

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

**SECTION 1: Planning Applications**

**SECTION 2: Planning Appeals**

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

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## **1. PLANNING APPLICATIONS**

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

<b>Reference</b>	<b>Item</b>	<b>Place</b>	<b>Ward</b>	<b>Page</b>
9/2012/0536	1.1	Etwall	Etwall	1
9/2012/0630	1.2	Hatton	Hatton	22
9/2012/0039	1.3	Stenson	Stenson	57
9/2012/0555	1.4	Stenson	Stenson	70
9/2012/0760	1.5	Church Broughton	Hilton	77
9/2012/0775	1.6	Melbourne	Melbourne	79
9/2012/0791	1.7	Rosliston	Linton	86
9/2012/0705	1.8	Rosliston	Linton	89
9/2012/0281	2.1	Midway	Midway	93

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

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

09/10/2012

**Item** 1.1

**Reg. No.** 9/2012/0536/NO

**Applicant:**

Mr John Bowler  
Bowler Energy LLP  
Badger Farm  
Willowpit Lane  
Hilton

**Agent:**

Mr Anthony Lee  
Bowler Energy  
Badger Farm  
Willowpit Lane  
Hilton

**Proposal:** THE INSTALLATION OF 2 X 50 KW ENDURANCE WIND  
TURBINES (RADIUS 9.6M) WITH CABLING ON LAND  
LYING TO THE SOUTH OF BURNASTON LANE ETWALL  
DERBY

**Ward:** ETWALL

**Valid Date:** 22/06/2012

Members are advised that under Section 78 of the Town and Country Planning Act 1990, the applicants have exercised their right of appeal against non-determination of the application and any decision made by the Committee can only express the Council's opinion had it been in a position to determine the application itself. The Secretary of State would thus determine the appeal. The purpose of this report and the subsequent decision will inform that appeal process.

**Reason for committee determination**

Councillor Lemmon has asked that the Committee determine this application, as there are issues of local concern that should be addressed.

**Site Description**

The site lies in the countryside to the east of dwellings at Risborrow Close and the Nursing Home off Sandypits Lane (about 400m to the turbines) and to the west of Burnaston Village (760 metres). The nearest dwelling is on Burnaston Lane, about 300 metres to the north of the nearest of the proposed turbines.

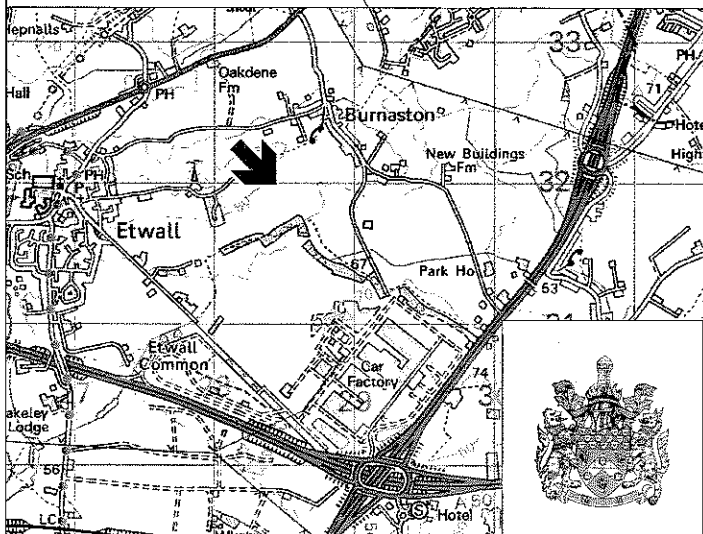
A public footpath is to the north of the site and access to the site would be along Sandypits Lane and the footpath.

The northern boundary of the field is fairly open alongside the footpath but hedges define other boundaries to the field within which the turbines and associated equipment would sit.

**DE65 6JA**

Burns

## THE SITE



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

A high-pressure gas main lies within the north boundary of the site in the vicinity of the public footpath that it also crosses before entering the site and crossing it in the northeast corner.

## **Proposal**

The turbines and supporting structures would have a maximum height from ground to tip of blade of 46 metres each blade having a radius of 9.6 metres and thus a diameter of 19.2 metres. The supporting mast would be 35.4 metres and the hub of the turbine would be 36.4 metres above ground level. The masts are shown constructed on 5m x 5m x 0.5m concrete bases.

The turbines and supporting structures would be set a minimum of 40 metres from the boundary hedge that encloses the field to the west (max 50 metres). The public footpath is some 100 metres to the north of the nearest turbine site. An underground line from each turbine would link them to the national grid via an existing electricity pole that stands within the hedge on the west boundary of the field the access to the grid is at the point where the underground lines converge.

Access to construct the turbines would be from Sandypits Lane in the form of a temporary metal track laid on the surface of the ground that would be removed once the works are complete. The application documents state that the laying of the foundation would take half a day, it would be then left for three weeks to cure and the masts and turbines would take a further two days. Maintenance access would be by vehicles capable of crossing the field without the need for any formal access.

## **Applicants' supporting information**

### **Policy**

The South Derbyshire Local Plan is silent on the issue of renewable energy. As such the provisions of the NPPF have considerably more weight as a material consideration than would be the case if there were a Local Plan policy (Paragraph 14). Attention is drawn to the provisions of paragraph 98 *[this is summarised below and discussed below in Planning Assessment]*.

### **Noise**

In addition to the information submitted with the previous planning application, a full noise survey has been carried out in accordance with the provisions of ETSU 97. This is the standard procedure for assessing wind noise from turbines and is the document set out in the companion guide to PPS 22 that remains Government advice in terms of renewable energy despite PPS 22 having being superseded by the NPPF. The noise report demonstrates that based on the ETSU assessment there would be no unacceptable noise impacts on the houses on Etwall Lane, Risborrow Close and Burnaston Village. *[See 'Noise Issues' in the Planning Considerations below]*.

### **Landscape and Amenity**

The application is now augmented by a landscape and visual assessment that takes account of the Derbyshire Landscape Character Assessment reference to which was

omitted in the scheme previously submitted and has regard to the Needwood and South Derbyshire Clay landscape character within which the application site lies. In the opinion of the applicants, the Trent Valley Washlands is nearby and also has a bearing on the consideration of the application.

The application documents state that the supporting structures would be white in colour and the blades would be coloured cream.

Their impact has been assessed from four locations at Risborrow Close, the public footpath to the north, Green Lane and Findern Lane. The applicants emphasise state that it is not part of their argument that the turbines would not impact on the landscape. They consider that the site, design colour and materials of the development help to minimise these impacts. It is noted that Risborrow Close is some 400 metres to the west of the proposed development and that the village of Burnaston is some 600 metres further to the west. There are relatively few dwellings on Risborrow Close that look directly towards the site and they tend to have long distance views.

From the public footpath, for about 100 metres off the end of Sandypits Lane, the developers assert that the development would be screened by vegetation emerging from the screened area on the footpath. The development would then be viewed in the context of other prominent structures such as the cooling towers of the former Willington Power Station and the Toyota factory. From the Burnaston Village end of the footpath, the roofs of the Risborrow Close development are visible and the turbines would be located in front of those buildings.

Green Lane serves one property and there are relatively few users of the road itself. Views from here would be limited.

Findern Lane is some 1.2km to the east of the site and there would be distant views of the development from the lane.

The applicant's conclusion is that there would be an impact on the landscape but not to a point where there would be a detrimental effect on the character of the area that would warrant refusal of planning permission.

#### Separation from the footpath

The Companion Guide to PPS 22 remains valid albeit that the Government is reviewing all such documentation and PPS 22 itself has been revoked. It offers advice on the separation distances between turbines and public footpaths. 1.5 times the height of the turbines is the minimum separation distance advocated and as this separation distance is exceeded there would be no danger to the users of the public footpath. [*1.5 times the height of the turbines in this case is 69 metres*].

#### Ecology and Wildlife

The standing advice from Natural England requires a minimum separation of 65m between woodland and turbines in respect of bats, and the turbines have been located a minimum of 65 metres from the boundary hedge. Given this siting requirement it is asserted that the turbines would not significantly interfere with migrating/feeding birds or indeed bats.

In response to the assertion that a SSSI lies within 5Km of the application site, the applicants have acknowledged this but assert that because of the size of the turbines, there is unlikely to be any impact on migrating birds.

### **Construction**

Erection of the turbines would take about 5 working days and involve 6 HGV's movements including a mobile crane to assist. Construction workers vehicles would be in addition to HGV movements. Any excavated material would be spread on the rest of the field thus minimising the need to transport material from the site.

Interference with electromagnetic transmissions is considered and given the type of turbine selected, the risk of such interference has been minimised as no brushes are involved in the generation process. As digital signals are the only television signals available, there would be no interference with television transmissions.

### **Built Heritage**

There are no recorded listed buildings or other heritage assets in the vicinity of the site that would be adversely affected by the development.

### **Health and safety issues**

The applicants, in response to objections to the safety of both turbines and the potential dangers to occupiers of houses and users of the footpaths have stated that there is no evidence of danger to humans or indeed wild animals. Incidents that have occurred have arisen from poor installed or maintained plant and equipment, confirmed in various appeal decisions and the companion guide to PPS 22. The masts and turbines are located at a safe distance from public footpaths, there is no possibility of sweep over the path as it is more than 100m from the nearest mast and the 'fall over' distance for this equipment is 46m, more than twice the distance to the paths. The applicants stress that the companion guide states that there have been no examples of injury to members of the public.

The applicant's conclusion is that whilst there would be a limited number of short or middle distant public views of the turbines these are capable of mitigation either through the use of colour or are mitigated by distance from any particular viewpoint. There are social, economic and environmental benefits arising from the development with a modest impact on the wider landscape. The proposals would not result in unacceptable harm to the wider visual amenity and would provide renewable energy and reduce carbon emissions. In the light of the above the applicant's request that planning permission be granted.

### **Planning History**

An earlier planning application was withdrawn this year due to some problems that could have resulted in a legal challenge. That matter has been addressed in the current application.

### **Responses to Consultations**

Etwall Parish Council has indicated that it supports the many objections to the development including those from Burnaston residents. The success of this application could seriously affect the surroundings to Etwall in the future and the seeking of commercial income should not be at the cost to the local environment and their visual impact. This type of development is better suited to coastal locations or other remote locations well away from rural habitation. The Parish is already threatened by a potentially savage planning application on Egginton Common.

Burnaston Parish Council objects to the development on grounds of visual impact – the turbines would dwarf all features in the local landscape creating an industrial landmark that would be seen from miles around; noise – there is no noise survey information on the properties at Burnaston where the properties are 'downwind of the turbines' and noise would carry to these houses; the nearest house has a lady with MS and is vulnerable to noise and vibration in particular low frequency noise; lack of any benefit to the local community – the turbines would not assist any local farm business or any part of the community and would thus have no local benefit; lack of consultation – notwithstanding the scale of the application, there was no pre-application consultation with the community and local landowners and this has resulted in deep concern amongst the local community; safety concerns – there is the possibility that young cattle grazing in the adjacent field would be disturbed by noise or 'flashing', and stampede thus representing a danger to users of the paths. In summary the Parish Council feels that the very modest environmental benefit is not sufficient to offset the degradation to the quality of life of parishioners should planning permission be granted.

The Derbyshire Wildlife Trust confirm that there are no designated sites for important bird populations near the site nor is it on a major migratory route albeit the Trust is aware of Buzzard and Peregrine Falcons in the wider area. However any data in relation to adverse impacts on birds is not available for turbines of the scale proposed.

Bat activity is noted in the supporting information, however the turbines blades should be located a minimum of 50m from a potential foraging route to accord with Natural England advice. The scale plans provided indicate that the turbines would be partly located within this minimum separation distance.

However, in response to the first application, the Trust stated it was not aware of any bat roosts or suitable bat roost habitat in the immediate vicinity of the turbines and therefore it is unlikely that the turbines would have an impact on bats.

The Trust requests that once the turbines are in place they be permitted to gather data to aid the assessment of any impact of the development on bats. This survey would be undertaken during optimal activity periods for bats (June and July) and the ground beneath the turbines would be inspected for fatalities if any. The results would then be made available to the Local Planning Authority and The Trust.

The Environmental Health Manager notes that the use ETSU-R-97 although criticised remains the best practice guidance in respect of noise assessment for wind turbines. The submitted noise assessment concludes that the noise levels produced by the turbines would not have a detrimental effect on neighbouring residents. The predicted noise levels are considerably below ETSU limits and as such there are no grounds for objecting to the proposals. In the event that complaints arose following the installation of the turbines, those complaints could be addressed through the Environment Protection Act. Conditions are recommended requiring the installation of the turbines in the positions shown, limiting the turbines to those specified and requiring the



submission and implementation of a maintenance regime in accordance with manufacturers recommendations.

East Midlands Airport has no objection subject to it being notified within 1 month of the turbine commencing operation in order that it can monitor wind turbine activity in the area and monitor the impact on aircraft safety.

National Grid (Gas) has no objection to the principle of the development provided that its gas assets are protected at all times.

### **Responses to Publicity**

One letter of support has been received. It states that problems of health and safety have been wildly exaggerated scaremongering and that if non-fossil energy is to be provided then schemes such as this are necessary to meet targets and wind power is the natural choice. Wind turbines require significant initial investment with a turbine of the sort proposed costing £250,000. The tariff scheme is designed to get people to invest. In effect you have to earn £250,000 before any profit is realised. The applicant is a local businessman and entrepreneur who has invested in wind energy as well as free range egg production and he should be offered more support than is the case now.

In response to this application some 120 letters, including another letter from BERATE (the local opposition group), have been received objecting to the development.

Many of the objectors request that previous objections be taken into account when determining this application. The summary of these objections are set out at a) to zz) below copied in italics and note should be taken of these objection in determining this application to those earlier objections as all of those points have been made in one form or another to the current submission.

To avoid repetition and immediately following the BERATE letter, a summary of the new points of objection made in response to the current application is given.

BERATE objections to the original application are also summarised in the a) to zz) section below and the latest letter also contains a commentary of the previously prepared report and the letter is summarised below:

- a) It is likely as this application is almost identical to the previous one and the officer recommendation is likely to be the same. The letter objecting to this application contains new information in the form of a critique of the last officer's report and some new points of objection.
- b) Development Plan policy continues to take primacy and particular regard is taken of the provisions of the East Midlands Regional Plan and Environment Policy 1 of the adopted Local Plan.
- c) In respect of the Regional Plan it is asserted that there is no overall policy presumption in favour of wind turbines but it does require the submission of a landscape visual assessment and the lack of such a document in the application, makes the development contrary to Regional Policy.
- d) Environment Policy 1 of the Local Plan has at its heart a presumption against development unless it is essential to a rural based activity and is unavoidable in the countryside; safeguards and protects the character of the countryside, landscape quality, wildlife and historic features. If permitted development should

be sited and designed so as to create as little impact as practicable on the countryside. It is contended that in the light of the above policy given that the applicant has admitted either by implication or expressly that the power generated here would be fed directly into the National Grid, that the location of the turbines is neither essential to a rural based activity or unavoidable in the countryside. It is contended that turbines can be located in more urban locations such as business parks and indeed East Midlands Airport. In the light of this the proposal is clearly contrary to the provisions of the Development Plan and should be refused.

- e) The development would be in receipt of considerable subsidy for up to 20 years and whilst the previous report dismissed this as a material planning consideration; it will allow the developer to have an income as a result of the subsidy, based on the operator's figures, of some £2.36m over the 20-year period. BERATE argue that this is a material planning consideration as the payment of these subsidies is in direct conflict with UN Resolution 42/187 that defined sustainable development as *'meeting the needs of the present without compromising the ability of future generations to meet their own needs.'* It is submitted that the long-term subsidy being paid to the developer must prejudice the situation for future generations and is hence a non-sustainable development that fails to qualify for the support for the presumption in favour of sustainable development set out in The NPPF. Accordingly the application should be refused.
- f) The development would represent skyline development, visible from the direction of the A516 making it more prominent. The site lies between 2 small settlements and the group of houses and old persons home at Risborrow Close. Thus the diminution of that gap is material as the countryside forms an important wedge of special countryside that would be detrimentally affected by the turbines. The nearest footpath and the one to the south are significant, well used and the turbines would detract from their attractiveness. The development would have a significant visual impact from all these locations and be detrimental to the landscape quality of the area.
- g) Noise impacts are significant and have been addressed by a Dr Foord a member of BERATE. His submissions should be given particular weight and it is noted that the important matter of infrasound has not been addressed in the application.
- h) The development may set a precedent for the erection of additional turbines. Precedent may be considered at material planning consideration in respect of wind turbines.
- i) Two private members bills are in process that would prohibit the installation of wind turbines as a minimum of 500m or up to 2km unless the community is signed up to the principle of their development. The legislation would sit outside planning legislation and it would be premature to grant permission for this type of development when in fact they may not be able to proceed in law. A decision to allow the turbines should be delayed until this matter is clear.
- j) Wildlife implications are considered important by BERATE and it supports the objections of other in this regard whilst not detailed in the BETRATE response.
- k) The same officer dealing with the same form of application could be said to have prejudged the issue having previously recommended that the application be permitted.
- l) The Planning Assessment in the previous report misrepresents planning policy and fails to draw a distinction between the primacy of the Development Plan and other material considerations.

- m) The previous report failed to properly consider the provisions of Environment Policy 1 and misrepresented its terms that could have misled the Committee.
- n) It is wrong to suggest, as occurred in the previous report, that turbines can only be located in the countryside, clearly not the case as referred to above.
- o) The subsidy is a relevant consideration notwithstanding the assertions in the Committee report. The subsidy is not directly made by the Government, the subsidy is in effect given through the distribution companies by the requirement to buy renewable energy, but the Council is under a duty to protect the open countryside and should exercise that duty notwithstanding that another arm of Government chooses to make payment to operators.
- p) The application is again deficient in that the submitted plan only shows the location of the turbines within the field; it fails to properly show how access to the highway to install the turbines would be achieved. Nor is there an indication of how access to the grid would be achieved, the connection to the Grid may have third party implications.
- q) In the light of all the above BERATE consider that planning permission should be refused on the basis that the development is contrary to the development plan and that the material considerations both in total and individually support the refusal.

New/Additional Objections not referred to the in a) to zz) summary or in the BETRATE objection above:

- a) The statement in the previous report that 'the principle of turbine development even small scale schemes is capable of meeting the country's obligation on carbon reduction' is wholly inaccurate and is incredibly naïve. In support of this assertion 2 court cases are quoted where judges have ruled that adverse visual impact can outweigh the acknowledged benefits arising from renewable energy schemes. In summary these case turned on the ability to see the full height of turbines at distance in the landscape. This is a material consideration of considerable weight.
- b) None of the tall features mentioned in the supporting information are visible from Risborrow Close; the turbines would be the only large features visible from the houses.
- c) The proposal is contrary to the: Neighbourhood Plan for Risborrow Close and surrounding countryside that states that low level wind turbines are supported provided several criteria have been followed including pre-application consultation, the proposal should be linked to an established business use and situated close to that business use, properly maintained, less than 50m to the tip of the blade, there are no more than 2 turbines in a 1000m radius and they are situated a minimum of 2km from the nearest dwelling and others that are not material planning considerations.
- d) The deficiencies in the application documents are such that the contents are misleading and the application should not therefore be considered until these issues are corrected.
- e) Several people who objected to the original application have not been notified of the new submission. This is undemocratic and unfair. *[There were several objectors to the previous application who did not provide contact details thus it was not possible to contact everyone who had previously objected.]*
- f) The masts will be visible from base to tip from windows and this was sufficient for a Planning Inspector to dismiss an appeal for a wind turbine in the Carlisle area. There are more houses directly affected in this way than was the case in Carlisle.

*Summary of objections to the previous planning application (147):*

- a) *The application was made valid before all the relevant information was submitted, such as a Landscape Character Assessment, Noise Impact Assessment and Environmental Impact Assessment.*
- b) *The fact that the application is deficient suggests a Regional Plan policy presumption against such development.*
- c) *There is no justification for a rural location and therefore the application is contrary to Local Plan Saved Environment Policy 1.*
- d) *The development is not farm diversification as stated by the applicant; the land is still farmed, there is no requirement to provide electricity for any existing development and therefore all electricity generated would be fed into the national grid. No farm plan has been submitted to show how the proposal fits in with the on-going farm business.*
- e) *The scale and impact of the proposal would not meet the advice in Environment Policy 1.*
- f) *Government advice is only supportive of wind turbine development that can be incorporated into new development.*
- g) *Anomalies between the applicant's assertions that wind power are 'free' and the government subsidies in the form of feed-in tariffs. Public money is used to generate profits for the operator for private financial gain.*
- h) *How can such a project be sustainable when they are supported by public money?*
- i) *Wind turbines are alien features in the landscape, which cannot be screened effectively. They will dominate the area between Etwall and Burnaston, undermine its attractiveness and have an unacceptable visual impact.*
- j) *Adverse impact on visual amenity and quality of life of neighbouring residents and diminished enjoyment for the users of the adjacent footpaths, which flies in the face of the County Council's document 'The Needwood and South Derbyshire Claylands Character Assessment No.68'.*
- k) *Intrusive low frequency noise levels, particularly at night, impact of electro-magnetic radiation and shadow flicker can cause problems for sufferers of epilepsy and autism.*
- l) *If approved, the precedent would be set for future wind turbine development on the land.*
- m) *The application is premature in light of two Private Members' Bills currently before Parliament to determine minimum distances between turbines and residential properties.*
- n) *Potential damaging impact on local and migrating birds (bird strike) and wildlife and human safety. No mention has been made of the badger setts located to the north of the application site or the roosting bats at Manor Farm or the recent return of Barn Owls to the area. Other birds that could be affected include Buzzards, Owls, Ospreys, and Peregrine Falcons, all of which have been encouraged into the area. Loss of habitats.*
- o) *Contrary to the submitted information relating to the non-proximity of the site to nature reserves, Ramsar sites, Special Areas of Conservation etc., the Hilton Gravel Pits Nature Reserve is located 3km to the west of the site and the non-designated nature site at Toyota is 500m to the south of the site.*
- p) *Loss of views.*
- q) *Public safety, particularly when the turbines are affected by high winds or risk from fire. Consideration in this regard should be given to the proximity of existing*

gas and sewer pipelines. Wind speeds of 50mph have been recorded recently in the area.

- r) Loss of revenue by way of Council Tax reduction, possibly of around £80,000 per annum (from the 200 houses that would be affected) as a result of devaluation of properties.
- s) Impact on elderly residents of Etwall Lodge Nursing Home, which is less than 600m from the site.
- t) Sandypits Lane is too narrow for emergency vehicles to get to in the event of the turbines setting on fire and it would be difficult to evacuate residents.
- u) Impact on health such as heart problems, sleep deprivation, loss of hearing/tinnitus, lung problems, depression, dizziness, migraine headaches and nausea, wind turbine syndrome etc.
- v) Impact on the medieval ridge and furrow ground works that are evident on the application site.
- w) At 300m the distance between the proposed turbines and nearest residential properties is insufficient.
- x) Fear for children's safety when playing outdoors on windy days, should the turbines become unstable.
- y) Local authorities and planning officers have a duty to consider hazards that are too close to residential properties that may result in personal injury.
- z) Possible loss of business and land blight.
- aa) The Local Planning Authority should designate suitable sites following comprehensive surveys.
- bb) The turbines will be highly visible from more than the 4 public vantage points listed in the supporting information, including the A38, A516 and the A50.
- cc) Impact on horses and cattle that graze the land.
- dd) The application is not 'small scale' as stated by the applicant, plus inaccurate/out of date information of the economic, environmental and technical nature used in the submission.
- ee) There has been no consultation with the local community or businesses, in accordance with the Localism Bill.
- ff) There is no benefit to the rural economy. The applicant should submit a cost benefit analysis to show the net benefit to the community would outweigh the negative impacts.
- gg) Means of access for construction and maintenance vehicles is not clear.
- hh) Construction vehicles will produce noise, dust and exhaust emissions and increase danger on local roads.
- ii) The development should be classed as industrial development and assessed against the noise criteria associated with such proposals.
- jj) No mention of ground-borne noise. The noise from more than one turbine will increase and vary the frequency of their rhythm.
- kk) Inappropriate commercial development on agricultural land. Valuable agricultural land should be protected from irreversible and inappropriate development.
- ll) Overbearing effect on residents resulting in unsatisfactory living conditions. The submitted plans do not provide a true impact on the character of the landscape and residential properties in terms of scale.
- mm) Compensation may be required from the Council and/or applicant to re-house affected residents.
- nn) An application for a temporary high wind speed measuring mast at Toyota was refused because of possible detrimental impact on the operation at Egginton airfield. It is assumed that the proposed wind turbines would have a similar impact.

- oo) *Negative impact on flying of light aircraft, hang gliding, ballooning, bird watching, star gazing and kite flying.*
- pp) *Increased risk of damage to power lines which supply Burnaston.*
- qq) *Increased traffic on minor roads.*
- rr) *Danger to police and emergency helicopters.*
- ss) *The damage to the environment will not outweigh the benefit of producing just 25kw of electricity.*
- tt) *Adverse impact on the setting of Listed Buildings, the nearest of which is just 500m.*
- uu) *Wind power is not the solution to solving out energy problems. It does not fulfil sustainable objectives.*
- vv) *How can this development be approved when an application for a replacement dwelling at Greenacres (which is in the adjacent field) was refused on grounds that it would adversely affect the character and appearance of the locality?*
- ww) *No detail to justify there is sufficient wind in the location to generate 316,440kw of energy per year, as stipulated in the Design and Access Statement.*
- xx) *Contrary to the Council's primary objective in the Corporate Plan to improve the health and well being of communities and residents.*
- yy) *Why was there no site notices posted near the site or in Burnaston?*
- zz) *Conditions should be imposed to monitor actual output and for removal if failing to operate for several months.*

### **Development Plan Policies**

The relevant policies are:

EMRP: Policies 1, 3 & 40 together with Appendix 4.

Local Plan: Environment Policy 1.

### **National Guidance**

National Planning Policy Framework (NPPF) states that planning law remains the same in that applications for planning permission must be determined in accordance with the development plan unless material considerations dictate otherwise (Section 38(6)). The NPPF constitutes a material consideration particularly as the development plan is silent on the issue of sustainable development. Although the document should be considered in its entirety, particularly relevant paragraphs to this case include 14,17, 97, 98, 110 and 123.

There is an overarching National Policy Statement for Energy (EN-1) and the National Policy Statement for Renewable Energy Infrastructure (EN-3). Although these are primarily intended to inform the work of the Planning Inspectorate (formerly the Infrastructure Planning Commission) on proposals for nationally significant energy infrastructure, they can be a material consideration in assessing applications such as this.

The Noise Policy Statement for England (NPSE) is an overarching policy statement for noise in England published by DEFRA in 2010.

### **Planning Considerations**

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

- The need for an Environmental Impact Assessment.

- Development Plan Policy and other material considerations as set out in Government Advice.
- Noise Issues
- Landscape and Visual Impacts
- The Natural and Cultural Environment
- Cumulative impact
- Other issues

## **Planning Assessment**

### Environmental Impact Assessment

The proposal has been screened in accordance with the requirements of the Environmental Impact Regulations 2011 and the conclusion, having completed the assessment matrix, was that the development did not require the submission of an Environmental Impact Assessment. This outcome has been posted on the Part 1 of the Planning Register in accordance with the requirements of the Regulations. Accordingly the Local Planning Authority accepts that that no EIA is required for the proposed development.

### Development Plan Policy and other material considerations

The application must be determined in the light of the provisions of the Development Plan unless material considerations indicate otherwise (as required by Section 38(6) of the Planning and Compulsory Purchase Act 2004).

The Development Plan currently consists of the East Midlands Regional Plan (although this is to be revoked) and the South Derbyshire Local Plan.

The Regional Plan contains targets for energy generation from renewable sources and the contribution of wind power to this target is acknowledged in the policy and states that Local Planning Authorities should not adopt policies that seek a blanket ban on on-shore wind energy projects (para 3.3.86) and it is also stated that micro generation can be applied anywhere either grid linked or with battery back up (Para 3.3.88). Policy 40 then looks at criteria that could be applied to drawing up a renewable energy policy particularly with respect to on shore wind energy in LDFs. These criteria are landscape and visual impact, the effect on biodiversity, the built environment, the number and size of turbines, the cumulative impact including intervisibility, the contribution towards meeting renewable targets and the contribution to national and international environmental objectives on climate change. It is understood that there is currently no body monitoring the implementation of the targets set out in the Regional Plan.

The South Derbyshire Local Plan is silent on renewable energy but the provisions of Environment Policy 1 are a consideration in respect of any development in the countryside. In this regard, the policy seeks to ensure that development outside settlements is essential to a rural based activity, or, unavoidable in the countryside, and that the character of the countryside, landscape quality, wildlife and historic features are safeguarded and protected. In this case the erection of the turbines whilst occasionally feasible in urban locations is most likely to occur in the countryside. The policy goes on to state that where development is permitted in the countryside it should be designed and located so as to create as little impact as practicable.

The policy issues of environmental and other protections are considered later in this report as due to the lack of a specific policy for renewable energy in the Local Plan, the provisions of the NPPF are material to the determination of this application. However, the more up to date national policy considerations need to be considered before a judgement on the criteria can be made. If not then the provisions of the more up to date National Policy considerations would take precedence over the relevant Development Plan policies.

In determining all planning applications Paragraph 14 of the NPPF states that Local Planning Authorities should grant permission for development that accords with the Development Plan. Where there are no policies or the policies are out of date, permission should be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits when assessed against the policies of the NPPF taken as a whole or where there are specific policies in the NPPF indicate development should be restricted. In this latter case it gives examples as SSSI, Green Belt, ANOB as, amongst others, areas where the NPPF seeks to restrict development. There are no such designations that affect this site. In this regard the Local Plan can only be described as out of date. Environment Policy 1 needs to be examined in the light of more up to date National policy and as stated above if the application is considered in accord with that policy then planning permission should be granted. In this case that policy is expressed in the NPPF at paragraphs 97 & 98 and subject to the consideration of the provisions of paragraphs 110 and 123 on noise issues.

Section 10 of the NPPF discusses the need to meet the challenge of climate change, flooding and coastal change. At paragraph 97 it states that Local Planning Authorities should recognise the responsibility on all communities to contribute to energy generation from renewable or low carbon sources. The paragraph then goes on to identify criteria that should be adopted in Local Plans to draw up suitable policies for such development but in respect of planning applications, Paragraph 98 gives guidance to the Local Planning Authorities when determining applications.

It states that applicants should not *'... be required to demonstrate the overall need for renewable or low carbon energy and Local Planning Authorities should recognise that even small-scale projects provide a valuable contribution to cutting greenhouse emissions.'* It further states that applications for such development should be approved if its impacts are or can be made acceptable unless material considerations indicate otherwise.

The NPPF is therefore a material consideration in the determination of planning applications being an expression of National Policy that is more up to date than the Development Plan. The document should be read as a whole but Paragraphs 97 and 98 give specific guidance to drawing up renewable energy policies and determining planning applications. The provisions of Paragraph 98 are particularly relevant to the determination of this planning application. This paragraph is summarised above but in the light of the objections received, there are no grounds for the Local Planning Authority to seek justification for the development here – as the NPPF paragraph 98 states, *'...even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions'*.

The provisions of paragraphs 110 and 123 therefore have to read in conjunction with the specific advice above and it is necessary to consider whether there are planning



conditions available that could mitigate any undue noise impact arising from the proposed development. This issue is considered further in 'Noise Issues' below.

Much of the Guidance in National Policy Statements (EN1 and EN3) is similar to that found in the now revoked PPS 22 and now succinctly stated in the NPPF. Certainly the urgency of addressing climate change is stressed but there is no fundamental shift in the balance implicit in the NPPF between exploiting renewable energy and satisfactorily addressing environmental, economic and social impacts. Bearing in mind the strategic thrust of the National Policy Statements, they do not carry great weight in this case. Nor do they need to do so in order to bolster the importance attached to renewable energy generation in national policy (para 3.4.5 in EN1); that importance is already self-evident in the NPPF and in particular the statement that '*...small-scale projects provide a valuable contribution to cutting greenhouse emissions.*'

'The Risborrow Close and Surrounding Countryside Neighbourhood Plan' as referred to by objectors, can be afforded no weight whatsoever in the determination of this application. Government Regulations require that a community proposing a Neighbourhood Plan, that is not a Parish Council, must be recognised by the Local Planning Authority. This is not the case here nor has there been an application to be so recognised. Any weight afforded to that Plan in determining the application would be therefore deemed ultra vires.

