

# **REPORT OF THE STRATEGIC DIRECTOR (SERVICE DELIVERY)**

**SECTION 1: Planning Applications**

**SECTION 2: Appeals**

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

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## **1. PLANNING APPLICATIONS**

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

<b>Reference</b>	<b>Item</b>	<b>Place</b>	<b>Ward</b>	<b>Page</b>
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When moving that a site visit be held, Members will be expected to consider and propose one or more of the following reasons:

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

Item 1.1

Ref. No. 9/2018/0621/OX

**Applicant:**  
**Mr A Cox**  
**The Barn**  
**Green4 Developments**  
**Hopwell Hall**  
**Ockbrook**  
**DE72 3RW**

**Agent:**  
**Mr Ian Mchugh**  
**IMCH Planning & Development**  
**20 Attewell Close**  
**Draycott**  
**DE72 3QP**

**Proposal:** **OUTLINE APPLICATION (MATTERS OF ACCESS, LAYOUT, SCALE AND APPEARANCE TO BE CONSIDERED, WITH MATTERS OF LANDSCAPING RESERVED) FOR THE RESIDENTIAL DEVELOPMENT OF 8 DWELLINGS ON LAND AT SK2628 6240 DUCK STREET EGGINTON DERBY**

**Ward:** **Etwall**

**Valid Date** **05/07/2018**

*This item was originally reported to the meeting on 26 February 2019 where the Committee resolved to defer the application to a later meeting to allow further details regarding viability of the drainage system to be obtained.*

*Since then, the applicant has also requested that matters of appearance be considered under this outline application. Landscaping thus remains the only reserved matter, with this deferring matters of planting, hard surfacing and boundary treatments to a later stage.*

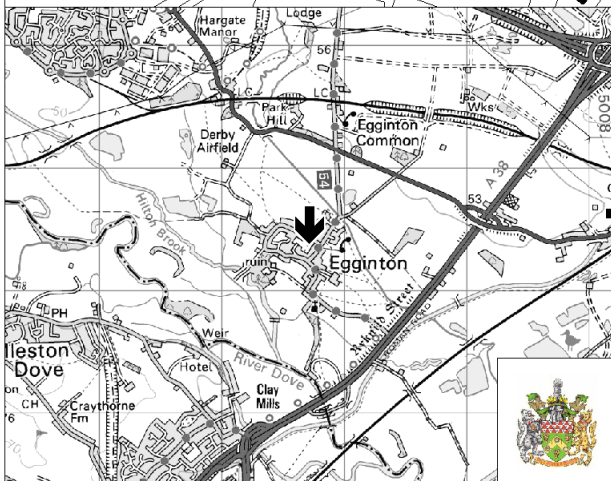
*The report below remains as originally written with any additions in italics and superseded text struck out.*

### **Reason for committee determination**

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

### **Site Description**

The 0.62 hectare site is located within the centre of the village of Egginton. It is a grassed field and an existing Dutch barn is located adjacent to the south eastern boundary. Mature trees and hedgerow screen the site from the road frontage. An individual Ash tree on the north eastern corner together with a group of nine Ash Trees along the Duck Street frontage to the north-west are protected by Tree Preservation Order (TPO) No. 498.

[illegible]

**South Derbyshire District Council. LA 100019461. 2014**

## Proposal

Outline permission is sought for 8 dwellings with access, *appearance*, layout and scale to be agreed at this stage. The proposal would take the form of a detached farmhouse with a barn complex and central courtyard. The access would be located in the north eastern corner and would curve round to the front of the farmhouse into the courtyard area to the west and rear. The courtyard would be framed by a mix of barn-style attached dwellings forming an 'L' shape ranging in scale from single storey adjacent to Duck Street, to one-and-a-half storey and two-storey adjacent along the western range, and single to one-and-a-half storey along the southern range. A detached one-and-a-half storey dwelling is proposed beyond the southern range, accessed through a covered access between dwellings. A large open, green space to the front of the farmhouse and courtyard would allow for existing trees and hedgerow fronting Duck Street to be retained.

## Applicant's supporting information

A Flood Risk Assessment (FRA) states the site is classified as within Flood Zone 2 and 3 'medium' and 'high' risk. However, the risk of flooding, associated with Egginton Brook, is reduced by flood defences. Flood risk from sources such as surface water, groundwater and reservoirs are generally considered low probability and secondary to fluvial flooding under design flood conditions. Sustainable Drainage Systems (SuDS) would be used to manage surface water runoff. The proposal restricts built development to within Flood Zone 2. The proposed highway access is within Flood Zone 3 (high risk), as are surrounding areas of existing highway. The report estimates that only 50% of the 0.64ha site (equating to 0.32ha) would be occupied by built surfaces such as dwellings and hardstanding, increasing to 0.35ha over time as a result of urban creep (assumed as 10% of development area). The remaining site area would be formed by garden curtilages. It is advised that dwellings be restricted to ground which is above the 46.6m AOD existing site contour. Preference is for infiltration drainage systems to serve the proposed development. If infiltration drainage is not viable then site wide surface water attenuation SuDS would be required with a restricted rate of discharge to public sewer network. Permeable surfacing is shown for the part of the access within Flood Zone 3.

*Two Drainage Addenda have been submitted, with the first containing that which was previously reported verbally to the Committee. The first states:*

*The proposed attenuation system can be operated in a number of ways, depending on depth to groundwater and geology, both of which are subject to percolation testing and groundwater monitoring at this point:*

- *open infiltration system (if above groundwater and geology permits and LLFA approve of this)*
- *partial infiltration system (if above groundwater and geology not suitably permeable for reliance on infiltration drainage and LLFA approve of this)*
- *sealed system (if above ground water table but the LLFA do not want any infiltration)*

- sealed system (if below groundwater table and groundwater ingress to be avoided)

*In each case the proposed system would achieve an invert level better than an equivalent crate system due to the required depth of cover over crates (1.2m where trafficked). If required, the system could be amended to obtain an invert level of 45.35m AOD under critical storm conditions without flooding. The storage below outlet invert from houses would be in the region of the 1 in 30 + 40% climate change event. The balance up to the 1 in 100 + 40% climate change event would be stored above the invert of the incoming pipe.*

*Severn Trent Water does not know the invert level of the receiving sewer in Duck Street. However, LIDAR data indicates that the road levels immediately north of the site are 46.0 to 46.2 mAOD. Sewers for adoption require a minimum depth of cover to the crown of gravity pipes without protection in highways of 1.2m. Assuming a 300mm diameter sewer, the maximum invert level is therefore likely to be 44.5mAOD.*

*Assuming that freeboard within the attenuation system is 100mm, there is a minimum fall between that and the receiving sewer of 0.85m (45.35m – 44.5m). A gradient of 1 in 150 over 30m would require a fall of only 0.20m. Hence, under normal conditions, it should always be possible to discharge to the Severn Trent sewer without the need for pumping. Based on these assumptions, it should also be possible to connect to a sewer as high as 45.15mAOD.*

*If groundwater is at road level (46.0mAOD), then there would be storage capacity in the pervious pavement subbase for 102m<sup>3</sup> before any discharge to the sewer. If the sewer is pumped, then it should continue to drain even if tide-locked in local watercourses.*

*A 150mm diameter in-line non-return valve would prevent pressurised flow from within the Severn Trent sewer backing up into the site drainage system. There is no inbuilt system to pause or delay outflows from the site. However, it is important to note that following the development, outflows are restricted to 2l/s for all rainfall events up to the 1 in 100 plus climate change. Currently the 1 in 100 plus (30%) climate change storm would discharge from the greenfield site at 3.7l/s, so the contribution from the site to the road flooding would be reduced by 46%.*

*The second drainage addendum responds to a further representation received which included comments from a drainage consultant on behalf of the Parish Council and residents [inset]. This states:*

*A specialist drainage consultant has been asked to comment on the drainage design and while there is much that we agree with, there are a couple of points that should be clarified. The letter states:*

*“Although the scheme presented is relatively basic and the drawing does not look great I would suggest they have covered themselves with numerous surface water drainage options to get through planning and*

*then they will address the main issues of draining the site in the detailed design and the LLFA have covered themselves with a relatively standard condition. Although they may have to deliver something slightly different (attenuation surrounded in concrete to avoid any floatation) a discharge to the Severn Trent Water sewer should be viable in the worst case”.*

*We agree that the design is viable even in the worst case. The letter continues:*

*“The issue I would raise, is that if the existing sewer may be very shallow as they have not confirmed invert levels and a gravity drainage solution may not be viable. Although this could be addressed by a package pumping station (as they suggest) as the scheme is small and although it would be awkward it should be acceptable to Severn Trent Water, as long they agree maintenance”.*

*The Severn Trent sewer maps show that the upstream and downstream invert levels for surface water manholes are 44.95mAOD and 44.63mAOD respectively. Our design shows an invert in the hydrobrake of 45.35mAOD, based on the sketch in the drainage statement. It is clear that a gravity connection is possible, and the gradient between our site and this connection would be approximately 1 in 50  $((45.35 - 44.95)/20)$ , which is adequate for a 150mm diameter sewer. The letter continues:*

*“A more valid point is if Egginton Brook floods regularly and surcharges the outfall you could argue the site should design the attenuation assuming a surcharged outfall which would increase the attenuation significantly. This may well be an argument to raise as the consultant has stated that a non-return valve should be included to prevent back flow. The problem with this argument is that if Severn Trent water accept their proposed flow rate really, it is then an issue for Severn Trent Water to guarantee the flow is available to deal with and not the developer. Although in the long term this could affect the development”.*

*We would be happy to look again at the design of the attenuation storage, if Severn Trent wishes us to do so [at the necessary point in time]. Returning to the letter:*

*“They should also ask the developers consultant to provide FFLs and flood levels of the Brook to make sure they are situated above the flood level”.*

*Finished floor levels are set at 47.5mAOD. The EA do not have modelled flood levels for Egginton Brook, but the site is very largely in Flood Zone 2, therefore ground levels are above the 1 in 100 year flood level. The letter continues:*

*“As the proposed properties are in the flood plain it should be stated how they are going to mitigate against flooding in future (i.e. flood*

*resilient or resistant construction). Also, a key point to raise, is whether there is nowhere better to build houses (say Hilton for example) as although the site is in Flood Zone 2 the area is surrounded in Flood Zone 3 and could be completely cut off in times of flood”.*

*The design includes an allowance for Climate Change of 40%, which is in line with EA and NPPF guidelines. The FRA provides details of flood resilient and flood resistant designs. The issue of whether the houses are in the best location is best addressed in a Sequential Test, not a drainage design.*

*In view of the above, we do not believe that reasonable grounds have been determined for withholding approval [of] this application.*

The Heritage Statement provides details of the Grade II listed Village Pinfold or Pound, situated on the corner of Main Street and Duck Street. It is a small rectangular shaped stone structure with a gate on one side, listed in 1952. The statement considers that as there is no recorded functional or formal relationship between the application site and the Pound, and the closest proposed dwelling would be some 30m from the Pound with existing intervening buildings and structures minimising any visual impact; it draws the conclusion that the proposal would not be harmful to the significance of the listed building and its setting, either directly or indirectly.

The Tree Survey includes a survey of four individual trees and two group of trees. The trees in the survey are mainly ash, with a single horse chestnut and a group of hawthorn. Three of the individual trees including the ash covered by the TPO have been categorised as B (trees of moderate quality). One individual tree and one group have been categorised as C (trees of low quality). A group of ash trees covered by TPO have been classed as B (trees of moderate quality). None of the trees would need to be removed in order to facilitate the construction of the development. Some works are recommended on trees that overhang the site and protective fencing would be required to protect the trees during construction.

## **Planning History**

- |             |  |
|-------------|--|
| 9/2000/0395 | Outline application for the erection of twenty dwellings - refused July 2000 and dismissed at appeal February 2001 |
| 9/1999/0493 | Outline application for the erection of 23 detached houses – withdrawn December 1999                               |

## **Responses to Consultations**

The Environment Agency (EA) states the revised layout plan shows the dwellings to be in the lower risk area of the site and as such they have no objection subject to a condition requiring finished floor levels set no lower than 47.5m Above Ordnance Datum (AOD) and development restricted to Flood Zone 2.

*The Lead Local Flood Authority (LLFA) has no objection in principle to the proposed drainage strategy. The proposed discharge rate of 2l/s is in line with their*



*recommended practical minimum. The proposed attenuation storage provision of 236m<sup>3</sup> is shown in the modelling to accommodate the 1 in 100 year rainfall event plus 40% climate change, taking into account 10% urban creep. These points are in line with the LLFA's recommendations. The LLFA also supports the proposal to discharge to infiltration, subject to ground percolation tests. However, where infiltration is found not to be feasible, the proposed alternative discharge is to a surface water sewer, which would eventually outfall into Egginton Brook. The LLFA supports this proposal subject to agreement with Severn Trent Water and the invert level of the sewer being able to accommodate the invert level of the hydrobrake in the drainage design. The LLFA recommends that EA advice is sought regarding the finished floor levels. The development within the site would be within Flood Zone 2 and the corresponding EA standing advice is that the finished floor level is 0.6 m above the estimated flood level or 0.3 m above the general ground level, whichever is higher. The finished floor levels for this development are proposed as the higher of 0.3m above the design flood level or 0.3m above ground level. The LLFA is also satisfied that the Drainage Addenda further support the proposed drainage strategy, and the above comments stand against these further reports.*

The Council's Drainage Officer acknowledges the surface water issues in Egginton due to the system having very little fall and the area having a high water table. Both Severn Trent and the EA have in the past improved outfalls close to the flood banks.

The County Council's Emergency Planning Officer has reviewed the FRA, concurs with the recommendations and confirms that future residents would have to sign up to receive flood warnings which, with the timescales involved, should provide sufficient time to evacuate through Flood Zone 3, leaving the village to the north. A personal flood plan is recommended with reference to the flood plan for Derbyshire.

Severn Trent Water has no objections subject to a drainage condition and informative regarding access to the pumping station.

The Development Control Archaeologist recommends a condition requiring a written scheme of investigation due to possible medieval ridge and furrow.

The Tree Officer concurs with the tree assessment and supports the use of protection during the course of construction.

The Highway Authority has no objections subject to conditions in respect of provision of a site compound during construction, access visibility sightlines, the width of the access, access gradient, parking and bin stores.

## **Responses to Publicity**

Egginton Parish Council has made the following comments:

- a) The proposal is not in accordance with the Policy H1 as it is not considered limited development within the settlement boundary;
- b) The Local Plan defines the village as unsustainable due to its lack of services for residents and no public transport links;

- c) The site is a valuable open space in a prominent location reflecting the rural and farming heritage of the community;
- d) The Inspector in the 2001 appeal considered the openness of the site to make a valuable contribution to the character and form of the village;
- e) In relation to Policy BNE4, the proposal would have an unacceptable impact on landscape character, visual amenity and sensitivity which is not sufficiently mitigated;
- f) The village suffers from flooding due to an inadequate storm drainage system which was evident in the flood event in 2012 and is not adequately dealt within the FRA;
- g) The Inspector noted in the appeal decision that the surface water drainage system was unsatisfactory and had insufficient capacity;
- h) A surface water drainage scheme should be provided at outline stage and not as a condition and the application refused until a site investigation is undertaken;
- i) Flash flooding on Main Street and Duck Street would be made considerably worse by the development;
- j) Increased traffic would increase the use of already dangerous junctions;
- k) If permission is granted suggested conditions would be the scale of dwellings should be in scale with existing properties, density should match the surrounding area and design should incorporate local design features;
- l) Section 106 monies should be sought for school places, maintenance of replacement fencing on Etwall Road / Carriers Road crossroads required by Derbyshire County Council to improve visibility, 2 affordable houses, a pumping station and protection of existing trees and hedges;
- m) *The revised drainage information does not address the question of what happens when the Egginton and Hilton Brooks and River Dove are in flood;*
- n) *The flooding of these water courses closes the outlet flap from the village surface water drainage network, and a pumping station solution for the entire village is needed – not just this site; and*
- o) *Parts of Duck Street and Main Street are in Flood Zone 2, with part of it in Flood Zone 3.*

25 representations of objection have been received, raising the following concerns:

- a) Planning permission was refused for 20 dwellings in 2000 which was dismissed at appeal due to the principle and the adverse effect on the character and appearance of the area;
- b) The Inspector in the appeal mentions the 'loss of openness of the appeal site' and this remains relevant;
- c) The proposal is over development for the size of the site;
- d) Insufficient parking has been provided;
- e) The village does not have the facilities and school places to accommodate the new residents;
- f) There should be consideration of whether the existing sewer system has capacity;
- g) New residents would increase traffic in the village as due to the lack of facilities residents are reliant on the car to access facilities;
- h) There is no bus route serving the village;

- i) The site enhances the character of Duck Street and adds to the rural feel of the village;
- j) The inspector in 2001 considered that the 'openness of the site makes a valuable contribution to the character and form of the village';
- k) The site offers a distinctive visual break within the village;
- l) The site is maintained and continues to be used for animal grazing;
- m) Egginton is prone to localised flooding due to a high water table and covering this site with built development would exacerbate this problem;
- n) Flood events cause the access to the village to be blocked;
- o) The surface water drainage system along Duck Street and Main Street is poor and the sewage pumping system for foul is at capacity with a flood event in 2012;
- p) One dwelling is proposed within Flood Zone 3 in conflict with Policy SD2;
- q) The village has been downgraded in terms of sustainability in the Local Plan as there is no bus route, shop, mobile library or post office;
- r) The Local Plan suggests that the village should accommodate 15 affordable dwellings and not luxury 4 and 5 bedroom dwellings;
- s) Loss of privacy to No. 21 Main Street, Holly Cottage and Holly Bush Farm, Duck Street;
- t) The application does not mention protection of hedgerows, trees or wildlife;
- u) Local open spaces are to be protected;
- v) The site has a higher land level than Duck Street;
- w) There are no cycle routes or footways to Willington from the village;
- x) The other open space within the village known as the 'education field' should be considered instead;
- y) Loss of the hedgerow as a haven for birds and wildlife, the barn has nesting swallows and the field is used by bats;
- z) Dwellings should be sympathetic to the 'village atmosphere' of low density development;
- aa) The Inspector found that the Elmhurst / Dove Grove development had eroded some of the traditional character of the village;
- bb) The use of modern dormers are not traditional features;
- cc) The proposal would change the rural feel of the footpath along the north western boundary;
- dd) The proposal would have an unacceptable impact on the landscape character contrary to Policy BNE4;
- ee) *Whilst the applicant's drainage data may seem impressive, the reality is that the village's storm sewer system cannot accept any further water;*
- ff) *If the applicants plan to sell the land on, then the drainage issue could be 'swept under the carpet';*
- gg) *The proposal does not comply with policy H1 in that it is not small scale and proportional to the size of the village;*
- hh) *Development should only be allowed in higher risk flood areas where there are wider community benefits or for regeneration needs, and a sequential test is needed.*

2 representations in support have been received, raising the following comments:

- a) The proposal would revitalise a scruffy field into a new cul-de-sac of attractive properties;

- b) The local school is not at capacity and new housing would ensure it remains open; and
- c) Flood defences have been improved and as such insurance premiums have reduced.

*Immediately following the February 2019 meeting, a further objection was been received on behalf of the Parish Council and residents.*

*“[Our] previous objection set out detailed concerns on drainage, loss of open space and the overall unsuitability of the site for housing development. I focus my comments now on the drainage details and the overall appropriateness of the site for housing given the concerns over drainage and flooding.*

*As previously outlined, the site is within the designated flood plain where new housing should be avoided in line with adopted Policy SD2 of the Local Plan Part [1]. Whilst drainage details have been submitted, there is serious concern that matters are being looked at in isolation and no regard is being given to the wider picture of the village, which has a very high water table, is surrounded by watercourses that are known to flood and has a foul and surface water drainage system that has failed on numerous occasions. It is the linkages between these factors, or the apparent absence of this, that gives rise to the greatest concern. Even if a technical solution was to be provided for the site, the capacity of the drainage system to cope with the additional volumes is uncertain, particularly as the drains will flow to watercourses that themselves will be in flood; hence the potential for back flows.*

*Comments of a specialist drainage consultant have been sought on the information submitted and it is clear that gaps in the proposals are still evident and a serious concern is raised as to the suitability of the site overall for residential development”.*

*These comments are set out in full, and responded to, in the Applicant’s supporting information. The objection goes on to state:*

*“Further to these comments, the size and adequacy of the proposed surface water storage is questioned along with the plan for its ongoing maintenance.*

*To be deferring any information on drainage to a condition is not acceptable for this site. Full details that comprehensively address not only the site drainage but consider the capacity of the local drainage network to take the outfall of the new development, should be provided. In addition, a clear and accountable maintenance scheme should be submitted and approved before any determination is made. A full investigation should be undertaken and a report provided to clearly explain to local residents, Members and Officers that the development is acceptable. At present, the information falls far short of this, a fact highlighted by the significant concerns of local residents who have experienced severe impacts of flooding over the years.*

*Ultimately, serious concern remains that the site is not suitable for housing development. As identified by the drainage consultant, putting 8 additional*

*families, in a vulnerable location which is highly likely to add to existing drainage and flooding problems in Egginton is not a pragmatic or sensible decision, particularly when the District has more than sufficient housing land in less vulnerable and more sustainable locations. It is very important that a holistic view is taken to this development, looking at the wider impacts and long term implications of developing a green space to an impermeable area causing increased health and safety problems to existing and proposed residents”.*

*At the time of writing, the application is subject to further publicity with the amended proposals, to include matters of appearance, and the additional drainage information referred to in the applicant’s supporting information above available for comment. The period for responses to be received closes on the 4 June and any further representations will be reported verbally at the meeting.*

## **Development Plan Policies**

The relevant policies are:

- 2016 Local Plan Part 1 (LP1): S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), S4 (Housing Strategy), S6 (Sustainable Access), H1 (Settlement Hierarchy), H20 (Housing Balance), SD1 (Amenity and Environmental Quality), SD2 (Flood Risk), SD3 (Sustainable Water Supply, Drainage and Sewerage Infrastructure), BNE1 (Design Excellence), BNE2 (Heritage Assets), BNE3 (Biodiversity), BNE4 (Landscape Character and Local Distinctiveness) and INF2 (Sustainable Transport); and
- 2017 Local Plan Part 2 (LP2): SDT1 (Settlement Boundaries and Development), BNE7 (Trees, Woodland and Hedgerows) and BNE10 (Heritage).

## **National Guidance**

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

## **Local Guidance**

- Design Guide Supplementary Planning Document (SPD)

## **Planning Considerations**

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

- Principle of development;
- Layout, scale and character
- Highway safety and capacity;
- Trees and biodiversity;
- Flood risk and drainage; and
- Residential amenity.

## Planning Assessment

### Principle of Development

The site lies within the settlement boundary of Egginton, which is a rural village in LP1 Policy H1. This policy states that *“development of a limited nature will be allowed within the settlement boundary where applicable or adjacent to as exceptions or cross subsidy site as long as not greater than 15 dwellings”*.

As the site located within the settlement boundary and is considered to constitute development of a limited nature it complies with this policy. The only development that may be acceptable adjacent to the settlement boundary would be for exceptions or cross subsidy sites incorporating either 100% affordable dwellings or a percentage of affordable with a maximum of 15 dwellings. This does not mean that only affordable dwellings are acceptable within the village as stated in objections. There is a principle of limited housing development within the village of which this proposal complies.

The explanation for Policy H1 states that the hierarchy is based on directing larger development sites to those areas which have a higher level of everyday services and facilities. This was informed by an assessment of services and facilities within the settlements and Egginton was considered to fall within the criteria for a rural village.

### Layout, scale and character

LP1 Policy BNE1 requires development to create places with a locally inspired character that respond to their context, be visually attractive and respect historic views and vistas. The proposed layout is considered to reflect the character of the rural village which is dominated by farm complexes made up of a larger property with ancillary buildings close to the road frontages. The detached dwelling takes the character of a farmhouse with the lower scale dwellings providing enclosure similar to traditional barns framing a central courtyard. Existing trees and hedging would be retained along Duck Street and an open frontage to the development retained within the north eastern corner and along this frontage. The proposal would therefore compliment the rural character of the village through the farmstead layout and by setting the greater scale development back into the site with single storey elements close to the road frontage. By retaining the openness in the frontage the visual link with open land to the north east, across Main Street, would not be lost.

The layout is designed as such to take account of the Inspector's comments in the 2001 appeal as development within the village has not changed significantly since this decision. The Inspector referred to character within the village as having *“little development of depth”* with *“glimpses of the surrounding countryside”* contributing to the rural feel of the village. This ‘bleeding’ of the agricultural landscape into the heart of the village is integral to the character of it. The decision confirms the *“openness of the appeal site makes a valuable contribution to the character and form of the village”* and considers the site to be prominent with a long frontage on Duck Street and mentions the traditional arrangement of farms within the settlement that retained agricultural land next to farm yards. The proposal in taking this more traditional form

has taken on board the Inspector's view of the more modern development that was considered to have *"eroded some of the traditional character of the village"*, and it should be noted that the appeal decision related to a dense, suburban scheme of 20 two-storey dwellings – materially different to that now presented.

The proposed scale takes account of the scale of existing adjacent dwellings. Single storey development on the frontage respects the existing properties opposite on Duck Street of the same scale. One and half storey properties are proposed adjacent to the southern and western boundaries where adjacent properties are bungalows and dormer bungalows. These scales have been assessed taking account of existing and proposed ground levels as required by the EA and are considered acceptable. ~~A condition requiring finished floor levels to be submitted with any reserved matters application is considered necessary, so to ensure this is 'fixed' early on in the detailed design stage.~~ *Finished floor levels are detailed along with surrounding land levels for the courtyard and patio areas which accord with that set out in the drainage statement and required by the EA.* The ridge and eaves heights reflect the three scales proposed with the prominent farm house style property having the highest ridge height at 9m, the impact of which would be minimised by both the distance from the site frontage, its massing and the retention of existing trees and hedging.

*The appearance of the proposal is now a matter for consideration. As anticipated at the previous meeting, a positively executed run of 'converted' barns is achieved, with authentic openings facing into the central courtyard. Care has been taken to ensure the barn plots are subservient in scale and detailing to the principal 'farmhouse' which carries stonework in recognition of its primacy in the mix of buildings on the site. Interruptions in the roofslope are limited to dormers on the 'extension' element to the farmhouse with small rooflights to the barns. Cart openings are either treated as garages or extend to full height glazed openings, and whilst rear elevations appear more 'domestic' this is considered to be appropriate in portraying the message of a converted farm cluster.*

The layout, scale *and appearance* are considered to respond to *their* context and retain the openness of the site in keeping with the character of this rural village, in accordance with Policy BNE1 and the Design Guide.

#### Highways safety and capacity

LP1 Policy INF2 requires appropriate provision for safe and suitable access to and within a development. The Highway Authority considers sufficient visibility can be achieved at the access of 2.4m x 43m in both directions. A plan has been produced to show that the visibility splay can be achieved without any impact on the protected trees on the frontage. Suitable access, parking and manoeuvring can be achieved, by way of condition where necessary, in accordance with Policy INF2.

#### Trees and biodiversity

Policies BNE4 and BNE7 requires proposed development that could affect trees to demonstrate that the layout and form of the development has been informed by appropriate arboricultural surveys, shading impacts have been considered and

appropriate measures secured to ensure adequate root protection and buffers around trees, woodland and hedgerows.

An individual Ash tree on the north eastern corner together with a group of nine Ash Trees along the Duck Street frontage are protected by a TPO and all these trees are to be retained. Impacts during construction have been considered and adequate mitigation proposed in accordance with Policy BNE7.

### Flood Risk and drainage

LP1 Policy SD2 requires development in areas at risk of flooding to be resilient to flooding through design and layout and to not increase flood risk to other properties or surrounding areas. The site is mainly located within Flood Zone 2, with part of the access in Flood Zone 3. However, Egginton does benefit from flood defences along Egginton Brook. Development on the site has been limited to Flood Zone 2 with the access in the north eastern part within Flood Zone 3. A sequential test is therefore not required. Existing site levels range from 47.6m AOD (Above Ordnance Datum) in the north western corner and 46.2m AOD in the eastern corner. The EA has reviewed the FRA and has no objections to the development provided that finished floor levels are set no lower than 47.5m AOD together with flood resident design features being incorporated. The Emergency Planning Section has been consulted and have reviewed the FRA and concurs with its recommendations in the flood evacuation section, such as signing up to flood warnings and preparing a personal flood plan. This can be secured by a condition.

The local concerns regarding surface water flooding do, however, require particular attention given the known problems the village suffers during period of high water/rainfall. The surface water drainage system for Egginton ultimately discharges to the Egginton Brook where, if it itself is flooded, this system backs up and results in flooding to roads and so forth within the defended envelope of the village. The concerns raised locally, and observed by the Council's drainage engineer, indicate that confidence is required prior to determination that suitable Sustainable Drainage Systems (SuDS) can be provided on the site, and that they would be able to operate under flood conditions without worsening the existing problems.

Normally, use of SuDS would be secured by the Building Regulations on a scheme of this size, but ground conditions are understood to be difficult, with a high water table in particular. The suggestion of using infiltration is therefore noted to be of concern if deferring this matter to a later stage. Nonetheless, a technical solution is *likely has been demonstrated* with on-site attenuation and flow controls *normally* capable of throttling the rate at which total surface water flows from the site cross its boundary to enter the public sewerage system. *Sufficient attenuation would be provided to cater for the worst storm events, adequate fall can be achieved to secure a gravity fed discharge to the sewer, whilst control would be inserted into the system to prevent reverse flows from a sewer network operating at capacity and the surrounding watercourses in flood. It is notable that the drainage consultant engaged by the Parish Council and residents has agreed that although something slightly different may need to be delivered "a discharge to the Severn Trent Water sewer should be viable in the worst case". It is on this point that is it considered the further drainage work carried out by the applicant has pushed the extent of preliminary work*



*to its limit with it now necessary for Severn Trent to participate in determining the final detailed scheme. It remains the view that a conditional approach is thus appropriate at this stage, and accords with the NPPF in promoting the use of conditions to make otherwise unacceptable development, acceptable. Whilst the LLFA has not raised concern in this respect and advances the following of their standing advice which also promotes this approach; at the time of writing, the applicant is preparing a more detailed drainage design for the development in response to the concerns raised. This will be verbally reported to the Committee at the meeting. Furthermore, the LLFA has reviewed the additional drainage work presented and concurs with the findings. The lack of a detailed management scheme is not considered to merit withholding permission given it would be unreasonable to require this now when the final design of the system is yet to be secured, and it is a matter which can clearly be required under condition. Again, the LLFA raises no objection to this approach, suggesting it be brought forward under a pre-commencement condition instead.*

Therefore, noting that the statutory and technical consultees have reviewed the proposal and consider that residential development can be accommodated on site with sufficient mitigation to reducing the risk of flooding to existing and prospective occupiers and property, the proposal is considered to accord with Policy SD2.

#### Residential amenity

LP1 Policies SD1 and BNE1 require the impacts of the development on the residential amenity of neighbouring properties to be assessed with the Design Guide stipulating separation distances between windows. Whilst a full assessment is not possible at this stage as the window positions are not known, the layout indicates that the separation distances could be met in order to protect residential amenity. A full assessment would be carried out at the reserved matters stage when all the details of the proposed properties are known. Therefore, in principle the proposed layout would not have a significant adverse impact on residential amenity in accordance with the requirements of Policies SD1 and BNE1.

#### Summary

To conclude, the proposed is considered limited development within this rural village in compliance with policy H1 with the layout and scale reflecting the character of the area and retaining the open character of the site – linking it with its agricultural origins beyond the village. The farmhouse with its ancillary buildings, or barn, design concept reflects the character of the village which is dominated by this type of development. Existing trees along the site frontage would be retained and sufficient mitigation in terms of flood risk could be achieved. The proposed access is considered adequate in terms of visibility and the layout indicates sufficient parking and turning can be accommodated. *It has also been demonstrated that suitable and feasible drainage system can be achieved without detriment to the existing conditions experienced in the village during times of flooding.*

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. Approval of the details of the landscaping (herein referred to as the 'reserved matter') shall be obtained from the Local Planning Authority in writing upon an application made in that regard before any development is commenced.  
Reason: 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 section 92 of the Town and Country Planning Act 1990 (as amended by Section 51 of the Planning and Compulsory Purchase Act 2004).
2. (a) Application for approval of the reserved matter shall be made to the Local Planning Authority before the expiration of three years from the date of this permission; and  
(b) The development hereby permitted shall be commenced before the expiration of two years from the date of approval of the reserved matter to be approved.  
Reason: To conform with Section 92 of the Town and Country Planning Act 1990 (as amended by Section 51 of the Planning and Compulsory Purchase Act 2004).
3. The layout, scale and appearance of and access to the development hereby permitted shall be carried out in accordance with plans/drawings numbers A100, A101 and A200 (Unit 1 Floor Plans and Elevations); A102, A103 and A201 (Unit 2 Floor Plans and Elevations); A104, A105 and A202 (Unit 3 Floor Plans and Elevations); A100, A101 and A200 (Unit 4 Floor Plans and Elevations); A101, A100 and A200 (Unit 5 Floor Plans and Elevations); A100, A101 and A200 (Unit 6 Floor Plans and Elevations); A102, A103 and A201 (Unit 7 Floor Plans and Elevations); and A005 (Ground Floor Site Plan) all received on 9 May 2019; plans/drawings numbers A100, A101 and A200 (Unit 8 Floor Plans and Elevations); A004 (Roof Site Plan) and A020 (Long Elevations) received on 22 May 2019; and A803 (Access Detail) received on 6 February 2019, unless as otherwise required by condition attached to this permission or allowed by way of an approval of a non-material minor amendment made on application under Section 96A of the Town and Country Planning Act 1990 (as amended).  
Reason: For the avoidance of doubt and in the interests of sustainable development.
4. The development shall be carried out in accordance with the Flood Risk Assessment (FRA) ref. Revision A, dated 13 October 2018 compiled by Encon Associates Ltd, and the following mitigation measures:
  - Finished floor levels shall be set no lower than 47.5 m above Ordnance Datum (AOD) as detailed in section 8.5 of the flood risk assessment (FRA) referenced above.
  - Flood resilient design shall be incorporated to no lower than 47.8m above Ordnance Datum (AOD) as detailed in section 8.8 of the FRA referenced above.
  - All residential development within the site is restricted to Flood Zone 2 as detailed with section 11.2 and Appendix B of the FRA referenced above.

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

Reason : To reduce the risk of flooding to the proposed development and future occupants; to reduce the consequence of flooding and facilitate a quicker recovery in the event of an extreme flood.

5. Throughout the construction phase of the development space shall be made available within the site curtilage for the storage of plant and materials, site accommodation, parking and manoeuvring of site operative's vehicles and goods vehicles.

Reason: In the interests of highway safety.

6. Notwithstanding the approved plans, no construction of a dwelling shall commence until further details of the proposed ground levels of the site relative to the finished floor levels as shown and hereby approved on the site layout plan have been submitted to and approved in writing by the Local Planning Authority. Such details shall be supplemented with locations, cross-sections and appearance of any retaining features required to facilitate the proposed levels. The development shall thereafter be constructed/delivered in accordance with the approved details.

Reason: To ensure the visual impact of the development, as well as the effect on adjoining occupiers, is acceptable.

7. Before any works involving the construction of any dwelling commences a new vehicular and pedestrian access shall be created to Duck Street in accordance with the approved plans/drawings. The new access into the site shall be provided with visibility sightlines of 43m in both directions, measured to the nearside carriageway edge from a point 2.4m back from the nearside carriageway edge and centrally in the new vehicular access, the area forward of which shall be cleared of any obstruction exceeding 600mm in height and thereafter maintained clear of any obstruction throughout the life of the development.

Reason: In the interests of highway safety.

8. The access driveway shall have a minimum width of 4.8m over its entire length, plus an additional 0.5m where immediately bounded by a wall, fence, hedge or similar enclosure.

Reason: In the interests of highway safety.

9. The gradient of the new access shall not exceed 1:20 for the first 5m into the site as measured from the highway boundary.

Reason: In the interests of highway safety.

10. Prior to the first occupation of any dwelling, a parking scheme incorporating no less than 2 vehicles per dwelling shall be submitted to and approved in writing by the Local Planning Authority and implemented in accordance with the approved details.

Reason: In the interests of highway safety.

11. A bin collection point shall be provided within the site adjacent to the access for placing and storage of refuse and recycling bins on the relevant collection day(s). No bins or other items shall be stored on this collection point on other days.

Reason: In the interests of highway safety and in the interest of the visual amenities of the area.

12. Before any works involving the construction of any dwelling commences a scheme for the disposal of foul water shall be submitted to and agreed in writing by the Local Planning Authority. The scheme shall include, where necessary, details and specifications of any on-site pumping equipment required to ensure the safe and efficient operation of the system. The scheme shall be carried out in conformity with the details which have been agreed before the development is first brought into use.  
Reason: In the interests of pollution control.
13. Prior to the occupation of any of the dwellings a personal flood plan as detailed in the FRA dated 13th October 2018 ref. A3701 Rev A shall be submitted to and approved in writing by the Local Planning Authority and thereafter implemented and maintained in accordance with the approved details for the life of the development.  
Reason: To reduce the risk of flooding to the proposed development and future occupants; to reduce the consequence of flooding and facilitate a quicker recovery in the event of an extreme flood.
14. No construction of a building or hard surface shall commence until a detailed assessment to demonstrate that the proposed destination for surface water, assessed across the site as a whole, accords with the hierarchy in paragraph 80 of the planning practice guidance (or any revision or new guidance that may replace it) has been submitted to and approved in writing by the Local Planning Authority. The assessment shall include a full understanding of the water table and any springs within the site and any associated mitigation requirements, and 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 surface water drainage system;  
iv) to a combined sewer.  
Reason: To ensure that surface water from the development can be directed towards the most appropriate waterbody in terms of flood risk and practicality, noting that certain works may compromise the ability to subsequently achieve this objective.
15. No construction of a building or hard surface, setting of site levels or installation of services/utilities shall take place until a detailed design of, and associated management and maintenance plan for, surface water drainage of the site based upon the proposed drainage strategy as set out in Encon's correspondence received 19 February 2019 and drawing ref. A3701-10A received 22 February 2019 and in accordance with Defra non-statutory technical standards for sustainable drainage systems, has been submitted to and approved in writing by the Local Planning Authority. The scheme shall demonstrate that, as a minimum, suitable capacity is proposed to attenuate peak flows from the site, making allowance for climate change and urban creep, and where necessary include measures to capture overland flows between proposed and existing properties. The surface water drainage infrastructure shall be installed in conformity with the approved details prior to the first use/occupation of a building/road/hard surface served by the surface water drainage system or in accordance with a phasing plan first submitted to

and approved in writing by the Local Planning Authority. Those elements of the surface water drainage system not adopted by a statutory undertaker shall thereafter be maintained and managed in accordance with the approved management and maintenance plan.

Reason: To ensure that the principles of sustainable drainage can be incorporated into the development, noting that initial preparatory and/or construction works may compromise the ability to mitigate harmful impacts.

