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Our Ref: DS

Your Ref:

Date: 28 October 2019

Dear Councillor,

Planning Committee

A Meeting of the **Planning Committee** will be held in the **Council Chamber**, Civic Offices, Civic Way, Swadlincote on **Tuesday, 05 November 2019** at **18:00**. You are requested to attend.

Yours faithfully,



Chief Executive

To:- **Conservative Group**

Councillor Mrs. Brown (Chairman), Councillor Mrs. Bridgen (Vice-Chairman) and
Councillors Angliss, Brady, Ford, Muller, Watson and Mrs. Wheelton

Labour Group

Councillors Gee, Dr Pearson, Shepherd, Southerd and Tilley

AGENDA

Open to Public and Press

- 1** Apologies and to note any Substitutes appointed for the Meeting.
- 2** To note any declarations of interest arising from any items on the Agenda
- 3** To receive any questions by Members of the Council pursuant to Council procedure Rule No. 11.
- 4** REPORT OF THE STRATEGIC DIRECTOR (SERVICE DELIVERY) **3 - 63**
- 5** AMENDMENT TO SECTION 106 AGREEMENT RELATING TO LAND AT COURT STREET, WOODVILLE **64 - 67**

Exclusion of the Public and Press:

- 6** The Chairman may therefore move:-
That in accordance with Section 100 (A)(4) of the Local Government Act 1972 (as amended) the press and public be excluded from the remainder of the Meeting as it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that there would be disclosed exempt information as defined in the paragraph of Part I of the Schedule 12A of the Act indicated in the header to each report on the Agenda.
- 7** To receive any Exempt questions by Members of the Council pursuant to Council procedure Rule No. 11.

REPORT OF THE STRATEGIC DIRECTOR (SERVICE DELIVERY)

Section 1: Planning Applications Section 2: Planning and other 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.

| Reference | Item | Place | Ward | Page |
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| 9/2019/0299 | 1.1 | Hilton | Hilton | 5 |
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When moving that a site visit be held, Members will be expected to consider and propose one or more of the following reasons:

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

Item 1.1
Ref. No. 9/2019/0299
Valid Date 28/05/2019

Applicant:
 Mr Sean Goodwin

Agent:
 Mr D Cooney
 Planning & Design Practice Ltd
 3 Woburn House
 Vernon Gate
 Derby
 DE1 1UL

Proposal: Demolition of existing dwelling (use class C3) and nursery buildings (sui-generis use) and construction of 9 light industrial/office buildings (use class B1(c)) with the creation of a new access to Derby Road and associated works at Talbot Farm, 75 Derby Road, Hilton, Derby

Ward: Hilton

Reason for committee determination

This item is presented to Committee because this is a major application and there have been more than two objections received.

Site Description

The site is located on the approach into Hilton on Derby Road. The site is fairly flat and is adjacent to residential properties to the south of the site with a residential scheme proposed to the west of the site and open to the north and east.

Proposal

Consent is sought for the erection of nine light industrial units (use class B1(c)) and associated works and parking.

Applicant's supporting information

Design and Access Statement

The proposed development constitutes sustainable development by virtue of the re-development of an existing brownfield site that is currently used for a commercial business. The location is sustainable, is well served by public transport, ideally situated to connect with the A50 and will provide much needed industrial and commercial space in a 'Key Service Village' given the redevelopment of the Hilton depot site for housing. The current and future residents of Hilton that work in local businesses will be able to access the site by walking, cycling and on public transport, thus reducing the reliance on private cars. The scale and design of the proposed scheme is appropriate for this location, in relation to the scale of the recent housing development opposite. The retention of the existing boundary hedgerows, along with the innovative landscaping proposals for the front part of the site, result in an attractive scheme that will present an image of a high quality development. The land to the north and west of the site is a housing allocation in Part 2 of the South Derbyshire Local Plan, and has recently been granted outline planning permission for up to 45 dwellings, meaning that the site will be virtually surrounded by development on three sides. The loss of the single residential dwelling on the site will be offset by a proposed replacement dwelling in a separate application, located in the south-west corner of the site. It is therefore

9/2019/0299 - Talbot Farm, 75 Derby Road, Hilton, Derby DE65 5FP



considered that the proposal is compliant with the planning policies in the National Planning Policy Framework, the South Derbyshire Local Plan Part 1, and the South Derbyshire Local Plan Part 2.

Transport Statement

The works are proportionate to the scale of the proposed development and in relation to the amount of traffic generated by the current lawful use of the site.

The proposed development constitutes sustainable development by virtue of the redevelopment of an existing brownfield site that is currently used for a commercial business. The location is highly sustainable, is well served by public transport, ideally situated to connect with the A50 and will provide much needed industrial and commercial space in a 'Key Service Village' given the redevelopment of the Hilton depot site for housing. Current and future residents of Hilton that work in local businesses will be able to access the site by walking, cycling and on public transport, thus reducing the reliance on the private car. Businesses on the site will be provided with information so that they can encourage employees to travel by sustainable modes of transport. It is therefore considered that the proposal is compliant with the planning policies relevant to Transport in the National Planning Policy Framework, the South Derbyshire Local Plan Part 1, and the South Derbyshire Local Plan Part 2.

Flood Risk Assessment

The proposed use is classified as 'Less Vulnerable' and the Environment Agency advises that 'Less Vulnerable' uses are appropriate within Flood Zone 1. Surface Water ponding is the only source of flood risk to the site itself, however the risk of this is low and the potential depth of this is less than 300mm. A surface water run-off attenuation pond is proposed on the west of the site, along with SuDS features within the site itself to encourage direct infiltration to ground. The risk of flooding to the development itself and from the development to the surrounding areas would not be significant.

Ecology Survey

The existing buildings on site provide a poor level of roosting potential for bats. There are examples of nesting bird provision within two of the building and the surrounding hedgerow, the retention of the hedgerow and the accommodation for nesting birds are strongly recommended.

Arboricultural Report

The proposed development is to remove the existing buildings and construct 9 industrial units. To allow for the new entrance to the site, 3 category C trees will require removal. The 3 trees are T20, 21 and 22, consisting of 2 Lawson's Cypress and 1 variegated Holly, all in fair condition.

To allow for the construction of the new units, 6 trees will require removal, consisting of; 1 category B tree (T19), 4 category C trees (T3, 15, 16 and 18), and 1 category U tree (T9). A Hybrid Black Poplar, T9 an Ash and T15 a Sycamore are all covered by a Tree Preservation Order. T3 is an over mature tree which is starting to decline with hanging and broken branches throughout the crown. T9 is in poor condition with fungal brackets and decay present on the stem. T15 is also starting to decline with die back and major dead wood in the crown.

To the rear of unit 1 will be a flood balance area. It is recommended that T17 Hybrid Black Poplar is felled on the grounds of safety. This tree is also included in the TPO. It is recommended that a replacement tree planting scheme is produced to replace the trees removed from site. The trees removed from the TPO will not be able to be replaced with like for like species, so suitable alternatives will be required. All retained trees will require protection during the construction work to make sure that they are not damaged. This can be achieved by creating a Construction Exclusion Zone (CEZ), using barriers to exclude vehicles, personnel and materials.

Planning history

9/2008/1205 – The erection of two portable offices - Approved with conditions - 02/03/2009

Responses to Consultations

The Environmental Health Officer has raised no objection to the application subject to the inclusion of conditions for contaminated land and gas migration, hours of construction and a lighting strategy.

The County Highways Authority has raised no objections to the application subject to conditions relating to plant and materials storage and wheel washing as part of the construction period; the access and parking to be constructed and laid out in accordance with the approved plans and for bin storage details to be submitted. As part of a previous application in the close vicinity of this site, a speed reading survey was carried out on Derby Road which resulted in vehicle speeds of 39.51 mph travelling in a north eastern direction and 31.58 mph travelling in a south western direction. In accordance with current design guidance, based on these readings the desirable emerging visibility sightlines are 2.4m x 101m to the south west and 2.4m x 71m to the north east.

Whilst the recommended sightline to the north east can easily be achieved, the submitted drawings illustrate a sightline of only 73m to the south west. However, this is from a setback distance of 4.5m, whereas current design guidance allows a setback distance of 2.4m, of which it would be evident that a 2.4m x 101m visibility sightline to the south west could be achieved over controlled land. Internally, adequate parking spaces are being provided for the proposed use with sufficient turning space for vehicles to enter and exit the proposed access without encroaching onto the opposite carriageway lane.

The Lead Local Flood Authority (LLFA) has raised no objection subject to conditions relating to surface water drainage schemes and how site run off would be managed during the construction phase.

Derbyshire Wildlife Trust has raised no objection to the application. Following the assessment of the submitted Preliminary Ecology Survey and the Bat Emergence and Pre-Dawn Return Surveys, it is considered that the assessment that has been carried out for bats meets the requirements of the Conservation of Habitats and Species Regulations 2017. Evidence of nesting birds was found within certain buildings and conditions would be required for a scheme for alternative nesting for swallows to be accommodated prior to works commencing on site.

The Council's Economic Development Department has confirmed that there is a need/demand for units of this size and use in the Hilton area of the District.

Responses to Publicity

Six objections/letters of support have been received, raising the following concerns/points:

- a) The village is already equipped with ample retail sites.
- b) Although the notes which accompany the planning give the impression of making only a minor difference, this is not correct.
- c) Although the plans are for a B1 site, these can be changed in the future to a B8. This would mean the introduction of larger and heavier haulage vehicles- which is a frightening prospect.
- d) The village signage states 40 mph, not 30 mph as stated in the planning and prohibits the heavier lorries from using the main road.
- e) 80 full time jobs are included but only 54 parking spaces are proposed with the suggestion that many could cycle and that the majority of workers would be local. This is assuming there are 80 locals with no jobs who are able to fill these vacancies.
- f) This would significantly increase noise with car doors, lorries coming and going with reversing beepers sounding continuously? There is currently no noise during the evenings and on Sundays.
- g) Espalier trees are to be used instead of the hedge that currently surrounds the property. These have sparse flimsy structures which will neither cut out the light nor the noise for many years, if

ever. The existing boundary hedge is very low and would not shield the public from the sight of ugly tall units on a residential road.

- h) If a fence/ hedge would be put up then it needs to be much higher so that people do not look over an industrial estate, especially on a residential street with a new housing estate to be built next door.
- i) Adding to what is already a very busy road; there would be approximately one hundred cars from the two new building sites. This will further increase the volume and there would be at least fifty cars from proposed employees and visitors, plus deliveries, customers and sales desks. It will also increase the air pollution as cars idle whilst queuing to exit the village at rush hour.
- j) Who will buy people's houses when they are situated opposite a retail park, with lorries, cars turning in and coming back onto the busy road all the time?
- k) The bus stop has also moved to be situated across the road of the entrance. This is a frequent service and causes the traffic to build up with the proposed crossing a few yards down the road.
- l) The application shows a 6 axle 40/44ton lorry using the access. This suggests they are planning for industrial units more than Commercial and light industries and are still referring to a B8 use in the application.
- m) The Villager bus stops outside existing residential properties. This will cause congestion on Derby Road making it unsafe for pedestrians and road users. There are no two storey properties on this site, the tallest being the current residence which is more one and a half to two storey. The height of the buildings is excessive and not in keeping with the area even with screening.
- n) There are HGV restrictions into Derby Road. This site already operates early in the morning and late at night causing noise and light pollution. It also sells to the general public and there are not enough car park spaces for the employees let alone visitors to the site. A condition that denies conversion from a B1 use class to B8 use class at a later date would be suitable.
- o) They mention showers in the units for cyclists yet they are not shown in the plans. Hilton needs small business units and not the industrial ones proposed.
- p) If cars cannot access the site where will they park? Derby Road traffic volumes have risen considerably during peak traffic and speed is also an issue on this road at all times of the day and night.
- q) Concerns that this will turn into a 24/7 industrial site unsuitable for a residential area.
- r) There are a number of factually incorrect statements regarding roads and road safety in the application that an inspector may not be aware of and that could subsequently influence the decision to approve the application on false information, such as speed restrictions, routes through the village centre and visibility.
- s) Derby Road is subject to a 40mph speed limit and speeds are not low.
- t) Visibility onto Derby Road from the Mease Roundabout is limited due to the curvature of the road and therefore road safety should be a concern.
- u) There is no mention within the application that Derby Road is currently subject to a 7.5 tonne weight limit. It is evident from the plans that there would be a significant increase in HGV accessing the site despite this being a weight restricted road.
- v) The application itself details that "Derby Road can be busy" and this has been validated in the traffic surveys conducted by the Hilton Neighbourhood Plan which also highlights significant speeding issues along Derby Road and Main Street and issues with HGV travelling along them. The approval of this application would further compound these issues.
- w) There is no evidence to support the statement that Derby Road is now the secondary route and that the Hilton Bypass is a primary route.
- x) Each unit appears to only utilise office space within each unit of between 1/9th to 1/4 of the entire space and steel shutters similar in size to those usually seen on a B8 use class application.
- y) The heights of each unit are significantly higher than the existing buildings on the site that are being replaced.
- z) The proposal would require the removal of existing established trees and hedgerow without good reason for their removal.
- aa) Section 5.3 "Impact on Neighbours" states that "existing dwelling are set well back from the road" therefore why is this development not in keeping and why are the commercial units not also set well back from the road?

- bb) A commercial development of this size will significantly increase traffic volumes (including HGVs - despite the weight limit restrictions detailed above).
- cc) In addition, the application states the existing business will continue to operate from this site and approximately a further 8 new businesses will also operate from this site in the future. This is supported by the application stating that there will be an increase in provision for parking by 270% from the current provision and it can naturally be assumed an increase in delivery and/or customer visits.
- dd) If nine commercial/office units are being built then these units could operate 24/7 and 365 days a year. As such lighting and noise and traffic will be increased and directly impact the residents of Derby Road, therefore this should not be considered as irrelevant.
- ee) There is insufficient broadband infrastructure on Derby Road to support modern businesses and there are no plans for this infrastructure to change either part of this development or the Derby Road housing development. Without sufficient broadband provision "local demand" will be limited for most modern businesses and this should be considered when deciding if there truly is local demand.
- ff) The proposal does not accord with policy SDT1 of the Local Plan and the site is located outside of a settlement boundary. The site is located within a rural area and would not require works that would comply with policy BNE5 .
- gg) No detailed evidence has been provided that would demonstrate that the proposal would meet with local demand for commercial units.
- hh) Concerns regarding the scale and intensity of the proposed development and the impact that this would have on the living conditions of neighbouring residents. This would create high levels of traffic generation. The proposal would conflict with policy 127 of the National Planning Policy Framework (NPPF).
- ii) The proposal would not be suitable in a residential area and would add to existing problems.