The issue will now turn on whether the proposal is acceptable or can be made acceptable in terms of other material considerations such as landscape or visual effects, the natural or cultural environment, the built environment including noise impacts, and the number and size of the turbines proposed.

#### Noise issues

The Noise Policy Statement for England (NPSE) and the NPPF both state that matters of noise pollution should not be viewed in isolation. It is a relevant factor when considering an application that has noise issues as a part of an assessment of overall policy and the benefits arising a particular development. The NPPF on the subject at Para 110 states in respect of conserving and enhancing the natural environment that preventing both new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels of soil, air, water or noise pollution or land instability should be a consideration – the aim should be to minimise risks. At Para 123 it states that (inter alia) all planning decisions should aim to: avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development; mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new development, including through the use of conditions; and identify and protect areas of tranquillity which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason.

The nearest house to the development site is some 300m to the north of the nearest turbine on Etwall Lane. Risborrow Close properties are some 460m to the west of the site and Burnaston Village is some 550m to the east. Green Farm is some 560m to the southeast. Given these distances, on the advice of the Environmental Health Manager, the immediate noise impact on built development is not considered significant.

The issue of noise is another major plank of the objectors' case against the development; not just the noise of the turbines themselves but the issue of low frequency noise has been raised which is dealt with later.

Having regard to all of the noise issues generally, the submitted noise assessment concludes that the noise derived from the installation of the wind turbines should not be audible above current background levels either during the day or at night. The report states *'It should be noted that due to the proximity of a number of major roads near to the proposal our assessment has indicated that the noise level of the turbines at their highest rated noise level do not exceed the background noise limit at low wind speeds. The effect of increasing wind speed will increase the background noise level; we would therefore consider that this is a conservative assessment.'*

It is a common feature of refusal of planning permission for turbines at appeal for Inspectors to criticise the ETSU method of assessment as a means of enforcing the noise outcome that the method predicts. It is deemed too slow and unwieldy to give complainants certainty that a complaint can be dealt with promptly. However, the ETSU method remains the accepted test for these cases. Where permitted, noise issues have been carefully assessed and where levels are below ETSU limits, noise has not played a part in the determination of those appeals. It is common practice at appeal that if the predicted operating noise levels are at, slightly above or so close to the ETSU level that is deemed harmful, then refusal on noise grounds is a reason for refusal in those cases.

Since ETSU-R-97 was developed various other methods have been trialled that should be able to provide a 'quick' remedy to noise complaints. One of these is to set noise levels described in noise terms as 40 dBA Leq,10 mins at the curtilage of noise sensitive premises at wind speed of 8 m/sec. In the event of a complaint, noise readings can be taken close to the turbines and a sound pressure level extrapolated to calculate noise at the boundary of vulnerable properties. This should provide a quick assessment of any breach of noise levels and could lead to the serving of a Breach of Condition Notice, under planning legislation, if this noise limit were exceeded.

A condition should set noise levels at the boundary of potentially noise sensitive properties; monitor the noise levels of the turbines following installation to ensure they perform as predicted in the noise survey; provide for the turbines to be shut down in the event that the boundary noise level is subsequently breached and require submission of noise data that the turbines are performing at a level compatible with the condition following remedial works. The turbines would have to be allowed to rotate for a limited time to make this assessment in appropriate meteorological conditions. Such a condition would only be justified if there were to be a perceptible increase in noise levels above background at noise sensitive receptors.

The Environmental Health Manager has considered the noise report and his conclusions are that the predicted noise levels should not produce a statutory noise nuisance and if it did that nuisance would be enforced under Environmental Health legislation. This would call into question whether a noise boundary condition could be justified. In the light of the Environmental Health Manager's comments it would be difficult to substantiate the need for a planning condition to control noise levels at the boundary of potentially noise sensitive properties given the test required for all planning conditions set out in Circular 11/95.

There is criticism of the exclusion of Burnaston from the Noise Assessment but in the light of the above-mentioned results, the noise impact on properties in Burnaston is likely to be undetectable.

In terms of low frequency noise, the impact reduces with distance from the structures. Advice in the companion guide to PPS 22 states that vibration levels 100m from the nearest turbine were a factor of 10 less than those recommended for human exposure. Again the grounds for refusing permission on this basis would not stand up at appeal as the properties are well in excess of 100m from the turbines and would need to be well within 100m to suffer any low frequency noise impacts at a level that might be harmful to health.

Objectors have alluded to the need for minimum separation distances from turbines and make reference to a Bill promoted by Lord Reay however this made no progress in the last session of parliament.

Having had regard to all the objections, the Environmental Health Manager has concluded that the proposal would not adversely affect the occupiers of the houses to a point where there is justification to refuse planning permission. A condition is recommended to restrict the type of turbine to be installed on the site to those proposed in the application. It is also recommended that a condition be imposed requiring the submission of a noise report on the noise outputs from the turbines once installed to demonstrate that they are operating at the predicted levels following installation. If they were then full use would be allowed, if not then the installation would be assessed to see what further measures would be required to provide the necessary performance. This would necessarily include restricting the first operation of the turbines until they were operating to the levels specified in the supporting documentation. Such a condition would enable the Local Planning Authority and Environmental Health Manager to assess any proposed changes of turbine against the advice pertaining at that time in respect of noise.

#### Landscape and Visual Impacts

The application is for two wind turbines both with a hub height of 36.4m and a maximum blade height of 46m. An illustration, that accompanied the application, to be displayed at the meeting, will show the relative height of the range of turbines currently in use in the UK. It will illustrate that these turbines are at the lower end of the height scale but nevertheless would represent tall but slender structures in what is currently an area of open countryside lying between two villages. Objectors have made much of the visual and landscape intrusion arising from this development in respect of the structures themselves and the impact on the visual amenity of residents living in the vicinity of the site. There is also concern that the development would be visible from houses in relatively close proximity to the turbines.

In some appeal cases the fact that turbines are visible for their full height from bedrooms and other rooms at relatively long distances, has been held to be a ground for refusal as adversely affecting the amenity of the occupiers of those properties. The height of the turbines in these appeal cases tends to be at the upper end of the height scale but equally, the separation distances between the affected houses and the turbines tend to be greater.

The applicants have drawn attention to an appeal decision in Bedfordshire for a development of 10 wind turbines and the comments therein by the Inspector about outlook and the impact wind turbines can have on views. He stated that *'...It is a well held planning principle that there is no "right to a view" such that an attractive or cherished outlook from a private property can be protected from development that would adversely affect it. The fact that the proposed wind turbines would be seen from dwellings in and around Langford, and in some cases would be prominent and would significantly change views of the countryside, is not determinative in itself.'*

In the same case the Inspector agreed that *'...the appropriate test by which to judge the overall magnitude of visual impact on local residents is what is described in the Spalding case [appeal decisions made in 2010] as the "public interest test", and which has been widely applied by Inspectors and the Secretary of State. This is to ask the question "... would the proposals affect the outlook of residents to such an extent, i.e. be so unpleasant, overwhelming and oppressive, that the property would become an unacceptably unattractive place to live?"'*

This is a severe test to be applied and has been used by inspectors to dismiss appeals. However, in this case the height of the turbines is generally less than half the height of those dismissed at appeal. In this case, a balanced decision would consider whether the visual impact of the full height of the turbines from Risborrow Close and Burnaston at the shorter distances, is such that living conditions would be so detrimentally affected by the development, that planning permission should be refused.

It will be noted from the display of the various turbine heights, that the scale of the proposed turbines is not excessive and although they will be visible and change the appearance of the countryside, it would not be reasonable to argue that they would breach this test. As such the conclusion is that there are no landscape or visual impact objections arising from the impact on residential amenity to justify a refusal of planning permission.

It is also likely that the turbine blades would be visible on the skyline when viewed from the A516 but would be a distant view and given the lack of landscape designation that may support a reason for refusal, the appearance of the blades in the wider landscape is unlikely to justify a refusal.

The visual impact from public footpaths is also raised as a significant objection to the development. The applicants have asserted that the views from the footpath are already degraded by the presence of Toyota and the cooling towers at Willington Power Station. These views have been assessed as a part of the consideration of the application but it remains a fact that although these views are pleasant they are not part of an unspoilt landscape as such are not worthy of a statutory designation (para. 14 NPPF). (Objectors make reference to the area being a part of the Green Belt but this is not the case.)

#### The Natural Environment

This is one of the main objections to the development. The impact on bats, birdlife and other species including badgers, are matters that are considered by objectors to be reasons for refusing planning permission. The applicants have addressed these issues in their submissions and the Derbyshire Wildlife Trust (DWT) in its response has confirmed the approach as acceptable provided the position of the turbines meets the

minimum separation distance from a potential foraging route required by Natural England. In the case of Turbine 2 (the most southerly) there would be a shortfall of this distance along a 75m length of the hedge. If an appeal had not been lodged, the applicant would have been requested to submit an amended plan to reflect this shortfall. This is not possible now but given the extent of the land ownership, an amendment to the position of Turbine 2 is unlikely to result in a different recommendation. The applicant would probably want to submit an amended plan to the Planning Inspectorate to cover this point.

Objectors state that there is a need for a full habitat survey; however the Derbyshire Wildlife Trust advises provided the siting complies with Natural England advice there is no need for a habitat survey. Whilst the strength of local objection is noted, on the advice of the DWT (as the Council's advisor on such matters) the impact on the natural environment would not justify a refusal of planning permission.

### The Cultural Environment

The application also looks at the proximity of cultural assets. Given the distances involved, the applicant's assertion that there are none that would be affected is accepted and would not form a valid reason for refusal.

### The number and size of the turbines

A site for two turbines with an overall height of 46m, in relative terms and industry standards, is not large. In terms of intervisibility, turbines on this site may be visible in association with the turbine permitted at Highfield Farm Findern some 1.8km to the south west of this site. That permission is for a 10.8m diameter blade on a 15m high tower, which has now been implemented. There is another turbine in place off The Castle Way Willington. It is not considered any of these would be seen in the same view from any significant vantage points such as public footpaths. Landform and distance separate the turbine from the site at Highfield Farm albeit that the blades of these turbines may, from some distant vantage points, be visible in the wider landscape at the same time as the one at Highfields Farm. It is considered that there are no grounds for refusing permission on this basis, as these longer views would not be adversely affected.

### Other issues

Research on shadow flicker has revealed that only those properties within 130° either side of north relative to the turbines at latitudes in the UK can be affected. Turbines do not cast long shadows on their south side. Shadow flicker has been proven to affect only those properties within 10 rotor diameters of a turbine (companion guide to PPS22). There are no properties within 182 m of either of the turbines. The nearest dwelling in this sector is some 300m to the north.

The objectors place particular emphasis on the subsidy that the developer would enjoy if planning permission were granted. It is Government policy to encourage renewable energy generation by subsidy and to refuse permission on these grounds would thus be flawed. The BERATE group has argued that this is not the case, and that the funds received are a material consideration given all the circumstances set out in its objection. All developments give rise to profit. In the case of renewable energy development, in order to meet its objectives, the Government has decided, subject to review, to pay

what amounts to a subsidy. The delivery of renewable and low carbon energy is central to the government's definition of sustainable development and the impacts do not outweigh the need to address climate change through reducing greenhouse gas emissions and this is reflected in the overall consideration of National Planning Policy set out in the NPPF.

The potential for a turbine to break and cast a blade in the direction of the footpath on the north boundary is not grounds for refusing planning permission. It is a health and safety management matter that is covered by other legislation and it is the responsibility of the operator to ensure that the equipment is properly installed and maintained. The applicant is then answerable to the Health and Safety Executive in the event of an accident causing injury. As the Companion Guide to PPS 22 states there are no recorded injuries to the public arising from the operation of turbines. It is considered that there are no overriding health and safety issues arising from this development based on the advice in the Companion Guide.

References to loss in value to property and wider health issues cannot form part of the consideration of the application. Health issues are a matter for central government in terms of the health of the nation and the loss in property values is not a matter for consideration as part of any planning application.

### Final Conclusion

It is acknowledged that modern wind turbines have an impact on the landscape and the visual environment, and this scheme would have an impact on the character and appearance of the area when viewed from properties on Risborrow Close and Burnaston Village. In assessing the planning balance, the size and number of turbines justify a countryside location rather than an urban settlement. As such the development is considered to accord with the Development Plan (in particular Environment Policy 1 in the Local Plan) which are outweighed by the policies on renewable energy set out in the NPPF as a significant material consideration. It is plain that the delivery of renewable and low carbon energy is central to the government's definition of sustainable development and the impacts do not outweigh the need to address climate change through reducing greenhouse gas emissions.

Notwithstanding the considerable level of objection from the community and Parish Councils, in the light of the above assessment, it is considered that National and Regional policy and other material planning considerations suggest that planning permission should be granted.

### **Recommendation**

Advise the Secretary of State that South Derbyshire District Council would have **GRANTED** planning 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 wind turbines hereby permitted shall be erected only in the positions shown on the submitted drawing unless the Local Planning Authority has granted planning permission for an alternative location in response to a planning application made in that regard.

Reason: The proposal has been assessed on the basis of the submitted information in particular the noise impact of the development, the Local Planning Authority seeks to ensure that the development is sited to accord with the information submitted in support of the application and in the event that there is an application to vary the siting of the turbines there is a proper assessment of those changes through the medium of a new planning application.

3. The turbine installed at the site shall be the Endurance E3 120 50Kw mounted on 2 x 35.4m high towers unless the Local Planning Authority grants planning permission for an alternative type of turbine in response to a planning application made in that regard.

Reason: The proposal has been assessed on the basis of the submitted information in particular the noise impact of the development, the Local Planning Authority seeks to ensure that the development is sited to accord with the information submitted in support of the application and in the event that there is an application to vary the siting of the turbines there is a proper assessment of those changes through the medium of a new planning application.

4. Before the development is commenced a maintenance schedule drawn up in accordance with the manufacturers recommendations shall be submitted to the Local Planning Authority. Following approval of the maintenance schedule it shall be used to undertake maintenance operations to the turbines throughout the life of the development.

Reason: This planning permission is granted on the basis that the turbines will operate at optimum capacity and that the noise characteristics will be the same throughout their period of operation. Accordingly the submission and approval of a maintenance schedule and the requirement to undertake maintenance in accordance with that schedule is imposed to secure the operation of the turbines on the basis that the permission was granted.

5. If any wind turbine generators hereby permitted ceases to operate for a continuous period of 6 months then, unless otherwise agreed in writing by the Local Planning Authority, a scheme for the decommissioning and removal of the wind turbine generators and any other ancillary equipment and structures relating solely to those generator), shall be submitted to and agreed in writing by the Planning Authority within 1 month of the end of the cessation period. The scheme shall include details for the restoration of the site. The applicant or his agent shall implement the scheme within 6 months of the date of its agreement by the Local Planning Authority.

Reason: To ensure that the specific details of the decommissioning work are outlined and agreed on prior to being carried out in the interests of the character and appearance of the countryside once the development has reached the end of its working life.

6. All electrical cabling between the individual turbines and the on-site connection building shall be located underground unless otherwise agreed in writing with the Local Planning Authority. Thereafter the excavated ground shall be reinstated to

its former condition as pastureland within 2 months of the commissioning of the wind turbines.

Reason: For the avoidance of doubt and in the interests of visual amenity of the area and to ensure that the clutter normally associated with overhead power lines is removed to minimize the impact of such structures on the appearance of the countryside.

7. In the period comprising the June and July following the commissioning of the wind turbines, a survey of bat activity within the vicinity of the turbines and including the hedgerow shall be commissioned from a suitably qualified and registered bat expert. The ground area in the vicinity of the turbines shall be examined in that same period to identify if any fatalities to the bat population have taken place. The results of the survey shall be submitted to the Local Planning Authority for assessment in consultation with the Derbyshire Wildlife Trust.

Reason: To assist the Derbyshire Wildlife Trust in the gathering of data.

Informatives:

The proposal has been screened in accordance with the requirements of the Environmental Impact Regulations 2011 and the conclusion is that the development did not require the submission of an Environmental Impact Assessment. This outcome has been posted on the Part 1 of the Planning Register in accordance with the requirements of the Regulations. Accordingly the Local Planning Authority accepts that that no EIA is required for the proposed development.

That the hedgerows on the application site may contain nesting birds. It is an offence under the Wildlife and Countryside Act 1981 to intentionally kill, injure or take any wild British breeding bird or its eggs or damage its nest whilst in use or being built. The nesting season normally encompasses the months March to July inclusive. If you are in doubt as to requirements of the law in this regard you should contact English Nature, Peak District and Derbyshire Team, Manor Barn, Over Haddon, Bakewell, Derbyshire, DE4 1JE.



09/10/2012

**Item** 1.2

**Reg. No.** 9/2012/0630/MSF

**Applicant:**  
Nestle UK  
Marston Lane  
Hatton  
Derby

**Agent:**  
Mr Graham Trehwella  
Cass Associates  
Studio 104  
82 Wood Street  
The Tea Factory  
Liverpool

**Proposal:** THE CONSTRUCTION OF A COFFEE PRODUCTION FACILITY TOGETHER WITH THE ERECTION OF AN ELECTRICITY SUBSTATION, ASSOCIATED ACCESS ROADS, HARDSTANDINGS AND LANDSCAPING AT LAND TO THE EAST OF NESTLE COMPANY LIMITED MARSTON LANE HATTON DERBY

**Ward:** HATTON

**Valid Date:** 23/07/2012

**Reason for committee determination**

This is a major application with the potential to bring significant inward investment into the District and is a matter, in the opinion of the Head of Planning and Community Services, which requires determination by the Planning Committee.

**Site Description**

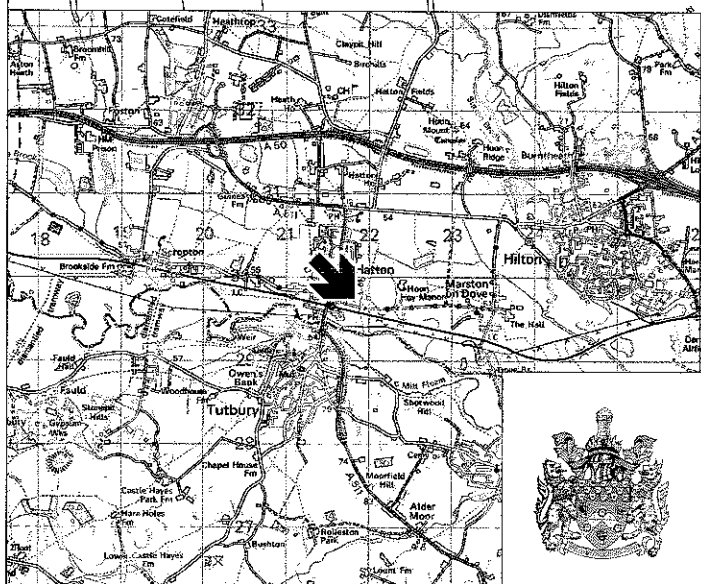
The proposed development site is located adjacent east of the existing manufacturing facility in Hatton. To the north and east, the site is bounded by agricultural land. To the south, is bounded by the Derby-Crewe Railway Line, beyond which there is farmland and the River Dove. The River Dove is approximately 400m to the south of the site.

The proposed development site is generally flat and mostly made up of pasture and grassland and is currently enclosed by a 2-metre high palisade fence. There is a wide corridor associated with the existing bridleway that currently crosses the application site that is dominated by a mixture of dense scrub, trees (generally immature) and 'gappy' hedgerows.

The Salt Brook flows south along the eastern boundary of the existing factory/the western boundary of the proposed development. The Brook is currently being diverted around the outside of the proposed development as part of the wider Environment

# 9/2012/0630 - Nestle, Land to the East of Marston Lane, Hatton

DE65 5DW



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South Derbyshire District Council. LA 100019461. 2010

Agency Hatton Flood Alleviation Scheme, which will reduce the risk of flooding in Hatton in accordance with the planning permission granted earlier this year.

## **Proposal**

The application proposes the erection of 33,000 sq m of new factory floor space on the site. The buildings have a maximum height of 35m abut that does not include the chimney, containing two flues that would be some 50m high, the same height as the existing flues on the current factory site. In the Design and Access statement below, there is considerable discussion about the process undertaken to arrive at the proposed materials of construction.

From public vantage points the applicants state that the dominant colours would be the red and gold on the upper parts of the main buildings *[see the illustrations on the display at the meeting]*. There are numerous other colours that would be apparent from with the site and potentially from the proposed new bridle path these range from black cladding on the bottom of the main buildings to the glazed covered ways that link the buildings. There are glazing elements in the production buildings to provide natural light to the interiors. The warehouse at the north of the application site would be clad in dark materials of brown verging on black on the upper walls and the black lower walls proposed on the rest of the site.

Notwithstanding the permitted palisade fencing referred to above, and along the line of the bridle paths proposed diversion route, it is proposed as part of this application that this be replaced with a more sympathetic but similarly secure green weld-mesh fence. Within and outside the proposed replacement fencing, it is proposed that mounding and native tree and shrub planting is included along the perimeter of the factory site.

Access for construction purposes would be split. All heavy traffic would be directed through the existing factory as has happened during the recent expansion of the factory. However, the large numbers of construction workers has dictated, the applicant's state, a need to provide parking and access via Marston Lane accessed through Marston Village and this would be controlled through the use of the submitted Construction Access Management Plan (CAMP). It is stressed that only cars and light goods vehicles would be allowed to access the construction site via this route. Once the new factory is opened sole access to the site would be via the permitted improved access from Station Road *[see the plan to be displayed at the meeting]*.

Staff parking provision would be provided within the extended factory site and a planning application to increase parking provision is/has been under consideration.

## **Pre- application Consultations**

A Statement of Community Involvement accompanies the application. This sets out the consultation process undertaken by the Nestle Development Team to inform the communities surrounding the factory of its proposals. As well as a public exhibition, presentations were given to the Parish Councils at Hatton, Tutbury, Hilton and, Foston and Scropton. The results of the consultation exercise have, the applicants assert, been used to inform the preparation of the planning application and points out that these communities would also have the opportunity to comment on the planning application itself.

## **Applicants' supporting information**

Nestlé UK have decided to expand their coffee manufacturing facilities in Hatton and for the first time, bring together all forms of coffee production on one site. This is in line with how they operate in other European countries. This expansion also accommodates the growing demand for their products. The site at Hatton has the potential to expand a skilled workforce available in the local area and has good access to the national transport network as well as the availability of land to expand the factory.

Preparation of the site for building would start following receipt of planning permission if granted. The applicants propose that the building works would start in spring 2013 and would be completed by spring 2014. Following construction the buildings would then be fitted out with the technical equipment. It is hoped that the new factory would be fully operational by the end of 2014 if all goes to programme.

Once constructed the new facility would provide 125 new jobs at the Hatton Site. The company is committed to providing improvement to local facilities and infrastructure. With this in mind it has made a significant financial contribution amounting to some £1.7m towards the implementation of the Lower Dove Flood Management Relief Scheme, work on which commenced last month. The company is also working/has worked with local community groups to implement community projects such as Thistley Meadow and the additional changing facilities at the Scropton Road Community playing fields. Ongoing projects are the completion of a link from Marston Lane to Station Road to allow pedestrian and cycle access to the village and the station particularly from Hilton.

Since submission the applicants have submitted a revised Landscape Plan for the site to take account of consultee and consultant comments; clarified issues for Natural England and updated bat surveys the last of which took place on 10<sup>th</sup> September; provided clarification and amended the appearance of the northern warehouse to take account of comments from the Council's Design Excellence Officer.

### Design and Access Statement

An extensive Design and Access Statement (DAS) that follows the process followed to achieve the overall design that is now before the Committee accompanies the application. This process was also explained to the Council in a briefing held in May and to various Parish Councils within and adjoining the District these consultations are referred to in the Statement.

A letter also accompanies the Statement from the OPUN organisation that is a part of CABE (the Government's design agency). Prior to the letter being submitted, the applicants' design team, in the presence of officers, made a presentation to a Panel of Architects and Landscape Architects about the scheme now before the Committee. The DAS addresses the design comments made by OPUN, in particular the softening of the eastern boundary of the site next to the Salt Brook diversion route.

The submitted scheme was also amended and now shows the proposed diversion of the Bridleway to include the removal of the existing palisade fencing, and the relocation of parts of the new type of fencing to produce a softer edge to the development by incorporating some of the mounds outside the secure boundary.

Having considered all the relevant factors influencing the design and siting of the buildings, the architects summarise the submitted scheme in the following terms in various parts of the Design and Access Statement:

*"There have been a number of factors and influences that have shaped the design process resulting in the design proposals shown here. The design addresses the surrounding area in a number of ways by carefully responding to the environment on each scale and level. The red central zone wraps around the development creating consistency between all the different building elements. It will also provide a striking design feature that helps to empathise the horizontality of the scheme helping to reduce the overall vertical scale. From a distance this strong design feature would have the distinct benefit of breaking up the overall mass of the development so the individual buildings would not appear as one large mass which would be difficult to achieve if the buildings were all similar in colour. The horizontal punctuated dark tinted 'slot' windows create a seemingly random arrangement and contribute the horizontal 'flow' of the red ribbon running around the scheme.*

*"The lower level part of the development will be most visible at close range from around the perimeter of the site in particular from the bridle path. From this perspective people will be looking up at the gold coloured towers, which would appear to be sitting on top and behind the solid red horizontal mid-level 'ribbon' below. A continuous dark solid plinth constructed from a robust polished block wraps around most buildings at ground level provides a solid dark coloured base for the buildings above creating a contrast to the red horizontal ribbon above. A transparent 'Kalwall' zone runs above the 'solid base' from the 3m to 6m level. This zone provides natural light to the ground floor levels of most buildings without compromising security issues. On both the north and the south elevations a low-level mesh screen runs the length of the development to mask unsightly items from eye level and strengthen and enhance the horizontal emphasis and preserve the clean crisp lines by linking the buildings together at low level. This also has the effect of creating a new 'zone' in the foreground that places the larger blocks further in the background and diminishing their appearance from close range.*

*"The taller buildings will be most visible from the distance and are clad with a gold mesh or similar material with high reflective and metallic qualities and respond to the surrounding landscape by not remaining static or heavy and changing during the day and under different weather conditions. The transparent properties of the mesh angled parapets would give the very tops of the buildings a distinct quality of 'lightness' that would appear to 'fade' into the sky and creating lively 'dancing towers'. The crisp clean uninterrupted outline of the buildings create an exciting and vibrant skyline and detracting from the sterile horizontal line of a typical roof-scape.*

*"Finally the landscape 'zone' is created that runs around the around the perimeter of the site following the bridle path. This adds another elemental layer in the foreground closest to the perimeter where the public can view the development clearest. The creation of carefully placed undulating landscaped 'mounds' of varying heights and sizes softens the most close up views into the site from the boundary. Planted with native meadow grasses and wild flowers they will create a sweeping and flowing natural barrier between the public zone of the bridle path and the factory area within.*

*"The external appearance of a new development changes during the day with the movement of the sun and the changing weather conditions. However the most significant change comes about during the transition from day to night. How the*

development looks during the hours of darkness is an important consideration especially in the open countryside where light pollution is a sensitive issue.

*“In the Red Central Zone the appearance of the materials and the fabric of the building will have a very different look during the night. Materials lose their quality in terms of colour, texture and reflection and become almost black unless illuminated by a direct or reflected artificial light source. The solid red panels would become dark and only locally illuminated by dispersed light from the windows or reflected light from below. This will give the building a special deep and rich quality of lighting during hours of darkness.*

*“The lower levels of the gold towers will be softly illuminated to create a dispersed light to gently illuminate the towers without imposing any light pollution to the surrounding landscape. The black silhouettes of the utmost tops of the gold towers should still be subtly visible against the night sky creating an interesting skyline even at night*

*“Windows - During the day the horizontal windows are dark slashes in the colourful red building fabric but come alive in the night becoming illuminated slots within the dark fabric of the building envelope. Likewise the randomly placed windows in the gold towers will be softly illuminated from the light within the building.”*

The DAS also draws on the results of the other supporting documents below to provide a comprehensive iterative design for the whole of the site. The full text of the DAS is available on the register.

#### The Applicants Summary of the Environmental Impact Assessment (EIA)

The EIA contains information on a number of topics that are summarised below. It also considers the alternatives to development on the application site. Whilst considering the Hatton site suitable to accept the development [referred to in the document as ‘Tutbury’], various other sites at Hayes in Middlesex, France, Germany Spain and Switzerland are considered and dismissed for a variety of reasons, the conclusion being that Hatton has the best location to consolidate all forms of coffee production on one site in the UK albeit a sensitive design is required. If nothing is done then there is a lost opportunity for investment in jobs and the economy of South Derbyshire and might cause the loss of the manufacturing facility altogether.

**Noise** – The Noise Assessment that accompanies the application asserts that the local noise environment comprises a mix of road traffic noise, industrial noise (including from the existing factory) and occasional rail noise the precise mix being dependent on the location of the individual [either person or business] to these noise sources.

To find out what the likely noise impacts are associated with the new factory, a detailed assessment has been undertaken. Firstly the study area was defined around the factory and included the properties at Mercia Close and Hoon Road to the west, the dwellings on Dove Side and Marston Old Lane to the south and the dwellings at Holly Cottage and Hoon Hay Farm to the east.

Secondly, noise surveys were carried out; the consultants took measurements from around the existing factory at the above properties to assess the background noise levels over a typical 24-hour period.

Finally, a detailed noise map of the existing site to show the different levels of noise across the factory was prepared. This, together with information provided by Nestle UK on the equipment that would be used in the new factory, was used to generate the predicted noise levels of the new factory was fed into a computer model. The advanced computer model generated the likely noise "outbreak" from the new factory, i.e., areas of the proposed site where noise levels might be considered too high. Having obtained a base model using this data, the program was run again and incorporated different noise reduction measures such as walls and screens on the areas where noise outbreak was predicted as being too high. This information has been used to inform the noise mitigation measures that are now included in the planning application.

Consideration has also been given within this model to the likely noise arising from additional construction and operation traffic using the figures provided by the transport consultants. During the construction of the new factory, the contractors will be required to adopt best practice measures as a part of the Construction Management Plan to reduce the noise levels from the site for example deliveries will be programmed to arrive during daytime hours only and noisy equipment will be fitted with mufflers.

The applicants, in consultation with the Council's Environmental Health Service, have an objective in the long-term, for the reduction of noise levels that would arise from the proposed development and existing manufacturing facility combined. Therefore, it is intended that the noise model predictions for the proposed development demonstrate no more than a negligible impact i.e. very little change on local amenity when complete.

In order to achieve this, further noise surveys would be undertaken during fitting out operations prior to commissioning of the new factory to ensure that the predictions and proposed noise reduction measures have been effectively implemented. Furthermore, as the detailed design for the factory develops, it is possible that more detailed information will become available and this will allow the noise consultants to refine the model predictions and ensure that we can advise on any further mitigation that is required.

To operate the new factory, Nestle may be required to obtain a permit from the Environment Agency. As part of this permit, the new factory would have to operate within strict limits to prevent excessive noise pollution along with other environmental controls of which the Environment Agency would be responsible for enforcing. *[At the time this report was prepared there was no decision as to whether a Permit would be required – if further information becomes available prior to the meeting, a verbal update will be provided.]*

**Flood Risk** - All surface water run off from the new factory will be captured in a series of drainage channels. These would incorporate pollution control measures such as silt traps oil and petrol traps, to reduce the amount of sediment or other pollutants going into local watercourses. The ground conditions at the site mean it is been possible to use natural drainage systems rather than engineered systems so water is absorbed back into the ground naturally rather than flowing through pipes direct to the river or brook course.

These systems are now encouraged in Government advice to the Environment Agency and Local Authorities. Clearly this system may not work at times of heavy rain and to this end two new drainage ponds would be created to hold water during these periods. A controlled release of water would then take place into the Salt Brook post storm. The

system should ensure that any excess water from the development site flows onto farmland rather than back towards the village.

The factory and development site would benefit from the Lower Dove Flood Management Scheme, part of which includes the works to the Salt Brook, for which the Company is providing partial funding.

**Traffic Impacts** – a Traffic Impact Assessment, Construction Management Plan and a Travel Plan accompany the application.

