

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

## **SECTION 1: Planning Applications**

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

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## **1. PLANNING APPLICATIONS**

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

<b>Reference</b>	<b>Item</b>	<b>Place</b>	<b>Ward</b>	<b>Page</b>
9/2016/0102	1.1	Overseal	Seales	11
9/2016/0094	1.2	Swadlincote	Midway	24
9/2016/0162	2.1	Hilton	Hilton	40

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

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

19/07/2016

**Item**            1.1

**Reg. No.**        9/2016/0102/FM

**Applicant:**  
**Mr Andrew Gadsby**  
**Croft House**  
**37 Repton Road**  
**Hartshorne**  
**Swadlincote**  
**DE11 7AF**

**Agent:**  
**Mr Darryn Buttrill**  
**bi Design Architecture Ltd**  
**79 High Street**  
**Repton**  
**DE65 6GF**

**Proposal:**        **THE ERECTION OF REPLACEMENT DWELLING AND  
ASSOCIATED ALTERATIONS AT SEALVIEW GREEN  
LANE OVERSEAL SWADLINCOTE**

**Ward:**            **SEALES**

**Valid Date:**      **29/01/2016**

*Members will recall deferring this case to enable a visit to the site to be made.*

#### **Reason for committee determination**

The item is presented to Committee at the request of Councillor Murray as the Committee should debate the issues in the case which are finely balanced.

#### **Site Description**

The site is located on Green Lane adjacent to two public footpaths (along Sealwood Lane and Green Lane). The site is elevated with views out onto the open countryside. Green Lane consists of a strip of ribbon development which falls outside of the settlement boundary for Overseal. Green Lane mostly consists of single storey bungalows but there have been instances where a number of the existing bungalows have been demolished and replaced with one and a half storey replacements.

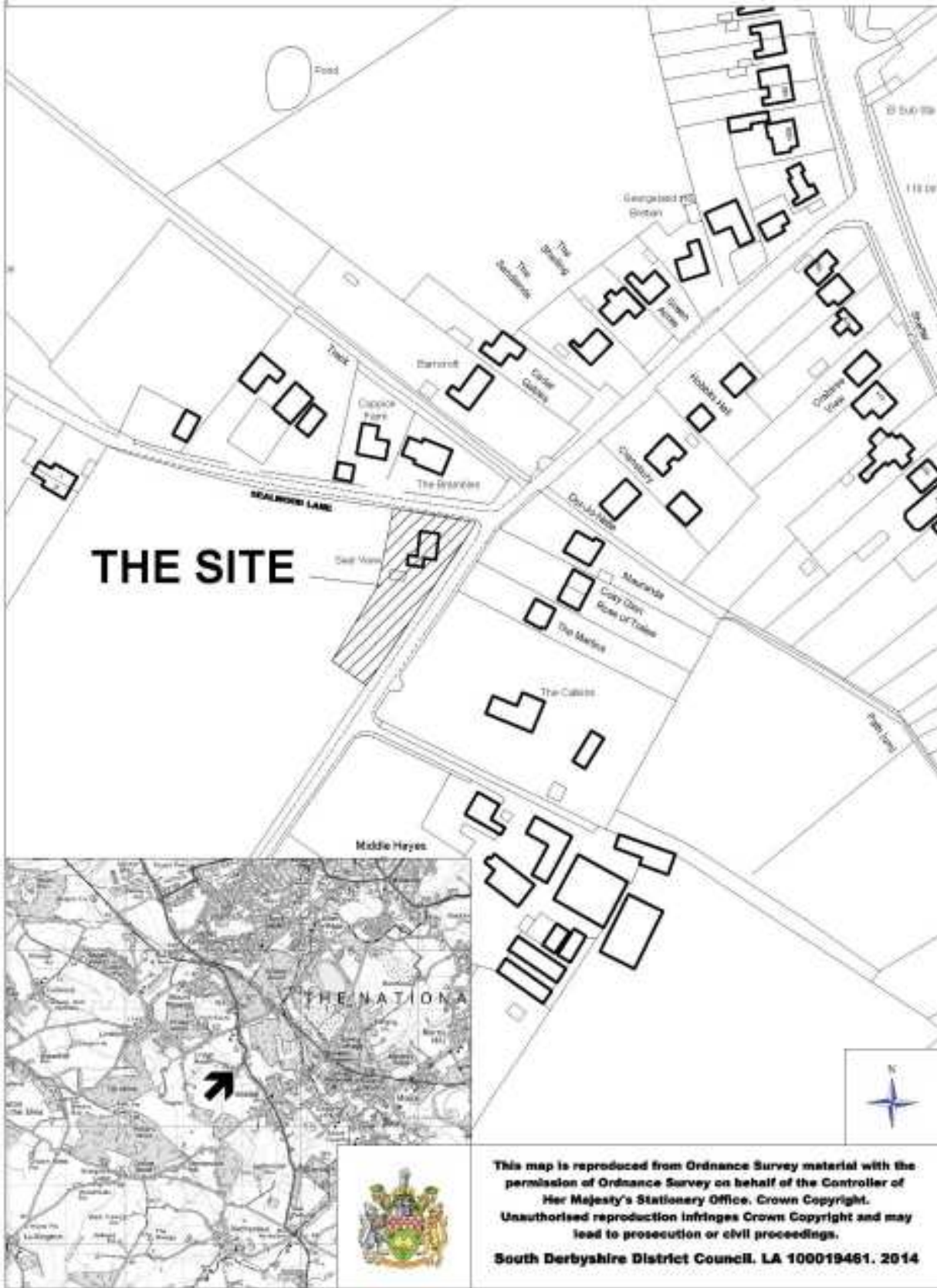
#### **Proposal**

Consent is sought to demolish the existing single storey bungalow and replace the existing dwelling with a two storey replacement dwelling and garage.

#### **Applicant's supporting information**

Design and Access Statement – The proposed development is for the replacement of an existing dwelling. Whilst the proposed dwelling would be an increase in area from the existing property, there are other examples where there are replacement

9/2016/0102 - Sealview, Green Lane, Overseal DE12 6JP



dwellings which are larger than the existing dwellings, namely applications; 9/2015/0647 and 9/2015/0646. The existing bungalow has an existing finished floor level of 11.00 based on the topographical survey. The proposed new dwelling entrance storey floor level is to be 11:60, with a road access of 9:00. The building has been designed with different room levels to break the scale and massing of the building and create interest. The proposed dwelling is to be constructed with a 3m easement from the Severn Trent sewer.

**Protected Species Survey** – The site is comprised of amenity grassland, disturbed soil and hardstanding. The hardstanding is of negligible ecological value and the amenity grassland is of low intrinsic ecological value. Overall the site is considered to be of a low ecological value and the proposals are not considered likely to give rise to an adverse ecological impact. There are two mature trees that are to be retained as part of the development, a mature oak (T1) and a mature holly (T2). If these trees are affected, it is recommended that the oak tree in particular is assessed for its potential to support bats. The existing building has the potential to be used for nesting by species of birds, therefore any future redevelopment should ideally avoid nesting season. Habitat creation could be carried out to compensate for the works and to enhance the site for nature and conservation and wildlife. For the proposed habitats to provide some compensation for the works it is essential that native species suitable to the local area are used for planting and that they are designed to maximise their wildlife potential.

## **Planning History**

There is no relevant history for the site.

## **Responses to Consultations**

The County Highways Authority has no objections to the application to the proposal subject to conditions relating to visibility splays, the re-instatement of the existing access to a grass verge and the layout of the access and parking prior to the occupation of the dwelling house.

Severn Trent has no objections to the proposal.

Natural England have no objections to the application, subject to the conditions relating to foul water drainage and that there is sufficient capacity and that surface water drainage is not directed to a mains sewer, as well as compliance with the Developer Contribution Scheme.

The Environment Agency has no comments to make regarding the application, subject to the development complying with the River Mease Development Contribution Scheme.

The Contaminated Land Officer has no objections to the proposal but notes that the site is adjacent to a significant area of unknown filled ground which could be linked to the historic infilling of a former quarry and it is therefore it is considered that the development may be at risk from ground gas migration and ingress into the proposed house. It would therefore be necessary for a suitable scheme for the

prevention of ground gas ingress to be submitted to the Local Planning Authority and approved prior to the construction of the proposed dwelling.

The Coal Authority has no objections to the application.

Derbyshire Wildlife Trust considers that the assessment that has been undertaken for bats meets Government guidance within Circular 06/2005 and, as such, sufficient information regarding these protected species has been supplied to enable the Council to make an informed decision in accordance with the guidelines and to discharge its legal obligation to have regard to the requirements of the Habitats Directive. The trees and hedgerows are retained as part of the proposal and this is supported, any new landscape and planting should use native species appropriate to the corresponding landscape character. The precautionary measures outlined in section 5 of the assessment should be implemented in full as a condition of any consent.

### **Responses to Publicity**

Overseal Parish Council does not object to the principle of a replacement dwelling on the site. However, the Parish Council is concerned about the safety of the new access and the dominance of this large house within the rural landscape.

There have been 13 letters of objection which have been received, raising the following concerns/points:

- a) Section 38 of the Planning and Compulsory Purchase Act 2004 states that development must accord with the development plan unless material considerations indicate otherwise.
- b) The proposed development would not comply with policy EV1 of the Saved Local Plan and the development is not essential to a rural based activity or unavoidable in the countryside.
- c) It is estimated that the proposal would be around 1300 cubic metres in comparison to the 250 cubic metres of the existing property. This would be over five times the volume and would “substantially exceed” the form and bulk of the original building and is contrary to policy H8.
- d) The Design and Access Statement incorrectly states that the existing property could be extended by 8m. Therefore, the test applies to the original dwelling.
- e) Despite the adoption of the Part 1 Local Plan, policies in the Saved Local Plan will be rolled forward until the adoption of the Local Plan Part 2.
- f) The dwellings on Sealwood Lane and Green Lane are predominantly single storey and are set back from the highway, with generous plot sizes and large gardens to the front.
- g) New development in the immediate area has been of a simple infilling nature and has reflected the existing character of the area.
- h) There are currently views over the existing bungalow to the countryside beyond. The height and bulk of the proposed dwelling would obscure these public views down Green Lane.
- i) The finished ground level of the development has been increased by 600mm above the existing ground level, to allow for a submerged garage which is

unnecessary due to the proposed double garage and car port that is proposed.