16. Upon completion of the surface water drainage system, including any attenuation ponds and swales, and prior to their adoption by a statutory undertaker or management company; a survey and report from an independent surveyor shall be submitted to and approved in writing by the Local Planning Authority. The survey and report shall be carried out by an appropriately qualified Chartered Surveyor or Chartered Engineer and demonstrate that the surface water drainage system has been constructed in accordance with the details approved pursuant to condition 15. Where necessary, details of corrective works to be carried out along with a timetable for their completion, shall be included for approval in writing by the Local Planning Authority. Any corrective works required shall be carried out in accordance with the approved timetable and subsequently re-surveyed by an independent surveyor, with their findings submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure the effective operation of the surface water drainage scheme following construction of the development.

17. 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/organisation 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 'A' above.
- 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 'A' above 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, noting that unacceptable impacts would likely arise

if details were not agreed and/or implemented prior to development commencing.

18. No development, including preparatory works, shall commence until protective fences have been erected around all trees and hedgerows shown to be retained on the approved plans. Such fencing shall conform to best practice as set out in British Standard 5837:2012 (or equivalent document which may update or supersede that Standard) and ensure that no vehicles can access, and no storage of materials or equipment can take place within, the root and canopy protection areas. The fences shall be retained in situ during the course of ground and construction works, with the protected areas kept clear of any building materials, plant, debris and trenching, and with existing ground levels maintained; and there shall be no entry to those areas except for approved arboricultural or landscape works.

Reason: In the interests of safeguarding existing habitat and the visual amenities of the area, recognising that initial preparatory works could bring about unacceptable impacts.

19. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, or any statutory instrument amending, revoking and/or replacing that Order, the dwellings hereby approved shall not be enlarged, extended or altered, and no buildings, gates, walls, fences or other means of enclosure or hard surfaces (except as authorised by this permission or allowed by any condition attached thereto) shall be erected/installed on the site without the prior grant of planning permission pursuant to an application made to the Local Planning Authority in that regard.

Reason: To maintain control in the interest of the character and amenity of the area, having regard to the setting and size of the development, the site area and effect upon neighbouring properties and/or the street scene, and to minimise the risk of flooding to property on or off the site during the lifetime of the development.

20. Prior to their incorporation in to the building(s) hereby approved, details and/or samples of the facing materials to be used shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be constructed using the approved facing materials.

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

21. Prior to their incorporation in to the building(s) hereby approved, details of the eaves, verges, cills and lintels shall be submitted to and approved in writing by the Local Planning Authority. The details shall include drawings to a minimum scale of 1:10. The eaves, verges, cills and lintels shall be constructed in accordance with the approved drawings.

Reason: In the visual interest of the building(s) and local distinctiveness.

22. *Each dwelling shall be constructed and fitted out so that the estimated consumption of wholesome water by persons occupying the dwelling will not exceed 110 litres per person per day, consistent with the Optional Standard as set out in G2 of Part G of the Building Regulations (2015). The developer must inform the building control body that this optional requirement applies.*

*Reason: To ensure that future water resource needs, wastewater treatment and drainage infrastructure are managed effectively, so to satisfy the requirements of policy SD3 of the Local Plan.*

Informatives:

1. The County Flood Risk Team advises:
  - Any alteration to existing impermeable surface area of the site may exacerbate surface water flood risk, so new impermeable surfaces should be limited where possible. Where an increase in impermeable area is unavoidable, Derbyshire County Council (DCC) strongly promote Sustainable Drainage Systems (SuDS) to be incorporated within the design of a drainage strategy for any proposed development, applying the SuDS management train with an appropriate number of treatment stages. Applicants should consult Table 3.3 of the CIRIA SuDS Manual (C697) to confirm the appropriate number of treatment stages, or contact the EA or the DCC Flood Risk Management Team directly. Surface water drainage should be designed in line with the non-statutory technical standards for SuDS (March 2015) where reasonably practicable, and ground infiltration to manage the surface water is preferred over discharging to a surface water body or public sewer system.
  - Any SuDS should be designed to ensure that the maintenance and operation requirements are economically proportionate and that a maintenance plan is available to the persons/organisations that will be responsible for ongoing maintenance.
  - The applicant is advised to contact the Environment Agency (EA) that hold modelling data for Main Rivers and some ordinary watercourses if fluvial flood risk is a concern.
  - Due to the historic mining and mineral extraction operations in Derbyshire, adits may exist beneath the surface. The applicant is therefore advised to investigate the potential for hidden watercourses existing on the land prior to any works being undertaken.
  - Development located in areas where the water table is at a shallow depth may be susceptible to groundwater flooding. Development site drainage should be considered carefully to avoid any increased risks associated with groundwater. DCC would not recommend infiltration as a means of development site surface water disposal in areas where geohazards or ground instability are deemed likely without appropriate analysis of the risks involved. Infiltration of surface water to the ground is also not advised in sensitive groundwater areas without an appropriate SuDS management train.
2. The Highways Authority advises:
  - a. In order to achieve the visibility sightlines at the proposed accesses, much of the site frontage will need to be cleared including the street light (No. 42280) which will need to be relocated in accordance with details agreed with Derbyshire County Council's Street Lighting engineers.
  - b. The site application site is located adjacent to a Public Right of Way (Footpath 1 in the parish of Egginton). The rights and safety of users of the Footpath will need to be protected at all times.
3. Severn Trent Water advise that although their statutory sewer records do not show any public sewers within the site, there may be sewers that have been recently adopted under The Transfer Of Sewer Regulations 2011. Public sewers have statutory protection and may not be built close to, directly over or be diverted without consent and the developer is advised to contact Severn Trent Water to discuss their proposals. Severn Trent will seek to assist in obtaining a solution which protects both the public sewer and the building. In addition, there is a pumping station close to the site and any new development must not restrict their access to the Sewage Pumping Station

(SPS). Severn Trent Water will require free access to the SPS at all times in order to complete any programmed routine maintenance tasks and also for any emergency reactive visits in case of failure. Please note that due to the close proximity of the proposed new development the occupant may experience noise and/or smell pollution. In order to minimise disruption to any future occupant(s), they advise that all habitable buildings are constructed a minimum of 15 metres from the curtilage of the SPS compound.

4. 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 and Communities at County Hall, Matlock regarding access works within the highway. Information and relevant application forms, regarding the undertaking of access works within highway limits, are available via the County Council's website [www.derbyshire.gov.uk](http://www.derbyshire.gov.uk), email [Highways.Hub@derbyshire.gov.uk](mailto:Highways.Hub@derbyshire.gov.uk) or telephone 01629 533190.
5. 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.
6. 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 gully laid across the access immediately behind the back edge of the highway, discharging to a drain or soakaway within the site.
7. 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.
8. The SuDS hereby permitted or which would be incorporated into public areas on the site should be designed to accord with health and safety guidance as set out in the CIRIA SuDS Manual 2015 (C753) or guidance that may update or replace it, and to meet the requirements of the Construction (Design and Management) Regulations (CDM) 2015 through assessing all foreseeable risks during design, construction and maintenance of the pond, minimising them through an 'avoid, reduce and mitigate residual risks' approach.
9. The applicant/developer is advised to liaise with the Local Planning Authority prior to submitting details of reserved matters for approval. It is strongly encouraged that, in addition to the requirements set out in any conditions, adequate details are supplied so to negate the need for further conditions upon approval. For example, details and locations of boundary treatments and species and size for soft landscaping should be provided pursuant to matters of landscaping. For all matters, attention should be given to the Council's Design Guide Supplementary Planning Document - in particular the relationship with surrounding properties and the quality of materials and finishes expected.
10. The developer is encouraged to install recharge points for electric vehicles to comply with the following criteria:



- Residential: 1 charging per unit (dwellinghouse with dedicated parking) or 1 charging point per 10 spaces (or part thereof) where individual units have shared or courtyard parking;

- Commercial/Retail: 1 charging point for every 10 parking spaces;

- Industrial: 1 charging point for every 10 parking spaces;

To prepare for increased demand in future years, appropriate cable provision should be included in scheme design and development. Residential charging points should be provided with an IP65 rated domestic 13amp socket, directly wired to the consumer unit with 32 amp cable to an appropriate RCD. This socket should be located where it can later be changed to a 32amp EVCP. Non-residential charging points should be supplied by an independent 32 amp radial circuit and equipped with a type 2, mode 3, 7-pin socket conforming to IEC62196-2 (or equivalent standard that may replace it). Measures should be taken to prevent subsequent occupiers of the premises from removing the charging points.

**Item**            **1.2**

**Ref. No.**        **9/2018/0774/SSO**

**Applicant:**  
**Mr Clive Collins**  
**c/o Agent**

**Agent:**  
**Mr J Imber**  
**JMI Planning**  
**62 Carter Street**  
**Uttoxeter**  
**ST14 8EU**

**Proposal:**    **OUTLINE APPLICATION (ALL MATTERS EXCEPT FOR ACCESS TO BE RESERVED) FOR THE RESIDENTIAL DEVELOPMENT OF UP TO 15 DWELLINGS AT 247 HEARTHCOTE ROAD SWADLINCOTE**

**Ward:**           **Swadlincote**

**Valid Date**    **05/12/2018**

**Reason for committee determination**

This item is presented to Committee as it is a major application and more than two letters of representation have been received.

**Site Description**

The application site comprises the south eastern half of the larger plot belonging to 247 Hearthcote Road. The site has an area of 0.6ha and is roughly rectangular in shape. The site is host to a large detached dwelling set back from the highway by a hard surfaced parking area and driveway. A mature belt of landscaping, including a number of protected trees forms the front boundary of the site; this feature provides substantial screening. The dwelling has been extended to the rear and there are various detached single storey buildings within its curtilage (predominantly to its east). The property has an extensive garden which is host to two large ponds along with clusters of protected trees. The garden is predominantly enclosed by mature conifers. The land levels fall to the north.

The application site is situated within a mixed use area host to building that are highly varied in terms of their design.

Dwellings along Hearthcote Road consist of a mixture of traditional and relatively modern properties, semi-detached and detached properties, two storey properties and bungalows. Dwellings are set back from the road at varying intervals and are finished in a range of materials including facing brickwork and render of various colours.

9/2018/0774 - 247 Hearthcote Road, Swadlincote DE11 9DU



**South Derbyshire District Council. LA 100019461. 2014**

To the south-east of Hearthcote Road is an expansive area of late 20th Century residential development. Dwellings here are principally two storey detached properties with open plan frontages containing front lawns and parking areas. The massing and design of properties here is traditionally inspired, and density is relatively high. The use of repetitious house types, a less varied material palette and more consistent set-back from the highway boundary lends this area a more uniform character than Hearthcote Road.

To the north-west and south-east of the site the built context has a more commercial character.

## **Proposal**

The application seeks outline planning permission for the residential development of the site, with all matters being reserved aside from access. The application proposes up to 15 dwellings.

The site would be accessed via an improved junction onto Hearthcote Road, which has been designed by the applicant's highway consultants in consultation with a supporting traffic speed survey. The junction has been designed to accommodate traffic generated by the development and to preserve the safe and efficient use of Hearthcote Road.

To facilitate the development the existing dwelling and outbuildings would be demolished and a number of trees would be removed. It was originally proposed to fill in one of the ponds to the rear of the site, however following consultation with Derbyshire Wildlife Trust, this no longer forms part of the proposal.

During the course of the application, amended plans have been received. The application site has been reduced effectively omitting the two ponds which would now remain.

## **Applicant's supporting information**

The Ground Conditions Report states that a Phase I Desk Study has been undertaken with the purpose of characterising the geological and environmental setting of the site. The information obtained has then been used to evaluate the environmental sensitivity (vulnerability) of aquatic, human and ecological systems in the site's vicinity. The report recommends various additional investigations that will be required to inform the design stage. These include, investigation of soil and groundwater conditions, geotechnical assessment, installation of ground gas/water monitoring wells and a hazardous ground gas risk assessment.

Coal Mining Risk Assessment: illustrates shallow workings beneath the site. As a result, it is concluded that further site investigation work will be required, and in particular in areas of proposed buildings. The report states that the site investigation should be sufficient to prove/disprove the presence of shallow depth workings beneath proposed buildings and should allow for boreholes to be drilled to a minimum depth of 30m bgl. As the development progresses, it is stated that a method statement and risk assessment will need to be supplied to the Coal Authority.

Bat and Bird Activity Survey: in relation to bat presence/absence, from the survey, it can be concluded that buildings B1 and B2 do not contain a bat roost, however, foraging and commuting common pipistrelle (*Pipistrellus pipistrellus*), Daubenton's (*Myotis daubentonii*) and soprano pipistrelle (*Pipistrellus pygmaeus*) bats were identified using the site, with the habitats in the northern section of the site potentially pivotal to the local bat populations. In relation to the presence of birds, the buildings were not found to have any bird nests, however the hedgerows and trees located around the site are known to support a wide variety of bird species. The report continues that the ecological value of the building units to bats and birds have been deemed as having 'negligible' ecological value. The report recommends that a dark corridor along the south-western section of the site and around any ponds should be created, that bat roosting enhancements should be incorporated post development, that no vegetation should be removed between March and August without a full bird breeding survey being undertaken, that bird boxes should be incorporated throughout the site and that once planning permission and a Natural England Development Licence has been granted, to produce a management plan for the site.

Drainage Strategy: this identifies that there are two ponds, linked by a sluice within the garden of the existing property and that the site lies within Flood Zone1, where the annual probability of fluvial flooding of less than 1 in 1000 and that there is no risk of tidal flooding or flooding from reservoirs. The report details impermeable areas of the site, but concludes that as the final layout of the site is yet to be determined, it is not possible at this stage to provide a detailed drainage scheme and that the s106 agreement may include provisions for a sustainable drainage system and its transfer to a management company for ongoing maintenance if necessary.

Great Crested Newt Survey: confirms the presence of a great crested newt breeding pond long with a medium population of GCN within Pond 1. Pond 1 and Pond 2 were also found to support a small population of smooth newts. Therefore the impact upon the identified specimens will be high, with mitigation and compensation necessary. The report recommends that as a population of Great Crested Newts has been identified, no works can commence until a Natural England Development Licence has been obtained. Throughout the course of the application this survey has been updated to include proposed mitigation.

The Highway Report has been produced on the development of the site for up to 50 dwellings. The report states that a new adopted road will provide visibility splays in excess of those required for the measured speed of traffic and so vehicles turning into and out of the access will therefore be unlikely to create significant danger to road users. It is stated that car parking and turning will be provided within the site, in accordance with Highway Authority standards, that the site is within a sustainable location and will not therefore result in any increased harm to highway safety.

Design and Access Statement: identifies that the site is sustainably located and well related to existing residential areas. It is considered that the application responds to the more positive aspects of the site's context and would therefore contribute positively towards the character and appearance of the surrounding area. It continues that the accompanying, specialist reports demonstrate that the development would not be at unacceptable risk from surface water flooding, would

not exacerbate flood risk off-site, would not prejudice the safe or efficient use of the highway network and would not harm protected species or their habitats.

The Tree Survey provides advice regarding the condition of trees occupying the site and guidance for the design team. The report sets out the constraints relating to the trees on site and includes a tree survey along with root protection details. A detailed schedule of works for each tree is also provided.

The Noise Assessment identifies that, six sites (numbered 1 – 6), were chosen throughout the site for the survey, to obtain a representative picture of noise associated with the main road (Hearthcote Road) at the Southern edge of the garden, and from the surrounding factories. Each site was tested 3 times for ten individual one minute periods, firstly in the night time period +between 05:15 and 06:30, secondly during the rush hour period between 07:55 and 09:05, and finally in the daytime period between 10:00 and 11:15. The report references World Health Organisation guidance, that “general daytime outdoor noise levels of less than 55 dB(A) LAeq are desirable to prevent any significant community annoyance”, based on free field measurements and that “based on limited data available, a level of less than 35 dB(A) is recommended to preserve the restorative process of sleep”. This means that free field noise at night outside should be less than 48 dB(A), allowing for a reduction of 10 - 15 dB(A) inside a property, created by the structure of the house. Except for site 1, beside Hearthcote Road, all the sites comply with both these criteria, meaning that all of the new development houses would be satisfactorily quiet by day and night. There would potentially be an increase of noise on the site from resident’s vehicles, but the number of vehicle movements would be low in comparison with Hearthcote Road.

An amended Noise Assessment has been undertaken to address the issues raised during the initial consultation. This assessment recorded overnight noise between the 1<sup>st</sup> and 3<sup>rd</sup> May 2019. The assessment acknowledges that there is a range of guidance against which noise impacts can be assessed. The most recent guidance contained within the PPG is based upon the assessment of Significant and Observed Adverse Effect Levels (SOAEL). The assessment continues that there is more flexibility in the recently issued guidance, but that it is more difficult to interpret. The report states that when working on a continuous maximum night time noise figure of 48dB(A), the situation at Hearthcote Road, based on the 15 minute LAeq would appear to be satisfactory. However the LAeq figures show that about 8% of records collected during the night show exceedances of the 60 dB(A) SOAEL. On this basis the report recommends that occasional crashes/bangs from loading/unloading/manoeuvring of vehicles may cause exceedances of the 60 dB (A) SOAEL, which may or may not inconvenience the new residents. To mitigate this potential noise, the report recommends an acoustic barrier be erected between the yard and current garden, which if appropriately designed and sited would give a noise reduction of between 20 and 30 dB(A).

## **Planning History**

9/2003/0962 The erection of 39 dwellings with associated garages and an access road. Withdrawn 05/03/04

9/2007/0669 The demolition of two existing dwellings and the erection of sixty nine dwellings. Withdrawn 02/10/07

## Responses to Consultations

The Environmental Health Officer (EHO) considered impacts of the development in terms of noise, air quality and land quality. In regards to air and land quality, no objection subject to conditions were received. In relation to noise, further exploration of the potential impacts associated with the surrounding uses was advised.

In response to the amended plan re-consultation, the EHO clarified that the existing land uses to the west and northwest of the site consist of 24hr logistics and vehicle repair, both of which could generate noise which may adversely impact on the amenity of the proposed residential use. The response continued that the application documents contained no empirical data offering any insight as to whether logistics HGV noise during the night-time exceeded the SOAEL. Accordingly it was advised that the LPA were not in a position to determine whether the SOAEL criteria had been exceeded and that an additional noise assessment was required.

Following submission of the amended noise assessment, the EHO has commented that there are no noise levels in planning law, or guidance to provide Local Planning Authorities with prescriptive advice on what is acceptable. On this basis, the data within the amended acoustic report has been considered against the guidance contained in the Professional Practice Guidance on Planning & Noise - ProPG: Planning & Noise (2017). The scope of the guidance is however restricted to development sites where the 'dominant' local noise source is transportation. This assessment methodology can therefore be applied where industrial/commercial noise is present, but is 'not dominant'.

### Assessment Against ProPG:

Stage 1 of the ProPG methodology recommends that noise risk assessment should seek to determine the appropriate Noise Risk Category (NRC) of the site, without proposed mitigation, prior to development. The Stage 1 parameters in ProPG for the night-time period are summarised below

Noise Risk Category	Noise Level	Potential Risk if Unmitigated
Negligible	<40dBA (8hour average)	May be noticeable but no adverse effect on health and quality of life
Low	40 – 55dBA (8hour average)	Adverse effect on health and quality of life
Medium	55 – 60dBA (8hour average)	Significant adverse effect on health and quality of life
High	60dBA (8hour average) <u>or</u> >10 L <sub>A</sub> max events of 80 dBA	Unacceptable adverse effect on health and quality of life

Based on the data in the noise report, the average night-time noise level expressed as the L<sub>A</sub>eq was in the range 40-55dBA, and the L<sub>A</sub>max data shows that there was

one event over the two nights monitoring in excess of 80dBA. These bring the site into the 'Low' ProPG classification.

With a Low classification the guidance recommends that *"The development may be refused unless a good acoustic design process is followed and demonstrated via a Level 1 Acoustic Design Statement which confirms how the adverse impacts of noise on the new development will be mitigated and minimised and that a significant adverse noise impact will not arise in the finished development."*

Based on this classification, an appropriately worded planning condition has been recommended to secure an Acoustic Design Assessment; as a minimum this should include the provision of a 3 metre high acoustic barrier and specialist glazing in all noise sensitive rooms.

#### Other NPPF Considerations:

The EHO response continues that the ProPG assessment assumes that the prevailing acoustic conditions measured will remain unchanged. If noise from local businesses is considered to be 'dominant' then the ProPG guidance advises that local planning authorities should instead assess the noise impact against a different noise standard – namely BS4142:2014. The noise report does not contain a BS4142 assessment, however the EHO advises that based on his experience of this standard, there is a high degree of certainty that the local industrial noise would be considered to have a significant adverse impact under any circumstances where it becomes dominant. On assessing the potential impacts of the proposal on the potential expansion of the adjacent industrial units, paragraph 182 of the National Planning Policy Framework (Feb 2019) is referenced. This states "Existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established. Where the operation of an existing business or community facility could have a significant adverse effect on new development (including changes of use) in its vicinity, the applicant (or 'agent of change') should be required to provide suitable mitigation before the development has been completed."

On account of the guidance within the NPPF, the EHO has commented that if the logistics business wishes to extend the hours of its operations then, on the basis of the data in the noise report, the logistics noise would become dominant. Where this is the case, noise nuisance law is likely to take effect and the local authority would be likely to have to take action to control the noise from the logistics business. In summary the EHO has assessed the development as being acceptable provided that robust noise mitigation is conditioned, but has also advised that if the business noise were to become dominant, the development would, in effect, constrain the potential expansion of the business as the development would become an 'agent of change' under para 182 of the NPPF.

The Highway Authority has raised no objection subject to clarification in relation to the width of the site access (which has been received) and the imposition of conditions to secure suitable access width and visibility, a construction environment management plan, wheel cleaning facilities, that the site be laid out in accordance with guidance in Manual for Streets, access design details and details of parking and turning.



The Open Space Society has no objection.

Derbyshire Wildlife Trust has provided three sets of comments, one relating to the scheme as originally proposed, which requested further information on newt mitigation and suggested two conditions, the second on the basis of the revised site boundary and suggested mitigation, which continued to raise concerns relating to the loss of the terrestrial habitat and advised the applicant to engage with Natural England's pre-submission screening service, to determine the adequacy of the proposed mitigation and compensation.

The third set of comments acknowledge that Natural England's advice has been sought. DWT confirm that a Natural England Licence should be granted on the basis that it is proven that any habitat lost would be low value and that there would be significant enhancement to the area of terrestrial habitat to be retained. DWT has assessed the terrestrial habitat to be of low value and stated that the revised mitigation and compensation (the retention of the two existing ponds) would maintain the population of great crested newts identified. On account of this, DWT has raised no objection subject to condition.

The Environment Agency has no comment.

The National Forest Company has requested a developer contribution of either National Forest Planting equating to 20% of the site or a financial contribution of £4900.00. This is to provide for woodland creation in accordance with Policy INF8.

The Lead Local Flood Authority (LLFA) has raised concerns over the filling in of one of the ponds and the potential drainage implications. As per the revised plans however it is no longer proposed to fill this pond in. The LLFA have however suggested a range of conditions to secure drainage details, including a pre commencement condition. The imposition of this condition has been agreed in writing with the applicant.

Severn Trent Water has no objection subject to the imposition of conditions to secure details of foul and surface water drainage.

The Strategic Housing Manager has raised no objection.

Natural England has no comments on the application. They have confirmed that it has not assessed the application in terms of its impacts on protected species and has clarified that a lack of comment from Natural England does not imply that there are no impacts on the natural environment, only that the application is not likely to result in significant impacts on statutory designated nature conservation sites or landscapes. Natural England has advised that the LPA should obtain specialist advice or other environmental advice when determining the environmental impacts of development.

The Coal Authority has commented that the application site falls within a Development High Risk Area and has suggested conditions on this basis.

Peak and Northern Footpaths has commented that the adjacent footpath 42, remains unobstructed at all times and that it would like to see a footpath link from the development to footpath 42, to encourage walking from the site.

The Ramblers Association raises no objection.

Derbyshire County Council (Education) has requested £32,375.28 for the provision of two junior places at Pennine Way Junior Academy towards Project B: Expansion of Teaching Accommodation and £75,236.78 for the provision of two secondary and one post 16 place at The Pingle Academy towards Project A: Additional Teaching Accommodation is required.

The Police Architectural Liaison Officer has raised no objection.

### **Responses to Publicity**

12 letters of representation from different addresses were received on the basis of the original plans and two letters of representation from different addresses were received in response to the amended plan re-consultation. A letter of objection from a planning consultancy acting on behalf of an adjacent business has also been received. This correspondence raised the following issues/concerns:

- a) That the site is not suitable for residential development on the basis of the prevailing land uses within the vicinity of the site and the associated undesirable effects that the development would have on the trade and economic activities of the surrounding uses.
- b) Highways safety concerns as a result of additional traffic during the construction phase.
- c) The area is predominantly industrial and houses that do exist mainly pre-date the construction of the industrial and commercial units.
- d) The submitted noise report pays little attention to the relevant noise sources and the hours surveyed do not correlate with the hours of work of surrounding commercial uses.
- e) It is unclear what the use of the land will be to the north of the application site.
- f) Paragraphs 180, 182 and 183 of the NPPF are set out, and para 183 summarised in that 'it is clear that planning should focus on the acceptability of the use of land rather than the control mechanisms for emissions. It is not expected that controls over noise sources should be revisited after planning permission is granted.
- g) Local plan policies S1, S2 and E2 and E3 have been identified. In relation to such it is suggested that these emphasise the re-use of previously developed land and the safeguarding of existing employment sites. It is also stated that the design and amenity policies of the plan seek to protect land uses from adverse impacts on each other.
- h) It is stated that no case has been made that the development is one of housing necessity that could be outweighed by other material considerations.
- i) The development is proposed on a greenfield site, which is not required to be released to meet the councils housing requirement.

- j) Overall the development is unsustainable, will have adverse economic, social and environmental impacts, including job losses and the loss of an existing water body and will be contrary to planning policy.
- k) The supporting application documents are ambiguous.
- l) The site access is unsuitable, would have an adverse impact on highway safety for all road users and clarification is required in relation to the number of dwellings.
- m) The application site does not constitute an allocated housing site.
- n) The characteristics of the site would not enable it to be developed in accordance with Policy H23.
- o) Further infill development would be to the detriment of air quality, amenity and would overwhelm local infrastructure.
- p) The development would be contrary to the character of the area and the way it functions.
- q) The existing highway network is overcapacity, is used by too many HGV's and there has been an increase in on street parking.
- r) The proposal would result in fumes/pollution and an increase in ambient noise.
- s) The visibility splays and access design is inadequate.
- t) The highway report provided by Edwards and Edwards is inaccurate and is not comprehensive in its detail.
- u) The proposal would have a detrimental impact in terms of amenity and biodiversity.
- v) The development would result in a significant increase in noise and air pollution.
- w) Queries raised as to when the application will be heard by planning committee.
- x) There would be adverse noise implications on the proposed dwellings as a result of the nearby commercial uses.
- y) The proposed development will have a detrimental impact on the surrounding industrial operations.
- z) This application proposes 15 dwellings, however once these are approved many more will follow.
- aa) The proposal will have a detrimental impact on local employment.
- bb) The adjacent industrial uses are noisy, result in odour and many operate 24 hours a day.
- cc) The proposal would have a detrimental impact in terms of ecology and would result in a net loss in terms of biodiversity.
- dd) There needs to be an amended noise report submitted to comprehensively assess noise implications.
- ee) There have been numerous noise complaints made to Environmental Health as a result of noise from the industrial estate, if more houses are allowed there will be more complaints against the businesses.
- ff) Why are so many amendments proposed to the trees and water bodies on site?
- gg) There are already too many accesses served off this road.
- hh) The applicant does not control the visibility splay to left as this is owned by Marstons PLC.
- ii) There has been confusion caused as a result of the consultation process.

- jj) The development will increase the occurrence of car headlights shining into existing dwellings.
- kk) The Oak tree needs to be protected.
- ll) The application will result in housing becoming closer to the neighbouring industrial uses.
- mm) If the application is approved, a condition should be imposed to prevent the occupants from complaining about the surrounding businesses.
- nn) The road is already very congested and it is difficult for existing residents to pull off their driveways.
- oo) The proposal would have an adverse impact on surrounding property values.
- pp) Where is the new junction for this development proposed?
- qq) Will the dwellings be social or private?

In response to the re-consultation on the amended noise report, three letters of neighbour representation have been received, along with one letter from the planning consultant. The following additional issues have been raised:

- a) The hedgerow adjacent to the pavement is not maintained meaning that users of the pavement are forced to walk on the carriageway.
- b) The applicant makes numerous complaints to environmental health re Catchems P.H. and the now Bullivant Site, removing the intervening belt of trees will result in more complaints.
- c) The number of dwellings applied for is questioned and it is likely that a much higher number will be applied for at a later date.
- d) The noise report does not include assessment on a Monday night – which is the busiest night of the week.
- e) The accompanying plan fails to identify the exact location of the measuring instrument.
- f) For the 1<sup>st</sup> and 2<sup>nd</sup> May the reading exceeded 60dB (A) from 05.00am and for the 2<sup>nd</sup> - 3<sup>rd</sup> May the readings again exceeded 60dB(A) from 05.00 am.
- g) The detailed minute by minute readings show that on the dates 1<sup>st</sup> May – 2<sup>nd</sup> May the 60dB (A) was exceeded after 10pm as well as after 05.00 am and for the 2<sup>nd</sup> – 3<sup>rd</sup> May 60dB (A) was exceeded throughout the night from 10pm to 05.30am and that in the early morning some of the readings exceeded 70 dB (A) and are close to 80dB (A). The report indicates that this shows 26 and 35 times when 60dB (A) was exceeded over the two night time periods.
- h) The author of the report recognises that there is a significant and observed effect with the potential for sleep disturbance etc. in the climate that has been observed and measured and on this basis suggests mitigation.
- i) The letter refers to para 182 of the NPPF which sets out that “existing businesses and facilities should not have unreasonable restrictions placed upon them as a result of development permitted after they were established.” And makes clear that new development must be appropriate for its location.
- j) The PPG is referenced in relation to noise categorisation and suggests that experienced specialist assistance should be sought when applying this policy (relating to the SOEL)
- k) It is acknowledged that the NPPG does not include specific noise levels against which to measure the problem, however PPG24 did and these are considered a useful guide when weighing this matter up. The PPG indicated that a noise level over 66dB would place the development in category D,

which would indicate refusal of the development. As the development exceeds this level, it should therefore be refused.

- l) The findings of the noise report identify a significant and adverse effect.
- m) The consequential noise may mean that new residents would have to have their windows closed to avoid discomfort, which does not facilitate healthy living.
- n) The land use relationship here is completely inappropriate.
- o) The future residents will expect a certain level of tranquillity, which cannot be achieved here.
- p) The site cannot be categorised as brownfield development.
- q) It is unclear from the report exactly where the acoustic fence would be and there may be practical and legal (land ownership) issues relating to the construction of the fence.
- r) Safeguarding the future of the employment areas is one of the Council's own policy imperatives, industrial areas need to morph and change to be flexible to maintain economic growth. Inhibiting their flexibility is contrary to policy. Policies E2 and E3 are trying to maintain employment areas for uses including B2 and B8, which are uses that are not appropriate next to a residential area.

## **Development Plan Policies**

The relevant policies are:

- 2016 Local Plan Part 1 (LP1): S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), S4 (Housing Strategy), S6 (Sustainable Access), H1 (Settlement Hierarchy), H20 (Housing Balance), H2 (Land north of William Nadin Way), SD1 (Amenity and Environmental Quality), SD2 (Flood Risk), SD3 (Sustainable Water Supply, Drainage and Sewerage Infrastructure), SD4 (Contaminated Land and Mining Legacy Issues), BNE1 (Design Excellence), BNE3 (Biodiversity), BNE4 (Landscape Character and Local Distinctiveness), INF1 (Infrastructure and Developer Contributions), INF2 (Sustainable Transport), INF7 (Green Infrastructure), INF8 (The National Forest) and INF 9 (Open Space, Sport and Recreation).
- 2017 Local Plan Part 2 (LP2): SDT1 Settlement Boundaries and Development), BNE7 (Trees, Woodland and Hedgerows).

## **National Guidance**

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

## **Local Guidance**

- South Derbyshire Design Guide SPD
- South Derbyshire Section 106 Guide

## **Planning Considerations**

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

- Principle of Development
- Access and Highway Issues
- Character, Appearance and Design
- Ecology and Biodiversity
- Trees
- Residential Amenity
- Flood Risk and Drainage
- Coal Mining legacy
- Developer Contributions

## **Planning Assessment**

### Principle of Development

At a strategic level, Policy S1(j) (LP1) identifies the numerical housing requirements of the district and sets out that such will be delivered on mixture of brownfield and greenfield sites, and Policy S6 (B,i) seeks to achieve patterns of development that enable travelling distances to be minimised.

The application site is situated within the settlement confines of the Swadlincote Urban Area as defined within Policies H1 (LP1) and SDT1 (LP2). The settlement hierarchy is based on the range of services and facilities within a settlement, with the majority of growth directed to the most sustainable locations.

At an overarching level the NPPF seeks to significantly boost the supply of homes and at paragraph 60, the NPPF is clear that the 'minimum' number of homes need to be planned for.

Paragraph 68 of the NPPF also acknowledges that medium housing sites, such as this can make an important contribution to meeting the housing requirements of an area and criterion (c) of this paragraph suggests that LPAs should be supportive of windfall sites and attribute great weight to the benefits of using suitable sites within existing settlements for homes.

Within this context, whilst the LPA is currently able to provide a minimum of five years' worth of deliverable housing sites against the identified housing requirement, this is a minimum requirement and in accordance with the objective of 'significantly boosting' housing supply, sites within sustainable locations such as this are considered acceptable in principle.

### Access and Highway Issues

This is an outline application, with access being the only matter for detailed consideration.

Policy INF2 (1, a) seeks to ensure that the development would have no undue detrimental impact upon highway safety, (b) requires appropriate provision to be

made for safe and convenient access to and within the development for all users and (c ) that car travel generated by the development is minimised. Criterion (e) of the policy also states that development should include appropriate car parking provision.

The application has been accompanied by a Highway Report. The Highway Report was undertaken on the basis of the site being developed for 50 dwellings. This application proposes 15 dwellings, however the general content of the report remains relevant. This report considers the likely highway impacts of the development and seeks to demonstrate that the proposal should not lead to any unacceptable highway safety issues.

A speed survey was carried out in the vicinity of the site access, between Wednesday 8th and Wednesday 15th of November 2017. The results show that the 85th percentile speed of passing traffic was 34.9mph for north-east bound traffic and 35.3 for south-west bound traffic.

The site is identified as being served by an existing gated access 5 metres wide, with restricted visibility. The report also includes information on nearby accidents, taken from CrashMap. The results show there have been two recorded accidents within 300 metres of the site in the latest 3 years period, but that neither of these occurred at the site access.

The report continues that the current access arrangements would not be suitable to serve the proposed development. The recommended solution is a new adopted road with improved visibility. The report concludes that vehicles using the access will be unlikely to create significant danger to road users, that the development will not result in any increased harm to highway safety, that the site is in a sustainable location and therefore would be compliant with local and national planning policies.

The Highway Authority has considered the content of the submitted report and has requested clarification on the dimensions of the proposed access. This clarification has been provided by the agent. On this basis, various conditions have been recommended. The Highway Authority has also clarified that it has not commented on the internal layout of the proposal as this will be considered at reserved matters stage.

On the basis of the supporting Highway Report and the comments from the Highway Authority, there are considered to be no materially harmful impacts in terms of highway safety associated with the development. The proposal is therefore considered to be in accordance with Policy INF2.

### Character, Appearance and Design

Policy BNE1 requires all new development to be well designed and respond to their context and BNE4 requires development to have regard to the character and visual amenity of the landscape. As the proposal is outline with details of layout, scale, appearance and landscaping reserved for future approval, a detailed assessment of these impacts is not yet possible. However, owing to the size of the site and given that it is situated within an area of varied character (in terms of building design, siting and mix) it would be possible to design a scheme that would be suitable in this

context. The illustrative layout shows a development of 15 relatively large detached houses and garages, whilst there would be adequate space on the site to accommodate such a scheme, to ensure that the housing addresses the needs of the market and provides a suitable mix of properties, in accordance with Policy H20, this matter would need to be considered in further detail at reserved matters stage. Given that the site is situated within the National Forest and to ensure that the development integrates with the parcel of amenity land to its north, it is considered that the detailed provided with the reserved matters submission should illustrate a comprehensive native landscaping scheme including a scheme of complimentary tree planting.

## Ecology

Policy BNE3 states that planning proposals that could have a direct or indirect effect on sites with potential or actual ecological or geological importance including priority habitats and species shall be accompanied by appropriate surveys to assess impacts and the mitigation proposed. The policy continues that where mitigation measures, or exceptionally, compensation cannot sufficiently offset the significant harm resulting from the development and/or where the development can potentially be located on an alternative site that would cause less or no harm, planning permission will be refused. NPPF paragraph 170 seeks to protect and enhance sites of biodiversity and paragraph 175 (a) states that if significant harm to biodiversity resulting from development cannot be avoided (through locating on an alternative site with less harmful impacts) adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.

The application has been accompanied by a number of surveys assessing implications on biodiversity and ecology, including a Great Crested Newt survey. This survey confirms that there is a newt population on the site. The report concludes that the impact upon the identified specimens will be high, with mitigation and compensation necessary. The report also confirms that a Natural England licence would be required in order for the development to proceed.

Derbyshire Wildlife Trust has raised no objection subject to conditions in relation to impacts of the scheme on bats, birds reptiles and terrestrial amphibians, however concerns were originally raised in relation to Great Crested Newt. On account of these concerns it was advised that the application should not be determined until further information on Great Crested Newt mitigation was provided. At this point the Agent was also advised to seek advice from Natural England through the pre-submission screening service on the level of mitigation and compensation required, to be confident that a licence would be granted. In response to the initial comments, an amended site layout and a revised Great Crested Newt Survey report was provided. There has been a lengthy process of negotiation between the applicant's ecologist, Derbyshire Wildlife Trust and Natural England to establish an acceptable way forward. To this end it has been confirmed by DWT that the terrestrial habitat lost is ultimately considered as low value and that the proposed compensation and mitigation should maintain the identified population of Great Crested Newt. On this basis, conditions have been recommended.



Subject to the imposition of the suggested conditions, there are considered to be no outstanding ecological concerns.

### Trees

Policy BNE4 promotes the retention of key valued landscape components such as mature trees, unless it can be demonstrated that the loss of such features will not give rise to unacceptable effects on local landscape character. The application site is subject to area Tree Preservation Order. To assess potential impacts of the development on these trees an arboricultural assessment has been undertaken and a plan has been provided indicating which specimens are to be removed. Whilst a brief assessment has been undertaken in relation to the trees to be removed and whilst in principle the removal of such would not appear to result in any materially harmful impacts in terms of amenity (on account of their location, condition and type) it is considered necessary that additional information in this regard be provided alongside the first reserved matters submission. As details of layout are not for consideration at this stage, this additional information is considered necessary to ensure that such impacts are correctly understood and appraised. Subject to conditions requiring the submission of an arboricultural implications assessment and to ensure the protection of the remaining trees on the site during the construction phase, the proposal is not considered to result in any materially harmful impacts in this regard.

### Residential Amenity

Throughout the consultation, concerns have been raised on grounds of residential amenity and more specifically in relation to impacts in terms of noise and disturbance on the future occupants of the dwellings from the nearby commercial uses.