The Traffic Impact Assessment has looked at the planning permissions and current operations at the site and takes account of the new access arrangements and the impact of the new factory on 4 junctions (Marston Lane and Station Road, Uttoxeter Road and Station Road, Bridge Street and A511 Roundabout and Burton Road/ A511 and Rolleston Lane) in the vicinity of the site identified by the County Highway Authorities as potentially being affected by the proposed development. An assessment of the potential traffic impacts on the Marston Lane/Derby Road Junction at Hilton arising from construction impacts has also been undertaken.

Following the construction of the new access to the factory site as a whole the Traffic Impact Assessment concludes that the impacts from the new factory on the local highway network can be accommodated both on Station Road and the wider area without the need for further changes to the identified junctions.

The Travel Plan – There are limited public transport options available at the time the shift changeovers would occur and as such the Travel Plan concentrates on ensuring that a plant wide car share scheme is established and a 'bike2work' scheme is promoted to the whole plant backed with new facilities on the site such as a new cycle parking shed [an application for this is currently under consideration – 9/2012/0726]. Targets have been set that would be incorporated into an Action Plan for the site that seeks to reduce car usage by 7% consisting of a target to increase car sharing by 5%, cycling by 1% and walking by 1%. Progress towards these targets would be the subject of a bi-annual management report that would include input by the County Council – any improvements necessary would then be incorporated into the action plan. An on-site travel plan co-ordinator would be responsible for the travel plan. The applicants have also advised that they have the long-term objective of transferring their product from road to rail but this is not a part of the current application.

**The Construction Access Management Plan** – this proposes that all heavy construction plant and equipment would access the site via the improved Marston Lane junction for the duration of the construction period. Light vehicles including construction workers vehicles would access the site from Marston Lane via the Marston Lane/ Derby Road junction next to Hilton. It should be noted that this is a substantial project and there could be up to 500 contractor staff on the site in the 2<sup>nd</sup> Quarter of 2013. The application now proposes that access for light goods and contractors' private vehicles would be via the Derby Road/Marston Lane junction. Temporary traffic lights would be provided, some new road markings at a pinch point and the provision of a passing place to the east of the Church should suffice to facilitate contractors access to the development site for the duration of the contract period.

**Air Quality** - The local air quality is currently rated as good and South Derbyshire has not declared any air quality management areas in the district. The study area includes



sensitive receptors (people, ecology) close to the Nestlé factory and along the routes that will be used by vehicles travelling to and from the site both during construction and when the site is operational. The applicant has undertaken extensive consultation with the Environmental Health Service at the Council to determine the scope of the assessment.

Detailed profiles of likely construction traffic (no, type, vehicle speeds), spread over the duration of the construction programme and predicted emissions for the new operations arising from both traffic and for fixed plant have been prepared and fed into an air quality model. In the applicants' view this shows that the concentrations of monitored air pollutants for both construction and operational phases should not increase significantly and that the predicted levels are within recommended objective levels. The new stack that would aid the dispersal of emissions has been designed to optimise dispersal over a wide area. This has the effect of minimising impact on local air quality and would maintain the local 'good' rating for air quality referred to above. Before the facility could operate it would require a permit from the Environment Agency. To secure this permit, air quality will be carefully considered by the Environment Agency and the site would not secure a permit without demonstrating and proving that there would be no detrimental impact on the local air quality. It is concluded by the applicants that overall, building the new factory would not significantly alter the existing air quality and therefore is compliant with the law and recognised standards.

**Dust** – The applicants assert that construction and operational activities are likely to generate dust but these will be localised and are more likely associated with the early stages of the construction process foundations are being installed or earth is being moved about to provide a platform to build the factory. The potential for dust to be released has been considered as part of the environmental assessment and consideration has been given to impact on residential properties and businesses that are close to the site.

During the construction of the new factory, the appointed contractors would be required to adopt best practice measures to be set out in a Construction Management Plan that would be approved by the Local Planning Authority in the event that planning permission is granted. Its aim is to reduce dust emanating from the site and this would include covering of soil and other stockpiles and dust suppression in periods of dry weather. The applicants conclude that dust from construction activities on site can be managed and would not cause serious long-term effects to local air quality subject to mitigation measures contained in the Construction Management Plan being put in place.

During the operation of the new factory, the new roasters, boiler and skips might release dust. A bag filter will be installed on the new boiler that will minimise any dust emissions, the new roasters would have filters within them to capture any chaff within the release gas and all skips would be covered. With these mitigation measures, the applicants assert that the new facility is unlikely to produce significantly more dust. If this were not the case, local residents would be provided with a point of contact at the Nestlé factory through which complaints would be investigated.

**Odours** – It is likely that odours from processes on site will be released into the surrounding area as discussed in the Air Quality section above. However, an odour assessment has been undertaken as a part of the Environment Impact Assessment. The assessment included three site visits to the factory to assess existing odour levels and computer modelling of the proposed factory odour outputs (including consideration

of wind speed and direction) to determine the level of smells likely to be associated with it. This assessment concluded, in the applicant's view, that whilst the new factory would cause a slight increase in the levels of odour, the design of the new factory would ensure that the overall level of change would be minor. If permission were granted a log would be kept of all complaints relating to odour and there would be a point of contact at the factory for local residents who are affected to odour release.

**Night Time Illumination** - The lighting scheme for the new factory has been designed in accordance with best practice to reduce 'light spill'; i.e. it will be directional lighting to shine only within the site and not shine in the direction of any residential properties nearby. A computer-generated model of the lighting impacts accompanies the application.

**Ecological Impacts** - A full ecological survey has been carried out at the site by a qualified ecologist. Overall the site was classified as having low ecological value and does not contain many rare and protected species, except for a small number of breeding birds and bats.

Bat surveys will be on going until the autumn of 2012; so far they have found that bats are using some of the trees along the Salt Brook as a feeding ground. No evidence of bat roosts on site has been found. Since submission, the Bat Survey has been updated and the new surveys confirm the original findings above. A further survey in early September has also confirmed the original results.

The applicants state that if bats are found to be roosting on the site in a final survey just prior to the start of construction, then a special protected species licence would have to be obtained and an appropriate strategy to deal with them developed under the supervision of Natural England.

The development offers the opportunity to provide new habitat as part of the new factory development including the provision of new trees, shrubs and hedgerows along the northern, eastern and southern boundary of the development site. Furthermore, as part of the new bridleway there would be extensive planting that will provide foraging habitat for bats as well as other wildlife and Nestle UK have committed to the erection of bat boxes around the existing factory and new development site.

More generally, a precautionary approach will be adopted during construction to ensure that if any unexpected protected species, animals or plants are found then these are also managed and protected in accordance with legislation. This would include having an ecologist available to provide guidance and advice to the contractors on site; this would be included in a Construction Environmental Management Plan that would be a recommended condition if the Local Planning Authority were minded to grant planning permission.

**Contamination** - The development site is previously undeveloped and as such no soil or groundwater contamination has been recorded on the land and ground survey information has been submitted as a part of this application. A Construction Environmental Management Plan will be created that details measures to be adhered to that will substantially reduce the risk of releasing potential contaminants e.g. oil spills or sediments into the ground, Salt Brook and River Dove during the construction of the factory. During operation, the presence of the new buildings will protect the groundwater to an extent and the implementation of best practice and a new drainage

system (for both rain water and water from the factory processes) will prevent the possibility of future contamination of the Salt Brook and River Dove. The submitted information confirms that the applicants understand they have an ongoing responsibility for the safe operation of the plant in respect of contamination issues.

The application is also accompanied by a Utilities Plan that shows the new factory would be capable of operating when constructed and a waste management plan that sets out the processes to be followed both during and after construction to ensure that waste material taken from the site is minimised or recycled and reused.

Documents relating to the management of the construction phase, utilities availability and waste management have also been submitted that address these issues that have been taken into account by consultees in responding to the planning application.

### **Planning History**

The application site has had permission granted for the erection of palisade security fencing on its boundaries (9/2011/0505) and permission just outside the fence for the provision of an alternative route for the bridle path that currently passes through the application site and for the diversion of the Salt Brook that would run parallel to the proposed route for the Bridle Path (9/2012/0089). Temporary planning permission has also been granted for the storage of soil (9/2011/0578) to facilitate the implementation of the Lower Dove Flood Management Scheme that was recently granted planning permission (9/2012/0132). Temporary planning permission has been granted for the installation of a PSA (Nitrogen Fixing) plant on a part of the site (9/2012/0433).

Permission for the new access (9/2011/0925) [See Condition 8 below] has been granted and works to form the new access commenced on 24th September 2012. An application for the additional car, motorcycle and cycle parking (9/2012/0726) will have been determined by the time this application is considered by the Committee [See condition 17 below]. There are three other current planning applications including revisions to the currently permitted amenity building (9/2012/0718) [*this is one of the applications alluded to below*] on the existing Nestle site at the time this report was prepared.

The main factory site has been the subject of numerous planning applications in the past to consolidate Nescafe and Dolche Gusto production on the Hatton Site; this history is not directly related to the application for this factory but is included for information. One of these buildings, once constructed, will include the European Training facility referred to in the press reports, entrance wall and advert on Station Road and staff facilities (9/2011/1026).

### **Responses to Consultations**

Hatton Parish Council – No comments received

Tutbury Parish Council – No comments received

Foston and Scropton Parish Council – No comments received

Hilton Parish Council – No comments received

Marston on Dove Parish Meeting has no comments on the application.

Three Counties – No comments received

Derbyshire County Council – has confirmed that the proposals are in accord with the NPPF and Regional Policy for the East Midlands. It welcomes the long-term objective of getting product onto rail, as an alternative to road and the possibility of using one of the local SFRI sites should be investigated. The travel plan is also welcomed but some form of works transport should be considered. The County Council has as a long-term objective, the aim of providing a link from Hilton to the Hatton Station, and would welcome the achievement of this through discussions with the applicant.

The County Council has also made comments about the landscaping proposals and the use of colour in the proposed buildings. The main concerns relate to: the use of 2m high mounds, as these are alien features in the local landscape; the plant species; and the size of some of the trees proposed. It considers that smaller trees would become more easily established and that the proposed landscaping should extend into the meadow areas on the site to provide a more substantial landscape element along the east boundary that is considered necessary to mitigate the impact of the factory. There is also concern that the landscape visuals show an outcome some 20 years hence rather than the actual initial image that would be much less verdant than the illustrations.

Concern was also expressed about the use of the proposed cladding colours and their impact on the wider landscape. The use of Goosewing Grey is promoted as an alternative.

East Staffordshire Borough Council has no objections to the proposal as submitted but notes that careful consideration should be given to the impact of the proposal on the setting of Tutbury Castle (a Scheduled Ancient Monument).

Staffordshire County Council (Planning and Highway Departments) have no comments.

The County Highway Authority – having considered all the supporting information in relation to traffic impacts has raised no objection subject to the imposition of conditions to cover construction traffic and more importantly operational traffic.

The Highways Agency has no objections to the proposal.

Network Rail has no objection to the principle of the development but would wish to be consulted by the Local Planning Authority on the following issues should planning permission be granted: drainage, boundary fencing, Armco barriers, method statements, lighting and landscaping. There are other operational issues that Network Rail state need to be addressed with the applicants and informatives are requested to draw this to the attention of the applicants.

Natural England – Originally objected to the development on the grounds of potential impact on a SSSI in East Staffordshire that receives waters from the River Dove. However following correspondence with the applicants Natural England has withdrawn

its objection. In respect of protected species, Natural England is satisfied that the proposed development would be unlikely to affect European Protected Species.

The Derbyshire Wildlife Trust – notes the contents of the EIA and has determined that the proposals have been appropriately assessed in accordance with the Regulations. It therefore has no objection to the development subject to the imposition of a condition requiring the submission and implementation of a Habitat Management Plan covering a minimum period of 5 years from the date of any planning permission.

The Derbyshire County Development Control Archaeologist – has no objection on the basis that all the information submitted with the planning application and subsequently is sufficient to confirm that in accordance with the advice in the NPPF, the Local Planning Authority has sufficient information to enable it to determine the planning application and as such there is no objection to the proposal subject to further observation and recording of any finds in two areas of the application site. A condition is recommended to secure this limited additional work on the site.

English Heritage [EHM] has no comments and recommends that the application should be determined in accordance with National and Local policy guidance and on the basis of specialist conservation advice at the Council.

English Heritage [West Midlands] [EHWM] notes that the proposals will impact on the Tutbury Castle but that the Nestle factory is a long-term neighbour to the Castle. EHWM is satisfied that the EIA properly assesses the impact of the development on the heritage assets in the vicinity of the project and that the new built form, use of materials and planting will help to minimise its visual impact although there are reservations about the use of gold and red which is considered bold and perhaps needs more evidence that these colours are appropriate to meet the challenge of reducing visual and landscape impact. EHWM state that the proposed buildings would have an impact on Tutbury Castle to the detriment of its setting but is not of such significance that EHWM would object to the proposal.

The Environment Agency has no objection subject to conditions that relate to the need to implement surface water drainage during both the construction and operational phase of the development to ensure surface water run-off from the site is no greater than the existing flows from the green field; the setting of minimum floor levels; measures to protect controlled waters through the installation of oil and petrol interceptors. Other information is also provided to assist the applicants in respect of undertaking the development that does not require the imposition of conditions.

Severn Trent Water has no objection subject to the applicants being advised of the presence of Severn Trent Water assets within the site. *[Note: Nestle are in discussions with Severn Trent Water about diverting its assets within the application site].*

East Midlands Airport has no safeguarding objection to the proposal.

The County Footpaths Team has commented that pending a successful application to divert the bridleway under the provisions of the Town and Country Planning Act 1990 there should be no obstruction of the adopted route, no disturbance to the surface. If the path is to be affected prior to the diversion, then a temporary closure order should be sought prior to any works taking place. Any structure erected adjacent to the path

should not encroach within the site boundary of the path and consideration should be given at all times to members of the public that use the path.

The Peak and Northern Footpaths Society has no objection to the application provided that the rights of way officer at the County Highway Authority has been consulted, there is no obstruction of the existing route prior to a diversion order being obtained, or a temporary stopping up order, the new route is constructed to meet County Council standards. Extensive planting is put in place to minimise the impact of security fencing, seating and information boards are provided and the new bridleway links along a pleasant and convenient route for all users and that the landowner/factory maintain the bridleway in perpetuity.

The Derby and South Derbyshire Group of The Ramblers note that the diversion of a public right of way is proposed if planning permission were granted. The diversion indicated is potentially acceptable if constructed to the same standard, as the existing one with benches notwithstanding the route is 300m longer. If the route could be extended more formally to take in a route beneath the railway and extend back into Hatton then that is considered an excellent idea as it would allow residents/cyclists in Hilton to access the rail network at Hatton relatively easily.

The Police Crime Prevention Design Advisor has noted the extensive discussion in the Design and Access statement and has noted that there is a mesh fence proposed that is far more effective than the usual palisade fencing at deterring criminal activity. The proposed swales can also act as a deterrent to criminal activity. Concern is expressed about the east boundary as now proposed as the landscaping and mounds outside the proposed boundary could provide hiding places if not properly monitored. It is recommended that the straight boundary be reinstated.

The Environmental Health Manager (Contamination) notes the site may be subject to infiltration by ground gas due to previous uses on or immediately adjoining the site; the submitted information goes some way to addressing the requirements of the legislation but further testing is required. The additional information has been received and the requirements of the legislation have been complied with in terms of determining the planning application but the usual conditions relating to unexpected contamination and the certification of imported soil as being non-contaminated need to be attached to any permission.

The Environmental Health Manager (Noise) - has concerns about the potential noise impacts of the additional factory when combined with existing noise issues on the existing factory site. There is a distinction to be drawn between noise issues relating to the current factory and those likely to be generated by the new factory. The submitted information indicates that provided the noise generating equipment is properly installed and maintained in the new factory, then noise at the boundary of the site would increase only marginally and not to a point where refusal of permission can be considered.

To secure the proper implementation of noise generating equipment, a condition is recommended to ensure that all such equipment is tested against the noise information that accompanied the application prior to production commencing. If found to be performing below the submitted information, the condition would require the submission of further information to mitigate the shortfall; this is accepted by the applicant as a reasonable requirement.

However, the Environmental Health Manager is working with the applicants to seek best practicable means of reducing noise levels from the existing factory at the nearest noise sensitive boundaries. The applicants state that considerable investment in noise reduction measures has already been and continues to be undertaken at the factory. Some of these measures are yet to be finished and it is hoped that existing noise levels at the factory boundary will be reduced further. As a result of these works, the noise impact arising from the proposed development would have a more marked impact. For this reason, the developer should be aiming for noise levels from the new development to be at least 10 dB(A) below existing factory noise levels at the boundary of the nearest residential receptor.

Attempts to reduce noise levels have thus far had limited impact in achieving a significant reduction and the Environmental Health Manager advises that at community liaison meetings complaints from local residents are a feature. However, it will be noted that no noise objections have been received in response to this planning application and it is open to the Environmental Health Manager to take action against unacceptable noise levels under the Environmental Protection Act and he continues to monitor the situation. The Environmental Health Manager notes that this control mechanism cannot be relied upon as the site operator could still cause a nuisance if he can demonstrate a 'Best Practicable Means' defence; therefore adequate control at planning stage is imperative.

Taking all of the above the Environmental Health Manager has no objection subject to the recommended condition as the noise impacts from the development are considered to be acceptable and would not form the basis for refusing planning permission.

The Environmental Health Manager (Odour) - Odours from the existing factory have been the subject of complaint in the past and to some extent continue to be a matter of concern to the local community as expressed in community meetings between Nestle and residents. Environmental Health representatives who have noted this local concern also attend these meetings. The submitted information indicates that odours from the new factory should be no greater than those already experienced by the community. However this is based on an assumption within the EIA that two of the main existing sources of odour namely Roaster 1 and the Steam Treatment of Coffee (STOC) would cease. It is not clear at this point when and if these two sources will cease operating and therefore it is likely that odours from the existing factory will continue to be 'very strong' as identified in the EIA. To the layman, it will be impossible to distinguish whether an odour is being generated by the existing or new development. In conclusion

it is that strong odours are coming from the Nestle site as a whole and are likely to continue. The EIA assessment outcome is also based on assumptions that have been made about odour emissions rates from the new factory. Odour emissions are extremely difficult to predict and therefore the assumptions about odour emissions and the conclusion that there will be no significant increase are potentially open to a large degree of uncertainty.

A condition has been recommended to the applicants that would ensure that all new odour sources are tested following commissioning to demonstrate that odours are dispersed so that odour exposure limits from new sources are not exceeded beyond the levels calculated in the EIA. Where this cannot be demonstrated, the condition would require improvements to be made until the odour exposure limits are met.

A condition has also recommended that all odour complaints be fully investigated by the applicants to enable a distinction to be drawn between odour from the existing and new factory. It is open to Environmental Health to take action against existing odours under the provisions of the Environmental Protection Act. However, if the whole site requires an Environmental Permit from the Environment Agency then it is anticipated that strict site boundary odour conditions will be imposed by the Environment Agency, which would be more onerous than any controls that can be imposed by the Council. Planning guidance directs local planning authorities not to impose conditions where they duplicate controls under Environmental Permitting law.

This factory application has attracted no objection in respect of odours and on the basis that there is other legislation to control excess odour emissions and that the predicted impact of odour from the current proposal is calculated as being negligible, it is considered unreasonable to consider refusing permission. Conditions are recommended to secure proper implementation of an odour control scheme as discussed above in line with the information set out in the EIA in respect of the new factory.

### **Responses to Publicity**

Two comments have been received complaining of traffic problems in Rolleston-on-Dove where HGVs clearly trying to access the Nestle Factory, use roads through Rolleston when it is clearly signed that the route is inappropriate at the Claymills junction of the A38. Lorries then try to access the factory via Marston Lane that is highly unsuitable. It is requested that controls be put on Nestle to control their logistic operations to prevent lorries using such an unsuitable route to the factory. Similar comments have been received about heavy traffic in Marston-on-Dove where construction traffic is already causing a narrow country lane to be busy and dangerous. *[The current construction traffic in Marston on Dove is related to the diversion of the Salt Brook and the provision of a potential diversion route for the bridle path and is not associated with the construction of the new factory].*

### **Development Plan Policies**

The Regional Spatial Strategy (RSS): Policy 1 (Regional Core Objectives), Policy 3 (Distribution of new Development) Policy 18 (Regional Priorities for the Economy), Policy 20 (Regional Priorities for Employment Land) Policies 26 & 27 (Protecting and enhancing the Regions Natural, Historic and Cultural Heritage), Policy 29 (Priorities for Enhancing the Regions Biodiversity), Policy 31 (Priorities for the Management and Enhancement of



the Regions Landscape), Policy 35 (A Regional Approach to Managing Flood Risk), Policy 36 (Regional Priorities for Air Quality),

Local Plan: Employment Policies 1, 6 & 8; Environment Policies 1, 9, 11, 13, 14, Transport Policy 6, Recreation and Tourism Policy 8.

### **National Guidance**

National Planning Policy Framework (NPPF) - Paragraphs 7, 10, 18 - 22, 28, 37, 65, 109, 110, 116, 120, 122, 123, 128 & 134

### **Other Relevant Local Policies**

Regional Economic Strategy for the East Midlands, The Derbyshire Economic Partnership, The South Derbyshire Economic Development Strategy 2008 – 2012, the South Derbyshire Employment Land Review.

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Regional Economic Strategy for the East Midlands, The Derbyshire Economic Partnership, The South Derbyshire Economic Development Strategy 2008 – 2012, the South Derbyshire Employment Land Review.

### **Other relevant National Guidance**

The Noise Policy Statement for England (NPSE) is an overarching policy statement for noise in England published by DEFRA in 2010.

### **Planning Considerations**

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

- Environmental Impact Assessment (EIA) and its appendices as a guide to the determination of the planning application
- The Development Plan and the NPPF.
- Traffic Impacts.
- Noise Impacts.
- Landscape and visual impacts.
- Impact on Heritage Assets (Including the SAM at Tutbury Castle).
- Flood Risk
- Other material considerations: Police Comments, Public footpath impacts, Planning Obligations.

### **Planning Assessment**

#### The Environmental Impact Assessment

The EIA has been considered, and the topics with supporting appendices assessed both by the specialist consultees, set out above, and by planning officers. Subject to appropriate planning conditions suggested in the EIA as potentially mitigating the impact of the development on the locality, and subject to the following assessment of individual topics, the EIA is accepted as properly assessing the environmental impacts arising from the development. With regard to protected species, in the light of the assessment

of the impact on protected species revealing that there is no significant bat activity on the application site (as confirmed by Natural England), no derogation tests (as set out in the Habitat Regulations 2010) are necessary.

#### The Development Plan and the NPPF

Three dimensions of sustainable development are set out in the NPPF (economic, social and environmental): paragraph 10 states that '*Plans and decisions need to take local circumstances into account, so that they respond to the different opportunities for achieving sustainable development in different areas*'. For decision taking this means that development plan compliant proposals should be approved promptly. This should always happen unless impacts are of a magnitude and significance which outweigh the benefits, or where developments would adversely impact on areas where restrictive policies are justified such as the Green Belt, or in proximity to other nationally significant designated heritage assets (e.g. Tutbury Castle, the Tutbury Bridge or other significant listed building or sites of archaeological importance).

Following the main theme of *Building a strong and competitive economy*, the NPPF places a strong emphasis on securing jobs and growth as a means of stimulating economic activity whilst taking account of the need to promote sustainable transport, requiring good design, and whilst taking account of climate change and flooding issues.

In balancing these considerations, on the theme of *Conserving and enhancing the natural environment*, when determining planning applications, local planning authorities should aim to conserve and enhance biodiversity. If significant harm resulting from a development cannot be avoided (through locating on an alternative site with less impacts), adequately mitigated, or as a last resort compensated for, then planning permission should be refused.

The above-mentioned Development Plan policies as set out in the Regional Plan and South Derbyshire Local Plan have been considered in the light of the NPPF. It is considered that all have a high degree of compliance with the provisions of the NPPF such that they can carry significant weight in determining the application.

Both the Regional Plan and the Local Plan contain policies that encourage the expansion of existing businesses provided various environmental, traffic and impacts on adjacent occupiers is properly considered and assessed. The County Council has confirmed that in its view the proposed development is in general conformity with these policies.

These various criteria are assessed individually below if members are satisfied that the application meets each of these criteria then it would be reasonable to conclude that the proposal accords with the Development Plan. The assessment is based on the variety of criteria found in the adopted Local Plan, Regional Plan and guidance in the NPPF. The relevant policies and paragraphs and policy considerations are referred to at the start of each section.

**Traffic Impact** – Transport Policy 6 in the adopted Local Plan, Policy 20 in the Regional Plan and Para 35 in the NPPF. These all require that safe and efficient delivery of goods and services in the context of ensuring that development meets sustainable objectives. The County Highway Authority has no objection subject to the conditions set out in the recommendation and Members will note that the Highways Agency has no comment. On the face of it, the proposals would appear to give rise to significant levels

of traffic but the County Highway Authority and the Highways Agency are satisfied that there would be no significant impact on the highway network arising from either the construction of the new factory or during its operation. The most significant recommended condition is that requiring the implementation of the access improvements to Station Road prior to works being commenced on the site (9/2011/0925) and provision of on-site parking (9/2012/0726). The conditions to control this are recommended.

**Noise Impacts** – Employment Policy 1 of the adopted Local Plan, Policy 20 in the Regional Plan and Para 123 of the NPPF require a proper assessment of environmental impact arising from new development. The Noise Policy Statement for England (NPSE) and the NPPF both state that matters of noise pollution should not be viewed in isolation. It is a relevant factor when considering an application that has noise issues as a part of an assessment of overall policy and the benefits arising a particular development. The NPPF states that noise is considered an important consideration and that planning decisions should avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development; mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from development. However the NPPF goes on to state that the Local Planning Authorities should recognise that development will often create some noise and existing businesses wanting to develop in continuance of their business should not have unreasonable restrictions put on them because of changes in near by land use since they were established.

The Environmental Health Manager has given careful consideration to the noise potentially generated as a result of the development. He notes that there are ongoing complaints about noise from the existing factory but is also aware that no objection has been raised from the community in respect of noise from the new factory albeit he is aware that there are complaints from his attendance at community liaison meetings. In the light of the Environmental Health Manager's concerns that the new development should not add to existing noise levels at the site boundary, it is recommended that a condition that confirms EIA noise predictions be imposed to secure this.

Odour and emissions impacts – Employment Policy 1 of the adopted Local Plan, Policy 20 in the Regional Plan and Para 7, 17, 109, of the NPPF. These require a proper assessment of environmental impact arising from new development. In relation to pollutants, the NPPF states that there is a need to take into account the cumulative impacts on air quality in the local area. The Environmental Health Manager is aware of concerns about odours from the existing factory complex. He has noted two existing sources of odour in the factory that have been the cause of on-going complaint. However, he is satisfied that the proposed factory has the potential to operate without adding to odour levels within the locality. He has noted that the EIA identifies the closure of the main sources of odour complaint and that there is no timetable for this to occur. Thus there is the probability that odour complaints would continue. The applicants have been asked to justify their assertion that the odour sources will be removed, and to this end the applicant's state there is a long-term plan to remove these sources to the new factory site. However, there is no program to achieve this aim and the company is not able to indicate when it is likely to occur or indeed if market conditions would allow this to happen.

The Environmental Health Manager accepts that there is other legislation that can be used to control odour emissions and that the proposed factory could operate as

calculated provided that plant and equipment is properly installed, maintained and tested. Thus a condition is recommended that would ensure the odour limits set out in the EIA are achieved prior to production being commenced on the new factory site. Subject to this, the Environmental Health Manager considers the proposal acceptable and potential odour issues would not form a basis for refusing planning permission.

**Landscape and Visual Impacts** – Environment Policy 1, Employment Policy 1 in the Local Plan, Policies 3, 20 & 27, Paras. 7, 9, 10, 17, 18 - 22, 28, 37, 109, 110, 116, and 120. These policies and advice seek to ensure that an appropriate assessment is taken of the landscape and visual impact arising from a development including its impact on historic and natural feature in the wider landscape.

From the wider landscape the new factory would be seen from higher ground – distant views at the Bretby Ridge, high ground to the north and south of Hatton and to a lesser extent down the Dove Valley when viewed from the Radbourne area. The addition of the new factory would not compromise this wider landscape setting, as it would be characteristic of the landscape type - Lowland Village Farmlands in 'The Landscape Character of Derbyshire' published by the County Council. The context of the wider landscape is that of the Dove and Trent Valleys, which comprise a mainly pastoral landscape interspersed by substantial man-made structures that dominate the areas in which they are located. Most notably these comprise the Trent Valley power stations and factories such as those at Dove Valley Park, Toyota and indeed the Nestle site in the more 'local' area. The landscape and visual impacts from the wider area of the development site are considered acceptable given the above assessment.

Middle distant views are identified in the application documents and have been assessed from Uttoxeter Road Foston, Marston on Dove and Tutbury. The applicants accept that the factory would have an impact on the landscape in these local areas but that the mitigation in the form of boundary landscaping would help to reduce impacts. It could be argued that the provision of off-site landscaping could help to mitigate these views of the site in particular, the views from the ramparts of Tutbury Castle. However, it is considered that the on-site landscaping proposals would, over time, help to reduce the middle distance landscape impacts albeit the initial effect would be minimal compared to the landscape concept drawing submitted. The landscape impacts from heritage assets (the Castle and Local Listed Buildings) are discussed below.

Close up views are identified in the application documents. There are several locations where the proposed factory would be visible in the local landscape. Most notably these are the railway the amended line of the public bridleway and local housing both in the countryside and Hatton and Tutbury villages.

The view from the railway is at best transitory albeit representing a significant change in the landscape both during construction and once the factory becomes operational. However it should be noted that views from many railway lines are often of significant urban or infrastructure developments that abut these important transport routes. The existing factory is already a major feature in the local landscape and the impact of the proposed factory would be a significant addition to the urban form of Hatton. The proposed landscape scheme is considered to help to mitigate, without ever fully screening the development, to a point where the additional close up impact is considered acceptable from the rail line.

The bridle path diversion route would have the most prominent, close up views of the proposed factory; these views are significant and are discussed at length in the Design and Access Statement and the Landscape and Visual Appraisal.

The applicants have reacted to the observations of the OPUN review, and the landscaping scheme has been amended to bring some of the proposed landscaping into the bridle path boundary rather than being located in the factory grounds. There has been some criticism of the use of mounds in what is a flat landscape. The applicants argue that their response to OPUN comments takes account of this criticism and the use of mounds is justified to help to break up the mass of the buildings whilst still presenting views of the buildings that are considered to be capable of becoming of local interest. The mounds would be complemented by tree planting of various sizes. Prevailing specialist advice is that larger trees can take longer to establish and grow whilst the much smaller 'whips' can quickly become established and overtake the more mature specimens. Whilst the submitted views show the landscaped position in the long-term the proposed planting, the proposals are considered to be a good balance between instant impact and the need for the speedy establishment of a landscaping scheme.

There is clearly a significant change to the local landscape by the development of the factory but the proposed landscaping and use of colour would provide a development with visual interest, complemented by a landscaping scheme designed to provide a good local setting for the development.

The impact on local housing in Hatton is mitigated to a large extent by existing urban features. There are clearly parts of the local villages where the new factory would be visible but there are a limited number of houses that would have direct views of the factory site both in Hatton and Tutbury.

In Hatton the most significant view is from houses on Hassall Road as described earlier and combined with that and the view from the retained part of the bridle path when emerging from the village and looking towards the proposed warehouse. Alterations to the design of the warehouse have been achieved that would add some architectural interest to the structure and over time it would be viewed through the proposed landscaping. In Tutbury as explained earlier, the existing landscaping on the route of the Tutbury bypass would mitigate the views of the new factory and it would also be seen in the context of the existing factory complex.

The County Council's concern about the use of materials is noted and is a point of concern also raised by the Council's Landscape Consultant. His main concern relates to the views from high ground at Tutbury Castle and the higher ground above the factory. As with all these cases, the use of a particular material can affect the view of a building. There are distant views of the site as discussed above where it would not be possible to discern the actual colours and these would appear almost black. From closer in the colours would be discernable but from many locations the factory would be seen against the background of the sides of the valley.