Hilton Parish Council has raised the following comments:

- a) The original application written in 2018 and most of the supporting documents centre on the development catering for a Distribution and Storage centre under business use class B8.
- b) The application states (Design and Access Statement dated June 2017) that the proposed buildings will address local business needs. No evidence for this is cited and the statement is at odds with Hilton Parish Council's own Neighbourhood Development Plan survey carried out in 2018. The responses to the survey indicated that the real need was for smaller business units and not the type proposed.
- c) Hilton Parish Council would appreciate reviewing the data that supports the Planning Design statement as it may well be useful in the preparation of the Neighbourhood Development Plan.
- d) Hilton Parish Council is not an expert in building design but as indicated above the design proposed does not seem best suited to a B1 business use. The Parish Council would like to see a revised building design suitable for B1 purposes and not capable of conversion to B8 use at a later date.
- e) The projected number of people that the development could employ is perhaps ambitious but taken at face value, it would appear that between 60 and 80 extra jobs would be created, assuming approximately 20 are currently employed by Talbot Turf. This number of people arriving and leaving the site would be the equivalent of a housing development of approximately 30 houses. This needs to be viewed in the context of the development for 45 houses, just down the road.
- f) The application suggests that a good number of the jobs will be filled by local people as indicated by providing only 54 parking spaces for the 90 full time equivalent staff. This looks ambitious. Hilton does not have an unemployment problem with approximately 2% unemployment. In reality far less than 40% of the envisaged employees will arrive by walking, cycling or even bus.
- g) It is far more likely that the majority of the new employees will arrive by car, adding to the current traffic issues of Derby Road. Where will the cars park that cannot access a space on site? It would be unacceptable to have them parking on Derby Road. It should be noted that no up to date traffic assessment was produced for the Derby Road Housing development. The only up to date traffic survey of Derby Road was carried out by the Parish Council as part of the Neighbourhood Development Plan and this quite clearly shows the extent of the problems of

traffic volumes at peak times and speeding traffic at non-peak times. The application states that the speed limit on Derby Road is 30mph. This is incorrect. As of today, it is 40mph.

- h) A proper analysis of the traffic may well indicate that the visibility splays as shown in the application are not sufficient.
- i) Additionally, the swept analysis shows a 6 axle 40/44 tonne lorry, which, whilst ideal for distribution, is most unsuitable for the local traffic and residential area.
- j) Surface water flooding is a known issue in the area. The proposed attenuation pond and subsequent controlled release may be sufficient on a stand-alone basis but this release will be combined with a similar rate of release from the proposed attenuation pond for the Derby Road development. There is no assessment as to the capability of the existing surface water drainage system to cope with this additional flow.
- k) Likewise, there is no assessment of the capability of the sewage system to cope with the extra requirements of the extra staff. For the Derby Road development, Severn Trent stated in their letter that there are known capacity issues. Although, it was then stated that the system would cope with demands of the housing development. The proposed commercial development is equivalent to a housing development of approximately two thirds that of the Derby Road site, but no assessment is offered as to whether this extra flow can be accommodated in addition to the Derby Road housing flows.
- l) The concern is that if the sewage system cannot cope, then the overflow discharges into Hilton Brook.
- m) It is noted that it is proposed to remove trees with preservation orders. Whilst it is stated that these trees are not of good order, it is less than two years since SDDC granted the preservation orders. A review by SDDC should be carried out.
- n) Any revised proposal should take into consideration the points raised above and the impact on the local residents. A commercial development would be acceptable to Hilton Parish Council, provided that it does not increase the traffic, noise, nor detrimentally affect the landscape view, the surface water flooding and sewage capacity.

Relevant policies and guidance

The relevant Development Plan policies are:

- Local Plan Part 1 (LP1): S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), S6 (Sustainable Access), E2 (Other Industrial and Business Development), SD1 (Amenity and Environmental Quality), SD4 (Contaminated Land and Mining Legacy Issues), BNE1 (Design Excellence), BNE4 (Landscape Character and Local Distinctiveness) and INF2 (Sustainable Transport).
- Local Plan Part 2 (LP2): SDT1 (Settlement Boundaries and Development), BNE5 (Development in Rural Areas) and 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 development;
- Visual impact and impact on amenity; and
- Highways.

Planning Assessment

Principle of development

The site is located outside of the settlement boundary for the village of Hilton. The planning history for the site is not conclusive but there has been some demonstrable planning history to show that the site has been used historically as a nursery (horticulture) in the past and would fall under the scope of an agricultural use. Additional information has since been provided by the agent including business rates details as well as evidence of Goods Vehicle licencing, of which this shows a ten year period of continuous use and payment of business rates for business purposes falling within use classes B1(a) and B1(c) with some ancillary storage. Therefore, based on this information and based on the balance of probability, a continuous ten year period of this use of this nature could be proven. This is crucial to the determination of the application as it would be necessary to ascertain what the current lawful use of the site would be to assess the correct policy position.

Policy E2 of the Local Plan supports the redevelopment of industrial or business land provided that it lies within or on the edge of a Key Service Village and would not give way to undue impacts on the local landscape. Given that, on the balance of probability, the site has historically been the subject of some business activity, the erection of the new B1(c) industrial buildings would constitute the redevelopment of the existing industrial/business site on the edge of a Key Service Village and would broadly be consistent with policy E2 of the Local Plan.

Visual impact and impact on amenity

The site currently consists of various single storey structures sprawled around the site with a two storey structure to the rear and a two storey dwelling to the front of the site and hardstanding areas for car parking.

Policy BNE1 stipulates that proposed development should be visually attractive and should respect important landscape features. The proposal seeks consent for the erection of nine industrial units for B1(c) use. This would result in the clearing of the site and would condense the built form and remove the sprawled appearance from the site. Given the lawful use of the site would be for business purposes, the proposed design and built form of the buildings would be consistent with a use of this nature and leaves sufficient space on site for turning and manoeuvring and would not constitute an overdevelopment of the site. Therefore, subject to the use of suitable materials and an effective landscaping scheme to soften the visual appearance of the site and retain the hedgerow to the front of the site, it would be considered that the proposed works would be suitable and consistent with the policy BNE1 of the Local Plan.

There have been concerns raised by local residents with regard to issues of overbearing and overlooking from the proposed units. The proposed units would be 8m in height and would be separated from the existing residential properties by Derby Road, of which, the Council's Design SPD does relax the proposed separation distances between existing and proposed development that is separated by a highway. The side elevations of units 3 and 4 would be positioned along the site frontage and would be closest elevations to the neighbouring dwellings. These would be blank elevations and would pose no overlooking issues to the neighbouring residential amenity, the units would be separated from the front elevations of the neighbouring properties by in excess of 30m and owing to this distance and the separation with a highway, it would be considered that the proposed units in terms of their position and size would be consistent with the separation and amenity requirements as defined within policies BNE1 and SD1 and the Council's Design Guide SPD.

In addition, concerns have also been raised over potential light and noise pollution from the proposed site. The Environmental Health Officer has requested a lighting scheme to be required as a planning condition to ensure that there would be no lighting that would shine into neighbouring properties or cause disturbance to the residential amenity and that any external lighting would need to accord with the approved submitted details.

Given that the site benefits from an established business use at the site, it would not be proportionate or reasonable to withhold planning permission on the basis of the nature of the proposed use, as the site could be continued to be used in an unconditioned fashion without the erection of the proposed buildings. However, it would be considered that through the use of suitable materials and effective landscaping and conditions relating to the proposed lighting of the site that the proposed works would result in an improvement to the current circumstances and would create a more visually positive appearance and could help to reduce the impact of the site on the neighbouring residential amenity.

Highways

Concerns have been raised by local residents with regard to the increase in traffic to the site and the potential for large HGV vehicles to be accessing the site and causing noise, disturbance and increasing pollution in the local area. There have been no objections raised by the County Highway Authority owing to a speed survey that was carried out at an adjacent site, showing traffic speeds on average of 30mph as opposed to 40mph and it is considered that the required visibility splays could be accommodated at the site and would accord with policy INF2 of the Local Plan.

Other

The proposed use would be for use class B1(c) with ancillary offices proposed on the floor plans to support the B1(c) uses. There would be no retail element to the proposed use which would reduce the numbers of comings and goings to the site.

Concerns have been raised by Hilton Parish Council that there is no need for units of this size in the Hilton area as part of the evidence undertaken to inform the proposed Neighbourhood Plan. The Council's Economic Development Department have confirmed that there is demand for units of this size and use within the Hilton area and that enquiries have been made to the Council. In addition, there have been a number of letters submitted by the agent from businesses declaring interest in occupying units at the site and confirmation from property consultants regarding likely occupancy rates.

Conclusion

On the basis of the evidence that has been produced by the agent, it would appear that on the balance of probability that the site has been used for business purposes for a period of in excess of ten years and that the proposed works would accord with policies E2, BNE1, BNE5, SD1 and INF2 of the Local Plan and it is recommended that planning permission be granted subject to conditions.

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

Recommendation

GRANT permission subject to the following conditions:

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

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

2. The development hereby permitted shall be carried out in accordance with plan(s)/drawing(s) ref. 1385 - 003 Rev B, 1385 - 004B Rev B, 1385 - 005A Rev A, 1385 - 006A Rev A, 1385 - 007A Rev A and 1385 - 008A Rev A, received on 19th March 2019, unless as otherwise required by condition attached to this permission or allowed by way of an approval of a non-material minor amendment made on application under Section 96A of the Town and Country Planning Act 1990 (as amended).

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

3. No development, including preparatory works, shall commence until a scheme for the creation of suitable alternative nesting sites for swallows along with a timetable for the provision of such measures, has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved scheme.

Reason: In the interests of the preservation of the species and that there would be no loss throughout the construction period.

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

Reason: To protect the trees/landscape areas and biodiversity from undue disturbance during the construction period.

5. No development, including preparatory works, shall commence until a Risk Assessment/Method Statement for amphibians and reptiles, detailing Reasonable Avoidance Measures, has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved Risk Assessment/Method Statement.

Reason: In the interests of the preservation of the species and to reduce any harm posed during the construction period.

6. No development, including preparatory works, shall commence until a biodiversity enhancement strategy, has been submitted to and approved in writing by the Local Planning Authority. The details shall include (but not exclusively relate to) the biodiversity enhancement measures outlined in sections 5.17 and 5.20 of the Preliminary Ecological Appraisal report prepared by Absolute Ecology dated January 2018. The approved measures shall be implemented in full as construction proceeds and completed prior to first occupation of the development and thereafter maintained as such.

Reason: To protect species during the construction period and to ensure that biodiversity gain is incorporated into the development.

7. No development shall take place until a detailed design and associated management and maintenance plan of the surface water drainage for the site, in accordance with the principles outlined within:
 - a. Flood Risk Assessment Business and Commercial Development of land at Talbot Nursery – Derby Road, Hilton, for Talbot Turf (April 2019, by Planning Design Practice Ltd) and including any subsequent amendments or updates to those documents as approved by the Flood Risk Management Team
 - b. And DEFRA's Non-statutory technical standards for sustainable drainage systems (March 2015),

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

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

8. No development shall take place until a detailed assessment has been provided to and approved in writing by the Local Planning Authority, to demonstrate that the proposed destination for surface water accords with the drainage hierarchy as set out in paragraph 80 reference ID: 7-080-20150323 of the planning practice guidance.

Reason: To ensure that surface water from the development is directed towards the most appropriate waterbody in terms of flood risk and practicality by utilising the highest possible priority destination on the hierarchy of drainage options. The assessment should demonstrate with appropriate evidence that surface water runoff is discharged as high up as reasonably practicable in the following hierarchy:

- I. into the ground (infiltration);
- II. to a surface water body;
- III. to a surface water sewer, highway drain, or another drainage system;
- IV. to a combined sewer.

9. Prior to commencement of the development, the applicant shall submit for approval to the LPA, details indicating how additional surface water run-off from the site will be avoided during the construction phase. The applicant may be required to provide collection, balancing and/or settlement systems for these flows. The approved system shall be operating to the satisfaction of the LPA, before the commencement of any works, which would lead to increased surface water run-off from site during the construction phase.

Reason: To ensure surface water is managed appropriately during the construction phase of the development, so as not to increase the flood risk to adjacent land/properties or occupied properties within the development.

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

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

11. During the period of construction, no ground, construction or fitting out works shall take place other than between 0730 and 1800 hours Monday to Friday and 0800 and 1300 hours on Saturdays. There shall be no works on Sundays or public holidays except in an emergency.

Reason: To protect the neighbouring residential amenity during the construction period.

12. Throughout the construction phase space shall be provided within the site for storage of plant and materials, site accommodation, loading, unloading and manoeuvring of goods vehicles, parking and manoeuvring of employees and visitors vehicles, laid out and constructed in accordance with detailed designs first submitted to and approved in writing by the Local Planning Authority. Once implemented the facilities shall be retained free from any impediment to their designated use throughout the construction period.

Reason: In the interest of highway safety.

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

Reason: In the interest of highway safety.

14. Prior to the layout out of drainage and utilities at the site, details of the finished floor levels of the buildings hereby approved and of the ground levels of the site relative to adjoining land levels, shall be submitted to, and approved in writing by, the Local Planning Authority. Thereafter, the development shall be constructed in accordance with the agreed level(s).

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

15. Prior to their incorporation into the development, to which this permission relates, precise details, specifications and, where necessary, samples of the facing materials to be used in the construction of the external walls and roof of the building(s) shall be submitted to and approved in writing by the Local Planning Authority. The work shall be carried out in accordance with the approved details.

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

16. Prior to occupation of the proposed units a new vehicular access shall be formed to Derby Road laid out in accordance with drawing No 1385-003, and provided with visibility sightlines extending from a point 2.4 metres from the carriageway edge, measured along the centreline of the access, for a distance of 101 metres to the south west and 71m to the north east, measured along the nearside carriageway edge. The land in advance of the visibility sightlines shall be retained throughout the life of the development free of any object greater than 1m in height (0.6m in the case of vegetation) relative to adjoining nearside carriageway channel level.

Reason: In the interest of highway safety.

17. No unit shall be taken into use until space has been laid out within the site in accordance with drawing No 1385-003 for 54 cars to be parked and for vehicles to turn so that they may enter and leave the site in forward gear. These facilities shall thereafter be retained for use at all times.

Reason: In the interest of highway safety.

18. No part of the development shall be occupied until details of arrangements for storage of bins and collection of waste have been submitted to and approved by the Local Planning Authority. The development shall be carried out in accordance with the agreed details and the facilities retained for the designated purposes at all times thereafter.

Reason: In the interest of highway safety and to ensure that it would not be stored on the public highway.

19. Prior to the first occupation of the units, details shall be submitted to and approved in writing by the Local Planning Authority of a scheme of proposed planting and landscaping, the site shall be planted in accordance with the approved scheme prior to the first occupation of the units or the first planting season, whichever is sooner.

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

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

Reason: To preserve the visual amenity and the residential amenity of the area and to prevent light pollution.

21. Within 28 days of the new access being taken into use, the subject of condition No 16 above, the existing vehicular accesses to Derby Road shall be permanently closed with a physical barrier and the existing vehicle crossover reinstated as footway and verge in accordance with a scheme first submitted to and approved in writing by the Local Planning Authority.

Reason: In the interest of highway safety.

