

REPORT OF THE HEAD OF PLANNING SERVICES

SECTION 1: Planning Applications

SECTION 2: Appeals

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

1. PLANNING APPLICATIONS

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

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

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

Item 1.1

Reg. No. 9/2009/0256/FM

Applicant:

Mr Kevin Ellis
Egginton Hall
Church Road
Egginton
Derby

Agent:

Mr Kevin Ellis
Gainsborough Development
The Gatekeepers Cottage
Mickleover Manor
Mickleover
Derby

Proposal: **The rebuilding of Burnaston House on Land Off
Bannells Lane Bearwardcote Derby**

Ward: **ETWALL**

Valid Date: **03/04/2009**

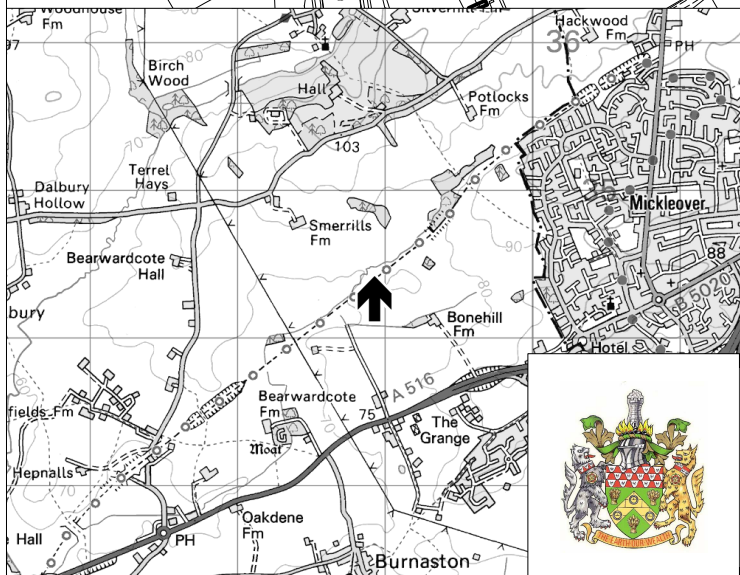
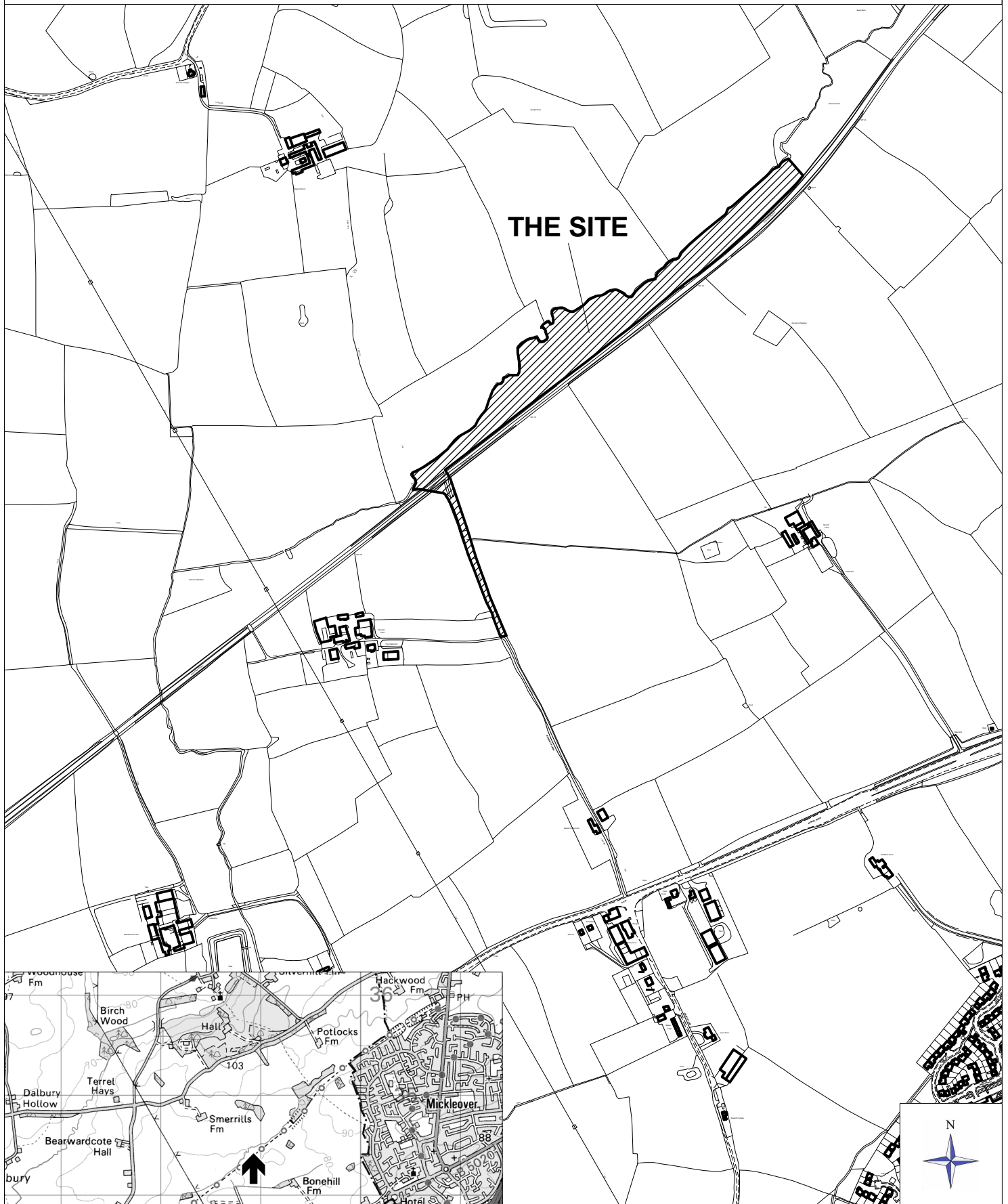
Reason for committee determination

