

REPORT OF THE HEAD OF PLANNING SERVICES

SECTION 1: Planning Applications

SECTION 2: Appeals

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

1. PLANNING APPLICATIONS

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

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9/2009/0822	2.1	Swadlincote	Swadlincote	1
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When moving that a site visit be held, Members will be expected to consider and propose one or more of the following reasons:

1. The issues of fact raised by the Head of 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 Planning Services, arise from a Member's personal knowledge of circumstances on the ground that lead to the need for clarification that may be achieved by a site visit.
3. Implications that may be demonstrated on site arise for consistency of decision making in other similar cases.

Item 2.1

Reg. No. 9/2009/0822/U

Applicant:

Mr Scott Taylor
Evisa Fitness
5 Dane Hurst Drive
Gedling
Nottingham

Agent:

Mr Tom Edwards
Browne Jacobson
44 Castle Gate
Nottingham

Proposal: **The Change Of Use From Industrial To Gym At Unit 5
Hearthcote Road Swadlincote**

Ward: **Swadlincote**

Valid Date: **21/10/2009**

Update

This application was deferred for a site visit at the 15th December Committee. A further supporting letter has been received from the agent and this with the officer response together with the verbal updates given at the last Committee and the formal Highway Authority response have now been included in the report which has effectively been rewritten with regard to those aspects.

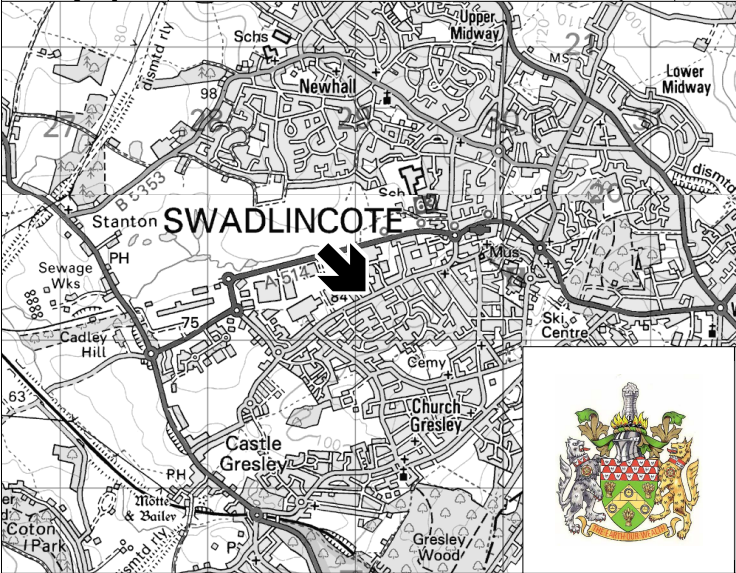
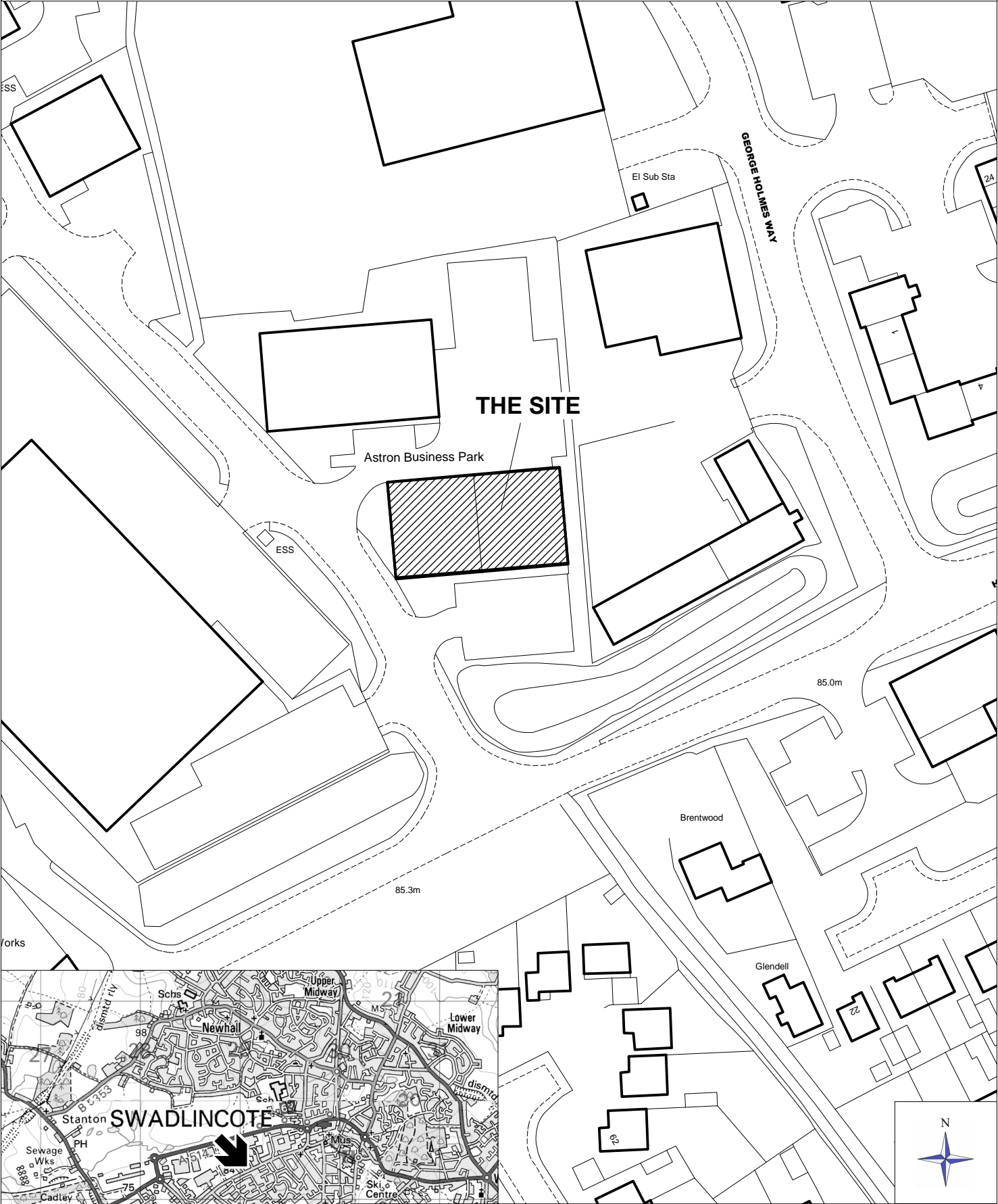
PPS 4 has now been issued in its final form and as a consequence PPS6 cancelled because the issues it covers are incorporated into the new PPS4. The report below has not been amended to take this into account, as the points made are still relevant. The reasons for refusal however have been updated to refer to the new document.