Policy BNE1 (h) states that new development should not have an undue adverse effect on the privacy and amenity of existing nearby occupiers and similarly that occupiers of new development should not be unduly affected by neighbouring land uses.

### Privacy and Overshadowing

As this application is in outline and no specific details in terms of the design, scale or layout of the dwellings have been provided, it is not possible to undertake a detailed assessment of the likely impacts of the proposal upon surrounding properties in terms of privacy and overshadowing or to establish whether the proposal would be overbearing. Notwithstanding this, given the size of the site and its relationship with nearby dwellings, it is considered that a scheme could be developed that would adhere to the separation distances as set out within the Design SPD and that the dwellings could be orientated and detailed so as to avoid any materially harmful impacts in relation to the above.

## Noise and Disturbance

In addition to the requirements within Policy BNE1, the NPPF para 180 seeks to ensure that development is appropriate for its location, taking into account the likely effects of pollution on health and living conditions and (a) that noise giving rise to significant adverse impacts on health and the quality of life should be avoided and para 182 which states that planning decisions should ensure that new development can be integrated effectively with existing businesses and community facilities and that existing business should not have unreasonable restrictions placed upon them as a result of development permitted after they were established. The advice continues that where the operation of an existing business could have a significant adverse effect on a new development in its vicinity, suitable mitigation should be required before the development has been completed.

To assess impacts of noise and disturbance on the future occupants of the dwellings, a Noise Assessment has been undertaken. This assessment provides short term readings from within the development site and considers these in relation to World Health Organisation Guidelines. The Environmental Health Officer (EHO) commented on this assessment and identified some deficiencies. To address these, further exploration of the impacts of local sources of impact and tonal noise and appropriate mitigation was advised. The EHO also considered the noise related objections, which infer that the noise from HGV's is so significant that they exceed the Significant Observed Adverse Effect Level (SOAEL). In the absence of any evidence to clarify this, the EHO advised that the LPA were not in a position to determine within any certainty whether or not this would be the case.

As requested by the EHO an additional noise survey has been undertaken to ascertain the night-time noise within the vicinity of the site. On the basis of this survey, as detailed within the consultation response above, noise impacts of the site have been assessed against the ProPG: Planning and Noise (2017) guidance. This assessment is used where the 'dominant' local noise is transportation. When assessed against this criteria the noise generated would fall within the 'low' noise risk category. On this basis, conditions to secure mitigation have been suggested by the EHO. However the EHO response continues that if noise from existing local businesses is considered to be dominant, impacts should instead be assessed against the BS4142:2014. It must therefore be established whether 'transportation' or industrial noise would be 'dominant'.

To help inform this assessment, the nature of the surrounding commercial uses have been investigated. On the basis of the available planning history, it would appear that the majority of the industrial units on the Boardman Industrial Estate operate on an unrestricted basis. However where new uses have been permitted these have been subject to various noise related restrictions. Furthermore, the large unit immediately to the north west of the site currently benefits from no restrictions and would be classified as a B8 use. However in 2011, planning permission was applied for (9/2011/0510) for the change of use of the site to a mixed B1, B2 and B8 use and was approved subject to a number of noise related restrictions. This consent has not however been implemented.

The EHO has commented that if the logistics business wishes to extend their hours or operations then, on the basis of the data in the noise report, their logistics noise would become dominant. However, as the use currently operates on an unrestricted basis, the current situation would be the worst case scenario in terms of noise generation, which has been assessed as not 'dominant' and so acceptable. If the existing unrestricted operations were to generate a level of noise that caused harm, it would be expected that complaints would have been made to the Council in this regard and action taken. Whilst it is acknowledged that the development would result in dwellings being brought closer to the industrial site, this distance would be relatively insignificant and a separation distance of approximately 100m would be retained. The majority of noise associated with a haulage business (or indeed many B8 uses) is generated from vehicle movements and as illustrated by the assessment undertaken, one-off occurrences where noise levels spike are limited (which is consistent with this type of use). It is for this reason why B8 uses are generally considered compatible alongside residential uses. Should this business wish to expand its range uses or further develop the site in some way, this would comprise a new operation requiring planning consent. A new operation, for the purposes of noise assessment would be subject to different considerations in terms of planning policy (compared to if the use was existing). Furthermore, by virtue of the historic consent referenced, it is considered that the site could be further developed (subject to appropriate mitigation) without having a materially harmful impact in terms of residential amenity.

In terms of noise impacts, it is considered appropriate to have assessed the noise against the ProPG: Planning and Noise (2017) guidance and on this basis, subject to mitigation suggested, the development would not result in a significant level of harm from noise and disturbance and would therefore be acceptable in this regard.

Queries have been raised in relation to the location of the acoustic fence. At this stage such is unknown, however the site (and land within the applicants ownership) is considered a sufficient size to accommodate the suggested mitigation. Furthermore, there is no requirement at this stage to provide details of this.

### Flood Risk and Drainage

LPP1 Policy SD2 requires development in flood risk areas to be resilient to flooding through design and layout and surface water measures required to minimise the likelihood of new development to increase flood risk with any development that change the surface water flows incorporating SUDS. The majority of the site is within Flood Zone 1 with part of the site adjacent to the Darklands Brook within Flood Zone 3. Darklands Brook runs along the southern boundary of the site and existing bodies of attenuated water drain into the Brook. The proposed SUDS would be designed to accommodate the 1:30 year rainfall event without any surface water flooding and would be capable of retaining the 1:100 year plus 40% climate change storm event on site without flooding any buildings. Foul flows would need to cross the Darklands Brook to reach the existing sewer and Severn Trent has confirmed a connection. The Environment Agency has no objection subject the recommendations within the submitted FRA and its mitigation measures are secured by condition.

## Coal Mining Legacy

LP1 Policy SD4 relates to contaminated land and mining legacy issues and requires applicants to demonstrate through appropriate investigations that necessary remediation measures can be incorporated. The submitted Coal Mining Risk Assessment considered the risk from underground workings impacting the proposed development is deemed negligible especially given the extent of opencasting. No mineshafts are recorded on or within 20m of the site. The risk of ground gas impacting the site from opencast backfill is considered low to moderate. The Coal Authority has no objection and recommends conditions in respect of intrusive ground investigations and gas monitoring.

## Developer Contributions

The National Forest Company has requested a developer contribution of either National Forest Planting and landscaping equating to 20% of the site or a financial contribution of £4,900.00. This is to provide for woodland creation in accordance with Policy INF8.

Derbyshire County Council has requested £32,375.28 for the provision of 2 junior places at Pennine Way Junior Academy towards Project B: Expansion of Teaching Accommodation and £75,236.78 for the provision of 2 secondary and 1 post 16 place at The Pingle Academy towards Project A: Additional Teaching Accommodation.

In terms of green infrastructure a financial contribution towards recreation space based on £372 per person and for outdoor facilities based on £220 per person is required. This contribution would go towards the following projects: additional infrastructure at Swadlincote Urban Park, William Nadin Way and play facilities at Maurice Lea Park.

From a planning point of view, legislation states that there are legal tests for when a S106 agreement can be utilised and these are set out in regulation 122 and 123 of the Community Infrastructure Levy (CIL) Regulations 2010 as amended (and as set out in para. 204 of the NPPF). S106 agreements, in terms of developer contributions, need to address the specific mitigation required by the new development. The tests are that they must be:

1. Necessary to make the development acceptable in planning terms
2. Directly related to the development; and
3. Fairly and reasonably related in scale and kind to the development.

In this case it is considered that the contributions requested would meet the identified tests and therefore would be imposed.

## Conclusion

The residential development of this site, by virtue of its sustainable location would be consistent with the Councils approach to development as set out within the settlement hierarchy and on this basis would be acceptable in principle. Subject to

conditions and developer contributions there would be no residual harm in terms of highway impacts, character, appearance or design, residential amenity, trees, ecology, flood risk, drainage or coal mining and whilst concerns have been raised in relation to potential noise implications associated with the nearby industrial units, these have been subject of considerable scrutiny, and on account of this, the relationship has been considered acceptable. Overall the development would be compliant with the development plan and there would be no material considerations that would render it unacceptable.

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

## **Recommendation**

- A.** That the Committee delegates authority to the Head of Planning and Strategic Housing to conclude the Section 106 Agreement in pursuit of the provisions as set out in the planning assessment above;
- B.** Subject to A, **GRANT** permission subject to the following conditions:
1. (a) Application for approval of the reserved matters listed at condition 2 shall be made to the Local Planning Authority before the expiration of three years from the date of this permission; and  
(b) The development hereby permitted shall be commenced 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 of the Town and Country Planning Act 1990 (as amended by Section 51 of the Planning and Compulsory Purchase Act 2004).
  2. Before any development is commenced the further approval of the Local Planning Authority is required with respect to the following matters (herein referred to as 'the reserved matters') on an application made in that regard:
    - (a) appearance,
    - (b) landscaping,
    - (c) layout, and
    - (d) scale.Reason: 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 section 92 of the Town and Country Planning Act 1990 (as amended by Section 51 of the Planning and Compulsory Purchase Act 2004).
  3. The development hereby permitted shall be carried out in accordance with plan ref. Site Location Plan (Scale 1:2500) received on the 01/03/19, unless otherwise required by condition attached to this permission or following approval of an application made pursuant to Section 96A of the Town and Country Planning Act 1990.  
Reason: For the avoidance of doubt and in the interests of achieving sustainable development.

4. An Arboricultural Implications Assessment shall be submitted alongside the first reserved matters submission. This will need to break down the extent of tree removals, analysing the percentage of different age groups, and categories within a site to be removed. The broader landscape will also need to be considered, usually supported by photographic evidence demonstrating the effect tree felling will have. Shading can be a critical factor in evaluating whether a tree will be sustainable within a new development. In some cases a full BRE Daylight Study may be required. This applies the guidelines set out in BRE Digest 209 to establish that acceptable levels of daylight can be achieved.  
Reason: In the interests of safeguarding existing habitat and the visual amenities of the area.
5. No development, including preparatory works, shall commence until protective fences have been erected around all trees and hedgerows shown to be retained on the approved plans. Such fencing shall conform to best practice as set out in British Standard 5837:2012 (or equivalent document which may update or supersede that Standard) and ensure that no vehicles can access, and no storage of materials or equipment can take place within, the root and canopy protection areas. The fences shall be retained in situ during the course of ground and construction works, with the protected areas kept clear of any building materials, plant, debris and trenching, and with existing ground levels maintained; and there shall be no entry to those areas except for approved arboricultural or landscape works.  
Reason: In the interests of safeguarding existing habitat and the visual amenities of the area, recognising that initial preparatory works could bring about unacceptable impacts.
6. No removal of trees, hedges, shrubs, buildings or structures shall take place between 1st March and 31st August inclusive unless a survey to assess the nesting bird activity on the site during this period and a scheme to protect the nesting birds has first been submitted to and approved in writing by the Local Planning Authority. No trees, hedges, shrubs, buildings or structures shall be removed between 1st March and 31st August inclusive other than in accordance with the approved bird nesting protection scheme.  
Reason: In order to safeguard protected and/or priority species from undue disturbance and impacts.
7. The details submitted pursuant to the reserved matters shall incorporate a biodiversity enhancement strategy which shall, as a minimum, include features incorporated into the new building (s) for roosting bats and across the site for nesting birds.  
Reason: To ensure the detailed scheme submitted secures a net gain in biodiversity in accordance with policy BNE3 and the NPPF.
8. Prior to the commencement of any works which may affect great crested newts and their habitats, a detailed mitigation strategy based upon the information provided in section 6 of the Great Crested Newt Survey Report prepared by Elite Ecology dated June 2018 and including the need for the works to be carried out under a Natural England licence shall be submitted to and approved in writing by the Local Planning Authority. All works shall then proceed in accordance with the approved strategy. A copy of the Natural England licence shall be provided to the LPA once issued.

Reason: In order to safeguard protected and/or priority species from undue disturbance and impacts.

9. Prior to the first occupation of the development a Landscape and Ecological Management Plan (LEMP) shall be submitted to and approved in writing by the Local Planning Authority.

The content of the LEMP shall include the following:

- a) Description and evaluation of features to be managed;
- b) Ecological trends and constraints on site that might influence management;
- c) Aims and objectives of management, including mitigation and enhancement for species identified on site and as advocated by the response of the Derbyshire Wildlife Trust (specify date);
- d) Appropriate management options for achieving aims and objectives;
- e) Prescriptions for management actions;
- f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a ten-year period);
- g) Details of the body or organisation responsible for implementation of the plan, along with funding mechanism(s) for that body or organisation; and
- h) Ongoing monitoring and remedial measures, including where monitoring shows that conservation aims and objectives of the LEMP are not being met.

The approved plan shall be implemented in accordance with the approved details.

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

10. All planting, seeding or turfing comprised in the approved details of soft landscaping shall be carried out in the first planting and seeding seasons following the first occupation of the buildings 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 phase die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species and thereafter retained for at least the same period, unless the Local Planning Authority gives written consent to any variation.

Reason: In the interest of the visual setting of the development and the surrounding area.

11. No development, including preparatory works, shall commence until details of the finished floor levels of the buildings hereby approved, and of the proposed ground levels of the site relative to the finished floor levels and adjoining land levels, shall be submitted to and approved in writing by the Local Planning Authority. Such details shall be supplemented with locations, cross-sections and appearance of any retaining features required to facilitate the proposed levels. The development shall be constructed in accordance with the approved details.

Reason: To protect the amenities of adjoining properties and the appearance of the area generally, recognising that site levels across the site as a whole are crucial to establishing infrastructure routeing/positions.

12. Prior to the construction of a boundary wall, fence or gate, details of the position, appearance and materials of such boundary treatments shall be

submitted to and approved in writing by the Local Planning Authority. The boundary treatments shall be completed in accordance with the approved details before the respective dwelling(s) to which they serve is/are first occupied or in accordance with a timetable which shall first have been submitted to and approved in writing by the Local Planning Authority.

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

13. No reserved matters application to confirm the layout of the proposed development shall be approved until a detailed drainage strategy including an assessment of the existing ponds on site and associated infrastructure has been provided to and approved in writing by the LPA.

Reason: To ensure that the proposed development does not increase flood risk and that the principles of sustainable drainage are incorporated into this proposal. The assessment should provide further details on the existing ponds onsite and demonstrate with appropriate evidence that flood risk is not increased when the existing pond is removed.

14. No construction of a building or hard surface shall commence until a detailed assessment to demonstrate that the proposed destination for surface water, assessed across the site as a whole, accords with the hierarchy in paragraph 80 of the planning practice guidance (or any revision or new guidance that may replace it) has been submitted to and approved in writing by the Local Planning Authority. The assessment shall include a full understanding of any springs within the site and any associated mitigation requirements, and 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 surface water drainage system;
- iv) to a combined sewer.

Reason: To ensure that surface water from the development can be directed towards the most appropriate waterbody in terms of flood risk and practicality, noting that certain works may compromise the ability to subsequently achieve this objective.

15. No development, including preparatory works, shall commence until details of measures indicating how additional surface water run-off from the site will be avoided during the construction works have been submitted to and approved in writing by the Local Planning Authority. The applicant may be required to provide collection, balancing and/or settlement systems for these flows. The approved measures and systems shall be brought into operation before any works to create buildings or hard surfaces commence.

Reason: To ensure surface water is managed appropriately during the construction phase of the development, so as not to increase the flood risk to adjacent land/properties or occupied properties within the development itself; recognising that initial works to prepare the site could bring about unacceptable impacts.

16. No construction of a building or hard surface, setting of site levels or installation of services/utilities shall take place until a scheme for the drainage of foul water from the site has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be carried out in conformity



with the approved details prior to the first occupation of each respective dwelling served by the foul water drainage system.

Reason: In the interests of minimising the likelihood of flooding incidents and pollution of the environment.

17. No development shall take place until a detailed design and associated management and maintenance plan of the surface water drainage for the site, in accordance with the principles outlined within:

(a) Drainage Strategy, Outline Application for Residential Development - 274 Hearthcote Road, Swadlincote including any subsequent amendments or updates to those documents as approved by the Flood Risk Management Team. and

b) DEFRA's Non - statutory technical standards for sustainable drainage systems (March 2015),

have been submitted to and approved in writing by the LPA. The approved drainage system shall be implemented in accordance with the approved detailed design, prior to the use of the building commencing.

Reason: To ensure the proposed development does not increase floodrisk and that the principles of sustainable drainage are incorporated into this proposal, and sufficient detail of the construction, operation and maintenance/management of the SUDS systems are provided to the LPA, in advance of full planning consent being granted.

18. Each dwelling shall be constructed and fitted out so that the estimated consumption of wholesome water by persons occupying the dwelling will not exceed 110 litres per person per day, consistent with the Optional Standard as set out in G2 of Part G of the Building Regulations (2015). The developer must inform the building control body that this optional requirement applies.

Reason: To ensure that future water resource needs, wastewater treatment and drainage infrastructure are managed effectively, so to satisfy the requirements of policy SD3 of the Local Plan.

19. Prior to any other operation being commenced the existing access to Hearthcote Road shall be modified for construction purposes to have a minimum width of 6 metres and provided with 2.4 m x 59 m visibility sightlines in both directions measured along the nearside of the carriageway edge. The land in advance of the visibility sightlines shall be retained throughout the construction phase of the development free from any object greater than 1m in height (0.6m in the case of vegetation) relative to the adjoining nearside carriageway channel level.

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

20. Prior to the first occupation the site access to Hearthcote Road shall be laid out in accordance with application drawing No. 5 provided with a minimum width of 5.5m with 2m footways on both sides, 7.5m radii and visibility sightlines of 2.4m 59m in both directions to the nearside carriageway edge. The land in advance of the sightlines across the controlled site frontage shall be constructed as footway.

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

21. Before any other operations are commenced, excluding construction of the temporary access referred to in Condition 16 above, space shall be provided within the site for storage of plant and materials, site accommodation, loading,

unloading and manoeuvring of goods vehicles, parking and manoeuvring of employees and visitors vehicles, laid out and constructed 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 construction period.

Reason: To ensure safe and suitable conditions are maintained on the public highway, in the interests of highway safety.

22. Throughout the period of construction vehicle wheel cleaning facilities shall be provided and retained within the site. All construction vehicles shall have their wheels cleaned on a hard surface before leaving the site in order to prevent the deposition of mud or other extraneous material on the public highway.

Reason: To ensure safe and suitable conditions are maintained on the public highway, in the interests of highway safety.

23. Prior to the first occupation of each dwelling, space shall be provided for the parking of vehicles associated with that dwelling in accordance with the approved plan(s) and the 6Cs Design Guide (or any subsequent guidance that may amend or replace it); and notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, or any statutory instrument amending, revoking and/or replacing that Order, such space shall be maintained throughout the life of the development free of any impediment to its designated use. For the avoidance of doubt, where a garage is to be counted as a parking space, the internal dimensions shall not be less than 3m wide by 6m long with any service or vehicular doors opening outwards.

Reason: To ensure adequate parking and turning provision, in the interests of highway safety.

24. Notwithstanding the submitted information a subsequent reserved matters or full application shall include design of the internal layout of the site in accordance with the guidance contained in the 'Manual for Streets' document issued by the Departments for Transport and Communities and Local Government.

Reason: To ensure safe and suitable conditions are maintained on the public highway, in the interests of highway safety.

25. The development hereby permitted shall not begin until a scheme to deal with contamination of land/ground gas has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include all of the following measures, unless the LPA dispenses with any such requirement specifically in writing:

1) A Phase II intrusive investigation report detailing all investigative works and sampling on site, together with the results of the analysis, undertaken in accordance with BS 10175:2011 Investigation of Potentially Contaminated Sites - Code of Practice. The report shall include a detailed quantitative human health and environmental risk assessment and address the recommendations contained in section 7.0 of the Phase 1 Desk Study dated April 2018 Project No:1825-18

2) A remediation scheme detailing how the remediation will be undertaken, what methods will be used and what is to be achieved. A clear end point of the remediation shall be stated, and how this will be validated. Any ongoing monitoring shall also be determined.

3) If during development any contamination or evidence of likely contamination is identified that has not previously been identified or considered, a written scheme to identify and control that contamination shall be submitted to and approved in writing by the Local Planning Authority prior to any further works taking place on the site. This shall include a phased risk assessment carried out in accordance with the procedural guidance of the Environmental Protection Act 1990 Part IIA (or equivalent guidance which may subsequently update or replace it), and appropriate remediation/mitigation proposals. The approved scheme shall be implemented in accordance with the approved remediation/mitigation proposals.

4) A validation report detailing the proposed remediation works and quality assurance certificates to show that the works have been carried out in full accordance with the approved methodology shall be submitted prior to first occupation of the development. Details of any post-remedial sampling and analysis to demonstrate that the site has achieved the required clean-up criteria shall be included, together with the necessary documentation detailing what waste materials have been removed from the site.

Reason: To protect the health of the public and the environment from hazards arising from previous uses of the site and/or adjacent land which might be brought to light by development of it, recognising that failure to address such matters prior to development commencing could lead to unacceptable impacts even at the initial stages of works on site.

26. The applicant shall submit an Acoustic Design Statement prior to the submission of the final development plans. The contents of the Statement shall be agreed in writing by the local planning authority and the content of the Statement shall be implemented in full prior to first occupation of the development and thereafter maintained for the life of the development. For the purposes of clarity, the Acoustic Design Statement should, as a minimum, include the provision of a 3m acoustic barrier of the dimensions stated in the acoustic report designed to a specification of 10 kg/m<sup>2</sup> and installed with no gaps or holes and fully sealed at the ground. The fence will need to be maintained for the lifetime of the development. Also the glazing of all of the noise sensitive rooms of the proposed residential units should be double glazing to an acoustic rating of at least 38 Rw and provided with sufficient trickle ventilation to meet the requirements of Building Control Approved Document F (Ventilation).

Reason: In order to safeguard the amenities of the occupiers of the proposed development in respect of environmental noise in compliance with policy SD1 & BNE1.

27. No development shall commence until a scheme of intrusive site investigation for coal mining legacy has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be carried out in accordance with the approved details and a report of the findings arising from the intrusive site investigations, along with any remedial works required (including a timetable for the carrying out of such works), shall be submitted to and approved in writing by the Local Planning Authority prior to any construction works commencing. The approved remedial works shall thereafter be implemented in accordance with the approved timetable.

Reason: To protect the health of the public and the environment from hazards arising from past coal mining which might be brought to light by development of the site, recognising that failure to address such matters prior to development commencing could lead to unacceptable impacts even at the initial stages of works on site.

Informatives:

1. This permission is the subject of a unilateral undertaking or agreement under Section 106 of the Town and Country Planning Act 1990. All formal submissions to discharge obligations of the undertaking or agreement, or queries relating to such matters, must be made in writing to [s106@southderbyshire.gov.uk](mailto:s106@southderbyshire.gov.uk) with the application reference included in correspondence.
2. The developer is encouraged to install recharge points for electric vehicles to comply with the following criteria:
  - Residential: 1 charging per unit (dwellinghouse with dedicated parking) or 1 charging point per 10 spaces (or part thereof) where individual units have shared or courtyard parking;
  - Commercial/Retail: 1 charging point for every 10 parking spaces;
  - Industrial: 1 charging point for every 10 parking spaces;To prepare for increased demand in future years, appropriate cable provision should be included in scheme design and development. Residential charging points should be provided with an IP65 rated domestic 13amp socket, directly wired to the consumer unit with 32 amp cable to an appropriate RCD. This socket should be located where it can later be changed to a 32amp EVCP. Non-residential charging points should be supplied by an independent 32 amp radial circuit and equipped with a type 2, mode 3, 7-pin socket conforming to IEC62196-2 (or equivalent standard that may replace it). Measures should be taken to prevent subsequent occupiers of the premises from removing the charging points.
3. The applicant/developer is advised to liaise with the Local Planning Authority prior to submitting details of reserved matters for approval. It is strongly encouraged that, in addition to the requirements set out in any conditions, adequate details are supplied so to negate the need for further conditions upon approval. For example, details and locations of boundary treatments and species and size for soft landscaping should be provided pursuant to matters of landscaping, whilst details and/or samples of facing and surfacing materials and details of porches, rooflights, verges, eaves, cills and lintels should be provided pursuant to matters of appearance. For all matters, attention should be given to the Council's Design Guide Supplementary Planning Document - in particular the relationship with surrounding properties and the quality of materials and finishes expected.
4. The details submitted under reserved matters should ensure that (i) all exposed housing elevations are well treated to allow a view between interiors and external space; (ii) where housing is set in blocks of more than two properties, rear garden access originates within the view of associated houses either by using gated undercroft alleyways, through plot access where practical, or by breaking up housing blocks into two or less, and that all shared rear garden accesses are secured at the point of origin with a lockable gate; (iii) enclosed parking courtyards are overlooked or gated; and (iv)

aspects of footpaths through public spaces are not compromised by any landscaping sited between footpath and the dwellings.

5. The County Flood Risk Team advises:
  - Any alteration to existing impermeable surface area of the site may exacerbate surface water flood risk, so new impermeable surfaces should be limited where possible. Where an increase in impermeable area is unavoidable, Derbyshire County Council (DCC) strongly promote Sustainable Drainage Systems (SuDS) to be incorporated within the design of a drainage strategy for any proposed development, applying the SuDS management train with an appropriate number of treatment stages. Applicants should consult Table 3.3 of the CIRIA SuDS Manual (C697) to confirm the appropriate number of treatment stages, or contact the EA or the DCC Flood Risk Management Team directly. Surface water drainage should be designed in line with the non-statutory technical standards for SuDS (March 2015) where reasonably practicable, and ground infiltration to manage the surface water is preferred over discharging to a surface water body or public sewer system.
  - Any SuDS should be designed to ensure that the maintenance and operation requirements are economically proportionate and that a maintenance plan is available to the persons/organisations that will be responsible for ongoing maintenance.
  - The applicant is advised to contact the Environment Agency (EA) that hold modelling data for Main Rivers and some ordinary watercourses if fluvial flood risk is a concern.
  - Due to the historic mining and mineral extraction operations in Derbyshire, adits may exist beneath the surface. The applicant is therefore advised to investigate the potential for hidden watercourses existing on the land prior to any works being undertaken.
  - Development located in areas where the water table is at a shallow depth may be susceptible to groundwater flooding. Development site drainage should be considered carefully to avoid any increased risks associated with groundwater. DCC would not recommend infiltration as a means of development site surface water disposal in areas where geohazards or ground instability are deemed likely without appropriate analysis of the risks involved. Infiltration of surface water to the ground is also not advised in sensitive groundwater areas without an appropriate SuDS management train.
6. Severn Trent Water advises that although their records do not show any public sewers within the area, there may be sewers that have been recently adopted under the Transfer Of Sewer Regulations 2011. Public sewers have statutory protection by virtue of the Water Industry Act 1991 as amended by the Water Act 2003 and you may not build close to, directly over or divert a public sewer without consent. You are advised to contact Severn Trent Water to discuss your proposals. Severn Trent Water will seek to assist you in obtaining a solution which protects both the public sewer and the proposed development.
7. The applicant/developer is reminded that it is an offence to damage or destroy species protected under separate legislation, which includes, but is not limited to, nesting birds which may be present in hedgerows, trees or ground habitats on the site. Planning permission for a development does not provide a defence against prosecution under wildlife protection legislation. You are advised that it may be necessary, shortly before development commences, to

commission an ecological survey from suitably qualified and experienced professionals to determine the presence or otherwise of such protected species. If protected species are found to be present, reference should be made to Natural England's standing advice and/or the Derbyshire Wildlife Trust should be consulted for advice.

8. All work should be carried out in accordance with the British Standards Institute's recommendations for tree work.
9. Any phased risk assessment for contamination should be carried out in accordance with the procedural guidance of the Environmental Protection Act 1990 Part IIA. The contents of all reports relating to each phase of the risk assessment process should comply with best practice as described in the relevant Environment Agency guidance. For further assistance in complying with planning conditions and other legal requirements, applicants and developers 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 at [www.south-derbys.gov.uk/our-services/environment/pollution/contaminated-land](http://www.south-derbys.gov.uk/our-services/environment/pollution/contaminated-land). Reports in electronic formats are preferred. 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: [environmental.health@south-derbys.gov.uk](mailto:environmental.health@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; and
  - Guidance for the Safe Development of Housing on Land Affected by Contamination Environment Agency (ISBN 0113101775).
10. Where development is proposed, the developer is responsible for ensuring that development is safe and suitable for use for the purpose for which it is intended. The developer is thus responsible for determining whether land is suitable for a particular development or can be made so by remedial action. In particular, the developer should carry out an adequate investigation to inform a risk assessment to determine:
  - whether the land in question is already affected by contamination through source > pathway > receptor pollutant linkages and how those linkages are represented in a conceptual model;
  - whether the development proposed will create new linkages (e.g. new pathways by which existing contaminants might reach existing or proposed receptors and whether it will introduce new vulnerable receptors); and
  - what action is needed to break those linkages and avoid new ones, deal with any unacceptable risks and enable safe development and future occupancy of the site and neighbouring land.A potential developer will need to satisfy the local authority that unacceptable risk from contamination will be successfully addressed through remediation without undue environmental impact during and following the development. In

doing so, a developer should be aware that actions or omissions on his part could lead to liability being incurred under Part IIA of the Environmental Protection Act 1990 (e.g. where development fails to address an existing unacceptable risk or creates such a risk by introducing a new receptor or pathway) or, when it is implemented, under the Environmental Liability Directive (2004/35/EC). Where an agreed remediation scheme includes future monitoring and maintenance schemes, arrangements will need to be made to ensure that any subsequent owner is fully aware of these requirements and assumes ongoing responsibilities that run with the land.

11. The proposed development lies within an area that has been defined by the Coal Authority as containing potential hazards arising from former coal mining activity. These hazards can include: mine entries (shafts and adits); shallow coal workings; geological features (fissures and break lines); mine gas and previous surface mining sites. Although such hazards are seldom readily visible, they can often be present and problems can occur in the future, particularly as a result of development taking place. Any intrusive activities which disturb or enter any coal seams, coal mine workings or coal mine entries (shafts and adits) requires a Coal Authority Permit. Such activities could include site investigation boreholes, digging of foundations, piling activities, other ground works and any subsequent treatment of coal mine workings and coal mine entries for ground stability purposes. Failure to obtain a Coal Authority Permit for such activities is trespass, with the potential for court action. Property specific summary information on past, current and future coal mining activity can be obtained from: [www.groundstability.com](http://www.groundstability.com) or a similar service provider. If any of the coal mining features are unexpectedly encountered during development, this should be reported immediately to the Coal Authority on 0345 762 6848. Further information is available on the Coal Authority website at: [www.gov.uk/coalauthority](http://www.gov.uk/coalauthority).
12. All building work should be in compliance with best working practices so to avoid pollution of the water environment. Advice is available from the Environment Agency in the 'Construction, inspection and maintenance' section of their website at [www.gov.uk/guidance/pollution-prevention-for-businesses](http://www.gov.uk/guidance/pollution-prevention-for-businesses). The developer is recommended to contact the Environment Agency so to arrange a site meeting and agree the necessary measures to prevent pollution of the water environment during the construction phase of their development. Please contact [EastMidWaterQuality@environment-agency.gov.uk](mailto:EastMidWaterQuality@environment-agency.gov.uk) for further information and advice.
13. 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 of the Economy, Transport and Environment Department at County Hall, Matlock (Tel: 01629 533190). The applicant is advised to allow approximately 12 weeks in any programme of works to obtain a Section 38 Agreement.
14. Pursuant to Section 149 and 151 of the Highways Act 1980, the developer must take all necessary action 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 developer'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.

15. 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 and Communities at County Hall, Matlock regarding access works within the highway. Information and relevant application forms, regarding the undertaking of access works within highway limits, are available via the County Council's website [www.derbyshire.gov.uk](http://www.derbyshire.gov.uk), email [Highways.Hub@derbyshire.gov.uk](mailto:Highways.Hub@derbyshire.gov.uk) or telephone 01629 533190.
16. Pursuant to Sections 219/220 of the Highways Act 1980, relating to the Advance Payments Code, where development takes place fronting new estate streets the Highway Authority is obliged to serve notice on the developer, under the provisions of the Act, to financially secure the cost of bringing up the estate streets up to adoptable standards at some future date. This takes the form of a cash deposit equal to the calculated construction costs and may be held indefinitely. The developer normally discharges his obligations under this Act by producing a layout suitable for adoption and entering into an Agreement under Section 38 of the Highways Act 1980.



**Item**            **1.3**

**Ref. No.**        **9/2018/0470/SMD**

**Applicant:**  
**Mr D W Lewin**  
**Regent Developments (Midlands) Ltd**  
**Regent House**  
**Ascot Drive**  
**Derby**  
**DE24 8HJ**

**Agent:**  
**Mr Ian Palmer**  
**Staniforth Architects Ltd**  
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**1a Stamford Street**  
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**LE1 6NL**

**Proposal:**    **ERECTION OF 9 DWELLINGS AND ASSOCIATED GARAGES WITH ACCESS FROM SLADE CLOSE ON LAND TO REAR OF 4-8 LAWN AVENUE AND ADJ. TO 7 & 8 SLADE CLOSE ETWALL DERBY**

**Ward:**           **Etwall**

**Valid Date**    **11/05/2018**

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

The item is presented to Committee at the request of Councillor David Muller as local concern has been expressed about certain issues.

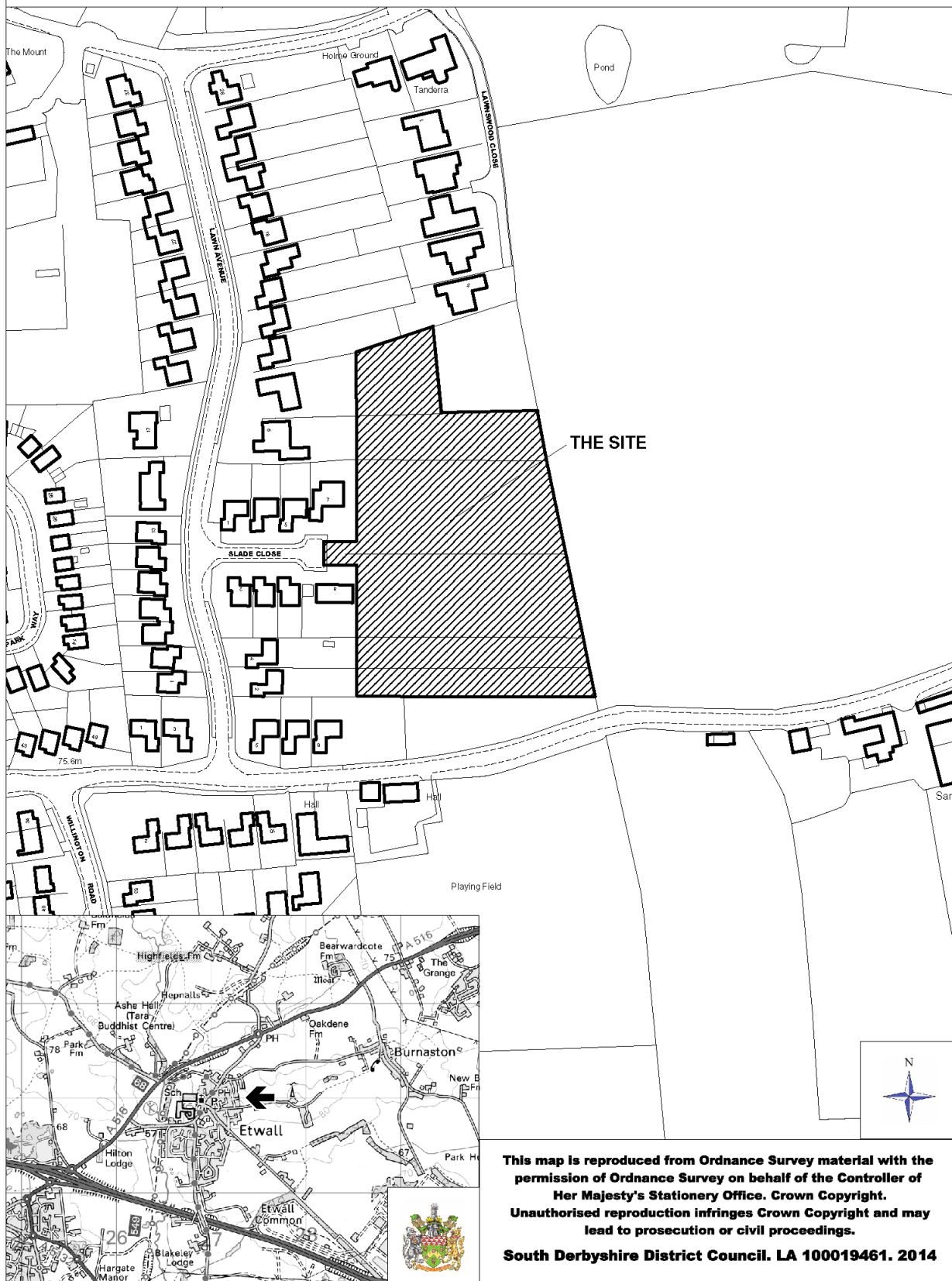
#### **Site Description**

Originally agricultural land, the site now forms part of the rear gardens to Nos. 4 to 8 Lawn Avenue and the side gardens to 7 and 8 Slade Close. To the north are rear gardens but also the five recently constructed dwellings accessed via the new Lawnswood Close from Burnaston Lane. To the south are rear gardens to other properties along Lawn Avenue and to the east is agricultural land. The site totals an area of 1.2 hectares and lies within, but on the edge of, the settlement boundary of Etwall. It is generally level and mostly laid to lawn although it is characterised by numerous mature trees, these subject of Tree Preservation Order (TPO) No.427 which was confirmed on 7 September 2016. The Order comprises the following:

- Three groups: G1 being 7 Birches located in the garden of No.8 Slade Close; G2 being 4 Birches, located on the eastern boundary of the garden of No.7 Slade Close; and G3 being a larger mixed group of Oak, Beech, Lime, Norway Maple and Birch within the rear garden of No. 8 Lawn Avenue.
- A total of 34 individual mixed species trees, 17 of which are located outside the application site.

There are also rows of conifer hedges that act as boundaries to separate the rear gardens, however these do not form part of the TPO and are therefore not protected.

**9/2018/0470 - Land to the rear of 4-8 Lawn Avenue and adjacent to 7 and 8 Slade Close, Etwall, Derby DE65 6JH**



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The site is elevated when compared to the land and countryside to the east towards Burnaston although the site itself is reasonably level with a slight fall from east to west and towards the north-east corner. The site adjoins the turning head on Slade Close, an existing cul-de-sac currently serving 8 detached dwellings, taking in part of the frontage to numbers 7 and 8.

## **Proposal**

It is proposed to construct nine detached dwellings and five associated garages (along with 3 integral garages) all accessed via Slade Close, with a further detached garage for number 8. Slade Close would be extended into the site to provide vehicular and pedestrian access, with private drives running from a new turning head. The application has been reduced from that originally submitted (11 dwellings) following concerns expressed regarding the impact of the proposed dwellings on the protected trees. The amended scheme shows the dwellings would all face and frame a 'glade' towards the centre of the site and prominent in views when entering it, with the exception of plot 2 which would be set back towards the north-west corner.

The wooded north-eastern corner would be retained as it presently exists, outside of the reduced application site boundary, although conveyed to the future occupier of plot 2. A new hedgerow is proposed to be planted along the northern and eastern boundaries and an existing hedgerow along the southern boundary would be retained. A number of trees would be removed to facilitate the development, but the majority of these are not protected by the TPO. T30, T25 and around 3 to 4 trees from G3 would be lost to facilitate the development.

