

## **DEVELOPMENT CONTROL COMMITTEE – 7 October 2003**

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).

### **REPORT OF THE PLANNING SERVICES MANAGER**

#### **1. Planning Applications**

#### **2. Appeals**

### **INDEX TO PLANNING APPLICATIONS**

<b>Application Reference</b>	<b>Item No.</b>	<b>Place</b>	<b>Ward</b>	<b>Page No.</b>
9/2003/0641	1.1	Swadlincote	Swadlincote	1
9/2003/0709	1.2	Overseal	Seales	6
9/2003/0855	1.3	Melbourne	Melbourne	12
9/2003/0933	1.4	Church Broughton	North West	18
9/2003/0961	1.5	Melbourne	Melbourne	25
9/2003/1016	1.6	Repton	Repton	29
9/2003/1090	1.7	Melbourne	Melbourne	32
9/2003/1152	1.8	Church Gresley	Gresley	35
9/2003/0930	2.1	Linton	Linton	37
9/2003/1011	2.2	Aston	Aston	39
9/2003/1019	2.3	Newhall	Newhall	42

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 Planning Services Manager's 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 Planning Services Manager, 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



07/10/2003

**Item** 1.1**Reg. No.** 9 2003 0641 O

**Applicant:**  
Mainstream  
Properties Ltd  
12 Stafford Street  
Derby  
DE11JG

**Agent:**  
Steedman Planning  
Chestnut Farm  
Ashby Road  
Moirs  
Swadlincote  
DE126DP

**Proposal:** The demolition of a dwelling and outline application (all matters to be reserved) for the residential development of Site Of 224 And Land At The Rear Of 220 230 Burton Road Woodville Swadlincote

**Ward:** Swadlincote

**Valid Date:** 22/05/2003

### Site Description

This 0.5ha back land site is on the east side Burton Road to the north of The Granville School. It forms part of the rear gardens to four detached dwellings, which front Burton Road. The rear of the site is bounded by the former Swadlincote Loop railway line and beyond this is open countryside.

### Proposal

The proposal is in outline with all matters (siting, design, external appearance, means of access and landscaping) reserved for subsequent approval. The proposal would involve the demolition of 224 Burton Road to provide access to the site.

### Responses to consultations

The Education Authority comments that whilst it is conscious that the proposed development, though situated within the normal area for Woodville School it is also convenient for the Eureka Primary School, which at present does have some spare capacity. It does not therefore require a contribution to local education facilities.

The Primary Health Care Trust comments that population growth in this area is already putting extra demands on Primary Care services and further developments will exacerbate this further. It would therefore be looking for a contribution from the developer in recognition of these pressures. A contribution of £444 per dwelling would be a reasonable contribution to local medical facilities.

The Highway Authority has no objection to the proposal and comments that as the number of dwellings would exceed five, the site would need to be served by an adoptable highway subject to appropriate highway safety conditions .

Severn Trent Water Limited raise no objections subject to satisfactory means of drainage.

### **Responses to publicity**

Four letters of concern have been submitted (including one from the headteacher of the adjacent school) which are summarised as follows:

- The school is not ideally situated on a bend in the road where 400-500 children have to cross the A511 on four occasions during the day. Even a small development is likely to increase danger to them.
- Traffic is already congested and further development onto a dangerous stretch of road is likely to make matters worse for motorists and pedestrians.
- There have been many serious accidents on this stretch of road
- The new road will provide convenient parking spaces for parents promoting more dangerous manoeuvres
- A safer access is needed for the school.
- Demolition and construction work could weaken foundations of neighbouring houses.
- Existing boundary walls are in a poor state of repair.
- Concerns about levels of dust/debris and noise during demolition and hours of working
- The property to be demolished contains a colony of bats and felling of garden trees could be involved.

### **Structure/Local Plan Policies**

Structure Plan: Housing Policy 3

Local Plan: Housing Policy 4, Recreation and Tourism Policy 4, Community Facilities Policy 1.

Revised Deposit Draft Local Plan: Policies H1, C3, C5, LRT4

### **Planning Considerations**

The main issues relating to this proposal are:

- Appropriate use of previously developed land
- Potential loss of amenity
- Highway safety
- Contributions to education and medical facilities

### **Planning Assessment**

The site is within the defined area for development from the Local Plan and is within the definition of previously developed land. The proposal is therefore acceptable in principle.

Conditions relating to boundary treatment and landscaping can be used to overcome any amenity issues and the garden trees on the site are not of sufficient amenity value to justify them being made the subject of a tree preservation order.

Despite the concerns raised by the school and local residents, the expert opinion of the Highway Authority is that the proposal would not be detrimental to highway safety.

The location of play space on the site, in accordance with the Councils SPG for public open space, can be considered at the reserved matters stage. A commuted sum for future maintenance would be required at this stage by way of legal agreement.

The contribution to local medical facilities should also be secured by way of a legal agreement.

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

### **Recommendation**

A. Subject to the applicant entering into an agreement under Section 106 of the Town and Country Planning Act 1990 to secure:

- a. financial contribution to local medical facilities and
- b. the provision and future maintenance of public open space (to include equipped toddlers play area or other facility as deemed appropriate);

B. **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 either before the expiration of five years from the date of this permission or before the expiration of two years from the date of approval of the last of the reserved matters to be approved whichever is the later.
1. Reason: To conform with Section 92(2) of the Town and Country Planning Act 1990.
2. Approval of the details of the siting, design and external appearance of the buildings the means of access thereto and the landscaping and means of enclosure of the site shall be obtained from the Local Planning Authority in writing before any development is commenced.
2. 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 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.
3. Reason: In the interests of the appearance of the area.
4. No development shall commence on site in connection with this approval until samples of materials for the external elevations of the buildings have been submitted to and approved in writing by the Local Planning Authority and the development shall be carried out in accordance with the approved materials.
4. Reason: To ensure the materials are appropriate to safeguard the appearance of the area.

5. No development shall take place until there has been submitted to and approved by the Local Planning Authority a scheme of landscaping, which shall include indications of all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection in the course of development.
5. Reason: In the interests of the appearance of the area.
6. Further to condition 5 above, soft landscape details shall include planting plans; written specifications including cultivation and other operations associated with plant and grass establishment; schedules of plants (noting species, plant sizes and proposed numbers/densities where appropriate) and the implementation programme.
6. Reason: In the interests of the appearance of the area.
7. 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.
7. Reason: In the interests of the appearance of the area.
8. The development hereby permitted shall not commence until drainage works for the disposal of both surface water and foul sewage have been carried out in accordance with details that have been submitted to and approved in writing by the Local Planning Authority.
8. Reason: To ensure the development is provided with a satisfactory means of drainage.
9. Prior to any other works commencing in connection with this development, the new access shall be formed with Burton Road. The access shall be laid out and constructed to adoption standards comprising a 5.5m carriageway, 1.8m footways, radii of 10.5m and being provided with 4.5mx90m visibility sightlines with on obstruction exceeding 600mm in height relative to the nearside carriageway edge forward of the sightlines unless agreed otherwise in writing by the Local Planning Authority.
9. Reason: In the interests of highway safety.
10. The internal road within the adoption site shall be laid out and constructed to adoption standard in accordance with Derbyshire County Council's policy document 'Roads in Housing' and material and construction specification document unless otherwise agreed in writing by the Local Planning Authority.
10. Reason: In the interests of highway safety.
11. The gradient of the new road shall not exceed 1 in 14.
11. Reason: In the interests of highway safety
12. 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).
12. Reason: To protect the amenities of adjoining properties and the locality generally.

13. Prior to the first use of the development hereby permitted, parking facilities shall be provided so as to accommodate, in the case of dwellings of four or more bedrooms three cars, in any other case two cars within the curtilage of each dwelling, or in any alternative location acceptable to the Local Planning Authority or as may otherwise be agreed in writing by the Local Planning Authority in accordance with its published standards. Thereafter three parking spaces (in the case of dwellings with four or more bedrooms) or two parking spaces (in any other case), measuring a minimum of 2.4m x 4.8m, shall be retained for that purpose within the curtilage of each dwelling unless as may otherwise be approved in writing by the Local Planning Authority.
13. Reason: To ensure that adequate parking/garaging provision is available.

**Informatives:**

To note and act upon as necessary the comments of the Coal Authority (see attached letter).

07/10/2003

**Item** 1.2**Reg. No.** 9 2003 0709 F**Applicant:**

Pinehouse Ltd  
School House  
Normanton Le Heath  
Leicestershire  
LE672TH

**Agent:**

Brownhill Haywood Brown  
Georgian House  
24 Bird Street  
Lichfield  
Staffordshire  
WS136PT

**Proposal:** The demolition of a bungalow and the erection of a house on  
Land Adjacent To Overseal Manor Moira Road Overseal  
Swadlincote

**Ward:** Seales

**Valid Date:** 23/06/2003

**Site Description**

The site for the proposed dwelling is an area of open parkland within the curtilage of Overseal Manor (a listed building). The site fronts on to Moira Road but is elevated approximately 1 to 2 metres above road level. The boundary with Moira Road is marked by a wall and there are mature trees and hedging within the site on top of the wall. A public footpath runs alongside the western boundary of the site. The bungalow to be demolished is located within close proximity of the Manor adjacent to one of the main approaches to the building.