Informatives:

1. Pursuant to Section 184 of the Highways Act 1980 and Section 86(4) of the New Roads and Streetworks Act 1991 prior notification shall be given to the Department of Economy, Transport and Communities at County Hall, Matlock regarding access works within the highway. Information and relevant application forms, regarding the undertaking of access works within highway limits, are available via the County Council's website www.derbyshire.gov.uk, email Highways.Hub@derbyshire.gov.uk or telephone 01629 533190.
2. The Highway Authority recommends that the first 10m of the proposed access driveway should not be surfaced with a loose material (i.e. unbound chippings or gravel etc.). In the event that loose material is transferred to the highway and is regarded as a hazard or nuisance to highway users the Authority reserves the right to take any necessary action against the householder.
3. Pursuant to Section 127 of the Highways Act 1980, no works may commence within the limits of the public highway to reinstate the footway/verge and redundant vehicular accesses 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 127 Agreements may be obtained by contacting this Authority via email - kevin.barton@derbyshire.gov.uk . The applicant is advised to allow approximately 12 weeks in any programme of works to obtain a Section 127 Agreement.
4. 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.
5. If the work is carried out in such a manner as to result in the removal, uprooting or destruction of a protected tree or trees, without the consent of the Local Planning Authority or as provided by section 211 of the Town and Country Planning Act 1990, you may be liable to replace such a tree or trees by a tree or trees of appropriate size and species under the duty laid down under section 213(1) of the Act. Accordingly, you are advised to consider employing a qualified tree surgeon or other competent person to carry out or oversee the works. All work should be carried out in accordance with the British Standards Institute's recommendations for tree work.
6. The site is affected by a Building Line prescribed under the Roads Improvement Act 1925. The line will need to be revoked before any building works can begin. The applicant should contact the Director of Environmental Services at Derbyshire County Council and be advised that there is a fee payable to cover administration and legal costs.
7. The County Flood Risk Team advises:
 - Any alteration to existing impermeable surface area of the site may exacerbate surface water flood risk, so new impermeable surfaces should be limited where possible. Where an increase in impermeable area is unavoidable, Derbyshire County Council (DCC) strongly promote Sustainable Drainage Systems (SuDS) to be incorporated within the design of a drainage strategy for any proposed development, applying the SuDS management train with an appropriate number of treatment stages. Applicants should consult Table 3.3 of the CIRIA SuDS Manual (C697) to confirm the appropriate number of treatment stages, or contact the EA or the DCC Flood Risk Management Team directly. Surface water drainage should be designed in line with the non-statutory technical standards for SuDS (March 2015) where reasonably practicable, and ground infiltration to manage the surface water is preferred over discharging to a surface water body or public sewer system.
 - Any SuDS should be designed to ensure that the maintenance and operation requirements are economically proportionate and that a maintenance plan is available to the persons/organisations that will be responsible for ongoing maintenance.
 - The applicant is advised to contact the Environment Agency (EA) that hold modelling data for Main Rivers and some ordinary watercourses if fluvial flood risk is a concern.
 - Due to the historic mining and mineral extraction operations in Derbyshire, adits may exist beneath the surface. The applicant is therefore advised to investigate the potential for hidden watercourses existing on the land prior to any works being undertaken.
 - Development located in areas where the water table is at a shallow depth may be susceptible to groundwater flooding. Development site drainage should be considered carefully to avoid any increased risks associated with groundwater. DCC would not recommend infiltration as a means of development site surface water disposal in areas where geohazards or ground instability are deemed likely without appropriate

analysis of the risks involved. Infiltration of surface water to the ground is also not advised in sensitive groundwater areas without an appropriate SuDS management train.

8. That the hedgerow(s) affected may contain nesting birds. It is an offence under the Wildlife and Countryside Act 1981 to intentionally kill, injure or take any wild British breeding bird or its eggs or damage its nest whilst in use or being built. The nesting season normally encompasses the months March to July inclusive. If you are in doubt as to requirements of the law in this regard you should contact Natural England on 0300 060 3900.

Item No. 1.2

Ref. No. DMPA/2019/1007

Valid date: 29/08/2019

Applicant:

Alistair Chapman
Beehive Leisure Ltd

Agent:

Rupert Rayson
Rosliston
Swadlincote

Proposal: Change of use of land to form a seasonal wedding venue including the erection of four linked tipis and the construction of a timber a frame ceremony structure with associated works at Beehive Woodland Lakes, Rosliston, Swadlincote, DE12 8HZ

Ward: Linton

Reason for committee determination

The application has been called to Planning Committee by Councillor Pegg due to local concern that has been expressed about a certain issue and unusual site circumstances that should be considered by the Committee.

Site Description

The site is located off Lullington Road and is located between the villages of Coton in the Elms and Rosliston. The site is fairly isolated and is within a rural location. The site has a fairly flat topography and is heavily screened by existing tree planting with no immediate views into the site. There is currently a car park that serves the site and provides around 50 car parking spaces.

The proposal

Consent is sought for the retention of an existing tipi structure and the use of the site for wedding ceremonies and wedding functions during April to October as well as the erection of an additional canopy structure for ceremonies to take place at the site.

Applicant's supporting information

A Planning Statement considers that by the nature and ethos of the business the proposed development requires a rural location. The tipis are temporary in nature and sympathetic to the existing woodland setting. Whilst the timber A-frame structure is technically of permanent construction, it could, if required, be removed with minimal effort should the proposed use ever cease. Furthermore, the open nature of the structure provides a transparency, which helps to assimilate the structure into the surrounding woodland backdrop. In view of the limited impact of the proposal on the local landscape, and in the absence of identifiable harm to any issue of acknowledged planning importance, it is therefore respectfully requested that a conditional planning permission be granted in due course.

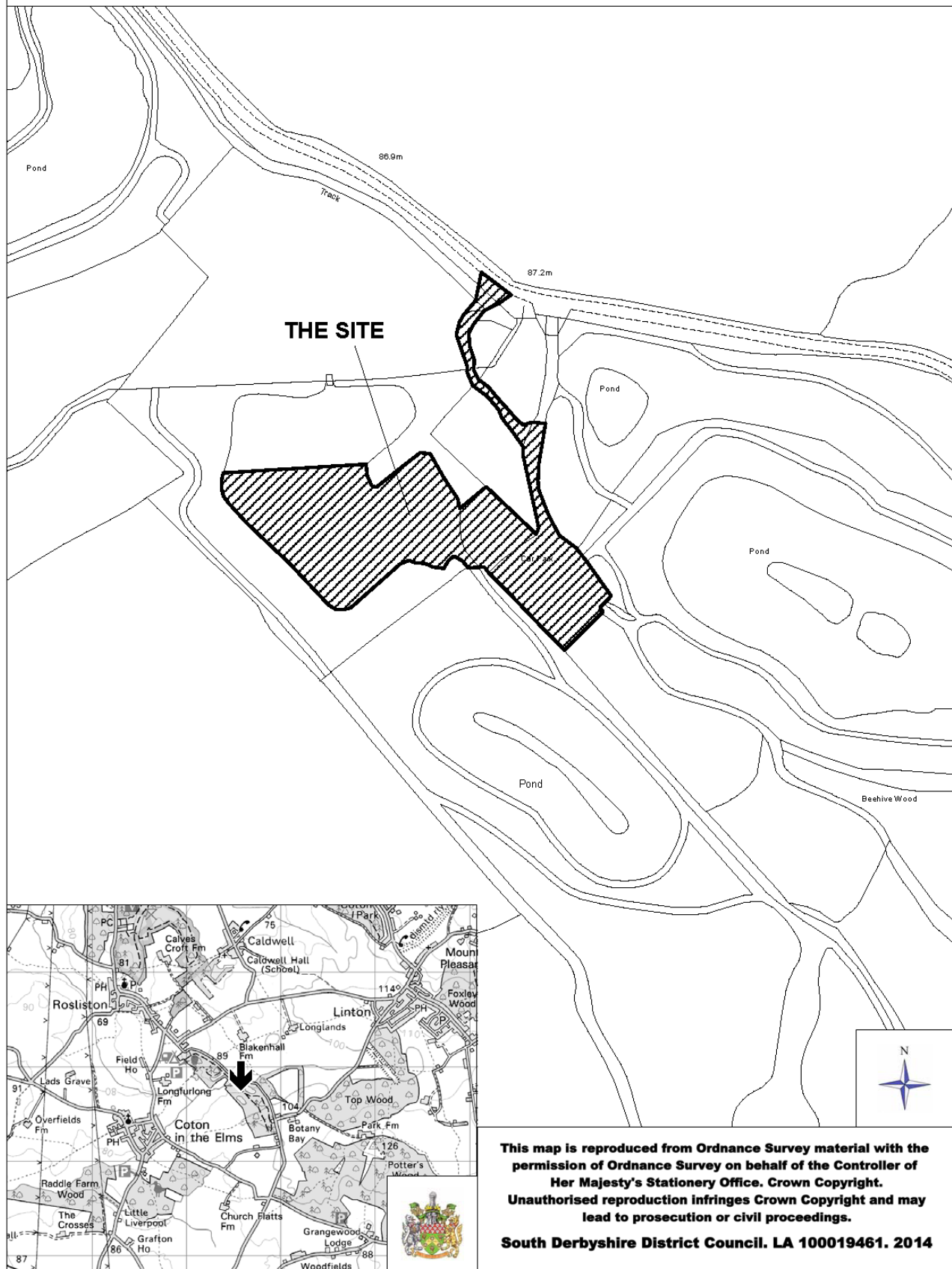
Relevant planning history

9/2001/1073 The formation of a fishing lake – Approved with conditions

Responses to consultations and publicity

The Environmental Health Officer has raised no objections to the proposal but does recognise that there could be noise and disturbance caused by music playing for the functions on the evenings and has recommended the inclusion of planning conditions to ensure that noise would not be allowed to

**DMPA/2019/1007 - Beehive Woodland Lakes, Rosliston, Swadlincote
DE12 8HX**



exceed a certain volume or be played after a certain time.

The County Highway Authority has raised no objections to the development. Whilst the fronting road is subject to the national speed limit, due to the alignment and rural nature of the road, vehicle speeds are reduced to approximately 40mph and the proposed access could therefore, accommodate the recommended visibility sightlines of 2.4m x 103m in both directions subject to maintenance of the vegetation. Whilst the 50 spaces are currently used for parking in association with the fishing lakes, no fishing will be permitted on wedding days. Therefore, subject to conditions it is considered that this level of parking would be adequate as there would be additional space within the site to accommodate overspill.

The Environment Agency has raised no flood risk objections to the development as the Ceremony Pavilion and Temporary Tipis are located within Flood Zone 1.

Natural England has made no comments on the application.

The Planning Policy Officer has raised no objections. The site, although located in the River Mease Catchment would be served by mobile toilets which would be normal for such development types/uses in rural areas. This approach would represent an attempt to mitigate effects on the SAC justifying an appropriate assessment given the nature of the proposal. STW is not licenced to receive tankered deliveries of waste water into treatment works at any Mease catchment works and so any discharges would be exported out of catchment and would have no effect on the SAC. If the flows were to go to the foul network it would be served by Clay Mills and so would also be exported out of catchment.

Severn Trent has raised no objections subject to conditions relating to details of surface water drainage.

Responses to publicity

There has been one letter/email of objection received raising the following issues:

- a) There has been an increase in traffic and noise (music and singing and shouting) at the Hidden Hive in recent times.
- b) Concerns with regard to over development of this site which was agricultural land and became part of the National Forest as a woodland and wildlife habitat.
- c) Object strongly to music, lighting and late night activity at this site.

Rosliston Parish Council would wish to object on the grounds of noise to local residents, safe visibility for the traffic using the venue entrance/exit and the danger of increase in traffic.

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), SD1 (Amenity and Environmental Quality), SD3 (Sustainable Water Supply, Drainage and Sewerage Infrastructure), BNE1 (Design Excellence), BNE4 (Landscape Character and Local Distinctiveness), INF2 (Sustainable Transport), INF8 (The National Forest) and INF10 (Tourism Development).
- 2017 Local Plan Part 2: SDT1 (Settlement Boundaries and Development), BNE5 (Rural Development) and 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

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

- Principle of development;
- Visual Impact; and
- Impact on Amenity

Planning assessment

Principle of development

The site is located outside of a designated settlement boundary and would be considered to be development within the open countryside. There is scope within policies INF10 and BNE5 of the Local Plan for the creation of tourism based facilities within the open countryside provided that they are supported by a sound business case, that the proposed operational development would be of a temporary or reversible nature and that the proposed works would not give rise to undue impacts on the local amenity by way of noise or disturbances.

A business case has been submitted with the application to support the use of the site for wedding ceremonies and wedding functions, showing that there have been wedding functions carried out on the site under permitted development since 2017, with bookings being taken into 2020. With the increase in demand for the use of the site, consent is now sought for the use of the site between April – October for wedding functions and ceremonies and the associated physical structures. This shows that there is a demand for the proposed use and that the subsequent application has been submitted as a result of the growth and demand for the business.

In addition, the tipis and timber canopy structure for the ceremonies would not be fixed to the ground and could be removed from site at a later date. The proposed works would therefore, not create permanent structures and if the use were to cease at a later date the structures could be removed and the site could be returned to its original state. This would therefore, satisfy the criteria of the policies INF10 and BNE5 in that the structures would be of a temporary and reversible nature.

Visual Impact

Policies INF10, BNE1 and BNE5 of the Local Plan support the erection of new structures outside of settlement boundaries for tourist accommodation and leisure facilities provided that the structures would be well designed and would not have an undue impact on the landscape and character of the area.

The structures are of a small and temporary nature and the tipis and timber canopy structure would be in-keeping with the wider woodland feel of the site. The structures would be screened from wider public view by existing tree planting that surrounds the site, which all but omits views into the site. On the basis of this, the structures would not have a harmful visual impact and would comply with the principles of policies BNE1, INF10 and BNE5 of the Local Plan.

Impact on Amenity

Concerns have been raised by local residents with regard to noise from loud music at the site during the evenings. The site is located in a particularly remote location and is contained by the fishing lakes and caravan park to the north, with the nearest residential property located around 500m away from the site.

The Environmental Health Officer has requested the use of planning conditions to control noise at the site late at night; by limiting the maximum noise level that could be emitted from the site and for the applicant to provide details of this and how it shall be done as well as no music to be played after 11pm. This would endeavour to address the concerns that have been raised by local residents with regard to likely noise pollution. On the basis of this and with the inclusion of these planning conditions, the development would not have an undue impact on the amenity of local residents and would comply with the principles of policies SD1 and BNE5 of the Local Plan.

Other

Concerns have been raised by local residents with regard to the increase in traffic to the site. The site is currently used as a fishing lake and when the site is used for wedding purposes, the fishing lake would not be in use, of which this could be controlled through the use of planning conditions. This would allow the car park and all the overflow area to be available for parking for the wedding venue and would ensure that vehicles visiting the site could leave the site in a forward gear. Subject to the inclusion of these conditions, there have been no objections raised by the County Highway Authority and it would be considered that the development would accord with policy INF2 of the Local Plan.

Conclusion

The development would comply with policies BNE1, BNE5, INF2, INF10 and SD1 of the Local Plan and it is recommended that the application is approved subject to conditions.

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

GRANT permission subject to the following conditions:

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

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

- 2 The development hereby permitted shall be carried out in accordance with plan(s)/drawing(s) ref. Location Plan, received 29th August 2019, Block Plan, received 29th August 2019, Proposed Tipis, received 29th August 2019 and Proposed Ceremony Structure, received 29th August 2019; unless as otherwise required by condition attached to this permission or following approval of an application made pursuant to Section 96A of the Town and Country Planning Act 1990.

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

- 3 The site, to which this permission relates, shall only be used for wedding ceremonies and wedding functions from 1st April to 31st October in each calendar year and shall cease operation outside of these times.

Reason: To ensure that the use is operated in accordance with the submitted application documents and as it has been assessed.

- 4 No other permitted activities on the site shall take place on the site when it is being used for wedding days and the sole use of the car park shall be to serve the wedding ceremony and wedding function use during wedding days

Reason: In the interest of highway safety and to ensure that there is an adequate level of parking available for the wedding use.

