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Date: 22 February 2016

Dear Councillor,

Planning Committee

A Meeting of the **Planning Committee** will be held in the **Council Chamber**, Civic Offices, Civic Way, Swadlincote on **Tuesday, 01 March 2016 at 18:00**. You are requested to attend.

Yours faithfully,



Chief Executive

To:- **Conservative Group**

Councillor Roberts (Chairman), Councillor Mrs. Brown (Vice-Chairman) and Councillors Atkin, Mrs. Farrington, Ford, Grant, Mrs. Hall, Stanton and Watson.

Labour Group

Councillors Dunn, Pearson, Shepherd and Southerd.

AGENDA

Open to Public and Press

- 1** Apologies and to note any substitutes appointed for the Meeting.
- 2** To note any declarations of interest arising from any items on the Agenda
- 3** To receive any questions by Members of the Council pursuant to Council procedure Rule No. 11.
- 4** REPORT OF THE DIRECTOR OF COMMUNITY AND PLANNING SERVICES **3 - 76**

Exclusion of the Public and Press:

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

REPORT OF THE DIRECTOR OF COMMUNITY AND PLANNING SERVICES

SECTION 1: Planning Applications

SECTION 2: Appeals

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

1. PLANNING APPLICATIONS

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

Reference	Item	Place	Ward	Page
9/2015/0959	1.1	Elvaston	Aston	5
9/2015/0997	1.2	Stenson	Stenson	15
9/2015/1079	1.3	Findern	Willington & Findern	21
9/2015/1092	1.4	Overseal	Seales	35
9/2016/0004	1.5	Mickleover	Etwall	46

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

Item **1.1**

Reg. No. **9/2015/0959/SSO**

Applicant:
JSC Farming Ltd And
Central Land Holdings Limited
C/O Agent

Agent:
Mr Michael Knott
Barton Willmore LLP
The Blade
Abbey Square
Reading
RG1 3BE

Proposal: **OUTLINE APPLICATION (ALL MATTERS TO BE RESERVED) FOR THE CONSTRUCTION OF A TWO-FORM ENTRY PRIMARY SCHOOL AND ASSOCIATED ACCESS, CAR PARKING, OUTDOOR PLAY SPACE, SURFACE WATER DRAINAGE, SERVICES, LIGHTING, SIGNAGE AND LANDSCAPING ON LAND AT SK3931 2744 MILL HILL BOULTON MOOR DERBY**

Ward: **ASTON**

Valid Date: **14/10/2015**

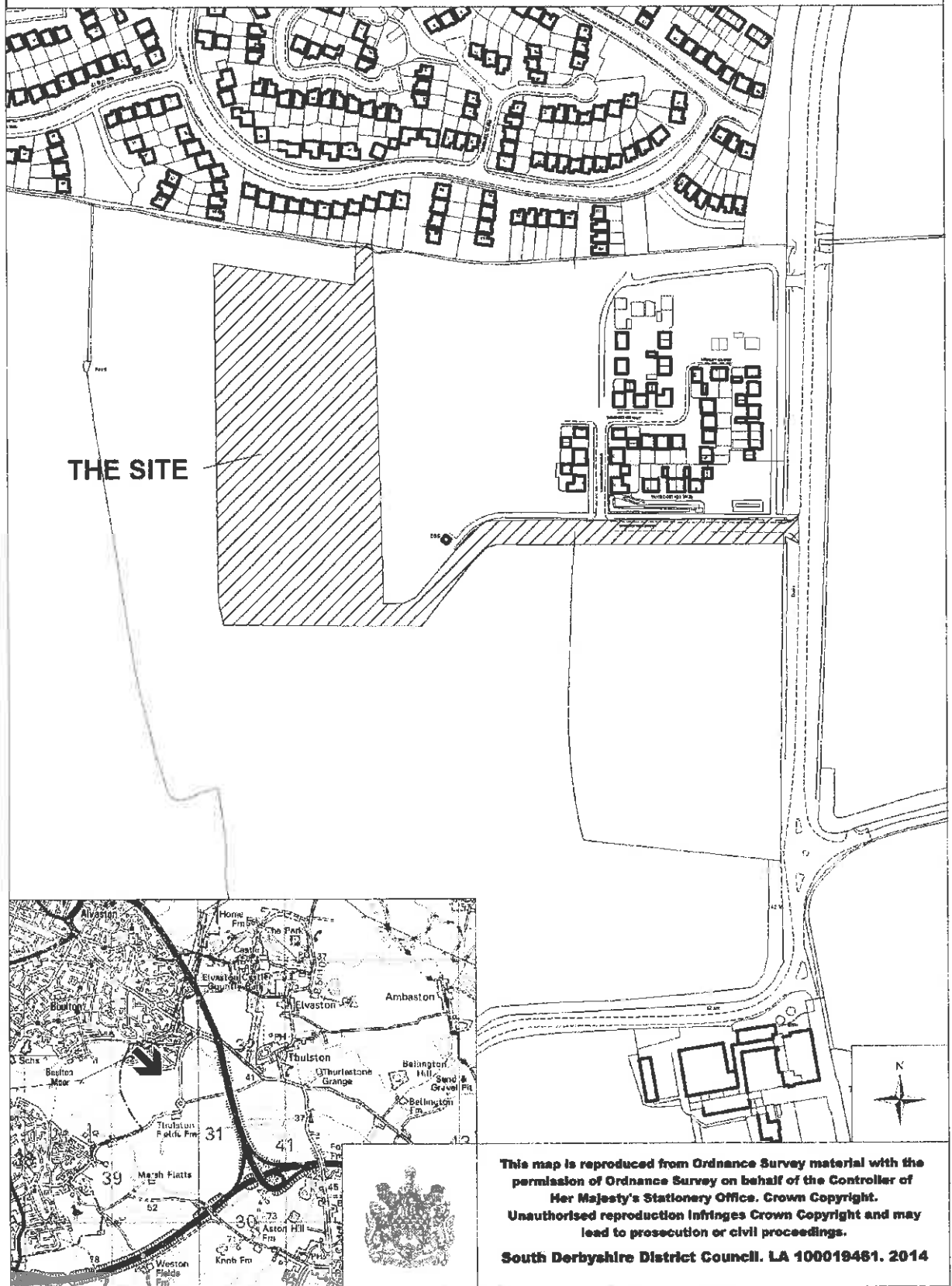
Reason for committee determination

The item is presented to Committee as it is a major application subject to more than two objections.

Site Description

The site comprises approximately 2.04 hectares of land currently in agricultural use and is located immediately to the south-east edge of Derby and at the northern edge of the District. The site is approximately 6.5km from the city centre, adjoining the Boulton Moor Phase 1 site for which outline planning permission was originally granted in 2009 and has the benefit of detailed permission for some 400 dwellings to date (now under construction), with pending proposals to sustain supply from the wider Phase 1 site. The 'Snelsmoor Grange' site, located within Derby City's administrative area, lies to the west beyond open farmland at the present time with this intervening land forming an allocation in the emerging Local Plan. Thulston Fields Farm is located to the south, south of Snelsmoor Lane, beyond which is the A50. The Site is located approximately 30 metres to the south of existing residential development within Boulton Moor, between which the Southern Brook is located.

9/2015/0959 - Land at SK3931 2744 Mill Hill, Boulton Moor DE72 3FB



Proposal

The outline planning permission for Boulton Moor Phase 1 (9/2010/1134) includes the provision of a Primary School to serve the new residents of the development. This application seeks to secure a 2-form entry primary school in lieu of the approved site shown on the outline masterplan, in a more central location to the wider development area. As the site falls beyond the approved confines of the Phase 1 permission, a separate application is necessary.

Applicant's supporting information

A Planning Statement outlines the purpose of the application, responding to a more co-ordinated and strategic approach to development in this sub-Derby area which spans the administrative boundary and reflects the emerging allocations for additional housing. The Statement discusses land use and layout, access, design and landscaping, and surface water drainage principles, as well as considering utilities and services to sustain the proposals. It is considered the proposal accord with local and national planning policies, in particular, meeting the requirements of emerging policy H13 and the proposed Framework Plan contained within the draft joint Development Framework Document (DFD) which is currently being prepared by the developers/landowners of the Boulton Moor Strategic Development Area (SDA) in liaison with the City, County and District authorities. The proposed relocation of the primary school is supported in principle by the Local Education Authority (LEA), and is considered a more sustainable location being more central within the wider SDA. The site is accessible by sustainable modes of transport, namely, walking, cycling and by bus. It is of equal size to that already secured and is proposed to be delivered at the same early stage in the development coming forward, and is submitted now in advance of an application for the wider development of the Phase 2 site, to facilitate the early delivery of this school. The applicants are committed to this being secured through a Section 106 agreement.

The Design & Access Statement (DAS) considers the development and design principles, land use and site structure, access and circulation, urban form and building structure, architecture and appearance, outdoor spaces, drainage and boundary treatments. It reiterates the objectives for securing the primary school's relocation including providing a more central, sustainable location, enabling the expansion of the approved local centre within phase 1 to be delivered through the 're-planning' of this part of the SDA alongside a revised park and ride scheme; and to maintain the commitment to early delivery of a primary school with the same capacity as already secured.

The Transport Statement considers the traffic impact of the school has already been assessed as part of the Phase 1 permission, such that the Statement focusses on access by sustainable modes of transport such as walking, cycling and public transport. The Statement concludes that the site is well located to the existing and proposed residential areas of the town which it will serve and the proposed highway infrastructure surrounding the school would be designed to accommodate walking, cycling and public transport, linking these new connections with existing connections in the area. This would therefore make sustainable modes of transport realistic options for journeys to the school. Car and cycle parking would be provided in accordance with local parking standards, whilst the design could include a drop off area and bus pull-in to prevent on street parking on the nearby carriageway.

Flood Risk Assessment (FRA) confirms the site is shown on Environment Agency (EA) mapping to lie in Flood Zone 1, and not considered at significant risk of flooding. The EA surface water flood maps show a small area of low probability surface water flooding just to the north of the site, associated with the Southern Brook; but the area of this indicated flooding is limited, shallow (300 mm or less), and not adjacent to any proposed built development. Surface water flooding is not therefore considered to pose a notable hazard.

Infiltration testing has determined low but viable infiltration rates such that it is proposed to manage surface water runoff with a combination of infiltration and positive outfall to the Southern Brook. Surface water attenuation would be sized to manage storm events.

Planning History

9/2015/1104: Approval of reserved matters of 9/2010/1134 for the erection of 142 dwellings with associated infrastructure, car parking and landscaping (Boulton Moor Phase 1D) – Pending

9/2015/0998: Outline application (all matters to be reserved) for the creation of playing pitches, a sports pavilion, allotments, ancillary car parking and associated access, informal open space and landscaping – Pending

9/2015/0612: Approval of reserved matters of 9/2010/1134 for the erection of 113 dwellings with associated infrastructure, car parking and landscaping (Boulton Moor Phase 1C) – Approved January 2016

9/2013/0802: Approval of reserved matters of 9/2010/1134/ for the erection of 284 dwellings with associated infrastructure, access roads, drainage and public open space (Boulton Moor Phases 1A & 1B) – Approved April 2014

9/2010/1134: Application to extend the time limit for implementation of outline application 9/2005/0611 including the variation of conditions 1, 2, 5, 6 and 25 involving amendments to the approved masterplan and amendments to the associated Section 106 Agreement – Approved November 2011

9/2005/0611: Outline application (all matters to be reserved except for means of access) for the construction of up to 1058 dwellings together with a primary school, retail provision (comprising A1-A5 uses) public open space (including children's play areas and sports pitches) supporting infrastructure and associated landscape works at – Allowed at Appeal January 2009

Responses to Consultations

The County Highway Authority notes the application site includes a new, already approved, estate street road which links the site to the existing highway (although not presently adopted). The road will need to be laid out and constructed to adoption standard prior to first use of the premises. It is also noted a parking and bus turning area is indicatively shown although the number of parking spaces would be

dependent upon the size of the school. There are thus no objections subject to conditions being included.

The County Education Officer comments they would need to be involved at the detailed design stage to ensure that the new building complies with all relevant requirements, but in principle the location is better than the original under Phase 1, although it remains that the school must be delivered to serve Phase 1 with unimpeded access through the wider site once open.

The County Flood Risk Team notes that the proposed method of surface water disposal is via a swale to an attenuation basin, followed by discharge into the watercourse to the north of the site. Surface water disposal would be limited to 2.9 l/s and the attenuation volume sized to facilitate this discharge rate up to and including the 1 in 100 year rainfall event with a 30% allowance for climate change. The proposed swale and attenuation would provide two treatment stages for surface water prior to discharge to the watercourse. Hence whilst the principles of surface water management set out in the FRA are acceptable, more information will be needed at the reserved matters stage to demonstrate these principles have been followed.

The Development Control Archaeologist notes the Boulton Moor Phase 1 development is subject to phased archaeological conditions requiring a scheme of work within each phase to identify and record significant archaeological remains. This is due to the general potential of gravel terrace landscapes for prehistoric archaeology. Two areas of the development have been subject to evaluation and some controlled strip-and-record, identifying extensive Iron Age open settlement and land management features (pits, postholes, linears, pit alignments) and a 'pond' feature with Roman pottery. These are typical late prehistoric to Romano-British rural features and taken together represent a regionally important resource. The current proposal site is immediately adjacent to one of the areas already evaluated, and therefore has potential for similar archaeological remains. The site is also partially within the consented area already subject to the phased archaeological conditions. It is therefore recommended that any new consent is subject to the same requirements.

The County Minerals Officer advises the proposal would not adversely affect the minerals safeguarding interest.

Responses to Publicity

Three representations have been received raising the following objections/comments:

- a. the land to the north of the site around the watercourse already becomes waterlogged in winter with standing water, and dumping excess water into it would create major problems for residents;
- b. the watercourse is a wildlife corridor which for most of the year does not contain any water;
- c. Disturbance from constant noise of water flowing along the watercourse;
- d. the developers so far have torn up hedgerows and shown disrespect to existing residents;

- e. surface water should be dealt with on site as the watercourse is not sufficient for the proposed use;
- f. existing blockages along the watercourse pose a problem;
- g. a connection from the site to Mill Hill raises concern over pedestrians using private drives;
- h. there should be no playing field floodlights;
- i. the playing field use should be restricted to weekdays only;
- j. any security lighting should be activated by PIR only and no lighting should be left on outside of working hours; and
- k. the plans do not show the land ownership correctly.

Development Plan Policies

The relevant policies are:

- Saved Local Plan 1998: Community Facilities Policy 1, Transport Policies 6 & 7, Environment Policy 1 & 14.

Emerging Development Plan Policies

The relevant policies are:

- Submission Local Plan Part 1: S2 (Presumption in Favour of Sustainable Development), S6 (Sustainable Access), H13 (Boulton Moor), SD1 (Amenity and Environmental Quality), SD2 (Flood Risk), SD3 (Delivering Sustainable Water Supply, Drainage and Sewerage), SD5 (Minerals Safeguarding), BNE1 (Design Excellence), BNE2 (Heritage Assets), BNE3 (Biodiversity), BNE4 (Landscape Character and Local Distinctiveness), INF2 (Sustainable Transport) and INF6 (Community Facilities).

National Guidance

- National Planning Policy Framework (NPPF)
- National Planning Policy Guidance (NPPG)

Planning Considerations

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

- The justification for relocating the primary school
- Flood risk and drainage
- Design, access and impact on neighbouring amenity

Planning Assessment

The justification for relocating the primary school

The Phase 1 outline permission includes the provision of land for a 2 form entry primary school, and the existing Section 106 agreement secures its provision in a timely fashion relative to delivery of housing on the site. The approved site for the school is situated further to the north-east of the now proposed location, and whilst

adjacent to the proposed park and ride land and local centre, it would be on the edge of and somewhat detached from the housing to be provided under Phase 1. The outline permission for Phase 1 pre-dates the emerging Local Plan which seeks to allocate Phase 2 west of Phase 1, along with Phase 3 to north of Shardlow Road. Snelsmoor Grange, in Derby City, would also connect to the west of Phase 2 and an application for that site is presently lodged with the City. The context for development in the area has therefore changed significantly since the original permission was granted and a more co-ordinated and strategic approach to services and facilities for the wider SDA is warranted. Almost all of the additional development is to be located to the west of Phase 1 such that by shifting the centre of the SDA towards the Phase 2 site, the proposed relocation of the primary school appears logical and more sustainable.

The County LEA supports the principle of this movement and as such it is considered there is good justification for its relocation. The timing for its delivery is to remain consistent with the existing Section 106 agreement such that there is no concern that further delay would be created through allowing this proposal. Emerging policy H13 also states that the Boulton Moor SDA should provide a 2-form entry primary school to cover phases 1 and 2 with separate provision to Snelsmoor Grange in Derby. A location is not prescribed. As such the proposal accords with this policy whilst gaining further support under saved policy CF1 and the NPPF.