The application is brought to Committee at the request of Councillor Mrs Patten (ward member) so that the committee can debate unusual site circumstances.

Site Description

The application site lies in the countryside and comprises an area of open land between the former railway line, now forming part of the National Cycleway, and an unnamed brook. The brook course is lined for the most part by trees. The land between the brook and railway line slopes away from the line to the brook with a 'hump' in the middle of the site where the House would be erected. The rail line has a number of trees alongside the application site that is repeated on the other side of the line albeit sporadically.

The access to the site would be via Bannells Lane, off the A516, that is a part made and part grass track, the part adjacent to the A516 being the made part of the road. The unmade track commences where the lane joins the drive to Bannells Farm. In order to access the site itself a crossing would be required over the rail line that is elevated above the adjacent fields at this point. There are field gates either side of the rail track 'on the slant' in other words the access may pass diagonally across the track bed on what is stated to be an existing right of way to access the land. Currently earth banks form ramps either side of the track but these would probably require further work before an access could be made suitable to serve the proposed dwelling.



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South Derbyshire District Council. LA 100019461. 2010

Proposal

The proposal is to incorporate the salvaged external stonework of the demolished former Grade II listed Burnaston House into a new, single-family residence. The house was originally located at the site of the Toyota development and the external stonework was carefully dismantled and logged during demolition in order to enable its re-erection should a suitable site be identified.

The proposal is to build the new house to the same dimensions as the old one but with a different rear wing. The proposal differs from, and improves on, the last application at Red Lane Repton in that an appropriate two-storey rear wing would be provided, albeit at a reduced length, at the rear of the house. A separate garage with a lead or zinc roof would also be constructed, concealed within a garden wall.

An existing high point in the site would be extended to form a plateau upon which the house, its rear wing, garage block and walled garden would sit. This area it is suggested would form the curtilage to the dwelling, with the remaining land being managed to form a serpentine lake into which a reed bed filtration system would feed, prior to water being discharged into the brook course. This is in lieu of a foul water package treatment plant. Rainwater would be harvested to provide water for toilets and washing machines. The grounds would also be landscaped to provide a parkland setting for the house and its curtilage.

Access to the site would be from Bannells Lane that currently serves two farms and a dwelling close to the A516. There is an existing track that extends towards the cycle way from the metalled part of Bannells Lane that would be surfaced as described below and the new drive would cross the cycle way via existing field gates that currently provide an access to the field.

The proposed house would be constructed to the BREEAM code level 4 and would include a variety of sustainable features that would include photo voltaic arrays, solar heating for hot water placed in an unobtrusive valley in the roof structure, and the use of ground or air source heat pumps to heat the property. External joinery would be single glazed but would be high performing insulating glass from specialist manufacturers. Wall and roof construction would also minimise heat loss.

Applicant's supporting information

Following the refusal of planning permission at Red Lane Repton, the applicant has sought to identify a site in a less sensitive location and having identified this site, has worked with officers to establish what would be required to make a planning application. The plans have also been amended since submission to remove the proposed access drive from the flood plain to ensure that there is a dry access always available to provide a means of escape in the case of a flood. The following is a summary of the proposals that have followed the discussions/negotiations during the course of the consideration of this application.

