

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).

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.

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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 No. 1.1

Ref. No. [DMPA/2019/1143](#)

Valid date: 22/10/2019

Applicant: Providence Land Ltd

Agent: Dr Wickham

Proposal: Outline application (matters of access to be considered now with matters of layout, scale, appearance and landscaping reserved for later consideration) for the residential development of up to 57 dwellings with associated landscaping, parking and sustainable drainage on Land at SK2531 3702, Lucas Lane, Hilton, Derby

Ward: Hilton

Reason for committee determination

This item is presented to Committee at the request of Councillor Billings on the basis of local concern. In addition, in excess of 4 letters of objection have been received against the application.

Site Description

The Site is situated at the northern end of Lucas Lane, it is 2.0 hectares in area and is relatively flat. It comprises three fields, a group of agricultural buildings and small areas of residential curtilages. The main natural features comprise the perimeter and dividing hedgerows. To either end of the hedgerow bounding Lucas Lane, there are two substantial oak trees. The site is visually enclosed by the intersection to the A50 to the north and dwellings to the west and south. Currently, vehicular access into the site is via Lucas Lane leading to a private track serving the fields and farm buildings. Alongside this track is a public right of way, which continues further north. Properties along Lucas Lane, within the vicinity of the site are generally detached and set in large plots, whereas the dwellings on Normandy Road, to the south and Pegasus Way, to the west form part of relatively modern residential developments. Further east of the site is agricultural land and further north is the A1352 and a roundabout connecting to the A50. The highway infrastructure is however separated from the site by a woodland buffer. Pedestrian access to the centre of Hilton is along Derby Road or Lucas Lane.

The proposal

This is an outline application for up to 57 dwellings and associated infrastructure. All matters have been reserved for later consideration, aside from access. Two access points are proposed. The main access would be situated roughly mid-way along the sites eastern most boundary, with Lucas Lane. The secondary access would re-use (and upgrade) the existing farm access, situated further north along Lucas Lane. Illustrative layout details have been provided. These show an area of open space, incorporating SUDS features adjacent to the boundary with Lucas Lane. The layout is structured on the principle of perimeter blocks; meaning that the dwellings would address the street to maximise surveillance, and the orientation of buildings have been position so as to provide a clear demarcation between the private and public realm. To mitigate noise from the A50, a perimeter block of dwellings to the north of the site, in a crescent formation are shown, which would face towards the woodland buffer. The illustrative layout also provides for the necessary mix of dwellings sizes, including bungalows, along with the required parking provision and circulation space at an appropriate density, of approximately 30 dwellings per hectare.

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Applicant's supporting information

A Planning and Sustainability Statement provides an overview of the site, its natural characteristics and existing access. Accessibility information is then detailed both in terms of the sites proximity to local service and facilities and to sustainable transport measures within the local area (bus routes, foot/cycleway). An appraisal of technical matters (topography, ecology, trees, landscape character, flood risk and noise) is then undertaken, followed by a policy review. Key points within the NPPF are discussed, including the presumption in favour of sustainable development and housing delivery. In regards to housing delivery, it is specifically identified that Local Planning Authorities (LPAs) must make every effort to meet their housing need and should seek to significantly 'boost' the supply. In terms of local policy it is identified that the principle of housing within settlement boundaries is accepted by Policy SDT1 and that the Core Strategy Topic Paper of July 2014 identified Hilton to be the District's second largest small town/village. A sustainability appraisal is then included. As part of this it is referenced that 30% affordable housing would be provided, along with properties sized to reflect local demand. The Flood Risk Assessment and Drainage Strategy is then referenced, stating how the proposal is able to meet the challenges of climate change in relation to future flood risk. A section summarising planning obligations and local financial considerations is then provided, followed by conclusions. The report concludes that the development is within a suitable location, where housing development should be accepted and would fulfil the economic, social and environmental intentions of sustainable development as a result of the following:

- The development will make a significant contribution to the Council's housing land supply;
- It will provide a range and mix of house types and tenures;
- It is in an accessible location in relation to Hilton but also bus services to nearby towns;
- It will provide housing in ways that will not harm the local landscape, is sensitive to its location and respond positively to the distinctive character of the area;
- It has a low probability of flooding and can be developed without increasing flood risk elsewhere;
- It can provide appropriate amounts of Green Infrastructure that will result in public open space, sustainable drainage and improvements in biodiversity;
- The development will qualify for a New Homes Bonus over a six year period which can be used to benefit the local community.
- The site is contained and will not result in any harmful visual impacts.

A Design and Access Statement describes the site and its context. A character appraisal of the nearby residential areas is provided, supplemented by a photomontage identifying specific architectural features. Design objectives, in accordance with the Design SPD are then listed; it is stated that the development will reflect and respect the character of Lucas Lane and the nearby countryside; will integrate within and enhance the sites setting; and will be designed to mitigate noise impacts from the A50. An evolution of the design is then provided. Sections are subsequently included on: 'Amount and Layout', identifying that the proposal will be for 57 dwellings at 30dph; 'Scale', identifying that this will be reflective of surrounding development, 'Appearance', which explains that the development will draw on local character and will utilise high quality materials; 'Landscaping', which identifies that a substantial area of open space will be provided to the sites frontage, that the woodland buffer adjacent to the A50 boundary will be retained and that as far as practical, existing trees and hedgerows will be incorporated; and 'Crime Prevention', which explains that the orientation of properties will ensure natural surveillance. Overall, the report concludes that an acceptable layout and access can be achieved, for vehicles, cyclists and pedestrians and that connectivity both within and surrounding the site can be improved. It is finally stated that the proposal will deliver a high quality policy compliant development that will secure good design and promote healthy communities.

A Preliminary Ecological Appraisal (PEA) and Ecological Impact Assessment identifies describe and assess the value of important ecological receptors, identifies potential ecological impacts, effects, mitigation and compensation measures and provides an assessment of the significance of any residual effects. The report also sets out the requirements for post-construction monitoring and identifies any associated legal and policy implications. On the basis of the evidence gathered, the

site's habitats are not considered to be intrinsically of high ecological importance. It is however acknowledged that the development will result in a loss of grassland and hedgerows, but that impacts are not anticipated to be significant beyond the site level. Mitigation and compensation measures are identified to reduce or avoid effects on nesting birds, toads and great crested newts.

A Bat Survey seeks to identify the presence or likely absence of bat roosts and to make recommendations for any further survey work. The Building Assessments identified building B1 as having very low bat roost potential, B3 as moderate and B8 as low. To best practice standards the report advises that the low potential buildings should be subject to one dusk or pre-dawn survey and the moderate building should be subject to two surveys in the form of a single dusk and separate pre-dawn survey. However, in the context of the cluster of buildings and the local habitats, the report considered that three surveys (two separate dusk and a single pre-dawn) would be robust and appropriate. Each of these buildings (B1, B2, B3, B8) were included in each survey. Three surveyors were used on the dusk surveys and two for the pre-dawn survey. No bat roosts were recorded within the Site. During the nocturnal surveys, common pipistrelle brown long-eared bat and noctule were recorded over the Site. On this basis no mitigation is recommended.

A Breeding Bird Survey identified 37 species of bird during the course of the survey. Of these species, 24 were confirmed, probable or possible breeders within the application site. There were no specially protected species recorded throughout the course of the surveys. Of the birds of conservation interest, confirmed, probable and possible breeders were dunnoek, house sparrow, song thrush, linnet and bullfinch.

The Reptile Survey notes that surveys were carried out between 12th July 2018 and 17th September 2018. The surveys concluded that there were no constraints on the site with regard to reptiles, but that the original ecology report should be referred to for advice on other flora and fauna. A great crested newt was however recorded at the site, but it is stated that this is further considered within the separate Ecological Impact Assessment.

A Tree Survey categorises the existing trees and hedgerows on the site according to their condition. A future management plan is also provided for each specimen/group of vegetation, along with measures to secure their protection throughout the course of the development. The report identifies that the vast majority of vegetation on the site would be retained and maintained/protected. This is with the exception of a small portion of vegetation which has been categorised as a 'C' or 'U' classification and so is of very poor quality.

A Transport Statement includes chapters on the following: Policy, The Existing Situation, The Proposed Development, Trip Generation and An Assessment of Traffic Impacts. This explains that the location of the proposed development is consistent with national, regional and local policy aspirations. That there are a range of jobs, schools, shops, community facilities and amenities, which are accessible within reasonable walking and cycling distance of the site, reducing the need to travel by private car and that the development would also be well positioned relative to a wider range of employment, commercial, retail and recreational facilities located in Hilton. It is identified that the development is proposed to be served by two new vehicular accesses onto Lucas Lane and that pedestrian access is also promoted from these locations, where new footways will provide pedestrian facilities, linking the site to the wider area. It is stated that parking provision will be in accordance with the specified guidance and that cycle parking provision will be provided. In conclusion it is explained that the appraisal of the impacts along the wider highway network demonstrate that the traffic flows generated would dissipate onto the various road corridors and that the resultant increases in traffic along the road corridors beyond the proposed development would fall within the day-to-day variation of traffic flows, and would not therefore trigger any material impacts. In transportation terms it is stated that there are no overriding or sustainability reasons why the development should not be approved.

A Travel Plan sets out objectives and measures to promote and provide for the use of sustainable modes of transport as an alternative to single occupancy car use, along with a strategy for implementation, target setting and monitoring. The plan contains sections on: Transport Policy;

Existing Sustainable Transport Opportunities; Development Proposals; Management; Measures and Initiatives; Targets and Monitoring; and Workplace and a School Travel Plan. The overarching objectives which underpin this Travel Plan are to:

- Reduce the need for unnecessary travel to and from the development;
- Reduce the traffic generated by the development to a lower level than would normally be predicted for the site without the implementation of a Travel Plan, in order to minimise the impact on the local highway network;
- Encourage those travelling to and from the development to use public transport, cycle or walk in a safe and secure manner; and
- Promote healthy lifestyles and sustainable, vibrant local communities.

It is identified that the developer will fund the requirements and monitoring of the Travel Plan and that sales / marketing staff will be trained to promote sustainable travel and sell the Travel Plan aspirations to potential buyers. Further, a Travel Plan Coordinator will be appointed to monitor targets.

A Flood Risk Assessment (FRA) identifies that the proposed development is within Flood Zone 1 and is not therefore at significant risk of flooding. To minimise surface water flooding it is proposed that finished floor levels be raised 1.5m across the north side of the development and 1.2m on the east side of the development. Finally it is stated that the proposed onsite drainage systems are in accordance with the NPPF and would ensure no third parties would be at risk from flooding.

The Flood Risk and Drainage Addendum details the surface water drainage proposals and their feasibility. Initially it was identified that it would not be possible to soakaway to a nearby watercourse. An acceptable discharge rate (at greenfield runoff rates) was subsequently calculated, which would prevent any downstream flooding. The design of a proposed attenuation feature has been determined on the specifics of the development (as far possible at this outline stage) and details of its design, provided; this feature would be to the size shown on the illustrative plans and would have grassed sides with a gradient of 1 in 3. It is explained that a maintenance contract would be established to prevent erosion and debris build-up. On the basis of its design, and that it would be overlooked, it is considered to result in minimal risks. Subject to it being able to hold the required volume, it is noted that the specific detail, shape and design of the attenuation feature could be amended.

A Noise Assessment initially describes the location of the site in relation to the existing transport infrastructure and neighbouring land uses and provides an overview of the development proposal. It contains chapters on the following:- national and local planning policy and 'industry standard' design guidance relevant to noise; the results of environmental noise monitoring (to determine existing noise levels); the results of the baseline acoustic modelling of the site; an initial risk assessment of noise conditions at the site in line with Stage 1 of ProPG guidance; a detailed Stage 2 assessment of the development proposals in line with ProPG guidance; and details of how the temporary construction impacts of the scheme will be controlled. In terms of the Existing Noise Environment it is stated that noise levels across the measurement locations are dominated by noise from the A50 and that the northern boundary of the site is also influenced by traffic on the A5132. The requirements of national and local planning policy are identified along with reference to industry standard design guidance, in particular ProPG: Planning and Noise, recently published by the Institute of Acoustic, Association of Noise Consultants and Chartered Institute of Environmental Health. The site suitability for residential development has been assessed in line with stage 1 of ProPG guidance, which concludes that the site represents a "low" to "medium" noise risk. With particular regard to the considerations required by ProPG, it is concluded that:

- The development proposals reflect a good acoustic design process;
- Internal noise levels can be adequately controlled through the appropriate specification of glazing and alternative means of ventilation;
- Future residents should have access to private external amenity spaces, compliant with the aspirational noise levels indicated in WHI/BS8233 guidance;

In relation to construction noise and vibration, the nature and scale of the proposed development is not expected to give rise to any significant adverse noise impacts during construction works. If considered necessary however, the potential impact could be controlled by means of condition(s). In light of the above, the report considered that the proposed development should not raise any residual significant or other adverse impacts on the health and/or quality of life for existing residential and commercial neighbours of the site arising from noise. It is therefore concluded that the proposed development complies fully with noise related national and local planning policy.

An Archaeological Desk Based Assessment (DBA) draws together the available archaeological, historic, topographic and land use information to clarify the heritage significance and archaeological potential of the site. The report considers that the site has low potential to contain remains dating to the prehistoric, Roman, Saxon, Medieval and Post Medieval periods. The report acknowledges that construction related activities would remove any archaeological remains, however the assessment concludes that the site has a low potential for archaeological remains. It is noted that if the site does contain archaeological evidence, there would be an opportunity to expand and enhance understanding of rural settlement patterns in Derbyshire. The assessment determines that the likely significance of any buried remains within the site would be local, and the scale of the effect to their significance, which would be their removal by construction related activities, as is required by paragraph 189 of the NPPF. On this basis the report concludes that no further information is required to inform the planning decision.

An update to the Archaeological DBA specifically address comments raised by the Development Control Archaeologist. The report explains, that on the basis of a further review of the available evidence, that the study site does have the potential to contain artefactual evidence relating to the early Prehistoric period and also possibly below-ground evidence for Medieval agricultural activity in the form of ridge and furrow. It is also confirmed that the site does have the potential to contain artefactual evidence for the Palaeolithic period particularly. Further investigation is recommended by the report, comprising of the geo-archaeological monitoring of site investigation boreholes and/or of geo-archaeologically-controlled test-pits. Such investigations would subsequently inform the potential impact of development on any features and would allow a suitable mitigation programme to be scoped. It is further stated that the results of any such investigation and mitigation would also have the potential to inform research and understanding of the archaeological potential of the Eggington Common Sand and Gravel terrace and to contribute to the updated research agenda and strategy (2012). On the basis of the available evidence, including recent research and analysis of the Trent Valley, the report concludes that the archaeological potential of the study site does not preclude or constrain development proposals; however, a suitable programme of investigation, including mitigation as appropriate, is considered necessary.

Relevant planning history

9/2019/0244: Outline application (all matters to be reserved) for the residential development of up to 61 dwellings with associated landscaping, parking and sustainable drainage – Withdrawn April 2019

Responses to consultations and publicity

Environmental Health has raised no objections subject to the imposition of various conditions. These are discussed in further detail in the appraisal section below.

Derbyshire Wildlife Trust (DWT) initially commented that the development would result in the loss of native hedgerow priority habitat as a result of the creation of the new access. To overcome this, it advised a revision to the site layout, along with further native hedgerow planting. The response also requested clarification of how a net gain for biodiversity would be achieved, through use of a biodiversity impact calculator.

In response, additional information was provided by the applicant. On the basis of this, DWT commented that whilst the loss of the hedgerow would be compensated for, that through the use of

the Biodiversity Impact Calculator, it had been shown that there would still be a small net loss of biodiversity. On account of this, further detail was requested, and has been provided by the applicant. In response to this additional information, DWT has provided a final set of comments. These advise that whilst there would remain a small net loss of biodiversity, this could be suitably compensated for by off-site provision. On this basis, conditions have been recommended to secure a scheme of compensation/biodiversity offsetting along with an ecological management plan.

The Development Control Archaeologist initially objected to the application on the basis that the site does have potential for archaeological implications, but that no archaeological assessment had been provided. Accordingly, they requested that an archaeological desk-based assessment be produced. The applicant has provided such an assessment and on the basis of this, County Archaeology have raised no further objections subject to the imposition of a pre commencement condition to secure further archaeological investigations.