**Proposal**

The application proposes the demolition of an existing bungalow which was constructed in the 1960's and it's replacement with a four bedroom dwelling in an alternative location further away from the Manor. The proposal involves reducing the site levels by between 1 and 1.5 metres so that the dwelling has a lower ridge height than the adjoining dwelling fronting Moira Road and would be screened by the existing trees and hedges on the Moira Road boundary. The proposed dwelling would be accessed via a driveway located on the site of part of the former bungalow and across the Manor grounds from the existing drive to the Manor which currently serves the bungalow.

**Planning History**

Planning permission was granted in 1999 for the conversion of the Manor into three dwellings and the construction of a block of four new dwellings alongside the Manor fronting Hallcroft Avenue..



## Responses to Consultations

The County Highway Authority have no objections on the grounds that the application is for a replacement dwelling as long as no new access is formed onto Moira Road and provided that there is no adverse impact on the line, level, structural stability or safe pedestrian passage of the public right of way.

Overseal Parish Council strongly objects to the application insofar as the siting is concerned. The land on which the house would be built is within an area designated as important open space and contributing towards the character and environmental quality of the area. When the development of the adjoining Overseal Manor site was approved, this land was to be protected from development. It would be contrary to Local Plan Policies to allow development on this site. The siting would also make it more likely that infilling could be difficult to resist in the future, thereby further developing an area of land which should remain open.

The County Council Tree Officer has no objections providing the house has an adequate stand off area from the trees which would normally be about 10 metres.

## Responses to Publicity

Six letters of representation have been received raising the following issues:-

- Additional traffic generation on an already busy road and from a dangerous access point.
- Loss of privacy due to overlooking of the houses across Moira Road. The proposed dwelling would be at a higher level than existing properties.
- Impact on the protected trees through severing of roots through the construction of both the dwelling and driveway.
- The development would set a precedent for the construction of further dwellings on the rest of the land adjacent to Overseal Manor.
- This proposal is going back on what has previously been agreed with the developers, as it was agreed that this land would remain as a green field.
- The application calls the dwelling a replacement but it is a house not a bungalow and is in a different location. The position of proposed dwelling will leave another plot fronting Moira Road for future infill development.
- Concerns over the new access driveway and impact on access to the existing dwellings sharing the narrow drive from Moira Road and safety on the driveway.
- The driveway up to the Manor from Moira Road was supposed to be closed off and made into a cul de sac but this hasn't yet occurred.
- The driveway to the dwelling would pass alongside the bedroom window of the adjoining bungalow resulting in increased noise and a loss of privacy.
- The proposed site of the house is on land that is shifting and has a fault running down it.
- The existing bungalow doesn't have a carport attached and therefore this cannot be considered in calculating the footprint of the bungalow for comparative purposes.

## Structure/Local Plan Policies

The relevant policies are:

Joint Structure Plan: Environment Policy 10, Housing Policy 5.

Revised Deposit Draft Local Plan: Policies ENV8, ENV19 and H1.

## Planning Considerations

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

- The impact of the existing and proposed dwellings on the setting of the listed building.
- The impact of the proposed dwelling on an area of land that has been identified as contributing to the character and environmental quality of the settlement.
- The impact on residential amenity and the protected trees.

## Planning Assessment

The curtilage land around Overseal Manor is located within Overseal village development boundary. Overseal is classified as a serviced village under Policy H1 of the Draft Local Plan where there is a presumption in favour of the residential development of brownfield land. However the curtilage land around Overseal Manor has also been identified as land that contributes towards the character and environmental quality of Overseal on the Draft Local Plan proposals map and as such is protected from development under the provisions of Policy ENV 8 of the Draft Local Plan.

The curtilage around Overseal Manor was included in the Draft Local Plan as an area of land that contributes to character and environmental quality of the village in order to protect the setting of the listed manor house and retain the park like quality of the grounds. The existing bungalow is of very poor quality design and external appearance and is located within 50 metres of Overseal Manor house, the existing bungalow is therefore considered to have an adverse impact on the setting of the listed building. The proposed dwelling is of a good quality design and is sited adjacent to the end of the row of existing dwellings fronting Moira Road so that it would read as part of the existing development in the streetscene. The proposed dwelling would be located over 90 metres from the listed Manor. It is considered that the benefits gained from the improvement to the setting of the listed building as a result of the replacement of the bungalow would outweigh the adverse impact created by development of the land that has been designated as contributing to the character and environmental quality of the area. This case is considered to be unique and will not set a precedent for development of more of the grounds in the future, the protection of the openness of the land provided under Policy ENV 8 will still apply.

The driveway to the dwelling has been repositioned so that it is located centrally between two lime trees protected under a Tree Preservation Order so that the effect on the trees would be minimised. The proposed dwelling itself would be located 14 metres from the centre of the nearest tree and this distance is considered acceptable by the County Tree Officer.

The County Highway Authority have no objections to the application on the basis that the dwelling will be a replacement for the existing bungalow and therefore the existing access will not serve an increased number of dwellings.

The driveway would be 7 metres from the side elevation of the neighbouring dwelling, which contains a bedroom window but this distance is considered to be sufficient when considering that the drive will serve a single dwelling. The proposed dwelling would be located over 30 metres from the nearest property on the opposite side of Moira Road and therefore the window distances comply with the Council's standards set out in the Supplementary Planning Guidance on Housing Layout. Although the proposed dwelling would be located at a higher level than the road, the proposal includes the reduction in site levels by 1 to 1.5 metres and the dwelling will be located to the rear of existing mature trees. No 18 Moira Road, which is adjacent to the site, does

not have any windows in the side elevation and the occupiers will not be affected by the proposed development.

The proposal is therefore considered acceptable.

### **Recommendation**

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

1. The development permitted shall be begun before the expiration of five years from the date of this permission.
1. Reason: To conform with Section 91(1) of the Town and Country Planning Act, 1990.
2. The existing bungalow shall be demolished and the driveway hereby granted permission shall be constructed prior to the commencement of building works on the dwelling hereby approved.
2. Reason: To ensure that there is adequate access provision to the site.
3. 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).
3. Reason: To protect the amenities of adjoining properties and the locality generally.
4. No part of the development shall be carried out until 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.
4. Reason: To safeguard the appearance of the existing building and the locality generally.
5. Large scale drawings to a minimum Scale of 1:10 of external joinery, including horizontal and vertical sections, precise construction method of opening and cill and lintel details shall be submitted to and approved in writing by the Local Planning Authority before building work starts. The external joinery shall be constructed in accordance with the approved drawings.
5. Reason: The details submitted are inadequate to determine whether the appearance of the building would be acceptable.
6. Notwithstanding any details submitted, precise details of the type, size and position of the proposed rooflight(s) shall be submitted to and approved in writing by the Local Planning Authority. The approved rooflight(s) shall be fitted such that their outer faces are flush with the plane of the roof, unless otherwise agreed in writing with the Local Planning Authority.
6. Reason: In the interests of the appearance of the building(s) and the character of the area.
7. Notwithstanding any details submitted, 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.

7. Reason: In the interests of the appearance of the area.
8. External joinery shall be in timber and painted to a colour and specification which shall have been previously agreed in writing by the Local Planning Authority.
8. Reason: In the interests of the appearance of the building(s) and the character of the area.
9. All plumbing and service pipework, soil and vent pipes, electricity and gas meter cupboards and heating flues shall be located inside the building unless specifically agreed in writing by the Local Planning Authority. The type, number and position of heating and ventilation flues outlets shall be agreed in writing with the Local Planning Authority before development is commenced.
9. Reason: In the interests of the appearance of the building(s) and the character of the area.
10. Gutters shall be cast metal (with cast metal fall pipes) and shall be fixed direct to the brickwork on metal brackets. No fascia boards shall be used.
10. Reason: In the interests of the appearance of the building(s), and the character of the area.
11. A sample panel of pointing 2 metres square or such other area as may be agreed by the Local Planning Authority shall be prepared for inspection and approval in writing by the Local Planning Authority prior to the implementation of any other works of pointing.
11. Reason: In the interests of the appearance of the building(s) and the locality generally.
12. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995, the dwelling hereby permitted shall not be altered, enlarged or extended, no satellite dishes shall be affixed to the dwelling and no buildings, gates, walls or other means of enclosure (except as authorised by this permission or required by any condition attached thereto) shall be erected on the application site (shown edged red on the submitted plan) without the prior grant of planning permission on an application made in that regard to the Local Planning Authority:
12. Reason: To maintain control in the interest of the character and amenity of the area, having regard to the setting and size of the development, the site area and effect upon neighbouring properties and/or the street scene.
13. No development shall take place until there has been submitted to and approved by the Local Planning Authority a scheme of landscaping, which shall include indications of all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection in the course of development.
13. Reason: In the interests of the appearance of the area.
14. All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed with the Local Planning Authority.
14. Reason: In the interests of the appearance of the area.
15. There shall be no new access created on to Moira Road.
15. Reason: In the interests of highway safety.
16. Notwithstanding the submitted details, prior to the commencement of building operations on adjoining areas, the boundary with the area of protected trees shall be fenced with chestnut pale fencing to a minimum height of one metre 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.