- j) The proposed dwelling takes nothing from the local vernacular. The dwelling is not of an outstanding innovative design that could justify the development.
- k) The extent of the red line on the location plan is not deemed to be residential curtilage. Therefore, the problem of overdevelopment would be exacerbated further.
- l) Green Lane is a small, rural, close-knit community that is being bombarded with new builds.
- m) Applications for “mini estates” which is out of character with this rural lane.
- n) The bottom of Green Lane has verges which has been broken down and grass churned up by; Lorries, diggers, JCB's and heavy machinery which are being used in the building of large re-builds. This increased development on the lane has got to stop.
- o) The proposed dwelling is completely out of character with the surrounding area, the dwelling is almost three times the size of the current bungalow and is higher than the other bungalows. Surely a re-build would need to be kept in character with the surroundings.
- p) There is no explanation for the 'outbuilding'. This is a large building in its own right and appears to be across two floors and there is no explanation for the building.
- q) There has been too much paid for the building plot and this is why the proposed dwelling is so large. This is not a sufficient reason for such a large dwelling to occupy the plot.
- r) The proposed property would be overbearing and out of scale with the existing properties on Green Lane. The development would be out of keeping with the area.
- s) It seeks to replace a small bungalow with a five bedroom property with a garage and outbuildings.
- t) The site occupies a prominent elevation on a corner junction. Therefore, the proposed two storey building with an under-garage would dominate the skyline.
- u) The level of traffic that uses Green Lane is already dangerous for dog walkers, elderly people and young children as a result of several businesses and new properties which have recently developed. Additional development would not appear to be possible.
- v) Whilst a replacement dwelling could be a welcome improvement to the original property, the proposed house would be out of keeping with the neighbouring properties, as the properties on Green Lane are predominantly bungalows or one and a half storeys.
- w) The site is already of an elevated position and a two storey dwelling here would tower over existing properties.
- x) The large footprint of the property would sit comfortably on the plot but would be suited to a single storey property or a one and half storey dwelling.
- y) The proposed outbuilding is an unnecessary additional building and would sit outside of the development line of Green Lane. The building should be contained within the existing garden area and should be of a timber/wooden construction which would be more in keeping with the existing area.
- z) There is increased traffic on Green Lane as the rural lane has become busy due to increased traffic.

- aa) The plans show a driveway entrance to the right on the corner of Green Lane/Sealwood Lane, with the increase in traffic, this is an increased concern. This junction is already unsafe due to the level of traffic and the inability of two cars to pass either on Green Lane or Sealwood Lane.
- bb) The lanes are used by ramblers as the lanes are more like footpaths than highways.
- cc) Green Lane and Overseal are being turned into towns. Whilst it is understandable that progress needs to be made, it is necessary to look at the impact on villages.
- dd) Green Lane represents a ribbon of dwellings outside of the village confine and sits on the edge of the countryside. Therefore, it would appear over dominant and excessively sized.
- ee) The proposal will tower over existing properties in the area, as they are predominately bungalows.
- ff) The current bungalow is 91 metres squared and the proposal is 243 metres squared, this is just the footprint and does not take account of the height or volume of the building.
- gg) The dwelling would appear to be three storeys in height when looked at from Green Lane.
- hh) The proposed dwelling has been set back to the site, creating an over dominant effect over the Brambles bungalow on Sealwood Lane and the Martins on Green Lane, it should not be built on the highest part of the plot as this would help to ensure that the privacy of neighbouring residents is retained.
- ii) The floor levels of the proposed dwelling are higher than existing to accommodate the sunken garage, this increases the impact of the proposed dwelling. The existing bungalow already overlooks the existing neighbouring properties, the proposed property would overlook and overshadow unnecessarily.
- jj) This is a replacement dwelling not a new dwelling and will not add to the housing stock within the district. The demand for dwelling type would be a single storey bungalow as there are many people living in Overseal and the wider District that live in larger properties that want to move to a bungalow if there was the opportunity.
- kk) The development would not comply with policy INF8 in that the scale of the proposed development is not appropriate and the development would adversely affect the character and appearance of the wider countryside.
- ll) A dormer bungalow would be better suited to the site.
- mm) Previous objections in relation to application 9/2015/0796 have been raised on the basis of; scale and scope, increase in traffic and environmental impact.
- nn) The access has been created over an existing ditch which carries excess water to a stream which eventually joins the River Mease. There are already excessive amounts of mud and waterlogging at the junction of Green Lane and Sealwood Lane.
- oo) If the application is not refused, it would clearly contradict the previous ruling of the Planning Committee against planning application 9/2015/0796.
- pp) The plan shows a garage with a room and a window in the gable end, this will look directly in the rooms of neighbouring properties.



- qq) Due to the number of garages and outbuildings is Green Lane to expect a business premises.

## **Development Plan Policies**

The relevant policies are:

- 1998 Local Plan (saved policies): Housing Policy 8 and Environment Policy 1.
- 2016 Local Plan: S2 – Presumption in Favour of Sustainable Development, H1 – Settlement Hierarchy, SD1 – Amenity and Environmental Quality, SD3 – Delivering Sustainable Water Supply, Drainage and Sewerage, BNE1 – Design Excellence, BNE3 – Biodiversity, BNE 4 – Landscape Character and Local Distinctiveness, INF2 – Sustainable Transport and INF8 – The National Forest.

## **Emerging Development Plan Policies**

The relevant policies are:

- Draft Local Plan Part 2: SDT1 – Settlement Boundaries and Development, H24 – Replacement Dwellings in the Countryside and BNE5 – Development in the Countryside.

## **National Guidance**

National Planning Policy Framework (NPPF), relevant paragraphs include:

- Paras 6-10 (Achieving sustainable development)
- Paras 11-14 (The presumption in favour of sustainable development)
- Para 17 (Core principles)
- Para 32-34 (Promoting sustainable transport)
- Chapter 6 (Delivering a wide choice of quality homes)
- Chapter 7 (Requiring good design)
- Para 72 (Promoting healthy communities)
- Para 109 and 118-123 (Natural environments)
- Para 186 (Decision-taking)
- Para 196 & 197 (Determining applications)
- Para 203 – 206 (Conditions and obligations)

Planning Practice Guidance (NPPG) ID:26 (Design), ID:21a (Conditions), ID:3 (Housing land availability) and ID:50 (Rural Housing)

## **Local Guidance**

- Housing Design and Layout SPG

## **Planning Considerations**

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

- The principle of a replacement dwelling
- The size and scale of the proposed dwelling
- Access to the proposed dwelling
- Other issues

## **Planning Assessment**

### The principle of a replacement dwelling

The proposed development seeks to erect a new dwelling in the same position as an existing bungalow. Whilst the site falls outside of the designated village boundary for the village of Overseal, the replacement of an existing dwelling with a new dwelling would be broadly considered acceptable in principle through policies H8 of the Saved Local Plan and the NPPF. This is subject to the proposed dwelling sitting substantially on the same site as the existing dwelling and that the proposed dwelling is in context with the neighbouring properties.

### The size and scale of the proposed dwelling

The proposed dwelling would be located on the corner of Sealwood Lane and Green Lane, both of which form public rights of way. The site is open fronted and visible from Sealwood Lane and two adjoining public footpaths, No. 36 which passes along Sealwood Lane and No. 6 which passes along the northern boundary. There are extensive, open views across the surrounding countryside to the south.

The proposed dwelling would therefore, be in an elevated position and would be highly visible from both public footpaths and the open countryside to the rear of the site.

The proposal substantially accords with the criteria of saved policy H8, in that the proposed dwelling although larger than the existing dwelling is of a similar scale to the existing since the scheme has been amended to reduce the overall height of the proposed dwelling by a reduction in the land levels and the removal of the additional outbuilding. This would create a dwelling which is more in-keeping with the neighbouring properties, which are predominantly between one and one and a half storeys.

The proposed dwelling is designed with the use of dormer windows and cat-slide roofs, to try and reflect the appearance of similar properties in the area and minimise the perceived dominance of the rear elevation to the open countryside. The development seeks to address the principles of policies BNE1 and BNE 4.

With suitable conditions, the proposed dwelling would comply with the minimum separation distances as contained within the Council's SPG.

### Access to the proposed dwelling

The proposal seeks to use the existing access for an integral garage and create another access an additional garage. Whilst there has been concerns raised by local residents with regard to the creation of a new access and the increase in traffic down Green Lane as a result of the proposed development, there has been no

objections raised by the County Highways Authority, subject to conditions stipulating visibility splays. The development would therefore be consistent with policy INF2.

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. The development hereby permitted shall be carried out in accordance with plan/drawing 10 (Amended Plan May 2016), received on 23rd May 2016; and plan/drawing 11 (Amended Plan May 2016), received on 23rd May 2016; unless as otherwise required by condition attached to this permission or allowed by way of an approval of a non-material minor amendment made on application under Section 96A of the Town and Country Planning Act 1990 (as amended).  
Reason: For the avoidance of doubt.
3. Construction work shall not 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.
4. No construction work shall be carried out until precise details, specifications and, where necessary, samples of the facing materials to be used in the construction of the external walls and roof of the building(s) have been submitted to and approved in writing by the Local Planning Authority. The work shall be carried out in accordance with the approved details.  
Reason: To safeguard the appearance of the existing building and the locality generally.
5. Notwithstanding the submitted details, prior to the commencement of building operations on adjoining areas, the boundary with the trees (identified and T1 and T2 on the submitted Protected Species Survey) shall be fenced with steel mesh fencing to 2.3m high supported by steel scaffold poles staked at 3 metre centres. The fencing shall be retained in position until all building works on adjoining areas have been completed unless otherwise agreed in writing with the local planning authority.  
Reason: To protect the trees/landscape areas from undue disturbance

6. Prior to the first occupation of the new dwelling, the new access shall be formed to Green Lane. The access shall have a minimum width of 3.25m, be provided with measures to prevent surface water escaping from the site onto Green Lane and with 2m x 25m visibility splays in each direction, the area forward of which shall be cleared and maintained throughout the life of the development clear of any obstruction exceeding 600mm in height relative to the Green Lane carriageway.

Reason: In the interest of highway safety.

7. Prior to the first occupation of the new dwelling, the existing access shall be reinstated as grass verge in accordance with a scheme first submitted and approved in writing by the Local Planning Authority.

Reason: In the interest of highway safety.

8. Prior to the first occupation of the new dwelling, space shall be laid out in accordance with application drawing 1237G 06 and maintained throughout the life of the development free of any impediment to its designated use.

Reason: In the interest of highway safety.

9. The dwelling shall not be occupied until there has been submitted to and approved by the Local Planning Authority a scheme of landscaping, which shall include indications of all existing trees and hedgerows on or adjacent to the site (including those which would have their root or canopy structure affected), and details of any to be retained, together with measures for their protection in the course of development.

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

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.

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

11. Notwithstanding any details submitted or the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended), the dwelling house shall not be occupied until there has been submitted to and approved in writing by the Local Planning Authority plans indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed in accordance with the approved details before the development is occupied or in accordance with a timetable which shall first have been agreed in writing with the Local Planning Authority.

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

12. No construction work shall take place until details of the finished floor levels of the buildings hereby approved and of the ground levels of the site relative to adjoining land levels, shall be submitted to, and approved in writing by, the Local Planning Authority. Thereafter, the development shall be constructed in accordance with the agreed level(s).