Derbyshire County Council Planning Policy have stated that in terms of primary school provision within, analysis of the current and future projected number of pupils on role, together with the impact of approved planning applications show that the normal area primary school would have sufficient capacity to accommodate the 11 primary pupils arising from the proposed development. On this basis, no contribution is requested towards Primary provision. In relation to Secondary level provision, following an analysis of the current and future projected number of pupils on role, it has been found that there would not be capacity to accommodate the 9 Secondary and 3 Post 16 pupils arising from the development. To mitigate against this, a contribution of £310,418.10 has been requested. This would go towards education facilities at John Port School. In terms of the provision of Broadband, it is requested that an advisory note be attached to any planning permission to ensure occupants have access to sustainable communications infrastructure.

Severn Trent Water has raised no objection, but has provided advice which will be imposed as a note to applicant on any planning approval.

The Derby and Derbyshire NHS Clinical Commissioning Group (CCG) have provided a calculation which illustrates that the estimated population of the development would be 142.5 people. The population figure is subsequently imputed into a formula to establish the health-related requirements associated with the development. This calculation would amount to a sum of £27,456. The response further identifies that the contribution would go towards an extension on the existing surgery.

The County Highways Authority (CHA) initially responded on the basis that inadequate details had been provided of the proposed accesses, there were concerns over whether the carriageway, margins and footpath could be accommodated on controlled land and that an incorrectly sized bin lorry had been used for vehicle tracking purposes. Overall they requested that engineering drawings, rather than illustrative drawings, based on the topological survey should be submitted to demonstrate that a safe and suitable access to the site can be achieved, along with details illustrating a footway on Lucas Lane, along with clarification that Footpath 18, as shown on the Derbyshire Definitive Map, would not be affected by the proposal.

Following the submission of additional details, the CHA have provided a further response. Within this response they confirmed that the amended drawings illustrate the carriageway and footway extending off Lucas Lane, but have failed to detail the requested northern side margin. In addition continued concerns were raised on whether the proposed highway works could be achieved on controlled land. Queries were also raised in regards to whether a ditch relating to the southern access could be accommodated, however in raising this matter, it was acknowledged that this could be dealt with at technical approval stage. Subject to receiving clarification in relation to the extent of the controlled land, the CHA have however confirmed that they would be in a position to recommend conditional approval.

The requested plans have been provided, and illustrate that the highway works are achievable in controlled land. As yet no response has been provided by the CHA. Any comments received will be reported to the Committee as a verbal update.

The Environment Agency has raised no objection subject to a condition relating to potential ground contamination.

The Police Designing out Crime Officer raises no objection to the scheme.

Hilton Parish Council has objected on the following grounds:

- a. The application does not conform with the Hilton, Marston and Hoon Neighbourhood Development Plan (NDP) policies which have been developed and endorsed by the residents.
- b. Lucas Lane is a valued community amenity and is used by walkers, dog walkers, cyclists, runners and as a safe route for schoolchildren on their way to and from John Port school.
- c. The Parish Council is working with SDDC to open up the "Path to Nowhere" (from Egginton Road, by Lucas Lane, to the Greenway) which would extend the safe, off-road, walking route for children going to, and from, John Port School into the heart of the new part of the village. This would also provide all residents another alternative walking route.
- d. The development would spoil the rural views of the area and the flora and fauna alongside the Lane.
- e. The development would destroy the character of the Lane and wider area.
- f. The development is unnecessary.
- g. It is not considered that the Lane could accommodate additional traffic or vehicles of an increased size which would be likely to result in highway safety issues.
- h. The development is in contravention of SDDC Policy SD1 "The Council will support development that does not lead to adverse impacts on the environment or amenity of existing and future occupiers within or around proposed developments".
- i. The site is not allocated for housing in the Local Plan and given that South Derbyshire can demonstrate a five year housing supply, there is no need for extra sites to address any shortfall.
- j. If the allocated/approved housing sites build out as planned there will be no need for additional sites such as this.
- k. It has been identified that there are differences between the results of a traffic survey submitted with the application and that commissioned by the Parish Council; namely that the applicants survey contains lower traffic flows and so there are knock on implications in regards to queuing and future forecasts.
- l. Deficiencies are identified with the submitted TS; no speed survey has been provided and as such, proposed visibility splays may be inadequate.
- m. The swept path analysis in the TS is inadequate and does not cater for the fact that the bend in street 2 has been tightened, a comprehensive analysis should be undertaken.
- n. The layout of the development is poor and there is inadequate parking provision in terms of its quantum and location.
- o. There is potential for the development to cause overlooking and be overbearing impacts.
- p. The siting of the dwelling would cause a non-compliance with the Design Guide.
- q. The submitted noise assessment is inadequate and does not take account of the revised development.
- r. There are no details provided of how the house design would mitigate the likely noise, or what the over-heating implication of the potential mitigation would be.
- s. The noise assessment wrongly concludes that all receptors will have the same sensitivity to noise; some receptors may be more sensitive.
- t. The submitted Travel Plan assumes that the 280m gap in the footpath to access the development will be on Council land. If this is not achieved there will be no safe access to the housing development.

40 objections have been received, raising the following issues:

- a. Lucas Lane is unable to safely accommodate additional traffic
- b. Lucas Lane is congested

- c. A more appropriate access would be from Normandy Road and Pegasus Way.
- d. Hilton is losing its identity as a result of all the new housing
- e. There are insufficient services to cope with the additional demands caused by more housing
- f. New housing should be closer to towns and built-up areas
- g. The proposal will result in overshadowing of existing dwellings
- h. The proposal will cause a loss of privacy and overlooking of existing dwellings
- i. The plans are inaccurate in that they fail to identify all existing properties
- j. The development is out of character with the existing developments and is out of scale
- k. The proposal would be too high density
- l. The proposals would result in a loss of gardens and an established hedgerow
- m. The number of dwellings would result in a massive increase in traffic and would compromise highway safety
- n. The Lane is used as a 'cut through' by significant numbers of school children in a morning and evening, and potential highway conflict would increase as a result of the development.
- o. Other potential access to the site should be utilised and explored
- p. The Lane is narrowed towards its southern end by parked cars – increasing highway safety dangers
- q. Lucas Lane is of an inadequate width to sustain the additional traffic
- r. The junction onto Egginton road is unable to cope with current traffic flow – the development will worsen this
- s. The road construction may not be able to withstand heavy construction traffic
- t. The development may compromise the safe disposal of sewage from existing dwellings
- u. The development will bring an additional 100 vehicles onto the Lane, which will substantially increase the number of cars and the potential for accidents.
- v. The survey found a limited number of incidents, but this is because the Lane is currently lightly trafficked.
- w. Access along the lane is restricted by parked vehicles
- x. The quiet amenity of the Lane would be lost as a result in the increased number of vehicles.
- y. The Parish Council's draft Neighbourhood Development Plan identifies Lucas Lane as a valuable amenity and propose a limit of 8 houses along with community amenities on the site. This would enable the Lane to retain it's character and benefit the village.
- z. The A50 would result in a considerable noise issue and weaknesses have been identified with the submitted noise survey which haven't been resolved.
- aa. Noise in the area will be increased as a result of the additional traffic
- bb. Flooding issues are likely to be worsened
- cc. The development would adversely impact on existing ecosystems and wildlife
- dd. There is already adequate market and social housing provided in Hilton.
- ee. The benefits of this application do not outweigh the negative impacts
- ff. The application will result in more pollution
- gg. The development will result in additional security risks to existing properties
- hh. The Transport Statement and Travel Plans seems to have little consideration for the current 'single track' nature of a large proportion of Lucas Lane.
- ii. There are concerns as a result of their being only one entry/exit to the site.
- jj. The development does not sufficiently consider access and the existing use of Lucas Lane as a pedestrian thoroughfare.
- kk. The highway issues could be improved by widening Lucas Lane, adding additional street lighting or reducing the number of dwellings.
- ll. Due to the cumulative effect of development in the area over the last 20 years, access is becoming increasingly difficult onto Egginton Road during peak hours.
- mm. There needs to be further resilience built into the road network as when further developments take place.
- nn. The cumulative impacts of multiple developments within the particular area need to be taken into account in the TA.
- oo. Public rights of way throughout the village have not been adequately joined up – S106 money would need to be spent on improving the cycling and walking facilities in the area.
- pp. There is no mention of electric vehicle charging points

- qq. There are concerns that the development won't meet the governments Zero carbon strategy.
- rr. The ad hoc provision of facilities in Hilton makes it hard for those with mobility issues to access services
- ss. No allotments are proposed, which should be according to the Neighbourhood Plan.
- tt. The roundabout junctions in Hilton in the vicinity of the site have significant queuing during the evening peak at the current time which also causes issues with the provision of safe crossing facilities for pedestrians as there are only pedestrian islands and no formal crossing facilities.
- uu. The roundabout junctions have significant queuing during the evening peak at the current time which also causes issues with the provision of safe crossing facilities for pedestrians as there are only pedestrian islands and no formal crossing facilities.
- vv. The routes to / from the secondary school need improving and continuous cycling facilities are required.
- ww. There is no NHS dentist available in the village.
- xx. There is no evidence that people living in Hilton, work in Hilton, therefore if people have to travel further for work, more pressure will be placed on rural roads.
- yy. Why are green areas chosen for housing when industrial areas could be reclaimed for housing?
- zz. No more houses are needed in Hilton.
- aaa. The houses proposed would have limited parking, small gardens and every house is squeezed in.
- bbb. The houses are designed with a lack of thought and character.
- ccc. Lucas Lane is a lovely walking spot for many local people which will be lost if the development goes ahead.
- ddd. The Lane is poorly lit and has poor footpaths.
- eee. This is the route children use to access local schools as no free bus service is available.
- fff. The land should be used to provide allotments, as outlined in the Neighbourhood Plan, to provide space for those with limited gardens.
- ggg. It would be wrong to go against the local peoples wishes which are set out in the Neighbourhood Plan, and approve the application.
- hhh. The proposed development of the site should be of a much-reduced scale to ensure that the Lane itself would not be impacted upon.
- iii. The proposal would be contrary to the guidance set out on the Design Guide SPG
- jjj. Destruction of local wildlife will have a negative impact on the mental health of existing residents, causing them increased stress.
- kkk. The ecological information provided is considered to be lacking in detail.
- lll. There is no sewer provision for houses local to the Site on Lucas Lane or Derby Road, all properties in this area are served by septic tanks.
- mmm. Hilton does not have enough amenities to accommodate more and more housing.
- nnn. Hilton needs more activities for young children, not more houses.
- ooo. The development will spoil the surrounding countryside.
- ppp. All the new housing is destroying the village community.
- qqq. The proposal would have an overbearing impact on the existing properties
- rrr. The proposal would breach the 45 degree rule.
- sss. Improvements should be made to the junction visibility and also traffic calming should be considered for the Lane itself to reduce vehicle speeds.
- ttt. The proposed house design is poor.
- uuu. The site was not included in the adopted Local Plan Part 2 in 2017.
- vvv. The development would be contrary to the proposed Neighbourhood Plan as it wouldn't provide low density housing for up to 8 dwellings.
- www. The site is close to the A50 so would suffer lots of engine pollution.
- xxx. Crime is increasing and the police can not cope.

Relevant policy, guidance and/or legislation

The relevant Development Plan policies are:

- 2016 Local Plan Part 1 (LP1): S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), S6 (Sustainable Access), H1 (Settlement Hierarchy), H20 (Housing Balance), H21 (Affordable Housing), 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), BNE2 (Conservation), BNE3 (Biodiversity), BNE4 (Landscape Character and Local Distinctiveness), INF1 (Infrastructure and Developer Contributions), INF2 (Sustainable Transport), INF6 (Community Facilities), INF7 (Green Infrastructure) and INF9 (Open Space, Sport and Recreation);
- 2017 Local Plan Part 2 (LP2): SDT1 (Settlement Boundaries and Development), BNE7 (Trees, Woodland and Hedgerows) and BNE10 (Heritage).

Relevant emerging plans/policies:

A Neighbourhood Area designation comprising the Parishes of Hilton, Marston on Dove and Hoon was designated on 6 March 2019 for the purpose of preparing a Neighbourhood Development Plan (NDP).

The draft NDP does not, as yet, form part of the development plan as defined by section 38 of the Planning and Compulsory Purchase Act 2004. In referring to what weight can be attached to an emerging plan, Planning Practice Guidance states that *"Paragraph 48 of the revised National Planning Policy Framework sets out that weight may be given to relevant policies in emerging plans in decision taking. Factors to consider include the stage of preparation of the plan and the extent to which there are unresolved objections to relevant policies."*

The emerging NDP has yet to be subject to full public consultation through the Regulation 16 publicity period. Neither the draft NDP nor the consultation statement have been formally submitted to the Council and, as such, the extent of unresolved objections is unknown. As set out in the PPG, *"the consultation statement submitted with the draft neighbourhood plan should reveal the quality and effectiveness of the consultation that has informed the plan proposals"*. For these reasons, it is too early in the Plan's preparation to afford it any weight.

The relevant National Guidance is:

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- National Design Guide (NDG)

The relevant Local Guidance is:

- Design Guide Supplementary Planning Document (SPD)
- Affordable Housing (SPD)
- Section 106 - Guidance for Developers

Planning considerations

Taking into account the application made, the documents submitted (and supplemented and/or amended where relevant) and the site and its environs; the main issues central to the determination of this application are:

- Principle of development;
- Character and appearance;

- Highway safety and accessibility;
- Residential amenity and noise;
- Ecology and trees;
- Drainage and flood risk;
- Archaeology; and
- Developer contributions.

Planning assessment

Principle of development

Section 38 (6) of the Planning and Compulsory Purchase Act 2004, requires all planning decisions to be made in accordance with the Development Plan unless material considerations indicate otherwise. This application proposes residential development within the Settlement Boundary of Hilton, as defined in the Local Plan.

In terms of applicable Local Plan Policies, at a strategic level, Policy S1 outlines the District's sustainable growth strategy and Policy S2 identifies the 'presumption in favour of sustainable development'. In specific reference to housing, Policy H1 'Settlement Hierarchy' defines Hilton as a Key Service Village. Villages are defined as such as a result of their range of services and facilities. Within the defined boundaries of such settlements, development of all sizes is considered appropriate. Policy SDT1 confirms the site is wholly within the settlement boundary.

Policy H21 'Affordable Housing' seeks to ensure that developments exceeding 15 dwellings secure up to 30% affordable housing and Policy H20 'Housing Balance' seeks to achieve a balance of housing, including a mix of dwelling type, tenure, size and density. Whilst this is an outline application, with all matters reserved aside from access, the illustrative layout identifies how a development could be achieved which would provide an appropriate mix of dwellings, both in terms of their size and detail, and proposes a tenure mix and percentage of affordable dwellings reflective of the requirements of policy H21 and the Affordable Housing SPD.

At a national level, to support the Government's objective of significantly boosting the supply of homes, paragraph 59 of the NPPF identifies the importance of ensuring that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay. Whilst the Council presently has an adequate housing supply, the development of this site would further bolster it in a sustainable fashion and contribute towards the windfall allowance upon which part of this supply is predicated.

When considered in accordance with both local and national guidance, the application site is considered to be in a sustainable and suitable location and would contribute towards achieving the Council's objectively assessed housing need. The proposal would therefore be acceptable in principle and compliant with the relevant local and national planning policies in this regard.

Character and appearance

Policy BNE1 expects new development to be well designed, visually attractive and appropriate having regard to existing characteristics. The principles underpinning this policy are expanded upon within the Design SPD. The NDG also lends support with the NPPF highlighting that good design is a key aspect of sustainable development and that new development should respond to local character and be visually attractive. Policy BNE4 sets out that the character, local distinctiveness and quality of South Derbyshire's landscape will be protected and enhanced through the careful design and sensitive implementation of new development.

The site comprises of three agricultural fields and a group of agricultural buildings. Small areas of residential garden are also included within the site. The main natural features are the perimeter and dividing hedgerows containing scattered trees, and the woodland buffer screening the road to the

north. Vehicular access to the site is currently from the turning head at the top of Lucas Lane. The lane forms part of a designated right-of-way, with access to the north towards Etwall. Hilton village centre lies approximately 1km to the south west. Properties along Lucas Lane and Normandy Road, to the south and those on Pegasus Way, to the west form part of a relatively modern housing development and further to the east of the site are fields. To the north, the A1352 and a roundabout connecting to the A50 are separated from the site by a woodland buffer. By virtue of the surrounding landform, infrastructure, other built development and boundary vegetation, the site benefits from a high degree of visual enclosure.