16. Reason: To protect the trees/landscape areas from undue disturbance
17. There shall be no tipping or deposition of materials within the area fenced under condition 16 above without the prior written authorisation of the local planning authority.
17. Reason: To protect the trees/landscape areas from undue disturbance
18. 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.
18. Reason: In the interests of the appearance of the area.

#### Informatives:

To note and act upon as necessary the comments of the Coal Authority (see attached letter).

Further to the above Informative, the responsibility and subsequent liability for safe development and secure occupancy of the site rests with the developer and/or landowner. This grant of planning permission does not give a warranty of ground support or stability, neither does it necessarily imply that the requirements of any other controlling authority would be satisfied.

To note that the Public Right of Way which runs alongside the site must remain available for use for members of the public at all times and that there should be no adverse effect on the line, level, structural stability of the footpath or safe passage of pedestrians along the footpath as a result of the proposed development.

07/10/2003

**Item** 1.3**Reg. No.** 9 2003 0855 F**Applicant:**

Alexander Hastings Developments Ltd  
C/O Architectural Design Services

**Agent:**

Architural Design Services  
The Carthovel, Charnels Court  
Upperfield Farm  
Shepstone  
Leicestershire  
LE67 2SG

**Proposal:** The erection of an office building and four dwellings at The  
Stackyard Castle Street Melbourne Derby

**Ward:** Melbourne

**Valid Date:** 15/07/2003

**Site Description**

The site is previously developed land, formerly an abattoir, in the conservation area, adjacent to the Grade II listed Castle Farm. There is a stone wall to the site frontage, with an existing access to the Castle Farm complex.

**Proposal**

A single range of buildings arranged around a courtyard is proposed, comprising a mixture of offices, two smaller terraced units and two family houses. On site parking is provided for the offices (three spaces) and the family houses (minimum three spaces per dwelling). The smaller dwellings would not have any designated parking area. There are several semi-mature trees on the site, which would need to be felled.

**Applicant's Supporting Information**

- a) A statutory declaration is attached, made by the previous owner, stating that there were until recently seven separate users of the access for a variety of domestic and business purposes. It was also formerly used as an abattoir with frequent lorry and van movements.
- b) Detail amendments have been undertaken to improve the appearance of the scheme.
- c) On site parking provision for the smaller dwellings has been deleted to satisfy the requirements of the Highway Authority.
- d) The smaller units would provide good starter homes for Melbourne, where it is increasingly difficult for young people to afford a house. Units would be for sale or let.

**Site History**

Following closure of the abattoir permission was granted in 1995 for several business uses at Castle Farm, utilising the Stack Yard for access and parking (3 vehicles). Additional parking

was provided within the curtilage of Castle Farm. With the exception of the veterinary surgery these uses have now ceased.

### **Responses to Consultations**

The Parish Council considers that the dangerous access would require a generous splay to be safe.

Melbourne Civic Society has no objection. Whilst it would perhaps have welcomed a more imaginative design the society considers that the development would undoubtedly enhance the character of the conservation area and complement the architecture of Castle Farm.

The Highway Authority considered the initially proposed on site parking provision to be excessive, having regard to the substandard nature of the access. In view of the location of the site relative to the town centre, the proximity of convenient parking facilities on Castle Street and the benefits of restricting vehicular use of the substandard access, it considers that there is justification for seeking a reduction in the number of spaces within the site.

### **Responses to Publicity**

Four letters have been received raising the following objections;

- a) There would be a dangerous increase in traffic.
- b) The existing access should be sealed to vehicles and the access to Castle Farm used for vehicles.
- c) The proposed business premises would cause disturbance.
- d) Open views would be lost.
- e) Mature trees that contribute to the environment and provide wildlife habitat would be felled.
- f) Parking provision is inadequate and there would be increased congestion on Castle Street, where there is no spare capacity for more parking.
- g) The development would be overbearing, reduce sunlight and daylight and result in loss of privacy to the adjacent business premises. This would diminish the amenity and value of the adjacent site.
- h) If the adjacent site were to be redeveloped the application proposal would be prejudicial to this.
- i) The boundary is incorrectly drawn.

### **Structure/Local Plan Policies**

The relevant policies are:

Joint Structure Plan: General Development Strategy Policy 1, 2 & 3, Housing Policy 5 and Environment Policy 9.

Local Plan: Housing Policy 5 and Environment Policy 12.

Revised Draft Deposit Local Plan: Housing Policy 1.

## **Planning Considerations**

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

- The principle.
- Impact on the character and appearance of the conservation area.
- Parking and highway safety.
- Residential amenity

## **Planning Assessment**

The site is a brownfield site within the confine of a serviced settlement. Therefore a mixed residential and business proposal in this location is acceptable in principle, meeting the basic criteria for sustainable development.

Apart from the front boundary wall, which is an historic feature, currently the site does not make a positive contribution to the character and appearance of the conservation area. The proposed development respects the grain and character of the area and would introduce a development of sympathetic traditional design into this historic area. The development would thus be a significant enhancement to the character and appearance of the conservation area, not least because it includes a mixture of residential and business uses in an area where these have co-existed for centuries. Whilst some trees would be lost their amenity value would be exceeded by the proposed new buildings.

The access does not meet the normal standards required by the Highway Authority. However it is clear that there has been significant usage in the past such that it is reasonable to enable some traffic to continue to use it into the future. The loss of the wall to improve the access would be severely harmful to the character and appearance of the conservation area. By providing less than the normal maximum on site parking as set out in supplementary planning guidance there could be an increase in parking in the street. However this is the sort of location at which PPGs 3 and 13 envisage the need to travel by private car to be reduced, particularly as the development provides employment space alongside the housing. As the situation is also acceptable to the Highway Authority the proposal would not be demonstrably harmful in terms of safety or parking provision.

The proposal meets supplementary planning guidance on space about dwellings and the amenities of existing residents would therefore not be adversely affected. The proposed small-scale office use is unlikely to give rise to loss of amenity. The supplementary planning guidance has regard to the potential for adjacent sites to be developed. By avoiding habitable room windows on the north boundary of the site the development potential of the adjacent site is reasonably safeguarded.

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 five years from the date of this permission.



1. Reason: To conform with Section 91(1) of the Town and Country Planning Act, 1990.
2. Notwithstanding the originally submitted details, this permission shall relate to the amended drawing nos 23293/PD/02A, 03A, 06A, 07A and 01A.
2. Reason: For the avoidance of doubt, the original submission being considered unacceptable.
3. No part of the development shall be carried out until precise details, specifications and samples of the facing materials to be used in the construction of the exterior of the buildings have been submitted to and approved in writing by the Local Planning Authority.
3. Reason: To safeguard the appearance of the existing building and the locality generally.
4. Pointing of the existing/ proposed building(s) shall be carried out using a lime mortar no stronger than 1:1:6 (cement:lime:yellow sand). The finished joint shall be slightly recessed with a brushed finish in accordance with Derbyshire County Council's advisory leaflet "Repointing of Brick and Stonework".
4. Reason: In the interests of the appearance of the building(s).
5. A sample panel of pointing 2 metres square or such other area as may be agreed by the Local Planning Authority shall be prepared for inspection and approval in writing by the Local Planning Authority prior to the implementation of any other works of pointing.
5. Reason: In the interests of the appearance of the building(s) and the locality generally.
6. External joinery shall be in timber and painted to a colour and specification which shall have been previously agreed in writing by the Local Planning Authority.
6. Reason: In the interests of the appearance of the building(s) and the character of the area.
7. All plumbing and service pipework, soil and vent pipes, electricity and gas meter cupboards and heating flues shall be located inside the building unless specifically agreed in writing by the Local Planning Authority. The type, number and position of heating and ventilation flues outlets shall be agreed in writing with the Local Planning Authority before development is commenced.
7. Reason: In the interests of the appearance of the building(s) and the character of the area.
8. Gutters shall be cast metal (with cast metal fall pipes) and shall be fixed direct to the brickwork on metal brackets. No fascia boards shall be used.
8. Reason: In the interests of the appearance of the building(s), and the character of the area.
9. Notwithstanding the submitted details large scale drawings to a minimum Scale of 1:10 of eaves and verges and external joinery, including horizontal and vertical sections, precise construction method of opening and cill and lintel details shall be submitted to and approved in writing by the Local Planning Authority before building work starts. The eaves and verges and external joinery shall be constructed in accordance with the approved drawings.
9. Reason: The details submitted are inadequate to determine whether the appearance of the building would be acceptable.
10. Prior to their first occupation measures shall be implemented to prevent the use of the curtilage to Units 2a and 2b for the purposes of parking cars in accordance with details

that shall have previously been submitted to and approved in writing by the Local Planning Authority and shall be retained as such thereafter.