Flood risk and drainage

The FRA confirms a low risk of flooding to the site, and the residual risk would affect open ground (playing fields) with reference to the indicative layout. Whilst the comments from neighbours are noted, the County Flood Risk team does not object to the principle of connecting to the Southern Brook which accords with best principles for handling surface water (i.e. infiltration and use of watercourses before considering surface water sewers). The detailed design and size of attenuation can be determined at the reserved matters stage.

Design, access and impact on neighbouring amenity

Whilst matters of access, layout, scale, appearance and landscaping remain to be dealt with at the reserved matters stage; the supporting documentation and consultation responses demonstrate that a satisfactory means of design and access can be achieved. The separation between existing dwellings and the proposed school would be considerable and suitable control can be imposed at the detailed design stage in respect of usage and lighting of outdoor facilities at the school.

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

Recommendation

- A. That delegated authority be granted to the Planning Services Manager for the completion of a Section 106 Agreement and/or variation of the existing Section 106 Agreement to ensure that existing controls secure the timely delivery of the school in line with the original permission;

B. Subject to A, **GRANT** permission subject to the following conditions:

1. (a) Application for approval of the reserved matters listed at condition 1 shall be made to the Local Planning Authority before the expiration of three years from the date of this permission; and
(b) The development hereby permitted shall be begun before the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.

Reason: To conform with Section 92(2) of the Town and Country Planning Act 1990 (as amended by section 51 of the Planning and Compulsory Purchase Act 2004).

2. This permission is granted in outline under the provisions of Article 5(1) of the Town & Country Planning (Development Management Procedure) (England) Order 2015, and the further approval of the Local Planning Authority is required before any development is commenced with respect to the following reserved matters:
 - (a) access;
 - (b) appearance;
 - (c) landscaping;
 - (d) layout; and
 - (e) scale.

Reason: The application is expressed to be in outline only and the Local Planning Authority has to ensure that the details are satisfactory, and to conform with Section 92(2) of the Town and Country Planning Act 1990 (as amended by section 51 of the Planning and Compulsory Purchase Act 2004).

3. No development shall take place until a detailed design and associated management and maintenance plan of surface water drainage for the site, in accordance with Defra non-statutory technical standards for sustainable drainage systems (March 2015), has been submitted to and approved in writing by the Local Planning Authority. The approved drainage system shall be implemented in accordance with the approved detailed design prior to the use of the building commencing.

Reason: To ensure that the principles of sustainable drainage are incorporated into this proposal and sufficient detail of the construction, operation and maintenance of sustainable drainage systems is provided to the Local Planning Authority in advance of full planning consent being granted, recognising that initial groundworks and setting of levels could affect the efficient operation of drainage systems.

4. a) No development shall take place until a Written Scheme of Investigation for archaeological work has been submitted to and approved by the Local Planning Authority in writing, and until any pre-start element of the approved scheme has been completed to the written satisfaction of the Local Planning Authority. The scheme shall include an assessment of significance and research questions; and
 - i. The programme and methodology of site investigation and recording;

- ii. The programme for post investigation assessment;
- iii. Provision to be made for analysis of the site investigation and recording;
- iv. Provision to be made for publication and dissemination of the analysis and records of the site investigation;
- v. Provision to be made for archive deposition of the analysis and records of the site investigation; and
- vi. Nomination of a competent person or persons/organization to undertake the works set out within the Written Scheme of Investigation.

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

c) The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the archaeological Written Scheme of Investigation approved under condition (a) and the provision to be made for analysis, publication and dissemination of results and archive deposition has been secured.

Reason: To enable items of archaeological interest to be recorded/and or preserved where possible, recognising that initial groundworks could lead to the unacceptable and permanent loss of heritage interest.

5. No development shall take place until a construction management plan or construction method statement has been submitted to and been approved in writing by the Local Planning Authority. The approved plan/statement shall be adhered to throughout the construction period. The statement shall provide for the storage of plant and materials, site accommodation, loading, unloading of goods vehicles, parking of site operatives' and visitors' vehicles, routes for construction traffic, hours of operation, method of prevention of debris being carried onto highway, pedestrian and cyclist protection and any proposed temporary traffic restrictions.

Reason: In the interests of highway safety, recognising that initial works to clear and prepare the site could give rise to unacceptable impacts.

6. The premises shall not be taken into use until the proposed new estate street, from the existing public highway extending along the southern site frontage, including that previously permitted, has been laid out in accordance with approved application drawings, constructed to base level, drained and lit in accordance with the County Council's specification for new housing development roads.

Reason: In the interests of highway safety.

7. Prior to the premises being first taken into use, the new accesses into the site shall be provided, laid out and constructed in accordance with a scheme first submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of highway safety.

8. Prior to the premises being taken into use, space shall be provided within the site curtilage for the parking and manoeuvring of staff and visitors vehicles and the parking and manoeuvring of buses, laid out and constructed in accordance with a scheme first submitted to and approved in writing by the

Local Planning Authority. The parking and turning space shall thereafter be retained free of any impediment to its use for these purposes.

Reason: In the interests of highway safety.

Informatives:

In dealing with this application, the Local Planning Authority has worked with the applicant in a positive and proactive manner through pre-application discussions and promptly determining the application. As such it is considered that the Local Planning Authority has implemented the requirement set out in paragraphs 186 and 187 of the National Planning Policy Framework.

This permission is the subject of a unilateral undertaking or agreement under Section 106 of the Town and Country Planning Act 1990.

The County Council do not adopt any private SuDS schemes. As such, it should be confirmed prior to commencement of works which organisation will be responsible for SuDS maintenance once the development is completed. The applicant should ensure there is a sufficient buffer strip in place which will allow for efficient maintenance to take place. We would recommend an easement of approximately 3m if the swale is less than 2m in width and 4.5m for swales over 2m in width. Whilst this is not stipulated within any legal byelaw DCC would recommend these distances in order to safeguard access for essential maintenance and inspection purposes.

Any works in or nearby to an ordinary watercourse require consent under the Land Drainage Act (1991) from the County Council (e.g. an outfall that encroaches into the profile of the watercourse, etc) to make an application for any works please contact Flood.Team@derbyshire.gov.uk.

Item **1.2**

Reg. No. **9/2015/0997/NO**

Applicant:
Mr Andrew Malkin
Pine Lake
Barrow on Trent
Derby
DE737GB

Agent:
Mr Andrew Malkin
Pine Lake
Barrow on Trent
Derby
DE737GB

Proposal: **THE RETENTION OF HARDSTANDING AT PINE LAKE
UNNAMED ROAD FROM TWYFORD ROAD TO
BUCKFORD LANE STENSON DERBY**

Ward: **STENSON**

Valid Date: **05/12/2015**

Reason for committee determination

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

Site Description

The site of the proposed hardstanding is located between existing residential properties to the west and existing stables/agricultural buildings to the east, and is connected to the existing vehicular access into the site. The site forms part of the larger Pine Lake children's camp development.

Proposal

The application is retrospective and is for the retention of the hardstanding that has been created to serve as a turning area for the development. There are 2m high brick walls and gates which have been erected on the site, falling under permitted development allowances.

Planning History

9/2008/0385 - Development of a children's camp including the erection of a multi-purpose accommodation/recreation block and manager's house together with a site layout for various recreational activities and the formation of an access road – Approved 23/05/2008

THE SITE

Tollgate Hall
Chapel House
Green Farm

A6132

Stenson
Willington
Twytford

North Arrow

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9/2009/0934 - The erection of plant room (revised scheme to that approved under planning reference 9/2008/0385) – Approved 14/12/2009

9/2014/0955 - Change of use of land as an extension to an existing children's camp including the erection of a sports hall, six holiday chalets and related ancillary buildings, along with creation of recreation lake, play area and use of land for ancillary recreational activities – Approved 13/04/2015

Responses to Consultations

The Contaminated Land Officer has no comments to make.

The County Highways Officer has no comments to make.

The County Archaeologist has confirmed that the works would have no archaeological impact and therefore, has no comments to make

The County Flood Risk Officer has no comments to make.

Responses to Publicity

Four objections have been lodged by local residents raising the following points:

- a) Increased security and privacy risks, including to young children.
- b) Significant alteration to the appearance of the countryside in the area.
- c) The proposed development contradicts with previous statements made by the organisers of Pine Lake.
- d) Neighbouring dwellings are seen as insignificant.
- e) The need for a safe and healthy living environment.
- f) The proposal is different to the masterplan under permission 9/2014/0955.
- g) There is a high volume of traffic to and from the site, unlike a residential community.
- h) Pine Lake is in excess of 20 acres and the hardstanding should be provided well away from adjacent residential dwellings.
- i) The hardstanding should be positioned to the front of the access road around the main gate, where this could be easily accommodated.
- j) The position of the portacabins could be a suitable location for the turning area.
- k) The walls were erected prior to an application being submitted.
- l) A row of seven mature horse chestnuts have been removed that were covered by a Tree Preservation Order (TPO).
- m) Landscaping does not appear to be in accordance with permission 9/2008/0385.
- n) Two mobile homes have been erected on the site adjacent to the manege.
- o) The proposed hardstanding will cause disturbance with traffic moving and turning day and night at such a close proximity to neighbouring properties.
- p) Numerous security problems have existed since the use began.
- q) There has been no consideration given to the aesthetics of the development, where other more suitable areas of rough grass could have been used to accommodate this.
- r) There is no vegetation to screen the development.

- s) The vegetation that had screened the use from neighbouring properties has been ripped out.
- t) The loss of the horse chestnut trees could have been avoided and the trees could have been pollarded.

Development Plan Policies

The relevant policies are:

- Saved Local Plan: Environment Policy 1
- Emerging Local Plan Part 1: S2 – Presumption in Favour of Sustainable Development, SD1 – Amenity and Environmental Quality, BNE1 – Design Excellence, BNE4 – Landscape Character and Local Distinctiveness

National Guidance

National Planning Policy Framework (NPPF), in particular:

- Paras 6-10 (Achieving sustainable development)
- Paras 11-14 (The presumption in favour of sustainable development)
- Para 17 (Core Principles)
- Chapter 3 (Supporting a prosperous rural economy)
- Chapter 7 (Requiring good design)
- Chapter 11 (Conserving and Enhancing the Natural Environment)
- Paras 196-197 (Determining applications)

National Planning Policy Guidance (NPPG) ID26 (Design)

Planning Considerations

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

- Impact on the countryside
- Concerns regarding potential increase in crime
- Erection of walls and gates

Planning Assessment

Impact on the countryside.

The hardstanding has been positioned between the existing neighbouring properties and the existing stable buildings where a mix of existing buildings and hard or artificial surfaces already affect the appearance of this part of the countryside. This therefore limits the degree of intrusion into the countryside, as the hardstanding is already contained to some degree, especially considering the scope of the permitted scheme which is yet to be completed in this area of the wider site.

The most likely form of visual intrusion that could arise from the presence of the hardstanding would be through the parking of vehicles. However given the context of the lawful use of the site and surrounding uses also attracting vehicles, it is not likely

that this would result in a substantially adverse effect. It is also worth noting that vehicles could be parked on the grassed area without the creation of the hardstanding and therefore, this issue could still arise irrespective of the development. Furthermore, planting is proposed along the boundary to provide a degree of screening to the hardstanding.

The removal of trees is not considered to be a relevant matter in the determination of this application, with the works to these protected trees allowed by the County Council – the authority responsible in this instance. Those works were undertaken separate and distinct to this proposal, and would not have been affected by the hardstanding in any case.

Concerns regarding the increase in crime

Concerns have been raised by local residents who have expressed concerns that the position of the hardstanding could increase the likelihood of theft in the area, as people could park on the hardstanding and would be able to see into neighbouring properties. In this particular situation, the hardstanding would in time be positioned immediately by and overlooked by a security hut, thus being subject to constant surveillance. In this regard there would be a net benefit in terms of security of the site and the wider environs.

Erection of walls and gates

The walls and gates that have been erected appear to be less than 2m in height and are not positioned adjacent to the highway. Therefore, the walls and gates do not require planning permission in this instance.

Conclusion

Whilst there would be a degree of intrusion into the countryside by way of this proposal, it would be considerably limited in the context of the wider built form around and beyond the site boundaries. The hardstanding would, in time, form an indiscernible part of the wider children's camp. In this respect the impact is not considered to be significant, so much so to outweigh the benefits of the proposal in providing sufficient turning space for larger vehicles and wider security of the site and young persons residing there.

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

Recommendation

GRANT permission subject to the following conditions:

1. The development hereby permitted shall be carried out in accordance with plan/drawing 'Reception, Gate & Turning Area 102015' unless as otherwise required by condition attached to this permission or allowed by way of an approval of a non-material minor amendment made on application under Section 96A of the Town and Country Planning Act 1990 (as amended).

Reason: For the avoidance of doubt.

2. The approved post and rail fence shall be erected in accordance with the approved details within three months of the date of this planning permission. 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 date of this permission; 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.

Reason: In the interests of the appearance of the area and the amenity of local residents.

Informatives:

In dealing with this application, the Local Planning Authority has worked with the applicant in a positive and proactive manner through quickly determining the application. As such it is considered that the Local Planning Authority has implemented the requirement set out in paragraphs 186 and 187 of the National Planning Policy Framework.

Item **1.3**

Reg. No. **9/2015/1079/BME**

Applicant:
David Wilson Homes Ltd,
Miller Homes Ltd &
Taylor Wimpey Developments
c/o Agent

Agent:
Mr Mark Rose
Define Planning & Design Ltd
Unit 6
133-137 Newhall Street
Birmingham
B3 1SF

Proposal: **REMOVAL OF CONDITIONS 32 & 33 OF PLANNING PERMISSION REF: 9/2011/0640 (RELATING TO THE ERECTION OF UP TO 1200 RESIDENTIAL UNITS [C3], NEW PRIMARY SCHOOL (UP TO 1.3HA), NEW COMMUNITY FACILITIES AND LOCAL CENTRE (UP TO 1HA, INCLUDING LOCAL RETAIL UNITS [A1], RESTAURANTS [A3], PUBLIC HOUSE [A4] AND HOT FOOD TAKE AWAY [A5]), ASSOCIATED INFRASTRUCTURE (INCLUDING SEWERS, DRAINAGE AND SERVICES), NEW ROAD JUNCTIONS WITH THE EXISTING HIGHWAY NETWORK, NEW INTERNAL ROADS FOOTPATHS AND CYCLEWAYS, PLAY AREAS, STRATEGIC LANDSCAPING (UP TO 10.96HA) AND THE PROVISION OF A NEW COUNTRY PARK (UP TO 8.42HA)) ON LAND TO THE SOUTH AND EAST OF HOLLYBROOK WAY, PORTICO ROAD AND BOWBANK CLOSE, HIGHFIELDS FARM RYKNELD ROAD DERBY**

Ward: **WILLINGTON & FINDERN**

Valid Date: **17/11/2015**

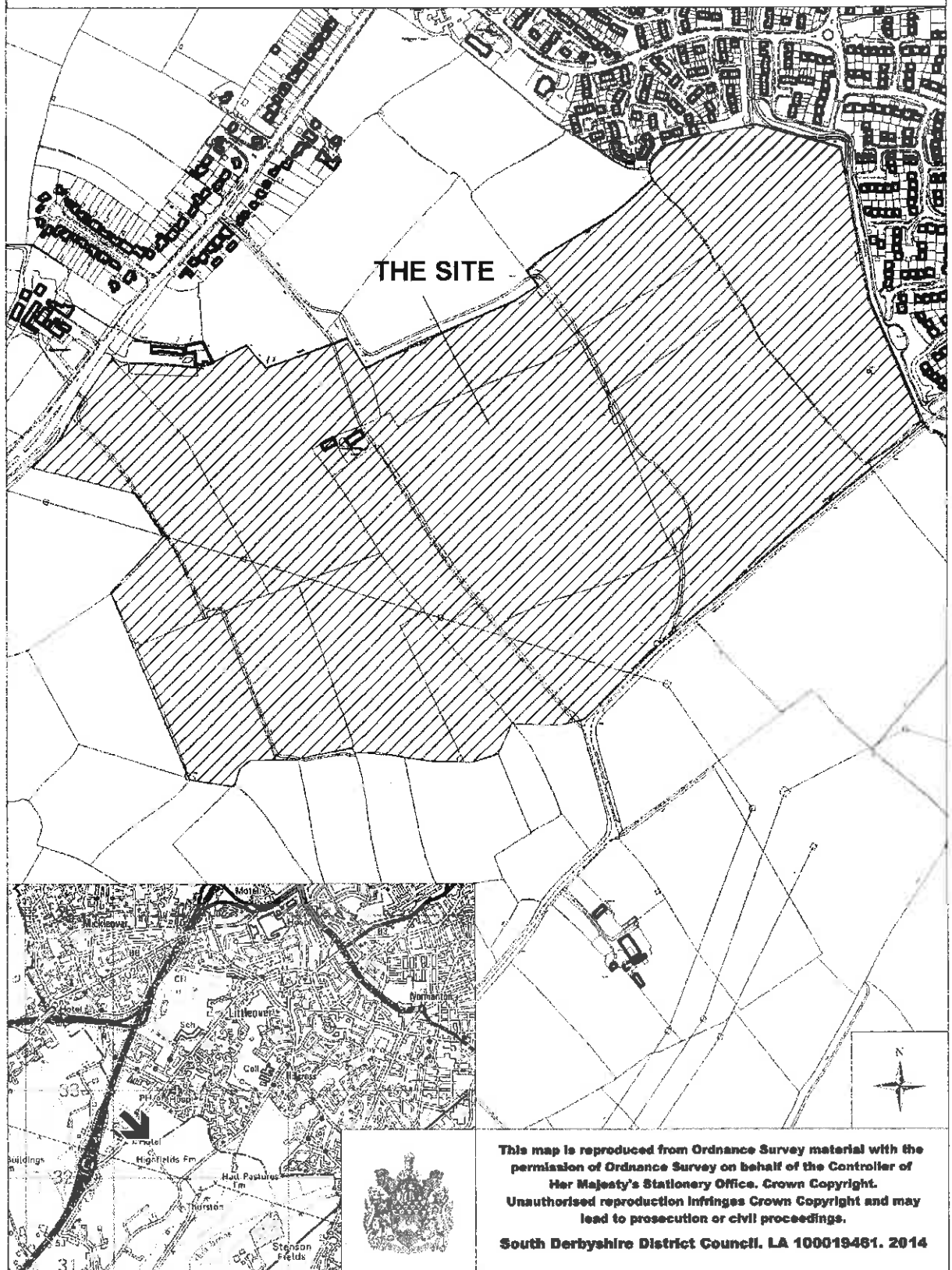
Reason for committee determination

The item is presented to Committee at the discretion of the Planning Services Manager.