The applicant has submitted a Design and Access Statement (a full copy of which is available for inspection on the file), which makes the following assertions:

- a) Burnaston House was built as a classical 'Soanian' villa of true Sir John Soanes design of which only a handful still exist. The house is of significant cultural

- significance. Several previous attempts to rebuild Burnaston House have failed, and because of this, the possibility of its survival is diminishing.
- b) The house was meticulously dismantled with all removed blocks coded and stored on numbered pallets for ease of reassembly, and detailed drawings and schedules prepared.
 - c) The current proposal intends to recreate the shell of the main house in its entirety, but not rebuild the original ancillary buildings, which contributed nothing to the period design.
 - d) The applicants are willing to enter into an agreement to ensure that Burnaston House remains as a single household residence only.
 - e) A Planning Inspector has acknowledged that Burnaston House was a building of significant interest and that the 'benefits from the re-erection of the building may well justify a siting where new residential development would not normally be acceptable'.
 - f) The site is located in a non-prominent position relative to the wider landscape and as such the applicant is confident that the Planning Inspector's previous concerns of the building's prominence in regard to a site at Etwall have been overcome. The location also complies with the landscape character of the area in that it is secluded and low lying, is only 2.5 miles from its original location and there are no historic or other issues that the building would infringe upon, unlike the previous proposed location in Repton.
 - g) The previous appeal Inspector also considered a greater level of detail was required to ensure both accurate re-erection and restoration of the house. The applicant has confirmed that they have secured the services of conservation architect Adam Bench (RIBA) of Buxton, who has prepared this supporting information after extensive research to support this application, to oversee the project.
 - i) No trees on the boundary of the site are scheduled for removal.
 - j) The site is perfectly placed to give access to the country's main transport network.
 - k) Burnaston House is a rare example of an almost extinct style of architecture, and as such, its reconstruction is seen as highly desirable for historic and cultural reasons.
 - l) If Burnaston House were re-constructed, its planning permission will not set a precedent, as nobody else would be able to re-create a property of this type in the area. It is truly a one-off and it is the type of application that should also be considered under PPS7 as an exception to the normal presumption against residential development in the countryside.

Other information from the submitted documents

Whilst the original staircase was re-used in the construction of Egginton Hall, a part of the original balustrade does exist and the staircase would be re-created together with new stone risers identical to the one from the original Burnaston House (Photographic evidence of it exists). The original cornices are not in the applicant's possession but cornice moulds will be made where possible and used in the completed building based on the photographic evidence that accompanies the planning application.

Floor plans have been submitted showing that the principal rooms relate to the principal windows and the supervising architect will ensure that the house is generally in keeping with the period. However approval of the detailed internal layout of the property is

requested as a planning condition so that further thought can be given to the layout in the knowledge that planning permission has been obtained.

The application documents specify that the proposed access drive from Bannells Lane would be constructed in a bound gravel construction on a concrete or hardcore sub base. This would have cattle grids set into it to define the differing parkland areas that would be formed as part of the landscaping of the site. Reclaimed Yorkstone paving would be utilised around the house in a manner that would allow full access to the property in accordance with the requirements of Part M of the Building Regulations.

A sketch landscaping scheme has been submitted that would involve the creation of a parkland setting for the dwelling separated into three parts – the entrance area through park land setting to provide glimpses of the house on the raised central portion of the site, the house area, and an arboretum to the north east of the house. The site is well screened from the cycle track albeit that the planting on this boundary is deciduous and the rear and service wing and garage face towards the track. Significant planting is proposed on the meadowland to provide a setting for the new dwelling that reflects its importance.

The application is also supported by a flood risk assessment, surveys assessing the presence or otherwise of protected species, and an assessment of the potential of the cycle track as a habitat for glowworms. Although not a protected species, various colonies of glowworms have been identified over the years along the line of the cycleway including in the area where the proposed access would cross the site. Copies of these documents are available for inspection on the working file. It is the conclusion of these documents that the house could be erected without detriment to flood risk subject to engineering works and without detriment to habitats subject to protection during construction and the provision of replacement/'additional habitats.

Planning History

Planning approval was sought in 1990 to rebuild Burnaston House on a site adjacent to Ashe Hall in Etwall. The Committee had resolved to grant planning permission subject to the signing of a Section 106 Agreement to limit occupation to a single family and to ensure the controlled re-erection of the building. However, following a lengthy planning process the application was not pursued and was withdrawn.

A second application was reported to Committee in 1993 further down the site and subsequently refused. The Local Planning Authority were not satisfied that the building had sufficient architectural or historic interest to warrant a significant intrusion into the countryside and considered that the proposal would be detrimental to the rural character of the area due to loss of hedgerow to provide the necessary sightlines.

The application was subsequently dismissed at appeal. The Planning Inspector acknowledged that Burnaston House was a building of "significant interest" and it would be "desirable to re-erect the building in the interests of architectural conservation". The Inspector commented, "the benefits from the re-erection of the building may well justify a siting where new residential development would not normally be acceptable." However, the Inspector considered the elevated position of the proposed site, which lacked tree cover, made it particularly prominent over a considerable area and concluded that the proposal would detract from the character and appearance of the rural area. He considered that the benefits of re-erection did not outweigh the harm

identified. The Inspector further added that had the principle of re-erection been acceptable a greater level of detail would have been required to ensure both accurate re-erection and restoration of the house and appropriate treatment of the space around the building.

