

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

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

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

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## 1. PLANNING APPLICATIONS

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

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

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

**Item**            1.1

**Reg. No.**        9/2011/1004/FM

**Applicant:**

MR KEIRON ARMSTRONG  
C/O ARMSTRONGS MILL  
ILKESTON  
DERBYSHIRE  
DE7 5TT

**Agent:**

IAN MCHUGH  
IMCH PLANNING & DEVELOPMENT  
CONSULTANCY  
DRAYCOTT  
DERBYSHIRE  
DE72 3QP

**Proposal:**        **THE CHANGE OF USE OF FORMER HOTEL AND  
RESTAURANT TO SINGLE DWELLING WITH ANNEXE  
AT THE LADY IN GREY WILNE LANE SHARDLOW  
DERBY**

**Ward:**            **ASTON**

**Valid Date:**     **19/12/2011**

**Reason for committee determination**

These applications (9/2011/1004 & 1005) are brought before the Committee at the request of Councillor Watson as local concern has been expressed about a particular issue and there are unusual site circumstances that should be considered by committee.

**Site Description**

The 0.30 hectare site includes the majority of the curtilage and the building 3 Wilne Lane, known as the Lady in Grey. This is a Grade II Listed Georgian House previously used as a hotel and restaurant. The application site includes the garden area to the south and east and the building which abuts Wilne Lane. There are residential properties to the east on Wilne Lane, a public house to the south east over the road and offices to the south. The site lies within Shardlow Wharf Conservation Area.

The Listing description is as follows:

*The Lady in Grey is late C18 with C20 additions. Red brick with painted stone dressings and plain stone first floor band. Hipped slate roof with rendered rear wall stacks and moulded eaves cornice. Two storeys and three bays with advanced pedimented central bay which has a two storey blind semi-circular headed recess with stone impost band and moulded arch. To ground floor the centre bay is covered by a C20 flat roofed rendered addition with brick quoins and glazing bar sash to front, over which is a Sun Alliance fire insurance plaque. Behind the addition is the original semi-circular headed doorcase with rusticated jambs, C20 glazed door and traceried iron fanlight below open pediment on moulded consoles. To either side there are glazing bar sashes below*



*rusticated wedge lintels with double keystones and above there are two similar to either side of central glazing bar sashes in moulded surround. Above again to centre is a shallow moulded pediment with small moulded circular window. Attached to north side is the original stable block, now part of the restaurant, which is rendered and has a hipped C20 concrete tile roof and an assortment of C20 windows.*

## **Proposal**

Planning permission and Listed Building Consent are sought for the change of use of the former hotel and restaurant to single dwelling with annexe. The Lady in Grey is a Grade II Listed Building listed in 1967.

A conversion to a 5 bedroom property with a 1 bedroom annexe in the eastern part of the building adjacent to Wilne Lane is proposed. An existing outbuilding within the grounds on the north western boundary would be re-furbished and extended to provide a garage/ store building attached to the existing boundary wall.

The proposal involves retaining the original internal layout, preserve existing features of note and to restore and replace features in an original style and form. On the ground floor the works would involve removing the existing flat roof entrance door and a replacement front door with fanlight. Reinstatement of the four main ground floor rooms would include walls, doorways and fireplaces. Existing windows would be reconditioned with secondary glazing installed. Later additions to the rear would be converted to a family kitchen, garaging and utility space and ground floor kitchen to form the annexe. These works would involve replacement windows, alteration to window openings and doorways.

On the first floor the proposals involve reinstating the four principal rooms to form three bedrooms and a bathroom. A further two bedrooms and the remainder of the annexe would be formed in the later additions. Works involve blocking door openings and reinstating original openings and reconditioning original windows. Decorative mouldings, cornices and architraves would be retained. The existing staircase would be repaired and reinstated.

On the second floor the existing four rooms are considered to be of insufficient height to provide reasonable living accommodation and would be used as storage areas. Other major works include underpinning/ rebuilding parts of the structure in particular the more recent additions on the western side. Repairing and replacing rainwater goods, chimney stacks and the roof covering. The garden areas would be restored and existing trees retained.

Access to the property would be via the two existing doors to the front and rear of the building.

## **Applicants' supporting information**

### Design, Access and Heritage Statement

This document sets out the history of the building and its previous uses. It was a private residence through much of the 20<sup>th</sup> Century but was converted into a hotel and restaurant in the 1960s. More recently it was in use as restaurant on the ground floor with a flat above. The restaurant closed in 2008 and the flat remains occupied. The building has fallen into a state of disrepair and is included on the English Heritage

Buildings at Risk Register. Recent works to make the building watertight and weatherproof have been undertaken. The building is considered an important Heritage Asset and is a prominent feature in the streetscene of Wilne Lane. The document summarises all the works proposed.

### Flood Risk Assessment

The development lies within flood zone 3a. The site is protected by defences currently in place to the 1 in 50 year event, but remains within the 1 in 100 year fluvial flood plain of the River Trent. The site experiences over-topping from flooding events more severe than the 1 in 50 year event. The Environment Agency's records indicate that flooding last occurred near the site in October 2000 by fluvial Trent flow of the main River Trent. At 33.28 AOD the existing defences are over-topped by 510mm. It is recommended that the occupants sign up for the Environment Agency's Flood Warning service. The assessment suggests various mitigation measures.

### **Planning History**

9/2009/0282 – The felling and pruning of trees, No objection 8/6/09.

9/2004/0710 – Listed Building Consent - The installation of a new flue for the kitchen, Granted 13/7/04.

9/2003/0177 – Outline Application (all matters except siting and means of access reserved) for the erection of a 40 bedroom bed and breakfast hotel, Refused 11/4/03.

### **Responses to Consultations**

The County Highways Authority considers that as the vehicle movements generated by a residential dwelling will be less than those generated by the hotel and restaurant there are no highways objections. A condition requiring the parking to be laid out and an informative in relation to the public right of way No.12 is recommended.

The Environment Agency objects to the application on the basis that the site lies within Flood Zone 3a defined by PPS25 as having a high probability of flooding where notwithstanding the mitigation measures proposed, the risk to life and/or property, from inundation would be unacceptable if the development were to be allowed. In particular:

- i) The proposed development does not have a safe means of access and/or egress in the event of flooding. Consequently, there would be an unacceptable risk to the health and safety of the occupants in a flood event. The FRA demonstrates that in accordance with the DEFRA document Framework and Guidance for Assessing and Managing Flood Risk for New Development FD2320/TR2 there would be a 'Danger for All'.
- ii) The site is currently not defended to the appropriate standard taking into account climate change over the lifetime of the development and no provision is made in the application to improve the existing defences to the required standard. The converted dwelling would remain at significant flood risk.

The County Council's Archaeologist is satisfied that the proposal has no archaeological impact.

British Waterways has no comments to make on the applications.

Severn Trent Water has no objection to the proposal and no comments to make.

Shardlow and Great Wilne Parish Council has concerns.

### **Responses to Publicity**

Eighteen letters of objection have been received the majority in relation to the proposal for 8 dwellings and the reasons specific to these applications are summarised below:

- a. The works to the Listed Building should be secured prior to any works being completed on the new dwellings proposed.
- b. The renovation of the property and change of use to residential is acceptable, however, the property has not been empty since 2008 as stated.
- c. The Lady in Grey is an iconic building for Shardlow as it occupies a prime location in the village and view through the gate to the garden area from the canal are key features of Shardlow.
- d. Renovation of the building and grounds would be welcomed.
- e. If the plans are satisfactory executed it would restore this important heritage asset.
- f. There are inaccuracies in the application in terms of distance from a watercourse, trees have been removed and that the Lady in Grey cannot be seen from a public road.
- g. They would be happy to see the Lady in Grey restored to its original splendour and do not mind it reverting to a residential dwelling.
- h. They fear for the loss of the gardens as trees have been removed.
- i. The proposal does not include the whole garden and they object on this basis.
- j. The 1960s extension to the side of the property should be removed.
- k. The proposal involves the use of the rear access and there is concern regarding the increase in traffic as it is opposite their house.
- l. Provided that the use is for a private dwelling and not a facilitating multiple occupation there is no concern.

### **Development Plan Policies**

The relevant policies are:

East Midlands Regional Plan: Policies 2, 3, 12, 27, 48

Local Plan: Housing 5 and 11, Environment 12 and 13 and Transport 6

### **National Guidance**

PPS 1, 3, 5 and 25.

### **Planning Considerations**

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

- The principle of development
- The impact on the fabric and setting of the Listed Building and Conservation Area
- The impact on residential Amenity
- Highway Issues

- Flood Risk
- Other matters raised by objectors

## **Planning Assessment**

### The principle of development

The proposed change of use and Listed Building Consent seek to restore the building to its original use as a private residential property and as such the principle of development is acceptable.

### The impact on the setting on the Listed Building and Conservation Area

This sympathetic conversion would considerably enhance the appearance and character of the Listed Building and Conservation Area. The renovation involves restoring original features and bringing the building back to its appearance when it was a private dwelling. Original room layouts would be reinstated together with repairing the outside elevations and fabric of the building. The proposal is therefore welcomed and it is considered to significantly improve the appearance and character of the Building. The proposal would have a positive impact on the Conservation Area.

### The impact on residential Amenity

The only main room windows proposed on the north eastern elevation would be set within the courtyard area approximately 15 metres from the side wall of 5 Wilne Lane. Overlooking and loss of privacy as therefore not considered significant.

### Highway Issues

The Highways Authority has no objection to the application for change of use and recommend a condition in relation to car parking and an informative relating to the right of way.

### Flood Risk

In summary the site lies within Flood Zone 3a defined by PPS25 as having a high probability of flooding. The site is protected by defences currently in place to the 1 in 50 year event, but remains within the 1 in 100 year fluvial flood plain of the River Trent. Mitigation proposed is to have a finished floor level of 33.43 AOD above the flooding level of 33.28 AOD.