Site Description

Development of the site is underway pursuant to the original permission(s) with remaining components still put to pasture and arable purposes. A network of hedgerows with mature trees within run through the site, some coincidental with the alignment of drainage ditches and watercourses. Highfields Farm is the only original building on the site and stands towards the mid to western end of it along with an agricultural outbuilding. A hotel complex directly adjoins the north-western corner of

9/2015/1079 - Land to the south and east of Highfields Farm,
Rykneld Road, Derby DE23 4AN



the site where it abuts Rykneld Road. A number of the new dwellings around the Rykneld Road access, which has now been fully installed, have already been substantially completed.

The fields directly to the north of the site (and to the other side of Rykneld Road) are allocated for mixed-use development (but predominately residential) under the adopted Derby City Local Plan. This land is known as the 'H9' development site. The north eastern end of the site is bounded by existing residential development with the remainder of the site being bounded by open countryside or Bakeacre Lane, which partially runs along the south-eastern site boundary.

The north-eastern end of the site is also bounded by Hell Brook which runs south out of Littleover and then east after leaving the eastern most tip of the site. A further water course joins the brook at this point and this part of the site is subject to fluvial flooding with it identified on Environment Agency mapping to fall in Flood Zones 2 and 3. Findern lies some 1 to 1.5km to the south; the Rykneld Road connects with the A38 close to the proposed access, and there is an existing local centre just north of H9 on Hollybrook Way. The centre of Derby is some 5 to 5.5km distant.

Proposal

It is proposed to remove conditions 32 and 33 attached to the outline permission which require the new dwellings to achieve a minimum of level 3 under the Code for Sustainable Homes (CfSH) and at least 10% of energy needs to be generated on site. The conditions presently state:

“32. No development within any phase shall take place until there has been submitted to, and approved in writing by the Local Planning Authority, an initial design stage assessment by an accredited assessor for The Code for Sustainable Homes and an accompanying interim certificate stating that the dwellings within the submitted phase achieve either Code Level 3 or the then-required Code Level rating whichever is the higher. The development shall be carried out in accordance with the certificated design.

33. Before the development hereby permitted is begun a scheme for generating 10% (or a higher percentage) of the predicted energy requirement of the development from on-site renewable sources shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented before the development is first occupied and thereafter be maintained so that it provides the required level of generation”.

Applicant's supporting information

A Supporting Statement sets out that in order to facilitate the implementation of the approved scheme and to reflect current requirements in relation to sustainable design, the changes now proposed in respect of the sustainable design measures are justified. In respect of condition 32 it is argued that the obligation for the dwellings to achieve at least level 3 of the CfSH is no longer in line with current Government policy on housing design standards, and that practice guidance highlights that a condition should not be used to control matters that are subject to specific control elsewhere. In this case the carbon performance elements of the code are being progressively implemented via the Building Regulations. In respect of

condition 33 it is argued that this requirement would have a significant effect on the viability of the proposed development and similarly does not reflect the Government's current approach to housing design standards. It is also advanced that the removal of this requirement would enable the development to deliver an increased provision of affordable housing.

As the application falls under Schedule 2, category 10b of the Environmental Impact Assessment (EIA) Regulations 2011 (as amended) an EIA has been carried out and an Environmental Statement (ES) provided. This ES remains the same as that originally submitted save for updates to the Ecology section, submitted with the previous applications in 2011 and 2014, following a Screening Opinion that concluded that matters covered by the ES would not have materially altered since its preparation. The ES covers the following topics:

- Planning policy context;
- Socio economic factors;
- Alternative development options;
- Landscape & visual impacts;
- Ecology;
- Transport;
- Air Quality;
- Noise;
- Archaeology; and
- Hydrology and drainage.

These documents can be viewed online as part of the current submission.

Planning History

9/2015/0195: Approval of reserved matters on land subject to outline permission 9/2011/0640 for 102 dwellings in lieu of 85 previously approved under 9/2014/0275 (Barratt Homes parcel A1 (in part)) - Approved April 2015.

9/2015/0011: Approval of reserved matters relating to access, layout, scale and appearance on remaining land subject to outline permission 9/2011/0640 for 44 dwellings and associated infrastructure, including new roads and junctions - Approved April 2015.

9/2014/0275: Approval of reserved matters on land subject to outline permission 9/2011/0640 for 979 dwellings and associated infrastructure, including new roads and junctions, footpaths and cycleways, drainage and public open space including play areas, pitches and strategic landscaping - Approved January 2015.

9/2011/0640: Extension of time allowed for submission of reserved matters and implementation of 9/2006/0775 - Approved January 2012.

9/2006/0775: Outline application (all matters to be reserved) for up to 1200 residential units, a new primary school, community facilities and local centre, associated infrastructure and landscaping including the

provision of a new country park - Not determined but allowed at Appeal January 2009.

Responses to Consultations

The Environment Agency raises no objection.

The County Flood Team has no comments to make.

The County Archaeologist has no comments to make.

Natural England has no comments to make.

Derbyshire Wildlife Trust raises no objection.

Highways England raises no objection.

The County Highway Authority raises no objection.

Severn Trent Water raises no objection.

The Environmental Health Officer raises no objection.

The National Planning Casework Unit has no comments to make.

The Police Crime Prevention Design Advisor comments that the move away from the Code for Sustainable Homes would be a concern without an alternative provision to replace the security element within this scheme. One of the outcomes of the Housing Standards Review was to move house security into Building Regulations applicable from 1st October 2015, but any schemes consented before this date are not likely subject to these Regulations and the proposal may fall outside of the scope of either if the condition is removed. It is therefore suggested that that compliance with approved document Q of Building Regulations is set as a condition of approval, if it were not seen as enforceable through building regulations for this particular scheme.

Responses to Publicity

None received.

Development Plan Policies

The relevant policies are:

- Saved Local Plan 1998: Housing Policies 9 and 11 (H9 and H11).

Emerging Development Plan Policies

The relevant policies are:

- Submission Local Plan Part 1: H12 (Highfields Farm), SD1 (Amenity and Environmental Quality), SD3 (Delivering Sustainable Water Supply, Drainage

and Sewerage), SD6 (Sustainable Energy and Power Generation) and BNE1 (Design Excellence).

National Guidance

- National Planning Policy Framework (NPPF) with particular reference to paragraphs 6, 7, 8, 14, 17, 58, 61, 95, 96, 173, 203, 206, 215 and 216.
- National Planning Policy Guidance (NPPG)

Local Guidance

- Housing Design and Layout SPG

Environmental Impact Assessment (EIA)

The PPG advises that a Section 73 application is considered to be a new application for planning permission under the 2011 Regulations. Where the development satisfies the criteria or thresholds set, the Council must carry out a new screening exercise and issue a Screening Opinion whether a fresh EIA is necessary. Where an EIA was carried out on the original application, it is necessary to consider if further information needs to be added to the original Environmental Statement (ES) to satisfy the requirements of the Regulations.

A fresh Scoping Opinion was issued in August 2015 confirming that no further update to the previous ES was required as a consequence of the proposed variation, given it was considered that the change in itself would not bring about significant adverse effects on the environment in the context of the Regulations.

Planning Considerations

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

- The principle of development
- The impact of removing conditions 32 and 33

Planning Assessment

The principle of development

The site is not allocated in the saved Local Plan although it forms a strategic allocation in the emerging Plan. There has been no material change in these circumstances since the 2012 approval other than the advancement of the Part 1 Plan and the changes to regional and national planning policy (the NPPF). The NPPF sets out a presumption in favour of sustainable development, in particular affording weight to significantly boosting housing delivery and economic development. It also adjusts the approach to the eco-credentials of new development. The emerging Plan relies on the housing provision arising from this site and has already been considered as sustainable in the round given the provision of facilities and services on and close to the site to support these provisions.

As a Section 73 application, Members should not reconsider the principle of development – instead focus on the effects of the proposed removal of conditions. With all other matters remaining materially consistent with the decision made in 2012, such as ecology, flood risk, heritage impacts and so forth, those matters are not discussed further and determination turns on whether the resulting impact of allowing the conditions to fall would materially undermine the overall sustainable balance of the proposal to a degree where the harm would be significant and demonstrable.

Members should also be aware that the proposal, if approved, triggers an automatic uplift in the proportion of affordable housing provided across the site as whole, from 14% to 18%. This trigger is enshrined in the existing Section 106 agreement which also is structured to apply other obligations contained therein to subsequent applications, such as this one.

The impact of removing conditions 32 and 33

It is recognised that since the original outline planning permission was granted, the economic climate and planning policy landscape has materially changed. The house building sector has struggled with market conditions, development viability and finance availability over this time, whilst the Government has also shifted its strategy regarding low carbon energy production and efficiencies in relation to consumption of natural resources. The raft of former design and development standards in relation to residential development has been recently rationalised, with the CfSH abolished as part of this process – instead there being reliance on Building Regulations to deliver thermal, lighting and water consumption efficiencies whilst other objectives of the CfSH remain to be delivered through good overall design.

There is clear support from the Government for this approach. The Government's 2011 'Plan for Growth' set out a commitment to ensuring the planning system supports growth, whilst the NPPF formally enshrined this. More specifically, the Housing Standards Review sought to consolidate the myriad of technical standards (such as the CfSH) into the Building Regulations where possible, endorsing a 'fabric first' approach as opposed to 'bolting on' renewables to meet individual demand. Consequently new development should only need to comply with current Building Regulation standards. Reliance on Building Regulations however is not justification alone for the deletion of the conditions as the house types adhere to 2010 Regulations – not the latest updates. Notwithstanding this, the noticeable differences relate to thermal efficiency, where building performance would be approximately 20% less efficient than current Regulations; and efficiency of water and electricity consumption. However, the CfSH requirements in terms of biodiversity, surface water management and open space provision for instance are considered to be satisfactorily accommodated by way of the Reserved Matters design and approved details pursuant to other planning conditions on the 2012 permission. The same can be said for the security element of Building Regulations with the latest update to Part Q not materially altering the version applicable in 2010, with the changes mainly relating to window and door locking mechanisms which tend to be part of the standard fitting out of new dwellings.

The balance therefore turns on whether the reduction in energy performance and consumption of the dwellings, versus the prevailing policy and guidance in respect of such matters. It is material that retaining the conditions in their existing form would

unlikely fulfil the tests set out in the NPPF, and this provides clear direction on whether the planning system should be seeking to control such matters. Hence in this respect it is considered that the removal of the conditions would not make the development less sustainable to a degree which would fundamentally alter the principle of development being supported here, and the resulting benefit by way of increased affordable housing provision should be recognised and balanced in reaching a decision.

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. Application for approval of all remaining reserved matters shall be made to the Local Planning Authority on or before 25 January 2020.
Reason: To conform with Section 92(2) of the Town and Country Planning Act 1990 (as amended by Section 51 of the Planning and Compulsory Purchase Act 2004).
2. Approval of the details of the layout, scale, appearance and the landscaping of remaining phases of the development shall be obtained from the Local Planning Authority in writing before any development in that phase is commenced.
Reason: To conform with Section 92(2) of the Town and Country Planning Act 1990 (as amended by Section 51 of the Planning and Compulsory Purchase Act 2004).
3. Notwithstanding the development hereby permitted, there shall be no development on the parcel of land shaded orange on drawing number EMS1122_104-1 that accompanied planning application ref 9/2006/0775.
Reason: In order for the purposes of clarity, to make it clear that there is no intention to develop this land, nor does the development rely upon it.
4. No development shall commence until a phasing programme in respect of the phased delivery of the development has been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved phasing plan and programme.
Reason: In order to ensure a continuous release of land for development in the interests of maintaining housing land supply, and to ensure that supporting elements of the development as a whole are delivered in a timely fashion for prospective occupants of the site, noting that such details are required at an early stage to ensure these objectives are achieved without unacceptable impacts arising.
5. The hard and soft landscaping shall proceed in accordance with the approved plans and details outlined in the conditions approval letter dated 15 September 2015 under planning permission ref: 9/2011/0640 in so far as the parts of the site to which those approved plans and details relate, unless alternative details are first submitted to and approved in writing by the Local

Planning Authority. Where hard and soft landscaping details have not yet been approved, prior to any construction works taking place on that part(s) of the site details of both hard and soft landscape works shall be submitted to and approved in writing by the Local Planning Authority. These details shall include trees to be retained showing their species, spread and maturity; proposed finished levels of buildings and surrounding land; means of enclosure; car parking layouts; other vehicle and pedestrian access and circulation areas; hard surfacing materials; and minor artefacts and structures (e.g. furniture, play equipment, refuse or other storage units, signs, lighting, etc.).

Reason: To ensure an adequate standard of hard and soft landscaping provision across the site as a whole, in the interests of good design and visual amenity.

6. Soft landscape works shall include planting plans; written specifications; schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate; and implementation programme.

Reason: To ensure an adequate standard of provision, in the interests of the amenities of the area.

7. All hard landscape works shall be carried out as approved prior to first occupation of the dwelling or building to which they relate, or in accordance with the approved phasing programme required by condition 4; whilst all planting, seeding or turfing comprised in the approved details of soft landscaping shall be carried out in the first planting and seeding seasons following the occupation of the building(s) to which it relates or in accordance with the approved phasing programme required by condition 4.

Reason: To ensure an adequate standard of provision, in the interests of the amenities of the area.

8. The landscape management plan submitted under reserved matters application ref: 9/2014/0275 shall be implemented as approved.

Reason: To ensure an adequate standard of provision, in the interests of the amenities of the area.

9. Any tree or shrub which forms part of the approved landscaping scheme which within a period of five years from planting fails to become established, becomes seriously damaged or diseased, dies or for any reason is removed shall be replaced in the next planting season by a tree or shrub of a species, size and maturity to be first approved in writing by the Local Planning Authority.

Reason: To ensure an adequate standard of provision, in the interests of the amenities of the area.

10. None of the mature trees or hedgerows indicated as retained on plans 5643-A-08 Rev B, 5643-A-09 Rev B, 5643-A-10 Rev B, 5643-A-11 Rev B, 5643-A-12 Rev B, 5643-A-13 Rev B, 5643-A-14 Rev B, 5643-A-15 Rev B, 5643-A-16 Rev B and 5643-A-17 Rev B; shall be cut down, uprooted or destroyed, nor shall they be topped or lopped without details of works having been first submitted to and approved in writing by the Local Planning Authority (pursuant to a formal application under The Town and Country Planning (Tree Preservation) (England) Regulations 2012 where necessary). If any of the

trees or hedgerows to be retained are removed, uprooted, destroyed or dies, a replacement of a size and species as first specified by the Local Planning Authority shall be planted in the same place within the first available planting season.

Reason: To protect the trees/hedgerows from undue disturbance, in the interests of the visual amenities of the area.

11. The protective fencing to trees and hedgerows shall be installed in accordance with the approved plans and details outlined in the conditions approval letter dated 15 September 2015 under planning permission ref: 9/2011/0640 in so far as the parts of the site to which those approved plans and details relate, unless alternative details are first submitted to and approved in writing by the Local Planning Authority. The protective fencing shall be retained in the approved position until all building works on adjoining areas have been completed.

Reason: To protect the trees/hedgerows from undue disturbance, in the interest of the visual amenities of the area.

12. The boundary treatments shall be installed in accordance with the approved plans and details outlined in the conditions approval letter dated 15 September 2015 under planning permission ref: 9/2011/0640 in so far as the parts of the site to which those approved plans and details relate, unless alternative details are first submitted to and approved in writing by the Local Planning Authority. Where boundary treatments have not yet been approved, prior to any construction works taking place on that part(s) of the site details of the boundary treatments to be erected shall be submitted to and approved in writing by the Local Planning Authority. These details shall include a plan(s) indicating the positions, design, materials and type of boundary treatment to be erected within that part(s). The boundary treatments shall be erected in accordance with the approved details prior to first occupation/use of the building or space it encloses.