Reason: To protect the amenities of adjoining properties and the locality generally.

13. No development shall take place until a suitable scheme for the prevention of ground gas ingress has been submitted to and approved in writing by the Local Planning Authority (LPA). Alternatively, the site shall be monitored for the presence of ground gas and a subsequent risk assessment 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'.

Upon completion of either, verification of the correct installation of gas prevention measures (if any) shall be submitted to and approved in writing by the LPA prior to the occupation of the development hereby permitted.

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

14. Prior to the occupation of the dwelling house, the window inserted into the northern elevation (facing Sealwood Lane) of the first floor games room shall be obscurely glazed and shall remain as such for the lifetime of the development, unless otherwise approved by the Local Planning Authority.

Reason: In the interest of protecting the amenity of neighbouring residents.

#### Informatives:

The application site is affected by Public Rights of Way (Footpaths 7 and 36 in the parish of Overseal as shown on the Derbyshire Definitive Map). The routes must remain unobstructed on their legal alignment at all times and the safety of the public using them must not be prejudiced either during or after development works take place. Further information can be obtained from the Rights of Way Duty Officer in the Economy, Transport and Environment Department at County Hall, Matlock. Please note that the granting of planning permission is not consent to divert or obstruct a public right of way. If it is necessary to temporarily obstruct a right of way to undertake development works then a temporary closure is obtainable from the County Council. Please contact 01629 580000 for further information and an application form. If a right of way is required to be permanently diverted then the Council that determines the planning application (The Planning Authority) has the necessary powers to make a diversion order. Any development insofar as it will permanently affect a public right of way must not commence until a diversion order (obtainable from the Planning Authority) has been confirmed. A temporary closure of the public right of way to facilitate public safety during the works may then be granted by the County Council.

For assistance in complying with planning conditions and other legal requirements

applicants should consult "Developing Land within Derbyshire - Guidance on submitting applications for land that may be contaminated". This document has been produced by local authorities in Derbyshire to assist developers, and is available from [http://www.south-derbys.gov.uk/environment/pollution/contaminated\\_land/default.asp](http://www.south-derbys.gov.uk/environment/pollution/contaminated_land/default.asp). The administration of this application may be expedited if completion or verification evidence is also submitted to the Environmental Protection Officer (Contaminated Land) in the Environmental Health department: [thomas.gunton@south-derbys.gov.uk](mailto:thomas.gunton@south-derbys.gov.uk).

Further guidance can be obtained from the following:

CIRIA C665: Assessing the risks posed by hazardous ground gases into buildings  
CLR 11: Model Procedures for the Management of Contaminated Land.  
CLR guidance notes on Soil Guideline Values, DEFRA and EA.  
Investigation of Potentially Contaminated Land Sites - Code of Practice, BSI 10175 2001.  
Secondary Model Procedure for the Development of Appropriate Soil Sampling Strategies for Land Contamination, R & D Technical Report P5 - 066/TR 2001, Environment Agency.  
Guidance for the Safe Development of Housing on Land Affected by Contamination Environment Agency. ISBN 0113101775.  
BS 8576:2013 Guidance on investigations for ground gas. Permanent gases and Volatile Organic Compounds (VOCs).

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

It is an offence to kill or damage or disturb bats or their roosts. If bats are found you are advised to inform Natural England, Block 7, Government Buildings, Chalfont Drive, Nottingham, NG8 3SN.

Practical advice on how to protect/relocate any bats may be obtained from Malcolm Hopton, Derbyshire Bat Group, 9 Ashton Close, Mickleover, Derby, DE3 5QD, (Tel. 01332 511427).

The proposed development lies within a coal mining area which may contain unrecorded coal mining related hazards. If any coal mining feature is encountered during development, this should be reported immediately to The Coal Authority on 0345 762 6848. It should also be noted that this site may lie in an area where a current licence exists for underground coal mining. Further information is also available on The Coal Authority website at: [www.gov.uk/government/organisations/the-coal-authority](http://www.gov.uk/government/organisations/the-coal-authority). Property specific summary information on past, current and future coal mining activity can be obtained from: [www.groundstability.com](http://www.groundstability.com).

The hedgerows on the application site may contain nesting birds. It is an offence under the Wildlife and Countryside Act 1981 to intentionally kill, injure or take any

wild British breeding bird or its eggs or damage its nest whilst in use or being built. The nesting season normally encompasses the months March to July inclusive. If you are in doubt as to requirements of the law in this regard you should contact English Nature, Peak District and Derbyshire Team, Manor Barn, Over Haddon, Bakewell, Derbyshire, DE4 1JE.

This project has been screened to assess its impact on the River Mease SAC under the Conservation of Habitat and Species Regulations 2010. The assessment has concluded that the development would cause no significant impact and therefore an Appropriate Assessment is not required.

19/07/2016

**Item** 1.2

**Reg. No.** 9/2016/0094/MR

**Applicant:**  
Mitre Residential LLP  
c/o M S Architects Ltd  
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79 Allhallowgate  
Ripon  
HG4 1LE

**Agent:**  
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M S Architects Ltd  
Unity House  
79 Allhallowgate  
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**Proposal:** **OUTLINE APPLICATION (ALL MATTERS EXCEPT FOR ACCESS, LAYOUT AND SCALE TO BE RESERVED) FOR THE RESIDENTIAL DEVELOPMENT OF 13 BUNGALOWS WITH NEW ACCESS FROM SHELLEY ROAD PARKING SPACES AND NEW ADOPTED ROAD AT EUREKA LODGE NEWHALL ROAD SWADLINCOTE**

**Ward:** **MIDWAY**

**Valid Date:** 11/02/2016

**Reason for committee determination**

The case is presented to Committee as it is a major application where more than two objections have been received.

**Site Description**

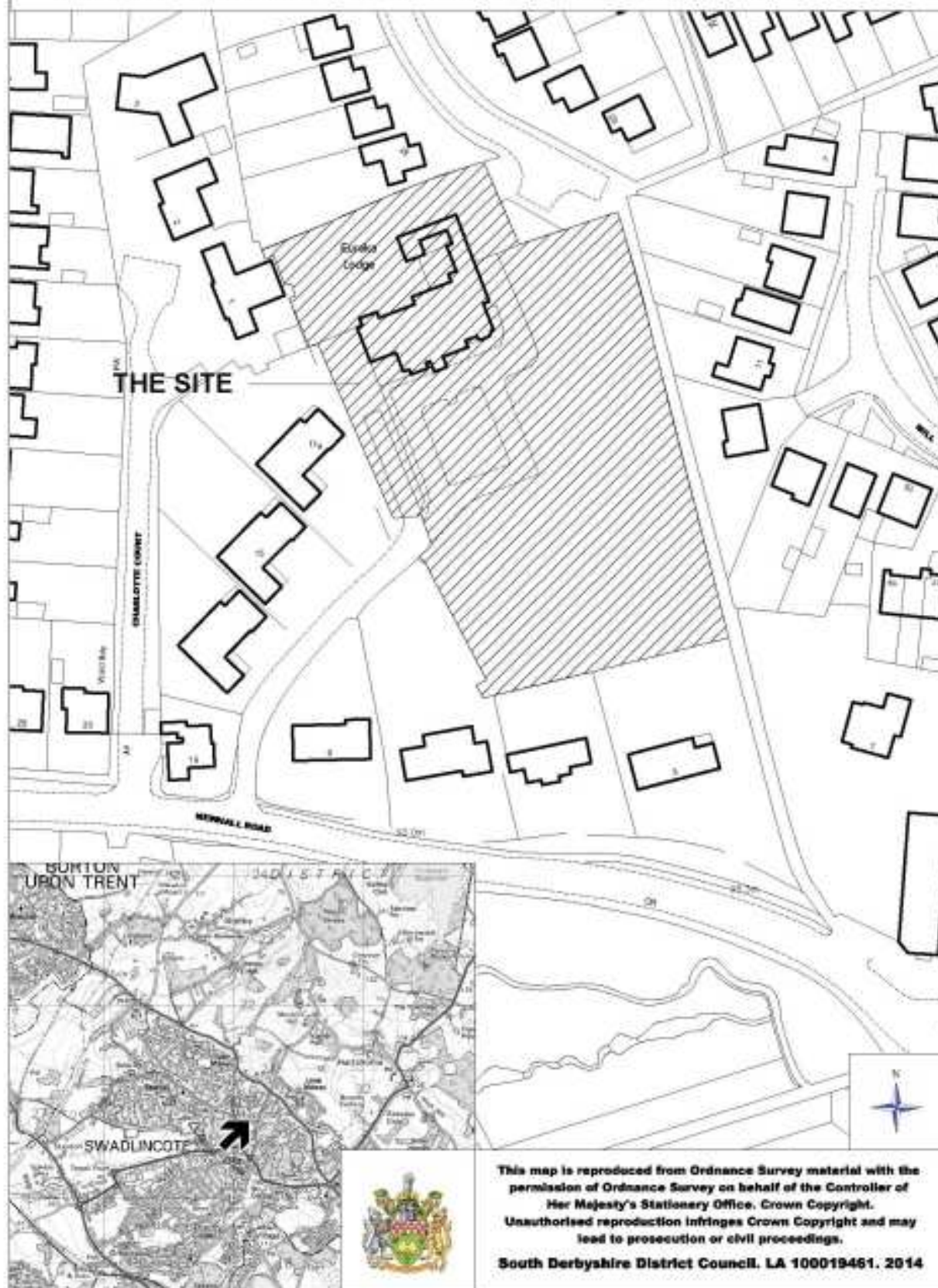
The 0.68 hectare site is currently accessed via a private drive off Newhall Road, opposite Eureka Park. Eureka Lodge is a large two storey building in the northern part of the site surrounded by landscaped grounds and enclosed by mature trees. It is a late 19<sup>th</sup> Century Villa, home to the Wragg family but is not listed. Many of the trees within the site are included in a County Council Tree Preservation Order 96 dating back to 1969. A 2m wall bounds the site to the east adjacent to public footpath 119. Three detached bungalows are located to the south west along the private drive. The turning head for Shelley Road is adjacent to the north eastern corner of the site where there are the remnants of an earlier gated access.

**Proposal**

Demolition of Eureka Lodge and outline planning permission is sought for 13 bungalows with access, layout and scale to be agreed and appearance and landscaping reserved for a subsequent reserved matters application. Access would



9/2016/0094 - Eureka Lodge, Newhall Road, Swadlincote DE11 0BA



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South Derbyshire District Council. LA 100019461. 2014

be from Shelley Road and a private drive is proposed within the site with the bungalows facing onto it. No vehicle or pedestrian access is proposed via the private drive off Newhall Road, however, a pedestrian link to the existing footpath in the south eastern corner is proposed. Two parking spaces per dwelling are proposed.