The dwellings themselves comprise two 3-bed dwellings, one 4-bed dwellings and six 5-bed dwellings. These would be provided in a mix of styles with ridge and eaves heights to suggest one and one-and-a-half storey scale. The materials would comprise a red brick and grey roof tile, with grey uPVC window frames.

## **Applicant's supporting information**

An Arboricultural Impact Assessment (AIA) considers that the scheme has been carefully designed to reduce the visual effect from tree loss from the principal visual receptors. The development is considered to successfully integrate the trees, retaining specimens in locations that allow their full development retaining the treescape. Where trees are being removed, they are to be replaced with significant specimens and the indicative landscaping scheme aims to blend and mature as the development integrates into the surroundings, and it is advanced that there would be an overall significant net gain in tree cover. Indirect impacts are considered to be satisfactorily managed by the method statement of implementation. It is considered that the proposal conserves trees with contribute positively to the visual amenity and environmental value of the area, in accordance with policy. Where the unavoidable removal of trees is required in order to enable works, the provision of replacement tree planting has been included in the proposed scheme. Secondary development pressures are not considered to be of such an issue that tree would be placed under pressure to be prematurely removed.

A Landscape Appraisal (supported by a Landscape Strategy plan) recognises that the proposed development would have a potential impact on the existing landscape character and, in particular, the existing trees on the site. The document considers the landscape context of the site, including the existing landscape character and, especially, the existing trees in the light of both the National Character Assessment (NCA) and local landscape character work. A consideration of the character of the village of Etwall, looking at the local vernacular style, is included. Potential visual effects of development are considered, with the views in and out of the site. Many of the trees are considered to be of indifferent quality, falling into 'Category C' when assessed under the British Standard (BS5837). As a group, though, they offer the chance to be incorporated into development proposals to secure a robust edge to the settlement boundary. Views into the site are generally restricted to reasonably proximal views from Sandypits Lane, a lightly used road and (ultimately) public right of way to the smaller village of Burnaston to the east. Views into the site are not easy to obtain along Burnaston Lane, in spite of its relatively elevated position, as field hedges, other vegetation and topography intervene. There are few public rights of way to the eastern side of the site. The retention of a number of trees and tree groups to form a strong landscape framework is proposed, within which development of a more dispersed nature (featuring relatively large properties, of an 'agricultural' local vernacular style) would be both visually discrete and offer a gentle transition to more open countryside. Buildings would be viewed in the context of trees from within the site and Slade Close. A new hedgerow planted along the eastern boundary would increase screening from that direction.

A Design and Access Statement (DAS) notes that the nearest bus stops, post office and public houses are situated on Main Street which is around a 5 minute walk distant. Where the proposed adoptable road layout finishes, the road surface would change material, with the interface to private drives demarked with blue granite sets or similar. A single access off Slade Close is proposed. The dwellings are of varied height and style with those closest to existing dwellings designed to be of lesser scale. The layout is informal, lacking the regularity and density of most urban developments, whilst the buildings are considered to be well spaced and offer differing ridge heights, form and massing to add interest. The development is designed to make a positive contribution to the architectural heritage of Etwall, respecting the position of the site adjacent to open countryside and retaining the benefit of established trees within the site. The development is therefore designed to make reference to historic rural building forms. Garages have been designed to differ from those seen on modern housing developments whilst the colour white is absent from the colour palette on detailing. The perimeter hedge along the field to the east would be retained and enhanced with the addition of native 'Saxon' hedgerow tree mix, and the hedge would be extended along the boundaries to the north and south. The hedgerow along with the trees would allow limited glimpses of the development from outside the site during the summer, but with the deciduous trees, there would be greater exposure during the winter months.

The Preliminary Ecological Appraisal (PEA) notes that whilst the site was fully accessible, the time of year meant many plants would not be visible. Considering that the site is well maintained gardens with standard trees and there are no semi-natural habitats within the boundary, the timing of the survey is not felt to affect the integrity of the report and its conclusions and recommendations. There was no

evidence of protected/BAP priority species and or habitats within the site boundary. Due to the structure of the site, there will be foraging and commuting bats within the area and bird species will use the gardens for nesting and foraging. The proposed development is considered to have a low to negligible impact on the local ecology. Reasonable avoidance measures are proposed along with compensatory habitat features to secure a net biodiversity gain.

A Flood Risk Assessment (FRA) notes the site is at low risk of flooding from rivers (Flood Zone 1) although consideration is also required of the flood risk presented from other potential sources such as overland flows, groundwater, sewers and retained water features. The site has been assessed for these threats and the topography of the site is such that in the event of overland flows, it would not threaten life or property. There is low risk of surface water flooding in Lawn Avenue which terminates before the frontage of the development. Furthermore, the foul and surface water sewers in Lawn Avenue are not considered to pose any risk. An accompanying Drainage Strategy finds the opportunity for using infiltration is considered unlikely due to the presence of clay soils, so the proposed drainage strategy seeks to mimic the existing drainage system with restricting the discharge rate to greenfield. Discharge from the proposed development would be restricted to greenfield runoff rates of 5l/s to the Severn Trent sewer, whilst attenuation storage would be provided with the use of a mixture of permeable paving and large diameter pipes. It is considered from the FRA that the level of risk of flooding to and from the proposed development is of an acceptable level and is in keeping with current policy. A SuDS Maintenance and Management Plan also gives guidance on the maintenance of a Sustainable Drainage System (SuDS) and outlines who will be responsible for the maintenance.

A Phase 1 Desk Study Report notes the underlying geology is indicated to comprise superficial deposits of sand and gravel overlying clay soils. Given the mature vegetation at the site, in both linear and cluster features, deepening of foundations may be required in line with NHBC guidelines, although conditions should be suitable for traditional shallow foundations. Dependant on the granular content of the sand and gravel deposits and their thickness conventional soakaway drainage features may be suitable at the site. However the underlying clays are less likely to provide amenable soakage potentials. Should a soakaway drainage scheme be pursued at the site, then full scale testing would be required to provide infiltration rates of the ground, and help inform suitability and design. It is considered that human health or controlled waters receptors will be at a low risk from the development, and therefore no further works or remediation is required prior to development. However it is considered possible that there may be some contamination on site, present from unknown past activities, and that therefore we recommend a watching brief should be undertaken during the construction phase.

## **Planning History**

9/675/443	Residential development – Refused November 1975
9/776/538	Residential development – Refused September 1976 and dismissed at appeal April 1978

9/978/827

The change of use of agricultural land to domestic gardens –  
Approved subject to conditions December 1978.

## **Responses to Consultations**

The County Highway Authority (CHA) has raised no objection to the proposals, seeking conditions to ensure provision on-site for storage of construction materials, etc. and wheel washing facilities during the course of works, further construction details of the road, formation of the new junction/connection to Slade Close, provision of the highway connections prior to occupation, details of any management company for the road (if not to be adopted) and provision of parking for the dwellings prior to occupation. Later comments on amended proposals note that the plans do not show the limits of the adoption area for the roads, but they concede this is a matter which is for the developer to consider when applying to the CHA for approval under section 38 of the Highways Act.

The Lead Local Flood Authority (LLFA) notes the intention to discharge surface water to the surface water sewer at a rate of 5l/s. Surface water is proposed to be attenuated on site to a volume between 239m<sup>3</sup> to 329m<sup>3</sup> to ensure the proposed discharge rate can be maintained up to the 1 in 100 critical storm duration. The LLFA would require the developer, at the detailed design stage, to demonstrate that the on-site surface water drainage system is sized appropriately to manage surface water up to the 1 in 100 (+40% Climate Change) event. The LLFA also ask that an allowance of 10% for urban creep is made, in addition to the 40% allowance for climate change. In addition, the developer will need to evidence that surface water is drained in accordance with the hierarchy in paragraph 80 of the Planning Practice Guidance and that the private surface water sewer has sufficient capacity to accept the discharge from the site. Finally, suitable provision for the maintenance of the drainage infrastructure will need to be made. Subject to conditions to secure the above matters, the LLFA raises no objection.

The Environment Agency raises no comments, indicating the advice of the LLFA for surface water disposal should be taken into account.

Derbyshire Wildlife Trust (DWT) notes the findings of the PEA. It is noted that the site comprises well maintained gardens with introduced shrub beds and standard trees. The trees and other vegetation on the site provides suitable habitat for nesting birds. A brick garage on the site is considered to have negligible potential for roosting bats. Overall, DWT advises that sufficient ecological survey work has been submitted to enable the determination of the application in the knowledge that there are unlikely to be any ecological constraints associated with the proposed development. To avoid harm to nesting birds they recommend that a condition be attached, whilst the enhancement measures recommended in the PEA should also be secured by a condition.

The County Archaeologist notes the site lies to the east of the historic core of Etwall and appears to have once been part of the grounds of Etwall Lawn (Derbyshire Historic Environment Record (HER) 19815), a substantial house built around 1700 with formal gardens including a ha-ha. To the south of the site a series of long, narrow agricultural fields, with sinuous boundaries, reflect remnants of medieval strip

field agriculture. Ridge and furrow earthworks survive in some of these fields and there is a suggestion that they also occur within the application boundary area. Given the location, and lack of historic development on the site, below-ground archaeology relating to medieval or earlier activity may occur. Any such archaeology would be impacted by the excavations associated with the proposed development. Taking this and the relatively small size of the site in to account, it is recommended that a condition for archaeological field evaluation be attached to any grant of planning permission.

The Environmental Health Officer (EHO) has no objections in principle but seeks conditions to control the construction phase impacts in respect of hours of working, dust emissions and use of generators.

The County Section 106 Officer notes the proposed development would affect capacity at Etwall Primary School. Analysis of the current and future projected number of pupils on roll, together with the impact of approved developments elsewhere, shows that the school would not have sufficient capacity to accommodate the primary age pupils arising from the proposed development. The proposal would also affect John Port School. Again, analysis of the current and future projected number of pupils on roll, together with the impact of approved development shows that the school would not have sufficient capacity to accommodate the secondary-age and post-16 pupils arising generated from this development. The County Council therefore requests financial contributions as follows:

- £33,624.48 for the provision of 2 primary places at Etwall Primary School towards a new classroom or towards the new primary school at New House Farm;
- £52,806.92 for the provision of 1 secondary place (£25,332.89) and 1 post-16 place (£27,474.03) at John Port School towards provision of additional accommodation.

Both projects are confirmed to have benefitted from less than 5 contributions to date.

The NHS Southern Derbyshire CCG has confirmed they are not seeking a contribution from the development.

## **Responses to Publicity**

Etwall Parish Council objects on the following grounds:

- a) the site was not considered in the formation of the Local Plan and hence is not considered as a site suitable for development;
- b) whilst within the village settlement boundary, aspects of the site are not consistent with a sustainable development;
- c) [referring to the earlier designs for 11 dwellings] the proposed house style is not consistent with the local properties and the massing is much greater than existing, and the development is not in keeping with the local streetscape of chalet bungalows;
- d) [referring to the earlier designs for 11 dwellings] the properties have either balcony doors or velux windows which, when opened, form a balcony, and this would overlook adjacent properties in either Slade Close or Lawn Avenue;

- e) Slade Close was not designed for parking and any parking, even if partially on the footpath, blocks the road and vehicles have to mount the opposite footpath, and the addition of further large properties would exasperate this;
- f) traffic to the development would have to negotiate the junction of Burnaston Lane/Main Street or the junction of Willington Road/Main Street, which are both busy and the Burnaston Lane junction in particular is dangerous and requires improvement;
- g) the proposed extension of Slade Close does not appear to have sufficient turning provision for refuse lorries, etc.;
- h) the Ecological Appraisal and Arboricultural Report downgrade the value of the protected trees and the proposed layout in the appraisal differs to the current proposal and significantly downplays the effect on the wooded north-eastern corner [referring to the earlier designs for 11 dwellings];
- i) the erection of houses within the root zone of protected trees would also have a significant effect on the trees;
- j) wild birds, including buzzards, are nesting in the trees in the northern part of the site;
- k) concern that the foul infrastructure and sewage works may not cope with additional flows;
- l) any additional surface water flows not collected by the drainage system would potentially cause flooding of existing properties to the south and west, with surface water flows from the site onto Slade Close noted during heavy rain in 2018
- m) the ground is clay so soakaways are not appropriate;
- n) adoption of the proposed drainage system is unclear;
- o) the virtually flat storage pipe may silt up, as porous pipes are used to drain the driveway storage material and particularly if road gullies, etc. are not regularly cleaned;
- p) construction of the new outlet pipe would block Slade Close;
- q) whether the hydrobrake would work under low water flows;
- r) permeable drainage surfacing requires regular maintenance to retain water permeability capacity, and this must be contained in any approval granted;
- s) the drainage model infers insufficient capacity under certain storm conditions;
- t) a previous planning application in 1976/77 was turned down at appeal due to visual impact and the more recent Lawnswood Close development took this into account, and these proposals would have a similar visual impact, bearing in mind that the site is on high ground;
- u) there are adjacent properties that have covenants forbidding any building on the site, and would similar restrictions apply here;
- v) the area has low water pressure so the capacity of the local infrastructure to supply the new development is questionable;
- w) the adoptability of the extension to Slade Close is not clear, and if not adopted the refuse wagon would need to collect bins at the end of the current road, meaning the siting of up to 44 bins on recycling collection day [referring to the earlier designs for 11 dwellings];
- x) the revised house types are still oversized and out of character for the local area; and
- y) current trees covered by the TPO are at risk and the tree planting/removal/retention drawings do not clarify which trees have a TPO.



36 objections were received to the original proposals, raising the following concerns/points:

Principle of development

- a) the site is not allocated in the Local Plan;
- b) it is outside of the village envelope;
- c) intrusion into the countryside;
- d) permission was turned down in 1976/77 because of “an adverse impact on the village setting”;
- e) paragraph 53 of the NPPF indicates local planning authorities should resist inappropriate development of residential gardens;
- f) additional housing above that required in the Local Plan on non-strategic sites;
- g) the value of having a TPO only for it to be removed to suit the landowners;

Highway capacity and safety

- h) other housebuilding in the village is increasing traffic flow along Lawn Avenue and onto Burnaston Lane;
- i) the 180 houses already being built off Willington Road are resulting in investigations for improving traffic-flow and road-safety in Etwall and these need to be taken into consideration;
- j) junction with Burnaston Lane is extremely dangerous as there is no footpath;
- k) visibility on Oaklands Road is an existing issue with parking on the road making it single way traffic most of the time;
- l) short section of Burnaston Lane between Main Street and Lawn Avenue must be widened to enable large cars/SUVs to pass safely and a footpath provided for pedestrians;
- m) an average of two cars per household would lead to increased traffic into the village centre or onto Burnaston Lane which is very narrow, before heading out to Derby;
- n) Slade Close is a narrow cul-de-sac and parked vehicles restrict access;
- o) there would be considerable traffic/access problems during the construction phase;
- p) access for emergency vehicles when roads are congested;

Infrastructure

- q) public facilities in the area (parks, etc.) are not being upgraded and neither is the road network;
- r) the schools are already at full capacity;

Design and character

- s) adverse visual impact on the village setting;
- t) fails to maintain rural character;

- u) the height of the proposed buildings would not blend in with existing properties;
- v) the developer has tried to put too many houses onto the site leading to loss of trees;
- w) 11 dwellings is discordant with the surrounding housing density;
- x) dense form of development at the narrow end of the site and less dense at the wider end;
- y) three storey houses do not fit in;
- z) no properties in Etwall built since 1930s have more than 2 storeys;
- aa) height and elevated position of the proposed dwellings is overpowering in comparison to neighbouring houses and bungalows on Lawn Avenue;
- bb) scale has led to refusal of previous application on village edge development on Main Street;
- cc) the dwellings would dominate the skyline;
- dd) maximum height of the buildings must be kept the same as those on Lawnswood Close so as not to be over dominant;
- ee) greater density of development than Lawnswood Close;
- ff) window patterns are unbalanced;
- gg) russet bricks are out of character with much of Etwall;

#### Biodiversity and trees

- hh) loss of trees at the north and east boundaries with loss of birds, bats and wildlife;
- ii) colony of bats on site;
- jj) care must be taken to ensure that trees are not felled when birds are nesting;
- kk) of the 70 trees on the site, only 2 are in poor condition whilst all of the other 68 trees (97%) are in fair or good condition;
- ll) the trees are a civic visual amenity enjoyed by many;
- mm) the trees are semi mature and healthy;
- nn) the trees would provide better screening than the proposed 3m hedgerow;
- oo) felling of protected trees to construct some of the dwellings;

#### Amenity

- pp) balconies must not overlook other properties or their gardens;
- qq) increased noise and disturbance;
- rr) loss of trees detrimental to health;
- ss) overlooking and privacy issues to neighbouring properties;
- tt) all building traffic will use Slade Close causing considerable noise, dirt and inconvenience to the existing inhabitants;

#### Flood risk and drainage

- uu) increased risk of surface water flooding ;
- vv) a balancing pond would be needed;
- ww) appropriate steps must be taken to ensure that surface water is adequately drained and in particular does not cause flooding of other properties on Slade Close and Lawn Avenue;

- xx) capacity and condition of water and drainage network to serve the site, including water pressure;
- yy) arrangements for handling of foul water with capacity issues at present;

Other matters

- zz) the height of the proposed 3m wide hedgerow and responsibility for maintenance, and omission of it a new hedge on the western edge of the site;
- aaa) what protection will there be for the retaining wall at 5 Lawnswood Close;
- bbb) no mention made of the covenants pertaining to the site;
- ccc) loss of views for neighbours; and
- ddd) the owner of one of the properties has refused to enter into a Joint Venture Agreement such that there is concern that they could develop their own garden and leave others within any access, effectively 'land locking' their gardens.

Further objections were received to the revised proposals in September 2018, although only increasing the total number of objectors to 38, echoing the points listed above and raising the following additional concerns:

- eee) why not address the need in Etwall for bungalows
- fff) limited off road parking for the proposed dwellings;
- ggg) native hedgerow does not exist on the northern boundary and sections of eastern boundary; and
- hhh) appraisal photographs showing local landscape character of Etwall were taken using wide angle or similar lenses giving an untrue representation of views.

A further round of publicity was carried out in April 2019 in response to the amendments now presented. Further objections were received to the revised proposals from those who had previously made representations, echoing many of the points listed above and raising the following additional concerns/comments:

- iii) plot 2 has moved towards the northern boundary and is within the 3m hedgerow on that boundary
- jjj) the plot 2 elevations show a chimney on the north elevation which presents a fire risk to the hedgerow, in turn spreading to the woodland and to adjacent housing;
- kkk) whether SuDS be fully maintained and renewed for the whole lifetime of the development;
- lll) can a TPO be placed on the proposed 3m wide hedgerow or it made a planning condition that it is maintained for the life of the development, and can a minimum height and width be insisted upon;
- mmm) defer the application until such time as an alternative access route can be agreed via Sandypits Lane;
- nnn) surface water data referred to seems to be questionable and should be re-examined;
- ooo) who will own and be responsible for maintaining the land to the north east corner, with it a potential building plot of the future;

- ppp) the inclusion of wood burning stoves can only have an adverse effect on pollution levels; and
- qqq) much better layout and sensible reduction in the number of properties, with vehicle access and turning improved.

## **Development Plan Policies**

The relevant policies are:

- 2016 Local Plan Part 1 (LP1): S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), S4 (Housing Strategy), S6 (Sustainable Access), H1 (Settlement Hierarchy), H20 (Housing Balance), SD1 (Amenity and Environmental Quality), SD2 (Flood Risk), SD3 (Sustainable Water Supply, Drainage and Sewerage Infrastructure), BNE1 (Design Excellence), BNE2 (Heritage Assets), BNE3 (Biodiversity), BNE4 (Landscape Character and Local Distinctiveness), INF1 (Infrastructure and Developer Contributions), INF2 (Sustainable Transport), INF6 (Community Facilities and INF9 (Open Space, Sport and Recreation); and
- 2017 Local Plan Part 2 (LP2): SDT1 (Settlement Boundaries and Development), BNE7 (Trees, Woodland and Hedgerows) and BNE10 (Heritage)

## **National Guidance**

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

## **Local Guidance**

- South Derbyshire Design Guide Supplementary Planning Document (SPD)
- Section 106 Agreements – A Guide for Developers (2010)

## **Planning Considerations**

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

- Principle of development;
- Arboricultural and visual impact;
- Access and design;
- Drainage and environmental performance;
- Biodiversity impacts; and
- Impact on local services and facilities.

## **Planning Assessment**

### Principle of development

The site lies within the settlement confines for Etwall. Whilst not specifically allocated within the Local Plan, this is a 'windfall' site which would contribute to the projected rolling 5 year housing supply which must be maintained. Policy H1 states that the

distribution of new development outside of allocations will be in accordance with the Settlement Hierarchy, this confirming that *“development of all sizes within the settlement boundaries will be considered appropriate”* in Key Service Villages (KSV), given range of services and facilities available. Etwall is a KSV under this hierarchy such that the development is appropriate in principle. Attention therefore turns to the capacity of the site to support the quantum of development proposed, noting that policy H20 states *“any housing development would be expected to make the most efficient use of the land whilst taking into account what is appropriate for the surrounding local built and natural environment”*.

#### Arboricultural and visual impact

The proposal has been subject to pre-application discussion before and amendment since its receipt by the Council. At the pre-application stage 10 dwellings with 3 detached garages were proposed along with considerable impacts on the tree cover offered by the site. The informal advice suggested that the scheme should be reduced in number and the wooded north-east corner retained as a natural resource. It was therefore somewhat disappointing to receive a scheme for 11 dwellings with 10 detached garages which both intensified the impacts and ignored the advice regarding the trees. The initial proposals attracted objection from the Tree Officer, particularly in respect of concerns over liveability – the shading and associated effects on occupiers of the development, along with the future pressures for use of wooded areas and subsequent desire to fell trees and open up gardens to the proposed dwellings.

The initial scheme also brought about harmful visual effects. The site is a part of the landscape buffer between the built-up environment of Etwall and the open countryside (rear private gardens and woodland) and as such has a unique character that is informed by the associated landscape/ urban elements and features rather than open countryside and built form within the settlement. It was noted that the initial layout appeared to veer away from some of the key recommendations of the Landscape Appraisal. In addition, there was concern as to the relative heights of the dwellings to adjacent existing development and to the screening vegetation, considering the site lies on a topographically prominent landform. It was also noted to be highly unlikely (nor desirable) that a proposed 3m width hedge would stand more than 3m in height, it both ‘hemming in’ the development but also incongruous in relation to the characteristic scale of hedgerows within the prevailing Landscape Character Type. Therefore its effectiveness as mitigation was felt to be limited. At the same time, some 50% of the existing site vegetation was estimated to be proposed for removal, inevitably resulting in a change to the character and views of and from the site.

Consequently, officers have made considerable efforts to secure a solution which achieves an appropriate balance between the development of the site and the protection of the biodiversity offering on the site. This has led to the reduction in the number of dwellings from 11 to 9, and the number of detached garages from 10 to 5. The scale and massing of the dwellings has also been reduced so to better reflect the woodland character of the site. The proposal now focuses the built form towards the western and southern edges of the site, although the south-east corner would still be visible in views from Sandypits Lane to the east. However, this would present

itself as the rear faces of plots 5 and 6, with the reduced scale of these and other dwellings meaning that existing tree cover and proposed boundary vegetation would assimilate the development to a reasonable degree, allowing glimpses of rooftops and some parts of elevations in between the canopies of the trees. Overall, the visual impacts would be more balanced and acceptable in terms of policy BNE4.

The change in the 'density' of the development and its reconfiguration to work with and around existing tree cover to a better degree has also alleviated some of the concerns over 'liveability'. A number of plots were previously set out such that their entire external amenity space would be under tree cover, whilst a number of semi-mature specimens would have likely caused issues in the future as they matured. Careful placing of the dwellings along with minimal selected removal of trees now achieves a satisfactory balance, with the Tree Officer noting that trees have a number of benefits including providing privacy and screening, offering an attractive backdrop, reducing carbon dioxide and aiding in micro-climate control, filtering and absorbing noise and pollution, helping prevent soil erosion and improve soil quality, reducing stress of modern lifestyles, encouraging wildlife and offering shade and shelter on warm days. These benefits would need to be balanced against the disadvantages of window shading, leaf and fruit drop, and falling twigs and the occasional deadwood branch, and it would be for the prospective occupiers to reach this conclusion before purchasing, in the full knowledge of the TPO and the restrictions by way of condition as set out below. Existing root structures could be protected by way of conditions during the course of the development, with appropriate no-dig techniques and geo-textile solutions employed to spread loading where root protection areas (RPAs) must be crossed. Hence, permitted development rights for extensions, hard surfaces and boundary treatments would be withdrawn so to protect these RPAs as well as to minimise these future liveability pressures and safeguard the visual impacts discussed above.

The loss of a few protected trees is noted. Nonetheless, these need to be viewed in context. The loss of around 3 to 4 trees from group G3 would not be of harm to this group, it being the large wooded cluster to the north-eastern corner and existing cover would fill out to close much of the opening created. Tree T30 sits within the line of conifers, which is to be removed. It would be both impractical to retain this tree given the likely interwoven root structures, and it is also likely to have poor structural form given its companionship with the conifers. In a landscape context, these changes would be indiscernible given the proximity to others within their groups. An apple tree would be lost to the rear of plot 7 so to provide suitable living conditions for occupiers. The loss of this tree is therefore not considered to outweigh the benefits arising from the scheme as a whole. In compensation for those lost on the site, there is some scope to provide selected replacements elsewhere in the scheme, as well as further ornamental planting and hedgerows, so to offer suitable offsetting with time – particularly as replacement trees are likely to be in locations where tree cover on the site is presently limited. Overall and subject to conditions, the proposal is thus considered to satisfy policies BNE4 and BNE7 in respect of arboricultural matters.

## Access and design

As noted above, the design of the proposal has altered considerably through its inception and assessment stages, with the scheme now drawing back the extent of adoptable highway to a short extension of Slade Close and a new turning head towards the site entrance. Beyond this turning facility, the drives would not be adoptable and remain the responsibility of the prospective occupiers as 'common parts' in Title – similar to that deployed on modern housing estates elsewhere. There is still a need to consider the type of finish for service margins to this turning head and the driveways, given the tree cover on the site and the 'green' emphasis of the design, but conditions can address this and pick up on the comments of the CHA. Overall, suitable access provision is made with the site reasonably well connected to the centre of Etwall where services and facilities lie in the main. Adequate parking provision for the size of the dwellings proposed is also made, subject to conditions to protect such provision going forward. The scheme is therefore in conformity with policy INF2.

The evolution of the design of the dwellings is briefly discussed above. The constraints of the site have been a key driver in these changes, with officers also highlighting the confused foci of the design parameters with the earlier versions. The resulting scale and form of the dwellings strikes an appropriate balance between the historic character of Etwall and the wooded glade in which the development would sit. The drawing back of the ridge and eaves heights to single and one-and-a-half storey better communicates the latter whilst the detailing of the dwellings emulates the former. Boundary treatments are carefully chosen and placed so to minimise the former 'funnelling' of views down Slade Close, and to allow the open frontages of the dwellings to continue by perception into a central 'green'. Although this green would be conveyed to individual occupiers, it could be protected by removal of permitted development rights for enclosures and hardstandings, with such control also ensuring soft boundaries between the frontages to the dwellings are also likely retained. Surfacing materials would also be made subject to condition, with these to be agreed in advance along with facing materials, noting that the former would need to also reflect the proposed drainage strategy. The proposal is thus considered to satisfy the aims of policy BNE1 and the Design SPD.

The layout largely has little effect in terms of amenity on existing occupiers of adjacent dwellings, with considerable separation to prevent overlooking or shading arising from the development. Plots 1, 2 and 9 would have some effects however. Plot 1 is 1.5 storey, reducing to a single storey towards the western boundary with 7 Slade Close. Taking into account boundary treatments, the only window of concern is a secondary window to bedroom 3 which might cause some overlooking of the external amenity space to that property. A condition could ensure this is obscure glazed however. Plot 2 is located some 22 metres or more from the rear elevation to 8 Lawn Avenue, complying with the separation standards set out in the SPD, with only a small dressing room window overlooking its rear amenity space. Plot 9 offers no first floor space which would overlook 8 Slade Close, with the building set back from the boundary line so to achieve the 12 metres separation required to the blank gable elevation. The proposal is therefore, subject to conditions to control later changes to roofspaces (which would also been necessary in the interests of protecting tree canopies), considered to comply with policies BNE1 and SD1.

Furthermore, concerns as to the construction phase impacts on adjoining occupiers can also be addressed by condition to fulfil policy SD1.

#### Drainage and environmental performance

As noted in the response of the LLFA, there is broad agreement that a suitable drainage solution can be secured. As with most development schemes, a conditional approach is considered acceptable here given there are no particular flood risk or drainage issues identified with the site, with it possible to deal with concerns regarding overland surface water flows by way of managing flows under the approved scheme (e.g. by use of filter drains). The need to design the scheme to accommodate climate change and urban creep, along with the drainage benefits and constraints of the protected trees and further conditions to withdraw permitted development rights, means that the eventual outfall from the site is likely to remain well within the scope of the worst case scenario modelled. The proposal is therefore compliant with policy SD2 whilst the securing of water efficiency measures can also fully satisfy policy SD3.

#### Biodiversity impacts

The main risk to biodiversity has been minimised by way of the amended proposals, with the vast majority of tree cover now remaining. The recommendations of the PEA can assist in securing a net biodiversity gain from the development, which remains a key priority under policy BNE3 and provisions of the NPPF, whilst suitable protective measures can be deployed through condition to safeguard the existing interest.

#### Impact on local services and facilities

Whilst the scheme has been reduced from 11 to 9 dwellings, it still presents a total floorspace coverage of over 1,000m<sup>2</sup>. The PPG formerly stated *“there are specific circumstances where contributions for affordable housing and tariff style planning obligations (section 106 planning obligations) should not be sought from small scale and self-build development”* with it stating that contributions should not be sought from developments of 10 units or less, and which have a maximum combined gross floorspace of no more than 1,000 square metres (gross internal area). The PPG was revised in March 2019 to confirm that *“provision of affordable housing should only be sought for residential developments that are major developments”*. The PPG is now silent on ‘tariff style’ planning obligations, such that the former constraint offered by the PPG is considered to fall and it is for the Council to determine whether to levy such obligations.

The County Section 106 officer observes that, at over 1,000m<sup>2</sup>, a planning obligation in terms of education should still be sought. Indeed, given the evidenced pressures on schooling at all three tiers of the system, it is well justified. The size of the dwellings concerned means it is quite reasonable to expect children to reside on the development and thus the contributions shall be secured. In the same vein, there would be inevitable impacts on open space provision, outdoor sports facilities and built facilities in the area. The development would attract contributions of £12,682.00, £7,480.00 and £4,175.20 respectively. Whilst it has been suggested to the applicant that the central green and the wooded corner be offered as open space, so to



eliminate the need for an off-site contribution; they have decided to retain those spaces as extended ownerships for the respective plots. In summary, the contributions to be secured under a section 106 agreement would be:

- £33,624.48 for the provision of 2 primary places at Etwall Primary School towards a new classroom or towards the new primary school at New House Farm;
- £52,806.92 for the provision of 1 secondary place (£25,332.89) and 1 post-16 place (£27,474.03) at John Port School towards provision of additional accommodation;
- £12,682.00 towards the improvement of open space facilities at King George V playing fields in Etwall;
- £7,480.00 towards the improvement of outdoor sports facilities, namely the MUGA and tennis courts, at Etwall Leisure Centre; and
- £4,175.20 towards the improvement of built facilities, being the refurbishment of squash courts at Etwall Leisure Centre.

### Summary

With the principle of development acceptable, the impact on local services and facilities offset by way of planning obligations, and drainage, highway, biodiversity and environmental impacts addressed by way of condition; the focus is towards the balance between the extent and design of the development and the constraint of tree cover and visual impacts. The above discussion acknowledges there would be some limited negative impacts in this context, but the benefit of housing towards the social and economic needs of the District must be weighed against this, and with it noted that the 9 dwellings would go towards the rolling annual supply by way of a windfall contribution. Overall, the harm is considered to be outweighed and the development is considered to be sustainable in the round, according with policies S1 and S2.

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

### **Recommendation**

- A.** That the Committee delegates authority to the Head of Planning and Strategic Housing to complete a Section 106 Agreement to secure the planning obligations identified in the report above;
- 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 following plans and drawings:
    - Site Plan 1431 - P03f
    - Plot 1 Floor Plans 1431 - P04a

- Plot 1 Elevations 1431 - P05a
- Plot 2 Floor Plans 1431 - P06a
- Plot 2 Elevations 1431 - P07a
- Plot 2 Elevations 1431 - P08a
- Plot 3 Floor Plans 1431 - P09a
- Plot 3 Elevations 1431 - P10a
- Plot 3 Elevations 1431 - P11a
- Plot 4 Floor Plans 1431 - P12a
- Plot 4 Elevations 1431 - P13a
- Plot 4 Elevations 1431 - P14a
- Plot 5 Floor Plans 1431 - P15a
- Plot 5 Elevations 1431 - P16a
- Plot 6 Floor Plans 1431 - P17a
- Plot 6 Elevations 1431 - P18b
- Plot 6 Elevations 1431 - P19b
- Plot 7 Floor Plans 1431 - P20a
- Plot 7 Elevations 1431 - P21a
- Plot 7 Elevations 1431 - P22a
- Plot 8 Floor Plans 1431 - P23a
- Plot 8 Elevations 1431 - P24a
- Plot 9 Floor Plans 1431 - P25a
- Plot 9 Elevations 1431 - P26a
- Plot 9 Elevations 1431 - P27a

unless as otherwise required by condition attached to this permission or allowed by way of an approval of a non-material minor amendment made on application under Section 96A of the Town and Country Planning Act 1990 (as amended).

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

3. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, or any statutory instrument amending, revoking and/or replacing that Order; none of the dwellings hereby permitted shall be enlarged or extended, no gates, walls, fences or other means of enclosure (except as authorised by this permission or allowed by any condition attached thereto) shall be erected, and no hard surfaces shall be created (except as authorised by this permission or allowed by any condition attached thereto) without the prior grant of planning permission on an application made to the Local Planning Authority in that regard.

Reason: To maintain control in the interest of the character and amenity of the area, having regard to the setting and size of the development and effect upon neighbouring properties and protected trees, and so to secure the character of the development in the long term.

4. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, or any statutory instrument amending, revoking and/or replacing that Order, the garages/parking spaces to be provided in connection with the development shall not be used other than for the parking of vehicles except with the prior grant of planning permission pursuant to an application made to the Local Planning Authority in that regard.

Reason: To ensure adequate parking and turning provision, in the interests of highway safety.

5. a) No development, including preparatory works, shall commence until a Written Scheme of Investigation for archaeological work (WSI) has been submitted to and approved in writing by the Local Planning Authority, and until all pre-commencement elements of archaeological fieldwork identified in the WSI have 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 and provision to be made for post investigation analysis and reporting;

- iii) provision to be made for publication and dissemination of the analysis and records of the site investigation;
  - iv) provision to be made for archive deposition of the analysis and records of the site investigation; and nomination of a competent person or persons/organisation to undertake the works set out within the WSI.
- b) The development shall take place in accordance with the approved WSI and shall not be occupied until the site investigation and post investigation reporting has been completed in accordance with the programme set out in the approved WSI and the provision to be made for publication and dissemination of results and archive deposition has been secured.  
Reason: To enable potential archaeological remains and features to be adequately recorded, in the interests of the cultural heritage of the District, recognising that initial preparatory works could have unacceptable impacts.
6. No development, including preparatory works, shall commence until protective fences have been erected around all trees and hedgerows shown to be retained on the approved plans. Such fencing shall conform to best practice as set out in British Standard 5837:2012 (or equivalent document which may update or supersede that Standard) and ensure that no vehicles can access, and no storage of materials or equipment can take place within, the root and canopy protection areas. The fences shall be retained in situ during the course of ground and construction works, with the protected areas kept clear of any building materials, plant, debris and trenching, and with existing ground levels maintained; and there shall be no entry to those areas except for approved arboricultural or landscape works.  
Reason: In the interests of safeguarding existing protected habitat and the visual amenities of the area, recognising that initial preparatory works could bring about unacceptable impacts.
7. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order, with or without modification), no lines, mains, pipes, cables or other apparatus shall be installed or laid on site other than in accordance with drawings first submitted to and approved in writing by the Local Planning Authority.  
Reason: In the interests of safeguarding existing protected habitat and the visual amenities of the area.
8. Prior to the construction of buildings, enclosures or hard surfaces within the root protection area or under the canopy of any tree shown to be retained on the approved plans, details of the method of construction and root protection and load spreading measures to be installed shall be submitted to and approved in writing by the Local Planning Authority. Such details shall be based on best practice as set out in British Standard BS 5837:2012 (or equivalent document which may update or supersede that Standard). The development shall proceed in accordance with those approved details.  
Reason: In the interests of safeguarding existing protected habitat and the visual amenities of the area.
9. No removal of trees, hedges, shrubs, buildings or structures shall take place between 1st March and 31st August inclusive unless a survey to assess the nesting bird activity on the site during this period and a scheme to protect the nesting birds has first been submitted to and approved in writing by the Local Planning Authority. No trees, hedges, shrubs, buildings or structures shall be

removed between 1st March and 31st August inclusive other than in accordance with the approved bird nesting protection scheme.

Reason: In order to safeguard protected and/or priority species from undue disturbance and impacts.

10. The development shall be carried out in strict accordance with the enhancement recommendations detailed in Table 5.2 of the Preliminary Ecological Appraisal prepared by Haslam Ecology dated 15th February 2018. Prior to their installation, the location and type of bird boxes and bat boxes/bricks shall be submitted to and approved in writing by the Local Planning Authority. The ecological enhancement measures shall be retained as such thereafter.

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

11. No development, including preparatory works, shall commence until details of the finished floor levels of the buildings hereby approved, and of the proposed ground levels of the site relative to the finished floor levels and adjoining land levels, shall be submitted to and approved in writing by the Local Planning Authority. Such details shall be supplemented with locations, cross-sections and appearance of any retaining features required to facilitate the proposed levels. The development shall be constructed in accordance with the approved details.

Reason: To protect the amenities of adjoining properties and the appearance of the area generally, as well as to ensure that impacts on protected trees are minimised, recognising that site levels across the site as a whole are crucial to establishing infrastructure routeing/positions.

12. No development shall commence until a detailed assessment to demonstrate that the proposed destination for surface water, assessed across the site as a whole, accords with the hierarchy in paragraph 80 of the planning practice guidance (or any revision or new guidance that may replace it) has been submitted to and approved in writing by the Local Planning Authority. The assessment shall include a full understanding of any springs within the site and any associated mitigation requirements, and 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 surface water drainage system;
- iv) to a combined sewer.

Reason: To ensure that surface water from the development can be directed towards the most appropriate waterbody in terms of flood risk and practicality, noting that the detailed design of the site needs to respond to the findings of this assessment and certain works may compromise the ability to subsequently achieve this objective.