Currently the Environment Agency Object to the application for the following reasons:-

- 1) The proposed development does not have a safe means of access and/or egress in the event of flooding. Consequently, there would be an unacceptable risk to the health and safety of the occupants in a flood event.
- 2) The site is currently not defended to the appropriate standard taking into account climate change over the lifetime of the development and no provision is made in the application to improve the existing defences to the required standard. The converted dwelling would remain at significant flood risk.

There are measures available to mitigate the effects of a major flood. The building cannot be provided with dry access in the event of flood nor can it be completely protected against inundation. In this case flooding would occur when the Shardlow flood defences have been breached. The locality has a well-established flood warning and evacuation plan and in practice the occupiers of the new dwellings would benefit from these measures. Conditions are recommended to secure mitigation measures which could include participation in the scheme. Furthermore, whilst accepting the principle of avoiding development in areas at risk of flood the position of the heritage asset (Lady in Grey) is fixed. Therefore a balanced decision has to be taken, which is the desirability of the long term future of the listed building versus a potential for the need for occupants to be evacuated in an extreme flood. In this case the former issue is most important and justifies a decision contrary to the Environment Agency's objection.

### Conclusion

The proposal is considered acceptable in principle as it involves the restoration of a Grade II Listed Building that is currently on the English Heritage Buildings at Risk Register. The proposal involves sympathetic works of repairing and reinstating original features and as such would enhance the character and appearance of both the Listed Building and the Conservation Area. These benefits are of sufficient weight as to override the objection from the Environment Agency on flood risk grounds.

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 premises the subject of the application shall not be occupied until space has been provided within the application site in accordance with application drawing 0101/0005 for the parking of residents, laid out, surfaced and maintained throughout the life of the development free from any impediment to its designated use.  
  
Reason: In the interests of highway safety.
3. No development shall be commenced until a scheme for the flood protection for the lifetime of the development, including any necessary evacuation measures, has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details prior to the first occupation of the development.  
  
Reason: To mitigate against flood risk on site for the lifetime of the development.

Informatives:

The application site is adjacent to a public right of way (Footpath/Bridleway number 12). The route must remain unobstructed on its legal alignment at all times and the safety of the public must not be prejudiced either during or after development. Further advice can be obtained by calling 08456 058058 and asking for the Rights of Way Officer.

**Item**            **1.2**

**Reg. No.**        **9/2011/1005/L**

**Applicant:**

MR KEIRON ARMSTRONG  
C/O ARMSTRONGS MILL  
ILKESTON  
DERBYSHIRE  
DE7 5TT

**Agent:**

IAN MCHUGH  
IMCH PLANNING & DEVELOPMENT  
CONSULTANCY  
DRAYCOTT  
DERBYSHIRE  
DE72 3QP

**Proposal:**        **THE CHANGE OF USE OF FORMER HOTEL AND  
RESTAURANT TO SINGLE DWELLING WITH ANNEXE  
AT THE LADY IN GREY WILNE LANE SHARDLOW  
DERBY**

**Ward:**            **ASTON**

**Valid Date:**     **14/12/2011**

See report 9/2011/1004 above

**Recommendation**

**GRANT** Listed Building Consent subject to the following conditions:

1.     The works to which this consent relates shall be begun before the expiration of three years from the date of this consent.  
  
Reason: To conform with Section 18(1) of the Planning and Listed Buildings and Conservation Area Act 1990.
2.     Prior to the commencement of any joinery works, a schedule of all existing and proposed internal and external joinery shall be made, numbered to relate to the floor plans and elevations. The schedule shall specify the extent of proposed repairs to each item of existing joinery, including replacement door and window furniture, and where necessary shall be cross-referenced to detail drawings of new joinery at a scale not smaller than 1:10, including horizontal and vertical sections where applicable. The schedule shall be submitted to, and agreed in writing by, the conservation officer before the joinery works commence.  
  
Reason: In the interests of the appearance of the building, and the character of the area.
3.     The extent of renewal to the roof structure of the house shall be agreed with the conservation officer when the existing coverings are stripped, and before any existing carpentry is removed.

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

4. Notwithstanding the particulars of the application, revised details of the following shall be submitted for approval in writing by the Local Planning Authority prior to commencement of building operations:

- west elevation doors to family dining, snug and living areas
- door from bedroom three to roof terrace
- external door/window combination frame to kitchenette of proposed granny annexe
- roof of existing vinery building proposed for incorporation into the new garage, showing retention of the existing roof structure and roof covering.

Reason: The submitted details are considered unsatisfactory.

5. Notwithstanding the particulars of the application, the wine bins in the storage area of the granny annexe shall not be removed unless otherwise agreed in writing with the local planning authority.

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

6. Notwithstanding the particulars of the application, the flat roofed section of the living room to the main house shall be underpinned and not rebuilt.

Reason: avoidance of doubt as drawing 1018 states that it is to be rebuilt, while other drawings state that it is to be underpinned.

7. Traditional copings to walls. All new boundary walls shall have a traditional style of shaped clay or stone coping the details, including a sample, of which shall have been previously agreed in writing by the Local Planning Authority.

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

8. A specification for the making good of the east elevation of the house, where the WC extension is to be removed, shall be submitted to, and approved in writing by, the local planning authority before the works of making good are commenced.

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

9. The extent of repointing works shall be agreed in writing by the Local Planning Authority before any such works are commenced.

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

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

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

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

Reason: In the interests of the appearance of the building and the character of the area.
12. All new rainwater goods shall be cast metal (with cast metal fall pipes) and shall be fixed direct to the brickwork on metal brackets. No fascia boards shall be used.

Reason: In the interests of the appearance of the building, and the character of the area.
13. All roofing materials used in the development to which this permission relates shall match those used in the existing building in material, colour, coursing and texture unless otherwise agreed in writing by the Local Planning Authority.

Reason: To safeguard the appearance of the existing building and the locality generally.
14. All facing bricks used in the development to which this permission relates, including boundary walls, shall match those used in the existing building in colour, coursing and texture unless otherwise agreed in writing by the Local Planning Authority.

Reason: To safeguard the appearance of the existing building and the locality generally.
15. A specification for re-rendering shall be submitted to and approved in writing by the Local Planning Authority before any such works are undertaken, including details of how the render is to be finished around door and window reveals and at the bottom. Any such work shall only take place in accordance with the approved specification.

Reason: In the interests of the appearance of the building, and the character of the area.
16. Unless otherwise agreed in writing with the local planning authority, the hallway floor of the main house shall be finished with limestone flags to match the existing remains.

Reason: In the interests of the appearance of the building, and the character of the area.
17. Prior to commencement of development the parking arrangement to the front of the building shall be amended, submitted and approved in writing by the Local Planning Authority.

Reason: Vehicle parking directly in front of the Listed Building would have an adverse impact on the front elevation.

**Item**            1.3

**Reg. No.**        9/2011/1034/FH

**Applicant:**

MR G LANDBOROUGH  
39-41 BROOK STREET  
HARTSHORNE  
SWADLINCOTE

**Agent:**

DARRYN BUTTRILL  
BI DESIGN ARCHITECTURE LTD  
79 HIGH STREET  
REPTON  
DERBYSHIRE  
DE65 6GF

**Proposal:**        **THE ERECTION OF EXTENSIONS AND DETACHED  
GARAGE AT 39-41 BROOK STREET HARTSHORNE  
SWADLINCOTE**

**Ward:**            WOODVILLE

**Valid Date:**     03/01/2012

**Reason for committee determination**

An element of the proposed scheme is not in compliance with a minimum distance as set out in the Council's Supplementary Planning Guidance 'Extending Your Home' but a positive decision is recommended.