### **Applicant's supporting information**

An Arboricultural Impact Assessment indicates the removal of three individual trees adjacent to the Shelley Road access and two groups of trees within the site adjacent to the eastern boundary and five trees within a group on the southern boundary to facilitate the proposal. The report recommends protection of the root protection area (RPA) of an Ash and Pine tree which are visible on Shelley Road. Nineteen Lime and Horse Chestnut trees along the eastern boundary with the public footpath would be retained. A shading assessment concludes that plots 7-9 will be affected by the trees on the southern boundary. Recommendations are made in terms of tree works and construction within the RPA of the trees and a Tree Constraints Plan should be produced.

A Structural Report on the house states there has been significant water ingress to the first floor and ground floor ceilings, weakening the timber roof structure, vandalism and pigeon nesting are evident. Many rooms have been stripped and dry rot within timbers is evident. Cracks and mould were noted on ceilings and walls. The roof tiling and flashing has been removed and partial collapse of the roof was noted to the rear. Guttering is blocked and has been removed in places causing damage to external walls. Replacement of much of the internal structure to the first floor and roof construction would be necessary and external brickwork would require remedial attention.

A viability appraisal based on the 2014 conversion proposal concluded a profit of 0.92 %. In order to generate a gross profit of 25% the land value would have to be circa -£30,000 which confirms that conversion is not viable.

The Heritage Statement includes a description of the Lodge and development surrounding it over time. It concludes the building does not have significant architectural merit, is beyond economic repair and recommends detailed survey work and recording be undertaken prior to demolition. A draft historic building recording brief was provided.

Bat Emergence Surveys concluded that the building does not contain a significant roost and there is a low level of foraging activity associated with the garden. The building has moderate potential for roosting therefore the report recommends no works within the bat activity season, further surveys prior to any works and mitigation measures incorporating within the development such as bat tiles. Reptile and Bird Survey found no evidence of reptiles or nesting birds and a further bird survey is recommended prior to any works on site. A Protected Species Appraisal found no evidence of protected species and limited biodiversity but recommends further surveys prior to any demolition or tree work.

A Coal Mining Risk Assessment identifies the site has been subject to past coal mining activity and recommends a intrusive site investigation prior to commencement.

## **Planning History**

9/2014/1012 - Proposed conversion of eureka lodge into five residential dwellings and fifteen new build residential dwellings, Withdrawn 9/11/15

9/2004/0073 - Residential development including the erection of three detached dwellings the conversion of Eureka Lodge to six flats and extension to provide two flats and an apartment block of three flats with access from Shelley road (flats) and Newhall road (houses), Granted 20-04-04

9/2002/0840 - Outline application (all matters except means of access to be reserved) for the erection of five dwellings (main house excluded from application site), Granted 23-04-03

9/1999/0195 - The use as a residential home for the elderly and day nursery, Granted 20-07-99

## **Responses to Consultations**

Severn Trent Water has no objection subject to a drainage condition and informative regarding public sewers.

The Police Crime Prevention Design Adviser has no objections and considers with appropriate housing treatment and boundaries the development has the potential to be a success from a community safety perspective.

Derbyshire Wildlife Trust has no objection as sufficient ecological survey work has been completed. Conditions in respect of vegetation clearance, protection of the common toad, lighting strategy, further survey work for bats and submission of an ecological enhancement plan.

The Coal Authority has no objections subject to a condition requiring an intrusive site investigation.

Derbyshire County Council requests a contribution of £34,197.03 for Belmont Primary School Project A: Extensions to up to two classrooms. It states that Secondary Level education has capacity to accommodate the development. Informatives regarding high speed broadband and Life Time Homes are recommended. A contribution for the Household Waste Recycling Centre cannot be requested as five contributions have already been secured.

The County Highways Authority has no objections to the principle of the proposed development as set out in the latest revised scheme layout and based on the internal site remaining private. Work would be required within the public highway at the site access off Shelley Road to extend the existing turning head to create the site access; this work should be carried out under a joint Section 278/72 agreement should any land need to be dedicated as public highway. Conditions are

recommended in respect of the access, construction compound, closure of the access off Newhall Road, future street management and laying out of the turning head.

The Council's Contaminated Land Officer has no objection subject to a condition for ground gas prevention.

The Conservation Officer considers that the loss of the heritage asset has been sufficiently justified and the layout and scale of the scheme is acceptable. Conditions are recommended in terms of a photographic record of the building be carried out and historic features such as doors, metal grills and tiling in the entrance hall be salvaged for re-use.

Derbyshire County Council's Tree Officer [the site being covered by a County TPO] considers the layout and recommendations within the Arboricultural Report to be acceptable and although she has expressed concern about possible shading to plots 7 to 9, the open nature of the retained pine trees and the increased amenity space available in this layout help to mitigate the impact to a reasonable level. Trees 1 and 2 have been identified for specialist tree protection associated with the new access road and car parking. The County Council's comments are awaited in relation to the additional Arboricultural Impact Assessment in relation to the access. However, this Council's Tree Officer has assessed the additional Arboricultural Impact Assessment submitted in relation to the access road detail and considered it acceptable and recommends that the proposed 'construction methods' be controlled by condition.

The National Forest Company states that due to the site area of 0.67ha, 0.13ha (20%) of woodland should be included. Given the small scale of the proposals, and the limited opportunity for this to be incorporated on-site, paragraph C of INF8 of the Emerging Local Plan allows for a financial contribution to be made in lieu of on-site planting. This is currently calculated at £20,000 per hectare and would therefore equate to £2,600. The policy states that this could be used towards urban tree planting. The application site is in close proximity to Eureka Park where the National Forest Company has worked with the District Council to undertake specimen tree planting in recent years. It is proposed to use any financial contribution from this scheme towards extending this project. The National Forest Company would be grateful if this could be secured by condition or through a s106 Agreement.

## **Responses to Publicity**

Four objections have been received, raising the following concerns/points:

- rr) Increase traffic on Shelley Road
- ss) Eureka Lodge had a new roof and has been boarded up for the past two years so why does it need to be demolished?
- tt) They were lead to believe Eureka Lodge has a preservation order on it.
- uu) It would be a great shame to lose fabulous architecture which has historic value to the town to build new properties with no personality or character.

Cllr Wilkins would be upset to see the Lodge disappear. He fails to understand why the completed development cannot be accessed from both Shelley and Newhall

Road with a cul-de-sac to prevent a rat run. The lack of a pedestrian access to Newhall Road is ludicrous.

## **Development Plan Policies**

The relevant policies are:

- 2016 Local Plan Part 1: S2 (Presumption in Favour of Sustainable Development)  
H1 (Settlement Hierarchy)  
SD1 (Amenity and Environmental Quality)  
BNE1 (Design Excellence)  
BNE2 (Heritage Assets)  
BNE3 (Biodiversity)  
INF1 (Infrastructure and Developer Contributions)  
INF2 (Sustainable Transport)  
INF8 (The National Forest)  
INF9 (Open Space, Sport and Recreation)
- 1998 Local Plan (saved policies): EV9 (Protection of Trees and Woodland)  
EV11 (Sites and Features of Natural History Interest)  
EV13 (Listed or Other Buildings of Architectural or Historic Importance)

## **Emerging Development Plan Policies**

The relevant policies are:

- Draft Local Plan Part 2: BNE8 (Trees, Woodland and Hedgerows)  
BNE11 (Heritage)

## **National Guidance**

- National Planning Policy Framework (NPPF) 14,17, 32, 51, 56, 57, 58, 60, 61, 109, 118, 135, 136, 196, 197
- National Planning Policy Guidance (NPPG) 26

## **Local Guidance**

- SPG Housing Design and Layout

## **Planning Considerations**

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

- Principle of Demolition
- Principle of Development

- Trees
- Ecology
- Residential Amenity
- Design and layout
- Section 106

## **Planning Assessment**

### Principle of Demolition

The demolition of Eureka Lodge was considered at the time of the 2002 application whereby a request to list the building was made to English Heritage. Their decision not to list the building was received in September 2002. The Inspector acknowledged that although the building was a 'rare survival locally' the form of detached suburban villa survives in very substantial numbers throughout England. It was considered to have 'modest architectural quality' for its period and a listing could not be justified on grounds of special architectural interest. The association with the Wragg family was considered of local importance and was not of sufficient historic significance to add weight to the case for listing. Fourteen years on from this decision, the building is derelict and has been for many years without any viable use and its state of repair has deteriorated due to vandalism and fire damage.

The Structural Report submitted states that there is deterioration due to water ingress as a result of vandalism. The roof structure is weakened and much of the internal structure would require replacement. A viability appraisal has been undertaken which confirms that in order to gain the required 25% gross profit the land value would have to be a minus figure which identifies the reason the building has remained derelict for all this time. In terms of Policy the Emerging Local Plan Policy BNE2 in relation to Heritage Assets states the Council will promote the respect of, and protection and care of the historic environment and refers to non-heritage assets being identified on a Local List. A Local List has yet to be compiled. Framework paragraph 135 relates to non-designated heritage assets and states that the significance of the asset should be taken into account in determining an application. It goes on to state that *"in weighing applications that affect directly or indirectly non designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset."*

The significance of the building is acknowledged to be of local importance, however, it could be argued its significance has been greatly diminished by the introduction of a succession of modern residential developments within its setting. It is an isolated site with no main road frontage and has been derelict and subject to constant vandalism for years. The opportunity to designate it as a heritage asset has passed, being considered not worthy of listing in 2002. Its state of repair has precluded any viable use for a long period of time. On balance, therefore, the harm attributed to its loss is considered to be outweighed by the economic and social benefits of a provision of 13 dwellings in a highly sustainable location.

### The principle of development

The site is located within the urban area of Newhall within walking distance of the town centre of Swadlincote with its services and facilities. It is a highly sustainable location and as such there is a presumption in favour of development. This application includes scale and has identified a need for bungalows within the urban area. There are significant economic and social benefits of housing provision within the urban area with any environmental harm in relation to the loss of the building and trees being weighted accordingly. The proposal is therefore considered acceptable in principle and in accordance with Local Plan Part 1 Policy H1 and Framework paragraph 7 and 14.

### Trees

The Trees on site are covered by a Derbyshire County Council TPO 96. Both the County and District Tree Officers consider the layout and the proposed loss of some trees to be acceptable. The significant trees on the north eastern, eastern and southern boundaries are to be retained and protected during development. Shading to plots 7-9 is acknowledged but considered to be at an acceptable level without placing undue pressure on the trees post development. Minimum disturbance to the retained trees RPAs is proposed and the development has no impact on the RPAs of the Lime and Horse Chestnut Trees adjacent to the footpath. An Arboricultural Method Statement (AMS) has been produced for T1 and T2 at the entrance to the site in order to ensure the access can be constructed without significant damage to the root areas of these trees as they have a high amenity value on Shelley Road. Conditions in respect of submission of an AMS for all trees on site that addresses all phases of development including demolition, submission of a landscaping scheme including biodiversity enhancement measures are recommended. The proposal is therefore considered to comply with Saved Policy EV9, Policy BNE3 and Framework paragraph 118.