An application to re-erect the House in the grounds of a former mansion on Red Lane Repton was refused due its impact on the former parkland that was viewed as significant and detrimental to the countryside.

A Listed Building Application submitted with the application currently under consideration was withdrawn due to the de-listing of the building on 9th April 2010 by English Heritage.

Responses to Consultations

The County Highway Authority has no objection subject to conditions.

Derbyshire County Council as manager of the Mickleover – Egginton cycle way has indicated that subject to careful treatment, a crossing of the rail track could be possible. During the construction phase gated barriers across the track would be required to protect users, but once the building works were completed the barriers would be removed with appropriate gates erected on either side of the track to prevent access by motor vehicles would be required. Derbyshire County Council would wish to be involved in any approval of such details.

The Environment Agency has maintained an objection to the development on the basis that the Flood Risk Assessment is inadequate to allow a proper assessment of the impact of the development on the brook course, further survey is required and this with other information is required before it can comment on the application. However, the Agency recognises that given the location of the site and the fact that the site lies in a hollow in the landscape it is unlikely that there would be consequent effects downstream of the site. It recognises that maintaining an objection due to the lack of suitable information would be difficult to sustain at appeal and that this is an unusual case. In the light of this it has suggested conditions to secure mitigation of the impact of the proposal on the flood plain but would support a reason for refusal should the Council ultimately refuse planning permission.

English Heritage does not wish to comment on the application but has confirmed that it has removed the former Burnaston House from its list of Buildings of Architectural or Historic Interest.

Natural England has examined the submitted ecology reports and agrees with the conclusions and recommends that conditions be applied to ensure the protection of the habitats identified in the reports.

The Derbyshire Wildlife Trust has examined the reports submitted with the application. It notes that there is no evidence of great crested newts or water vole. It accepts that the actual building works would not affect the area occupied by another protected species. The main ecological concern is the glow worm population and the importance of the limestone ballast as a habitat and that glow worms have been observed where the existing right of way crosses the site. However, subject to conditions requiring the use of limestone to consolidate the railway crossing point and the control of external

lighting that looks towards the cycleway and no lighting where the access crosses the cycle track, the Trust has no objection.

The Environmental Protection Manager has no objections.

The Contaminated Land Officer requires an assessment prior to building works being commenced.

Network Rail has no comments.

Responses to Publicity

At the request of the applicant, a local farmer, who has farmed the land for over 50 years, has written to confirm that the field has never been covered with floodwater and he expresses the view that because of the proposed elevated position of the house the chances of it flooding are nil.

One other letter of support has been received from a former resident of the House who notes its previous uses since the 1930's and expresses the view that there would be considerable pleasure derived for people who knew the house in its original setting to see it re-erected.

In response to the application as originally submitted some 16 letters were received about the development. These are summarised below in the usual way but the majority of these are submitted on behalf of one landowner who has appointed consultants to advise him and as such the objections relate to such issues as the listed status of the House, the result of these objections contributed in part to the remains of Burnaston House being formally de-listed by English Heritage. In the light of this there will be no reference to the objections relating to the former listed building in this summary of objections.

- a) The applicant does not own or have a right of access along Bannells Lane, one landowner claims not to have received formal notice of the application. [The applicants have subsequently served notice on all relevant landowners]. The current farmers frequently move animals along Bannells Lane and there would be disruption to farming activities as a result of the extra traffic on Bannells Lane.
- b) The proposal is a device to construct a new house in countryside, as little of the original mansion was salvaged. It will contribute nothing to the local landscape. The development would be contrary to the provisions of Environment Policy 1 of the adopted South Derbyshire Local Plan. This could set a precedent for similar large houses to be built in the countryside.
- c) It would compromise the unique quality of the trail that is a wildlife corridor that has a population of glow worms that has been put at risk through careless management of the trail. The house would add to those risks to the population. Survey evidence has been submitted to show the location and number of glow worms surveyed in the vicinity of the site over the past three years. It is emphasised by the surveyor that total darkness is essential to the successful breeding of glow worms.
- d) Traffic crossing the trail both during construction and during the occupation of the house would present a hazard to users of the trail that include walkers, horse riders and cyclists. If permitted, the trail should not be obstructed and users should have right of way over the occupiers of any house. If permitted it would

not be long before the house owner would seek to get it stopped up due to proximity to their house. It is inevitable that trees and vegetation would be removed to form the access and this should not be permitted. It would provide another opportunity for motorcyclists to access the trail.

