

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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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 1.1

Reg. No. 9/2009/0156/FH

Applicant:

Mrs Jackie Clark
Mount House
Commerce Street
Melbourne
Derby

Agent:

Mrs Jackie Clark
Mount House
Commerce Street
Melbourne
Derby

Proposal: **The retention of a support for ornamental trees at
Mount House Commerce Street Melbourne Derby**

Ward: **Melbourne**

Valid Date: **20/02/2009**

Background

The application was considered by the Committee on 12 May 2009, when it was resolved to invite the applicant to amend the application so that the structure would be reduced to a height equivalent to the top of the neighbour's kitchen window. In accordance with the Committee's suggestion, an attempt at mediation between the applicants and their neighbours has taken place conducted by the Ward Member. Unfortunately this process did not produce a mutually agreeable solution. Therefore it now falls to the Committee to determine the application and so the report is reproduced below with changes highlighted in italics.

Reason for committee determination

The application is retrospective and the Committee has previously resolved to take enforcement action.

Site Description

The property is a large Victorian detached villa, with kitchen and bedroom windows in the side elevation. These face the side elevation of a newly erected dwelling at 46A Commerce Street, which contains a kitchen door and window at ground floor level, serving an open plan kitchen, dining and living area. The main windows to this room face the property's garden and the proposal is not visible therefrom.

Proposal

The application relates to a structure, some 3.7m to 3.9 m in height, measured from the applicant's ground, and 13 m in length, comprising slender vertical metal stanchions



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affixed to the boundary wall, between which wires are held in tension. The purpose of the development is to provide a framework to pleach a recently planted Hornbeam hedge.

Applicants' supporting information

- a) The purpose of the proposal is to restore privacy lost when 46A was built and to contain and constrain the growth of the trees. Without the support the trees would grow as standard specimens, with consequent growth into the neighbouring property, far bushier, and potentially considerably higher. Unchecked, Hornbeam can grow to a height of 25 metres with a spread of 20 metres.
- b) There is no realistic alternative location for the hedge other than alongside the boundary.
- c) Planning permission was not sought in the first instance because it was believed that permission would not be needed for the support structure. The reason an application was not made immediately after being advised of the requirement is because it was understood that it would not be expedient for the authority to take enforcement action.
- d) The Hornbeam species lends itself to pleaching (effectively a 'hedge on stilts') and is a typical feature of Victorian and Edwardian landscaping. Pleaching cannot take place without the supporting structure.
- e) The support is a slim uniform structure that has no impact on reducing light or views to the neighbours. In any case it will be almost entirely hidden by the growth from the trees within two years.
- f) Hornbeam is not a high water demanding species and its root system is not invasive.
- g) The structure has been designed with flexible uprights and sliding hoops to connect the trees to the wires to reduce stress on the tree branches and the wall. The integrity of the wall, which belongs to the applicants, was taken into account as a priority.

In response to the invitation to lower the structure the applicant makes the following points:

- a) For clarification the trees are not subject to planning control and will be retained in order to restore privacy and improve outlook following the construction of the neighbouring house.*
- b) Lowering the support would not serve any purpose and would in fact be detrimental because the upper parts of the trees would grow out of control.*
- c) Non-planning issues should not be taken into account.*

Planning History

The Committee resolved to take enforcement action at its meeting on 20 January 2009.

Responses to Consultations

The Parish Council initially raised no objection but asks that consideration be shown to the neighbour's objection.

Melbourne Civic Society has no objection although it feels the height is perhaps excessive. However as there is no public interest the Society does not wish to comment further.

The Council's consultant arboriculturist has affirmed that if the trees are not pleached they will assume the growth habit as shown on the applicant's illustrative drawing.

Responses to Publicity

Two letters of support have been received, commenting that the structure is barely visible and will enable the trees to be managed in a more sympathetic manner than without it.

The adjoining neighbour has supplied reports from a chartered town planner and structural engineer. In summary the objections raised are as follows:

- a) There would be loss of daylight and sunlight to the only window in the kitchen and dining area of 46A. Members are invited to visit the site to view the impact.
- b) The appearance of the structure is overbearing. The wires are very visible from the kitchen window. It extends to a height of more than 4m relative to the ground level at No 46A.
- c) When mature the structure will create significant overshadowing to 46A. The trees should not be considered in isolation.
- d) The pleaching effect is out of character with the surrounding landscaping and area.
- e) Planting 15 trees on the boundary wall and in close proximity to 46A is likely to cause structural damage to the wall and property.
- f) The attachment of the frame and wires will increase flexural stress levels to the wall by 300%, as a result of which the wall would likely become dangerous and subject to collapse.
- g) Action under dangerous structures legislation could be too late.
- h) No action has been taken by the applicants to reduce the height of the structure despite the decision by the committee on taking enforcement action in January.

Development Plan Policies

None relevant.

National Guidance

None relevant.

Planning Considerations

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

- Impact of the structure on the general character of the area.
- Impact on the living conditions of the occupiers of the adjoining dwellinghouse.

Planning Assessment

The structure is set well back from the street and has negligible impact on the general character the area.

The structure itself is visually very lightweight and there is no demonstrable loss of light to the neighbour, or overbearance, attributable to it.

The trees do not need planning permission and in the event of refusal of permission they would assume their natural growth habit.

The matter of potential damage to structures caused by the trees is a civil matter not controllable through the planning system. If at some time in the future damage to the boundary wall occurs, resulting in the general public becoming at risk, then it could be considered a dangerous structure. As such Section 77 or 78 of the Building Act 1984 could be applied, through the Building Control section, to remove the danger.

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

Recommendation

GRANT permission.

Item 1.2

Reg. No. 9/2009/0240/RM

Applicant:

David Wilson Homes East Midlands
Forest Business Park
Cartwright Way
Bardon Hill
Coalville

Agent:

Mr Jim Toothill
David Wilson Homes East Midlands
Forest Business Park
Cartwright Way
Bardon Hill
Coalville

Proposal: **Approval of reserved matters of application 9/0890/0515
for the erection of 309 dwellings and associated works
at Phase 5 Land To The South East Of Swadlincote
Lane Castle Gresley Swadlincote**

Ward: **Church Gresley**

Valid Date: **25/03/2009**

Reason for committee determination

The application is brought before the Committee as it is a major application with more than two objections. *The application was deferred at the 16th June Committee to enable a site visit to be held and was also deferred at the 7th July Committee for a discussion between the applicant and Highways Authority with regard access from Westminster Drive. Changes to the report made since that time are shown in italics. The intervening time has also been used to secure further improvements to the scheme (see below).*

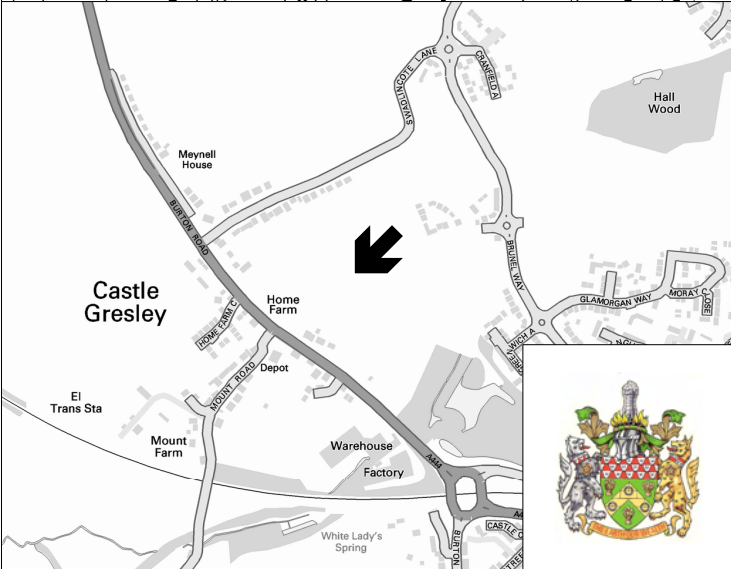
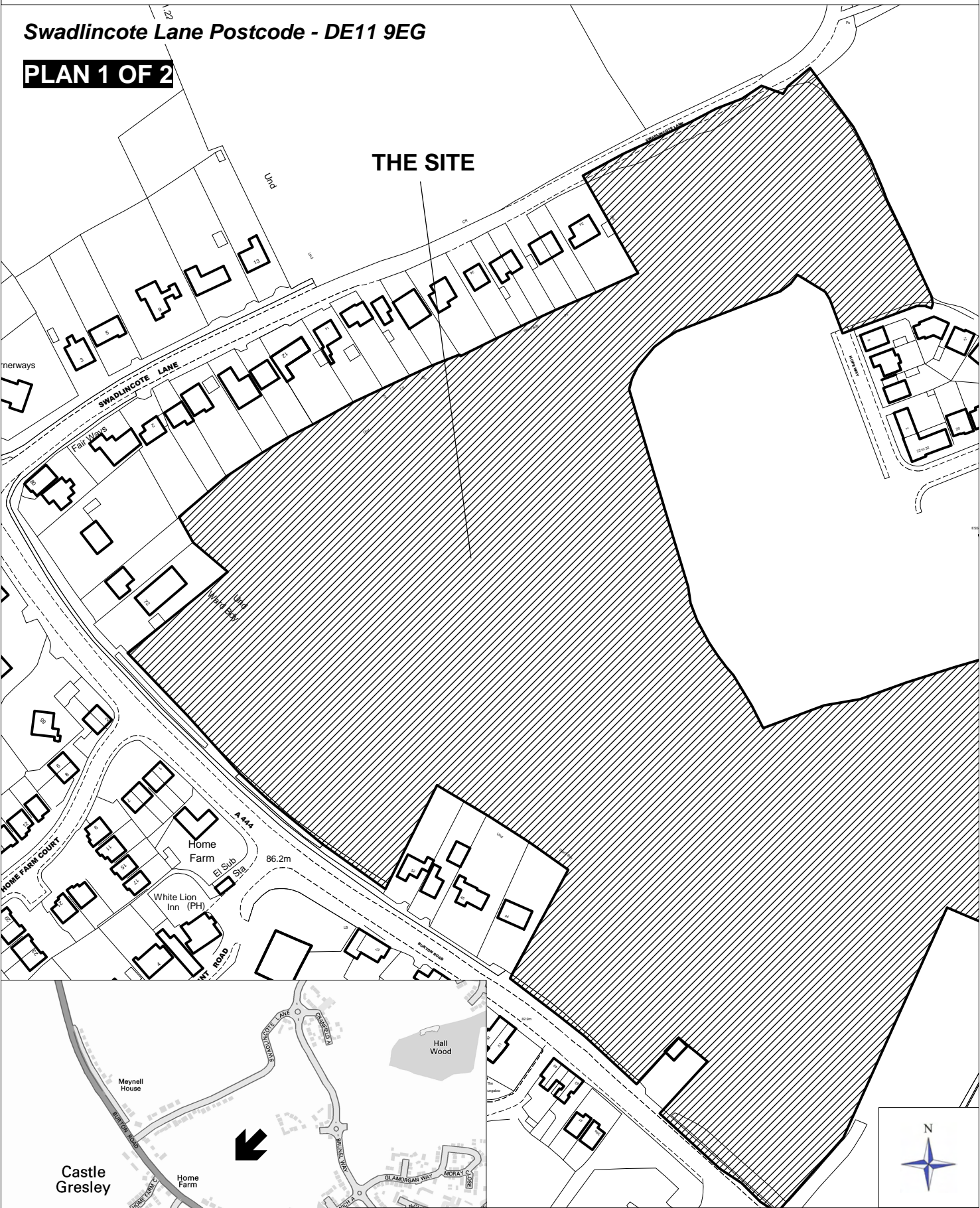
Site Description

This 8.08 hectare site is to the south of Swadlincote Lane, Castle Gresley. The main distributor road through Castleton Park is to the east and Burton Road runs along its south western boundary. The site is undulating with its highest point at the centre of the site. The land level adjacent to Burton Road is approximately 2m higher than the road level. The existing residential properties adjacent to the north western and south western boundaries on Swadlincote Lane and Burton Road are a mix of large detached dwellings to bungalows. The majority of the site boundary is immediately adjacent to Burton Road; however, there are four detached properties in the centre of the site frontage. There is also a builder's yard further along this road to the south east. This site has outline permission for a dwelling granted in May 2008.

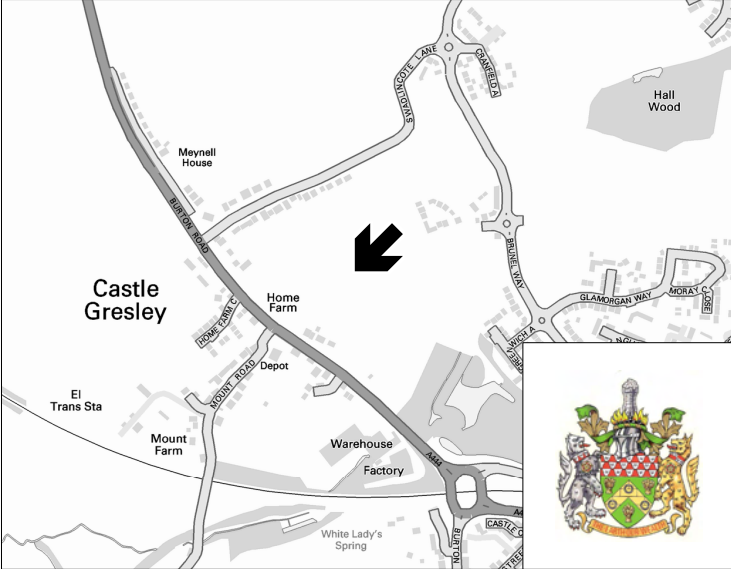
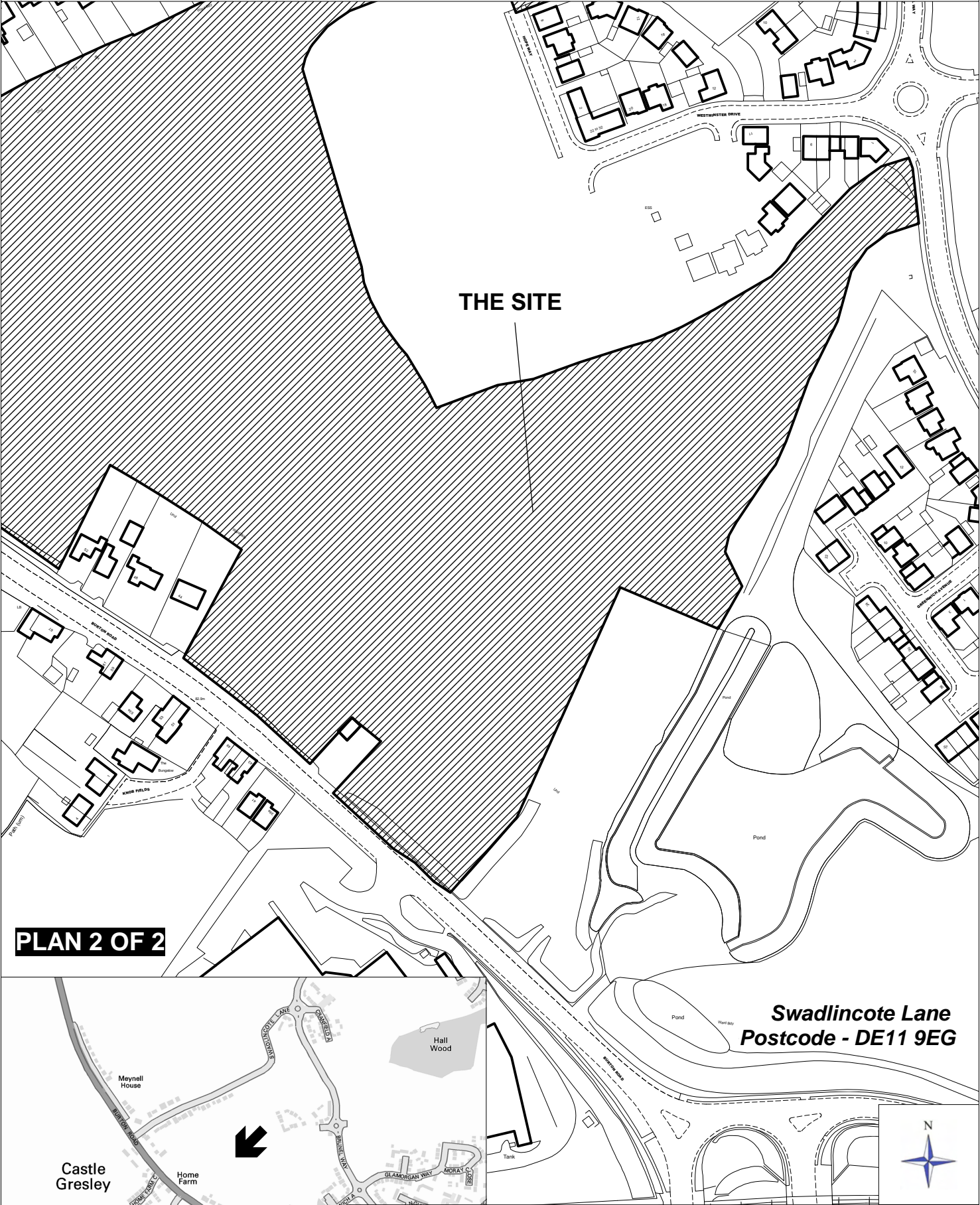
The previous phases of the Castleton Park development are continuing to be constructed from the Brunel Way roundabout along Westminster Drive. Approximately 50 dwellings are still to be constructed in the central section of the site under a previous permission for 119 dwellings approved in February 2007 (9/2006/1280). Swadlincote

Swadlincote Lane Postcode - DE11 9EG

PLAN 1 OF 2



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Lane is in the process of being stopped up and a turning head constructed which would provide access for three additional dwellings from the Lane. The north eastern part of Swadlincote Lane would serve as an access for this development from the main roundabout on Brunel Way.

Proposal

This reserved matters application proposes the erection of 309 dwellings on the remainder of the Phase 5 part of the Castleton Park development. The reserved matters are appearance, layout and scale.

The proposed footpath/cycleway runs through the centre of the site and would create a link from the main development on Brunel Way through to Burton Road to the west. All along its length dwellings front onto it. This would provide for the main diversion of the current route of footpath 40. In the centre of the site the footpath/cycleway link opens up into an area of public open space framed by dwellings. Public open space is also proposed in the southern corner of the site adjacent to the balancing lagoon and landscape buffer zone adjacent to phase 1 of the development.

The majority of the parking is to the side of dwellings or in rear parking courtyards which is a design feature of the overall development to reduce the visual impact and dominance of cars in the streetscape. The main estate roads link with the western part of Swadlincote Lane and Westminster Drive which both link directly onto main roundabouts on Brunel Way. These estate roads are curved to reduce vehicle speeds and also allow for a more interesting development where dwellings curve around the corners creating landmarks to aid navigation around the site. Along Burton Road the majority of dwellings face the road but the development would not have a direct relationship with the road as no vehicle access is proposed and the existing hedging along the frontage would be retained.

The majority of dwellings are two storey, however three storey town houses have been used to frame the footpath / cycleway link, surround the public open space and add interest on the main corners of the estate roads. Two and a half storey properties are dotted around the site often adjacent to the three storey dwellings. There are no three storey dwellings proposed adjacent to boundaries with existing residential properties on Swadlincote Lane and Burton Road. Plots 650 – 654 are two and a half storey properties adjacent to the Swadlincote Lane boundary; however, there is a distance of 35m from the rear elevation of the existing property to the north.