### Ecology

The Bat Emergence Surveys concluded that the building does not contain a significant roost and there is a low level of foraging activity associated with the garden. The Reptile and Bird Survey found no evidence of reptiles or nesting birds, however, common toad was recorded under some of the reptile mats. Common toad is a Section 41 Species of Principal Importance. The Protected Species Appraisal found no evidence of protected species and limited biodiversity. Further surveys would be required prior to demolition or tree works and mitigation measures submitted within an Ecological enhancement plan. The proposal therefore accords with Local Plan Policy BNE 3 and Framework paragraph 118.

### Residential Amenity

Layout and scale are to be determined at this outline stage. The proposed layout indicates that thirteen bungalows can be accommodated on site without any significant adverse impact on the amenity of neighbouring residential properties. Distances in excess of the minimum standards can be achieved irrespective of the extensive tree screening on the eastern, southern and part of the western boundaries. The scale of the proposal at single storey limits any overlooking or loss of privacy impacts as screening to a height of 1.8m to 2m encloses the site at

present. The proposal therefore accords with Policy SD1, Emerging policy and NPPF paragraph 17 and the Housing Layout and Design SPG.

### Design and layout

Policy BNE1 requires new development to create places with a locally inspired character that respond to their context, are visually attractive and possess a high standard of architectural quality. The NPPF considers good design is a key aspect of sustainable development should contribute positively to making places better for people (para 56) and considers it important to plan positively for the achievement of high quality and inclusive design for all development (para 57).

Amendments to the layout were sought in order to improve the scheme from a standard turning head arrangement to a more flexible private drive in order to achieve a more bespoke development that incorporated the entrance features that exist on Shelley Road through relocation of the existing gate piers and wall. The amended Design and Access Statement further details what is to be expected in terms of design at reserved matters stage. The design of properties should reflect some of the character and materials of the Lodge building and where possible materials re-used. An artist's impression of the potential scheme has been developed based on the Lodge and an example of a bespoke scheme elsewhere in the District. High quality design would mitigate the loss of the non-designated heritage asset to some extent and ensure that some of its historic features were incorporated to provide a cue as to what the scheme replaced in accordance with current policy.

A link to the existing footpath along the eastern boundary has been provided to improve the site's accessibility criteria. The Highway Authority has no objection to the access, parking or manoeuvring space and thus the proposed layout provides a safe and suitable access in accordance with Policy INF2 and Framework paragraph 32.

### Section 106

Thirteen dwellings would generate a requirement for education, public open space and National Forest contributions. In terms of education, it would generate a need for 3 additional primary pupils at Belmont Primary School and 2 secondary pupils at Granville Sports College. Whilst the secondary pupils generated by this development could be accommodated within the normal area secondary school, at primary level a financial contribution of £34,197.03 would be required as it does not have capacity. Belmont Primary School is on a split site and has a number of classrooms which are undersized compared to current requirements. Development in the area would result in additional pupils which would increase class sizes and exacerbate the current situation. This will make teaching in the small classrooms increasingly difficult. The site of the original school (site 2 – Midway Road/Belmont Road) offers potential for extending at least two existing undersized classrooms at the rear of the building. The contribution of £34,197.03 sought from this development would therefore be pooled with other contributions (where available) and used for "Belmont Primary School Project A: Extensions to up to two classrooms". If additional funding were to become



available from further development in the area the next stage would be to provide additional teaching spaces for intervention work.

For a site with an area of 0.67ha, 0.13ha (20%) of woodland should be included. Given the small scale of the proposals, and the limited opportunity for this to be incorporated on-site, Policy INF8 of the Local Plan allows for a financial contribution to be made in lieu of on-site planting. This is currently calculated at £20,000 per hectare and would therefore equate to £2,600. The policy states that this could be used towards urban tree planting. The application site is in close proximity to Eureka Park where the National Forest Company has worked with the District Council to undertake specimen tree planting in recent years. It is proposed to use any financial contribution from this scheme towards extending this project.

Thirteen dwellings generate a requirement of Public Open Space (Off site contributions) as follows:-

£373 per bedroom for Recreation Open Space

£220 per bedroom for Recreation Outdoor Facilities

£122 per bedroom for Recreation Built Facilities

An additional clause can be included within the S106 agreement that the dwellings shall be bungalows in line with the applicants' offer of such.

To conclude, the proposal is considered acceptable as the loss of the non-heritage asset has been weighted against the social and economic benefits of provision of housing within a highly sustainable location and any harm in relation to trees and ecology sufficiently mitigated. The scheme could be a bespoke high quality design incorporating features of the building it would replace. There is the added bonus that the development could be said to be more adaptable for the elderly. A safe and suitable access can be provided with a pedestrian link to the existing footpath.

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

## **Recommendation**

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

1. (a) Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.  
(b) The development hereby permitted shall be begun before the expiration of two years 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 (as amended by Section 51 of the Planning and Compulsory Purchase Act 2004).

2. Approval of the details of the appearance and landscaping (the Reserved Matters) shall be obtained from the Local Planning Authority in writing upon an application made in that regard 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. No demolition shall occur until a contract for the implementation and construction of the development approved under this planning permission has been secured. If for any reason that development does then not commence within 6 months of the demolition of the existing building, a scheme for the restoration of the land shall be submitted to and approved in writing by the Local Planning Authority. The land shall then be restored in accordance with the approved scheme within 6 months of the date of its approval or in accordance with an approved timetable of restoration.

Reason: to ensure all reasonable steps have been taken to ensure the new development will proceed after the loss of a heritage asset has occurred, in line with paragraph 136 of the NPPF.

4. The development shall be implemented in accordance with the recommendations of the submitted Coal Mining Risk Assessment, in particular with regard to intrusive site investigation works (which shall be undertaken prior to the commencement of any other development) and any resultant remedial works identified by the site investigation.

Reason: To ensure the stability and safety of the development to protect against coal mining legacy.

5. No development shall take place until a suitable scheme for the prevention of ground gas ingress has been submitted to and approved in writing by the Local Planning Authority (LPA). Alternatively, the site shall be monitored for the presence of ground gas and a subsequent risk assessment 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'.

Upon completion of either, verification of the correct installation of gas prevention measures (if any) shall be submitted to and approved in writing by the LPA prior to the occupation of the development hereby permitted.

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.

6. If during development any contamination or evidence of likely contamination is identified that has not previously been identified or considered, then the applicant shall submit a written scheme to identify and control that contamination. This shall include a phased risk assessment carried out in accordance with the procedural guidance of the Environmental Protection Act 1990 Part 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.

7. 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.

8. No part of the development shall be carried out until precise details, specifications and, where necessary, samples of the facing materials to be used in the construction of the external walls and roof of the building(s) have been submitted to and approved in writing by the Local Planning Authority. The work shall be carried out in accordance with the approved details.

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

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. Notwithstanding the originally submitted details, this permission shall relate to the amended drawing No's 1.1 and 1.14 Rev B; unless as otherwise required by condition attached to this permission or allowed by way of an approval of a non-material minor amendment made on application under Section 96A of the Town and Country Planning Act 1990 (as amended).

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

11. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, or any statutory instrument amending, revoking and/or replacing that Order; none of the dwellings hereby permitted shall 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 protected trees.

12. 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.

13. Prior to the development hereby approved commencing, details of the finished floor levels of the buildings hereby approved and of the ground levels of the site relative to adjoining land levels, shall be submitted to, and approved in writing by, the Local Planning Authority. Thereafter, the development shall be constructed in accordance with the agreed level(s).

Reason: To protect the amenities of adjoining properties and the locality generally.

14. No vegetation clearance or works to the lodge shall take place between 1st March and 31st August inclusive, unless a competent ecologist has undertaken a careful, detailed check of the site for active birds' nests immediately before work is commenced and provided written confirmation that no birds will be harmed and/or that there are appropriate measures in place to protect nesting bird interest on site. Any such written confirmation should be submitted to the local planning authority for their approval.

Reason: To ensure that ecological interests are protected and enhanced in accordance with paragraph 118 of the National Planning Policy Framework. This needs to be made clear before commencing to ensure that all stages of development are considered.

15. In order to safeguard any common toad (a Species of Principal Importance under the provisions of the NERC Act 2006) that may be present on site, the site shall only be cleared under the supervision of an experienced ecologist in a systematic fashion and any common toad discovered shall be moved to an area of safety within retained habitat on site.

Reason: To ensure that ecological interests are protected and enhanced in accordance with paragraph 118 of the National Planning Policy Framework. This needs to be made clear before commencing to ensure that all stages of development are considered.

16. Prior to the occupation of any dwelling a lighting strategy shall be submitted to and approved in writing by the Local Planning Authority and the scheme implemented in accordance with the approved details.

Reason: To ensure that ecological interests are protected and enhanced in accordance with paragraph 118 of the National Planning Policy Framework. This needs to be made clear before commencing to ensure that all stages of development are considered.

17. If works to the lodge are undertaken during the bat active season (April-October) then a pre-commencement dusk or dawn bat survey shall be completed by an appropriate number of surveyors to determine the current use of the lodge by bats. If work commences during the winter months a licensed and appropriately experienced ecologist shall be in attendance on

site to supervise the removal of features with potential to support bats (for example ridge and hip tiles). If evidence of bats or bats is discovered during these works then work shall stop and advice sought from Natural England. The results of this work should be submitted to the LPA.

Reason: To ensure that ecological interests are protected and enhanced in accordance with paragraph 118 of the National Planning Policy Framework. This needs to be made clear before commencing to ensure that all stages of development are considered.

18. Before any works involving the construction of any dwelling commences an ecological enhancement plan (detailing measures for bats, birds and native planting) shall be submitted to and approved in writing by the Local Planning Authority. Such approved measures shall be implemented in full within a previously agreed timescale.

Reason: To ensure that ecological interests are protected and enhanced in accordance with paragraph 118 of the National Planning Policy Framework. This needs to be made clear before commencing to ensure that all stages of development are considered.

19. Demolition of the Lodge shall not commence until a programme of historic building recording in accordance with a written scheme of investigation has been submitted and approved in writing by the Local Planning Authority. This shall include a photographic record and re-use of materials where possible and historic features such as doors, metal grills and tiling salvaged for re-use. The works shall be implemented in accordance with the approved scheme.

Reason: In mitigation for the loss of the non-designated heritage asset in accordance with Framework paragraph 135.

20. The demolition and development hereby approved shall be carried out in accordance with the CBE Consulting's Arboricultural Impact Assessment dated 1st December 2015 and Arboricultural Impact Assessment Access Road Detail dated 24th June 2016.