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

13. The surface water drainage shall be installed in accordance with the approved plans and details outlined in the conditions approval letter dated 15 September 2015 under planning permission ref: 9/2011/0640 in so far as the parts of the site to which those approved plans and details relate, unless alternative details are first submitted to and approved in writing by the Local Planning Authority. Where surface water drainage details have not yet been approved, prior to any construction works taking place on that part(s) of the site details of the surface water drainage scheme shall be submitted to and approved in writing by the Local Planning Authority. Such a scheme shall adopt sustainable drainage principles in accordance with DEFRA Non-statutory technical standards for sustainable drainage systems (March 2015), and shall not result in an increase in the rate and/or volume of surface water discharge to the local land drainage system. The submitted details of the sustainable drainage system to be implemented shall:

(i) Provide information about the design, storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving ground water and/or surface waters;

(ii) Details of the methods employed to prevent the risk of pollutants and rainwater contaminated with silt/oil from ground disturbed during the construction process, from discharging into the watercourses, land drains or sewer during the period of construction;

(iii) Specify the responsibilities of each party for the implementation of the sustainable drainage scheme, together with a timetable for its implementation;

(iv) Provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

The scheme shall be implemented, maintained and managed in accordance with the approved details prior to any plot or building first draining to the system.

Reason: In the interests of flood protecting and pollution control.

14. The foul water drainage shall be installed in accordance with the approved plans and details outlined in the conditions approval letter dated 15 September 2015 under planning permission ref: 9/2011/0640 in so far as the parts of the site to which those approved plans and details relate, unless alternative details are first submitted to and approved in writing by the Local Planning Authority. Where foul water drainage details have not yet been approved, prior to any construction works taking place on that part(s) of the site details of the foul water drainage scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details prior to any plot or building first draining to the system.

Reason: In the interests of pollution control.

15. 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.

Reason: In the interests of pollution control.

16. There shall be no building or structures including gates, walls and fences or raised ground levels within 8.0 metres from the top of the bank of Hell Brook and within 5.0 metres from the top of the bank of Holly Brook.

Reason: In the interests of providing maintenance access to the structural surface water drainage system.

17. There shall be no new buildings or structures including gates, walls and fencing or raised ground levels within that part of the site liable to flood during a 1 in 100 year flood event as indicated on drawing EMS.1122_38 1A detailed within Section 12, Volume 1 of the Environmental Statement, dated May 2007.

Reason: In the interests of flood protection.

18. The roads, footpaths, car parking areas and courtyards shall be constructed in accordance with the approved materials set out in the conditions approval letter dated 15 September 2015 under planning permission ref: 9/2011/0640 in so far as the parts of the site to which those approved plans and details

relate, unless alternative details are first submitted to and approved in writing by the Local Planning Authority. Where details of surfacing materials have not yet been approved, prior to any construction works taking place on that part(s) of the site details of the surfacing materials shall be submitted to and approved in writing by the Local Planning Authority. The roads, footpaths, car parking areas and courtyards shall be constructed in accordance with the approved materials.

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

19. Prior to the first occupation of any dwelling in each phase the estate carriageways and footways between the dwelling and the adopted highway shall be constructed to minimum base level together with highway surface water drainage and street lighting, in accordance with the details set out in the conditions approval letter dated 15 September 2015 under planning permission ref: 9/2011/0640 in so far as the parts of the site to which those approved plans and details relate, unless alternative details are first submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of highway safety.

21. The space within the curtilage of the site for site accommodation, storage of plant and materials, parking and manoeuvring for employee and visitor vehicles, loading and unloading and manoeuvring of lorries shall be provided in accordance with the approved details set out in the conditions approval letter dated 15 September 2015 under planning permission ref: 9/2011/0640 in so far as the parts of the site to which those approved plans and details relate, unless alternative details are first submitted to and approved in writing by the Local Planning Authority. Where details have not yet been approved, prior to any construction works taking place on that part(s) of the site details of the surfacing materials shall be submitted to and approved in writing by the Local Planning Authority. In all cases the facilities shall be retained in accordance with the approved scheme throughout the construction period.

Reason: In the interests of highway safety.

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

Reason: In the interests of highway safety.

23. No part of the development shall be occupied until the off-site highway works within the highway limits of Burton Road and Chain Lane, as shown on the approved plans set out in the conditions approval letter dated 15 September 2015 under planning permission ref: 9/2011/0640, have been laid out and constructed in accordance with the approved details and phasing. For the avoidance of doubt the developer will be required to enter into a S278 Agreement with the Highway Authority in order to comply with the requirements of this condition.

Reason: In the interests of highway safety.

24. The Primary Link Road from Rykneld Road shall be maintained and made available for construction traffic from the highway network throughout the period of construction.
Reason: In the interests of highway safety.
25. No construction traffic associated with the development shall access the site from Hollybrook Way and Callow Hill Way.
Reason: In the interests of the amenity of occupiers of the above roads and to prevent disturbance from construction vehicles accessing the site.
26. Prior to the first occupation of the first dwelling on the site, the vehicular link between the development site and Callow Hill Way shall be provided and open to traffic, in accordance with a scheme first submitted to and approved in writing by the Local Planning Authority.
Reason: In the interests of highway safety and to enable occupants to access services and facilities within Derby by a range of modes of transport.
27. There shall be no vehicular access between the development site and Bakeacre Lane.
Reason: Bakeacre Lane is unsuited to accommodating additional traffic likely to arise from a development of this scale in the interests of highway safety.
30. The buildings shall be constructed in accordance with the approved finished floor levels set out in the conditions approval letter dated 15 September 2015 under planning permission ref: 9/2011/0640 in so far as the parts of the site to which those approved plans and details relate, unless alternative details are first submitted to and approved in writing by the Local Planning Authority. Where details of finished floor levels have not yet been approved, prior to any construction works taking place on that part(s) of the site details of the finished floor levels, set at least 600mm above 1 in 100 year flood level, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the buildings shall be constructed in accordance with the approved finished floor levels.
Reason: To protect the amenities of adjoining properties and the locality generally.
31. The development shall proceed in accordance with the Written Scheme of Investigation for Archaeological Work ref: 14/916 (as amended 26 May 2015) submitted pursuant to condition 35 of planning permission ref: 9/2011/0640 and approved on 15 September 2015.
Reason: To enable items of archaeological interest to be recorded/and or preserved where possible.
32. The ecological management plan submitted under reserved matters application ref: 9/2014/0275 shall be implemented as approved.
Reason: In order to ensure the long term biodiversity value and enhancement of the site.
33. The development shall proceed in accordance with the dust mitigation measures set out in the Construction Management Plan received 21 March 2015 submitted pursuant to condition 37 of planning permission ref: 9/2011/0640 and approved on 15 September 2015. The approved measures shall be implemented and retained throughout the construction period.

Reason: In order to minimise the risk of dust and noise intrusion in the interests of the amenity of the occupiers of dwellings adjacent to the development site.

34. During the period of construction of any phase of the development which abuts any occupied dwelling within or adjacent to the site, no construction work shall take place outside the following times: 0730-1900 hours Monday to Friday, and 0730-1330 hours on Saturdays and at any time on Sundays, Bank and Public Holidays.

Reason: In the interests of the amenities of the occupiers of dwellings on or adjacent to the site.

35. No fixed plant or equipment (LAeq,t) associated with the uses within Use Classes A1-A5 hereby permitted shall exceed the background level (LA90,t) as measured at the boundary of the nearest residential properties at any time.

Reason: In the interests of the amenities of the occupiers of dwellings on or adjacent to the site.

36. Before first use of the retail units (within Use Classes A1-A5) commence, a scheme designed to protect the living conditions of occupants of nearby buildings from noise, vibration and odours from the air ventilation and extraction system, including the methods of treatment of the emissions and the external ducting, shall be submitted to and approved in writing by the Local Planning Authority. Before the uses hereby commence, the measures approved under the scheme shall be installed and brought into use. Thereafter the approved measures shall be retained, operated and maintained in accordance with the manufacturer's specifications.

Reason: In the interests of the amenities of the occupiers of dwellings on or adjacent to the site.

37. No deliveries shall be taken in or dispatched from the proposed local centre outside the following times: 0700 hours to 1900 hours Monday to Saturday and at any time on Sundays, Bank and Public Holidays.

Reason: In the interests of the amenities of the occupiers of dwellings adjacent to the local centre.

Informatives:

This permission is the subject of an agreement under Section 106 of the Town and Country Planning Act 1990, completed in conjunction with planning permission ref: 9/2014/0275 - the provisions of which automatically carry forward by way of a bespoke clause therein.

In dealing with this application, the Local Planning Authority has worked with the applicant in a positive and proactive manner through pre-application discussions, seeking to resolve planning issues, meetings and quickly determining the application. As such it is considered that the Local Planning Authority has implemented the requirement set out in paragraphs 186 and 187 of the National Planning Policy Framework.

Item **1.4**

Reg. No. **9/2015/1092/FX**

Applicant:
South Derbyshire District Council
Civic Offices
Civic Way
Swadlincote
DE11 0AH

Agent:
Mrs Sarah Boxford
Franklin Ellis Architects
The Old Pumphouse
5 The Ropewalk
Nottingham
NG1 5DU

Proposal: **THE ERECTION OF SIX TWO BEDROOM HOUSES WITH ASSOCIATED PARKING GARDENS AND ACCESS ON LAND AT SK2915 0614 LULLINGTON ROAD OVERSEAL SWADLINCOTE**

Ward: **SEALES**

Valid Date: **17/11/2015**

Reason for committee determination

The application is presented to Committee as the Council is the applicant and the development does not accord with the Development Plan.

Site Description

The site is located outside of the settlement boundary of the village of Overseal, on a piece of land that has previously been used as allotments and for storage purposes. The site slopes in a westerly direction away from the adjacent neighbouring residential properties, is open to the countryside on the northern and western boundaries and abuts the highway and existing residential development to the eastern and southern boundaries.

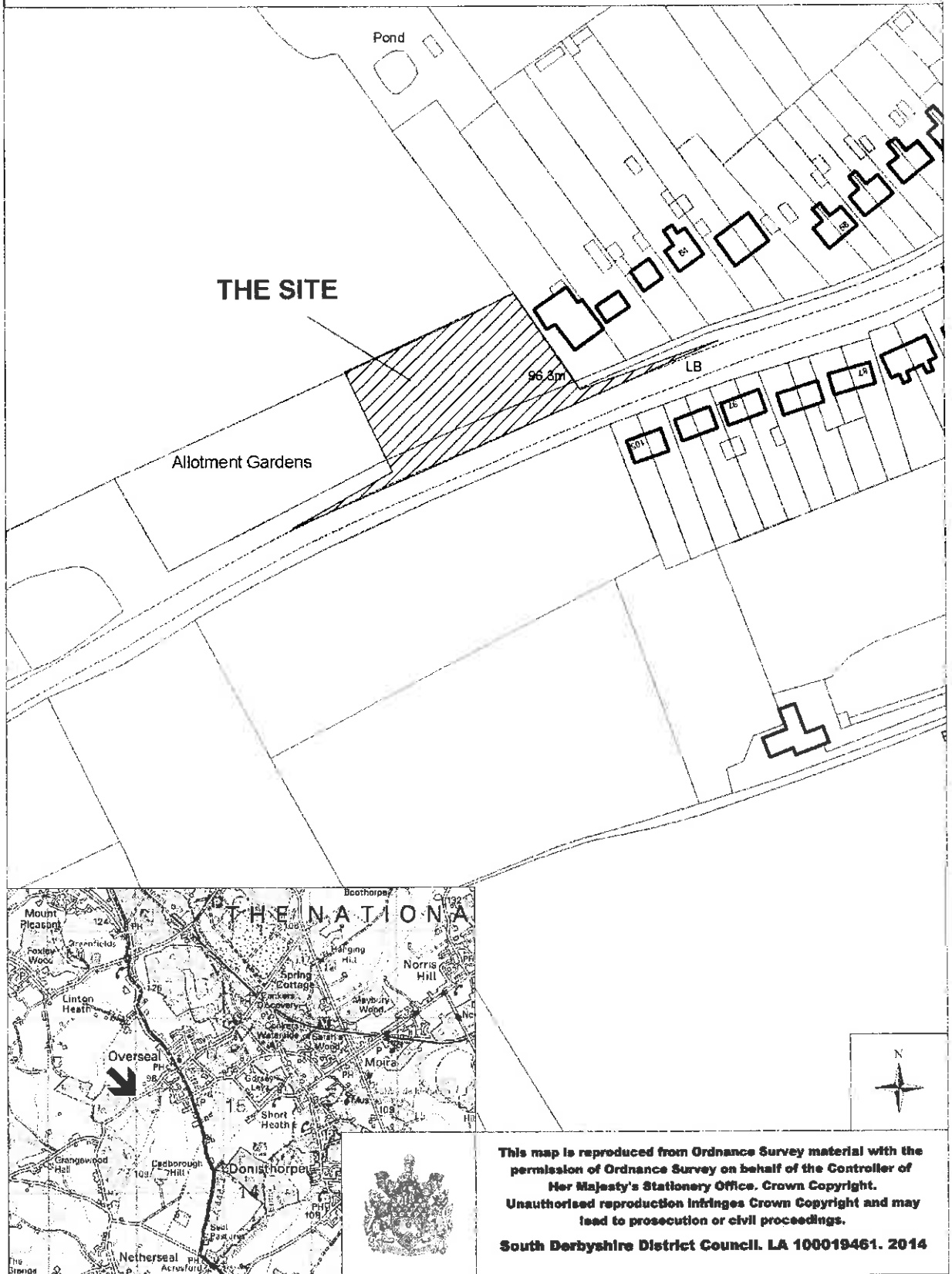
Proposal

The application seeks consent for the erection of six 2-bed dwellings, in three sets of semi-detached properties, all for affordable housing purposes.

Applicant's supporting information

Design and Access Statement

The dwellings along Lullington Road are predominantly two storey semi-detached properties which progress to wider housing features with wider frontages, the



elevational design draws on local materials and is a modern interpretation of local detailing and building proportion. The number 8, 9, 19 and 21 bus links provide access to neighbouring villages and towns, with a 32 minute car journey to Burton upon Trent train station.

Coal Mining Risk Assessment

The site is recorded to be underlain by several coal seams which have been mined at depth. In addition, the Coal Authority records indicated that additional shallow workings were also present beneath the site. However, these are not considered to be within influencing depth with regard to surface instabilities.

Planning History

There is no relevant planning history for the site.

Responses to Consultations

The Contaminated Land Officer has no objection to the proposal, subject to the a precautionary condition that if any evidence of contamination or likely contamination is identified during development, then a written scheme to identify and control the contamination is submitted.

The County Highways Authority has no objection subject to conditions securing the visibility splays, that space must be accommodated on the site for plant and machinery and construction traffic, and that wheel cleaning facilities should be provided and retained within the site.

The Coal Authority has no comments to make.

The County Flood Risk Officer has no comments to make.

Natural England has no objections to the proposal subject to compliance with the River Mease Developer Contribution Scheme, and that a condition is attached which would assess surface water drainage feasibility on site, exploring other non-mains surface water drainage alternatives first. In addition, a Construction Management Plan is required which assesses the likely impact of the development on the River Mease SAC along with suitable mitigation measures.

The Environment Agency has no comments to make.

Responses to Publicity

Overseal Parish Council has no objection citing that the proposal is in keeping with the village and helps to meet the identified need for affordable housing. The designs show the dwellings to be well spaced with good garden areas around them.

One comment has been received from a local resident raising the following points:

- a) the height of the dwellings would be out of keeping with the adjacent bungalow;

- b) the dwellings would create substantial overshadowing to the adjacent property, reducing efficiency of solar panels;
- c) undue and adverse effect on the privacy and amenity of nearby occupiers;
- d) no details of facing materials have been submitted;
- e) the design should comply with policy BNE1(f);
- f) it is unclear what perimeter fencing is proposed;
- g) timber fencing would be out of character, and the hedge should be retained;
- h) there is no evidence of landscaping to screen the development;
- i) lack of renewable energy generation;
- j) there is a need to comply with the National Forest and the River Mease (SAC) policies;
- k) the surface water drainage is contrary to Council and EA policies;
- l) there is no adopted surface water mains drainage on Lullington Road; with the available combined sewer contrary to policy and leading to premature discharge of foul drainage to the River Mease;
- m) flash flooding potential if surface water drainage is directed to the nearest watercourse;
- n) there is no waste treatment works capacity to increase foul water flows;
- o) no evidence of a River Mease SAC developer contribution;
- p) bats, newts (possibly crested newts), badgers, foxes and other wildlife have been spotted on adjacent property;
- q) removal of hedge would affect local wildlife and need the consent of the adjoining owners;
- r) the erection of a fence next to the hedge would affect wildlife movement;
- s) access for the owners of 70 Lullington Road needs to be provided for maintenance of the hedgerow;
- t) impeded maintenance access to the electricity transformer; and
- u) the Design and Access Statement shows misleading photographs.