The range of property sizes are as follows:-

- 9 No. - 1 -2 bed apartments
- 21 No. - 2-3 bed affordable houses
- 21 No. - 1 bed life / coach houses
- 34 No. - 2 bed houses
- 93 No. - two storey 3 bed houses
- 35 No. - two and half storey 3 bed houses
- 31 No. - three storey 3 bed houses
- 44 No. - two storey 4 bed houses
- 6 No. - two and half storey 4 bed houses
- 11 No. - three storey 4 bed houses
- 1 No. - two storey 5 bed house

Twenty five dwellings would be classed under the PPS 3 definition of affordable housing. The outline application included a definition for affordable housing based on floorspace and the total of affordable houses on the overall development exceeds the specified land area in the outline Section 106. Therefore these properties are additional affordable housing.

The majority of properties would have 2 car parking spaces which includes a garage. The smaller properties and apartments would have one space with some visitor parking.

Planning History

9/0890/515 – Outline - Residential Development of approximately 58.3 hectares of land to the south east of Swadlincote Lane, Approved March 2000

Phase 5

9/2006/1280 – Approval of reserved matters of application 9/0890/0515 for the construction of 119 dwellings and associated works, Approved February 2007

9/2007/0415 – Amendment to Phase 5 of scheme approved under 9/2006/1280, Approved June 2007

Responses to Consultations

The County Highway Authority had concerns about some of the detail set out in the original submission and amended plans have now been received primarily to address these concerns. The Authority is now broadly satisfied with the scheme although it considers that access to a few remaining plots via 'drive-unders' are not ideal. However, it considers that these concerns are not sufficient to recommend refusal.

The Derbyshire Police Crime Prevention Design Advisor states that the layout plan in general is acceptable apart from a few hard barriers such as gates and fencing to all communal parking areas with open access. There is a landscaped area that runs to the rear of communal open parking area, which is a concern for security. There is no detail of enclosure or purpose/ function of this green corridor. Natural surveillance of these areas is required. It is recommended that the land be divided to provide amenity for the apartment blocks and /or incorporated into garden space where possible. As in line with the rest of this phased development, the physical security measures should comply with the "Secure by Design" scheme.

The Leisure Services Manager has no objection subject to a landscaping plan setting out which areas are to be offered for adoption.

The Environmental Protection Manager has no comment.

The Contaminated land Officer has no objection subject to a phased contamination survey condition.

Severn Trent Water has no objection subject to conditions relating to drainage.

Derbyshire Wildlife Trust has no objection but comments that there are protected species on adjoining land.

The Environment Agency has no objection subject to there being no increase in surface-water run-off from this section when compared with the original outline layout. Conditions in relation to surface water drainage are recommended.

Responses to Publicity

Twenty letters of objection were received and are summarised as follows:

- Westminster Drive is too small and narrow for the main access
- Green spaces not sufficient; there would be a lack of green children's areas
- The site is popular with dog walkers and wildlife
- Westminster Drive is the main point of entry
- Developers should supply a school or shops for this size of development
- The hedge opposite No.41 Burton Road should be retained
- There would be a loss of privacy to No.72 Burton Road due to five south eastern facing windows facing the rear of proposed properties
- There would be an overshadowing of No.72
- Plots 383 & 341 are only 1m from the boundary with No.72 Burton Road and would be overbearing
- When a garage was proposed for No.72 Burton Road it could not be set far forward but plots 383 and 341 are
- Properties on Wyedale had a 10m privacy zone and at a meeting at Gresley Old Hall, residents were told they would have a similar area
- There is a concern over maintenance of fencing due to 12 properties being on their boundary
- Parking would be insufficient
- 309 dwelling plus what has already been constructed requires a local distributor road of 6.75m in width with 2m footpaths and 2 points of access
- Future residents would use Westminster Drive as a main route to the A444 thus increasing traffic
- Plots 691 and 694 require access across a private road and 694 has paths that access onto this road
- Developers have not consulted existing residents
- Developers stated that there would be no additional traffic on the private road
- Public rights of way have been ignored
- Hope Way cannot take extra traffic as it is too narrow
- Speed bumps should be installed on Westminster Drive
- There would be a devaluation of properties on Westminster Drive
- Alternative accesses should be considered
- Residents were told that plots 502-521 were owned by the National Forest and no dwellings could be built and it would be maintained as a woodland walkway to the balancing lagoon
- Westminster Drive has an on-street parking problem
- It is unclear what is proposed as boundary treatment to the rear of 34 Swadlincote Lane
- Proposed properties are not in keeping with Swadlincote Lane
- The proposed properties to the rear of 17 Westminster Drive would be 5 metres away from the boundary and a balcony is proposed that would overlook their garden.

- The 15 metre window to window distance between the proposed properties and that of 17 Westminster Drive is below the 21 m standard and existing shrubs on the boundary which provide screening would have to be removed.
- An alternative access for construction traffic should be used as Westminster Drive is too narrow.
- *The area to the rear of properties on Westminster Drive was designed as a landscape area with a woodland walkway which would also contain surface water run-off.*
- *There is woodland with a pond in the vicinity so there may be Great Crested Newts in the area.*
- *What does the term “Affordable Housing” mean?*
- *Plots 501 –521 are small 2 bedroom properties which are not in keeping with the area.*

Development Plan Policies

The relevant policies are:

East Midlands Regional Plan: Policies 2, 3, 12, 14, 26 and 48.

Local Plan: Housing Policy 2, Housing Policy 11, Environment Policy 10, Transport Policy 6, Transport Policy 8, Recreation and Tourism Policies 4 and 8.

National Guidance

PPS 1, PPS3, PPG13, PPG17.

Planning Considerations

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

- The principle of the development
- Residential amenity
- Appearance and Burton Road streetscene
- Landscaping and Public Open Space
- Highways issues
- Other issues mentioned by objectors

Planning Assessment

Principle of Development

The principle of residential development on this land was established in the granting of outline consent in 2000 (9/0890/515). This is the final phase of the overall development and only details in terms of the appearance, layout and scale can be considered at this stage. The access and landscaping were agreed as part of the outline permission.

Residential Amenity

Firstly, in relation to the relationships between dwellings within the development a detailed assessment has been carried out to ensure that the Council's space standards and relationships which have been agreed on other phases have been met. The amended plans include some changes to distances that were considered substandard and the amended layout is considered acceptable in this regard. The orientation of properties and distances between them has ensured that private rear garden areas are not substantially overlooked.

A section of the relationship between the proposed properties and 17 Westminster Drive has been produced. This indicates that the proposed property would have a 2.1 metre lower land level than that of the existing property and thus only the first floor windows would be visible above the 1.8m boundary treatment. The proposed Juliet balcony on plot 504 would be 18 metres from this property and is only a feature and not a useable balcony. Overlooking of this property is not considered significant due to the land level difference and the fact that the proposed properties are at an angle. A window to window distance of 15 metres is therefore considered acceptable in this case.

Since the application was deferred discussion with the applicant with regard to the above relationships has brought to light an issue with regard to the existing screening on the boundaries of properties on Westminster Drive. The existing planting will have to be removed due to garden stability issues and works required on the rear boundaries of these properties. However, a 1.8m fence with a 600mm trellis has now been indicated on the layout plan together with planting on the area adjacent to these properties. An additional condition would further control these details. Plots 501 – 510 have been moved further away from the Westminster Drive properties and all window to window distances now comply with the Council's standard of 21 metres, irrespective of the proposed boundary treatment and planting. Therefore overlooking of these properties is not considered to be significant. In relation to Plot 694, the first floor bedroom windows on the southern elevation of the proposed dwelling would now be obscure glazed by condition and new bedroom windows would be inserted into the front and rear elevations, thus improving the relationship with the existing property 8 Hope Way.

Secondly, in relation to the impact on the amenity of existing properties on Swadlincote Lane, amendments have been sought to improve the relationships and increase the distances between the properties. Land levels of the existing properties and the adjacent proposed properties were requested due to the sloping nature of the site.

A distance of 30m from the rear of the proposed properties and the rear elevations of properties on Swadlincote Lane has been maintained to protect privacy. The window to window distances would vary to between 30 – 40 metres which is well in excess of the 21m standard. No.72 Burton Road is a bungalow that has five windows on its side elevation adjacent to the site. The majority of these windows are secondary; however, there is a bedroom window on this side. A distance of 18m has been achieved between the nearest proposed dwelling in order to meet the Council's space standards. Plots 383 and 341 have been moved further away from Burton Road and the boundary with No.72 Burton Road to reduce their impact on this property and to improve their appearance in the streetscene. The position of these dwellings is now considered acceptable.

In relation to land levels of the proposed properties along the boundary with existing properties on Swadlincote Lane, the majority are slightly higher (between 500mm – 700mm) which is not considered significant and would not reduce the privacy of these properties when taking into account the distance of around 30 m between the properties. Proposed properties to the rear of 72 Burton Road would be 2.4 -1.8m higher than the land level of the property. However, this follows the existing slope from Burton Road and would be at a distance of 25m and is therefore considered acceptable as it meets the SPG standard. Plots 619 – 626 proposed along the southern boundary of this property reduce in height towards Burton Road and therefore towards the rear of the property are 540mm higher and reduce to 1.6m lower than 72 Burton Road, adjacent to Burton Road. This is considered an acceptable relationship.

No's 44, 50, 48, 44 Burton Road are in the centre of the sites frontage onto Burton Road and thus would be surrounded by the proposed properties. A distance of 10 -11 metres is maintained adjacent to the boundaries with these properties and main aspect distances are between 38 - 40m. Plots 601 and 577 are nearest to these existing dwellings and each has a side elevation adjacent to the boundaries which have small bathroom windows on the first floors. The relationship with these existing properties is considered acceptable.

Adjacent to 52 Burton Road the proposed properties slab levels increase to the north east along the side boundary of the property from 200mm – 2.2m higher than the property. This follows the existing slope of the site and that of the existing property's 30 m rear garden. Proposed properties to the rear of these existing dwellings on Burton Road vary in slab level from 1.2 – 1.7m higher at a distance of 38 – 40 m. The nearest proposed property to the side of 44 Burton Road would be 1.26m lower than this dwelling.

In order to protect the amenities of these existing properties in the future permitted development rights for extensions on some plots should be removed by condition.

Appearance and Burton Road Streetscene

Seventeen of the thirty one proposed house types have been previously been approved on other phases of the development. A good mix of dwellings is proposed and the size and design is considered compatible and in keeping with that of the previous phases. A mixture of brick detailing, arched lintels, door frames and canopies, balconies and bay windows serve to add variety. The use of the three storey properties to frame the focal open space and main estate roads together with two and half storey properties with dormers serves to add interest to the internal streetscenes. Overall the design of the dwellings is considered to be high quality in accordance with national and regional guidance and the standard that has already been set on the wider site.

Along the Burton Road frontage the proposed properties maintain slab levels similar to the existing properties 44 - 52 Burton Road. The distance from the road is also similar and the majority of the proposed properties have their main elevations facing the road. The mass is broken up in sections by an internal road and the footpath/cycleway link. The site is approximately 2m higher than the road level and there is an existing 1m high hedge along the boundary which shall be retained by condition. It is acknowledged that the streetscene in this area of Burton Road would change significantly, however, considering the land levels and proposed properties only being two storey detached properties similar to existing properties they would not appear overly dominant or unexpected. Their impact could also be reduced further by careful consideration of the external materials, which shall be dealt with by condition.

Landscaping and public open space

The principle of the landscaping layout was agreed at outline stage and the size and location of the areas of public open space is compatible with this layout and that of the development masterplan. Tree lined footpaths/ cycleways have been incorporated and provide sufficiently overlooked focal points. The boundary treatments for the areas of public open space and footpath/cycleways are open railings which ensure their security. The landscape strip, referred to by the Crime Design Advisor, forms a ditch and is thus not able to be sectioned off into amenity spaces. However, the area and the communal parking is considered to be significantly overlooked by the proposed properties and

previously approved properties to provide natural surveillance and a condition relating to crime prevention measures should also help.

The amount of woodland planting and public open space was stipulated in the outline application's Section 106 together with their locations in relation to the Masterplan. A detailed soft landscaping plan can be required by condition. The hedge along the Burton Road boundary would be retained as part of this scheme.

Highways issues

An amended layout has been received which incorporates most of the changes requested by the Highways Authority and is very similar to details previously approved on recent phases. The proposed development is to be accessed from both Swadlincote Lane and Westminster Drive. The principle of obtaining access from Westminster Drive was granted in 2000 in the outline permission. Westminster Drive has thus been designed to provide access to the development and on the advice of the County Highway Authority is of sufficient width to do so. Under the latest amendment Public Footpath 39 would not require diverting but Footpath 40 would be mainly diverted via special new footpath/cycleways prior to the commencement of development (although this requires a separate authorisation).

The Highways Authority has provided the background with regard the access via Westminster Drive since the 7th July Committee as requested.

The carriageway of Westminster Drive is 5.5m wide, and this width is sufficient to allow any two vehicles to pass each other with a margin of ½ metre. Such a carriageway is therefore suitable for use as a major collector road serving developments of 300 dwellings, as per the Derbyshire County Council's 'Roads in Housing' design document (based on national design criteria in the Department of Transport document DB32), which were the guidelines at the time the road layout was first considered and accepted.

The advent of 'Manual for Streets' as the current design document has not changed this concept, except that housing layouts are now expected to be more dense. This, together with the view that traffic congestion is no longer to be considered as being an important issue, thereby results in it being acceptable for a higher number of dwellings to be served by a 5.5m wide road.

Approval of this application would result in a total of about 450 dwellings on Phase 5 as a whole. The vehicle generation from this number of dwellings is estimated at 360 veh/hr in the peak hour, some of which would use Swadlincote Lane and the remainder via Westminster Drive. If all traffic used the Westminster Drive route, this would still be well within the theoretical capacity of a 5.5m carriageway, as affirmed by para 3.13 of DB32.

A highway requirement for the acceptance of the first part of Phase 5, was for a second access to be provided via Swadlincote Lane, as a single access to Phase 5 via Westminster Drive alone, as originally submitted by the developer, was not considered acceptable, both for the purposes of access for emergency service vehicles and convenience of access generally.

The applicants have acknowledged that the layout has been planned in accordance with the Highway Authority's requirements and in phase 5 follows the same principles as on

all former phases. As such they have not made any access/road layout amendments to the scheme.

Other issues raised by objectors

The majority of objections were received from properties within the Castleton Park development and only two letters were received from existing established properties on Burton Road and Swadlincote Lane. The provision of shops, medical centre and school for the overall development was considered at outline stage and as such is detailed within the Section 106 agreement. The access for plots 691 and 694 has been amended and would no longer be accessed by a private drive. The area where plots 502 – 521 are proposed was included in the development principle plan for the outline permission and thus was not proposed as part of the woodland walkway. However, a footpath/cycleway runs along the south eastern boundary alongside the woodland buffer zone as originally envisaged and links to the balancing lagoon to the south.

All boundary treatments and retention of hedging would be controlled by conditions. The applicants are aware of the existence of protected species on adjacent land to the south of the site and the need for any appropriate licences. *There is a balancing lagoon to the south east of the site, which is not affected by this proposal. Surface water drainage is controlled by condition as recommended by the Environment Agency.*

Plots 501-521 are small 2 bedroom apartments and houses, which are classed as “affordable housing”. There is a national requirement to provide this type of accommodation on a housing site of this size and their location is considered appropriate within the site’s context. Affordable Housing is defined in PPS3 Housing as “social rented and intermediate housing, provided to specified eligible households whose needs are not met by the market”.

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. *Delegate authority to the Head of Planning Services to deal with any subsequent representations received from specific neighbours by 31 July 2009;*
- B. Subject to A, **GRANT** approval of details subject to the following conditions:
 - 1. Notwithstanding the originally submitted details, this approval shall relate to the amended layout drawing no. S0000_100_01 Rev H, the amended housetype for Plot 694 drawing no. P341.08 and elevations and floorsplans for plots 501-510 drawing no's S0000/500/03 and S0000/500/04.

Reason: For the avoidance of doubt, the original submission being considered unacceptable.
 - 2. Before any other operations are commenced (excluding site clearance), space shall be provided within the site curtilage for storage of plant and materials/ site accommodation/ loading and unloading of goods vehicles/ parking and manoeuvring of site operatives and visitors vehicles, laid out and constructed in accordance with detailed designs first submitted to and approved in writing by the Local Planning Authority, and maintained throughout the contract period in

accordance with the approved designs free from any impediment to its designated use.

Reason: To ensure the free flow of traffic on the adjoining highway.

3. Before any of the operations hereby approved are commenced, facilities shall be provided as agreed in writing with the Local Planning Authority to prevent the deposition of extraneous material on the public highway and shall be maintained throughout the construction period of the development.

Reason: In the interests of highway safety.

4. No dwelling shall be occupied until the estate road serving the dwelling has been constructed to base level in accordance with the County Council's specification for new housing development roads.

Reason: To ensure that each dwelling is afforded access.

5. The proposed private vehicular access driveways shall be surfaced with a solid, bound material (i.e. not loose chippings) prior to the occupation of the dwelling to which they relate.

Reason: To prevent the deposition of extraneous material on the public highway in the interests of highway safety.

6. Dwellings shall not be occupied until space has been provided in accordance with the approved application drawings for the parking for residents and visitors, laid out, surfaced and maintained throughout the life of the development free from any impediment to its designated use. Garages & parking spaces shall be kept available for the parking of motor vehicles at all times, and shall be used solely for the benefit of the occupants of the dwelling of which it forms part and their visitors and for no other purpose and permanently retained as such thereafter, unless otherwise agreed in writing.

Reason: To ensure that adequate parking/garaging provision is available.

7. 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.

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

8. 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 (including the retention of the hedge on the frontage of Burton Road), together with measures for their protection in the course of development.

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

9. All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed with the Local Planning Authority.

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

10. Notwithstanding any details submitted or the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended), no

development shall take place until there has been submitted to and approved in writing by the Local Planning Authority plans indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed in accordance with the approved details before the development is occupied or in accordance with a timetable which shall first have been agreed in writing with the Local Planning Authority.

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

11. Prior to the commencement of the development hereby approved full details of the proposed bin stores and the materials for surfacing the bin collection areas shall be submitted to and approved in writing by the local planning authority. The bin stores and collection areas shall be provided in accordance with the agreed details prior to occupation of the relevant dwellings.

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

12. No development shall take place until details of a scheme for the disposal of surface and foul water have been submitted to and agreed in writing by the Local Planning Authority. The scheme shall be carried out in conformity with the details which have been agreed before the development is first brought into use.

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

13. 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.

14.
 - 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.

15. The Footpath/Cycleway/Greenway/public open space shall be landscaped, hard surfaced and opened for public access prior to the occupation of the 50th dwelling on this phase unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interests of permeable public access across the site.

16. Prior to the commencement of development, a landscaping scheme (including an implementation plan) for the affected length of Swadlincote Lane so as to ensure that the route is not physically accessible by vehicular traffic, shall be submitted to and approved in writing by the Planning Authority.

Reason: In the interests of highway safety.