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

21. The development shall not be commenced until a detailed scheme of highway works for the alteration of the turning head on Shelley Road to provide the site access, together with a programme for the implementation and completion of the works, has been submitted to and approved in writing by the Local Planning Authority. No part of the development shall be brought into use until the required highway improvement works have been constructed in accordance with the approved details. For the avoidance of doubt the developer will be required to enter into a 1980 Highways Act S278/S72 Agreement with the Highway Authority in order to comply with the requirements of this condition.

Reason: In the interests of highway safety.

22. Prior to commencement of development, space shall be provided within the site for storage of plant and materials, site accommodation, loading, unloading and manoeuvring of goods vehicles, parking and manoeuvring of employees

and visitors vehicles, laid out and constructed in accordance with detailed designs first submitted to and approved in writing by the Local Planning Authority. Once implemented the facilities shall be retained free from any impediment to their designated use throughout the construction period.

Reason: In the interests of highway safety.

23. There shall be no vehicular access to the application site via Newhall Road and the existing vehicular access to the application site off the private road leading from Newhall Road shall be permanently closed with a physical barrier in accordance with a scheme first submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of highway safety.

24. No development shall be commenced until details of the proposed arrangements for future management and maintenance of the proposed streets within the development have been submitted to and approved by the local planning authority. The street shall thereafter be maintained in accordance with the approved management and maintenance details.

Reason: In the interests of highway safety.

25. Before the first occupation of any of the dwellings, the subject of the application, the internal access road, including turning head, shall be laid out and constructed in accordance with the submitted application drawing number 1118/1.14 Rev B unless otherwise agreed in writing with the Local Planning Authority.

Reason: In the interests of highway safety.

#### Informatives:

Severn Trent Water advise that although our statutory sewer records do not show any public sewers within the area you have specified, there may be sewers that have been recently adopted under The Transfer Of Sewer Regulations 2011. Public sewers have statutory protection and may not be built close to, directly over or be diverted without consent and you are advised to contact Severn Trent Water to discuss your proposals. Severn Trent will seek to assist you obtaining a solution which protects both the public sewer and the building. Should you require any further information please contact us on the telephone number or email below. Asset Protection (waste water) Severn Trent Water Ltd Tel 0116 234 3834  
net.dev.east@severntrent.co.uk

The Revised Design and Access Statement received on the 6th June 2016 gives an indication of the quality of design anticipated in any reserved matters application. The indicative plans and elevations submitted originally with the application in February 2016 are thus superceded, being considered unacceptable.

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

available on The Coal Authority website at:  
[www.gov.uk/government/organisations/the-coal-authority](http://www.gov.uk/government/organisations/the-coal-authority). Property specific summary information on past, current and future coal mining activity can be obtained from:  
[www.groundstability.com](http://www.groundstability.com).

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

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

For further assistance in complying with planning conditions and other legal requirements applicants should consult ""Developing Land within Derbyshire - Guidance on submitting applications for land that may be contaminated"". This document has been produced by local authorities in Derbyshire to assist developers, and is available from [http://www.south-derbys.gov.uk/business/pollution/contaminated\\_land/default.asp](http://www.south-derbys.gov.uk/business/pollution/contaminated_land/default.asp)

Reports in electronic formats are preferred, ideally on a CD. For the individual report phases, the administration of this application may be expedited if a digital copy of these reports is also submitted to the pollution control officer (contaminated land) in the environmental health department: [pollution.control@south-derbys.gov.uk](mailto:pollution.control@south-derbys.gov.uk).

In dealing with this application, the Local Planning Authority has worked with the applicant in a positive and proactive manner through suggesting amendments to improve the quality of the proposal and quickly determining the application. As such it is considered that the Local Planning Authority has implemented the requirement set out in paragraphs 186 and 187 of the National Planning Policy Framework. Pursuant to Section 278 of the Highways Act 1980 and the provisions of the Traffic Management Act 2004, no works may commence within the limits of the public highway without the formal written Agreement of the County Council as Highway Authority. It must be ensured that public transport services in the vicinity of the site are not adversely affected by the development works. Advice regarding the technical, legal, administrative and financial processes involved in Section 278 Agreements may be obtained from Mr K Barton in the Economy, Transport and Communities Department at County Hall, Matlock ([kevin.barton@derbyshire.gov.uk](mailto:kevin.barton@derbyshire.gov.uk)). The applicant is advised to allow approximately 12 weeks in any programme of works to obtain a Section 278 Agreement. Pursuant to Sections 219/220 of the Highways Act 1980, relating to the Advance Payments Code, where development takes place fronting new estate streets the Highway Authority is obliged to serve notice on the developer, under the provisions of the Act, to financially secure the cost of bringing up the estate streets up to adoptable standards at some future date. This takes the form of a cash deposit equal to the calculated construction costs and may be held indefinitely. The developer normally discharges his obligations under this Act by producing a layout suitable for adoption and entering into an Agreement under Section 38 of the Highways Act 1980.

19/07/2016

**Item**            **2.1**

**Reg. No.**        **9/2016/0162/MR**

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**Vernon Gate**  
**Derby**  
**DE1 1UL**

**Proposal:**        **OUTLINE APPLICATION (ALL MATTERS TO BE RESERVED) FOR THE RESIDENTIAL DEVELOPMENT OF UP TO 34 DWELLINGS WITH ASSOCIATED ACCESS, PUBLIC OPEN SPACE, SUSTAINABLE DRAINAGE AND LANDSCAPING ON LAND ADJACENT TO THE MANDARIN CHINESE RESTAURANT EGGINTON ROAD HILTON DERBY**

**Ward:**            **HILTON**

**Valid Date:**      **18/02/2016**

**Reason for committee determination**

This case is presented to Committee as it is a major application where more than two objections have been received.

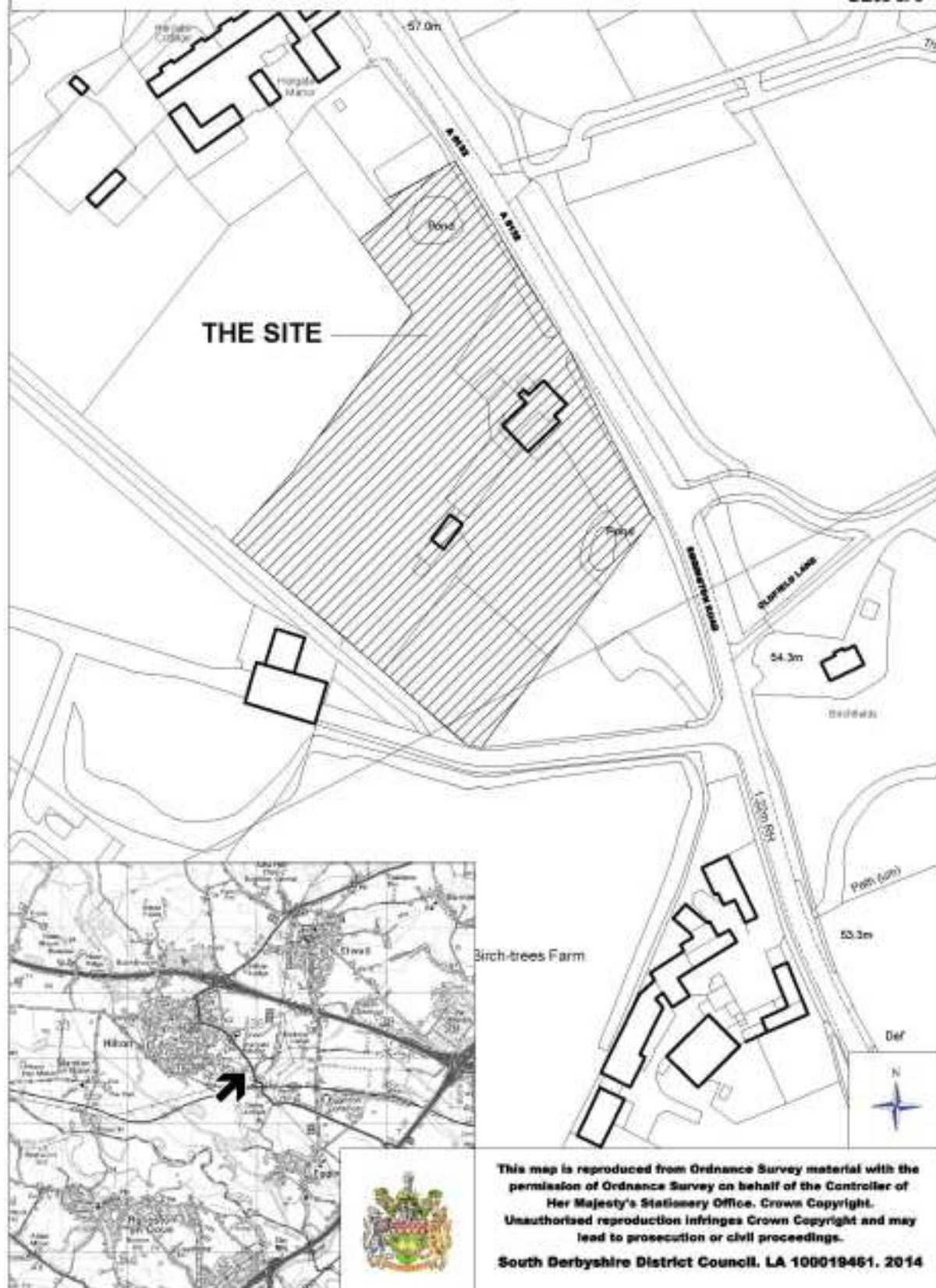
**Site Description**

This 1.44 Ha site comprises two fields, a derelict barn and the Mandarin Restaurant on Egginton Road, Hilton. The land is flat and existing hedgerows and trees exist on the south-eastern and northern parts of the Egginton Road frontage and is open immediately in front of the restaurant with an extensive car parking area. There are two ponds on site, one to the south east of the restaurant building adjacent to the outside drinking area and one to the north-west to the rear of the trees on the road frontage. Power lines dissect part of the southern corner of the site and a cycleway/footpath runs parallel with the south-western boundary. A new hedge has been planted along the south western boundary with the cycleway/footpath with gaps and at varying heights between 1 and 2 metres.



9/2016/0162 - The Mandarin Restaurant, Land adjacent to Egginton Road, Hilton

DE65 5FJ



## **Proposal**

Outline planning permission is sought with all matters reserved for the erection of 34 dwellings. The indicative proposal involves the retention of the existing restaurant, car parking area and some outside space associated with the restaurant (including one pond). The access would be moved further to the north-west and would serve both the residential development and the restaurant. The mix of dwellings proposed on the indicative plan include: 13 two beds, 17 three beds and four 4 bed dwellings. The majority of the development would be to the rear of the existing restaurant with three properties proposed in line with the existing building to the north-west. An internal access road would run to the rear of the restaurant with on-street parking included and would link to three cul-de-sacs with a planted swale running parallel to the central road. Areas of open space are proposed in the north-west corner and southern corner with a balancing area and public open space. The two existing ponds would be retained.