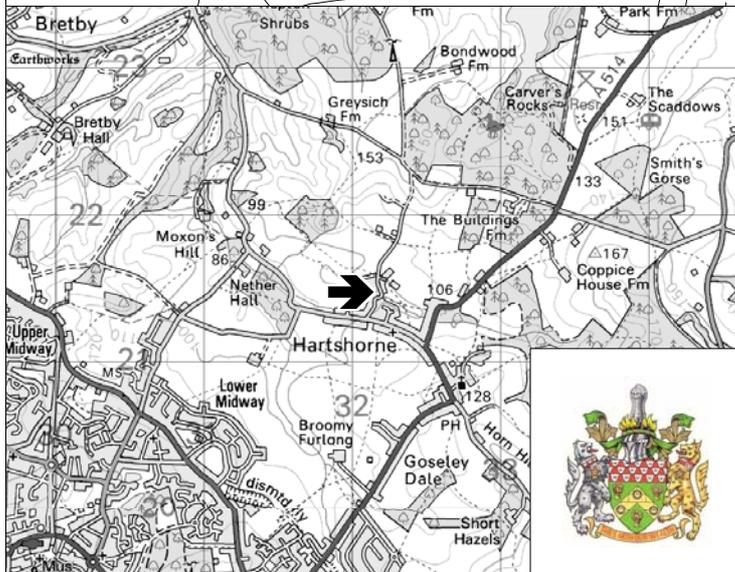
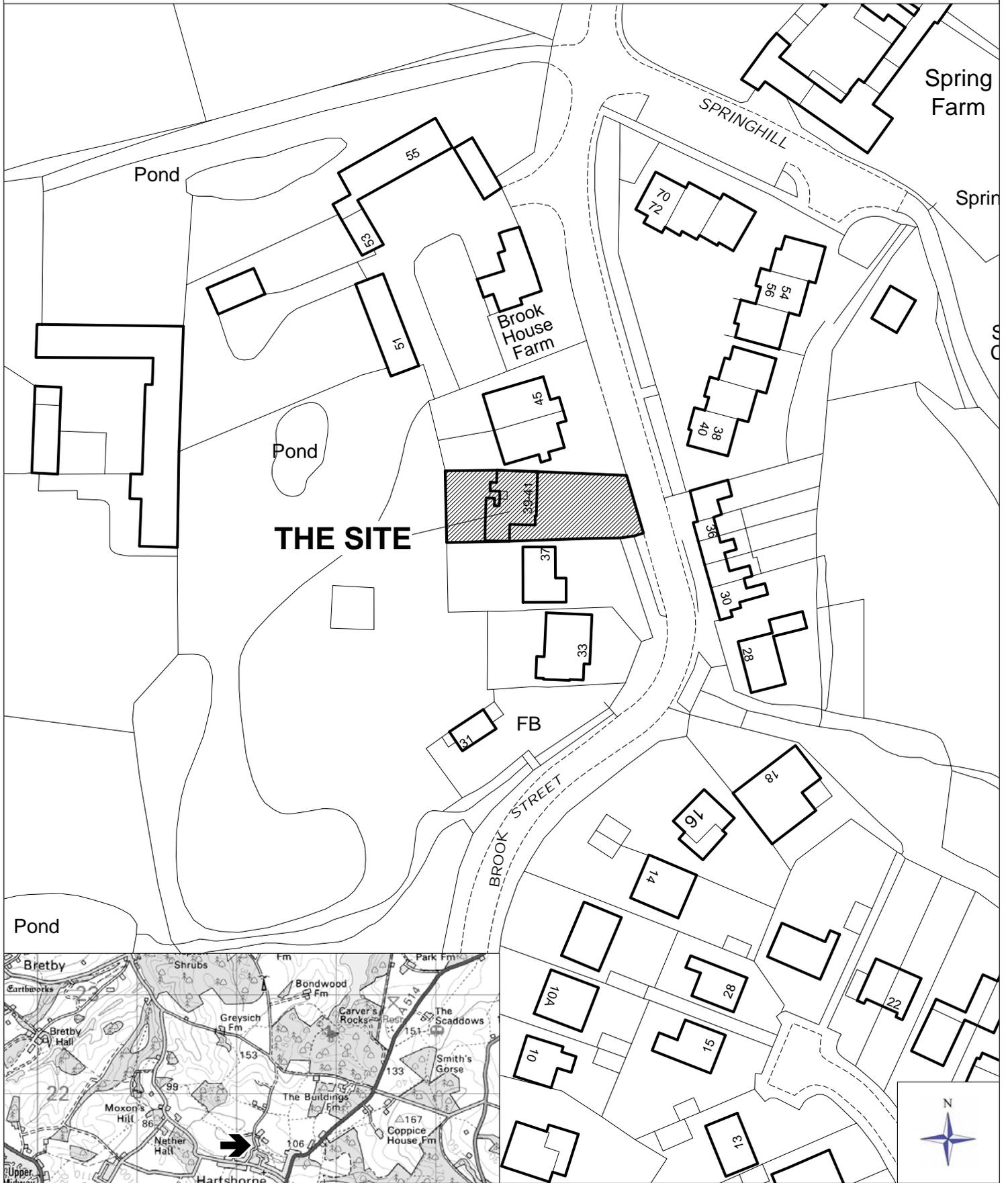
**Site Description**

The application property is a double fronted detached dwelling within Hartshorne village. The dwelling is situated on land that slopes up approximately 2m above the level of the highway to its frontage, similar to both its bounding neighbours. No.43, a semi-detached dormer bungalow, is approximately 1/2m higher than the application site and No.37, a two-storey property of a similar modern design to No.39, is approximately 1/2m lower than the application site. All three properties have open farmland to their rears. Some of the dwellings in this locality also have subordinate structures such as garages on their frontages.

There are varying designs and overall sizes of dwellings along Brook Street. The application property is of a modern design and unusually has a conservatory on its front elevation.

**Proposal**

The application proposes to extend the house by the use of single storey elements with vaulted ceilings, first floor accommodation in roof spaces and standard two storey



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elements that provide ground floor and first floor living accommodation with the roof above.

The application also includes the erection of a garage structure situated forward of the main dwelling that would be built into the site.

### **Applicants' supporting information**

None.

### **Planning History**

None.

### **Responses to Consultations**

None.

### **Responses to Publicity**

A letter received by a neighbouring household outlines the following concerns:

- a. They would like the retention of the wall (a safety feature) that bounds their property and the application property to be an obligation imposed by the planning process.
- b. There is potential overlooking from the several windows facing their property and they request that this be overcome if possible.
- c. The prominence of the resultant property is also noted.

### **Development Plan Policies**

The relevant policies are:

Local Plan: Housing Policy 13.

Supplementary planning Guidance: Extending Your Home.

### **National Guidance**

None.

### **Planning Considerations**

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

- The effect it would have on neighbouring properties.
- The design of the proposed scheme.

### **Planning Assessment**

The rear facing patio doors of No.37 Brook Street are not the sole source of natural light serving the living room, as there is a large bay window to the front elevation of the property. Both glazed units are substantial in size and could be considered as primary aspects if considered individual. However as the patio doors contain a larger amount of

glazing they are marginally considered to be the more important window to which the 45° rule should be applied.

The element of the extension that breaches this rule slopes away from No.37 Brook Street, thus limiting the effect it has upon the neighbour. There is no definitive point where the extension becomes two-storey therefore it is debatable at which point the measurement should be taken. The path of the sun is also such that there would be very limited loss of natural light to the affected neighbouring living room. Notwithstanding the provisions of the SPG, due to the other substantial source of light to the living room of No.37 Brook Street, the path of the sun and the sloping away of the roof on the relevant element of the scheme there would be no material overbearance caused.

With regards to potential overlooking, all main room habitable window openings that would overlook neighbouring properties have been conditioned to be fixed and obscure glazed.

The application proposes substantial alteration to the dwelling. However, given the individual nature of the properties on Brook Street, the resulting design would not appear at significant variance in its context. The proposed garage would be positioned within the current sloping land close to the boundary of the considerably higher frontage land of No.43 Brook Street. This, and the presence of the garage at No.37 would mitigate any adverse effect it would have on the street scene. The design of the garage structure is therefore acceptable.

As the wall noted in the submitted neighbour letter is not crucial to any planning considerations, a condition to retain it would not be appropriate. In any event, this would likely be a consideration under the provisions of the Party Walls Etc Act.

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. All external materials used in the development to which this permission relates shall match those used in the existing building in colour, coursing and texture unless otherwise agreed in writing by the Local Planning Authority.

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

3. The skylights serving the guest bedroom in the south facing elevation shall be permanently fixed and glazed in obscure glass.

Reason: To avoid overlooking of adjoining property in the interest of protecting privacy.

Informatives:

The proposed development lies within an area that has been defined by The Coal Authority as containing potential hazards arising from coal mining. These hazards can include: mine entries (shafts and adits); shallow coal workings; geological fissures; mine gas and previous surface mining sites. Although such hazards are often not readily visible, they can often be present and problems can occur as a result of development taking place, or can occur at some time in the future.

It is recommended that information outlining how the former mining activities affect the proposed development, along with any mitigation measures required, be submitted alongside any subsequent application for Building Regulations approval. Any intrusive activities which disturb or enter any coal seams, coal mine workings or coal mine entries (shafts and adits) requires the prior written permission of The Coal Authority. 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 Coal Authority permission for such activities is trespass, with the potential for court action. Property specific summary information on coal mining can be obtained from The Coal Authority's Property Search Service on 0845 762 6848 or at [www.groundstability.com](http://www.groundstability.com)

**Item**            1.4

**Reg. No.**        9/2012/0073/TP

**Applicant:**

South Derbyshire District Council  
Civic Offices  
Civic Way  
Swadlincote

**Agent:**

Mr Martin Buckley - Tree Officer  
South Derbyshire District Council  
Civic Way  
Civic Offices  
Swadlincote

**Proposal:**        **WORKS TO TREES COVERED BY SOUTH DERBYSHIRE  
DISTRICT COUNCIL TREE PRESERVATION ORDER  
NUMBER 166 AT LAND AT KINGFISHER CLOSE  
MICKLEOVER DERBY**

**Ward:**            **ETWALL**

**Valid Date:**     **12/01/2012**

**Reason for committee determination**

The Council is the applicant; the trees are within a Tree Preservation Order on Council owned land, maintained as public open space.

**Site Description**

This woodland occupies a corner site, within a residential estate, and is well seen from the public realm.

**Proposal**

Various arboricultural work to trees within falling distance of the highway / residential properties. Due to a lack of previous management these trees have become leggy and top heavy with sparse high canopies, as such at risk of 'wind-snap'.

Some of the trees are seen as high risk of failure and as such three are to be removed. Others are to be reduced in height with deadwood removed and generic crown cleaning.

**Applicants' supporting information**

The applicant has submitted a tree assessment report. All of the trees here have been given an individual reference number – these numbers relate to a detailed schedule of proposed work.

**Planning History**

9/2012/0073 - Land at Kingfisher Close, Mickleover, Derby DE3 0UE



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

This Order (TPO166) was confirmed unopposed in March 2000.

### **Responses to Consultations**

None.

### **Development Plan Policies**

Local Plan Environment Policy 9.

### **Planning Considerations**

The main issue central to the determination of this application is whether the work proposed is warranted given the protective designation.

### **Planning Assessment**

This group of trees is a Woodland Preservation Order (TPO166) featuring a mix of species including Lime, Birch and Beech.

The works are deemed essential, part of a long-term management programme. The works are seen not to compromise the overall amenity value of this woodland and importantly will reduce the likelihood of failure in a public environment.

### **Recommendation**

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

1. The works hereby granted consent shall be carried out within two years from the date of this permission.  
Reason: To enable the Local Planning Authority to retain control over the works.
2. The work shall be carried out in accordance with BS3998:2010 - Tree Work.  
Reason: To safeguard the health of the trees.