10. Reason: In the interests of highway safety.
11. The car parking spaces and manoeuvring areas shown on the submitted plan shall be provided prior to the first use of the development and thereafter retained for that purpose free of obstruction, unless as may otherwise be approved in writing by the Local Planning Authority.
11. Reason: In the interests of highway safety.
12. Notwithstanding any details submitted, 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.
12. Reason: In the interests of the appearance of the area.
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).
13. Reason: To protect the amenities of adjoining properties and the locality generally.
14. Notwithstanding any details submitted, precise details of the type, size and position of the proposed rooflight(s) shall be submitted to and approved in writing by the Local Planning Authority. The approved rooflight(s) shall be fitted such that their outer faces are flush with the plane of the roof, unless otherwise agreed in writing with the Local Planning Authority.
14. Reason: In the interests of the appearance of the building(s) and the character of the area.
15. The windows in the north wall of the building shall be permanently glazed in obscure glass, the specification of which shall have previously been submitted to and approved in writing by the Local Planning Authority.
15. Reason: To avoid overlooking of adjoining property in the interest of protecting privacy.
16. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995, the dwelling hereby permitted shall not be altered, enlarged or extended, no satellite dishes shall be affixed to the dwelling and no buildings, gates, walls or other means of enclosure (except as authorised by this permission or required by any condition attached thereto) shall be erected on the application site (shown edged red on the submitted plan) without the prior grant of planning permission on an application made in that regard to the Local Planning Authority.
16. Reason: To maintain control in the interest of the character and amenity of the area, having regard to the setting and size of the development, the site area and effect upon neighbouring properties and/or the street scene.
17. No part of the development shall be carried out until precise details, specifications and samples of the hard landscaping to be used in the paving of all external areas of the site shall have been submitted to and approved in writing by the Local Planning Authority.

17. Reason: To safeguard the appearance of the locality generally.

Informatives:

Further to Condition 14 above the two rooflights to the rear (north) elevation should be omitted as they are not necessary to the function of the space that they serve and it is in the interests of preserving the character and appearance of the conservation area to minimise the number of roof openings.

07/10/2003

**Item** 1.4**Reg. No.** 9 2003 0933 F**Applicant:**

Mr Mrs S Taylor  
Houghton House, Main Street  
Church Broughton  
Derby  
DE655AS

**Agent:**

Mr Mrs S Taylor  
Houghton House, Main Street  
Church Broughton  
Derby  
DE655AS

**Proposal:** The erection of a new dwelling to replace the cottage at Glebe Cottage Ashbourne Road Church Broughton Derby

**Ward:** North West

**Valid Date:** 29/07/2003

**Site Description**

The site comprises a long narrow strip of land adjacent to the Ashbourne Road, widening out at its northern end to an area where the new dwelling would be sited. In part of this wider area stands a small former estate worker's cottage. This lies immediately adjacent to the road and is a basic 1 up and 1 down arrangement with lean to additions that provided what may have been a kitchen area. It would appear that there was a small-attached outbuilding that may have been a pigsty.

The land has no physical boundaries and a mixture of hedges and fencing, none of which is substantial, encloses the area where the cottage stands. A plan showing the cottage on the OS map for 1879 indicates a curtilage for the cottage extending both to the north and south of the building. The only evidence of curtilage is the land immediately surrounding the cottage. The original curtilage appears to have been ploughed into the adjacent fields.

**Proposal**

There are two main elements to the proposal:

- a) The formation of a new access to the south of the dwelling with a new drive running north towards the site of the existing cottage.
- b) The demolition of the existing cottage and its replacement with a larger dwelling of a traditional form and construction.

**Applicants' supporting information**

*[The applicant has submitted a considerable amount of supporting documentation in support of his contention that the residential use of the cottage has not been abandoned. This is an*

*important point in the determination of this application and the supporting information is summarised below and then commented upon in the Planning Assessment below. The case studies referred to in the text are available for inspection on the file together with other cases the applicants have subsequently submitted.]*

Glebe Cottage is situated on Ashbourne Road Church Broughton and is owned by Mr & Mrs T Beech. It sits in the corner of the small field adjoining Mr & Mrs Beech's home. Our research on the cottage started with a visit to the D.C.C. Records Office at Matlock where it was discovered that its name is Glebe Cottage and was occupied from at least 1935 until 1954 by Mr & Mrs Middleton, who we believe were tenants. We know that Mrs Middleton left the cottage at that time to become housekeeper for Mr Bradshaw who lived across Ashbourne Road in Brickyard Cottage. This was possibly after the death of Mr Middleton.

Further research at Chatsworth Estates office found that the cottage could be found on a map dated 1852 but not on the previous map dated 1818, therefore we can assume that the cottage is at least 150 years old. The existing cottage is constructed in red brick. The bricks would probably have come from the local brickyard which used to be across the road from the cottage. The roof tiles are "Rosemary"

Glebe Cottage is one of the last remaining old properties on the outskirts of Church Broughton. It is our intention to restore/replace the building re-using the existing materials and matching up with new materials as near as possible. By purchasing land to create a safe entrance/access we will, in fact, be restoring the property and land to almost exactly as shown on OS map dated 1879 (enc.). Our aim is to recreate a property which looks old and compliments other dwellings on Ashbourne Road. By doing this we feel we will be contributing to the balance between old properties and the many newer houses built in the 1970s and 1980s. The houses built in the 1970/80s have taken away some of the "Olde Worlde" charm to be found in small villages in Derbyshire such as Church Broughton.

Along with this we are certain that the new cottage would be much more pleasing to the eye than the existing and will enhance the outlook as you approach Church Broughton from Ashbourne Road. We have a genuine interest and commitment to renovation which will restore both the ambience and character of the dwelling.

We have consulted with the owners of the adjoining properties, Mrs C Prince Brambles (formerly Brickyard Cottage) Ashbourne Road and Mr & Mrs P Shanks The White House Ashbourne Road and they are in full support of our application. Mrs Prince, whose house has been burgled twice, welcomes the renovation and says she would feel much safer with a property near by her home.

Great consideration has been given to the points raised in PPG7 3.16 & 3.21 -relating to properties in the countryside, S.D.D.C local Plan ref. HSG HP8(b) and case law report -Hughes v The Secretary of State for the Environment, Transport & the Regions and South Holland District Council JPL 826 (2000).

a) The criteria for concluding that the residential use has not been abandoned are:  
From our research, when the property was vacated by Mrs Middleton in 1954 it appears that the owners did not carry out any redevelopment work due to the cost far out weighing the return on rent.

b) Mr Beech and Mr Peach (previous owner) have cared for the property and not

used it for any other purpose.

c) Mr Peach discussed with us his intention to renovate the cottage when we returned to Church Broughton in 1984 but due to the cost implications decided not to proceed.

d) See case study similarities to Glebe Cottage (below)

The applicant also cites six appeal cases against abandonment that he claims are similar to this case which have been upheld. Details are available on the file.

### **Planning History**

There is no planning history on this site.

### **Responses to Consultations**

Church Broughton Parish Council objects to the proposal as submitted and as amended for the following reasons:

- a) The building is too large for the plot
- b) There are no boundaries on all the land edged red, the plan is therefore misleading.
- c) The application also involves the change of use of agricultural land to domestic curtilage
- d) There would be an additional loss of hedgerow.
- e) The buildings would be close to the road and vision would be restricted on a dangerous blind bend.

In response to the amended scheme, the following comments have been made:

- a) The changes have not reduced the size of the proposal
- b) The garage itself is larger than the footprint of the original dwelling
- c) The Local Plan requires that a replacement dwelling should reflect the footprint, bulk and scale of the existing dwelling and this proposal does none of these things.

The County Highways Authority has asked for clarification about the planning situation. If the dwelling has not been abandoned, then there would be no objection to the dwelling subject to conditions. If the use has been abandoned, then there would be an objection to the creation of an additional access on this stretch of Ashbourne Road on the grounds of safety and sustainability.

### **Structure/Local Plan Policies**

The relevant policies are:

Joint Structure Plan: General Development Strategy Policies 2 & 4, Housing Policy 6.

Local Plan: Environment Policy 1, Housing Policy 8

Emerging Local Plan: Policies ENV 7 & 21 and H 1

### **Planning Considerations**

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

- The abandonment of the residential use
- The scale of the proposed dwelling and its impact on the character and setting of the area.

- The access to the site and its impact on highway safety.

### **Planning Assessment**

Abandonment is a legal concept used by the courts to describe the circumstances in which rights to resume a use which has been lawfully carried on in the past may be lost because of the cessation of that use. As it is not a principle embodied in planning, law assessments of whether 'abandonment' has occurred can create contention, particularly as court decisions on the matter have not been made entirely consistent.

So far as residential development is concerned, abandonment is normally an issue related to buildings of the early C20th wooden timber chalet type, or even older remote rural cottages. If it is found that a residential use has not been abandoned there may be permitted development rights to alter and extend the original dwelling but a far more important consequence is that policy may allow a new replacement dwelling.

Lord Denning's summary in the landmark Hartley case in relation to abandonment was "a reasonable person might assume that the residential use had for all intents and purposes been abandoned."

The courts have subsequently developed the following tests to assist in this assessment:

- a) the physical condition of the premises;
- b) the period of non-use;
- c) whether there had been any intervening use;
- d) evidence regarding the owners intentions.