Development Plan Policies

The relevant policies are:

- Saved Local Plan: Housing Policies 5, 8, 9, 11; Environment Policies 1, 10, 11; and Transport Policy 6.
- South Derbyshire Local Plan Part One (Submission Version): S2 – Presumption in Favour of Sustainable Development, S4 – Housing Need, S6 – Sustainable Access, H1 – Settlement Hierarchy, SD1 – Amenity and Environmental Quality, SD3 – Delivering Sustainable Water Supply, Drainage and Sewage, SD4 – Contaminated Land and Mining Legacy Issues, BNE1 – Design Excellence, BNE3 – Biodiversity, BNE4 – Landscape Character and Local Distinctiveness.

National Guidance

National Planning Policy Framework (NPPF), particularly paragraphs 6, 7, 8, 14, 17, 47, 49, 50, 55, 56, 57, 58, 61, 69, 109, 118, 119, 203, 204 and 206

National Planning Policy Guidance: ID 8 (Natural Environment) and ID 26 (Design)

Planning Considerations

The main issues that relate to the determination of this application are:

- Planning policy and impact on the countryside
- Design and layout
- Impact on neighbouring properties
- Highway safety considerations
- River Mease impact

Planning Assessment

Planning policy and impact on the countryside

The site lies outside the settlement confines for Overseal, not catered for by way of saved policy H5 of the adopted Local Plan. H5 however can be afforded little weight as it is no longer playing a part in significantly boosting the supply of housing as required by the NPPF. The principle of development therefore falls to be considered under saved policy EV1. Whilst EV1 was not intended as a housing policy, it has the effect of restraining delivery being a policy for the supply of housing in the eyes of the NPPF (paragraph 49). The presumption in favour of sustainable development is therefore engaged.

Notwithstanding this the policy does allow for development in the countryside which is unavoidable, allowing overriding need to outweigh the primacy of the Development Plan. In the context of housing needs for the emerging Plan period and the need to maintain a rolling 5 year supply of housing land, it is considered that this proposal benefits from this allowance in EV1. This approach has been ratified at appeal recently and it must also be remembered that the Part 2 emerging Plan still needs to find smaller sites around the District to sustain the 5 year housing supply. Emerging policy H1 also identifies Overseal as a Key Service Village where housing growth is considered to be acceptable, whilst emerging policy H20 supports rural exception sites. Hence whilst the proposal would not accord with the principle of the relevant policies in the adopted Local Plan, it is considered to comply with the approach to sustainable development and affordable housing provision in the NPPF and the emerging Plan.

Consideration turns to the impact on the character and landscape quality of the countryside. The degree of intrusion into the countryside in this location would be limited by way of its relationship to existing development and the recent affordable housing scheme to the opposite side of Lullington Road. The overall scale of the development and backdrop of built form provided by existing dwellings in vistas of the site results in a less than significant impact on the countryside.

The remaining parts of the report give consideration to whether any other adverse impacts of granting permission would significantly and demonstrably outweigh the benefits of the proposals, noting that conditions or obligations may be used to mitigate or address an otherwise unacceptable impact.

Design and Layout

The proposed dwellings are reflective of dwellings in the vicinity and adhere to a simple, symmetrical pattern in formation. The proposed layout would provide a spacious development which is considered to provide a good transition between the properties along Lullington Road and the open countryside. Detailing and materials, boundary treatments and landscaping can be secured by condition such that it is considered that the design and layout accords with saved Housing Policy 11, the Council's SPG and the NPPF.

Comments relating to further details of materials, landscaping, boundary treatments are the subject of conditions attached for later submission.

Impact on neighbouring properties

There have been comments received with regard to the impact of the proposal on the neighbouring bungalow, as set out above. The proposed dwellings would be consistent with the minimum separation distances as contained within the Council's SPG. The concerns regarding shading of solar panels is noted but the development is not considered to substantially shade these panels during the course of the day and this impact falls to be weighed against the creation of six dwellings for the purposes of affordable housing.

Highway safety considerations

The County Highway Authority has assessed the scheme and considers the proposal to be acceptable in highway safety terms, and any additional vehicular movements can be absorbed within existing movements on the network. Visibility splays, the requirement for space to be accommodated on the site for plant and machinery and construction traffic and for vehicle wheel cleaning facilities to be provided and retained within the site can be secured by condition. The proposal is therefore in accordance with Local Plan Saved Transport Policy 6.

River Mease impact and ecology

The site lies within the River Mease SAC where developer contributions towards water quality management would normally be required. The intended discharge of surface water to mains drainage is not ideal from the outset but can be acceptable where there are no other feasible options (i.e. infiltration and attenuation on site, or discharge to a watercourse) and Natural England has requested conditions to assess and eliminate other discharge alternatives first. This is consistent with the approach to determination of the site opposite. A financial contribution consistent with the River Mease developer contribution scheme can be secured when the final surface water drainage solution is established. The contribution in this scheme ensures that small developments such as this can go ahead making a contribution to a wider scheme of mitigation to counter any adverse effects subject to capacities available at the various water reclamation works in the catchment area. There is no evidence as to the likelihood of the presence of any protected species on the site. A Habitat Regulations Assessment has been undertaken and concluded that no significant effects from the development are likely.

Other matters

The application contains more than adequate information identifying the exact whereabouts of the site notwithstanding any other misinterpretations. The submitted photographs are designed to show the wider context of the site to assist with the consideration of the current design solution. 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.

Conclusion

Whilst there would be a degree of intrusion beyond the existing village confines and occupants of adjoining property would experience a change in outlook; these impacts are not considered to outweigh the considerable benefits of the proposal in delivering much needed affordable housing to a good standard of design and without unacceptable impacts on highway safety, neighbouring amenity and the River Mease SAC, subject to appropriate controls.

Recommendation

GRANT permission subject to the following conditions:

1. The development permitted shall be begun before the expiration of three years from the date of this permission.
Reason: To conform with Section 91(1) of the Town and Country Planning Act, 1990 (as amended by section 51 of the Planning and Compulsory Purchase Act 2004).
2. The development hereby permitted shall be carried out in accordance with plans/drawings LRO-FEA2485-EX-XXX-DX-A-00001 Rev C; LRO-FEA2485-EX-XXX-DX-A-00002 Rev C; LRO-FEA2485-BU-ZZZ-DP-A-15000 Rev C; LRO-FEA2485-BU-ZZZ-DP-A-15001 Rev B; LRO-FEA2485-EX-XXX-DX-A-05000 Rev C; LRO-FEA2485-EX-XXX-DX-A-05001 Rev C; LRO-FEA2485-EX-XXX-DX-A-05002 Rev C; LRO-FEA2485-EX-XXX-DZ-A-20000 Rev C; and LRO-FEA2485-EX-XXX-DZ-A-25000 Rev C; unless as otherwise required by condition attached to this permission or allowed by way of an approval of a non-material minor amendment made on application under Section 96A of the Town and Country Planning Act 1990 (as amended).
Reason: For the avoidance of doubt.
3. The dwelling houses shall not be constructed 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. The work shall be carried out in accordance with the approved details.
Reason: To safeguard the appearance of the existing building and the locality generally.
4. Prior to the construction of the dwellinghouses, evidence shall be provided to and approved in writing by the Local Planning Authority that all reasonable alternatives to mains sewer drainage for surface water have been explored. For the avoidance of doubt, surface water should be drained by infiltration where possible, or by disposal to a watercourse if infiltration techniques can be shown to be unsuitable. Only if infiltration or disposal to a watercourse is

not feasible, shall surface water be directed to mains sewers; full details of which shall be submitted to and approved in writing by the Local Planning Authority prior to installation of such drainage.

Reason: To safeguard and improve the water quality within the River Mease Site of Special Scientific Interest (SSSI)/Special Area of Conservation (SAC).

5. Prior to any ground works commencing on site, a Construction Management Plan (CMP) shall be submitted to and approved in writing by the Local Planning Authority. The CMP shall detail the nature of construction works to be carried out and the likely potential impacts on the River Mease, along with suitable mitigation measures where necessary. The approved CMP shall be implemented throughout the construction period.

Reason: To safeguard and improve the water quality within the River Mease Site of Special Scientific Interest (SSSI)/Special Area of Conservation (SAC), noting that initial works have the potential for unacceptable impacts unless appropriately controlled.

6. If during development any contamination or evidence of likely contamination is identified that has not previously been identified or considered, then the applicant shall submit a written scheme to identify and control that contamination. This shall include a phased risk assessment carried out in accordance with the procedural guidance of the Environmental Protection Act 1990 Part 2A, and appropriate remediation proposals, and shall be submitted to the LPA without delay. The approved remediation scheme shall be implemented to the satisfaction of the LPA.

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

7. Before any other operations are commenced, a temporary access for construction purposes shall be formed to Lullington Road, laid out, constructed and provided with 2.4m x 47m visibility splays in each direction in accordance with detailed designs to be submitted in advance of the sightlines being cleared of all obstructions greater than 1m in height (0.6m in the case of vegetation), maintained in accordance with the approved scheme throughout the contract period free from any impediment to its designated use.

Reason: In the interests of highway safety, noting that initial works have the potential for unacceptable impacts unless appropriately controlled.

8. Before any other operations are commenced, space shall be provided within the site curtilage for the storage of plant and materials, site accommodation, loading and unloading of good vehicles, parking and manoeuvring of site operatives and visitors vehicles, laid out and constructed in accordance with detailed designs to be submitted in advance to the Local Planning Authority for written approved and maintained throughout the contract period in accordance with the approved designs free from any impediment to its designated use.

Reason: In the interest of highway safety, noting that initial works have the potential for unacceptable impacts unless appropriately controlled.

9. Throughout the period of construction within any phase vehicle wheel cleaning facilities shall be provided and retained within the site. All

construction vehicles shall have their wheels cleaned before leaving the site in order to prevent the deposition of mud or other extraneous material on the public highway.

Reason: In the interests of highway safety.

10. Prior to the first occupation of any dwelling, a new footway shall be provided fronting the application site. The footway shall be constructed at the rear of the existing highway, have a width of 2m and be constructed to the adoption standards in accordance with Derbyshire County Council's specification for adopted highways. For the avoidance of doubt, the remaining highway margin shall be retained as grass verge and any damage caused during construction phase shall be reinstated prior to the first occupation.

Reason: In the interest of highway safety and to achieve safe access.

11. Prior to the first occupation of any dwelling, the new vehicular accesses shall be formed to Lullington Road, laid out and constructed in accordance with Derbyshire County Council's specifications for adopted highways.

Reason: In the interest of highway safety.

12. Prior to the first occupation of any dwelling, the car parking and manoeuvring space shall be provided within the application site, laid out in accordance with the application drawing 05002 Rev C and maintained throughout the life of the development free from any impediment to its designated use.

Reason: In the interests of highway safety.

13. Any gates shall be set back at least 5m from the highway boundary and open inwards only.

Reason: In the interests of highway safety.

14. Notwithstanding any details submitted or the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (as amended), no dwelling shall be occupied 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.

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

15. No dwelling shall be occupied 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 or adjacent to the site (including those which would have their root or canopy structure affected), and details of any to be retained, together with measures for their protection in the course of development.

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

16. 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.

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

Informatives:

In dealing with this application, the Local Planning Authority has worked with the applicant in a positive and proactive manner through seeking to resolve planning objections and quickly determining the application. As such it is considered that the Local Planning Authority has implemented the requirement set out in paragraphs 186 and 187 of the National Planning Policy Framework.

Pursuant to Section 184 of the Highways Act 1980 and Section 86(4) of the New Roads and Streetworks Act 1991 prior notification should be given to the Department of Economy and Transport & Environment at County Hall, Matlock regarding access works within the highway. Information, and relevant application forms, regarding the undertaking of access works within highway limits is available via the County Councils website:

http://www.derbyshire.gov.uk/transport_roads/roads_traffic/development_control/vehicular_access/default.asp email ETENetmanadmin@derbyshire.gov.uk or telephone call Derbyshire on 01629 533 190.

Pursuant to Section 163 of the Highways Act 1980, where the site curtilage slopes down towards the public highway measures shall be taken to ensure that surface water run-off from within the site is not permitted to discharge across the footway margin. This usually takes the form of a dish channel or gulley laid across the access immediately behind the back edge of the highway, discharging to a drain or soakaway within the site.

The Highway Authority recommends that the first 5m of the proposed access driveway should not be surfaced with a loose material (i.e. unbound chippings or gravel etc.). In the event that loose material is transferred to the highway and is regarded as a hazard or nuisance to highway users the Authority reserves the right to take any necessary action against the householder.

Pursuant to Sections 149 and 151 of the Highways Act 1980, the applicant must take all necessary steps to ensure that mud or other extraneous material is not carried out of the site and deposited on the public highway. Should such deposits occur, it is the applicant's responsibility to ensure that all reasonable steps (eg; street sweeping) are taken to maintain the roads in the vicinity of the site to a satisfactory level of cleanliness.

Pursuant to Section 278 of the Highways Act 1980 and the provisions of the Traffic Management Act 2004, no works may commence within the limits of the public highway without the formal written Agreement of the County Council as Highway Authority. It must be ensured that public transport services in the vicinity of the site are not adversely affected by the development works. Advice regarding the technical, legal, administrative and financial processes involved in Section 278 Agreements may be obtained by contacting the Director of Environmental Services at County Hall, Matlock (tel: 01629 580000 and ask for the Area Development

Manager). The applicant is advised to allow approximately 12 weeks in any programme of works to obtain a Section 278 Agreement.

The proposed development lies within a coal mining area which may contain unrecorded coal mining related hazards. If any coal mining feature is encountered during development, this should be reported immediately to The Coal Authority on 0345 762 6848. It should also be noted that this site may lie in an area where a current licence exists for underground coal mining. Further information is also available on The Coal Authority website at:

www.gov.uk/government/organisations/the-coal-authority. Property specific summary information on past, current and future coal mining activity can be obtained from: www.groundstability.com.

It would be advisable to ensure that any new hard surfaces are constructed of permeable materials to control and contain surface water runoff.

Item **1.5**

Reg. No. **9/2016/0004/TP**

Applicant:
Mr Martin Buckley
SDDC
Civic Offices
Civic Way
Swadlincote
DE11 0AH

Agent:
Mr Martin Buckley
SDDC
Civic Offices
Civic Way
Swadlincote
DE11 0AH

Proposal: **THE PRUNING OF TWO PLANE TREES COVERED BY
SOUTH DERBYSHIRE DISTRICT COUNCIL TREE
PRESERVATION ORDER NUMBER 132 AT THE
PLAYGROUND WREN WAY MICKLEOVER DERBY**

Ward: **ETWALL**

Valid Date: **04/01/2016**

Reason for committee determination

The Council is the Applicant and the trees are sited on Council owned land maintained as public open space.

Site Description

The plane trees are located on a small piece of public open space and adjacent to a formal children's play area. They are highly visible, seen from Wren Way and a number of surrounding residential streets. The site and immediate land is flat.