In terms of its character, whilst on the settlement edge and being within close proximity to agricultural land to the east, the site is predominantly enclosed by residential development and significant highway infrastructure and therefore, to the north, west and south west, the area has a developed landscape which is more urban in nature. The character of Lucas Lane itself however diverges from this. Here, frontage properties are predominantly set back, detached and occupy spacious, landscaped plots. This, combined with the informal character of Lane, derived from its limited highway infrastructure, its width (single carriage) and grass verges which are host to native hedgerow and mature trees; results in the area having more of an 'edge of village' feel. The development has identified this subtle change in character and has sought to provide an acceptable response. The illustrative layout identifies the majority of the Lucas Lane boundary as being absent from built development, instead being host to the drainage infrastructure. Where dwellings are proposed they would continue the style and form of dwellings further south along Lucas Lane. The density of development would subsequently increase to the north and west, reflecting the increasing density of development in these directions. The illustrative layout would therefore result in a scheme that would successfully integrate into the surrounding landscape. On account of this, it could not be argued that the proposed development would be contrary to the pattern of existing development.

In terms of appearance, the site would be prominent from Lucas Lane and from the public right of way along its north eastern boundary. There may also be glimpsed views from the highway to the north; however these would be fleeting by virtue of both the intervening vegetation and the speed at which the majority of receptors would be travelling. Whilst it is accepted that views would be gained, from the primary vantage points the development would be viewed against the back drop of a semi-urban landscape and, as such, harm would be reduced and the development would appear assimilated into its setting as a result.

As this application includes limited detail in terms of scale, layout or appearance, it is not possible to undertake a detailed assessment at this stage. This said, on account of the areas existing character and landscape features and given the size of the site, it is considered that a suitably designed, policy compliant development could be achieved.

Overall, in terms of character and appearance, it is considered that an appropriately designed development could be achieved that would not result in any material harm in this regard, and would be compliant with Policies BNE1 and BNE4 of the Local Plan, as well as the Design Guide SPD and NDG.

Highway safety and accessibility

Access has been submitted for detailed consideration. Two points of access have been proposed. The primary access point would be in the form of a simple priority junction off Lucas Lane, which would access 40 dwellings. The second, and more northerly access, would utilise the existing farm access, providing access to the remaining 17 dwellings.

In terms of local Policy, Policy S6 seeks to ensure that development minimise the need to travel, makes efficient use of transport infrastructure and services, encourages a modal shift towards more sustainable means of travel and supports transport measures that address accessibility issues. Part B of this policy outlines various measures to ensure the policy intentions are met. Policy INF2 seeks to ensure that the travel generated by development has (a) no undue detrimental impact upon local amenity, the environment, highway safety, (b) that appropriate provision is made for safe and

convenient access to and within the development, and (c) that development should include an appropriate level of parking provision.

Various concerns have been raised within the letters of representation on grounds of highway safety, access and parking. The application has been accompanied by a Transport Statement and a Travel Plan. The Transport Statement contains chapters on Policy, the existing situation, the proposed development, trip generation, and an assessment of traffic impact. In regards to the current situation, it is explained that existing pedestrian and cycle networks provide a good level of accessibility to local education, retail, community and health facilities. In relation to bus services, it is stated that there are frequent services between the site, Derby and other surrounding regional centres. On account of this it is considered that there are realistic alternatives to the private car. It is also contended that the existing non car networks in the vicinity, coupled with measures to enhance opportunities for sustainable travel, will ensure that non-car trips generated will be accommodated in a satisfactory manner.

The appraisal of impacts along the wider highway network demonstrates that the traffic flows generated by the proposal would dissipate onto the various road corridors. The resultant increases in traffic along the road corridors beyond the proposed development would fall within the day-to-day variation of traffic flows and would therefore not trigger any material impacts. Overall the Transport Statement concludes that traffic flows generated by the proposed development would dissipate onto the various road corridors and that the resultant increases in traffic along the road corridors beyond the proposed development would be within the day-to-day variation of traffic flows and would therefore not trigger any material impacts.

Throughout the course of the application there has been ongoing dialogue between the agent and the Highway Authority to address the issues raised. Within their initial consultation response, the CHA requested additional information on the following:

- The design detail for the proposed accesses;
- The viability of providing a 2 metre wide footway to the western side of the Lane and a highway margin on eastern side, whilst also maintaining the route of Footpath 18 within the constraints of the site boundary;
- Details to demonstrate how the ditch fronting the site would be accommodated;
- An amended swept path analysis (on the basis of a correctly sized vehicle); and
- Appropriate visibility splays at the Lucas Lane/Egginton Road junction in the easterly direction.

Comments were also raised in regards to the Travel Plan.

To address these matters, amended and additional documentation was provided and a targeted re-consultation with the CHA was undertaken. In response, the CHA commented that whilst the majority of issues had been resolved, there remained some outstanding matters. Specifically, no details had been provided of the margin on the northern side of the access, or whether this was achievable within controlled land and no detail was provided of measures to accommodate the ditch. Subject to receiving the requested clarification, the CHA have however confirmed that they would be in a position to recommend conditions. In addition, the Travel Plan (and monitoring fee) would be secured through the legal agreement.

A further set of plans have been provided. These show that the necessary highway works can be accommodated on controlled land. The CHA have not yet provided their formal response and so any comments received will be provided verbally at the meeting.

On the basis of the detailed access and the illustrative layout plans, it is considered that there could be further opportunities to improve connectivity through walking and cycling routes from the proposed development to existing residential areas which have not been exploited. As such, this detail can be specifically required within any future reserved matters submission. Nonetheless, on account of the information provided and on the basis that there are no outstanding highway

objections, subject to the recommended planning conditions and obligations the development is considered to provide sustainable access options and would be served by a safe access. Therefore the development would be in accordance with policies S6 and INF2 of the Local Plan and the relevant policies within the NPPF.

Residential amenity and noise

Policy SD1 is supportive of development that does not lead to adverse impacts on the environment or amenity of existing and future occupiers within or around proposed developments. To ensure this, criterion (B)(iii) acknowledges the need for strategic buffers between conflicting land uses in respect of amenity issues, such as odours, fumes or dust and disturbance such as noise, vibration or light. Paragraph 190 of the NPPF states that planning decisions should ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment.

On account of the site area and the quantum of development proposed, it is considered that a suitably designed and laid out development could be achieved that would not result in any materially adverse impacts in terms of residential amenity on grounds of overlooking or overshadowing and that the development would not be of an overbearing nature. This said, the specific detail relating to such would be considered further at reserved matters stage. Notwithstanding the above however, on account of the proximity of the site to a major highway network, there would be the potential for harm associated with vehicle noise.

The Noise Assessment identifies and summarises the key components:

- Existing Noise Environment: Detailed noise monitoring has been undertaken to determine the existing environmental noise climate at the site. Noise levels across the measurement locations are dominated by noise from the A50. The northern boundary of the site is also influenced by traffic on the A5132.
- Planning Policy Context and Design Guidance: Commentary on the relevant policies are provided along with reference to the ProPG: Planning and Noise.
- Site Suitability: The potential risk of the site for residential development has been assessed in line with Stage 1 of ProPG guidance. This concludes that the site represents a 'low' to 'medium' noise risk.
- ProPG: With particular regard to the considerations required by ProPG, it is concluded that:
 - The development proposals reflect a good acoustic design process;
 - Internal noise levels can be adequately controlled through the appropriate specification of glazing and alternative means of ventilation;
 - Future residents should have access to private external amenity spaces, compliant with the aspirational noise levels indicated within guidance.

The nature and scale of the proposed development is not expected to give rise to any significant adverse noise or vibration impacts during construction works. If considered necessary, however, the potential impact construction phase noise and vibration could be controlled by means of appropriate planning condition(s) (e.g. restricting the working hours of the site or through the submission of a Construction Environmental Management Plan).

The assessment concludes that the proposed development should not raise any residual significant or other adverse impacts on the health and/or quality of life and therefore complies fully with noise related policy and guidance. On the basis of the noise survey and the response from the Environmental Health Officer, subject to the necessary conditions being imposed, the development would not result in any materially harmful impacts in terms of residential amenity generally, or noise, more specifically and would therefore be in accordance with the relevant local and national planning policy and guidance.

Ecology and trees

Policy BNE3 is supportive of development which contributes to the protection, enhancement, management and restoration of biodiversity ...and that delivers net gains in biodiversity, with criterion (B) of this policy specifically advising that planning proposal that could have a direct or indirect effect on sites with potential or actual ecological importance.. including those with priority habitats or species need to be supported by appropriate surveys or assessments sufficient to allow the Authority to fully understand the likely impacts and the mitigation proposed. Policy BNE4(B) expects key valued landscape components such as mature trees and established hedgerows to be retained, unless it can be demonstrated that the loss of features will not give rise to unacceptable effects on local landscape character. Policy BNE7 seeks to ensure that where development is proposed that could affect trees, woodland and/or hedgerows, which are important in terms of their amenity, ecological, landscape or historic value they will be adequately protected and that the layout and form of development has taken their presence into account.

The application was initially accompanied by the following ecological surveys:

- Preliminary Ecological Appraisal and Ecological Impact Assessment Version 1 (March 2019);
- Great Crested Newt Survey Version 1 (February 2019);
- Reptile Survey report Version 1 (January 2019);
- Breeding Bird Survey report Version 1 (January 2019); and
- Bat Survey report Version 1 (2019)

The Phase 1 Habitat Survey identified the site as comprising cattle grazed pasture, barns and grassland, with native hedgerows and trees dividing the fields and forming the perimeter boundaries. Furthermore, all the native hedgerows on the site were classified as a Habitats of Principal Importance (priority habitats). As illustrated within the ecological surveys, the proposed development would result in the loss of native hedgerow priority habitat to the extent of between 160 to 221 metres. No other ecological harm was identified in other surveys.

The Wildlife Trust (DWT) initially commented that the development was highly likely to result in a net loss of biodiversity, including hedgerow priority habitat, contrary to the objectives of local and national planning policy and recommended the use of a Biodiversity Impact Calculator to demonstrate the level of biodiversity loss and seek measures to address such loss. Concerns were also raised on the basis of the illustrative layout and the access proposals, which would result in further losses to hedgerows and associated habitats, and guidance was provided on potential alternative solutions. To address these concerns, the following documents were provided and a further re-consultation was undertaken with the Trust.

- Phase 1 Habitat Report;
- A hedge creation plan illustrating additional hedgerow in compensation for the unavoidable losses (resulting in a total gain of 41.3m of hedgerow); and
- Biodiversity Net Gain Calculations.

DWT commented that the proposed new planting of species-rich hedgerows within the scheme would suitably compensate for the loss, although clarification should be provided on the extent of hedge removal necessary to create the new access. They also identify that through the use of the Biodiversity Impact Calculator, there would be a small net loss of biodiversity. On this basis they advise that every attempt should be made to avoid and mitigate such impacts on-site, but that any residual impact could be dealt with by a pre-commencement condition requiring a Net Gain Biodiversity Offsetting Scheme and that scheme could form part of the reserved matters submission. Hence, DWT confirmed that subject to the imposition of conditions they are satisfied that the development would not result in any materially harmful ecological impacts.

Information on the outstanding matters was submitted and DWT provided a further response. The Trust acknowledge that there will be a residual loss to biodiversity through the proposal, primarily to semi-improved grassland, amounting to between -1.67 to -2.07 habitat units, depending upon the

type of habitats provided as part of the landscaping. Layout options have also been put forward that will either result in, or avoid a net loss of hedgerow priority habitat. DWT advises that the small net loss of biodiversity can be suitably compensated for by off-site provision on arable land that is under the applicant's ownership and therefore recommend that a scheme for compensation/biodiversity offsetting is implemented as part of the application. This said, they also recognise that the scheme is only at outline stage and that the final development has the potential to be revised. On this basis, they advise that the mitigation hierarchy should be followed and as much ecological mitigation as feasible is provided on-site. DWT specifically recommend the creation of a wildflower meadow around the SuDS feature. The Trust have also advised that when they are consulted at the Reserved Matters stage, the Biodiversity Impact Calculator will need to be recalculated on the basis of the specific detail; and that an ecological management plan will also be necessary to secure management of both the on-site ecological features and the offsite scheme for a minimum of 30 years. It is recommend that this be submitted with the reserved matters application to fully inform the revised calculation. To address these points, taking into account that the final layout has not yet been determined, a suitably worded condition can be imposed.

The application has also been accompanied by a Tree Survey and Tree Constraints Plan. Of primary importance in the consideration of this application are two mature Oak Trees. These are situated at the northern and southern ends of the boundary of the site with Lucas Lane. These are both defined as Category 'A' trees owing to their physiological and structural condition. The trees also have a high amenity value as a result of their visual prominence within the street scene. The Oak tree to the north (T2) would be within close proximity to the sites secondary access; this access is existing (it currently serves the farm buildings) but would be upgraded to serve part of the development. It must therefore be ensured that the necessary tree protection measures are secured prior to any upgrading works. By virtue of its position, the Oak to the south would be at no greater risk as a result of the development proposed. This said, the trees and hedgerows identified on the constraints plan should be protected in accordance with the suggested details, to minimise the risk of any potential harm.

On the basis of the ecological and arboricultural surveys and subject to the suggested conditions and protection, there would be no harmful ecological or arboricultural impacts as a result of the proposal and the development would therefore be in accordance with Policies BNE3, BNE4 and BNE7 of the Local Plan, the relevant paragraphs of the NPPF and the Habitats Regulations 2017 (as amended).

Drainage and flood risk

Policy SD2 states that suitable measures to deal with surface water will be required on all sites to minimise the likelihood of new development increasing flood risk locally and that any development that could lead to increased floodrisk should be managed through the incorporation of a Sustainable Drainage System (SuDS), which mimics natural drainage patterns, unless this is not technically feasible, or where it can be demonstrated that ground conditions are unsuitable for such measures. Policy SD3 seeks to ensure that new developments incorporate sustainable drainage schemes as a means of managing surface water... to improve river quality and reduce pressure of drainage infrastructure. Part (B) requires foul flows generated by new development to be connected to the main sewer and (C) requires surface water to be managed by SuDS. SD3 also seeks to limit water consumption in new properties.

The site is situated in flood zone 1 where, due to its scale, a flood risk assessment (FRA) is supplied. Furthermore, on the basis of the Environment Agency Flood Risk maps, the sites south eastern corner is identified to be at a higher risk of surface water flooding. The FRA concludes that the proposed development is not at significant risk of flooding. In relation to surface water flooding, it is suggested that to reduce any risk, finished floor levels should be raised. Finally it is stated that the proposed on-site drainage systems are in accordance with NPPF and would ensure that no third parties would be at increased flood risk. The Addendum FRA provides more specific detail relating to surface water flooding and the design of sustainable attenuation features. This shows that a viable solution is achievable for the site.

On grounds of drainage and flood risk, the Environment Agency have raised no comments whilst no objection has been received from Severn Trent Water. The Lead Local Flood Authority has not provided any comments, although any update will be verbally reported to the Committee.

Given that the site does not fall within an area of high flood risk and on the basis that surface water would be drained by way of a sustainable drainage system, the development would not result in any material harm in terms of drainage or flood risk and as such, would be in accordance with Policies SD2 and SD3 of the Local Plan.

Archaeology

Policy BNE2 states that development that affects heritage assets will be expected to protect, conserve and enhance the asset and its setting in accordance with national guidance. BNE10 supports this policy. Paragraph 189 of the NPPF requires that in determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting and in relation to the consideration of potential impacts, paragraph 199 advises that Local planning authorities should require developers to record and advance understanding of the significance of any heritage assets to be lost (wholly or in part) in a manner proportionate to their importance and the impact, and to make this evidence (and any archive generated) publicly accessible.

The Development Control Archaeologist originally objected to the application on grounds that no archaeological assessment was provided with the application. The request for an assessment was on the basis that, within this part of Derbyshire and on sites with specific geological characteristics (such as this one) there is an increased likelihood of associations with Palaeolithic (early 'stone age'), Neolithic and Bronze age activity. Furthermore, it was stated that there is also DHER information relating to a possible Anglo Saxon cemetery (DHER 20605) in the vicinity of Hilton gravel pits, which are roughly 350m to the north of the site.