- 5 Prior to the first use of the site for wedding ceremonies and wedding functions, a scheme shall be submitted to and approved in writing by the Local Planning Authority to demonstrate that the level of music noise emitted from the development shall not exceed 30dBA between the hours of 0700-2300 measured as a 15 minute LAeq at the nearest sound sensitive premises. All measurements shall be made in accordance with the methodology of BS4142: 2014 Methods for rating and assessing industrial and commercial sound and/or its subsequent amendments. Where access to the nearest sound sensitive property is not possible, measurements shall be undertaken at an appropriate location and corrected to establish the noise levels at the nearest sound sensitive property. The findings from the approved scheme shall be incorporated into the development within a time limit agreed in writing by the Local Planning Authority and shall be retained thereafter for the the lifetime of the use.

Reason: In the interest of protecting the neighbouring public amenity from noise pollution.

- 6 No music shall be played at the development between the hours of 23:00 to 07:00.

Reason: To protect the public amenity from noise pollution.

- 7 Prior to any weddings taking place on the site, the existing vehicular access to Lullington Road shall
be provided with visibility sightlines extending from a point 2.4 metres from the carriageway edge, measured along the centreline of the access, for a distance of 103 metres in each direction measured along the nearside carriageway edge. The area in advance of the visibility sightlines shall
be retained throughout the life of the development free of any object greater than 1m in height (0.6m in the case of vegetation) relative to adjoining nearside carriageway channel level.

Reason: In the interest of highway safety.

- 8 Prior to any weddings taking place, space shall be provided within the site curtilage for the parking and manoeuvring of vehicles, located, designed, laid out and constructed all as agreed in writing with the Local Planning Authority and maintained throughout the life of the development free from any impediment to its designated use.

Reason: In the interest of highway safety.

- 9 The car park area shall not be modified and the timber structure shall not be installed until a scheme for the drainage of surface water from the site has been submitted to and approved in writing by the Local Planning Authority. This scheme shall accord with water quality principles as set out in the River Mease Special Area of Conservation Water Quality Management Plan. The scheme shall be carried out in conformity with the approved details prior to the first use served by the surface water drainage system.

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.

Item 1.3
Ref. No. 9/2019/0495
Valid Date 12/08/2019

Applicant:
 Mr Ben Bates

Agent:
 Mr Darren Johnson-Rose
 UK Surveyors Ltd
 Office 14 Grosvenor Court
 Lea Hall Enterprise Park
 Brereton
 Rugeley
 WS15 1LH

Proposal: The demolition of stable building and the erection of a detached dwelling at 21 Linton Road, Castle Gresley, Swadlincote

Ward: Castle Gresley

Reason for committee determination

This item is presented to Committee at the request of Councillor Pegg as local concern has been expressed about a particular issue, the committee should debate the issues in this case which are very finely balanced and unusual site circumstances should be considered by the Committee.

Site Description

The application site comprises an area of land of approx. 410 square metres, which is accessed via a single track of 30m off Linton Road, with the site located behind the existing properties off Linton Road, Bass's Crescent and Arnold Close. The site is therefore bound by residential properties and also a small public car park to the north east, which is situated on land approx. 2.5m higher than that of the application site. The site currently comprises a small single storey red brick building, with blue tile pitched roof which would be demolished in order to accommodate the proposed new dwelling. The site has a tarmac hardstanding across the entire site and is bound by mostly 1.8m fencing and large block wall at the rear of the site. There is a large protected Lime tree to the south east corner of the site with is the subject of County Council TPO No.109 and also several large mature conifer trees within the neighbour's property close to the southern boundary of the site.

Proposal

The proposal is for full planning permission for the erection of 1 detached single storey dwelling, with parking provision for 2 spaces for the proposed dwelling and 2 spaces provided for the existing dwelling No.21 within the application site.

Applicant's supporting information

The Design and Access Statement seeks to demonstrate the design principles and concepts that underpin the development proposals indicating how the scheme would contribute towards the creation of a high-quality sustainable development. It is stated that the proposed layout has been specifically designed to maximise the best use of the land and that the proposal has been considered in accordance with the principles set out in the council's current design requirements. The statement concludes that the use of the site for the development of 1 dwelling is considered acceptable in this location taking account of the existing surrounding residential area, the existing building on site and that the location of the site, it is considered sustainable and in accordance with both national and local planning policies.

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The Preliminary Bat Roost Assessment & Emergence Surveys were undertaken as a result of Derbyshire Wildlife Trust's initial consultation response. Following surveys taken on site the assessment identified that both the building and surrounding environments offer value to bats. No internal evidence of bat was identified; however, but they were unable to confirm any roosting evidence within the spaces between the roof coverings and claddings/ceilings below due to limited access. A further two emergence surveys took place on the 17th July 2019 (Dusk) and 2nd August 2019 (Dawn) where no bats were observed to have emerged from within or into the building during each survey.

Planning History

| | |
|-------------|--|
| 9/2008/0629 | Outline application for the erection of one dwelling – Granted 31/07/2008 |
| 9/2011/0303 | Application for planning permission to extend the time limit for implementation of outline application 9/2008/0629 for the erection of one dwelling – Granted 14/06/2011 |
| 9/2014/0966 | Outline application (all matters to be reserved) for the erection of two bedroom bungalow – Granted 26/11/2014 |
| 9/2017/0981 | Outline application (all matters to be reserved) for the residential development of a two bedroom bungalow – Granted 03/11/2017 |

Responses to Consultations

Derbyshire Wildlife Trust's initial response required that bat surveys were required. After undertaking the requested surveys which did not identify roosting bats within the building or any active bird nests, there are no objections subject to a condition.

The Coal Authority has raised no objections as the site does not fall within the defined Development High Risk Area.

The County Highway Authority has raised no objections as the site now benefits from outline planning consent. The previous conditions apply, in order to secure parking provision to both the proposed dwelling and the existing and to keep sightlines clear.

Responses to Publicity

Castle Gresley Parish Council raised concerns in relation to parking as the proposal would reduce the amount of parking available to No.19. It is also noted that as No. 23 is for sale the future occupiers are not able to comment on the application.

Two objections have been received, raising the following comments:

- a) The land being sold for development has resulted in a loss of off street parking for No.19, which has placed further strain on parking for neighbouring residents, with cars having to park on grass verges or on the kerb side.
- b) No consideration has been given as to the noise disturbance would have on neighbours.
- c) Housing delivery within the area has already been met and is deliverable.
- d) Any visitors or additional cars would have nowhere to park on the site.
- e) Due to the driveway being accessible for a single car only and restricted in terms of its width it could cause highway safety issues, in terms of turning into the driveway from the highway.
- f) The proposal would be detrimental to the area.
- g) The road is inadequate and unsafe for current traffic levels, further development would only exacerbate the issue.

Relevant Policies and Guidance

The relevant Development Plan policies are:

- Local Plan Part 1 (LP1): S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), S4 (Housing Strategy), S6 (Sustainable Access), H1 (Settlement Hierarchy), H20 (Housing Balance), SD1 (Amenity and Environmental Quality), SD3 (Sustainable Water Supply, Drainage and Sewerage Infrastructure), BNE1 (Design Excellence), BNE3 (Biodiversity), BNE4 (Landscape Character and Local Distinctiveness) and INF2 (Sustainable Transport)
- Local Plan Part 2 (LP2): SDT1 (Settlement Boundaries), 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 Development;
- Neighbouring Amenity;
- Design and Visual Impact; and
- Highway Safety.

Planning Assessment

Principle of Development

Given the site is the subject of an extant outline permission, what needs to be considered here primarily are issues around design and layout. The site received an outline permission in 2017 because it is located within settlement boundary of the Swadlincote urban area, as identified by Policies H1 and SDT1. The site is within a built up residential area, with neighbouring dwellings surrounding the site. The principle of the proposed development for the erection of a dwelling to replace an existing stable building is considered to be acceptable, appropriate development as it is compliant with Policies H1 and SDT1 (i.e. new development within the settlement boundary, where development of all sizes within the settlement boundary are considered appropriate).

Neighbouring amenity

Policy SD1 supports development that does not lead to adverse impacts on the environment or amenity of existing and future occupiers. In relation to the impacts on the residential amenities of neighbouring occupiers that surround the site, when assessing the dwellings to the north-east along Linton Road, the separation distance from the proposed north elevation at the closest point would be in excess of 25m, and from properties to the south along Bass's crescent in excess of 30m, which comfortably complies with the requirements of the SPD. When assessing the impact on No.12 Arnold Close a single storey dwelling, the separation to the proposed rear elevation would be 13m, with views obscured by 1.8m timber fencing. When drawing the 45 degree view from both existing property and the proposed, they would not intersect. In addition the levels of the application site are considerably lower than that of No.12 and as the proposed dwelling is single storey only, it would further reduce any potential harm. As such it is considered that the proposed dwelling would not demonstrably impact the residential amenities of neighbouring properties that surround the site and therefore the proposal is compliant with Policies SD1, BNE1 and the SPD.

Design and Visual Impact

In relation to impacts on the street scene, there would be minimal views of the proposed dwelling along Linton Road and Arnold Close, with the proposed dwelling being single storey and set behind the row of two storey dwellings on Linton Road. In addition when viewed from Arnold Close, the ground level is considerably lower, with only the roof being visible. The surrounding dwellings differ in design, but are predominantly two storey detached and semi-detached dwellings built from red brick. It is considered that the proposal would have limited impact on the street scene, with the dwelling set back behind the built up nature of dwellings on Linton Road and therefore obscured from view, therefore not disturbing the character along this part of Linton Road. In addition the site is currently occupied by a stable with the proposed dwelling being of a similar footprint; therefore it is considered that this has not harmfully impacted the street scene as a result. In addition the development is of single storey massing which also limits the impact on the street scene and is further reduced by the drop in levels from the street to the site by approx. 2.5m. There would be views into the site from the public car park on Arnold Close, but due to the reasons stated, the impact is not considered to be harmful on the character of the area. Overall, subject to conditions to control finer detailing and materials, the proposal complies with Policy BNE1 and the SPD in relation to its design and impact on the street scene.

Highway Safety

Vehicular access for the site is proposed down existing access road which joins Linton Road north east of the site. The County Highway Authority has recommended that as the site currently benefits from an extant outline permission, a refusal on highway safety terms could not be substantiated, the previous conditions were referenced. As a result of these comments, the location plan was amended to include parking for No.21 Linton Road within the red outline of the site and No.'s 19 and 21 were amended to be shown in blue on the location plan and therefore within the applicant's control. As such the same conditions were applied as that of the previous outline permission granted in 2017, minus the requirement to reduce the height of the gate at the front of No.19 as it no longer falls within the amended sightlines. Sufficient space has been proposed within the site to ensure adequate parking for two vehicles which complies with the parking guidance within the SPD, in addition the plans show 2 parking spaces for No.21 Linton Road, to ensure the existing dwelling does not result in a loss of parking as a result of the development. It is considered that vehicle movements generated by the proposal are unlikely to have an increased negative impact on the capacity of the wider highway network, with the site currently suitable for parking of several vehicles. As such the access and parking proposed is considered suitable enough to facilitate a dwelling and would not adversely impact on highway safety to a point where which would it would reasonably justify refusal of the application. As such the proposal complies with the requirements of Policy INF2.

Recommendation

GRANT permission subject to the following conditions:

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

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

2. The development hereby permitted shall be carried out in accordance with Drawing No. 004162 Rev E and the Location Plan received 12 August 2019 and Drawing No. 004161 Rev A received 08 May 2019; unless as otherwise required by condition attached to this permission or allowed by way of an approval of a non-material minor amendment made on application under Section 96A of the Town and Country Planning Act 1990 (as amended).

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

3. No development, including preparatory works, shall commence until protective fencing has been erected around the protected Lime tree on the site, as shown on Drawing No. 004162 Rev E received 12 August 2019. Such fencing shall conform to best practice as set out in British

Standard 5837:2012 and ensure that no vehicles can access, and no storage of materials or equipment can take place within, the root and canopy protection areas. The fences shall be retained in situ during the course of ground and construction works, with the protected areas kept clear of any building materials, plant, debris and trenching, and with existing ground levels maintained; and there shall be no entry to those areas except for approved arboricultural or landscape works.

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

4. No development, including preparatory works, shall commence until an Invasive Non-Native Species Protocol (INNSP) has been submitted to and approved in writing by the Local Planning Authority. The INNSP shall detail the timing and method of containment, control and removal of Japanese Knotweed on the site. The measures identified in the INNSP shall be carried out strictly in accordance with the approved scheme.

Reason: In order to contain and remove an invasive, non-native species from the site in the long term interest of the natural environment, noting that initial preparatory works could have unacceptable impacts.

5. Prior to any works to construct a building or boundary treatment, a scheme of biodiversity enhancement (namely the incorporation of bat roosting boxes and integral bird nesting boxes) shall be submitted to and approved in writing by the Local Planning Authority. The submitted scheme shall also include a method of communicating the purpose of such biodiversity enhancement measures to occupiers of the dwelling(s). The approved scheme shall be implemented so that physical measures are incorporated before the first occupation of each respective dwelling and thereafter retained and maintained in situ.

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

6. Prior to works commencing on the construction of the dwellinghouse, the visibility sightlines at the application site access shall be provided in accordance with Drawing No. 004162 Rev E. The existing boundary wall to No.19 and No.21 Linton Road shall be lowered to a height not exceeding 1m relative to the nearside carriageway edge. The area within the sightlines shall be kept clear of any object greater than 1m in height (0.6m in the case of vegetation) above the nearside carriageway channel level.

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

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

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

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

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

9. Prior to the occupation of the dwelling a scheme of hard and soft landscaping shall be submitted to and approved in writing by the Local Planning Authority. All hard landscaping shall be carried out in accordance with the approved details prior to occupation of the dwelling, whilst all planting, seeding or turfing comprised in the approved scheme shall be carried out in the first planting and seeding seasons following the first occupation of the dwelling or the completion of the development, whichever is the sooner; and any plants which within a period of five years (ten

years in the case of trees) from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species and thereafter retained for at least the same period, unless the Local Planning Authority gives written consent to any variation.

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

10. Prior to the first occupation of the dwelling hereby approved, space shall be provided within the site curtilage for the parking and turning of no less than two vehicles for each of the existing and proposed dwellings. Each space shall measure at least 4.8m x 2.4m (3m in width where captive to a boundary treatment or building, and 6m in length where provided within a garage or car port) and be maintained throughout the life of the development free from any impediment to its designated use.

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

11. There shall be no gates or other barriers within 5m of the nearside highway boundary and any gates shall open inwards only.

Reason: In the interests of highway safety.

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

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

Informatives:

1. The Highway Authority recommends that the first 5m of the proposed access driveway should not be surfaced with a loose material (i.e. unbound chippings or gravel etc.). In the event that loose material is transferred to the highway and is regarded as a hazard or nuisance to highway users the Authority reserves the right to take any necessary action against the landowner.
2. Pursuant to Section 184 of the Highways Act 1980 and Section 86(4) of the New Roads and Streetworks Act 1991 prior notification shall be given to the Department of Economy, Transport and Communities at County Hall, Matlock regarding access works within the highway. Information and relevant application forms, regarding the undertaking of access works within highway limits, are available via the County Council's website www.derbyshire.gov.uk, email Highways.Hub@derbyshire.gov.uk or telephone 01629 533190.
3. Pursuant to Sections 149 and 151 of the Highways Act 1980, the applicant must take all necessary steps to ensure that mud or other extraneous material is not carried out of the site and deposited on the public highway. Should such deposits occur, it is the applicant's responsibility to ensure that all reasonable steps (eg; street sweeping) are taken to maintain the roads in the vicinity of the site to a satisfactory level of cleanliness.
4. Pursuant to Section 163 of the Highways Act 1980, where the site curtilage slopes down towards the public highway measures shall be taken to ensure that surface water run-off from within the site is not permitted to discharge across the footway margin. This usually takes the form of a dish channel or gulley laid across the access immediately behind the back edge of the highway, discharging to a drain or soakaway within the site.
5. The trees and shrubs have potential to support nesting birds. The active nests of all wild birds are protected under the Wildlife & Countryside Act 1981 (as amended). An active nest is one being built, containing eggs or chicks, or on which fledged chicks are still dependent. No vegetation removal should be undertaken between 1st March and 31st August inclusive, unless a competent ecologist has undertaken a careful, detailed check for active birds' nests immediately before the work is commenced. If any active nests are discovered then the nest should be left undisturbed until the birds have fledged with an appropriate buffer surrounding the nest.