17. The footpath/cycleway link where it meets Burton Road shall have a gradient of 1:20.

Reason : In the interest of cycling and highway safety.

18. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008, the dwellings on plots 577, 587, 600, 601, 619, 621, 623, 632, 633, 642, 643, 644, and 645 hereby permitted shall be not be enlarged or extended without the prior grant of planning permission on an application made to the Local Planning Authority in that regard.

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 the street scene.

19. Prior to the commencement of the development of plots 501 - 510, details of the fencing and planting on the northern boundary with 15 and 17 Westminster Drive shall be submitted to and approved in writing by the Local Planning Authority and completed prior to the commencement of the development in accordance with the approved details and retained thereafter.

Reason: In the interests of the appearance of the area and to protect the amenity of adjoining properties.

20. Prior to the commencement of the development, a scheme for the phasing, completion and use of all public footpaths/cycleways and public open spaces shall be submitted to and agreed in writing by the Local Planning Authority and the areas shall be completed and made available for use in accordance with the agreed phasing.

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

21. The en-suite, bedroom and living room windows (excluding the french doors) on the first floor on the north western elevation of Plots 502 and 504 and the first floor bedroom windows on the southern elevation of Plot 694 shall be permanently glazed in obscure glass.

Reason: To avoid overlooking of adjoining properties in the interest of protecting privacy.

Informatives:

The grant of planning permission does not entitle developers to obstruct public rights of way affected by the proposal. Development, in so far as it affects the right of way, should not be started, and the right of way should be kept open for public use, until the necessary order under Section 247 or 257 of the Town and Country Planning Act 1990 for the diversion or extinguishment of the right of way has been made and confirmed. Nor should it be assumed that because planning permission has been granted an order will invariably be made or confirmed.

Further to the comments above relating to rights of way the County Highways Authority advise that the layout affects the route of definitive public right of way footpath no. 40, as shown on the definitive plan. The Footpath will need to be diverted prior to works commencing.

Any security measures implemented in compliance with the approved scheme should seek to achieve the 'Secured By Design' accreditation awarded by Derbyshire Constabulary. Written confirmation of those measures should then be provided to the Local Planning Authority.

For the discharge of the site investigation, as a minimum, the report should include:

- a) Details of an overview of the initial walkover survey to including the identification of contaminants from other sources e.g. gases emitted from natural organic deposits such as coal, or structures such as disused drains.
- b) Detailed on site sampling to identify any contamination.
- c) The locations of any contaminated zones within the site including details of more extensive and geographically wider investigation of these zones. This will provide a more reliable picture of the distribution of contamination on the site and reduce the risk of failing to discover a hot spot of contamination.
- d) An assessment of any off site impacts such as the effect on watercourses etc.
- e) A thorough explanation of the chosen remedial measures including depth, breadth of excavation and details of soil replacement.
- f) Plan of action if further contamination is identified during remediation.
- g) Details of the measures to verify that the contaminant has been removed to an acceptable level.
- h) The identification as to whether a long-term monitoring and maintenance programme is required, if so, details of the plans.
- i) Details of the long and short term risk to human health including the construction phase and post-development.
- j) Details of the British Standards or other guidelines used in both the assessment and remediation measures proposed.

Further guidance can be obtained from the following:

- I. Model Procedures for the Management of Land Contamination CLR 11
- II. CLR Guidance notes on Soil Guideline Values, DEFRA and EA
- III. Sampling Strategies for Contaminated Land, CLR4 1994, DoE.
- IV. Investigation of Potentially Contaminated Land Sites - Code of Practice, BSI 10175 2001.
- V. Secondary Model Procedure for the Development of Appropriate Soil Sampling Strategies for Land Contamination, R & D Technical Report P5 - 066/TR 2001, Environment Agency.
- VI. Guidance for the Safe Development of Housing on Land Affected by Contamination' Environment Agency. ISBN 0113101775.

C:\Scp\Planning\Gis\DNPD66.DOC Soil contamination or the potential for it is a material planning consideration and must be taken into account by a local planning authority in the determination of a planning application. This site is suspected to be contaminated with chemicals associated with farming. The responsibilities for providing information on whether and how a site is contaminated rests with the developer, as does the subsequent safe development and secure occupancy of the site. Under these circumstances, you should undertake a site investigation and submit the results and remediation proposals as part of the planning application.

If a reclamation strategy is submitted and agreed by the planning authority compliance with it will be condition of any subsequent approval.

The developer will also be required to sign a completion certificate confirming that the works of reclamation have been carried out in accordance with the agreed strategy.

This permission is subject to conditions on the outline planning permission approved under the Council's reference 9/0890/0515/O and to the agreement under Section 106 of the Town and Country Planning Act 1990 that accompanied that permission.

The Water Industry Act requires that there shall be no building over any public sewer crossing the site without the express consent of the Regional Water Company. You are asked to contact Severn Trent Water with regard to ensuring adequate protection/room for maintenance of the sewer.

The proposed layout requires the permanent closure to vehicular traffic of Swadlincote Lane adjacent plot 677. A Prohibition of Driving Order under the Town and County Planning Act must be carried out and completed prior to the commencement of development in the vicinity.

Item **1.3**

Reg. No. **9/2009/0321/J**

Applicant:

E.ON UK Plc
Westwood Way
Westwood Business Park
Coventry

Agent:

Mr Neil Riley
E.ON UK Plc
Westwood Way
Westwood Business Park
Coventry

Proposal: **Application for consent to construct and operate a combined cycle gas turbine power station on the site of Drakelow Power Station Walton Road Drakelow Burton-on-trent**

Ward: **Linton**

Valid Date: **17/04/2009**

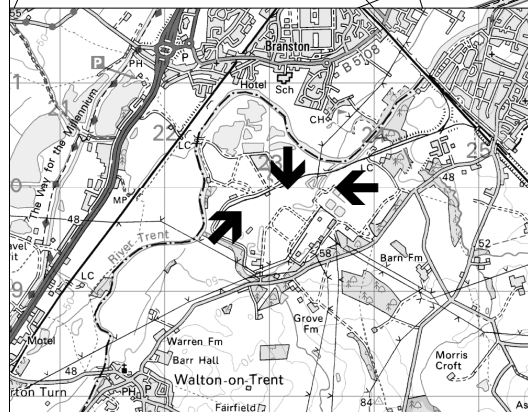
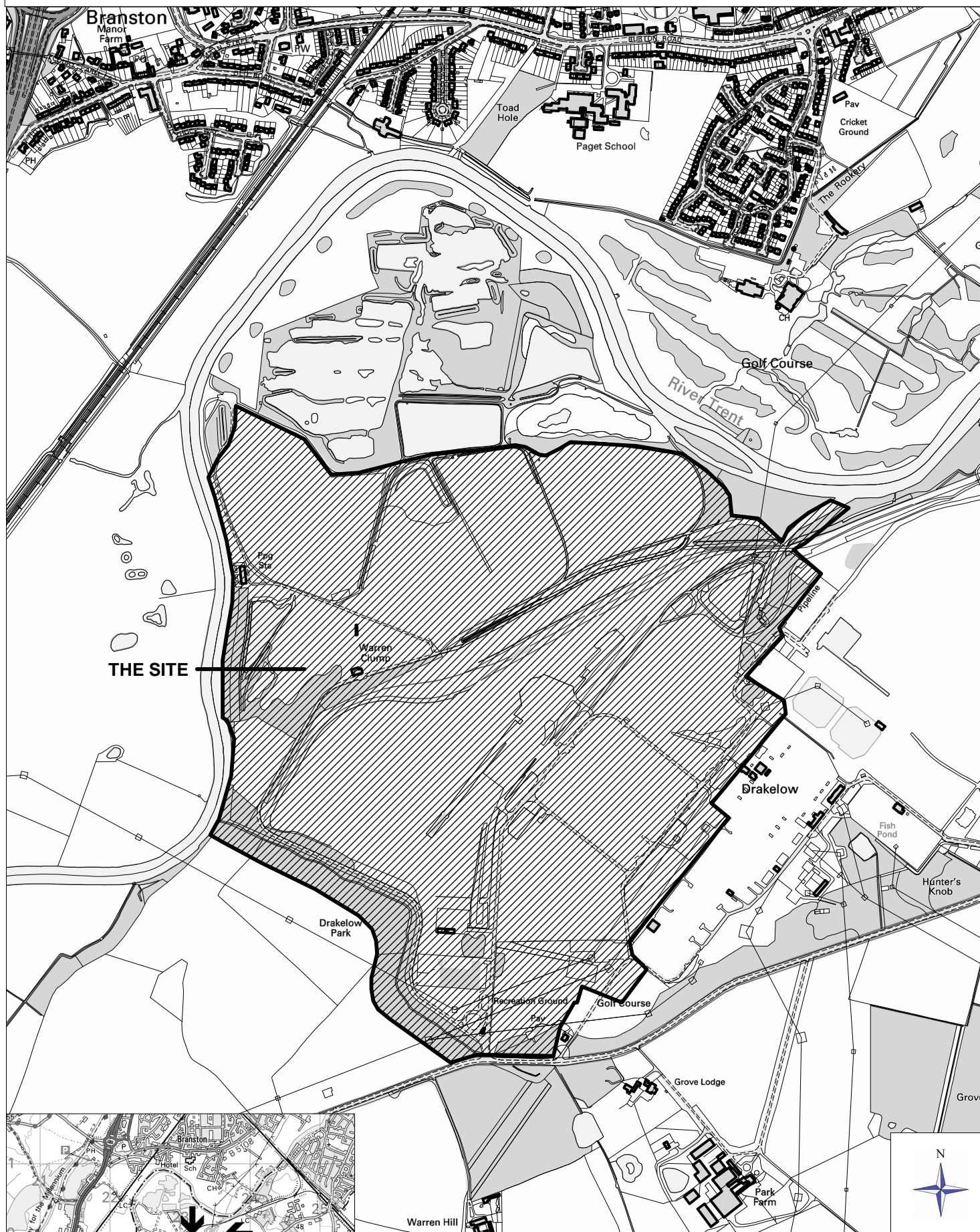
Procedures

The application for consent to construct an additional three Combined Cycle Gas Turbines (CCGT) is made to the Secretary of State under Section 36 of the Electricity Act 1989. This Council, amongst other bodies is a consultee to that procedure.

Section 36 provides, amongst other matters, that a generating station shall not be constructed, extended or operated except in accordance with a consent granted by the Secretary of State. The procedures for obtaining consent provides that where there is an objection to an application by a local planning authority, the Secretary of State must hold a public local inquiry before granting consent. In the case of objections being raised by a body that is not a local planning authority, the Secretary of State is not obliged to hold a public inquiry but is required to consider objections along with all other material considerations with a view to considering whether an inquiry should nonetheless be held.

Whilst planning permission is also required because the scale of the works fall outside of deemed permission granted under the Town and Country Planning (General Permitted Development Order) 1995, the Secretary of State is authorised to direct, upon granting consent, that planning permission for the development and for ancillary development shall be deemed to be granted subject to conditions as may be specified by Section 90 of the Town and Country Planning Act 1990.

9/2009/0321/J Drakelow Power Station, Walton Road, Drakelow



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South Derbyshire District Council. LA 100019461. 2009

Site Description and History

This site has been used for the generation of electricity following the demolition of Drakelow Hall in 1934. Drakelow A was completed in 1955, B station was completed in 1960 and C station in 1966. Stations A and B were demolished at the end of their design lives in 1999 and Station C was closed in 2003 with demolition completed in 2006.

On 16 October 2007, Section 36 consent was granted to allow for the construction and operation of a Combined Cycle Gas Turbine generating station in the location of the former C station coal stockyard area to which the Council offered no objection subject to a request that the Secretary of State consider a series of planning conditions designed to address design, materials, landscaping, on-going landscape management, archaeology and on-site contamination.

On 16 February 2009 planning permission was granted for the installation of a high pressure steel gas pipeline from the National Grid (NG) Transmission System to the Drakelow Power Station with associated works to form temporary construction accesses to facilitate this development.

The site is currently a vacant former power station site which lies in a rural location with the River Trent to the north, Roger Bullivant Ltd to the east and agricultural land to the south and west. In the past due to its size and the height of the cooling towers the power station dominated the countryside for miles around. There are protected trees to the Walton Road which block views into the site from the highway.

Proposal

This application is for an extension to the approved Drakelow D, which was given permission in 2007. It is for the construction of a further three Combined Cycle Gas Turbines (CCGT) units referred to as Drakelow E to be sited adjacent to the approved Drakelow D units on the former coal stockyard area of Drakelow C.

The new proposals would comprise of three gas fired CCGT generating units providing around 440MW (electrical) output and ancillary equipment. Each generating unit would be sited in separate turbine buildings which are estimated to be approximately 130m and 180m in length, 45m and 55m in width and approximately 25m in height with the height of the stacks being approximately 80m as with the consented Drakelow D stacks. The former cooling towers at Drakelow C were 110m in height when in operation. This proposal may be amended to two large turbine halls depending on the final design. To assess the Environmental Impact of the proposal the applicant has used the worst case scenario.

The construction works for Drakelow D which has permission would commence in 2010 and be operational in 2013 and works for the current application would commence in 2013, being operational in 2017.

Applicant's Supporting Information

The applicant has provided supporting information stating that the proposal is a modern efficient gas fired combined cycle power plant, who's technology will make it one of the

most efficient generation sites, which in turn creates less carbon, making Drakelow a significant contribution to a lower carbon economy. The application being sited on an old coal generation site is proposed as a significant step to providing the energy that is needed for the future.

Gas generation is flexible and is able to respond to cold days when there is little wind available and renewables cannot produce electricity. The UK will have a mix of renewable, nuclear, gas and coal generation in the future and a mix of fuels is important to keep prices to consumers reasonable. Affordable, reliable energy can only be guaranteed if new generation capacity is constructed over the next decade as a third of the current capacity closes.

The UK is also building gas storage schemes, which together with new pipelines from Europe and the increased capacity to import gas (as Liquid Nitrogen Gas) means gas supplies can be maintained.

The applicant further states that the proposal for the gas fired station recognises the need for a flexible generation, the need to provide new lower levels of carbon emissions and the need to have alternatives to renewables, nuclear and coal.

An Environmental Statement was submitted with the Section 36 application which has assessed the affects on air quality, water quality, terrestrial ecology, flood risk, landscape and visual effects, noise, transport, socio-economic effects, cultural heritage, health and safety and environmental management. Looking at each of these in turn, the emissions that would be released would be within the air quality strategy objectives and within World Health Organisation guidelines, plume visibility would be minimal and mitigation measures would be in place to mitigate any dust during construction. With regards to effects on global warming the Environmental Statement states that a CCGT firing natural gas powered station would emit less than half of the CO₂ per unit of electricity compared to that of a coal fired plant and as such would contribute to lower CO₂ emissions for the UK.

With regards to water quality the report acknowledges that the most significant impact of its operation would arise from the cooling water system, which would result in water returning to the River Trent at an excess in temperature, but this would not result in a breach of any relevant quality standards. There would be no adverse residual impact of significance to the terrestrial ecology and this has been confirmed by Natural England. Mitigation measures have been undertaken; to ensure that there would be no increase in the risk of flooding in the area, and to counteract any effects from construction traffic. Once the plant is operational there would be no discernable increase in traffic as a result of the development. The noise levels are unlikely to give rise to any public complaint. The construction work would provide up to 800 jobs, which may be sourced locally. There would be no impact on archaeological remains due to the disturbance of the site of the past years and all other matters would comply with regulations and licensing arrangements as required, with regards to health and safety and environmental management.

The applicants have undertaken investigations to determine whether there are any suitable combined heat and power (CHP) synergies within a suitable distance of the site and if no practical opportunities arise prior to the new plant being operational they propose that the CCGT design would be such as to not preclude the provision of heat and power to a third party in the future.

Responses to Consultation

The Highways Agency advises that there are unresolved transportation issues and therefore request that permission not be granted until their concerns have been fully addressed. The applicants have met with the Agency and have responded to their concerns and are undertaking some further remodelling work as requested from the agency to alleviate any concerns raised. This work and further comments from the Highways Agency will be reported verbally at the Committee if available.

The County Highway Authority suggests that a traffic management plan/travel plan is needed for the extraordinary traffic movements to and from the site during the construction period.

Natural England has not raised any objections to the application but has stated that they believe that there is insufficient data to create a full picture of the implications likely to affect the site proposed. This includes comments regarding the phase 1 habitat survey, data which is four years old being used and no mention of invertebrates. They also advise that sites other than Drakelow Wildlife reserve should be considered. The applicant is meeting with Natural England to address these comments and their responses will be reported verbally at the committee if available.

East Staffs Borough Council raises no objections to the application but requests: a set of mitigation measures to ensure that operational noise does not exceed background levels at Links Estate, Branston; any mitigation measures are agreed with the Council before construction commences; hours of operation restrictions and dust mitigation measures are conditioned.

The Pollution Control Officer (Contaminated Land) raises no objections and requests a standard condition be attached to any permission.

The Environment Agency raises no objections to the application and request that standard conditions be applied to the permission.

The National Forest Company raises no objections to the application and advises that loss of ecological habitats should be offset by equivalent habitat creation elsewhere on the site, a long term management plan should be in place for mature screen planting. An effective woodland management programme should be agreed and implemented, landscaping needs to fit in with the green infrastructure proposals for the wider development area and the development should be subject to the National Forest development planting guidelines.

The Derbyshire Wildlife Trust raises no objections to the application and has advised that the ecological survey and assessment have been undertaken to a generally satisfactory standard. They advise that invertebrates should be included in the surveys and offered detailed advice on specific matters. These additional comments are not reproduced within this report but have been passed previously to the applicant for their information.

National Policy

Planning Policy Statement 9

Development Plan Policies

The relevant policies are:

East Midlands Regional Plan: Policies 26, 29, 30, 32, 35, 36, 40 and 46

Saved Policies: Transport 6 and 7, Employment 1, 8, 9 and 10, Environment 1, 9, 10, 11 and 14

Planning Assessment

The principle

The site has already been given consent in 2007 for the construction of a Combine Cycle Gas Turbine power station and therefore the principle of this type of development has already been considered and was deemed acceptable previously (by the Council and the Secretary of State). The site has not altered since the previous application and the proposal to site an extension to the approved power station is therefore logical and accords with national and local policies.

The site is brownfield having been a power station in the past and the proposal is dependant on water for cooling and the pipeline application to supply the gas has been approved and would facilitate this extension together with the previously approved station. Therefore there would be no reasonable objection to the extension of the power station subject to all other matters being acceptable.

As with the previous application the location of the site in the National Forest and the design of outbuildings are the key issues in consideration of the proposal. The Environmental Impact Assessment submitted has dealt with the main effects of the proposal on human beings, flora, fauna, soil, water, air, climate, landscape and cultural heritage and also the cumulative effects of the development.

Environment

In terms of its impact on the landscape the extension proposed is considerably lower than the previous cooling towers of Drakelow C and the proposal would be much less visually intrusive. Photomontages have been produced accompanying the application showing both the proposed application and also the approved Drakelow D station. As with the previous application the Council would wish the Secretary of State to impose a condition on any consent that would enable the final design to be fully assessed, as the details are not finalised to date.

In terms of trees and woodlands, mitigation measures are recommended to protect and enhance the landscape character and due to the location of the development in the National Forest it is considered that the proposal should be accompanied by an appropriate tree-planting scheme. A condition to this effect would be requested from the Secretary of State.