In response, an Archaeological Desk-Based Assessment was provided. This concluded that, on the basis of available evidence, the site had low potential to contain remains dating to the prehistoric, Roman, Saxon, Medieval and Post Medieval periods. The Development Control Archaeologist was further consulted on this document, but did not concur with its conclusions. They commented that the assessment was insufficient on grounds that it did not adequately address the potential for early prehistoric remains and failed to assess the extent to which recent land-uses may have impacted upon earlier archaeology. Furthermore, they were surprised that the potential for the survival of prehistoric remains on site were considered low, in spite of the fact that the presence of multiple prehistoric assets within the wider study area were acknowledged within the report.

The applicant's archaeologist provided further information to address these specific matters and on account of this information, the Development Control Archaeologist has reached a position whereby they are satisfied to recommend approval, subject to a pre-commencement condition. This condition would require an initial archaeological assessment, on the basis of which, an archaeological mitigation programme could be scoped. The initial phase of investigation would involve geo-archaeological monitoring of site investigation boreholes and/or test pits. Dependant upon the results of this work further, more extensive archaeological recording may be necessary. They have also advised that the assessment for early prehistoric remains requires specialist input, and the developers should seek the advice of their archaeological consultants to identify a suitable archaeological contracting organisation.

Subject to the imposition of the suggested condition, potential archaeological impacts would be adequately assessed and managed and the development would therefore be compliant with Policies BNE2 and BNE10 of the Local Plan and the referenced paragraphs of the NPPF.

Developer contributions and obligations

In regards to the provision of Affordable Housing there is a policy requirement for 30% provision. On the basis of the indicative proposals and the maximum under the description of development, this would equate to 17 units. Strategic Housing have requested that 68% of the properties should be for social rent and the remaining 32% for intermediate housing. Requests in relation to their size and layout have also been identified.

In terms of open space provision, as the development proposes in excess of 50 dwelling, there would be requirements for on and off-site provision. In regard to on-site facilities, a Locally Equipped Area for Play (LEAP), with a minimum dimension of 20m x 20m, would be required. In terms of off-site provision, a contribution of £372 per bedroom would be required towards open space, a contribution of £220 per bedroom would be required towards outdoor facilities and a contribution of £122.80 per bedroom would be required towards built facilities. Through liaising with the Open Spaces and Facilities Manager, the following projects have been identified:

- the open space monies could contribute towards additional allotment provision, the Hilton Greenway Link or the Mease Woodland;
- the outdoor space provision would go towards upgrading and increasing existing play provision in the area; and
- the built facilities contribution would go towards the village hall project or the scout hut project.

As part of the application, both the illustrative plans and the flood risk assessment detail that on site SuDS would be provided. It is unknown at this stage exactly what form this would take and whether the long term management and maintenance of the facilities would be the responsibility of the Local Authority or a private management company. As such an either/or clause along with a maintenance sum would be included within the legal agreement.

In relation to secondary level provision, following an analysis of the current and future projected number of pupils on role, the County confirm that there would not be capacity to accommodate the 9 secondary and 3 post-16 pupils arising from the proposed development. To mitigate against this, a contribution of £310,418.10 has been requested. This would go towards expanding facilities at John Port School.

The CCG has provided a calculation which illustrates that the estimated population of the development would be 142.5 people. The population figure is subsequently converted to establish the health-related requirements associated with the development, resulting in a sum of £27,456.00. The response further identifies that the contribution would go towards an extension at the existing surgery.

Obligations would also be sought to cover the Council's and the County Council's monitoring costs. This Council's monitoring fee would be £2,500 and the County's fee, which would be assigned to Travel Plan monitoring, would be £5,000.

From a planning perspective, legislation identifies that there are legal tests for when a S106 agreement can be utilised to secure developer contributions. These are set out in regulations 122 and 123 of the Community Infrastructure Levy (CIL) Regulations 2010, as amended (and within paragraph 204 of the NPPF). The contributions sought must address the specific mitigation required by the new development. To ensure this, contribution requests must meet the following tests, 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 secured by way of a legal agreement. The proposal is thus compliant with policies INF1, INF6 and INF9 of the Local Plan and the Council's section 106 guidance.

Other Issues

The Environmental Heath Officer has advised that the site is within influencing distance of several areas of potentially contaminated land and have recommended a pre-commencement condition to ensure that this issue is adequately assessed and if necessary, managed and mitigated. Subject to the imposition of the suggested condition there would be no materially harmful impacts in this regard.

Environmental Heath have also recommended other conditions which seek to prevent the installation of solid fuel combustion appliances and functioning chimneys cannot be imposed since they would not meet the required tests set out in the NPPF for various reasons, one of which being that such installations would not comprise 'development' and so could not be controlled via the planning system.

Through developing the site an area of agricultural land would be lost. The classification of this land appears to be Grade 3 (good to moderate land) based on Natural England mapping, although its sub-grade is unknown. The NPPF seeks to ensure that the highest quality and most versatile agricultural land is retained (Grade 3a). Whilst Grade 3 land is not poor quality, neither is it of excellent quality, and in any case the extent of land and its current productiveness is not considered to be significant in terms of the NPPF or overall planning balance. On account of this, the harm associated with its loss would be limited.

Overall planning balance and conclusion

As required by Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990, development must be determined in accordance with the development plan, unless material considerations indicate otherwise. Although this site is not formally allocated through Local Plan process for housing development, as explained within this appraisal the site is situated within the settlement boundary of Hilton where Policy H1 is supportive of residential development regardless of its scale. By virtue of this location, the site would be easily accessible, would promote opportunities for the use of more sustainable modes of transport and would be within close proximity to a range of services and facilities. Furthermore, the development would contribute towards and assist in boosting the Council's housing land supply position and would provide for 30% affordable housing. As such, the principle of the development is considered acceptable.

In regards to more technical issues, details of the access have been considered and a policy compliant solution has been identified. Noise impacts arising from the A50 have been identified as a key issue but, subject to appropriate mitigation being secured, could be reduced to an acceptable level. Matters relating to ecology and trees, drainage and flood risk, archaeology and land contamination have all been considered within specific technical reports and there are no outstanding issues with the relevant consultees. Finally, the character and appearance of the area has been appraised and on the basis of both the site area and the quantum of development proposed, it is considered that a form of development could be achieved which would respect and respond to the area's character and would not result in any material harm in terms of appearance. Finally, to address the impacts of the development on the local infrastructure and services, a range of developer contributions have been requested. The detail of these have been assessed against the relevant legislation and are considered compliant, and necessary to render the development acceptable.

In terms of adverse impacts, the development would result in a minor loss of agricultural land. However, this is potentially not best and most versatile land and its present productive use and ability for it to be farmed effectively for food production limit the harm arising. The development may also not result in a biodiversity net gain on-site. However the development has sought to reduce the

associated harm as far as possible, and a Grampian condition can be imposed to ensure suitable off-site compensation can be secured to address this issue. On balance, it is not considered that the adverse impacts identified would significantly and demonstrably outweigh the multitude of benefits that this development would bring.

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, noting that conditions or obligations have been attached where meeting the tests for their imposition. Where relevant, regard has been had to the public sector equality duty, as required by section 149 of the Equality Act 2010 and to local finance considerations (as far as it is material), as required by section 70(2) of the Town and Country Planning Act 1990 (as amended), as well as climate change, human rights and other international legislation.

Recommendation

A. Grant delegated authority to the Strategic Director (Service Delivery) to conclude negotiations on and complete an agreement under section 106 of the Town and Country Planning Act 1990 so to secure the planning obligations outlined in this report along with associated provisions for long term management of any public facilities provided; and

B. Subject to A, **Approve** the application subject to the following condition(s):

1. 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 before any development is commenced the further approval of the Local Planning Authority is required in respect of the following reserved matters:
 - (a) appearance;
 - (b) landscaping;
 - (c) layout; and
 - (d) scale.

Reason: The application is expressed to be in outline only and the Local Planning Authority has to ensure that the details are satisfactory, and so 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. The details/matter of access hereby permitted shall be carried out in accordance with the drawings and plans listed in the Drawing Schedule received by the Local Planning Authority on the 12 March 2020 unless otherwise required by a 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. (i) Application for approval of the reserved matters listed at condition 1 shall be made to the Local Planning Authority before the expiration of three years from the date of this permission; and
 - (ii) The development hereby permitted shall be begun before the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.
 - (iii) The details submitted pursuant to the reserved matters listed at condition 1 shall broadly be in accordance with the illustrative masterplan. Each application for reserved matters approval shall incorporate or be supported by, in so far as relevant to that/those matter(s), the following specific detail/requirements:
 - (a) retained hedgerows and trees shall, as far as practicable, not act as enclosures to proposed dwellinghouses and be incorporated into public spaces/green infrastructure;
 - (b) a shading analysis to demonstrate the effects of tree and/or hedgerow shading on residential properties created by the development;

- (c) where applicable, details of measures to support hard landscaping within any root protection areas of retained trees or hedgerows;
- (d) evidence to demonstrate that the open (pond/swale) features of the sustainable drainage system has been designed to provide sufficient capacity to drain the site in accordance with conditions 19 & 20 of this permission;
- (f) the provision of at least 2 bungalows;
- (g) the internal layout of the site shall be in accordance with the guidance contained in the 6C's Design Guide (or any subsequent revision/replacement of that guidance) and Manual for Streets issued by the Department for Transport and Environment and Local Government (or any subsequent revision/replacement of that guidance);
- (h) the provision of bin collection points at the adoptable highway end of private shared driveways and courtyards, sufficient in size to accommodate two bins per dwelling to which they serve;
- (i) each dwelling shall be provided with space for the parking of two vehicles for each 1, 2 or 3 bedroom dwelling or three vehicles for each 4+ bedroom dwelling in accordance with the dimensions set out in the Council's Design Guide SPD, with any garages to be counted as a parking space of internal dimensions no less than 3m x 6m;
- (j) a Landscape and Ecological Management Plan (LEMP) for all retained and created habitats demonstrating provision for the establishment of the approved landscaping scheme for a period of no less than thirty years and details of the legal and funding mechanism(s) by which the long-term implementation of the LEMP will be secured by the developer with the management body(ies) responsible for its delivery; and
- (k) details of ways to improve connectivity through walking and cycling routes from the proposed development to existing residential areas.

Reason: For the avoidance of doubt and in order to secure an appropriate detailed design which accords with best design principles under the Council's Design Guide SPD and Secured by Design, and in the interests of sustainable drainage and reducing flood risk, biodiversity and the cultural heritage of the District.

4. No removal of trees, hedges and shrubs 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 and shrubs 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 species from undue disturbance and impacts.

5. No development, including preparatory works, shall commence until the following has been submitted to and approved in writing by the Local Planning Authority;
 - a) a Biodiversity Metric Calculation to confirm the extent by which mitigation measures proposed through the LEMP contribute to the achievement of biodiversity net gain in compliance with policy BNE3 of the South Derbyshire Local Plan and paragraph 175 of the National Planning Policy Framework. In the event that the biodiversity metric calculation identifies a net loss of biodiversity, then, as a last resort a scheme ('the offsetting scheme') for the offsetting of biodiversity impacts at the site shall be submitted to and agreed in writing by the Local Planning Authority. The offsetting scheme shall include:
 - (i) a methodology for the identification of receptor site(s);
 - (ii) the identification of receptor site(s);
 - (iii) details of the offset requirements of the development (in accordance with the recognised offsetting metrics standard outlined in the Defra Metrics Guidance dated March 2012, or any document that may update or supersede that guidance);
 - (iv) the provision of arrangements to secure the delivery of the offsetting measures (including a timetable for their delivery); and
 - (v) a management and monitoring plan (to include for the provision and maintenance of the offsetting measures for fifteen years from the commencement of the offsetting scheme. The development shall be carried out in accordance with the approved schemes.

Reason: In order to safeguard protected and/or priority species from undue disturbance and impacts, noting that initial preparatory works could have unacceptable impacts; and in order to secure an overall biodiversity gain.

6. No development, including preparatory works, shall commence until a scheme for the protection of trees, hedgerows and ponds has been submitted to and approved in writing by the Local Planning Authority. Such a scheme shall be based on best practice as set out in BS 5837:2012 (or equivalent standards which may replace them) and ensure that no vehicles can access, and no storage of materials or equipment can take place within, the root and canopy protection areas of trees/hedgerows. The approved scheme of protection shall be implemented prior to any works commencing on site and thereafter retained throughout the construction period. In the interests of safeguarding existing habitat and the visual amenities of the area, recognising that initial preparatory works could bring about unacceptable impacts to protected and non-protected interests.

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 to protected and non-protected interests.

7. 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. To protect the amenities of adjoining properties and safeguard against potential surface water flooding.

Reason: To protect the amenities of adjoining properties and safeguard against potential surface water flooding.

8. No development shall take place until a Written Scheme of Investigation for archaeological work has been submitted to and approved by the local planning authority in writing, and until any pre-start element of the approved scheme has been completed to the written satisfaction of the local planning authority. The scheme shall include an assessment of significance and research questions; and
 1. The programme and methodology of site investigation and recording
 2. The programme for post investigation assessment
 3. Provision to be made for analysis of the site investigation and recording
 4. Provision to be made for publication and dissemination of the analysis and records of the site investigation
 5. Provision to be made for archive deposition of the analysis and records of the site investigation
 6. Nomination of a competent person or persons/organization to undertake the works set out within the Written Scheme of Investigation"

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.

9. No development shall take place other than in accordance with the archaeological Written Scheme of Investigation approved under condition (8)." 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.

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.

10. The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the

archaeological Written Scheme of Investigation approved under condition (8) and the provision to be made for analysis, publication and dissemination of results and archive deposition has been secured."

Reason: To enable 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.

11. During the period of construction, no ground, construction or fitting out works shall take place and no deliveries shall be taken at or dispatched from the site other than between 0730 and 1800 hours Monday to Friday and 0800 and 1300 hours on Saturdays. There shall be no construction works (except for works to address an emergency) or deliveries on Sundays or Bank Holidays.

Reason: Reason: In order to protect the amenities of adjoining residential occupiers.

12. No development shall take place until a scheme of dust mitigation measures and the control of noise 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 order to protect the amenities of adjoining residential occupiers.

13. Prior to the construction of a dwelling, a scheme of noise mitigation for protecting occupants of the development from noise from the road network 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: Reason: In order to protect the amenities of adjoining residential occupiers.

14. a) No development shall commence until a scheme to identify and control any contamination of land or pollution of controlled waters has been submitted to and approved in writing by the Local Planning Authority, and until the measures approved in that scheme have been implemented. The scheme shall include all of the measures (phases I to III) detailed in Box 1 of Section 3.1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated' (herein referred to as 'the Guidance'), unless the Local Planning Authority dispenses with any such requirement specifically and in writing.
b) Prior to occupation of the development (or parts thereof) an independent verification report which meets the requirements given in Box 2 of Section 3.1 of the Guidance shall be submitted to and approved in writing by the Local Planning Authority. With the prior written agreement of the Local Planning Authority pursuant to part (a) of this condition, this may be carried out on a plot-by-plot basis.
c) In the event that it is proposed to import soil onto site in connection with the development, this shall comply with the specifications given in Box 3 of Section 3.1 of the Guidance.
d) If required by the conceptual site model, no development shall commence until monitoring at the site for the presence of ground gas and a subsequent risk assessment which meets the requirements given in Box 4, Section 3.1 of the Guidance has been completed in accordance with a scheme first submitted to and approved in writing by the Local Planning Authority.

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.

15. 1 charging point shall be provided per unit (house with dedicated parking). 1 charging point per 10 spaces where the individual units have no allocated parking. Residential charging points shall be provided with an IP65 rated domestic socket 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 shall be supplied by an independent 32 amp radial circuit and equipped with a type 2, mode 3, 7-pin socket conforming to IEC62196-2. Alternative provision to this specification must be first submitted to and approved in writing by the Local Planning Authority.

Reason: In order to reduce carbon emissions associated with residents' transport to and from the development and to improve air quality.