6. The building is known to support nesting birds. The active nests of all wild birds are protected under the Wildlife & Countryside Act 1981 (as amended). An active nest is one being built, containing eggs or chicks, or on which fledged chicks are still dependent. No building work should be undertaken between 1st March and 31st August inclusive, unless a competent ecologist has undertaken a careful, detailed check for active birds' nests immediately before the work is commenced. If any active nests are discovered then the nest should be left undisturbed until the birds have fledged with an appropriate buffer surrounding the nest.
7. The proposed development lies within a coal mining area which may contain unrecorded coal mining related hazards. If any coal mining feature is encountered during development, this should be reported immediately to The Coal Authority on 0345 762 6848. It should also be noted that this site may lie in an area where a current licence exists for underground coal mining. Further information is also available on The Coal Authority website at: www.gov.uk/government/organisations/the-coal-authority. Property specific summary information on past, current and future coal mining activity can be obtained from: www.groundstability.com.

Item 1.4
Ref. No. 9/2019/0547
Valid Date 29/05/2019

Applicant:
 Monument Two Ltd

Agent:
 Monument Two Ltd
 50 Friargate
 Derby
 DE1 1DF

Proposal: Application to modify the second schedule 'affordable housing' of the section 106 agreement for the site dated the 7th September 2007 related to permission ref. 9/2006/0885 at the former Calder Aluminium Works, Repton Road, Willington, Derby

Ward: Willington & Findern

Introduction

Members will recall deferring this application at the Committee meeting on the 16 July 2019, in order that a contribution could be negotiated with the developer and that the final terms of the proposed agreement could be considered. The report is therefore the same as before but is now updated in italics.

Reason for committee determination

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

Site Description

The site comprises approximately 1.99 hectares of previously disused industrial land formerly occupied by industrial buildings and storage areas associated with Calder Aluminium. Outline planning permission was granted in 2007 with subsequent reserved matters approval granted in 2010. Permission was originally granted for 42 dwellings but this has subsequently been amended and the latest reserved matters approval for the site totals 39 dwellings. The site is currently under construction and partially completed.

Proposal

This application has been submitted under Section 106A in accordance with the Town and Country Planning (Modification and Discharge of Planning Obligations), to modify the requirements of the Section 106 Agreement (S106) dated 7 September 2007.

The proposal is to modify the requirements of the second schedule of the agreement relating to the provision of affordable housing. The S106 requires the provision of 10% affordable dwellings on the site. This application is seeking to replace the requirement for the affordable dwellings to be provided on site with ~~the payment of a financial contribution in lieu of this~~ *the transfer of a dwelling located within the Parish of Willington to the Council in lieu of this requirement.*

Applicant's supporting information

A Supporting Letter has been provided which sets out the justification for the application. The applicant has set out that 11 Affordable Housing Providers (AHP) have been contacted in October

THE SITE

St Michael's Church

Sycamore Farm

Sycamore Court

Kingsmead Lane

Bunting Way

Church Lane

Eggington Brook

Willington

Parson's Hill

Askew Hill

North Arrow

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2018 and April 2019 offering the units to them. No offers have been received from any of the AHPs for the units, this is due to the low number of units on the site (4) and the size of the units themselves. As a result of this the current application has been submitted to vary the requirements of the Section 106 Agreement.

Planning History

9/2018/0008: The variation of condition 2 of planning permission ref: 9/2010/0125 for substitution of housetypes for plots 14 and 32-39 inclusive. Approved 19/09/18.

9/2017/0879: Variation of Condition 2 of planning permission 9/2010/0125 for the substitution of house type on plot 15. Approved 20/10/17.

9/2010/0125: Approval of reserved matters application 9/2006/0885 for residential development. Approved 24/8/10.

9/2006/0885: Outline application (all matters to be reserved except for means of access) for the erection of a residential development. Approved 7/9/07.

Responses to Publicity

One response has been received to the application questioning why the houses are being sold if they are supposed to be for Housing Association tenants.

Relevant Policies and Guidance

The relevant Development Plan policies are:

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

National Guidance

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

Local Guidance

- Affordable Housing SPD
- Planning Obligations SPD

Planning Considerations

The main issue central to the determination of this application is the affordable housing provision.

Planning Assessment

Affordable housing provision

As detailed above, the current S106 agreement contains a reduced affordable housing requirement of 10% for reasons of viability at the time of the original application. Following the commencement of development on site, in accordance with the 2010 reserved matters approval (and subsequent revisions to the scheme) the applicant has made a number of enquiries with Affordable Housing Providers (AHP) in order to take the proposed affordable dwellings which have proven unsuccessful. Following discussions with the Strategic Housing Manager the reasons for the dwellings being unattractive to AHPs are accepted; i.e. the number of units being only 4, and that the unit sizes are below that which would be expected and are now required for affordable units. This has resulted in the

request that the dwellings (partially completed) be allowed to be sold as market dwellings and that a financial contribution be paid in lieu of the on-site provision.

It is noteworthy in this instance that the Section 106 Agreement allows for the affordable dwellings to be disposed of as discount open market dwellings, subject to the applicant being unable to sell the on-site dwellings to a Registered Provider for a 12 month period (in addition to a requirement to undertake appropriate measures to secure the transfer). Based on the sale prices submitted as evidence of the applicant's marketing activity, this allowance within the agreement would equate to the equivalent of a £166,500 contribution. However, in this locality and in today's housing market, the provision of discounted sale dwellings and, in the opinion of the Council's Strategic Housing Manager, would not deliver a truly affordable housing product and as a result negotiations with the applicant have been continued to agree an alternative provision.

Discussions to agree an agreed commuted sum have proven unsuccessful, with offers dismissed by Officers due to the amounts suggested being below that required in order to deliver tangible alternative affordable housing within the Parish bounds. An alternative option preferred by the Strategic Housing Manager would be the freehold transfer of a dwelling into the Council's ownership. The dwelling would need to be located within the Parish of Willington, and valued in the region of £190,000. It is considered that the capital value coupled with the likely rental income from this asset (around £6,000 pa) would provide an appropriate equivalent to the originally required affordable dwellings on the site.

Although it is always disappointing when the impact of development on local area infrastructure cannot be mitigated in the way originally envisaged, the solution offered is reasonable given the lack of interest from AHPs for these dwellings.

Other matters

The proposed revisions to the agreement have highlighted two additional anomalies with the agreement as currently worded. The first being the lack of an indexation requirement, whilst a definition of index is included within the definitions this does not appear as a charge in any schedule of the agreement. The revised agreement should therefore include an indexation requirement for payments.

The second required the open space contribution to be paid to the Council on the occupation of the 85th dwelling. As the development is for 39 dwellings (originally approved as 42) this element was always incorrect, it is proposed to seek a variation to this to require the payment on occupation of the 20th dwelling.

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

Recommendation

- A. ~~Subject to no material planning objections being received by the 19 July 2019, grant delegated authority to the Head of Planning and Strategic Housing to negotiate the amount of affordable housing contribution the equivalent to 4 dwellings.~~
- B. ~~Subject to A,~~ **GRANT** approval for the proposed amendment to the agreement to accept a financial contribution *the transfer of a dwelling of an appropriate value and size within the Parish of Willington* in lieu of providing affordable dwellings on site, include an indexation requirement, and amend the public open space trigger to require the balance of the Open Space Contribution to be paid on the occupation of the 20th dwelling.

Item No. 1.5

Ref. No. DMPA/2019/0891

Valid date: 30/07/2019

Applicant:

Taylor
Indigo Sun Retail Ltd

Agent:

Paul Moran
McEachern Architects
13 Allan Park
Stirling
FK8 2QG

Proposal: Change of use from retail unit to sunbed salon (Sui Generis) (re-submission of withdrawn application ref. 9/2019/0213) at Unit A & Part B, Aldi Development, Swarkestone Road, Chellaston, Derby, DE73 6WS

Ward: Aston

Reason for committee determination

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

Site Description

The site forms part of the recently completed local centre which is located within the Chellaston Fields site, a new housing development of approx. 450 dwellings which is currently still under construction. The design of the local centre follows pre-application work to create an active frontage at the entrance of the site and located off the main access road. The building and shopfronts and the larger retail unit which is now occupied by an Aldi supermarket take on a contemporary appearance, with grey white and red cladding, which matches colours of the first dwellings within the site and complement the approach into the site as well as contrasting with the more traditional housing design ethos.

The proposal

A change of use is proposed to Unit A and a small part of Unit B from retail (Use Class A1) to a sunbed salon (Use Class Sui Generis). No external alterations to the unit are proposed as part of this application.

Applicant's supporting information

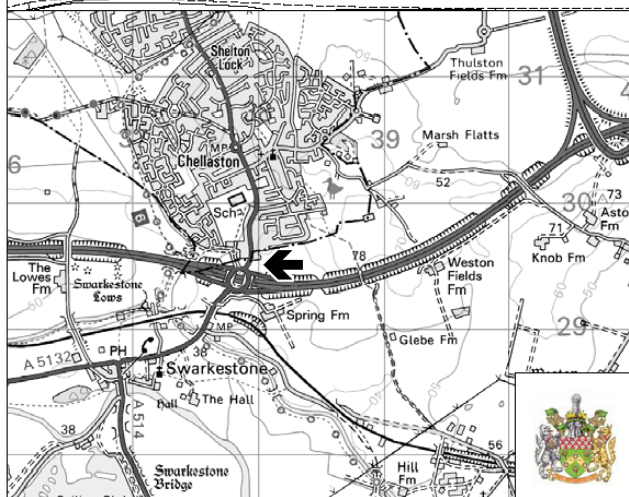
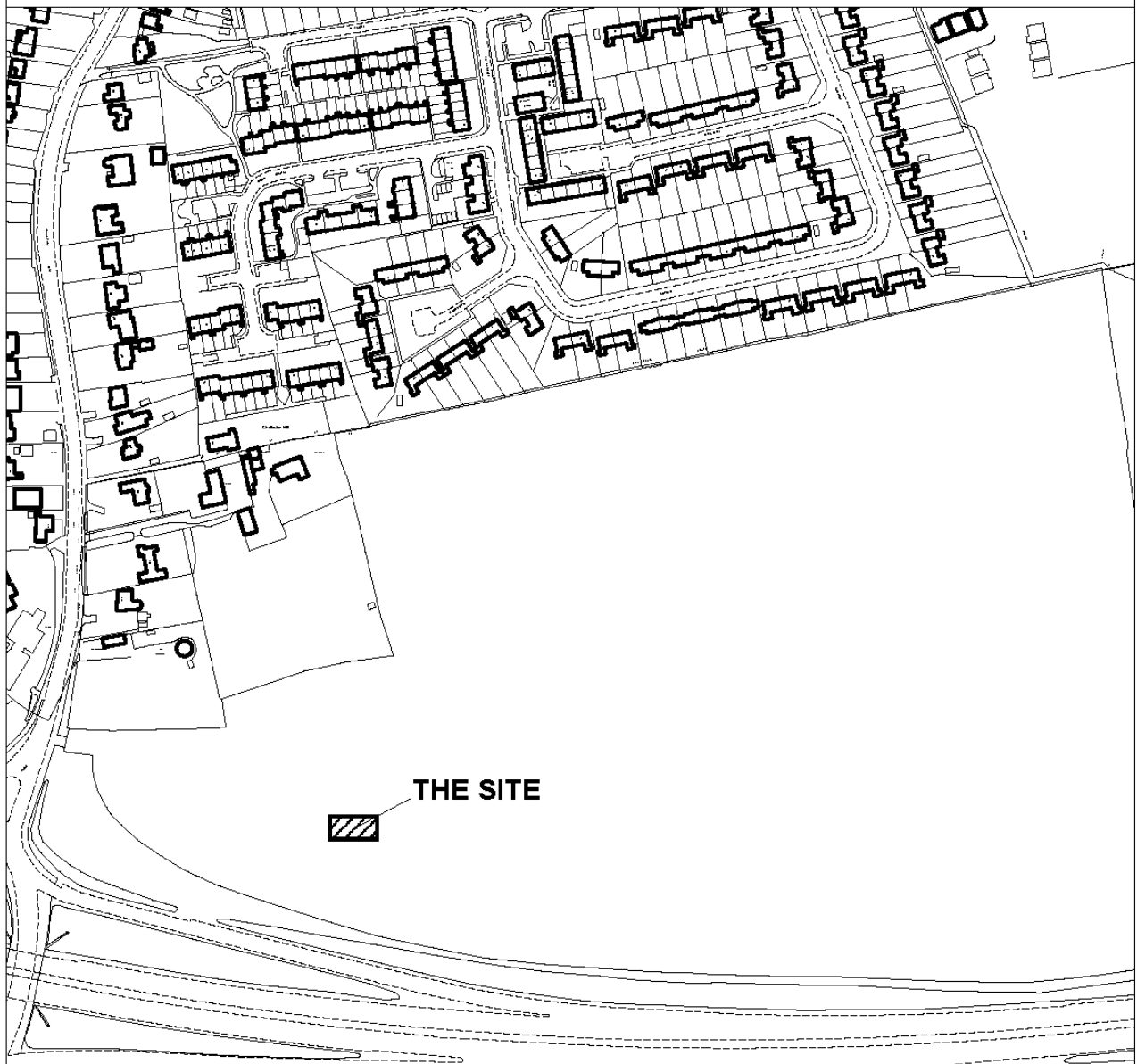
Supporting Marketing Evidence has been submitted to demonstrate that the unit has been fully marketed for a period of 6 months; this includes a report detailing all of the enquiries received and a supporting statement that details the benefits of a sunbed salon within the local centre.

Relevant planning history

9/2012/0568 - Outline application with all matters reserved (except for access) for up to 450 dwellings including the provision of a small discount supermarket (A1 use 1,650sqm), local centre comprising of no more than five individual units (A1/A2/A3 use totalling 1,650sqm), day nursery (D1 use - 450sqm) primary school and open space. Approved 26/01/15.

9/2016/1208 - Erection of a discount foodstore (use class a1) and three units (use classes A1, A2 and A3) collectively forming a local centre associated customer and service access, car parking and landscaping. Approved 06/10/17.

DMPA/2019/0891 - Unit A and part B, Aldi Development, Swarkestone Road, Chellaston, Derby DE73 6WS



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South Derbyshire District Council. LA 100019461. 2014

9/2018/0046 - The variation of condition 23 of planning permission ref: 9/2016/1208 (relating to Erection of a discount foodstore (use class a1) and three units (use classes A1, A2 and A3) collectively forming a local centre along with associated customer and service access, car parking and landscaping. Approved 12/04/18.

9/2018/0655 - The erection of a Costa Coffee outlet with drive through and car parking - Granted 26/10/2018.