- e) The junction of Bannells Lane with the A516 is dangerous with an accident record including one fatality; increased use of the access would increase the risk of further accidents. An application for use by a single lorry was refused planning permission on highway safety grounds.
- f) Bannells Lane is part of the 'green lane' network other green lanes have been allowed to be destroyed in the locality and it should not be allowed to happen to Bannells Lane. It is unsuitable for use by construction traffic and given that some properties immediately abut the lane, its use by construction traffic would be detrimental to the amenities of the occupiers of those properties as well as their health and safety.
- g) Flooding is a major issue that should be addressed by the submission of a Flood Risk Assessment. It is alleged that the site has previously flooded. In the event that an FRA is submitted it would need to be subject to the sequential and exception tests as required by PPS 25. The objectors do not consider that the development is capable of passing these tests as alternative sites in other parishes exist that lie outside flood zones 2 & 3. In addition the plateau works would involve significant intrusion into the flood plain that would not be as easily overcome as is suggested in the FRA as much more flood plain would be lost than is suggested.
- h) Surface water drainage has been properly assessed but there is no information where the water from the hard areas within the site would be stored.
- i) There has been no consultation with Natural England about the ecological implications arising from the development. Protected species are known to be active in the locality but no assessment has been made of the impact of the development on these species.
- j) Visual intrusion was used as a reason for refusal for the development at Bannells Farm, particularly the intrusion when viewed from the trail; the proposed development would have a greater impact when all vehicle movements and the built impact are taken into account.
- k) The application plan seems to be inconsistent in that the red line does not follow accurately some of the boundary features shown on the map.
- l) If spoil is created as a result of the development, it should be removed so that flood waters can flow evenly as is the case at this time and not cause additional flooding on the opposite side of the brook. The watercourse at the side of the site is not the Etwall brook as stated.
- m) The site is not in Bearwardcote but Radbourne Parish.

A further 8 letters have been received in response to reconsultation following the receipt of additional information. One of the letters is from a former occupier of Burnaston House stating that he no longer wishes to receive correspondence about the proposal. The following additional points of objection are raised to those stated above.

- a) The 2010 glow worm survey has been submitted.
- b) There is a culvert at the bottom of Bannells Lane that could not take the weight of construction traffic. None of the land adjacent to Bannells Lane will be sold to allow for passing places, the Lane is not wide enough to allow two vehicles to pass.

- c) There would soon be an application to change the use of the dwelling to form apartments – this would clearly add to traffic problems on Bannells Lane.
- d) The services in Bannells Lane could be damaged by construction traffic.
- e) Would the previous refusal of permission at Bannells Farm be reconsidered if planning permission were granted for this development?
- f) The use of the dwelling should be strictly controlled to prevent additional traffic if the building were permitted.
- g) Flooding issues have not been resolved.

Development Plan Policies

The relevant policies are:

Local Plan: Housing Policy 8 & Environment Policy 1.

Planning Considerations

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

- The principle of development in the countryside.
- The historic and architectural merits of Burnaston House.
- The impact of the erection of the house on its location.
- Flooding Issues
- Access
- Ecology

Planning Assessment

The principle of development in the countryside

Environment Policy 1 of the Local Plan seeks to protect the countryside from new development that would have an adverse impact on the landscape quality and historic features that contribute to the character of the countryside. These issues are considered under relevant headings below. Housing Policy 8 contains similar requirements and seeks to ensure that dwellings are only allowed in such locations provided they are necessary to a rural based activity. The proposed re-erected building does not meet that requirement but being a former country house that originally sat in large grounds it is possible that a new site might be acceptable in the countryside.

PPS7 'Sustainable Development in Rural Areas' advises that isolated new houses in the countryside require special justification for planning permission to be granted. This justification may occasionally be provided by the exceptional quality and innovative nature of the design of a house. The value of such a building will be found in its reflection of the highest standards in contemporary architecture, the significant enhancement of its immediate setting and its sensitivity to the defining characteristics of the local area. The sections below are pertinent to the consideration as to whether the proposal meets this requirement.

The historic and architectural merits of Burnaston House.

It is this issue together with impact on location discussed under a separate heading that is likely to influence whether it is considered that the proposal meets the requirements of PPS7. Being no longer of national importance consideration has therefore been given

to the local perspective. It is the view of the Council's Heritage Officer that the historic and architectural merit of Burnaston House is severely compromised by the limited level of survival. The original plans of the house do not survive in their entirety. The only survival is the original first floor plan, or a prototype of it, which is undated but has a watermark of 1811. The house was built in 1825. In 1833, Stephen Glover noted "Burnaston House, the seat of Ashton Nicholas Every Moseley, is a modern stone mansion, erected by the present owner on a commanding situation." The design of the house has been variously attributed to Samuel Brown or Francis Goodwin, both active in Derby, but there is no evidence to confirm either of these attributions.

The house as it stood at the time of listing was not a "pure" and harmonious design of a single date, as has been claimed. The side wings, which were the most distinctive part of the building, were not part of the original design concept. Externally these side wings gave added interest and 'movement' to a plain house, but internally the extra space did nothing to improve the plan form, producing some oddly proportioned rooms. The internal plan form of the house now proposed is very different from the original, as there would be no point in recreating unsatisfactory features of the demolished building which have ceased to exist.

The original design ethos is respected by the proposals insofar as the principal windows light the principal rooms and a stone staircase and cornicing to selected rooms will be re-created. The applicant has requested that final details of the interior arrangement should remain open to possible amendment if permission is granted for the development.