Reason for committee determination

The application is brought before Committee at the request of Councillor Mrs Lane (ward member) because she considers that the committee should debate the issues in this case, which are very finely balanced and unusual site circumstances should be considered.

Site Description

The 680 square metre industrial unit is located at the entrance to Astron Business Park on Hearthcote Road. The unit was constructed approximately 4 years ago and is a flat roof building which is steel clad with two glazed sections on the front elevation with brick surrounds. It is approximately 6m in height and thus has the potential for a mezzanine floor within it. 2m high weld mesh fencing and gates enclose the car parking area to the front. The Business Park also includes an identical unit and two large B1, B2, B8 units and one small unit. The access road therefore serves 5 units in total.



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Industrial uses dominate this side of Hearthcote Road with residential areas opposite to the south east. The proposed unit is vacant at present but has been use for storage and distribution (B8) previously. All the other units within the business park appear to be occupied by industrial uses.

Proposal

Planning permission is sought for a change of use from industrial (B1, B2 and B8) to gymnasium (D2). The proposed gymnasium would include a gymnasium floor, toilets and shower facilities, vending machines for drinks and snacks including reception and seating areas, one exercise studio for group classes or for rent for dance or martial arts classes and a sun bed. 18 car parking spaces with one disabled space is proposed. The applicant's have stated within their Travel Plan that an additional 10 car parking spaces to the rear of the unit within the car parking area of another unit can be secured to bring the total to 28. A cycle shelter for 6 bikes is proposed at the entrance of the building. Two full time staff and 4 part time staff are proposed. Proposed hours of use are- 6.30 – 21.00 Monday to Friday, 7.30 – 18.00 on Saturdays and 7.30 – 18.00 on Sundays and Bank Holidays.

At the request of the Highways Authority a Travel Plan has been submitted which includes details of the potential numbers of members of the gymnasium. As the gym would be a wholly new facility members numbers are estimated on the basis of 25 gym users per exercise station (equipment). It is envisaged that 'Evisa Fitness' would start with a total of 35 exercise stations, giving the potential for the capacity to reach 875 gym users. This figure does not include the extra users of the exercise studio which would hold 25 individuals per class and the sun bed.

The applicants expect that a maximum number of 40 individuals would be within the building at any one time and this would be expected at peak times between 6 – 8pm on a week night. The maximum time spent in the gym per individual is 1 hour and 10 minutes. The expected number of individuals travelling to the gym by car would be a maximum of 28 cars per hour. The anticipated total membership in 12 months time would be a total of 470.

Applicants' supporting information

The Alternative Premises Sites Report outlines the building and locational requirements of the proposed gymnasium which include:

Internal building requirements

- 1) between 6,000 -7000 square feet of internal floorspace,
- 2) 4000sq. ft to hold 60 pieces of gym equipment,
- 3) space of reception and office,
- 4) ground floor toilets and shower facilities close to the entrance door,
- 5) space for a ground floor exercise studio,
- 6) suitable eaves height to hold a mezzanine floor for air conditioning and potential future developments,
- 7) sufficient fire escapes,
- 8) suitable standard of building with no need of repair
- 9) internal flooring suitable for heavy equipment

External requirements:-

- 1) 18 car parking spaces with 1 disabled space
- 2) Visibility from roadside
- 3) Building must look presentable
- 4) Available roadside land for advertisement board

A table of 23 industrial or office units with Swadlincote, Burton, Hilton and Derby were assessed against the above requirements and only the proposed unit at Astron Business Park was found to be suitable and would meet all of the above needs. Reasons that the listed units were unsuitable ranged from not sufficient car parking to design / age of building unsuitable for the use. Other reasons included rent costs too high and too close to existing industrial uses. Only 3 out of the 23 units were offices and the remainder were units within established industrial areas. 15 of the units listed were within the Swadlincote area.

The Planning Statement makes the case for the use in relation to Local Plan Policies, the SDDC Employment Land Review and National Planning Policies within PPS6 and PPS4 – Consultation Document. The document states that the proposed use would not cause any greater level of noise and disruption than the current industrial use and is in a sustainable location where car use can be reduced. The unit is classified as a good quality unit within the Employment Land Review, however, this should be seen within the context of Swadlincote that traditionally has a poor level of demand for industrial uses. The proposal should not be seen as a loss of employment land as it would remain in economic use and would employ 6 people. The proposal is on the edge of Swadlincote town centre within walking distance and on a main bus route. A local need for the facility has been established as there is only one gym within the area, located at Green Bank Leisure Centre.

The Travel Plan outlines that the site is easily accessible by a choice means of transport. It is within walking distance of the town centre and residential areas and is on a main bus route. A notice board within the building would highlight and promote walking and cycling routes. There are 8 bus stops within half a mile of the site with some services running late into the evening. A total of 28 car parking spaces are available. Membership numbers are estimated as detailed in the proposal section above. Surveys of staff and members would be undertaken annually and reported back to SDDC.