Responses to consultations and publicity

The County Highway Authority has raised no objections.

Relevant policy, guidance and/or legislation

The relevant Development Plan policies are:

- Local Plan Part 1 (LP1): S1 (Sustainable Growth Strategy); S2 (Presumption in Favour of Sustainable Development); S7 (Retail); H14 (Chellaston Fields, Chellaston); SD1 (Amenity and Environmental Quality); SD2 (Flood Risk); SD3 (Sustainable Water Supply, Drainage and Sewerage Infrastructure); SD4 (Contaminated Land and Mining Legacy Issues); INF2 (Sustainable Transport); BNE3 (Biodiversity); and BNE1 (Design Excellence)
- Local Plan Part 2 (LP2): RTL1 (Retail Hierarchy)

The relevant local guidance is:

- South Derbyshire Design Guide Supplementary Planning Document (SPD)

The relevant national policy and guidance is:

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

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 issue(s) central to the determination of this application are:

- Principle of Development
- Neighbouring Amenity ; and
- Highway Safety

Planning assessment

Principle of Development

The retail unit is currently vacant. Condition 3 of application 9/2016/1208 restricting the retail units to Use Class A1, A2, A3 and A5 and for no other purpose, to ensure that this area of the site was disposed of for primarily a retail use and which has now been fully constructed. Although only four use classes are listed in the previous condition, it does not mean that other use classes would not be acceptable in principle. Although the proposed sui generis use is not listed, given the similarities in character of the use as a sunbed salon when compared to other uses falling within the retail use classes (e.g a hair salon), it is considered to be acceptable in principle and indeed could attract linked trips to the other units, helping to improve the retail sustainability of the centre as a whole.

Map 2 of Policy RTL1 identifies the proposed local centre within the Chellaston Fields site, which has now been built out. Part F of Policy RTL1 refers to the loss of retail within local centres; it states that

that the loss of retail units in centres will be permitted where:

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

As a result of this requirement supporting marketing evidence has been submitted as part of this application. However the enquiry report submitted which states that marketing of the units began on 12th November 2018 does not provide the dates of which the enquiries were made, also from the evidence provided it is clear that the letting of the unit in question was agreed to Indigo Sun, prior to the unit being marketed for a period of 6months. Therefore it is considered that the marketing evidence submitted fails to demonstrate that the current retail use of the unit is no longer viable as such it is considered that the proposal does not fully comply with policy RTL1.

Notwithstanding this, it is considered that the proposed use would be of benefit to residents occupying the site and is considered to be sustainable development that would support the needs of a growing community, as the site continues to be built out and the local population increases. With other units within the local centre also under the retail use class, if permission was granted as a sunbed salon, it would allow for a more mixed use local centre and community hub, with residents on the site being able to walk to their appointments and also use the other retail units before or after. It is therefore considered that the proposed change of use would be a sustainable business location for what is currently a vacant unit within the local centre, being within walking distance of many new dwellings and therefore is supported by Policy S2. In addition the occupation of a unit would ensure that jobs are provided, helping to boost the local economy and the sustainable growth of the area.

Neighbouring Amenity

The applicant proposes that the opening hours of the unit would be 0900 to 2200, Monday to Friday. 0900 to 2100 Saturday and 1000 to 2100 Sundays and Bank Holidays, which is similar to the hours of operation for the supermarket. It is considered that the proposed business hours and subsequent noise/traffic generated as a result of the change of use would not unduly impact on the amenity of neighbouring properties adjacent to the site with the nearest dwelling being approx 70m away, and no more so than the current permitted retail use; and as such the proposed use is considered to comply with Policy SD1 and iii) of part F of Policy RTL1.

Highway Safety

There are no car parking spaces included within the red line of the application site, as shown on the location plan. However the local centre overall includes 135 car parking spaces. It is noted that the County Highway Authority raises no objection to the proposal. It is therefore considered that the car parking to the front of the site already provided for the local centre is sufficient parking provision for the requirements of the change of use and as such it is considered that the proposal complies with Policy INF2 and iii) of part F of Policy RTL1.

Conclusion

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

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

GRANT permission subject to the following conditions:

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

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

- 2 The development hereby permitted shall be carried out in accordance with Drawing No PR(2-) 01 Rev C and the Location Plan; unless as otherwise required by condition attached to this permission or following approval of an application made pursuant to Section 96A of the Town and Country Planning Act 1990.

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

- 3 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015, as amended, or any order revoking and re-enacting that Order with or without modification, the proposed change of use shall be used only for a sunbed salon (Use Class Sui Generis) and for no other purpose.

Reason: Only the approved use has been considered in establishing whether the proposal would have acceptable impacts in this location, and other uses would require further detailed consideration by the Local Planning Authority.

- 4 The premises shall not be open to the public other than between 0900 hours and 2200 hours Mondays to Fridays, between 0900 hours and 2100 hours on Saturdays, and between 1000 and 2100 Sundays and Bank Holidays.

Reason: To safeguard the amenities of nearby occupiers and/or in the interests of highway safety.

Informatives:

- a. The applicant is advised to contact the Council's Licensing and Environmental Health Department as certain beauty treatments require registration with the Council before they can commence.

Item No. 1.6

Ref. No. DMOT/2019/1054

Valid date: 02/09/2019

Applicant:
Martin Buckley
South Derbyshire District Council

Agent:
N/A

Proposal: The felling of a pine tree covered by South Derbyshire District Council Tree Preservation Order No.157 at Bretby Heights, Newhall, Swadlincote

Ward: Newhall & Stanton

Reason for committee determination

This item is reported to Committee as the Council is the applicant.

Site Description

The site where the pine tree stands is public open space between the rear gardens of dwellings fronting Woods lane and the road known as 'Bretby Heights', which serves dwellings. The land is bounded and consists of rough grass, brambles and various trees. The trees in the group are the subject of Tree Preservation Order No.157.

The proposal

The proposal is to fell a pine tree within the area covered by the group Tree Preservation Order.

Applicant's supporting information

The applicant (the Tree Officer for the Council) advises that the tree is leaning towards the rear garden of No.161 Wood Lane with one branch resting on the garden fence. He describes that phototropic action as the cause of the leaning, as 2 large sycamores are suppressing its crown. He concludes that no replacement tree is necessary [for visual amenity purposes] as the adjacent sycamores will grow to fill the void. However, 3 rowan will be planted as the land is Public Open Space.

Relevant planning history

None.

Responses to consultations and publicity

None.

Relevant policy, guidance and/or legislation

The relevant legislation is:

- Town and Country Planning (Tree Preservation) (England) Regulations 2012

The relevant Development Plan policies are:

- 2016 Local Plan Part 1 (LP1): BNE3, BNE4
- 2017 Local Plan Part 2 (LP2): BNE7

DMOT/2019/1054 - Bretby Heights, Newhall, Swadlincote DE11 0BS



Planning considerations

Taking into account the application made, the document submitted and the site and its environs; the main issues central to the determination of this application are:

- The current condition of the tree and its impact on private property; and
- The impact of the proposed works on the visual amenities of the area.

Planning assessment

Policy BNE7 of the LP2 states that:

“The felling of protected trees, groups of trees or woodland and/or removal of important hedgerows, will be considered in accordance with the relevant national guidance and regulation, taking account of particular of their amenity, ecological, landscape and historic value. Where protected trees and/or hedgerows are subject to felling or removal, a replacement of an appropriate number, species, size and in an appropriate location will normally be required”.

The pine tree is leaning towards the rear garden of 161 Wood Lane, as described by the Tree Officer, and a large branch is resting on the fence. There is the potential for this to cause damage to private property and be a potential safety hazard. Any remedy to these issues in the form of felling must be balanced against the public amenity impact of the loss of the tree.

It is considered that the visual amenity impact of felling the tree will be limited. This is because the tree is of low amenity value as it is leaning and has a suppressed crown and because the tree is situated amongst other trees including two sycamores, and their canopies will quickly fill the void left by the pine. The felling is, therefore, justified and no replacement tree is required by condition to offset the loss. However, the Tree Officer's proposal to plant 3 rowan trees within this area of Public Open space is welcomed, which can be mentioned in an informative.

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

GRANT permission subject to the following conditions:

- 1 The work hereby approved shall be carried out within two years of the date of this consent.

Reason: To conform with Regulation 17 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012, in order to enable the Local Planning Authority to consider any proposals beyond this period in the interests of safeguarding the amenity value of the tree(s).

Informatives:

- a. The applicant is encouraged to provide 3 rowan trees within the area of Public Open space within their control.

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 | Page |
|------------------|---------------------------------------|----------------------|----------------------------|-----------------------|-------------|
| 9/2018/0968 | Church Street, Hartshorne | Repton | Allowed* | Delegated | 46 |
| 9/2018/1336 | Lullington Road, Coton in the Elms | Seales | Dismissed | Delegated | 52 |
| 9/2019/0230 | Grassy Lane, Burnaston | Etwall | Allowed (costs refused) | Delegated | 56 |
| 9/2019/0270 | Manor Road, Stanton | Newhall & Stanton | Dismissed | Delegated | 62 |

Appeal Decision

Site visit made on 16 September 2019

by Alexander Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th October 2019

Appeal Ref: APP/F1040/W/19/3232081

4 Church Street, Hartshorne, Swadlincote DE11 7ER

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr D Cooper on behalf of D Cooper Construction Limited against the decision of South Derbyshire District Council.
 - The application Ref 9/2018/0968, dated 3 September 2018, was refused by notice dated 3 June 2019.
 - The development proposed is the erection of three dwellings and alterations to access.
-

Decision

1. The appeal is allowed and outline planning permission is granted for the erection of three dwellings and alterations to access at 4 Church Street, Hartshorne, Swadlincote DE11 7ER in accordance with the terms of the application, Ref 9/2018/0968, dated 3 September 2018, and the plans submitted with it, subject to the conditions contained within the Schedule attached to this Decision.

Procedural Matter

2. The planning application was submitted in outline form with all matters reserved for future consideration, with the exception of access. Whilst the drawings indicate the siting of the dwellings, these are clearly identified as illustrative. I have determined the appeal on this basis.
3. The initial application sought permission for four dwellings. During the Council's consideration of the planning application, this was revised to three dwellings. I have determined the appeal on this basis.

Main Issues

4. The main issues are whether the appeal site represents a suitable location for housing, having regard to the development plan, and the effect of the development on the character and appearance of the area.

Reasons

Suitability of Location

5. The appeal site comprises a bungalow set within an extensive garden that lies just outside the settlement of Hartshorne. The boundary for the settlement, as identified in the development plan, is to the south west boundary of the appeal site. There is no dispute that the site is adjacent to the settlement.

6. Policy SDT1 of the South Derbyshire Local Plan Part 2 (LP2) 2017 states that outside of settlement boundaries and allocated sites, within the rural areas as defined in Policy H1 of the South Derbyshire Local Plan Part 1 (LP1) 2016, development will be limited to that considered acceptable, inter alia, by Policy BNE5. Policy BNE5 of the LP2 states that development within rural areas will be granted where the development satisfies certain requirements, including being allowed by Policy H1.
7. Policy H1 of the LP1 identifies Hartshorne as a Local Service Village where development is acceptable on sites adjacent to settlement boundaries as an exceptions or cross subsidy site as long as it is not greater than 15 dwellings.
8. The Council confirms that the glossary of LP1 provides a definition for a Cross Subsidy Exceptions Site, which *'are sites that would not normally secure planning permission, however development of the site is granted for both affordable and some private housing to allow the site to be viable'* and an Affordable Housing Exception Site (or Rural Exception Site) as *'A site which would not normally secure planning permission for housing due to being adjacent to a settlement boundary but is allowed for development solely for affordable housing.'* However, the wording of Policy H1 of the LP1 and its explanatory text does not include either of these terms. The wording of the policy refers to *exceptions or cross subsidy sites*, whereas the definition in the glossary combines the two as *'Cross Subsidy Exceptions'* and introduces the words *'Affordable Housing'*, which again is not present in the wording of, or explanatory text to, Policy H1. Therefore, the terminology used is ambiguous.
9. From my reading of the wording of Policy H1, the restriction on the number of dwellings to no greater than 15 on sites adjacent to the settlement boundary is an exception that satisfies the exceptions element of the policy. Therefore, as the proposal is for less than 15 dwellings and the site is adjacent to the settlement boundary of Hartshorne, I find no conflict with Policy H1 of the LP1. In reaching this conclusion, I have interpreted the policy objectively in accordance with the language used, read as always in its proper context in line with the Supreme Court case of *Tesco Stores Ltd v Dundee City Council* [2012] UKSC 13.
10. The Council also argues that Policy H21 of the LP1 is a 'partner' to Policy H1. However, Policy H21 relates to affordable housing, referring to *'Rural exceptions sites'* rather than *'exceptions or cross subsidy sites'*, and does not define such sites. I acknowledge that there is a link between the two policies as part C of Policy H21 clearly refers to Policy H1. However, this is with regard to rural exception sites that are kept in perpetuity as affordable housing. The wording of this suggests that there are other forms of rural exception sites, not just affordable housing ones, such as the proposal. Therefore, whilst there are instances when the two policies are to be read together, such instances are only when the proposed development is for a rural exception site comprising affordable housing.
11. I have had regard to the excerpts of the Examination Inspector's report for the LP1 regarding Policy H1. Whilst the comments clearly highlight the need for affordable housing, they do not state that the exception sites referred to in the policy are for affordable housing only.

12. The appellant has referred me to two previous appeal decisions¹, one of which was determined by way of an Inquiry, whereby the Inspectors took a similar approach to how Policy H1 of the LP1 should be interpreted. Based on the evidence before me, and the lack of any convincing evidence to persuade me otherwise, I have taken a similar approach. The Council have referred me to two other appeal decisions² whereby the Inspector took a different approach. However, the details regarding these appeals are limited and therefore I cannot be certain the same arguments that have been presented to me were before these Inspectors. Therefore, I can only attribute them limited weight.
13. I acknowledge the Council's argument that the intention of Policy H1 is to only allow affordable housing exception sites, as well as cross subsidy sites adjacent to settlement boundaries. However, that is not what the policy expresses. Furthermore, I do not consider that my, or indeed the previous Inspectors, consideration of the wording of Policy H1 'represents an overly legalistic and isolated interpretation of one selected element of text.' It is a clear and simple interpretation of what the wording of the policy states. I have also had regard to the appellant's reference to the Chancellor of the High Court's comments regarding a '*legalistic analysis of the different formulations adopted in a planning officer's report.*' However, there is a significant, distinct difference between the wording contained within an Officer's Report, which is aimed at local members, and the wording of an adopted local plan, which is aimed at the general public.
14. The appellant also argues that the site is an infill development in accordance with criterion (iv) of Policy BNE5 of the LP2. However, as the proposal satisfies criterion (i) of Policy BNE5 I need not consider whether it comprises infill development.
15. I find therefore that the proposal would be located in a suitable location for housing as envisaged by Policies S1, S4, and H1 of the LP1 and Policies SDT1 and BNE5 of the LP2, which, amongst other things, seek to ensure that development contributes towards sustainable growth in appropriate locations. It would also accord with the housing supply objectives of the National Planning Policy Framework (the Framework).