**Item**            1.5

**Reg. No.**        9/2012/0096/FH

**Applicant:**

Miss Jane Griffiths  
25 IRVINE CLOSE  
STENSON FIELDS  
DERBY

**Agent:**

David Brown  
David Paul Brown Ltd  
5 Maes yr Eglwys  
Llansaint  
Kidwelly

**Proposal:**        **THE ERECTION OF EXTENSIONS AND ALTERATIONS  
AT 25 IRVINE CLOSE STENSON FIELDS DERBY**

**Ward:**            **STENSON**

**Valid Date:**     **07/02/2012**

**Reason for committee determination**

Councillor Ford (Planning Chair) has requested that the Planning Committee determine this application, as a member of his family has an association with the applicant.

**Site Description**

The property is a semi detached two-storey dwelling built in the late 1990s, located in a cul de sac on a large residential estate. It affords both front and rear garden space with some space to the front and side of the house used for off road parking. Houses in the street are of a similar basic form, most featuring a front porch of some description. The site and surrounding land is flat. Front gardens are in the main open with limited planting / fencing separating plots.

**Proposal**

The proposal is in two main parts and includes a two-storey extension to the side and a single storey extension to the whole of the front elevation.

The applicant also proposes to block pave the front garden.

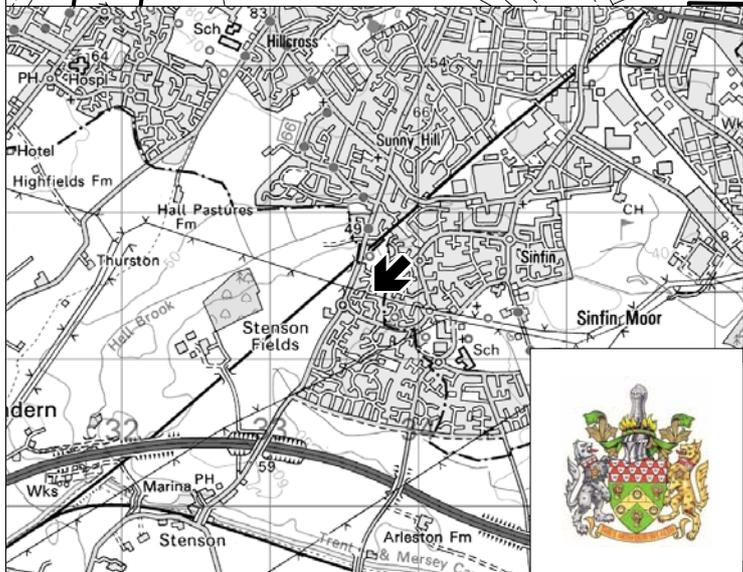
**Applicants' supporting information**

None.

**Planning History**

The property has been extended before with a conservatory to the rear.

9/2012/0096 - 25 Irvine Close, Stenson Fields, Derby DE24 3HS



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## **Responses to Consultations**

No comments have been received.

## **Development Plan Policies**

The relevant policies are: Local Plan Housing Policy 13  
Supplementary Planning Guidance (SPG): Extending your Home.

## **Planning Considerations**

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

- Design / Impact on the streetscene
- Residential Amenity

## **Planning Assessment**

Two storey side extensions have been allowed in this street without undue detriment to its character. The two-storey part here appears subordinate, being narrower than the host, stepped back from the main elevation and also featuring a lower ridgeline.

The front extension is modest in its protrusion – 1.8m deep and single storey in its form. No other property in the street has been extended in this manner before but all feature a variety of forward development in the form of porches so impact on the street scene would be insignificant.

Housing Policy 13 permits extensions that are not detrimental to the amenities of neighbouring properties. By virtue that no neighbour primary windows are overlooked or overbeared upon and light levels are not unduly affected, the proposal is seen to be acceptable in that regard.

## **Recommendation**

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

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

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

2. All external materials used in the development to which this permission relates shall match those used in the existing building in colour, coursing and texture unless otherwise agreed in writing by the Local Planning Authority.

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

3. Prior to the first use of the development hereby permitted, parking facilities shall be provided so as to accommodate two cars within the curtilage of the dwelling. Thereafter, (notwithstanding the provisions of the Town and Country Planning

(General Permitted Development) Order 1995), two parking spaces, each space measuring a minimum of 2.4m x 4.8m, shall be retained for that purpose within the curtilage of the site.

Reason: To ensure that adequate parking provision is available.

**Item**            1.6

**Reg. No.**        9/2012/0126/TP

**Applicant:**

South Derbyshire District Council  
Civic Offices  
Civic Way  
Swadlincote

**Agent:**

Mr Martin P Buckley – Tree Officer  
South Derbyshire District Council  
Civic Offices  
Civic Way  
Swadlincote

**Proposal:**        **WORKS TO TWO ASH TREES COVERED BY SOUTH  
DERBYSHIRE DISTRICT COUNCIL TREE  
PRESERVATION ORDER NUMBER SED1996 AT ST  
WILFREDS CHURCH CHURCH LANE BARROW ON  
TRENT DERBY**

**Ward:**            **ASTON**

**Valid Date:**     **12/01/2012**

**Reason for committee determination**

The Council is the applicant.

**Site Description**

These mature Ash trees are located on the northeastern boundary of St Wilfred's Church, adjacent to No 14 Hall Park. Hall Park is a residential street; the Church is Grade II Listed. The site is flat. The trees as well as being protected (SED1966) also sit within the Barrow Conservation Area.

**Proposal**

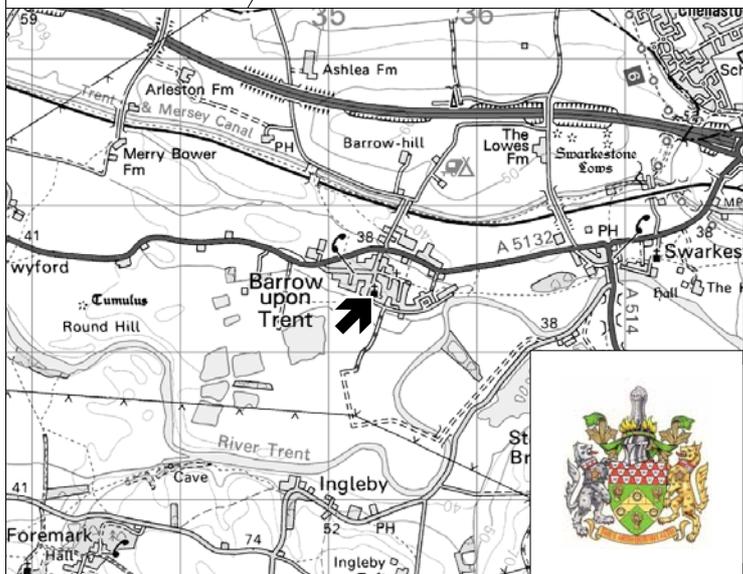
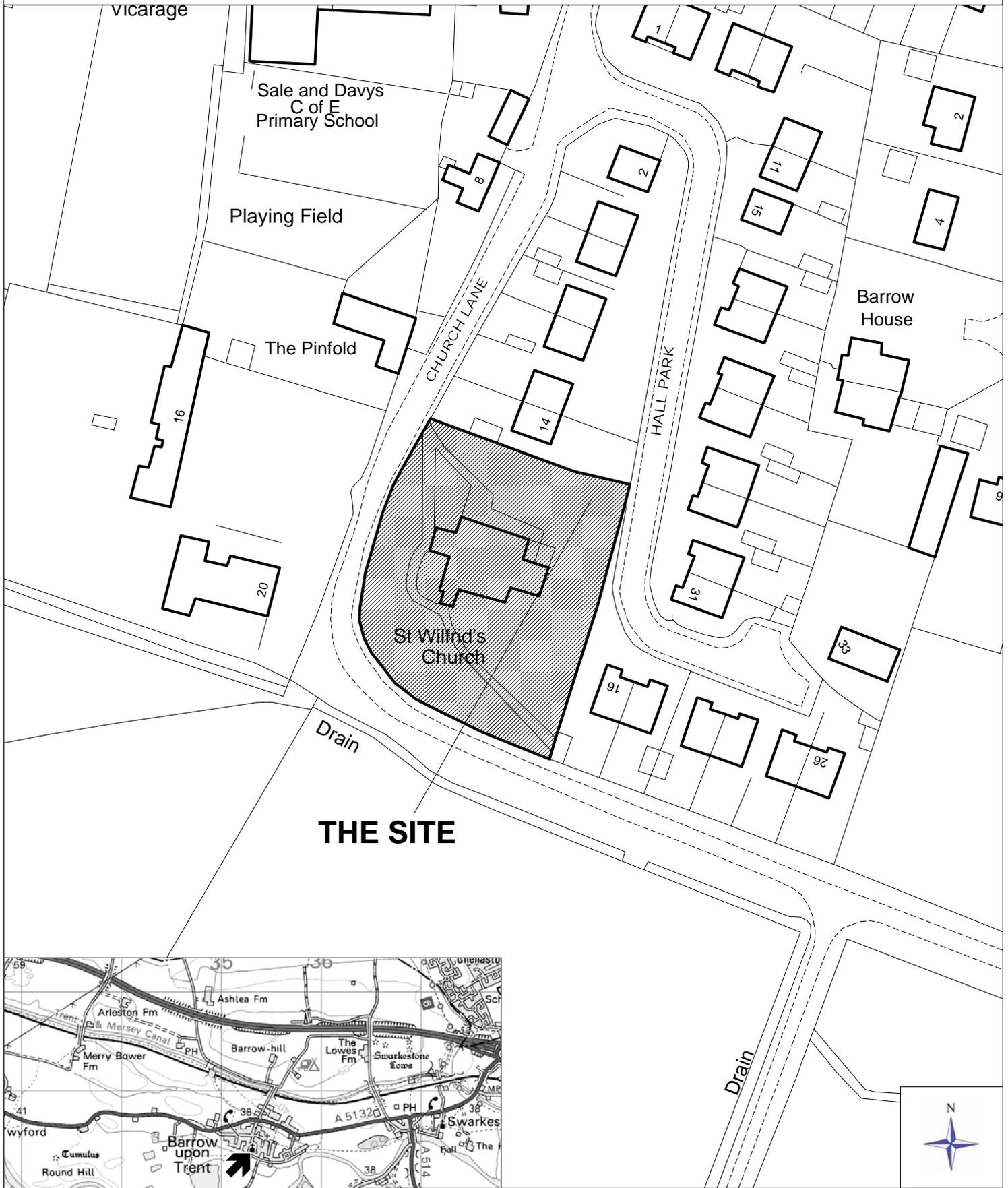
Tree 1 – Crown clean, reduce end weight on the lowest limb growing over the churchyard and remove 2m from the growing tips back to healthy live wood.