An Additional Supporting Statement based on the original committee report has been received and is summarised as follows: -

In the previous appeal the Inspector did not have submissions made in respect of the fact the proposed use remained an economic use and should be considered positively. PPS4 Consultation Document states that a restrictive view of economic uses should not be taken and does not mean that employment areas be retained with B1, B2 and B8 uses. The unit is currently unoccupied and this provides an indication of lack of demand. Their client is currently negotiating with the landlord for a leasehold interest therefore there is no weakness in the marketing of the property.

The definition of edge of centre only refers to retail operations and does not refer to leisure uses and the 300m limit is therefore not applicable. However, the site performs well with regard to an out of centre site. The site is within 800m of the town centre with good transport links to it and well within appropriate walking distance. They attach a list of sites in the town centre and on the edge of centre locations as the submission was

criticised, as they were not included. None of the premises are suitable due to their size and cost and their client has looked at many premises, which do not fit in with their stated criteria and thus have been flexible in their approach. The proposed site is therefore sequentially preferable.

In relation to highways, clarification on the members is required. Whilst there is capacity for exercise machines for 875 members it is not anticipated that the club would have any more than 300 members in total. The maximum number of persons on the premises cannot exceed 40. This figure is based on 33 gym users (1 per machine), 2 members of staff, 4 members using changing / shower facilities and 1 person using the sunbed. This is based on the current usage of a gym where the applicant currently is employed. Exercise studios would be used on an ad hoc basis by existing gym users. Due to the shift patterns of the staff it is not anticipated that they will have difficulty parking as their time periods for changing are 6.15am and 3pm which are not during peak hours. No further confirmation that the additional car parking can be provided as it would be within a lease, however, a condition could prevent occupation until this additional parking is made available.

A letter from the occupier of the adjacent unit has confirmed that provision of 10 of their car parking spaces for use by the gym is acceptable and also when they close at 5pm their additional 22 spaces will also be available for gym members.

Planning History

Relevant history includes: 9/2004/1405 - The approval of reserved matters of planning application 9/2001/0762/O for the erection two buildings to form B1, B2 & B8 accommodation, approved 15/12/04

9/2001/0762 - Refurbishment, alterations and extension of buildings, plus new buildings to form B1, B2 and B8 accommodation together with ancillary loading, car parks, access and landscaping, approved 6/3/02.

Responses to Consultations

The County Highways Authority response is that the application is not acceptable as the red line is just around the building and therefore confirmation that the access and 18 car parking spaces is available is required. The additional spaces within an adjacent factory unit are currently used for storage and are within a separate gated enclosure therefore confirmation is required that these spaces are available to the applicant.

The Travel Plan is considered to be a first draft and guidance on their content has been provided. Any consent should condition that a Travel Plan is submitted and approved by the Local Planning Authority. The submitted document states that the gym would start with 35 exercise stations equating to 875 users, with a maximum of 40 users in the club at any one time. It is not clear whether this takes into account individuals attending classes at the exercise studio. Therefore, they cannot advise that consent be granted without formal inclusion of parking proposals within the application. Parking for the maximum number of vehicles expected should be included as part of the application and this number should include the use of the exercise studio and sunbed.

Severn Trent Water has not responded to the consultation.

Environmental Health has no comment to make.

Responses to Publicity

Two letters of objection were received and the reasons are summarised below:

- 1) It is not felt that Swadlincote can support another gym as there are already four;
- 2) Customers already have choice and competition is already hard between the existing facilities, this may cause hardship for one or more;
- 3) The applicant's research is insufficient as there is not only a gym within the Green Bank Leisure Centre there are three within the town centre area and one in Newhall;
- 4) Existing gym membership within the current economic climate is difficult and another facility would adversely affect the existing businesses.

Development Plan Policies

The relevant policies are:

East Midlands Regional Plan:

1 – Regional Core Objectives

46 – A Regional Approach to Behavioural Change

48 – Regional Car Parking Standards

Local Plan: Recreation and Tourism Policy 1, Transport Policy 6.

National Guidance

PPS1, PPS4 Consultation Document, and PPS6.

Planning Considerations

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

- The compatibility of the proposed use with the existing B1/B2/B8 uses on site;
- The loss of existing industrial/business space within the Swadlincote Sub-Area
- The appropriateness of location
- Highways Issues
- Other issues raised by objectors

Planning Assessment

The compatibility of the proposed use with the existing B1/B2/B8 uses on site

The unit is located at the entrance to the small business park whereby the largest units are located to the west and north west and are in industrial use. Due to the distance between units it is considered that the proposed use would not be adversely affected by noise from the existing industrial units and Environmental Health has no comments to make in relation to noise. Due to the peak times of a gymnasium being outside the normal working hours of an industrial use, a conflict between the users is not considered to be significant.

The loss of existing industrial/business space within the Swadlincote Sub-Area

The application should be considered with regard to the East Midlands Regional Plan Policy 1 “Regional Core Objectives” which states that economic prosperity, employment opportunities and regional competitiveness should be improved through “*ensuring that sufficient good quality land and premises are available to support economic activity...*” It is considered that the loss of such a premises to non B1, B2 and B8 development would result in a need to identify further new employment land in other locations which are likely to be less well related to the urban area, leading to longer journeys to work by less sustainable transport modes.

The Derby Housing Market Area Employment Land Review (March 2008) identifies a shortfall of land for B1, B2 and B8 purposes throughout the district to 2026 of some 80 ha (para 9.20). In assessing the quality of established employment sites, it concludes that the area of which this site forms is “good” quality and the associated action should be to “protect strongly”. In seeking to determine whether established employment sites can be lost to other uses, the Council has asked that premises be marketed for industrial and business purposes to determine the extent of market demand. No marketing evidence has been submitted with the application. PPS4 Consultation Document and PPS6 identify leisure uses as “town centre” uses. The site is thus considered to be located “out of centre”. A sequential assessment has been submitted with the application in accordance with national guidance.

A recent appeal decision (July 2009) at Unit 6, Woodhouse Business Centre in Woodville has concurred with this advice. A creative arts children’s nursery with dance classes in the evening was proposed at the unit which was also classified as “good” quality. The Inspector stated that based on the above document:

“...the use of Unit 6 for non B1, B2 or B8 would lead to the loss of good quality, established employment premises, which would reduce the availability of industrial / business space within the local area. Given the identified shortfall, the proposal would therefore be detrimental to the supply of employment land”.

