
REPORT TO:	Development Control Committee	AGENDA ITEM: 7
DATE OF MEETING:	20th May 2003	CATEGORY: DELEGATED
REPORT FROM:	DEPUTY CHIEF EXECUTIVE	OPEN PARAGRAPH NO: N/A
MEMBERS' CONTACT POINT:	Joanne Holder Ext 5737	DOC:
SUBJECT:	Street Naming - Hilton	REF: ST/SN/JH/
WARD(S) AFFECTED:	Hilton	TERMS OF REFERENCE: DC01

1.0 Reason for Exempt

1.1 N/A

2.0 Recommendations

2.1 The Committee's recommendations are sought in accordance with section 17 of the Public Health Act 1925

3.0 Purpose of Report

3.1 To advise of street naming proposals in Hilton

3.2 A request has been received to provide a new road name for the development taking place at land off The Mease, Hilton

3.3 The suggested names are	Thames	Ordley Brook
	Mersey	Nothill Brook
	Dove	Winderemere
	Roach	Otter
	Tyne	Rother
	Derwent	Lark
	Humber	Glen
	Dee	Hamble
	Orwell	Isis
	Eden	Sherbourne
	Wildhay Brook	Clyde
	Hull	Aire
	Foss	

The names are in keeping with the existing development at the Hilton Depot. The Royal Mail and the Parish Council are in agreement with these names

4.0 Financial Implications

4.1 None

5.0 Background Papers

5.1 Street Naming and Numbering files ST/SN Hilton

DEVELOPMENT CONTROL COMMITTEE – 20 May 2003

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).

REPORT OF THE PLANNING SERVICES MANAGER

1. Planning Applications

2. Appeals

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(N.B. recent changes to ward boundaries not available at time of printing)

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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 Planning Services Manager's report or offered in explanation at the Committee meeting require further clarification by a demonstration of condition of site.
2. Further issues of principle, other than those specified in the report of the Planning Services Manager, 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

20/05/2003

Item 1.1**Reg. No. 9 2002 1012 F****Applicant:**

Mr M Rossiter
125 Derby Road
Aston On Trent
Derby
DE722AE

Agent:

Mr M Rossiter
125 Derby Road
Aston On Trent
Derby
DE722AE

Proposal: The erection of ten residential units at Alderslade Farm 125 Derby Road Aston-on-Trent Derby

Ward: Aston

Valid Date: 27/09/2002

Site Description

The application lies at the northern edge of the village. It comprises a large dwelling, built in the late 19th century, and a range of outbuildings, one of which has been used as living accommodation. The buildings are set in a large garden. The front of the site is distinguished by the presence of three mature trees, subject to a Tree Preservation Order. The existing access to the site passes between two of the trees.

Proposal

Initially the application sought the erection of ten dwellings. However this has been amended and eight detached houses are proposed, served by an improved access. The works to the access would necessitate the removal of the middle of the three preserved trees, a Horse Chestnut. The applicant proposes to replace this tree with four semi-mature trees, grown and transplanted by a specialist company. The dwellings would be contained within the village confine. The rear gardens of four dwellings at the back of the site would be outside the confine, but within the curtilage of the existing dwelling. The existing house and outbuildings would be demolished.

Applicant's Supporting Information

- a) In order to achieve the required access it is necessary to remove the middle one of the three protected trees.
- b) The tree is considerably younger and in a semi-mature state.
- c) It is the easiest to remove/replace.
- d) The trees either side are much larger and therefore mask its presence on entering or leaving the village, making visually non-consequential.
- e) It is possible to move the tree or to replace with a scheme of four semi-mature trees, which would enhance the appearance of the area.
- f) The planting of several trees would enhance the stock of trees in the area.

- g) The planting of trees and hedges would screen the new housing and enhance the environment.

Responses to Consultations

The Parish Council objects as follows:

- a) Being at the brow of a hill, the development would dominate the existing dwellings and be totally out of keeping with area.
- b) The site access would be dangerous.
- c) The formation of an access and the proximity of the proposed dwellings would result in severe damage to protected trees.
- d) Part of the development would be outside the village confine.
- e) The development would be too dense.
- f) The existing house should be preserved.
- g) Most of the objections relating to an application for an equestrian centre still apply and local opposition supports these.
- h) Foul and surface water drainage is inadequate.
- i) There is no justification for felling trees.

The Highway Authority, Severn Trent Water Limited and the Environment Agency have no objection in principle.

The Police Liaison Officer suggests various minor security measures, which would not alter the layout or house types.

Responses to Publicity

Save Aston Village Environment objects for the following reasons:

- a) The proposal is not entirely within the village confine and is not infill.
- b) The existing house is a traditional building that should be retained.
- c) The access would be dangerous.
- d) Protected trees should be retrained.
- e) The proposal is over development.
- f) The development would not be in keeping with the rural character of the area.

Four neighbours object in the following terms:

- a) The development would be out of keeping with the area.
- b) There would be harm to the protected trees.
- c) In the amended plan trees are shown in different positions.
- d) It is disputed that one of the trees is diseased.
- e) There would be loss of light and privacy to neighbours.
- f) The access would be inadequate and dangerous. Accidents have occurred here.
- g) There would be a significant increase in traffic and activity.
- h) Parking may be inadequate.
- i) A precedent would be set which would exacerbate the problems.
- j) There could be flooding to adjacent property.
- k) There could be damage to adjoining property.
- l) The power supply is vulnerable to damage.

- m) The existing house is worthy of preservation.
- n) Part of the site is on agricultural land.
- o) The layout is cramped.
- p) None of the houses would be affordable for local people.
- q) Parking would be inadequate.

Structure/Local Plan Policies

The relevant policies are:

Joint Structure Plan: Housing Policy 5 Environment Policy 9.

Local Plan: Housing Policy 5 and Environment Policy 16

Draft Local Plan: Housing Policy 1.

Planning Considerations

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

- The principle of development.
- Impact on the general character of the area.
- Trees.
- Highway safety.
- Residential amenity.
- Drainage.

Planning Assessment

As amended the proposed dwellings would all be inside the village confines. The gardens to the four plots at the rear of the site would be outside the village confine. However this land is already used for purpose incidental to the enjoyment of Alderslade House and has very low visual impact. Therefore the principle is acceptable in respect of the relevant development plan policies for development in villages.

Alderslade House was built in the latter part of the 19th Century. It does not meet the criteria for listing. With the exception of Alderslade House and its outbuildings, the buildings in the locality are predominately modern and of suburban character. In this context the development of the site with new houses would not be out of keeping with local distinctiveness of the area. Existing and proposed trees would filter views of the development from Derby Road. The design of the dwellings incorporates steep roofs with narrow gables and these would not appear out of keeping with the area. The house types are all different but the use of harmonious materials throughout would produce visual unity.

The development would result in the loss of one mature Horse Chestnut tree to enable the access to be formed. However the applicant is prepared to plant four semi-mature specimens. It is felt that the compensatory planting would lead to a net enhancement to tree cover at the front of the site.

On the advice of the Highway Authority the development would not have a demonstrably harmful effect on highway safety.

The proposal satisfies the supplementary planning guidance with regard to existing dwellings and the effect on neighbours is therefore acceptable.

In the absence of objection from Severn Trent Water Limited and the Environment Agency there is no evidence that the drainage systems are inadequate.

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 five years from the date of this permission.
1. Reason: To conform with Section 91(1) of the Town and Country Planning Act, 1990.
2. Notwithstanding the originally submitted details, this permission shall relate to the amended drawings showing 8 dwellings and revised house type No 1 received 18 February 2003.
2. Reason: For the avoidance of doubt, the original submission being considered unacceptable.
3. No part of the development shall be carried out until precise details, specifications and, where necessary, samples of the facing materials to be used in the construction of the external walls and roof of the building(s) have been submitted to and approved in writing by the Local Planning Authority.
3. Reason: To safeguard the appearance of the existing building and the locality generally.
4. Notwithstanding any details submitted, no development shall take place until there has been submitted to and approved in writing by the Local Planning Authority plans indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed in accordance with the approved details before the development is occupied or in accordance with a timetable which shall first have been agreed in writing with the Local Planning Authority.
4. Reason: In the interests of the appearance of the area.
5. Prior to the development hereby approved commencing, details of the finished floor levels of the buildings hereby approved and of the ground levels of the site relative to adjoining land levels, shall be submitted to, and approved in writing by, the Local Planning Authority. Thereafter, the development shall be constructed in accordance with the agreed level(s).
5. Reason: To protect the amenities of adjoining properties and the locality generally.
6. No development shall take place until there has been submitted to and approved by the Local Planning Authority a scheme of landscaping, which shall include indications of all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection in the course of development.

6. Reason: In the interests of the appearance of the area.
7. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.
7. Reason: In the interests of the appearance of the area.
8. Notwithstanding the submitted details, prior to the commencement of building operations on adjoining areas, the boundary with the area of protected trees shall be fenced with chestnut pale fencing to a minimum height of one metre staked at 3 metre centres. The fencing shall be retained in position until all building works on adjoining areas have been completed unless otherwise agreed in writing with the local planning authority.
8. Reason: To protect the trees/landscape areas from undue disturbance
9. Any works of excavation beneath the canopies of the protected trees shall be carried out by hand and there shall be no severance of any roots with a diameter exceeding 15 mm.
9. Reason: To ensure that the trees are not damaged.
10. The windows in the north elevation to Plot 9 and the south elevation to Plot 1 shall be permanently glazed in obscure glass.
10. Reason: To avoid overlooking of adjoining property in the interest of protecting privacy.
11. Large scale drawings to a minimum Scale of 1:10 of eaves and verges; and external joinery, including horizontal and vertical sections, precise construction method of opening and cill and lintel details shall be submitted to and approved in writing by the Local Planning Authority before building work starts. The eaves and verges and external joinery shall be constructed in accordance with the approved drawings.
11. Reason: The details submitted are inadequate to determine whether the appearance of the building would be acceptable.
12. No development shall take place until details of a scheme for the disposal of all surface and foul water have been submitted to and agreed in writing by the Local Planning Authority. The scheme shall be carried out in conformity with the details which have been agreed before the development is first brought into use.
12. Reason: In the interests of flood protecting and pollution control.
13. During the period of construction any tanks for the storage of oils, fuels or chemicals, shall be sited on impervious bases and surrounded by impervious walls. The volume of the bunded compound shall be at least equivalent to the capacity of the tank plus 10%. If there is multiple tankage the compound should be at least equivalent to the capacity of the largest tank, or the combined capacity of interconnected tanks plus 10%. All filling points, vents or gauges and site glasses must be located within the bund. The drainage system of the bund shall be sealed with no discharge to any watercourse, land or underground strata. Associated pipework shall be located above ground and be protected from accidental damage. All filling points and tank overflow pipe outlets shall be designed to discharge downwards into the bund.
13. Reason: In the interests of pollution control.

14. Before any other operations are commenced a new vehicular access shall be created to Derby Road in accordance with the submitted plans including visibility sight lines, laid out and constructed in accordance with specifications that shall have previously been submitted to and approved in writing by the Local Planning Authority. The area in advance of the visibility sight lines shall be retained in perpetuity free from any obstruction greater than 1m in height relative to the adjoining nearside carriageway channel level.
14. Reason: In the interests of highway safety.
15. Prior to the first use of the development hereby permitted, parking facilities shall be provided so as to accommodate, in the case of dwellings of four or more bedrooms three cars, in any other case two cars within the curtilage of each dwelling, or in any alternative location acceptable to the Local Planning Authority or as may otherwise be agreed in writing by the Local Planning Authority in accordance with its published standards. Thereafter three parking spaces (in the case of dwellings with four or more bedrooms) or two parking spaces (in any other case), measuring a minimum of 2.4m x 4.8m, shall be retained for that purpose within the curtilage of each dwelling unless as may otherwise be approved in writing by the Local Planning Authority.
15. Reason: To ensure that adequate parking/garaging provision is available.
16. The private accessway shall be surfaced in a solid bound material at a gradient no steeper than 1 in 15 and measures shall be implemented to prevent the flow of surface water onto the adjacent highway.
16. Reason: In the interests of highway safety.

Informatives:

To contact the Area Engineer South, Trent Valley Area, Derbyshire County Council, Director of Environmental Services, County Hall, Matlock, Derbyshire (Tel. 01629 580000 ext 7595) at least six weeks before the commencement date of the proposed works in order to arrange the necessary supervision of works on the highway crossing.

20/05/2003

Item 1.2**Reg. No.** 9 2002 1350 FT**Applicant:**

Hutchinson 3G UK LTD
 Star House
 20 Grenfell Island
 Maidenhead
 SL6 1EH

Agent:

Stappard Howes
 Unit B1 The Viscount Centre
 Uni Of Warwick Science Park
 Millburn Hill Road
 Coventry
 CV4 7HS

Proposal: The erection of a 20 metre high mono telecommunications pole, three antennas, one dish and one equipment cabinet at Field Off Arleston Lane Stenson Fields Derby

Ward: Ticknall

Valid Date: 30/12/2002

Site Description

The site is part of a field adjacent to woodland at the edge of the Stenson Fields urban area.

Proposal

A 20-metre high monopole structure is proposed. Landscaping and fencing would form the boundary of the associated equipment compound.