Tree 2 – Crown clean, remove hung up branches and all dead wood (in particular those overhanging the adjacent private property and remove 1 limb growing over the churchyard).

**Applicants' supporting information**

The applicant has submitted photographs indicating the extent of the proposed works, in particular regard to limb removal and the removal of secondary growth.

9/2012/0126 - St Wilfrid's Church, Church Lane, Barrow on Trent DE73 7HB



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

## **Planning History**

The trees are part of Tree Preservation Order SED1996

## **Responses to Consultations**

None

## **Responses to Publicity**

None

## **Development Plan Policies**

Local Plan Environment Policies 9 and 12

## **Planning Considerations**

The main issue central to the determination of this application is whether the work proposed is warranted given the protective designation.

## **Planning Assessment**

The works are considered essential to the long-term wellbeing of the trees and to avoid potential of falling limbs and therefore issues of health and safety.

## **Recommendation**

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

1. The work hereby approved shall be carried out within two years of the date of this consent.  
Reason: To enable the Local Planning Authority to retain control over the works.
2. The work shall be carried out in accordance with BS3998:2010 - Tree Work.  
Reason: To safeguard the health of the trees.

**Item**            2.1

**Reg. No.**        9/2011/1006/FX

**Applicant:**

MR KEIRON ARMSTRONG  
C/O ARMSTRONGS MILL  
ILKESTON  
DERBYSHIRE  
DE7 5TT

**Agent:**

IAN MCHUGH  
IMCH PLANNING & DEVELOPMENT  
CONSULTANCY  
DRAYCOTT  
DERBYSHIRE  
DE72 3QP

**Proposal:**        **THE ERECTION OF EIGHT DWELLINGS AT THE LADY  
IN GREY WILNE LANE SHARDLOW DERBY**

**Ward:**            **ASTON**

**Valid Date:**     **27/01/2012**

**Reason for committee determination**

The application is brought before the Committee at the request of Councillor Watson as a local concern has been expressed about a particular issue and there are unusual site circumstances that should be considered by committee.

**Site Description**

The 1,266 square metre site currently forms part of the curtilage of 3 Wilne Lane, known as the Lady in Grey. This is a Grade II Listed Georgian House previously used as a restaurant. The building itself is adjacent to Wilne Lane and the garden area is to the north and west. The application site is the northern part of the garden area that abuts the Trent and Mersey Canal. There are residential properties to the east on Wilne Lane, a public house to the south east over the road and offices to the south. The site lies within Shardlow Wharf Conservation Area.

**Proposal**

Planning permission is sought for 8 dwellings immediately adjacent to the Trent and Mersey Canal boundary to the north west of the Listed Building. The dwellings would be in a terrace form with a contemporary modern design. A garage block to serve the properties is proposed on the eastern boundary with 5 and 7 Wilne Lane and the existing access between the rear of the Listed Building and 5 Wilne Lane would be utilised. 5 car parking spaces are proposed within the garage block and three spaces are proposed in front of Unit 1. Four 2 bedroom properties and four 4 bedroom properties are proposed. Units 5-6 have 3 floors of accommodation.



The design is based on similar canal side development in that a single linear block is proposed. The main elevations of the proposal would face the canal and the location has been chosen in order to minimise the impact on the character and setting of the Listed Building and Conservation Area. The proposed floor level would be 1.2m above ground level and the Units 1-4 and Units 5-8 form two distinct elements in terms of their design. Units 1-4 are two storey, at a height of 6.6m and Units 5-8 would be 9.1m above existing ground level. The raised floor level is required to mitigate flood risk and enables the elevations facing the canal to extend above the existing boundary wall.

A mix of contemporary materials is proposed with timber cladding, zinc cladding on the chimneys, steel frames, timber louvers together with more traditional materials of brickwork and slate roof tiles.

## **Applicants' supporting information**

### Design, Access and Planning Statement

This document sets the context of the site and its surroundings, assesses the relevant planning policy and outlines the principle of development due to its sustainable location. It considers the impact on the Heritage Assets of the Listed Building and Conservation Area and makes the case that the form of the development is similar to existing canal side development. The history of the Listed Building is summarised and the proposed siting ensures that the principal elevations of the Listed Building would remain as open garden areas. The views from the Wilne Land Road have been considered and the southern part of the proposed limited to two storeys to minimise the impact on the character and appearance of the Listed Building. The proposed dwellings have been designed as to comply with the Council's space standards. The timber louvers proposed on the south eastern elevation of Units 5-8 would restrict views from the windows to prevent overlooking of existing properties. The document also outlines the viability link between this application and the application for the change of use to the Listed Building.

The valuation documentation submitted with the application indicates that the proposed works to the Listed Building exceed the value of the building and as such the new build proposal is necessary to make the scheme viable. The profit level would be below normal and is the level of development proposed is thus highly reasonable. [The valuations have been assessed by a Chartered Surveyor within the Council].

### Flood Risk Assessment

The development lies within flood zone 3a. The site is protected by defences currently in place to the 1 in 50 year event, but remains within the 1 in 100 year fluvial flood plain of the River Trent. The site would experience over-topping from flooding events more severe than the 1 in 50 year event. The Environment Agency's records indicate that flooding last occurred near the site in October 2000 by fluvial Trent flow of the main River Trent. At 33.28 AOD the existing defences are over-topped by 510mm. The finished floor levels to the proposed row of terraced houses to be constructed to a level of no less than 33.43 AOD. A safe routine access and exit can only be gained in the event of a lesser severe flooding event by constructing a graded ramp and approach between the entrance to the row of terrace houses and the public highway. It is recommended that the proprietor or tenants sign up for the Environment Agency's Flood Warning service.

## **Planning History**

9/2009/0282 – The felling and pruning of trees, No objection 8/6/09

9/2004/0710 – Listed Building Consent - The installation of a new flue for the kitchen, Granted 13/7/04

9/2003/0177 – Outline Application (all matters except siting and means of access reserved) for the erection of a 40 bedroom bed and breakfast hotel, Refused 11/4/03

## **Responses to Consultations**

The County Highways Authority requires further information in relation to the Lady in Grey and its previous use as a restaurant. The agent is currently providing information and a full consultation response shall be reported verbally at committee.

The Environment Agency have received confirmation that the Sequential Test has been undertaken and passed, confirming that there are no 'reasonably available' alternative sites in lower flood risk areas which meet the need of the development. However the Agency objects to the application on the basis that the site lies within Flood Zone 3a defined by PPS25 as having a high probability of flooding where notwithstanding the mitigation measures proposed, the risk to life and/or property, from tidal inundation would be unacceptable if the development were to be allowed. In particular:

- iii) The proposed development does not have a safe means of access and/or egress in the event of flooding. Consequently, there would be an unacceptable risk to the health and safety of the occupants in a flood event. The FRA demonstrates that in accordance with the DEFRA document Framework and Guidance for Assessing and Managing Flood Risk for New Development FD2320/TR2 there would be a 'Danger for All'.
- iv) The site is currently not defended to the appropriate standard taking into account climate change over the lifetime of the development and no provision is made in the application to improve the existing defences to the required standard. The converted dwelling in particular would remain at significant flood risk.
- v) The site lies within the floodplain and the proposed new dwellings will impede flood flow and/or reduce storage capacity thereby increasing the risk of flooding elsewhere.
- vi) The information does not provide any details of the sustainable drainage principles that will be used for the site. Although soakaways are discussed, there are no plans should soakaways not be feasible and above ground storage be required.

The agent is currently in discussions with the Environment Agency and an update on progress shall be reported verbally at committee.

The Contaminated Land Officer recommends a phased contamination condition.

British Waterways considers the wall adjacent to the canal is an important feature within the Conservation Area, making a significant contribution to the setting and character of the canal corridor. They are concerned that the design does not successfully combine a modern design style with the historic character of the existing wall. By seeking to extend the rebuilt wall vertically, the development creates a very stark edge to the towpath, and one which would be quite overbearing, particularly where the building would be three storeys in height. The proposed porthole windows in the wall are wholly alien to its

original character. The mix of materials is too complex for this waterside location. Therefore, whilst they do not object to the principle of development they consider the design fails to achieve an appropriate balance between new and old and it would neither preserve nor enhance the character of the Conservation Area. The rebuilding the boundary wall and use of the access to the towpath would require prior consent from British Waterways.

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

The Council's Drainage Technician states that following the conclusion and recommendation of the FRA the most appropriate methods of surface water disposal should be submitted to the Council for examination and approval.