It is considered that close up, the proposed landscaping and glimpsed views of the buildings would appear as an interesting feature in the local landscape. The suggested use of the Goosewing grey is considered the wrong option, as it would make the buildings appear more prominent in the wider landscape. This is apparent when looking towards the existing factory from the wider landscape, which has a light appearance;

similar to Goosewing grey that draws the eye towards it. However, it is considered that the use of earth colours such as the brown base, red lower areas and golden upper areas is considered to be the right option to help to minimise the wider impact of the buildings by grounding the buildings in their surroundings. OPUN in its pre-application review of the of the development recommended the use of these 'earth' colours in the existing factory site to help to merge the two parts of the site. This is a reasonable solution that will be pursued with the applicants when considering future applications on the existing factory site and the OPUN approach is preferred to that of the County Council in terms of minimising the visual impact generally.

Landscape and Visual Impact Assessment conclusions are that there is clearly a visual impact arising from the development that would impact on the local landscape but the choice of materials of construction and amended proposed landscaping scheme, if successfully implemented, bring the development into line with the requirements of Employment Policy 1 to minimise impact on the amenity of an area in terms of landscape impact. The visual impact of the factory although significant, would not form a valid reason for refusing planning permission for the reasons set out above as the proposed materials of construction are considered to help to ground the development into its landscape.

**Impact on Heritage Assets** – Environment Policy 13 of the adopted Local Plan, Policies 26 & 27 of the Regional Plan and Paras 7, 17, 65, 128, & 134 of the NPPF seek to ensure that no development has an adverse impact on Heritage Assets. This can form a reason for refusing planning permission if that impact is considered so severe that the quality of the asset and its setting is detrimentally affected. The NPPF calls for the weighing of public benefits of the development compared to what is described as 'less than substantial harm' to the significance of a designated historic asset.

The following heritage assets are considered potentially vulnerable and should be properly assessed in determining the application:

Tutbury Castle - English Heritage has advised that there would be impacts arising from the proposed development on Tutbury Castle but not to a point where it would object to the development. The site, when viewed from the castle grounds would be either obscured by existing vegetation or be seen in the context of the existing factory. Whilst EHW has concerns about the choice of colours for the new factory, the only location in the castle where these colours would be visible is from the turrets of the castle. Views from here are at best transitory and it should also be borne in mind that the castle is closed for public access during the winter months when the new factory would be more visible from the castle grounds and structure. There would be an impact but this is not considered sufficient to warrant consideration for refusing the application.

Tutbury Bridge – Although the new factory would be visible from Tutbury Bridge it would be seen in the context of the existing factory and the remainder of the village environment with views of the skyline beyond. The colours of the proposed buildings would be most apparent at the higher levels where gold is the primary colour and in some lights, the colour would be more obvious. In assessing this view regard has been had to the submitted information, the Landscape and Visual Impact Assessment and the comments of consultees. None of the heritage consultees has expressed a view on the impact on the bridge and as a result it is considered that there would be no impact on the character or setting of this Listed Building.

St Mary's Church Tutbury - this church and its grounds sit at a higher level than the application site. Views from inside the church building are not available due to the orientation of the building. The graveyard being the church rises away from the valley and views of the site would be available to its visitors, particularly in the winter months. As with other heritage assets in the vicinity of the site, there would be an impact in terms of outlook from the church grounds but this is not a recurring impact and would be transient for the duration of a visit to the grounds. Such an impact is not considered to detrimentally impact on the character or setting of the listed building.

St Mary's Church Marston On Dove – the new factory complex would be viewed in the context of the large structures that already exist on the site as a distant view along the Dove Valley. In the foreground of this view are a considerable number of hedges and trees that help to mitigate the impact of the lower part of the proposed buildings and the chimney. The upper parts of the new buildings, as stated, would be seen in the context of the existing factory and the character and setting of this heritage asset would not be detrimentally affected by the development.

Other listed structures in Tutbury and Uttoxeter Road Foston - whilst some intervisibility would be possible, this is in the context of the wider landscape. It is noted that East Staffordshire Borough Council's concerns relate to the impact on Tutbury Castle rather than any other of the listed structures.

**Archaeological Impacts** – Environment Policy 14 of the adopted Local Plan and Paras 17, 65, 128, & 134 of the NPPF call for a proper assessment of impact on archaeological features before any development is permitted so that appropriate safeguards can be put in place to record the archaeology prior to any building works. If the archaeology is a national or regional significance then further investigation is required or if very significant, planning permission should be refused.

The County Development Control Archaeologist is satisfied that these impacts have been properly assessed to a point where the grant of planning permission can be considered subject to the imposition of conditions requiring the monitoring of excavations on limited parts of the site and recording of any finds for the local record. In these circumstances there are no grounds for refusing the application to protect archaeological remains.

The conclusion is that the impact of the development on heritage assets has been properly assessed in the application and on the basis of the above considerations, planning permission should not be withheld.

**Flood Risk** - Flood risk is addressed Policy 35 of the adopted Regional Plan and at paragraph 100 of the NPPF and in the associated Technical Guidance. All development in flood zones has to be assessed and if not accepted, then planning permission can be refused. The village is about to have its flood defences significantly enhanced to provide additional protection from flooding and this includes the application site and adjacent factory. The development site would remain in a flood zone and this remains a consideration in determining the application.

The application documents include the required Flood Risk Assessment, which the Environment Agency and the Councils Drainage Officer have assessed. In the light of the above and the enhanced flood defences, the erection of the new factory is

considered acceptable by the consultees and no objection to the development is made subject to the recommended conditions.

#### Interim Conclusion on conformity to the Development Plan

From the foregoing, it is appropriate to conclude that in terms of the criteria for assessing development as set out in above-mentioned policies and advice that the proposal is in accord with those policies and as such the proposal accords with Development Plan policies. The next stage is to determine if material considerations dictate that the development should be determined other than in accord with Development Plan policies.

#### Other Material Considerations

The Police Crime Prevention Design Advisor - comments about the east boundary fencing are noted. The existing bridleway has been in place for over 15 years and it contains landscaping, seating areas and information boards that are also suggested for the diverted route. There are no recorded incidents arising from the use of the existing route. Whilst not dismissing the possibility of miscreants using the landscaping to hide; there is a balance to be struck. A choice must be made between providing a pleasant environment through which the majority of users of the path travel, as proposed in the application; against the concern of the Police Crime Prevention Design Advisor regarding the retention of the 'straight line' boundary fence on the factory side of the proposed bridle path. Having weighed these issues it is considered that the amended proposals strike the right balance, and for this reason, the softer edge to the development can be accepted as promoted by the developers in the interests of providing a more positive experience.

Public Footpath Impacts - are assessed in 'Landscape Impacts' above and there is no need for further comment here subject as always to an appropriate diversion order being put in place under the provisions of Section 257 of the Town and Country Planning Act 1990. This process can only begin if a planning permission affecting the route is granted.

Planning Obligations – It will be noted from the 'Applicants Supporting Information' that Nestle is already involved in community projects, of which the most significant contribution has been the voluntary provision of funds to the Environment Agency to implement the Lower Dove Flood Management Scheme. Other local community schemes have benefited and continue to benefit from funding or benefits in kind supplied by the Company. In the light of this it is considered that the case for a formal agreement on community benefits would be unreasonable in this context.

Proposed Conditions – The recommended conditions bring a level of control to the implementation of the proposal that mean the development can be considered to accord with the provisions of the Development Plan and ensure that the concerns of consultees are met to a point where consideration can be given to the grant of planning permission.

#### Overall Conclusion

In terms of sustainability the proposal represents a significant inward investment into the district. The NPPF requires that decisions be made that promote development that has economic, social and environmental benefits. The proposal would bring significant



numbers of jobs to the locality, it would result in additional investment into the local economy, and, whilst the development would involve the loss of green fields, it would bring about new habitat creation on its edges that may improve the ecological diversity for the locality, albeit at a short-term cost. The social benefits are the employment opportunities that would be created that may assist in the retention of local community facilities.

Having had regard to the information in the EIA, the responses of consultees and the proposed design and appearance of the development it is concluded that the proposed development is in accord with Development Plan policies and with the Guidance in the NPPF, subject to the imposition of the recommended conditions.

### **Recommendation**

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

#### General 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. This permission shall relate to the drawings listed on the document received on 19th September 2012 appended to this decision notice.

Reason: For the avoidance of doubt.

#### Pre Construction Conditions

3. Before building works are commenced, except for ground works on the new factory site, a Construction Environment Management Plan shall be submitted to the Local Planning Authority. The plan shall include:

##### Construction Works

- a) The program and phasing details of the proposed development;
- b) Detailed site layout arrangements, plans for storage, accommodation, vehicular movements, deliveries and access; Details of operations that are likely to result in disturbance, with an indication of the expected duration of each phase with key dates, including a procedure for prior notification of SDDC and relevant statutory and non-statutory consultees (including neighbours) so that local arrangements can be agreed;
- c) Installation of part time signals at the junction of Marston Lane/Derby Road to be operated during staff arrival and departure times and amendment of existing layout of Marston Lane/Derby Road to accommodate a suitable signalised junction layout;
- d) Widening of section of Marston Lane to allow for a passing place;
- e) Details of pre-construction highway condition survey to establish the current conditions to facilitate making good any deterioration caused by construction traffic;

f) Restriction to specified working hours as follows: 07:00 and 18:00hrs Monday to Friday; 08:00 to 13:00hrs on Saturdays; and Other hours by exception notified to the Local Planning Authority in accordance with the requirements of b) above;

g) Provisions for the regular inspection of local highways and site boundaries to check for dust deposits (evident by soiling and marking) on vegetation, cars and other objects, taking remedial measures where necessary. The Construction Environmental Management Plan shall make provision for inspections to be carried out on a daily basis, during the working week, or more frequently depending on the nature of the activity being undertaken;

#### Protected Species

a) Make provision for a European Protected Species (EPS) licence to be obtained in the event that roosting bats are identified;

b) Make provision to undertake pre-clearance check of trees to be felled by a suitably qualified ecologist under the supervision of an ecological clerk of works;

c) Make provision for removed timber to be left at the base of the felled trees for 48 hours after being cut down;

d) Make provision for the installation of a minimum of eight Schwegler bat boxes of different types in locations to be agreed in writing by the Local Planning Authority;

e) Pre-construction checks for nesting birds (if vegetation is to be removed during the breeding season) by a suitably qualified ecologist (under an ecological clerk of works);

f) Fencing around open trenches or hazardous areas.

g) If Great Crested Newts identified, then work should cease and advice sought from a suitably qualified ecologist.

The submitted plan shall contain details for its implementation and monitoring and details of persons appointed as responsible for ecological and archaeological areas covered by the plan for the duration of the construction period or such other period that may be agreed in writing by the Local Planning Authority.

Reason: The submitted EIA contains details for mitigation of ecological impacts that may arise from the proposed development. The condition is imposed to ensure that the measures identified in the EIA as forming the basis for a Construction Management Ecological Plan (CEMP) are brought forward in that document to mitigate the ecological impacts arising from the development.

4. A. Prior to the commencement of operations on the new factory site, a report to demonstrate that the odour levels emitted from the proposed development will not exceed the 6 European Odour Units (OUE/m<sup>3</sup>) threshold exposure level at any nearest sensitive receptor as set out in the EIA shall be submitted to and approved in writing by the Local Planning Authority. The report shall comprise extractive odour monitoring results of all new sources of odour undertaken using the testing standards as set out in BS EN 13725:2003 and a dispersion modelling assessment of the actual odour emissions rates under normal operation conditions.

Where the report indicates odour levels exceed the limits predicted in the EIA an Odour Management Plan shall be prepared and submitted and approved in

writing by to the Local Planning Authority. It shall include an Odour Improvement Plan that contains a full inventory of potential odour sources both contained and fugitive, full details of the monitoring methods and records kept in support of the management controls, and make provision for alterations to odour control mechanisms and systems within the development site to bring odour levels to 6 OUE/m<sup>3</sup> threshold exposure level at any nearest sensitive receptor .

Thereafter an annual report containing details extractive monitoring of sources of odour within the development boundary shall be submitted to and approved in writing by the Local Planning Authority to quantify and demonstrate that odour emissions rates do not exceed the 6 OUE/m<sup>3</sup> threshold exposure level specified in the planning application for a period not exceeding 3 years.

B. Before building works are generally commenced, except for ground works on the new factory site an Odour Complaint Investigation Procedure shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the procedure shall be fully implemented and maintained. The procedure shall contain details of systems for the investigation; resolution and response to local complaints of odour and an annual report of complaints shall be submitted to the Local Planning Authority for information.

Reason: The planning application has been granted planning permission on the basis of the information on odour emissions contained in Chapter 9 and the associated Appendix 9 of the Environmental Impact Assessment. The Local Planning Authority seeks to ensure that the odour emissions from the factory are assessed prior to full production to demonstrate that odours do not exceed the upper threshold of European Odour Units specified in the application prior to full production commencing and that measures are in place to address any excessive emissions identified at the plant commissioning stage and thereafter annual monitoring of emissions takes place all in the interests of the amenity of the occupiers of adjacent properties.

5. A. Prior to the commencement of operations a Noise Management Plan shall be submitted to and approved in writing by the Local Planning Authority.

The Noise Management Plan shall include:

a) A report on the pre-production commission testing of all fixed plant or equipment installed at the development hereby permitted. The submitted report shall confirm that as a result of the development all plant and equipment has been commissioned with noise rating levels (expressed as an LAeq,T) that does not exceed an upper limit of 10 dB(A) below the measured background noise levels (expressed as an LA90) representative of the quietest period of a typical week at the nearest noise-sensitive premises to the development. The rating level and assessment shall be carried out in accordance with BS 4142: 1997. The background noise level shall be agreed in writing with the Local Planning Authority prior to testing being undertaken.

Where the report demonstrates that noise levels from plant and equipment exceed the levels specified in the EIA a Noise Mitigation Plan shall be submitted to the Local Planning Authority. On approval, the Noise Mitigation Plan shall be implemented prior to production in the factory being commenced and thereafter maintained. Following the implementation of the Noise Mitigation Plan, further noise monitoring and modelling shall be undertaken in accordance with the original environmental noise survey to demonstrate that the noise thresholds have been achieved;

b) The Noise Management Plan shall contain full details of the monitoring methods and records to be kept in support of the management controls.

B. Before building works are generally commenced, except for ground works on the new factory site a Noise Complaint Investigation Procedure shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the procedure shall be fully implemented and maintained. The procedure shall contain details of systems for the investigation; resolution and response to local complaints of noise and an annual report of complaints shall be submitted to the Local Planning Authority for information.

Reason: The planning application has been granted planning permission on the basis of the information on noise contained in Chapter 8 and the associated Appendix 8 of the Environmental Impact Assessment together with the additional information received since submission of the application. The Local Planning Authority seeks to ensure that the noise from the factory is assessed prior to production commencing to demonstrate that noise levels do not exceed those specified in the application documents and that measures are in place to address any excessive noise levels identified at the plant commissioning stage all in the interests of the amenity of the occupiers of adjacent properties.

6. No built development shall be commenced on the section of highway known as Marston Lane which lies in the application site, until that section of the highway has been stopped up, and provision made for improved highway (vehicle turning head) adjacent to the proposed Sub-Station, by virtue of an Order made under Section 247 of the 1990 Town & Country Planning Act.

Reason: To ensure that public access to the highway is maintained pending consideration of the closure of part of Marston Lane affected by the development and that no works affecting the route of Marston Lane are undertaken prior to that decision in the interests of highway safety.

7. No development shall be commenced on those sections of Hoon Hay Bridleway 4 and Hatton Bridleway 30 which lie within the application site until those sections of bridleway have been diverted by virtue of an Order made under Section 257 of the 1990 Town & Country Planning Act.

Reason: To ensure that public access to the public bridleway is maintained pending consideration of the diversion of part of the bridleway affected by the development and that no works affecting the route of the bridleway are undertaken prior to that decision in the interests of highway safety.

8. No development shall be commenced except for site clearance and groundworks until the junction of Marston Lane and Station Road has been improved in accordance with Drawing No. SE14256\_SK08B or other design that may be subsequently approved in writing by the Local Planning Authority. 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: The development hereby permitted is only acceptable following the improvement of the access from Station Road to Marston Lane as set out on the above drawing unless another suitable access improvement is suggested. The new access is therefore required in the interests of highway safety.

9. 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

- a. The programme and methodology of site investigation and recording;
- b. The programme and provision to be made for post-excavation analysis and reporting;
- c. Provision to be made for publication and dissemination of the analysis and records of the site investigation;
- d. Provision to be made for archive deposition of the analysis and records of the site investigation; and
- e. 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 Part A.

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

Reason: To enable items of archaeological interest to be recorded/and or preserved.

10. The development shall only be carried out in accordance with the approved Environmental Statement (ES) dated 19 July 2012, and Flood Risk Assessment (FRA) Version 1, dated 11 July 2012 - Ref: 50600048-IF3 - including Drawing No. 50600048/D-01 revision D, undertaken by WSP group. The following mitigation measures detailed within the ES and/or FRA shall be implemented in accordance with the following requirements and completed prior to commencement of construction with the exception of groundwork and before the plant becomes operational. The mitigation measures are:

A) During the Construction Phase

- a) Limiting the surface water run-off generated by all rainfall events up to the 100-year critical rainstorm so that it will not exceed the run-off from the undeveloped site and not increase the risk of flooding off-site all as set out in ES sections 5.2.49, 5.2.67, 11.6.1, 11.6.6 and 11.6.8.
- b) Managing the increased risk of flooding to contractors and employees by monitoring groundwater and river levels during excavations, using de-watering measures where necessary, and considering flood risk within the site wide Health and Safety Plan all as set out in ES sections 11.6.11 to 12, and 11.6.14 to 16.
- c) Finished floor levels of buildings are set no lower than 53.1m above Ordnance Datum (AOD), and flood resilient and resistant construction is used within the design all as set out in ES section 11.6.26 and FRA sections 7.2.2, 8.1.3 & 4, 8.1.11, and 10.2.2.

B) During the Operational Phase

- a) Limiting the surface water run-off generated by all rainfall events up to the 100-year plus 30% (for climate change (up to 2015)) critical rainstorm so that it

will not exceed the run-off from the undeveloped site and not increase the risk of flooding off-site as set out in ES sections 11.6.18, 11.6.21 to 25, and FRA sections 8.1.5 to 10, 8.1.13 to 14, and 9.1.1 to 9.2.1.

C) Identification and provision of safe route(s) into and out of the site to an appropriate safe haven, by reviewing and updating the site Flood Warning document and Flood Strategy and Action Plan (2006) to include the construction and operational phases of the proposed development all as set out in ES section 11.6.29, and FRA sections 8.1.18 and 10.2.1.

Reason: In order to prevent flooding by ensuring the satisfactory storage of/ disposal of surface water from the site and to reduce the risk of flooding to the proposed development and future occupants.

11. Development shall not begin with the exception of groundwork until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, has been submitted to and approved in writing by the local planning authority. The scheme shall subsequently be implemented in accordance with the approved details before the development is completed. The scheme shall include:
  - a) Surface water drainage system(s) to be designed 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 discharge rate and storing the surface water run-off generated by all rainfall events up to the 100 year plus 30% (for climate change (up to 2015)) 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 (up to 2015)) critical rain storm.
  - d) Detailed design (plans, cross, long sections and calculations) in support of any surface water drainage scheme, including details on any attenuation system, and the outfall arrangements.
  - e) Details of how the scheme shall be maintained and managed after completion.

Reason: To prevent the increased risk of flooding, to improve and protect water quality and improve habitat and amenity.

12. The development hereby permitted shall not be commenced with the exception of groundwork until such time as a scheme to install oil and petrol separators has been submitted to, and approved in writing by, the local planning authority. The scheme shall be implemented as approved.

Reason: To protect the water environment.

#### Construction Conditions

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 accord with the approved methodology.

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.

14. 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'. Otherwise ground contamination and ground gas shall be assessed and addressed as set out in Section 10 of the Environmental Impact Assessment and Appendix 10 of that Assessment together with the additional information submitted under cover of your letter dated 29th August 2012 from WSP on behalf of the applicant.

Reason: To protect the health of the public and the environment from hazards arising from the importation of material to the site.

15. The applicant shall comply with the content of the Framework Construction Traffic Management Plan version 2, submitted under cover of SKM Colin Buchanan letter dated 23 August 2012, or with any amendment thereto that may subsequently be agreed in writing by the Local Planning Authority, prior to and for the entirety of the construction period.

Reason: In the interests of highway safety.

16. Notwithstanding Condition 15 above, and Paragraph 3.4.2 of the Framework Construction Traffic Management Plan, the proposed temporary part-time signals at the junction of Derby Road and Marston Lane shall be removed within 14 days of the completion of the building works prior to the installation of plant and equipment, or such other period of time as may be agreed in writing with the Local Planning Authority.

Reason: To minimise the delay to traffic on the public highway that would arise in the event that the traffic lights were retained in place following the construction of buildings and road infrastructure phase of the development in the interests of the proper management of the highway network.

17. The development shall not be taken into use until the car parking and manoeuvring spaces, motorcycle and cycle storage facilities have been provided in accordance with the details submitted under planning permission ref. 9/2012/0726, or such other scheme as may subsequently be submitted to and approved by the Local Planning Authority. The facilities shall thereafter be retained free of any impediment to their designated use.

Reason: To ensure that proper parking facilities are available to serve the development in accordance with the details submitted with planning application 9/2012/0726 or such other scheme that may be submitted and approved following the grant of planning permission.

18. The landscaping details and security fencing detailed on Cass Associates Drawing 1110-003F received on 10 September 2012 shall be implemented following the completion of construction works in the planting season that expires on 30 April 2013 any planting or fencing works that are not completed by that

date shall then be implemented in following planting season September - March 2014.

Reason: In order to ensure that the landscaping and security fencing is in place prior to the commencement the start of production in the plant hereby permitted.

#### Operational Conditions

19. 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: To ensure that the landscape scheme is properly established in the interests of the appearance of the area.

20. An Annual Report on bat foraging and activity around the installed bat boxes shall be undertaken for a period expiring on 31 December 2017 following the completion of the development within the application site. The annual reports shall be submitted to the Local Planning Authority, which shall provide the reports to the Derbyshire Wildlife Trust and Natural England for their records.

Reason: The submitted EIA identified that bats were active in the application site and the reports are required so that the mitigation measures in the form of landscaping and provision of bat boxes has encouraged bats to remain active in the locality.

21. Within 3 months of the installation of the lighting scheme hereby permitted the lighting scheme shall be assessed to ensure that it has been installed in accordance with the submitted scheme to show that light spill and glare are not apparent outside the development boundary.

Reason: To ensure that light spillage and glare are not apparent outside the development boundary in the interests of the amenity of the area and to ensure that there is no distraction to train drivers on the adjacent railway.

#### Informatives:

Network Rail advises it wishes to be consulted on the submission of details to the Local Planning Authority relating to drainage, landscaping, boundary fencing, lighting and various method statements. However, it advises that the following issues need to be addressed with and signed off by Network Rail via its Asset Protection Project Manager at Network Rail (London North Eastern) Floor 2A - George Stephenson House, Toft Green, York, YO1 6JT.

If planning permission is granted, at least six weeks prior to works commencing on site must be given to the Asset Protection Project Manager who will require to see any designs, method statements/drawings relating to any excavation, drainage, demolition, lighting and building work or any works to be carried out on site that may affect the safety, operation, integrity and access to the railway. These issues include: Fail Safe Use of Crane and Plant, Excavations/Earthworks, Method Statements/Fail Safe/Possessions, Abnormal Loads, Cranes, Two Metre Boundary, Trees/Shrubs/Landscaping, Lighting and Access to Railway.

In submitting details of the drainage, all surface and foul water arising from the proposed works must be collected and diverted away from Network Rail property. In the



absence of detailed plans all soakaways must be located so as to discharge away from the railway infrastructure. The following points need to be addressed in that -

There should be no increase to average or peak flows of surface water run off towards Network Rail assets, including earthworks, bridges and culverts. Any existing culverts that may be affected by the development Network Rail must be fully consulted and if required approve the design. Attenuation should be included as necessary to protect the existing surface water drainage systems from any increase in average or peak loadings due to normal and extreme rainfall events. All surface water run off and sewage effluent should be handled in accordance with Local Council and Water Company regulations.

Any future liability for flooding at this site is the responsibility of the developer and not the Network Rail and any claims or complaints should be directed at the Developer or other responsible Authority.

It is essential that, during and after construction, no part of the development, including the entrance off Station Road, should cause the level crossing sight lines, road traffic signs and markings, or the crossing itself to be obstructed. This includes the parking of caravans, machines and equipment etc. together with the erection of signs, fences and the planting of trees/hedges

Full details of the Network Rail requirements in respect of these issues are contained in the E-mail forwarded to you on 30th August 2012 by the Local Planning Authority.

Where development is proposed, the developer is responsible for ensuring that development is safe and suitable for use for the purpose for which it is intended. The developer is thus responsible for determining whether land is suitable for a particular development or can be made so by remedial action. In particular, the developer should carry out an adequate investigation to inform a risk assessment to determine:

- whether the land in question is already affected by contamination through source - pathway - receptor pollutant linkages and how those linkages are represented in a conceptual model;
- whether the development proposed will create new linkages, e.g. new pathways by which existing contaminants might reach existing or proposed receptors and whether it will introduce new vulnerable receptors; and
- what action is needed to break those linkages and avoid new ones, deal with any unacceptable risks and enable safe development and future occupancy of the site and neighbouring land.

A potential developer will need to satisfy the local authority that unacceptable risk from contamination will be successfully addressed through remediation without undue environmental impact during and following the development. In doing so, a developer should be aware that actions or omissions on his part could lead to liability being incurred under Part IIA, e.g. where development fails to address an existing unacceptable risk or creates such a risk by introducing a new receptor or pathway or, when it is implemented, under the Environmental Liability Directive (2004/35/EC). Where an agreed remediation scheme includes future monitoring and maintenance schemes, arrangements will need to be made to ensure that any subsequent owner is fully aware of these requirements and assumes ongoing responsibilities that run with the land.

The County Highway Authority advises that:

- a) Pursuant to Section 278 of the Highways Act 1980, no works may commence within the limits of the public highway without the formal written Agreement of the County Council as Highway Authority. Advice regarding the technical, legal, administrative and financial processes involved in Section 278 Agreements may be obtained from the Environmental Services Department, Derbyshire County Council, County Hall, Matlock DE4 3AG.
- b) The Order under Section 247 of the 1990 Town & Country Planning Act shall be sought from the National Transport Casework Team, 2nd Floor, Lancaster House, Hampshire Court, Newcastle upon Tyne, NE4 7YH.
- c) The Order under Section 257 of the 1990 Town & Country Planning Act shall be sought from South Derbyshire District Council. The Order shall provide for the removal of existing highway status as necessary from the area shown stippled on attached plan no. EMRT/35/1/231-97, and for the inclusion of barriers on the proposed route should these be regarded as appropriate. It is recommended that advice be obtained from the Public Rights of Way Section, Environmental Services Department, Derbyshire County Council. Contact [espro@derbyshire.gov.uk](mailto:espro@derbyshire.gov.uk)
- d) 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 (e.g. street sweeping) are taken to maintain the roads in the vicinity of the site to a satisfactory level of cleanliness.
- e) Pursuant to Section 50 (Schedule 3) of the New Roads and Streetworks Act 1991, before any excavation works are commenced within the limits of the public highway, at least 6 weeks prior notification should be given to the New Roads and Streetworks Section, Department of Environmental Services, Derbyshire County Council, County Hall, Matlock DE4 3AG.
- f) Notwithstanding the submitted Framework Construction Traffic Management Plan the provision of temporary traffic signals at the junction of Derby Road and Marston Lane will require the implementation of a temporary speed limit on Derby Road, at the applicant's expense. It is anticipated, without prejudice, that associated costs will not exceed £1000. Please contact Mike Wells in the Environmental Services Department, Derbyshire County Council (phone 01629 538664, email [michael.wells@derbyshire.gov.uk](mailto:michael.wells@derbyshire.gov.uk)) with regard to the necessary procedures.
- g) The applicant is requested to use its best endeavours to secure a Travel Plan for the overall site, based on the submission within the planning application and the subject of subsequent correspondence with Derbyshire County Council Sustainable Travel Team.
- h) In respect of c) above you are advised that:
  - i. The route of the bridleway must remain open, unobstructed and on its legal alignment at all times.
  - ii. There should be no disturbance to the surface of the path without prior authorisation from the Rights of Way Inspector for the area.
  - iii. Consideration should be given to members of the public using the path at all times.
  - iv. A temporary closure of the bridleway may be granted to facilitate public safety subject to certain conditions. Further information may be obtained by contacting the Rights of Way Section.
  - v. If a structure is to be erected adjacent to the public footpath, it should be installed within the site boundary so that the width of the right of way is not encroached upon.
- j) Further to conditions 6 & 7 above and for the avoidance of doubt these conditions do not preclude development being carried out elsewhere on the application site.

The Environment Agency advises that:

Please be advised that the Environment Agency proposes to install flood alleviation works in the area that will provide flood protection to the 1:100 year plus Climate Change standard (The Lower Dove Flood Alleviation Scheme). The construction works are due to start during September 2012 and are expected to be complete in late 2013. The proposed development lies in the area that will ultimately benefit from the flood alleviation scheme; however, if the developer chooses to build or occupy the development prior to the flood alleviation works being complete it will be entirely at their own risk. Should you require more details about the Lower Dove Flood Alleviation scheme please contact Sarah Mallet on 01543 405029. The Environment Agency also advises that:

#### Protection of 'Controlled Waters'.

The site is located on Triassic Mercia Mudstone which is designated a 'Secondary (B) Aquifer' by the Environment Agency. Superficial deposits of Alluvium are indicated for the site which are designated as a 'Secondary (A) Aquifer' by the Environment Agency. The site is located within Source Protection Zone 3. Salt Brook is located adjacent to the development site and the River Dove is located 125 metres to the south.

The information submitted identifies that the site has not been subject to previous development. Consequently there is limited potential for contamination to be present.

Samples of the soils and groundwater of the site have been collected and analysed for a general suite of contaminants. This analysis has indicated the presence of limited concentrations of contamination.

Additionally, it should be noted that in accordance with Government Policy detailed in the National Planning Policy Framework (paragraph 120), 'where a site is affected by contamination or land stability issues, responsibility for securing a safe development rests with the developer and/or landowner'. Therefore, should any significant contamination, not assessed by virtue of this report/project, subsequently become apparent responsibility remains with these parties. If during site development any areas of significant contamination are suspected, then the materials should be sampled, tested and suitable remediation carried out in consultation with the Local Planning Authority.

#### Groundwater Protection Advice:

The applicant / developer should refer to our 'Groundwater Protection: Policy and Practice' (GP3) document, available from our website at [www.environment-agency.gov.uk](http://www.environment-agency.gov.uk). This document sets out our position on groundwater protection with regard to a wide range of activities and developments.

Foul drainage Discussions should continue between the applicant and Severn Trent Water Ltd to ensure that any improvements required to the existing receiving foul drainage system are timed with the construction and operation of the new plant so as to prevent any overloading of the foul drainage network and the flooding and pollution issues that may cause.

Dewatering The Agency notes that dewatering may be required as part of the proposal. Dewatering is currently exempt from the requirement for abstraction licences. This exemption is due to be removed; the timing of the legal changes will be determined by Government, but according to the Defra timetable the implementation target date for the

removal of the exemption is late 2013. Once the exemption is removed abstraction licences will be required for dewatering.

**Waste** The selection of construction mechanisms and materials and site design should aim to minimise waste arisings and facilitate the sustainable management of waste throughout the whole life of the development ('cradle-to-cradle' design). This should include the construction phase but will also mean considering the design of buildings and supporting infrastructure with respect to their future repair and eventual demolition. Design should enable occupants to follow the waste hierarchy - reduce, re-use, recycle, recover, with landfill as the last resort.

The development should ensure adequate interior and exterior storage space and give thought to spatial issues for waste collection.

Please note any that any applicant who intends to carry out a project on any one construction site with an estimated cost greater than £300,000 excluding VAT must prepare a site waste management plan conforming to the Site Waste Management Plan Regulations 2008 before construction work begins.

During the period of construction, oil and fuel storage will be subject to the Control of Pollution (Oil Storage) (England) Regulations 2001. The Regulations apply to the storage of oil or fuel of any kind in any kind of container which is being used and stored above ground, including drums and mobile bowers, situated outside a building and with a storage capacity which exceeds 200 litres. A person with custody or control of any oil or fuel breaching the Regulations will be guilty of a criminal offence. The penalties are a maximum fine of £5000 in Magistrates' Court or an unlimited fine in Crown Court. Further details of the Regulations are available from the Environment Agency.