16. No development shall take place until a Construction Management Plan (CMP) or Construction Method Statement (CMS) has been submitted to and been approved in writing by the Local Planning Authority. The CMP/CMS shall provide details of space for the storage of plant and materials, site accommodation, loading, unloading of goods' vehicles, parking of site operatives' and visitors' vehicles, routes for construction traffic, method of prevention of debris being carried onto highway and any proposed temporary traffic restrictions. The CMP/CMS shall be adhered to 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.

17. No development or other operations, including preparatory works, shall commence until a temporary access for construction purposes has been provided in accordance with a detailed design first submitted to and approved in writing by the Local Planning Authority. The detailed design shall include measures for warning other highway users of construction traffic entering or emerging from the access. The access shall be retained in accordance with the approved scheme throughout the construction period free from any impediment to its designated use until it is replaced/completed pursuant to the requirements of condition 16.

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.

18. 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 1, constructed to base level, drained and lit in accordance with the County Council's specification for new housing development roads.

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

19. Prior to any works to construct a building or hard surface, setting of finished floor/site levels or installation of services/utilities, a detailed assessment to demonstrate that the proposed destination for surface water accords with the hierarchy in paragraph 80 of the planning practice guidance (or any revision or new guidance that may replace it) shall be submitted to and approved in writing by the Local Planning Authority. The assessment shall 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.

The assessment shall also provide an evidenced and full understanding of the springs within the site and any associated mitigation requirements which might be required. Any mitigation required shall be accommodated in the surface water drainage scheme.

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.

20. Prior to any works to construct a building or hard surface, setting of finished floor/site levels or installation of services/utilities, a detailed design of, and associated management and maintenance plan for, surface water drainage of the site, in accordance with the principles contained within the Defra non-statutory technical standards for sustainable drainage systems, shall be 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. The scheme shall also include measures to capture and drain overland surface water flows between gardens and properties adjoining the site. The surface water drainage infrastructure shall be installed in conformity with the approved details prior to the first occupation/use of each respective 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.

21. 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 demonstrate that the surface water drainage system has been constructed in accordance with the details approved pursuant to condition 19. 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.

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 Part 1.

Informatives:

- a. 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 with the application reference included in correspondence.
- b. You are advised, as part of the application for approval of reserved matters, to provide details of the following (so to avoid the need for additional conditions at a later stage):-facing materials, eaves and verge details, and cill and lintel details;-rooflight, porch and bay canopy details;-surfacing materials and patterns;-boundary treatments (including materials thereof); and-if applicable, details of a management and maintenance strategy for any highways not adopted under an agreement pursuant to section 38 of the Highways Act 1980, nor conveyed to individual property owners. You should also ensure that the reserved matters ensure that
 - (1) all exposed housing elevations are well treated to allow a view between interiors and external space;
 - (2) where housing is set in blocks of more than two properties rear garden access should originate 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;
 - (3) enclosed parking courtyards are best gated or overlooked; and
 - (4) the open aspects of the footpath route and proposed links are not compromised by any landscaping sited between footpath and the development.
- c. The application site is abutted by a Public Rights of Way (Footpath 18 in the Parish of Hilton, as shown on the Derbyshire Definitive Map). The route must remain unobstructed on its legal alignment at all times and the safety of the public using it must not be prejudiced either during or after

development works take place. Further information can be obtained from the Rights of Way Duty Officer in the Economy, Transport and Environment Department at County Hall, Matlock.

- d. Pursuant to Section 278 of the Highways Act 1980 and the provisions of the Traffic Management Act 2004, no works may commence within the limits of the public highway without the formal written Agreement of the County Council as Highway Authority. It must be ensured that public transport services in the vicinity of the site are not adversely affected by the development works. Advice regarding the technical, legal, administrative and financial processes involved in Section 278 Agreements may be obtained by contacting the County Council via email - es.devconprocess@derbyshire.gov.uk. The applicant is advised to allow approximately 12 weeks in any programme of works to obtain a Section 278 Agreement.
- e. 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.
- f. The developer should ensure that construction and contractor vehicles are parked legally in a manner that shows consideration to the occupiers of adjacent and nearby properties.
- g. The watercourses, attenuation pond(s) and/or swale(s) 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.

Item 1.2

Ref. No. 9/2019/0699

Valid Date 28/06/2019

Applicant:

Mr P Hammond

Agent:

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Proposal: THE VARIATION OF CONDITION 1 AND REMOVAL OF CONDITION NO. 4 OF PERMISSION REF. 9/2018/0959 (RELATING TO THE ERECTION OF A SUN CANOPY) AT 11 THE GREEN WILLINGTON DERBY

Ward: Willington and Findern

This report was deferred at the meeting on 4th February 2020 in order to carry out a site visit. Since then, the applicant has also chosen to submit a revised scheme which has been subject to further publicity. The report remains the same as previously published other than additional assessment set out in *italics*.

Reason for committee determination

This item is presented to Committee at the discretion of the Head of Planning and Strategic Housing, the Committee having considered previous applications for the site recently.

Site Description

The application site is part of the existing beer garden and seating area at the rear of the Dragon public house adjacent to the canal towpath. This land is owned by Derbyshire County Council but leased to the owner of The Dragon.

Proposal

Following the submission of two separate applications for variation of different conditions (9/2019/0699 – Lighting and 9/2019/0741 – approved plans) which referred to two separate permissions the applicant was advised that the only way to achieve a valid consent which could be implemented was to amalgamate the two applications. 9/2019/0741 was therefore withdrawn and this proposal now seeks to vary conditions 1 and 4 of planning permission 9/2018/0959 relating to the retention of a sun canopy within the existing seating area at the rear of The Dragon. Condition 1 relates to the approved plans and condition 4 states that the lighting shall be for a limited period of six months following the first use. This application for the variation/removal of conditions is to allow the applicant to retain the lighting on a permanent basis to the structure and vary the approved plans.

Applicant's supporting information

The applicant has submitted relevant plans and elevations of the canopy structure and, in addition, has provided details of the proposed lighting installation in terms of location, number and brightness.

Planning History

- 9/2010/0982 Alterations to existing public house to rearrange kitchen, toilets and living accommodation, provision of new access from canal side including new external eating/dining/drinking area, erection of a smoking shelter and alterations to car parking layout – Approved 23-12-10
- 9/2010/1012 The demolition of rear toilet block and store, porch and bay window to allow for alterations – Granted 23-12-10
- 9/2011/0461 Retrospective application for the erection of front & rear extensions and alterations to canal side ground levels to form new seating area. The erection of smoking shelter, fencing to rear seating area, external lighting, timber bin store, rebuilding of existing garage and installation of ventilation duct indicated – Approved 18-01-12
- 9/2012/1037 The erection of a glazed verandah and retention of minor landscaping works – Approved 01-02-13
- 9/2013/0627 Shed demolition, store extension, glazed screen, patio extension, wickerwork screening & kitchen/cellar extension – Approved 16-10-13
- 9/2013/0966 Change of use of existing dwelling to public house with extensions and alterations (retrospective in part) to provide for relocated kitchen, additional seating, external terrace and smoking shelter at ground floor, and offices, welfare facilities and 2 units of independent accommodation at first floor; along with conversion of existing garage to ancillary accommodation, conversion of existing prep room to micro-brewery, and relocation of vehicular access and reconfiguration of car parking – Approved 13-02-14
- 9/2015/0130 Change of use of land to extend beer garden, rep of retaining wall, formation of pathway and steps, and erection of gate on land to the canal side – Approved 22-04-15
- 9/2015/0375 Single storey extensions to the kitchen and restaurant areas – Approved 24-06-15
- 9/2017/0520 The retention of fixed external bar – Approved 11-07-17
- 9/2017/0649 The erection of an extension to the restaurant – Approved 09-08-17
- 9/2017/1357 The erection of a sun canopy – Approved 16/03/2018
- 9/2018/0449 The retention of fixed external bar (revised scheme to that approved under application ref. 9/2017/0520) – Refused 20-07-18
- 9/2018/0503 The retention of a sun canopy (revised scheme to that approved under permission ref. 9/2017/1357) Approved 03-07-18
- 9/2018/0959 The variation of conditions 1 & 3 of planning permission ref: 9/2018/0503 (relating to the retention of a sun canopy (revised scheme to that approved under permission ref. 9/2017/1357) – Approved 28-11-18
- 9/2018/1192 The retention of a sun canopy – Refused 24/12/2018
- E/2018/00205 Enforcement notice requiring the removal of the structure upheld on appeal
Inspectors decision notice dated 3rd October 2019 gave the applicant two months notice to remove the structure.

Responses to Consultations

The Environmental Health Officer notes that the lighting proposed is low intensity decorative lighting of lower power than domestic internal lighting. Their output would be insufficient to impact upon neighbouring residential amenity significantly when compared to the levels in the Institute of Lighting Engineers guidance on intrusive lighting.

The Conservation Officer states that the sun canopy is a well-designed lightweight glazed structure of contemporary design offering additional seating space in inclement weather and enhances the viability of the business as well as help animate the space. The impact on the conservation area is considered to be moderately beneficial. Provided that there has been no discernible increase in neighbour nuisance (specifically noise and light pollution) no objection is proposed.

Responses to Publicity

Nine letters of objection have been received, raising the following concerns/points:

- a) The sun canopy structure is subject to enforcement action. How can something not compliant be amended?
- b) Lighting detrimental to the character of the conservation area.
- c) Planning committee added this condition, they should determine this application.
- d) Potential for stress and anti-social behaviour
- e) Lights will cause lack of sleep and lead to health issues.
- f) The Dragon cannot facilitate the customers it already has never mind accommodate more customers. Parking is insufficient.
- g) External speakers continue to play music.
- h) Conditions relating to noise limits ignored.
- i) Impact on neighbours including narrow boats.
- j) Conditions are put on for a reason, why would the council change their mind?
- k) The character of the conservation area is important and should not be degraded.
- l) Lights a distraction to the wildlife including the bats
- m) The area is part of public open space and forms an integral part of the conservation area. The sun canopy spoils the CA and resident's peaceful enjoyment of it.
- n) The applicants have consistently ignored planning conditions and regulations.

Development Plan Policies

The relevant policies are:

- 2016 Local Plan Part 1 (LP1): S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), SD1 (Amenity and Environmental Quality), BNE1 (Design Excellence), BNE2 (Heritage Assets).
- 2017 Local Plan Part 2 (LP2): SDT1 (Settlement Boundaries and Development), BNE9 (Advertisements and Visual Pollution), BNE10 (Heritage).

National Guidance

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

Local Guidance

- South Derbyshire Design Guide SPD
- Trent and Mersey Canal Conservation Area Character Statement (CACS) 2013

Planning Considerations

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

- Design and impact on the character of the conservation area; and
- The effect of lighting on residential and visual amenities of the area;

Planning Assessment

Background

The original application (ref. 9/2017/1357) for the canopy structure was presented to the Committee in February 2018. Permission was given in March 2018 following a confirmation of no objection from the Canal and Rivers Trust. A further application was submitted to agree the structure in the same location but rotated by 90 degrees (ref. 9/2018/0503). This was approved under delegated powers in July 2018. Both permissions include a condition preventing the affixing of lights to the approved structure.

A further Section 73 application was made (9/2018/0959) which also came before Committee seeking to vary conditions 1 and 3 of 9/2018/0503 which Members agreed to approve subject to the addition of a condition limiting the lighting to a six-month period after the first use to assess the effect of the lighting on the local amenity.

It should be noted that a further application was submitted (9/2018/1192) for the retention of the sun canopy as built with full glazing on all sides. This application was refused under delegated authority due to the lack of visual permeability.

Following refusal of this application enforcement action was instigated. The applicant appealed but the appeal was dismissed. The applicant was given two months to remove the structure. This has not been done as the applicant had made an application to amend the design of the canopy and, at the same time, remove the temporary lighting condition. Action has not been taken to allow this application to be determined.

It should also be noted that Derbyshire County Council, the owners of the land on which the beer garden is located, has a number of conditions set out in the lease with the applicant. DCC has made it known that it is not happy with certain aspects of the applicant's use of the site. As landlord, it is in a position to cease any activity that may not comply with the conditions of the lease. However, as landlord, it is also the subject of the Enforcement Notice.

Design and impact on the character of the conservation area

As can be seen from the above planning history the sun canopy has had three separate permissions. Unfortunately, since it was first installed it has not been built in accordance with any of the approved plans. This current application which in part seeks the variation of condition 1 for an amended design lowering the glazing on the structure to a height of 1.5m, the same height as previously approved in 9/2018/0959 but with the introduction of gravel boarding at ground level to a height of approximately 500mm.

Previous reports have discussed the importance of the sun canopy to appear lightweight and visually permeable. The removal of the full height glazing on the existing structure which was considered unacceptable appears to suggest that the applicant has gone some way towards complying with the enforcement notice and would implement the details of this proposal, should it be considered acceptable. Whilst full height glazing might appear permeable, in different lighting conditions and in cold weather the structure can appear solid and impermeable. This proposed 'half-height' glazing – provides a gap of 1.1m between the top of the glazing and the upper horizontal metal bar of the structure. This gap provides valuable permeability allowing views through the

structure at all times and helps the structure to be part of the landscape whilst also providing an element of protection from the sun and moderately inclement weather. The gravel boarding would be predominantly screened by the boundary hedge and therefore would have little impact on the permeability of the structure. However, whilst previous approvals have all shown the continuation of the hedgerow on the canal side of the structure, this proposal reflects that the structure is on the boundary of the land being rented by the applicant and as such the replacement of the hedgerow would be outside of land in use by the applicant. An alternative to a hedgerow outside of the applicant's control would be the addition of an artificial hedgerow attached to the gravel panels retaining the appearance of a continuous hedgerow maintaining the appearance of the previously approved scheme which could be required by condition. The revised design with this addition is considered to comply with BNE1, BNE2 and BNE10 of the Local Plan.

Following deferral of the item at Committee on 4th February, the applicant has proposed an amended scheme which differs from the scheme described above by omitting the gravel boarding and glazing on the north elevation of the sun canopy, allowing the reinstatement of the hedgerow albeit without removing the structure. This would have the benefit of reintroducing the hedgerow and reduce the amount of glazing proposed, taking the design back to its original concept. This revised proposal is considered both preferable and compliant with policies BNE1, BNE2 and BNE10 of the Local Plan.

The effect of lighting on residential and visual amenities of the area

As was previously noted when temporary permission was granted for the lighting (9/2018/0959), the installation of lighting would not enable patrons to sit outside in less inclement weather any longer than they currently could, particularly when low level lighting could be used on tables without the need for planning permission. Environmental Health has commented that the lights to be retained, 48 1 watt bulbs on a string around the structure are low density decorative lighting (lower than domestic internal lighting) and unlikely to impact on residential amenity when compared to the levels provided in the Institute of Lighting Engineers guidance on intrusive lighting. The previous application provided a lighting spill plan and this showed light levels quickly diminish to 0.2 and 0.1 lux on the canal towpath and drop to less than 0.1 lux before reaching the water. A similar drop in lighting levels is seen in the remaining directions. This is not considered to bring about an undue adverse effect, and given there are no objections from the Environmental Health Officer, particularly as it has confirmed that they have not had any formal complaints regarding lighting from the above premises in the last 12 months, the proposal is considered to comply with policy SD1.

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 hereby permitted shall be carried out in accordance with drawing ref. 23N, 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.

2. Notwithstanding the approved plans, prior to the first use of the reconstructed sun canopy details and species types of the hedgerow to be reinstated shall be submitted to, and approved by, the Local Planning Authority.

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

3. Notwithstanding the approved plans, before their installation, the materials to be used in the creation of the solid floor beneath the canopy shall be submitted to and approved in writing by the Local Planning Authority. Only the approved materials shall then be used.

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

4. All planting, seeding or turfing comprised in the approved details of soft landscaping shall be carried out in the first planting and seeding season 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.

Item 1.3

Ref. No. 9/2019/0406

Valid Date 12/04/2019

Applicant:

Mr J Bailey
J Bailey & Son

Agent:

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

Proposal: CHANGE OF USE OF PART OF AGRICULTURAL Paddock FOR THE EXERCISING OF DOGS ALONG WITH THE ERECTION OF BUILDINGS FOR BOARDING KENNELS AND ASSOCIATED STORAGE AND THE CREATION OF A PARKING AREA ON LAND ADJACENT TO GREENACRE BENT LANE CHURCH BROUGHTON DERBY

Ward: Hilton

This report was deferred at the meeting on 25 June 2019 following it being reported at that meeting that a new dwelling had been approved adjacent to the application site. A revised Noise Assessment was requested to address this recently permitted dwelling (ref. 9/2019/0333) in regard to the potential impacts of the proposed use on this new residential receptor. The report below thus remains largely the same as previously published other than additional assessment or comments set out in *italics*, with any now outdated discussion ~~struck through~~.