Shardlow and Great Wilne Parish Council objects to the application and their comments are summarised as follows:

- The proposed three storey houses would dominate the site in terms of height, form and the relationship with the Listed Building.
- The parking provided is not adequate as the apartments are likely to appeal to working individuals and couples and it therefore not unreasonable to anticipate 16 vehicles would be associated with the development. Garage space is likely to be used for storage rather than vehicle accommodation and as such parking on Wilne Lane would increase.
- The proposal would add a significant load on the inadequate drainage / sewage system.
- The proposed scheme does not comply with the Historic Environment Planning Practice Guide for PPS5 points 79, 80 and 121. Section 82 of this document relates to the condition of the heritage asset and deliberate neglect or damage. The Listed Building has been in the same ownership for 15 years and the very basic levels of maintenance have not been undertaken. Therefore the viability of the scheme should not be considered in relation to the suitability of the scheme.
- The proposed access narrows away from Wilne Lane and is inadequate for the number of dwellings.
- The application would have a dominant and irreversible impact on the setting of the Lady in Grey and its valuable surrounding space.

## **Responses to Publicity**

Thirty letters of objection have been received and reasons are summarised below:

- a. The proposal includes replacing the boundary wall which is a historic feature and should be preserved.
- b. The style of the proposed buildings is totally out of character in this sensitive historic landscape.
- c. The Listed Building has deliberately been allowed to deteriorate until it is now in need of serious attention.
- d. The erection of extra dwellings would detract from the historically important relationships between the large buildings in the immediate area.
- e. The layout and design of the dwellings utilizes a strange mixture of materials which would appear totally incompatible with any other building in the vicinity including the Lady in Grey.
- f. The positioning of the dwellings abutting the garden wall represents a significant impact on the canal towpath.

- g. Loss of privacy to the Lady in Grey and properties on Wilne Lane.
- h. The proposal contravenes the guidance in the SDDC document ' Guidelines to Conservation' that states ... 'the special character of the area is not harmed'... and the new buildings must 'complement established patterns and strengthen local distinctiveness...'
- i. The access is narrow with no provision of visibility splays.
- j. The area of the new development is subject to flooding problems and the mitigation for the new dwellings would be likely to increase flooding to properties on Wilne Lane.
- k. The close proximity of the new buildings to the Lady in Grey would adversely affect the setting of the Listed Building.
- l. The design, appearance and building materials are modern and not in keeping with the character of the area.
- m. The proposed development by reason of its size and height would have an adverse impact on the amenities for the properties immediately adjacent in relation to overlooking, loss of privacy and overbearing impact.
- n. In 2003 outline permission was refused for development on the same site where a three storey modern building was proposed.
- o. The application states that the Lady in Grey has been empty since 2008, however, people are living at the property.
- p. Loss of privacy to bedroom windows and overshadowing at 7 Wilne Lane.
- q. The proposed garages would be adjacent to 7 Wilne Lane's boundary wall and there is concern regarding their height and impact on the wall.
- r. The SDDC document 'Shardlow Wharf' states that important spaces that contribute to the port's character and one such space is the 'private area within the Lady in Grey grounds'. The proposed building would significantly reduce the open area within the grounds.
- s. There is no bin storage area proposed and refuse vehicles would not be able to gain access.
- t. A number of trees have been removed in preparation for this application.
- u. The valuations appear to be low for a Listed Building and as such the profit is greatly underestimated.
- v. Devaluation of properties on Wilne Lane and the Lady in Grey.
- w. The housing would significantly affect the setting of two important Listed Buildings, namely the Lady in Grey and Broughton House and this was a major consideration in the refusal of the hotel application.
- x. The size and elevations of the buildings facing the canal are totally out of character with the area.
- y. Moving the gate and re-building the wall would harm its historic fabric.
- z. The flat roof design of the dwellings and wood cladding is out of character with the area.
- aa. Potential conflict may occur between the future residents and the existing users of the adjacent Trent and Mersey Canal 48 hr boat visitor moorings which would be only the width of the towpath away. Noise from engines and the boat building business opposite may cause conflict.
- bb. The view of the Lady in Grey from the Canal would be lost.
- cc. The existing boat building and repair business is concerned as the existing wall acts as a noise barrier to existing properties and they carry out work from 7am seven days a week and this proposal would be likely to generate noise complaints, and may result in limiting their business and their viability.
- dd. Shardlow does not have many community facilities and new residents would rely on the private car for transport which is not sustainable.

- ee. The proposed garages would overshadow the small gardens of properties on Wilne Lane.
- ff. The threat by the developer that if this proposal is allowed to proceed the Lady in Grey would be restored but otherwise it would not should not be considered by the Planning Authority.

### **Development Plan Policies**

The relevant policies are:

East Midlands Regional Plan: Policies 2, 3, 12, 27, 48

Local Plan: Housing Policies 5 and 11, Environment Policies 12 and 13 and Transport Policy 6.

### **National Guidance**

PPS1, 3, 5 and 25.

### **Planning Considerations**

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

- The principle of development
- The impact on the setting on the Listed Building and Conservation Area
- The impact on residential Amenity
- Highway Issues
- Flood Risk
- Other matters raised by objectors

### **Planning Assessment**

#### The principle of development

The proposed site is within the village confines of Shardlow therefore residential development is in principle acceptable provided it is in keeping with the scale and character of the settlement. The site is located within Shardlow Wharf Conservation Area and is located within the curtilage of a Grade II Listed Building known as the Lady in Grey. Local Plan Environment Policies 12 and 13 seek preservation and enhancement of the character, appearance and setting of both the Conservation Area and the Listed Building. Therefore in establishing the principle detailed analysis of the impact on these is required.

#### The impact on the setting on the Listed Building and Conservation Area

The site is located within a conservation area containing numerous historic buildings. Nevertheless a carefully considered modern design can be employed to good effect in such sensitive locations. A substantial building alongside the canal would be quite typical of the conservation area. There has been a large building (of unknown height) behind the Lady in Grey before, but on a different alignment, one remaining wall of which bounds the application site to the east. While this is irrelevant to consideration of the current application, it serves as a reminder that the juxtaposition of fine houses and large plain utilitarian buildings has always been part of the character of the Shardlow conservation area. Therefore in principle building in a contemporary idiom could be

acceptable provided that suitable materials were chosen, of good, warm colour and a “soft” texture. However the proposal in its current form, chiefly on account of the raised ground level on a sensitive part of the site, large footprint of the four two-storey dwellings, and the solar panels, would fail to protect the setting of the listed building and would not preserve or enhance the character or appearance of the conservation area.

#### The impact on residential Amenity

The nearest residential properties are 5-11 Wilne Lane and all have habitable rooms on their rear elevations. Having assessed the relationships in detail the nearest window to window distances are between 20-22 metres which is well within the space standards set out in the Council’s Housing and Layout Supplementary Guidance. The large windows proposed on the southern elevation would be behind the proposed timber louvers and thus would not cause an overlooking impact. The main aspect of the dwellings are to the north overlooking the canal. Therefore the loss of privacy, overlooking and overbearance on 5-11 Wilne Lane is not considered significant and a refusal on this basis is unlikely to be sustained at appeal.

The proposed garage building would be 5m high to its ridge, however there is an existing 2.7m high boundary wall with properties on Wilne Lane. On this basis, relatively little difference would be experienced by the occupiers when viewed from ground floor windows and gardens. As such a refusal on these grounds would be unsustainable.

#### Highway Issues

The Highways Authority has yet to formally comment on the application as they are seeking information on the previous use of the Lady in Grey as a restaurant. Their comments will be reported verbally at committee.

#### Flood Risk

The Environment Agency Objects to the application for the reasons set out earlier. The building cannot be provided with dry access in the event of flood. In this case flooding would occur when the Shardlow flood defences have been breached. The locality has a well established flood warning and evacuation plan and in practice the occupiers of the new dwellings could benefit from these measures. Furthermore, whilst accepting the principle of avoiding new development in areas at risk of flood, the position of the main heritage asset (Lady in Grey) is fixed. The applicant’s valuation and costings indicate that the host listed building cannot be viably restored without the development. Therefore a balanced decision has to be taken, which is the desirability of securing the long term future of the listed building versus flood risk. In the particular risk circumstances of this site, the former issue is capable of being the most important on balance, and could justify a decision contrary to the Environment Agency’s objection. However because the proposed development would fail to preserve or enhance the character or appearance of the conservation area, and the setting of the listed building, the flood risk issue takes precedence in this case.

#### Other matters raised by objectors

In relation to the noise generated from the boats and the adjacent boat building and repair business the views of the Environmental Health Manager will be reported verbally.

## Conclusion

The proposal is located within the village confines of Shardlow. However the scale and design of the particular proposal would have an adverse impact on the character and setting of the Listed Building known as the Lady in Grey and the Shardlow Wharf Conservation Area. Furthermore there is objection on flood risk grounds, which combine with the aforementioned harm to make the development unacceptable, even though it could assist in providing a viable restoration of the Listed Building.

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

## **Recommendation**

**REFUSE** permission subject for the following reasons:

1. The site lies within Flood Zone 3a defined by PPS25 as having a high probability of flooding where notwithstanding the mitigation measures proposed, and in the absence of an acceptable scheme to make viable the restoration of the adjacent listed building, the risk to life and/or property, from tidal inundation would be unacceptable if the development were to be allowed. In particular:-
  - i) The proposed development does not have a safe means of access and/or egress in the event of flooding. Consequently, there would be an unacceptable risk to the health and safety of the occupants in a flood event. The FRA demonstrates that in accordance with the DEFRA document Framework and Guidance for Assessing and Managing Flood Risk for New Development FD2320/TR2 there would be a 'Danger for All'.
  - ii) The site is currently not defended to the appropriate standard taking into account climate change over the lifetime of the development and no provision is made in the application to improve the existing defences to the required standard. The converted dwelling in particular would remain at significant flood risk.
  - iii) The site lies within the floodplain and the proposed new dwellings will impede flood flow and/or reduce storage capacity thereby increasing the risk of flooding elsewhere.
  - iv) The information does not provide any details of the sustainable drainage principles that will be used for the site. Although soakaways are discussed, there are no plans should soakaways not be feasible and above ground storage be required.
2. Whilst a building in the contemporary idiom could be appropriate to this location, the scale height and form of the building is such that it would appear visually over dominant in its context adjacent to the Grade II listed Lady in Grey, such that it would not only be detrimental to the setting of the listed building but also to the character and appearance of the Shardlow Wharf Conservation Area.