All precaution must be taken to avoid discharges and spills to ground both during and after construction. For advice on pollution prevention measures, the applicant should refer to our guidance 'PPG1 - General guide to the prevention of pollution', available from the Environment Agency website.

Environmental Permitting Regulations (EPR) (2010) - The Agency may have further requirements regarding the proposal under the Environmental Permitting Regulations (EPR) 2010; such requirements will be considered once an EPR Permit application has been submitted and been given due consideration by the Agency. For further information, the applicant should contact the Agency's PPC Officer, Graham Macro (01543 404857).

In granting planning permission the Local Planning Authority has taken into account the environmental information submitted in the Environmental Impact Assessment.

09/10/2012

**Item** 1.3

**Reg. No.** 9/2012/0039/RM

**Applicant:**

BARRATT HOMES NORTH MIDLANDS  
C/O AGENT

**Agent:**

MR MARK ROSE  
DEFINE PLANNING & DESIGN LTD  
CORNWALL BUILDINGS  
45-51 NEWHALL STREET  
BIRMINGHAM  
B3 3QR

**Proposal:** APPROVAL OF RESERVED MATTERS OF  
APPLICATION 9/2011/0484 FOR THE DEVELOPMENT  
OF 487 DWELLINGS, COMMUNITY BUILDING, ROADS  
AND OPEN SPACE ON LAND AT STENSON FIELDS  
STENSON ROAD STENSON DERBY

**Ward:** STENSON

**Valid Date:** 16/01/2012

**Reason for committee determination**

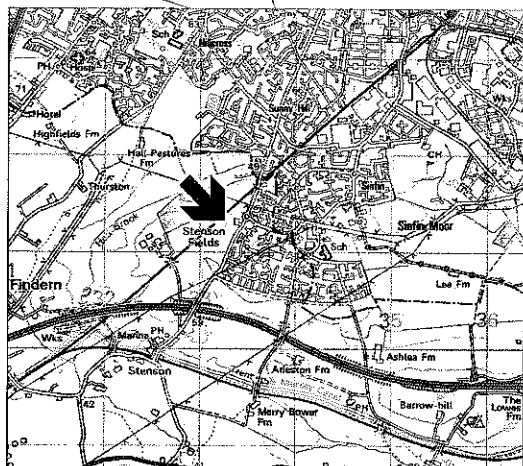
The application is brought to Committee at the discretion of the Head of Planning Services as this is the first of the conjoined inquiry sites to submit reserved matters for consideration but primarily to explain the course of renegotiations of the existing Section 106 agreement due to development viability issues.

**Site Description**

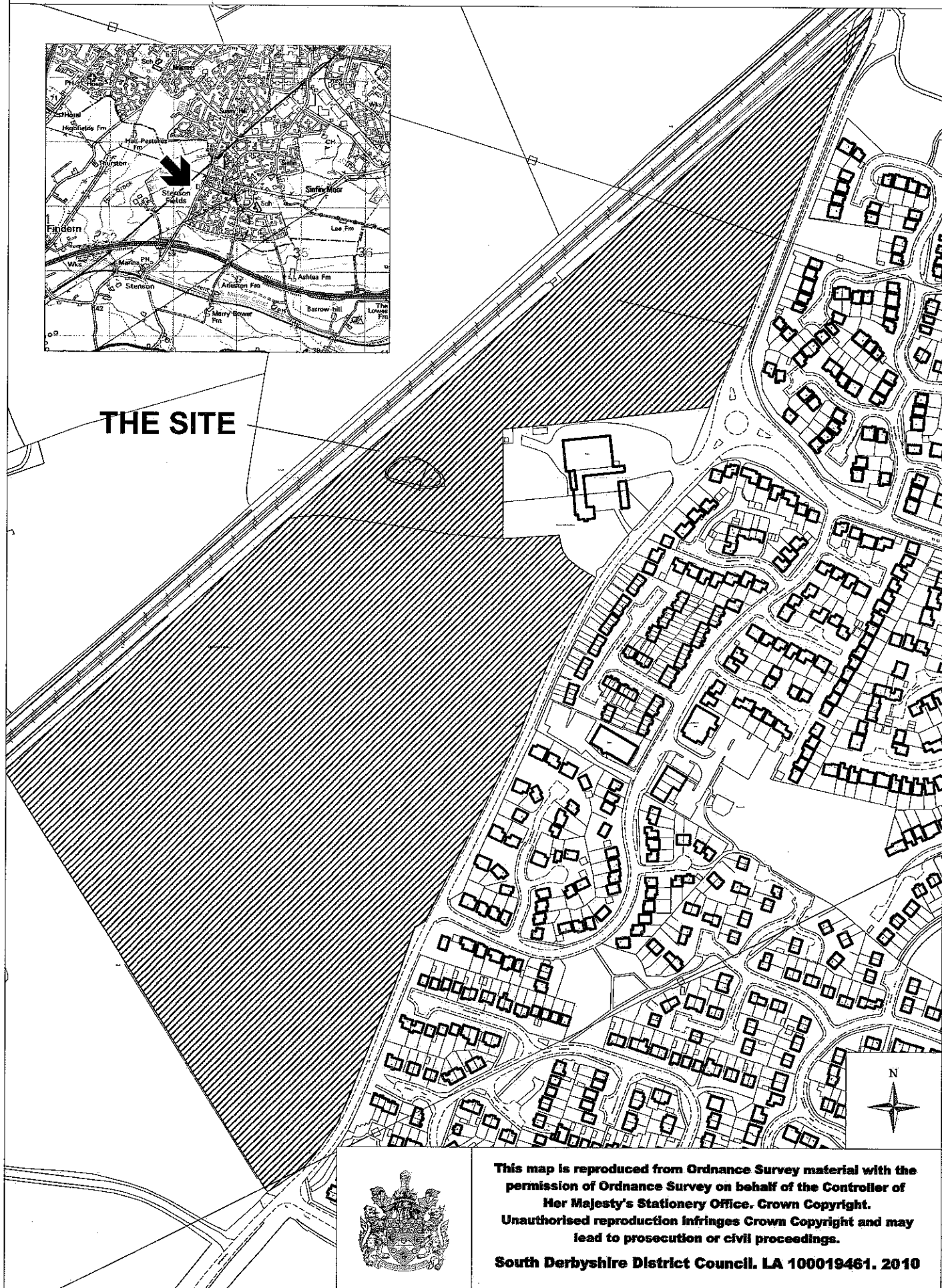
The site is triangular shaped piece of agricultural land amounting to some 17 ha, situated within South Derbyshire on the south-western fringe of Derby City. The site is bordered to the east by Stenson Road beyond which lies the residential development of Stenson Fields. The west of the site is bordered by the railway line beyond which is agricultural land which also lies beyond the south-western boundary. The site surrounds Stenson Fields Farmhouse, a residential property, and a small group of adjacent industrial units with a permitted use for B1 (light industry)/B8 (storage and distribution), vehicle repairs & bodywork, car sales, valeting & rental permitted in May 2011. The site contains various trees and hedgerows, a number of which are to be retained under the requirements of the outline consent, including a group surrounding a small wetland pond on site. The site is relatively flat with a gentle slope to the south-western corner. An overhead power line crosses the northern part of the site.

**Background and Planning History**

# 9/2012/0039 - Land at Stenson Road, Stenson Fields DE24 3JG



**THE SITE**



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South Derbyshire District Council. LA 100019461. 2010

Outline planning permission for the residential development of the site for up to 500 dwellings including the erection of a community building and the formation of roads and open space (all matters reserved) was granted at appeal by the Secretary of State in January 2009, reference 9/2007/0020, following the conjoined Public Inquiry which considered a number of housing sites within the District. The approval was subject to a S106 agreement and an approved masterplan which outlined the overall design principles for the scheme:

- The creation of a series of perimeter blocks varying in density and grain, with looser, less dense properties located to the south and west boundary;
- The retention of on site vegetation;
- The retention of the wetland pond;
- The creation of a linear informal public open space to the west and south of the site, with a more formal central public space, including play facilities;
- Building frontages on the southern edge to be set back behind native hedgerow supplemented by informal native tree planting;
- Gradual introduction of development when moving northwards along Stenson Road, by angling development obliquely to Stenson Road;
- Two vehicular access points from Stenson Road;
- A potential pedestrian connection to Stenson Local Centre, and;
- A pedestrian link crossing Stenson Road in the vicinity of Grampian Way roundabout.

The outline permission was subsequently renewed on 4 January 2012 under application 9/2011/0484 and subject to a deed of variation that maintained the S106 obligations of the original outline consent.

### **Proposal**

The applicants, a consortium of Barratt Homes North Midlands, Miller Homes Ltd and Taylor Wimpey UK Ltd, have submitted an application for the approval of reserved matters. In conjunction with this, the Consortium has approached the Council to consider renegotiation of the S106 agreement due to viability issues and submitted a Section 73 application to vary conditions on the outline consent.

Due to the integral nature of these issues it is considered appropriate to report all matters together to provide members with a holistic overview of matters relating to the development of the site.

### **Reserved Matters Application**

The reserved matters application seeks approval of layout, scale, appearance, means of access and landscaping for 487 dwellings (as amended), a community building and associated roads and open space. The proposed dwellings would be two-storey in height and consist of 2, 3 and 4-bedroom properties. Vehicular access into the site would be via two new access roads from Stenson Road. A recreational pedestrian/cycle route is proposed around the rural perimeter of the site with links to the proposed open spaces, the 2m-wide footway that would extend along the Stenson Road frontage of the site (required by outline condition) and to the existing cycleway to the northeast of the site. A formal central park is proposed which would accommodate a community building and formal play area, with two more informal areas of open space

proposed to the north and south of the site, the southern area incorporating a Sustainable Urban Drainage Scheme. A mix of on and off-site parking would be provided throughout the site. Pedestrian access points from the site aligned to cross Stenson Road at the Grampian Way roundabout and further south adjacent to the Stenson Local Centre are also proposed. Affordable housing would be pepper-potted throughout the site the level of which is discussed later in this report.

### **S106 Renegotiation**

Alongside the consideration of reserved matters, the applicants have submitted that the scheme is unviable under the terms of the existing S106 agreement and have approached the Council to renegotiate the terms approved under the outline consent. An analysis of the applicants' viability report has been carried out by the District Valuer on the Council's behalf, the outcome of which and the subsequent negotiations are discussed later in this report.

### **Application for the Variation of Conditions**

In conjunction with the S106 renegotiations, the applicants are seeking to vary Conditions 24, 25, 29 & 30 of the renewed outline consent, 9/2012/055, relating to highway issues, Code 3 'Sustainable Homes' requirements and on-site renewables.

The variations proposed are as follows:

- Condition 24 - to vary the condition relating to the design and phasing of highway improvements within Derby City at the junction of Sinfin Lane/Newdigate Street and Stenson Road/Warwick Avenue to alleviate perceived traffic impacts arising from the development within Derby City. There are incompatible inconsistencies between the three approved drawings referred to in the outline condition imposed by the Inspector and the condition requires regularisation and clarification on the correct schemes to be implemented.
- Condition 25 - relates to a typing error where the condition cross refers to the phasing details required under Condition 5 and should refer to Condition 4 in the outline consent.

The applicants advise that the removal of Conditions 29 & 30 would have a significant effect on the viability of the scheme.

- Condition 29 – to remove the requirement for the submission and approval of a scheme that achieves a 'Code Level 3' under the 'Code for Sustainable Homes'.
- Condition 30 – to remove the requirement for the submission and approval of a scheme for generating 10% (or a higher percentage) of the predicted energy requirement of the development from on-site renewables.

### **Applicants' supporting information**

The applicant has submitted a Design and Access Statement with the reserved matters application, intended to build on that approved under the outline consent, which includes the following details:



- The masterplan permitted under the outline consent established a number of principles to guide the development of Stenson Fields. In the reserved matters application the masterplan has been re-examined in the context of the quite different market conditions that now exist. Higher density mews houses and apartments were envisaged in some areas which are no longer viable. It has become evident that current market conditions would only support a variety of family housing (2-5 bed) with the significant majority being detached.
- The perimeter block structure has been varied slightly to ensure the main street running through the development has built form on either side to improve efficiency;
- The central open space has been moved closer to Stenson Road, elongated in form and contains the community building as a focus;
- The character typologies of the masterplan have been reinterpreted (Mews & Principal Roads, Formal Street Frontage and Rural Edge) to create a distinct and varied form of development (Stenson Road Frontage, Main Street, Mews, Rural Edge and Central Park) as follows:  
 Stenson Road Frontage – Buildings front on positively to Stenson Road with development set back by approximately 13m behind a native hedge;  
 Main Street – this character typology aims to promote consistent street character and consistent building lines. Characterised by low front boundary hedge;  
 Mews – contrasts to formal main street, with a shared surface and brighter materials to create a distinct, pedestrian friendly space;  
 Rural Edge – a looser, more organic arrangement; and  
 Central Park – includes a striking community centre facility, formal recreation opportunities and play areas. Use of buff brick and more formal building lines.
- The Community building aims to be a distinct landmark building for the new and existing community, being highly visible and contrasting by its appearance; fusing red brick, timber and green walls into two ‘boxes’ with a noticeable roofline.
- ‘Landmark’ buildings, predominantly in render, are located throughout the site with a heightened presence alongside key squares of entrances to the site.

In addition to the Design and Access Statement the applicant has submitted a revised ‘Building For Life’ Assessment, following detailed discussions with Planning Officers, which sets a self-score of 15/20.

In support of the Section 106 renegotiation, the applicants have submitted financial details to the District Valuer for assessment.

### **Responses to Consultations**

The Highway Authority has no objections following the receipt of amended plans.

Environmental Health has no objection.

The Environment Agency has no objection but further to the details submitted regarding site drainage would encourage the use of conveyance SUDS and will review the site investigation results and drainage design under the formal discharge of the outline drainage conditions.

The Crime Prevention Officer has commented that there is a generic issue throughout the layout with lack of safety and security provision to many shared parking spaces and access to and from the to the rear and through blocks of dwellings. Concern is also expressed regarding the boundary sub-division between dwellings being too low (900mm to 1200mm) encouraging trespass from dwelling private space to private space and denying safe play space for young children. Left over space adjacent to dwelling boundaries can be a source of misery for residents, especially nuisance, congregation and ball games against an exposed wall. Enclosing the space within a dwelling boundary or at least defensively planting or landscaping the space would avoid nuisance and anti-social behaviour. The community centre has good all round natural surveillance and access which can be deterrents for crime and anti-social behaviour.

Stenson Fields Parish Council object to the application on the grounds that there is no adequate transport infrastructure in place to cope with the increased volume of traffic; impact on local schools; need for further medical facilities; and no feeder road to carry heavy volume of construction traffic; and construction noise.

The Strategic Housing Manager, whilst expressing regret at the potential loss of 20% affordable homes, accepts that in the economy it is also important to ensure the site is sufficiently viable in order that dwellings in any market sector on the site are delivered. She has also stated that she would prefer that the remaining 20% be the same tenure split as before. She warns however that the loss of potential affordable housing numbers will affect the Council's district wide targets for overall provision set out in the Housing Strategy.

### **Responses to Publicity**

Two letters have been received raising the following concerns:

- a) A home is bordered on two sides by the development. What provisions will be made for protection against noise, dust and dirt from heavy vehicles during construction?
- b) How will privacy be protected?
- c) The current road infrastructure on Stenson Road is already overloaded at peak times and the canal bridge and road layout at Stenson Bubble will need improving.
- d) What consideration and plans are being made to improve the current road layout?

### **Development Plan Policies**

The relevant policies are:

East Midlands Regional Plan Policies 1, 2, 3, 12, 14, 26, 35, 39, 44, Three Cities SRS 3. Local Plan: Housing Policy 11, Environment Policies 9 & 11, Community Facilities Policy 1, Recreation and Tourism Policy 4, and Transport Policy 6

### **National Guidance**

National Planning Policy Framework (NPPF) paragraphs 7, 17, 35, 49, 50, 56, 60, 61, 70, 96, 109 & 205

## **Planning Considerations**

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

- Principle of development and accordance with approved Masterplan
- Design and 'Building for Life' Assessment
- Highways
- S106 issues
- S73 variation of conditions

## **Planning Assessment**

### Principle of Development and approved Masterplan

The principle of development has been established through the grant of outline permission by the Secretary of State and the subsequent renewal of this outline permission. The reserved matters application has reviewed elements of the approved masterplan to reflect current market circumstances. Despite this, the proposed scheme maintains the core principles of the approved masterplan and the scheme is considered to be in accordance with the requirements of the outline consent.

### Design and Building For Life Assessment

NPPF paragraph 17 seeks to secure high quality design and a good standard of amenity for existing and proposed occupiers. Paragraph 35 encourages the creation of safe and secure layouts which minimise conflicts between traffic, cyclists and pedestrians and promote sustainable transport modes. Paragraph 56 advises that good design is a key aspect of sustainable development advising at paragraph 61 that securing high quality and inclusive design goes beyond aesthetic considerations. Decisions should address connections between people and places and the integration of the development into the environment. Paragraph 70 advises that to deliver the social, recreational and cultural facilities a community needs decisions should plan positively for the provision and use of shared space and community facilities.

The reserved matters scheme has been subject to a lengthy process of negotiation regarding design issues, the original submission scoring poorly under an initial Building for Life (BFL) assessment by the Council's Design Excellence Officer. The scheme has been subject to numerous amendments with the latest submission scoring 14/20 under the BFL assessment, meeting the Council's minimum 'good' score under this assessment. The scheme has improved enormously and the proposed features such as hedgerows as front boundary treatments along the 'Main Street', block paving to 'Mews' areas and the use of buff brick and a strong building line to dwellings surrounding the central park, would help to define street character and bring continuity to a scheme with three different house builders and varying house types. The central park would be a feature area within the scheme which, along with the proposed play area and community centre, would provide a positive shared community space. The scheme would have benefited from a more comprehensive use of street trees and highways and parking solutions that reflect best practice in Manual for Streets and other guidance documents more closely. Buildings could turn corners better in some

instances and building lines and alignments could be stronger in some places. However, the scheme makes provision for good pedestrian links throughout the site and to the open spaces and provides pedestrian and cycle links to the wider area and the proposed bus stop on Stenson Road. In delivering this scheme it would be essential that the finer detail, such as street surfaces, landscaping and architectural materials, the approval of which is conditioned in the outline consent, are carefully designed, selected and constructed. With this in mind it is considered expedient that a Tree Preservation Order is placed on a number of trees proposed at both entrance roads to the site and those surrounding the central park. The successful delivery of the finer details would create a new residential area that has the potential to be an attractive place to live.

The proposal complies with the Council's space about dwelling standards in relation to Stenson Fields Farm, the main dwelling affected by the development, and sufficient private amenity space, landscaping and adequate public open space would be provided in accordance with Housing Policy 11 of the Local Plan.

The comments of the Crime Prevention Officer have predominantly been addressed through subsequent amendments to the scheme such that rear parking courts have been removed from the scheme and parking spaces are overlooked. Locked gates are proposed to areas with rear access and left over space adjacent to dwellings has been minimised through re-positioning of boundary treatments or landscaping. Boundary treatments are required by condition of the outline consent and would be approved as part of the discharge of conditions.

Affordable housing would be pepper-potted throughout the site in accordance with the requirements of the S106 agreement.

The overall design of the site achieves the Council's standards required as measured by the 'Building for Life' standard and is in line with the requirements of the NPPF as outlined above and as such is considered acceptable in this regard.

### Highways

The principle of residential development of the site and subsequent impact on adjacent highway conditions was considered at outline stage resulting in a number of highway conditions and S106 obligations which encompassed strategic highway improvements. Condition 21 of the renewed outline consent requires that the internal layout of the site should be designed in accordance with guidance contained in 'Manual for Streets'. The Highway Authority expressed initial concerns regarding the proposed long straight sections of road, particularly in the northern section of the site. The amended scheme has been designed to alleviate these concerns such that the proposed road layout is considered acceptable. Sufficient parking provision would be made throughout the site with safe pedestrian access such that the Highway Authority has no objection and the proposal is considered to be in accordance with Housing Policies 6 & 7 of the Local Plan. Whilst there is currently no footway on the site boundary with Stenson Road, there is a requirement on the outline consent for the construction of a 2-m wide footway along the site frontage.

### Other Matters

In accordance with the 2011 EIA Regulations, the application has been screened and a screening opinion issued in February 2012 advising that the Council does not consider

the proposed scheme to be EIA development and does not therefore require the submission of an Environmental Statement.

Issues of ecology, drainage and the control of dust, noise and hours of activity during construction are conditioned under the outline consent.

### Section 106 Issues

The applicant Consortium contends that the scheme is not viable under the terms of the existing S106 agreement which includes obligations for the provision of 40% affordable housing and contributions relating to highways, open space, a community facility, education, healthcare and bus service provision. In view of this, the District Valuer (DV) has carried out a viability assessment on behalf of the Council.

The DV's report was based on two assessments: a policy compliant scheme including 40% affordable housing and other obligations as specified in the existing S106; and the second on a 20% provision of affordable housing. The report concludes that the policy compliant scheme with 40% affordable housing would be significantly in deficit and is not viable. On the basis of 20% affordable housing, the scheme would still be in deficit but at a reduced level. In considering further issues, such as the trigger dates for contributions, the DV suggests that the Consortium should be able to afford a fixed affordable percentage of 20%.

Following the District Valuer's report the Consortium have submitted a draft revised S106 agreement proposing 20% affordable housing and altering the trigger points for obligation payments. The obligations of the existing S106 and alterations proposed by the Consortium are summarised in table format at Appendix 1 attached to this report.

The proposed variations have been discussed with all other parties involved in the S106 including Derby City Council, the Highways Agency, the Primary Care Trust and the Education Authority and no objections in principle have been raised to the proposed variation of payment triggers. The Education Authority has confirmed that there is no longer a requirement for a contribution towards Secondary Education. As amended the scheme would still deliver the envisaged Community Facility (in the central location shown on the reserved matters layout) and the criteria for precisely who would occupy it would remain in the gift of the Council (although the precise methodology for delivery is yet to be finalised). Equally, an offer of £150,000 in lieu of an occupier would be secured as before.

The main impact from the proposed S106 variation is a 20% reduction in the level of affordable housing to be provided throughout the site. On the advice of the Council's Strategic Housing Manager there is an acceptance that current market circumstances are affecting the viability of the scheme and therefore a need to address viability issues in order to ensure that any affordable housing is provided. The applicants' solicitor has proposed the insertion of a review mechanism within the revised S106 which would provide the Council the opportunity to claw-back finances towards affordable housing should the market improve, the exact method and timing of which would be agreed with the Council. The timescales for completion of the affordable housing remains as in the original agreement.

This is the first reserved matters submission of the three approved conjoined inquiry sites to come forward for consideration. The Council is unable to demonstrate a five-

year supply of housing land in the PUA. Despite extant permissions for over 2,000 houses as a result of the Secretary of State's decision at the conjoined inquiry in February 2009, the delay in delivery of these sites due to the recession has led to a significant increase in the residual requirement. This has resulted in the number of dwellings, which can be considered 'deliverable' in the next five years on these sites, not meeting the requirements of the Regional Plan.

NPPF paragraph 205 advises that where obligations are being sought or revised, LPAs should take account of changes in market conditions over time and, wherever appropriate, be sufficiently flexible to prevent planned development being stalled.

The DV's report confirms that the scheme is unviable in the current economic climate under the current S106 requirements even at a 50% reduction in affordable housing.

#### Variation of Conditions

The variation of highway conditions proposed relates to off-site highway works within Derby City. Derby City Highway Authority has been in discussions with the applicant's to review the road schemes proposed. Discussions are ongoing as to acceptable specific schemes and the Derby City Highway Authority propose that Condition 24 is varied as follows:

"No development shall be commenced until schemes are submitted to and approved by the Local Planning Authority, following consultation with Derby City Council, to secure the necessary highway improvement works at the Sinfin Lane and Stenson Road junctions with the A5111. The works shall be laid out and constructed in accordance with the approved schemes prior to the occupation of the 201st dwelling."

Should a specific scheme and plans be agreed with Derby City Highway Authority prior to Committee, this will be reported to members with a view to recommending a more prescriptive condition.

The requirement for Code 3 standards under Condition 29 and on-site renewables under condition 30 would contribute positively to the sustainability of the site in accordance with national guidance and regional guidance, which encourage the promotion of a reduction in energy usage in new development. However, whilst desirable, the development would be subject to Building Regulation approval and under the current regulations (which have changed since the Code 3 requirement was agreed in 2008) would require a build quality comparable with Code 3 standards anyway. The removal of the specific Code 3 requirement (now of more marginal benefit) would further assist in the viability of the scheme and in bringing the site forward for development.

#### Conclusion

The amendments received under the reserved matters application have significantly improved the design of the scheme from that originally submitted such that the scheme is now considered to achieve the Council's 'good' score of 14/20 and is therefore acceptable.

The District Valuer's report confirms that the scheme is unviable under the terms of the existing S106. The proposed variations to the S106, whilst proposing a significant reduction in the amount of affordable housing proposed, would assist in bringing the

scheme forward for development whilst retaining the remaining financial obligations of the original S106. A suitably worded clause within the revised S106 would ensure that monies towards affordable housing elsewhere could be clawed back should the economic climate improve. The proposed variation of Conditions 29 & 30 would further assist in the viability of the scheme.

Recent national planning guidance recognises the need to take account of changes in market conditions and the need to review planning obligations to get sites moving and members are advised that this is a material consideration in considering the proposed alterations to the S106 agreement and variation of conditions proposed.

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 the Committee authorise the Head of Community and Planning Services to finalise the details of a revised agreement under Section 106 in accordance with the foregoing provisions set out in the report.

B. **GRANT** approval of details subject to the following conditions:

1. Notwithstanding the originally submitted details, this permission shall relate to the amended drawing nos. Received 5 September 2012: Amended Composite layouts 041\_\_DE 013 rev D & 012 rev D, Miller Homes Planning Layout V83-PSP-01 & 02 rev M, Landscape Masterplan Bir.0358\_01D, 02D, 03D, 04D, 05D, 06D, 07D & 08D Bir additional drawing 'Bin Store' details BS/01 & 02 Received 5 July 2012:

Taylor Wimpey - Amended Layout 01 rev H, House Types Ta, Ta Plot 423, Tb, Tb Plots 401 & 424, Tc, Tc Plots 341, 394, 395 & 450, Td 452-454, Td 355-357, Td 437-438, Te, Te 486 & 487, Tj, Tj Plots 398, 400, 408, 409 & 422, Tk Plot 407, Tk Plots 338-340 & 449, Tl, Tm, Tm 460, Tm 366, 380 & 463, Tn, Tp, Tq, Tr, Ts 358, Ts 354 & 448, Ts 337, 342, 392 & 397, Tt 349, Tt 393 & 396, Tt 399, Tt 451, Tu, Tu 334, Tu 405, Tu 410 & 425, Tu 421, Tv 419, Tv 336 & 406, single garage and double shared garage.

Barratt Homes - Amended Planning Layout H4365/01 rev D, House Types 2010/ASH/C/01, 2010/BAR/C/01 & 02, 2010/CAM/C/01, 2010/CHE/C/01, 2010/FIN/C/02, 2010/HAR/C/01, 2010/LIN/C/01, 2010/LIN/C/01, 2010/MOR/C/01, 2010/MOR/C/01, 2010/ROC/C/01, 2010/SOM/C/01, 2010/ESC/C/00, SB19-4 REV A, 2010/BAM/C/01, 2010/BAR/C/01, 2010/BAR/C/02, 2010/BARS/C/01, 2010/GUI/C/01, 2010/LAU/C/01, 2010/KNG/C/00, 2010/TOM/C/00, 2010/CSC/C/00, 2010/DET/C/135, 2010/DET/C/136, 2010/DET/C/139, 2010/DET/A/159, 2010/LIN/C/99, 2010/ROC/C/99, 2010/MOR/C/99

Miller Homes - House Types MA, MB, MC, MD, ME, MF, MG, MH, MH+ Plot 65, MHH, MI, MJ, MK, MKK, ML, MLL, MM, MN, MO, MP, MP Plots 105 & 106, MQ, MR, MS, MT brick & render, MU, MUU, MV brick & render, MW, MWW Plot 56, MX, MY, garages.

Reason: For the avoidance of doubt, the original submission being considered unacceptable.

2. Gutters and downpipes shall have a black finish.

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

3. Notwithstanding the submitted details large scale drawings to a minimum Scale of 1:10 of eaves and verges shall be submitted to and approved in writing by the Local Planning Authority before building work starts. The eaves and verges shall be constructed in accordance with the approved drawings.

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

4. Prior to the first occupation of the development hereby permitted, measures to minimise the risk of crime to meet the specific security needs of the application site and the development shall be implemented in accordance with a scheme previously submitted to and approved in writing by the Local Planning Authority.

Reason: In pursuance of the Council's duty under section 17 of the Crime and Disorder Act 1998 to consider crime and disorder implications in exercising its planning functions; to promote the well-being of the area pursuant to the Council's powers under Section 2 of the Local Government Act 2000 and to reflect government guidance set out in PPS1.

5. Prior to any other works commencing, a scheme for the disposal of highway surface water via a positive, gravity fed system (i.e. not pumped) discharging to an approved point of outfall (e.g. existing public sewer, highway drain or watercourse), to be sanctioned by the Water Authority (or their agent), Highway Authority or Environment Agency respectively, shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details.

Reason: In the interests of highway safety.

6. Before any other operations are commenced, a new estate street junction shall be formed to Stenson Road in accordance with the approved application drawings, laid out, constructed to base level and provided with visibility splays extending from a point 2.4 metres from the carriageway edge, measured along the centreline of the access, 120 metres in each direction, measured along the nearside carriageway edge. The area in advance of the sightlines shall be levelled, constructed as footway and shall not form part of any plot or other sub-division of the site.

Reason: In the interests of highway safety.

7. No dwelling, the subject of the application, shall be occupied until the proposed new estate streets between the plot and the existing public highway have been laid out in accordance with the revised application drawings, constructed to base level, drained and lighted in accordance with the County Council's specifications for new housing developments.

Reason: In the interests of highway safety.

8. No dwelling shall be occupied until the new footway fronting Stenson Road has been laid out in accordance with the application drawings to conform to the County Council's specifications for new housing developments.



Reason: In the interests of highway and pedestrian safety.

9. Prior to the occupation of Plots 1-4, 53-56, 167-169 and 334-336, all served by shared private drives, measures shall be implemented and maintained throughout the life of the development, in accordance with schemes first submitted to and approved in writing by the Local Planning Authority, to prevent individual access being formed to Roads 1 and 2 in view of the proximity to the new housing estate street junctions with Stenson Road.

Reason: In the interests of highway safety.

10. Prior to the occupation of each dwelling, the allocated car parking and manoeuvring space shall be laid out in accordance with the revised application drawings and maintained thereafter free of any impediment to its designated use.

Reason: In the interests of highway safety.

11. Garage spaces, intended as parking spaces, shall measure at least 3m x 6m.

Reason: In the interests of highway safety.

12. Car parking spaces shall measure at least 2.5m x 5.5m and be provided with 6m manoeuvring space behind.

Reason: In the interests of highway safety.

13. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995, the garage accommodation/parking space to be provided in connection with the development shall not be used other than for the above stated purpose except without the prior permission of the Local Planning Authority granted on an application made in that regard.

Reason: In the interests of highway safety.

14. Notwithstanding the submitted drawings, accesses onto private drives and shared parking areas shall be constructed as splayed vehicular crossovers, not with kerbed radii, in order to maintain pedestrian priority.

Reason: In the interests of highway safety.

15. Where dwellings are fronted by 650mm maintenance margins (rather than footways), the entire frontage shall be maintained clear of any obstruction exceeding 600mm relative to road level, for a distance of 2.4m from the carriageway edge or such other distance as may be agreed in writing by the Local Planning Authority, in order to maximise visibility for emerging drivers.

Reason: In the interests of highway safety.

16. Notwithstanding the submitted drawings, the access to Plot 438 shall be constructed at 90° to the carriageway in accordance with a scheme first submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of highway safety.

#### Informatives:

Pursuant to Section 184 of the Highways Act 1980 and Section 86(4) of the New Roads and Streetworks Act 1991, at least 3 months prior notification should be given to the Director of Environmental Services at County Hall, Matlock (telephone 01629 580000 and ask for the District Highway Care Manager on extension 7595) before any works commence on the vehicular access within highway limits.