The Review identifies a shortfall of land for B1, B2 and B8 purposes throughout the district to 2026 of some 80 ha and notes that “*certainly more land is needed to service Swadlincote*”. Therefore, given that this type of proposal which results in the loss of employment land has already been tested at appeal, it is considered a material consideration in determination of this application. The applicant has not provided any evidence of marketing information for industrial and business purposes to determine the extent of market demand but has simply stated that “*Swadlincote traditionally has a poor take up of employment sites*”. This is not sufficient, as it is not backed up by evidence. It is also not sufficient justification to state that the unit will be in economic use and would employ six people in order to warrant approval of the application. In the short term it is obvious that current lack of demand is a factor of the economic recession, however, this does not override the fact that the area has a shortfall of employment land for the long term and thus existing “good” quality premises should be safeguarded.

The South Derbyshire Economic Development Strategy identifies a number of weaknesses relating to employment sites and accommodation as follows:

1) *Limited supply of small and “grow on” workspace.*

Economic Development Officers have confirmed that at 627 sq.m, the application premises would represent a “grow-on” unit. There is little alternative accommodation in the Swadlincote area in this size range.

- 2) *“Little speculative development; design and build and freehold ownership constraints on some available employment land”.*

The application premises were built on a speculative basis and are being marketed on a freehold basis.

- 3) *“Little employment land available in the Swadlincote urban area”.*

This underlines the need to protect established good quality employment premises to avoid exacerbating this situation. This unit has planning consent for uses within B1, B2 and B8 categories and therefore provides for flexibility.

PPS4 Consultation Document advises that Local Planning Authorities should *“adopt an evidence-based approach to proposals which do not have the specific support of plan policies, for example, using relevant market and other economic information”* and advocates taking a longer term view on the benefits or costs. Therefore, the identified need has been established by a recent review of employment land which recommended that the premises should be *“protected strongly, supported and expanded”* in order to protect the long term need for employment sites within the area.

Comments in response to Additional Supporting Statement

Consultation Draft indicates a need for flexibility, but does not preclude retention within the B1, B2 and B8 use categories, where it is considered appropriate to do so by the local planning authority. It is not surprising that there is little demand for this or any other industrial unit in the midst of the current protracted economic recession. It is important that the Council takes a long term view and seeks to protect industrial and business accommodation for which there will be a need when the economy begins to grow again.

The appropriateness of location

National Policy within PPS 6 and PPS4 Consultation Document define leisure uses as “town centre” uses. This site is located approximately 800m from the edge of Swadlincote town centre and PPS6 defines edge of centre sites as *“... likely to be within 300m of a town centre boundary”*.

Comments in response to Additional Supporting Statement

PPS6 states in paragraph 1.8 that:

‘The main town centre uses to which this policy statement applies are:

- retail (including warehouse clubs and factory outlet centres);
- leisure, entertainment facilities, and the more intensive sport and recreation uses (including cinemas, restaurants, drive-through restaurants, bars and pubs, night-clubs, casinos, **health and fitness centres**, indoor bowling centres, and bingo halls)...’

Given this, the proposed use is considered a ‘main town centre use’ in PPS6. The definition of an edge of centre site in PPS6 (Annex A) states:

‘For retail purposes, a location that is well connected to and within easy walking distance (ie. up to 300 metres) of the primary shopping area.

For all other main town centre uses, this is likely to be within 300 metres of a town centre boundary.’

It is not correct to state that the edge of centre definition in Annex A 'only refers to retail operations' as the applicants have commented. (The explanatory note for this definition relates only to office development, which is considered a special case).

To clarify, whilst a leisure use that is more than 300 metres from the town centre boundary could still be considered edge of centre, this site is nearly three-times that distance away. Given that, and the fact that there is also a fairly busy road to cross en route to the town centre, the site is considered an out-of-centre location in terms of PPS6' definition.

'PPS6: Planning for Town Centres' sets out a hierarchical approach for the identification of site for D2 (Leisure) uses beginning with the town centre, followed by edge of centre. An Alternative Premises Sites report was submitted with the application, however, the sites listed did not include any town centre sites and the majority of the premises are within existing industrial areas that are also out-of-centre locations.

PPS6 states that *"in applying the sequential approach, and considering alternative sites, developers and operators should be able to demonstrate that in seeking to find a site in or on the edge of existing centres they have been flexible about their proposed business model in terms of the following planning considerations:*

- the scale of their development;*
- the format of their development;*
- car parking provision; and*
- the scope for disaggregation"*

It is not considered that the 9 internal requirements and 4 external requirements listed above in the applicant's supporting information section could be construed as "flexible". On this basis the sequential approach is not considered to accord with guidance within PPS6 and PPS4 Consultation Document which recommends the use of the PPS6 sequential approach.

Highway Issues

A letter from the occupiers of the adjacent unit has confirmed that part of that site can be used to create 10 new spaces designated for gym users and that a further 22 spaces would be available at their unit after 5pm. The total number of spaces available specifically for the gym would therefore be 28. However, given the fact that the projected numbers of members could reach 470 in 12 months time and that it is envisaged that 40 individuals could be within the building at any one time there are serious concerns with regard the level of car parking provision. It is acknowledged that the site can be accessed by walking and cycling and is on a main bus route, however, it would be difficult to control the use of cars by members and the submitted Travel Plan does little to allay these concerns.