From a purely historic building point of view alone, the historic and architectural merits of Burnaston House are not considered so significant as to warrant special justification for the erection of a new house in the countryside.

Nevertheless it is acknowledged that the remains of Burnaston House have some residual local historic interest. The varied modern history of the house, involving its use as an RAF pilot training school, airfield base, subsequent dereliction, rescue as a nursing home, demolition prior to completion of the conversion, salvage of the stone and abortive proposed rebuilding in Japan all contribute towards making the project of interest on that account alone, if for no other reason. On this basis it is considered that a case could be made for the erection of the new dwelling provided that other material considerations support that view. If permitted, then a large number of conditions would be required to secure a reasonable facsimile of the original elevations and an appropriate interior, amongst many other issues

The impact of the erection of the house on its location.

The Planning Inspector supported the desirability of rebuilding when the application to build Burnaston House at Etwall was dismissed at appeal in the 1990's. The view expressed by Committee when it refused the application at Red Lane Repton was that officers should try and work with the applicant to identify a more suitable, less sensitive location that might accommodate a re-erected Burnaston House.

The applicant consulted Officers prior to submitting this application and it was agreed that the site did offer some potential as a location for Burnaston House. It was stated that it would be for the applicant to provide a full justification for the development and that all reports necessary to support the application should be submitted. However, as

with all officer advice prior to an application, the advice is given without prejudice to the outcome of any planning application.

The house would sit in a hollow in the landscape and existing trees would substantially screen it from wider views. Its proposed setting would be like a small park, a miniature version of many others belonging to country houses in South Derbyshire, that are an important part of the cherished rural scene.

Clearly there would be close up views of the site from the cycle way in that it would be seen through the vegetation that lies on the north side of the cycle way. In itself this impact is not considered such that a refusal of permission could be justified. There is clearly a short-term impact arising from the construction phase but that harshness would be removed as the landscaping and materials of construction age over time.

Flooding Issues

The Environment Agency remains concerned, albeit recognising that flood zone mitigation can probably be overcome by the submission of further details to satisfy a condition attached to any permission. Although the Agency has raised an objection it also suggests conditions should the Committee be minded to grant permission. There is a potential engineering solution to the impact of the development on the flood zone and it is likely that flood plain compensation works and control of water flow from the application site could be ensured given the land available to the applicant. This however would have to be proven by the applicant in submitting detailed plans for the development in order to comply with conditions. It is therefore felt that objection on the grounds recommended by the Environment Agency would be difficult to sustain at appeal.

Access

The County Highway Authority has raised no objection on highway safety grounds to the access onto the A516 from Bannells Lane subject to a condition that the junction of Bannell's Lane shall be widened and constructed as a splayed vehicle access. It is accepted that this is a fast road however other than during the temporary construction period traffic will be that associated with an additional single dwelling. In the absence of an objection refusal on highway safety grounds would be difficult to sustain.

Objectors have commented that there is no right of access to the site via Bannells Lane. Initially it was also stated that landowners had not been properly notified about the application. The landowners were notified through the proper methods and as such this is not an issue in determining this application. The dispute on the right of way is also not an issue that should hinder the determination of the application as it will be a matter for resolution between the parties should planning permission be granted. If there is no right of access, then for that reason it will not be possible to implement the permission.

It is highly likely that any potential conflict between vehicles accessing the proposed dwelling and those using the Cycleway could be mitigated against by the provision of appropriate measures secured by appropriate condition.

Ecology

There seems little doubt that there is a protected species in the vicinity of the site however, Natural England is of the opinion that the habitat can be protected during construction and that there is a reasonable prospect that the habitat would be retained.

Glow worms are not a protected species and whilst the Derbyshire Wildlife Trust recognises that the trail provides a habitat in which they are established it has not recommended that the application be refused; it recommends conditions that will mitigate any disruption.

Conclusion

The conclusion is finely balanced.

Members will note that the listed status of the building no longer applies and this is a significant difference from the previous occasions when applications relating to the rebuilding of Burnaston House were considered. We do not know whether the Inspector considering the appeal would have made the same statement if the building were not Listed. Clearly being of national importance the special architectural or substantive historic interest would have added support to the argument in favour recreating a facsimile of the original Burnaston House as an exception to policy that seeks to protect the countryside.