Applicant's Supporting Information

A comprehensive statement is provided, covering issues of need for the mast, consideration of alternatives, landscape considerations, land availability, planning policy and health and safety. With regard to the latter issue a statement of conformity with public exposure guidelines of the International Commission on Non-Ionising Radiation Protection (ICNIRP) is attached. In particular the applicant makes the following points:

- a) Sites at Stenson Fields Farm, a previously permitted site to the west Stenson Road and electricity pylons are not available.
- b) The proposal accords with policy C7 of the Local Plan.
- c) The impact is mitigated by the high level of screening at the site.

The following comments have been received following discussions with the applicant:

- a) Sites at Moor Lane and Derby Rifle and Pistol Club will not satisfy the operational requirements of the applicant.
- b) The site as Stenson Fields Farm (Orange Mast) is still not available.

- c) A slimmer type of monopole is now proposed, to reduce the impact of the proposal. It is proposed to colour it green but the applicant would accept any colour considered appropriate.
- d) The compound would be bounded by a timber fence instead of a security fence, along with landscaping.
- e) The applicant would be happy to avoid the wildlife sensitive area around the watercourse during construction.
- f) There would be no impact on the woodland and associated wildlife.
- g) A photomontage is provided to illustrate that there would be no significant visual impact.

Responses to Consultations

Councillor Pabla fully shares the concerns of residents.

Barrow on Trent Parish Council objects because the site is close to residential properties and believe that the equipment could be fixed to an electricity pylon.

Stenson Fields Parish Council objects for the following reasons:

- a) The site is incorrectly named as Sinfin. It should be Stenson Fields (Comment: The site is in Barrow on Trent parish).
- b) The site is on land intended for development by the Parish Council for recreation and nature conservation and the development would be inappropriate to this.
- c) The site is too close to housing and would be visible from Wragley Way.
- d) The Parish Council quotes the Stewart Report *"We are concerned at the indirect impact which current planning procedures are having on those who are, or have been, subjected to the often insensitive siting of base stations. Adverse impacts on the local environment may adversely impact on the public's well-being as much as any direct health effects."*

Derbyshire wildlife Trust has no objection in principle.

Derby City Council has no comment.

Responses to Publicity

Save Our Sinfin Action Group objects as follows:

- a) The consultation process has been inadequate.
- b) The mast would be too close to homes, causing a detrimental visual intrusion.
- c) The mast would spoil the recreational activity of residents in this area.
- d) The proposal may cause a danger to health.

A petition of 111 signatories has been received objecting on the following grounds:

- a) Health risk. There is no conclusive evidence that there would be no such risk.
- b) Intrusion on the surroundings.
- c) No meaningful argument to support this installation.

25 individual letters have been received objecting as follows:

- a) The health risks are unknown.
- b) The mast could be harmful to health.

- c) Existing serious illness could be exacerbated causing constant fear for the affected household.
- d) A cautious approach is advised by the government.
- e) Some mortgage companies will not lend on properties close to masts.
- f) Property values would be adversely affected.
- g) The mast would be unsightly and harm the character of the area
- h) Walks and recreation the area would be unpleasant because of the mast.
- i) Publicity has been inadequate.
- j) The mast should be sited well away from the residential area.
- k) The mast would exacerbate adverse environmental conditions brought on by other developments on the area.
- l) There is no meaningful argument to support this installation.
- m) There would be adverse impact on the adjacent woodland and its wildlife.
- n) The site would attract fly-tipping.
- o) The proposal would prejudice proposals to use the land for enjoyment of the public.

Structure/Local Plan Policies

The relevant policies are:

Joint Structure Plan: General Development Strategy Policy 4.

Local Plan: Environment Policy 1 and Community Facilities Policy 7.

Planning Considerations

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

- The principle of development.
- Alternative sites.
- Impact on the countryside.
- Wildlife.
- Health risks.

Planning Assessment

PPG8 makes it clear that the telecommunications development is to be encouraged as being essential to a modern economy and contributing to sustainability objectives. It advises planning authorities to respond positively to proposals for such development. It is clear that it is sometimes necessary for masts to be erected in the countryside. As such the proposal is acceptable as a matter of principle.

The applicant has investigated several alternative sites, some at the request of officers. However none of the alternatives appear to be available to the applicant, or will not satisfy operational requirements, and reasonable evidence has been submitted in this regard. This is material to the overall process, as advised by PPG8, of striking the balance between operational and environmental considerations.

The application site benefits from screening by the existing woodland, particularly during the months when the trees are in leaf. However clear views of the mast would be available from

Arleston Lane, albeit against the backcloth of the woodland. The mast would project above the canopies of the trees by about 4 metres. In this specific locality the applicant appears to have taken all reasonable measures to minimise the visual impact of the mast, so that its impact on the character of the countryside is not demonstrably harmful.

On the advice of Derbyshire Wildlife Trust the proposal would not have a harmful impact on wildlife interests.

The issue of health is addressed most emphatically in PPG8. In particular Paragraph 31 states “it is the Government’s firm view that the planning system is not the place for determining health safeguards. It remains central Government’s responsibility to decide what measures are necessary to protect public health.” The guidance goes on to say that if a base station meets ICNIRP guidelines then it will not be necessary for the local planning authority to further consider the health aspects and concerns for them. In this case the applicant has confirmed that the site will comply with Health and Safety legislation and in particular the ICNIRP guidelines. As such there is no evidence to support the contention that the development would have adverse health consequences.

A substantial number of the objections express fear regarding health effects. In recent years there have been several reported UK legal cases concerning the problematic issue of the extent to which public perceptions of risk of harm (as opposed to any actual risk) are themselves capable of being material considerations for determination of planning applications. However the available evidence appears to indicate no significant degree of risk and the advice in PPG8 is likely to be afforded the greatest weight on the issue of health risk.

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 five years from the date of this permission.
1. Reason: To conform with Section 91(1) of the Town and Country Planning Act, 1990.
2. Notwithstanding the originally submitted details, this permission shall relate to the amended drawing no.207588 - 101 Issue E received 2 April 2002.
2. Reason: For the avoidance of doubt, the original submission being considered unacceptable.
3. Notwithstanding the submitted details no development shall take place until there has been submitted to and approved by the Local Planning Authority a scheme of landscaping, which shall include indications of all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection in the course of development.
3. Reason: In the interests of the appearance of the area.
4. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of five years from the completion of the development die,

are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

4. Reason: In the interests of the appearance of the area.

20/05/2003

Item 1.3**Reg. No.** 9 2003 0102 F**Applicant:**

M Dennis
 Quarterbridge Horses Lane
 Measham
 Swadlincote
 Derbyshire

Agent:

Darren Insley MBIAT
 8 Brick Kiln Croft
 Measham
 Swadlincote
 DE12 7JJ

Proposal: The erection of six houses on plots 23-28 on Land Between
 145 And 153 Oversetts Road Newhall Swadlincote

Ward: Newhall

Valid Date: 30/01/2003

Site Description

The site is between the rear boundaries of properties fronting Oversetts Road and The Gables. Access to the site is from the new road off Oversetts Road, which serves recently completed residential development.

Proposal

It is proposed to erect a row of four, three bedroom detached dwellings fronting the southern side of the new road.

Responses to Consultations

Severn Trent Water require details of surface water drainage to avoid unnecessarily taking up capacity within the public sewerage system.

The County Highway Authority has no objection.

Responses to Publicity

Four letters of objection from residents adjoining the site at The Gables have been received and are summarised as follows:

- The end proposed dwelling being 14m from the existing neighbour would cause an unacceptable degree of overshadowing particularly as the neighbouring house is set at a lower level than those proposed.

- Due to neighbouring dwellings being at a lower level their gardens are boggy and remain wet throughout the summer months and proposed soakaways to the dwellings would make matters worse.
- Possible loss of trees.
- Recently constructed dwellings on the adjoining site has resulted in overlooking to neighbouring properties.
- A recently erected streetlight glows into the neighbouring bedroom.
- The development site is increasing in area as land becomes available which was not anticipated by existing residents and the developer has broken fences and left fires burning requiring responses from the fire brigade.
- Neighbouring gardens are relatively small and the development would further reduce light to them.

Structure/Local Plan Policies

The relevant policies are:

Local Plan: Housing Policy 11

Planning Considerations

The main issues central to the determination of this application is the impact of the development on the amenities of neighbouring residents.

Planning Assessment

The proposal has been amended and now complies with the Council's housing layout requirements. The neighbouring houses are at a lower level than the development and whilst this is likely to increase the impact felt by those neighbours on their living conditions the harm would not be so significant as to justify refusal.

The siting of soakaways can be agreed to ensure that bogginess to neighbouring gardens is not made any worse and with the implementation of managed drainage to the whole site an improvement to the present situation is likely.

A landscaping scheme is to be agreed which will endeavour to retain any hedges and trees that do not need to be removed to facilitate the development.

Recently constructed dwellings are in accordance with the Council's housing layout requirements.

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 five years from the date of this permission.

1. Reason: To conform with Section 91(1) of the Town and Country Planning Act, 1990.
2. This permission shall relate to the amended drawings, nos 19 and 25 received on 10 April 2003 showing amendments to internal layout and window arrangements.
2. Reason: To safeguard the privacy of future occupiers.
3. The garage window for plot 23 and the garage and bathroom window to plot 28 shall be obscure glazed before the buildings are occupied and shall remain as such thereafter in perpetuity unless otherwise agreed in writing by the Local Planning Authority.
3. Reason: To safeguard the privacy of neighbouring occupiers.
4. No development shall commence on site in connection with this approval until samples of external materials of the dwellings have been submitted to and approved in writing by the Local Planning Authority and the development shall be carried out in accordance with the approved materials.
4. Reason: To ensure the materials are appropriate in the interests of safeguarding the appearance of the area.
5. Notwithstanding any details submitted, no development shall take place until there has been submitted to and approved in writing by the Local Planning Authority plans indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed in accordance with the approved details before the development is occupied or in accordance with a timetable which shall first have been agreed in writing with the Local Planning Authority.
5. Reason: In the interests of the appearance of the area.
6. Prior to the development hereby approved commencing, details of the finished floor levels of the buildings hereby approved and of the ground levels of the site relative to adjoining land levels, shall be submitted to, and approved in writing by, the Local Planning Authority. Thereafter, the development shall be constructed in accordance with the agreed level(s).
6. Reason: To protect the amenities of adjoining properties and the locality generally.
7. No development shall take place until there has been submitted to and approved by the Local Planning Authority a scheme of landscaping, which shall include indications of all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection in the course of development.
7. Reason: In the interests of the appearance of the area.
8. Further to condition 7 above, soft landscape details shall include planting plans; written specifications including cultivation and other operations associated with plant and grass establishment; schedules of plants (noting species, plant sizes and proposed numbers/densities where appropriate) and the implementation programme.
8. Reason: In the interests of the appearance of the area.
9. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next

planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

9. Reason: In the interests of the appearance of the area.
10. No development shall commence on site in connection with this approval until details of surface water drainage have been submitted to and approved in writing by the Local Planning Authority and the approved drainage shall be completed in accordance with the agreed details before the dwellings are occupied.
10. Reason: To safeguard the amenities of neighbouring residents and to avoid unnecessarily taking up capacity within the public sewerage system specifically provided for the essential disposal of foul sewerage.
11. Before the occupation of the dwelling to which it relates, private driveways must be laid out and constructed and surfaced with a solid bound material. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995, the parking and garage spaces shall not be used for any other purpose other than the parking of vehicles, except with the prior permission of the Local Planning Authority.
11. Reason: In the interests of highway safety.

Informatives:

The applicant is informed that an alteration to the existing Section 38 Highways Agreement with the County Council is required, for the inclusion of the fronting footway to the proposed plots 23-28. Note also that an alteration to the street lighting layout, as designed by the County Council, may be necessary.

To note and act upon as necessary the comments of the Coal Authority (see attached letter).

Further to the above Informative, the responsibility and subsequent liability for safe development and secure occupancy of the site rests with the developer and/or landowner. This grant of planning permission does not give a warranty of ground support or stability, neither does it necessarily imply that the requirements of any other controlling authority would be satisfied.

20/05/2003

Item 1.4**Reg. No.** 9 2003 0208 FH**Applicant:**

Mr B Nash
Stanton View, Trent Side
Swarkestone
Derby
DE731JB

Agent:

NSW Architects
The Old Library
Risley Lane
Breaston
Derby
DE72 3AU

Proposal: The erection of extensions and conversion of garage to playroom at Stanton View Trent Side Swarkestone Derby

Ward: Aston

Valid Date: 26/02/2003

Site Description

The application site contains a detached dwelling, dating from the late 1980s, set back from the highway. There is a detached double garage to the front of the property, built with the original dwelling.

Proposal

The applicant seeks to double the size of the garage and to use half of it as ancillary living accommodation. A proposal to extend at the front the dwelling has been withdrawn from the application.

Applicant's Supporting Information

The proposal has been amended to incorporate officer comments but the use of brick (rather than recessed render panels) to make good the former garage door openings would inevitably have a patchwork appearance.

Responses to Consultations

The Environment Agency makes comments about the risk of flooding to the applicant's property.

Responses to Publicity

Objections have been received from 5 neighbours in the following terms (specific references to the withdrawn extension are not reported here):

- a) When permission was granted for the original dwelling amendments were incorporated to protect the living conditions of the occupiers of Hollybush Cottage and the area in general.
- b) The conversion of the garage would be a change of use.
- c) The extended garage would be harmful to the character and appearance of the conservation area because of its scale and design.
- d) The existing dwelling is out of character and any additions will worsen the situation.
- e) There is no need to extend the garage. Any additional requirements for living accommodation could be achieved by extending at the rear of the property.
- f) There would be loss of privacy and light to neighbours.
- g) The converted garage may be used for business purposes.