13. No development shall take place until a detailed design and associated management and maintenance plan of surface water drainage for the site, in accordance with the principles outlined within:
  - a. Flood Risk Assessment, Land off Slade Close, Etwall DE65 6JH (Project Ref: CO18/162/04, June 2018) by JMS Civil and Structural Consulting Engineers,

- b. And DEFRA Non-statutory Technical Standards for sustainable drainage systems (March 2015),  
have been submitted to and approved in writing by the Local Planning Authority. The approved drainage system shall be implemented in accordance with the approved detailed design prior to the first occupation of the development hereby permitted, and thereafter maintained in accordance with the approved management and maintenance plan.  
Reason: To ensure that the principles of sustainable drainage can be incorporated into the development, noting that initial preparatory and/or construction works may compromise the ability to mitigate harmful impacts.
14. No development, including preparatory works, shall commence until details of measures indicating how additional surface water run-off from the site will be avoided during the construction works have been submitted to and approved in writing by the Local Planning Authority. The applicant may be required to provide collection, balancing and/or settlement systems for these flows. The approved measures and systems shall be brought into operation before any works to create buildings or hard surfaces commence.  
Reason: To ensure surface water is managed appropriately during the construction phase of the development, so as not to increase the flood risk to adjacent land/properties or occupied properties within the development itself; recognising that initial works to prepare the site could bring about unacceptable impacts.
15. No development, including preparatory works, shall commence until space has been provided within the site for storage of plant and materials, site accommodation, loading, unloading and manoeuvring of goods vehicles, parking and manoeuvring of employees and visitors vehicles and wheel cleaning facilities, with this space laid out in accordance with a scheme first submitted to and approved in writing by the Local Planning Authority. All construction vehicles shall have their wheels cleaned on a hard surface before leaving the site in order to prevent the deposition of mud or other extraneous material on the public highway. Once implemented, the approved facilities shall be retained free from any impediment to their designated use throughout the construction period.  
Reason: To ensure safe and suitable access for all users, in the interests of highway safety, recognising that initial preparatory works could bring about unacceptable impacts.
16. Before works to create the new estate street take place, construction details of the residential estate road and footway(s) (including layout, levels, gradients, surfacing and means of surface water drainage via a positive gravity-fed system discharging to a public sewer, highway drain or watercourse) shall be submitted to and approved in writing by the Local Planning Authority. The submitted details shall accord with the 6C's Design Guide (or any subsequent revision to or replacement of that guidance). The development shall proceed in accordance with the approved details.  
Reason: To ensure safe and suitable access for all users, in the interests of highway safety.
17. Before any other operations are commenced, a new estate street junction/connection shall be formed to Slade Close in accordance with the approved plan(s), constructed to base level, drained and lit. As part of these works, street lighting column no. 42575 shall be relocated in accordance with

a scheme first submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure safe and suitable access for all users, in the interests of highway safety, recognising that even initial preparatory works could bring about unacceptable impacts.

18. Prior to the first occupation of a dwelling, details of the proposed arrangements for future management and maintenance of the streets proposed to be adopted by the Local Highway Authority within the development shall be submitted to and approved in writing by the Local Planning Authority. The streets shall thereafter be maintained in accordance with the approved management and maintenance details until such time as an agreement has been entered into under section 38 of the Highways Act 1980.

Reason: In the interests of maintaining suitable access and turning space within the site for occupants', visitors', service and emergency vehicles throughout the life of the development, and ongoing maintenance of street furniture, lining, lighting, etc. in the interests of highway safety.

19. Prior to the first occupation of each dwelling hereby permitted, the new street(s) between each respective plot and the existing public highway shall be laid out in accordance with the plan(s) approved under condition 15, constructed to base level, drained and lit in accordance with the County Council's specification for new housing development roads. 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 carriageway and footway(s) shall be completed with the final surface course within 12 months (or 3 months in the case of a shared surface road) from the first occupation of a plot.

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

20. Notwithstanding the plans hereby approved, prior to the construction of a hard surface a scheme of hard and soft landscaping shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall omit any hard surfacing to the proposed highway service margin with this provided as verge and a narrow kerb edge set within to delineate between public and private ownership. All hard landscaping shall be carried out in accordance with the approved details prior to occupation of each respective dwelling, whilst all planting, seeding or turfing comprised in the approved scheme shall be carried out in the first planting and seeding seasons following the first occupation of each respective dwelling or the completion of the development, whichever is the sooner; and any plants which within a period of five years (ten years in the case of trees) from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species and thereafter retained for at least the same period, unless the Local Planning Authority gives written consent to any variation.

Reason: In the interest of the visual setting of the development and the surrounding area.

21. Notwithstanding the plans hereby approved, prior to the construction of a boundary wall, fence or gate, details of the position, appearance and materials of such boundary treatments shall be submitted to and approved in

writing by the Local Planning Authority. The boundary treatments shall be completed in accordance with the approved details before the respective dwelling(s) to which they serve is/are first occupied or in accordance with a timetable which shall first have been submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of the character and appearance of the area and to ensure acceptable impacts on protected trees.

22. Prior to the installation of any external lighting a detailed lighting strategy (designed in accordance with the guidelines issued by the Institute of Lighting Engineers, or any equivalent guidelines which may supersede such guidelines) which shall include precise details of the position, height, intensity, angling and shielding of lighting, as well as the area of spread/spill of such lighting, shall be submitted to and approved in writing by the Local Planning Authority. All lighting shall be installed in accordance with the approved strategy and thereafter retained in conformity with them.

Reason: In the interests of protecting the amenity of the area and wildlife from undue illumination impacts, and to minimise light pollution at night.

23. Prior to their incorporation in to the building(s) hereby approved, details and/or samples of the facing materials to be used shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be constructed using the approved facing materials.

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

24. Prior to their incorporation in to the building(s) hereby approved, details of the eaves, verges, cills and lintels shall be submitted to and approved in writing by the Local Planning Authority. The details shall include drawings to a minimum scale of 1:10. The eaves, verges, cills and lintels shall be constructed in accordance with the approved drawings.

Reason: In the visual interest of the building(s) and local distinctiveness.

25. No development shall take place until a scheme of mitigation measures and for the control of dust emanating from the site during the construction period has been submitted to and approved in writing by the Local Planning Authority. The approved measures shall be implemented throughout the construction period.

Reason: In the interests of protecting the amenity of the area and adjoining occupiers, recognising that initial preparatory works could cause unacceptable impacts.

26. There shall be no use of portable generators during the construction phase without details having first been submitted to and approved in writing by the Local Planning Authority. Only those approved generators shall thereafter be used.

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

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

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

28. Each dwelling shall be constructed and fitted out so that the estimated consumption of wholesome water by persons occupying the dwelling will not

exceed 110 litres per person per day, consistent with the Optional Standard as set out in G2 of Part G of the Building Regulations (2015). The developer must inform the building control body that this optional requirement applies. Reason: To ensure that future water resource needs, wastewater treatment and drainage infrastructure are managed effectively, so to satisfy the requirements of policy SD3 of the Local Plan.

Informatives:

1. This permission is the subject of a unilateral undertaking or agreement under Section 106 of the Town and Country Planning Act 1990. All formal submissions to discharge obligations of the undertaking or agreement, or queries relating to such matters, must be made in writing to [s106@southderbyshire.gov.uk](mailto:s106@southderbyshire.gov.uk) with the application reference included in correspondence.
2. 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 of the Economy, Transport and Environment Department at County Hall, Matlock (Tel: 01629 533190). The applicant is advised to allow approximately 12 weeks in any programme of works to obtain a Section 38 Agreement.
3. 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.
4. The County Flood Risk Team advises:
  - Any alteration to existing impermeable surface area of the site may exacerbate surface water flood risk, so new impermeable surfaces should be limited where possible. Where an increase in impermeable area is unavoidable, Derbyshire County Council (DCC) strongly promote Sustainable Drainage Systems (SuDS) to be incorporated within the design of a drainage strategy for any proposed development, applying the SuDS management train with an appropriate number of treatment stages. Applicants should consult Table 3.3 of the CIRIA SuDS Manual (C697) to confirm the appropriate number of treatment stages, or contact the EA or the DCC Flood Risk Management Team directly. Surface water drainage should be designed in line with the non-statutory technical standards for SuDS (March 2015) where reasonably practicable, and ground infiltration to manage the surface water is preferred over discharging to a surface water body or public sewer system.
  - Any SuDS should be designed to ensure that the maintenance and operation requirements are economically proportionate and that a maintenance plan is available to the persons/organisations that will be responsible for ongoing maintenance.
  - The applicant is advised to contact the Environment Agency (EA) that hold modelling data for Main Rivers and some ordinary watercourses if fluvial flood risk is a concern.
  - Due to the historic mining and mineral extraction operations in Derbyshire, adits may exist beneath the surface. The applicant is therefore advised to



investigate the potential for hidden watercourses existing on the land prior to any works being undertaken.

- Development located in areas where the water table is at a shallow depth may be susceptible to groundwater flooding. Development site drainage should be considered carefully to avoid any increased risks associated with groundwater. DCC would not recommend infiltration as a means of development site surface

water disposal in areas where geohazards or ground instability are deemed likely without appropriate analysis of the risks involved. Infiltration of surface water to the ground is also not advised in sensitive groundwater areas without an appropriate SuDS management train.

5. The Lead Local Flood Authority note several inaccuracies within the submitted Flood Risk Assessment (FRA). It is expected that these issues will be rectified and all information provided at detailed design will be accurate. It is noted that in the submitted FRA the pipe numbering in the Drainage Strategy in Appendix L does not match the numbering in the Microdrainage Network Calculations in Appendix M, and in the submitted SuDS Maintenance and Management Plan there is incorrect numbering and referencing of tables.
6. The applicant is advised to consider the document 'Guidance on the assessment of dust from demolition and construction' from the Institute of Air Quality Management (IAQM) for advice on how dust assessments should be performed. The assessment of the impacts of construction on local air quality should be undertaken following a risk based approach, as outlined in the IAQM document 'Guidance on the Assessment of the Impacts of Construction on Air Quality and the Determination of their Significance'.

**Item**            **1.4**

**Ref. No.**        **9/2018/1280/U**

**Applicant:**  
**Mrs Shazia Ahmed**  
**Smart Properties UK**  
**32 Market Place**  
**Melbourne**  
**Derby**  
**DE73 8DS**

**Agent:**  
**Mr Waheed Khan**  
**Arcon Architects**  
**250 Walsall Road**  
**Perry Barr**  
**Birmingham**  
**West Midlands**  
**B42 1UB**

**Proposal:**    **CHANGE OF USE FROM BAKERY (USE CLASS A1) TO HOT FOOD TAKEAWAY (USE CLASS A5) WITH THE INSTALLATION OF A FLUE TO THE REAR AT 32 MARKET PLACE MELBOURNE DERBY**

**Ward:**           **Melbourne**

**Valid Date**    **16/01/2019**

### **Reason for committee determination**

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

### **Site Description**

The application site relates to a property located within the local centre of Melbourne and also within the conservation area. The building has been designated under an Article 4 direction which restricts permitted development rights. The last known use of the premises was as 'Birds Bakery', they have since relocated to a larger unit also on Market Place and the application unit has since remained vacant. The frontage is traditional in character and features a large amount of glazing. Along the northern boundary of the site is a footpath that leads to a public car park at the rear. At the front of the site there are also several designated car parking spaces. There are other retail units either side of the application site and in the locality generally, which include shops, restaurants and other food outlets.

### **Proposal**

A change of use is proposed from a former bakery (Use Class A1) to a Hot Food Takeaway Unit (Use Class A5), with the installation of an external flue at the rear. No alterations to the frontage or any other external alterations are proposed.

**South Derbyshire District Council. LA 100019461. 2014**

## **Applicant's supporting information**

A Heritage Statement has been submitted in support of the application and justifies how the proposal does not harm the visual appearance of the local area.

## **Planning History**

- 9/1994/0370     The installation of a doorway in the northern elevation of the confectioners shop – Approved 22 September 1994.
- 9/1994/0692     The installation of a new shop front at the confectioners shop – Approved 31 January 1995.

## **Responses to Consultations**

Environmental Health considers that the potential environmental impacts are the potential exposure of existing receptors to new sources of odour associated with the development. No objection is offered subject to a condition regarding the proposed extraction system.

The County Highway Authority has no objection in view of its central location.

Historic England has no comment.

The Council's Conservations Officer has no objection and recommends that the external flue is finished in black.

## **Responses to Publicity**

Eleven objection letters have been received, raising the following concerns:

- a) Not in keeping with the overall vista and character of an historic market town.
- b) It would result in an increase in noise and pollution (litter) to the local area, with the site in close proximity to dwellings.
- c) Object to the use of modern materials such as UPC windows and an extraction flue as the site is within the conservation area.
- d) It would result in disruption, anti-social behaviour and low level crime.
- e) The village is already well served by various fast food outlets, restaurants and pubs, with some being in close proximity to the site, there would be no benefit of another such business.
- f) Concerns over the potential environmental impacts as a result of the increase in non-biodegradable packaging and use of plastics that will cause damage to the local environment and wildlife.
- g) There is another hot food takeaway only two shops down from the application site.
- h) The village has already reached its limit as to the amount of food outlets a village can sustain.
- i) No advertisement or public engagement from the applicants. No posters, letters or posts in the village voice to inform the public of their plans.
- j) It would result in an increase in traffic along Derby Road.
- k) Another fast food outlet would increase the amount of unpleasant smells which impacts surrounding dwellings.

- l) Lack of parking within the village centre, cannot accommodate another fast food takeaway unit.
- m) The development would not add anything to the vibrancy of the village and is unnecessary.
- n) The addition of another takeaway would have a devastating impact on nearby businesses and possibly lead to their closure.

A petition with 601 signatures was received titled 'Petition To: Stop Another Hot Fast Food Takeaway from opening on Melbourne Market Place'.

Melbourne Parish Council objects due to concerns about the conflict of information within the plans – it was never a bakery. It considers the plans to be inadequate as there is no information about the frontage of the shop and the detail surrounding the signage is not clarified.

Melbourne Civic Society objects to the original siting of the external flue but has no objection to the amended plans which result in the flue being relocated.

### **Development Plan Policies**

The relevant policies are:

- 2016 Local Plan Part 1 (LP1): S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), S7 (Retail), H12 (Highfields Farm, South West of Derby), SD1 (Amenity and Environmental Quality), BNE1 (Design Excellence), BNE2 (Heritage Assets) and INF2 (Sustainable Transport).
- 2017 Local Plan Part 2 (LP2): SDT1 (Settlement Boundaries and Development), BNE10 (Heritage), BNE11 (Shopfronts) and RTL1 (Retail Hierarchy).

### **National Guidance**

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

### **Local Guidance**

- Design Guide Supplementary Planning Document (SPD)
- Melbourne Conservation Area Character Statement (CACS)

### **Planning Considerations**

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

- Principle of Development;
- Design and impact on the conservation area;
- Neighbouring Amenity; and
- Highway Safety.

## **Planning Assessment**

### Principle of Development

Consent is sought to change the use from a bakery shop (Use Class A1) to a use as a hot food takeaway (Use Class A5), a use for the sale of hot food for consumption off the premises. The only external alterations are for the erection of an external flue on the rear elevation. The site is located within Melbourne settlement boundary, a key service village within South Derbyshire as defined by Policy SDT1. Within the settlement boundary development will be permitted where it accords with the development plan.

Map 2 of Policy RTL1 identifies the local centre within Melbourne, with the application site falling within that area. Point D of Policy RTL1 permits development in Other Centres in Key and Local Service Villages (which Melbourne falls under) within Use Class A1, A2, A3, A4 and A5 provided that:

- I) It is appropriate with the scale and function of the centre; and
- II) It would not lead to unsustainable trip generation or undermine the vitality and viability of a neighbouring centre; and
- III) It does not adversely impact on neighbouring properties.

It is considered that the proposal would comply with the policy; the application site is located centrally within the local centre, with multiple retail units located either side of the of the application site. The proposed change of use would not result in a loss of retail as Use Class A5 still falls under retail and is one of the use classes listed as being permitted by Policy RTL1. The unit has been vacant for some time so may result in the likelihood of the unit being occupied sooner. The unit is well served by parking, with spaces to the rear and front of the site, in addition the site is located on one of the main access roads through the village making it sufficiently accessible by public transport. Concerns have been raised within the objections over the amount of hot food takeaways, pubs, restaurants and cafes within Melbourne. Competition of local businesses is not a planning consideration and therefore does not warrant refusal of the application. Policy RTL1 seeks to maintain and enhance the role and function of local centres within the district, as the proposal is for a retail unit located within the local centre, it is supported by the policy.

### Neighbouring Amenity

There have been no objections raised by the Environmental Health Officer but a condition has been requested relating to the proposed external flue, which would require the applicant to submit further details and specification of its design and intended use. Considering the current lawful use as a retail unit and its location within the local centre, being within close proximity of other takeaways, restaurants and pubs, a change of use to hot food takeaway would not result in an increase in harm to neighbouring amenity that would warrant refusal of the application on that basis. Therefore it is considered the proposal would not be harmful to the amenity of surrounding residential properties and complies with the principles of policy SD1.

### Design and impact on the conservation area

The conversion of the existing retail unit requires no external alterations; this is shown on the proposed plans and has also been clarified by the applicant's agent. The only external change proposed as part of this application is the addition of an external flue at the rear elevation. With consultation of the Council's Conservation Officer, amended plans have been received to alter the size and location of the flue. As such the conservation officer now has no objections as the visibility of the flue has now been reduced, making it more discreet and less visually harmful to the conservation area. It has been recommended that the flue is finished in black to make it more recessive, this could be ensured by a planning condition. There are clear views of the rear of the building from the public car park and footpath, making the proposed flue visible from the public realm. The application building and neighbouring buildings to the south have been altered and extended, with evidence of another extraction flue. The proposal is not considered to demonstrably impact on the contribution that the building makes to the conservation area and as such complies with policies BNE1, BNE2 and BNE10.

### Highway Safety

There are no car parking spaces included within the red line of the application site, as shown on the location plan. However the site is centrally located within Melbourne's local centre, there is a public car park at the rear of site accessed by a footpath adjacent to the building and there is also additional designated parking at the front of the site along the highway. It is noted that the County Highway Authority has raised no objection in terms of parking or highway safety issues. As such it is considered that the proposal complies with Policy INF2 and iii) of part D of Policy RTL1.

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

### **Recommendation**

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

1. The development permitted shall be begun before the expiration of three years from the date of this permission.  
Reason: To conform with Section 91(1) of the Town and Country Planning Act 1990 (as amended by Section 51 of the Planning and Compulsory Purchase Act 2004).
2. The development hereby permitted shall be carried out in accordance with Drawing No. 1 Rev D, received on 26 March 2019 and Drawing No. 2 received on 23 November 2018, unless as otherwise required by condition attached to this permission or allowed by way of an approval of a non-material minor amendment made on application under Section 96A of the Town and Country Planning Act 1990 (as amended).  
Reason: For the avoidance of doubt and in the interests of sustainable development.

3. Notwithstanding the submitted details, no extraction equipment shall be installed until a scheme of odour control has been submitted and approved in writing by the Local Planning Authority. The scheme should be designed in accordance with the latest DEFRA guidance. The approved scheme shall be installed prior to the first use of the extraction equipment and subsequently maintained as such.

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

4. The external flue shall have a black finish.

Reason: In the visual interest of the building and local distinctiveness.

Informatives:

1. The operator will need to register as a food business a minimum of 28 days before the business opens. Advice can be provided on the kitchen fitting and layout by contacting the Environmental Health Commercial Team on 01283 595947.



**Item**            **1.5**

**Ref. No.**        **9/2018/1049/SMD**

**Applicant:**  
**Mr P Normyle**  
**Lakeside**  
**Measham Road**  
**Oakthorpe**  
**DE12 7RF**

**Agent:**  
**Mr David Granger**  
**David Granger Design Ltd**  
**The Old Dairy**  
**Mill Street**  
**Packington**  
**Ashby De La Zouch**  
**LE65 1WN**

**Proposal:**    **DEMOLITION OF EXISTING BUILDING AND THE ERECTION OF 14 DWELLINGS AT M J CAR SALES PARK ROAD CHURCH GRESLEY SWADLINCOTE**

**Ward:**           **Church Gresley**

**Valid Date**    **01/10/2018**

**Reason for committee determination**

The item is presented to Committee as it is a major application where more than two objections have been received.

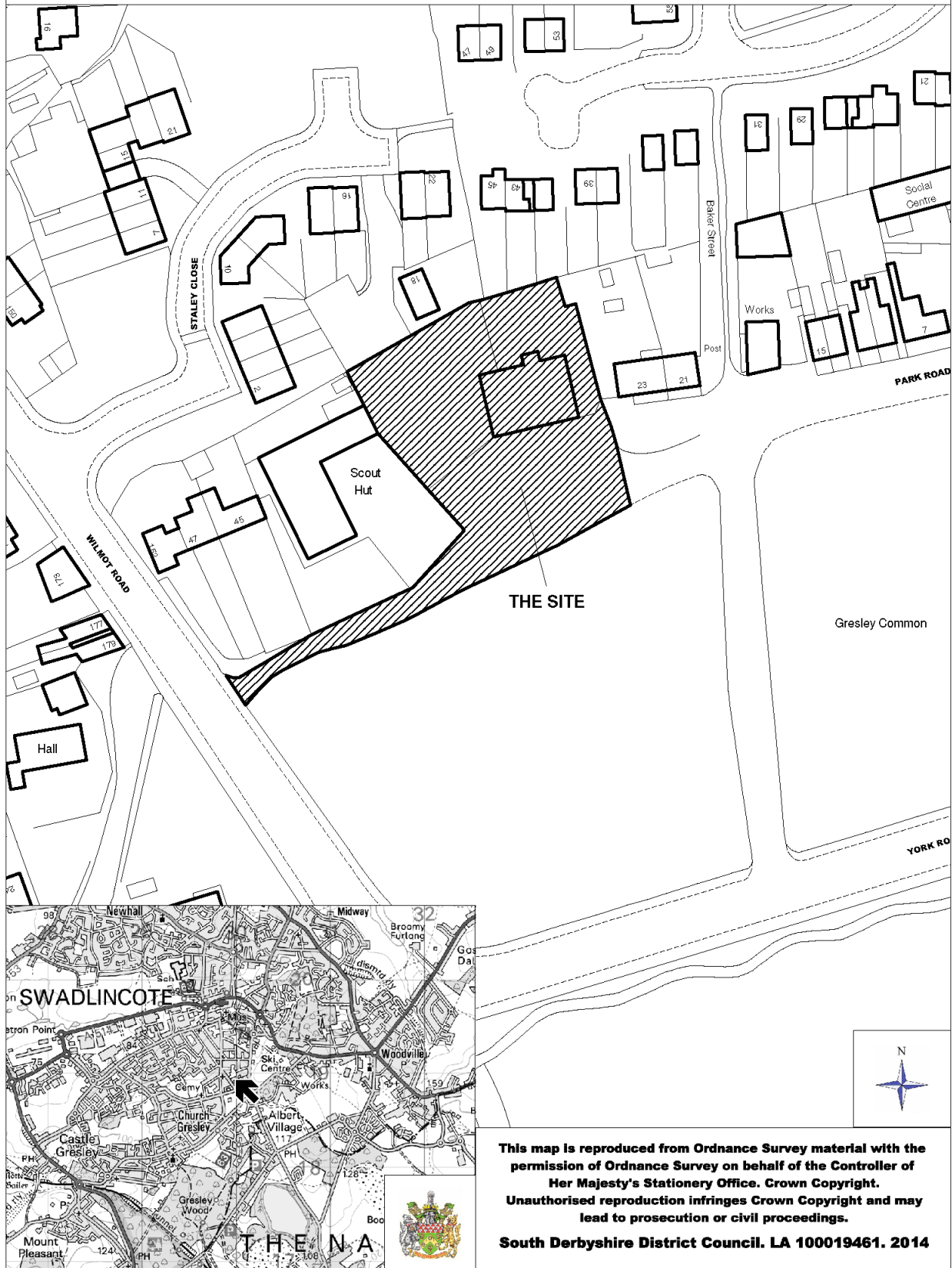
**Site Description**

The 0.25 Ha site is located on Park Road with the common land on York Road to the south. It is the former M J Car Sales site with existing grey clad garage buildings. There are residential properties to the east and north and a single storey Scout Hut building to the west. The site is accessed off the unadopted Park Road which has Swadlincote Footpath 26 that runs along its length and Footpath 27 traversing the site frontage.

**Proposal**

Planning permission is sought for 14 one bedroom apartments which appear as a two terraces of four and three-bed dwellings with the smaller section set 3m forward. Each apartment would have 1 car parking space either to the south of the front elevations or in front of the Plant Room. A communal garden area is proposed to the north and seven first floor apartments would be accessed from two external staircases to the rear of the building. A plant room is proposed to accommodate the plant required for the air source heat pump and utility meters.

9/2018/1049 - M. J. Car Sales, Park Road, Church Gresley, Swadlincote  
DE11 9QE



## **Applicant's supporting information**

Design, Access and Planning Statements summarise the planning history, the access and any constraints. The sustainability credentials are discussed in terms of the distance from facilities and services. The planning policy context is outlined and discussions of the design and character of the area. A diversion of Footpath 27 would be required as it crosses the site frontage. It notes that the change from car sales and garage to residential would greatly reduce the amount of traffic using park road.

The Coal Mining Risk Assessment concludes the risks are negligible in relation to recorded workings, recorded mine entries and mine gas emissions and subject to a site investigation report unrecorded workings and entries could be mitigated.

The Phase I Desk Geotechnical Desk Study recommends a ground investigation with removal of contaminated soils, a capping layer and gas protection measures.

An Intelligent Glass Brochure provides the specification for the first floor glazing of three first floor bedrooms adjacent to the external staircase.

Title deed information has been provided to confirm land ownership of the area proposed for building and car parking.

## **Planning History**

9/2012/0837 - Application for planning permission to extend the time limit for implementation of planning permission 9/2009/0805 for the change of use from car sales and workshop to residential development, Granted 3/12/12

9/2009/0805 - The change of use from car sales and workshop to residential development, Granted 7/12/09

9/2005/0340 - Outline application (all matters to be reserved) for the residential development, Granted 25/01/06

## **Responses to Consultations**

The Highways Authority states that Park Road is an unadopted highway which is included on the Definitive Map and to remove the Footpath 27 across the site frontage would require 'stopping up' under Section 247 of the Town and Country Planning Act. Records indicate that the development would be constructed on common land as the original plan they have indicates this. However, if the legal title and common land SDDC holds are correct, the amended plans are acceptable. Conditions in relation to parking, construction compound and wheel washing facilities are recommended.

The Coal Authority has no objections subject to a site investigations condition.

The Environmental Health Officer has no objection subject to conditions requiring electric recharge points for electric vehicles and a Phase II intrusive investigation report.

The County Education Authority does not require a contribution as the units are not likely to be occupied by families as they have only one bedroom.

The County Archaeologist states that the proposed site is a heritage asset, being the site of the former Granville Pottery and is likely to preserve below ground archaeological evidence. A written scheme of investigation should be secured by condition.

Severn Trent Water has no objection subject to a drainage condition.

The NHS Trust has not responded to consultation.

### **Responses to Publicity**

Six objections raising the following concerns/points:

- a) The proposed is overbearing being a two storey house on top of an apartment.
- b) The properties are not in keeping with the rest of Park Road, unlike the new properties at the other end.
- c) It would result in losing the access road to Wilmot Road which No.23 has used for 12 years.
- d) Park Road is in a poor state of repair and the proposal would result in increased traffic.
- e) The road has a high level of use due to the pre-school nursery, existing businesses and use by the fair twice a year.
- f) The introduction of bollards on Park Road would prevent through traffic but would put additional strain on roadside parking.
- g) Consideration should be given to the adoption of Park Road by the County Council.
- h) The road should be either segregated or surfaced.

### **Development Plan Policies**

The relevant policies are:

- 2016 Local Plan Part 1 (LP1): S2, H1, E3, SD1, BNE1, BNE2, INF2
- 2017 Local Plan Part 2 (LP2): SDT1, BNE10

### **National Guidance**

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

## **Local Guidance**

- South Derbyshire Design Guide SPD

## **Planning Considerations**

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

- Principle of Development
- Residential Amenity and Design
- Common Land
- Highways Issues
- Section 106
- Conclusion

## **Planning Assessment**

### Principle of Development

The site is located within the settlement boundary of the Swadlincote urban area within a predominantly residential area. LP1 Policy H1 states that development of all sizes is considered acceptable within the settlement boundary of the urban area. Outline consent for residential development on this site has previously been granted. The site is the former M & J Car Sales (previously A & M Motors) showroom and garage which is currently unused. LP1 Policy E3 states that redevelopment or changes of use of existing industrial and business land and premises for uses other than B1(b), B1 (c) and B8 will only be permitted where the existing use is significantly harmful to the amenity of neighbouring land uses in terms of noise, vibration, visual qualities, air quality or traffic generation which cannot be overcome or that there is no demand for the permitted uses of the site.

The site has existing residential properties adjacent to the northern and eastern boundary and a children's nursery to the west. Access to the site is via either Wilmot Road to the west or Coppice Side to the east via Park Road. The extant use of the site is B2 (General Industrial) with the resultant impacts in relation to noise, fumes and traffic generation. These impacts are combined with the visual impact of the existing grey clad buildings in this prominent street scene highly visible across the common land from York Road and Maurice Lee Park. On the basis that Policy H1 considers the principle acceptable, previous permissions have been granted and it would remove an existing use that is harmful to the residential and visual amenity of the area, the principle of development is considered acceptable.

### Residential Amenity and Design

LP1 Policy SD1 supports development that does not lead to adverse impacts on the environment or amenity of existing and future occupiers. LP1 Policy BNE1 requires new development to respond to their context, be visually attractive and not have an undue adverse effect on the privacy and amenity of existing nearby occupiers. There are two storey dwellings to the north west which have a 0.5 m higher land level than the application site and these dwellings are the nearest to the proposed

development. A detailed assessment of the relationships between the proposed and existing windows has been undertaken and all the distances are in compliance with the Design Guide Distance Guidelines with the nearest direct window to window measurement being 25m, in excess of the minimum distance of 21m. The nearest blank gable would be 10.4m from the rear elevation of the proposed properties where no minimum distance is required.

The design of the properties has been amended to reduce their scale and provide a scheme that responds to its context and is visually attractive. The proposal is a simple design of two sections of terraced properties with the smaller section set forward. The proposal would be viewed in context with the properties to the rear and the smaller scale cottages to the west. The design represents the character of existing properties along Park Road and due to the angle and set back from the frontage of the road the proposal would not appear dominant or intrusive; being in character with the street scene and an improvement from the grey cladding of the existing buildings. Detailing such as stone cills and lintels and no fascia boards is proposed to further improve the design. The proposal is therefore in keeping with the character of the area and would not have a significant adverse impact on the residential amenity of existing properties in accordance with LP1 Policies SD1 and BNE1.

### Common Land

The originally submitted scheme included land that was common land and this has since been amended to include all the built development and car parking within the area of the site where the applicant has proven ownership through title deeds and in accordance with the common land boundary the Council holds. Footpath 27 that crosses the site's frontage requires diversion and a separate application is required. The red line on the submitted location plan includes the common land and Park Road as the Highways Authority requires the red line to be up to the adopted highways which is Wilmot Road.

### Highways Issues

The Highways Authority has raised issues in relation to the common land and rights of access over Park Road and the Public Footpaths. Park Road is an unadopted road where footpaths 26 and 27 with 27 requiring diversion. The proposal no longer includes bollards which would block the through route that exists between Wilmot Road and Coppice Side. The frontage car parking is provided on the basis of 1 space per apartment and spaces measure 5.5m x 2.4m (3m adjacent to a wall) and all spaces are within the part of the site owned by the applicant and do not encroach beyond the common land boundary. This relationship of having car parking adjacent to Park Road and the Common Land boundary was considered acceptable in the development at the other end of Park Road which included the conversion of the Barley Mow. The state of repair of the unadopted road cannot be considered as the applicant has right of access and the existing use of car showroom and garage would generate significantly more traffic than the 14 residential units proposed. Upon gaining planning permission the applicant would look to seek to instigate a management company with existing residents of Park Road to repair and maintain Park Road to their joint benefit. On this basis, the Highways Authority has no

objection. As the proposal provides for safe and suitable access it is in compliance with LP1 Policy INF2.

### Section 106

As the application involves over 10 dwellings, Section 106 requirements have to be sought. The County Education does not require any contribution on the basis that the application has been amended to the provision of one bedroom apartments which are not classed as family homes. Public Open Space requirements on the following basis shall be secured: -

Recreation Open Space £373 x 14 = £5,222  
Recreation Outdoor Facilities £220 x 14 = £3,080  
Recreation Built Facilities £122 x 14 = £1,708

Total POS £10,010

The NHS Trust has been consulted with no response received and as such no contribution can be secured.

### Conclusion

The proposal would provide 14 one bedroom flats within walking distance of the town centre and local centre of Church Gresley and as such the parking provision is considered acceptable. The design of the properties would appear as terraces in keeping with the character of the area and existing properties on Park Road with a similar level of detailing as the properties built at the Barley Mow site. The proposal would not have an adverse impact on the residential amenity of existing properties adjoining the site and a safe and convenient access can be achieved.

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

### **Recommendation**

- A.** That delegated authority be granted to the Head of Planning and Strategic Housing to negotiate the details of the provisions of the Section 106 agreement referred to in the planning assessment of the report;
- 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 drawing no's 18.3489, 18.3489.21B, 18.3489.22A, 18.3489.23A, 18.3489.24A, 18.3489.25A , unless as otherwise required by condition

attached to this permission or allowed by way of an approval of a non-material minor amendment made on application under Section 96A of the Town and Country Planning Act 1990 (as amended).

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

3. Prior to their incorporation in to the buildings hereby approved, details and/or samples of the facing materials to be used shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be constructed using the approved facing materials.

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

4. Prior to the occupation of any dwelling a scheme of hard and soft landscaping shall be submitted to and approved in writing by the Local Planning Authority. All hard landscaping shall be carried out in accordance with the approved details prior to occupation of any dwelling, whilst all planting, seeding or turfing comprised in the approved scheme shall be carried out in the first planting and seeding seasons following the first occupation of [the/each respective] dwelling or the completion of the development, whichever is the sooner; and any plants which within a period of five years (ten years in the case of trees) from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species and thereafter retained for at least the same period, unless the Local Planning Authority gives written consent to any variation.

Reason: In the interest of the visual setting of the development and the surrounding area.

5. Notwithstanding the plans hereby approved, prior to the construction of a boundary wall, fence or gate, details of the position, appearance and materials of such boundary treatments shall be submitted to and approved in writing by the Local Planning Authority. The boundary treatments shall be completed in accordance with the approved details before any dwelling is first occupied or in accordance with a timetable which shall first have been submitted to and approved in writing by the Local Planning Authority.

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

6. No development, including preparatory works, shall commence until details of the finished floor levels of the buildings hereby approved, and of the proposed ground levels of the site relative to the finished floor levels and adjoining land levels, shall be submitted to and approved in writing by the Local Planning Authority. Such details shall be supplemented with locations, cross-sections and appearance of any retaining features required to facilitate the proposed levels. The development shall be constructed in accordance with the approved details.

Reason: To protect the amenities of adjoining properties and the appearance of the area generally, recognising that site levels across the site as a whole are crucial to establishing infrastructure routeing/positions.

7. 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/organisation 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 'A' above.

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 'A' above 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.

8. Prior to the first occupation of each dwelling, space shall be provided for the parking of vehicles associated with that dwelling in accordance with the approved plan 18.3489.21B and the 6Cs Design Guide (or any subsequent guidance that may amend or replace it); and notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, or any statutory instrument amending, revoking and/or replacing that Order, such space shall be maintained throughout the life of the development free of any impediment to its designated use.

Reason: To ensure adequate parking and turning provision, in the interests of highway safety.

9. No development shall commence until a scheme of intrusive site investigation for coal mining legacy has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be carried out in accordance with the approved details and a report of the findings arising from the intrusive site investigations, along with any remedial works required (including a timetable for the carrying out of such works), shall be submitted to and approved in writing by the Local Planning Authority prior to any construction works commencing. The approved remedial works shall thereafter be implemented in accordance with the approved timetable.

Reason: To protect the health of the public and the environment from hazards arising from past coal mining which might be brought to light by development of the site, recognising that failure to address such matters prior to development commencing could lead to unacceptable impacts even at the initial stages of works on site.

10. Throughout the period of construction vehicle wheel cleaning facilities shall be provided and retained within the site. All construction vehicles shall have their wheels cleaned on a hard surface before leaving the site in order to prevent the deposition of mud or other extraneous material on the public highway.

Reason: To ensure safe and suitable conditions are maintained on the public highway, in the interests of highway safety.

11. No development, including preparatory works, shall commence until space has been provided within the site for storage of plant and materials, site accommodation, loading, unloading and manoeuvring of goods vehicles, and parking and manoeuvring of employees and visitors vehicles, with this space laid out in accordance with a scheme first submitted to and approved in writing by the Local Planning Authority. Once implemented, the approved facilities shall be retained free from any impediment to their designated use throughout the construction period.  
Reason: To ensure safe and suitable access for all users, in the interests of highway safety, recognising that initial preparatory works could bring about unacceptable impacts.
12. Each unit shall be constructed and fitted out so that the estimated consumption of wholesome water by persons occupying the unit will not exceed 110 litres per person per day, consistent with the Optional Standard as set out in G2 of Part G of the Building Regulations (2015). The developer must inform the building control body that this optional requirement applies.  
Reason: To ensure that future water resource needs, wastewater treatment and drainage infrastructure are managed effectively, so to satisfy the requirements of policy SD3 of the Local Plan.
13.
  - a. A Phase II intrusive investigation report detailing all investigative works and sampling on site, together with the results of the analysis, undertaken in accordance with BS 10175:2011 Investigation of Potentially Contaminated Sites - Code of Practice. The report shall include a detailed quantitative human health and environmental risk assessment.
  - b. A remediation scheme detailing how the remediation will be undertaken, what methods will be used and what is to be achieved. A clear end point of the remediation shall be stated, and how this will be validated. Any ongoing monitoring shall also be determined.
  - c. If during the works contamination is encountered which has not previously been identified, then the additional contamination shall be fully assessed in an appropriate remediation scheme which shall be submitted to and approved in writing by the local planning authority.
  - d. A validation report detailing the proposed remediation works and quality assurance certificates to show that the works have been carried out in full accordance with the approved methodology shall be submitted prior to first occupation of the development. Details of any post-remedial sampling and analysis to demonstrate that the site has achieved the required clean-up criteria shall be included, together with the necessary documentation detailing what waste materials have been removed from the site.  
Reason: To protect the health of future occupiers of the site from any possible effects of contaminated land, in accordance with local planning policy SD4.
14. Prior to their incorporation in to the buildings hereby approved, details of the eaves, verges, cills and lintels shall be submitted to and approved in writing by the Local Planning Authority. The details shall include drawings to a minimum scale of 1:10. The eaves, verges, cills and lintels shall be constructed in accordance with the approved drawings.  
Reason: In the visual interest of the buildings and local distinctiveness.
15. An Arboricultural Method Statement shall be submitted and approved in writing by the Local Planning Authority in respect of the trees adjacent to the

eastern and northern boundaries of the site and works shall be implemented in accordance with the approved details.

Reason: In the interests of safeguarding existing habitat and the visual amenities of the area, recognising that initial preparatory works could bring about unacceptable impacts.