The applicant, in his submissions above has sought to meet these tests. However, the following points should be noted:

- a) The physical condition of the premises is poor. There are areas in the building where the brickwork has fallen out and although the roof is still intact but its condition is also poor. There is clear evidence within the building that this building was used as a dwelling. Fireplaces and cooking areas are clearly in evidence.
- b) The period of non-use is some 49 years based on the applicant's submission. The rating record for 1933 indicated that a person called Middleton occupied a property on Ashbourne Road. There is no indication of the name of the property although the next record in the book is a Brickyard Cottage and that dwelling is almost opposite the application site. A request has been sent to the County Records Office to see if there is an electoral roll record for the premises in the late 1930's. (The date is relevant as the landowner could force the Authority to purchase the site if permission is refused, the land is not capable of reasonably beneficial use and the premises were occupied as a dwelling at a date in 1937. (Purchase Notice provisions in the 1990 Planning Act)). Although the structure has been empty for a long period, it does not in itself offer evidence of abandonment, a fact supported in several court judgements.
- c) An internal inspection of the premises has revealed no evidence of any intervening use of the building. The structure has not been altered or adapted to take livestock nor does it appear to have been used for storage purposes. There is evidence of a simple earth floor and although not up to modern standards, it retains the appearance of a dwelling.

- d) The applicant has submitted a letter from the immediate previous owners. They draw attention to the prohibitive costs of refurbishment to enable the building to be occupied and of the difficulty of obtaining a safe access to the site as well as the costs of providing such access. This was in relation to the potential use as a holiday cottage.

So, the conclusion to be reached is what a reasonable man, in possession of all the relevant facts, may conclude when looking at the property?

The structure has the appearance of a dwellinghouse. It has been unoccupied for a considerable time but there is evidence that an occupied dwelling existed on the site between 1935 to about 1954. (Subject to confirmation, if available, from the Derbyshire Records Office – if a reply is received, it would be reported at the meeting). There is no evidence of an intervening use that would suggest that the residential use of the building has been abandoned. The intentions of the existing owners are stated but there is no evidence to counter their evidence of an intention to reuse the building for a quasi-residential use (holiday letting).

On balance, the conclusion is that the residential use of the building has not been abandoned. In reaching this conclusion, it has to be recognised that there is a consequence relating to the refurbishment and extension of the property.

If this is a dwelling then it enjoys permitted development rights to extend it by up to 70cu.metres. There is no evidence on the building of any extensions that may have been erected since 1948. The impact of this could be to double the size of the existing dwelling.

In judging the current application, this has to be taken into account when the impact of the proposals is assessed in the light of development plan policy. The scale of proposed extensions that might appear on first glance to be substantial have to be examined on the basis of what might already be there if full permitted development rights had been exercised. Then a subsequent application made to provide for the proposal that is now before the Committee. In other words the existing structure was double its existing size.

With regard to the scale of the proposal and its design and how that would fit into the character and setting of the area, it is true that the footprint of building proposed is substantial. However, the overall height of the dwelling has been minimised by utilising space in the roofs to provide living accommodation. This has the effect of reducing the height of the house and thus its impact on the surroundings. The new dwelling would be higher than the existing cottage but not to a point where it would represent an intrusion into the countryside. The south projection of the extension is wholly single story as is the proposed 3-bay garage. These help to reduce the overall mass of the building and thus the impact on the character and setting of the area. This would accord therefore with development plan policies. In order to ensure that there is no further extension without the Local Planning Authority being able to assess it, a condition removing permitted development rights for the new dwelling has been recommended. The proposed materials of construction would also help to reduce the impact of the dwelling. Conditions to control this and other design details are also recommended.

Another area of concern to the Parish Council is the proposed access to the site and the relationship of the proposed dwelling to the highway and the impact both these elements would have on highway safety. The County Highways Authority has identified that the access to the site is not ideal from a highway safety aspect and would have been resisted if the use as a dwelling had been abandoned. In the circumstances that the use is not abandoned, the County Highways Authority has indicated that the proposal would be acceptable with conditions. The



proposed access is some distance to the south and access to the house would be via a drive running adjacent to Ashbourne Road. The necessary requirements of the County Highways Authority can be achieved on land within the control of the applicant, using conditions. The relationship of the proposed dwelling to Ashbourne Road and the existing dwelling would not be materially different. It is the roadside hedge and the alignment of the road that obstructs views around the bend and not the presence of the dwelling. This would not be changed by the grant of this permission.

The overall conclusion is that the use as a dwelling has not been abandoned. The Development Plan makes provision for the replacement of dwellings in the countryside subject to the impact on the character and setting of the area not being materially affected. The design of the replacement dwelling is in keeping with the local tradition and measures can be put in place to give the Local Planning Authority control the future extension of the dwelling.

It should be noted that the applicant is a member of staff employed in the Building Control section of the Planning Service. The planning assessment and recommendations for this application are based on planning case law and a thorough assessment of the planning policies relevant to the application.

## **Recommendation**

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

1. The development permitted shall be begun before the expiration of five years from the date of this permission.
1. Reason: To conform with Section 91(1) of the Town and Country Planning Act, 1990.
2. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995, the dwelling hereby permitted shall not be altered, enlarged or extended and no buildings, gates, walls or other means of enclosure (except as authorised by this permission or required by any condition attached thereto) shall be erected on the application site (shown edged red on the submitted plan) without the prior grant of planning permission on an application made in that regard to the Local Planning Authority.
2. Reason: To maintain control in the interest of the character and amenity of the area, having regard to the setting and size of the development, the site area and effect upon neighbouring properties and/or the street scene.
3. Notwithstanding any details submitted, 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.
3. Reason: In the interests of the appearance of the area.
4. 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).

4. Reason: To protect the amenities of adjoining properties and the locality generally.
5. Notwithstanding the originally submitted details, this permission shall relate to the amended drawing accompanying your letter dated 4 September 2003.
5. Reason: For the avoidance of doubt, the original submission being considered unacceptable.
6. A sample of both the roof tile and the brick shall be submitted for approval in writing by the Local Planning Authority before work commences.
6. Reason: To ensure the building/extension is in keeping with its surrounding in the interest of the character and visual amenity of the area.
7. Pointing of the existing/ proposed buildings shall be carried out using a lime mortar no stronger than 1:1:6 (cement:lime:yellow sand). The finished joint shall be slightly recessed with a brushed finish in accordance with Derbyshire County Council's advisory leaflet "Repointing of Brick and Stonework".
7. Reason: In the interests of the appearance of the buildings.
8. Gutters and downpipes shall have a black finish and be fixed direct to the brickwork on metal brackets. No fascia boards shall be used.
8. Reason: In the interests of the appearance of the buildings, and the character of the area.
9. Prior to any other works commencing to construct the new dwelling, the new access shall be formed to Ashbourne Road with a minimum width of 5 metres and be provided with 2m x maximum achievable sightlines with no obstruction to forward visibility exceeding 1.0 metres in height relative to the road level as indicated on the amended drawing.
9. Reason: In the interests of highway safety.

07/10/2003

**Item** 1.5**Reg. No.** 9 2003 0961 R**Applicant:**

Laura And David Middleton  
 T/A Picture Of Health Fitness Studio  
 71, Derby Road  
 Melbourne  
 Derby  
 DE731FE

**Agent:**

Laura And David Middleton  
 Picture Of Health Fitness Studio  
 71, Derby Road  
 Melbourne  
 Derby  
 DE73 1FE

**Proposal:** The variation of Condition 3 of planning permission  
 9/1298/0732/U to enable the members' bar to be used from  
 2200 hrs - 2300 hrs Monday to Friday, 1800 hrs -2300 hrs on  
 Saturday and 1300 hrs - 1500 hrs on Sunday at 71 Derby  
 Road Melbourne Derby

**Ward:** Melbourne**Valid Date:** 05/08/2003**Site Description**

The property is a former industrial building used in recent years as a health and fitness club.

**Proposal**

The proposal seeks to extend the current permitted opening times of the studio to enable a members' bar to be operated.

**Applicant's Supporting Information**

- a) The variation of conditions to extend present opening hours would enable the applicants to open and run a lounge bar for members and guests.
- b) The bar would be a place for members to relax and socialise. This would involve Monday – Friday hours to be extended from 2200 hrs – 2300 hrs, 1800 hrs – 2300 hrs on Saturday and 1300 hrs – 1500 hrs on Sunday.
- c) The fitness studio would operate within the original hours of the planning permission.
- d) The bar area would be on the ground floor of the building, fronting Derby Road. This is the former reception area and lounge.
- e) The bar will not be in the style of a public house. The applicants want it to be a place of style and good taste with low level background music, tasteful décor and a relaxing atmosphere. Juke boxes and fruit machines will not be included.

## Site History

Permission to use the premises for its current use was granted in 1999 (9/1298/0732/U). Current opening hours are limited to:

Monday – Friday 0700 – 2200 hrs

Saturday 0700 – 1800 hrs

Sunday 0700 – 1300 hrs

## Responses to Consultations

Councillor Harrison, ward member, strongly recommends refusal and raises the following objections:

- a) Having in mind the reasonable and best interests of immediate neighbours it would be wholly inappropriate for the studio to be granted permission to operate a licensed bar outside of its existing opening times.
- b) Any extension beyond that time would effectively cause the establishment to become another licensed premise which, apart from any other consideration, would add to the current excess provision of such facilities in Melbourne and to the detriment of existing establishments.
- c) The studio has no parking provision and would add to the already intolerable parking pressures in Derby Road and adjacent side streets.
- d) If it is within the jurisdiction of the Council, the consumption of beverages should be confined to the interior of the premises and should not be allowed in the paved area to the rear having regard to the adverse impact on neighbouring properties.

The Parish Council has no objection.

Melbourne Civic Society has no objection provided that the bar is not open to non-members and used solely for purposes incidental to the primary use of the premises.