Proposal

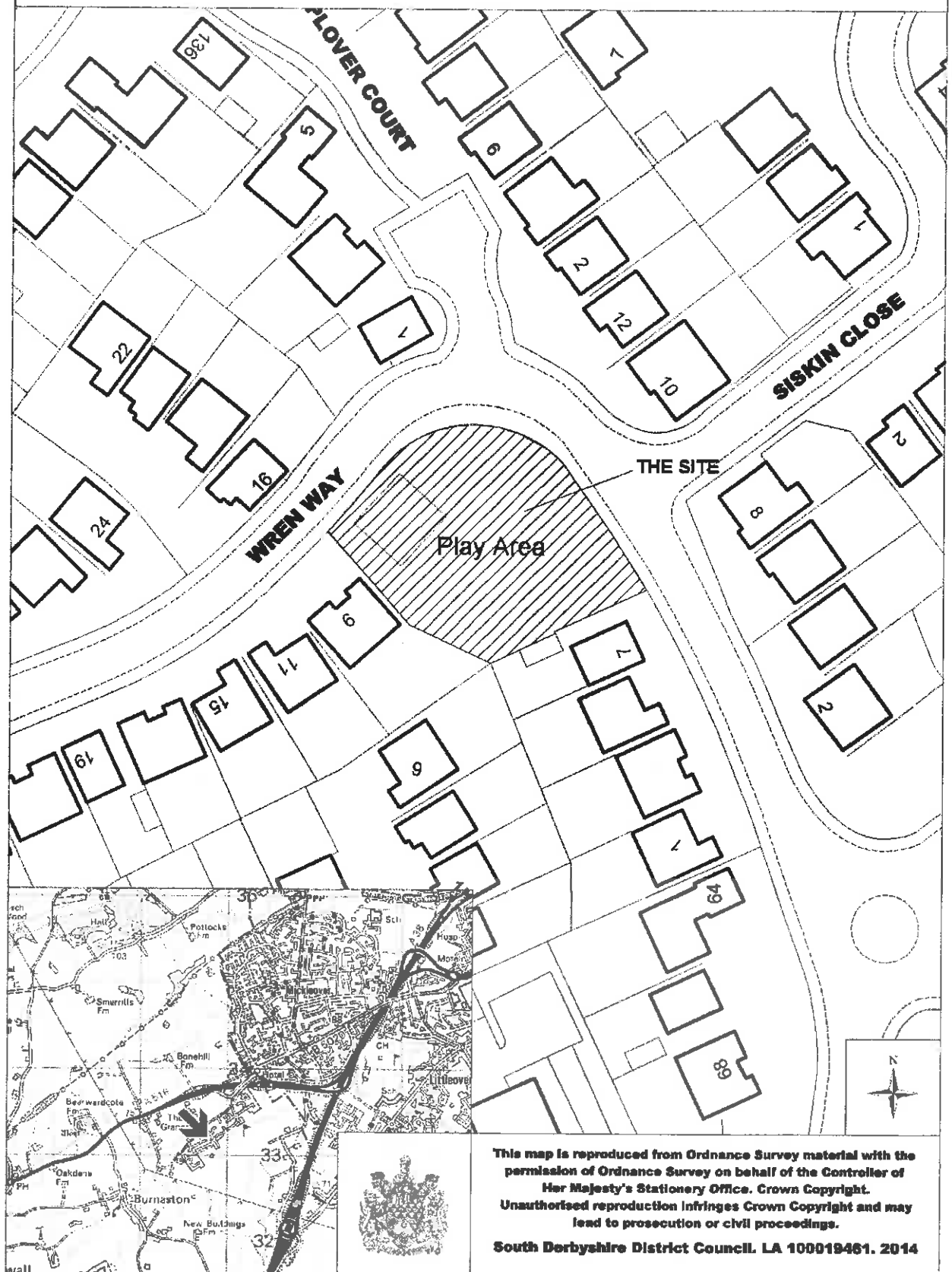
Tree 1 – Remove deadwood, additionally removing broken and hung up branches.
Tree 80 – Remove deadwood and broken hung up branches. Prune branches away from the adjacent private property leaving approximately 3m clearance. Both trees form part of Group 6 as defined in the Order.

Applicant's supporting information

The applicant has submitted a tree report, part of a District wide tree survey. The trees here have been given an individual reference number, relating to a detailed schedule of proposed work.

Planning History

9/2016/0004 - The Playground at Wren Way, Mickleover DE3 0UF



The trees were protected prior to the re-development of this former Hospital site. The Order was confirmed in February 1997.

Responses to Publicity

Councillor David Muller has offered no objection.
No others received.

Development Plan Policies

- Saved Local Plan: Environment Policy 9.
- Emerging Local Plan Part 1: BNE4 (Landscape Character and Local Distinctiveness)

National Guidance

- National Planning Policy Framework, paragraphs 17 and 118.

Planning Considerations

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

Planning Assessment

The trees are part of an estate wide Preservation Order. The specific trees in question are 'Plane' trees and are approximately over 220 years old.

The submitted works are deemed essential, part of a long-term management programme of Council owned trees. The pruning (specifically to tree 80) will additionally remove some conflict with a neighbouring residential property, where its outer crown is touching the side wall and roof and such is deemed a nuisance. The works are seen not to compromise the health or overall amenity value of these trees and importantly will remove the possibility of property damage and reduce the likelihood of falling tree 'debris' in what is a well-used public space.

Recommendation

GRANT permission subject to the following conditions:

1. The work hereby approved shall be carried out within two years of the date of this consent.
Reason: To conform with Regulation 17(4) of the Town and Country Planning (Tree Preservation) (England) Regulations 2012, in order to enable the local planning authority to consider any proposals beyond this period in the interests of safeguarding the amenity value of the tree(s).
2. The work shall be carried out in accordance with BS3998:2010 - Tree Work.
Reason: To safeguard the health of the tree(s).

2. PLANNING AND OTHER APPEALS

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

Reference	Place	Ward	Result	Cttee/Delegated	Page
9/2015/0298	Newhall	Newhall & Stanton	Dismissed	Delegated	51
9/2015/0309	Netherseal	Seales	Dismissed	Delegated	54
9/2014/0431	Overseal	Seales	Dismissed	Committee	56

Appeal Decision

Site visit made on 15 December 2015

by Beverley Wilders BA (Hons) PgDurb MRTPI

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

Decision date: 9 February 2016

Appeal Ref: APP/F1040/W/15/3133144

**Land adjacent to 11 Higgins Road, Newhall, Swadlincote, Derbyshire
DE11 0JY**

- The appeal is made under section 28 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Anthony Davis against the decision of South Derbyshire District Council.
 - The application Ref 9/2015/0298, dated 28 March 2015, was refused by notice dated 18 June 2015.
 - The development proposed is erection of detached dwelling on site of former cottage.
-

Decision

1. The appeal is dismissed.

Procedural Matter

2. The site location is described on the application form as 11 Higgins Road. It is described on the decision notice as land adjacent to 11 Higgins Road and I consider that to be a more accurate description. I have considered the appeal on that basis.

Main Issues

3. The main issues are:
 - The effect of the proposal on the character and appearance of the area;
 - The effect of the proposal on highway safety.

Reasons

Character and appearance

4. The appeal site comprises a vacant piece of land located on a small side road. A row of four, two storey terraced properties is located to one side of the appeal site with a public right of way (PROW) with a car park beyond located to the other side. Two bungalows are located on the opposite side of the road and are set back from it. Higgins Road slopes down gently from Main Street and also curves slightly. The set back position of the existing dwellings together with an area of open space at the end of the road gives the road a very open and spacious character when viewed from near the junction with

Main Street. Two storey buildings fronting Main Street are located on either side of the junction of Higgins Road and Main Street.

5. The proposed two storey dwelling is positioned very close to the front boundary of the site with Higgins Road, some distance forward of the front elevations of the terraced properties and slightly forward of the side elevation of the building fronting Main Street. The height and position of the proposed dwelling means that it would be very prominent and would reduce the existing open and spacious character of the road. It would be side onto Higgins Road presenting a largely blank gable to the street with the exception of a small first floor window. This would be at odds with surrounding residential properties which front the road. The blank rear elevation would also be visible from the road and from the PROW. The proposed dwelling would appear as a dominant and incongruous addition, out of character with the immediate surrounding area. Whilst I note that the proposed dwelling is traditional in terms of design and materials, this does not overcome the harm that I have identified above.
6. The development description on the application form states that the appeal site is the site of a former cottage. However I have seen no evidence of what development previously existed on the site and any building that was on site was clearly demolished some time ago. In any event, I must determine the proposal before me on its own merits.
7. I conclude that the proposal would adversely affect the character and appearance of the area and is contrary to Housing Policy 11 of the South Derbyshire Local Plan (SDLP) and relevant paragraphs of the National Planning Policy Framework (the Framework). These policies seek, amongst other things, high quality design for new housing developments.

Highway safety

8. Higgins Road is a narrow, gently sloping and slightly curved road that serves a number of residential properties, a pre-school nursery and provides access to an area of open space which includes a play area.
9. Vehicular access to a parking space is provided to the side of the proposed dwelling, adjacent to the row of terraced properties. No turning facilities are provided. This means that vehicles using the access and parking space would either have to reverse into or out of the site. The position of the proposed dwelling very close to the road means that drivers of vehicles exiting the parking space would have no view of vehicles travelling along the road from the junction with Main Street until the exiting vehicle was in the road. This would unacceptably increase the risk of collision on the road.
10. Reference has been made to the fact that the number of vehicle movements associated with the proposed dwelling would be small and to other traffic using the road. The fact that the road is used to access the open space at the end of it and sometimes by fairground vehicles adds weight to my concerns regarding the inadequate visibility that would be provided for the proposed access and parking area. Whilst only one dwelling is proposed, I consider that the number of vehicle movements associated with it would be material enough to adversely impact on highway safety in the immediate vicinity of the site.
11. I conclude that the proposal would result in an adverse impact on highway safety and would be contrary to Housing Policy 11 and Transport Policy 6 of the SDLP and relevant paragraphs of the Framework. These policies seek

amongst other things, to ensure that development proposals have safe layouts and adequate access and parking facilities.

Conclusion

12. For the above reasons and having regard to all matters raised, I conclude that the appeal should be dismissed.

Peterley Wilders

INSPECTOR

Appeal Decision

Site visit made on 15 December 2015

by Beverley Wilders BA (Hons) PgDip MRTPI

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

Decision date: 10 February 2016

Appeal Ref: APP/F1040/W/15/3135028

**Bluebell Manor, Grangewood, Netherseal, Swadlincote, Derbyshire
DE12 8BE**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Steven Clark against the decision of South Derbyshire District Council.
 - The application Ref 9/2015/0309, dated 7 April 2015, was refused by notice dated 8 June 2015.
 - The development proposed is the erection of one detached dwelling and garage.
-

Decision

1. The appeal is dismissed.

Procedural Matter

2. The proposal is for outline planning permission, with approval being sought for access at this stage. Appearance, landscaping, layout and scale are reserved matters. An indicative site plan showing the proposed access and indicative layout of the dwelling was submitted with the application. I have had regard to this in reaching my decision.

Main Issue

3. The main issue is the effect of the proposal on the character and appearance of the area.

Reasons

4. The appeal site comprises part of the side garden of the existing dwelling at Bluebell Manor. It is located between the existing large outbuilding at Bluebell Manor and the side boundary with the adjacent property Brackenhurst. Bluebell Manor is centrally located between two other large and relatively modern detached dwellings located in spacious plots. The dwellings are set back but visible from the road in a loose ribbon of development. The immediate surrounding area is rural in character.
5. The appeal site is relatively small and narrow, especially when compared with the plot sizes and widths of the existing dwellings in the immediate vicinity. The indicative layout shows a dwelling set back from the road and located close to the side boundaries of the site between the large outbuilding at Bluebell Manor and the dwelling at Brackenhurst. Whilst the layout is only indicative at

this stage, I consider that the restricted size and shape of the plot and its position relative to adjacent buildings is such that the erection of a dwelling on the site would result in a cramped form of development. Consequently it would be out of keeping with the scale and character of the immediate surrounding area.

6. I note the suggestion that a simple dwelling similar in scale and character to the smaller elements in the streetscene could be designed and that this would not appear cramped. However I have no such details to consider and in any event, for the reasons outlined above, I am not convinced that this would overcome my concerns regarding the size, shape and position of the plot. I also note that the Council did not seek any further details on the proposal during the course of the application and that it was initially recommended for approval by the case officer. However neither of these matters has affected my decision.
7. I conclude that the proposal would adversely affect the character and appearance of the area and would be contrary to Housing Policy 6 of the South Derbyshire Local Plan. This policy seeks to ensure, amongst other things, that new housing development is in keeping with the scale and character of the settlement.

Conclusion

8. For the above reasons and having regard to all matters raised, I conclude that the appeal should be dismissed.

Beverley Wilders

INSPECTOR

Appeal Decision

Hearing held on 5-6 January 2016

Site visit made on 6 January 2016

by Michael Boniface MSc MRTPI

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

Decision date: 26 January 2016

Appeal Ref: APP/F1040/W/15/3033436

Land at Valley Road, Overseal, Swadlincote, Derbyshire

- The appeal is made under section 28 of the Town and Country Planning Act 1990 against a refusal to grant planning permission
 - The appeal is made by Persimmon Homes Ltd against the decision of South Derbyshire District Council.
 - The application Ref 9/2014/0431, dated 1 May 2014, was refused by notice dated 26 March 2015.
 - The development proposed is a residential development for 64 dwellings with access provided.
-

Decision

1. The appeal is allowed and planning permission is granted for a residential development of 64 dwellings with access provided at Valley Road, Overseal, Swadlincote, Derbyshire in accordance with the terms of the application, Ref 9/2014/0431, dated 1 May 2014, subject to the conditions contained in the attached Schedule.

Application for costs

2. At the Hearing an application for costs was made by Persimmon Homes Ltd against South Derbyshire District Council. This application is the subject of a separate Decision.

Preliminary Matters

3. During the course of the planning application the proposed scheme was amended to accommodate 64 dwellings rather than the 61 dwellings initially proposed. This scheme was consulted upon by the Council and was that considered by the Council in reaching its decision. Therefore, I have considered the appeal on the same basis and have used the description of development contained within the appeal forms rather than the original planning application.
4. It is common ground between the parties that the Council cannot currently demonstrate a deliverable five year housing land supply in accordance with paragraph 47 of the National Planning Policy Framework (the Framework). In these circumstances, paragraph 49 is clear that housing applications should be considered in the context of the presumption in favour of sustainable development. Furthermore, relevant policies for the supply of housing should not be considered up-to-date.

5. Paragraph 14 of the Framework states that the presumption in favour of sustainable development should be seen as a golden thread running through both plan-making and decision-taking. For decision taking this means, approving development proposals that accord with the development plan without delay; and where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole, or specific policies of the Framework indicate development should be restricted. This is the basis upon which I have determined the appeal.
6. In its Statement of Case, the Council argued that the provisions of paragraph 14 did not apply given the need for Appropriate Assessment (AA) under the Habitat Regulations². However, it conceded during the Hearing that AA is not required and this matter is considered further below.

Main Issue

7. The main issue is the effect on landscape character.

Reasons

8. Environment Policy 1 (EV1) of the South Derbyshire Local Plan (LP) (1998) seeks to restrict development outside settlements unless it is essential to a rural based activity; or unavoidable in the countryside, and the character and appearance of the countryside, the landscape quality, wildlife and historic features are safeguarded and protected. If development is permitted in the countryside it should be designed and located so as to create as little impact as practicable on the countryside.
9. Again, it is common ground that this policy actively restricts the delivery of housing and is, therefore, a relevant policy for the supply of housing in the terms of the Framework set out above. As such, it is to be considered out-of-date. However, this does not alter the status afforded to the policy by statute as part of the development plan, in accordance with which applications for planning permission must be determined unless material considerations indicate otherwise³.
10. For this reason, I do not accept the appellant's position that no weight should be attached to Policy EV1, but given its effect of restricting the supply of housing, it must be weighed against other material considerations, including the policies of the Framework.
11. The site is a field comprising rough grassland outside of, but adjoining, the settlement of Overseal. Residential properties surround the North West and North East boundaries, their frontages facing Lullington Road and Valley Road respectively. Public rights of way roughly follow the alignment of the site boundaries and are in close proximity to the remaining boundaries that are not enclosed by existing housing, albeit separated from the site by established tree and hedgerow planting of various depths and height. A public right of way also crosses the site from Valley Road to the South West where it intersects the surrounding right of way. A sewerage treatment plant is located to the South West beyond an area of dense tree planting.

² Conservation of Habitats and Species Regulations 2012 (as amended) (SI 2012/631) of the Planning and Compulsory Purchase Act 2004

12. A Landscape and Visual Impact Appraisal (LVIA) undertaken in accordance with GLVIA3⁷ and by a landscape professional accompanied the planning application. The Council's Statement of Case dealing with landscape matters acknowledged that it appeared to have been undertaken in accordance, in general terms, with good practice. There is, however, disagreement as to the significance of visual effects from the various viewpoints identified.
13. The Zone of Theoretical Visibility (ZTV) identified by the LVIA, which is drawn relatively tightly around the site and surrounding properties, is also endorsed by the Council's Statement. This indicates that visual effects are likely to be localised to within very close proximity of the site, particularly from the surrounding residential properties and public rights of way. It is clear from this ZTV that the most significant visual effects would be localised. Beyond this area, it is suggested that landform, the surrounding built form, the presence of the sewerage treatment works and woodland areas and the strong hedgerow and tree planting on and close to the site boundaries would screen or filter views of the development.
14. I am inclined to agree with this assessment, noting that the site, even at the time of my site visit during the winter, was very well visually enclosed by the above features. I am also mindful of the additional landscaping proposed as part of the development. Therefore, I am satisfied that the viewpoints identified are representative of the most significant effects that are likely to be experienced. 14 representative viewpoints within and surrounding the site are identified within the LVIA and the Council identified a further 5.
15. Users of the various public rights of way within and close to the site, and residents surrounding the site are receptors that would be likely to be sensitive to changes in the landscape. Clearly the introduction of a residential development will alter the character of the site, the views across it and the experience of people passing through.
16. However, the route of footpath FP13 is to be maintained within the development and would continue to provide access to the countryside beyond. The change in character along the footpath would be notable for the length of the site but the effects would be short lived as users would continue to experience rural scenes beyond the site itself. Bearing in mind the proposed planting along the route of the path, the transient nature of users and the short stretch of footpath that would be affected, I consider that the Council overstates the significance of effect to these users. Conversely, the appellant's assessment is overly optimistic and I would anticipate a moderate adverse impact remaining by year 15 given the significant change from a rural to urban experience on this part of the path.
17. Public Rights of Way FP9 and FP10 surround the site but are separated by strongly defined hedgerow and tree planting. I found this to provide a very good degree of screening even during the winter. Whilst there are some gaps, these are likely to reduce in the Spring and Summer and in any case, only provide glimpsing views at intermittent points along the route. Given this level of visual screening, and again noting the transient nature of users with access to good rural scenes beyond the site, I agree with the findings of the LVIA that the significance of effect would be no more than minor adverse.