16. The windows hereby approved serving the first floor bedrooms for units 9, 10 and 13 in the north western elevation shall be glazed in switchable glass and permanently maintained thereafter as such.

Reason: In the interests of the amenity of future occupiers of the relevant units.

Informatives:

1. Where development is proposed over areas of coal and past coal workings at shallow depth, The Coal Authority is of the opinion that applicants should consider wherever possible removing the remnant shallow coal. This will enable the land to be stabilised and treated by a more sustainable method; rather than by attempting to grout fill any voids and consequently unnecessarily sterilising the nation's asset. Under the Coal Industry Act 1994 any intrusive activities, including initial site investigation boreholes, and/or any subsequent treatment of coal mine workings/coal mine entries for ground stability purposes require the prior written permission of The Coal Authority, since such activities can have serious public health and safety implications. Failure to obtain permission will result in trespass, with the potential for court action. Application forms for Coal Authority permission and further guidance can be obtained from the Coal Authority's website at: [www.coal.gov.uk/services/permissions/index.cfm](http://www.coal.gov.uk/services/permissions/index.cfm).
2. The developer is encouraged to install recharge points for electric vehicles to comply with the following criteria:
  - Residential: 1 charging per unit (dwellinghouse with dedicated parking) or 1 charging point per 10 spaces (or part thereof) where individual units have shared or courtyard parking;
  - Commercial/Retail: 1 charging point for every 10 parking spaces;
  - Industrial: 1 charging point for every 10 parking spaces;To prepare for increased demand in future years, appropriate cable provision should be included in scheme design and development. Residential charging points should be provided with an IP65 rated domestic 13amp socket, directly wired to the consumer unit with 32 amp cable to an appropriate RCD. This socket should be located where it can later be changed to a 32amp EVCP. Non-residential charging points should be supplied by an independent 32 amp radial circuit and equipped with a type 2, mode 3, 7-pin socket conforming to IEC62196-2 (or equivalent standard that may replace it). Measures should be taken to prevent subsequent occupiers of the premises from removing the charging points.

**Item**            **1.6**

**Ref. No.**        **9/2018/1314/U**

**Applicant:**  
**Mr M Bates**  
**c/o Agent**

**Agent:**  
**Joel Hancock**  
**Hancock Town Planning Ltd**  
**Hope Cottage**  
**The Green**  
**Claverdon**  
**CV35 8LL**

**Proposal:**    **CHANGE OF USE TO 3 NO. VACANT UNITS (USE CLASSES A1, A3 AND A5) TO CHILDREN'S DAY NURSERY (USE CLASS D1) AT UNITS E, F AND G LOCAL CENTRE (PART OF HIGHFIELDS FARM) TUTBURY AVENUE LITTLEOVER DERBY**

**Ward:**           **Willington and Findern**

**Valid Date**    **19/12/2018**

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

The item is presented to Committee because the application does not comply with Policy RTL1 but the Committee needs to take into account other material considerations.

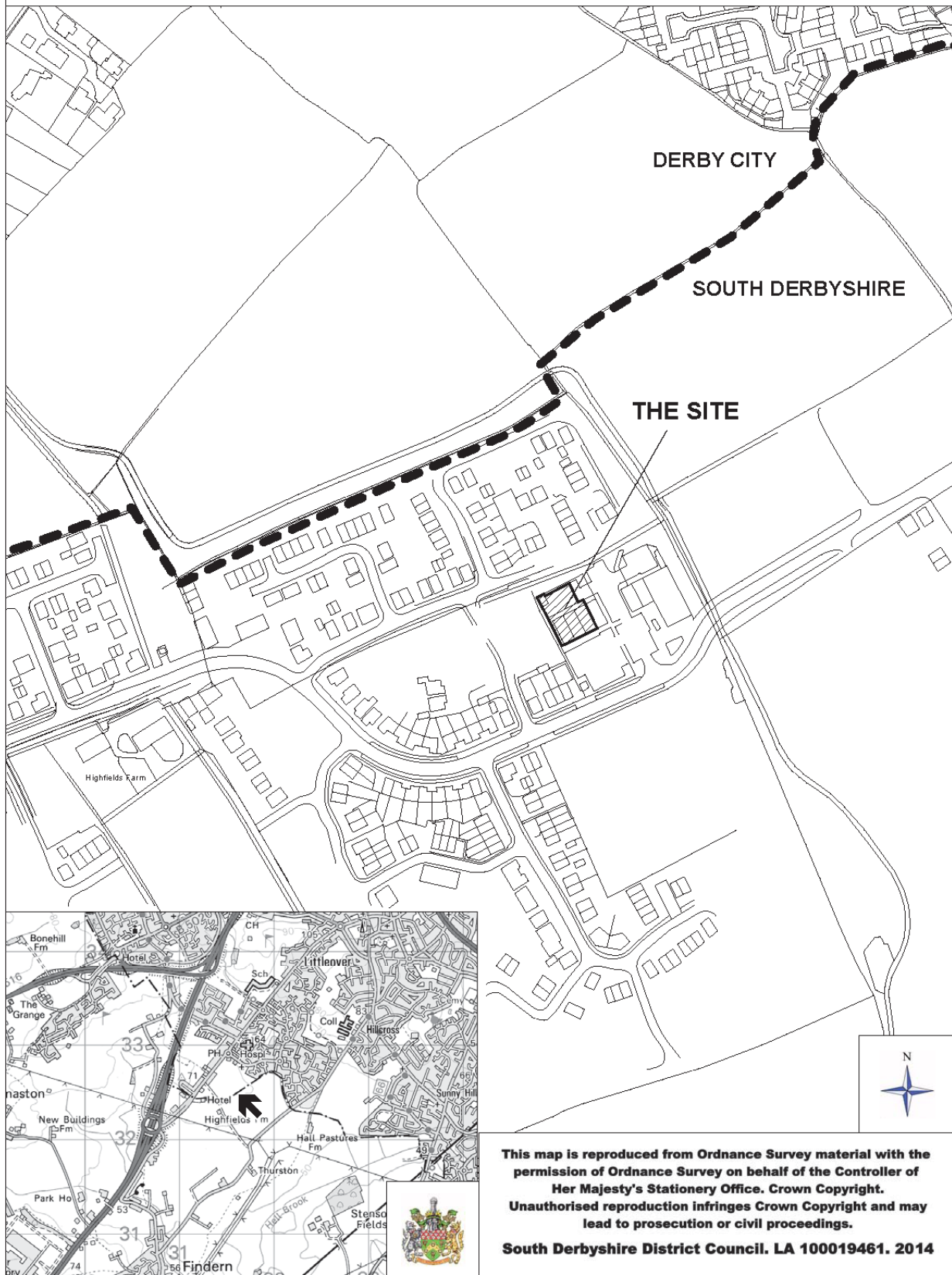
#### **Site Description**

The site forms part of the recently completed local centre which is located within the Highfields Farm site, a new housing development which is currently still under construction. The design of the local centre follows pre-application work to create an active frontage onto the main spine road from all approaches. The orientation of the shopfronts and relationship to the phase 1 block of the development sustains this principle further across the parking and pedestrian areas. The building and shopfronts themselves take on a contemporary appearance, built from red brick and concrete, which complement the approach for the school as well as contrasting with the more traditional housing design ethos. At the time of this report, only one of the units is open for business, being the supermarket (co-op), with one other unit currently being readied for opening. All units have been fully constructed and are currently being advertised for let, both on the site and online.

#### **Proposal**

A change of use is proposed to three units: E, F and G at the Highfields Farm development local centre. With the proposed change of use being Unit E – Use Class A1, A3, A5, Units F and G – Use Class A1 and A3, all to the use as a

**9/2018/1314 - Units E, F and G Local Centre (part of Highfields Farm),  
Tutbury Avenue, Littleover, Derby DE23 3AT**



children's day nursery (Use Class D1). A small children's play area is proposed at the rear, but no external alterations are proposed.

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

A Planning Statement has been submitted in support of the application and justifies how the proposal is supported by policies of the local plan in addition to the NPPF. It considers that there is local demand for a children's nursery. It concludes by stating that the 'planning balance' supports the application as meeting an important unmet community need in an accessible location which will re-enforce the role of the local centre, rather than weaken it.

Supporting Marketing Evidence has been submitted to try and demonstrate that the unit has been fully marketed for a period of 6 months; this includes an enquiry report detailing all of the enquiries received.

### **Planning History**

- |              |   |
|--------------|---|
|              | Non Material Minor Amendment to 9/2017/0994 relating to a change in the permitted use classes of the units – Approved October 2018.   |
| 9/2017/0994  | Approval of reserved matters of planning permission ref: 9/2016/0592 for the construction of phase 2 of new local centre to comprise of four a1 or a3 units with associated car parking, means of enclosure, landscaping and access – Approved November 2017.   |
| 9/2017/0713  | Approval of reserved matters (appearance and landscaping) for local centre to consist of one A1 convenience store, one A1/A3 unit and one A5 unit with associated car parking, fencing and public spaces - Approved September 2017.   |
| 9/2014/0275: | Approval of reserved matters on land subject to outline permission 9/2011/0640 for 979 dwellings and associated infrastructure, including new roads and junctions, footpaths and cycleways, drainage and public open space including play areas, pitches and strategic landscaping - Approved January 2015. |

Further planning applications relating to the Highfields Site but are not considered to be relevant to this application.

### **Responses to Consultations**

Environmental Health considers that the potential environmental impacts are the potential exposure of new sensitive receptors in the residential housing being constructed around the development to noise associated with the proposed development. The proposed class D1 use does have the potential to generate noise which could result in adverse impact on the amenity of the surrounding residential use. On the basis that potential noise from children at the unit will be controlled by the hours of use and the management controls described in the application, the development is considered acceptable and there are no objections.

### **Responses to Publicity**

None received.

## Development Plan Policies

The relevant policies are:

- 2016 Local Plan Part 1 (LP1): S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), S7 (Retail), H12 (Highfields Farm, South West of Derby), SD1 (Amenity and Environmental Quality), BNE1 (Design Excellence)
- 2017 Local Plan Part 2 (LP2): SDT1 (Settlement Boundaries and Development) and RTL1 (Retail Hierarchy)

## National Guidance

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

## Local Guidance

- Design Guide Supplementary Planning Document (SPD)

## Planning Considerations

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

- Principle of Development
- Neighbouring Amenity
- Highway Safety

## Planning Assessment

### Principle of Development

Units E, F and G have use approved for Retail, Restaurants/Cafes and a Drinking Establishment, with the proposed use being for a children's day nursery. The seventh schedule of the original Section 106 agreement (related to application 9/2014/0275), was to ensure that this area of the site was disposed of as a local centre, which has now been fully constructed. The S106 defines the local centre as *'a centre to provide facilities for residents of the development to include retail units (A1) restaurants (A3), public house (A4) a hot food takeaway (A5) and residential dwellings (C3)'*. Although only five use classes are listed under the definition, it does not mean that other use classes would not be acceptable in principle. Although the proposed Use Class of D1 is not listed under this definition for a local centre, and not the originally intended purpose for the local centre, it is still considered to be acceptable in principle given the similarities in character of the use and indeed could attract linked trips to the other units.

Map 3 of Policy RTL1 identifies the proposed local centre within the Highfield Farm site, which has now been built out. Point F of Policy RTL1 refers to the loss of retail

within local centres; it states that that the loss of retail units in centres will be permitted where:

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

As a result of this requirement supporting marketing evidence has been submitted as part of this application. However the enquiry report submitted as part of this evidence showed that two enquiries were interested in the units but were rejected as there intended use would conflict with the use of another unit on the site, the co-op. Therefore the marketing evidence submitted fails to demonstrate that the current use of the units is no longer viable as such it is considered that the proposal does not comply with policy RTL1.

Notwithstanding this, it is considered that the proposed use would be of benefit to residents occupying the site and is considered to be sustainable development that would support the needs of a growing community as the site continues to be built out and the local population increases. With other units within the local centre also under the retail use class, if permission was granted for a D1 use it would allow for a more mixed use local centre and community hub, where parents can drop off/collect their children and then use the retail units. It is therefore considered that the proposed change of use would be a sustainable business location for what are currently vacant units within the local centre, being within walking distance of many new dwellings and therefore is supported by Policy S2. In addition, there are further retail units approx. 500m to the north of the local centre situated on Hollybrook Way.

#### Neighbouring Amenity

The applicant proposes that the opening hours of the nursery would be 0730 to 1830, Monday to Friday, with no external alterations to the units proposed. It is considered that the proposed business hours and subsequent noise/traffic generated as a result of the change of use would not unduly impact on the amenity of neighbouring properties that surround the site, and no more so than the current permitted use, it is also noted that Environmental Health raised no objections and as such the proposed use is considered to comply with Policy SD1 and iii) of part F of Policy RTL1.

#### Highway Safety

There are no car parking spaces included within the red line of the application site, as shown on the location plan. However the local centre overall includes approx. 50 car parking spaces. It is noted that at the time of the report the County Highway Authority had not responded for comment. However it is considered that the car parking to the front of the site provided for the local centre is sufficient parking provision for the requirements of the change of use and as such it is considered that the proposal complies with Policy INF2 and iii) of part F of Policy RTL1.



## Conclusion

Although technically the applicant has failed to demonstrate that the current use is no longer viable and therefore not compliant with Policy RTL1, when considering the planning balance, the benefits of adding a children's nurse to the newly constructed housing that surrounds the site, would outweigh the negative impacts of the potential loss of retail units within the local centre.

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 Location Plan and Site Plan both received on 19 December 2018; unless as otherwise required by condition attached to this permission or following approval of an application made pursuant to Section 96A of the Town and Country Planning Act 1990.  
Reason: For the avoidance of doubt and in the interests of sustainable development.
3. The premises shall not be open to the public other than between 0730 hours and 1830 hours Mondays to Fridays. The premises shall not be open to the public whatsoever on Saturdays, Sundays, public holidays and bank holidays.  
Reason: To safeguard the amenities of nearby occupiers.
4. The development hereby permitted shall be carried out in accordance with the management controls as described within the submitted planning statement.  
Reason: To safeguard the amenities of nearby occupiers.

**Item**            **1.7**

**Ref. No.**        **9/2019/0396/FO**

**Applicant:**  
**Mr James Davies**  
**The Conifers**  
**Uttoxeter Road**  
**Foston**  
**Derby**  
**DE65 5DL**

**Agent:**  
**Mr Neil Arbon**  
**DPDS Consulting Ltd**  
**3 Gleneagles House**  
**Vernon Gate**  
**Derby**  
**DE1 1UP**

**Proposal:**    **OUTLINE APPLICATION (ALL MATTERS EXCEPT FOR ACCESS TO BE RESERVED) FOR THE RESIDENTIAL DEVELOPMENT OF ONE DWELLING ON LAND AT THE CONIFERS 2 THE STABLEYARD UTTOXETER ROAD FOSTON DERBY**

**Ward:**           **Hilton**

**Valid Date**    **05/04/2019**

**Reason for committee determination**

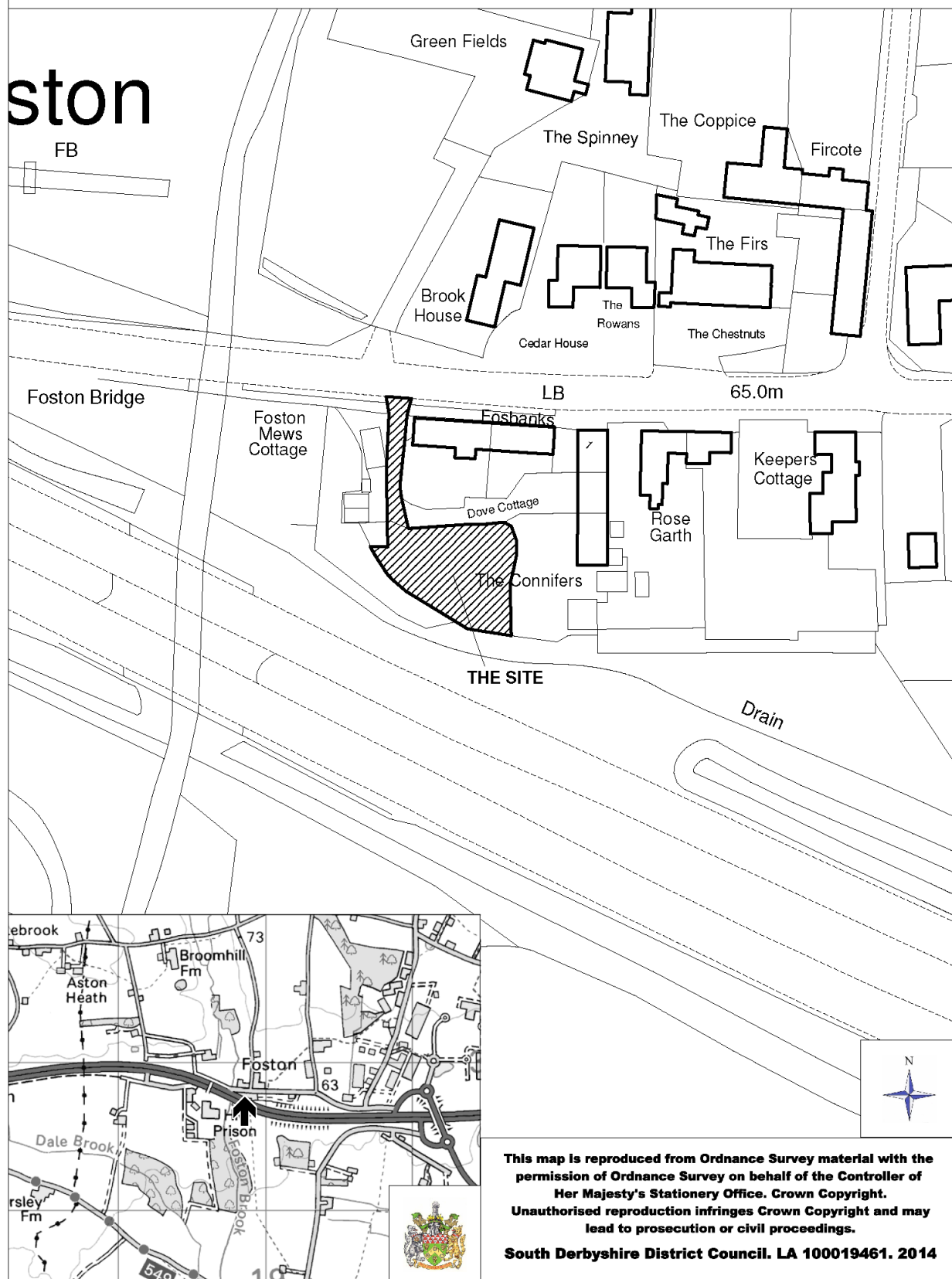
This item is presented to Committee as the development it is situated within the countryside and it is questionable as to whether it constitutes infill development which policy seeks to allow.

**Site Description**

The application site is situated towards the edge of the Village of Foston. Foston is a small village with no settlement boundary. The site comprises part of the residential curtilage associated with a barn conversion known as The Conifers (the host dwelling). The Conifers comprises one dwelling in a complex of converted barns. The complex comprises of two linear buildings situated at a right angles to one another. There is an internal courtyard sub-divided between the properties which provides their amenity and parking provision. This area is predominantly hard surfaced, aside from two defined areas of lawn (one comprising the site). The complex is accessed via the historic farm access off Uttoxeter Old Road with two internal driveways. To the south and western perimeters of the complex are a number of small detached buildings providing parking and storage facilities. A mature belt of trees bounds the site to the south and west, providing separation and screening from the A50, which is situated a short distance further south.

Development within Foston is predominantly concentrated to the north of Uttoxeter Old Road. Development is sporadic in its layout and the settlement has developed organically. There is a significant degree of variation in terms of building design, scale, siting and age.

9/2019/0396 - Land at The Connifers, 2 The Stableyard, Uttoxeter Road,  
Foston, Derby DE65 5DL



## **Proposal**

This is an outline application with all matters reserved aside from access. Illustrative details of the layout, scale and appearance have been provided. These show an 'L' shaped three bedroomed dormer bungalow which would accommodate the majority of the grassed area to the west of the host dwelling. Three parking spaces are also indicated on the plan. It appears as though the dwelling would take a simplistic appearance.

## **Applicant's supporting information**

The Flood Risk Assessment identifies that the site is situated within Flood Zone 2, with the area north of Uttoxeter Road falling within Flood Zone 3, however it is identified that there is a flood defence barrier between the site and the Foston Brook. The report concludes that the EA flood warning information maps assess the area of the application site to be at very low risk of flooding, and based on this information, the Mapmatic Survey and the reported memory of villagers, it is considered that there is very little risk of the proposed new development being affected by flooding.

The Noise Assessment identifies the site as being relatively noisy and mitigation would be necessary to achieve the World Health Organisation daytime and night-time aspirational targets. To achieve the aspirational target of 55 dB in the garden, it is recommended that a 2m high acoustic fence is erected along the length of the boundary hedge and to achieve the night-time target it is recommended that the dwelling be well insulated with both thermal and acoustic insulation. Based upon this mitigation it is stated that the proposed house and garden should be within the WHO recommended noise levels.

The Planning Statement concludes that the principle of development is acceptable in the context of the current national and local planning policies. That safe access to the site can be achieved through the existing access which benefits from visibility to the required standards in both directions. The illustrative layout confirms that a form of development could be provided on the site which would satisfy relevant design criteria and would not have a detrimental impact on the amenities of the surrounding properties. The statement outlines the benefits associated with the proposal and seeks to demonstrate that no adverse impacts would arise.

## **Planning History**

None relevant.

## **Responses to Consultations**

Environmental Health (Contaminated Land) has raised no objection subject to the imposition of conditions. These seek to control hours of construction, require the submission of a scheme of noise mitigation, seek to control the burning of waste, require the submission of a scheme to prevent the ingress of ground gas or alternatively require monitoring and the completion of a subsequent risk assessment and require a contamination assessment to be undertaken should contamination be encountered during construction works.

The Highways Authority has raised no objection on the basis that the existing access would be used and only one dwelling is proposed.

The Environment Agency has referred to standing advice as the site is within Flood Zone 2.

## **Responses to Publicity**

Foston and Scropton Parish Council has provided two responses, one raising no comments and the other raising concern owing to the concentration of dwellings in this small area and querying the access arrangements.

One letter of neighbour representation has been received, this raises the following issues:

- a) The proposal will appear out of keeping
- b) The proposal will result in overshadowing and will be imposing
- c) The proposal will result in a loss of privacy for surrounding dwellings
- d) The use of the access will result in more traffic and disturbance
- e) The proposal is purely for financial gain.

## **Development Plan Policies**

The relevant policies are:

- 2016 Local Plan Part 1 (LP1): S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), S4 (Housing Strategy), S6 (Sustainable Access), H1 (Settlement Hierarchy), H20 (Housing Balance), SD1 (Amenity and Environmental Quality), SD2 (Flood Risk), SD3 (Sustainable Water Supply, Drainage and Sewerage Infrastructure), SD4 (Contaminated Land and Mining Legacy Issues), BNE1 (Design Excellence), BNE3 (Biodiversity), BNE4 (Landscape Character and Local Distinctiveness), INF2 (Sustainable Transport), INF7 (Green Infrastructure).
- 2017 Local Plan Part 2 (LP2): SDT1 Settlement Boundaries and Development), BNE5 (Development in Rural Areas)

## **National Guidance**

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

## **Local Guidance**

- South Derbyshire Design Guide SPD.

## **Planning Considerations**

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

- Principle of Development
- Character and Appearance
- Residential Amenity
- Highway Safety
- Planning Balance

## **Planning Assessment**

### Principle of Development

The site is situated towards the edge of the village of Foston, a village with no settlement boundary. For the purpose of planning policy, the site is therefore considered as countryside. The development of new dwellings within the countryside is generally restricted, subject to a handful of exceptions.

Policy H1 of the Local Plan identifies that in 'rural villages' with no settlement boundary, development of new dwellings will be restricted to limited infill or conversions (ii). Policy BNE5 reiterates this and further emphasises that infill development should be in keeping with character and represent the infilling of a small gap not normally for more than two dwellings, within small groups of housing.

A primary consideration here is whether or not the proposed development constitutes 'infilling'. Within both national and local planning policy there is no definition of 'infill' development. Whether or not a plot is considered as such is determined upon the characteristics of the specific site. To inform the assessment of this, various appeal decisions have been considered.

Within appeal decision APP/A0665/W/17/319061, the Inspector concluded that 'owing to the topography of the area, the separation distance between the properties along this part of the road, the significant severance caused by Action Lane (the highway) and importantly the lack of frontage of the proposed property onto Strawberry Lane, it would not be agreed that the current proposal would be an infill plot'.

Within appeal decision APP/A0665/W/14/3000557, the application site was considered as infill on the basis that its road frontage would be limited and the development would 'infill' a plot that would not be 'at odds with the length of the frontages of other properties nearby', despite the fact that there was a large side garden and a Lane separating the plot from the nearest houses to the south.

Within appeal decision APP/R0660/W/17/3170279 the site was considered infill despite it not being enclosed on three sides by development (although planning permission had been granted on the third side) and on the basis that the development would result in the rounding off of the settlement.

By virtue of its set back position, the application site would have a limited relationship with the street, however it would benefit from a high degree of containment and there would be built development along two of its boundaries. Furthermore, the barn conversion complex on which this development would be situated also comprises the final parcel of development on the southern side of the carriageway to the western end of Foston, and in this sense the development would round off this extent of the village. On the basis of the sites specific characteristics, it could be argued that the site is an infill plot.

If the site was not considered to comprise an 'infill' plot, the policy conflict (harm) in this regard would need to be established (in terms of its severity) and subsequently balanced against the other material planning considerations to determine whether or not it would be overcome.

The reasons for this policy restriction must therefore be considered.

The settlement hierarchy, as set out in Policy H1 seeks to achieve sustainable patterns of development by directing the *majority* of growth to the most sustainable locations. One of the reasons being, to ensure new development has good accessibility to a wide range of services, facilities and alternative modes of transport. Policy BNE5 further identifies the importance of allowing limited development in rural areas, to support these communities. This policy also identifies design related requirements to ensure development is in keeping with an area's character and is well integrated to its landscape context.

The NPPF at para 78 is supportive of rural housing where it would enhance or maintain the vitality of rural communities and acknowledges that where there are groups of smaller settlements, development in one village may help to support services in a village nearby and paragraph 79 is accepting of rural housing, aside from in isolated locations.

Whilst the site is technically defined as countryside and so would not be considered a 'sustainable' location for new residential development, the specific details of the locality must be considered. The site is within close proximity to the strategic highway network, would be a very short walking distance from a bus stop providing an hourly service to Burton on Trent and would be within close proximity of the key service village of Hilton. On account of this, the location is considered relatively sustainable. Furthermore the development would comply with the numbers restriction imposed by policy BNE5 and when considering the design related restrictions, it would be difficult to argue that the development would not 'infill a small gap' and would not be situated within a small group of housing. In addition the proposal would not be isolated and would help sustain existing rural services and maintain vitality. Although the site may not reflect the conventional idea of an infill plot, conflict with policies H1 and BNE5 would at worst be restricted to policy harm, and the degree of harm would be limited, for the proposal would not undermine the general intentions of these policies.

## Character, Appearance and Design

The immediate locality is characterised by a complex of barn conversions comprising two linear buildings set perpendicular to one another. These buildings vary in scale; with the eastern building being two storeys and the northern building being single storey (with accommodation in the roof). The barns have been subdivided into five residential units and their amenity space is provided internally.

The wider settlement has little in the way of definable residential character, comprising groups of dwellings of varying design, form and siting.

The illustrative plans show a one and a half storey 'L' shaped dwelling of simple form and appearance situated within the internal courtyard.

The original character of the historic farmstead has already been partly eroded through its conversion, with particular harm caused as a result of the sub-division of its internal courtyard. On account of this, although a detached building would not historically have been found in the proposed location, as a consequence of the existing character, the harm caused in terms of its siting would not be significant. Notwithstanding this, to adhere to the historic simplicity of the existing buildings, the illustrative design may be more appropriate if it were to be amended to omit the western gable and if the eastern gable were to be increased in length. The scale illustrated would however be compatible with that of the existing buildings. Subject to the minor amendments and conditions discussed, it is considered that a dwelling could be accommodated on the site that would be in keeping with the character of the area and would not result in any harmful impacts in terms of appearance and would be compliant with policies BNE1, BNE4, BNE5 and H20.

## Residential Amenity

Given the siting of the proposal there would be potential for harmful impacts to arise between both the existing and proposed dwellings. There are a number of principle room windows within the facing elevations of the existing barn conversions and whilst comprehensive elevational details of the proposed dwelling have not been provided, illustrative details of the northern gable have been. These show a first floor bedroom window, along with ground floor patio doors (serving the kitchen /dining space) within this elevation. There would be a separation distance ranging between 17.5m (approx.) and 18.2m (approx.) between the two facing elevations.

To ensure no harmful impacts would arise in relation to overlooking, the SPD advises a separation distance of 21 metres between elevations containing principle room windows. The guidance however continues that these distances should not be applied rigidly and that site specific circumstances should be taken into account when assessing such impacts. 'Fosbanks' is a single storey property with accommodation in its roof, served by a number of rooflights. Due to the variation in site levels, this property occupies a slightly elevated position in comparison to the application site. The garden associated with 'Fosbanks', along with an internal driveway would separate the existing dwelling from that proposed. In terms of boundary treatment, 'Fosbanks' garden is enclosed by a relatively low picket style fence and vegetation and the application site is currently bounded by a mature



Laurel hedge, ranging in height between 1.5 metres and 1.8 metres; however it would be difficult for this to be retained in its entirety during the construction phase. As no definitive plans of the layout, scale or appearance of the proposal have been provided at this stage, it is not possible to comprehensively assess the impacts in terms of amenity, however on the basis of the details provided and the site specific circumstances, it is considered, subject to appropriate design detail that a dwelling could be developed on the site without resulting in any materially harmful impacts between 'Fosbanks' and the proposed dwelling.

In terms of the relationship between the proposal and the remaining residential units, it is considered that a dwelling could be designed in a way to comply with the relevant guidance, to ensure that no materially harmful impacts would arise in terms of privacy or overshadowing.

The development would cause additional disturbance as a result of increased vehicle movements, however owing to the minor nature of the development, the level of disturbance would be minimal and thus would not be materially harmful.

Environmental Health has requested the submission of scheme of noise mitigation on the basis of the sites proximity to the A50. Whilst there are existing dwellings within a similar proximity to the identified noise source, which may not benefit from mitigation, on the basis that the specific noise is likely to increase over time and to achieve betterment in this regard, the submission of a scheme of noise mitigation is considered necessary.

Overall, the illustrative details show that the development of one additional dwelling could be accommodated on this site without resulting in any materially harmful impacts in terms of residential amenity. The proposal would therefore be compliant with policy BNE1.

### Highway Safety

The proposal would be served by the existing site access. The Highway Authority has raised no objection to the increased use of this. They have however commented that suitable parking and manoeuvring would need to be demonstrated as part of the reserved matters submission. The proposal would therefore be compliant with policies S6 and INF2.

### Planning Balance

If the proposal were not to be considered as 'infill' development there would be some residual harm, however this would be restricted to 'policy' harm as oppose to 'actual' harm and as set out the severity of this harm would be limited.

In favour of the proposal the site is within a relatively sustainable location, having good access to a range of services and facilities and would not be reliant on the private car to access such. The proposal would be grouped with existing residential properties and would be beneficial in contributing to the vitality and viability of this rural community.

The illustrative details show that a dwelling could be achieved that would be in keeping with the existing character, would be of an acceptable design would not result in any materially harmful impacts in terms of residential amenity or highway safety and no other issues have been identified (which could not be addressed by way of condition) that would render the proposal unacceptable.

On balance therefore the material considerations in favour of the scheme would overcome the limited harm identified and the proposal would therefore be acceptable.

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

## **Recommendation**

**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 (as amended by Section 51 of the Planning and Compulsory Purchase Act 2004).
2. Before any development is commenced the further approval of the Local Planning Authority is required with respect to the following matters (herein referred to as 'the reserved matters') on an application made in that regard:
  - (a) appearance,
  - (b) landscaping,
  - (c) layout, and
  - (d) scale.Reason: 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 section 92 of the Town and Country Planning Act 1990 (as amended by Section 51 of the Planning and Compulsory Purchase Act 2004).
3. The development hereby permitted shall be carried out in accordance with drawing ref. C99030.PL.001; unless as otherwise required by condition attached to this permission or following approval of an application made pursuant to Section 96A of the Town and Country Planning Act 1990.  
Reason: For the avoidance of doubt and in the interests of achieving sustainable development.
4. The reserved matters to be submitted for scale and appearance shall ensure the dwelling has an eaves height and ridge height no greater than the existing dwelling known as 'Fosbanks'.

Reason: In the interests of achieving sustainable development, having particular regard to the potential impact of the development on the character of the surrounding area and the amenities of adjoining occupiers.

5. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, or any statutory instrument amending, revoking and/or replacing that Order, the dwelling hereby permitted shall not be enlarged or extended, and no buildings shall be erected on the site without the prior grant of planning permission pursuant to an application made to the Local Planning Authority in that regard.

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

6. All planting, seeding or turfing comprised in the approved details of soft landscaping shall be carried out in the first planting and seeding seasons following the first occupation of the buildings 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 phase die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species and thereafter retained for at least the same period, unless the Local Planning Authority gives written consent to any variation.

Reason: In the interest of the visual setting of the development and the surrounding area.

7. Prior to the construction of a boundary wall, fence or gate, details of the position, appearance and materials of such boundary treatments shall be submitted to and approved in writing by the Local Planning Authority. The boundary treatments shall be completed in accordance with the approved details before the respective dwelling to which they serve is first occupied or in accordance with a timetable which shall first have been submitted to and approved in writing by the Local Planning Authority.

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

8. No laying of services, creation of hard surfaces or erection of a building shall commence until a scheme for the drainage of surface water from the site has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be carried out in conformity with the approved details prior to the first occupation of the dwelling served by the surface water drainage system.

Reason: In the interests minimising the likelihood of flooding incidents and damage to the environment, property or life.

9. No development shall commence until details of a proposed foul drainage system have been submitted to and approved in writing by the local planning authority (including details of its siting, design and subsequent management/maintenance, if appropriate) and the dwelling shall not be occupied until works for the disposal of sewage have been fully implemented in accordance with the approved details.

Reason: In the interests of minimising the likelihood of flooding incidents and pollution of the environment.

10. The dwelling shall be constructed and fitted out so that the estimated consumption of wholesome water by persons occupying the dwelling will not

exceed 110 litres per person per day, consistent with the Optional Standard as set out in G2 of Part G of the Building Regulations (2015). The developer must inform the building control body that this optional requirement applies. Reason: To ensure that future water resource needs, wastewater treatment and drainage infrastructure are managed effectively, so to satisfy the requirements of policy SD3 of the Local Plan.

11. Prior to the first occupation of the dwelling, space shall be provided for the parking and turning of vehicles associated with that dwelling in accordance with the 6Cs Design Guide (or any subsequent guidance that may amend or replace it); and notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, or any statutory instrument amending, revoking and/or replacing that Order, such space shall be maintained throughout the life of the development free of any impediment to its designated use.

Reason: To ensure adequate parking and turning provision, in the interests of highway safety.

12. No development shall commence until a suitable scheme for the prevention of ground gas ingress has been submitted to and approved in writing by the Local Planning Authority. 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 submitted to and approved in writing by the Local Planning Authority. Both schemes shall meet the requirements in Box 4, Section 3.1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated', and include relevant mitigation where necessary. The approved preventative or mitigation measures (if any) shall be incorporated the development and upon completion, verification of their correct installation (if any) shall be submitted to and approved in writing by the Local Planning Authority prior to the first occupation of the development hereby permitted.

Reason: To protect the health of the public and the environment from hazards arising from previous uses of the site and/or adjacent land which might be brought to light by development of it, recognising that failure to address such matters prior to development commencing could lead to unacceptable impacts even at the initial stages of works on site.

13. If during development any contamination or evidence of likely contamination is identified that has not previously been identified or considered, a written scheme to identify and control that contamination shall be submitted to and approved in writing by the Local Planning Authority prior to any further works taking place on the site. This shall include a phased risk assessment carried out in accordance with the procedural guidance of the Environmental Protection Act 1990 Part IIA (or equivalent guidance which may subsequently update or replace it), and appropriate remediation/mitigation proposals. The approved scheme shall be implemented in accordance with the approved remediation/mitigation proposals.

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

14. During the period of construction, no ground, construction or fitting out works shall take place other than between 0730 and 1800 hours Monday to Friday

and 0800 and 1300 hours on Saturdays. There shall be no works on Sundays or public holidays except in an emergency.

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

15. Prior to the construction of a dwelling, a scheme of noise mitigation for protecting occupants of the development from noise from the A50 and Uttoxeter Road shall be submitted to and approved in writing by the Local Planning Authority. The dwellings shall be constructed in accordance with the approved scheme and noise mitigation measures shall be completed before the first occupation of each respective dwelling and thereafter maintained. Subsequent replacement or insertion of windows and doors and any conversion of loft space by owner/occupiers of the dwellings shall be done in a manner to ensure the same level of acoustic protection as achieved by the noise mitigation measures approved under this condition.

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

Informatives:

1. The developer is encouraged to install recharge points for electric vehicles to comply with the following criteria:
  - Residential: 1 charging per unit (dwellinghouse with dedicated parking) or 1 charging point per 10 spaces (or part thereof) where individual units have shared or courtyard parking;
  - Commercial/Retail: 1 charging point for every 10 parking spaces;
  - Industrial: 1 charging point for every 10 parking spaces;To prepare for increased demand in future years, appropriate cable provision should be included in scheme design and development. Residential charging points should be provided with an IP65 rated domestic 13amp socket, directly wired to the consumer unit with 32 amp cable to an appropriate RCD. This socket should be located where it can later be changed to a 32amp EVCP. Non-residential charging points should be supplied by an independent 32 amp radial circuit and equipped with a type 2, mode 3, 7-pin socket conforming to IEC62196-2 (or equivalent standard that may replace it). Measures should be taken to prevent subsequent occupiers of the premises from removing the charging points.
2. The applicant/developer is advised to liaise with the Local Planning Authority prior to submitting details of reserved matters for approval. It is strongly encouraged that, in addition to the requirements set out in any conditions, adequate details are supplied so to negate the need for further conditions upon approval. For example, details and locations of boundary treatments and species and size for soft landscaping should be provided pursuant to matters of landscaping, whilst details and/or samples of facing and surfacing materials and details of porches, rooflights, verges, eaves, cills and lintels should be provided pursuant to matters of appearance. For all matters, attention should be given to the Council's Design Guide Supplementary Planning Document - in particular the relationship with surrounding properties and the quality of materials and finishes expected.
3. The details submitted under reserved matters should ensure that (i) all exposed housing elevations are well treated to allow a view between interiors and external space; (ii) where housing is set in blocks of more than two properties, rear garden access originates within the view of associated

houses either by using gated undercroft alleyways, through plot access where practical, or by breaking up housing blocks into two or less, and that all shared rear garden accesses are secured at the point of origin with a lockable gate; (iii) enclosed parking courtyards are overlooked or gated; and (iv) aspects of footpaths through public spaces are not compromised by any landscaping sited between footpath and the dwellings.