Economy

The extension to the power station is anticipated to not only bring economic benefits of providing electricity to homes, industry and community facilities but also to provide approximately 800 jobs for workers during the construction phase, with the intention to draw from the local labour force. Given the current economic climate this is a substantial benefit to the District and region as a whole.

Highways

Whilst the Highways Agency has requested that the Secretary of State does not determine the application until unresolved highway issues are addressed, the applicants are in discussions with the Agency and are carrying out further remodelling works to alleviate the Agency's concerns. The County Highway Authority has not raised any objections and subject to standard conditions regarding construction traffic and a traffic management programme and appropriate mitigation measures being carried out, as per the previous application at Drakelow D, no concerns are raised.

Conclusion

There is no objection to the principle of extending the Combined Cycle Gas Turbine Power station with a further three turbines that produces energy more efficiently, providing energy and jobs for the District. Any concerns that are unresolved can be conditioned and are a result of information and detail that is not yet available.

Recommendation

That the Secretary of State be advised that:

- A. This Council raises **No Objection** to the principle of redevelopment of the site based on the Environmental Statement submitted that the buildings would be 25m in height.
- B. If the detailed design results in a building above 25m then the Council would wish to have the opportunity to evaluate this impact.
- C. It is requested that the matters of concern raised in this report be dealt with by the Secretary of State as appropriate with the possibility of the inclusion of the following conditions and notes to applicant:
 - 1. Prior to commencement of the development, details of the siting, design and external appearance of the buildings, the means of access thereto and the landscaping of the site shall be agreed in writing with the Local Planning Authority.
 - 2. Prior to the commencement of development, details, specifications and where necessary, samples of facing materials to be used in the construction of the external walls and roofs of the buildings shall be submitted to and approved in writing by the Local Planning Authority.
 - 3. No development shall take place until there has been submitted to and approved by the Local Planning Authority a scheme of landscaping/tree planting, 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 during the course of the development.
 - 4. All hard and soft landscaping works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed with the Local Planning Authority.
 - 5. A landscape management plan which shall include long term design objectives, management responsibilities and maintenance schedules for all landscape areas shall be submitted to and approved by the Local Planning Authority prior to the occupation of the development. The landscape management plan shall be carried out as approved.

6. 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 must 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 should 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) If required by the conceptual site model, no development shall take place until monitoring at the site for the presence of ground 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'.
- e) 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 to the satisfaction of the LPA.
7. No construction works associated with the Development shall take place on the site at any time on any Sunday or Bank Holiday nor any other day except between the following times:
- | | |
|------------------|-------------|
| Monday to Friday | 0700 – 2200 |
| Saturday | 0730 – 1730 |
- Unless such work is associated with an emergency or is carried out with the prior written approval of the District Council.
8. Before any operations commence involving the movement of materials in bulk to or from the site, facilities shall be provided that have previously been approved in writing by the Local Planning Authority, to prevent the deposition of mud or extraneous material on the access roads to the site.
9. No development shall take place until a schedule of landscape maintenance for a minimum period of 5 years has been submitted to and approved in writing by the Local Planning Authority. The schedule shall include details of the arrangements for its implementation. Development shall be carried out in accordance with the approved schedule.
10. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next

- planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.
11. The commencement of the Development shall not take place until there has been submitted to, approved in writing by, and deposited with the District Council a Traffic Management Plan. The approved Plan shall be adhered to throughout the period of the construction of the Development, unless any variation has been approved by the District Council.

Item **1.4**

Reg. No. **9/2009/0399/FM**

Applicant:

Mr & Mrs M Matthews
1 The Gardens
Chapel Lane
Church Broughton
Derby

Agent:

Mr S Taylor
Hammerson Fields
Ashbourne Road
Church Broughton
Derby

Proposal: **The erection of a detached dwelling on land to north of
1 The Gardens Chapel Lane Church Broughton Derby**

Ward: **North West**

Valid Date: **09/06/2009**

Reason for committee determination

Councillor Bale has requested this case be brought to Committee, as the issues are very finely balanced.

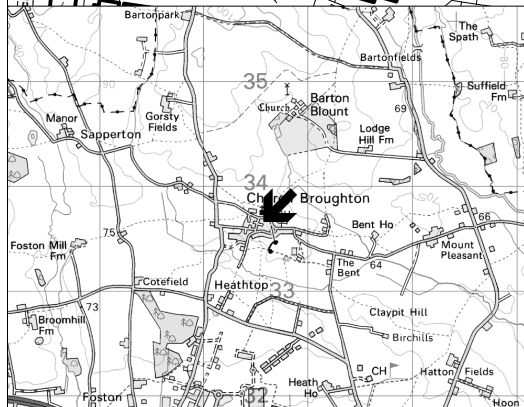
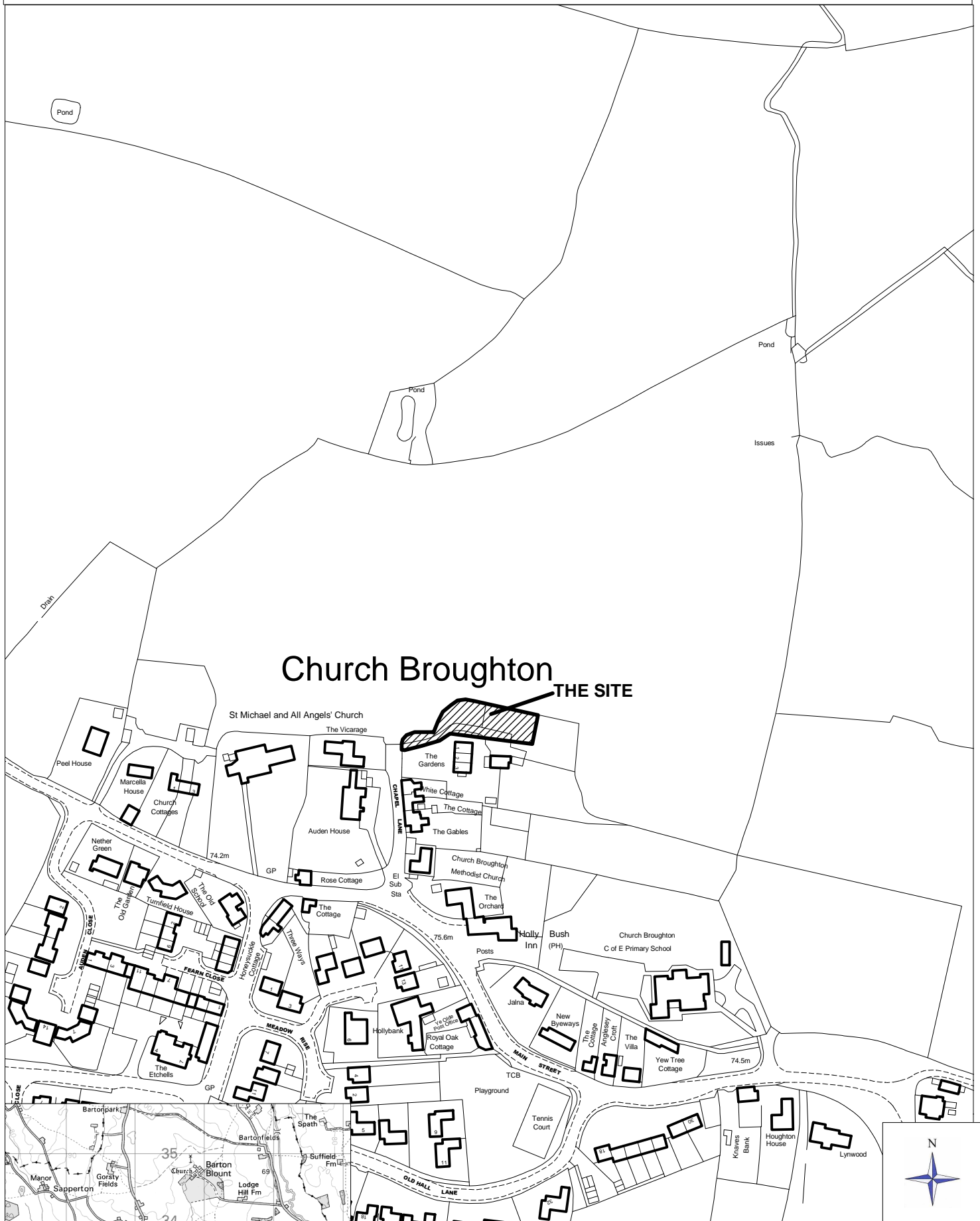
Site Description

The plot comprises the side garden to 1 The Gardens. The house has windows that face the proposed plot and that flank also contains the 'front' door to the house. There is no firm boundary between the site and the house but a low hedge forms the north boundary to the plot. A hedge also forms the east boundary. There is evidence of archaeological remains in the field north of the proposed plot. There are two public footpaths that diverge at the end of Chapel Lane, one in a northeast direction, the other to the northwest. Neither footpath would be affected by the development.

Proposal

Access to the site would be from Chapel Lane using the same access point as the existing house. The drive for the new plot would diverge almost as soon as it enters the drive. The dwelling would have 4 bedrooms and be constructed in brick and blue tiles. The windows would be timber and have a painted finish. Roof and other grey water would be collected for use for flushing toilets. Foul water disposal would be to the main drains.

The building has been designed such that no clear glazed windows would overlook the existing house.



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South Derbyshire District Council. LA 100019461. 2009

Applicants' supporting information

The applicants state that the site is almost flat and the house has been positioned to reflect the line of other houses on Chapel Lane. It is also designed to ensure as little impact as possible on the countryside and neighbouring dwellings and would be built in materials that are appropriate to the locality. The applicants are willing to accept a landscaping condition to help to mitigate the impact of the development.

The site lies within the village confine and it is noted that the abandoned replacement Local Plan would have sanctioned infill development in Church Broughton. This site lies within the defined boundary to the village and as such this presents a defensible boundary beyond which further development would be resisted. The house design is sensitive to the South Derbyshire style and would blend into the skyline when viewed from outside the village.

Access is easy from Chapel Lane and appropriate disabled person access will be provided in accordance with the Building Regulations. There is a local bus service to Ashbourne, Uttoxeter and Derby and the site is in walking distance of the village primary school. Transport in the form of a school bus takes children from the village to the Secondary School at Etwell. The A50 is close to the village and the local rail station is at Hatton some 3 miles from the village. It is argued that Chapel Lane is wide enough for emergency and refuse vehicles despite the fact that householders on the Lane maintain it.

Planning History

There have been three previous applications on the site dating from the 1980's and 1990. The 1980's applications were for a wooden garage, one refused and one permitted. The 1990 application included the application site and land in the adjacent field was for a detached dwelling. This was refused on the basis that the majority of the site laid outside the village confine.

Responses to Consultations

Church Broughton Parish Council has no objection.

Subject to the imposition of conditions to cover access, parking and manoeuvring as shown on the application drawing the County Highway Authority has no objection. It is acknowledged by the County Highway Authority that Chapel Lane is less than ideal being unmade and unadopted, but it is considered that one additional dwelling would not be so detrimental to highway safety to justify refusal of planning permission.

The County Archaeologist notes that the site lies next to a site that is in the Derbyshire Historic Environment Record. Excavations may expose or impact on below ground remains of the medieval village to which the record refers. In accordance with the policies in Environment Policy 14 and PPG 16 he recommends that a watching brief of the excavations should be maintained during building operations and the terms of the brief should be agreed prior to works being commenced on the land.

Severn Trent Water has no objection

The Environmental Protection Manager notes there may be contaminated land in proximity to the site and that the usual conditions about contamination should be attached to any permission that may be granted.

Responses to Publicity

None.

Development Plan Policies

The relevant policies are:

EMRP: Policies 1, 2, 3, 12 and 27

Local Plan: Housing Policies 5 & 11; Environment Policy 8 & 14

National Guidance

PPS 1, 3; PPG 13 & 16.

Planning Considerations

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

- The Development Plan.
- The importance of the gap at the edge of the village on the character of the settlement.
- Access to the site
- The appearance of the dwelling
- Archaeological considerations

Planning Assessment

The site lies in the village confine and the principle of residential development would be acceptable under the terms of Housing Policy 5. The abandoned replacement Local Plan identified Church Broughton as a location where infill development would be acceptable and the Planning Policy Position Statement states that where the Inspectors report has bearing on an application, the fact it was used as a material consideration will be recorded in the reasons for granting or refusing a planning application. The policy H1 in the replacement local plan was not subject to challenge and as such its provisions are capable of being a material consideration in this case.

The applicant notes that the site does not fulfil the criteria in Policy H1 of the replacement local plan for the infilling of a small gap in an otherwise built up frontage. However, the applicant asserts that the site is within the defined village confine; as such there is no prospect of further housing development beyond the defined curtilage. Thus he asserts that the proposal represents the infilling of a gap in the settlement that could defended if subsequent applications were submitted in general accord with the above policy.

Environment Policy 8 of the Local Plan seeks to ensure that important open spaces within villages are protected from development where they make a valuable contribution to the character or environmental quality of the settlement. The site lies on the edge of the settlement and is visible from both the public footpaths that approach the village

from the north. However, this is private land and the view from the public footpaths would be of a larger dwelling with windows rather than the cottage with windows and doors as is the case now. There are other soft and hard edges all around the village and it would be difficult to argue that this particular open space on the edge of the village made any greater contribution to the character and environmental quality than these others. Accordingly it is considered that the loss of this space on the edge of the village would not adversely affect the character of the village.

In the light of this the proposal is considered acceptable under the provisions of Housing Policy 5 of the adopted Local Plan as refined by the Planning Policy Position Statement.

Although access is via an unmade and unadopted road, on the advice of the County Highway Authority a refusal of permission on highway safety grounds would not be sustainable at appeal.

The design and appearance of the dwelling are considered to accord with the provisions of Housing Policy 11 and adopted supplementary planning guidance on Housing Layout and Design. Materials of construction will be important and a condition requiring their approval is recommended.

The archaeological remains are evident in the adjoining fields. The County Archaeologist considers that observation and recording of any remains would be sufficient in this case therefore an appropriate condition is recommended.

Overall the development is considered to accord with the above policies and the following recommendation is considered appropriate.

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. 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.
3. 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.

4. No development shall take place, until the developer has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved by the Local Planning Authority in writing.

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

5. The access, car parking spaces and manoeuvring areas shown on the submitted plan shall be hard surfaced with a solid bound material prior to the first occupation of the dwelling and thereafter retained for that purpose free of obstruction.

Reason: In the interests of highway safety.

6. No part of the development shall be carried out until precise details specification and samples of the facing materials to be used in the construction of the external walls and roof of the building have been submitted to and approved in writing by the Local Planning Authority.

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

7. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995, there shall be no external alterations, including the insertion of new windows, to the buildings other than as approved under this permission.

Reason: In the interests of preserving the setting of the building and the character of the area.

8. Notwithstanding the provision 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 without the prior grant of planning permission on an application made to the Local Planning Authority in that regard.

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.

9. Notwithstanding any details submitted or the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended), no development shall take place until there has been submitted to and approved in writing by the Local Planning Authority plans indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed in accordance with the approved details before the development is occupied or in accordance with a timetable which shall first have been agreed in writing with the Local Planning Authority.

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

10. Gutters and downpipes shall have a black finish and be fixed direct to the brickwork on metal brackets. No fascia boards shall be used.

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

11. No work shall take place on the site until details of a scheme for the disposal of surface water have been submitted to and agreed in writing by the Local Planning Authority. The scheme shall be carried out in conformity with the details which have been agreed before the development is first brought into use.

Reason: In the interests of flood protection.

12. 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.

13. No development shall take place until a schedule of landscape maintenance for a minimum period of 5 years has been submitted to and approved in writing by the Local Planning Authority. The schedule shall include details of the arrangements for its implementation. Development shall be carried out in accordance with the approved schedule.

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

Informatives:

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 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 www.south-derbys.gov.uk/Environment/Pollution/LandPollution/contaminatedlandguide.htm

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. You are advised that any finds of objects of treasure are subject to the provisions of the Treasure Act 1996 and must be referred to the Derby and South Coroner at 18 St. Mary's Gate, Derby, DE1 3JR, (Tel. 01332-222159).

Item **1.5**

Reg. No. **9/2009/0454/FM**

Applicant:

Mr Graham Franklin
Findern Lane
Burnaston
Derby

Agent:

Mr Ian Pick
Ian Pick Associates Ltd
Unit 9
Brook Street
Drifffield

Proposal: **Outline application (all matters to be reserved) for an
agricultural workers dwelling at Liberty Farm Findern
Lane Burnaston**

Ward: **Etwall**

Valid Date: **17/06/2009**

Reason for committee determination

Councillor Lemmon has requested that this application be brought to Committee as local concern has been expressed about a particular issue.

Site Description

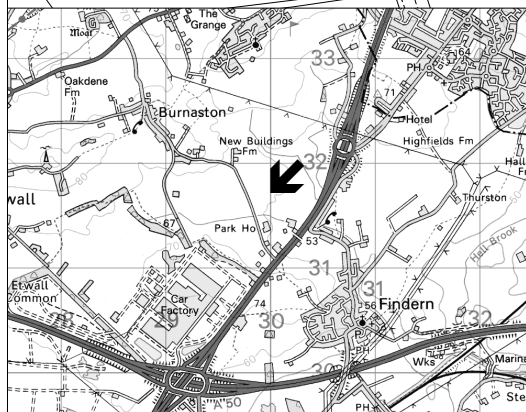
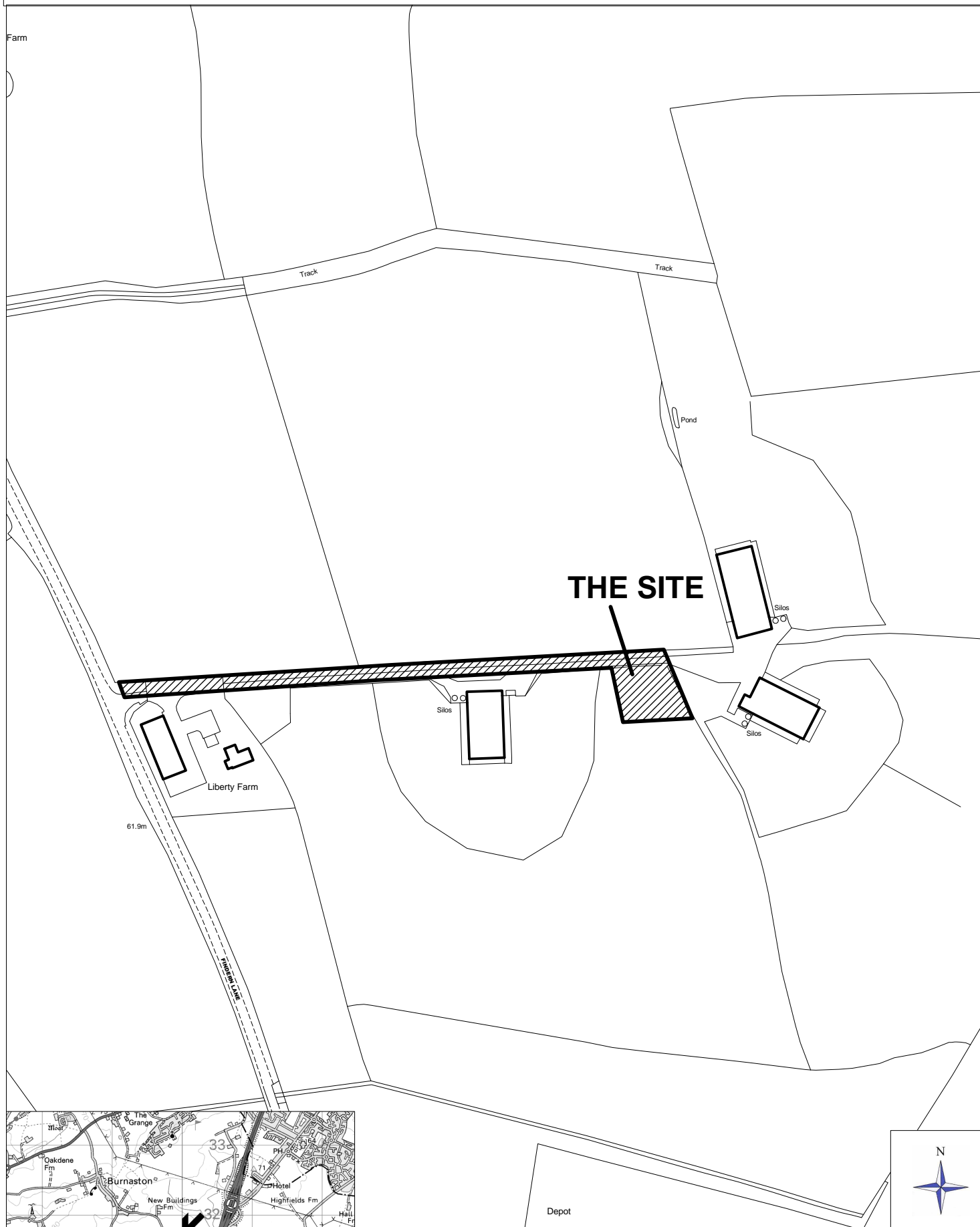
The application site lies in the heart of the free-range egg unit known as Liberty Farm; located in the middle of the 3 free-range egg production units on the farm. Another dwelling is located near the entrance to the farm off Findern Lane Burnaston.