Reason for committee determination

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

Site Description

The application site comprises a paddock adjacent to and to the rear of Greenacre, Bent Lane, Church Broughton, a bungalow. The site lies within open countryside to the east of a group of former farm buildings now converted to residential dwellings. The site is approximately 1.7km southeast of the village of Church Broughton and approximately 2km north of Hatton.

Proposal

The application proposes the erection of a kennel building and separate smaller storage building at the rear of Greenacres. The northern part of the paddock the west would serve as an area for the exercising of dogs and a small parking area would be created to the north of the Greenacres itself. Access to the parking area and kennels would be via a surfaced track currently used to access the field but also used by a neighbouring property.

Applicant's supporting information

The applicant has provided location and block plans as well as plans and elevations of the proposed buildings. In addition the applicant has provided a Supporting Planning Statement, a Business Case as required by Policy E7 demonstrating the need and economic viability of the proposal, a Noise Assessment which recommends the provision of acoustic fencing and concludes that noise can satisfactorily be controlled by the design of the development, and a Barn Owl and Wider Ecology

THE SITE

Church Broughton
Heathcote
A50
A611
N

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South Derbyshire District Council. LA 100019461. 2014

Survey which concludes that the shed and nesting boxes does not show any evidence of past Barn Owls and that the boxes should be moved to adjacent trees.

30 letters of support are provided. The authors include being dog owners or trainers in the majority, with some having known the applicants for some time and verifying their repute. These letters support the need for the kennels and express a desire to take up space at the business, as well as expressing disappointment at the previous refusal.

Planning history

9/1982/060 The erection of an agricultural workers dwelling – approved April 1982.

9/2018/0839 Change of use of agricultural paddock for the exercising of dogs along with the erection of buildings for boarding kennels and associated storage and the creation of a parking area – refused in December 2018 for the following reason:

“Notwithstanding the submitted evidence, even taking into account the noise mitigation measures recommended in the noise report accompanying the application, there would be significant adverse impacts on quality of life for nearby residents by way of noise levels emanating from the development which could not be reasonably controlled by planning conditions. As such the proposal is contrary to policies SD1 and E7 of the adopted Local Plan Part 1”.

Responses to Consultations

The Environmental Health Manager notes that the previous application was refused, and the reason for this refusal. The revised scheme is identical to that previously submitted, save for the reduction in the size of the outdoor exercise area and its enclosure with acoustic fencing. The noise data submitted in support of this application has been compared with the previously submitted noise report, and a conclusion to the comparison is that:

- The predicted noise from the external exercise area would be ‘half as loud’ as the original application;
- The noise from the outer run will be slightly less than half as loud as the original application, and;
- The noise from the inner run will be ‘perceptibly’ less than the original application.

The noise report states that the proposals meet the criteria in BS8233 “Guidance on sound insulation and noise reduction for buildings”. It is also useful to compare the predicted noise levels against the measured background noise levels at the development location to provide an indication about how prominent barking noise is likely to be against the existing background noise environment. Based on the noise data collected, the impact of dog noise from the proposed development is considered to be ‘low’. Nevertheless, at the noise levels predicted it is still considered that dog noise would be audible at the local noise sensitive receptors. However, the proposal is not considered to result in demonstrable harm to the amenities of nearby residents subject to conditions relating to the provision of sound insulation for the building and the installation of an acoustic fence.

Following the meeting on the 25 June 2019, the Environmental Health Officer provided a further response stating they had concerns with regards to noise from the proposed unit. The applicant was able to demonstrate that the proposed development could be undertaken without noise causing significant adverse impact on neighbouring amenity. However, prior to the application being determined, a new residential property had been granted permission significantly closer to the proposed kennelling units. The introduction of this new receptor needed to be considered as part of the kennel application, as without it the noise impacts cannot be accurately quantified. Without this information, the Environmental Health Officer has no alternative other than to now recommend refusal of the application.

The Highway Authority, having commented on the previous application, note that the proposal differs little in highway terms from the previous application and has no objections. The previous comments stated that Bent Lane is of single width and only serves 12 properties. Whilst not ideal, it is not considered that the traffic generated by 14 kennels to accommodate 28-32 dogs could be considered severe enough to recommend refusal of the application. The Highway Authority therefore recommends conditions relating to access, parking and manoeuvring and location of gates.

The Development Control Archaeologist considers that the proposal would have no archaeological implications.

Derbyshire Wildlife Trust supports the recommendations of the submitted Barn Owl and wider ecology survey, such that any development should be carried out in accordance with the recommendations of the survey. This would secure the relocation of the existing bird boxes and checks on the building for occupation by birds before its demolition. In addition the provision of native hedgerow planting and wildflower meadow establishment is supported.

Responses to Publicity

Church Broughton Parish Council objects on the following grounds:

- a) there is an agricultural tie on the property and possibly the land as well, and the planned development should be allowed to proceed;
- b) the property has been let out to a tenant who now wants to create this business, which is not agricultural and so outside of the constraints of the tie;
- c) the scope for noise from a site housing so many dogs is significant;
- d) noise from the A50, as referred to in the application, is not normally audible and would not cover the sound of barking dogs;
- e) it is not clear on how faeces is to be collected and disposed of, with concerns of cross contamination and threat to health.

A petition signed by 62 people has been received, this raising a number of objections. In addition 45 letters of objection have been received, by many of the same residents whom signed the petition raising the following concerns/points:

Principle

- a) There are sufficient existing facilities in the area so there is no need for another one. There are 11 within a six mile radius of Hilton.
- b) This rural location is inappropriate for commercial development.

Amenity Impacts

- c) The proposed measures to reduce noise are laughable.
- d) Dogs barking will be to the detriment of the local population.
- e) 32 dogs will cause a lot of noise.
- f) The frequency, pitch and volume of the dogs 24 hours a day will negate any mitigation.
- g) Happy hounds in Church Broughton is already heard from 2 miles away.
- h) Increased lighting nuisance.
- i) The various activities around the site including the tennis courts will set dogs barking.
- j) The guidance set out in South Derbyshire 'barking dogs leaflet' is noted as regards statutory nuisance. This proposal would constitute a considerable nuisance.
- k) At the last Planning Committee it was stated that the process of enforcement of noise would be a complex issue – no monitoring or enforcement would be practical.
- l) Impact from the development on a recently approved dwelling close to the site.

- m) The assessment is based on just two dogs barking at the same time – this is not a true reflection of how much noise 28 – 32 dogs will make.
- n) Impact on adjacent children's play area (private garden) and the implications of this.
- o) Comparing noise to the ambient noise from the A50 is inappropriate – dog barking is more sporadic and noticeable
- p) Dogs are pack animals and one barking would set others off.
- q) The proposed acoustic fencing is totally ineffectual – how can this work.
- r) Impact upon the pleasant and peaceful surroundings to enjoy outdoor sport.

Highways

- s) Increased traffic causing disruption to residents and impacting on the road surface.
- t) Access via the single track is narrow and unsuitable for the development.

Other

- u) Concern for welfare of the dogs due to the small exercise area.
- v) There is no evidence that the barn owl boxes have been relocated as required by the submitted survey.
- w) The buildings would be visible from the public highway.
- x) Cross contamination – removal of faeces is not covered by this application.
- y) The supporting letters within the statement live a long way from Church Broughton.
- z) Impact on existing biodiversity including barn owls with the building to be demolished.

Since the meeting on the 25 June 2019 a further representation has been received echoing the comments previously received.

Development Plan Policies

The relevant policies are:

- 2016 Local Plan Part 1: S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), S3 (Environmental Performance), S6 (Sustainable Access), SD1 (Amenity and Environmental Quality), SD3 (Sustainable Water Supply, Drainage and Sewerage Infrastructure), SD4 (Contaminated Land and Mining Legacy Issues), E7 (Rural Development), BNE1 (Design Excellence), BNE2 (Heritage Assets), BNE3 (Biodiversity), BNE4 (Landscape Character and Local Distinctiveness), INF2 (Sustainable Transport)
- 2017 Local Plan Part 2: SDT1 (Settlement Boundaries and Development), BNE5 (Development in the Countryside), BNE7 (Trees, Woodland and Hedgerows),

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 the development;
- Design;
- Impact on amenity;
- Highway safety;

- Impact on historic environment; and
- Impact on ecology

Planning Assessment

The Committee should note that this application is a revision to the previously refused scheme considered in December 2018. The main change relates to the extent of the proposed exercise area, which has been reduced in size, located away from the site boundaries, and enclosed to the south, east and west by acoustic fencing.

Principle of the development

The principle of new development in the countryside is established by BNE5 of the Local Plan Part 2. This states that (inter alia):

“Outside of settlement boundaries (as defined in policy SDT1) within the Rural Areas of the district planning permission will be granted where the development is... allowed for by policies H1, H22, E7, INF10, H24, H25, H26, H27 or H28”.

Policy E7 of the LP1 states that: *“development proposals which diversify and expand the range of sustainable employment activities on land outside of settlement boundaries will be supported by the Council provided they support the social and economic needs of the rural communities in the District”.* The policy goes on to state that *“the Council will support proposals for the re-use, conversion and replacement of existing facilities and development of new buildings...”* subject to certain criteria. These include the submission of a sound business case, that the highway network is capable of accommodating the traffic generated, that development will not give rise to any undue impacts on neighbouring land, that the proposal is well designed and at a scale commensurate with the proposed use, and visual intrusion and the impact on the character of the area is minimised. The submission of a business case is fundamental to the principle of the development. Other issues are discussed under relevant headings below.

The applicant has provided a business case which highlights the need for additional high quality dog kennels in the area based on the number of new dwellings being constructed in the area and the associated growth in the population. Using the number of homes that currently have a dog, the applicant estimates the potential additional dog population from the number of new homes to be built over the period of the Local Plan. The business plan then looks at the number of kennel facilities in the area and concludes that there is a shortfall. Given the limited number of other kennel facilities highlighted in the Business Case at the time the previous application was submitted, the applicant was asked to provide additional information. The Council has a publicly available list of licenced premises which totals 36 premises throughout South Derbyshire. The additional information provided assessed this list and reduced to 13 the number of premises that actually provide boarding facilities for dogs. Whilst there is limited evidence of existing kennel spaces available at present and no mention of what kennel facilities might be available in Staffordshire, also within a reasonable catchment area, it is considered that a case has been made for the number of new households in the District which is expected to rise substantially over the plan period and it is reasonable to assume that the dog population would rise in line with the additional housing provision. The supporting letters are also a good indication of the likelihood of take-up of the business. The business case also sets out the start-up costs and expected turnover based on providing the new building to the most recent Licencing standards. The proposal therefore complies with criterion (i) of Policy E7.

Objectors have raised the issue of the property being constrained by an agricultural tie. Planning history for the site confirms that Greenacres is a dwelling that was granted consent with condition to limit its occupation to someone working in agriculture. Whilst the property was recently purchased in 2017, the current owner is employed in agriculture, with the current tenant also working for the owner of Greenacres and employed as a farm manager. As the property is both owned by someone who works in agriculture and his tenant works for him employed in agriculture, there is no breach of

this condition. The application, whilst in the name of the owner of Greenacres, is a proposal by the tenant and family to run the kennel business whilst still employed in agriculture. There are also no restrictions on the original permission restricting the setting up of a business from the property.

Design

Policy E7(iv) states that the new buildings should be “*well designed and of a scale commensurate with the proposed use*”. The proposed kennel and storage building are of functional design being proposed as double skin blockwork construction and timber clad gable ends with the main window and door openings facing north and south. The kennel building is of pitched roof construction with relatively low pitch roof with a height to ridge of just under 4.1 metres and height to eaves of 3.62 metres. The kennel building would be 19.10 metres in length and 11.30 metres in width. The flat roof storage building located to the west of the kennel building would be much smaller being only 3.56 metres in height and measuring 6.30 metres by 5.70 metres.

Whilst these buildings have a relatively large footprint they have been designed to have a minimal impact on the wider area being located to the rear of the existing house and minimising their height through the use of a shallow pitched roof. The materials are similar to that found on modern agricultural buildings, the use of concrete and timber boarding being prevalent in modern agricultural buildings. The kennel building itself would be some 18 metres away from the western boundary of the site and 10 metres away from Greenacres itself. The storage building would be located opposite Greenacres and create a courtyard around the parking area being 21 metres away from Greenacres but closer to the western boundary than the kennel building itself. In addition, the proposal includes the provision of a solid timber fence (acoustic barrier) along the boundary of the exercise area, which could impact upon the character of the area. However, considering that such a fence could be erected without the need for planning permission (up to a height of 2m) and it would be partially screened from the public realm by the existing field boundaries (which could be supplemented further by a landscaping scheme to the outer edge of the fence), the fencing in itself is not considered to be demonstrably detrimental to the character or appearance of the area.

Overall the layout, buildings and proposed development are considered to be of a scale commensurate to the proposed use, and the area in general subject to the submission and agreement of materials and landscaping details and therefore complying with E7(iv) as well as policies BNE1 and BNE4.

Impact on amenity

The previous refusal of the application is a material consideration in determining the acceptability of the current proposal. The question is therefore whether this application is materially different to the degree that conditions are either not required to control noise and disturbance from the site or that conditions can be applied which are both enforceable and offer reasonable control.

The design and layout of the building are considered to be acceptable as set out above being functional in appearance and layout. In addition, there would be no overlooking of neighbours being sufficiently distant from neighbouring properties and in any event the buildings are single storey. The proposal also includes a new hedgerow on the southern/eastern side of the acoustic fence minimising the visual impact the proposal would have on the surrounding area.

The nature of the development however could create potential adverse impacts on neighbour amenity affecting their living conditions. Policy SD1 states that: “the Council will support development that does not lead to adverse impacts on the environment or amenity of existing and future occupiers within or around proposed developments”. This policy states that the Council will take into consideration certain criteria, including criterion (iii) which states “the need for a strategic buffer between conflicting land uses such that they do not disadvantage each other in respect of amenity issues, such as odours, fumes, or dust and other disturbance such as noise, vibration, light or shadow flicker”.

The closest residential dwelling other than Greenacres itself is approximately 55m away. The Noise Assessment has been considered in detail by the Environmental Health Manager such that the proposed kennels and revised exercising area is considered to be capable of being accommodated without causing undue harm in this location subject to the proposed mitigation (i.e. the provision of acoustic insulation for the building and acoustic fencing to surround the outdoor exercise area). The revisions to the scheme are considered to result in the predicted noise from the external exercise area being 'half as loud' as the original proposal – a reduction of 9 to 11dBA, with noise from the outer run being reduced by 7.5 to 9.2dBA and the inner run at feeding times by 2 to 4dBA. Each of these measurements results in noise from the operation being below background noise levels.

Following the granting of permission for the new dwelling adjacent to the application site (ref. 9/2019/0333) and deferral of this proposal from Committee there has been a lengthy delay from the applicant considering whether a revised noise assessment would be prepared. The applicant notified the Council that a revised noise assessment would be prepared but, to date, this has not been provided. A deadline was set for submission of a revised noise assessment however that deadline has long passed. It is therefore considered that, in the absence of sufficient information relating to impacts on existing and prospective residential receptors it cannot be demonstrated that the proposal complies with policy SD1.

Whilst a lighting layout and specification has been submitted, the information submitted is insufficient to allow a full assessment of the scheme to be provided. As such, a condition requiring the submission of a full scheme is considered appropriate in order to ensure any lighting installed at the site would not impact on the amenities of nearby residents and reduce sky glow in the evenings/at night.