The information submitted with the application is also contradictory as the Travel Plan states that a total of 35 exercise stations would be proposed at the start and the Alternative Premises Sites Report has an internal requirement for the premises to hold 60 pieces of gymnasium equipment. Based on the calculation of gym capacity at 25 gym users per exercise station within the Travel Plan it equates to a potential of 875 gym users and in the later report it equates to 1,500. These figures do not include the staff which would be 2 full time posts, 1 part time receptionist, 1 gym instructor for 20 hours per week and 2 fitness instructors for gym classes. Neither do the figures include

use of the sun bed facility or exercise classes. In terms of shift patterns, the two full time staff would be at the gym throughout the day, from 6.30am-9.00pm. There would also be two part time staff which would work 25 hours each. One would work a morning shift 5 days a week from 6.30am-11.30am and the other would work from 4.30pm-9.30pm 5 days a week. Unless controlled by a condition should the application be approved a mezzanine floor can be inserted and used at some point in the future for additional exercise stations and thus generating a need for further car parking spaces without the need for planning permission.

The County Highways Authority consider that the application is not acceptable and their response to the confirmation of the number of car parking spaces now confirmed as available will be reported verbally at committee.

Other issues raised by objectors

The only reason given for objection was based on the need for the facility and the impact of competition on existing gymnasiums in the town centre and Newhall. This is not a material planning consideration and thus cannot be considered in this case.

Conclusion

The proposal would result in the loss of the site to non B1, B2 and B8 uses which would exacerbate both a quantitative and qualitative shortfall in employment land and premises. The loss would need to be redressed through alternative provision, which would be likely to be less sustainably located, contrary to Regional Planning Policy 1 and the Derby Housing Market Area Employment Land Review. The sequential assessment submitted does not accord with guidance within PPS6 and PPS4 Consultation Document. Insufficient car parking provision is proposed based on estimated members and staff of the facility.

Recommendation

REFUSE permission for the following reason:

1. Astron Business Centre has an established industrial use found to be of good quality in the 'South Derbyshire Housing Market Area Employment Land Review'. The proposed change of use to D2 (Leisure) would mean the loss of industrial/business space leading to both a qualitative and quantitative deficiency of land for such uses within the Swadlincote Sub-Area contrary to East Midlands Regional Planning Policy 1 "Regional Core Objectives".
2. The sequential assessment submitted with the application does not accord with the criteria within Policy EC15 Planning Policy Statement 4 : Planning for Sustainable Economic Growth as it does not include sequentially preferable sites within town centres and edge of centre locations and the criteria used for site selection was not a flexible business model.
3. The proposed use would be detrimental to highway safety as sufficient car parking provision has not been provided based on the potential users of the facility, contrary to Local Plan Policy Transport 6.

Item **2.2**

Reg. No. **9/2009/0923/FH**

Applicant:

Mr B Littlewood
Station House Farm
2 Scropton Old Road
Hatton

Agent:

Mr Peter Diffey
Peter Diffey & Associates
Cotesbach Villa
54 Woods Lane
Stapenhill

Proposal: **The Erection Of A Detached Garage With Ancillary
Accommodation For A Dependant Relative At 2
Scropton Old Road Hatton Derby**

Ward: **Hatton**

Valid Date: **02/11/2009**

Reason for committee determination

Councillor Roberts has requested that this application be brought to Committee, as there are special personal circumstances of the applicant, which Members should consider.