## **Applicant's supporting information**

The Archaeological Impact Assessment states that there are two non-designated archaeological remains recorded by the Derbyshire HER and NRHE as being located within the site: the remains of WWII Military Depot (MDR14140) and ridge and furrow earthworks (MDR14598). Slightly truncated ridge and furrow earthworks were identified during both a geophysical survey (Durkin 2016) and walkover survey. Also within the boundaries of the site are the remains of a former stable block though to originate in the late 18<sup>th</sup> century, with later 19<sup>th</sup> century additions. The Mandarin Chinese Restaurant (formerly the White Swan Inn) dates back to at least the early-mid 19<sup>th</sup> century, and potentially earlier, as a building was depicted in this vicinity on Burdett's map of Derbyshire (1767). The stable block appears on maps as early as 1840. As the proposed development plans for the site indicate that the existing restaurant will be retained and the former stable block will be demolished, there is the potential that groundworks will impact upon both known and unknown remains associated not only with the former stable block, but also the numerous outbuildings that were depicted on the 1922 OS map (Figure 7). It recommends that consultation should be undertaken with the Derby and Derbyshire Development Control Archaeologist as to whether any further evaluation and/or mitigation is required, pre- or post-determination of the planning application.

The amended Design and Access Statement describes the site and its context with photos of types of dwellings found in Hilton. It includes a SWOT analysis with the weaknesses and threats being its countryside location and ecology issues and strengths its sustainable location and access together with opportunities to link the development with the adjoining cycleway. The block of three houses on the frontage is proposed to read as a single building in keeping with the character of the road and a block of houses would mirror the character of the existing outbuilding to be demolished. Parking is a mix of off street, on street and rear courtyard parking. A planted swale is a key feature of the layout as is the link to the cycleway.

The Ecology Report identifies two ponds on site and both of these ponds have been assessed as having potential to support amphibians. The results of the survey identified the presence of smooth newts and toads. No great crested newts were

recorded on any of the surveys. There are currently two potential roosting features within the site boundary. The barn is deemed as having high potential to support roosting bats. The results of the evening bat survey and dawn re-entry survey identified three roosting locations within the building. The locations are all located on the south-east aspect of the building. Evidence of birds nesting was recorded within the barn. A total of seven reptile survey visits have been undertaken on the site, No reptiles have been found during the surveys. The barn has been identified as supporting small numbers of common pipistrelle bats, which are believed to be roosting within cracks within the masonry of the building.

The Flood Risk Assessment considers that there is a low risk of fluvial flooding from the fluvial sources to the south and east of the site. It is recommended that the ground floor level of all the dwellings within the site are elevated at least 150mm above the finished external ground level to ensure that any surface water flooding doesn't enter the new buildings. As the development is residential, it is considered that dry access and egress from the development site will be essential during extreme flood events. It is considered that the proposed development is located outside of the 1 in 1,000 year extreme flood envelope and will be a safe area during flood events. As such, dry access and egress will be available at all times onto Egginton Road to the north of the site. Consideration has been given to the hierarchy for surface water disposal which recommends the SUDs approach. It is concluded that the proposed development lies within flood zone 1 low risk and the current drainage feasibility study utilises sustainable drainage techniques where practically possible.

The Geophysical Survey results did not reveal any definite evidence of archaeological remains within the site which would preclude development.

The Planning Statement describes the site and planning policy context. It considers that as the Council does not have a 5 year supply of housing paragraph 49 is relevant and restrictive policies within the Local Plan do not carry weight. The site is surrounded by existing developments and is not visually prominent.

## **Planning History**

None relevant.

## **Responses to Consultations**

Derbyshire County Council requests the following contributions towards education provision:

- £79,793.07 towards the provision of 7 primary places at Hilton Primary School;
- £103,057.02 towards the provision of 7 secondary places at John Port School;
- £55,883.70 towards the provision of 3 post-16 places at John Port School.

The County Council Flood Team has no objections subject to a sustainable drainage condition.

The Council's Housing Strategy Manager requests 30% of affordable housing equating to 10 dwellings with a split of 75% for rent and 25% for intermediate housing; 4 two beds and 4 three beds for rent; and 1 two bed and 1 three bed for intermediate tenure.

The Council's Contaminated Land Officer raises no specific points but recommends a standard precautionary condition.

Derbyshire Wildlife Trust considers the additional Ecological Report to be acceptable and sufficient information regarding protected species has been supplied. It recommends tree and hedgerow retention. The retention of the ponds is welcomed, however, they advise against public access to pond 1 and additional measure proposed for pond 2. Gully traps along road side kerbs as mitigation are recommended. They recommend conditions in respect of bats, lighting, avoiding works within the bird breeding season, measures during construction to prevent harm to protected species and submission of a Landscape and Ecological Management Plan.

The Environment Agency has no objections as the site is located within Flood Zone 1.

The County Highways Authority states that Egginton Road is subject to a 40mph speed limit. The access plan is considered adequate to indicate the required visibility splay of 2.4m x 103m. It does appear that the required visibility can be achieved within land controlled by the applicant and highway limits albeit with a possible loss of some foliage within the site frontage and grass verge north west of the proposed access. On the indicative layout the authority would only adopt the first 60m into the site including the turning head. Allocated on-street parking would not be adopted. Severn Trent Water has no objection subject to a drainage condition and informative in relation to public sewers.

The County Archaeologist states that the heritage assessment including the results of geophysical survey has established that the ridge and furrow earthworks within the site are not particularly well preserved, and that there is no evidence for prehistoric floodplain-edge activity shown on the geophysics. Therefore, there is no requirement for further archaeological investigation.

The Environmental Health Officer has no objection in principle taking account of the retention of the restaurant and with the conditions in place on the adjacent industrial permission (9/2013/1044). The industrial development is considered to be adequately conditioned to protect the proposed residential amenity. Recommendations include consideration given to boundary treatment similar to that proposed along the southern boundary and a condition in respect of submission of a scheme of noise and odour control.

Natural England has no comments.

The Police Crime Prevention Design Advisor considers that the revised layout is an improvement, however, there remains concerns with regard the access points to the adjacent cycleway and long convoluted shared rear garden access.

## **Responses to Publicity**

9 objections (one letter is sent on behalf of 11 people) have been received, raising the following concerns/points:

- vv) John Port School is close to capacity and suitable contributions for its future expansion are required.
- ww) The proposal would create a high density suburban development totally unconnected to the village, out of keeping with the rural context.
- xx) The development is isolated, insular and unsustainable.
- yy) The footpath linking the site to the village is unlit and uninviting.
- zz) The footpath along Egginton Road to Hilton involves crossing a busy road.
- aaa) The access is not sufficient for the increase in traffic.
- bbb) The site is outside the village confines.
- ccc) The proposal would introduce residential development adjacent to the consented (9/2013/1044) industrial development approved at outline.
- ddd) The access has poor visibility in both directions
- eee) Schools and doctors are at capacity
- fff) The bus service along the road is very poor.
- ggg) The land is within the Green Belt.
- hhh) The proposal will alter the semi-rural location adjacent to Hargate Manor.
- iii) The proposal would increase traffic on the poorly maintained railway bridge.
- jjj) How can surface water be disposed of with no drains or ditches on the site.
- kkk) There are high voltage cables on site which should prevent building under them.
- lll) There should be no more development until the railway bridge is upgraded.
- mmm) It is an unsustainable location for affordable housing.
- nnn) The proposal would close the gap between Egginton and ever encroaching Hilton.

Hilton Parish Council objects to the application as there are already a large number of new build houses being built or to be built on a number of sites within the village and the infrastructure is already struggling to cope. Doctor's surgeries and schools are at capacity. The proposal is wholly inappropriate to the character of the area and is overly dense. The site is isolated and outside the settlement. There would be a resultant increase in traffic on an already busy route, it would exacerbate flooding/ drainage issues in the area and have an adverse impact on wildlife. Additional comments following consultation on the amended plans were submitted in which they state that the design is poor with limited space between dwellings and that there is inadequate parking.

Councillor Billings responded in terms of mitigation through section 106 contributions and requested monies towards the re-surfacing of The Mease Pavilion car park and improvements to the greenway to open up the end of it and provide bins and lighting.

## **Development Plan Policies**

The relevant policies are:

- 2016 Local Plan Part 1: S1 (Sustainable Growth Strategy)  
S2 (Presumption in Favour of Sustainable Development)  
S3 (Environmental Performance)  
S4 (Housing Strategy)  
H1 (Settlement Hierarchy)  
H20 (Affordable Housing)  
SD1 (Amenity and Environmental Quality)  
SD3 (Sustainable Water Supply, Drainage and Sewerage Infrastructure)  
BNE1 (Design Excellence)  
BNE3 (Biodiversity)  
BNE4 (Landscape Character and Local Distinctiveness)  
INF1 (Infrastructure and Developer Contributions)  
INF2 (Sustainable Transport)  
INF9 (Open Space, Sport and Recreation)
- 1998 Local Plan (saved policies): H8 (Housing Development in the Countryside)  
EV1 (Development in the Countryside)  
EV9 (Protection of Trees and Woodland)  
EV14 (Archaeological and Heritage Features)

## **Emerging Development Plan Policies**

The relevant policies are:

- Draft Local Plan Part 2: BNE5 (Development in the Countryside)  
BNE8 (Trees, Woodland and Hedgerows)  
INF12 (Provision of Education Facilities)

## **National Guidance**

- National Planning Policy Framework (NPPF) 7, 14, 17, 32, 49, 50, 56, 58, 69, 109, 118, 123, 135, 196, 197
- National Planning Policy Guidance (NPPG) 8, 26, 37

## **Local Guidance**

- SPG Housing Design and Layout

## **Planning Considerations**

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

- Principle of Development
- Landscape character and context
- Highways
- Ecology
- Layout
- Section 106 agreement
- Planning Balance

## **Planning Assessment**

### Principle of Development

The application must be determined in accordance with the development plan unless there are material considerations that indicate otherwise (section 38(6) of the Planning and Compulsory Purchase Act 2004). The Local Plan Part 1 was adopted on the 13<sup>th</sup> June 2016 and as a consequence the Council can now demonstrate a 5 year housing supply. The Draft Local Plan Part 2 includes allocations for at least a further 600 dwellings to be included in the housing supply. Consideration is still to be given to the policies H5 and H8 of the 1998 Local Plan which have not been superseded by the recently adopted Plan and these are relevant to this application. The housing policies can now be considered up to date and therefore NPPF paragraph 49 no longer applies and as such an assessment of the relevant development plan policies follows:

H5 states that new housing development within Hilton will be restricted to that which can be accommodated within the village confines. The village confine of Hilton in the 1998 Local Plan includes the northern part of the settlement including and adjacent to the original part of the village. The proposed settlement boundary within the Draft Local Plan Part 2, currently out to consultation, incorporates the areas of housing development to the south enclosed within The Mease together with the Hilton Depot Part 1 housing allocation.