4. Any phased risk assessment for contamination should be carried out in accordance with the procedural guidance of the Environmental Protection Act 1990 Part IIA. The contents of all reports relating to each phase of the risk assessment process should comply with best practice as described in the relevant Environment Agency guidance. For further assistance in complying with planning conditions and other legal requirements, applicants and developers 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 at [www.south-derbys.gov.uk/our-services/environment/pollution/contaminated-land](http://www.south-derbys.gov.uk/our-services/environment/pollution/contaminated-land). Reports in electronic formats are preferred. 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: [environmental.health@south-derbys.gov.uk](mailto:environmental.health@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; and
  - Guidance for the Safe Development of Housing on Land Affected by Contamination Environment Agency (ISBN 0113101775).

**Item**            **1.8**

**Ref. No.**        **9/2019/0271/NO**

**Applicant:**  
**Mr Steve Hollingsworth**  
**Melbourne Sporting Partnership**  
**Melbourne Sports Pavillion**  
**Cockshut Lane**  
**Melbourne**  
**Derby**  
**DE73 8DG**

**Agent:**  
**Mr Phil Lenton**  
**South Derbyshire District Council**  
**Civic Offices**  
**Civic Way**  
**Swadlincote**  
**Derbyshire**  
**DE11 0AH**

**Proposal:**    **THE LAYING OF A NEW SURFACE WATER DRAINAGE SYSTEM  
(INCLUDING ASSOCIATED WORKS ALONG ROBINSON'S HILL  
AND ASHBY ROAD) AT MELBOURNE SPORTS PARK COCKSHUT  
LANE MELBOURNE DERBY**

**Ward:**           **Melbourne**

**Valid Date**    **19/03/2019**

### **Reason for committee determination**

This item is presented to Committee because the Council has an ownership interest in the land.

### **Site Description**

The application site is a line for a trench commencing in a central location in the playing fields off Cockshut Lane, passing along Robinsons Hill and terminating at an existing watercourse east of Ashby Road, along with a small section west of houses in Ashby Road; a total length of about 975 metres.

### **Proposal**

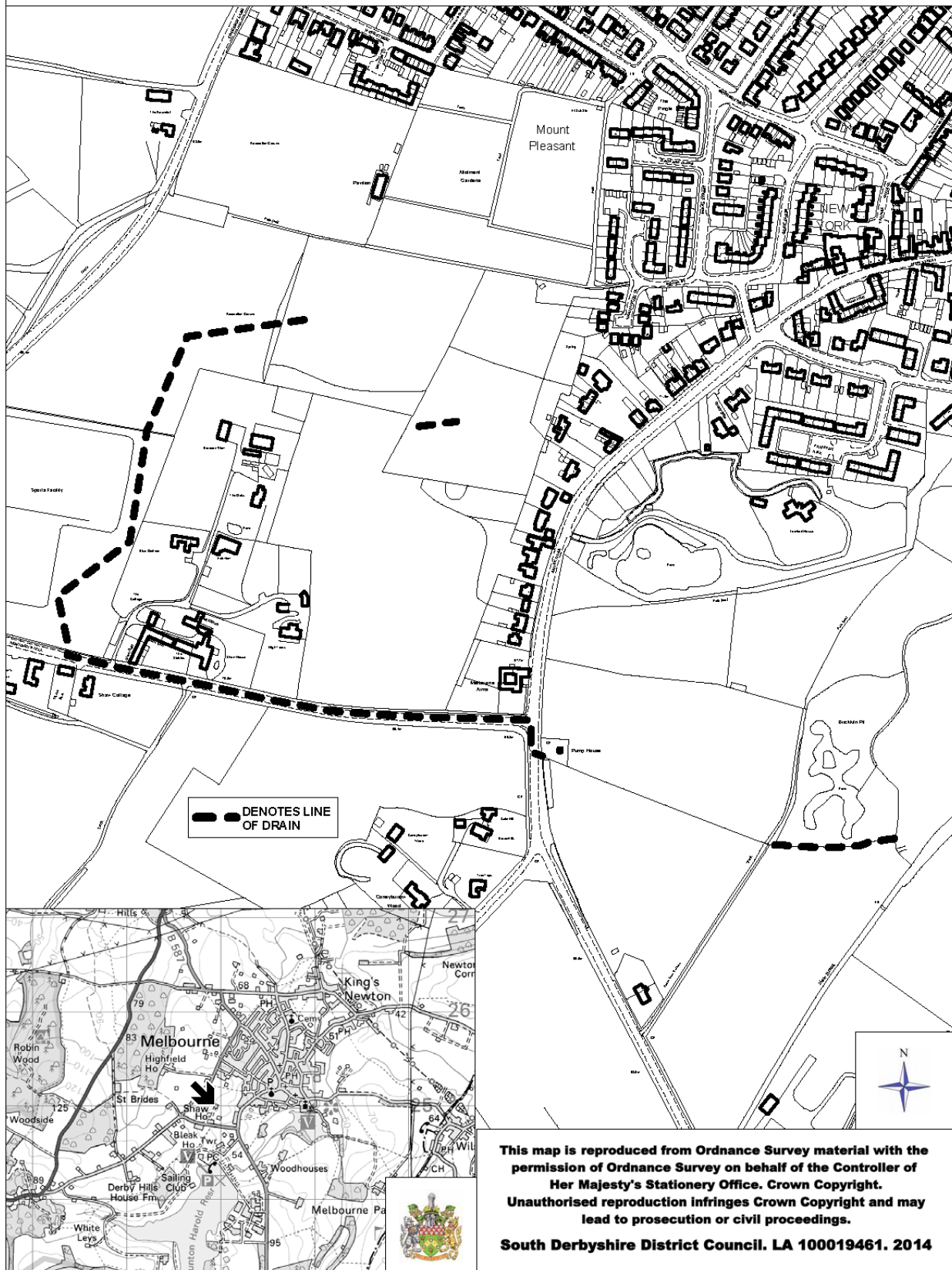
The proposal involves the laying of drainage pipes, with associated manholes and outfall structures along the line of the application site. About 420 metres of drain would be trenched along the carriageway in Robinsons Hill and across Ashby Road. A short section of drain would also be installed in sloping land to the west of properties along Ashby Road.

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

#### Introduction

- The application seeks permission for the laying of a new upvc Surface Water drain, to mitigate known drainage issues and to facilitate enhanced

**9/2019/0271 - Melbourne Sports Park, Cockshut Lane, Melbourne DE73 8DG  
(including associated works along Robinson's Hill and Ashby Road)**





infrastructure to the MSP playing fields. The design capacity will also accommodate anticipated future needs and bespoke drainage improvements to individual pitches/facilities.

- The necessary excavations include for a maximum 1 metre width trench and the provision of a ditch or pipe on third party land.
- At present there are no detailed plans for drainage enhancements to existing or planned facilities and it is anticipated that these will be subject to further approval pursuant to planning conditions.

### Hydrology

- The primary driver for this project is the need to establish a solution to alleviate the risk of flooding of properties in Ashby Road.
- Investigation work included detailed surveys, and computer modelling to confirm the root cause of the flooding and to also assess the performance of options to alleviate the risk of future flooding, resulting in
- The recommended preferred option consisted of a two stage approach.
- The first stage involved a number of remedial works to remove deficiencies found in the existing surface water drainage system to ensure that it performed at its optimum. These were implemented and completed in the summer of 2018.
- The second stage was to implement the detailed design and construction of the new surface water sewer scheme subject to this application.
- The project is designed to intercept (and divert via a new route) a considerable amount of the surface water from the sports field complex prior to it entering the existing surface water drainage system that is routed through existing properties in Ashby Road. Computer modelling techniques demonstrate a reduction in the risk of flooding of properties in Ashby Road.
- The proposed scheme would reduce the amount of surface water entering the existing surface water drainage system during extreme rainfall events, together with the remedial works already carried out, reducing the level of flood risk to the existing properties on Ashby Road.
- The scheme is not designed to collect highway surface water from Robinsons Hill or Ashby Road, this being a separate responsibility of the Highway Authority.

### Ecology

- The report identifies protected species likely to be affected and makes recommendations for precautionary measures, in particular to ensure protection of water voles, otters and great crested newts around the pond to the east of Ashby Road and the recipient watercourse.

### **Planning History**

9/2011/0910    Permission granted for comprehensive redevelopment of Melbourne playing fields.

9/2013/0458    Amend conditions to accommodate minor amendments.

9/2013/0759 Artificial pitch

9/2013/1035 Floodlights

9/2017/0631 Dugouts alongside football pitch

9/2018/0104 Non turf cricket pitch

9/2018/1378 All weather tennis courts (deferred by Committee at the 16 April meeting)

### **Responses to Consultations**

The Highway Authority has no objection but advises of the need to arrange temporary traffic management with the County Council, for works in the highway.

The Lead Local Flood Authority has no objection.

### **Responses to Publicity**

The Parish Council and Melbourne Civic Society have no objection.

A representation has been received, raising the following concerns:

- a) There should be available access to properties in Robinsons Hill during construction.
- b) Any damage to verges should be made good,
- c) Advance notice of works should be given to Derbyshire County Council and thus to residents.

### **Development Plan Policies**

The relevant policies are:

- 2016 Local Plan Part 1 (LP1): S2, SD2, SD3, BNE3, INF2, INF9
- 2017 Local Plan Part 2 (LP2): BNE5

### **Emerging Policies**

- Melbourne Neighbourhood Development Plan (NDP): No relevant policies

### **National Guidance**

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

### **Planning Considerations**

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

- Drainage
- Biodiversity
- Highways matters

## **Planning Assessment**

### Drainage

The scheme is designed to reduce existing and future flood risk and investigation has revealed the necessity to convey water away from the site. The new system would enable existing on site drainage to be repaired/modified to direct it to the new outfall arrangements, thus reducing the risk of flooding to buildings. As such it satisfies the tests in Policies SD2 & SD3, and will be of particular immediate benefit to residential properties from which surface water would be diverted.

By facilitating improved site drainage, the development would also contribute towards enhancing the high quality sport and recreation facilities at Melbourne Sports Park and is thus supported by Policy INF9.

### Biodiversity

Ecological impacts, in particular with reference to protected species, are likely to be confined in the main to the construction period. The proposed mitigation recommendations in the submitted ecology report are sufficient to protect these interests, in accordance with Policy BNE3.

### Highways matters

The Highway Authority has no objection and the proposal does not offend Policy INF2. There would be consequent excavation works within the highway but separate legislation would be engaged and controlled by the Highway Authority, in particular with regard to any temporary traffic management measures. No duplication of control is necessary or warranted through the planning process.

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

## **Recommendation**

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

1. The development permitted shall be begun before the expiration of three years from the date of this permission.  
Reason: To conform with Section 91(1) of the Town and Country Planning Act 1990 (as amended by Section 51 of the Planning and Compulsory Purchase Act 2004).
2. The development hereby permitted shall be carried out in accordance with drawing no. 10049/0106 Rev E received 21 May 2019, unless as otherwise required by condition attached to this permission or allowed by way of an

approval of a non-material minor amendment made on application under Section 96A of the Town and Country Planning Act 1990 (as amended).  
Reason: For the avoidance of doubt and in the interests of sustainable development.

3. No new or remedial drainage works shall be undertaken on the land edged blue on the submitted site location plan, until the development hereby permitted has been completed and commissioned for use.

Reason: In the interests of flood protection.

4. The development shall be implemented in accordance with the recommendations in the submitted Preliminary Ecological Appraisal Report ref:HCB0047-EXT-001 dated 11 February 2019.

Reason: To safeguard protected species.

Informatives:

1. Temporary traffic management may be need for the duration of the works and the applicant is advised to contact Derbyshire County Council's Traffic and Safety section (01629 533190) regarding this matter.
2. 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 and Communities at County Hall, Matlock regarding access works within the highway. Information and relevant application forms, regarding the undertaking of access works within highway limits, are available via the County Council's website [www.derbyshire.gov.uk](http://www.derbyshire.gov.uk), email [Highways.Hub@derbyshire.gov.uk](mailto:Highways.Hub@derbyshire.gov.uk) or telephone 01629 533190.

**Item**            **1.9**

**Ref. No.**        **9/2019/0398/Q**

**Applicant:**  
**St Modwen Homes Ltd & St Modwen**  
**Developments Ltd**  
**c/o Planning Prospects Ltd**

**Agent:**  
**Mairead Kiley**  
**Planning Prospects Ltd**  
**4 Mill Pool**  
**Nash Lane**  
**Belbroughton**  
**DY9 9AF**

**Proposal:**    **APPLICATION TO MODIFY THE FOURTH SCHEDULE**  
                  **'AFFORDABLE HOUSING' OF THE SECTION 106 AGREEMENT**  
                  **FOR THE SITE DATED THE 13TH JUNE 2013 PLANNING**  
                  **REFERENCE 9/2012/0743 ON LAND SOUTH OF CADLEY HILL**  
                  **INDUSTRIAL ESTATE EAST OF BURTON ROAD**

**Ward:**           **Church Gresley**

**Valid Date**    **24/04/2019**

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

This item is presented to Committee as the outline planning permission to which this Section 106 Agreement (S106) relates was approved by this Committee.

#### **Site Description**

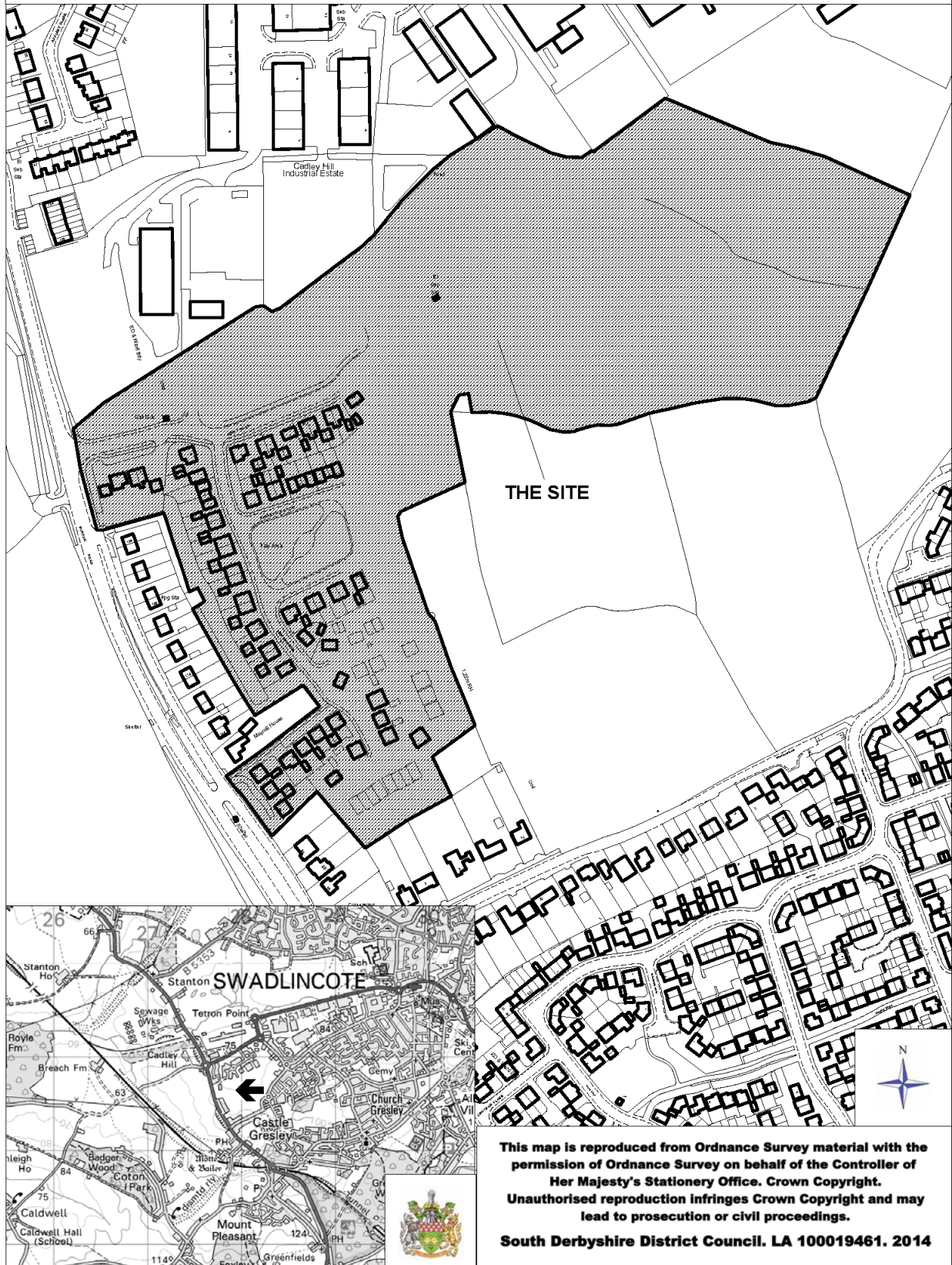
This 10.32 hectare site is located in-between Cadley Hill Industrial Estate, and the A444 (Burton Road). The site is currently under construction and partially completed. Detailed planning permission has been granted for a total of 196 dwellings on the site, and outline permission for 9.75 ha of employment land which whilst remaining undeveloped is allocated for employment purposes under policy E1A.

#### **Proposal**

This application has been submitted under Section 106A(1)(b) in accordance with the Town and Country Planning (Modification and Discharge of Planning Obligations), to modify the requirements of the S106 dated 13 June 2013.

The proposal is to modify the requirements of the fourth schedule of the agreement relating to the provision of affordable housing. The S106 requires the provision of 13.95% affordable dwellings on the site, and this application is seeking to reduce this requirement. A total of 196 dwellings have been approved, which in accordance with the S106 requires the delivery of 27 affordable dwellings in total. The site has currently delivered 12 affordable dwellings, and the proposed variation would see a

9/2019/0398 - Land south of Cadley Hill Industrial Estate and east of Burton Road, South Derbyshire (DE11 9FW)



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financial contribution provided in lieu of an additional 4 dwellings on site, resulting in the equivalent of 16 affordable dwellings (8.16%) provided through the development.

In addition, the proposed variation seeks the removal of the requirement that all affordable dwellings be constructed to Level 3 of the Code for Sustainable Homes, noting that the Code for Sustainable Homes has now been withdrawn.

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

A Supporting Letter sets out the purpose of the application, the planning history of the site, describes the proposed variation to the S106, and describes the submitted Sustainability Statement and Viability Assessment. The letter highlights the findings of the viability assessment, which concludes that it would not be viable to deliver the remaining affordable housing requirements on the final phase of the development (i.e. the delivery of any additional affordable dwellings over the 12 already delivered). Following an assessment of the viability of the scheme by the District Valuer, whilst not agreeing with their assessment St Modwen has agreed to provide a financial contribution the equivalent of providing 4 additional affordable dwellings.

In terms of the requirement for the affordable dwellings to meet the requirements of the Code for Sustainable Homes, as this code itself has been withdrawn this element of the S106 no longer serves a useful purpose. A sustainability statement submitted sets out that the existing affordable units have been constructed to a standard equivalent to, or in some in excess of the technical requirements of Code Level 3 required by the S106.

### **Planning History**

- 9/2012/0743 Outline application (all matters except for access to be reserved) for mixed use development comprising residential (C3) and employment (B1 and/or B8), access, road and associated infrastructure, parking, public open space and landscaping. Approved 14-06-13.
- 9/2012/0892 Application for the extension of time limit (9/2009/1037) for an Outline application for Business (B1), General Industrial (B2) and Storage and Distribution Development (B8), including means of access. Approved 31-01-13
- 9/2013/0548 Proposed new access and spine road from burton road with associated drainage, earth works, landscaping enlargement of existing pond and erection of a sub-station. Approved 20-09-13.
- 9/2013/0785 Approval of reserved matters following outline planning permission 9/2012/0743 for phase a providing 83 dwellings (matters of appearance, landscaping, layout and scale submitted for approval). Approved 23-12-13.
- 9/2014/0101 The variation of condition 2 of planning permission 9/2013/0785 to amend the approved layout towards western extent of the site around first internal estate road junction. Approved 13-05-14.

- 9/2014/0464 The variation of condition 37 of planning permission 9/2012/0743 (relating to outline permission (all matters except for access reserved) for mixed use development comprising residential (C3) and employment (B1 and/or B8), access, road and associated infrastructure, parking, public open space and landscaping) to amend the construction working hours to 8am-4pm Saturday. Approved 11-07-14.
- 9/2014/1212 Application for approval of reserved matters following outline planning permission and section 73 approval (9/2012/0743 & 9/2014/0464) for phase b of proposed development providing 26 dwellings involving matters of layout, scale, appearance and landscaping. Approved 26-05-15.
- 9/2016/0861 Application for approval of reserved matters following outline planning permission and section 73 approval (9/2012/0743 & 9/2014/0464) for phase b of proposed development providing 26 dwellings involving matters of layout, scale, appearance and landscaping. Approved 24-04-17.
- 9/2018/0162 The variation of condition 43 of outline permission ref. 9/2014/0464 (relating to varied permission ref. 9/2012/0743 for outline permission (all matters reserved except for access) for a mixed use development comprising residential (C3) and employment (B1 &/or B8), access, roads and associated infrastructure, parking, public open space and landscaping). Approved 15-05-18.
- 9/2019/0133 The removal of condition 39 of planning permission ref: 9/2018/0162 (relating to a mixed use development comprising residential (class C3) and employment (classes B1 &/or B8), access, roads and associated infrastructure, parking, public open space and landscaping). Undetermined.

## **Responses to Publicity**

No responses received at the time of writing this report. However, the consultation period does not expire until 11 June 2019.

## **Development Plan Policies**

The relevant policies are:

- 2016 Local Plan Part 1 (LP1): H20 (Housing Balance), H21 (Affordable Housing), and INF1 (Infrastructure and Developer Contributions)

## **National Guidance**

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



## **Local Guidance**

- Affordable Housing SPD
- Planning Obligations SPD

## **Planning Considerations**

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

- The affordable housing provision; and
- The requirement for the affordable housing to meet Level 3 of the Code for Sustainable Homes

## **Planning Assessment**

### Affordable housing provision

As detailed above the original S106 approved a reduced affordable housing requirement of 13.95%. As part of this agreement an affordable housing overage provision was included, which required a review of the viability of the site on the 5<sup>th</sup> anniversary of the date of the planning permission. Following this review, if the site generated more profit than envisaged then an agreed financial contribution would be made to the Council in lieu of a plan compliant level of affordable housing being delivered. This review has revealed that the previously agreed scheme itself is no longer viable, not even at the reduced 13.95% provision. This is primarily due to build costs having increased at a higher rate than revenues. This overall conclusion has been confirmed by the District Valuer and it is agreed that no affordable housing overage is required.

In addition to the affordable housing overage, the viability of the whole site has been revisited and a viability assessment has been submitted by the land owner. This has again been considered by the District Valuer who came to the conclusion that a scheme with the originally requested level of affordable housing (13.95%) would not be viable. However, a reduced level of affordable housing i.e. the provision of four additional affordable dwellings, would be viable in accordance with the District Valuer's assessment of what the site can afford.

The site has already delivered 12 affordable homes on site, so an additional four dwellings would result in an overall affordable housing provision of 8.16%. It is proposed that the additional four affordable dwellings would be delivered off-site and as such would take the form of a financial contribution of the equivalent value to be used as close to the site as is practicable.

Although it is always disappointing when the impact of development on local area infrastructure cannot be fully mitigated, the solution offered is reasonable given the proven viability shortcoming of the development.

The requirement for the affordable housing to meet Level 3 of the Code for Sustainable Homes

The original S106 was prepared and signed at a time when the standard of both market and affordable homes were being urged to meet the standards set out within the Code for Sustainable Homes. The agreement sets out that the affordable homes to be delivered on site should meet the requirements of Level 3 of the code. The code was withdrawn in 2015. Whilst there is now no benchmark against which to assess the dwellings, the applicant has demonstrated that the affordable homes delivered, meet (and in some cases exceeded) the requirements of the now defunct Level 3 of the Code for Sustainable Homes. As such there is no objection to the removal of this requirement from the S106.

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. Subject to no material objections being received by the 11 June 2019, then grant delegated authority to the Head of Planning and Strategic Housing to negotiate the amount of affordable housing contribution, the equivalent to four dwellings.
- B. Subject to A, **GRANT** approval for the proposed amendment to the agreement to accept a reduction in the level of affordable housing on site, a financial contribution in lieu of an additional four affordable dwellings on-site, and the removal of the requirement for the affordable homes delivered to meet the requirements of Level 3 of the Code for Sustainable Homes.

**Item**            **1.10**

**Ref. No.**        **CD9/2019/0007/CD**

**Applicant:**  
**Mr Dave Massingham**  
**Derbyshire County Council**  
**County Hall**  
**Smedley Street**  
**Matlock**  
**DE4 3AG**

**Agent:**  
**Mr Gary Lees**  
**Pegasus Planning Group Ltd**  
**4 The Courtyard**  
**Church Street**  
**Lockington**  
**Derby**  
**DE74 2SL**

**Proposal:**    **THE DEMOLITION OF ASHLEA FARM AND RELATED BUILDINGS OFF DEEP DALE LANE AND THE DEVELOPMENT OF A NEW ALL-MOVEMENT JUNCTION ON THE A50 AND CONNECTING LINK ROAD TO INFINITY PARK WAY, WITH ASSOCIATED WORKS INCLUDING STREET LIGHTING COLUMNS, FOOTWAYS/CYCLEWAYS, CONSTRUCTION OF EARTH MOUNDS, FLOOD COMPENSATION AREAS, ACOUSTIC FENCING AND LANDSCAPING (COUNTY REF. CD9/0319/110) ON LAND BETWEEN DEEP DALE LANE AND INFINITY PARK WAY SINFIN DERBY**

**Ward:**           **Stenson and Aston**

**Valid Date**    **23/04/2019**

**Reason for committee determination**

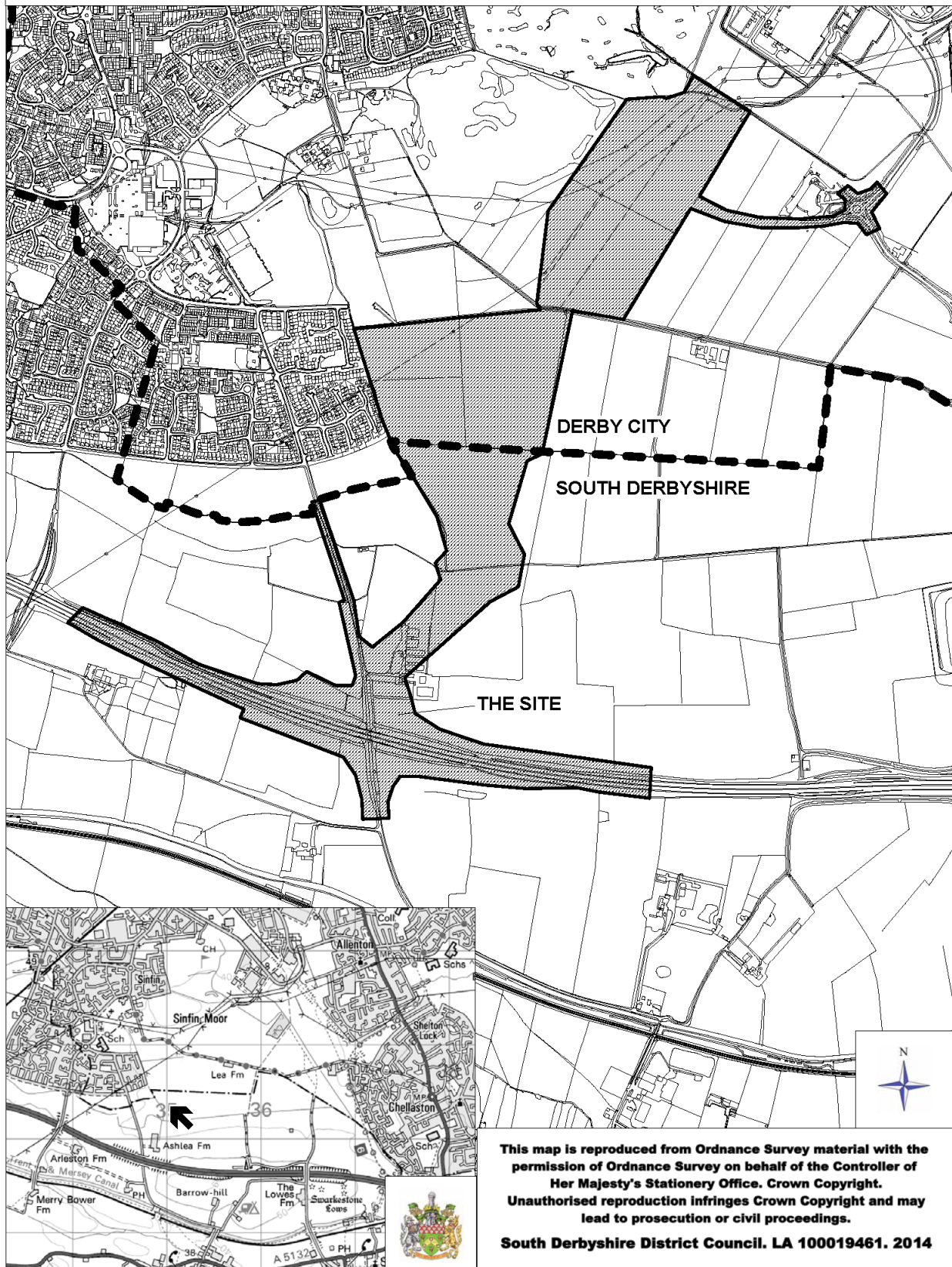
This item is presented to Committee at the discretion of the Head of Planning and Strategic Housing.

**Site Description**

The site lies to the south side of Derby, between Sinfin and Stenson Fields to the west and Chellaston to the east. The A50 Derby Southern Bypass runs to the south. Sinfin Moor Park Local Nature Reserve (LNR) lies to the north west. The site comprises mainly agricultural land and part of the A50 on the south side of Derby. Due to the nature of the proposals, the site is irregular in shape and covers approximately 69.3 hectares. The site is relatively flat in nature and generally lies between 38.8m AOD in the south to 38.75m AOD in the north. Three main watercourses cross the site boundary including Barrow Drain, the Main Drain and the Cuttle Brook.

The area is known as the Southern Derby Growth Zone (SDGZ) and gained the status of Infinity Garden Village (IGV) in 2017. The wider IGV includes land allocated

CD9/2019/0007 and NA9/2019/0009 - Land between Deep Dale Lane and Infinity Park Way, Sinfin, Derby (DE73 7LJ)



for employment (Infinity Park Derby) within the Derby City Local Plan and an extension to this in South Derbyshire, together with land allocated for housing off Wragley Way. The site also includes land designated as Green Wedge in the Derby City Local Plan.

## **Proposal**

The application is made to both the County Council and the City Council as respective highway authorities for this cross-boundary development (applications ref. CD9/0319/110 and 19/00417/FUL respectively). The District Council is therefore a consultee to both applications such that this report forms the basis for a conjoined response to both those authorities.

The proposal comprises a new junction on the A50 and a link road between this new junction and Infinity Park Way, which is already constructed within the City limits. The proposed scheme comprises of two primary elements. A new dumbbell roundabout arrangement on Deep Dale Lane with four new slip roads onto the A50, providing direct access to and from the A50 in all directions, and a link road routing from the new A50 junction to the northeast to ultimately connect to Infinity Park Way. The first section of this from the new A50 junction would be a dual carriageway. Several access roundabouts would be provided on the link road to access the future development proposals. The road corridor would be constructed on a low earth mound, varying from 0.5m to 2.0m above existing ground levels, with the road corridor 28.6m wide for the dual carriageway section and 16.3m wide for the single carriageway sections. To allow for minor variations which may be required at detailed design stage, a parameter plan identifies the maximum extent of possible deviation (approximately +/- 2m either side of the current alignment shown). A 40mph design speed has been assumed with both the link road and junction being street lit. The connecting east/west section of the link road towards Chellaston is already consented within the City limits (ref. 11/15/01379) and has been partially constructed by the City Council.

There is a consequential requirement to make alterations to lay-bys on the A50 to accommodate the new junction. Whilst these works would be permitted development and thus not forming part of the application site, the effect of these works is taken into account as part of the ES.

Shared footway/cycleways would be provided along the link road between the new A50 junction and the existing provisions on Infinity Park Way. A new traffic signal-controlled Pegasus crossing would be provided at Sinfin Moor Lane to facilitate the safe crossing of the link road by the existing pedestrian, cycle and equestrian traffic. Connections from Sinfin Moor Lane would be provided to the new footway/cycleways whilst gated vehicle access would remain for landowner access and maintenance.

The proposed link road crosses the flood plain and therefore appropriate flood compensation areas would be incorporated within the design. Two large areas are proposed for this to the west and north west of the proposed link road. Where the link road also crosses the watercourses, the proposals provide for the partial diversion of some sections of these, together with some ditch improvement works. Balancing/attenuation ponds are to be provided and flows into the watercourse

network will be restricted to greenfield run off rates. Some regrading of the outfall ditches and watercourses would be required. In addition, there are green infrastructure proposals as part of these works to facilitate compensatory planting for losses required to facilitate the development, and new landscape habitats such as those to surround the LNR that would effectively expand upon this resource. A 2.5m high acoustic barrier would be provided in order to mitigate increased noise levels at the nature reserve.

Demolition of the existing Ashlea Farm buildings, associated outbuildings and hardstandings is required to facilitate the proposal, and at this stage an overall programme of 18 months is assumed for the entire scheme, with the A50 junction works taking around 9 months.