Pursuant to Section 38 and the Advanced Payments Code of the Highways Act 1980, the proposed new estate roads should be laid out and constructed to adoptable standards and financially secured. Advice regarding the technical, financial, legal and administrative processes involved in achieving adoption of new residential roads may be obtained from the Department of Environmental Services at County Hall, Matlock (tel: 01629 58000).

Pursuant to Section 278 of the Highways Act 1980, no works may commence within the limits of the public highway without the formal written Agreement of the County Council as Highway Authority. Advice regarding the technical, legal, administrative and financial processes involved in Section 278 Agreements may be obtained from the Director of Environmental Services at County Hall, Matlock (tel: 01629 580000). The applicant is advised to allow at least 12 weeks in any programme of works to obtain a Section 278 Agreement.

Highway surface water shall be disposed of via a positive, gravity fed system (i.e. existing public sewer, highway drain or watercourse) to be sanctioned by the Water Authority (or their agent), Highway Authority or Environment Agency respectively. The use of soakaways for highway purposes is generally not sanctioned. The Highway Authority recommends that the first 5m of the proposed private driveways 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 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. Pursuant to Sections 149 and 151 of the Highways Act 1980, the applicant must take all the 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 (e.g. street sweeping) are taken to maintain roads in the vicinity of the site to a satisfactory level of cleanliness. The applicant should be aware that any extra over carriageway planting within the highway or use of non-standard materials may attract a commuted sum for their future maintenance.

The applicant is advised that an Ordinary Watercourse Consent will be required under Section 23 of the Land Drainage Act 1991 and should contact the County Flood Risk Manager, Steve Mead or James Biddlestone to arrange this prior to works commencing which may affect the watercourses on the development site.

That notwithstanding Condition 1, the submitted application details in relation to materials, landscaping and boundary treatments do not fully discharge the requirements of the relevant outline permission conditions (9/2011/0484) and further details will be required in this regard.

Your attention is brought to the comments of the Environment Agency dated 28 September 2012, a copy of which is attached for your information.

<b>APPENDIX 1</b>  <b><u>OBLIGATION</u></b>  <b>AFFORDABLE HOUSING</b>	<b><u>EXISTING S106</u></b>  40%  Intermediate - 1% 10-bed, 26% 2-bed, 23% 3-bed  Social Rented mix – 24% 2-bed, 20% 3-bed, 6% 4-bed  50% social rented/50% Intermediate or other mix as agreed.	<b><u>TRIGGER</u></b>	<b><u>PROPOSED/TRIGGER</u></b>  20%  Intermediate – 27% 2-bed, 23% 3-bed  Social Rented - 24% 2-bed, 20% 3-bed & 6% 4-bed  50% social rented/50% Intermediate or other mix as agreed.
<b>OPEN SPACE CONTRIBUTION</b>	<b>Open Space Contribution £330,000 paid to District Council</b>  <b>Sch 2 - 5.4</b> Transfer of Footpaths & Cycleways to Management Company – pay Management Company reasonable contribution for future management and maintenance of the respective Children's Play Area in accordance with Management Scheme.	Prior to first occupation (to District Council)	Prior to occupation of 150 <sup>th</sup> dwelling  <b>Sch 2 - 5.4 removed</b>

<b>BUS SERVICE CONTRIBUTION</b>	<p><b>£200,000</b></p> <p>£56,000 – installation of real time passenger info for 14 buses</p> <p>£100,000 – installation of real time passenger info at 20 existing bus stops.</p> <p>£30,000 – installation of MOVA &amp; bus detection facilities at Stenson Road rail bridge;</p> <p>£14,000 – installation new bus stops including level access &amp; real time passenger info</p>	Prior to commencement – to City Council	Prior to occupation of 200 dwellings
<b>HIGHWAYS CONTRIBUTION</b>	<p><b>£313,750</b></p> <p>£15,000 – cycle route along Sinfin Lane between Redwood Rd &amp; Wordsworth Ave – 500m of signing &amp; lining.</p> <p>£250,000 – upgrade of Stenson Rd/Blagreaves Lane junction in provision of signal controls.</p> <p>£48,750 – 650m Heatherton cycle route between Stenson Rd &amp; city park.</p>	Prior to occupation (to City Council)	<p>£15,000 – on occupation of 50<sup>th</sup> dwelling</p> <p>£250,000 – on occupation of 150<sup>th</sup> dwelling</p> <p>£48,750 – on occupation of 200<sup>th</sup> dwelling</p>

<p><b>EDUCATION CONTRIBUTION</b></p>	<p>Primary School Provision</p> <p>Secondary School Provision</p>	<p>Paid to City Council – to provide primary school places at Grampian School.</p> <p>Paid to City Council – to provide secondary school places at Sinfin Community School</p>	<p>Primary School provision only (as per County/City) Payment Schedule as per original agreement.</p> <p>No Secondary provision required (as per County/City)</p>
<p><b>COMMUNITY FACILITIES</b></p>	<p>Contribution £150,000</p> <p>Building to be constructed in accordance with Scheme and used to provide D1 or D2 Class provision</p> <p>Scheme – to provide Community Facilities in agreement with District Council</p>	<p>Sch 6</p> <p>1.1.1 – Owner provides District Council with list of community groups &amp; organisations to approve.</p> <p>1.1.3 – transfer of Community Facilities Land prior to occupation 80% dwellings.</p>	<p>1. Marketing Strategy – approved by District</p> <p>3.3 Secure completion of facility prior to occupation 250<sup>th</sup> dwelling</p>

			<p><b>1.1.5</b> Pay District Council upon transfer of land (if Community Facility goes to District Council)</p> <p><b>3.4</b> No interest in Community Facility within 12 months of marketing – all obligations in Schedule cease &amp; Community Facilities payment paid to District.</p>	
			<p><b>1.1.7</b> – in the event that the District Council notify the owner that the Community Facilities</p> <p>Prior to commencement</p> <p>£512.56 per dwelling prior to occupation of 250th dwelling</p>	
HEALTHCARE		£551.25 per dwelling		
STRATEGIC HIGHWAYS CONTRIBUTION		£320, 845.76		
		£36,689.17 – improvements at A50/a514 junction		£36,689.17 – on occupation of 50 <sup>th</sup> dwelling
		£8,627.39 – improvements at A50/A515 junction		£8,627.39 – on occupation of 100 <sup>th</sup> dwelling
		£22,054.23 improvements at A50/A38 junction		£22,054.23 – on occupation of 150 <sup>th</sup> dwelling
		£253,474.97 – improvements at A38/A5132 junction		£253,474.97 – on occupation of 250 <sup>th</sup> dwelling

<b>SUPPLEMENTARY MEASURES FUND</b>	£50,000 for implementing sustainable transport supplementary measures	Paid to City Council (prior to occupation)	To be related to Travel Plan & only payable if targets not reached as per Derby City Council standard approach.
<b>TRAVEL PLAN &amp; SUSTAINABLE TRANSPORT PLAN &amp; PUBLIC TRANSPORT PLAN</b>	1 Travel Plan  1.8 Annual monitoring & detailed reports to City Council (travel plan)	Paid to City Council – prior to commencement	Prior to commencement
<b>TRAVEL MONITORING CONTRIBUTION</b>	£25,000	Paid to City Council – prior to first occupation	To be paid in the event that targets identified in the Travel Plan have not been reached in the preceding year.

09/10/2012

**Item**            **1.4**

**Reg. No.**        **9/2012/0555/B**

**Applicant:**

Mr Robert Galij  
David Wilson Homes Ltd

**Agent:**

Mr Mark Rose  
Define Planning and Design Ltd  
45-51 Newhall Street  
Cornwall Buildings  
Birmingham

**Proposal:**        **THE VARIATION OF CONDITIONS 24,25,29 & 30 OF  
PLANNING PERMISSION 9/2011/0484/MR RELATING TO  
OFF-SITE HIGHWAY WORKS, SITE ACCESS, CODE  
FOR SUSTAINABLE HOMES AND ON-SITE  
RENEWABLES ON LAND AT STENSON FIELDS  
STENSON ROAD STENSON DERBY**

**Ward:**            **STENSON**

**Valid Date:**      **26/06/2012**

See preceding report for 9/2012/0039.

**Recommendation**

Subject to the satisfactory completion of a revised S106 agreement as detailed in the preceding report, **GRANT** permission subject to the following conditions:

1.     a) The development hereby permitted within the land edged red on the submitted Location Plan shall be begun either before the expiration of 3 years from the date of the renewed outline consent, 9/2011/0484, dated 4 January 2012, or before the expiration of 2 years from the date of approval of the last of the reserved matters to be approved, whichever is the later.

b) Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of 3 years from the date of this permission.

Reason: To conform with Section 92(2) of the Town and Country Planning Act 1990.

2.     Approval of the details of the layout, scale and appearance of any buildings, the means of access to and within the site and landscaping of the site (hereinafter called "the reserved matters") for each phase of the development shall be obtained from the Local Planning Authority in writing before any development is commenced in that phase. Plans and particulars of the reserved matters for each phase of the development shall be submitted in writing to the Local Planning Authority and the development of each phase shall be carried out as approved.



Reason: The application is expressed to be in outline only and the Local Planning Authority has to ensure that the details are satisfactory.

3. The reserved matters submitted in accordance with Condition 2 and details submitted in accordance with any other condition of this planning permission shall accord with the principles outlined in the master plan, drawing number 4865RC051007 approved under application 9/2007/0020 as renewed by application 9/2011/0484.

Reason: To ensure that sustainable urban design is achieved in accordance with PPS1 and PPS3.

4. No development shall commence until a phasing plan and programme in respect of the phased delivery of the development has been submitted to and agreed in writing by the Local Planning Authority. The development shall be implemented in accordance with the phasing plan and programme unless otherwise varied with the written agreement of the Local Planning Authority.

Reason: The application is expressed to be in outline only and the Local Planning Authority has to ensure that the details are satisfactory and that the development proceeds in an orderly manner.

5. No development of any phase shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved in accordance with the agreed phasing plan. These details shall include trees to be retained showing their species, spread and maturity; proposed finished levels or contours; means of enclosure; car parking layouts; other vehicle and pedestrian access and circulation areas; hard surfacing materials; minor artefacts and structures (e.g. furniture, play equipment, refuse or other storage units, signs, lighting etc.); proposed and existing functional services above and below ground (e.g. drainage power, communications cables, pipelines etc. indicating lines, manholes, supports etc.); retained historic landscape features and proposals for restoration.

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

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: In the interests of the appearance of the area.

7. All hard and soft landscape works shall be carried out in accordance with the approved phasing plan and details and finished not later than the first planting season following completion of the relevant phase of the development.

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

8. A landscape management plan, including phasing and implementation strategy, long term design objectives, management responsibilities and maintenance schedules for all landscape areas, other than privately owned domestic gardens, shall be submitted to and approved in writing by the Local Planning Authority as part of the reserved matters submission in accordance with Conditions 2 and 6. The landscape management plan shall be implemented as approved.

Reason: In the interests of the appearance 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 approved in writing by the Local Planning Authority.
- Reason: In the interests of the appearance of the area.
10. None of the existing trees or hedgerows indicated as existing on the master plan drawing number 4865RC051007 approved under 9/2007/0020 shall be cut down, uprooted or destroyed, nor shall be topped or lopped without the prior written approval of the Local Planning Authority. If any of the existing trees or hedgerows to be retained are removed or, uprooted or destroyed or dies, a replacement shall be planted in the same place and that tree or hedge shall be of such size and species, and shall be planted at such time, as may be specified in writing by the Local Planning Authority.
- Reason: In the interests of the appearance of the area.
11. No site clearance works or development of a phase shall take place until there has been submitted to the Local Planning Authority for their written approval a scheme showing the type, height and position of protective fencing to be erected around each tree or hedgerow to be retained in that phase. The scheme shall comply with BS 5837:2005.
- No site clearance works or development of any phase shall be commenced in the vicinity of the protected tree or hedgerow until such a scheme is approved in writing by the Local Planning Authority and thereafter the development hereby permitted shall only be carried out in accordance with the approved scheme. The area surrounding each tree or hedgerow within the protective fencing shall remain undisturbed during the course of the works, and in particular in these areas:
- (i) There shall be no changes in ground levels;
  - (ii) No material or plant shall be stored;
  - (iii) No buildings or temporary buildings shall be erected or stationed;
  - (iv) No materials or waste shall be burnt within 20 metres of any retained tree or hedgerow; and
  - (v) No drain runs or other trenches shall be dug or otherwise created; without the prior written consent of the Local Planning Authority.
- Reason: To ensure that tree and hedge features are adequately protected.
12. Prior to the commencement of development details of a programme of further survey work relating to great crested newts, bats, breeding birds, slow worm, common lizard and grass snakes shall first be submitted to and approved in writing by the Local Planning Authority. Details of any required conservation measures and proposed habitats, including implementation, management and maintenance proposals shall be included in the report and the development implemented in accordance with the approved details.
- Reason: To ensure protection of ecological interests.
13. No development of any phase shall take place until there has been submitted to and approved in writing by the Local Planning Authority a plan indicating the positions, design, materials and type of boundary treatment to be erected within

that phase. The boundary treatment shall be completed in accordance with a timetable agreed in writing with the Local Planning Authority. Development shall be carried out in accordance with the approved details.

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

14. Prior to the commencement of development details of a 1.8 metre high boundary fence to be provided adjacent to the existing railway boundary shall be submitted to and approved in writing by the Local Planning Authority. The fence shall be provided in accordance with the approved details prior to the development of the site and subsequently maintained thereafter.

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

15. Prior to the commencement of the development hereby permitted, a scheme for the disposal of surface water from the site shall be submitted to and approved in writing by the Local Planning Authority. It shall not be limited to surface water produced when the development is complete, but will include consideration of any surface or ground water disposal necessary during construction activities. Such a scheme shall adopt sustainable drainage principles in accordance with the principles of sustainable drainage systems set out in Appendix F of PPS25 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) Provide details of the methods employed to prevent the risk of pollutants 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.

Reason: In the interests of flood protection.

16. No phase of the development shall commence until surface water drainage details in accordance with the approved drainage strategy for that phase have been submitted to and approved in writing by the Local Planning Authority. The scheme shall subsequently be implemented in accordance with the approved details before any dwelling is first occupied.

Reason: In the interests of flood protection.

17. No phase of the development shall take place until details of the proposed means of disposal of foul sewage have been submitted to and approved in writing by the Local Planning Authority. All foul water shall be directed into the

main foul sewerage system. The development shall be carried out in accordance with the approved details.

Reason: In the interests of pollution control.

18. 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.

19. No development of any phase shall take place until details of the materials proposed to be used on the surfaces of the roads, footpaths, car parking areas and courtyards along with samples of the materials to be used on the external surfaces of the buildings within that phase have been submitted to and approved in writing by the Local Planning Authority. The development of each phase shall be carried out using the approved materials unless otherwise agreed in writing with the Local Planning Authority.

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

20. Prior to the first occupation of any dwelling on the site 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 to be submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of highway safety.

21. The internal layout of the site shall be designed in accordance with the guidance contained in the "Manual for Streets" document issued by the Departments for Transport and Communities and Local Government, March 2007, or an appropriate successor document.

Reason: In the interests of highway safety.

22. Before the commencement of development of any phase, space shall be provided 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 in accordance with a scheme first submitted to and approved in writing by the Local Planning Authority. The facilities shall be retained in accordance with the approved scheme throughout the construction period.

Reason: In the interests of highway safety.

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

Reason: In the interests of highway safety.

24. No development shall be commenced until schemes are submitted to and approved by the Local Planning Authority following consultation with Derby City Council to secure the necessary highway improvement works at the Sinfin Lane and Stenson Road junctions with the A5111. The works shall be laid out and constructed in accordance with the approved schemes prior to the occupation of the 201st dwelling.

Reason: To ensure free and safe flow of traffic on the public highway.

25. No development shall be commenced until detailed designs for the accesses between the site and Stenson Road, and for the permanent closure of redundant accesses, have been submitted to and approved in writing by the Local Planning Authority. Proposals for implementation of the approved access arrangements shall be submitted as part of the phasing details required under Condition 4.

Reason: In the interests of highway safety.

26. No development shall be commenced until detailed designs for a scheme for a 2.0 metre footway along the Stenson Road frontage of the site has been submitted to and approved in writing by the Local Planning Authority. Proposals for implementation of the approved design shall be submitted as part of the phasing details required under Condition 4.

Reason: In the interests of highway safety.

27. No development shall be commenced until a detailed design for a scheme for street lighting along the Stenson Road frontage of the site has been submitted to and approved in writing by the Local Planning Authority. Proposals for implementation of the approved design shall be submitted as part of the phasing details required under Condition 4.

Reason: In the interests of highway safety.

28. There shall be no direct access between any dwellings and Stenson Road unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interests of highway safety.

29. No development of a particular phase shall commence before details of the finished floor levels of each building has first been submitted to and approved in writing by the Local Planning Authority. The buildings within that phase shall be constructed in accordance with the approved details.

Reason: In the interests of the appearance of the area and residential amenity.

30. No development of any phase shall take place until a scheme has been submitted to and approved in writing by the Local Planning Authority that specifies the provision to be made for dust mitigation measures and the control of noise emanating from the site during the period of construction of the development. The approved measures shall be implemented throughout the construction period.

Reason: To protect the amenities of existing residents in the locality.

31. During the period of construction of any phase of the development which abuts any occupied dwelling within 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: To protect the amenities of existing residents in the locality.

32. No development shall be commenced until a detailed design scheme for noise attenuation in respect of the dwellings adjacent to Stenson Road, community facility and operational railway line has been submitted to and approved in writing by the Local Planning Authority; all works which form part of the scheme shall be completed in accordance with the approved details prior to the first occupation of the noise-sensitive dwellings and retained and maintained at all times thereafter.

Reason: In the interests of the aural amenities of incoming residents.

33. 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 the fieldwork element of the scheme is completed to the written satisfaction of the local planning authority, or in accordance with any alternative schedule as may be agreed in writing with the local planning authority. The scheme shall include an assessment of significance and research questions; and
1. The programme and methodology of site investigation and recording;
  2. The programme and provision to be made for post-excavation analysis and reporting;
  3. Provision to be made for publication and dissemination of the analysis and records of the site investigation;
  4. Provision to be made for archive deposition of the analysis and records of the site investigation; and
  5. 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 Part A.
- C) The development shall not be occupied until the archaeological site investigation and post investigation analysis and reporting has been completed in accordance with the programme set out in the Written Scheme of Investigation approved under Part 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.

Informatives:

Attention is drawn to the letter dated 31 May 2007 which was submitted to the Inquiry relating to application 9/2007/0020 by East Midlands Airport (Inquiry document WR10), drawing attention to current and proposed future activities of the Airport (IR33). This permission is the subject of a unilateral undertaking or agreement under Section 106 of the Town and Country Planning Act 1990.

09/10/2012

**Item**            **1.5**

**Reg. No.**        **9/2012/0760/TP**

**Applicant:**

South Derbyshire District Council  
Civic Offices  
Civic Way  
Swadlincote

**Agent:**

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

**Proposal:**        **THE PRUNING AND FELLING OF TREES COVERED BY  
SOUTH DERBYSHIRE DISTRICT COUNCIL TREE  
PRESERVATION ORDER NUMBER 327 AT LAND AT  
AUDEN CLOSE CHURCH BROUGHTON DERBY**

**Ward:**            **HILTON**

**Valid Date:**      **28/08/2012**

**Reason for committee determination**

The Council is the applicant.

**Site Description**

This collection of trees is situated on an area of public open space. They are best seen from Auden Close, a small residential cul-de-sac. They do though afford views (especially the canopies) from adjacent 'developments'.

**Proposal**

The proposal includes various arboricultural works to 6 individual trees and a number of trees that form a small but densely populated 'group'.

Individual trees

Trees 10 and 11 – Crown clean, remove all dead wood including a dead limb.

Tree 12 – Fell

Trees 14 and 17 – Formative pruning and crown raise.

Tree 16 – Crown lift

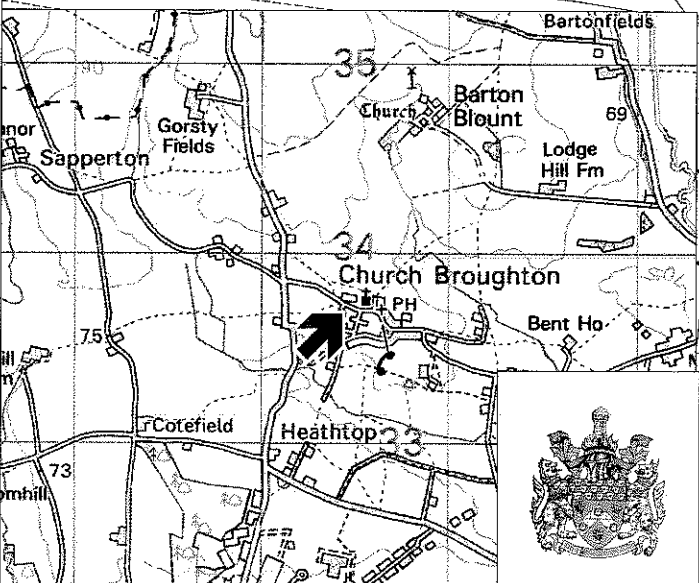
Small group (of approx 25 trees)

The works include:

Crown lift and clearing out of interlocking branches to all trees, removing deadwood where applicable;

Cut back all ivy and epicormic growth from tree bases;

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100	101	102	103	104	105	106	107	108	109	110	111	112	113	114	115	116	117	118	119	120	121	122	123	124	125	126	127	128	129	130	131	132	133	134	135	136	137	138	139	140	141	142	143	144	145	146	147	148	149	150	151	152	153	154	155	156	157	158	159	160	161	162	163	164	165	166	167	168	169	170	171	172	173	174	175	176	177	178	179	180	181	182	183	184	185	186	187	188	189	190	191	192	193	194	195	196	197	198	199	200	201	202	203	204	205	206	207	208	209	210	211	212	213	214	215	216	217	218	219	220	221	222	223	224	225	226	227	228	229	230	231	232	233	234	235	236	237	238	239	240	241	242	243	244	245	246	247	248	249	250	251	252	253	254	255	256	257	258	259	260	261	262	263	264	265	266	267	268	269	270	271	272	273	274	275	276	277	278	279	280	281	282	283	284	285	286	287	288	289	290	291	292	293	294	295	296	297	298	299	300	301	302	303	304	305	306	307	308	309	310	311	312	313	314	315	316	317	318	319	320	321	322	323	324	325	326	327	328	329	330	331	332	333	334	335	336	337	338	339	340	341	342	343	344	345	346	347	348	349	350	351	352	353	354	355	356	357	358	359	360	361	362	363	364	365	366	367	368	369	370	371	372	373	374	375	376	377	378	379	380	381	382	383	384	385	386	387	388	389	390	391	392	393	394	395	396	397	398	399	400	401	402	403	404	405	406	407	408	409	410	411	412	413	414	415	416	417	418	419	420	421	422	423	424	425	426	427	428	429	430	431	432	433	434	435	436	437	438	439	440	441	442	443	444	445	446	447	448	449	450	451	452	453	454	455	456	457	458	459	460	461	462	463	464	465	466	467	468	469	470	471	472	473	474	475	476	477	478	479	480	481	482	483	484	485	486	487	488	489	490	491	492	493	494	495	496	497	498	499	500	501	502	503	504	505	506	507	508	509	510	511	512	513	514	515	516	517	518	519	520	521	522	523	52
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Cut back all trees in close proximity to rear gardens/fences on Church Road to leave a 4m headroom clearance;

Some trees within this group are proposed to be felled. These include a white poplar and 3 x cypress trees; other smaller trees will be felled to benefit adjacent more desirable trees. The stump of the white poplar would be chemically treated following its felling.

### **Applicants' supporting information**

The applicant has submitted a tree assessment report.

### **Planning History**

This Order (TPO327) was confirmed by the Council following modification in September 2010.

### **Responses to Consultations**

Church Broughton Parish Council has no objection.

### **Development Plan Policies**

Local Plan Environment Policy 9

### **Planning Considerations**

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

### **Planning Assessment**

This collection of trees is protected by TPO327 - a village wide Order. It features a number of individual trees and a small but densely populated group.

The recommended tree maintenance is essential to prevent the trees encroachment into the small but well-used grassed area of public open space and the adjacent rear gardens, and in the interests of public safety.

### **Recommendation**

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

1. Two week's prior notice of the date on which the work is intended to be carried out shall be given to the local planning authority in order that an officer can arrange to be on site prior to the work commencing to agree the extent of the pruning.

Reason: To enable the local planning authority to consider any proposals beyond this period in the interests of safeguarding the amenity value of the trees.

2. The work shall be carried out in accordance with BS3998:2010 - Tree Work.

Reason: To safeguard the health of the trees.

09/10/2012

**Item**            **1.6**

**Reg. No.**        **9/2012/0775/FM**

**Applicant:**

Mr James Wigmore  
Westview  
The Common  
Melbourne  
Derby

**Agent:**

Mr Stewart Jackson  
Beckett Jackson Thompson  
8 Eldon Chambers  
Wheeler Gate  
Nottingham

**Proposal:**        **THE DEMOLITION OF EXISTING DWELLING AND  
INDUSTRIAL WORKSHOP BUILDINGS AND THE  
ERECTION OF A DETACHED DWELLING AT WESTVIEW  
THE COMMON MELBOURNE DERBY**

**Ward:**            **MELBOURNE**

**Valid Date:**      **04/09/2012**

**Reason for committee determination**

The application is referred to Committee because of the implications for Saved Environment Policy 1 and Housing Policy 8 of the South Derbyshire Local Plan.

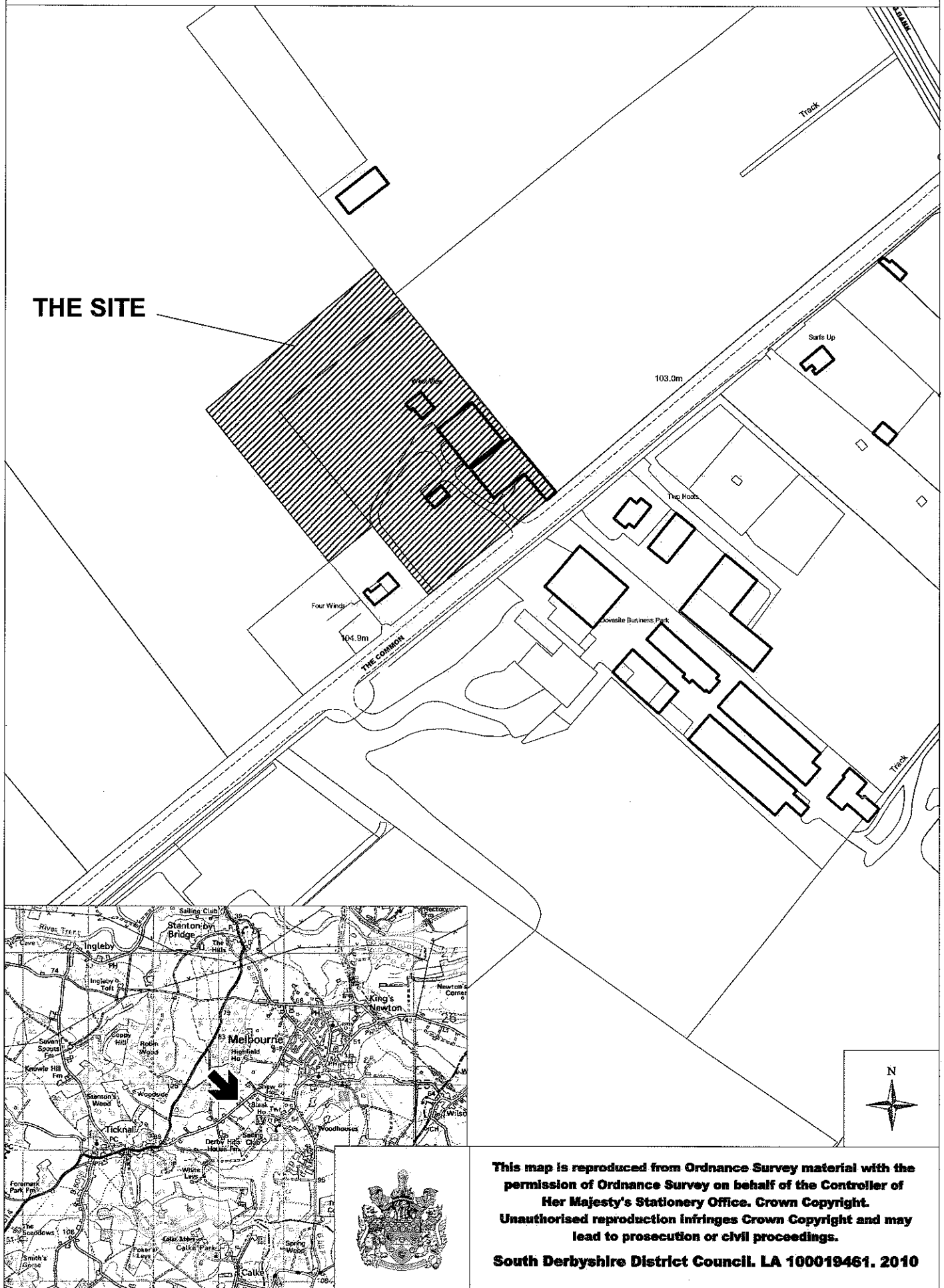
**Site Description**

The site is a former market garden and industrial premises containing a dwelling (approx 120 sq m) and a range of glasshouses and utilitarian sheet clad buildings (approx 1015 sq m). The latter, in particular, occupy a visually prominent location adjacent to the public highway. There are light industrial premises on the opposite side of the road at Dovesite and Two Hoots and a dwelling, Four Winds, next door. The site lies within the National Forest.

**Proposal**

The application proposes the demolition of all the existing buildings and their replacement with a new two-storey single dwelling house with a footprint of about 440 sq m (the total floor area over both storeys would be some 686 sq m). It would be faced predominantly in red brick, with some stone and timber frame elements, topped with a plain clay tile roof. The dwelling would occupy a more or less central location on the site, orientated at an angle to the road, with an array of photovoltaic cells on the roof of the single storey range facing due south.

The two existing accesses would be closed, with a new site opening formed in the north east corner. Substantial new screen planting is proposed to the site boundaries.



### **Applicants' supporting information**

The Design and Access Statement makes the point that the existing dwelling and garden could be developed under permitted development rights to provide significant additional buildings, and that the proposal would bring about a reduction in site coverage of about 50%. It concludes that the proposal generally accords with policy and best practice and would be built to a very high specification. The design would be respectful of the sensitive nature of the setting and would greatly benefit the character, enjoyment and use of the locality.

### **Planning History**

9/0889/0551 - Use for manufacturing of agricultural machinery – permitted.

9/1194/0713 - Sales of tractors – permitted.

9/2001/0961 - The demolition of building and the erection of an office unit and the change of use and alterations for light industrial purposes- permitted.

9/2008/1202 - Re-development of site with new B1 employment building - permitted.

### **Responses to Consultations**

The Parish Council and Melbourne Civic Society have no objection.

The Highway Authority has no objection on the basis that there would be a reduction in the amount of development at the site and in the number of vehicular accesses.

The Contaminated Land Officer has no objection subject to site investigation conditions being imposed.

### **Responses to Publicity**

None received to date.

### **Development Plan Policies**

The relevant policies are:

East Midlands Regional Plan Policy 2.

South Derbyshire Local Plan Saved Environment Policies 1 & 10, Housing Policy 8 and Transport Policy 6.

### **National Guidance**

National Planning Policy Framework paragraphs 11-14 (presumption in favour of sustainable development) 17 (core principles) and 60 (reinforcing local distinctiveness in design).

### **Planning Considerations**

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

- The principle.
- Impact on the character of the countryside.

## **Planning Assessment**

### The principle

Local Plan Saved Environment Policy 1 requires development to be necessary or unavoidable in the countryside subject to environment safeguards, in particular protection of the character of the countryside. Saved Housing Policy 8 clarifies the acceptability in principle of replacement dwellings in the countryside, provided that:

- the form and bulk of the new dwelling does not substantially exceed that of the original;
- the design and materials are in keeping with the character of the surroundings;
- the new dwelling is on substantially the same site as the old; and
- there is no increase in the number of dwellings.

The proposal would not be fully compliant with Saved Housing Policy 8 because it would be of a greater size and not substantially on the same footprint as the current bungalow.

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning decisions to be taken in accordance with the development plan unless material considerations indicate otherwise.