18. Residents surrounding the site, including those at Clifton Close, Valley Road and Lullington Road would all have views of the site of varying significance dependent on their relative proximity and position. The view from these properties would be altered somewhat from open fields to residential development but private views are not protected by the planning system. In this case, the number of residents affected would be relatively small and the visual effect would again be likely to fall somewhere between the main parties assessment, amounting to moderate-minor adverse impact at year 15 for the worst affected residents. This effect would reduce with distance from the site and whilst glimpsing or partial views would be possible from Valley Road, Bailey Avenue and Lullington Road the development would be seen in the context of the surrounding built form on the edge of the village and would be well related to it.
19. The landscape effects of the development would be evident, in introducing built form to a currently undeveloped site along with the removal of hedgerows to accommodate the site access. However, the other boundary hedgerows and tree planting, field pattern and general form would be maintained. No other particular landscape features of merit exist within the site and although some rough grassland would be lost, no evidence has been submitted to suggest this is a rarity in the area or of any particular importance. I am also mindful that compensatory planting is proposed as a condition by the Council.
20. The LVIA identifies that the site falls within National Character Area 71 – 'Leicestershire and South Derbyshire Coalfield' of the National Character Map of England⁴ and the 'Village Estates Farmlands' character area defined more locally within *The Landscape Character of Derbyshire*⁵. The site is found to be broadly consistent with the characteristics of these areas. The site also falls within the National Forest where development is expected to incorporate additional tree planting and 20% of the site area would be laid out for tree planting and landscaping in support of these objectives.
21. The site is not designated for its landscape value and the Council accepted that it did not rank highly in the hierarchical approach to protection advocated by paragraph 113 of the Framework. Nevertheless, it asserted that the site constitutes a 'valued landscape' which should be protected and enhanced in the terms of paragraph 109 of the Framework.
22. I note that the site is well used by local people for recreation and leisure, that it allows countryside views and quick access to the wider countryside and National Forest. However, no specific feature of interest or physical attribute was identified within the site, nor was it demonstrated how the site makes a positive contribution to the local area other than through its intrinsic rural character, which could be said of any piece of undeveloped land in the countryside.
23. The Council undertook an exercise based on guidance within GLVIA3 to apportion value to the site, finding an overall medium value, much of which derived from the field pattern, boundary planting and ecological benefits, all of which would be maintained or enhanced by the development. The appellant provided an alternative assessment, which although not offering a defined value, assessed the value to be attached to various criteria as somewhat less.

⁴ National Character Map of England, Natural England

⁵ *The Landscape Character of Derbyshire*, Derbyshire County Council (2004)

24. The bar for landscape being considered 'valued' in the terms of the Framework is a matter for the decision maker but was considered by the High Court² recently which found support for an interpretation that the site need show a demonstrable physical attribute rather than just popularity. This is not something that can be said of the appeal site, nor is this argued by the Council. For the reasons set out above, I have seen nothing to indicate that the site is anything other than ordinary or that its level of protection should be elevated to that of a truly 'valued' or valuable landscape. This is notwithstanding that local people clearly enjoy the site.
25. Whilst the development would clearly alter the appearance of the site, the landscape effects would be localised given the enclosed nature of the site and the design of the proposed development. The wider countryside would not be harmed. Similarly, harmful visual effects would largely be confined to the immediate vicinity of the site and limited to the surrounding residents and users of nearby public rights of way for a short stretch within and very close to the site.
26. Policy EV1 of the LP allows for development outside of settlements where it is unavoidable in the countryside. The Council accepts that land outside of settlements will need to be released in order to meet its housing needs. Therefore, it seems to me that the first part of the policy is met. Furthermore, the character of the wider countryside, landscape quality, wildlife and historic features would be safeguarded and protected. However, there can be no dispute that some limited adverse effect would result to landscape character in the vicinity of the site. For this reason, I find a limited degree of conflict with Policy EV1. Whilst Policy EV1 is out-of-date in so far as it restricts housing supply, its objectives to protect the countryside and its intrinsic character are consistent with paragraph 17 of the Framework and this must be weighed against other considerations.
27. Although the Council had not previously referred to Criteria B of Policy EV1, it raised some concerns during the Hearing that housing would be located on higher ground within the site and that landscaping might be improved. However, it also acknowledged during the Hearing that the development had been designed sensitively. Areas of open space are proposed on the periphery of the site along with areas of improved landscaping, as well as a green corridor along the maintained route of public right of way FP13. Furthermore, it seems entirely appropriate that development be located on the higher parts of the site given that these are directly adjacent to the existing built edge of the village. As a result, the development would be well related to the existing form of the settlement with a reduced density marking the transition to the open countryside beyond. I consider that it has been designed and located so as to create as little impact as practicable on the countryside and this is supported by the conclusions reached above. I find no conflict with this criterion of the policy.
28. Much of the village has developed with properties in a linear alignment following the main roads in the settlement. However, this is not exclusively the case and I noted several examples of development at depth and of irregular layout, including close to the site at Clifton Close, Bailey Avenue and Bramble

² Case of *Stroud District Council v Secretary of State for Communities and Local Government and Gladwin Developments Ltd* [2015] EWHC 406 (Admin)

Walk. As such, the development would not be at odds with the prevailing character and form of the settlement.

Other Matters

29. The site is located close to the River Mease Site of Special Scientific Interest (SSSI) and Special Area of Conservation (SAC). The Habitats Regulations require that development does not significantly harm the purposes or integrity of such areas. In this case, the SAC is designated for the habitat it provides to a number of important species and water quality must be protected in order to maintain favourable conditions.
30. The Council has carried out a detailed Screening Exercise under the Habitats Regulations, concluding that, subject to appropriate mitigation such as a drainage scheme and developer obligation to maintain water quality, no significant effects would occur, either individually as a result of the development, or in combination with other development. The approach to avoidance of effects is outlined in the Council's *River Mease Special Area of Conservation Water Quality Management Plan (October 2012)* Developer Contribution Schema and is supported by Natural England. I have no reason to reach a different conclusion and agree with the Council's Screening exercise. As a result, Appropriate Assessment is not necessary under the regulations.
31. Many local residents have raised concern that the development would result in highway safety issues at the junction with Valley Road and on the surrounding highway network. The application is accompanied by a Transport Statement (April 2014) which considers these matters. It details traffic speed surveys in the vicinity of the site access, which are recorded as being below the speed limit. The Local Highway Authority (LHA) confirms that the site access complies with its design requirements and would be safe. Whilst I note that the access would be on a bend, visibility splays appropriate to the measured speed of traffic on Valley Road are achievable (2.4m x 33m) and I see no reason why the access should be unsafe under these circumstances.
32. The traffic volume arising from the development is also considered, along with the likely distribution on the surrounding highway network. No capacity issues are identified and the recorded accident data provided by Derbyshire Constabulary indicates no pattern of accidents in the local area. Whilst visibility at some junctions between Valley Road, Lullington Road and the A444 are substandard by current requirements, Manual for Streets confirms that there is not necessarily a link between reduced visibility and increased incidents as drivers are likely to be more cautious. This is evident in the accident data submitted. The development would have only limited additional impact on surrounding junctions and this would not be harmful to highway safety or capacity. In reaching this conclusion, I am also mindful that the Council commissioned its own Independent Transport and Highways Review (Edwards and Edwards Consultancy Ltd) which supported these findings.
33. Whilst I have had regard to the concerns of local people regarding accidents, some of which may not be recorded by the Constabulary, and the volume and size of traffic using the surrounding area, there is no evidence before me to suggest that the development would be harmful in highways terms.
34. Both the LHA and the Council have also confirmed that the level of parking provision, roughly 2 parking spaces per dwelling, is considered appropriate.

Given the location of the site, with access to a range of services and facilities on foot, including public transport, I have no reason to disagree.

35. It is preferable to utilise Brownfield sites prior to Greenfield but it is unlikely that the Council can meet its housing requirements solely using previously developed land. This is particularly so in the short term and there is an immediate need for the delivery of housing now. Available sites must, therefore, be considered on their merits.
36. Overseal provides a range of services and facilities which has led the Council to identify it as a Key Service Village in its emerging Local Plan. Whilst I can only attribute very limited weight to this document at the current time given its stage of preparation, it is a good indication of the village's relative sustainability. The village benefits from a primary school, post office/shop and public transport amongst other things. The main parties agree that the village is an appropriate location for residential development and I have no reason to disagree.
37. The development is solely residential in nature and would be entirely compatible with neighbouring residential properties. Whilst some noise and disturbance may result during construction, this would be temporary and the living conditions of neighbouring residents would not be unacceptably harmed. I am also aware of concerns in respect of overlooking, loss of light and overbearing impact but the proposed buildings would be suitably removed from neighbouring properties as to avoid an adverse impact in these respects. Buildings would be close to the boundary with properties on Clifton Close but have been sited so as to avoid harmful impacts in terms of window placement and design. The Council raises no objection with regards to living conditions and I see no reason to take an alternative view.
38. Some ridge and furrow has been identified within the site but this is of limited significance according to the submitted Archaeological Assessment and the County Archaeologist. Its isolated position suggests that the site is outside of the old medieval village and the likelihood of any further remains of archaeological interest is considered to be low.
39. A number of local residents raised concern regarding the presence of a geological fault under the site, noting the impact of the coal mining industry on ground conditions in the area. The appellant confirmed that no land stability issues had been identified, including in the submitted Geo-environmental Assessment (April 2014) and Flood Risk Assessment (April 2014). Ground conditions would be a matter for the developer to consider in the detailed design of the building foundations and whilst I have had regard to the anecdotal evidence provided by local people of ground shrinkage and subsidence, there is nothing before me to indicate that the site is not suitable for residential development, or that ground conditions present an insurmountable issue that should lead to the refusal of planning permission.
40. An Ecological Appraisal (April 2014) identifies that the site comprises heavily grazed semi-improved natural grassland which would be lost to development. However, the main habitat is provided in the surrounding hedgerows and trees on the boundaries of the site which may be suitable for bat roosting and bird nests. These are to be retained within the development. Potential exists for the presence of Great Crested Newts but further survey work is required on third party land. If this species is present, terrestrial trapping will be required

and a licence may be necessary from Natural England. The report goes on to recommend a series of measures that would enhance the ecology within the site, such as the provision of native planting, bat and bird boxes, dead wood piles and insect houses. Such measures could be secured by condition if planning permission were granted. Overall, therefore, there is potential for ecological enhancements and no significant loss of biodiversity is identified.

41. I have had regard to the ongoing plan making process underway by the Council and the emerging Local Plan. This process will ultimately identify the quantum and location of development in the district but as mentioned above, the emerging LP attracts only very limited weight at the current time given its stage of preparation, its lack of independent testing and the unknown extent of unresolved objections. Given the Framework's objective to boost significantly the supply of housing, it would not be appropriate to withhold planning permission in anticipation of the plan making process being completed.
42. The site is located entirely within Flood Zone 1 (lowest risk) as defined by the Environment Agency. The detailed Flood Risk Assessment (April 2014) carried out in support of the application suggests that Greenfield run-off rates will be maintained at their current level through the detailed design of the drainage scheme, utilising attenuation ponds and the existing surface water system. As such, the development would not be at risk of flooding, nor would it increase the risk elsewhere.
43. Residents raised concern that the scheme might adversely affect the local tourism industry but the development would have little impact on the wider public rights of way in the area or the level of access to the countryside. There is no evidence to suggest that this development would harm tourism and I attach this matter little weight.
44. Many local people are concerned that the development would result in a loss of value to their property but that is not material to my decision in this appeal and I am unable to attach it weight.
45. Concerns are raised that local infrastructure such as the school and doctor's surgery has insufficient capacity to accommodate additional residential development. However, the Council is satisfied that the existing facilities could be upgraded or altered to increase their capacity and accommodate the demand generated by the development. This would be funded by developer contributions secured under S106 of the Town and Country Planning Act 1990. The County Council and Health Authority have each confirmed that appropriate contributions would mitigate the impact of the development.
46. Further obligations contained within the completed legal agreement include a built facilities contribution for improvements to the changing room facilities at Overseal Recreation Ground; a grassland contribution to provide compensatory grassland at Swadlincote Woods; provision of a Locally Equipped Area for Play; an Off-site Open Space contribution to improve play provision at Overseal Recreation Ground and compensate for a lack of open space provision on site; an Outside Sports Facilities Contribution to improve the existing sports pitches at Overseal Recreation Ground; and a River Mease Contribution towards water quality management so as to ensure that significant effects to the SAC are avoided. Provision is also made for maintenance contributions in respect of the open space and SuDS if adopted by the Council or other body.

47. Having had regard to the evidence before me, including the CIL Compliance Statement provided by the Council, I am satisfied that these obligations are relevant to the development proposed, necessary and are otherwise in accordance with Regulation 122 of the Community Infrastructure Levy Regulations 2010. Furthermore, no obligation would involve the pooling of more than 5 contributions towards any one project so as to conflict with Regulation 123 and I am, therefore, able to take the contributions into account.

Planning Balance

48. The appellant has highlighted a range of benefits that would arise from the development. Firstly, the scheme would deliver 64 dwellings that would assist in meeting the Council's housing needs. The Framework seeks to boost significantly the supply of housing and it is recognised that the Council cannot currently demonstrate a deliverable five year housing land supply so as to support this objective. Therefore, I attach significant weight to the contribution that would be made to local housing supply. Furthermore, 30% of the proposed dwellings would be for the purposes of affordable housing, for which there is, again, a recognised shortfall in the district and an ongoing need. I attach significant weight to this benefit.
49. The construction of houses creates jobs in the construction industry, whilst the in-migration of people increases the local labour force and assists in maintaining the viability of local business through increased custom. The Council do not dispute these benefits and accept that both the social and economic objectives of the Framework would be fulfilled by the development.
50. In environmental terms, I have identified limited landscape impact that would be in conflict with Policy EV1 of the LP. However, this impact would be localised and would not be significant in the wider landscape. There would be environmental benefits arising from the development given the location of the site with good access to services and facilities, reducing the need to travel. Furthermore, the open space, landscaping and ecological enhancements proposed would enhance the environmental value of the site. Therefore, I conclude that, taken as a whole, the environmental objectives of the Framework would also be fulfilled and that the development would constitute sustainable development.
51. I have identified only limited conflict with Policy EV1 of the LP, which I have already established is out of date. The limited and localised adverse impact on landscape character that I have identified does not significantly and demonstrably outweigh the benefits that I have outlined above, when assessed against the policies of the Framework, taken as a whole. As such, the presumption in favour of sustainable development applies and planning permission should be granted.

Conditions

52. The Statement of Common Ground contains a range of conditions which both parties consider to be necessary if planning permission is granted, which I consider below.
53. It is necessary to secure details of facing materials and detailed design components to ensure an appropriate appearance for the development. Details of the proposed boundary treatments are sought to ensure an appropriate

appearance and ensure suitable living conditions for future occupants. Details of the LEAP equipment are necessary to ensure that an appropriate facility is provided which meets the needs of residents.

54. Tree and hedgerow protection measures must be approved in the interests of ecology, character and appearance. For the same reason, detail of the proposed street tree planting is necessary and the approved landscaping scheme is secured. A detailed foul and surface water drainage scheme is necessary for flood prevention and pollution control. Furthermore, a condition is necessary to ensure that drainage follows the principles of SuDS and accords with the submitted FRA. Ground contamination must be investigated and remediated as necessary in the interests of public health.
55. Finished floor levels must be approved to ensure an appropriate appearance and protect the living conditions of neighbouring occupants. In order to protect the integrity of the River Mease SSSI and SAC, details of the proposed design and operation of the attenuation pond is necessary and an ecological construction and mitigation scheme must be approved and implemented. The ongoing effectiveness of the attenuation pond should also be monitored. The development should be carried out in accordance with the recommendations of the submitted Ecological Appraisal, including the provision of bat boxes/tiles.
56. A scheme of affordable housing (19 units) is secured. Whilst a Planning Obligation is normally the best way to ensure certainty of delivery, the parties agree that a condition would secure the necessary housing and would be enforceable. Given that the condition specifies the requirements of the scheme, I see no reason why a condition would not be effective in this instance.
57. In the interests of highway safety details of the proposed surface materials for the internal roads should be approved; on-site provision should be made for the storage of plant, materials and vehicles associated with construction; wheel washing should take place; visibility splays should be secured from an early stage; parking for individual properties should be retained for that purpose in perpetuity; gates should be set back from the highway by 5m to allow a car to pull clear and driveway gradients should not exceed 1 in 15.