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

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

<b>Reference</b>	<b>Place</b>	<b>Ward</b>	<b>Result</b>	<b>Cttee/Delegated</b>
9/2011/0425	Rosliston	Linton	Dismissed	Delegated
9/2011/0478	Walton	Seales	Dismissed	Delegated
9/2011/0735	Netherseal	Seales	Dismissed	Committee
9/2011/0768	Aston	Aston	Dismissed	Delegated



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# Appeal Decision

Site visit made on 20 December 2011

**by Jeremy Eagles DipTP DMS MRTPI**

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

**Decision date: 3 January 2012**

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**Appeal Ref: APP/F1040/D/11/2164141**

**16 Main Street, Rosliston, Swadlincote, Derbyshire DE12 8JW**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr and Mrs C Johnson against the decision of South Derbyshire District Council.
  - The application Ref 9/2011/0425/FH, dated 6 July 2011, was refused by notice dated 19 August 2011.
  - The development proposed is the erection of detached garage to front drive/garden area.
- 

## Decision

1. The appeal is dismissed.

## Main Issue

2. The main issue in this case is the effect of the proposed development on the character and appearance of the appeal site and its surroundings.

## Reasons

3. The appeal site comprises the front garden and sloping parking area of a detached house facing a busy classified road towards the centre of Rosliston. The existing integral single garage would be converted to additional living accommodation and a pitched roof double garage would be sited to one side of the frontage, close to and at the same level as the highway. Saved Policy H13 of the *South Derbyshire Local Plan* requires that domestic development should be in keeping with the scale and character of the site and its surroundings.
4. The proposed garage would take up almost half of the site's frontage and although it would be set at a lower level than the house its blank side wall and roof would obscure a significant part of the front elevation of the property and much of the remaining planted area. It would be located close to the highway boundary with little opportunity for any landscaping which might otherwise soften its appearance. The adjoining bus shelter is a lightweight structure which would do little to screen the proposal. The proposal would represent a substantial obtrusive built feature in the street scene which is characterised, on this side of the road, by residential properties with generally open landscaped gardens and would be out of keeping with the overall appearance of the area.
5. I sympathise with the appellants' desire to provide accommodation for a member of their family but their personal circumstances are likely to change with time whilst the development proposed would be permanent. I saw the other cases in the village referred to by the appellants. 47 Main Street has a

much wider plot and unlike the appeal proposal, the garage does not obscure the face of the dwelling. 104 Main Street is a traditional outbuilding and is too old to be a relevant precedent for modern development. The garage at 14 Catton Lane is set well back off the road in a spacious landscaped garden where it has less visual impact. 11 Vicarage Walk is located in one corner of the head of a secluded cul-de-sac and the garage is not a prominent feature in the street scene.

6. For the above reasons and having regard to all other matters raised, including the views of the neighbouring occupier, I conclude that the proposed development would cause significant harm to the character and appearance of the appeal site and its surroundings in conflict with relevant development plan policy.

*Jeremy Eagles*

INSPECTOR



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# Appeal Decision

Site visit made on 20 December 2011

**by Jeremy Eagles DipTP DMS MRTPI**

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

**Decision date: 3 January 2012**

---

**Appeal Ref: APP/F1040/D/11/2164299**

**The Hollies, 16A Station Lane, Walton-on-Trent, Swadlincote, Derbyshire DE12 8NA**

- 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 C Beebee against the decision of South Derbyshire District Council.
  - The application Ref 9/2011/0478/FH, dated 18 June 2011, was refused by notice dated 12 August 2011.
  - The development proposed is a drop kerb to facilitate vehicular access.
- 

## Decision

1. The appeal is dismissed.

## Main Issue

2. The main issue in this case is the effect of the proposed development on highway safety.

## Reasons

3. The appeal site comprises a detached dwelling facing Station Lane close to the traffic-light controlled, single lane, bailey bridge across the River Trent which links the village to the A38 trunk road. The existing means of vehicular access to the double garage and parking area to the rear of the site is by means of a shared private drive which joins Station Lane to the east, on the outside of a bend in the road, affording reasonable visibility. Saved Policy TP6 of the *South Derbyshire Local Plan* states that planning permission will not be granted for development which interferes with the free and safe flow of traffic.
4. The proposed access would be located at the front corner of the site closest to the traffic lights and adjoining the boundary with the neighbouring dwelling. As a result of the height and proximity of the neighbouring boundary hedge, there would be very restricted visibility for drivers emerging from the proposed access in the critical right-hand direction. Although there is a speed limit for vehicles passing over the bridge cars do tend to accelerate down the slope towards the proposed access point. No information on vehicle speeds or appropriate access visibility standards has been submitted but it is clear that the available visibility for drivers emerging onto this busy classified road would be inadequate. I agree with the Highway Authority that this would be contrary to the best interest of highway safety.

5. The Council is concerned that vehicles would reverse into or out of the proposed access and would manoeuvre in the highway in order to do this whilst the appellant states his intention to alter the garden to allow space for vehicles to turn within the site. No details of any such turning arrangements or confirmation as to whether there is sufficient room for vehicles to pass through the narrow gap between the building and the boundary have been submitted and it is not clear that vehicles would, as a matter of course, enter and leave the access in a forward gear. There is a significant possibility that cars will manoeuvre in the highway close to the traffic lights conflicting with traffic using Station Lane at this point.
6. I note that the Walton-on-Trent bypass is currently under construction and that this will allow Station Lane to be closed to through traffic. However, I have been given no details of when this might happen and I must consider the appeal proposal in the light of current circumstances. I note that there are existing accesses closer to the traffic lights than the proposal but I have been given no details of whether these were created after the lights were installed or what standards of visibility are available. These accesses do not provide a significant precedent for this proposal. I appreciate the appellant's desire to improve security to the rear of his property but it has not been demonstrated that this can only be done by the creation of the new access. These matters are insufficient to outweigh the harm I have already identified.
7. For the above reasons and having regard to all other matters raised, I conclude that the proposed development would cause significant harm to the interests of highway safety in conflict with relevant development plan policy.

*Jeremy Eagles*

INSPECTOR



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# Appeal Decision

Site visit made on 3 January 2012

**by Gary Deane BSc(Hons) DipTP MRTPI**

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

**Decision date: 10 January 2012**

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## **Appeal Ref: APP/F1040/D/11/2164764**

### **The Dairy, Hall Farm, Main Street, Netherseal, Derbyshire DE12 8BZ**

- 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 David Savory against the decision of South Derbyshire District Council.
  - The application Ref 9/2011/0735/FH, dated 31 August 2011, was refused by notice dated 1 November 2011.
  - The development proposed is the installation of solar panels.
- 

### **Decision**

1. The appeal is dismissed.

### **Main issue**

2. The main issue is the effect of the proposed development on the character and appearance of the Netherseal Conservation Area.

### **Reasons**

3. The appeal building, The Dairy, is an attractive, single storey building that forms part of a group of converted barns at Hall Farm, which is located in the Netherseal Conservation Area (CA). Although the appellant has advised that parts of The Dairy are later additions, the style, built form and appearance of the appeal building are in keeping with the traditional rural character of the group to which it belongs. The CA Map identifies The Dairy, and the wider grouping, as buildings that contribute positively to the special architectural and historic character of the area. I agree with that assessment.
4. The main parties have not drawn my attention to any current development plan policies regarding the impact of climate change. In this respect, the South Derbyshire Local Plan (LP) appears outdated by more recent national policy guidance<sup>1</sup>, which I have taken into account. As these documents make clear, the government strongly encourages the take-up of small-scale renewable energy generation projects as an essential element of the drive to cut carbon dioxide emissions in the bid to manage climate change. Buildings in conservation areas are not excluded from such proposals provided that the character or appearance of such areas is preserved or enhanced.

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<sup>1</sup> These include Planning Policy Statement (PPS) 1, *Delivering Sustainable Development*, PPS1 Supplement, *Planning and Climate Change*, PPS22, *Renewable Energy*, its Companion Guide, *Planning for Renewable Energy*, and PPS5, *Planning for the Historic Environment*.

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5. The proposed panels would be installed on the southwest-facing roof slope of The Dairy. They would lie just below the ridge in 3 rows, each of 6 panels and would cover a significant portion of this roof slope. Each panel would be dark in colour, set within a dark coloured frame, and positioned to sit on top of the slates. The proposed panels would be clearly seen from a public footpath and bridleway, which run close to the site. From these public vantage points, the proposed panels would be conspicuous given their elevated position on the roof slope and their texture and colour, which would contrast with the dark clay tiles. This would be pronounced over time given the effects of weathering of the roof tiles. Notwithstanding their close fit to the roof slope and low reflective nature, the proposed panels would stand proud of the roof plane and be a visually dominant feature in the appearance of the appeal building. In my assessment, the proposed panels would be a discordant element in and detract from the appearance of the building and diminish its positive contribution to the CA.
6. PPS5 explains that where conflict between climate change objectives and the conservation of heritage assets is unavoidable, the public benefit of mitigating the effects of climate change should be weighed against any harm to the significance of heritage assets. In my view, the harm that I have identified to the CA outweighs the considerable benefits of renewable energy generation, even in areas such as Netherseal where energy costs are relatively high due to the absence of mains gas and the consequent reliance on oil and electricity.
7. Against that background, and taking all of these points into account, I conclude that the proposal would fail to preserve or enhance the character and appearance of the CA. Accordingly, it would conflict with LP Environment Policy 12 and PPS5, which broadly seek to protect the quality of the historic environment.
8. In reaching this conclusion, I note that the appellant has considered and ruled out other potential locations for the solar panels as unsuitable or non-viable notwithstanding the Council's view that some of these alternatives may be considered more favourably than the proposal. I also acknowledge that the installation of solar panels would normally be considered to be permitted development, even in conservation areas. However, permitted development rights have been removed at this property in recognition that certain types of development may harm the character and appearance of the buildings. Consequently, I am unable to attach significant weight to this matter in support of the appellant's case. The Council also raises concern that the proposal, if allowed, may set an undesirable precedent for the installation of solar panels on other nearby buildings or elsewhere in the CA. However, such proposals would need to be considered on their individual merits, which I have done in this case.
9. I have had regard to all other matters raised. However, these matters are not sufficient to outweigh the harm that I have identified. Therefore, for the reasons given above, I conclude that the appeal should be dismissed.