Structure/Local Plan Policies

The relevant policies are:

Joint Structure Plan: Environment Policy 9.

Local Plan: Environment Policy 12 and Housing Policy 13.

Planning Considerations

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

- The principle.
- Impact on the character and appearance of the conservation area.
- Residential amenity.
- Flood risk.

Planning Assessment

In principle extensions to properties in villages can be accommodated without prejudice to the development plan. The conversion of the garage to ancillary residential accommodation is not a material change of use. (It is also noteworthy that the conversion of the existing garage could be undertaken as permitted development).

The extension to the garage would result in a rectangular building of simple form. This would have a neutral impact on the character and appearance of the conservation area.

The increased mass of the garage would not have a material effect on light and overbearance to neighbouring properties. The windows in the garage would be 16 metres from habitable room windows in the side elevation of Hollybush Cottage. The normal guidelines seek 21 metres between main habitable room windows. However the supplementary planning guidance ascribes less importance to side elevations and inter visibility could reasonably be screened by appropriate boundary treatment, by condition. The overall impact on neighbours is therefore acceptable.

The Environment Agency's comments are advisory and the proposal would not increase the risk of flooding to third parties.

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 five years from the date of this permission.
1. Reason: To conform with Section 91(1) of the Town and Country Planning Act, 1990.
2. Notwithstanding the originally submitted details, this permission shall relate to the amended drawing no. 2852/103B & 104B received 11 April 2003.
2. Reason: For the avoidance of doubt, the original submission being considered unacceptable.
3. All external materials used in the development to which this permission relates shall match those used in the existing building in colour, coursing and texture unless otherwise agreed in writing by the Local Planning Authority.
3. Reason: To safeguard the appearance of the existing building and the locality generally.
4. Large scale drawings to a minimum Scale of 1:10 of eaves and verges; and external joinery, including horizontal and vertical sections, precise construction method of opening and cill and lintel details shall be submitted to and approved in writing by the Local Planning Authority before building work starts. The eaves and verges and external joinery shall be constructed in accordance with the approved drawings.
4. Reason: The details submitted are inadequate to determine whether the appearance of the building would be acceptable.
5. Notwithstanding any details submitted, precise details of the type, size and position of the proposed rooflight(s) shall be submitted to and approved in writing by the Local Planning Authority. The approved rooflight(s) shall be fitted such that their outer faces are flush with the plane of the roof, unless otherwise agreed in writing with the Local Planning Authority.
5. Reason: In the interests of the appearance of the building(s) and the character of the area.
6. Notwithstanding any details submitted, no development shall take place until there has been submitted to and approved in writing by the Local Planning Authority plans indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed in accordance with the approved details before the development is occupied or in accordance with a timetable which shall first have been agreed in writing with the Local Planning Authority.
6. Reason: In the interests of the appearance of the area.

20/05/2003

Item 1.5**Reg. No. 9 2003 0214 FH****Applicant:**

Mr Mrs M Field
 3 Trentside Cottages, Trent Side
 Swarkestone
 Derby

Agent:

E. Lee
 Mr. Eric J. Lee
 Pennside
 Penn Lane
 Melbourne
 Derbyshire
 DE73 1EP

Proposal: The erection of an extension at 3 Trentside Cottages Trent Side Swarkestone Derby

Ward: Aston

Valid Date: 06/03/2003

Site Description

The property is a traditional brick and tile cottage in the conservation area. There is an attached dwelling at right angles (The Nook).

Proposal

The applicant proposes a two-storey extension to form a day room and a bedroom, with a smaller two-storey extension to provide a utility room with a bathroom over. The latter would result in a 45° line, drawn from the centre of the nearest ground floor window at The Nook, being breached, at a distance of some 8 metres. The extension would be set to the north east of the affected window.

Applicant's Supporting Information

The neighbour has been consulted and supports the application.

Responses to Consultations

The Environment Agency advises that the area may be subject to rare instances of flooding.

The Environmental Health Manager has no comment.

Responses to Publicity

The adjoining occupier has written in support of the application.

Structure/Local Plan Policies

The relevant policies are:

Joint Structure Plan: Environment Policy 9.

Local Plan: Environment Policy 12 and Housing Policy 13.

Planning Considerations

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

- The impact on the character and appearance of the conservation area.
- Residential amenity.
- Flooding.

Planning Assessment

The proposals respect the character of the host building and the development would preserve the character and appearance of the conservation area, subject to conditional control over materials and detail design.

The smaller bathroom extension would breach the guidelines for space about dwellings because it would intersect a 45° line drawn from the centre of the nearest ground floor habitable room window of The Nook. However the following matters are relevant:

- The part of the extension that affects the neighbour is lower than the main part of the building (6.4 m to the ridge of the roof).
- The affected window is set away from the boundary by about 5 metres.
- The neighbour has written support of the proposal.

In these circumstances, given that the impact of the breach of the guidelines is relatively marginal and in the light of support from the neighbour, the situation is considered to be acceptable.

The Environment Agency's comments are advisory and the proposal would not increase the risk of flooding to third parties.

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 five years from the date of this permission.
1. Reason: To conform with Section 91(1) of the Town and Country Planning Act, 1990.
2. Notwithstanding the originally submitted details, this permission shall relate to the amended drawing received under cover of the agent's letter dated 10 April 2003

2. Reason: For the avoidance of doubt, the original submission being considered unacceptable.
3. No part of the development shall be carried out until precise details, specifications and, where necessary, samples of the facing materials to be used in the construction of the external walls and roof of the building(s) have been submitted to and approved in writing by the Local Planning Authority.
3. Reason: To safeguard the appearance of the existing building and the locality generally.
4. Large scale drawings to a minimum Scale of 1:10 of external joinery, including horizontal and vertical sections, precise construction method of opening and cill and lintel details shall be submitted to and approved in writing by the Local Planning Authority before building work starts. The external joinery shall be constructed in accordance with the approved drawings.
4. Reason: The details submitted are inadequate to determine whether the appearance of the building would be acceptable.
5. Pointing of the existing/ proposed building(s) shall be carried out using a lime mortar no stronger than 1:1:6 (cement:lime:yellow sand). The finished joint shall be slightly recessed with a brushed finish in accordance with Derbyshire County Council's advisory leaflet "Repointing of Brick and Stonework".
5. Reason: In the interests of the appearance of the building(s).
6. A sample panel of pointing 2 metres square or such other area as may be agreed by the Local Planning Authority shall be prepared for inspection and approval in writing by the Local Planning Authority prior to the implementation of any other works of pointing.
6. Reason: In the interests of the appearance of the building(s) and the locality generally.
7. External joinery shall be in timber and painted to a colour and specification which shall have been previously agreed in writing by the Local Planning Authority.
7. Reason: In the interests of the appearance of the building(s) and the character of the area.
8. All plumbing and service pipework, soil and vent pipes, electricity and gas meter cupboards and heating flues shall be located inside the building unless specifically agreed in writing by the Local Planning Authority. The type, number and position of heating and ventilation flues outlets shall be agreed in writing with the Local Planning Authority before development is commenced.
8. Reason: In the interests of the appearance of the building(s) and the character of the area.
9. Gutters shall be cast metal (with cast metal fall pipes) and shall be fixed direct to the brickwork on metal brackets. No fascia boards shall be used.
9. Reason: In the interests of the appearance of the building(s), and the character of the area.

Informatives:

To note the attached advice of the Environment Agency.

20/05/2003

Item 1.6**Reg. No. 9 2003 0232 FH****Applicant:**

Mr R Allsopp
 The Old Standings Arleston Farm, Arleston
 Lane
 Barrow On Trent
 Derby
 DE73 1HN

Agent:

B. Williamson
 Mr. B. A. Williamson
 Genista
 Broomhills Lane
 Repton
 Derbyshire
 DE656FS

Proposal: The erection of an extension at The Old Standings Arleston
 Farm Arleston Lane Barrow On Trent Derby

Ward: Ticknall

Valid Date: 28/02/2003

Site Description

The property is one of a group of converted barns in an open setting. There are two existing windows in the gable end of the property facing the neighbouring dwelling known as Cuckoo Wood Barn.

Proposal

The proposal seeks to amend a previously approved extension for a double garage to form a single garage and a study. The study window would be some 10m from the nearest habitable room window of Cuckoo Wood Barn. A hardstanding for parking is proposed next to the garage.

Site History

The garage extension was approved in 2001 (9/2001/0327/F).

Responses to Publicity

A neighbour objects to the position of the garage door because it would cause obstruction to the private right of way shared by several properties. He comments that the problem would be solved if the applicant gained access from an alternative location.

Structure/Local Plan Policies

The relevant policies are:

Local Plan: Housing Policy 13

Planning Considerations

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

- Impact on the character of the countryside.
- Residential amenity.
- Traffic.

Planning Assessment

The principle of extending the property is established through the previous grant of permission. The bulk form and mass of this extension would be the same.

The extension would be in keeping with scale and design of the principal building and the impact on the countryside would not be harmful.

The proposed study window does not conform to supplementary planning guidance. However two windows already face the neighbouring dwelling and the provision of a study window in this instance would not worsen the situation. The impact is therefore not demonstrably harmful.

The traffic matters raised by a neighbour affect a private way and there is no public safety issue. The single garage door is in the same position as the previously approved proposal. Therefore there is no basis to require the applicant to seek an alternative means of access to the garage.

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 five years from the date of this permission.
1. Reason: To conform with Section 91(1) of the Town and Country Planning Act, 1990.
2. All external materials used in the development to which this permission relates shall match those used in the existing building in colour, coursing and texture unless otherwise agreed in writing by the Local Planning Authority.
2. Reason: To safeguard the appearance of the existing building and the locality generally.
3. Large scale drawings to a minimum Scale of 1:10 of external joinery, including horizontal and vertical sections, precise construction method of opening and cill and lintel details shall be submitted to and approved in writing by the Local Planning Authority before building work starts. The external joinery shall be constructed in accordance with the approved drawings.
3. Reason: The details submitted are inadequate to determine whether the appearance of the building would be acceptable.

4. Gutters and downpipes shall have a black finish and be fixed direct to the brickwork on metal brackets. No fascia boards shall be used.
4. Reason: In the interests of the appearance of the building(s), and the character of the area.

20/05/2003

Item 1.7**Reg. No.** 9 2003 0261 D**Applicant:**

Mr J Sahota, M Singh
 Rai, B Singh Rai, And B Kaur Sahota
 84 Blackwatch Road
 Radford
 Coventry

Agent:

JWA Architects
 Robert Tresham House
 Clipston
 Market Harborough
 Leicestershire
 LE16 9RZ

Proposal: Application for approval of reserved matters pertaining to trunk road service area including 100 bed hotel, public house restaurant, filling station, food outlets and associated parking, access and landscaping Land To The North Of The Farm Buildings At Hill Farm Willington Derby

Ward: Willington**Valid Date:** 03/03/2003**Site Description**

The site comprises part of the area allocated for development in the current Local Plan as a roadside facilities site. The remaining land is in separate ownership and would be the subject of a separate application. The site lies within the south-east quadrant of the A38/A50 interchange. It is enclosed by hedges on all its boundaries. Access to the site would be from the B5008 Etwell Road. To the south of the site is Hill Farm a Grade II Listed Building that has, together with its outbuildings, been redeveloped for residential use

Proposal

There are 6 main elements to the proposal:

- a) A 100 bedroom hotel (Eaves height 5m approx, ridge height 10.8m)
- b) A pub, food outlet and drive through restaurant (Eaves height 4m, ridge height 11m also includes managers accommodation in the roof space of the pub)
- c) Car (176 spaces), coach (3 spaces) and lorry (6 spaces) parking all with provision for extension
- d) Car and lorry refuelling facilities (Canopy height 6.2m, eaves height of service building 3.4m, ridge height 5.5m)
- e) Picnic area
- f) Landscaping proposals - this comprises a mixture of mounding, shrub and tree planting with the emphasis on the screening of the south and east boundaries.

There is also provision for direct road access to the remaining land that is the subject of the Local Plan allocation. No details of the foul and surface water drainage details have been submitted although the form indicates that the foul water will be pumped to the mains drain and surface water would be disposed of to a sustainable drainage system. These details would have to be submitted prior to the development as would the materials of construction.

Applicants' supporting information

Since submission, the application has been amended to include the provision of a landscape mound along the south boundary between the site and the dwellings on Hill Farm. The access to adjacent land has also been changed to ensure that the site is easily accessed, that was not the case when the application was originally proposed. The access arrangements to this site have also been amended to coincide with those approved in 1998. The applicant has confirmed that the requisite adjoining land to form the access is in the applicants' ownership.

Planning History

The site was allocated as a Roadside Facility site in the early 1990's. Two subsequent applications for the development of the allocation were permitted in the mid 1990's.

These were permitted again in 2000 and the outline planning permission for both sites expires in June this year. The outline permission requires that buildings on the site have an eaves height of less than 4 metres unless it can be demonstrated that the proposal would be wholly unobtrusive, submission of details of the landscaping, provision for all vehicles to access the adjacent allocated land and details of the foul and surface water drainage.