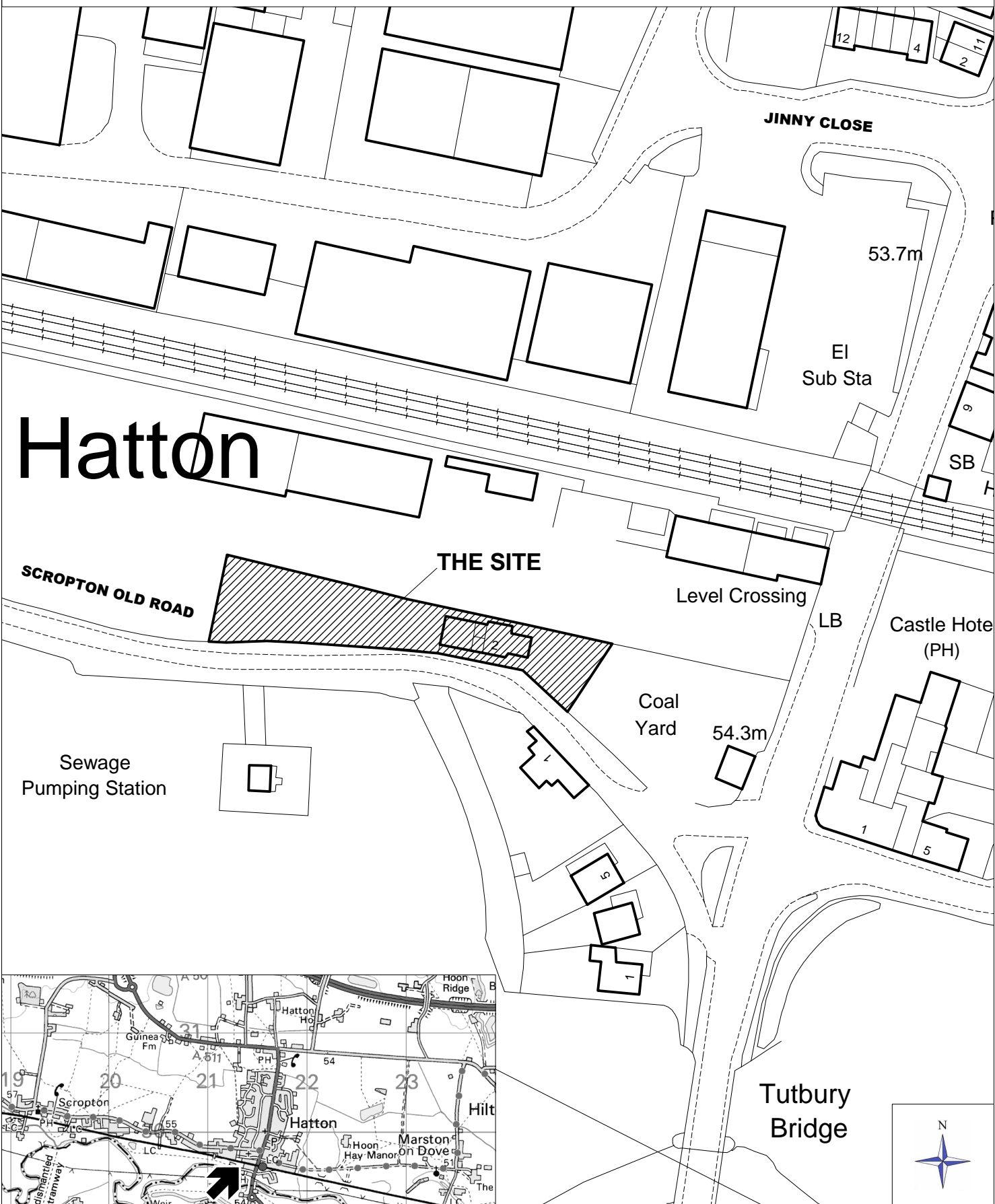
Site Description

The site forms part of the curtilage to 2 Old Scropton Road having previously been used as railway sidings as part of the branch to the Tutbury Mill. Since purchase by the applicant it has been used for domestic purposes and is currently used for the parking of vehicles and is also occupied by various domestic buildings and a small area of gardens. Substantial conifer hedges enclose the site and screen the curtilage from the Buildbase site (formerly Hatton Building Supplies) that abuts the site to the north and west. The courtyard to Old Station House abuts the application site to the east and Old Scropton Road forms the south boundary to the site with a field beyond. Within the field are agricultural buildings in the ownership of the applicant.

Proposal

The proposal involves the removal of the garage and shed and the erection of the two-storey building with parking provision at ground level and a 3-bedroom flat above but with a utility room and WC on the ground floor. The garage has been designed to house a traction engine and the applicant's son's vehicle. The son currently lives in the applicant's house.

Applicants' supporting information



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The building has been designed with the appearance of a locomotive shed in keeping with the historic associations the site has with the adjacent railway. The site is a brownfield site having been associated with 2 Old Scropton Road since 1980. It is surrounded by built development on three sides and there is also housing development to the south that almost extends to the site on the south side (houses on the junction of Old Scropton Road and Station Road).

The land is excluded from the village confine and there is no logical explanation for this as the land south of the railway has been in employment or residential use since the mid 19th century. The fact that the site forms a part of the urban form of the settlement should therefore be treated as a material planning consideration in determining the application.

The site falls within the definition of brownfield as expressed in PPS 3, it does not fall within the any area of open space nor is it visually related to the countryside, it reads as being part of the built up area and as such should be considered under the provisions of Housing Policy 5 albeit it is accepted that the site lies outside the village confine. However the site is very much within the wider physical confines of the settlement.

Even if the above arguments were not accepted, the proposal would constitute infilling within a settlement without a village envelope. Housing Policy 6 makes provision for such development and whilst this site is considered to be within the wider physical confines of the settlement, the provisions of Housing Policy 6 are such that the proposal is acceptable. There is no possibility of the development extending further west; the presumption in the policy supports the grant of planning permission.

It is not part of the case that the dwelling is necessary for the operation of an established rural business so there is no reliance on the provisions of Housing Policy 8.

Government advice is also supportive of the proposals and in particular the advice on the countryside in PPS 7 is clear as it encourages development that does not cause urban sprawl and does not cause the development of greenfield land indeed it describes the countryside as largely undeveloped countryside that separates cities, towns and villages. The site is well related to the existing built up area and as such there is nothing in PPS 7 that would support refusal of the application.

In terms of policy in the Local Plan the applicant considers that the development and its design add to the character of the locality; it has no adverse impact on the countryside and is viewed from public vantage points against the background of the Buildbase site. It is asserted that the development accords with the provisions of the Development Plan.

The design of the building is then considered and it is stated that the son wishes to remain on the site of the parent's house to pursue his interest in the steam engine and involvement in the adjacent small holding and this development would allow him a degree of independent living whilst pursuing his hobby and other activities. The design reflects the vernacular of the North Staffordshire Railway having brick arch details, black painted fascia boards, stone copings etc, (full details are in the Design and Access Statement) this is a summary of some of the design elements incorporated in the development.

Planning History

A previous application for this building was refused under delegated powers earlier this year for the following reasons: -

'The site lies outside the village confine identified in the adopted South Derbyshire Local Plan and so the provisions of retained Housing Policy 5 of that Plan do not apply. Accordingly the development falls to be considered under the provisions of Housing Policy 8 of the adopted Plan. The proposal is tantamount to the erection of a new dwelling. Although described as living ancillary accommodation for a dependent relative it is remote from the main dwelling and contains not only sufficient space for separate living, but the garage area would be capable of conversion to living accommodation. Reference is made in the Design and Access Statement to the need for the additional accommodation to assist with the operation of the adjacent smallholding. It is stated that cattle and sheep are kept at the site and that they require 24/7 attention. The existing house is well placed to provide this level of supervision and given the proximity to the village, there is no justification for the provision of a second dwelling to meet the needs of the holding. The proposal therefore does not satisfy the provisions of Housing Policy 8 nor PPS7. Especially in the absence of evidence that there is a need for a second dwelling to serve the holding and that the business could support the financing of the second dwelling. Thus in absence of any justification for the dwelling the proposal would represent an unwarranted intrusion into the countryside to the detriment of the character of the area contrary to the provisions of the above policy'.

Permission was granted for the extension of the applicant's dwelling in the 1980's.

Responses to Consultations

Hatton Parish Council has no comments or objections to the application

Responses to Publicity

None

Development Plan Policies

The relevant policies are:

East Midlands Regional Plan: Policies 1,2,3 & 12.

Saved Local Plan: Housing Policies 5 & 8.

National Guidance

PPS 7

Planning Considerations

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

- The Development Plan
- The applicant's case
- Consideration of the Reason for Refusal.

Planning Assessment

This application differs from that previously submitted in that the applicant's case is made on the basis that the proposal accords with the provisions of Housing Policies 5 & 6 of the adopted Local Plan (as opposed to a need to supervise the adjacent smallholding as was argued with the previous application). The text below sets out why those two policies are not applicable and why the application should instead be considered against Housing Policy 8.