Highway safety

Bent Lane, leading to Miry Lane, is one of several roads that were severed by the A50 when constructed in the 1990s. It is now a dead-end and serves a small number of properties. The road is predominantly single width carriageway and therefore does not encourage high vehicle speeds. The Highway Authority states that whilst not ideal, it is not considered that the traffic generated by 14 kennels to accommodate 28-32 dogs could be considered severe enough to recommend refusal of the application. The Highway Authority also notes that the proposed access is across land in third party ownership, but the applicant maintains that he has a right of access to access the paddock across the land adjacent to Greenacres. This is a legal issue and not a planning one and therefore the Highway Authority recommends conditions relating to access, parking and manoeuvring, and location of gates. The proposal is therefore considered to comply with policies E7(ii) and INF2 and paragraph 109 of the NPPF.

Impact on historic environment

The site lies adjacent to but outside the Derbyshire Historic Environment Record (HER) for the World War II airfield at Church Broughton. The County Archaeologist has acknowledged that the proposal would have no impact on any associated archaeological remains. However, the site is within 'Heathhouses', a small settlement attested as early as the 14th century, and possibly therefore with potential for medieval settlement archaeology. The site is within a small field with no evidence for occupation on historic mapping, though the form of the field suggests that it may have been a medieval 'croft' or backplot rather than part of the open field as per the rather larger fields in the surrounding landscape. The site also appears on aerial photographs to have some surface earthworks, although the 2009 satellite photography suggests that these are far more likely to be the result of 20th century dumping and settlement-edge activity rather than medieval village remains.

As the County Archaeologist considers it very unlikely that this location would be the focus of a medieval settlement and the proposal involves the construction of the kennel and storage buildings at the rear of Greenacres and the creation of hedgerow/tree planting, it is concluded that the nature and location of the proposal set against policies BNE2, BNE10 and the NPPF do not justify the a planning requirement for archaeological work in relation to the current proposals.

Impact on ecology

The proposal involves the demolition of an existing three sided timber outbuilding. The building contains two boxes suitable for Barn Owls, the building and surroundings have been surveyed. The surveys have identified no evidence of Barn Owls using the building but evidence that they are currently being used by Little Owl, Stock Dove and Blackbirds. The survey identifies the need to relocate these boxes on to adjacent trees, and surveys undertaken of the building to check for nesting birds before the removal of the shed. Subject to conditions to secure this and an appropriate landscaping scheme, the proposed development would not have a detrimental impact on biodiversity and as such complies with the requirements of policy BNE3.

Conclusion

The proposal appears to meet the policy requirements of BNE5 and E7 in terms of the principle of development. The NPPF and policy S2 set out a presumption in favour of sustainable development which arises from the three strands of economic, social and environmental objectives. There would be economic and social benefits to the local area with investment in supporting businesses to the proposal as well as additional kennelling opportunities for residents in the wider area. *However, following the approval of the dwelling adjacent to the application site and no revised Noise assessment being provided it cannot be demonstrated that the proposal would not have a detrimental impact on the new residential receptor* Whilst the application has the potential to cause harm to neighbouring amenity, these potential impacts are, *in light of the updated position, not considered to be demonstrably acceptable through the imposition of conditions that would provide the necessary environmental safeguards to ensure the impacts are not a significant or unacceptable harm.*

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

Recommendation

Refuse permission for the following reason:

1. In the absence of sufficient information relating to noise impacts on existing and prospective residential receptors it is not possible to adequately assess the noise impacts of the proposal on those receptors. The proposal is therefore likely to give rise to unacceptable living conditions for those receptors, contrary to policy SD1 of the Local Plan Part 1 and paragraphs 8 and 180 of the National Planning Policy Framework.

Item No. 1.4

Ref. No. [DMPA/2019/1177](#)

Valid date: 11/10/2019

Applicant: Mrs Partington

Agent: Richard Giles-Grant

Proposal: The retention of a septic tank and formation of a vehicular access to serve Tiddly Frog Barn, Unnamed Road From Twyford Road To Buckford Lane, Stenson, Derby, DE73 7GB

Ward: Stenson

Reason for committee determination

This item is presented to Committee at the request of Councillor David Shepherd as it is considered the issues in this case are very finely balanced and the unusual site circumstances should be considered and debated by Committee.

Site Description

The site lies in open countryside but is part of a group of buildings to the south of an unnamed section of road connecting with Buckford Lane to the west. The applicants dwelling is one of several traditional buildings now converted to residential accommodation. The dwellings, farmsteads other uses in the locality are all served by long driveways from the highway and Tiddly Frog Barn shares the existing driveway with other dwellings and commercial uses.

The proposal

This application seeks permission for a new separate access for Tiddly frog Barn and latterly to regularise the installation of a septic tank in the south eastern corner of the field located to the north east of the applicant's property, which is outside the domestic curtilage.

Applicant's supporting information

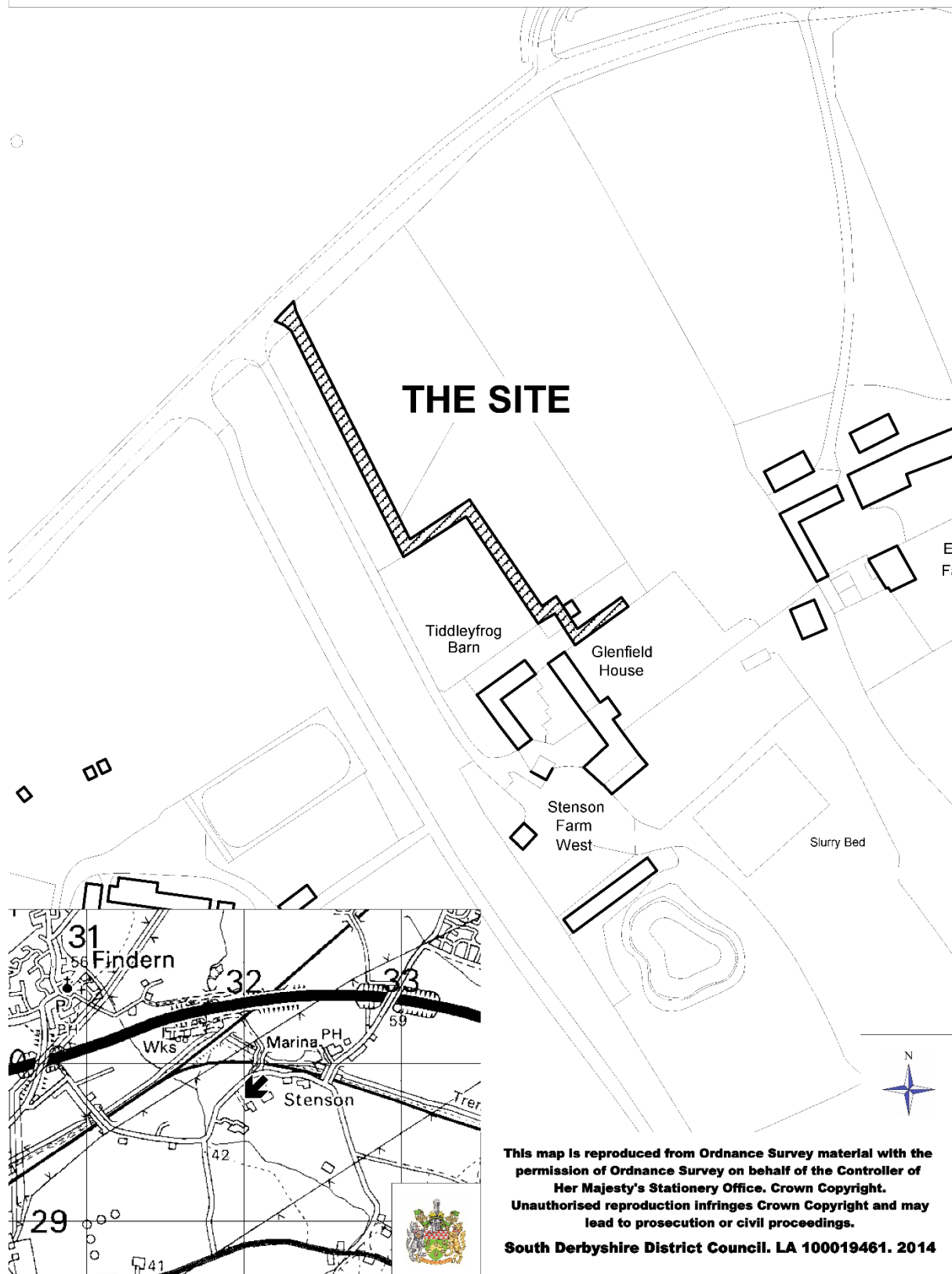
The applicant has provided plans identifying the location of the proposed access and track, the location of the septic tank and both a planning statement and a personal statement setting out the reasons for the need for a separate dedicated access for these premises. The Planning Statement notes the character of the area to be one where buildings are set back from the highway and have long driveways. The statement notes the conflict between users of the cattery and domestic vehicles and highlights that there are no passing places along the existing driveway which is approximately 130m from highway to existing access and goes on to set out how the proposal complies with BNE5 of the Local Plan.

Relevant planning history

9/1986/0654 - Conversion into two dwellings of agricultural buildings and two detached garages to the west of the farmhouse at West Farm - Refused 20 March 1987 but allowed on Appeal

9/1989/0015 - Total reconstruction in the form permitted under 9/1186/0654 to form a dwelling out of the detached barn at West Farm - Approved 25 May 1989

9/1999/0666 - The erection of a detached double garage at Glenfield House - Approved 8 December 1999



9/2004/0682 - Application for a certificate of lawfulness for an existing use for the storage of a horse lorries, horse trailers, caravans and ice cream vans at Fryzms House - Refused 16 July 2004

9/2007/1383 - The formation of a vehicular access to serve Glenfield House - Approved 24 Jan 2008 (unimplemented)

9/2010/1123 - The erection of a dog boarding facility at West Farm - Approved 27 April 2011

9/2011/0645 - Resubmission of application for the erection of a dog boarding facility at West Farm - Approved 28 September 2011

9/2018/0481 - The erection of a first floor front extension at West Farm Approved 3 July 2018

9/2018/0580 - The enlargement of an existing double garage and addition of a garden room at Tiddly Frog Barn - Approved 14 August 2018

9/2019/0047 - The erection of extensions at Tiddly Frog Barn - Approved 14 August 2018

Responses to consultations and publicity

The County Highway Authority states that he originally proposed driveway would emerge onto an existing access point to Buckford Lane. This is likely to lead to driver confusion and conflict when drivers entering or exiting the existing driveway meet drivers entering or exiting the proposed driveway. A revised access separate from the existing access has been provided and is considered acceptable, subject to conditions. The County Highway Authority notes the tight 90 degree corners set out within the field and suggests a condition for a revised layout using additional land within the owners control.

The County Archaeologist states that the proposals will have no archaeological impact.

Two representations have been received, raising the issue that ownership of the land may be in dispute, but following amended plans has no objection.

Relevant policy, guidance and/or legislation

The relevant Development Plan policies are:

- 2016 Local Plan Part 1: S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), SD3 (Sustainable Water Supply, Drainage and Sewerage Infrastructure), BNE4 (Landscape Character and Local Distinctiveness), INF2 (Sustainable Transport); and
- 2017 Local Plan Part 2: SDT1 (Sustainable Boundaries and Development), BNE5 (Development in Rural Areas) and H26 (Residential Gardens in Rural Areas).

The relevant National Guidance is:

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

Planning considerations

In taking account of the application documents submitted (and supplemented and/or amended where relevant) and the site and its environs; the main issues central to the determination of this application are:

- Principle of development;

- Landscape character; and
- Highway safety.

Planning assessment

Principle of development

Policy SDT1 states that *"Outside settlement boundaries and allocated sites, within the rural areas as defined in policy H1, development will be limited to that considered acceptable inter alia by Policy BNE5"*. In addition to policies specifically referenced the policy sets out criteria which proposed development must comply. Development which is not covered by policies set out in criterion (i) must be:

- ii) Otherwise essential to a rural based activity; or*
- iii) Unavoidable in the countryside; or*
- iv) 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; and*
- v) will not unduly impact on: landscape character and quality, biodiversity, best and most versatile agricultural land, and heritage assets.*

Tiddly Frog Barn is a dwellinghouse created from a former agricultural building and shares its access with West Farm, which also runs a dog kennel business and cattery, and Glenfield House, another former barn. There is other development in the vicinity that have their own accesses from the highway and therefore long driveways are a pattern of development in the area. The application site has been a residential dwelling since the early 1990s and has right of access, although the access itself is owned by West Farm. It would appear that the dog kennels and cattery have only operated since around 2011 when permission was granted.

More recently permission for an extension to Tiddly Frog Barn has been granted which appears to have obstructed access to the field from within the residential curtilage, thus making access to a empty a new septic tank difficult. In addition, works being undertaken to the property has led to concerns from the owner of the dog kennels and resulting in some restriction of access and parking for the applicant, leading to the applicant installing a temporary access through the field from half way down the existing access. This was clearly done as a solution to a temporary problem but the applicant has stated that this would be a more useful access to their existing historic access. Nonetheless the shared use of existing access is well established and a new dedicated access for Tiddly Frog Farm, whilst this may be desirable, cannot be considered to be unavoidable and cannot be justified as otherwise essential to a rural based activity.

This application also seeks regularisation for the locating of a septic tank in the field adjacent to the dwelling following approval and implementation of extensions to the dwelling. In principle, there is no objection to this element of the proposal. Overall however, the proposal fails to meet any of the criteria set out in policy BNE5.

Landscape Character

Policy BNE4 seeks to retain the character, local distinctiveness and quality of South Derbyshire's landscape and soilscape will be protected and enhanced. The applicant's statement references the Landscape Character of Derbyshire, noting the site is within the Trent Valley Washlands area and the character is of lowland village farmland with pasture giving way to mixed farming and with larger and more regular fields. It also references the power stations and their cooling towers which dominate the scene and the evidence of sand and gravel extraction and subsequent restoration. The applicant states that there is nothing in the landscape character assessments that indicates any conflict with the proposal. However, the introduction of an additional access and driveway, which would see the loss of a significant section of hedgerow to achieve adequate visibility splays, would have an unacceptable impact on the landscape character and visual amenity contrary to policy BNE4.

Highways

The original proposal showed the proposed new driveway close to the existing access and, in effect, sharing part of the access junction with the existing access. The Highway Authority states that this is likely to lead to driver confusion and conflict when drivers entering or exiting the existing driveway meeting drivers entering or exiting the proposed driveway. An amended scheme as suggested by the Highway Authority was submitted and is deemed acceptable subject to conditions relating to the inclusion of visibility splays along with a more detailed access design to avoid the potential problems with 90 degree corners. The scheme is therefore considered to comply with policy INF2.

Conclusion

Despite there being no objection from a highway safety point of view, the need for the driveway has not been demonstrated to be unavoidable or otherwise essential to a rural based activity in this location. The applicant retains a right of access to their property over the existing access track and, whilst desirable, the proposal would cause unnecessary harm to the character and appearance of the area.

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, noting that conditions or obligations have been attached where meeting the tests for their imposition. Where relevant, regard has been had to the public sector equality duty, as required by section 149 of the Equality Act 2010 and to local finance considerations (as far as it is material), as required by section 70(2) of the Town and Country Planning Act 1990 (as amended), as well as climate change, human rights and other international legislation.

Recommendation

REFUSE permission for the following reasons:

1. The proposed driveway and access would pass through open countryside and would lead to the detrimental domestication of the field. Furthermore, given that the access is not considered to be unavoidable - the existing shared access having served the property since the building was first used as a residential dwelling and there being no evidence which would demonstrate that this access is no longer available for use; the proposal is contrary to policies H26 and BNE5 of the Local Plan Part 2 and paragraph 11 of the National Planning Policy Framework.
2. The introduction of an additional access and driveway which would see the loss of a significant section of hedgerow to achieve adequate visibility splays would have an unacceptable impact on the landscape character and visual amenity of the hedgerow fronting the highway, as well as lead to a net loss of biodiversity, contrary to policies BNE3 and BNE4 of the Local Plan Part 1.