There is a Section 106 Agreement attached to the outline planning permission that requires several issues to be addressed both by the applicant and the Local Planning Authority.

In the first instance, the Agreement requires that an application for the redevelopment of Hill Farm be submitted and approved before development is commenced on the roadside facility site. The approved scheme was to have been completed prior to the opening of any of the facilities on the application site. This part of the Agreement has been fulfilled.

Secondly, there is a requirement for the developer to provide fuel facilities, overnight accommodation, eating facilities and a picnic area and not to open those facilities unless car and lorry parking and toilets have been provided and the Council has given written consent for their opening. The car & lorry parking, fuel facilities, overnight accommodation and toilets are required to be available 24 hours a day throughout the year.

The emerging Local Plan no longer allocates the land for development as a roadside facility. This is the subject of an objection to the Plan. Members will be aware that the Inquiry into objections to the Local Plan is due to commence on 3 June 2003.

An application for approval of the access to the land was approved in 1998 but also forms part of this submission.

Responses to Consultations

Willington Parish Council objects to the proposal all the facilities are duplicated nearby and the provision of a public house in a major road services area is considered wholly inappropriate. It is understood that the Parish Council will be maintaining its objection to the development.

The Highways Agency has no objection.

The County Highways Authority is concerned that the proposed access as shown on the submitted drawing differs from that approved as a previous reserved matter.

The Environment Agency has no objection subject to conditions limiting surface water runoff from the land and that these elements should be implemented at an early stage of the development. All surface water, except roof water should also be passed through an oil interceptor. The Environment Agency will be consulted again when surface water drainage details are submitted as will Severn Trent Water about foul water disposal.

The Environmental Health Manager has no objection but draws attention to relevant regulations for the control of vapours during delivery operations that are subject to control.

Responses to Publicity

Four letters have been received objecting to the development including one from the owner of the adjacent allocated land. The grounds for objection are as follows and the first four objections relate to points made by the owners of the adjacent land albeit that others also make some of these objections:

- a) The 100-bed hotel is much too large, and consideration of the viability of this element should relate to the numerous consents for such facilities in the locality, none of which have been developed. (Atkins site, Y-Pass garage and the Every Arms). A smaller 2 storey, lower building is more appropriate on the site, and this size building is normally found on this type of development.
- b) The public house is not what was envisaged in the Local Plan Policy and is not normally found on a roadside services site. It is contrary to the Highways Agency advice if only from a road safety point of view. The building would also dominate the site. the requirement for food outlets would more than adequately be met by the two food outlets. Over provision of such facilities could affect the whole viability of the scheme.
- c) The Local Planning Authority should take the opportunity to ensure that the whole allocation is developed rather than just a part of it. If permitted the development would sterilise the rest of the allocated land. It would be more beneficial to develop the whole site that would allow the buildings to be moved close to the junction and offer better opportunities to reduce the visual impact of the development.
- d) The provision of the access to the adjacent land is not satisfactory and could involve a ransom strip being put in place for which the adjacent owner would have to pay. It would be better if there was a direct access to the land off the island.
- e) The appearance of the development is not in keeping with the character of Hill Farm which is a Grade II listed building. There is insufficient landscaping along the south boundary to screen the proposals from the Hill Farm site.
- f) Dwellings at Hill Farm would suffer a loss of privacy
- g) There would be an increase in the volume of traffic using Etwall Road. This would be extremely noisy, the road was not designed for this level of traffic. The traffic island would detract from the rural community aspect. Facilities such as the pub and filling station would

attract traffic at all times of the day whereas at present there are only a couple of peak traffic flows. The rest of the time the road is relatively quiet.

h) No provision has been made to attenuate noise from the development. A mound should be formed and noise fencing erected along the top of it. This could be in a neutral colour and the landscaping would quickly screen it. The landscaping in this area should be more densely planted. As proposed the screening impact would be minimal over a considerable number of years. More evergreen planting should be included in the scheme. The mounding and landscaping should be put in place before building works are commenced.

i) The outline specifies an eaves height of 4.0 metres but the applicants have incorporated accommodation in the roof. This gives a ridge height of 10.9 metres. This together with the illuminated signs on the pfs and other elements of the use will be intrusive in the countryside.

j) Noise from building operations should also be controlled.

In response to a reconsultation about the amended plans, one further letter of objection has been received. The points of objection are as follows:

The proposed bund on the south boundary, although a step in the right direction, still causes concern. The plants will take many years to establish. There is no indication of how high the bund would be. There are no evergreen trees in the scheme. The developer will be saving transport costs for material leaving the site and landfill tax, but there is no benefit to residents. The bund seems to be for the benefit of one occupier who is a part of the development company. Whilst the bund is welcomed, without a proper specification for the landscaping, there will be little protection of the setting of Hill Farm, noise or light pollution. The variety of planting should be addressed now. A lot could be done to meet the above points at relatively little cost.

Structure/Local Plan Policies

The relevant policies are:

Joint Structure Plan: Transport Policy 19 Environment Policy 10

Local Plan: Transport Policy 10 Environment Policy 13

Emerging Local Plan: No relevant policies, ENV 19

Planning Considerations

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

- The Development Plan.
- The impact of the proposals on the listed building (Hill Farm) and the countryside.
- The suitability of the access.
- Noise and privacy as raised by objectors.
- The landscaping proposals

Planning Assessment

The site has outline planning permission that was granted in accordance with the provisions of the current Local Plan. This application for some of the reserved matters indicates details of the development and is not a matter of principle upon which the Local Planning Authority can comment. Had the outline planning permission expired, then it is unlikely that it would have been renewed because of the change to the Development Plan.

The closest element of the proposals to the Hill Farm dwellings is the petrol filling station. This is some 190 metres from the nearest dwelling although there is a roadway at some 150 metres from the houses. The dwellings have a limited number of window opening facing the buildings. Between these dwellings and the petrol filling station is a proposed landscaped mound. The mound would not necessarily provide an instant screen but with the distance between the dwellings and structures on the site, the proposals would not detract from the character and setting of the group of listed buildings.

Clearly there is a change to the character of the area and part of the rural nature of the countryside hereabouts would be altered. The buildings have a functional appearance and in the main would be visible from the slip roads to the A50 and B5008. The reason the 4 metres eave height was attached to the outline permission was to ensure that the impact of the development on views from the east were minimised. The eaves height of the hotel would be some 5 metres with a ridge height of 10.8 metres. This element of the proposals is set back furthest from the east boundary of the site. The mounding and screening on the east side of the site would help to screen the hotel from the lower ground to the east. There would be distant views of the site from Findern and the road bridge over the A50 at Findern. However, the height of the eaves and ridge would not be prominent from this distance especially when this view also contains the Toyota Factory on the opposite side of the A38. The application has demonstrated that the maximum eaves height of 4.0 metres could be set aside.

The access to the site has been amended. This has been passed to the County Highways Authority for comment but the initial view is that the amended proposals would generally be acceptable. The formal response will be report at the meeting.

The objectors have made several objections to the proposal, soe of which are addressed above. The issue of loss of privacy is not accepted because of the distances, described above, and the fact that the very few windows look directly towards the buildings on the site and there would be significant landscaping on the boundary between the site and the dwellings.

Clearly there is going to be a change in the noise characteristic of the traffic passing the site and a new noise element from traffic turning into the site. This is a matter of principle and not one that would justify withholding approval of reserved matters. In any event the dwellings are some 100 metres, at the closest point from the traffic island and this would not justify refusal of permission on the grounds of traffic noise.

The general principles as set out in the landscaping proposals are broadly acceptable. However, there are elements such as the species of some trees and the spacings between them that are to be addressed with the applicants prior to the meeting. Any relevant outcome of these discussions will be reported.

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 approval of reserved matters in respect of the details submitted under cover of this application subject to the following conditions:

1. Notwithstanding the originally submitted details, this permission shall relate to the amended drawing no.[final drawing nos. to be inserted]
1. Reason: For the avoidance of doubt, the original submission being considered unacceptable.
2. The access to the adjacent land shown 11 on [final drawing nos. to be inserted] shall be constructed concurrent with the rest of the site roads. It shall be constructed to a minimum of base course level and shall finish contiguous with the boundary between the western boundary of the land.
2. Reason: In order to facilitate access to the adjacent land in the interests of the proper planning of the area.
3. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation. The mounding to the southern boundary shall be formed to its finished height within 6 months of the commencement of the development and planting on this part of the site shall be implemented in the first planting season following the formation of the mound.
3. Reason: In the interests of the appearance of the area and to reduce the impact of the development on the character and setting of the Grade II Listed Building.
4. Reasonable planning requirements of the LHA.

Informatives:

Drainage details and materials of construction remain to be approved in detail. Development may not be commenced until these details have been discharged together with other matters that may require discharge.

You are reminded of the provisions of the Section 106 Agreement in respect of this land whereby all the facilities referred to in the agreement must be available for use on the site. Please see the relevant clauses in the Agreement.

20/05/2003

Item 1.8**Reg. No.** 9 2003 0281 FH**Applicant:**

Mr M Taylor-Dawes
 Bramcote Lodge, Main Street
 Milton
 Derby

Agent:

Steve D Pearce
 Steve D Pearce
 Pimlico Barn
 Austrey Lane
 No Mans Heath
 Tamworth
 B79 0PF

Proposal: The retention of a single storey outbuilding at Bramcote Lodge Main Street Milton Derby

Ward: Repton

Valid Date: 06/03/2003

Site Description

The garden to Bramcote Lodge is on the northern edge of Milton adjacent to a residential barn conversion called Harvest Barn. The site is within the Milton Conservation Area.

Proposal

It is proposed to retain a recently constructed out building sited alongside the northern boundary. The building is 5.1m wide by 3.3m deep and 3.25m to the ridge and is finished in stone and timber boarding.

Responses to Consultations

Repton Parish Council objects to the building. It says that the building is described as a single storey outbuilding but is described in marketing material as a stable and questions the wooden building being too close to neighbours.

Responses to Publicity

A neighbour objects to the building which has been used to keep pet dogs resulting in numerous complaints to the Council's dog warden and considers it as being an eyesore in the Conservation Area. He also complains of the applicant's apparent disregard of planning procedure.

Structure/Local Plan Policies

The relevant policies are:

Local Plan: Environment Policy 12 and 13

Planning Considerations

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

- The impact of the development on the character and appearance of the Conservation Area
- The impact of the development on the setting of listed buildings
- The impact on the amenities of neighbouring residents

Planning Assessment

The building represents a relatively minor addition to the garden and is not visually intrusive from beyond the site boundaries. The external materials are appropriate to the surroundings. The building is not excessively high at 3.25m to its ridge does not have a detrimental effect on neighbours' amenities. The noise caused by pet dogs is not a relevant to the consideration of this application, being a matter under the control of other legislation.

Retrospective applications are legitimate under planning procedures, the risk of refusal falling on the applicant.

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.

20/05/2003

Item 1.9**Reg. No.** 9 2003 0284 F**Applicant:**

Willington Parish Council
 C/O The Riverbank
 Willington
 Derbyshire
 DE65 6EQ

Agent:

Willington Parish Council
 C/O The Riverbank
 Willington
 Derbyshire
 DE65 6EQ

Proposal: The erection of a youth shelter and three tubular frame seats
 at Picnic Area The Green Willington Derby

Ward: Willington

Valid Date: 06/03/2003

Site Description

The site comprises part of an open area on the car park adjacent to the Trent and Mersey Canal. There are no boundary features in the vicinity of the site but it would be close to trees.

Proposal

The shelter would have a tubular metal structure coloured green some 2 metres long, 3.7 metres wide and 2.5 metres high. The frame would be set in the ground

Planning History

There is no relevant planning history.

Responses to Consultations

No responses received.

Responses to Publicity

One petition signed by 30 residents has been received objecting to the application on the following grounds: -

- a) The council should not even consider the proposal after all the problems that occurred the last time there was a shelter in the area. There was considerable relief from locals when the last shelter was demolished.
- b) The last shelter was used as a urinal and thus could not be used for its intended purpose.

- c) There was a lot of noise from car radios when the last shelter was in place. When complaints were made about the noise, radios were turned down when police approached, only to be turned back up again when the police left the site.
- d) There was also a lot of broken glass left lying around as a testament to the amount of alcohol drunk by users of the shelter. This problem largely disappeared when the shelter was removed.
- e) The proposal should be rejected out of hand.

Structure/Local Plan Policies

The relevant policies are:

Local Plan: Community Facilities Policy 1

Emerging Local Plan: Policy C2

Planning Considerations

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

- The Development Plan
- The impact on the adjoining dwellings arising from the objections above.

Planning Assessment

The community facilities policy in both the above policies set criteria that have to be met before development can be permitted. In this case the need to be well related to the community it is intended to serve and the measures to reduce adverse impact on adjacent residential occupiers from traffic or other noise.

The site is located within a car park adjacent to the railway line. It is set against an area of trees that would help to screen it from the nearest dwellings that lie some 30 metres away. The site is well located in relation to the community it is intended to serve.

The prime concern of objectors is the issue of noise and pollution based on their experience of a previous enclosed shelter. These objectors are located on the opposite side of the canal some 100 metres from the car park and the likely impact of noise from the shelter itself would not constitute grounds for refusing planning permission. The shelter would have open sides and this would not encourage some of the activities that the objectors fear. (See objections as set out above).

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 five years from the date of this permission.
1. Reason: To conform with Section 91(1) of the Town and Country Planning Act, 1990.