Conclusion

58. In light of the above, and having considered all other matters, the appeal is allowed.

Michael Boniface

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Gary Stevens	Planning Consultant
Phil Rech	Landscape Advisor
John Edmond	Solicitor
Colin Shields	Highways Advisor

FOR THE LOCAL PLANNING AUTHORITY:

Ian McHugh	Planning Consultant
David Hickie	Landscape Advisor
Chris Nash	Planning Officer

INTERESTED PERSONS:

Cllr Beth Hall	District Councillor
Darren Holmes	Local resident
Lyndsey Holmes	Local resident
Donald Swindell	Local resident
John Haywood	Local resident
Michael Strangward	Local resident
Anne Beard	Local resident
Mr Mottram	Local resident
Cllr Pat Murray	District Councillor

DOCUMENTS SUBMITTED DURING HEARING

- 1 Proposed Conditions and CIL Compliance Statement
- 2 High Court case of Streud District Council v SoS and Gladman Developments Ltd [2015] EWHC 488 (Admin)
- 3 Aerial photograph of site at Linton
- 4 Diagram titled Areas of Multiple Environmental Sensitivity (October 2010)
- 5 Costs application on behalf of the appellant

- 6 Completed Planning Obligation
- 7 Addendum to Statement of Case (by the Council)
- 8 Copy of complete set of house type drawings
- 9 Independent Transport and Highways Review (Edwards and Edwards Consultancy Ltd) (March 2015)
- 10 Ariel photographs of appeal site
- 11 E-mail from Derbyshire Constabulary to Robert Holland dated 5 January 2016 regarding accident data
- 12 Consultation responses to planning application
- 13 Updated Costs application on behalf of the appellant
- 14 Council's Costs Rebuttal
- 15 GLVIA3 Box 5.1 review by Phil Rech
- 16 E-mail from Zoe Sewter to Chris Nash dated 6 January 2016 regarding leisure and recreation contributions

DOCUMENTS SUBMITTED AFTER CLOSE OF HEARING

- 1 Amended Planning Obligation

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: SL/01 Rev. E, 178/FLAT/08, 178/ALN/01, 178/Cast/12, 178/CHED/08, 178/ClayA/10, 178/DGAR/11, 178/HAN/02, 178/HAT/05, 178/KEN/07, 178/ROSE/06, 178/SGAR/11, 178/SOUT/04 and 178/WIN/09); and GL0267 01 Rev. F.
- 3) No part of the development involving the construction of a dwelling shall be carried out until precise details, specifications and samples of the facing materials to be used in the construction of the external walls and roof of the dwellings have been submitted to and approved in writing by the Local Planning Authority. The work shall be carried out in accordance with the approved details.
- 4) Notwithstanding any details submitted or the provisions of the Town and Country Planning (General Permitted Development) Order 2015, no dwelling shall be occupied 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 treatments 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) Prior to the commencement of the erection of the dwelling to which they relate, details of all eills, window headers, ventilation infill panels within windows, wet verge details without clanking tiles, eaves and verge projections, block paving types and colours, and footpath/pavement materials and colours shall be submitted to and approved in writing by the Local Planning Authority. The development shall be completed strictly in accordance with the approved details.
- 6) Prior to the first occupation of any of the dwellings, details of the design and equipment for the LEAP, including the materials of the proposed equipment, shall be submitted to and approved in writing by the Local Planning Authority. The works shall be carried out strictly in accordance with the approved details in accordance with a timetable agreed in writing by the Local Planning Authority.
- 7) Notwithstanding the submitted details, prior to the commencement of development, details of the measures for the protection of all trees and hedgerows to be retained shall be submitted to and approved in writing by the Local Planning Authority. The approved measures shall be implemented prior to the commencement of the development and retained in position until all building works on the site have been completed.
- 8) Prior to the commencement of development involving the construction of a road the planting scheme for the street trees and details of the tree pit design shall be submitted to and approved in writing by the Local Planning Authority. The works shall be carried out in accordance with the approved details.

- 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 dwellings 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.
- 10) No development shall take place until details of a scheme for the disposal of foul and surface water has been submitted to and agreed in writing by the Local Planning Authority. The surface water drainage scheme shall be based on sustainable drainage principles and include an assessment of the hydrological and hydro geological context of the development. The drainage scheme shall demonstrate the surface water run-off generated up to and including the 100 year plus 30% (for climate change) critical rain storm will not exceed the run-off from the undeveloped site following the corresponding rainfall event. The submitted scheme shall demonstrate how the drainage will discharge into the attenuation pond. The scheme shall subsequently be implemented in accordance with the approved details before the development is occupied.
- 11) In accordance with Condition 10 above the surface water drainage system(s) shall include: a) the design to be in accordance with either the National SuDS Standards or CIRIA C697 and C687, whichever are in force when the detailed design of the surface water drainage system is undertaken; b) limiting the run-off generated by all rainfall events up to the 100 year plus 30% (for climate change) critical rain storm so that it will not exceed the run-off from the undeveloped site and not increase the risk of flooding off-site; c) provision of surface water run-off attenuation storage to accommodate the difference between the allowable discharge rate/s and all rainfall events up to the 100 year plus 30% (for climate change) critical rain storm; d) detailed design (plans, cross, long sections and calculations) in support of any surface water drainage scheme, including details of any attenuation system and the outfall arrangements; and e) details of how the on-site surface water drainage systems shall be maintained and managed after completion and for the lifetime of the development, to ensure long-term operation to design parameters.
- 12) The development shall not be commenced until a scheme to identify and control any contamination of land, or pollution of controlled waters has been submitted to, and approved in writing by, the Local Planning Authority; and until the measures approved in that scheme have been implemented. The scheme shall include all of the measures (phases I to III) detailed in Box 1 of section 3.1 the South Derbyshire District Council document 'Guidance on submitting planning applications for land that may be contaminated', unless the Local Planning Authority dispenses with any such requirement specifically and in writing. Prior to occupation of the development (or parts thereof) an independent verification report shall be submitted, which meets the requirements given in Box 2 of section 3.1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'. In the event that it is proposed to import soil onto site in connection with the development, this shall be done to comply with the specifications given in Box 3 of section 3.1 of the

Council's 'Guidance on submitting planning applications for land that may be contaminated'.

- 13) If during development any contamination or evidence of likely contamination is identified that has not previously been identified or considered, then the applicant shall submit a written scheme to identify and control that contamination. This shall include a phased risk assessment carried out in accordance with the procedural guidance of the Environmental Protection Act 1990 Part IIA, and appropriate remediation proposals, and shall be submitted to the LPA without delay. The approved remediation scheme shall be implemented in accordance with the approved methodology.
- 14) Prior to the commencement of the dwellings to which they relate, details of the finished floor levels 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 approved level(s).
- 15) Prior to the first construction of any dwelling or road on the site, full detailed drawings of the attenuation pond, including depth, construction, water quality outflow parameters, materials and planting, shall be submitted to and approved in writing by the Local Planning Authority. The pond shall be designed to capture and filter out surface water run-off from the estate roads. The development shall be completed in accordance with the approved details.
- 16) Prior to the commencement of development an ecological construction and mitigation statement shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out strictly in accordance with the approved statement.
- 17) Prior to the occupation of the first dwelling on the site, details for the monitoring of the effectiveness of the attenuation pond shall be submitted to and approved in writing by the Local Planning Authority and the approved monitoring scheme shall be carried out in accordance with the approved details.
- 18) No development involving the construction of a dwelling shall commence until a scheme for the provision of the affordable housing hereby permitted, as detailed on approved plan SL/01 Revision E, has been submitted to and approved in writing by the Local Planning Authority. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in Annex 2 of the NPPF or any future guidance that replaces it. The scheme shall include: a) the tenure of the affordable housing provision to be made which shall consist of not less than 19 dwellings; b) the arrangements for the transfer of the affordable housing to an affordable housing provider or the management of the affordable housing (if no RSL involved); c) the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing; and d) the occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.
- 19) Prior to the first occupation on site, details of the surface materials to be used in all areas of proposed public highway shall be submitted to and

- approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 20) Before any other operations are commenced (excluding demolition/site clearance) space shall be provided within the site for the storage of plant and materials / site accommodation / loading and unloading of goods vehicles / parking and manoeuvring of site operatives' and visitors' vehicles, laid out and constructed in accordance with detailed designs to be submitted to and approved in writing by the Local Planning Authority. The area shall be maintained throughout the contract period in accordance with the approved designs free from any impediment to its designated use.
- 21) Throughout the period of construction wheel cleaning facilities shall be provided and retained within the site. All construction vehicles shall have their wheels cleaned before leaving the site in order to prevent the deposition of mud or other extraneous material on the public highway.
- 22) Before any other operations are commenced the new estate street junction shall be formed to Valley Road in accordance with the application drawings, laid out, constructed to base level and provided with 2.4m x 33m visibility splays in each direction, the area in advance of the sightlines being levelled, constructed as footway and not being included in any plot or other sub-division of the site.
- 23) No dwelling shall be occupied until the proposed new estate streets between each respective plot and the existing public highway have been laid out in accordance with the application drawings to conform to the County Council's Estate Road design guide, constructed to binder course level, drained and fit in accordance with the County Council's specification for new housing development roads.
- 24) No dwelling shall be occupied until space has been provided within the site in accordance with the application drawings for the parking and manoeuvring of residents' and visitors' vehicles, laid out and surfaced. Once provided any such facility shall be maintained throughout the life of the development free from any impediment to its designated use.
- 25) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015, the garage accommodation/parking space to be provided in connection with the development shall not be used other than for the above stated purpose.
- 26) No gates or other barriers to any dwelling shall be erected within 5m of the proposed nearside highway boundary and any gates elsewhere shall open inwards only.
- 27) The proposed access drive to each dwelling shall be no steeper than 1 in 15 for the first 5m from the nearside highway boundary.
- 28) Prior to the construction of the first dwelling on the site, details shall be submitted to and approved in writing by the Local Planning Authority to show how bat boxes and bat tiles will be incorporated into the development. The works shall be carried out in accordance with the approved details.
- 29) The development hereby approved shall be carried out in accordance with the Ecological Appraisal dated April 2014.

Costs Decision

Hearing held on 5-6 January 2016

Site visit made on 6 January 2016

by Michael Boniface MSc MRTPI

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

Decision date: 16 January 2016

Costs application in relation to Appeal Ref: APP/F1040/W/15/3033436 Land at Valley Road, Overseal, Swadlincote, Derbyshire

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Persimmon Homes Ltd for a full award of costs against South Derbyshire District Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for a residential development of 64 dwellings with access provided.
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Decision

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

The submissions for Persimmon Homes Ltd

2. That the Council has failed to substantiate its reason for refusal providing evidence that is less than robust in an attempt to defend a decision reached by its members, contrary to an officer recommendation, without the benefit of professional advice on landscape impacts. This followed two deferrals at committee in respect of highways concerns where no landscape advice was sought.
3. The Council misinterpreted planning policy, attaching weight to Environment Policy 1 (EV1) of the South Derbyshire Local Plan (LP) (1998) when it was clearly out of date in the absence of a demonstrable five year housing land supply. Furthermore, it failed to properly apply the presumption in favour of sustainable development advocated by the National Planning Policy Framework (the Framework).
4. The Council has been inconsistent in its decision making, failing to have regard to other recent appeal decisions¹ in the district which were relevant to the determination of the appeal proposal.
5. The Council misinterpreted the need for Appropriate Assessment under the Habitat Regulations² and wrongly suggested that the presumption in favour of sustainable development did not apply.
6. As a result, it is suggested that the Council delayed development which should clearly have been permitted; failed to substantiate its reason for refusal; and refused planning permission on a ground capable of being dealt with by

¹ APP/F1040/W/14/2228051, APP/F1040/W/15/3005774 and APP/F1040/W/14/2224623
² Conservation of Habitats and Species Regulations 2012 (as amended)

condition (landscape). This has resulted in the need to pursue an appeal which should not have been necessary given that the scheme is in accordance with Government objectives. A full award of costs is sought pursuant to the costs of the appeal process.

The response by South Derbyshire District Council

7. The Council refused planning permission due to a conflict with Policy EV1 of the LP. This remains part of the development plan for the area and S38(6) of the Planning and Compulsory Purchase Act 2004 continues to require that applications be determined in accordance with the development plan unless material considerations indicate otherwise. There was, therefore, no error in applying this policy, notwithstanding recognition that it was out-of-date in the terms of the Framework in the absence of a five year housing land supply. The policy continues to attract weight dependent on its degree of consistency with the Framework as per paragraph 215 of the Framework.
8. It is clear from the Council's committee report that EV1 was accepted to be out-of-date and reference was made to the Linton appeal decision¹ as such. This does not alter the fact that it is for the decision maker to apportion weight to policy and other material considerations as they see fit. The implications of paragraph 14 of the Framework, the presumption in favour and the need for any harm to significantly and demonstrably outweigh the benefits was made explicit to members through the committee report. Committee members are entitled to exercise their own judgement in weighing material considerations and are not bound to accept an officer recommendation.
9. There is no question that the Council was aware of the implications of paragraphs 14 and 49 of the Framework and these were acknowledged in the Statement of Common Ground. The Council accepted that social and economic objectives were met by the development but maintained throughout that the environmental harm identified significantly and demonstrably outweighed the other recognised benefits.
10. Full regard was had to the appeal decision quoted by the appellant and there was never a dispute that Policy EV1 was out of date. The examples do not suggest that no weight should be attached to the policy and the amount of weight is a matter for the decision maker.
11. The misinterpretation of the need for Appropriate Assessment was rectified in the Statement of Common Ground in advance of the hearing, where it was reconfirmed. The appellant has provided no evidence of additional expense incurred as a result of this error.
12. Evidence by an experienced professional has been submitted to support the Council's case and there is no prescribed minimum standard for evidence, nor is there any prescribed methodology for value assessments associated with landscape impact – this is a matter of professional judgement. Clearly there is a difference of opinion in this case but that is not in itself unreasonable.
13. The Council made a robust case and identified clear conflict with the development plan. There are no grounds to say that development should clearly have been granted under these circumstances, nor that an appeal and its associated costs could have been avoided.

Reasons

14. The Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
15. The Council has reached its decision following detailed discussion at a number of committee meetings, albeit that there were other concerns involving highways matters during earlier meetings. The fact that landscape concerns were not raised at an early stage is unfortunate but the committee minutes provided are brief and there is no evidence to suggest that landscape impact was introduced without thorough consideration.
16. I agree with the Council that its members are free to exercise their own judgement and are not bound to accept an officer recommendation. This includes matters of landscape impact, a matter which members, being familiar with the site, could legitimately take a view. This view was subsequently supported by professional independent advice, albeit obtained after the decision.
17. It cannot be said that this matter, being the sole reason for refusal, was not substantiated. The Council provided a detailed Statement of Case in respect of Landscape Issues which was undertaken by an experienced Chartered Landscape Consultant. Although the case did not provide the same level of detail as the Landscape and Visual Impact Assessment (LVIA) supporting the planning application or the Appellant's Statement of Case, this was not necessary given that much of the analysis and conclusions were accepted by the Council. Where dispute existed, this was made clear in the Council's submissions. Whilst there was a clear divergence of opinion between the landscape experts in this case, both set out their case sufficiently robustly as to enable an understanding of the issues involved.
18. Concerns in respect of the detailed design of the development, particularly the presence of housing on high land and the potential for improved landscaping were not raised until the hearing. However, these issues were raised in the context of the refusal reason, contributing, it was said, to the visual intrusion raised as a concern. Brief discussion of these matters did not lead to additional expense at the hearing.
19. A separate Statement of Case for the Council deals with other planning matters and includes a clear recognition that the Council could not demonstrate a five year housing land supply and that Policy EV1 of the LP is out-of-date as a result. It was further explained that the policy continued to attract weight by statute and given consistency with objectives of the Framework. The fact that the appellant does not agree with this stance does not make it an unreasonable position. This is particularly so, given that the appeal decisions referenced by the appellant did not, in the Council's opinion, support the assertion that no weight could be attached to the policy.
20. The minutes of the Council's committee meeting do not assist in identifying the topics of discussion at the meeting, nor the application or otherwise of the planning balance required by paragraph 14 of the Framework. However, the officer report to the committee clearly undertakes such an exercise in such a manner that would have left members in no doubt as to the requirements in this respect. What is clear from the minutes is that members were advised of

the need to clearly identify the planning reasons for any decision contrary to officers' recommendation. Ultimately, a clear reason for refusal was stated, which was subsequently defended to an adequate extent at appeal. Based on the evidence before me, I am satisfied that the committee would have been aware of the need to balance planning considerations in accordance with paragraph 14 of the Framework. There is no evidence to suggest that it did not.

21. Finally, the Council conceded that it had made a mistake in suggesting that Appropriate Assessment was necessary under the Habitat Regulations, given that no significant effects were anticipated in the screening exercise. The Statement of Common Ground⁴ made this clear in advance of the hearing and the position was confirmed at an early opportunity during the hearing itself. The balancing exercise required by paragraph 14 of the Framework was clearly applied by the Council in its other submissions, notwithstanding the erroneous paragraph contained in the Statement of Case. It has not been made clear what additional work and expense resulted from this error and no unnecessary expense can be attributed.
22. It is suggested that the development could have been made acceptable using a planning condition and that this would have avoided refusal. However, the Council raised a fundamental objection to development of the site and, to my mind, this could not be overcome by a condition.
23. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Michael Boniface

INSPECTOR

⁴ Paragraph 3.5 of the Statement of Common Ground