The Highway Authority has no objection.

The Environmental Health Manager recommends conditions to ensure that music from the bar does not cause nuisance to neighbours.

## Responses to Publicity

Six letters have been received raising the following objections:

- a) The nearby wine bar was opposed by residents. The record of violence and disturbance is matter of public fact, involving police action.
- b) The proposal would create another pub and drinking environment in an area that already has several.
- c) Existing disturbance and parking/highway safety problems would be exacerbated.
- d) The existing car park for the premises at Queensway is under utilised as visitors tend to park on Derby Road.
- e) The principal reason for visiting the premises will be simply to consume alcohol and not to take part in fitness activity. People attracted to the facility would be those who visited the now closed nearby wine bar.
- f) Membership restriction would not adequately control the clientele of the bar.

- g) There is no need or a bar facility in the area.
- h) The studio already causes excessive noise and disturbance. Windows are opened and music emanates from the premises for the duration of opening hours.
- i) Any outdoor drinking would increase noise to residents.
- j) Property values would be adversely affected.
- k) There is no bar presently at the site.
- l) The site is surrounded by residential property.

### **Structure/Local Plan Policies**

The relevant policies are:

Joint Structure Plan: Leisure and Tourism Policy 1.

Local Plan: Recreation and Tourism Policy 1.

### **Planning Considerations**

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

- The principle.
- Noise and disturbance.
- Highway safety and parking.

### **Planning Assessment**

The provision of a bar incidental to the primary use of the premises as a health and fitness club does not require planning permission. If the character of such a bar changed so that it became a public bar then this would amount to a material change of use, which would thus require permission. Therefore the main considerations in this case must concentrate on the impact of the extended hours only.

The bar would occupy a small part of the premises only. Whilst residents report noise from music associated with the health and fitness club it is not proposed to extend the hours of operation of the normal activities. The conditions recommended by the Environmental Health Manager would ensure that music would not cause disturbance during the extended hours proposed. If the facility became in effect a public bar, as feared by residents, it is likely that a material change of use would have occurred and it would thus be open to the Council to consider this on its own merits.

On the advice of the Highway Authority the proposal would not give rise to unacceptable parking or highway safety conditions.

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

## Recommendation

GRANT permission subject to the following conditions:

1. The bar shall be used solely for purposes incidental to the use of the premises as a health and fitness studio.
1. Reason: For the avoidance of doubt and to protect the amenities of neighbours and in the interests of highway safety.
2. There shall be no consumption of food or drink outside the confines of the building.
2. Reason: To protect the amenities of neighbours
3. Any music played in the bar area or during the extended hours hereby permitted shall be background pre-recorded music only. No DJ, Karaoke or live band or other form of noise generating entertainment shall take place.
3. Reason: To protect the amenities of neighbours.
4. The volume of any music played in the bar area or during the extended hours hereby permitted shall be controlled so as not to be audible outside the building.
4. Reason: To protect the amenities of neighbours
5. The extended hours of opening hereby permitted shall apply to the use of the members bar only and in particular the principal use of the premises as a health and fitness studio shall not be operated during the extended hours.
5. Reason: To protect the amenities of neighbours.

07/10/2003

**Item** 1.6**Reg. No.** 9 2003 1016 FH**Applicant:**

Mr Mrs Jones  
 20, Burdett Way  
 Repton  
 Derby  
 DE65 6GA

**Agent:**

Darryn Buttrill  
 Bi Design Architecture  
 First Floor Studio  
 79 High Street  
 Repton  
 Derbyshire  
 DE65 6GF

**Proposal:** The erection of extensions at 20 Burdett Way Repton Derby**Ward:** Repton**Valid Date:** 14/08/2003**Site Description**

The property is a detached bungalow with flat-roofed dormers on the rear roof slope. The front garden slopes down to the highway boundary. The property is situated close to the head of the cul-de-sac. The other properties in the vicinity are set to fairly regular building lines, although there are three projecting flat roofed garages on the same side of the cul-de-sac.

**Proposal**

The application proposes a two-storey pitched-roof front extension extending some 3.6 metres from the front face of the dwelling and 7 metres in width, and a small pitched-roof dormer on the existing front roof slope.

**Planning History**

Permissions have been granted for a rear ground floor extension and a rear dormer. These developments have been implemented.

**Responses to Consultations**

Councillor Mrs Wheeler has requested that this application be brought to Committee.

The Parish Council has objected for the following reasons: -

- 1) Neighbours have asked for support for their objections.
- 2) The building will protrude in front of the building line, blocking views.

- 3) The number of bedrooms “will increase from 3 to 7” and the dwelling will be totally out of keeping with neighbourhood dwellings.  
(Note – the applicant’s agent has stated that the number of bedrooms will remain as at present (5 in total).
- 4) Neighbours opposite who could see “one window opposite” will have 4 bedroom windows “overlooking their lounge”.  
(Note – neighbours opposite who can see two windows opposite will have 2 bedroom windows, 1 family room window and 1 study/store room window opposite).
- 5) The split level extension will appear much taller and will be overbearing, out-of-character, and over-development of the plot, the linear features of the housing and character of the area being major factors.
- 6) There will be parking for only two cars, turning will be difficult, and the applicants already use their neighbour’s drive to access their property when cars are parked on their own drive.  
(Note – the submitted scheme indicates accommodation for 5 vehicles)

The Parish Council has requested a site meeting.

The Village Society has objected for some of the above reasons.

Any comments of the County Highways Authority’s will be reported to the meeting.

### **Responses to Publicity**

Objections have been received from the neighbours to each side and from two other dwellings on the opposite side of Burdett Way, for most of the reasons given by the Parish Council, and on grounds of overshadowing and of there being a dangerous difference in levels of up to 1.8 metres between the applicant’s property and an adjoining property.

### **Structure/Local Plan Policies**

The relevant policies are:

Local Plan: Housing Policy 13

Emerging Local Plan: Policy ENV21

### **Planning Considerations**

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

- Impact on the general character of the area.
- Residential amenity.

### **Planning Assessment**

Although nos. 14 to 20 (evens) Burdett Way are built to a fairly rigid building line, there are three projecting flat-roofed garages within these numbers. The properties in the vicinity are bungalows, although several have dormers on front roof slopes. It is considered that in view of the extension’s limited projection (less than half-way towards the highway boundary and part-way along the front elevation of the bungalow), there would not be material detriment to the street scene.



The proposed extension more than complies with the standards of the Council's supplementary planning guidance. There will be approximately 24.4 metres between the extension and the main aspect of the property opposite (the minimum standard being 21 metres), and the extension will also satisfy the overbearing test regarding the living room in the adjacent dwelling to the south.

The proposed scheme shows accommodation for 5 vehicles within the site.

The application is therefore considered acceptable.

### **Recommendation**

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

1. The development permitted shall be begun before the expiration of five years from the date of this permission.
1. Reason: To conform with Section 91(1) of the Town and Country Planning Act, 1990.
2. All external materials used in the development to which this permission relates shall match those used in the existing building in colour, coursing and texture unless otherwise agreed in writing by the Local Planning Authority.
2. Reason: To safeguard the appearance of the existing building and the locality generally.

07/10/2003

**Item** 1.7**Reg. No.** 9 2003 1090 F**Applicant:**

Laura Anne Smith  
 The Gateway, Cockshut Lane  
 Melbourne  
 Derby  
 DE731DG

**Agent:**

Laura Anne Smith  
 The Gateway, Cockshut Lane  
 Melbourne  
 Derby  
 DE731DG

**Proposal:** The siting of a mobile home for a dependant relative at The Gateway Cockshut Lane Melbourne Derby

**Ward:** Melbourne

**Valid Date:** 02/09/2003

**Site Description**

The site is a paddock adjacent to an agricultural worker's dwelling.

**Proposal**

The applicant proposes to site a mobile home in the paddock for a dependant relative. It would measure approximately 6m x 12 m.

**Applicant's Supporting Information**

- a) Due to bereavement, advanced age and medical conditions the applicant's mother is finding it difficult to carry on alone.
- b) Due to the deteriorating circumstances the applicant wishes her mother to live at the site.
- c) The applicant's dwelling is fully occupied.
- d) As there is an agricultural occupancy condition on the dwelling and because of its design extension is not an easy option.
- e) The garden to the bungalow cannot accommodate a mobile home due to its size, exiting mature trees and established flowerbeds.
- f) The mobile home would enable the applicant's mother to be looked after without burdening the over stretched state system.

**Site History**

Permission for the existing dwelling was granted in 1990 for an agricultural worker.

## **Responses to Consultations**

Melbourne Civic Society has no objection subject to an appropriate time limit and personal permission.

The Highway Authority has no objection subject to occupation being ancillary to the existing dwelling.

## **Structure/Local Plan Policies**

The relevant policies are:

Joint Structure Plan: General Development Strategy Policy 4 and Housing Policy 6.

Local Plan: Environment Policy 1 and Housing Policy 8.

Revised Deposit Draft Local Plan: Policy ENV7.

## **Planning Considerations**

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

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

## **Planning Assessment**

The development plan does not specifically deal with this development except that emerging policy usually requires new dwellings in the countryside only where the use is necessary to the viable operation of a rural based activity. However, as the proposal relates to a temporary structure and would serve the needs of the family living at The Gateway (the residence of those operating a viable rural based activity (see planning history above)) the principle of the proposal is acceptable. As and when the mobile home is no longer needed for accommodating a dependant relative it can be removed from the site.