2. Planning and other Appeals

(References beginning with a DMPA, DMPN, DMOT or 9 are planning appeals and references beginning with an ENF or E are enforcement appeals)

Reference	Place	Ward	Outcome	Decision level
9/2018/0968	Shepherds Lane, Stanton by Bridge	Melbourne	Allowed (costs refused)	Delegated



Appeal Decision

Site visit made on 30 January 2020

by **R Morgan MCD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 9 March 2020

Appeal Ref: APP/F1040/W/19/3240900

St Brides Barn, Shepherds Lane, Stanton by Bridge, Nr Swadlincote, Derbyshire D73 7NF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Andrew Moseley against the decision of South Derbyshire District Council.
- The application Ref 9/2019/0651, dated 14 June 2019, was refused by notice dated 9 September 2019.
- The application sought planning permission for conversion of the existing timber frame barn to a dwelling without complying with conditions attached to planning permission Ref 9/2018/0887, dated 7 November 2018.
- The conditions in dispute are Nos 2, 4, 5 and 6 which state that:

(2) The development hereby permitted shall be carried out in accordance with drawing ref's MOSELEY/1/SLP Rev A received on the 17th August 2018 and MOSELEY/1/PL01 Rev B, MOSELEY/1/BP Rev B, MOSELEY/1/PL07 Rev A, MOSELEY/1/PL08 Rev A, MOSELEY/1/PL06 Rev C, MOSELEY/1/PL05 Rev C, MOSELEY/1/PL09, MOSELEY/1/PL10 and MOSELEY/1/PL11 received on the 24th October 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).

The reason given for the condition is:

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

(4) Prior to the occupation of a dwelling created by this permission 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 the dwelling created by this permission, 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 dwelling created by this permission 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.

The reason given for the condition is:

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

(5) Notwithstanding any details submitted or the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) 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.

The reason given for the condition is:
In the interests of the character and appearance of the area.

(6) 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 altered, enlarged or extended, and no buildings, gates, walls or other means of enclosure (except as authorised by this permission or required by any condition attached thereto) shall be erected on the site without the prior grant of planning permission on an application made in that regard to the Local Planning Authority.

The reason given for the condition is:
To maintain control in the interest of the character and amenity of the area, having regard to the setting.

Decision

1. The appeal is allowed and planning permission is granted for conversion of the existing timber frame barn to a dwelling at St Brides Barn, Shepherds Lane, Stanton by Bridge, Nr Swadlincote, Derbyshire D73 7NF in accordance with the application Ref 9/2019/0651, dated 14 June 2019, and subject to the conditions on the attached schedule.

Application for costs

2. An application for costs was made by Andrew Moseley against South Derbyshire District Council. This application is the subject of a separate Decision.

Procedural Matters

3. The Council granted planning permission on 7 November 2018 for the conversion of a barn to a two bedroomed dwelling, subject to 7 conditions. The current appeal seeks to make amendments to the approved scheme through the variation of condition 2, which specifies plans. Conditions 4, 5 and 6 are proposed to be removed.

Main Issue

4. The main issue is the effect of varying the conditions on the character and appearance of the area.

Reasons

5. The appeal property is a timber framed barn which is located in a wooded area in the countryside. The barn is adjacent to a small area of pasture land and is accessed via a track through the woods from Shepherds Lane. The barn has

three bays with the timber frame exposed in two sections and timber boarding around the third, with the frame of a lean-to along part of one side of the barn.

6. The approved scheme involves a sensitive conversion and limited extension of the barn, retaining the original frame and maintaining the character of the building in its woodland setting.

Condition 2

7. The proposal seeks to vary condition 2, which specifies approved plans, to allow alterations to the insulation, the lean-to extension and the fenestration detail.
8. The original permission involved the insertion of 123 mm of wall insulation within the frame and 170 mm outside of the structural columns. The proposed amendments would alter the insulation wall build up on the north, east and a small part of the western elevation. On these elevations, the insulation inside the frame would be removed and replaced with an additional 100 mm of insulation outside the frame.
9. The Council is concerned that the proposed revisions to the insulation would result in the existing structure being obsolete and the roof replaced. However, the appellant has confirmed that this would not be the case, that the existing structure would still provide support for the building and that there would be no change to the pitch of the roof.
10. Given the proposal to increase the insulation within the roof, I agree with the Council that it seems likely that the roof would need to be removed and replaced, and the result would be a slightly raised ridge height. However, re-roofing is a common part of many building projects, and provided that the same materials are used, this would not in itself render the proposal a new build rather than a conversion. There would be minimal impact to the appearance of the building.
11. The approved scheme involves the entire frame being wrapped around with timber cladding, so the original frame would not be visible externally. The current proposal to increase the insulation on the outside would result in a small increased projection of the northern and eastern elevation. However, the roof overhangs the structural columns and appellant has confirmed that the proposed wall would still sit within the extent of the existing piers.
12. The timber frame is an important feature of the building and the revisions would increase the extent of the visible frame, including the roof section, and avoid the need to cover the frame with insulation. Whilst this would be on the inside, the frame would be visible through the glazed sections, and would help to retain the original character of the building.
13. The approved scheme involves an extension to the existing lean-to structure, so that rather than occupying the width of one of the bays of the building as currently, the lean-to extension would occupy one and a half bays. The proposed revisions seek to further increase the width of the extension so that it would occupy two bays with an additional canopy overhang.
14. Whilst the proposed extension would be somewhat larger than that approved, the design would incorporate additional glazing which would reflect the open character of the original building, allowing the internal frame of the middle bay

to be revealed and mirroring the glazing on the other side of the building. The extension would still be well set back from the north elevation and the significant amount of glazing on the middle bay section would limit the visual impact of the extension. The canopy is modest in size and would not appear as a dominant feature.

15. The Council is concerned that the proposed extension would sit higher than the existing eaves line. I agree that the drawing for the proposed south elevation does appear to show the extension being raised above the eaves level, but this is not the case on the north elevation drawing so may be an error on the hand drawn plans. The appellant has confirmed that the intersection of the lean-to extension with the main building would be the same in the approved and revised plans.
16. The Council has suggested that, by sitting flush with the existing building, the extension would not appear as a separate or new entity. However, the existing lean-to sits flush with the main barn and the appellant has confirmed that the intention would be to make use of the existing structural frame. Given the existing situation, there appears to be little justification to set the extension back from the south elevation.
17. Changes to the fenestration on all four elevations are proposed as part of the revised scheme. Changes to the east elevation, which faces the site entrance and is therefore particularly sensitive, are minor and do not change the character of the building. On the north elevation, the size of the main window is proposed to be reduced, which would better reflect the proportions of this main elevation. Additional glazing is proposed on the west elevation of the lean-to, as discussed above. On the south side, the relocation of the chimney stack has allowed for a repositioning and an increase in the fenestration at first floor level. The proposed first floor window better reflects the position of the existing opening, although is wider. At ground floor level, the windows in the main elevation are similar to those already approved, with an additional window in the lean-to extension.
18. I note the Council's concerns that the proposed glazing would be overly domestic in its design, siting, symmetry and scale. However, on the most prominent east and north elevations the glazing is similar to that already approved, and respects the character of the building. The alterations to the west elevation are acceptable as discussed above. On the south side, reduced glazing to the first floor would be preferable but this is at the rear of the building, and compared with the approved plans, the proposed alteration better reflects the position of the existing openings.
19. Overall, the revisions to the insulation, lean-to extension and fenestration would not adversely affect the character of the building, nor would they result in a level of alteration which would change the scheme from a conversion to a new dwelling. Furthermore, the proposals would improve the thermal efficiency of the building and help to reveal the timber structure of the building.
20. The caravan on the site could be removed at any time, and unless its siting had been established through a certificate of lawful use, could not be accepted as a benefit of the scheme. The removal of the caravan does not form part of the proposals and I have given this matter no weight in this appeal.

Conditions 4 and 5

21. Condition 4 requires the submission of a scheme of hard and soft landscaping, and subsequent implementation of the approved works. Condition 5 requires details of boundary treatments. The appellant submits that drawing MA/6A provides the necessary information to fulfil these requirements, so the conditions can be removed.
22. The proposed landscaping shown on plan MA/6A is different from that previously approved. The large pond area is proposed to be split into two smaller ponds on either side of the repositioned lawn, with areas of native planting between the two ponds. A low retaining wall is proposed around the lawn, with steps from a York stone and gravel patio, which would be located adjacent to the barn.
23. Whilst reconfigured, the main features of the original landscaping scheme have been retained, with the ponds, native planting and a lawned area. The previous straight edge to the lawn has been replaced with a more contoured area, with planting beyond which will help assimilate the garden area into the woodland beyond. Areas of gravel around the building have been retained, with a patio replacing the area previously described as deck. The low retaining wall around the lawn would be constructed of stone from the site, and, once the pond and planting were established, would not be a prominent feature. The appellant has confirmed that such walls are a common feature in the local area and would not be out of place in this setting. Overall the proposals should continue to retain and respect the natural setting of the barn.
24. A metal estate railing is shown within on the plan which would provide a new boundary to the area of pasture adjacent to the house, beyond the previously approved area of curtilage. However, the appellant has accepted that this style of fencing, in the position proposed, would not be appropriate and that traditional post and wire fencing would be used instead in the position shown on the original plan.
25. With the exception of the metal estate railings, the details of hard and soft landscaping shown on drawing MA/6A would be acceptable and would meet the requirements for the submission of further details in condition 4. However, the condition also requires implementation of the approved landscaping scheme prior to occupation, and the replacement of any planting which dies, is damaged, diseased or removed. To ensure that the proposal respects the character of the area, this part of the condition is still necessary. Rather than removing condition 4, I have therefore varied it to require the implementation of the landscaping scheme shown in drawing MA/6A, specifying that the proposed estate railings do not form part of the approved drawing.
26. Condition 5 requires the submission of details of any boundary treatments. Given that the details of the railings shown on drawing MA/6A are not approved, but the alternative boundary treatment is not specified on any other plan, this condition is still necessary to ensure that the proposal respects the character of this sensitive woodland site. I have therefore retained condition 5.

Condition 6

27. The appellant is seeking the removal of condition 6, which removes permitted development rights for extensions and alterations. The proposed development

allows for the sensitive conversion of the timber framed building within its woodland setting, retaining the key features of the building and minimising the impact on the character of the area. The appellant has commented that the curtilage has been drawn tightly round the building which would limit the opportunity for alterations. However, the Council has confirmed that the approved domestic curtilage would include the wider setting of the barn. Unless removed, permitted development rights would enable the construction of buildings associated with the residential use within this wider area, which would have the potential to cause significant harm to the rural woodland setting of the barn.

28. The particular circumstances of the building and its setting, and its sensitivity to even relatively modest changes which could be associated with a new domestic use, mean that it is reasonable and necessary for the Council to retain control over future extensions and alterations. This need to protect the character of the building and its setting still applies even though it is not visible from the public domain.
29. I acknowledge that agricultural and forestry permitted development rights in the area surrounding the site could, if used, significantly impact on its landscape setting. However, if used these rights would permit development which would be typical of the countryside, and would not have the same impact on the area and its character as those associated with a domestic property might do. The existence of the agricultural and forestry rights do not therefore justify the removal of the residential permitted development rights. Similarly, decisions of the Council to allow other development in the surrounding area do not justify potentially harmful development in this sensitive location. Condition 6 therefore remains necessary and reasonable, and should be retained.
30. I conclude that the proposed amendments to the scheme which would be achieved through the variation of conditions 2 and 4 as described above, would not cause harm to the character and appearance of the area. I have found no conflict with Policies H1 of the South Derbyshire Local Plan Part 1 2016 or Policies SDT1, BNE5 and H28 of the South Derbyshire Local Plan Part 2 2017, which are concerned with development outside of settlement boundaries including residential conversions. Similarly, there is no conflict with paragraph 79 of the National Planning Policy Framework which seeks to avoid the development of isolated homes in the countryside. The proposal complies with Local Plan Part 1 Policy BNE4 regarding the protection of landscape and soilscape.

Conclusion

31. For the reasons given above I conclude that the appeal should be allowed and conditions 2 and 4 varied as set out in the attached schedule. Conditions 5 and 6 are still necessary and I have retained them. Minor alterations are needed to condition 1 to refer to the commencement of development date, and to condition 3 in the interests of precision and to reflect the appellant's intention to use, rather than replace, the structure of the existing lean-to.

R. Morgan

INSPECTOR

Schedule of Conditions

1. The development permitted shall be begun before the expiration of three years from 7 November 2018.
2. The development hereby permitted shall be carried out in accordance with the following drawings 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):

Site location plan MOSELEY/1/SLP Rev A;

Existing block plan MOSELEY/1/BP rev B;

Ground and first floor plan MA/1A;

North and west elevations MA/2A;

South and east elevations MA/3A;

Roof and wall build up detail MA/5A;

Hard and soft landscaping MA/6A – excluding details of metal estate railings

3. The development hereby approved shall relate solely to the conversion of the existing building. The existing timber building shall be retained, and altered and extended in so far as shown on the approved plans.
4. All hard landscaping shall be carried out in accordance with the approved details shown on drawing MA/6A prior to occupation of the dwelling created by this permission. All planting, seeding and turfing comprised in the approved scheme MA/6A shall be carried out in the first planting and seeding seasons following the first occupation of the dwelling created by this permission 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.
5. Notwithstanding any details submitted or the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) 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 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.

6. 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 altered, enlarged or extended, and no buildings, gates, walls or other means of enclosure (except as authorised by this permission or required by any condition attached thereto) shall be erected on the site without the prior grant of planning permission on an application made in that regard to the Local Planning Authority.
7. 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.

Costs Decision

Site visit made on 30 January 2020

by R Morgan MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 March 2020

**Costs application in relation to Appeal Ref: APP/F1040/W/19/3240900
St Brides Barn, Shepherds Lane, Stanton by Bridge, Nr Swadlincote,
Derbyshire D73 7NF**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Andrew Moseley for a full award of costs against South Derbyshire District Council.
 - The appeal was against the refusal of planning permission for the conversion of the existing timber frame barn to a dwelling without complying with conditions attached to planning permission Ref 9/2018/0887, dated 7 November 2018.
-

Decision

1. The application for an award of costs is refused.

Reasons

2. The Planning Practice Guidance (the Guidance) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. Paragraph 047 of the Guidance lists examples of unreasonable behaviour by local planning authorities in relation to procedural matters at the appeal, which include a lack of cooperation with the other party.
4. In the applicant's view, greater cooperation and dialogue during the application process could have resulted in a better understanding of the scheme, enabling a number of the reasons for refusal to be resolved. Whilst I appreciate that this must have caused the applicant some frustration, the evidence before me suggests that the Council understood the scheme and made an appropriate analysis of the submitted plans. Advice had been provided at earlier stages, and although there may have been changes in approach, the Council was not bound by any informal advice it had previously given.
5. The applicant has highlighted the Council's failure to determine the application within the time limits without providing a reasonable explanation as to why. However this did not in itself result in an appeal, nor did it lead to additional cost during the appeal process.
6. Paragraph 049 of the Guidance gives examples of types of behaviour which may give rise to a substantive award of costs against a local planning authority. In this regard, the appellant contends that the Council has acted unreasonably in a number of ways, including preventing or delaying

development which, having regard to the development plan, should have been permitted, and making vague, generalised or inaccurate assertions about the proposal's impact.

7. In my decision notice I concluded that the proposed amendments to the scheme would not conflict with Policy H28. However, whilst I came to a different decision to the Council, this was a matter of planning judgement. It is clear from the officer's report that the Council's decision was based on a detailed analysis of the case and I found there to be adequate explanation to justify its decision.
8. It is suggested that the Council could have dealt with certain matters by condition rather than refusal. However the Council had already imposed the conditions which it considered were necessary to make the scheme acceptable and were not obliged to make further changes to those conditions, or impose additional conditions. This was particularly the case as, in the Council's view, the amendments proposed were not acceptable.
9. The applicant contends that the Council has acted unreasonably by failing to implement Policy H28 in a way that is consistent, having regard to other examples nearby. However, the Council must make its decisions based on the merits of the particular case and the examples of nearby developments provided were not directly comparable to the appeal proposal.
10. In the applicant's view the Council imposed a condition which does not meet the guidance set out in the National Planning Policy Framework, but I have found that condition 6 is reasonable and necessary, and therefore the Council did not act unreasonably by imposing it.
11. I note the applicant's comments that a more helpful approach at the pre-application stage could have resulted in the appeal being avoided or narrowed in scope. However given the issues raised and the Council's response, it seems very unlikely that an appeal would have been avoided altogether. Furthermore, I am not convinced that further dialogue would have resulted in any significant resolution or narrowing of any of the issues.
12. I conclude that unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated. For this reason, an award of costs is not justified and the application for costs is refused.

R Morgan

INSPECTOR