Proposal

The application is in outline with all matters reserved for subsequent approval to comprise a bungalow of some 150m² with three bedrooms. The maximum eaves height would be 2.7m with an ultimate ridge height of 5.8m (Design and Access statement). The chosen site lies in the middle of the farm buildings, and would be screened from the wider countryside by those buildings and existing hedges and trees. The site would be enclosed by stock proof fence and the dwelling would be constructed in red brick beneath a pantile roof to match the existing.

Applicants' supporting information

The application is accompanied by an agricultural appraisal that looks at the existing site and the needs for the site to be supervised at all times and why the existing dwelling on the site will no longer be able to fulfil the supervisory function it was permitted to do.



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The appraisal demonstrates a functional and financial justification for a dwelling to supervise the operation of the farm and that the farm requires more than one person to operate it (currently 1 full-time and 2 part-time workers albeit that the standard labour texts suggest that the enterprise require 3 full-time workers). It comprises 20 hectares with a flock of 18,000 birds.

The farm's owners occupy the existing dwelling and it is their intention to retire but remain on the farm to assist with its operation. The site operates at a profit of some £40,000 per annum. This proposal is for a second dwelling on the holding to accommodate a farm manager and his/her family so that out of hours supervision of the business can be maintained following the retirement of the occupiers of the main house.

The appraisal then goes on to discuss PPS 7 and its requirements for new houses in the countryside to be justified on the needs of established rural businesses.

The appraisal concludes that there is a functional need for a dwelling to supervise the holding. It then goes on to discuss the availability of premises in the locality to meet the needs of the enterprise for supervision of the operation.

The appraisal then turns to the availability of Liberty Farm to undertake the supervisory function. It states that the intention of the owners to retire from day to day operations and discusses the reasonableness of requiring retiring farmers to vacate their homes upon retirement and whether the Local Planning Authority can view the existence of the main farm house as a reason for refusing permission for a second dwelling.

It is contended that it is unreasonable for the Local Planning Authority to require that a family be asked to vacate their home to make way for an incoming worker. In this they prey in aid two court cases and appeal cases subsequent to the courts' rulings. The first case known as 'Keen' (Keen v SOS and Aylesbury Vale District Council) related to an application that was refused and the subsequent appeal dismissed. However, the High Court ruled that the inspector has erred in that he had failed to take account of that part of PPS7 that requires an assessment of availability and suitability of dwellings. The mere presence of a dwelling on a holding was not sufficient assessment; it was essential to assess the availability and suitability of the dwelling. The appellants contend that this means a farmer should not be forced to move out when he decides to retire. An appeal case in 2006 followed this case in allowing an appeal near Richmond North Yorkshire.

This High Court ruling was reinforced in 2008 – 'Cussons' (JR Cussons v Secretary of State). This affirmed that the approach in the 'Keen' case was correct and Cussons was followed by an appeal case in 2009 that endorsed the approach in Keen and Cussons. The applicants contend that this case sits at all fours with the two court cases and the appeals determined subsequent to those appeal decisions. It is therefore necessary for the Local Planning Authority to assess whether there is accommodation available and suitable to meet the needs of this holding. [Copies of the various Inspectorate appeal decisions and court judgements are available for inspection on the case file].

The applicants then go on to discuss the reasons why on site supervision is necessary at this holding arising from hens panicking because of power failure or disturbance from wildlife or because of fire risk. The question then is whether another agricultural

dwelling in the vicinity of the site could provide the necessary level of supervision. Again appeal examples are quoted for similar sized farm enterprises to that under consideration here. In those case all four inspectors concluded that dwellings needed to be within 'site and sound' of the premises being supervised. Inspectors considered that sites up to 1.8km away from a holding fulfilled the function requirement for a dwelling on the holding.

Applicants' Conclusions

- There is a functional need for a dwelling to supervise the operation of the holding and the worker needs to reside at the site as required by Annexe A of PPS 7.
- There is a need for constant supervision of the enterprise to carry out day-to-day operations and deal with emergencies as they arise.
- It is not appropriate, given the court cases quoted, to require the owners to surrender occupation of the existing farm house and as that dwelling is not available for occupation by the incoming worker, PPS 7 makes provision for an additional dwelling as underscored by the court judgements in 'Keen' and 'Cussons'.

Planning History

Liberty Farm was established in the late 1990's with three free-range egg units permitted along with a mobile home to provide on site supervision. Subsequently evidence was submitted that showed the business was profitable and a four-bedroom dwelling was permitted on the site to supervise the holding subject to the usual agricultural occupancy condition.

Responses to Consultations

Burnaston Parish Council comments will be reported at the meeting if available

The County Highway Authority has no comments.

Responses to Publicity

None.

Development Plan Policies

The relevant policies are:

EMRP: Policies 1, 2, 3 & 12

Saved Local Plan: Housing Policy 8, Environment Policy 1.

National Guidance

PPS 7.

Planning Considerations

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

- The Development Plan
- Material Planning Considerations

Planning Assessment

Development Plan policies make provision for dwellings in the countryside where there is a justification and functional need for the dwelling to meet the requirements of an established rural enterprise. The business also needs to be well established and operating at a profit. The business at Liberty Farm meets each of these criteria based on the supporting information above and experience of the Bowler system for free range egg production. The issue here is whether it is reasonable to require a farmer to vacate a dwelling simply to facilitate occupation of the dwelling.

Notwithstanding all of the quoted court judgements, the crucial issue is whether a proper assessment of the availability and suitability of accommodation for the enterprise has been carried out. It is not sufficient to rely on the 'mere presence of a dwelling' on the site if that dwelling is not available to the incoming worker and in the light of the court judgement it is unreasonable to expect a farmer to vacate his house to facilitate occupation by the incoming worker. Therefore, the existing dwelling is now neither available nor suitable.

In this case there is a clear functional need for supervision of the holding. The applicants have not examined the availability of alternative agricultural workers dwellings in the vicinity but it is their case that the worker needs to be within sight and sound of the livestock in order to be properly able to supervise their welfare given the potential disastrous impact on business if the stock is adversely affected by external influences such as mechanical failure or predators. At appeal it would be for the Local Planning Authority to demonstrate that such other accommodation existed in the locality to meet the needs of the holding.

Given the precedents set by the cited cases, it can only be concluded that the principle of a dwelling on this site is acceptable. Accordingly the following recommendation is considered appropriate.

Recommendation

GRANT permission subject to the following conditions:

1. Application for approval of any reserved matters shall be made to the Local Planning Authority before the expiration of one year from the date of this permission and the development must be begun not later than whichever is the later of the following dates: i) before the expiration of two years from the date of this permission; or ii) before the expiration of one year from the date of approval of the last of the reserved matters to be approved.

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

2. Approval of the details of the layout, scale, appearance, access and the landscaping shall be obtained from the Local Planning Authority in writing before any development is commenced.

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 occupation of the dwelling shall be limited to the family and/or dependents of a person employed, or last employed, wholly or mainly, in agriculture, as defined in Section 336 of the Town and Country Planning Act 1990, or in forestry.

Reason: The site is within open countryside where the Development Plan provides that development shall be confined within the limits of an existing town or village, except where the needs of agriculture or other overriding reasons justify a departure from that policy. The Local Planning Authority is concerned to ensure that agricultural workers' dwellings are maintained available to meet the needs of the locality and to avoid proliferation of dwellings in the countryside.

4. No development shall take place until details of a scheme for the disposal of surface and foul water have been submitted to and agreed in writing by the Local Planning Authority. The scheme shall be carried out in conformity with the details which have been agreed before the development is first brought into use.

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

5. In submitting details required by Condition 2 above and notwithstanding any details submitted or the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended), no development shall take place until there has been submitted to and approved in writing by the Local Planning Authority plans indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed in accordance with the approved details before the development is occupied or in accordance with a timetable which shall first have been agreed in writing with the Local Planning Authority.

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

6. In submitting details required by Condition 2 above the details shall include gutters and downpipes with a black finish and be fixed direct to the brickwork on metal brackets. No fascia boards shall be used.

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

7. Notwithstanding the provision 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 without the prior grant of planning permission on an application made to the Local Planning Authority in that regard.

Reason: To maintain control in the interest of ensuring that the dwelling is not extended to a point where it becomes unavailable to the agricultural community due to its cost becoming prohibitively expensive such that agricultural workers cannot afford to purchase it.

Informatives:

Development Plan policies make provision for dwellings in the countryside where there is a justification and functional need for the dwelling to meet the requirements of an established rural enterprise. The business also needs to be well established and operating at a profit. The business at Liberty Farm meets each of these criteria based on the supporting information above and experience of the Bowler system for free range egg production. The issue here is whether it is reasonable to require a farmer to vacate a dwelling simply to facilitate occupation of the dwelling.

Officers have read the Cussons court judgement and the appeal cases referred to by the applicants. Indeed there are other cases where inspectors have relied on the Keen case to allow appeals in similar circumstances found in Practice Guidance. The crucial issue is whether a proper assessment of alternative accommodation and the suitability of that accommodation for the enterprise. It is not sufficient to rely on the 'mere presence of a dwelling' on the site if that dwelling is not available to the incoming worker and in the light of the court judgement it is unreasonable to expect a farmer to vacate his house to facilitate occupation by the incoming worker.

There is a clear functional need for supervision of the holding. The applicants have not examined the availability of alternative agricultural workers dwellings in the vicinity but it is their case that the worker needs to be within sight and sound of the livestock in order to be properly able to supervise their welfare given the potential disastrous impact on business if the hens are panicked by external influences such as mechanical failure or predators. At appeal it would be for the Local Planning Authority to demonstrate that such other accommodation existed in the locality to meet the needs of the holding.

Given the court cases quoted and the existence of other appeal outcomes that have been found subsequent to the application being submitted, the view is that the Authority would struggle to justify a refusal of planning permission. Accordingly the following recommendation is considered appropriate.

Item **1.6**

Reg. No. **9/2009/0468/SOF**

Applicant:

Mr Simon Deacon
Advance
76 Commerce Street
Melbourne
Derby

Agent:

Miss Alexandra Woodley
Peter Eaton & Associates
32 Royal Scot Road
Pride Park
Derby

Proposal: **The erection of an extension for light industrial and office use at Bridge Farm Sinfin Lane Barrow-on-Trent Derby**

Ward: **Aston**

Valid Date: **16/06/2009**

Reason for committee determination

The application is brought to Committee at the request of Councillor Watson because local concern has been raised about a particular issue.

Site Description

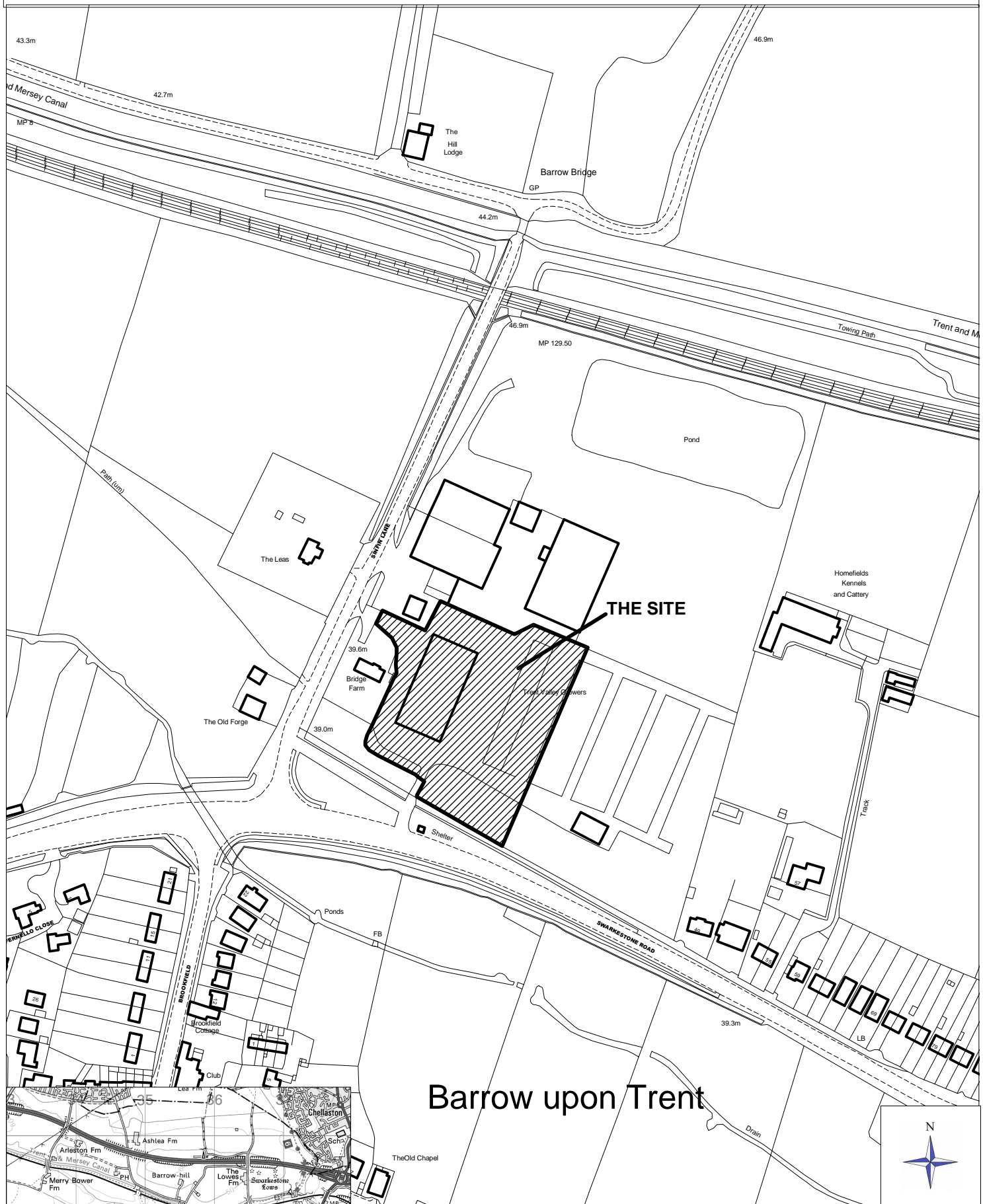
The site is part of a former market garden/food packing enterprise. There is a large steel framed building to the western end of the site, directly to the south of the established East Midlands Self Storage premises. The site is on the corner of Swarkestone Road and Sinfin Lane, with frontages to both roads. The main access is from Sinfin Lane. The Twyford Road frontage is defined by a mature hedge and trees, which filter views of the site therefrom.

Proposal

The application seeks permission for an extension to the existing building to its eastern elevation, which would result in an increase in volume and site coverage by about 75%. The height of the extension would be the same as the existing structure. There would also be elevational changes to the existing building, mainly the insertion of windows to provide light to office accommodation. The primary use of the building would be for B1 business and B8 storage purposes.

Applicants' supporting information

The extension would provide the applicant with the necessary expansion to enable them to relocate from their existing limited premises (Commerce Street Melbourne). This



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would bring a well-established business to the area with the prospect of creating 20-30 jobs.

In terms of daily vehicle movements it is anticipated that there would be 24 cars, 3 bicycles and 3 motorbikes, along with 10-15 7.5 tonne lorry movements, dispatching goods. It is anticipated that there would be one articulated lorry per week. A car share scheme is already in operation for staff.

Planning History

Permission was granted to the applicant to use the site for B1 & B8 purposes last year.

Responses to Consultations

The Parish Council objects for the following reasons:

- a) It adjoins a Conservation Area
- b) It would make a huge visual impact on the locality
- c) It would make a great impact on the road usage with the size of the lorries that would be accessing the development
- d) There is a reference in the Design and Access Statement to the area being an industrial site, this is incorrect as it was previously for agricultural use
- e) The other units are not manufacturing units
- f) There would be problems of access from the north side over the canal
- g) It would be setting a precedent for more industrial development to follow
- h) There would be a visual effect of outside security lighting on the area
- i) There is already very heavy traffic usage of the very narrow single lane and the increase of this traffic would cause damage and traffic problems

Severn Trent Water Ltd has no objection.

The Highway Authority has no objection in principle.

Responses to Publicity

A neighbour objects as follows:

- a) The existing building is too large and too close to residences. The proposal would be harmful to the character of the area.
- b) There would be loss of light and privacy, and overshadowing.
- c) The site access is dangerous and the additional traffic would increase the risk of accident.
- d) Sinfin Lane was never intended for use by large vehicles.
- e) There would be noise and light pollution.

Development Plan Policies

The relevant policies are:

RSS8: Policies 3 & 35

South Derbyshire Local Plan: Saved Environment Policy 1, Employment Policy 1 and Transport Policy 6.

National Guidance

PPG4, PPS7, PPS1.

Planning Considerations

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

- The principle.
- Impact on the character of the area.
- Residential Amenity.
- Highway safety.

Planning Assessment

Whilst Environment Policy 1 seeks to constrain development in the countryside, Local Plan Saved Employment Policy 1 provides for the expansion of industrial or business uses adjacent to their existing premises provided that the proposal is not detrimental to the character of the locality or residential amenity and does not cause environmental or traffic problems. PPS1 and PPS7 stress the need to protect and enhance the quality, character and amenity value of the countryside. For the reasons set out below the impact of the development would be such that it complies with Employment Policy 1.