The mobile home would be sited close to existing trees and hedges and would have a minimal impact on the general character of the countryside.

The unit would be sufficiently far away from neighbours so as to avoid any harm to their living conditions.

Subject to an appropriate occupancy condition there would be no demonstrable increase in traffic to the site.

## **Recommendation**

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

1. The mobile home shall be occupied solely as described in the applicant's covering letter dated 4 September 2003. On cessation of usage of the mobile home for that purpose it shall be removed from the site within 3 months of the date of cessation.

1. Reason: The Council is only prepared to grant permission on the basis of your personal family circumstances and wishes to retain control in the event of there no longer being a justifiable need for the mobile home.

07/10/2003

**Item** 1.8**Reg. No.** 9 2003 1152 TP**Applicant:**

M Winter  
 Housing Department  
 South Derbyshire District Council  
 Civic Offices  
 Swadlincote  
 DE110AH

**Agent:**

M Winter  
 Housing Department  
 South Derbyshire District Council  
 Civic Offices  
 Swadlincote  
 DE110AH

**Proposal:** Crown thinning and pruning of a Lime tree covered by South Derbyshire District Council Tree Preservation Order Number 195 at 28 George Street Church Gresley Swadlincote

**Ward:** Gresley

**Valid Date:** 18/09/2003

**Site Description**

The tree is located in the front garden of a Council owned dwelling and overhangs the highway.

**Proposal**

The application proposes works to a tree covered by a Tree Preservation Order. The work proposed is to crown raise the tree by 6 metres, to thin the crown by 30% and to remove the minor branches from around the telephone wires.

**Planning History**

The tree is covered by TPO 195 which was confirmed in October 2002.

**Responses to Consultations**

None received.

**Responses to Publicity**

None received.

**Structure/Local Plan Policies**

The relevant policies are:

Joint Structure Plan: Environment Policy 16.

**Planning Considerations**

The main issue central to the determination of this application is the impact of the proposed works on the protected tree.

**Planning Assessment**

The tree overhangs the footway and is impeding pedestrian access along the pavement. The Council's consultant landscape architect and arborist has visited the site and agreed that the works proposed are acceptable and will not harm the amenity value of the tree.

**Recommendation**

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

1. The work shall be carried out in accordance with BS3998: 1989 - Tree Work.
2. The work hereby approved shall be carried out within two years of the date of this consent.
2. To enable the authority to assess any future proposals beyond this time period.

07/10/2003

**Item** 2.1**Reg. No.** 9 2003 0930 FH**Applicant:**

Sean Fern  
23, Main Street  
Linton  
Swadlincote  
Derbyshire  
DE12 6PZ

**Agent:**

Sean Fern  
23, Main Street  
Linton  
Swadlincote  
Derbyshire  
DE12 6PZ

**Proposal:** The formation of an access 23 Main Street Linton  
Swadlincote

**Ward:** Linton

**Valid Date:** 29/08/2003

**Site Description**

The site is located within the centre of the village on the main street. The site is at the front of an end terrace house and a new dwelling is being constructed adjacent to the site.

**Proposal**

The scheme proposes the construction of an access on to a classified road at the front of the dwelling.

**Planning History**

A planning application for the same access as now proposed was refused earlier this year on highway safety grounds. Planning permission was granted for a dwelling on the adjacent plot last year contrary to the recommendation of the Highway Authority.

**Responses to Consultations**

The County Highway Authority recommend refusal of the application on the basis that the visibility is substandard so that use of the access would be contrary to the interests of highway and pedestrian safety.

Linton Parish Council has no objections and strongly support any planning applications that take traffic off the highway when not in use.

**Responses to Publicity**

Councillor Southern has requested that the application is reported to Committee.

A letter of support has been received from the occupier of a neighbouring dwelling stating that the parking of vehicles on the drive rather than the road will improve highway safety.

### **Planning Considerations**

The main issues central to the determination of this application is the impact of the scheme on highway and pedestrian safety.

### **Planning Assessment**

The Highway Authority considers that the creation of the access would be contrary to the best interests of highway and pedestrian safety. The access would be located in a position where highway visibility standards could not be achieved. The Highway Authority have acknowledged that planning permission has been granted for the adjacent dwelling but have stated that this was contrary to their recommendation and that highway visibility standards cannot be achieved.

### **Recommendation**

**REFUSE** permission for the following reason:

1. Approval of the proposal would result in the introduction of vehicular movements to and from the classified highway at a location where visibility is substandard contrary to the best interests of highway safety.
2. Approval of the proposal would result in vehicles emerging from within the site onto the footway where pedestrian intervisibility is substandard to the detriment of pedestrian safety.



07/10/2003

**Item** 2.2**Reg. No.** 9 2003 1011 FH**Applicant:**

E K Squires & K R Mitchell  
 11 15, Shirley Park  
 Aston-on-trent  
 Derby  
 DE72 2AP

**Agent:**

E K Squires & K R Mitchell  
 11 15, Shirley Park  
 Aston-on-trent  
 Derby  
 DE72 2AP

**Proposal:** The erection of a boundary fence at 11 & 15 Shirley Park  
 Aston-on-trent Derby

**Ward:** Aston

**Valid Date:** 18/08/2003

**Site Description**

The site is on the edge of Aston on Trent Conservation Area (but not within it). The wall is very prominent and one of the first built features to be seen on entering the village and conservation area. It is a late Victorian structure approximately 70 m long and 2m high. It was the garden wall to a large property called 'The Lodge' demolished some time before 1960 and now forms the rear garden wall to a row of houses on Shirley Park built in the 1960's. Constructed of even coloured red brick with no formal bond it has regularly spaced piers on the roadside which are topped with chamfered bricks and the whole has a saddle back shaped brick coping. The ground levels differ on either side of the wall and thus it acts in part as a retaining structure. The greatest difference in levels is at the west end where the wall retains approximately half a metre. The levels gradually even out so that at the east end they are equal.

The wall is in poor condition along its whole length though most badly affected at the west end. Bricks at lower level are badly eroded especially in the wetting and drying zone at the retained earth level. At the upper level at the western end the wall has a significant bulge.

**Proposal**

The proposal would involve the demolition of the wall behind 11 & 15 Shirley Park. Vertical boarded fence panels supported between concrete posts, with concrete gravel boards at ground level would replace it.

**Applicant's Supporting Information**

- a) The wall is dangerous and requires remedial action to make it safe.
- b) Although it would be preferable to retain the wall and have it restored the roadside face of the wall is beyond effective repair. The only option therefor is to demolish it and to erect a suitable replacement boundary.

- c) It would be far too costly to replace the wall. The applicants are therefore compelled to consider the option of replacing it with a fence.

### **Site History**

Following inspection by the Building Control Manager has been noted that the wall has reached a dangerous state. The applicants have therefore been requested to undertake measures to make the wall safe.

By way of negotiation officers suggested an alternative scheme as follows:

- Lower the wall to retaining height (approx. 600 mm) and reinstate the existing saddle back shaped brick coping.
- Erect a fence set back from the boundary in order to provide immediate screening.
- Plant an appropriate hedge in front of the new fence to provide a vegetated frontage to Shardlow Road. On the advice of the Council's consultant landscape architect the fence would need to be set back by 0.5 metre from the wall to enable the planting of Escallonia 'Donard Radiance', an evergreen shrub.

However, the applicants wish to pursue the submitted scheme.

### **Responses to Consultations**

The Highway Authority has no objection.

The Parish Council requests a site meeting before a decision is reached.

### **Structure/Local Plan Policies**

The relevant policies are:

Joint Structure Plan: Environment Policy 9.

Local Plan: Environment Policy 12.

Draft Deposit Local Plan: Policy ENV20.

### **Planning Considerations**

The main issue central to the determination of this application is whether the proposal would harm the setting of the conservation area.

### **Planning Assessment**

Retaining the wall in its existing state is not an option in this case due to the public safety issue. Nevertheless the wall's height and detailing make it an important visual feature on this approach to the village. Its replacement with the proposed concrete post and panel fence would visually downgrade the existing environmental quality of the area. Given that the remainder of the original wall, to the rear of Nos. 1- 9 Shirley Park, is also in a decaying state this application may well set a pattern for the future. The proposal would thus have a harmful effect on the setting of the conservation area and this important approach to the historic part of the village.

The option suggested to the applicants would probably be no more financially onerous than their own proposal and would help to retain some evidence of the historic wall, whilst providing a

softer vegetated screen to the frontage. The applicants would benefit from an immediate defensible boundary, albeit set into the garden by 0.5 m from the line of the wall. Whilst the rebuilding of the original wall would be the most desirable option in environmental terms the compromise would appear to present an appropriate alternative, causing minimal inconvenience and expense to the applicants.

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

### **Recommendation**

**REFUSE** permission for the following reason:

1. The proposed fence, because of its design would introduce an alien and discordant feature at this prominent approach to the historic part of the village to the detriment of the setting of the designated Aston on Trent Conservation Area, contrary to the following development plan policies:

Derby and Derbyshire Joint Structure Plan Environment Policy 9;

South Derbyshire Local Plan Environment Policy 12 and Revised Deposit Draft Policy ENV20.