20/05/2003

Item 1.10**Reg. No.** 9 2003 0349 O**Applicant:**

Mr And Mrs D Freeman
 Bluebell House, Meadow Lane
 Off Back Lane
 Hilton
 Derbyshire
 DE65 5GJ

Agent:

R. Crane
 Roger Crane, MBLAT
 208 Ashby Road
 Burton On Trent
 Staffs
 DE15 OLB

Proposal: The erection of two bungalows at Land Forming Part Of O S
 Field Numbers 3540 And 4141 Off Back Lane Hilton Derby

Ward: Hilton

Valid Date: 18/03/2003

Site Description

The site comprises former pig buildings and associated land off Meadow Lane Hilton. The site is enclosed by hedges on two sides and by housing on the other two. Access would from Meadow Lane that in turn has a junction with Back Lane.

Proposal

The proposal involves the erection of two dwellings on the land.

Planning History

A further dwelling was permitted on the site in about 2001; this has now been erected.

Responses to Consultations

Hilton Parish Council has objected because the access is inadequate and runs past the Council's playing fields that is used frequently by children to gain access to the fields.

The County Highways Authority comments that the issue of the access was tested at appeal in the 1994 and was found acceptable. There is no objection to the current application.

Structure/Local Plan Policies

The relevant policies are:

Joint Structure Plan: General Development Strategy Policy 3, Housing Policy 5

Local Plan: Housing Policy 5

Emerging Local Plan: H1

Planning Considerations

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

- Conformity with the Development Plan
- Suitability of the access
- Impact on neighbours

Planning Assessment

The development represents a windfall site within the built confines of Hilton and as such is acceptable in principle. The site does not represent an important open space within the settlement and there would not be grounds to refuse permission on this basis.

The County Highways Authority has referred to the appeal decision on other land in the vicinity of this site. That decision carefully considered the suitability of the use of the access onto Back Lane and concluded that whilst not ideal, there would not be a highway safety issue. This was because Back Lane was relatively lightly trafficked. Whilst there has been further development that is served off Back Lane since that time, including two further dwellings on Meadow Lane, the view is that Back Lane remains relatively lightly trafficked.

There are some windows in the applicant's dwelling that look towards the site, this and the proposed dwelling are bungalows and fences could screen the views to habitable rooms. This aspect would be fully considered at the reserved matters stage if this application were permitted.

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

Recommendation

GRANT permission subject to the following conditions:

1. (a) Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.
(b) The development hereby permitted shall be begun either before the expiration of five years from the date of this permission or before the expiration of two years from the date of approval of the last of the reserved matters to be approved whichever is the later.
1. Reason: To conform with Section 92(2) of the Town and Country Planning Act 1990.
2. Approval of the details of the siting, design and external appearance of the building(s) the means of access thereto and the landscaping and means of enclosure of the site shall be obtained from the Local Planning Authority in writing before any development is commenced.
2. Reason: The application is expressed to be in outline only and the Local Planning Authority has to ensure that the details are satisfactory.
3. Prior to the development hereby approved commencing, details of the finished floor levels of the buildings hereby approved and of the ground levels of the site relative to adjoining land levels, shall be submitted to, and approved in writing by, the Local Planning Authority. Thereafter, the development shall be constructed in accordance with the agreed level(s).

3. Reason: To protect the amenities of adjoining properties and the locality generally.
4. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995, the garage accommodation/parking space to be provided in connection with the development shall not be used other than for the above stated purpose except with the prior permission of the Local Planning Authority granted on an application made in that regard.
4. Reason: To ensure that adequate parking/garaging provision is available.
5. No development shall take place until details (including precise dimensions and proposed surface materials) of a vehicular turning area within the site curtilage adequate to enable all vehicles to enter and leave the site in a forward direction have been submitted to the Local Planning Authority. The turning area as approved by the Local Planning Authority shall be laid out and hard surfaced accordingly prior to the first use of the development and be retained available for that purpose thereafter.
5. Reason: In the interests of highway safety.

20/05/2003

Item 1.11**Reg. No.** 9 2003 0366 U**Applicant:**

Mr And Mrs R M Bird
 6 Maple Drive, Aston On Trent, DE72 2DG
 And 32 Yates Avenue,
 Aston On Trent, DE72 2DG

Agent:

Mr And Mrs R M Bird
 6 Maple Drive
 Aston On Trent
 Derbyshire
 DE72 2DG

Proposal: The erection of a boundary fence and the incorporation into the residential curtilage of numbers 6 Maple Drive and 32 Yates Avenue of Land At The Corner Of Yates Avenue And Maple Drive Aston on Trent Derby

Ward: Aston

Valid Date: 21/03/2003

Site Description

The site is a piece of open land within the recently developed Aston Hall site. It contains three trees protected by a Tree Preservation Order.

Proposal

The proposal seeks to bring the land within the curtilages of the adjoining dwellings. The screen fence separating the site from 6 Maple Drive would be brought forward but would remain behind the three trees.

Applicant's Supporting Information

The applicants own the land and there are no private rights of way affecting it.

Site History

Outline permission to develop Aston Hall was granted subject to a section106 Agreement, in 1994 (9/0292/1038/O). The agreement does not affect this piece of land.

Responses to Consultations

Aston on Trent Parish Council objects on the grounds that the applicant does not own the land and the proposal would be contrary to the Section 106 Agreement affecting the Aston Hall development.

Weston on Trent Parish Council has no objection.

The Highway Authority has no objection.

Responses to Publicity

6 letters have been received objecting as follows:

- a) The applicants did not own the land 21 days before the application. Therefore the application certificate is false. (Comment: The applicant's statement above resolves this issue, which is not of material concern to third parties).
- b) The land is shown as incidental open space on the title deeds. Enclosure of the open space would erode the gap between fence and pavement to the detriment of the character of the area.
- c) The protected trees could be threatened, including by way of the erection of the fence, to the detriment of the character of the area.
- d) Local children use the site as a play area and this facility would be lost. In general there is inadequate provision for children to play in the area.
- e) The fence would be a target for graffiti and increased vandalism.
- f) There are restrictive covenants affecting the land, and the development would result in the need for private action by residents.
- g) This is the only open space left in the area and should be retained for the community.
- h) 90% of the open space previously enjoyed by the community has been developed.
- i) It was understood that the land would be adopted.
- j) A precedent would be set for the further erosion of open space.

Structure/Local Plan Policies

The relevant policies are:

Joint Structure Plan: Environment Policy 16

Local Plan: Environment Policy 8 and 9.

Planning Considerations

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

- The principle.
- Impact on the trees.
- Impact on the environmental quality of the area.

Planning Assessment

The site is not adopted by the Council. It is not identified as an area for formal recreational use and because of its very close proximity to residential property would not be suitable for such purpose. Its chief attribute is therefore its amenity value. The issue of ownership per se is not relevant. There is never any obligation on a developer to seek to have spaces, not occupied by dwellings, to be adopted by the Council. As such the proposal is capable of being acceptable in principle.

The trees are statutorily protected and this will apply to whoever owns the land. The erection of a fence is unlikely to cause any significant damage to the trees.

The site presently provides an important landscape feature in this residential area. The notable characteristic of the site is its open frontage with the mature trees set back from the road. The relocation of the existing fence, bringing it from between 0- 4 metres nearer to the trees would not materially erode this attractive character. Development of remainder of the land could be controlled by a condition removing permitted development condition.

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 five years from the date of this permission.
1. Reason: To conform with Section 91(1) of the Town and Country Planning Act, 1990.
2. Notwithstanding any details submitted, no development shall take place until there has been submitted to and approved in writing by the Local Planning Authority plans indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed in accordance with the approved details before the development is occupied or in accordance with a timetable which shall first have been agreed in writing with the Local Planning Authority.
2. Reason: In the interests of the appearance of the area.
3. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995, no buildings and no gates, walls, fences or other means of enclosure (other than as approved pursuant to condition 2 above) shall be erected on the application site without the prior written approval of the Local Planning Authority.
3. Reason: To ensure that any such structures are appropriate to the character and appearance of the building.

Informatives:

Further to condition 2 above the re-location of the screen fence as shown on the submitted drawing is hereby approved.

20/05/2003

Item 1.12**Reg. No.** 9 2003 0384 R**Applicant:**

Director Of Services
 Facilities And Development Manager
 South Derbyshire District Council
 Civic Offices
 Swadlincote
 Derbyshire
 DE11OAH

Agent:

Facilities & Development Unit
 South Derbyshire District Council
 Civic Offices
 Civic Way
 Swadlincote
 Derbyshire
 DE11 OAH

Proposal: The renewal of outline planning application 9/2000/0226/O for the erection of a sports hall, swimming pool, multi games area and associated facilities (all matters except means of access to be reserved) on the Playing Fields To The South West Of The John Port School Hilton Road Etwall Derby

Ward: Etwall

Valid Date: 26/03/2003

Site Description

The site comprises the south-west corner of the John Port School playing fields. Hilton Road follows the south boundary of the site and there is a group of trees on the west boundary. The other two boundaries of the site are open to the rest of the playing field.

Proposal

This is an outline application with all matters except access reserved for subsequent approval. Access would be from the Hilton Road frontage where there is an existing access to the school.

Planning History

Outline planning permission was first granted in May 2000

Responses to Consultations

Etwall Parish Council has no objection.

The County Highways Authority has no objection subject to conditions as before.

Severn Trent Water has no objection subject to submission of details of the drainage details and the implementation of the approved details. A leaflet on disposal of swimming pool effluent is to be sent to the applicant if the development is permitted.

The Environment Agency has no objections subject to conditions cover disposal of surface water including a surface water retention scheme if necessary, provision of trapped gullies to all car parking and hard surfaced areas, submission of chemical storage facilities. The Environment Agency also draws attention to the need for approval of culverting of any watercourses and the necessity to consult Severn Trent Water about foul water disposal from swimming pools.

The Environmental Health Manager has no objection.

Responses to Publicity

The proposal has been advertised in the local press, site notices and by means of neighbour letters. No responses have been received.

Structure/Local Plan Policies

The relevant policies are:

Local Plan: Recreation and Tourism Policy 1

Replacement Local Plan: LRT 2 (III)

Planning Considerations

The main issue central to the determination of this application is the material change in policy since the grant of the original outline planning permission.

Planning Assessment

The development would be in accordance with the provisions of Policy LRT 2 of the Emerging Local Plan that makes provision for this facility to be provided at the school. The general location of the site is identified on the Proposals Map. This was not the case in the adopted Local Plan.

Subject to the conditions of the consultees, there are no material changes since the permission was originally granted in 2000.

Recommendation

GRANT permission subject to the following conditions:

1. (a) Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.
- (b) The development hereby permitted shall be begun either before the expiration of five years from the date of this permission or before the expiration of two years from the date of approval of the last of the reserved matters to be approved whichever is the later.
1. Reason: To conform with Section 92(2) of the Town and Country Planning Act 1990.
2. Approval of the details of the siting, design and external appearance of the building(s) the means of access thereto and the landscaping and means of enclosure of the site shall be obtained from the Local Planning Authority in writing before any development is commenced.
2. Reason: The application is expressed to be in outline only and the Local Planning Authority has to ensure that the details are satisfactory.

3. Prior to other works being commenced, the access shown on the submitted drawing shall be widened to a minimum of 5.5 metres with 10 metre radii and surfaced in a solid bound material for a distance 10 metres back from the carriageway edge.
3. Reason: In the interests of highway safety.
4. Land forward of visibility sight lines of 4.5 metres x maximum achievable shall be maintained free of any obstructions to visibility exceeding 1.0 metre in height relative to the nearside carriageway edge
4. Reason: In the interests of highway safety.
5. Space shall be provided within the site for the parking and manoeuvring of staff and visitors' vehicles in accordance with current published standards.
5. Reason: In the interests of highway safety and to ensure that adequate parking and manoeuvring space is provided clear of the highway.
6. No development shall take place until details of a scheme for the disposal of surface and foul water have been submitted to and agreed in writing by the Local Planning Authority. The scheme shall be carried out in conformity with the details which have been agreed before the development is first brought into use.
6. Reason: In the interests of flood protecting and pollution control.
7. In the event that there is insufficient capacity in the existing surface water sewerage system or ground conditions are not suitable for an infiltration drainage system and/or the proposals result in an increase of surface water runoff, no development approved by this permission shall be commenced until a scheme for the provision and implementation of surface water run-off limitation has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved programme and details.
7. Reason: In the interests of flood protection.
8. Prior to being discharged into any watercourse, surface water sewer or soakaway system, all surface water drainage from parking areas and hardstandings shall be passed through trapped gullies with an overall capacity compatible with the site being drained.
8. Reason: In the interests of pollution control.
9. Any tanks for the storage of oils, fuels or chemicals, hereby approved, shall be sited on impervious bases and surrounded by impervious walls. The volume of the bunded compound shall be at least equivalent to the capacity of the tank plus 10%. If there is multiple tankage the compound should be at least equivalent to the capacity of the largest tank, or the combined capacity of interconnected tanks plus 10%. All filling points, vents or gauges and site glasses must be located within the bund. The drainage system of the bund shall be sealed with no discharge to any watercourse, land or underground strata. Associated pipework shall be located above ground and be protected from accidental damage. All filling points and tank overflow pipe outlets shall be designed to discharge downwards into the bund.
9. Reason: In the interests of pollution control.
10. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of five years from the completion of the development die,

are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

10. Reason: In the interests of the appearance of the area.
11. The details required by condition 2 above shall include proposals for all lighting of the site, including floodlights to the multi-games area as well as proposals for the operating hours for the facility.
11. Reason: In order to ensure that all relevant information is available for consideration by the Local Planning Authority.