*Gary Deane*

INSPECTOR



# Appeal Decision

Site visit made on: 8 February 2012

By: **Jim Unwin** BSCFor MICFor FArborA CEnv.

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

Decision date: 5 March 2012

Appeal Ref:

**APP / TPO / F1040 / 2241**

At:

**No.8 Holly Court, Aston-on-Trent, Near Derby, DE72 2DL.**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent to undertake work to a tree protected by a Tree Preservation Order.
- The appeal is made by Mrs Carol Jean Arme, against the decision of South Derbyshire District Council.
- The application Ref: 9/2011/0768/TP, dated 1 August 2011, was refused by notice dated 4 November 2011.
- The work proposed and appealed is refusal of consent for felling one beech tree, T80 of the TPO.
- The relevant Tree Preservation Order (TPO) is the *South Derbyshire District Council (Land at Aston Hall, Aston-on-Trent) No.131 Tree Preservation Order*, confirmed on 15 August 1996.

## Decision

1. I dismiss the appeal to fell the beech tree, T80 of the TPO, located in the rear garden of No.8 Holly Court.

## Main Issues

2. I consider the main issues in this appeal are:
  - the impact the proposal would have on the appearance and character of the locality, and
  - whether the reasons given for felling the beech are sufficient to justify that course of action.

## Reasons

- ***The impact the proposal would have on the appearance and character of the locality.***
3. Holly Court is a short cul-de-sac off Willow Park Road which is the main access into an area of recent residential development on an old hospital site on the southern side of the Village and south of the large grounds of Aston Hall. This merges with Yates Avenue, an older residential area to the west.
  4. Holly Court comprises at least fifteen detached dwellings set in a compact rectangular area. Most are single-storey, but two closest to Willow Park Way are two-storey. To the east is a wide asphalt track walked by the public, and

east of this is parkland, used for access and parking for both a bowling club and a fishing lake further to the east.

5. No. 8 is located in the eastern corner of Holly Court, in a medium-sized rectangular plot about 25m north-west to south-east, by about 30m south-west to north-east. The single-storey house is set towards the western (front) corner with a detached garage to its south, to leave an L-shaped rear garden north east of the house, from 10m to over 13m in depth.
6. The southern boundary of Aston-on-Trent Conservation Area follows the northern boundary of Holly Court, then runs north east along the edge of the track.

#### *Local tree cover*

7. About 125m south west from the appeal tree is a long belt of mature trees running behind properties on the southern side of Willow Park Way and just into Yates Avenue to the west. Several trees of varied ages stand in parkland east of the appeal tree. For instance two veteran limes stand about 30m and 70m to its east, and several early-mature (three-quarters to fully grown) trees including two blue cedars, a lime and an oak, stand about 60m south of the appeal tree.
8. The southern tip of Aston Hall grounds immediately north of No.8 contains a large group of trees, including many mature yews, a veteran lime and a younger beech. About 90m west-north-west from the appeal tree are several mature oaks on the rear boundary of Holly Court. Closer to No.8, but part of the same landscape planting, is the appeal tree; from which a line of yews, topped into a large hedge about 7m tall, runs south west next to the track, to a group of yews and one sweet chestnut in the angle of the junction between track and Willow Park Way.

#### *Amenity value of the appeal tree*

9. The appeal beech, described by Peter Wood in his report of November 2011 as a copper beech, appears to be a green beech (*Fagus sylvatica*) in photos submitted to the appeal. It is one of the larger local trees, and all trees nearby (mostly yews) are much smaller.
10. I measured the appeal tree to be at least 18m tall, with a deep and broad canopy. This extends 6m north east to the boundary fence, 10.5m south east over the track, 9.6m south west: except for one low limb extending 13.5m south west, and 10.5m north west across No.8's rear garden.
11. At the site visit I was able to see the appeal tree clearly from the track passing under it, from the parkland to its east used by the bowls club and anglers, and from the continuation of Willow Park Way towards houses at Mulberry Way. The beech is also plainly seen over low houses in a view north east off Willow Park Way into Holly Court.
12. Although just outside Aston-on-Trent's Conservation Area, the appeal tree is clearly part of the planned landscape planting around Aston Hall. In this respect I cannot agree with Peter Wood that other trees such as the blue

cedars to its south east are beginning to take over the beech tree's landscape role, because there are no other large trees anywhere near the beech.

*Impact of tree removal on the local landscape*

13. Felling the appeal beech would erode the landscape value of old parkland south of Aston Hall, which is already becoming fragmented by tree decline and residential development. I consider strong justification would be required to remove the appeal tree.

- ***Whether the reasons given for felling the beech are sufficient to justify that course of action.***

*Condition of tree*

14. Mr Wood considers the appeal beech is over-mature, which suggests the tree is in decline. I would agree the beech is in its later stages of life, but would not agree it is in terminal decline. Trees in obvious terminal decline usually exhibit clear symptoms such as significant dieback, or obvious stem or limb defects including external fruiting bodies of known decay fungi.
15. The beech does have a narrow main fork, with included bark, which is weaker than a ideal 'U' shaped union. However, the main stems above are reasonably well balanced. I do not consider this main fork a significant weak point.
16. Older trees often exhibit some spiral grain. I did not note any particularly unusual tension spiralling in the trunk of the beech, which would indicate weakness. There were no other obvious signs of significant structural defects near the base of the tree.
17. The canopy is healthy with no noticeable dieback, but with short annual shoot growth, which is typical of an older tree. Some of the beech's limbs are long, but the limbs have a reasonable amount of inner shoots and smaller inner branches. A few limbs could be described as 'lion's tails', but that is not typical of all the crown.
18. The limb on the southern side of the tree which failed recently over the track and another long limb growing south west parallel with the track may have been over-long. Observation of the failed limb reveals nearby defects such as lesions in the bark or an incipient crack, and an old pruning wound or where a smaller branch died back, either or both creating a stress point. Therefore, that section of limb had some pre-existing symptoms of stress, which might have been identified as needing management if subjected to expert ground-level observation.
19. Mr Wood considers the beech at 120 years old (his estimate or knowledge) has reached the end of its safe useful life. This may be an under-estimate of safe useful life. For instance, the well-respected *Amenity Valuation of Trees & Woodland* by Rodney Helliwell published and updated regularly by the Arboricultural Association lists safe useful life expectancy under garden and parkland conditions of 150-200 years for beech. Whilst every assessment of a tree's condition must relate to the individual tree's location and condition, this does suggest the appeal tree at 120 years of age may not have reached the

end of its safe life; and may be suitable for retention with some lesser works than complete removal.

20. I note here the local authority's suggestion that a more detailed assessment of the tree's defects (mainly over-long limbs) could be addressed by other remedial work, as an alternative to felling. Please also see paragraph 23.

*Location of tree*

21. The beech overhangs the track walked and driven along regularly. It is only 8.6m north east from the rear corner of No.8's house, containing the master bedroom. Therefore, I can understand the appellant's concern particularly in strong winds, either for her own safety, and safety of persons using the track. This clearly has some negative impact on the 'liveability' of the house and its rear garden.
22. Mr Wood refers to the *BS5837:2005 Trees in Relation to Construction-Recommendations* Root Protection Area zone of 12.48m radius. That is intended to be the area retained around a tree to avoid damage to its roots or rooting environment (paragraph 5.2.1). No.8 was built around 2000, and at the site visit there was no obvious symptoms of root damage or rootzone loss. Mr Wood notes further guidance from BS5837 on positioning development near trees, to avoid over-bearing. This is very relevant to new build, but not necessarily to the numerous cases of trees close to buildings. Here, the tree and No.8 are already positioned as they are, so I can place only slight weight on the relevance of BS5837's pre-development guidance.
23. However, referring back to crown structure, the tree does have inner branches, so there is an option for pruning. I agree with Mr Wood and with Melbourne Tree Services in their September 2011 report that beech does not respond to pruning with new shoots from adventitious buds nearly as well as some other species. However, pruning back to a smaller side branch can still leave viable growth points on a beech tree such as the appeal tree. Therefore, in contrast to Mr Wood or Melbourne Tree Services I consider some lesser work would be viable to maintain the beech in better harmony with its location.

*Third-party representations*

24. I note Aston-on-Trent Parish Council's objection to felling, and similar objection by Mr David Martin. Both note the tree's good health. Although both appear to be lay observers rather than tree experts, I agree with their comments.

**Conclusions**

25. I consider the appeal beech tree is healthy, in late-maturity, but not in terminal decline. It is part of planned landscape planting around Aston Hall, and provides high public amenity value to its locality, which is now residential and recreational.
26. The beech does have some defects, and a recent limb failure has increased levels of concern to its owner. However, lesser work to the tree should be considered before felling.

27. For these reasons I dismiss the appeal to fell the beech T80, standing in the rear garden of No.8 Holly Court, Aston on-Trent.

*Jim Unwin* **Arboricultural Inspector.**