Housing Policy 5 relates to settlements such as Hatton. The policy restricts housing development to within the village confine of Hatton as identified in the adopted Local Plan Proposals Map. The boundary to the settlement is defined along the north side of the railway line. There is a logical explanation for this boundary in that the intention was to constrain housing development in Hatton, close to the river to a defensible boundary that is the railway. It provided a strong physical confine to prevent the further expansion of housing development southwards.

The existing housing to the south of the railway, as with other similar small ribbons of residential development on the edge of other settlements that straggle out into the wider countryside was therefore deliberately excluded.

Also although not directly at risk of flooding the area would have been more vulnerable until the River Dove flood defence was provided following the flooding in November 2000. The provisions of Housing Policy 5 do not relate to the application site because the site falls some distance outside the adopted village confine.

The fact that the site is surrounded by other development on the Buildbase site is irrelevant as other policies relate to employment and business uses the expansion of which, subject to meeting certain criteria, is supported and is not dependent upon the village confine.

Housing Policy 6 makes provision for the infilling of a small gap within a substantially built up frontage in 'other rural settlements'. The site is not located within an 'other rural settlement'. The policy relates to settlements that have a character and scale much smaller than that of Hatton and the other settlements listed in Housing Policy 5. The existing dwellings do not form a rural settlement in their own right, but constitute ribbon development outside the adopted village confine of Hatton. The proposal does not constitute infilling as there is no permanent built development to the west. The building would in fact extend ribbon development along that side of the road.

Housing Policy 8 relates to land that lies outside of settlement confines. The fact is that the site lies outside the village confine and therefore by definition, it lies in the countryside. In the countryside, new housing development is strictly controlled and limited to the replacement of existing dwellings and providing dwellings to meet the needs of an established rural business.

The site does lie in the countryside as evidenced by the applicant's smallholding south of Old Scropton Road and the views afforded across the River Dove towards Tutbury Castle from Old Scropton Road. No justification has been provided to meet the requirements for a new dwelling in the countryside.

Design issues

The supporting information makes much of the design of the building taking account of the vernacular architecture of the North Staffordshire Railway. However, the design of the building lacks the monumental simplicity of the Victorian industrial buildings, which it aims to emulate. The industrial design references, such as division into bays separated by external pilasters, and a broad span with shallow pitched roof and gable parapets, are miss-matched with overtly domestic features such as the randomly placed chimneystacks, dormer windows, and the external double doors at first floor level that reflect the proposed residential use of the upper floor of the building.

Conclusion

The starting point for determining any planning application is whether or not it is in accordance with the relevant policy in the Development Plan and if not whether there are any other material planning considerations that would justify setting aside the policy.

Clearly the site lies outside the village confine and as such the application cannot be considered under the terms of Housing Policy 5. Similarly as it is not infilling within a built up frontage within an 'other rural settlement' it cannot be considered under the terms of Housing Policy 6. Lying as it does outside the defined settlement confine of Hatton the relevant Development Plan policy against which the application should be assessed is Housing Policy 8. It is considered that the justification put forward by the applicant is unconvincing with regard to the relevance of the other two policies and that no justification has been submitted sufficient to meet the criteria set out in Housing Policy 8.

Whilst the personal circumstances put forward by the applicant in regard to the housing needs of his son are not sufficient to allow a new dwelling under Housing Policy 8 there would be no policy objection to the erection of a garage on the site of a size and design sufficient to accommodate a stream engine, as this would appear as ancillary to the main dwelling and subordinate to it. An extension to the existing house to provide accommodation for the son may also be acceptable in policy terms, as again impact would be reduced. This would have the same outcome as the proposal in terms of allowing the son to have independent accommodation whilst having dry storage for the steam engine and his car to allow him to pursue his hobbies.

The principal of residential use is therefore considered unacceptable as it is contrary to the Development Plan and the design of the building itself is also considered unacceptable in that the concept of a railway building is significantly undermined by the residential elements referred to above.

Recommendation

REFUSE permission for the following reasons:

1. The site lies outside the village confine identified in the adopted South Derbyshire Local Plan and so the provisions of saved Housing Policy 5 of that Plan do not apply. Accordingly the development falls to be considered under the provisions of Housing Policy 8 of the adopted Local Plan. The proposal is tantamount to the formation of a new dwelling unit. Although described as living ancillary accommodation for a dependent relative it is remote from the main dwelling and contains not only sufficient space for separate living, but the garage area would be capable of conversion to living accommodation. The proposal therefore does not satisfy the provisions of Housing Policy 8 nor PPS7 in that there is no justification that would allow the creation of an additional dwelling and the proposal would represent an unwarranted intrusion into the countryside to the detriment of the character of the area contrary to the provisions of the above policy. The application has also been considered against the provisions of Housing Policy 6 of the saved policies in the adopted South Derbyshire Local Plan because of the arguments advanced in the supporting information that accompanied the application. The view is that the small group of dwellings served off Station Road and Old Scropton Road do not constitute an 'other rural settlement' and there is no small gap in a substantially built up frontage that would justify the consolidation of this small group of dwellings located outside the defined village confine for Hatton as infilling in accordance with that policy.
2. The design of the building lacks the monumental simplicity of the Victorian industrial buildings, which it aims to emulate. The industrial design references, such as division into bays separated by external pilasters, and a broad span with shallow pitched roof and gable parapets, are miss-matched with overtly domestic features such as the randomly placed chimneystacks, dormer windows, and the external double doors at first floor level that reflect the proposed residential use of the upper floor of the building. Accordingly, the proposal is contrary to the provisions of Policy 2 of the East Midlands Regional Plan that seeks a design led approach that takes account of the historic character of the area.