Informatives:

The land in question is the subject of a Building Line prescribed under the Road Improvement Act 1925 which may need to be rescinded prior to building works can be commenced

Your attention is drawn to the attached leaflet published by Severn Trent Water regarding the disposal of effluent from Swimming Pools.

Limitation of surface water flows may be achieved by: -

- i. A suitable 'Best Management Practice' which may include soakaways in the case of small developments (Examples are given in the Agency's "Guide to Sustainable Urban Drainage" and CIRIA's report 156 "Infiltration Drainage, manual of Good Practice"). This will require the Local Authority building control department's approval and/or
- ii. On site storage with only restricted flow being discharged.

Whichever regulation method is adopted, it is essential the developer enter a suitable legal agreement to ensure satisfactory long-term maintenance and renewal when wanted.

Swimming pool filter backwash should be passed to soakaway or the foul drainage system, and not to a surface water sewer or watercourse. There must be no interruption to the surface water drainage system of the surrounding land because of the operations on the site. Provisions must be made to ensure that all existing drainage systems continue to operate effectively and that riparian owners upstream and downstream of the site are not adversely affected.

Any culverting of a watercourse requires the prior written approval of the Agency under the terms of the Land Drainage Act 1991 or Water Resources Act 1991. The Agency resists culverting on conservation and other grounds, and consent for such works will not normally be granted except for access crossings.

20/05/2003

Item 1.13**Reg. No.** 9 2003 0414 F**Applicant:**

Lawnwood Land C/O Agent

Agent:P. Billham
Mr. P. Billham
Planning & Design
Old School Lodge
Aston On Trent
Derbyshire
DE72 2AF**Proposal:** The erection of 6 dwellings on Land To The East Of Lawn Avenue Etwall Derby**Ward:** Etwall**Valid Date:** 04/04/2003**Site Description**

* The site comprises the rear gardens of dwellings on Lawn Avenue. The site is divided by existing garden boundaries and there is a post and wire fence along the east boundary with sporadic hedge growth.

The application is brought before the Committee, as Councillor Lemmon is a member of the group making the application.

Proposal

The application is for the erection of 6 of 7 dwellings permitted in outline in 2001. Access to the site is via two drives to serve two of the dwellings and a private drive to serve the remainder. The dwellings would be substantial bungalows with accommodation in the roof areas. Some of that roof accommodation is main living accommodation rather than bedrooms. In view of the foregoing, there are some two-storey elements to the dwellings. They would be constructed in red brick under a blue/grey tile roof.

Planning History

As stated above there is an outline planning permission for the erection of 7 dwellings on this site. However, this is a full application as there are differences in respect of the form of access compared to that permitted with the outline application.

Responses to Consultations

Etwall Parish Council comments will be reported at the meeting. It meets to consider the application on 12 May 2003.

The County Highways Authority has no objection subject to a condition requiring details of the drainage proposals to ensure that surface water does not flow onto the highway.

Severn Trent Water has no objection subject to submission of surface water drainage details.

The Environment Agency has no comments

Structure/Local Plan Policies

The relevant policies are:

Joint Structure Plan: Housing Policy 5

Local Plan: Housing Policy 5

Emerging Local Plan: H1 (II), ENV21

Planning Considerations

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

- The Development Plan.
- The accesses.
- The design of the dwellings.
- The impact on the countryside.

Planning Assessment

The proposals accord with the locational policies of the Development plan. The dwellings are located on the edge of a serviced village on land that has been previously used.

Although the number of accesses to Burnaston Lane has been increased, the County Highways Authority is satisfied that they can be accommodated on the frontage without prejudicing highway safety.

The dwellings are to be constructed in red brick under a blue/grey-coloured roof if permitted. This would help to minimise the impact of the dwellings on this edge of settlement location. Precise details have not been submitted but this can be controlled by condition.

The designers of the dwellings have sought to break up the mass of the elevations by use of projecting gables of a width that is typical in South Derbyshire. These help to disguise the wide gables that are normally associated with a standard bungalow and the design respects the local tradition.

The development is on the edge of the settlement and would be apparent from the north and east. From the north, the new dwellings would be seen in the context of other dwellings. However, views of the dwelling from Burnaston Lane when approaching from the east will be apparent as other dwellings are hidden by the landform. This was always going to be the case and it would be possible to mitigate the impact with some tree planting along the east boundary of the site. This element of the development can be controlled by condition.

Recommendation

GRANT permission subject to the following conditions:

1. The development permitted shall be begun before the expiration of five years from the date of this permission.
1. Reason: To conform with Section 91(1) of the Town and Country Planning Act, 1990.
2. No part of the development shall be carried out until precise details, specifications and, where necessary, samples of the facing materials to be used in the construction of the external walls and roof of the building(s) have been submitted to and approved in writing by the Local Planning Authority.
2. Reason: To safeguard the appearance of the existing building and the locality generally.
3. No development shall take place until there has been submitted to and approved by the Local Planning Authority a scheme of landscaping, which shall include indications of all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection in the course of development. The scheme shall make provision for tree planting along the east boundary of the site in the form of an avenue of native tree species.
3. Reason: In the interests of the appearance of the area.
4. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.
4. Reason: In the interests of the appearance of the area.
5. No work shall take place on the site until details of a scheme for the disposal of surface water have been submitted to and agreed in writing by the Local Planning Authority. The scheme shall be carried out in conformity with the details that have been agreed before the development is first brought into use. The submitted scheme shall make provision to prevent the surface water spilling onto Burnaston Lane from any of the proposed access points. The approved scheme shall be implemented before the first occupation of any of the dwellings served by the accesses.
5. Reason: In the interests of flood protection.
6. Prior to the first use of the development hereby permitted, parking facilities shall be provided so as to accommodate, in the case of dwellings of four or more bedrooms three cars, in any other case two cars within the curtilage of each dwelling, or in any alternative location acceptable to the Local Planning Authority or as may otherwise be agreed in writing by the Local Planning Authority in accordance with its published standards. Thereafter three parking spaces (in the case of dwellings with four or more bedrooms) or two parking spaces (in any other case), measuring a minimum of 2.4m x 4.8m, shall be retained for that purpose within the curtilage of each dwelling unless as may otherwise be approved in writing by the Local Planning Authority.
6. Reason: To ensure that adequate parking/garaging provision is available.

20/05/2003

Item 2.1**Reg. No. 9 2002 0387 O****Applicant:**

Mr I Jones
 Etwall Garage, Derby Road
 Etwall
 Derby
 DE656LR

Agent:

Mr G Bannon
 The Old Courthouse
 18-22 St Peters Churchyard
 Derby
 DE11NN

Proposal:

Outline application for the erection of two offices and seven dwellings (all matters other than access and siting reserved for further approval) at Etwall Garage Derby Road Etwall Derby

Ward:**Etwall****Valid Date:****05/04/2002****Site Description**

The site comprises two areas, one the existing garage site with its car sales area, workshop and petrol filling station; the other is a small area of the land where permission was granted for redevelopment of the garage and for roadside facilities.

The garage site lies immediately adjacent to the A516 it has a low boundary wall on the frontage and a variety of the boundary treatments along its other boundaries. The applicant's dwelling lies immediately to the west of the garage site.

The office development would be located on a strip of land immediately adjacent to the Seven Wells Public House. There is a ditch and hedge along the north boundary and the access road to the public house along the south boundary. Hedges lie along the east and west boundaries.

Proposal

There are two elements. The garage site is for the erection of 7 dwellings and the second is for the erection of two office blocks. Both applications are submitted in outline all matters reserved for subsequent approval if the principle of the development is found acceptable.

Applicants' supporting information

It is the applicant's contention that the Council is bound by the provisions of the Section 106 Agreement dated 8 February 1996. The applicant has based his decisions to sign agreements on the wording of the Agreement and would be significantly disadvantaged if the Council do not go along with the current application when it committed itself to residential use in the 1996 Agreement. The applicant felt comforted by the fact that the when the time came to close his

business and move to the new site, he would be able to enjoy the benefit of a residential use of the site as set out in the Agreement. The applicant is therefore dismayed that Council officers are mindful to recommend that the application be refused. An example of one cost of closing the business is cited, £29,900 just to make safe the petrol storage tanks. There would also be significant other costs involved in relocating business to the new site.

It is their contention that if residential use was acceptable in 1996, it is hard for them to understand why it is not so now. The applicants then list a series of decisions that have been granted over the years in the countryside. Reference is also made to the better use now required of brownfield land by government and that there is a pressing need for new homes.

The applicant's appeal directly to the committee for a favourable decision as they would like to work with the Authority rather than against it and its officers. The applicant's are keen that the application be determined rather than see it drag on.

Notwithstanding the contention by officers that the signing of the original agreement was perverse, a judge or planning inspector would judge the wording of the Agreement in its final form and not on what was intended. It is fanciful for officers to suggest that it is, the wording should have been thoroughly checked before the Agreement was signed. The Planning Authority cannot say that it did not know what it was signing back in 1996 and as such the Authority should stick by its signed agreement and grant planning permission for this application.

There is a comment on this aspect of the applicant's case in the 'Planning Assessment' below.

Planning History

The original application submitted in November 1994 (9/1994/0700/O) was for the relocation of the car sales and car maintenance business, provision of a motel and a food retail building on land adjacent to the existing garage site. The Committee resolved that permission would be granted subject to a Section 106 Agreement regarding the closure of access to the A516 and the restoration of the site either as domestic curtilage or as agricultural land. The minutes of the Development Control Sub Committee of 23 May 1995 - PL/16 refer. This decision to grant planning permission was contrary to Officer Recommendation.

There then followed a considerable period of negotiation regarding the provisions of the Section 106 Agreement and several drafts of the Agreement were submitted for consideration and comment by the Council. In the earlier drafts of the Agreement, the words 'residential use' appeared rather than 'domestic curtilage' as required by the resolution of the Committee in respect of the restoration of the garage site.

The final sealed document contained the words 'residential use' as an option for the restoration of the site along with 'agricultural land'. The original planning permission was then issued with the Section 106 Agreement. The Agreement was finalised on 8 February 1996.

After the permission was issued, an application for the erection of a pub was submitted as a reserved matter application. This ultimately became the Seven Wells Public House. This was built on an area of land identified in the Agreement as 'the purple land'. When the purple land was developed, the operator of the petrol filling station was required to shut the accesses to the petrol filling station and remove the pumps etc.

Within 2 years of the opening of premises on the purple land, the whole of the car repair and car sales areas should have relocated to the new site. The clock is ticking on the two-year period. The accesses have not been closed nor has the petrol filling station been removed. The objective of the closure of the accesses was to remove them in the interests of highway safety. This was due to their close proximity to the traffic island on the A516 trunk road.

The Agreement envisaged the development of a replacement petrol filling station on the purple land. However, there was nothing in the Agreement that precluded an alternative user on the purple land. This matter was investigated at the time the pub application was submitted as a reserved matters application and again when the public house was opened.

Approval of reserved matters for the relocation of the car sales and maintenance building has also been granted along with temporary provision for car sales on the area proposed for the office development.

The time for the submission of details on the original outline planning permission has also expired but is kept 'alive' by an outstanding application where the applicant is not willing to sign a deed of variation to carry forward the original Section 106 Agreement. (9/1999/0659 refers)

Responses to Consultations

Etwall Parish Council strongly objects' the garage should be retained, if not that then the land should be used for commercial purposes, not residential. The green fields between Etwall and Mickleover should be retained, this proposal is outside any development boundary. It is not desirable to have houses on the trunk road. The site is poorly served by drains and there is a concern that the land may be subject to flooding. Villages need five 'p's' to survive (parson, pupil, pub, post and petrol). If this petrol station were closed, then there would be a danger for villagers trying to access the site at Burnaston.

The County Highways Authority has concerns about the suitability of the access arrangements and would like to see revised plans for access to the housing part of the site. It may be preferable for the dwellings to be served from Derby Road subject to the views of the Highways Agency.

The Highways Agency has no objection subject to the road accesses to Derby Road being closed before development is commenced. It also advises that the closure of the accesses would need to be notified to the Agency if works are to be undertaken within highway limits.

The Environment Agency has removed its original holding objection following an assessment of flood risk. It requests that conditions be applied to any permission that may be granted. Conditions would include a requirement for dealing with contamination on the site and the safe treatment of the fuel storage tanks.

Severn Trent Water has no objection.

The Environmental Health Manager has concerns about the noise impact on future occupiers of the dwellings and draws attention to the need for contaminated land issues to be properly addressed. Conditions and informatives are recommended.

Structure/Local Plan Policies

The relevant policies are:

Joint Structure Plan: General Development Strategy Policies 1 & 4, Housing Policy 6

Local Plan (adopted): Environment Policy 1, Housing Policy 8

Local Plan (revised deposit draft): ENV 7, 10, 13, 21(F); H1,

Planning Considerations

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

- The provisions of the 1996 Section 106 Agreement
- The Development Plan
- Other material considerations

Planning Assessment

The Section 106 Agreement does not obviate the need to consider the current application on its own merits, having regard in the first instance to the Development Plan, to which the application runs counter. The requirement in the Agreement can be met without erecting new dwellings, by using the land for residential purposes incidental to the existing dwellinghouse. The fact that the word 'domestic curtilage' did not appear in the agreement does not free the Authority from its obligation to determine applications in accordance with the Development Plan. This point has been the subject of considerable debate between the Authority and the applicant. The Chief Executive has decided that the matter should be referred to Counsel for an opinion. The opinion is reproduced in full for Members' consideration in ANNEXE A.