Viewed from Sinfin Lane the development would have little or no visual impact, being screened by the existing building. From Twyford Road the extension would be seen against the backcloth of existing buildings to the north at the East Midlands Self Storage premises. As such the impact on the character of the countryside would not be substantial or harmful.

The existing building is subject to a limit on working hours. So long as this condition is applied to the proposal there would be no demonstrable increase in noise or disturbance to neighbours. The extension would have no impact on neighbours in terms of light or privacy.

On the advice of the Highway Authority there would be no demonstrable harm to highway safety interests.

With regards to the Parish Council's concerns the following points are relevant:

- The site is separated from the conservation area by the A5132 Barrow upon Trent Bypass and thus its context is distinct from the historic part of the village.
- The visual impact of the development is assessed above.
- There is no evidence that lorry movements would be excessive. On the basis of the applicant's supporting information HGV movements would be less than those generated by the previous food packing operation, which was not subject to any limit on hours of operation.
- Whilst the site was originally agricultural it already benefits from planning permission for business and storage uses.
- The site to the north, whilst used for storage, also benefits from B1 business permission (with the exception of the most recently constructed building).
- In view of the applicant's statement about vehicles movements, and the advice of the Highway Authority, there is no evidence that the development would result in traffic problems either in Sinfin Lane or the main road.

- External lighting could be controlled by condition.

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

Recommendation

GRANT permission subject to the following conditions:

1. The development permitted shall be begun before the expiration of 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. All external materials used in the development to which this permission relates shall match those used in the existing building in colour, coursing and texture unless otherwise agreed in writing by the Local Planning Authority.
Reason: To safeguard the appearance of the existing building and the locality generally.
3. No machinery shall be operated, no process shall be carried out and no deliveries taken at or despatched from the site outside the following times nor at any time on Sundays, Bank or Public Holidays:
Monday to Friday 0700 hrs - 1900 hrs
Saturday 0700 hrs - 1300 hrs
Reason: To ensure that the use does not prejudice the enjoyment by neighbouring occupiers of their properties.
4. The car parking spaces/manoeuvring areas shown on the submitted drawing no. 12406-03 rev A shall be hard surfaced with a solid bound material and marked out prior to the first use of the development and thereafter retained for that purpose free of obstruction.
Reason: In the interests of highway safety.
5. External lighting shall comply with the Institute of Lighting Engineers "Guidance notes for the Reduction of Obtrusive Light (2005) for Environmental Zone Category E2.
Reason: The site is located in a rural area wherein it is appropriate to so control the visual impact of lighting in the interests of protecting the character and appearance of the countryside.

Item **1.7**

Reg. No. **9/2009/0497/NO**

Applicant:

South Derbyshire District Council
Civic Offices
Civic Way
Swadlincote

Agent:

Wm Saunders Partnership LLp
Sheppard Lockton House
Cafferata Way
Newark on Trent

Proposal: **The erection of five nursery B1 units with ancillary accommodation at Forestry Centre Burton Road Rosliston Swadlincote**

Ward: **Linton**

Valid Date: **17/06/2009**

Reason for committee determination

This application is brought before this committee because the Council is the applicant.

Site Description

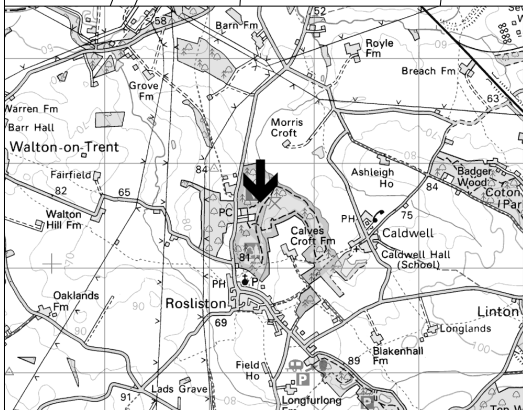
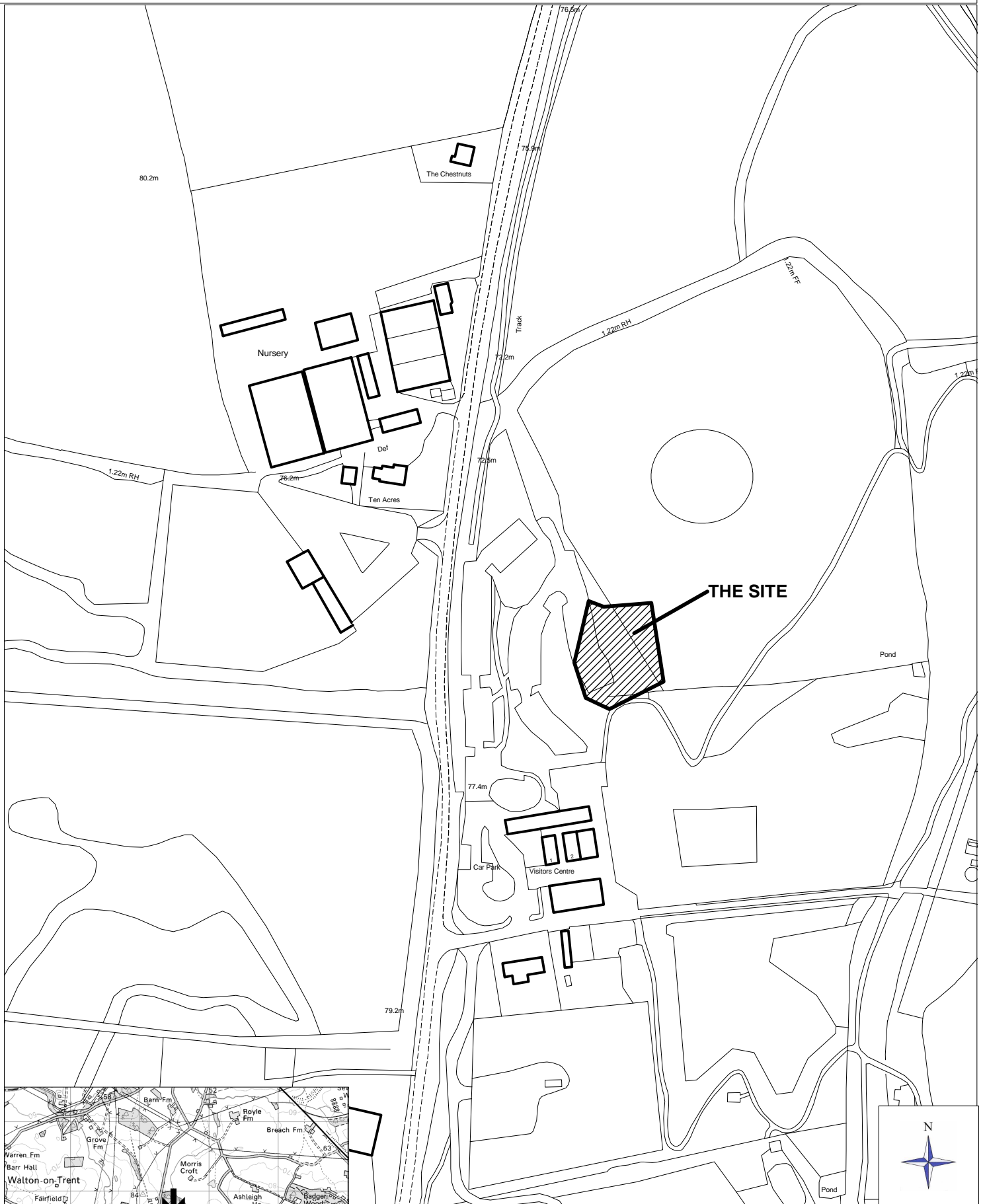
The application site lies well within the boundaries of the Forestry Centre. A belt of trees along the road frontage and an internal roadway separate the application site from the nearest public highway that lies around 80m away.

The site is part of the National Forest Centre at Rosliston located approximately 50m from the existing visitors centre on the site of the existing wood store that is currently used for bio fuel heating for the visitors centre and log cabins on the site.

Proposal

Permission was granted at Committee on the 3rd March 2009 to erect five nursery B1 (Business) units with ancillary accommodation for use as light industrial small units for start up businesses employing people in activities that are related to the National Forest. This application proposes a change in position of the building to the north east of the previously approved building on the site of the existing wood storage area. Minor changes to the elevations in terms of door widths and an increase rooflight size are also proposed. Trees would surround the building to the north, south and east and the existing footpath would not require diversion and would be to the south of the building. The existing Ash tree would be retained to the front of the proposed building.

The overall size of the proposed building has not changed and would be 26m in length x 13m in depth x 5m in height (maximum to ridge). Shared toilet facilities together with a



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shower and disabled toilet would be provided for use by the occupiers of the units. The units would be timber clad throughout. Roof lights are shown and a traditional timber and sedum roof are proposed using larch and cedar shingles. Car parking provision is shown as part of the application together with boundary treatments and cycle and refuse storage areas. The only works to trees shown would be pollarding of an existing ash tree which would be carried out irrespective of gaining permission due to its exposed location.

Applicants' supporting information

In support of the application are the following related reports:

- Design and access statement (by a specialist consultant)
- Planning Statement (by a specialised consultant)
- Ecological Appraisal (by a specialised consultant)
- Tree Assessment Report (by a specialist consultant)

Planning History

9/2009/0026 – The erection of five nursery B1 units with ancillary accommodation, granted 3/3/09

Responses to Consultations

The County Highway Authority previously commented that the proposal would result in the total loss of five car parking spaces, which it would not object to based on the size of the site and of parking being available elsewhere on the site. It therefore requested conditions in relation to replacement car parking spaces being made available on the site. However, comments have yet to be received on the change in position of the building but it would no longer involve the loss of car parking spaces as it is solely within the existing wood storage area. Their comments will be reported verbally at committee if available.

The Environmental Protection Manager has commented on the previous approval that the development is located within 170km of an unknown filled ground area and therefore recommends standard conditions be applied with regards to potential contamination.

The Council's Arboriculturalist Consultant comments that he has no objections to the pollarding of the ash tree to the original pollard points at approximately 300mm above ground level and recommends regular re-pollarding every 5 years.

Responses to Publicity

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

National Guidance

PPS 7.

Development Plan Policies

The relevant policies are:

RSS8: Policies 6 and 24

Saved Policies from the Local Plan: Employment Policies 4, 5 and 8.

Planning Considerations

The main issues central to the determination of this application have not changed since previously approved and are:

- Development plan policy and national guidance and advice
- The impact of the proposal on both the countryside and neighbours.

Planning Assessment

Environment Policy 1 of the Adopted Local Plan seeks to ensure that new development in the countryside is not permitted unless it is essential to a rural based activity.

However, more recently (and effectively updating advice) PPS1 encourages economic activity in rural areas and PPS7 and the RSS look for new employment to be located in or next to rural settlements. Further, Employment Policy 5 of the Adopted Local Plan allows small units of industrial development to be located within or on the edge of existing settlements.

Rosliston Forestry Centre is designed to be a visitor centre in the National Forest with a diverse function which was envisaged from its inception more than 10 years ago and has flourished from this ethos. The original planning permission granted in 1993 included the provision of six craft workshops on the site. These were originally built and all but one has now reverted to other uses and house the current visitors centre, meeting room and educational facilities. The proposal to provide five units for employment opportunities directly related to the works underway at the Forestry Centre and related to operations in the National Forest is acceptable in planning policy terms. The design of the proposed units would be in keeping with the existing visitors centre and would be set within a clearing of the trees and thus would not be highly visible. The buildings proposed would be sited below the existing visitors centre and would encourage visitors to observe local crafts taking place and provide an insight into the workings of the National Forest. Tree planting and landscaping proposals are continually taking place at the centre and these existing schemes will reduce any visual impact that the units may have. This is supported by the various reports submitted with the application. In particular the planning statement states that: *'The design of the proposed buildings utilises the latest sustainable construction techniques. It will provide an example of and assist in the promotion of low carbon, energy efficient sustainable technology within the National Forest. It will provide the public with a working example of sustainable building techniques.'*

As set out in the description above, the site is well screened from the public highway, there would be no effect on occupants of neighbouring properties as the site lies within the countryside and there are few residential properties in the locality. The centre is located in a position that is within 500 metres of the confines of the village and as such is easily accessible from there on foot and can utilise the limited local bus service. Taking all into account, the provision of new employment in this area would have little impact on current car parking provision and would diversify the rural economy

encouraging vitality and viability for the centre. Indeed in this context its location adjoining the existing centre would be preferred to a site closer to the settlement.

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

Recommendation

GRANT permission under Regulation 3 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.
 - 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.
3. 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.

4. No development shall take place until details of a scheme for the disposal of surface and foul water have been submitted to and agreed in writing by the Local Planning Authority. The scheme shall be carried out in conformity with the details which have been agreed before the development is first brought into use.

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

5. All service cables shall be located underground unless specifically agreed in writing by the Local Planning Authority.

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

6. Prior to commencement of development details of any lighting proposed shall be submitted to and approved in writing by the Local Planning Authority.

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

7. 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.

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.

8. Prior to the first use of the proposed development hereby permitted, a scheme for the external decoration shall be submitted to and agreed in writing by the Local Planning Authority. The approved scheme shall be implemented in accord with the approved details prior to occupation of the building.

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

9. 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.

Informatives:

The proposed development lies within an area which could be subject to current coal mining or hazards resulting from past coal mining. Such hazards may currently exist, be caused as a result of the proposed development, or occur at some time in the future. These hazards include: Collapse of shallow coal mine workings; Collapse of, or risk of entry into, mine entries (shafts and adits); Gas emissions from coal mines including methane and carbon dioxide; Spontaneous combustion or ignition of coal which may lead to underground heatings and production of carbon monoxide; Transmission of

gases into adjacent properties from underground sources through ground fractures;
Coal mining subsidence; Water emissions from coal mine workings.

Applicants must take account of these hazards which could affect stability, health & safety, or cause adverse environmental impacts during the carrying out of their proposals and must seek specialist advice where required. Additional hazards or stability issues may arise from development on or adjacent to restored opencast sites or quarries and former colliery spoil tips. Potential hazards or impacts may not necessarily be confined to the development site, and Applicants must take advice and introduce appropriate measures to address risks both within and beyond the development site. As an example the stabilisation of shallow coal workings by grouting may affect, block or divert underground pathways for water or gas. In coal mining areas there is the potential for existing property and new development to be affected by mine gases, and this must be considered by each developer. Gas prevention measures must be adopted during construction where there is such a risk. The investigation of sites through drilling alone has the potential to displace underground gases or in certain situations may create carbon monoxide where air flush drilling is adopted. Any intrusive activities which intersect, disturb or enter any coal seams, coal mine workings or coal mine entries (shafts and adits) require the prior written permission of the Coal Authority. Such activities could include site investigation boreholes, digging of foundations, piling activities, other ground works and any subsequent treatment of coal mine workings and coal mine entries for ground stability purposes. Failure to obtain Coal Authority permission for such activities is trespass, with the potential for court action. In the interests of public safety the Coal Authority is concerned that risks specific to the nature of coal and coal mine workings are identified and mitigated.

The above advice applies to the site of your proposal and the surrounding vicinity. You must obtain property specific summary information on any past, current and proposed surface and underground coal mining activity, and other ground stability information in order to make an assessment of the risks. This can be obtained from The Coal Authority's Property Search Service on 0845 762 6848 or at www.groundstability.com. Any security measures implemented in compliance with the approved scheme should seek to achieve the 'Secured By Design' accreditation awarded by Derbyshire Constabulary. Written confirmation of those measures should then be provided to the Local Planning Authority.

Item **1.8**

Reg. No. **9/2009/0510/NO**

Applicant:

South Derbyshire District Council
Leisure & Community Development
Department
Civic Offices
Civic Way
Swadlincote

Agent:

Mr William Kinghorn
Rolls-Royce Plc
P O Box 31
Derby

Proposal: **The erection of a covered external teaching area at
Forestry Centre Burton Road Rosliston Swadlincote**

Ward: **Linton**

Valid Date: **25/06/2009**

Reason for committee determination

This application is brought before this committee because the Council is the applicant.

Site Description

The application site lies well within the boundaries of the Forestry Centre on Burton Road in Rosliston. A belt of trees along the road frontage and an internal car park separate the application site from the nearest public highway that lies around 50m away.

The site is part of the National Forest Centre at Rosliston located within the main complex of buildings. The application site is to the west of the existing classroom building adjacent to the car park.

Proposal

Planning permission is sought for a covered external teaching area to the side of the existing classroom building (but fronting the car park). Its purpose would be to provide an additional teaching space for school children and other social groups to meet before exploring the surrounding natural woodlands as well as shelter from the weather. It would enable two further classes of children to be taught per day.

The overall size of the proposed building would be 13.3m in length x 5.54m in depth x 3.37m in height. It would be built from timber posts with half height timber cladding on three elevations and would have a wood shingle tiled roof with 6 UPVC rooflights.



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Applicants' supporting information

The submitted Design and access statement describes the Environmental Education project concept, the purpose of the building, its scale and design within the overall site context.

Planning History

There have been numerous planning applications at the Forestry Centre as a whole but none relate specifically to this part of the site.

Responses to Consultations

The County Highway Authority has no comments to make on the application.

The Environmental Protection Manager has confirmed that there is no requirement for ground investigation.

Responses to Publicity

None.

National Guidance

PPS 7.

Development Plan Policies

The relevant policies are:

East Midlands Regional Plan Policies: 3

Saved Policies from the Local Plan: Environment 10, Community Facilities 1

Planning Considerations

The main issue central to the determination of this application is the scale and appearance of the building in relation to the existing buildings and surrounding area.

Planning Assessment

The proposed building would be slightly lower than the existing classroom building and due to its open nature would be viewed against this building. The existing fence would be retained and thus only the timber posts and roof would be visible above this fence. A gap between the fence and proposed building is retained and a condition requiring some planting along this boundary is considered sufficient to mitigate the removal of the existing trees.

There is a residential property to the south west adjacent to the site exit approximately 22 metres from the proposed building which is occupied by the manager of the Forestry Centre. The impact on the amenity of this property is therefore not considered significant.

The proposal to provide an additional covered teaching area is directly related to the established Forestry Centre and relates to operations in the National Forest and is therefore acceptable in planning policy terms.

The design of the proposed building would be in keeping with the existing visitors centre and classroom building and would not be highly visible due to its open nature.

As set out in the description above, the site is well screened from the public highway, there would be no effect on occupants of neighbouring properties as the site lies within the countryside and there are few residential properties in the locality.

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

Recommendation

GRANT permission under Regulation 3 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. A sample of both the roof covering and the colour of the timber posts and cladding shall be submitted for approval in writing by the Local Planning Authority before work commences.
Reason: To ensure the building is in keeping with its surrounding in the interest of the character and visual amenity of the area.
3. No development shall take place until there has been submitted to and approved by the Local Planning Authority a scheme of landscaping, which shall include indications of all existing trees 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.
4. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.
Reason: In the interests of the appearance of the area.

Item 2.1

Reg. No. 9/2009/0373/U

Applicant:

Mr B Lees
Burnaston
Etwall
Derby

Agent:

Mr Justin Smith
Justin Smith Architects
Friar Gate Studios
Ford Street
Derby

Proposal: **The conversion of an existing outbuilding to residential use at Southlands Burnaston Etwall Derby**

Ward: **Etwall**

Valid Date: **01/06/2009**

Reason for committee determination

Councillor Mrs Brown has requested this case to come before the Committee as local concern has been expressed about a particular issue.