Character and Appearance

16. The appeal site is a large plot with residential development immediately to the north, west and south east. Neighbouring properties vary in their size and density. The western stretch of Church Lane comprises dwellings that form a tighter form of development than those properties further along the lane, including the appeal site, which are located within extensive plots and are arranged in a more organic pattern. Located on the periphery of the settlement of Hartshorne, the site provides a transition between the denser built form of the settlement and the open countryside. The overall size of the plots and the set back position of the dwellings from the lane provide a spacious character to the area.
17. Whilst the drawing submitted is illustrative for the purposes of the layout of the development, it indicates that the proposed three dwellings would be located within plots that would be generally smaller in size than the immediate

¹ Appeal Decisions APP/F1040/W/17/3191604 and APP/F1040/W/17/3171029

² Appeal Decisions APP/F1040/W/17/3167838 and APP/F1040/W/18/3207758

neighbouring properties. However, when considered in the context of the properties closer to the western end of Church Lane, they would be relatively comparable in size. Despite the smaller sized plots, as the drawing indicates, there could be spacious frontages that would ensure that the overall development does not appear cramped or overdeveloped.

18. Whilst the replacement of a single dwelling with three dwellings would inevitably reduce the openness of a site and increase its density, that in itself is not necessarily harmful. Having regard to the nearby development along Church Lane to the south west, which is more dense than that proposed as dwellings are more tightly arranged alongside each other, and the significantly lower density of the dwellings 'Cherry Lees' and 'Woodhall', the proposal would provide an acceptable transition between the two forms of development.
19. Overall, I am satisfied that the appeal site could satisfactorily accommodate three dwellings whilst retaining sufficient spaciousness and respecting the density of development along Church Lane. As such, the proposal complies with Policies S1, BNE4 and H20 of LP1 and Policies SDT1 and BNE5 of the LP2, which, amongst other matters, seek to ensure that development respects the character and appearance of the area. Furthermore, it would accord with the design objectives of the Framework.

Other Matters

20. I have had regard to the concerns raised regarding the effect of the proposed development on the privacy of the occupants of neighbouring residential properties. However, I am satisfied that there is sufficient room within the site and distance from neighbouring properties to ensure that there would not be any significantly harmful overlooking effects.
21. With regard to highway safety, whilst the proposal would increase the amount of traffic movements using Church Lane, I do not consider that they would increase to such an extent that they would represent an unacceptable risk to highway and pedestrian safety.

Conditions

22. I have considered the conditions suggested by the Council, having regard to the six tests set out in the National Planning Policy Framework. For the sake of clarity and enforceability, I have amended the conditions as necessary.
23. In the interests of public safety, conditions are necessary regarding ground gas ingress monitoring.
24. In the interests of safeguarding neighbouring residential amenity, a condition is necessary restricting the hours of works.
25. In the interests of highway safety, conditions are necessary regarding on site storage of materials, plant, site accommodation, loading and unloading of vehicles, parking and manoeuvring of site operative and visitors' vehicles; wheel washing facilities; access improvements and visibility splays; and, parking provision for residents.

Conclusion

26. For the reasons given above, the appeal is allowed.

Alexander Walker

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) No development, with the exception of demolition and site clearance, shall take place until a suitable scheme for the prevention of ground gas ingress has been submitted to and approved in writing by the local planning authority. Alternatively, the site shall be monitored for the presence of ground gas and a subsequent risk assessment completed in accordance with a scheme to be agreed with the local planning authority, which meets the requirements given in Box 4, section 3, 1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.

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

- 5) If during development any contamination or evidence of likely contamination is identified that has not previously been identified or considered, then the applicant shall submit a written scheme to identify and control that contamination. This shall include a phased risk assessment carried out in accordance with the procedural guidance of the Environmental Protection Act 1990 Part 2A, and appropriate remediation proposals, and shall be submitted to the local planning authority without delay. The approved remediation scheme shall be implemented to the satisfaction of the local planning authority.
- 6) During the period of construction of any phase of the development, no works including deliveries shall take place outside the following times: 0800 – 1800 hours Monday to Friday and 0800 – 1300 hours on Saturdays and any time on Sundays, Bank and Public holidays (other than emergency works).
- 7) Throughout the construction phase, space shall be provided within the site curtilage for the storage of plant and materials, site accommodation, loading and unloading of goods vehicles, parking and manoeuvring of site operative and visitors' vehicles, laid out and constructed and maintained throughout this period and remain free from any impediment to its intended use.

- 8) Throughout the demolition and construction period, wheel washing facilities shall be provided and retained within the site. All construction vehicles shall have their wheels cleaned before leaving the site.
- 9) Notwithstanding the approved details, prior to the commencement of the development, the existing access to church street shall be modified, laid out and provided with 2.4m x 2.5m visibility in the northerly direction, the area in advance of the sightlines being maintained clear of any object greater than 1m in height (0.6m in height in the case of vegetation) relative to the adjoining nearside carriageway channel level.
- 10) The hereby approved dwellings shall not be occupied until space has been provided within the site in accordance with the approved drawings for the parking and manoeuvring of residents' vehicles, laid out, surfaced and maintained as such thereafter.

Appeal Decision

Site visit made on 3 September 2019

by Karen Taylor MSC URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: Wednesday, 09 October 2019

Appeal Ref: APP/F1040/W/19/3231668

Malthouse Farm, Lullington Road, Coton In The Elms, Swadlincote

DE12 8EP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr & Mrs Wadsworth against the decision of South Derbyshire District Council.
 - The application Ref 9/2018/1336, dated 6 December 2018, was refused by notice dated 18 April 2019.
 - The development proposed is a change of use and alteration of outbuildings to form one dwelling house; construction of a new dwelling in lieu of existing buildings with approval for conversion to one dwelling; construction of new garages and garden stores; change of use of starvation paddock to domestic garden and provision of a new carriage driving arena; change of use of land to rationalise garden and paddock boundary and provision of new parking areas.
-

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this appeal decision are (i) Whether the appeal site forms a suitable location for development, having regard to the national and local planning policies; and (ii) the effect of the proposed development on the character and appearance of the area.

Reasons

Location of development

3. The appeal site consists of a residential property with several agricultural outbuildings and stables within the site. Although nearby, it is outside the settlement boundary of Coton in the Elms, therefore by definition this would be within the countryside. There are two dwellings proposed on the site and I have identified these as 'unit 1' and 'unit 2'.
4. There is little in the way of day to day services and facilities within Coton in the Elms. I noted on my site visit there is a nearby bus stop, but the service is limited to a few services to and from Swadlincote on Mondays to Saturdays. As such, future occupants of the development would be largely reliant on the private motor car to access services and facilities. However, the development would be located between the village boundary and existing properties along

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Lullington Road. Having had regard to the High Court judgement¹ regarding paragraph 55 (now paragraph 79) of the National Planning Policy Framework (the Framework), this physical location would not result in new isolated homes in the countryside that the Framework seeks to avoid. Thus, there would be no conflict with paragraph 79 of the Framework. Nevertheless, there would still be minor negative environmental and social effects arising from the location in terms of the use of natural resources and the accessibility of local services.

5. Policy H28 of the South Derbyshire Local Plan (SDLP), Part 2, allows residential conversions of buildings within the countryside where they meet certain criteria. Whilst Policy H1 of SDLP, Part 1 and Policy BNE5 of the SDLP, Part 2, allows limited infill development of no more than two dwellings. The proposed 'unit 1' would entail the conversion of outbuildings and stables and this would meet Policy H28 as it would be suitable for conversion without extensive alteration, rebuilding and/or extension. The proposed 'unit 2' would involve the demolition of outbuildings and stables and the construction of a new substantial residential dwelling. It would therefore not meet the criteria of Policy H28 and in relation to the location and position of the site would not constitute limited infilling or adjoining the settlement boundary.
6. There are extant permissions 'fallbacks' on the site for housing, which form a material consideration. I acknowledge that there is a high probability that they could be implemented. The net increase in dwellings on the site would be the same, but the circumstances would not be similar as different development plan policies would apply and the schemes would not be comparable to the development proposed in this appeal.
7. The previous application² in 2018 sought conversion of the buildings to form two residential dwellings, whilst the application³ in 2007 involved conversion of outbuildings to form short term holiday accommodation. The appeal proposal, although conversion in part for one of the dwellings, involves the complete demolition of other outbuildings to facilitate the construction of a new residential dwelling. In my view the 'fallback' schemes would not be as substantial, in terms of the proposed construction of a new dwelling within the countryside, which is now before me. In regard to the appellants suggestion that the 'appellant or subsequent owner' would seek conversion and then apply for a replacement dwelling and reference to profitability, I give this limited weight as this would be a matter for future consideration by the Council and profitability is not a planning matter. In any event the appeal site must be considered on its own merits.
8. For the reasons above, I conclude that the proposed development would result in a new dwelling within the countryside contrary to Policies S1, H1 of the SDLP Part 1, 2016 and Policies SDT1, BNE5 and H28 of the SDLP Part 2, 2017. Which taken together ensures that the economic, social and environmental objectives are addressed; landscape and rural character are protected, conserved and enhanced and aims to direct new development to within settlement boundaries whilst restricting the type of residential accommodation allowed within the countryside.

¹ Braintree District Council v Secretary of State for Communities and Local Government & Ors [2017] EWHC 2743 (Admin)

² 9/2018/0703

³ 9/2007/0811

Character and appearance

9. The existing outbuildings are located to the rear of the site and are positioned behind dwellings but can be seen from the access to the site and from along Lullington Road. The current agricultural appearance of this cluster of outbuildings offer limited visual merit to their immediate setting, but their subtle appearance, materials and low height blend with the landscape character and associated rural use of the site and within the surrounding countryside. I note the appellant's comments regarding the previous approved scheme, however this was given consent on the basis that it comprised solely of the conversion of existing buildings to facilitate residential development at the site, resulted in minimal visual impact to the rural setting and met the criteria set out in Policy H28 of the SDLP. Nonetheless, in contrast, the erection of a substantial new dwelling, combined with its overall height, materials and built form in the countryside would erode the rural setting and create a suburban appearance to the detriment of the character and appearance of the countryside.
10. In terms of views, the site can be seen from the public footpath and Coton Wood. I saw on my site visit there is some screening from vegetation and tree coverage, but this would not be the case throughout the year. The site would be clearly visible particularly where the new dwelling would be located, its built form and associated domestic paraphernalia would appear as an incongruous feature within the wider rural setting and would change the prevailing rural character of the area.
11. For the reasons given above the proposed development would harm the character and appearance of the area and would be contrary to Policies BNE1 and BNE4 of the SDLP, Part 1, 2016 and Policies H28 and BNE5 of the SDLP, Part 2, 2017. Taken together expects new development to be well designed, create places with a locally inspired character that respond to their context and have regard to valued landscapes, be visually attractive, protect character and local distinctiveness and do not duly impact on landscape character and quality. Whilst it would also be at odds with the design principles, particularly in regard to local character and pride and visual attractiveness, in the South Derbyshire Design Guide, Design Supplementary Planning Document, 2017.

Other Matters

12. The appellant contends that the appeal site amounts to previously developed land (PDL). The Framework supports development that makes efficient use of land, through the definition of PDL, which includes land occupied by a permanent structure including the curtilage of developed land, however this does not go without being caveated. It also excludes land that is or was last occupied by agricultural buildings. The main parties differ on whether the site is agricultural land or forms residential curtilage, and thus whether it would amount to PDL. The evidence before me is inconclusive, but even if I were to consider the site amounts to PDL, the proposal would not make efficient use of land, given the harm I have found in respect of character and appearance, it would not maintain the area's prevailing character and so would not accord with paragraph 122 of the Framework.
13. I have also been referred to other developments and appeal decisions. I do not have full details of these schemes and so cannot be certain that the circumstances are the same, although the location, previous use and

development plan policies are not directly comparable with those which apply to this appeal, while the effects on the character and appearance of the area were not identical to this appeal proposal. Therefore, although I have had regard to those appeal decisions, they have had little bearing on my findings to outweigh the harm I have set out above. In any case I have considered the appeal proposal on its own merits.

Conclusion and Planning Balance

14. I have found that the appeal site would not form a suitable location for development and the scheme would cause harm to the character and appearance of the area identified would be significant. Against this has to be the balanced factors in favour of the proposed development.
15. The provision of two additional dwellings would make a positive contribution to the Council's housing land supply when weighed in the overall planning balance, albeit that the contribution would be limited due to the quantum of development proposed. There would be a small social benefit in providing the two housing units. Economic advantages would also arise from the construction and occupation of new houses.
16. The Council dispute the appellant's claims that it cannot currently demonstrate a 5-year supply of housing land. The Council points me to the latest Housing Position Paper that a supply of 5.5 years exists. However, even if I were to conclude there is a shortfall in the five-year housing land supply on the scale suggested by the appellant, the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits. Therefore, the proposal would not be a sustainable form of development in terms of the Framework.
17. For the reasons given above, and having regard to all matters raised, I conclude that the appeal should be dismissed.

Karen Taylor

INSPECTOR

Appeal Decision

Site visit made on 17 September 2019

by R Norman BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 October 2019

Appeal Ref: APP/F1040/W/19/3232095

Land North of Stables Lodge, Grassy Lane, Burnaston, Derby DE65 6LN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr G Rudd, Derby Aluminium Company Limited against the decision of South Derbyshire District Council.
 - The application Ref 9/2019/0230, dated 26 February 2019, was refused by notice dated 8 May 2019.
 - The development proposed is residential development for two dwellings.
-

Decision

1. The appeal is allowed and planning permission is granted for residential development for two dwellings at Land North of Stables Lodge, Grassy Lane, Burnaston, Derby DE65 6LN in accordance with the terms of the application, Ref 9/2019/0230, dated 26 February 2019, subject to the conditions in the attached schedule.

Application for Costs

2. An application for costs was made by Derby Aluminium Company Limited against South Derbyshire District Council. This application is the subject of a separate decision.

Preliminary Matter

3. Outline planning permission is sought with all matters reserved. I have determined the appeal on this basis.

Main Issue

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

Reasons

5. The appeal site comprises a parcel of land which is bounded by mature vegetation and is somewhat overgrown. The current hedgerow and vegetation serve to visually enclose the site to some degree. It fronts onto Grassy Lane which is a narrow, unmade road. Part of Grassy Lane runs beside a service station and some commercial units. Further along the road, close to the appeal site are two dwellings and a holiday let and stables. Beyond the appeal site is open land with dispersed rural dwellings and agricultural premises. The site falls outside of any defined settlement boundary and is rural in character.

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6. The proposed development would introduce two detached dwellings into the appeal site. There has been a previous planning permission on the land for one dwelling.
7. The introduction of two dwellings into the site would result in a higher plot density than the previously approved single dwelling, nevertheless would still represent a reasonably low density of development. Grassy Lane is largely rural in character, however close to the appeal site are a mix of commercial premises and dwellings. Whilst the dwellings adjoining the site are generally on large and spacious plots, there is some degree of variation to these. The submitted layout plan is indicative only however it gives an indication that two dwellings could be accommodated into the site which would allow for a suitable amount of spacing between the properties and retain the sense of spaciousness which exists in the immediate surroundings.
8. The proposed development would infill a site between the existing dwellings and holiday let, reflecting the existing linear arrangement along this part of Grassy Lane. It would not encroach on the rural countryside as a result and the indicative site plan shows that the positioning of the dwellings could relate well to the existing development along this side of the road. Accordingly, I do not find that the development would result in a suburban character and would therefore not be unduly harmful to the character and appearance of the surrounding area.
9. Consequently, I find that the proposed development would comply with Policies S1 and H20 of the South Derbyshire Local Plan Part 1 (2016) and Policies SDT1 and BNE5 of the South Derbyshire Local Plan Part 2 (2017). Collectively these seek to ensure that development makes efficient use of land whilst taking into account what is appropriate for the surrounding environment, ensure that the rural character is protected, conserved and enhanced and ensure that infill development is in keeping with the character of the locality, amongst other things. It would also comply with paragraph 170 of the National Planning Policy Framework (2019) which seeks to enhance the natural and local environment.