Members should pay particular attention to the 'CONCLUSION' at Paragraph 26, namely that "Clause 3(e) of the Section 106 Agreement dated 8 February 1996 can be complied with in a number of ways that do not require the grant of planning permission for new dwellings." This advice completely rebuts the '**Applicant's supporting information**' as outline above.

Of course, it is open to the applicants to challenge this interpretation of the Agreement in the courts. The applicant would have the usual right to appeal against the decision of this Committee if it resolved that the application be refused.

The Development Plan policies as set out above mitigate against residential development in the countryside. It is noted that the applicants claim that the site is brownfield land and that the redevelopment for housing would accord with national advice. Policy H1 of the replacement Deposit Draft of the South Derbyshire Local Plan requires that development of brownfield sites be limited to those within designated settlements. This is a clarification of the principles for determining applications in the countryside set out in the adopted County Structure Plan.

In terms of the adopted policies, the development is in the countryside wherein housing development is only acceptable if there is a justification for it. Usually this would mean a dwelling being erected to meet the needs of the agricultural industry.

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

Recommendation

REFUSE permission for the following reason:

1. The proposal conflicts with the approved Derby and Derbyshire Joint Structure Plan General Development Strategy Policies 3 & 4 and Housing Policy 6 and the adopted South Derbyshire Local Plan Environment Policy 1 and Housing Policy 8 which seek to permit residential development outside settlements only if it is necessary to the operation of a rural based activity. The development would result in a unnecessary intrusion into the countryside to the detriment of the rural character of the area, which is unwarranted in the absence of such a need. These policy objectives are also repeated in the emerging replacement South Derbyshire Local plan at ENV 7 & H1

20/05/2003

Item 2.2**Reg. No.** 9 2003 0053 U**Applicant:**

Messrs D & P Edwards C/O Agent

Agent:

Andrew Thomas

Andrew Thomas Planning

2 Wrekin Close

Ashby-De-La-Zouch

Leics

LE65 1EX

Proposal: Use of land for the storage of touring caravans at Seale Lodge Farm Burton Road Acresford Swadlincote**Ward:** Netherseal**Valid Date:** 07/03/2003**Site Description**

The site is located within open countryside north east of Netherseal village. The site adjoins the Applicants dwelling and agricultural buildings to the west and a single dwelling to the south. The site is an open field surrounded by hedges and separated from Acresford by an area of woodland.

An area of land to the south west of the current application site has consent for the storage of 23 caravans.

Proposal

The application is for the storage of touring caravans on an area of land measuring approximately three-quarters of a hectare. Woodland planting is proposed on the eastern side of the site. Access is shown using the existing driveway.

Applicants' supporting information

The application proposes an increase in the area to be used for caravan storage. This will result from the retention of the existing caravan storage area (both the approved area and that which is presently unauthorised), together with the use of an additional area for storage immediately behind the farmhouse.

The proposals would provide a much needed source of income to supplement the applicant's income derived from more traditional agricultural activities and the existing caravan storage business at Seale Lodge Farm.

Whilst the overall area devoted to caravan storage is to increase, the application envisages a significant reduction in the area identified in the previous (refused) application. In particular, you will note that the proposed storage area does not extend away from the farmhouse into the fields to the rear as far as was previously proposed. The proposals also provide for substantial areas of woodland planting around the storage area.

The Local Plan doesn't contain any policies of direct relevance to proposals for the storage of caravans, however some of the provisions of Recreation and Tourism Policy 10 (Touring Caravan and Camp Sites) may be considered appropriate guidance in this case. The policy seeks to ensure that proposals do not result in an unduly prominent intrusion into the countryside, they should not cause disturbance to local amenity by virtue of noise or traffic generation, proposals should be of an appropriate scale and integrated with its surroundings and there should be adequate access, servicing, screening and parking.

Paragraph 1.7 of PPG7 acknowledges that farmers are increasingly diversifying into other activities to supplement their incomes. In March 2001, Planning Minister Nick Raynsford indicated that PPG7 was to be updated to make it clear that local authorities should take a positive approach towards farm diversification proposals. PPG7 was duly amended and paragraph 3.4A was amended to acknowledge that diversification into non-agricultural activities is vital to the continuing viability of many farm businesses. Paragraph 3.4a goes on to advise local planning authorities that they should be supportive of diversification schemes that are consistent in their scale with their rural location.

The caravan parking areas will be screened from the A444 by a mixture of existing buildings and natural features. There is an existing mature hedge and a belt of tree planting along the western and north western boundaries of the caravan parking areas which will help to ensure that the proposals will not result in an unduly prominent intrusion into the countryside and be integrated into their surroundings. Additional woodland planting to the southern boundary of the site will help to screen the proposal from views in that direction. The visual impact of the proposal will, therefore, be minimised to an acceptable degree, consistent with its surroundings and the character of the area.

The caravan storage areas and access are positioned so that they are unlikely to cause any disturbance to local amenity by virtue of noise or traffic generation.

The applicants only intend to store touring caravans at the site and many of the caravans that are presently stored there belong to people who live in urban areas where there are often restrictions placed upon the storage of caravans (covenants or planning restrictions). Quite often, caravan storage takes place on small areas of wasteland or underused land. The redevelopment of such sites (in accordance with the aims of PPG3) places pressure on caravan owners to find alternative storage such as Seale Lodge Farm.

Whilst the use will generate additional traffic movements in the countryside, these will be limited and infrequent. The authority seeks to encourage employment uses in the countryside and it should be noted that the proposals will secure employment for the applicants and help to ensure that they do not have to travel to nearby urban areas on a regular basis for alternative employment. On balance therefore, whilst there will be some additional traffic associated with the proposal, nonetheless, I do not consider that it would undermine national or local planning policies which seek to secure sustainable forms of development.

The existing caravan storage use at Seale Lodge Farm is an integral part of the applicant's business and farm diversification intentions. Without such additional income the income derived from traditional agricultural activities presently undertaken would not be sufficient to support the business or the applicants' livelihood. The expansion of the caravan storage area is therefore considered to be of paramount importance to the continued viability of Seale Lodge Farm

The proposal appears to accord with the general thrust of policies relating to caravans in the development plan and national planning policy guidance. The proposals have been amended to overcome the previous reasons for refusal and they also appear to be consistent with the emphasis presently being given to farm diversification projects.

The applicants are facing severe hardship following the recent decline in the profitability of agriculture along with other farmers in the area. The project, if approved, would provide a source of additional income which would help to sustain my clients' existing farming activities.

Planning History

Planning permission for the farmhouse and associated buildings was granted in 1992.

Planning permission for the storage of 23 caravans to the rear of the buildings was granted in 2001.

Planning permission for the storage of caravans on the same site as the current application site was refused in 2002 for reasons of unacceptable visual intrusion into the rural landscape and the fact that the development was considered to be contrary to the principles of sustainable development.

Responses to Consultations

The County Highway Authority has no objections.

Netherseal Parish Council object to the planning application on the grounds that the size of the proposed development would create a visual intrusion into the countryside and on the skyline. If the application was granted the Parish Council would request that the following conditions should be put in place:

- A tree planting scheme, to form a suitable adequate screen, should be implemented immediately using quick growing species.
- Earth mounds should also be implemented immediately.
- Any lighting installed should be sympathetic to the surroundings and low level.

Responses to Publicity

Twenty four letters of objection have been received raising the following issues:-

- The proposal is contrary to government policies as it is greenfield land.
- The site is in a prominent, hillside location and clearly visible from considerable distances away, the caravans reflect the sun.
- There is an adverse impact on the privacy of the occupiers of dwellings located close to the site.
- The development is an eyesore and is not well screened, it is especially visible in winter months.

- The development will result in additional traffic using the A444 and could result in accidents.
- No planning permission exists for the current levels of caravan storage on the site.
- Safety and security issues.
- Detrimental impact on wildlife.
- The planting that has been carried out does nothing to screen the site because the trees are only 1-2 feet tall.

Fourteen letters of support for the application have been received raising the following issues:

- Many people lack space to store caravans at their houses or have restrictive covenants in their deeds preventing caravan storage and therefore the service provided is necessary.
- Storage of caravans at dwellings advertises when the occupier is absent raising security problems.
- There is a shortage of such caravan storage facilities.
- The proposal is a good example of farm diversification.
- The development will not result in any noise issues or traffic problems.

Structure/Local Plan Policies

The relevant policies are:

Joint Structure Plan: General Development Strategy Policy 4.

Local Plan: Environment Policy 1.

Draft Local Plan: Policy Env 7.

Planning Considerations

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

- Whether the proposal complies with development plan policy.
- The impact of the development on the countryside.

Planning Assessment

The development plan contains no specific policy relating to caravan storage in the countryside. However more general environment policies require that any development in the countryside is either essential in its location or is unavoidable and that the character of the countryside is protected. In this case the applicants wish to store caravans at the site as a diversification to the farming business. However, this is not an essential operation in the countryside.

Planning permission was granted in 2001 for the storage of 23 caravans on a very limited site area located directly to the rear of the existing farm buildings. However since then the storage operations have grown and cover a much larger area of the field, planning permission was refused for this larger site in 2002. The current application is for the same site as the previously refused application although the actual land area proposed for the storage of caravans has been reduced and a wider bank of woodland planting is now proposed on the eastern area of the site. It is not considered that this amended scheme overcomes the previous reasons for refusal, which were on grounds of adverse visual intrusion in the countryside and the fact that the development would not be sustainable.

The site is in a prominent location on a hillside and is clearly visible from the A444 and from dwellings to the east of the site, particularly in winter when the trees have no leaves. Planting has been carried out to the west and north of the site although the trees are under a metre in height and do not mitigate against the visual intrusion of the caravans in the countryside. It is considered that the storage of caravans on this scale in this location has an adverse impact on the character of the rural landscape.

Recommendations

a. **REFUSE** permission for the following reasons:

1. The proposed use of the site would result in the creation of an unacceptable visual intrusion into the rural landscape contrary to General Development Strategy Policy 3 and Environment Policy 1 of the Joint Structure Plan, Environment Policy 1 of the Local Plan and Policy ENV 3 of the Revised Deposit Draft of the Local Plan which seek to ensure that the character of the rural landscape and the countryside is protected from inappropriate development.
 2. The development runs contrary to the principles of sustainable development in that it encourages trips by private motor vehicles to deliver and collect the caravans from urban areas. The proposal is therefore contrary to General Development Strategy Policy 1 of the Joint Structure Plan which seeks to ensure that new development respects the principles of sustainable development by contributing to the provision of opportunities for (inter alia) protecting and improving the natural environment and minimising pollution.
- b. That the Committee authorise the Planning Services Manager and the Legal and Democratic Services Manager to take all necessary actions to secure the removal of the unauthorised caravans and reinstatement of the site.

ANNEXE A

IN THE MATTER OF A S 106 AGREEMENT

AND IN THE MATTER OF AN APPLICATION FOR PLANNING PERMISSION
INCLUDING BUILT RESIDENTIAL DEVELOPMENT

AT IAN JONES MOTORS, ETWALL GARAGE, DERBY ROAD, ETWALL

ADVICE

SOUTH DERBYSHIRE DISTRICT COUNCIL

CIVIC OFFICES

CIVIC WAY

SWADLINCOTE

DERBYSHIRE

DE11 0AH

YOUR REF : LS/PL/17/112

OUR REF : CSL/76370/2138

ADVICE

1. By an application date stamped as received on the 5th April 2002, Ian Jones Motors ("the Applicants") sought planning permission from South Derbyshire District Council for two single storey office buildings, extension to access road and four two storey semi detached dwellings and three two storey detached dwellings on land at Etwall Garage, Derby Road and land off Heage Lane, Etwall. The application is for outline permission with design, external appearance and landscaping as reserved matters. The existing use is described as "garage and service of motors".
2. The application states that it is made "to comply with previously agreed section 106".
3. The reference in the planning application to a "previously agreed section 106" is a reference to a Deed dated the 8th February 1996 made between (1) the Council, (2) the Owner, (3) the Partners, and (4) Gulf Oil, relating to land which includes the application site. Ian Jones is the Owner and one of the Partners as defined in the Deed.
4. The Deed is an Agreement pursuant to s 111 of the Local Government Act 1972 and s 106 of the Town and Country Planning Act 1990 and all other enabling powers.
5. The Deed states (clause 2) that the covenants contained in it are planning obligations within the terms of s 106 and are enforceable by the Council.
6. The Deed refers to two planning permissions which the Council was disposed to grant subject to the execution of the Deed. Those two planning permissions were granted on the day the Deed was executed. Those two permissions did not include any residential development.
7. The planning permissions included permissions for new petrol filling stations on land described in the Deed as the red land and the purple land. Clause 3 (a) of the Deed states that

"Within 7 days of the commencement of trading on the purple land the Partners shall not use or cause or permit the blue land to be used for trading as a petrol filling station."
8. Clause 3 (e) states that :

"Within two years from ceasing to trade as proprietors of the petrol filling station as aforesaid on the blue land the Partners shall restore the blue land to agricultural or residential use or to such other uses as may be permitted by the local planning authority in response to a planning application made in that regard."
9. The blue land forms part of the 2002 application site.
10. I am instructed that the Applicants contend that the Council are estopped from properly determining the 2002 planning application in accordance with current policy and must allow

residential use as set out in the planning application.