Site Description

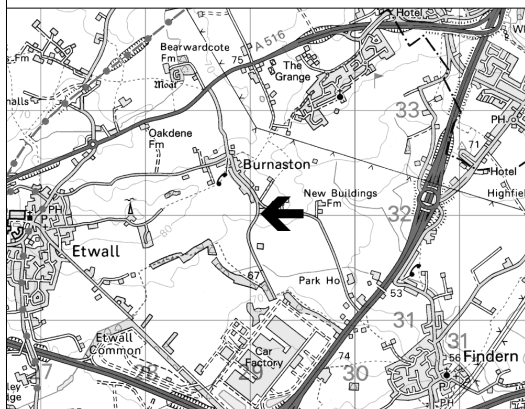
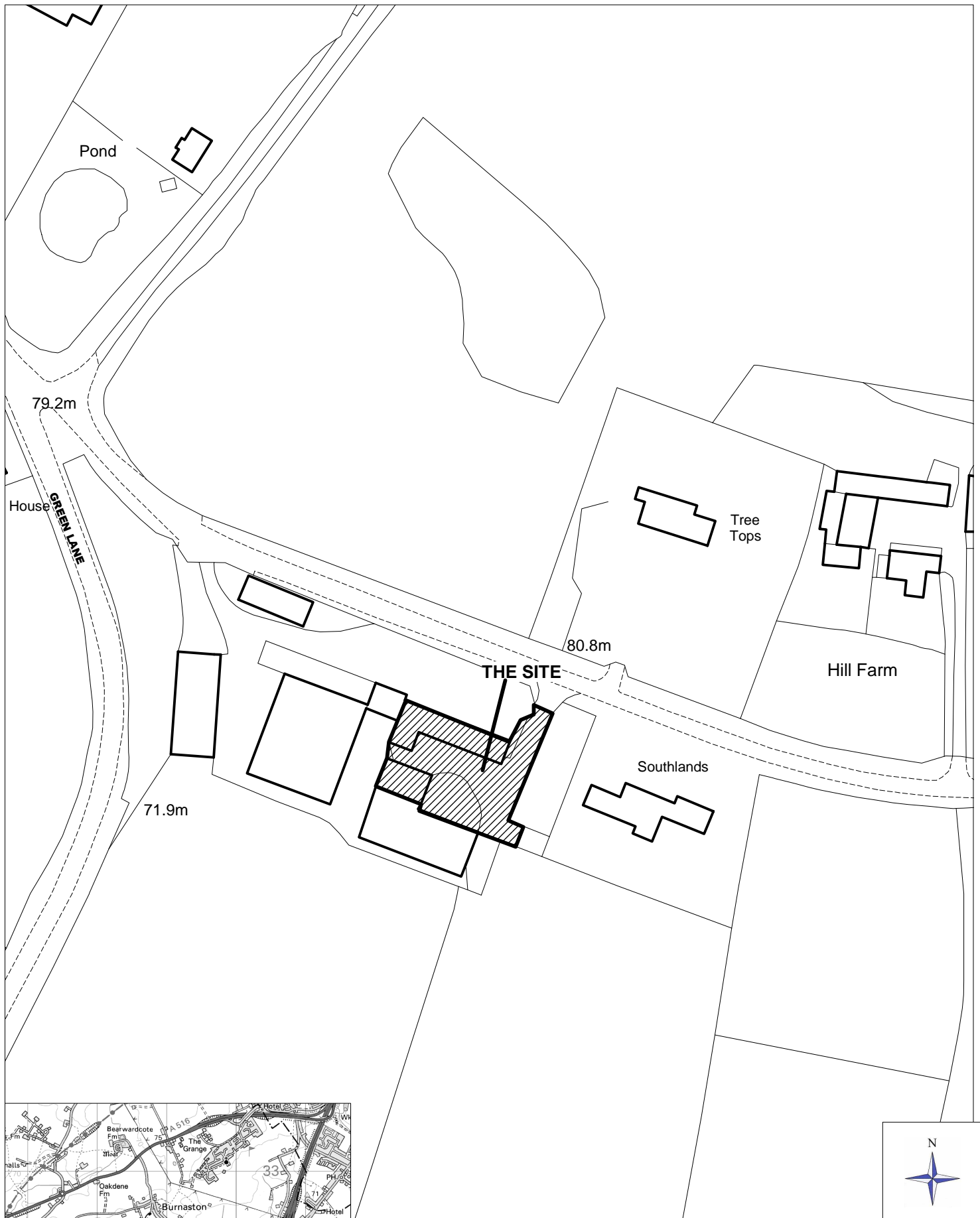
The site lies outside the village confines at Burnaston. It comprises a brick built stable block under a red tile roof. There is a roadside hedge that separates the building from the road with an access point between the stables and the existing dwelling. There are other agricultural buildings in the vicinity of the application building. There is another bungalow to the north of the site also outside the village confine, which lies to the west of the application building at Green Lane.

Proposal

The application seeks permission for the conversion of the stable block to a 2-bedroom dwelling incorporating a kitchen/dining room, living room and study as well as an integrated garage.

Applicants' supporting information

The stable block and Southlands were constructed in about 1972 and the design and materials of construction are typical of that period. It is contended that the development would have no adverse impact on the locality and that the conversion works would provide employment for the construction industry at these difficult times.



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The applicants contend that the site is a brownfield site that would contribute to the overall housing supply without affecting neighbouring houses, providing a high quality living environment with good standards of privacy and security. It is acknowledged that the building has no architectural or historic interest. The stable block already looks like a dwelling when viewed from Findern Lane and the level floor would assist the applicant by providing an inclusive dwelling with ease of access.

Only minor changes to the elevation are proposed and the existing appearance of the building would not be unduly affected. The Design and Access statement asserts that the applicant has been in liaison with the Local Planning Authority and that the agents are acting on that advice.

The applicant's doctor has submitted a letter confirming that the applicant suffers from rheumatoid arthritis and has recently suffered more restricted mobility and struggles in his current accommodation that is a large chalet bungalow with a number of trip hazards. The applicant would benefit from a move to a more appropriate single storey dwelling that would minimise his risk of falls and maintain his independence and allow him to maintain an interest in the farm.

Planning History

There is no recent planning history at the site, planning permission was granted for a bungalow, garage and stable block in 1972. In the 1950's permission had been granted on several occasions for an agricultural dwelling to serve a smallholding. In 1976 there was a building regulation notice for an extension to the stable block together with other agricultural buildings later in the 1970's. In 1988 planning permission was granted for a calf unit and implement shed and in 1992 permission for a livestock building. These events reflect the buildings now seen on the site.

Responses to Consultations

Burnaston Parish Council has no objection.

The County Highway Authority has objection subject to the imposition of conditions requiring the provision of visibility splays and appropriate parking provision.

Severn Trent Water has no objection subject to foul and surface water disposal methods being agreed.

Responses to Publicity

One objection has been received that draws attention to the agricultural occupancy condition in the existing dwelling and planning policy that requires the need for an additional dwelling to be proven. The building does not lie within the village confine and the employment generated by the development would be negligible. The existing bungalow should be adapted to improve access for the applicant. The development would result in creeping housing development along Findern lane.

Development Plan Policies

The relevant policies are:
RSS8: Policies 1,2 & 12

Local Plan: Environment Policy 1, Housing Policy 7 & 8.

National Guidance

PPS 1 & 7

Planning Considerations

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

- The Development Plan
- Material Planning Considerations
- Highway Considerations

Planning Assessment

The site lies outside the village confine at Burnaston. Thus the proposal lies in the countryside outside the village. In such locations new housing development including the conversion of buildings to residential use need to be justified on the basis of the proven needs of an established rural business. In this case the existing dwelling caters for the residential needs of the holding. Thus there is no agricultural justification to allow the dwelling.

PPS 7 encourages the reuse of redundant farm buildings but suggests that consideration of alternative uses should first be of those that benefit the rural economy such as workshops or holiday lets. Residential uses can be acceptable provided that the principles of sustainable development set out in PPS 3 and some of the paragraphs in PPS 7 are observed.

Housing Policy 7 makes provision for residential conversion but the terms of that policy no longer reflect the provisions of PPS 7.

The main argument of the applicant is that the existing dwelling does not meet his individual needs as there are trip hazards and the bungalow is too large for him. His Doctor supports him in this view. However, there is no evidence that any attempt has been made to adapt the existing dwelling to meet the applicant's needs, as this is a dormer bungalow. The objector has also made this point.

In the light of the above it is considered that there are no material considerations that would dictate that permission should be granted contrary to the provisions of the Development Plan.

Satisfactory access to the site can be provided subject to conditions.

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

Recommendation

REFUSE permission for the following reason:

The stable block lies in the countryside where the Local Plan requires that the dwelling should be necessary for the operation of an established rural business. PPS 7 asserts that where barn conversions to residential use are proposed, the application should assess the suitability of the building for alternative uses that would benefit the local economy such as workshops or holiday lets. In this case there is no agricultural justification for the development nor is there any assessment of alternative uses for the proposed building as set out in PPS 7. In the absence of any agricultural or other justification the conversion of the block to residential use would be contrary to the provisions of Housing Policies 7 & 8 of the adopted South Derbyshire Local Plan and Policies 1, 2, 3, and 12 of the East Midlands Regional Plan.

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
9/2008/0577	Foston	Etwall	Allowed	Committee
9/2008/0777	Woodville	Woodville	Dismissed	Delegated
9/2008/1126	Overseal	Seales	Dismissed	Delegated
9/2009/0019	Swadlincote	Swadlincote	Allowed	Committee



Appeal Decision

Hearing held on 27 May 2009

Site visit made on 27 May 2009

by **Phillip J G Ware BSc DipTP MRTPI**

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

Decision date:
3 July 2009

Appeal Ref: APP/F1040/A/08/2090336

Land at the former Castle View service station, Uttoxeter Road, Foston, Derby

- 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 Alan Buckland against the decision of South Derbyshire District Council.
- The application Ref 9/2008/0577/NU, dated 24 April 2008, was refused by notice dated 4 November 2008.
- The development proposed is a change of use to extend the existing caravan site to allow the stationing of touring caravans on 6 no. transit pitches, with ancillary access road, hardstanding and the replacement of the existing facilities block.

Application for costs

1. At the Hearing an application for costs was made by Mr Alan Buckland against South Derbyshire District Council. This application is the subject of a separate decision.

Procedural matter

2. The ground level of the appeal site has been raised to approximately that of the adjoining gypsy site. It was agreed at the Hearing that the planning application included this operational development, and that the Council had considered that aspect when dealing with the proposal. I have approached the appeal on the same basis.

Decision

3. I allow the appeal, and grant planning permission for a change of use to extend the existing caravan site to allow the stationing of touring caravans on 6 no. transit pitches, with ancillary access road, hardstanding and the replacement of the existing facilities block on land at the former Castle View service station, Uttoxeter Road, Foston, Derby in accordance with the terms of the application, Ref 9/2008/0577/NU, dated 24 April 2008, and the plans submitted with it, subject to the conditions in the Schedule attached to this decision.

Main issues

4. The main issues in this case are:
 - The effect of the development on the character and appearance of the area

- Whether any harm arising from the above matter is outweighed by the need for accommodation to meet the needs of gypsies

Reasons

Background

5. The appeal site is broadly rectangular, and is set behind an existing gypsy caravan site which is located on the north side of Uttoxeter Road. The site is outside any settlement and the surrounding area is largely agricultural, including open fields to the north, although there are pockets of residential and commercial development in the wider area and particularly along the Uttoxeter Road frontage. The area is generally flat, and the fields are mainly bounded by trees and hedges.
6. The land on the road frontage (in front of the current appeal site) was apparently originally a petrol filling station. In May 2001 permanent planning permission was granted on appeal¹ for a static unit for occupation by one gypsy family. An amenity block was subsequently allowed. In August 2003 permanent planning permission was granted on appeal² for six additional caravans on the frontage site. Both these permissions relate to permanent occupation, rather than transit pitches.
7. Planning permission was subsequently refused for raising the land which comprises the current appeal site to form a parking/play area. The operational part of the development has nevertheless been carried out.
8. The proposal is for the laying out of six pitches for transit caravans, together with a roadway and turning head. A facilities building, to replace the one which currently serves the frontage gypsy site, would be constructed and this would serve both the existing site and the proposed transit area. The entrance would be through the existing site.

The effect on the character and appearance of the area

9. The approach of the South Derbyshire Local Plan (LP) 1998 Environment Policy 1 is that new development will not be permitted outside settlements unless, amongst other matters, the character of the countryside is safeguarded. This approach is reflected in LP Housing Policy 15³, which deals specifically with gypsy caravan sites.
10. However, it is a material consideration that Circular 01/2006 "*Planning for gypsy and traveller caravan sites*" states that gypsy sites are acceptable in principle in the countryside. The fact that the appeal site is in the countryside cannot, in itself, be used as a reason for dismissing the appeal, especially as the area is not subject to any special planning constraints.
11. The view of the site from Uttoxeter Road would be very limited indeed, as it would be obscured by the existing vegetation and by the existing gypsy site on

¹ 1053594

² 1109149

³ It was agreed at the Hearing that the only relevant sections of the Housing Policy 15 (parts (i) and (v)) deal with countryside protection, and that the other parts of the policy are not relevant to this appeal.³

the road frontage. The proposal would be more visible (at a distance) from Brook Lane to the north, across open fields, and from footpath no. 13 close to the eastern boundary. The view from the footpath would be limited by the existing sporadic hedge which provides some screening.

12. The raised ground levels have increased the relative prominence of the site, and the proposed caravans and facilities building would be visible. However most of the views from Brook Lane and the footpath would be set against the backdrop of the existing gypsy site. If anything, the proposal could serve to screen the existing site from view by the use of native planting around the external boundaries, which could be required by a condition. Although there would be some increased sense of urbanisation, which would be out of place in this rural setting, this would be only partial due to the limited visibility of the site and the presence of the adjoining gypsy site.
13. In allowing the appeals for the frontage developments, previous Inspectors have referred to the significant impact of those schemes on the openness of the site, and the change to its rural character. However, it was noted in those decisions that this effect would be most apparent from the road frontage, and that the site was well contained visually on other sides. This accords with my view of the current appeal, which is set against the backdrop of the developments allowed by those earlier appeals.
14. In any event, I find nothing in national or local policy which requires that gypsy sites in rural locations should be entirely hidden from view. Overall, I consider the proposal is well related to the frontage site and, bearing in mind the proposed additional planting, would harm the character and appearance of the area and conflict with policy to only a limited degree.

The need for and provision of gypsy transit sites

15. As the proposal is for a transit site, there are no specific intended occupiers. However a condition could be imposed to require that all future occupiers of the site fall within the definition of gypsies and travellers at para. 15 of Circular 01/2006. I shall therefore apply national and local policy regarding gypsy site provision.
16. The approach at the regional level is set out at Policy 16 of the East Midlands Regional Plan 2009 (RSS) which provides that local authorities and other relevant public bodies should work together to identify land for additional gypsy and traveller pitch provision based on clearly evidenced assessments of need. The RSS identifies a net requirement of 19 additional pitches in South Derbyshire, but there is no requirement to provide additional transit pitches – as some other authorities are required to do.
17. This lack of a requirement in the RSS for transit sites in the District appears to have emanated from the Derbyshire Gypsy and Traveller Accommodation Assessment 2008 (GTAA). The GTAA refers to frequent unauthorised encampments, and notes that these groups may benefit from the provision of transit sites. However it further states that, without interviewing the groups concerned it is difficult to confirm their requirements. It appears that this further work has not been done to date.

18. The Council accepts that South Derbyshire is an area where gypsies reside and to which they resort, and it may be that more information and greater clarity on the need for transit sites will emerge during the production of the Local Development Framework in the light of the comments in the GTAA. However it was agreed at the Hearing that work on this is at an early stage and that there are no policies currently in existence of relevance to this appeal.
19. The gypsy count figures, updated at the Hearing, provide little hard evidence either way of need for transit sites. The parties also agreed that the count figures do not record those on the lawful frontage site, which casts their accuracy into some doubt. The count also does not show the extent of any hidden need for transit sites relating to temporary pitch sharing on authorised sites.
20. The best evidence related to any local need for transit sites was that provided by the Council during the Hearing⁴. This shows unauthorised encampments in the area from June 2005 onwards and clearly demonstrates a considerable number of temporary sites – often by the roadside or in car parks – in the area. Although the details of the events are not available, this continuous assessment of incidents of unauthorised encampments is a very useful source of information. It indicates some degree of need for temporary sites by those who, it is reasonable to assume, are passing through the area.
21. I will now turn to the accommodation which is currently provided in the District for those in transit. The Council had stated that sufficient vacant plots are available to meet any need for transit accommodation, but at the Hearing only the Council's Lullington site was put forward. This includes two transit pitches which, according to the evidence of the authority, are very little used. The appellant suggested that this may be due to the limited number of pitches, as gypsies often travel together, and due to location of that site away from main urban concentration in Derby where work may be most readily found. This seems a reasonable explanation for the apparent lack of use of these pitches.
22. I am not persuaded that these two pitches, in a relatively peripheral location (as opposed to the accessible location of the appeal site) comprise sufficient available accommodation for those in transit. I also note that the unauthorised encampments recorded by the Council continued despite the vacancies at Lullington.
23. Overall, the evidence available to me indicates that there is a need for transit accommodation in the area for gypsies, which is not being met by the current provision. This matter weighs in favour of the proposal.

Conclusion and conditions

24. I have weighed the limited harm which the proposal would cause to the character and appearance of the area against the need for and provision of transit sites for gypsies. I consider that the harm to the area is such that it is clearly outweighed by the need for the provision of a transit site, and I propose to allow the appeal.

⁴ Document 6

25. As discussed above, I consider it is necessary to require the submission of a landscaping and boundary treatment scheme and its subsequent implementation.
26. Given the reason for allowing the appeal, a condition should be imposed limiting the occupation of the site to gypsies and travellers. In addition, to ensure the use remains as transit accommodation, conditions are necessary, as agreed at the Hearing, to ensure that all caravans can be moved and to ensure that only temporary occupation occurs.
27. Commercial activity and the parking of commercial vehicles should be prohibited in the interests of the amenity of the area. Finally, in the interests of highway safety, the turning area shown on the submitted plans should be laid out before the use commences and subsequently retained. I do not consider that further details of this provision are necessary, as was suggested by the Council.
28. For the reasons given above I conclude that the appeal should be allowed.