The existing buildings do not make a positive contribution to the character and appearance of the countryside and occupy a prominent position in the landscape on the approach to Melbourne. Permission has previously been granted to redevelop the industrial buildings. The current application proposes a substantial overall reduction in the amount of the site covered by the buildings. They would be replaced by a dwellinghouse displaying high quality design (see assessment below) and considerable amounts of new planting which would, overall, lead to a significant enhancement to the appearance of the site. The reduction in the amount of development and the opportunity to employ energy efficient design would also be a more sustainable way to use the site into the future. In these circumstances the benefits of the development outweigh its failure to fully comply with Saved Housing Policy 8.

The curtilage of the application site is extensive, being an amalgamation of the existing garden and the industrial buildings and hardstandings. Therefore there is the potential for substantial amounts of development to be undertaken without the need to apply to the local planning authority, by virtue of the provisions of the General Permitted Development Order. In order to maintain the benefits of reduced site coverage, a condition removing permitted development rights is justified.

### Impact on the character of the countryside

Given their unprepossessing appearance, the loss of all the existing buildings and the associated hardstanding would be beneficial to the character of the countryside.

The proposed dwelling would utilise materials common to South Derbyshire's local tradition. Although the building would be a large dwelling its mass would be broken up by the use of small scale projecting elements, utilising the narrow gables and steep roofs that are distinctive of the district. The building would therefore sit comfortably in its landscape context, in accordance with Policy 2 of the Regional Plan and Paragraph 60 of the NPPF, both of which favour the reinforcement of local distinctiveness in design.

The new planting would further integrate the development with its National Forest location, in accordance with Saved Environment Policy 10.

### Conclusion

The substantial environmental enhancements that would result from the removal of unsightly buildings, and their replacement with a well designed building occupying much less of the site, justifies a decision not in accord with the development plan and would fit better with the aspirations of the NPPF.

Due to its non-conformity with the development plan, the application is subject statutory advertisement. The response period expires on 12 October.

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**

Subject to consideration by the Head of Community Planning Services of representations received in response to the statutory advertisement, **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. This permission shall relate to the submitted drawings 1120 E1 Rev A, E2 rev A, E3, E4, E5, E6, E7, E8, E11, E12, E 13 & E16.  
Reason: For the avoidance of doubt.
3. No part of the development shall be carried out until precise details, specifications and, where necessary, samples of the facing materials to be used in the construction of the external walls and roof of the building(s) have been submitted to and approved in writing by the Local Planning Authority. 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. Large scale drawings to a minimum Scale of 1:10 of eaves and verges and external joinery, including horizontal and vertical sections, method of opening and cill and lintel details shall be submitted to and approved in writing by the Local Planning Authority before being incorporated in the building. The eaves

and verges and external joinery shall be constructed in accordance with the approved drawings.

Reason: The details submitted are inadequate to determine whether the appearance of the building would be acceptable.

5. Precise details and specifications of the solar panels shall be submitted to and approved in writing by the Local Planning Authority prior to installation. The approved solar panels shall be installed in accordance with the approved details and specifications.

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

6. Gutters and downpipes shall have a black finish.

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

7. No development shall take place until there has been submitted to and approved by the Local Planning Authority a scheme of landscaping, which shall include indications of all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection in the course of development.

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

8. 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.

9. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008, the dwelling hereby permitted shall not be enlarged or extended, and no buildings, gates, walls or other means of enclosure (except as authorised by this permission or required by any condition attached thereto) shall be erected on the application site (shown edged red on the submitted drawing 1120 E16) without the prior grant of planning permission on an application made in that regard to the Local Planning Authority.

Reason: To maintain control in the interest of the character and amenity of the area, having regard to the setting and size of the development, the site area and effect upon neighbouring properties and/or the street scene.

10. A) 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 (LPA); 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 LPA dispenses with any such requirement specifically and in writing.

B) 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'.

C) 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'.

D) No development shall take place until monitoring at the site for the presence of ground/landfill gas and a subsequent risk assessment has been completed in accordance with a scheme to be agreed with the LPA, which meets the requirements given in Box 4, section 3.1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.

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

11. 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 accord with the approved methodology.

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.

12. Before the dwelling is first occupied a new vehicular access shall be created to The Common in accordance with the application drawing 1120 E2 Rev A, laid out, constructed and provided with 2.4m x 215 m visibility splays in either direction, the area in advance of which shall be maintained throughout the life of the development clear of any object greater than 1m in height (0.6m in the case of vegetation) relative to the adjoining nearside carriageway channel level.

Reason: In the interests of highway safety.

13. Within 28 days of the occupation of the dwelling, the existing vehicular accesses to The Common shall be permanently closed with a physical barrier and the existing vehicle crossovers reinstated as footway (or verge) in a manner that shall have previously been agreed in writing with the Local Planning Authority.

Reason: In the interests of highway safety.

14. The dwelling shall not be occupied until space has been provided within the application site in accordance with the application drawing 1120 E2 Rev A for the parking and manoeuvring of residents' vehicles, laid out, surfaced and maintained throughout the life of the development free from any impediment to its designated use.



Reason: In the interests of highway safety.

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

Reason: In the interests of highway safety.

16. The dwelling shall not be occupied until all the existing buildings on the application site have been demolished and the materials either used in the development hereby permitted or removed from the site.

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

#### Informatives:

Pursuant to Section 184 of the Highways Act 1980 and Section 86(4) of the New Roads and Streetworks Act 1991, at least 3 months prior notification should be given to the Director of Environmental Services at County Hall, Matlock (telephone 01629 580000 and ask for the District Highway Care Manager on extension 7595) before any works commence on the vehicular access within highway limits.

The phased risk assessment should be carried out in accordance with the procedural guidance of the Environmental Protection Act 1990 Part IIA. The contents of all reports relating to each phase of the risk assessment process should comply with best practice as described in the relevant Environment Agency guidance referenced in footnotes 1-4, to the relevant conditions attached to this permission.

For further assistance in complying with planning conditions and other legal requirements applicants should consult "Developing Land within Derbyshire - Guidance on submitting applications for land that may be contaminated". This document has been produced by local authorities in Derbyshire to assist developers, and is available from [http://www.south-derbys.gov.uk/business/pollution/contaminated\\_land/default.asp](http://www.south-derbys.gov.uk/business/pollution/contaminated_land/default.asp) Reports in electronic formats are preferred, ideally on a CD. For the individual report phases, the administration of this application may be expedited if a digital copy of these reports is also submitted to the pollution control officer (contaminated land) in the environmental health department: [pollution.control@south-derbys.gov.uk](mailto:pollution.control@south-derbys.gov.uk).

09/10/2012

**Item** 1.7

**Reg. No.** 9/2012/0791/NO

**Applicant:**

South Derbyshire District Council  
Civic Offices  
Civic Way  
Swadlincote

**Agent:**

Mr Alan Walker  
South Derbyshire District Council  
Civic Offices  
Civic Way  
Swadlincote

**Proposal:** THE ERECTION OF AN AERIAL MAST TO THE  
EDUCATION UNIT AT VISITORS CENTRE ROSLISTON  
FORESTRY CENTRE BURTON ROAD ROSLISTON  
SWADLINCOTE

**Ward:** LINTON

**Valid Date:** 11/09/2012

**Reason for committee determination**

The application is brought to Planning Committee as the District Council is the applicant and owns the site.

**Site Description**

This application relates to the main visitor attraction and education buildings within the Rosliston Forestry Centre, which are accessed from the public car park by existing pathways.

**Proposal**

It is proposed to erect a transmitter/receiver aerial on the south facing elevation of the building. The aerial would be approximately 5.5cm in diameter and 10m high, with the first 1.5m being attached to the building by two support brackets. The aerial would therefore protrude approximately 8.5m above the roof of the building.

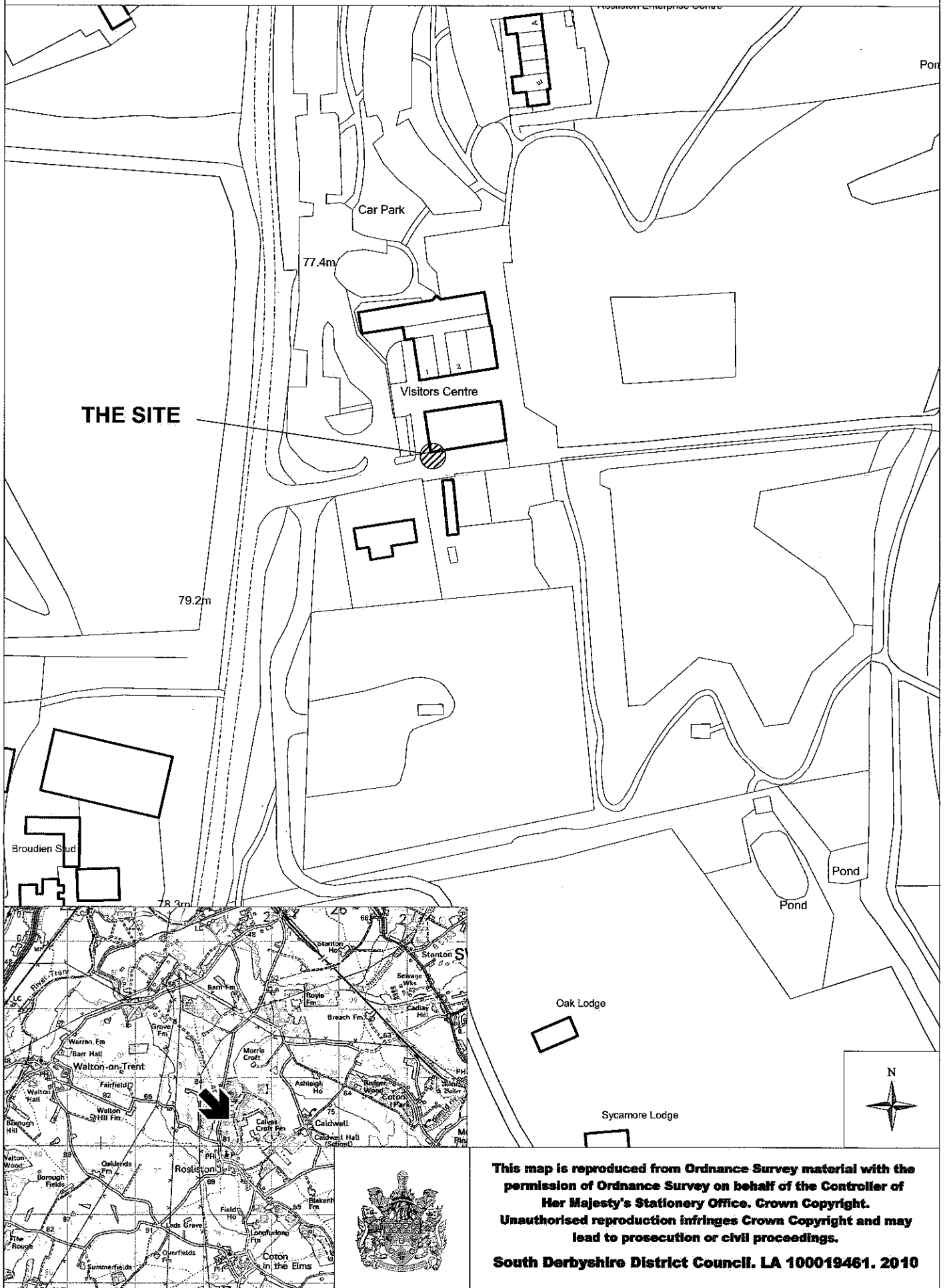
**Applicants' supporting information**

A Design and Access Statement has been submitted with the application, which is available to view on line. However, the salient points of the Statement are:

- The aerial will be fitted to the gable end of the building and extend 15 feet into the air, with a further 5 feet being attached to the building by two support brackets.

# 9/2012/0791 - Rosliston Forestry Centre, Burton Road, Rosliston

DE12 8JX



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- The aerial was chosen as a means of providing the centre with sufficient IT network capacity for future needs.
- The aerial will allow for other services to be provided as the site develops.
- There will be minimum visual impact.
- The proposed located would ensure the best reception across the site.

### **Planning History**

None relevant

### **Responses to Consultations**

None received

### **Responses to Publicity**

None received

### **Development Plan Policies**

The relevant policies are:

East Midlands Regional Plan: Policy 42.

Local Plan: Community Facilities Saved Policy 4.

### **National Guidance**

The National Planning Policy Framework (NPPF), Chapter 5, paragraph 42

### **Planning Considerations**

The main issue central to the determination of this application is the impact of the proposed aerial on the Forestry Centre and the surrounding area.

### **Planning Assessment**

The part of the building on which the aerial is to be mounted is in an area that is not frequented by the general public, being a fairly narrow service corridor between the outdoor eating area to the front of the restaurant and the route of the vehicular exit to the rear of the main visitor buildings. The aerial, which has the appearance of a slim pole, is to be mounted on the side gable elevation of the building and attached to the building by two, wall-mounted brackets. The elevation currently has two door openings and hosts two security lights and a burglar alarm box. It is considered that an additional two wall-mounted brackets would not have a detrimental visual impact on this part of the building.

This particular aerial was chosen to provide the Centre with sufficient IT network capacity for future service needs. Problems or poor reception within the Forestry Centre are currently an issue, as the site is located at the end of the BT Broadband line. The height of the aerial will allow for current and future needs to be met across the site, whilst also allowing for other services to be provided as the site develops over time.

Policy 42 of the East Midlands Regional Plan supports improvements in the quality of existing facilities and services in terms of the potential for tourism growth and economic benefit, provided that they do not have an adverse impact on the environment and local amenity.

Local Plan Saved Community Policy 4 encourages such developments provided that:

- (i) There are no satisfactory alternative means available;
- (ii) The siting of the development does not result in an unduly prominent intrusion in the countryside or damage the character of areas of local landscape value, conservation areas or the setting or fabric of listed buildings.

It also advises that any development should be sited and designed so as to minimise its visual impact.

At paragraph 42, the Framework supports high quality communications infrastructure by stating that: *Advanced, high quality communications infrastructure is essential for sustainable economic growth. The development of high speed broadband technology ... also plays a vital role in enhancing the provision the provision of local community facilities and services*.

At 8.5m above roof height there is little doubt that the aerial will be visible from areas within the Forestry Centre, particularly those close to the main visitor buildings. However, at just 5.5cms (2ins) diameter, the slim design of the pole will ensure that the visual impact is kept to an absolute minimum. It is considered that it would not be visible beyond the site owing to the orientation of the buildings and the mature vegetation that forms the natural boundary of the site with the adjacent highway network. There are no conservation areas or listed buildings to consider as part of this application.

It is clear that there is national and local policy support for the improvement of communications systems, including high-speed broadband provision. This application seeks to improve existing services and facilities, as well as planning for possible future services, which is essential for the long-term viability of education provision at the Forestry Centre. It is considered, therefore, that the proposal is in accordance with EMRP Policy 42, Local Plan Saved Communities Policy 4 and the advice in paragraph 42 of the National Planning Policy Framework.

## **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 aerial hereby approved shall be white in colour unless otherwise agreed in writing by the Local Planning Authority. It shall only remain erected while it is has a technical requirement.  
  
Reason: To safeguard the character and appearance of the site and its immediate surroundings.

09/10/2012

**Item** 1.8

**Reg. No.** 9/2012/0705/NO

**Applicant:**

Burton And South Derbyshire College  
Lichfield Street  
Burton on Trent

**Agent:**

Mr David Wallis  
Burton And South Derbyshire College  
Burton on Trent  
Lichfield Street

**Proposal:**

THE VARIATION OF CONDITION OF 7 PLANNING  
PERMISSION 9/2009/0497/No TO ENABLE UNITS A-E  
TO BE USED FOR EDUCATIONAL PURPOSES FROM  
B1 TO MIXED USE OF B1 & D1 (NON RESIDENTIAL  
EDUCATION AND TRAINING CENTRE) AT UNITS A TO  
E ROSLISTON ENTERPRISE CENTRE BURTON ROAD  
ROSLISTON SWADLINCOTE

**Ward:** LINTON

**Valid Date:** 23/08/2012

**Reason for committee determination**

The application is brought to the Planning Committee as the Council owns the units.

**Site Description**

The application relates to a block of five light industrial units located within the Rosliston Forestry Centre facing the public car park, which are leased out by the District Council. The block is of single storey U-shaped design and of timber construction. The units were originally built as nursery units for B1 (light industrial use with an emphasis on crafts, services and recreation associated with the National Forest), in order to encourage starter businesses.

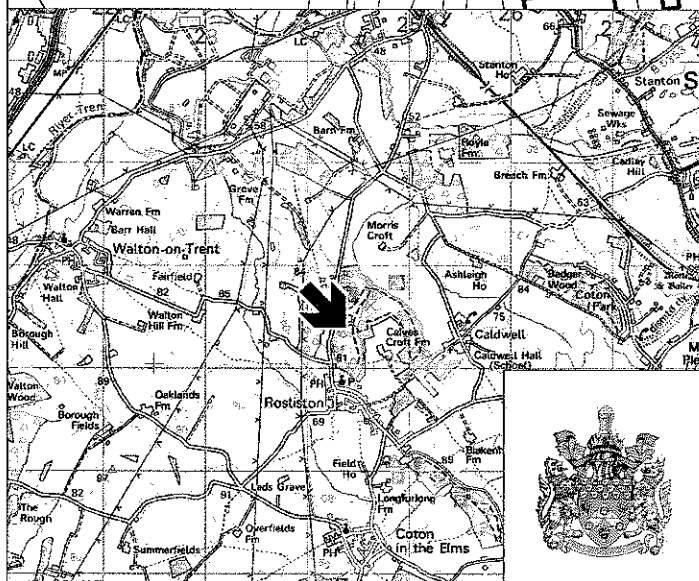
**Proposal**

This application is for the variation of Condition 7 of planning permission 9/2009/0497 to enable the five units (A – E) to be used for educational purposes, i.e. from B1 to a mixed use of B1 and D1 (Non-residential education and training centres), by Burton and South Derbyshire College. The application forms state that the use of the buildings as applied for has already been implemented, at least in part.

**Planning History**

# 9/2012/0705 - Rosliston Forestry Centre, Burton Road, Rosliston

DE12 8JX



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9/2009/0026 – Erection of five nursery B1 units with ancillary accommodation – approved 03/03/2009.

9/2009/0497 – Erection of five nursery B1 Units with ancillary accommodation (amended scheme) – approved 28/07/2009.

9/2011/0739 – Variation of Condition to enable use of units 2,3 and 4 for education purposes – Not validated and returned.

### **Responses to Consultations**

None

### **Responses to Publicity**

There has been no response to the site notice posted in relation to this application.

### **Development Plan Policies**

The relevant policies are:

Local Plan: Saved Community Facilities Policy 1, Transport Policy T6

### **National Guidance**

National Planning Policy Framework (NPPF), paragraph 28.

### **Planning Considerations**

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

- The principle of the use.
- Impact on the Forestry Centre as a tourist attraction.

### **Planning Assessment**

The original intention of the units was put forward as a way of introducing and promoting rural crafts and skills in association with ongoing activities relating to the Rosliston Forestry Centre and the National Forest. It was also intended that the operations taking place within the units would be able to be observed by the public and other interested groups, such as parties of school children, as a method of educating people/students by providing an insight into the workings of the National Forest and the ways of rural crafts.

Condition 7 of the original planning permission states: - *'Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 (as amended) and Article 3 and Part 3 of the Town and Country Planning (General Permitted Development) Order 1995, this permission shall relate to the use of the premises as described in your application and for no other purpose'*.

The reason for the condition was so that the Local Planning Authority could control the future use of the units, given the special circumstances with regard to the relationship with the Forestry Centre and the National Forest.



It is not known whether all of the units have ever been occupied at any one time, although it is believed that at least three were vacant until Burton and South Derbyshire College expressed interest in using the middle three units for educational purposes. In 2011 an application was submitted (and subsequent withdrawn) for the change of use of the three units. The scheme subject of this application now proposes the change of use of all five units.

The units would be used as classrooms and as a base for team sports, outdoor activities and expeditions to educate students in land navigation involving the use of maps and compasses. The units will be used mainly by Public Services students, but Childcare, Health and Social Care will use the facilities for team work and outside play. They would also be used for demonstrations from the Army, Navy, Air Force and the Ambulance Service.

Local Plan Saved Communities Policy 1 supports proposals for new and improved community facilities provided that: -

- (i) Development does not cause disturbance to local amenity by virtue of noise or traffic generation;
- (ii) Adequate provision is made for pedestrian and vehicular access, parking, servicing, screening and landscaping;
- (iii) They are of an appropriate scale and design and are well integrated with their surroundings.

In this instance, there are no neighbouring properties or local amenities that would be affected by the proposals, as the site is well within the boundaries of the Forestry Centre and the proposed use is not one that would usually generate an unacceptable degree of noise or disturbance. Vehicular access from the main road and adequate parking already exists to the front of the units. Screening is provided by way of existing trees to the sides and rear, although the front of the units is not screened from public view, and the units are easily visible from the public car park. The scale, design and materials of the units were assessed twice in 2009 when the applications for the erection of the units were determined.

Bullet point 1 of paragraph 28 of the NPPF advises local authorities to support economic growth and expansion of all types of business and enterprise in rural areas, both through conversion of existing buildings and well designed new buildings.

By allowing the units to be used for a mixed use of B1 (light industrial) and D1 (non-residential education/training centres) it would ensure the continued use of the buildings and provide a level of activity on the site that can only enhance the vitality, viability and setting of the Forestry Centre as a whole. It is concluded, therefore, that the principle of a mixed use for these units is acceptable.

In terms of the impact on the tourist attraction itself, the units are seen as a stand-alone building within the grounds of the Forestry Centre with little or no impact on the overall use of the site as a leisure and community attraction. The use of the units for educational purposes would not impede the use of the site by the public in any way; rather, it would be more likely to enhance the site by ensuring a level of vibrancy and interest in and around the building that would continue to promote and entice people to visit the attraction.

In conclusion, there are no objections to the variation of Condition 7 of planning permission 9/2009/0497 to allow the use of the units for a mixed B1 and D1 use.

### **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. Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 (as amended) and Article 3 and Part 3 of the Town and Country Planning (General Permitted Development Order (as amended), this permission shall relate to the use of the units for a mixed use of B1(light industry with emphasis on crafts, services and recreation associated with the National Forest) and D1 (non-residential education and training centres) and for no other purpose within B1 and D1 use classes.

Reason: In order that the Local Planning Authority may retain control over the future use of the premises and in the interests of the amenity of the area.

### **Informatives:**

You are advised that this permission should be read in conjunction with conditions 2, 3, 4, 5 and 6 of planning permission 9/2009/0497, relating to contaminated land, drainage, the requirement for underground cables and proposed lighting.

09/10/2012

**Item**            **2.1**

**Reg. No.**        **9/2012/0281/NO**

**Applicant:**

MR J MARSHALL  
CDP LTD  
ELLAND  
WEST YORKSHIRE  
HX5 9BW

**Agent:**

MR J MARSHALL  
CDP LTD  
ELLAND  
WEST YORKSHIRE  
HX5 9BW

**Proposal:**        **THE ERECTION OF A RETAIL UNIT (USE CLASS A1)  
WITH ASSOCIATED CAR PARK AND ACCESS AT  
FORMER PUBLIC HOUSE MASONS ARMS 406 BURTON  
ROAD MIDWAY SWADLINCOTE**

**Ward:**            **MIDWAY**

**Valid Date:**      **03/04/2012**

**Reason for committee determination**

The application is brought before the Committee at the request of Cllr Pearson (ward member) as a local concern has been expressed about a particular issue.

**Site Description**

This 0.11 hectare (1,127 sq. metre) site is located adjacent to the cross roads of Burton Road, Midway Road and Sandcliffe Road. The prominent Mason's Arms Public House building is right on the corner of Burton Road and Sandcliffe Road which is two storey and has a two storey bay feature on the corner with a 'Bass' sign above and two gable features on Burton Road and Sandcliffe Road. The windows are large with stone cills and lintels. The car park is to the south east with access onto Burton Road adjacent to the side of the building and the car park which is enclosed by a low wall. The site slopes from the north west down to the south east with a difference of 4.4m between the highest and lowest parts of the site. On Sandcliffe Road the site has a difference in levels from the north west corner to the corner with Burton Road of 2.9m.

**Proposal**

Planning permission is sought for demolition of the public house and redevelopment of the site for a local convenience store comprising 398 sq m (gross). Fourteen customer car parking spaces plus 1 disabled space, two cycle stands and a delivery area are proposed.

The proposed design has been amended significantly from a traditional building to a modern design. This change was brought about by advice from OPUN (an independent

9/2012/0281 - Masons Arms, 406 Burton Road, Midway DE11 7ND



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regional design panel). The building has a significant curved feature on the corner of Burton Road and Sandcliffe Road with a coloured cladding section set behind aluminium fins. This feature would create a covered entrance to the store tight up to the footway on the corner. The curved section would extend in brickwork along Sandcliffe Road and join to a cladded section which would be screened by trees.

Brick walls would enclose the boundaries on both road frontages with trees and landscaping set behind. The servicing area would be to the south east of the building screened by timber fencing. The access would be moved 17.5m south east of the existing access and would have a width of 6.5m.

### **Applicants' supporting information**

The Planning and Retail Statement outlines the site and scheme together with the planning history. Relevant planning policy is listed and it considers the scheme a brownfield site in a sustainable location. The public house has been vacant for 3 years with no interest for a public house use. Permission for residential conversion was granted on appeal in June 2011 but there is no market for this at present. The sequential approach defined the primary catchment area and this included Woodville and Swadlincote. The impact assessment concludes there would be no significant impact on existing stores within the PCA due to the size of the store proposed and it would provide a local retail facility in Midway.

An amended sequential assessment concludes that there are no available or suitable sites nearer to the town centre.

The Transport Assessment details traffic counts undertaken, accident data, bus stop locations, car parking and sustainable forms of transport such as walking and cycling. Traffic generation is assessed in detail with trip rate data. It concludes that the proposed site access can accommodate the vehicle movements. It recommends servicing of the site be controlled by a Service and Delivery Management Plan. This proposes that different types of service vehicles would enter and leave the site in a specified way controlled by this plan. For example, a 10.7m articulated vehicle would have to enter from the right and leave from the left. When service vehicles are on site 3 car parking spaces would be unavailable for use. A Service and Delivery Management Plan was submitted in August which includes swept path analysis for 4 different types of vehicle. A further assessment was provided in September to take into account the amended scheme and the resultant increase in floorspace from 368 m<sup>2</sup> to 380m<sup>2</sup>.

A Design and Access Statement includes a description of the site, siting, form, materials, massing, boundaries, landscaping, parking and accessibility. It concludes due to the prominence of the location the building, it provides a 'strong design identity'.

Phase 1 Geo Environmental Risk Survey concludes there are no landfill sites or mining activity within the vicinity of the site.

### **Planning History**

9/2010/0891 - The conversion of existing public house into four 1 bedroom flats and the erection of five new houses, Refused at committee (2/11/10) for the following reason:

*"The Local Planning Authority considers that the proposal would increase the volume and number of traffic movements at the access to a level which would exceed its capacity for safe use. In addition, the arrangement and confinement of parking spaces and shared turning area would be such that vehicles would find manoeuvring difficult adding to the awkward use of the access and the possibility of vehicles reversing on to the principle road, to the detriment of highway safety and thereby contrary to Saved Transport Policy 6 of the South Derbyshire Local Plan 1998.*

*A lower level of development would be more appropriate due to the severe limitations of the location of the access, the close proximity to a major 4-way road junction on an A-road and an existing bus stop".*

*Allowed at appeal 3/6/11 – The Inspector concluded that there was sufficient parking and manoeuvring and the use of the access would not cause harm to highway safety.*

### **Responses to Publicity**

Thirty-five letters of objection were received and two petitions with 99 and 1,018 signatures and 12 letters as a result of the re-consultation on the amended design and are summarised as follows:

- a) The adjacent junction is dangerous.
- b) The proposed store would cause considerable traffic disruption during peak periods.
- c) The Tesco Express in Woodville causes significant traffic disruption.
- d) Loss of trade to existing local stores within 0.5m of the site.
- e) The air con / ventilations systems should be positioned as not to affect local residents.
- f) Times of deliveries should be restricted to daytime to avoid disruption to neighbouring properties.
- g) The adjacent access to the east of the site should be kept clear.
- h) There is a potential for people loitering / youths drinking which would affect the amenity of residents.
- i) The community is already well served by local shops nearby.
- j) The existing building has character and should not be pulled down.
- k) The vacant site is being used by people to dump waste and is becoming an eyesore.
- l) Car parking provision is not sufficient.
- m) The residential proposal was refused due to the vehicle access.
- n) Existing stores provide local services such as newspaper deliveries, facilities to pay bills, parcel drop offs and cash machines which this store would not.
- o) Signage should tell customers to turn off engines and not play loud music as to avoid disturbance to residents.
- p) The proposal would not be easily accessible by pedestrians as Midway Road and Sandcliffe Road have substandard pavements and the junction is intimidatory
- q) to pedestrians.
- r) The proposal would diminish the streetscene with a windowless elevation on Sandcliffe Road and is out of character with the area.
- s) The Mason's Arms building is an imposing landmark building.
- t) The retail assessment omits the retail unit on Salisbury Drive.
- u) The introduction of traffic lights has reduced accidents but this proposal would increase them.

- v) Moving the bus stop to near the Midway Inn would increase walking time for residents and is unacceptable.
- w) The residential scheme was more sympathetic as it retained the building and would not generate significant numbers of vehicles.
- x) The entrance to the store is very close to the junction and is therefore dangerous.
- y) There are seven trees on site.
- z) The size of the proposed unit is larger than the floor area of existing small local shops
- aa) The pavement on Sandcliffe Road should be widened to improve pedestrian safety.
- bb) Deliveries can only take place when three car parking spaces are unoccupied and if they are when the service vehicle arrives it would cause congestion.

## **Responses to Consultations**

The Highway Authority in relation to the original proposal stated that Burton Road is a busy principle road subject to a 30mph speed limit. The application site is on the corner of a signal controlled four way junction. The proposal includes the relocation of the site access 20m further away from the junction where there is currently a bus lay by. The Planning and Retail Statement states that the existing public house could be converted to A1 without the need for planning permission and clarification is required. The applicant also refers to the servicing of the site being restricted to 10m rigid vehicles, controlled by a Service and Delivery Management Plan. SDDC are required to confirm if this could be controlled and enforced.

Clarification on TRICS data which includes stores that do not have car parking and are not comparable. Similar sites should be assessed. The Transport Assessment states there would be 15 car parking spaces and only 12 are shown. Parking provision should be on the basis of 1 space per 14m<sup>2</sup> (these standards relate to larger stores as there is no guidance on store below 1000m<sup>2</sup>). Additional parking is required. The tracking diagram is unsatisfactory and details of the bus stop should be submitted. The existing bus lay-by would need to be reinstated to prevent parking and U turns.

In respect of amended plans and additional transport assessments and tracked diagrams, the Highway Authority makes the following comments:  
14 car parking spaces equates to 1 space per 26m<sup>2</sup>. Based on the fact the most recent parking standards do not provide guidance on stores below 1000m<sup>2</sup> the Highway Authority retains its concern with regard the parking provision. However, bearing in mind the parking restrictions in the vicinity, an objection on these grounds is considered difficult to sustain.

In relation to the servicing and delivery of vehicles to the site, further information states that only 10m rigid vehicles would be used and they would only approach the site from the east, turning right into and left out of the access. The swept path diagram demonstrates that a vehicle cannot enter, turn and leave in a forward gear whilst some or all of the parking spaces are occupied. No details of deliveries by larger vehicles have been submitted. The applicant's consider that the type of vehicle, times, directions and frequency of deliveries can be controlled by means of a Service and Delivery Management Plan.

However it is considered that its implementation cannot be controlled by condition nor sufficiently enforced, and on this basis the Highway Authority has retained its objection.

It considers that approval of this scheme would result in onerous manoeuvres by service and delivery vehicles within the busy, principle road in close proximity to the signalised junction in order for the vehicle to enter or leave the site. It is therefore likely to result in vehicles either crossing onto the opposite carriageway in order to reverse into or out from the site or, in the event that the car park is full or an articulated vehicle is used, parking on Burton Road in order to unload, any of which would be detrimental to highway safety and refusal is recommended. The amended design did not alter the highway implications of the site and their objection remains.

Seven Trent Water has no objection subject to a drainage condition.

The National Forest Company wishes to see 2-3 trees planted on the A511 road frontage.