11. Section 57 of the 1990 Act states that planning permission is required for the carrying out of any development of land. However, section 55 (2) (e) states that the use of land for the purposes of agriculture shall not be taken for the purposes of the 1990 Act to involve development. Accordingly, planning permission is not required for the use of land for agriculture, and it follows that clause 3 (e) can be complied with without the grant of a planning permission.

12. A dwelling and its curtilage would generally be referred to in the context of town and country planning as in residential use, and since the blue land is adjacent to an existing dwelling, residential use within clause 3 (e) can be met by incorporating the blue land into the curtilage of the existing dwelling, without a planning permission for the erection of any new dwellings.

13. There may be non residential uses of the blue land which would receive planning permission, and the implementation of such a permission would comply with clause 3 (e).

14. Accordingly, as a matter of interpretation of its language, clause 4 (e) does not contain any representation, or establish any legitimate expectation, that planning permission would be granted for new houses.

15. It follows that the 2002 planning application falls to be determined by reference to current policies and circumstances.

16. I reach this conclusion as a matter of interpretation of the language of the Deed, but I would add that as a general rule of administrative law, a statutory authority may not by contract fetter the future exercise of its statutory discretionary power, for example its power under ss 58 and 70 of the 1990 Act to grant or refuse planning permission having regard to the development plan and other material planning considerations.

17. *Windsor and Maidenhead Royal Borough Council v Bandrose Investments Limited* [1983] 1 WLR 509 involved an agreement under s 52 of the Town and Country Planning act 1971 (which was the predecessor of s 106 of the 1990 Act) and s 29 of the 1971 Act (which was the predecessor of s 70 of the 1990 Act). Lawton LJ said, p 514 G - 515B that :

“Section 29 is the lynch pin of this part of the Act. When exercising powers under it a local planning authority are performing a public duty. They cannot bind themselves in advance as to how they will perform it, nor can they do more than the Act says they can do. Section 52 (1) empowers a local planning authority to make agreements to achieve ends which it could not achieve without the consent of an applicant for planning permission. It does not empower a local planning authority to grant planning permission otherwise than as provided by sections 26 to s 29 of the Act.

18. He went on to point out at p 515C that

“Were the law otherwise, section 52 agreements would be the equivalents of planning permissions to the prejudice of those entitled under ss 26 to 28 to object to grants.”

19. Although s 52 of the 1970 Act was replaced by s 106 of the 1990 Act which is in some respects different, the principles just mentioned continue to apply. The *Windsor and Maidenhead Royal Borough Council v Bandrose Investments Limited* case is referred to as representing the current law in the notes to s 106 of the 1990 Act in the Planning Encyclopedia, vol 2, at para P106.67.

20. There may be exceptions to the general rule, as demonstrated for example by the housing case of *R v London Borough of Hammersmith and Fulham, ex parte Beddows* [1987] 1 All ER 369 in which a resolution of the Council to dispose of a housing estate to a developer and to enter into a covenant not to grant new lettings on the Council’s retained land except by long leases at a premium, was held not to be an unlawful fetter on future housing policy. Fox LJ stated the principle as

“It is clear that a local authority cannot, in general, make declarations of policy which are binding in the future on the council for the time being. But it may be able to do so by the valid exercise of other statutory powers. If a statutory power is lawfully exercised so as to create legal rights and obligations between the council and third parties, the result will be that the council for the time being is bound, even though that hinders or prevents the exercise of other statutory powers.”

21. However, I cannot interpret the s 106 agreement in this case as containing any legal right in the Applicants to receive, or legal obligation on the Council to grant, a planning permission for new houses.

22. The doctrine of estoppel in planning law has been replaced by legitimate expectation. This occurred in *R (On the Application of Reprotech (Pebsham) Ltd) v East Sussex County C* [2003] 1 P&CR 63. Lord Hoffman (p 72, para 33) found it “unhelpful to introduce private law concepts of estoppel into planning law”. He said (p 72, para 34) that although there was an analogy between a private law estoppel and the public law concept of legitimate expectation created by a public authority the denial of which may amount to an abuse of power, it was no more than an analogy. It was true (p73, para 35) that the language of estoppel had been used in relation to planning law. However (p 73, para 35)

“It seems to me that in this area, public law has already absorbed whatever is useful from the moral values which underlie the private law concept of estoppel and the time has come for it to stand upon its own two feet.”

23. In *Reprotech* the issue concerned the process of determining whether development requiring planning permission was involved. The case emphasised the public interest element in planning decisions. Lord Hoffman said that

ANNEXE A

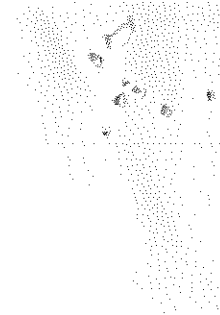
“..... a determination [as to whether planning permission is required] is not simply a matter between the applicant and the planning authority in which they are free to agree on whatever procedure they please. It is also a matter which concerns the general public interest and which requires other planning authorities, the Secretary of State on behalf of the national interest and the public itself to be able to participate.”

24. Subsequent cases have followed the lead provided by *Reprotech* and applied the public law legitimate expectation principle. For example *Henry Boot Homes Ltd v Bassetlaw District Council* [2002] EWCA Civ 983, where the issue was whether the conduct of the local planning authority had established a legitimate expectation that development commenced without compliance with conditions precedent would be regarded as commenced within the life of the planning permission. In that case the Court of Appeal (para 52) quoted with approval the words of Sullivan J at first instance :

“ it is important at all times to remember the public nature of town and country planning. It is not a matter for private agreement between developers and local planning authorities.”

25. This recently evolving line of reasoning in planning law cases, which emphasises the public nature of the planning system, points towards the view that only in exceptional cases will representations (or other conduct) by a planning authority create a legitimate expectation that the usual procedures and processes of the statutory planning system will be varied. The determination of planning applications in accordance with the development plan and other material planning considerations current at the time the application is considered, is a rule of the statutory system, and I cannot interpret the s 106 agreement in this case as containing any basis for making an exception to that rule in the present case.

26. CONCLUSION. Clause 3 (e) of the s 106 agreement can be complied with in a number of ways which do not require the grant of a planning permission for new dwellings, and accordingly that clause does not contain any representation or create any legitimate expectation that such a planning permission will be granted. Recent case law has emphasised the public interest in adherence to the statutory procedures and only in exceptional cases will representations (or other conduct) by a planning authority create a legitimate expectation that the usual procedures and processes of the statutory planning system will be varied. The determination of planning applications in accordance with the development plan and other material planning considerations current at the time the application is considered, is a rule of the statutory system, and the s 106 agreement in this case does not contain any basis for making an exception to that rule. It follows that the April 2002 planning application should be determined in accordance with current policies and circumstances.



10/10/10

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APPEALS DISMISSED

A.

Appeal by Mr & Mrs Price

The use of land for the siting of 5 caravans and the erection of a utility block and associated septic tank/soakaway at Land At Cauldwell Road Linton Swadlincote (9/2001/0814)

The application was refused permission for the following reason(s):

1. *Housing Policy 8 of the Joint Structure Plan and Housing Policy 15 of the Local Plan seek to ensure that gypsy caravan sites are permitted (inter alia) where they are acceptable in environmental terms. In this case there is strong evidence to suggest that the site is contaminated by the presence of land fill gas and asbestos and it has not been demonstrated that the site is safe for human habitation free of risk. The development is therefore contrary to the above policies.*

The Inspector found that the site met the Council's land use policies except in respect of health and safety issues. The Inspector's main conclusions were that to permit residential caravans on the site would involve an unacceptable risk to health and safety from the possibility of explosion, fire or fumes from landfill gases, principally methane. He considered that the composition of the tipped materials and the presence of asbestos would aggravate the situation and on this basis dismissed the appeal.

The Inspector has amended the Enforcement Notice to extend the period of compliance to eight months to allow the appellants' time to find an alternative home.

B.

Appeal by Renovations

The formation of a vehicular access to serve 149 and 151 Woodville Road Hartshorne Swadlincote (9/2002/0251)

The application was refused permission for the following reason(s):

1. *The vehicular access would result in the introduction of turning movements to and from a classified highway at a location where visibility is substandard contrary to the best interests of highway safety and Places, Streets and Movement the companion guide to Design Bulletin 32.*

The Inspector considered the main issue in this case to be the effect of the development on highway safety. He considered the appeal on its own merits, having regard to advice contained in DB32 and Places, Streets and Movements - A companion guide to DB32. He observed that the proposal does not accord with the recommended visibility splay of 2m back from the highway extending 120m in both directions. In addition two vehicles would be unable to pass on the access due to its insufficient width and visibility was further hindered by boundary fences and railings.

He considered that the increased use of the access, even if vehicles could leave in a forward gear, would result in an increased and unacceptable danger to road users. He said that as there are no restrictions to prevent on street parking, the displacement of such parking could be afforded little weight.

He concluded that the proposed development would unacceptably prejudice highway safety contrary to advice contained in DB32 and its companion guide 'Places, Streets and Movement'.

C.

Appeal by Henry Ltd

The erection of 10 dwellings Phase 7 Of Henry Boot Development Off Sorrel Drive Woodville Swadlincote (9/2002/0191)

The application was refused permission for the following reason(s):

1. *The development would result in the loss of a section of embankment and woodland whose amenity value it is in the public interest to protect, both as a highly visible wooded border on the north east edge of Woodville, as a clear physical buffer between built development and the countryside and as an important wildlife corridor. The development would result in a prominent intrusion into the rural landscape and would involve the loss of this important landscape feature which makes a valuable contribution to the environmental quality of the area contrary to:*

Regional Planning Guidance for the East Midlands: Policy 29: Protecting and Enhancing Natural and Cultural Assets.

Joint Structure Plan: General Development Strategy Policy 1: Sustainable Development; General Development Strategy Policy 2: Scale and Nature of Development; General Development Strategy Policy 3: Location and Density of Development; Housing Policy 3: Housing Development Within Urban Areas; Housing Policy 4: Housing Development Well Related to Urban Areas; Environment Policy 16: Trees and Woodlands.

Local Plan: Housing Policy 4: Housing Development Swadlincote; Environment Policy 8: Open Spaces in Villages and Settlements; Environment Policy 9: Protection of Trees and Woodlands.

The Inspector considered the main issue in this case to be the effect of the development on the character and appearance of the surrounding area.

She concluded that the appeal site is not substantially surrounded by development, that it would involve the loss of a prominent landscape feature which makes a valuable contribution to the character and environmental quality of the area and of an area of woodland (subject to a Tree Preservation Order) of value to its landscape setting, and that it would constitute a prominent intrusion into the rural landscape. Furthermore, having regard to advice in PPG3, the development site does not fall to be considered as previously developed land and its value in terms of its visual amenity is such that it cannot be regarded as requiring development. The proposal would therefore have a significant and adverse impact on the character and appearance of the surrounding area, contrary to General Development Strategy Policies 1, 2 and 3 and Housing Policy 4 of the Joint Structure Plan and to Housing Policy 4 and Environment Policy 9 of the Local Plan.

In addition, whilst she accepted that there were no protected species within the appeal site, she reiterated the observations of the Derbyshire Wildlife Trust that it provides a valuable wildlife corridor in an urban fringe location. She considered that the wildlife interest of the site would not necessarily preclude the form of development proposed, but, nonetheless, the loss of this established wildlife habitat served to add weight to her findings in relation to the impact of the development on the character of the wider area.

She also observed that the proposed development would not prejudice the continuity of a cycle route, since provision had already been made to incorporate a cycle way along an adjacent access road linking back onto the former railway line. Accordingly the appeal did not fail on this.

D.

Appeal by Regional Homes Ltd

The retention of of four signs (1 being in the car park of the Chesterfield Arms Public House) at the entrance to the development at Bretby Hall Hospital Bretby Burton On Trent (9/2002/0693)

The application was refused permission for the following reason(s):

1. *The amount of information contained on the signs is likely to be difficult to assimilate and this is exacerbated by the inclusion of lettering in a small type face. The signs are therefore regarded as a distraction to motorists on this busy section of principal road and their retention would be detrimental to highway safety.*
2. *The excessive number and size of the signs has resulted in a proliferation of signage adjacent to this principle highway which gives a cluttered and unsightly appearance in this urban fringe location thus detracting from the amenity of the area.*

The Inspector considered that the signs would be readily visible to motorists and would be able to assimilate the contents of the signs without causing a problem for other road users.

With respect to amenity he considered that the two wall mounted access signs would not be unduly intrusive features in the streetscene or create an excessive amount of advertising adjacent to the access.

He considered that the V shaped sign to the rear of the wall would stand out as an unduly intrusive feature in the streetscene.

He considered that the pole-mounted sign in the Chesterfield Arms car park with housing in the background would be an unduly intrusive feature in the streetscene. He was also of the opinion that the display of the signs would lead to excessive signage relating to the Bretby Hall development.

He concluded that the wall mounted signs were acceptable but that the V sign and pole-mounted sign would be detrimental to interests of amenity.

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