This site lies outside the settlement boundary of Hilton as defined by the Saved Policy H5 of the 1998 Local Plan and Emerging Policy SDT1 of the Draft Local Plan Part 2. It is adjacent to the south east of part of the 2016 Local Plan Part 1 housing and employment allocation, separated by a cycleway. The proposal is therefore contrary to policy H5. Saved Local Plan Policy H8 states that outside settlements new housing development will be permitted provided that it is necessary to the operation of an established, viable, long term rural based activity; a countryside location is necessary; it is well related to existing farm buildings and the size of the dwellings is commensurate with the functional requirement of the activity. The development of 34 dwellings outside the village confines is contrary to this policy. The principal of residential development on this site is therefore not acceptable as it is not in accordance with the development plan.

### Landscape character and context

The part of Egginton Road adjacent to the site is semi-rural in character with large gaps between the built development. From the railway crossing (Egginton Junction)

on the left hand side of the road there is Birch Tree Farm, a gap with hedges and trees, then the Mandarin Restaurant with its open frontage, then another large gap and then another farm complex Hargate Manor Farm. The site's context is therefore that of small clusters of farm buildings with significant gaps between. On the opposite side of the road there is less built development with hedges and trees adjacent to the road and open fields with the large farm complex of Hargate Fields Farm beyond.

Immediately adjacent to the south western boundary of the site is a National cycleway route NC549 that links Hilton to Etwell and beyond to Uttoxeter and also provides a link to the local footpath network via Hilton Footpath 13 to the east. Along the cycleway route there are open views across the site and the neighbouring open land. Hedges have been planted but are yet to offer a substantial screen. To the west there is Hilton Depot which has small industrial businesses adjacent to the cycleway, though it is envisaged that this will be more fully developed in line with the planning permission for that site.

The site is relatively flat and clear views can be afforded of the site from the Egginton Road frontage and the cycle route adjacent to the western boundary. Further open land abuts the site to the north-west and south-east. The development of 34 houses would thus appear isolated and out of character with the existing pattern of development and it would introduce an incongruous and harmful urban feature within the landscape and significantly change the character of its environs.

Local Plan Policy EV1 states that outside settlements new development will not be permitted unless it is essential to a rural based activity, unavoidable in the countryside and the character of the countryside, the landscape quality, wildlife and historic features are safeguarded and protected. The policy goes on to state that where development is permitted it should be designed and located so as to create as little impact as practicable on the countryside. The proposal is considered to be contrary to this policy as the character of the countryside in this location would be significantly altered by the introduction of an isolated dense urban development within it. Furthermore the landscaping proposed as mitigation annotated on the plan as 'new boundary planting to reflect landscape character' cannot be relied upon to blend the development into its surroundings, due to the time it can take to become established, its degree of permanence and seasonal variations in its effectiveness as a screen. Thus it is not considered possible to avoid causing harm to the character and appearance of this locality through the intrusion of built development on this landscape. Given that a five year supply of housing now exists, the development of the site is avoidable.

NPPF paragraph 17 states that the intrinsic character and beauty of the countryside should be recognised and in paragraph 109 valued landscapes should be protected and enhanced. This land when considered in its context has a value in that it contributes to the semi-rural character of the area when entering Hilton from the south east along Egginton Road or when viewed from the cycleway. There are no other benefits that would result from the development which are considered to significantly and demonstrably outweigh the harm that would result from the development. The proposal would be wholly out of keeping with this character and is thus contrary to the Framework.



## Highways

The proposed access is considered to be acceptable, and the access plan illustrates the required visibility splays of 2.4m x 103m can be achieved. The required visibility is possible within the land controlled by the applicant and the highway limits. In terms of adoption approximately the first 60m including the turning head would be adopted highway. Access would be a reserved matter and as such the indicative plan does show a safe and suitable access can be achieved and is thus in accordance with the Local Plan Part 1 Policy INF2 and Framework paragraph 32.

## Ecology

An additional Ecology Report was submitted in June. Smooth newts and toads were found within the ponds and the barn has been identified as supporting small numbers of common pipistrelle bats, which are believed to be roosting within cracks within the masonry of the building. There was evidence of birds nesting within the barn. Recommendations include providing compensation for the loss of habitat new hedgerows being planted around the boundary of the site. In addition both ponds should be retained and incorporated within the development scheme. Grassland around Pond 1 should be retained and a management plan should be developed to ensure the long-term future for these habitats. Prior to any works being undertaken on the barn, a licence would need to be secured from Natural England before works can proceed. Derbyshire Wildlife Trust requested the further survey work but have yet to provide a re-consultation response in relation to it. Their comments will be reported verbally at committee.

## Layout

The originally submitted scheme proposed 47 dwellings which included, amongst other things, apartments. The number of dwellings has been reduced to 34 through negotiation and some bungalows are now proposed. Changes to the layout have been negotiated in order to improve the proposal within its context and reduce its density. The main features of the layout include the attached buildings in line with the existing restaurant building, retention of the open space adjacent to the road frontage in the northern corner, the planted swale which links to the cycleway with terraced properties forming a strong built form along it and the area of public open space in the south western corner. Parking is a mix of off-street, on-street and one rear parking court. There are no residential properties immediately abutting the site apart from the residential flat above the restaurant that is owned by the applicant so as such the proposed layout complies with Policy SD1 and NPPF paragraph 17. The indicative layout does respond better to the site's context, however, due to the semi-rural location, the proposal would appear dense and more urban in character than the adjacent land as explained in the landscape section.

## Section 106

The proposal would generate a requirement for the provision of public open space and a financial contribution towards education which would be secured via a Section 106 agreement.

The Council's requirements for public open space for a development of over 20 dwellings would be contribution for formal open space as below:

- £373 per person for Recreation open space
- £220 per person for Recreation outdoor facilities
- £122 Recreation Built Facilities.
- On-site provision of informal open space and equipped play (minimum size 0.4ha).

The County Education Authority requires a contribution for education provision:

- £79,793.07 towards the provision of 7 primary places at Hilton Primary School;
- £103,057.02 towards the provision of 7 secondary places at John Port School;
- £55,883.70 towards the provision of 3 post-16 places at John Port School.

Due to the increase in numbers of pupils generated by this development, it would add to already significant pressure on external hard play and recreation spaces at Hilton Primary School. The school has identified areas where additional space can be brought into use. One of these is the development of an all-weather multi-use games area (MUGA) which would provide a valuable resource which children can use throughout the year. Any funding secured will be used to help facilitate this overall strategy. The contribution of £79,793.07 would therefore be for "Hilton Primary School Project B: Development of additional external hard play spaces."

John Port School has a long-term strategy and vision. In line with this strategy, the contribution of £103,057.02 for 7 secondary places would be for "John Port School Year 7 to Year 11 Project E: Creation of additional teaching accommodation". The contribution of £55,883.70 for 3 post-16 places would be for "John Port School Post-16 Project F: Creation of additional teaching accommodation".

### The Planning Balance

This decision must be taken in accordance with the development plan unless there are material considerations that indicate otherwise (section 38(6) of the Planning and Compulsory Purchase Act 2004). This is reiterated in paragraphs 11 and 12 of the NPPF where it states that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The development plan is the starting point for decision making and a proposed development that conflicts with it should be refused unless other material considerations indicate otherwise. The District Council in adoption of its Local Plan Part 1 has a proven five-year supply of housing and as such the planning balance has changed in that sites outside settlement boundaries no longer simply have to be justified in respect of sustainable development, they also have to comply with the Housing policies in the Local Plan. This site is thus contrary to the development plan.

In consideration of the three dimensions of sustainable development outlined in paragraph 7 of the NPPF, in terms of the economic and social role, the proposal would provide 34 dwellings, 10 of which would be affordable that would contribute to housing supply and provide construction jobs in the area. The site would also generate Council tax and New Homes Bonus. Hilton is a Key Service Village with its

resultant services and facilities, that has seen its settlement boundary extended significantly to the south and which now adjoins the Part 1 Housing allocation of Hilton Depot (H7). The outline permission granted for the site includes provision of 485 dwellings, employment units, primary school, community facilities and a centre with retail and assembly and leisure facilities. The application site is located on a main route into Hilton and has good links to the centre of the village via the cycleway as such it has good accessibility credentials as residents would not be solely reliant on the private car. However, these benefits would not be outweighed by the substantial harm to the character and appearance of the countryside as it would introduce an isolated harmful urban feature within the landscape and as such it is not considered to constitute sustainable development for which the NPPF and Local Plan Policy S2 supports.

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 reasons:

1. Saved Local Plan Policy H5 states that new housing development within Hilton will be restricted to that which can be accommodated within the village confines. Saved Local Plan Policy H8 states that outside settlements new housing development will be permitted provided that it is necessary to the operation of an established, viable, long term rural based activity; a countryside location is necessary; it is well related to existing farm buildings and the size of the dwellings is commensurate with the functional requirement of the activity. The proposal for 34 dwellings outside the village confines whereby the Council in Adoption of Part 1 of its Local Plan have a proven 5 year supply of housing is considered to be contrary to the Local Plan Policies H5 and H8 and paragraphs 11 and 12 of the National Planning Policy Framework (The Framework).
2. Saved Local Plan Policy EV1 states that outside settlements new development will not be permitted unless it is essential to a rural based activity, unavoidable in the countryside and the character of the countryside, the landscape quality, wildlife and historic features are safeguarded and protected. The policy goes on to state that where development is permitted it should be designed and located so as to create as little impact as practicable on the countryside. Paragraph 17 of The Framework states that the intrinsic character and beauty of the countryside should be recognised and in paragraph 109 valued landscapes should be protected and enhanced. The development of 34 houses would appear isolated and out of character with the existing pattern of development and significantly adversely change the character of its environs. With regard to the environmental dimension of sustainable development it is considered the proposal would result in substantial harm to the character and appearance of the countryside as it would introduce an isolated, harmful urban feature within the landscape. There are no other benefits that would result from the development which are considered to significantly and demonstrably outweigh the harm that would

result from the development and as such it is not considered to constitute sustainable development , contrary to Saved Policy EV1 of the 1998 Local Plan, Policy S2 of the 2016 Local Plan Part 1 and paragraphs 7, 14 and 109 of The Framework.

**Informatives:**

Notwithstanding this refusal, the Local Planning Authority has worked with the applicant in a positive and proactive manner through pre-application discussions, seeking to resolve planning objections and issues, suggesting amendments to the proposals. However, despite such efforts, the planning objections relate to the principle of the development in this location which is unable to be overcome. As such it is considered that the Local Planning Authority has implemented the requirement set out in paragraphs 186 and 187 of the National Planning Policy Framework.