However, given the comments of the Planning Committee when it met to consider the last application to recreate Burnaston House at Red Lane Repton, the local historical connections of the house to the area, that intrusion into the countryside will be limited albeit there will be views from the Cycleway (on its own this would not be an acceptable reason) and that necessary flood mitigation measures are likely to be available it is the officer's view that the balance is tipped marginally in favour of permitting the application,

Recommendation

GRANT planning permission subject to the following conditions:

1. The development permitted shall be begun before the expiration of three years from the date of this permission.
Reason: To conform with Section 91(1) of the Town and Country Planning Act, 1990 (as amended by section 51 of the Planning and Compulsory Purchase Act 2004).
2. Prior to the commencement of any building or site works to form access or extend the plateau upon which the dwelling will sit detailed drawings to a minimum scale of 1:50 showing the crossing of the Mickleover to Egginton Greenway (Route 54 on the National Cycle Network) to form part of the access to the site shall be submitted to and approved in writing by the Local Planning Authority. The submitted details shall indicate the means of:
 - i) preventing unauthorised access to the Greenway both during construction and after the completion of the dwelling;

- ii) The submitted details shall also contain provision for the formation of a concrete pad across the Greenway that shall demonstrate an ability to maintain a smooth surface for the Greenway during the construction period and following occupation of the dwelling;
- iii) The submitted details shall include a Method statement to demonstrate the impact on the local population of glowworms is minimised during construction works and the final formation of the enhanced crossing point to form the access to the dwelling shall be undertaken using limestone ballast.

Reason: To ensure that the integrity and future maintenance of the Mickleover to Egginton Greenway is secured both during construction and following the completion of the development. In addition the use of limestone ballast is required to maintain the habitat for glowworms that have been identified as an important colony in the locality that contributes to the biodiversity of the area.

3. Prior to the commencement of any other building works, except for the formation of an access to extend Bannells Lane to the site boundary, the crossing of the Mickleover to Egginton Greenway shall be formed in accordance with the approved drawings for the construction period. The finished formation of the crossing shall be implemented in accordance with the approved drawing and thereafter maintained to secure the finished surface shown on the approved plans.

Reason: To ensure that the integrity and future maintenance of the Mickleover to Egginton Greenway is secured both during construction and following the completion of the development. In addition the use of limestone ballast is required to maintain the habitat for glowworms that have been identified as an important colony in the locality that contributes to the biodiversity of the area.

4. Prior to the commencement of any building works or site works to form access or extend the plateau upon which the dwelling will sit, detailed drawings and flood water modelling to demonstrate that sufficient compensatory flood storage capacity can be provided within the application including calculations to justify the amount of capacity to be provided following engineering operations on the site to form the plateau and access road to the plateau shall be submitted to and approved in writing by the Local Planning Authority including details for the future maintenance of the compensatory flood plain. The approved plans shall be implemented prior to the commencement of building operations to form the dwelling in accordance with a written scheme of implementation. Thereafter the flood compensation area shall be maintained in accordance with the approved details.

Reason: To prevent flooding elsewhere by ensuring that compensatory storage of floodwater is provided within the site prior to the commencement of house building operations.

5. Prior to the commencement of any building works or site works to form access or extend the plateau upon which the dwelling will sit, detailed drawings of a scheme for the disposal of surface and foul water shall be submitted to and agreed in writing by the Local Planning Authority. The submitted details shall illustrate the reed bed foul water disposal system and include a maintenance regime, that will retain its effectiveness following the occupation of the dwelling and the surface water disposal calculations shall include an assessment of the hydrological and hydrogeological context of the development site including a

schedule for maintenance. The scheme shall be carried out in conformity with the details that have been agreed before the dwelling is occupied and thereafter the foul and surface water disposal systems shall be maintained in accordance with the approved details.

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

6. Prior to the commencement of any building or site works to form access or extend the plateau upon which the dwelling will sit, the details of the measures to minimise the impact on a protected species set out in the reports received on 24 June 2010 under cover of your e-mail shall be implemented and maintained in place for the duration of the building operations and shall be removed following the occupation of the dwelling. In addition, outside the protected area, no holes or trenches shall be left uncovered or if unavoidable a means of escape for creatures should be provided from any hole or trench before the site is vacated on any construction day.

Reason: In order to ensure that the impact of construction works on the nearby habitat of a protected species is minimised.

7.
 - A) The development shall not be commenced until a scheme to identify and control any contamination of land, or pollution of controlled waters has been submitted to, and approved in writing by, the local planning authority (LPA); and until the measures approved in that scheme have been implemented. The scheme shall include all of the measures (phases I to III) detailed in Box 1 of section 3.1 the South Derbyshire District Council document 'Guidance on submitting planning applications for land that may be contaminated', unless the LPA dispenses with any such requirement specifically and in writing.
 - B) Prior to occupation of the development (or parts thereof) an independent verification report shall be submitted, which meets the requirements given in Box 2 of section 3.1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.
 - C) In the event that it is proposed to import soil onto site in connection with the development, this shall be done to comply with the specifications given in Box 3 of section 3.1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.
 - D) No development shall take place until monitoring at the site for the presence of ground/landfill gas and a subsequent risk assessment has been completed in accordance with a scheme to be agreed with the LPA, which meets the requirements given in Box 4, section 3.1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.