07/10/2003

**Item 2.3****Reg. No. 9 2003 1019 F****Applicant:**

Reverend Bob Hollings  
 The Vicarage, Church Street  
 Newhall  
 Derbyshire  
 DE11 OHY

**Agent:**

Reverend Bob Hollings  
 The Vicarage, Church Street  
 Newhall  
 Swadlincote  
 Derbyshire  
 DE11 OHY

**Proposal: Formation of carpark on Land To Rear Of 127 High Street  
 Newhall Swadlincote**

**Ward: Newhall**

**Valid Date: 15/08/2003**

**Site description**

This 46m long open grassed area is on the east side of Church Road which is off the south side of High Street. There are four roadside equi-spaced mature lime trees on the site, which are subject to a tree preservation order. Beyond the site to the south is St John's Church which is a grade II listed building.

**Proposal**

It is proposed to hard surface the area to provide a car park for 14 cars involving the felling of the lime trees. The proposal would provide parking for the church congregation and local businesses.

**Applicant's supporting information**

The vicar of the church has submitted a supporting letter to justify the proposal. The points raised are as follows:

1. It will provide the necessary car park space for St John's Parish Church and its parishioners, as well as providing welcome parking space for businesses and their customers, of which there is a dearth of space in the locality.
2. Two trees have already been planted in front of the church and it is planned to plant others to replace the four to be felled, and others that have been felled in the past.
3. The removal of the trees will take away a major nuisance value from local residents who have had to put up for years with fall out from the trees and the problems it poses.
4. The church will be able to be seen from High Street for the first time in years. Many local residents do not know the church is there.

## Responses to consultations

The Highway Authority comments that it is aware of the existing parking problems in the vicinity of St John's Church and the on-street parking situation on Church Road. However, whilst the proposed car park may alleviate some of the existing problems, it would inevitably attract additional vehicles to the site. Therefore, approval of the proposal would result in an increase of the use of Church Road and Church Street which are unsuitable to serve additional traffic in terms of layout and construction and, in particular, an increase in the use of the Church Road/High Street junction which is severely sub-standard in terms of visibility. Furthermore, approval of the proposal would set a precedent for further development of Church Street, thus exacerbating the hazards outlined above. It objects to the proposal on these grounds.

## Responses to publicity

One letter of objection has been received, summarised as follows:

- The trees should not be felled. The walk to the church is peaceful and beautiful and will impair the surroundings of the church.
- There are no green areas left in Newhall
- Mature trees should not be felled in the National Forest
- There is doubt as to who owns the land
- The car park would attract a criminal element to a residential area. There are already problems in the area with noise and unsociable behaviour that the Council and Police are aware of.

## Structure/Local Plan Policies

*Joint Structure Plan: Environment Policy 10, 16*

*Local Plan: Environment Policy 9, 13 and Community Facilities Policy 1.*

Revised Deposit Draft Local Plan: Policy ENV 8, 19

## Planning Considerations

The main issues relating to this development are:

- The loss of protected trees and the impact of this on local amenity
- The impact on the historic setting of the church
- The community benefits of providing off-street parking
- Impact on highway safety

## Planning Assessment

It is clear that there is a need for off-street parking for the church and local businesses and that current parking in the area is inadequate and inconvenient. The benefits of off-street parking, however, need to be weighed against the costs to local amenity. The trees are healthy and are an important feature in the streetscene in a built-up area where there is a dearth of mature trees. In addition, they play an important part in emphasising the main approach to the listed church and therefore contribute to its historic setting. Views of the church could be enhanced from High Street with appropriate tree management without them being felled. On balance the benefits of the proposal do not outweigh the costs to amenity.

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.

## **Recommendations**

**REFUSE** permission for the following reasons:

1. Whilst the proposed car park may alleviate some existing parking problems, it would inevitably attract additional vehicles to the site. Therefore, approval of the proposal would result in an increase of the use of Church Road and Church Street which are unsuitable to serve additional traffic in terms of layout and construction and, in particular, an increase in the use of the Church Road/High Street junction which is severely sub-standard in terms of visibility. Furthermore, approval of the proposal would set a precedent for further development of Church Street, thus exacerbating the hazards outlined above. The proposal would therefore be detrimental to highway safety.
2. The trees are the subject of SDDC Tree Preservation Order 203 which form an important feature in the streetscene in a built-up area where there is a dearth of mature trees. In addition, they play an important part in emphasising and visually enhancing the main approach to the church and therefore contribute to its historic setting. The proposal would therefore be detrimental to the amenities of the area contrary to Environment Policy 10 and 16 of the Joint Structure Plan, Environment Policy 9 and 13 of the Adopted Local Plan and Policy Env 8 and 19 of the Revised Deposit Draft Local Plan.

## APPEAL ALLOWED

### Appeal by Mr & Mrs Buckland

The siting of six additional caravans (three residential and three utility) at Former Castle View Service Station Uttoxeter Road Foston Derby (9/2002/0595)

The application was refused permission for the following reason(s):

1. *The proposed development, if permitted, would lead to a significant intensification of the use of the site. The provisions of Housing Policy 8 of the adopted Structure Plan and Housing Policy 15 of the adopted South Derbyshire Local Plan make provision for the development of sites for the gypsy population subject to a number of criteria. One of these is the requirement for the proposal to be acceptable in environmental terms. In granting permission for the use of the site for a single gypsy family, the Planning Inspectorate considered that the impact of the site would be harmful to the character and appearance of the countryside. However, the view was that the need to accommodate a single family in a single caravan was sufficient to outweigh that harm subject to the provision of landscaping. The intensification of the use of the site would materially increase the impact of the development on the countryside hereabouts. This has a harmful impact on the character and appearance of the countryside to a point where the proposal is unacceptable in environmental terms and is contrary to the above policies.*

Having examined the policy background and various procedural matters, the Inspector found that the main issue was whether the siting of additional caravans on the site would have an adverse effect on the character and appearance of the countryside having regard to the potential mitigation of landscaping and the need for additional accommodation for gypsies.

The inspector accepted that the additional caravans would have a significant impact on the openness of the site and result in a fundamental change to its rural character. He noted that the effect would be most apparent on the frontage to Uttoxeter Road. The boundary to the east being well screened by vegetation where a public footpath passes the site as was the west boundary. The screening of the north boundary could be achieved by condition.

There is then discussion about the ability to screen the front boundary. The Inspector concluded that whatever the merits of the existing or proposed hedge, the site was capable of being screened.

The Inspector then turned to the need for a site to meet the needs of the family. He found that there had been a change in the private provision of sites in the District since the publication of the Local Plan and that the Council's Permanent Stay site was generally full. He also noted that the bi-annual count of gypsies in the District continued to show unauthorised encampments. Accordingly, he found that there was a continuing need for additional provision in South Derbyshire.

He found that the family circumstances had a material bearing on the consideration of the appeal. The family resides in the area in the winter months. The prospect of the family finding authorised pitches at that time to meet their needs appearing unlikely.

Drawing together these findings, he concluded that the proposal would conflict with the countryside protection policies in the Local Plan. However, there is a need for gypsy accommodation in South Derbyshire. There would be harm to the character and appearance of the countryside but the potential screening means that the site could be assimilated into its surroundings as required by the development plan policies for gypsies. The balance then fell in favour of allowing the appeal.

The Inspector acknowledged the need for consistency in decision making and that the harm to the countryside would be greater than that sanctioned by the previous inspector. However, the material considerations before him outweighed the additional harm caused. Although the protection of the countryside is important, the proposal fell to be considered against policies for the provision of gypsy accommodation.

The appeal was allowed with conditions covering the number of caravans to be stationed on the site, the approval of the layout of the caravans within the site and its landscaping.

### Costs Application

An application was made against the Local Planning Authority to recover the appellant's costs on the basis that it had put the appellants through a very expensive process. The application, like the first, had been recommended for approval but Members disagreed with their officers. Members had then failed to substantiate their reason for refusing the application in that the site is more than capable of being assimilated into its surroundings. The appellants were entitled to receive a decision in accord with the advice in Circulars and Planning Policy Guidance Notes. Councillors had not had regard to the relevant advice, they had not followed their Development Plan and had not had regard to the Government advice. The emerging policy was perverse in that the appellants had to demonstrate that their needs could not be met on their own authorised site.

In response, the Authority's advocate argued that the reason for refusal had been fully substantiated at the Inquiry. The appellant's witness had conceded that matters environmental harm involve a degree of subjective judgement. The Authority had not relied on the emerging policy, the adopted policies both rely on criteria that require proposals to be capable of sympathetic assimilation. The Members' judgement was that there would be harm to the countryside and used policies in the Development Plan that supports that view. An award of costs was therefore unjustified.

The Inspector agreed that the matter of harm requires a degree of subjective judgement and Members were entitled to have regard to the conclusions of the previous inspector in reaching their decision where he had identified harm arising from the siting of one caravan.

He accepted that it is unreasonable for Committee Members to be aware of all the detail of Government advice, the Committee report had set out the relevant policies in the Development Plan and he was satisfied that the Committee had taken all the material considerations into account when reaching its decision. Although he had found in favour of the appellants that does not mean that the Council acted unreasonably. Accordingly, he dismissed the application for costs.