P. J. G. Ware

Inspector

Schedule of conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) No development shall take place until there has been submitted to and approved in writing by the local planning authority a scheme of landscaping, which shall include indications of all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection in the course of development
- 3) 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 first occupation of the site; and any trees or plants which within a period of 5 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 approval to any variation.
- 4) Notwithstanding any details submitted, or the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended), no development shall take place until plans showing the position, design, materials and type of boundary treatment to be erected have been submitted to and approved in writing by the local planning authority. The boundary treatment shall be completed in accordance with the approved details before the first occupation of the site or in accordance with a timetable which shall first have been agreed in writing by the local planning authority.
- 5) Any caravans positioned on the site shall be capable of being lawfully moved on the public highway, without division into separate parts.
- 6) The site shall not be occupied by any persons other than gypsies and travellers as defined in paragraph 15 of ODPM Circular 01/2006.
- 7) No commercial activities shall take place on the land, including the storage of materials.
- 8) No vehicle over 3.5 tonnes shall be stationed, parked or stored on the land.
- 9) Caravans shall not occupy one or more of the hardstandings for more than 35 days consecutively in any calendar year, within no return to the site within 90 days of the hardstanding being vacated. When a caravan arrives the site owner shall enter into a register the details of the type and registration number of the caravan and the identity of its owner. This register shall be made available for inspection by the local planning authority at any time and a copy of the register shall be supplied to the local planning authority at the end of each calendar year for its file records.
- 10) The turning head shown on the plans hereby approved shall be laid out and surfaced before the use of the site commences, and shall be retained clear of obstruction for that purpose thereafter

DOCUMENTS

- | | |
|---|---|
| 1 | List of persons present at the Hearing |
| 2 | Council's letter of notification and list of persons notified |
| 3 | East Midlands Regional Plan 2009 (extract) |
| 4 | Update on gypsy count |
| 5 | Location of Council's Lullington site |
| 6 | Schedule of unauthorised sites in South Derbyshire |

PLANS

- | | |
|-----------|--|
| A/1 – A/4 | The appeal plans (07_163_BUCK3_001, 002, 003, 004) |
|-----------|--|



Appeal Decision

Site visit made on 23 June 2009

by Karen Baker DipTP MA DipMP MRTPI

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for Communities and Local Government**

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**Decision date:
2 July 2009**

Appeal Ref: APP/F1040/A/08/2090709

**Unit 6, Woodhouse Business Centre, Woodhouse Street, Woodville,
Swadlincote DE11 8ED**

- 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 Sarah Tindle against the decision of South Derbyshire District Council.
- The application Ref. 9/2008/0777/U, dated 26 June 2008, was refused by notice dated 16 September 2008.
- The development proposed is the change of use to D2 and erection of sign.

Procedural Matters

1. Although the application form describes the proposed development as detailed above, it was apparent from the evidence before me that the proposal would include the use of Unit 6 as a creative arts nursery for 2-5 year olds during the day and for dance classes between 1600hrs and 2100hrs (Monday to Friday) and on Saturdays. Therefore the proposed development would include elements of Class D1 use as well. I have therefore, considered the appeal on this basis.
2. In its decision notice, the Council made reference to Economy Policy 1 of the Derby and Derbyshire Joint Structure Plan. However, this policy is no longer a 'saved' policy following the approval of the East Midlands Regional Plan on 12 March 2009. As such, it no longer forms part of the development plan for the area.

Decision

3. I dismiss the appeal.

Main Issues

4. The main issues in this appeal are:
 - a) whether or not the proposed recreational/educational use would be compatible and would integrate with the existing neighbouring industrial/business uses;
 - b) the effect that the proposed change of use would have on the supply of industrial/business space in the local area; and,
 - c) whether or not a sequential approach to site selection has been applied to the proposed development, having regard to the advice in Planning Policy Statement (PPS) 6: Planning for Town Centres.
-

Reasons

Compatibility of the Proposed Recreational/Educational Use

5. The appeal property forms part of the Woodhouse Business Centre, which is located in a predominantly industrial area. The business centre is a 2 storey building, with adjoining single storey industrial units. The proposal would include the change of use of Unit 6 from B1 (Business), B2 (General Industrial) and B8 (Storage and Distribution) uses to D1 (Non-Residential Institutions) and D2 (Assembly and Leisure) uses. The units in the vicinity of the appeal property are used for a variety of B1, B2 and B8 uses. The only exception being Unit 8, which is used as a workshop/retail unit by Burton YMCA.
6. The surrounding businesses may vary in their intensity and level of noise pollution and type of vehicle movements. However, I note the response to the planning application from the Council's Environmental Health Officer that, although surrounding uses may cause disturbance to the proposed use, this matter could be satisfactorily resolved through the imposition of a planning condition on any approval requiring the submission and approval of a scheme to acoustically insulate the building from the adjoining premises. Given this, I am satisfied that the neighbouring uses would not have a detrimental impact on the future occupiers of Unit 6 and similarly, given the proposed use, the future occupiers of Unit 6 would be unlikely to have an adverse impact upon the present and future occupiers of neighbouring industrial/business units.
7. I conclude therefore that the proposed recreational/educational use would be compatible and would integrate with the existing neighbouring industrial/business uses. As such, it would not be contrary to Recreation and Tourism Policy 1 of the South Derbyshire Local Plan¹, adopted in May 1998.

Supply of Industrial/Business Space

8. The appellant states that allowing a leisure use on the appeal site would not be detrimental to local industry as there is no shortage of industrial units in the area. However, the Council is concerned that the use of the appeal property for non B1, B2 or B8 uses would exacerbate an existing qualitative shortfall in available land and premises. Indeed, it points to an identified shortfall of 80.32ha in employment land provision in the B1, B2 and B8 uses for 2026.
9. The Derby Housing Market Area Employment Land Review, published in March 2008, determines that the Woodhouse Business Centre is of good quality and recommends that such units should be protected strongly, supported and expanded. As such, in my view, 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.
10. I conclude, therefore, that the proposed change of use would harm the supply of industrial/business space in the local area.

¹ The Local Plan policy to which I refer in this decision has been saved by a Direction, under paragraph 1(3) of Schedule 8 to the Planning and Compulsory Purchase Act 2004, of the Secretary of State for Communities and Local Government, dated 21 September 2007

Whether or Not More Suitable Town Centre Locations Exist

11. PPS 6 identifies leisure as a main town centre use. In assessing proposed developments for main town centre uses, PPS 6 states that applicants should demonstrate a number of things, including that there are no more central sites for the development by applying the sequential approach to site selection for sites that are not in an existing centre. The appeal site is located in excess of 560m from the main shopping street in Swadlincote and, as such, the Council considers it to be an out of centre location.
12. I note that the appellant submitted a letter which stated that she had been looking for over a year for suitable premises, without success. However, I have no evidence before me relating to the other sites considered by the appellant or their location. As such, I do not consider that it has been sufficiently demonstrated that there are no suitable alternative sites in a town centre or edge of centre location for the proposed development.
13. I conclude, therefore, that a sequential approach to site selection has not been applied to the proposed development, having regard to the advice in PPS 6.
14. Although I consider that the proposed recreational/educational use would be compatible and would integrate with the existing neighbouring industrial/business uses, this is outweighed by the harm that I have identified to the supply of industrial/business space in the local area and that a sequential approach to site selection has not been applied to the proposed development, having regard to the advice in PPS 6. In my opinion, these are compelling objections and for these reasons the appeal should be dismissed.
15. I have considered all the other matters raised, including the benefits to the local community and need for the facility, but none changes my overall conclusion that the appeal should be dismissed.

Karen Baker

INSPECTOR



Appeal Decision

Site visit made on 23 June 2009

by Karen Baker DipTP MA DipMP MRTPI

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**Decision date:
6 July 2009**

Appeal Ref: APP/F1040/A/09/2101938

Land adjoining 70 Burton Road, Overseal, Swadlincote DE12 6JJ

- 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 Perrett Property Limited against the decision of South Derbyshire District Council.
- The application Ref. 9/2008/1126/FM, dated 13 November 2008, was refused by notice dated 19 January 2009.
- The development proposed is the conversion of a former telephone exchange to form a dwelling without vehicular access.

Decision

1. I dismiss the appeal.

Main Issues

2. The main issues in this appeal are:
 - a) whether or not the proposal would provide a reasonable level of amenity space and a safe and functional layout for future occupiers of the proposed dwelling; and,
 - b) the effect of the proposed development on highway safety.

Reasons

Amenity Space and Layout of the Proposed Development

3. The appeal site is located on the north eastern side of Burton Road, the A444. To the north west are residential properties and to the south east is a telephone exchange, beyond which are further residential properties. To the south west, on the other side of Burton Road are a Co-op retail unit and a fish and chip shop, with open countryside to the north west. The proposed development would include the conversion of the former telephone exchange to a dwelling.
 4. The appeal property is located towards the rear of the site. As such, the amenity space would be sited to the front of the proposed dwelling. The amenity space would be around 2m in depth with an open frontage to the A444. I note the appellants' statement that the lack of outdoor space would be regarded as an advantage by many single occupiers, and their successful conversion of a similar building in Warwickshire. Nevertheless, I consider that, given the small size of the amenity space, along with its location to the front of
-

the proposed dwelling, close to a busy highway, it would not provide an adequate, private or useable area for sitting out and recreation.

5. I conclude, therefore, that the proposed dwelling would not provide a reasonable level of amenity space and a safe and functional layout for future occupiers. As such, it would be contrary to Housing Policy 11 of the South Derbyshire Local Plan¹, adopted in May 1998.

Highway Safety

6. The proposed development would not include any provision for off street car parking. Government guidance in Planning Policy Guidance (PPG) Note 13: Transport, seeks to promote more sustainable transport choices, promote accessibility to jobs, shopping, leisure facilities and services by public transport, walking and cycling, and, reduce the need to travel, especially by car. PPG 13 states that developers should not be required to provide more spaces than they themselves wish, other than in exceptional circumstances which might include for example where there are significant implications for road safety. Burton Road is a busy principal road with traffic flows in excess of 10,000 vehicles in 12 hours, almost 10% of which are HGVs and is a road where actual vehicle speeds exceed the 30mph limit.
7. I note the previous Inspector's decision (Ref. T/APP/F1040/A/00/1036211/P8) and I acknowledge that Government guidance has changed since that time. Although maximum parking standards promote sustainable transport choices, Manual for Streets highlights the research by the Commission for Architecture and the Built Environment (CABE) that found that attempts to restrict parking in order to curb car ownership are unrealistic and have little or no impact on the number of cars a household would require or acquire. Manual for Streets also refers to research which shows that, although the ability of residents to reach important destinations by other modes is one factor affecting car ownership, dwelling size, type and tenure are also important.
8. The proposed dwelling would be located in a substantial village, with a wide range of facilities, and on a bus route, with regular bus services to major employment centres in the locality. However, the Highway Authority expects a car ownership level of 2 vehicles per household in this location. I note the appellants' statement that the proposal would create a small single bedroom bungalow for rent and that, as such, it would occupy a sector of the market where multiple car ownership, if not car ownership entirely, is likely to be economically unviable. Nevertheless, the tenure of the proposed dwelling may change in the future and it would provide accommodation larger than that provided in a bed-sit or shared dwelling, within an area with a large number of sizeable dwellings. Given this, I consider it likely that future occupiers of the proposed dwelling would own a car. As such, I have had regard to this, as well as to people visiting the proposed dwelling other than by public transport, walking and cycling.
9. The carriageway is wide and no parking restrictions apply along this part of Burton Road. Indeed, on street parking associated with nearby dwellings

¹ The Local Plan policies to which I refer in this decision have been saved by a Direction, under paragraph 1(3) of Schedule 8 to the Planning and Compulsory Purchase Act 2004, of the Secretary of State for Communities and Local Government, dated 21 September 2007

already occurs. Nevertheless, given that this is a busy highway, where vehicle speeds are in excess of the 30mph limit, along with the close proximity of the bus stop and access to the retail unit and hot food takeaway on the other side of Burton Road, any increase in the number of vehicles parking along, and manoeuvring within, the carriageway at this point would be likely to lead to conflicts with vehicles travelling along the A444. This would be detrimental to highway safety.

10. I conclude, therefore, that the proposed development would harm highway safety. As such, it would be contrary to Transport Policy 6 of the Local Plan.
11. I have considered all the other matters raised, including that the dwelling would be sustainable in terms of energy consumption and the future of the building if planning permission is not granted, but none changes my overall conclusion that the appeal should be dismissed.

Karen Baker

INSPECTOR



Appeal Decision

Site visit made on 23 June 2009

by **Karen Baker** DipTP MA DipMP MRTPI

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Decision date:
3 July 2009

Appeal Ref: APP/F1040/A/09/2101307

Jason Hylton Court, Wilmot Road, Swadlincote, Derbyshire DE11 9BJ

- 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 Stephen Jones against the decision of South Derbyshire District Council.
- The application Ref. 9/2009/0019/NO, dated 9 January 2009, was refused by notice dated 24 March 2009.
- The development proposed is the change of use of apartment block (C3 use) to nursing home for the elderly and infirm (C2 use) including a side extension and a rear and side single storey extension together with minor alterations to the external layout.

Decision

1. I allow the appeal, and grant planning permission for the change of use of apartment block (C3 use) to nursing home for the elderly and infirm (C2 use) including a side extension and a rear and side single storey extension together with minor alterations to the external layout at Jason Hylton Court, Wilmot Road, Swadlincote, Derbyshire DE11 9BJ in accordance with the terms of the application, Ref. 9/2009/0019/NO, dated 9 January 2009, and the plans submitted with it, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The materials to be used in the construction of the external surfaces of the extensions hereby permitted shall match those used in the existing building.
 - 3) Prior to the commencement of the development, the splayed vehicular crossover shall be constructed at the access to the site and the footway fronting the site reinstated as footway, in accordance with a scheme first submitted to and approved in writing by the local planning authority.
 - 4) Prior to the occupation of the development, the access into the site and the car parking and manoeuvring area shall be laid out and constructed in accordance with Drawing No. 46A and be maintained thereafter and made available at all times for their designated purposes.
 - 5) Any gates shall be set back 5m from the highway boundary and shall open inwards only.
 - 6) 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 building or the completion of the development, whichever is the sooner; and any trees or plants which

within a period of 5 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 approval to any variation.

- 7) Prior to the commencement of any work on site, a method statement shall be submitted to and agreed in writing by the local planning authority for all works under the canopies of the protected trees. The construction of the stairwell extension hereby approved shall be carried out in accordance with the agreed details.
- 8) The boundary treatment shall be completed in accordance with the approved details before the development is occupied or in accordance with a timetable which shall first have been submitted to and agreed in writing by the local planning authority.

Main Issues

2. The main issues in this appeal are:

- a) whether or not the proposal would provide a reasonable level of car parking to serve the proposed nursing home; and,
- b) whether or not the proposal would provide a reasonable level of private amenity open space for the future occupiers of the proposed nursing home.

Reasons

Car Parking

3. The proposed development would provide a 36 bedroom nursing home, with 12 car parking spaces, including 2 disabled spaces. The Council considers that the car parking provision would not be appropriate for the proposed development. I note, however, that the Highway Authority has no objection to the proposed access and car parking arrangements, subject to the imposition of a number of planning conditions.
4. Government guidance in Planning Policy Guidance (PPG) Note 13: Transport says that developers should not be required to provide more spaces than they themselves wish, other than in exceptional circumstances which might include for example where there are significant implications for road safety. No information was provided as part of the planning application relating to the likely number of employees or visitors. I am satisfied that, given the proposed use as a nursing home, residents would be unlikely to own cars. I also acknowledge that some staff and visitors would use other modes of transport, including public transport, walking and cycling.
5. There may be times during the evening and at weekends when demand for car parking spaces would be high. The Council is concerned that any overspill car parking on Wilmot Road would not be acceptable in terms of highway safety as it is a steep road with a junction immediately opposite. In my opinion, however, given the width of Wilmot Road and the available forward visibility, along with the 30mph speed limit and current levels of on street parking, any overspill at peak times would be safely accommodated along this highway. As such, I do not consider that the proposed number of car parking spaces would

have significant implications for road safety. Given this, and the scale of the proposed development, I am satisfied that a reasonable level of car parking would be provided.

6. I conclude, therefore, that the proposal would provide a reasonable level of car parking to serve the proposed nursing home. As such, it would not be contrary to Community Facilities Policy 1 of the South Derbyshire Local Plan¹, adopted in May 1998.

Amenity Open Space

7. The proposed development would provide 2 small sitting out areas for residents of the nursing home to the south eastern side of the building, with a further larger sitting out area to the north western side. The former would have a landscaped area to the south east, with the access road beyond. The latter would include a grassed area, with some landscaping beyond to the north west. The car parking and vehicle turning area would be sited immediately to the south west of this amenity area.
8. The Council has no standards relating to the provision of amenity open space for nursing homes. I am satisfied, however, that, given the size of the sitting out and grassed areas, their location towards the rear of the site and their accessibility from internal amenity areas, along with the proposed landscaping, the amenity open space would be private, attractive and sufficient to serve the needs of the occupiers of the proposed nursing home. In addition, although sited close to the access and car parking/turning areas, the limited activity associated with these areas would provide some interest for residents, without being detrimental to their use of the amenity open space.
9. I conclude, therefore, that the proposal would provide a reasonable level of private amenity open space for the future occupiers of the proposed nursing home. As such, it would not be contrary to Housing Policy 11 of the Local Plan.

Other Matters

10. The Council is concerned that the 2 rear extensions would significantly reduce the space available for landscape screening and parking. For the reasons given above, I consider that sufficient landscaping and parking would be provided within the proposed development. As such, the proposal would not represent an overdevelopment of the site.
11. The proposed 3 storey north western side extension, which would provide a second stairwell, would be located around 3m from a Horse Chestnut tree within the grounds of Weston House, which is protected by the South Derbyshire District (Wilmot Road and Clamp Drive, Church Gresley) Tree Preservation Order (TPO) No. 39A (1985). The proposed stairwell would extend the existing building by around 1.5m to the side for a distance of around 6m. Although the proposed extension would be constructed within the canopy of this tree, given its small scale, I consider that with careful excavation and construction it would not unduly harm the preserved tree. This matter

¹ The Local Plan policies to which I refer in this decision have been saved by a Direction, under paragraph 1(3) of Schedule 8 to the Planning and Compulsory Purchase Act 2004, of the Secretary of State for Communities and Local Government, dated 21 September 2007

could be controlled by the imposition of an appropriate planning condition. Indeed, such a condition has been suggested by the Council.

12. I have considered all the other matters raised, including the design of the nursing home and living conditions of neighbouring occupiers, but none changes my overall conclusion that the appeal should be allowed.
13. In addition to conditions relating to the standard time limit and protection of the preserved trees, the Council has suggested 8 conditions. I have had regard to Circular 11/95 during my consideration of these conditions and the response to them from the appellant. I note that the appellant has requested extending the standard time limit condition to 5 years because of present market conditions. However, in my opinion, having regard to the guidance in Circular 08/2005, given that the building has recently been constructed and is currently vacant, the imposition of the standard time limit in this case would be appropriate to the size and nature of the development and would give greater certainty to the local community.
14. A condition requiring the submission and approval of details of the materials to be used would not be necessary in this case, as a condition requiring the use of matching materials would be sufficient to safeguard the character and appearance of the existing building and local area. A condition requiring the submission and approval of a scheme for the splayed vehicular crossover and its construction would be reasonable in the interests of highway safety. However, the reference 'all to Derbyshire County Council's specification' is imprecise and not necessary.
15. Conditions requiring the laying out of the access and car parking areas, which I have combined into one condition, and the siting of gates, would be necessary in the interests of highway safety. A condition requiring that the approved landscaping details be carried out would be reasonable to safeguard the character and appearance of the area. A condition requiring the submission and approval of details of gas protection measures would not be necessary as this is covered by other legislation. Finally, a condition requiring that the boundary treatment shall be completed in accordance with the approved details would be reasonable to safeguard the living conditions of neighbouring residents and the character and appearance of the area.

Karen Baker

INSPECTOR