2. PLANNING AND OTHER APPEALS

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

Reference	Place	Ward	Result	Cttee/delegated
9/2009/0405	Castle Gresley	Gresley	Allowed (sort of)	delegated



Appeal Decision

Site visit made on 1 December 2009

by David Stephenson OBE
BSc(Eng) CEng MICE

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

The Planning Inspectorate
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Temple Quay House
2 The Square
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Decision date:
8 December 2009

Appeal Ref: APP/F1040/A/09/2111501

**Land adjoining 155 Station Street, Castle Gresley, Swadlincote, Derbyshire
DE11 9JY**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by A&J Design & Build Ltd against the decision of South Derbyshire District Council.
- The application Ref: 9/2009/0405/B, dated 18 May 2009, was refused by notice dated 16 July 2009.
- The application sought planning permission for the erection of a detached house without complying with a condition attached to planning permission Ref: 9/2004/1490/F, dated 3 February 2005.
- The condition in dispute is No 5 which states that: *The windows in the western wall of the building shall be permanently glazed in obscure glass.*
- The reason given for the condition is: *To avoid overlooking of adjoining property in the interest of protecting privacy.*

Decision

1. **I allow this appeal** and grant planning permission for the erection of a detached house at land adjoining 155 Station Street, Castle Gresley, Swadlincote, Derbyshire DE11 9JY in accordance with application Ref: 9/2009/0405/B, dated 18 May 2009 without compliance with condition number 5 previously imposed on planning permission Ref: 9/2004/1490/F, dated 3 February 2005 but subject to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect, and subject to the following new conditions:
 - 1) Within 3 months of the date of this permission the windows at first floor level in the west elevation facing 58 Spring Street shall be fitted with obscured glass of an opacity the details of which have been submitted to and approved in writing by the local planning authority and shall thereafter be permanently retained in that condition.
 - 2) Within 3 months of the date of this permission fencing or other solid boundary treatment as agreed in writing by the local planning authority shall be erected to a height of 2m above ground level on the western boundary with 58 Spring Street except for the length between the front boundary with Station Road and the front elevation of the dwelling hereby permitted unless otherwise agreed in writing by the local planning authority.

Main Issue

2. I consider that the main issue in this case is the effect that permitting the erection of a detached house without complying with Condition 5 of the previous planning permission would have on the living conditions of occupiers of 58 Spring Street in terms of privacy having particular regard to the effectiveness and appropriateness of the condition in dispute and any other conditions that could reasonably be imposed.

Reasons

3. The dwelling that is the subject of this appeal has already been constructed and occupied. In the western elevation it has a window at first floor level serving a bathroom and at ground floor level a window and glazed door to a utility room and a large window to a kitchen. At the time of my visit all the windows were fitted with a form of obscured glazing.
4. Views from these windows would directly overlook the main garden area of 58 Spring Street, the boundary of which is only some 1.2m away. Oblique views towards the dwelling at 58 Spring Street some 22m away are possible and this neighbouring dwelling has windows facing the appeal dwelling. Although the separation may exceed the distance guidelines for new kitchen windows from neighbouring habitable rooms as advised in the Council's Supplementary Planning Guidance (SPG) – *Housing Design and Layout*, adopted in 2004, the SPG indicates that these are not minimum distances.
5. In my experience the orientation of the properties is such that the degree of overlooking would lead to both an actual and a perceived loss of privacy that would adversely affect the living conditions of occupiers of 58 Spring Street by reducing the enjoyment that they could reasonably expect from their property. In order to maintain privacy, as sought by Policy 2 of the East Midlands Regional Plan 2009 and saved Housing Policy 11 of the South Derbyshire Local Plan, adopted in 1998, I consider that it is both necessary and reasonable to prevent overlooking from these windows.
6. Obscure glazing to the first floor window is in my opinion the most sensible option and such a requirement should remain. Obscure glazing to the ground floor windows, while restricting views from inside the dwelling, does not prevent overlooking of the dwelling and garden area of 58 Spring Street from people using the side utility door or the side access to the rear garden of the appeal dwelling, and is thus only a partial solution to the issue of loss of privacy.
7. At ground floor level overlooking could be prevented by solid screening on the boundary as an alternative to obscure glazing. Currently the occupiers of 58 Spring Street have erected a fence some 2m above ground level some 1.5m away from the common boundary with the appeal site, leaving a footpath access to a rear gate, and this prevents direct overlooking from the ground floor windows. This fence, however, is not under the control of the appellant or future owners of the appeal site and it is unreasonable to rely on this fence to provide screening in the future. It also does not restrict overlooking of the neighbouring footpath access.

8. The Appellant has requested that the requirement for obscure glazing to the ground floor windows should be removed, in part in order to improve light to the interior. I consider that this could be acceptable so long as boundary screening was provided instead, which would also have the benefit of restricting any overlooking from persons outside the side of the dwelling or from the rear garden. From measurements that I took on site I consider that a fence or other similar solid boundary treatment would need to be 2m above ground level to prevent overlooking from the ground floor windows, but I also consider that this would not be an excessive height such as to cause other problems.
9. I conclude that the existing Condition 5 is appropriate, though not fully effective, in maintaining the privacy of occupiers of 58 Spring Street, and that its removal would be detrimental to the living conditions of those occupiers. However, the ground floor windows need not be obscure glazed so long as 2m high solid boundary treatment is erected along the common boundary with 58 Spring Street from the line of the front elevation of the appeal dwelling to the rear boundary, and that the first floor windows are fitted with glazing of appropriate obscurity. In my opinion this alternative would be both appropriate and more effective than the existing Condition 5.
10. The Council also expressed concern that the removal of Condition 5 may prejudice the future development of the adjacent land, however I have no indication that such development is intended or that it would be acceptable even in principle should an application come forward, and I give this matter little weight. In any case I consider that the additional conditions I have mentioned above would prevent any such prejudice. I note that there are windows in 155 Station Street that overlook the appeal site, and the Appellant's comment that this was then developed accordingly so as not to result in loss of privacy, but I give this matter little weight in relation to the main issue in this case.
11. For the reasons given above I conclude the appeal should partly succeed. I will grant a new planning permission without the disputed condition but substituting two others and retaining the relevant non-disputed conditions from the previous permission.

David Stephenson

INSPECTOR