Other Matters

10. A letter of objection has been received from a neighbouring resident concerning highway safety and the potential for additional surface water run-off to cause flooding.
11. The proposed development for two properties only would be unlikely to result in a significant increase in vehicles using Grassy Lane. Whilst I appreciate the narrowness of the road, the appeal site is in a location with good visibility and ample parking within the site could be achieved. I therefore find that the use of this short stretch of Grassy Lane by vehicles associated with the development would be unlikely to result in adverse impacts on highway safety.
12. In regard to the potential for flooding, I have limited evidence before me that the site is located in a high-risk flood zone or that there have been significant issues in this regard. The proposed development would result in the increase in hardstanding within the site however the indicative layout demonstrates that ample garden areas could remain, and suitable drainage methods would be required to ensure that the site is able to cope with surface water run-off.

Conditions

13. In addition to the standard conditions for outline permissions I have imposed a condition requiring the development to be carried out in accordance with the approved plans as this provides certainty. The Council have requested a number of conditions which I have considered against the advice in the Planning Practice Guidance and amended where necessary.
14. A condition for a restriction on the hours of construction is necessary in order to protect the living conditions of nearby occupiers. Conditions for the provision of the access, visibility splays and provision of parking areas within the site are necessary in the interests of highway safety. A condition regarding vegetation clearance is necessary to protect any nesting birds which may be present. I have included the condition relating to water consumption restrictions as this is supported by Policy SD3.
15. I have been provided with limited details in relation to the likelihood of Great Crested Newts being present and I note the findings of the Appellant's Ecological Impact Assessment. It has therefore not been demonstrated that a condition for a RAMMS is reasonable or necessary.

Conclusion

16. For the reasons given above, and having regard to all matters raised, I conclude that the appeal should be allowed.

R Norman

INSPECTOR

Schedule of Conditions

- 1) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plan: Site Location Plan Scale 1:1250.
- 5) During the construction phase of the development, no works including deliveries shall take place other than between 0800 – 1800 on Mondays to Fridays and 0800 – 1300 on Saturdays. There shall be no works or deliveries at any time on Sundays or Bank or Public Holidays (other than for works required in an emergency).
- 6) Prior to the commencement of any works other than for site clearance, a new vehicular access shall be created to Grassy Lane in accordance with the details approved under condition 1. The access shall be laid out, constructed and provided with visibility sightlines extending from a point 2.4 metres back from the nearside carriageway edge and measured along the centre line of the access to the extremities of the site frontage abutting Grassy Lane in each direction. The land in advance of the sightlines shall be maintained for the life of the development clear of any object greater than 1 metre in height or 0.6 metres in the case of vegetation relative to the adjoining nearside carriageway channel level.
- 7) No removal of hedgerows, trees or shrubs or removal of buildings or structures that may be used by breeding birds shall take place between 1 March and 31 August inclusive, unless a competent ecologist has undertaken a careful, detailed check for active birds nests immediately before the work is commenced and provided written confirmation to the local planning authority that no birds will be harmed and/or that there are appropriate measure in place to protect nesting bird interest on site.
- 8) Prior to the first occupation of the development hereby permitted, the space for the parking and manoeuvring of residents' vehicles shall be provided in accordance with the details approved under condition 1 and shall be maintained throughout the life of the development free of any impediment to its designated use.
- 9) The dwellings shall be constructed and fitted out so that the estimated consumption of wholesome water by persons occupying each 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).

Costs Decision

Site visit made on 17 September 2019

by R Norman BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 October 2019

**Costs application in relation to Appeal Ref: APP/F1040/W/19/3232095
Land North of Stables Lodge, Grassy Lane, Burnaston, Derby DE65 6LN**

- 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 Derby Aluminium Company Limited for a full award of costs against South Derbyshire District Council.
 - The appeal was against the refusal of planning permission for residential development for two dwellings.
-

Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The applicant's application for costs relies on the fact that they consider that the Council failed to substantiate their reason for refusal, due to a lack of evidence from a qualified landscape architect and the lack of identified harm as a result of the difference in density between the proposed development and the existing adjacent site.
4. I have had regard to the FPCR Landscape and Visual Statement and its conclusions in terms of the low landscape value of the site and its relationship with the adjoining properties. Notwithstanding the outcome of the appeal, whilst the Council have not relied on qualified landscape architects, their decision has been based on the professional opinion of the planning officers and planning department. The Council have demonstrated that they have taken the Landscape and Visual Statement into account when considering the proposed development. However, they have considered the character and appearance of the area in terms of matters such as the scale and pattern of existing development and not only the landscape characteristics of the area.
5. I find that the Council have provided adequate reasons for their decision in regard to the introduction of the built form and plot sizes and whilst my overall conclusions differ from those of the Council, I consider that the Council have not acted unreasonably when reaching their conclusions on the proposed development.

<https://www.gov.uk/planning-inspectorate>

6. I therefore conclude that, for the reasons set out above, unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated. For this reason, and having regard to all matters raised, an award for costs is not justified.

R Norman

INSPECTOR



Appeal Decision

Site visit made on 24 September 2019 by L Wilson BA (Hons) MA

Decision by A U Ghafoor BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 October 2019

Appeal Ref: APP/F1040/D/19/3231920

33 Manor Road, Stanton, Swadlincote, DE15 9SW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Paul Maxim against the decision of South Derbyshire District Council.
 - The application Ref 9/2019/0270, dated 12 March 2019, was refused by notice dated 6 June 2019.
 - The development proposed is described on the application form as follows: "A new workshop on front side lawn over 2 meters from the boundary. 6x11 meter wooden shed, no window, double doors leading to drive, single door to rear side, with electricity and standing on concrete base. The roof has onduline roof with clear ones every other one for light".
-

Decision

1. The appeal is dismissed.

Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Main Issue

3. The effect of the proposed workshop on the character and appearance of the street scene.

Reasons for the Recommendation

4. The appeal site comprises a semi-detached property located within a residential area. The properties are set back from the highway and separated by driveways. Both Manor Close and Manor Road display a strong character and simple rhythm.
5. The existing boundary treatment would partially screen the workshop. However, as it would be sited to the front of the building line and on a corner plot it would be visible from the highway. The proposed development would harm the appearance of the street scene as the workshop would appear as a dominant and incongruous feature, due to its scale and siting in a prominent location. Painting the workshop and planting flowers would not sufficiently address the visual harm caused by the development.

6. The appellant has provided photographs of outbuildings, cars and caravans located elsewhere. These photographs are not directly comparable as the scale and siting of these examples differ to the proposed development. These other examples do not justify visually harmful development. Similarly, although most of the garden is to the front of the dwelling and there has been a lack of objections. However these are not considerations that outweigh the significant adverse visual harm to the character of the area.
7. The appellant argues he needs the workshop due to various personal circumstances including health. The Planning Practice Guidance sets out that there may be exceptional occasions where development that would not normally be permitted may be justified on planning grounds because of who would benefit from the permission¹. Personal circumstances rarely outweigh general planning considerations as the occupants of a dwelling can change whereas the development would be permanent. The appellant is concerned about the time and money spent in applying for planning permission, but this reason cannot justify visually unacceptable development.
8. For the reasons above, I find that the proposed development would cause significant adverse visual harm to the character and appearance of the street scene. Consequently, the proposal would conflict with Policy H27 of the South Derbyshire Local Plan Part 2 (2017), Policy BNE1 of the South Derbyshire Local Plan Part 1 (2016), South Derbyshire Design Guide Design Supplementary Planning Document (2017) and the National Planning Policy Framework.

Conclusion and Recommendation

9. For the reasons given above I recommend that the appeal should be dismissed.

L M Wilson

APPEALS PLANNING OFFICER

Inspector's Decision

10. I have considered all the submitted evidence and the Appeal Planning Officer's report, and, on that basis, I too agree and conclude that the appeal should be dismissed.

A U Ghafoor

INSPECTOR

¹ Paragraph: 015 Reference ID: 21a-015-20140306

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| REPORT TO: | PLANNING COMMITTEE | AGENDA ITEM: 5 |
| DATE OF MEETING: | 5 NOVEMBER 2019 | CATEGORY: DELEGATED |
| REPORT FROM: | STRATEGIC DIRECTOR (SERVICE DELIVERY) | OPEN |
| MEMBERS' CONTACT POINT: | RICHARD STEWART 01283 595730 (Richard.stewart@southderbyshire.gov.uk) | DOC: |
| SUBJECT: | AMENDMENT TO SECTION 106 AGREEMENT RELATING TO LAND AT COURT STREET, WOODVILLE | REF: |
| WARD(S) AFFECTED: | SWADLINCOTE AND WOODVILLE | TERMS OF REFERENCE: DC01 |

1.0 Introduction

- 1.1 Members will recall deferring this matter at the Committee meeting on the 6 August 2019. The matter was deferred in order to seek advice from the Highway Authority as to what the £27,000 highways contribution would be spent on, and whether there are improvements that could be provided within the 'Granville Island'.

2.0 Recommendations

- 2.1 The Committee endorses the amendment to the agreement to accept a financial contribution of £27,500 in lieu of the previously required financial contributions totaling £340,511.60 towards education, healthcare, built facilities, open space, outdoor sports, highways (Swadlincote Regeneration Route), and a Traffic Regulation Order. It is recommended that the sum be allocated towards the delivery of the Swadlincote Regeneration Route.

3.0 Purpose of Report

- 3.1 An application has been received from the land owner of this site to review the Section 106 agreement under Section 106A of the 1990 Act. This report considers the reasons why the application has been submitted and a recommendation is proposed.

4.0 Executive Summary

- 4.1 The submitted amendment to the Section 106 agreement for the site shows that the site is being developed as a 100% affordable housing scheme and a design and build contract for the site has been agreed for the site (which is currently under construction) and includes grant funding from Homes England. The application and supporting viability assessment concludes that the costs of the Section 106 agreement could not be met though the development of the site as a 100% affordable scheme. Whilst the viability assessment submitted indicates that no form of financial contribution would be

viable, following an independent assessment of the detail of the scheme and its costs by the District Valuer, a financial contribution of £27,500 had been proposed which in accordance with the advice of the District Valuer merits serious consideration and is recommended for acceptance.

5.0 Detail

- 5.1 Members will recall that the site was granted outline planning permission at this Committee in December 2016 for 72 dwellings. The originally considered scheme was proposed as a local plan complaint market housing led scheme.
- 5.2 A viability assessment has been submitted by the land owner which has been considered by the District Valuer who has come to the conclusion that a scheme for the development of the site for 100% affordable housing would not be viable based on the design and build contract agreed at the site but that a contribution of £55,704 would be viable based on the use of BCIS build costs. However, it cannot be ignored that a design and build contract has been agreed on the site and development has commenced. In discussions undertaken following the submission of the viability assessment an offer of £27,500 has been made by the applicant as a compromise against the above figure. The advice of the District Valuer is that serious consideration be given to accepting the proposed contribution.
- 5.3 The original agreement contained 6 schedules, 4 of which required the undertaking of works, the payment of financial contributions or the provision of infrastructure. For clarity each of the relevant schedules and the proposals put forward by the applicant for their amendment are set out below:
- 5.4 Second Schedule (Open Space); Part 1 - The provision of (or financial equivalent) of an off-site LEAP on land within the ownership of the Council (to the south of the site). Part 2 - Provision of on-site open space (including an option for transfer of the land to the Council or managed and maintained by a management company). Part 3 – Construction of the off-site LEAP. Part 4 – Payment of the off-site LEAP contribution. Part 5 – Off-site open space financial contribution if the quantum of open space provided on site is inadequate. The proposal is for the full quantum of open space to be provided on-site, and offered to the Council for adoption with a commuted sum to be provided for the sites maintenance, no provision or financial contribution is proposed for the delivery of the off-site LEAP.
- 5.5 Third Schedule (National Forest Planting); Part 1 – Approval of on-site planting. Part 2 – Provision and management of on-site planting. Part 3 – Payment of a financial contribution should the on-site provision not meet the national forest planting requirement. The applicant proposes to meet the requirements of this schedule in full.
- 5.6 Fourth Schedule (Financial Contributions); Built Facilities Contribution - £21,121.60. Outdoor Sports Facilities Contribution - £37,840. Education Contribution – Infant and Junior £159,586.14. Healthcare Contribution - £27,388.80. Highway Contribution - £41,475.36. TRO Contribution - £15,000. The proposed amendment would see a contribution of £27,500 paid for the Council to determine the most appropriate location for the contribution.
- 5.7 Fifth Schedule (Drainage Matters): The provision, management and maintenance of on-site SUDS, with options for maintenance by a

management company or transfer to the Council and as required the payment of a maintenance sum. This schedule of the agreement is to remain unchanged.

5.8 The main changes to the agreement therefore relate to the required financial contributions. Consideration therefore needs to be given to the allocation of the contribution deemed financially viable. In infrastructure terms, one of the key considerations as to the acceptability of the site for residential development was its impact on the highway network i.e. the Clock Island – and the need for the development to contribute towards the delivery of the Swadlincote Regeneration Route. To this end it is considered appropriate for the financial contribution to be allocated towards the delivery of the Swadlincote Regeneration Route or improvement works to mitigate traffic congestion at Tollgate Island.

5.9 At the request of Members, the Highway Authority has considered whether improvements could be made in the vicinity of the site in order to improve the highway network. This investigation has concluded that there is little that could be done and that the contribution should go towards the Swadlincote Regeneration Route – the justification being that a contribution towards the delivery of the new road would alleviate some of the congestion on the A514 & A511 which would, to an extent, mitigate the impact of the traffic generated by the new dwellings.

6.0 Financial Implications

6.1 The amended agreement would result in the maintenance of schedules 3 and 5 without alteration, the removal of the requirement to deliver an off-site LEAP from Schedule 2, and a substantial alteration to the financial contributions required by Schedule 4.

7.0 Employee Implications

7.1 None.

8.0 Corporate Implications

8.1 The scheme would contribute towards facilitating and delivering a range of integrated and sustainable housing and community infrastructure.

9.0 Community Impact

9.1 **Consultation:** As carried out in the course of the planning application, and directly with the Highway Authority following deferral of this decision.

9.2 **Equality and Diversity Impact:** The delivery of affordable housing will assist in achieving greater equality.

9.3 **Social Value Impact:** The overall development would assist in access to affordable homes.

9.4 **Environmental Sustainability:** Mitigation of the impact of the development will contribute toward the achievement of environmental objectives.

10.0 Conclusions

- 10.1 As members will be aware the development of sites for the provision of 100% affordable dwellings rarely provide sufficient 'headroom' in development finance terms to provide the financial contributions that a predominantly market dwelling scheme would see, particularly as much of the finance for the development of the site is based on Homes England grant funding.
- 10.2 There are a number of strategic sites around the District which are unable to deliver the local plan requirement of 30% affordable housing, and sites such as this which are delivering 72 affordable dwellings are necessary in order to help make up 'the balance' and help deliver the affordable homes the District needs. Whilst the full social and environmental needs and impacts of the development might not be fully mitigated this is not considered to make the development unsustainable in principle. Given the above and the significant benefits associated with delivering such a quantum of affordable dwellings the amendments to the agreement are recommended for approval including allocation of the monies to the Swadlincote Regeneration Route.