## **Applicant's supporting information**

The proposal qualifies as Environmental Impact Assessment (EIA) development and is thus supported by an Environmental Statement (ES). The ES comprises chapters on relevant topics (with summaries quoted below) and is supported by supplemental studies, listed but not detailed in the interests of brevity:

### **1. Alternatives**

*"The main alternatives which the applicant has studied include:*

- *The 'No Development' alternative;*
- *The Phase 1 Southern Derby Integrated Transport Link (SDITL) alternative (without a new junction on the A50); and*
- *Alternative alignments of the proposed link road.*

*Although the 'No Development' alternative would avoid the potential adverse effects associated with developing greenfield land, it would also miss out on the opportunity to deliver a new junction on the A50 and road linking it to existing infrastructure, support delivery of a major employment zone to provide opportunities for new investment, and deliver over 5,000 new jobs, support the delivery of major new residential development, increase accessibility to the strategic road network (SRN) for a major employment zone, and improve connectivity and reduce congestion for communities living in and around the SDGZ. It is concluded that the socio-economic benefits outweigh the limited benefits of the No Development alternative.*

*Recent transportation modelling has identified that the SDITL alone would not deliver the level of mitigation to accommodate the committed developments to the same extent as the new junction on the A50 would. A Modelling Summary Report assesses a number of infrastructure improvement scenarios to test the comparative merits of the proposed development and identifies the percentage benefits in terms of % reduction at congested junctions. The phase 1 SDITL would reduce congestion by 23% whereas the proposed development reduces congestion by over 70%. The SDITL alone would therefore not constitute a satisfactory means of successfully mitigating the impacts of the committed housing and employment land allocations.*

*The location of the new junction cannot be located anywhere else in the vicinity or be of a materially different design in utilising the existing under bridge, such that it is not considered reasonable to assess alternative A50 junction locations or designs. An alternative alignment for the link road was previously suggested that took it further west than the current scheme which had the benefit of maximising the socio-economic benefits of future employment land to the east of the link road. However, this alignment was:*

- Closer to the existing residents in Sinfin;*
- Bisecting land designated as Green Wedge; and*
- Running through land designated as a LNR.*

*Whilst it was not possible to re-align the road at that time due to land ownership issues, these have now been resolved allowing the link road to move substantially further to the east, missing the LNR entirely. The length of road is now also slightly shorter and would result in reduced adverse environmental impacts. The wider socio-economic benefits of the proposed development remain unchanged, although slightly more additional employment development would have been possible under this alternative alignment. It is though concluded that the benefits of the proposed development outweigh the alternative alignment”.*

## **2. Socio Economics**

*“During the construction phase the proposed development will have the following temporary effects:*

- 371 temporary jobs could be supported per annum over an 18-month build period.*
- An estimated £31.6million of gross value added over the 18-month construction timeframe.*

*These effects are considered to be significantly beneficial effect in the short-term. In respect of the operational phase, the proposed development will unlock development in the surrounding area at IGV. This will have a number of cumulative effects, including the creation of up to 5,000 gross jobs on-site and an annual GVA contribution of £53.6million. These effects are considered to have a significant beneficial effect in the long-term”.*

## **3. Landscape and Visual**

*“The local landscape is characterised by the nearby built context of Derby, the main transport corridor of the A50 and the recently built Infinity Park Way. Flat agricultural fields are interspersed with hedges, mature trees and shelter belts, watercourse and drains, and pylons.*

*The application site’s close relationship with the surrounding built-up area of Derby and the transport corridor of the A50 results in a landscape that is influenced by urbanising elements.*

*Direct impact as a result of the proposed development is restricted to that of the landscape character of the application site, which comprises a fairly unremarkable urban edge of landscape. Whilst there would be level of harm this would be localised in extent.*

*In the longer term, the proposed green infrastructure that forms part of the proposals would deliver a mature framework of landscape habitats that would provide environmental benefits for the landscape.*

*The proposed green infrastructure of retained hedgerows, that would be reinforced with woodland planting along the corridor of the Link Road would filter and 'soften' views, although new vegetation would take time to establish. At the outset views would be afforded of vehicles, light columns and signage. The extent of visibility will vary for individual properties dependant on building location, window position, ground floor screening and intervening vegetation.*

*Mitigation measures have been incorporated into the design of the proposed developed [sic] as part of the iterative design process. This includes new green infrastructure, that comprises, amongst other things, the planting of new trees and hedgerows to compensate for the removal of vegetation”.*

4. Biodiversity, including an Ecological Appraisal, Bat Activity Surveys, Badger Survey, Water Vole and Otter Report, Reptile Report, Amphibian Survey, Lighting Impact Assessment and Arboricultural Assessment

*“Sinfin Moor Local Nature Reserve (LNR) lies adjacent to the northwestern extent of the application site. The LNR comprises open grassland, areas of scrub and woodland and ponds. Hedgerows form an extensive network across the site and link to adjacent areas of countryside and the urbanised area of Sinfin.*

*Two local non-statutory designated sites occur within the application site; the Sinfin Moor Lane Stream Local Wildlife Site (LWS) flows adjacent to Sinfin Moor Lane and bisects the application site and the Cuttle Brook LWS occurs in the north of the application site and extends widely.*

*Surveys have identified the use of the site by:*

- *a range of typical urban edge and farmland bird species, that use the site for breeding in small numbers;*
- *a range of common and widespread bat species typical of the range of habitat present. No roosts have been identified.*
- *Otters have been identified using some of the drainage ditches for commuting;*
- *Common toad, common frog and smooth newts are known to use ponds in the vicinity of the site*
- *No evidence of reptiles, water voles or badgers has been identified within the site although badgers occur locally.*

*The proposed development has been carefully designed to avoid significant ecological effects by applying the mitigation hierarchy of avoidance, mitigation, and compensation.*

*The provision of the green infrastructure is an integral part of proposed development and is a primary mitigation measure.*



*The following avoidance measures have been built into the layout of the proposed development:*

- *Avoidance of direct impacts to the Sinfin Moor Park LNR through route realignment;*
- *Shelterbelt woodland, hedges and mature trees have been retained within the proposed development wherever possible;*

*The green infrastructure of the proposed development will include a substantial area of informal natural green space.*

*With the exception of some adjacent habitats of value, such as the Sinfin Moor Park LNR, the application site itself has been heavily influenced by past intensive agricultural management that has led to a reduction in habitat and species diversity generally. As a result few, potentially significant effects are identified and none of which cannot be successfully mitigated or compensated for by the proposed Greed [sic] Infrastructure”.*

5. Cultural Heritage, including an Archaeological Desk Based Assessment, Geo-archaeological Desk Based Assessment, Geophysical Survey and a Built Heritage Statement

*“There are no designated archaeological heritage assets located within the site or within a 1km search area of the application site. The nearest Scheduled Monument to the application site is Swarkestone Lows, approximately 1.1km east of the application site; the application site does not form part of its setting and therefore the proposed development will have no impact on its importance.*

*The majority of the application site crosses deposits associated with a former shallow postglacial lake, except at its far southern end, but initial investigations have identifies that the chance of locating Palaeolithic archaeology within the application site is very low.*

*A small area of ridge and furrow medieval cultivation cropmarks are recorded at the southern tip of the application site. This has been ploughed out, with no upstanding earthworks remaining.*

*The southern part of the application site lies within the wider settings of Deep Dale Bridge (Grade II Listed Building) and the Trent & Mersey Canal Conservation Area although these will not be affected.*

*The primary effect of construction works will be from the impact of groundworks associated with the proposed development, particularly in the flood compensation areas, with any remains within these areas likely to be substantially or totally removed. The road corridor itself will be constructed on a low earth mound and it is likely that this will result in at least the partial preservation of remains beneath the road corridor.*

*The assessment has identified potentially significant effects upon environmental and archaeological remains within the former lake basin, due to their removal by the groundworks for the proposed development.*

*Prior to construction a geo-archaeological trial programme will be undertaken to further investigate the potential of the lake deposits within the application site”.*

## 6. Transport and Access, including a Transport Assessment

*“An assessment has been undertaken of the likely significant effects of the development on the environment with respect to transport and access.*

*A full audit of the highway network surrounding the site has been undertaken as part of the assessment, the purpose of which was to identify locations that should be considered sensitive in accordance with the appropriate guidelines.*

*Traffic count data for both the AM and PM peak hour flows has been obtained to form a base level against which the impact of the development was assessed. The highway safety record of the roads surrounding the site has also been assessed to identify any problems that are likely to be exacerbated by the development.*

*The assessment of the impact of construction traffic concluded that the minimal increase in traffic during the construction phase would have a negligible impact on the road network. Any potential impact would be mitigated by the introduction of controls on construction. This includes measures to coordinate the delivery times to ensure that vehicle movements are spread throughout the day, and the provision of vehicle washing facilities to ensure that dust and mud are not transported onto the highway”.*

## 7. Air Quality, including Traffic data utilised in Air Quality Assessment, a Wind Rose for East Midlands Airport, Model Verification and Sensitivity Analysis

*“The assessment of baseline conditions at identified receptor locations in the study area indicated that concentrations of the pollutants nitrogen dioxide (NO<sub>2</sub>) and particulate matter (PM<sub>10</sub> and PM<sub>2.5</sub>) are below the relevant air quality objectives.*

*A detailed road traffic emissions assessment was undertaken to consider the impact of development-generated road traffic on local air quality at sensitive locations. Road traffic emissions were modelled and concentrations of NO<sub>2</sub>, PM<sub>10</sub> and PM<sub>2.5</sub> predicted. The proposed development was not predicted to result in any new exceedances of the relevant air quality objectives.*

*During construction the implementation of measures such as damping down stockpiles will ensure that construction dust does not become an issue”.*

## 8. Noise and Vibration

*“A noise and vibration assessment considered the construction and operational phases of the proposed development.*

*A baseline noise survey has been undertaken at locations representative of the nearest existing noise sensitive receptors. The existing noise climate is dominated by road traffic on the surrounding road network.*

*A qualitative construction noise and vibration assessment concluded that there is the potential for a significant effect if appropriate management measures are not adopted during construction.*

*An assessment of development generated road traffic noise on the Sinfin Moor Local Nature Reserve concluded that there is the potential from noise from the new road. Therefore a 2.5 metre high acoustic barrier along the western side of a section of the new link road is proposed so that the noise can be controlled”.*

## 9. Drainage and Flood Risk, including a Sustainable Drainage Strategy, Flood Risk Assessment, Highways. Agency Water Risk Assessment Tool

*“The proposed development is located within the floodplain of various watercourses, including the Barrow Drain, Main Drain and Meadow Drain, as well as many unnamed field drains. These all form part of the catchment of the Cuttle Brook. The floodplains associated with these watercourses are defined as ‘high probability’ zones and so at risk of frequent flooding.*

*The groundwater aquifers beneath the site are considered to have low productivity and so quantity is of no real concern. Quality of the groundwater reserves is influenced largely by historic mining and so the proposed development will have little bearing on this.*

*The proposed development includes a strategic flood alleviation scheme for the area that provides a holistic solution to managing flood risk far beyond what is required to support just this development proposal. Therefore, the effect on flood risk is a significantly beneficial.*

*The design of the highway drainage system ensures that suitable treatment is provided to the runoff from the road. This treatment removes particulate contaminants as well as pollutants from fuel, oil etc. The existing drainage system will also pass through an additional treatment stage and so the effect of runoff to water quality is not significant.*

*The drainage strategy also is designed so that the runoff rate from the road is no greater than currently generated by the greenfield conditions. The effect of the development on flood risk from runoff is therefore not significant.*

*Impacts associated with groundwater are considered to be negligible due to the low likelihood of possible impacts.*

*The proposed watercourse diversion will improve the current condition of a number of watercourses. The diversion will improve the capacity of the ditches, therefore reducing flood risk. It is also being designed to maximise the biodiversity of the channel from its current state. Therefore, the effect is not significant.*

*The primary mitigation of the proposed development from a flood risk perspective is the flood storage areas proposed. These offer a significant reduction in flood risk to a large area, over and above that required to support this proposed development.*

*Watercourse diversion proposals also seek to improve the biodiversity of the current watercourses, improving them from their uniform, linear state. They will also provide better management of flood flows, reducing localised issues. This enhancement goes above and beyond what is required to support the proposed development, showing an overall improvement”.*

10. Ground Conditions, including a Phase 1 Geo-technical Report, a GI Report, a Minerals Assessment and Agricultural Soils Assessment

*“The application site has remained undeveloped throughout history, currently utilised for agricultural purposes, with the A50 dual carriageway comprising the southern part of the site. Off-site history mainly comprises gradual residential and commercial development, including Rolls-Royce to the north.*

*The centre of the application site, extending from north of the A50 to south of residential development in Sinfin, is indicated to be located within Sinfin Moor Regionally Important Geological Site (RIGS).*

*During the construction phase, there is a possibility that the earthworks could damage the soil structure and of the topsoil and also increase particulate runoff into local watercourses, however the effect is not significant.*

*In order to reduce the effect to the RIGS in the south of the application site area, it is recommended that a piled foundation solution is utilised, where possible, to minimise the impact to the sedimentary sequences. Additionally, where cut and fill exercises are required, these will kept as small as possible, with a watching brief during excavation works”.*

11. Cumulative and in Combination

*“An assessment of the proposed development in combination with the wider Infinity Garden Village development has been undertaken. In summary, beneficial socio economic effects have been identified. It is acknowledged that there will be a change in the landscape as a result of the combined development but this is not considered to be unacceptable as the landscape is able to accommodate the development. An adverse cumulative effect on the Sinfin Moor Glacial Lake deposits has been identified but it is considered*

*that as each component of the wider development comes forward appropriate evaluation will be undertaken. No other significant adverse cumulative effects have been identified”.*

A Consultation Statement, Green Infrastructure Strategy and Planning Statement, along with the Scoping Reports of both authorities, are also included within the ES.

## **Planning History**

None relevant to the site and proposals, although an application for 100 dwellings (ref. 9/2017/0922) within the IGV is pending a decision. This application sits alongside approvals for 130 dwellings within the City boundaries which also fall within the IGV boundary and are presently under construction. Permission has also been granted for employment floorspace as an extension to Infinity Park, around the northern end of the site within the City (ref. 11/10/01385).

## **Responses to Consultations and Publicity**

As this is a consultation from a neighbouring and/or the County authority, there is no requirement for consultations/notifications to be issued by this Council. Nonetheless, it has been established that the County and City have notified the following interested parties in addition to statutory and technical consultees:

- Councillor Atkin and Councillor Ford as County Members;
- Barrow on Trent Parish Council;
- Stenson Fields Parish Council;
- Swarkestone Parish Council;
- Friends of Sinfin Moor Park; and
- Chellaston Neighbourhood Planning Forum.

The City has also consulted 67 neighbouring properties, in addition to the display of site notices and a press advert. Stenson and Aston Ward Members have also been notified of these consultations from the City and County.

## **Development Plan Policies**

The relevant policies are:

- 2016 Local Plan Part 1 (LP1): S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), S4 (Housing Strategy), S5 (Employment Land Need), S6 (Sustainable Access), H15 (Wragley Way, South of Derby), E1 (Strategic Employment Land Allocation), E4 (Strategic Location for Sinfin Moor Employment Site Extension), SD1 (Amenity and Environmental Quality), SD2 (Flood Risk), SD3 (Sustainable Water Supply, Drainage and Sewerage Infrastructure), SD4 (Contaminated Land and Mining Legacy Issues), SD5 (Minerals Safeguarding), BNE1 (Design Excellence), BNE2 (Heritage Assets), BNE3 (Biodiversity), BNE4 (Landscape Character and Local Distinctiveness), INF2 (Sustainable Transport), INF4 (Transport Infrastructure Improvement Scheme) and INF7 (Green Infrastructure); and

- 2017 Local Plan Part 2 (LP2): BNE5 (Development in the Countryside), BNE7 (Trees, Woodland and Hedgerows), BNE10 (Heritage) and INF13 (Infinity Garden Village).

## **National Guidance**

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

## **Local Guidance**

- South Derbyshire Design Guide SPD

## **Planning Considerations**

It is important to recognise that the wider IGV proposals are to be informed by a Development Framework Document (DFD) as agreed by the City, County and District authorities and the development consortium. This document has been prepared in liaison with a number of local Ward Members, Parish Councils and other local groups and forums, and sets out a vision and key objectives for IGV. It is considered that the junction and link road form a key aspect of the DFD in ensuring the impacts of the SDGZ can be satisfactorily accommodated without significant harm to surrounding communities, routes and associated services and facilities. With this in mind, it is first recommended that this Council make clear its support for the applications made, noting that the delivery of the road is of paramount importance in unlocking the SDGZ area for development, so to enable the delivery of identified housing and employment needs for the District, as well as the City. This would accord with the strategic objectives of the Local Plan, in particular policies S4, S5, H15, E1, E4 and INF4, as well as according with the objectives of policy INF13.

The summary of the ES as set out above identifies the key environmental, social and economic foci of the development, setting out the negative and positive impacts arising in each case. It is recommended that the consultation process that each authority is carrying out with the statutory and technical consultees is utilised to inform the determination of the applications such that it is not considered the Council needs to comment on matters of socio-economics, cultural heritage, noise and vibration, air quality, ground conditions and landscape and visual impacts – those matters more appropriately dealt with by those consultees or it considered that the effects of the development would be acceptable at a District level. Accordingly, it is recommended that the Council's response should support the comments of those consultees. The remaining topics are covered below.

### **Transport and access**

Further to the above observations as to the benefits of the junction and link road, there are two matters which require further consideration.

Firstly, the link road would act as a barrier to east/west movement of pedestrians and cyclists – particularly for those living in the housing created off Wragley Way to the west (or already residing in Sinfin and Stenson Fields) and either working in the

employment area or attending the new secondary school to the east. It is imperative that, as part of delivering the sustainable live/work objectives within the DFD, that IGV is 'permeable' for sustainable modes of transport. With this in mind, a single Pegasus crossing at the junction of Sinfin Moor Lane is not considered adequate to ensure safe and suitable means of access for all users, pursuant to policy INF2 and paragraph 108 of the NPPF. Indeed, the desire line of this existing route is lost by the considerable offsetting of the crossing from the lane, and it is not evident why this cannot be achieved much closer to its existing alignment.

It should be acknowledged that further crossings would be required, and indeed shown within a revision to the proposals. The dual carriageway would be unattractive for crossing, such that non-vehicular traffic would likely migrate towards the roundabout at the northern end of this dualled section before seeking to cross. With this in mind, some form of signal control should be introduced on the northern and southern arms of this roundabout. It is not considered a single crossing to the north alone would be sufficient given the desire lines for pedestrians and cyclists and the position of housing relative to employment opportunities and walking routes to school. A further crossing, with physical narrowing of the carriageway by means of build outs (similar to that achieved through Pride Park, Derby) should also be deployed. It should also be recognised that these additional features may need factoring into any modelling of traffic flows.

Secondly, the effect of 'opening up' this area of southern Derby to a new opportunity to connect with the A50 needs to be further explored in respect of the impact on the local road network. Whilst it is recognised that any subsequent housing and employment applications within IGV will need to address their own impacts accordingly, the current proposal would provide connectivity both for traffic within Sinfin and Stenson Fields to travel out of the City to the A50, it would also provide a new route into it. Existing routes from the A38 at Littleover and the A514/A50 interchange at Chellaston are already known to suffer from congestion northwards into the City during peak times. The opening up of a north/south route through Sinfin and/or Stenson Fields has the potential for commuters to take this alternative route instead, perhaps with detrimental impacts. The Transport Assessment does not appear to consider these issues.

In the same vein, the Transport Assessment also does not delve into the effects on Deep Dale Lane south of the new A50 junction. Here, this route is wholly unsuitable for heavy traffic flows and larger vehicles, particularly given the canal bridge over the Trent and Mersey Canal. The junction with the A5132 would also likely be affected as well as the junction of the A5132 and A514 in Swarkestone. There should be consideration of how the new junction might provide a 'short-cut' for eastbound traffic using the A50 to access the A514 when they presently must travel further to the A50/A514 island first. This would be a particular issue if the A50 were congested or blocked further east. In addition, traffic travelling from the south across the causeway at Swarkestone may also choose to travel towards the new junction at Deep Dale Lane if the A514 approach to the A50 is congested and/or the A50 is suffering from congestion or blockage. The Transport Assessment needs to consider these potential impacts by way of further sensitivity testing.

## Biodiversity

The survey work in respect of ecological and botanical matters should be considered by the Wildlife Trust. The proposal would however affect some existing trees and hedgerow along the line of the route. Much of that to be lost around the A50 junction is relatively young, having been planted at the time the A50 was created. These losses are not felt to be of significant concern with it possible to provide compensatory habitat through the design and conditions stages. There are, however, a couple of sections where trees would be lost – namely part of the line of Poplars which form a visual barrier through the IGV, as well as cover either side of Sinfin Moor Lane, where that would be intersected. Despite this, the alignment would have the least possible effect with tree cover either fragmented or largely non-existent at these points, with hedgerow lost capable of being compensated for by way of new hedgerow following the line of the proposed link road. With this in mind, it is not considered that statutory protection of trees is warranted, nor reasonable given the wider need and benefits of the proposal, although conditions should be applied to ensure protection of trees and hedgerows during the course of the development.

A few veteran trees have been identified and both policies BNE3 and BNE7 advocate a high level of protection to such features, classified as ‘irreplaceable habitat’ in the NPPF. Of those in South Derbyshire, they are mostly sufficiently distant from the road alignment so not to raise concern, subject to generous protection buffers. There are however two which border housing in Sinfin which require particular attention when it comes to providing drainage and flood plain compensation, and ground works should be designed to exclude the buffer zones in their entirety. There is a further single veteran tree immediately adjacent to the road where it links to the existing T12 spur within the City. An access is shown to lead into its protection area. Efforts should be made to ensure this access does not remain in the position shown, with it moved accordingly.

## Drainage and Flood Risk

It should be recommended that the advice of the respective Lead Local Flood Authority (LLFA) is taken into account when determining the respective applications. The capacity for drainage should be sufficient to cater for the 40% plus climate change scenario. However, the design of the drainage should recognise the concept of integrated ‘green’ and ‘blue’ infrastructure as envisaged by the DFD. The water bodies created should be designed so they can serve for multiple purposes – for recreation, for biodiversity gain, for air quality purposes and for visual relief. Ultimately, such features need to compliment both the LNR to which they would relate and the purposes of Green Wedge in the City. A range of treatment trains should be utilised to improve water quality, offer differing habitats and provide visual interest.

## Design

It is noted that the application is made in full with some scope for deviation from the alignment shown. Nonetheless, and notwithstanding the above comments regarding east/west non-vehicular movements, the route is shown to carry a nominal 1.5m verge between the carriageway and the cycle paths either side. The concept set out



in the DFD is to provide for a dominant green 'setting' to the wider development. Such a narrow width would compromise the ability to provide tree planting within such a verge, noting that tree planting offers a feeling of segregation and safety for pedestrians and cyclists, whilst also providing shade to surfaces in hot weather (reducing heat island effects) and assisting in filtering pollutants. Given the nature of the route and its intended purpose, it is felt to be particularly important to make allowance for adequate tree planting and their establishment. It is recommended that the verge be widened to 2.5-3m, with these verges continued around the proposed roundabouts also.

Furthermore, the A50 junction makes no provision for pedestrian and cycle movements south through the underpass and continuing down Deep Dale Lane. Whilst it is recognised there would be little demand for pedestrian movements, there would still be a residual desire for those utilising the route presently for recreational purposes – especially given the Trent and Mersey canal offers wider links through the District. The scheme should be amended to make allowance for such provision. This would include some form of cycle or pedestrian route on the eastern side of the dual carriageway section.

### **Recommendation**

Subject to the above observations being fully taken into account and, where necessary, being appropriately addressed; raise **NO OBJECTION** to the proposals.

Item 1.11

Ref. No. NA9/2019/0009/LA

**Applicant:**  
Mr Dave Massingham  
Derbyshire County Council  
County Hall  
Matlock  
DE4 3AG

**Agent:**  
Mr Gary Lees  
Pegasus Planning Group Ltd  
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Church Street  
Lockington  
Derby  
DE74 2SL

**Proposal:** THE DEMOLITION OF ASHLEA FARM AND RELATED BUILDINGS OFF DEEP DALE LANE AND THE DEVELOPMENT OF A NEW ALL-MOVEMENT JUNCTION ON THE A50 AND CONNECTING LINK ROAD TO INFINITY PARK WAY, WITH ASSOCIATED WORKS INCLUDING STREET LIGHTING COLUMNS, FOOTWAYS/CYCLEWAYS, CONSTRUCTION OF EARTH MOUNDS, FLOOD COMPENSATION AREAS, ACOUSTIC FENCING AND LANDSCAPING (DERBY CITY REF. 19/00417/FUL) ON LAND BETWEEN DEEP DALE LANE AND INFINITY PARK WAY SINFIN DERBY

**Ward:** Stenson and Aston

**Valid Date** 24/04/2019

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

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

Reference should be made to the report under application ref. CD9/2019/0007.

#### **Recommendation**

Subject to the observations in that report being fully taken into account and, where necessary, being appropriately addressed; raise **NO OBJECTION** to the proposals.

## **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>Decision level</b>	<b>Page</b>
9/2018/0446	Sleepy Lane, Kings Newton	Melbourne	Dismissed	Delegated	166
9/2018/0835	Brook Lane, Foston	Hilton	Dismissed	Delegated	170
E/2016/00178	The Potlocks, Willington	Willington & Findern	Dismissed	Delegated	173

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## Appeal Decision

Site visit made on 3 April 2019

**by Andrew Smith BA (Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 18 April 2019**

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**Appeal Ref: APP/F1040/W/18/3208633**

**Land adjoining Highfields, Sleepy Lane, Kings Newton, Derby DE73 8BU**

- 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 A Jackson against the decision of South Derbyshire District Council.
  - The application Ref 9/2018/0446, dated 23 April 2018, was refused by notice dated 21 June 2018.
  - The development proposed is erection of one dwelling.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. Since the submission of the appeal, an updated version of the National Planning Policy Framework (February 2019) (the revised Framework) has been published by the Government. This is a material consideration in planning decisions. In relation to the main issues in this appeal, Government policy has not materially changed and it was not therefore necessary to invite any further comments from the different parties involved.

### Main Issues

3. The main issues are:
  - Whether or not the appeal site represents an appropriate location for housing, with particular regard to the effect of the proposal upon the character and appearance of the area and the setting of the Kings Newton Conservation Area (the Conservation Area); and
  - The effect of the proposal upon the setting of Elms Farmhouse, a grade II listed building.

### Reasons

*Appropriateness of the location for housing, having regard to the character and appearance of the area and the setting of the Conservation Area*

4. The appeal site is located at King's Norton, which is defined as a Rural Village under Policy SDT1 of the South Derbyshire Local Plan (Part 1 adopted June 2016; Part 2 adopted November 2017) (the Local Plan), but outside of its defined settlement boundary. Policy BNE5 of the Local Plan states that, outside of settlement boundaries, planning permission will be granted where

- the development is, amongst other criteria, considered to be infill that is in keeping with the character of the locality and represents the infilling of a small gap for not normally more than two dwellings, within small groups of housing.
5. The site is accessed via Trent Lane and makes up of part of the private garden area of a detached dwelling (Highfields). It abuts the Conservation Area as well as a complex of former farm buildings (Elms Farm) that falls within the Conservation Area. It. Considering that the site is effectively sandwiched between Highfields and Elms Farm, I am content that the proposal would represent infill development within small groups of housing. However, in accordance with the full requirements of Policy BNE5, I must consider whether the proposal would be in keeping with the character of the locality whilst acknowledging its position adjacent to the Conservation Area.
  6. The significance of the Conservation Area as a designated heritage asset is drawn, in part, from its rural character and well-preserved ranges of historic buildings, which include farm buildings that survive substantially unaltered creating various courtyards. As referenced in the Kings Newton Conservation Area Character Statement (2011), the former farm complex at Elms Farm is largely set apart from Trent Lane within its own private courtyard.
  7. Notwithstanding the various courtyards that are in existence, the Conservation Area, and indeed Kings Norton as a whole, is predominantly characterised by linear patterns of development along its main routes. I however accept that examples of more irregularly laid out forms of development exist in the immediate vicinity of the appeal site. The most pertinent example of this is perhaps Highfields itself.
  8. I do not consider that Highfields makes a positive contribution to the setting of the Conservation Area, which is indeed a view shared by the Council's Conservation Officer. It does not respond to the typically compact layout and traditional form of nearby buildings contained within the Conservation Area. Whilst a recent eastward extension to Highfields has recently been erected, moving the built extent of the dwelling slightly closer to the Conservation Area, the extent of separation that remains is significant and valuable. Indeed, as suggested by the Council, the appeal site's open nature, notwithstanding that it is formed of private garden land, offers important breathing space between Highfields and Elms Farm where a distinctive edge to the Conservation Area is formed.
  9. I acknowledge that the appellant has referenced a recent built addition to Elms Farm Cottage, which forms part of Elms Farm, as well as to the erection of modern garage blocks close to the site boundary, also within Elms Farm. Whilst these represent modern additions to the complex, they read as a coherent part of the grouping of buildings to which they form part. Whilst individual buildings exhibit differences in age, form and design, Elms Farm continues to be recognisable as a complex of buildings situated around an inner private courtyard.
  10. The proposed dwelling would be a single storey in height, of modern design with a flat roof. It would be set towards the rear of the site when viewed from the north and cut in to the site, which is gently sloped. For these reasons and owing to the relatively discreet location of the site away from the

main routes through the village, I acknowledge that the proposal's visibility would be relatively limited. It would however still have a presence and influence how the Conservation Area would be read and experienced, particularly by neighbouring residents and by users of the nearby public footpath that connects to the grounds of Highfields.

11. For the above reasons, the proposal would fail to preserve the setting of the Conservation Area and would lead to less than substantial harm to the significance of the Conservation Area. In such circumstances, in accordance with the requirements of the revised Framework, this harm should be weighed against the public benefits of the proposal. In this instance, from the evidence before me, the public benefits of the proposal would be limited to the delivery of an additional housing unit, which would in turn support local services and facilities during both its construction and occupation phases. Whilst the revised Framework reaffirms the Government's objectives to significantly boost the supply of homes, the contribution of only one dwelling and its associated support for local services and facilities, even when factoring in the proximity of both public bus services and the National Cycle Network to the site, would be relatively modest and would not outweigh the identified harm that would be caused to the Conservation Area.
12. The proposal would cause harm to the character and appearance of the area and to the setting of the Kings Newton Conservation Area and therefore would not represent an appropriate location for housing. The proposal fails to accord with Policies S1, H1, SDT1, BNE1, BNE2, BNE5 and BNE10 of the Local Plan in so far as these policies state that outside of settlement boundaries planning permission will be granted where the development is considered to be infill that is in keeping with the character of the locality and that it is essential that the District's heritage assets, landscape and rural character are protected, conserved and enhanced.

#### *Setting of Elms Farmhouse*

13. Elms Farmhouse is grade II listed and is substantial, elevated and of architectural interest. It forms the main building amongst a complex of neighbouring former agricultural outbuildings at Elms Farm and its significance as a designated heritage asset is drawn in part from its traditional agricultural style and form and its relevance to the historic evolution and rural history of the area. Elms Farm and its internal courtyard arrangement are reflective of a traditional pattern of development. The complex of former outbuildings, whilst subordinate to Elms Farmhouse, read as an integral part of the grouping of buildings and contribute greatly to the former farmhouse's setting.
14. As referenced in the appellant's submitted Heritage Statement, the appeal site once served as the kitchen garden to Elms Farmhouse and still retains associated low stone walling to much of its perimeter. Notwithstanding that the appeal site is no longer in the same ownership as Elms Farmhouse and is now used as private garden land associated to Highfields, it clearly has a historical attachment. The site makes an important and longstanding contribution to the setting of Elms Farmhouse and its surrounding complex of subordinate buildings, not least by ensuring detachment from neighbouring built form to allow Elms Farm to read as a distinct and recognisable historic grouping.

15. The proposal would result in the construction of a dwelling that would be at odds with the traditional pattern of development that is in place at Elms Farm and would appear as a discordant and harmful addition accordingly. In accordance with the guidance set out in the revised Framework, the harm that would be caused by the proposal to the significance of Elms Farmhouse would be less than substantial. The public benefits of the proposal, as identified above, I consider, would not outweigh this identified harm however.
16. The proposal would cause harm to the setting of Elms Farmhouse, a grade II listed building in conflict with Policies S1, BNE1, BNE2 and BNE10 of the Local Plan in so far as these policies state that development that affects South Derbyshire's heritage assets will be expected to protect, conserve and enhance the assets and their settings.

**Conclusion**

17. For the above reasons the proposed development conflicts with the development plan, and material considerations do not lead me to a decision otherwise. The appeal is dismissed.

*Andrew Smith*

INSPECTOR



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## Appeal Decision

Site visit made on 27 March 2019

**by E. Brownless, BA (Hons), Solicitor**

**an Inspector appointed by the Secretary of State**

**Decision date: 3<sup>rd</sup> May 2019**

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### **Appeal Ref: APP/F1040/W/18/3217392**

#### **Land adjacent Brookside Farm, Brook Lane, Foston, Derbyshire, DE65 5PW**

- 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 Mr David Stevenson against the decision of South Derbyshire District Council.
  - The application Ref: 9/2018/0835 dated 30 July 2018, was refused by notice dated 26 October 2018.
  - The development proposed is described as 'erect an assisted living bungalow adjacent to the farmhouse'.
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### **Decision**

1. The appeal is dismissed.

### **Procedural Matter**

2. The application was made in outline with all matters reserved for future determination.

### **Main Issues**

3. The main issues are i) the effect of the proposed development on the character and appearance of the area and ii) whether the proposal would satisfy any of the exceptions that permit development within the countryside.

### **Reasons**

#### *Character and appearance*

4. The appeal site comprises a roughly square plot of rough pasture agricultural land that runs alongside Brook Lane and forms part of the curtilage to Brookside Farm. To its side sits the main farmhouse dwelling, whilst on the other side, to its rear and opposite, albeit behind a dense line of vegetation are open agricultural fields. Although there are a small number of dwellings sporadically located along the lane, the area predominantly consists of open fields and has an attractive verdant and rural character.
5. Although the appeal site sits to the side of the main farmhouse building, the proposal would introduce built form into an existing area of open agricultural land and thus would result in significant harm to the verdant and rural character of the area. Notwithstanding the presence of some intervening vegetation and the existing farmhouse that would partially screen the proposal from public views, the proposal would be readily visible in some views from Brook Lane, Church Broughton Road and views from the wider countryside



from where it would be read as an unwelcome intrusion or a harmful encroachment into the countryside.

6. Accordingly, I conclude that the proposal would be materially harmful to the character and appearance of the surrounding area. Therefore, the proposal would conflict with Policy H1 of the South Derbyshire Local Plan Part 1 (2016)(LP) and Policies SDT1 and BNE5 of the South Derbyshire Local Plan Part 2 (2017)(LP2). Among other things, these policies seek to protect undeveloped greenfield land, the character of the countryside and to prevent unrestricted development in rural areas. Furthermore, it would conflict with the aims of the Framework which recognises the intrinsic character and beauty of the countryside.

*Policy background*

7. The proposed development would be in the countryside for the purposes of the development plan and located outside of any defined settlement boundary. In these circumstances, LP2 Policy SDT1 generally precludes development within the countryside except where the development falls within certain categories. LP2 Policy BNE5 expands upon this approach and, among other things, is permissive of development outside of settlement boundaries where it satisfies the requirements of the rural dwellings policy, is essential to a rural based activity or is limited infill development.
8. LP2 Policy H25 provides the criteria against which the construction of a new dwelling will be considered. This requires, i) that there is an established existing essential need for an additional worker's dwelling to support a rural based activity, and ii) the rural based activity has been established, is economically sustainable and has the prospect of remaining so; and iii) it cannot be fulfilled by an existing dwelling within the locality.
9. The proposed dwelling is required due to personal circumstances relating to the appellant's worsening ill-health which prevents the use of facilities within the existing dwelling. The proposed bungalow would provide ground floor living accommodation and allow assisted living with a carer being present. The appellant has cited a desire to continue being actively involved in the day to day running of the farm from which he derives an income. Whilst matters affecting health can be of some gravity and the Framework recognises the need to improve the places in which people live their lives, there is limited evidence before me as to the extent of the appellant's ill-health, the nature and degree of the appellant's involvement in the operation of the farm business nor its present and future economic viability.
10. Albeit the appellant suggests there is no suitable property nearby that could be purchased, I have been supplied with no evidence to suggest that the existing farmhouse is incapable of adaptation for the needs of the appellant to live at ground floor level, nor that those adaptation works would be more cost prohibitive than building a new dwelling.
11. In addition, I observed at my site visit that there are a number of traditional stone buildings in close proximity to the farmhouse. The Council comments that these appear suitable for conversion in accordance with the prior notification process. Whilst these traditional buildings would need considerable repair and works to facilitate residential conversion, I have not been supplied with any figures in this regard to make a comparison with the costs of building

a new dwelling at the site. Consequently, it has not been conclusively established that these buildings would not be available for residential conversion. Thus, taking these matters together, it has not been demonstrated that the existing farmhouse or outbuildings would be incapable of housing the appellant.

12. Taking all matters into account and based on the evidence provided, I do not consider that it has been demonstrated for the purposes of LP2 Policy H25 that there is an essential functional need for the appellant to be readily available on the site nor that the business is financially sustainable. Furthermore, I find that the presence of the existing farmhouse and a number of other traditional buildings nearby could potentially meet that need and consequently, it has not been demonstrated that the proposal would meet an essential need to accommodate an agricultural worker at the appeal site. For similar reasons, I do not find that the proposal satisfies the essential rural based activity exception of LP2 Policy BNE5.
13. LP Policy BNE5 is permissive of infill development within a small gap in a group of housing. Whilst Brookside Farm adjoins the appeal site to one side, there is an absence of built development to its other side. Agricultural land together with a number of driveways separate the appeal site from the nearest dwelling which is situated some distance away. As such, I find the development does not accord with the requirements for limited infill development.

#### **Other Matters**

14. The appellant has drawn my attention to other private residences along Brook Lane that have been granted permission for new dwellings. I have little evidence relating to the particular circumstances of these developments and whether the circumstances are therefore comparable to the appeal proposal. As such, a comparison is of limited relevance in this instance and I have considered the appeal before me on its individual planning merits.
15. I have had regard to the appeal site being of no arable use and therefore being of no significant loss to the farming business. In addition, I note there are no identified risks of flooding or contamination and the proposal makes adequate provision for the removal of waste. However, the absence of harm is a neutral factor that weighs neither for nor against the proposal.
16. Whilst I agree a condition could limit the use of the dwelling to future employees and wider family members who work at the farm, this does not provide justification for the development nor does it overcome the harm which I have identified above.

#### **Conclusion**

17. Accordingly, for the reasons given above, the appeal is dismissed.

*E Brownless*

INSPECTOR



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## Appeal Decision

Site visit made on 24 April 2019

**by D H Brier BA MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 08 May 2019**

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### **Appeal Ref: APP/F1040/C/18/3211254 & 3211255**

#### **Land adjacent to 45 The Potlocks, Willington, Derbyshire**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Younger Homes (Northern) Ltd & Mrs S E Ibbersen against an enforcement notice issued by South Derbyshire District Council.
- The enforcement notice was issued on 13 August 2018.
- The breach of planning control as alleged in the notice is the carrying out of an engineering operation to regrade the land and form a bund.
- The requirements of the notice are regrade and level the land to remove the bund and return it to a flat open space and reseed it to grass.
- The period for compliance with the requirements is 30 days.
- The appeal by Younger Homes (Northern) Ltd (3211254 – Appeal A) is proceeding on the grounds set out in section 174(2) (a) and (c) of the Town and Country Planning Act 1990 as amended. The appeal by Mrs S E Ibbersen (3211254 – Appeal B) is proceeding on the grounds set out in section 174(2) (c) only. Since the prescribed fees have not been paid within the specified period for this appeal, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended in relation to this appeal have lapsed.

**Summary of Decision: The appeal is dismissed and the enforcement notice is upheld.**

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#### **The Appeal Site and Background**

1. The appeal site is an area of vacant land within a modern housing development. The bund in question, which according to the Council is some 600mm to 700mm high, runs parallel to the north-western and northern arms of The Potlocks and also extends northwards alongside the garages and parking area to the east of No.43.
2. According the Council, on the layout for the housing approved in 1990, the land was earmarked as open space. In July 2018, appeals under section 78 and section 174 against the Council's refusal of planning permission for the erection of 2 dwellings on the land and an enforcement notice alleging the erection of a metal palisade fence respectively, were both dismissed<sup>1</sup>.

#### **Appeal on Ground (c)**

3. In order for the appeal to succeed on this ground it has to be shown that there has not been a breach of planning control. Ground (c) is a legal ground of

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<sup>1</sup> Appeal references APP/F1040/C/18/3185562 & 3185563 and APP/F1040/W/17/3184924

appeal distinct from the planning merits and the Courts have held that the onus of proving it lies with the appellants.

4. In essence, the appellants' case is based on the premise that the works in question constitute permitted development under Class A of Part 2 of the GPDO<sup>2</sup>. However, other than a submission that there is no statutory definition of engineering operations in the 1990 Act, no reasons why the works are considered to fall within Class A have been advanced.
5. I accept that while 'engineering operations' fall within the meaning of development set out in section 55 of the Act, the term is not defined further in the Act. The appellants have not given any indication of the works involved here, but from what I observed, the bund in question appears to have been formed by scraping the ground within the site and depositing the resultant material on its fringes. Indeed, the appellants acknowledge that no material was brought onto the land or removed from it.
6. The formation of the bund does not appear to have taken very long – a maximum of 2 days according to the appellants. Be that as it may, having read that the works involved using a mini-digger transported to the site on a trailer, it seems to me that the execution of the works would have involved a degree of pre-planning and organisation. And, despite the fairly modest scale of the bund, my impression was that it has an air of permanence and is a perceptible topographical feature that has significantly altered the physical appearance of the land. All this leads me to conclude that, as a matter of fact and degree, the works constitute an engineering operation and so fall within the definition of development.
7. As to whether the bund is permitted development, Part 2 of Schedule 2 of the GPDO is headed 'Minor Operations'. In particular, Class A refers to "*the erection, construction, .....of a gate, fence, wall or other means of enclosure.*" As I see it, none of the criteria set out in paragraph A.1, which sets out the circumstances where development is not permitted by Class A, apply here, in which case, I consider the matter turns on whether the bund is an "*other means of enclosure*". In this respect I am mindful that in *Ewen Development Ltd v Secretary of State for the Environment* [1980] JPL 404, it was held that the words "*or other means of enclosure*" are governed by the ejusdem generis rule so that to satisfy the test, the means of enclosure must be similar to a gate, fence or wall.
8. To a large extent the bund is positioned on the fringes of the appeal site and, as such, it could be said to enclose the land. However, what purpose the bund serves, or is meant to serve, in this respect is far from clear. It was not apparent from what I saw, nor have the appellants provided any explanation. My impression was that rather than bearing any resemblance to a feature such as a wall or fence, the bund largely serves as a facility for the deposit of the material removed from the rest of the land.
9. The foregoing factors lead me to conclude that as a matter of fact and degree the bund in question does not constitute an "*other means of enclosure*" and so falls outside the ambit of the provisions of Part 2 Class A of Schedule 2 of the GPDO. The appeal on ground (c) therefore fails.

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<sup>2</sup> I take this to mean the Town and Country Planning (General Permitted Development) (England) Order 2015.

**Appeal A – Appeal on Ground (a) and the Deemed Application**

10. The main issue is the effect on the local street scene.
11. I have read that although the land was shown as public open space on the approved layout plan for the housing here, it was never formally adopted, nor was the approved landscaping scheme implemented either. However, while the appellant has commented upon the implications of both these points, they are not matters to which I am inclined to attach a great deal of weight. What I do attach considerable weight to is that the land appears to have functioned as open space, maintained by the Council, for some time.
12. Given the relative prominence of the site within the housing scheme, it seems to me that the land would have been an amenity that contributed to the pleasantness of the setting of the houses here. The contrast brought about by the bund could scarcely have been starker. Although the height of the bund is fairly modest, its formation looks very crude – it is effectively a long mound of excavated material, and like the rest of the appeal site, the present condition of which appears to have come about as a result of the disputed works, it is strewn with weeds. All this imparts a strong impression of neglect which is in marked contrast with the generally well-maintained surrounds of the nearby houses.
13. The unsightly appearance of the development in question, which has impacted on the appeal site as a whole, is such that it has had a seriously detrimental effect upon the local street scene and the setting of the houses here. As such, I find it contrary to Policies SD1 and BNE1 of the Council's Local Plan and the desire to create high quality places as expressed in the National Planning Policy Framework.
14. The appeal on ground (a) therefore fails and planning permission will not be granted on the deemed application.
15. I have taken into account all the other matters raised, but none are sufficient to outweigh the considerations that have led me to my conclusions.

**Formal Decision**

16. I dismiss the appeal and uphold the enforcement notice. In respect of Appeal A, I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

*D H Brier*

Inspector