The Environmental Health Manager requires a noise survey to be submitted giving details of the ventilation system and air conditioning equipment and details of deliveries and mitigation to ensure they are inaudible at the boundary. Deliveries should be restricted to 07:00 – 18:00 Monday to Friday, 08:00-13:00 on Saturdays and 10:00-12:00 on Sundays and Bank Holidays. Hours of opening should be restricted to 07:00 – 23:00. An informative to the applicant to consider signage requesting customers turn off engines and entertainment systems is recommended to minimise disturbance to residents.

The Environment Agency states that the site has low environmental sensitivity and a lack of contaminative uses historical and has no comments to make.

### **Development Plan Policies**

The relevant policies are:

EMRP: 3, 12, and 48

Local Plan: EV10, EV9, S3, T6

### **National Guidance**

NPPF Paragraphs 17, 24, 27, 56, 57, 58, 60, 62, 63, 123

Circular 11/95 – The use of conditions in planning permissions

### **Planning Considerations**

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

- Principle of development
- Residential Amenity
- Design and layout
- Highways Issues
- Retail impact

### **Planning Assessment**

#### Principle of development



The principle of a 'local shop' development is considered acceptable, as it has been proven within the sequential test that the development cannot be accommodated within or adjacent to the town centre and it would not have an adverse impact on the vitality and viability of the centre. The NPPF reiterates this guidance in paragraphs 24-27. Shopping Policies 2 and 3 in the Local Plan are in compliance with the NPPF in this respect. However, the both Local Plan Policies state that it would only be acceptable if adequate access and parking can be provided. This is a matter of contention and is discussed at length below.

### Residential Amenity

The Environmental Health Manager has highlighted the main issues with regard the proposal in respect of impacts on residential amenity. A noise survey to establish the noise impacts of the ventilation and air conditioning systems together with proposed mitigation was requested. However, as the highways concerns cannot be addressed and refusal recommended it was not considered pertinent to require the applicant to undertake further work and if this were to go to appeal could be dealt with by condition. Hours of use and deliveries and can be adequately controlled by condition together with signage requested through an informative if approval were recommended.

The proposed building would be a total height of 4.3m adjacent to the north eastern boundary with the nearest dwelling 2 Sandcliffe Road. The site land level drops down 1.7m and thus the building would only be 2.5m adjacent to the boundary. Ventilation systems are indicated on the south eastern boundary. The other nearest property to the south east is 394 Burton Road. The proposed building would be 2m from the boundary and 13m from the property itself. The existing property has a higher land level and mitigation in terms of the ventilation system could be controlled by condition. There is a delivery door proposed on the south eastern elevation but no window openings are proposed on this elevation or on the north eastern elevation. Overall, the building itself would not have a significant impact on residential amenity due to the significant lower land level and height of the building. It would be possible to mitigate potential noise nuisance through control of ventilations systems and restriction of hours of use and deliveries. It is therefore considered that the proposal would not adversely affect the amenities of neighbouring properties in accordance with Local Plan Policy S3 and NPPF paragraph 17.

### Design and layout

The original proposal attempted to copy the traditional design of the existing Mason's Arms building and buildings in the immediate area. This approach was not considered appropriate as it involved dummy window openings and failed to reach the overall quality of design that was considered to be essential on such a prominent site. It was therefore felt appropriate to request the original scheme to be assessed by OPUN Desktop Design Review Panel.

The main comments on the original scheme were that the proposed building's corner feature had an uncomfortable relationship with the boundaries of Sandcliffe Road and Burton Road and did not convincingly turn the corner. A dual pitch that reflected the dimensions of the new building may be more appropriate. Copying older features of the existing public house was probably not the solution. It would benefit from a public facing facades by pushing back or pulling forward features such as glazing. Any new scheme should recognise and respond to the important role the public house performs within the

townscape. The then proposed scheme was judged to create a visually weak boundary and emphasised the gap created by the car park.

Prior to submitting the amended scheme to the Council the applicant sought the advice of the OPUN through a desktop Design Review. Their comments were that the curved entrance canopy helps greatly in establishing and reinforcing the immediate corner of the road junction and the extra height achieves presence. Boundaries have improved and are better defined. The flat roof ties in with the overall contemporary appearance as do the cladding materials proposed. Overall the scheme is considered to be an improvement on the previous scheme as it has recognised and responded to some of the important roles the public house performed in the townscape.

The Design Excellence Officer considers that the applicant has taken the comments from OPUN on board and the scheme now represents an improvement in terms of overall design. The building has a feature that turns the corner and provides a dominant building in this prominent location. The proposal is considered to be a high quality design that is contemporary and not pastiche. Paragraph 56 of the NPPF states that *"The Government attaches great importance to the design of the built environment. Good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people"*. Paragraph 58 states that *"...decisions should aim to ensure that developments...function well and add to the overall quality of the area,... are visually attractive as a result of good architecture and appropriate landscaping"*. The NPPF paragraph 62 advocates the use of a Design Review Panel to ensure high standards of design and this advice has been followed in this case. Overall, the amended proposal is considered to accord with the above advice.

#### Highways Issues

The Highways Authority has a concern regarding the provision of car parking but does not consider an objection on these grounds could be sustained due to the fact that the most recent parking standards do not provide guidance on stores below 1000m<sup>2</sup> and taking in account parking restrictions in the vicinity.

The Transport Assessment submitted recommends servicing of the site be controlled by the submitted Service and Delivery Management Plan. This proposes that different types of service vehicles would enter and leave the site in a specified way controlled by this plan, for example, 10.7m Articulated vehicle would have to enter from the right and leave from the left. When service vehicles are on site 3 car parking spaces would be unavailable for use. The Highway Authority contends that the swept path diagrams demonstrate that a vehicle cannot enter, turn and leave in a forward gear whilst some or all of the parking spaces are occupied.

The applicant considers that the type of vehicle, times, directions and frequency of deliveries can be controlled by means of a Service and Delivery Management Plan. However, it is considered that its implementation cannot be enforced through a condition, as it would not meet one of the six tests in Circular 11/95. The Council considers that the level of monitoring in terms of types of vehicles and the direction they enter and leave the site does not meet the 'enforceable' test within the circular. The Highway Authority retains its objection for this reason and irrespective of this issue considers that approval of this scheme would result in onerous manoeuvres by service and delivery vehicles within the busy, principle road in close proximity to the signalised

junction. In order for vehicles to enter or leave the site it is likely that vehicles would either cross onto the opposite carriageway in order to reverse into or out from the site or, in the event that the car park is full or an articulated vehicle is used, parking on Burton Road in order to unload, any of which would be detrimental to highway safety and refusal is recommended.

Information in terms of decision notices from different Local Authorities which includes conditions for submission and implementation of a Service and Delivery Management Plans were submitted. However, this has not changed officer opinion that a condition that sought to control its implementation would not be enforceable. The proposal is therefore considered to be contrary to Local Plan Shopping Policies S2, S3 and Transport Policy 6 as adequate provision for access, manoeuvring and off street services cannot be accommodated which would interfere with the free and safe flow of traffic to the detriment of highway safety. The proposal is also contrary to NPPF Paragraph 32 which seeks to ensure that "*safe and suitable access to the site can be achieved for all people*".

### Retail Impact

The application is required to satisfy the policy requirements of the NPPF, the East Midlands Regional Plan and the South Derbyshire Local Plan. Section 2 of the NPPF relates to retail development and ensuring the vitality of town centres, of particular relevance to this application is the requirement for a sequential test to be carried out on '*planning applications for main town centre uses that are not in an existing centre and are not in accordance with an up-to-date Local Plan*' (NPPF, Para. 24). The applicants have also submitted an impact assessment, however, given the size of the development (398 sq m) and the threshold set in the NPPF (2,500 sq m), it is unlikely that the proposed development would have a significant impact on nearby centres.

In terms of the sequential test, the applicant agreed with the Council that three sites would be assessed for their suitability, availability and achievability. This assessment appears to have been done in a robust manner and none of the sites are suitable, available and achievable and as such the sequential test is passed.

As stated above, the scale of the proposal is significantly below the amount at which an impact assessment is required. As would be expected in this situation, the impact assessment carried out by the applicant has demonstrated that there is not expected to be any significant adverse impacts.

The relevance of Local Plan policies is dependant on their level of consistency with the NPPF, with a greater level of consistency resulting in greater weight (NPPF, Para. 215). The relevant policies in the Local Plan are considered to be consistent with the NPPF as they restrict new retail development outside of existing centres. The Local Plan policies (Shopping Policies 2 and 3) consider the impact and sequentially preferable sites and in addition consider the requirement of the site for other business uses, impact on the countryside, public transport provision and parking and highway matters. In terms of the impact on existing local stores both Local Plan and the NPPF policies advise only on assessment of the impact on the vitality and viability of the town centre.

Overall, the proposed development meets the broad requirements of the NPPF in terms of the sequential test and impact assessment.

### Other Issues Raised by Objectors

The loss of the existing building would be unfortunate. However, the residential conversion appears not to be viable and conversion for retail was not possible due to the differing floor levels within the building. Although the building is prominent, it does not benefit from statutory protection as it is not listable and thus consideration of this proposal for re-development has to be considered.

The Council's Tree Consultant assessed the trees as part of the residential scheme and did not consider them worthy of protection due to their species and health. A landscaping scheme would be required by condition to soften the appearance of the building.

### Conclusion

The proposal represents a high quality design that addresses the prominence of the site. A contemporary design was advocated by the OPUN Design Review Panel and the applicants have taken on board the guidance received through this process. The retail assessment is considered to be robust and there would be no undue adverse impact on the vitality and viability of the town centre and there are no sequentially preferable sites that are suitable and available within the centre. Impacts on residential amenity can be adequately controlled by condition. The proposal does not provide adequate access, manoeuvring and off-street serving arrangements as it is wholly reliant on the implementation of a Service and Delivery Management Plan which is considered to be unenforceable. The proposal would result in onerous manoeuvres by service and delivery vehicles within the busy, principle road in close proximity to the signalised junction. The proposal is therefore considered to be contrary to Local Plan Shopping Policies 2 and 3 and Transport Policy 6; and NPPF paragraph 32, as adequate provision for access, manoeuvring and off street services cannot be accommodated which would interfere with the free and safe flow of traffic to the detriment of highway safety.

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

### **Recommendation**

**Refuse** permission for the following reason:

The proposal would not provide adequate access, manoeuvring and off-street servicing arrangements as it is wholly reliant on the implementation of a Service and Delivery Management Plan which is considered to be unenforceable and thus does not meet the 'enforceable' test within Circular 11/95. The proposal would result in onerous manoeuvres by service and delivery vehicles within the busy, principle road in close proximity to the signalised junction. The proposal is therefore considered to be contrary to Local Plan Shopping Policies S and 3 and Transport Policy 6 and NPPF paragraph 32 as adequate provision for access, manoeuvring and off street servicing cannot be accommodated which would interfere with the free and safe flow of traffic to the detriment of highway safety.

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

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

<b>Reference</b>	<b>Place</b>	<b>Ward</b>	<b>Result</b>	<b>Cttee/Delegated</b>
9/2012/0034	Hatton	Hatton	Dismissed	Delegated
9/2011/0725	Coton	Seales	Dismissed	Committee
9/2011/0723	Etwall	Etwall	Dismissed	Committee



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## Appeal Decision

Site visit made on 6<sup>th</sup> August 2012

**by Jonathan G King BA(Hons) DipTP MRTPI**

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

**Decision date: 13 September 2012**

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**Appeal Ref: APP/F1040/A/12/2175364**

**168, Station Road, Hatton, Derby DE65 5EH**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Gary Supple against the decision of South Derbyshire District Council.
  - The application Ref 9/2012/0034, dated 23<sup>rd</sup> December 2011, was refused by notice dated 2<sup>nd</sup> April 2012.
  - The development proposed is the erection of 2 dwellings.
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### Decision

1. The appeal is dismissed.

### Procedural matter

2. The description of the development given above has been simplified by the Council with the agreement of the appellant from the original: "proposed residential development to construct 2no, three-bedroom semi-detached dwellings".

### Main Issues

3. The main issues in this case are the effect of the proposed development on:
  - (a) the living conditions of the occupiers of the neighbouring dwellings; and
  - (b) the character and appearance of the locality.

### Reasons

#### *Living conditions*

4. The appeal site lies between No 168 Station Road, an end-of-terrace house set back a short distance from the road and occupying the whole of the width of its plot, and No 170, a bungalow which lies further back and slightly in from its side boundaries. The proposed houses would not align directly with either: their slightly staggered front elevations would be a little behind that of the bungalow and a little forward of the rear 2-storey outrigger of No 168. The rear elevations would align approximately with that of the bungalow, but be considerably behind that of No 168.
5. There is no dispute with respect to the relationship of the new development with the bungalow. It would be acceptable.

6. The flank wall of the nearest new house would be approximately 1.4 metres from the boundary with No 168, with a length at 2-3 storey height (4.85 – 9.2 metres) of over 9 metres together with single-storey elements to the front and rear. It would contain 3 small windows, all serving the stairs. Though they would look towards a side-facing window in the kitchen / scullery of No 168, I do not believe there would be any significant risk of overlooking or loss of privacy.
7. However, taking into account its position so close to the boundary, and its considerable length and height, I agree with the Council that the flank wall would physically and visually dominate the rear of No 168. It would affect especially the outlook from the rear-facing ground floor windows in the main part, and the kitchen / scullery window in the outrigger. The outlook from the upstairs rear window would also be affected, but to a lesser degree. It would breach the guidelines relating to overbearing impact in the Council's Supplementary Planning Guidance *Housing Development and Layout*, contrary to the objectives of Housing Policy 11 of the South Derbyshire Local Plan (LP). Although the new house would lie to the north, and therefore would not have any significant effect on sunlight, it would nonetheless be unacceptably oppressive for the occupiers of No 168.
8. The appellant has submitted a planning application for permission to build a single-storey extension to the rear of No 168 in the angle between the main part of the house and the outrigger, and a short distance beyond, over the full width of the house. This would remove the side-facing window and the ground-floor, rear-facing window and create a new rear-facing window and a patio door in the extension.
9. I note the appellant's willingness to accept a condition making the construction of the proposed dwelling dependent upon the extension or alteration of No 168 in accordance with the present scheme or something similar agreed by the Council. Though unusual, such an approach could in principle be reasonable.
10. That notwithstanding, I consider it would not be proper to take this course of action if it would result in an unsatisfactory relationship between the 2 houses. Having considered the submitted plans, I believe that if the extension were to be built as intended, the proposed house would still harm the living conditions of the occupiers of No 168. Even though it would extend a somewhat shorter distance beyond the modified rear of the latter, the tallest part of the side of the new house would still significantly affect the outlook to the rear and be oppressive. In the circumstances, it would not be appropriate for me to allow the appeal with the suggested condition, as that would provide support for a potentially unacceptable outcome.

#### *Character and appearance*

11. I fully appreciate and support the Council's wish to promote good design in line with national policy and to ensure that development in villages, including Hatton, should be in keeping with the scale and character of the settlement under the provisions of LP Housing Policy 5. The National Planning Policy Framework says amongst other things that developments should respond to local character and reflect the identity of local surroundings; and that it is appropriate to seek to promote or reinforce local distinctiveness.

12. In the vicinity of the site the majority of properties on the eastern side of Station Road, including the terrace adjoining the site, have a similar building line a short distance back from the road frontage. But there are nonetheless several which are either sited further back, such as Nos 170, 174 and 176, or further forward, such as No 156. On the other side of the road the houses broadly share a building line, albeit that it is considerably further back from the roadside than the predominant line to the east. Although most of the properties on the eastern side appear to date from the late nineteenth century, there are exceptions, such as No 170 and 176. Those opposite are all much more recent. Taking into account both sides of the road, there is a wide variation in the scale, type, spacing, appearance and age of local buildings, such that there is little in the street scene which lends it a consistent character.
13. Against this background, the fact that the proposed houses would not share the predominant building line is not in my view sufficient reason to withhold permission. I do not believe that what is presently proposed would harm the character or appearance of the area in the way the Council fears.
14. The site lies within the built-up area of Hatton where there is no in-principle objection to new residential development by reference to LP Housing Policy 5A. I also note the fact that no objections have been raised with respect to flooding or highways issues. However, none of these or other matters is sufficient to outweigh my overall conclusion that, on balance, the proposed development is unacceptable for the reasons set out under my first issue. Consequently, the appeal fails.

*Jonathan G King*

Inspector





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## Appeal Decision

Site visit made on 8 August 2012

**by Susan Holland MA DipTP MRTPI**

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

**Decision date: 13 September 2012**

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**Appeal Ref: APP/F1040/A/12/2173159**

**Land adjacent to 1 Church Croft, Coton in the Elms, Swadlincote DE12 8HG**

- 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 M J Deakin against the decision of South Derbyshire District Council.
  - The application Ref 9/2011/0725, dated 5 April 2011, was refused by notice dated 1 November 2011.
  - The development proposed is the erection of a bungalow.
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### Procedural Matters

1. The application is in outline with all matters reserved for future determination.

### Decision

2. I dismiss the appeal.

### Main Issues

3. The main issues are the effects of the proposed development (a) on the character and appearance of the surrounding area and (b) on protected trees.

### Reasons

#### *Issue (a): Character and Appearance of the Area*

4. The residential development around the short cul-de-sac of Church Croft represents the redevelopment of a former farmyard under a planning permission granted in 1973. One plot, in the far northern corner, was left undeveloped. Since then, the South Derbyshire Local Plan (LP) has defined the *village envelope*, setting a development boundary beyond which all land is to be treated for planning policy purposes as open countryside. The development boundary follows the north-east side boundary of the plot at No.1, and the north-west side boundary of the plot at No.2 Church Croft, and excludes from the village envelope the vacant northern corner plot, which represents the current appeal site.
5. The appeal site stands at a level somewhat above the adjacent cornfield, from which it is separated by an earth bank on which trees and shrubs stand. The trees include a Horse-Chestnut, 2 Ash - one of which is covered by a Tree Preservation Order (TPO) (see Issue (b) below) as tree T2 - a specimen Sequoia, and a Cherry. An agricultural track runs within the field, and at field level below the bank, alongside the north-west boundary of the site. The site is therefore not on a level with the adjacent field. There is no access or

connection between the field and the site; and it is overgrown with grass, nettles and weeds. The cornfield merges with other cultivated fields beyond, into an open panorama of rolling countryside. In contrast the appeal site stands apart, and is visually separate: bounded by the bank and trees on 2 sides, and on the remaining 2 sides by residential plots containing bungalows.

6. The evidence is that the appeal site has never been a cultivated field or meadow, but was previously part of the farmyard that was redeveloped. No subsequent agricultural use has been claimed for it. The site is visually identifiable with existing village development, enclosed on 2 sides by existing residential plots. If the proposed bungalow were positioned centrally within the plot (rather than towards the outer boundaries of the site) it would align well with the layout of the existing dwellings and would not project built development significantly beyond the existing built area of the village.
7. The South Derbyshire Local Plan was adopted in 1998. It is not a 'new-style' post-2004 development plan document. The Appellant maintains that the Local Plan is out of date. The National Planning Policy Framework (the Framework) ¶215 applies to such old-style LP policies, and states that in such cases *due weight should be given to relevant policies in existing plans according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given)*.
8. LP Environment Policy 1 and Housing Policy 8 explicitly exclude new development *outside settlements* and so would exclude the appeal proposal simply on the basis that the site lies outside the village envelope as defined by the Local Plan. However, in dealing with housing development in rural areas, the Framework does not make such a simple distinction between housing within a village envelope or development boundary, and housing outside the boundary. Rather, the Framework states at ¶55 that *to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities*; advising that *local planning authorities should avoid isolated new homes in the countryside unless there are special circumstances* [those cited are not relevant to the current case].
9. The proposed dwelling would not be *isolated ... in the countryside*, but would be located within the compass of existing village built development, and would take access from within the village itself. The village has a shop, a school, a public house and a church; and a bus service to Swadlincote and Burton upon Trent. In terms of the Framework it is not an unsustainable location. Moreover, there is evidence that planning permission was previously granted for the development of a dwelling on the appeal site in conjunction with those neighbouring dwellings which have since been built. The appeal proposal would therefore be more consistent with the Framework than with the old-style Local Plan policies, and in this case the Framework carries more weight.
10. In conclusion, therefore, the appeal proposal would not have a materially harmful effect upon the character and appearance of the surrounding area in the light of prevailing planning policy for housing in rural areas.
11. The Council suggests that if the current proposal were allowed, *it is difficult to see where the line should be drawn with respect to the incremental and systematic encroachment of the countryside by inappropriate development, and that there will always be such villages with small fields abutting development boundaries*. Whether such development would be harmful, however, would depend upon the circumstances of each village and each site.

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In the course of time, up-to-date local planning policy will take these into account in the context of the Framework. In the current case, the balance of local circumstances and local and national planning policy favours the appeal proposal.

*Issue (b): Trees*

12. Trees standing within the front garden to the bungalow at No.7 Church Croft, and alongside the right of way and proposed access drive are protected as Group 1 (G1) under the South Derbyshire District (Land to the Northeast of No.1 Church Croft, Coton in the Elms) Tree Preservation Order No.347 (2011). G1 comprises 8 trees said to include oak, silver birch, maple, whitebeam, cypress and pyrus. Under the same Tree Preservation Order (TPO), 2 individual trees standing on the northeast boundary of the appeal site are also protected. These are listed as T1 – Dawn Redwood, and T2 – Ash (though the Appellant maintains that Tree T1 is not in fact a Dawn Redwood (*metasequoia*) but a *sequoiadendron giganteum* or Wellingtonia). Trees T1 and T2 stand close to the outer boundary of the site and the proposed bungalow could be positioned on the site, at reserved matters stage, so as to avoid them.
13. The Council maintains that the Oak (Tree no.1 within G1), which stands adjacent to the proposed driveway entrance off the existing tarmac driveway to No.1 Church Croft, would need to be felled to permit the construction of the driveway; and that a Birch (Tree no.7 within G1) would be a source of concern, though the Council's appeal statement does not specify the exact nature of the supposed threat to the Birch, which stands within the main body of the appeal site, adjacent to the south-west brick boundary wall, and is not itself in the line of the proposed driveway. The Council is also concerned that the access drive would run beneath the canopies of 5 other protected trees.
14. The Appellant's submitted Arboricultural Report estimates that the trees in group G1 were planted contemporaneously with the erection of the bungalows around the cul-de-sac, and so are probably around 40 years old. The Maple, Whitebeam and Birches are now tall trees with broad, merging canopies. The Oak tree, standing at the entrance to the proposed access drive (but see below) is stout but narrow, and its canopy does not have the breadth typical of an oak. However, the amenity value of the trees derives not from their value as individual specimens, but from their substantial collective contribution to visual amenity as a group. The Report does not suggest that any of the trees are in poor condition or nearing the end of their expected lifespan. Rather, the Report and accompanying Arboricultural Method Statement maintain that the driveway to the new dwelling could be formed without threat to the trees.
15. The appeal proposal includes, via the Arboricultural Method Statement, details of the 'no-dig' technology which would be used to protect the root-runs of the TPO G1 trees. The Council is concerned on the basis of the advice in British Standard BS 3998:2010 and BS 5837:2005 that *where there is constant flow from vehicles this could eventually result in root compaction and the inevitable death of the trees*. However, the proposal is for a single bungalow, which would be unlikely to generate *constant flow from vehicles*. The root-runs of the majority of the trees in the G1 group would therefore be at low risk of damage from the proposed access, providing its construction was specified by condition to follow the provisions of the Arboricultural Method Statement.
16. However, the Report was written on the basis that the access was 2.6m wide; and also on the basis that its direction could be adjusted, while maintaining a

width of 2.6m, to avoid the Oak (tree no.1 in G1). The plan ESA 12-02-01 submitted with the Arboricultural Method Statement indicates that the proposed driveway would not run in a straight line over its entire length but, from about 9m away from its junction with the existing tarmac drive, would swing north-westwards by up to 2m off the straight line, apparently into the existing front garden of No.1 Church Croft. Plan ESA 12-02-01 is drawn at 1:200 scale and represents the most detailed of the plans available, and potentially the most accurate: but it is not itself an application plan. The submitted application plan – a location plan at 1:1250 scale – indicates that the existing strip of ground intended for the access drive runs in a straight line, and suggests that there is no scope, within the width of the application site as defined on the red-line site plan, to adjust the direction of the access.

17. The Council's concern that the Oak would be felled derives from its location on the plan accompanying the TPO, which appears to locate the Oak tree close to the centre of the existing track, and to suggest that the appeal proposal would require its removal. However, the plan also appears to show that the tree stands within the driveway to the bungalow at No.1 Church Croft: whereas seen on the ground, it does not. (Nor does G1 tree no.2, which also appears from the TPO plan to stand within the driveway to No.1 Church Croft). Therefore, although the TPO plan is at 1:500 scale, its detail does not appear to be wholly reliable. The exact position of the Oak tree relative to the appeal site boundary is therefore unclear, and more than one of the submitted plans suggest that to avoid the Oak tree would entail using land which is not, according to the evidence, in the ownership or control of the Appellant.
18. The Highway Authority states that a condition should be imposed to require an access width of 3.5m *in the interests of highway safety*. The Council has imported this into its list of suggested conditions, without addressing in its statement the necessity for the condition, given that the site previously had planning permission for a dwelling. Whether that permission included the use of the access as currently proposed is not clear. Access is a reserved matter, and the submitted material contains no access plan sufficiently detailed to indicate whether the current concerns of the Highway Authority for highway safety are justified. If it were shown that the access had to be widened to 3.5m for reasons of highway safety and amenity, all trees in Group G1 would almost certainly have to be felled, with substantial harm to visual amenity.
19. In conclusion the evidence, including the submitted plans which contain significant inconsistencies, is inadequate to demonstrate that the appeal proposal would not cause material harm to the group of trees protected by the TPO; and that the proposal would not *lead to the loss of areas of woodland or specimen trees of value to their landscape setting*, and so conflict with statutory saved Environment Policy 9 of the South Derbyshire Local Plan, and with related policies 1, 26, or 30 of the East Midlands Regional Plan.

### **Overall Conclusion**

20. The conclusion in favour of the appeal proposal on Issue (a) is outweighed by the conclusion on Issue (b): so that the overall conclusion, on balance, is that this appeal should be dismissed.

*S Holland*

INSPECTOR



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## Appeal Decision

Site visit made on 23 July 2012

by **E Carr** MTCP MRTPI DipHEC

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

Decision date: 28 September 2012

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**Appeal Ref: APP/F1040/A/12/2171196**

**Etwall Lawn, Burnaston Lane, Etwall, Derby DE65 6LP**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Stuart Turner against the decision of South Derbyshire District Council.
  - The application Ref 9/2011/0723, dated 01 September 2011, was refused by notice dated 01 November 2011.
  - The development proposed is the erection of three detached dwellings on site of existing tennis court.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. In coming to a view on this proposal, I have had regard to the recently issued National Planning Policy Framework (the 'Framework'), which supersedes Planning Policy Guidance Notes (PPG's) and Planning Policy Statements (PPS's), including PPS5 'Planning for the Historic Environment'. I have also had regard to the provisions of the Localism Act 2011 and the intention to revoke Regional Strategies. However, in the context of this appeal, the relevant East Midlands Regional Plan policy does not suggest a significantly different approach from the policies within the South Derbyshire Local Plan (LP). The LP was adopted in May 1998. The main parties were given the opportunity to comment on any relevant implications for their cases as a result of the publication of the Framework and I have had regard to the comments received in coming to a decision on this appeal. I am mindful in this regard that none of the LP policies relevant to this case appear to be in conflict with the new Framework.
3. The address given on the application form, appeal form and decision notice vary. I have used that given on the appeal form in the heading above.

### Main Issues

4. The main issues in this instance relates to the effect of the proposed development on the setting of Etwall Lawn, a Grade II listed building, and on the character and appearance of the area.

## Reasons

5. The appeal site forms part of the grounds of Etwall Lawn, a grade II listed building, including the site of a disused hard tennis court. It adjoins modern housing to the east and south and the more formal garden area to Etwall Lawn to the west, the boundary of which is defined by a ha-ha and hedge planting. Etwall Lawn falls within the conservation area and the southern extent of the conservation area coincides with the boundary of the grounds to Etwall Lawn with the houses to the south. The eastern boundary coincides with the end of the more formal garden area. Most of the appeal site adjoins but lies outside of the conservation area, however part of plot C lies within it. The south and east boundaries to the appeal site and the grounds of Etwall Lawn are lined with protected trees. The Listed house and Etwall conservation area are both designated heritage assets as defined in the Framework. Access would be via a drive off Burnaston Lane, which currently serves other residential properties. The development proposed is for three detached dwellings and seeks to overcome concerns associated with an earlier scheme for four dwellings (reference 9/2009/0986/FM).
6. I accept that the appeal site lies outside the more formal gardens to Etwall Lawn and may always have done so, and that much of the appeal site lies outside the conservation area and that the Etwall Conservation Area Character Statement, adopted 9<sup>th</sup> June 2011 (ECACS) has little specific to say about the setting and grounds of Etwall Lawn, although it does refer to the generous gardens to houses along Main Street. Nevertheless, the appeal site helps to provide an appropriately spacious setting for Etwall Lawn, a substantial, individual and distinctive local house.
7. It is acknowledged that the grounds of the building were once much more extensive, but were built on in the 1960's and 1970's. However, this emphasises the importance of the remaining open land around the building and so is not in itself justification for further development. Indeed, it strengthens the importance of the remaining open land in providing a setting for Etwall Lawn. Nor would it preserve or enhance the character and appearance of the Conservation Area. In addition, the mature trees along the site boundaries are an attractive feature in themselves, they also help to separate Etwall Lawn from the more modern surrounding development and so help to define its setting. Due to its backland location the appeal site is not prominent in views from nearby publicly accessible locations, including along Main Street which forms the heart of the conservation area. However, an assessment of the character and setting is not solely based on the degree of prominence from the public domain, furthermore, in this case, the appeal site and the protected trees are clearly visible from a significant number of adjoining houses.
8. I accept that the houses would, in themselves, be well designed. However, the erection of three substantial houses in the grounds to Etwall Lawn would significantly erode the remaining open setting and materially reduce the separation between the house and the more modern housing development to the east. This would be apparent when approaching the appeal development and Etwall Lawn along the tree-lined access drive, from within the grounds to Etwall Lawn and from neighbouring houses.

9. Whilst I accept that the TPO trees could be protected from damage during construction and I understand that the buildings would stand outside the root protection zones, the trees would be very close to the proposed properties and their spreads would extend over much of the garden areas of the new dwellings. Future occupants might well be aware of the protected status when acquiring a property, nevertheless, given the close proximity it is likely that future occupants would seek to have them removed or significantly reduced in size to increase levels of internal and external daylight, to reduce problems from leaf fall and alleviate safety fears. In these circumstances, despite their protection, it would be difficult for the Council to reasonably resist such works given the proximity. The loss or significant reduction in the size of the trees would remove a valuable local feature and further erode the separation between Etwall Lawn and neighbouring houses.
10. For these reasons the proposal would harm the character and appearance of the area. In doing so it would fail to preserve the setting of Etwall Lawn. Nor would it preserve or enhance the character and appearance of the conservation area. Consequently, the proposal would not accord with policy 27 of the East Midlands Regional Plan, policies 12 and 13 of the LP and chapter 12 of the Framework.
11. Whilst accepting that the harm to the designated heritage asset would be less than significant in terms of paragraph 134 of the Framework, the public benefits of the proposal, as noted below, are not so significant that they would outweigh the harm identified.

### **Other Matters**

12. It has been put to me that this is a windfall site which would provide housing and that there is no 'garden grabbing' policy in the LP. However, these matters do not outweigh the harm identified above. In addition, I appreciate that the Framework presumes in favour of sustainable development. However, the Framework also defines sustainable development as comprising the policies in the Framework as a whole, including those relating to the historic environment. Given the conflict with these policies the proposal would not constitute sustainable development. Finally, I appreciate that the appellant sought pre-application advice. However, I have determined the appeal solely on its planning merits.
13. Whilst acknowledging local concerns in relation to living conditions of properties on Lawn Avenue, in particular No. 23, visibility at the access with Burnaston Lane, property devaluation and future responsibility for maintenance of the protected trees, they have not led me to a different overall conclusion on the appeal.

### **Conclusion**

14. For the reasons set out above, the appeal is dismissed.

*E Carr*

INSPECTOR