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

8. Prior to the commencement of any building or site works to form access or extend the plateau upon which the dwelling will sit, the junction of Bannells Lane at its intersection with the A516 shall be widened and constructed as a splayed vehicular crossover in accordance with a scheme first submitted to and approved in writing by the Local Planning Authority in consultation with the County Highway Authority.

Reason: In the interests of highway safety.

9. Prior to the commencement of any building or site works to form access or extend the plateau upon which the dwelling will sit, precise details, specifications and, where necessary, samples of the facing materials to be used in the construction of the external walls and roof of the buildings and boundary wall shall have been submitted to and approved in writing by the Local Planning Authority. The approved details shall include the proposed bonding patterns of brickwork, and details of rubbed and gauged bricks for use over doors and windows in the brick built parts of the buildings. The development shall then be undertaken in accordance with the approved details.

Reason: To secure the reconstruction of the house and its associated structures in materials that reflects its original construction as a significant dwelling in the countryside.

10. Prior to the commencement of any building or site works to form access or extend the plateau upon which the dwelling will sit and notwithstanding the submitted drawings the following additional details at a minimum scale of 1:10 shall be submitted to and agreed in writing by the Local Planning Authority:
- sections to show eaves detail of rear wing;
 - revised support post and roof structure of rear loggia;
 - precise dimensions and profiles of chimneystacks, chimney cappings and pots;
 - garage doors reduced to the appropriate width for a single vehicle
 - precise style and type of rainwater goods proposed, including the proposed position of downpipes.

The development shall thereafter be constructed and thereafter be maintained in accordance with the approved details.

Reason: To secure the reconstruction of the house and its associated structures in a manner that reflects its original construction as a significant dwelling in the countryside.

11. Prior to the commencement of any building or site works to form access or extend the plateau upon which the dwelling will sit, large scale drawings to a minimum scale of 1:10 of all 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 details shall be constructed in accordance with the approved drawings. The development shall thereafter be constructed and maintained in accordance with the approved details.

Reason: To secure the reconstruction of the house and its associated structures in a manner that reflects its original construction as a significant dwelling in the countryside.

12. Prior to the commencement of any building or site works to form access or extend the plateau upon which the dwelling will sit and notwithstanding any details submitted, precise details of the type, size and position of the proposed rooflights shall be submitted to and approved in writing by the Local Planning Authority. The approved rooflights shall be fitted such that their outer faces are flush with the plane of the roof in accordance with the approved details unless otherwise agreed in writing with the Local Planning Authority.

Reason: To secure the reconstruction of the house and its associated structures in a manner that reflects its original construction as a significant dwelling in the countryside.

13. Prior to the commencement of any building or site works to form access or extend the plateau upon which the dwelling will sit and notwithstanding the submitted landscape concept plan a scheme of landscaping for the house and its parkland, 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 shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the landscaping scheme shall be implemented and maintained in accordance with the requirements of Condition 26 below.

Reason: In the interests of the appearance of the area and to secure the reconstruction of the house and its associated landscaping in a manner that reflects its original construction as a significant dwelling in the countryside.

14. Prior to the commencement of any building or site works to form access or extend the plateau upon which the dwelling will sit precise details, including paving patterns, fencing types, the external lighting scheme, and specifications and samples of the materials to be used in the hard landscaping works, shall be submitted to and approved in writing by the Local Planning Authority prior to implementation. The approved details shall be carried out prior to the occupation of any part of the development or in accordance with a programme agreed with the Local Planning Authority as part of the submission of the hard landscaping scheme details.

Reason: In the interests of the appearance of the area and to secure the reconstruction of the house and its associated structures in a manner that reflects its original construction as a significant dwelling in the countryside..

15. Prior to the commencement of any building works or site works to form access or extend the plateau upon which the dwelling will sit precise details of the intensity, angling and shielding, and the area of spread of the lights shall be submitted to and approved in writing by the Local Planning Authority. The submitted scheme shall show the position of all lights to be placed within the application site including those mounted on the buildings and structures hereby permitted and shall minimise the numbers of lights adjacent to the Mickleover to Egginton Greenway. Thereafter the lights shall be installed in accordance with the approved details and be retained in conformity with them. The submitted scheme shall comply with the Institute of Lighting Engineers "Guidance notes for the Reduction of Light Pollution" (2000).

Reason: In order to minimise light pollution in this isolated location in the countryside and to ensure that light intrusion onto the Egginton to Mickleover Greenway is minimised in the interests of the habitat of locally important species.

16. Notwithstanding the submitted details and further to the requirements of Condition 12 above and prior to the commencement of any building or site works to form access or extend the plateau upon which the dwelling will sit the boundary with the area containing trees to be retained shall be fenced with steel mesh fencing to 2.3m high supported by steel scaffold poles staked at 3 metre centres. The fencing shall be retained in position until all building works on adjoining areas have been completed unless otherwise agreed in writing with the Local Planning Authority. Notwithstanding the submitted details, prior to the

commencement of building operations on adjoining areas, the boundary with the area of trees / proposed landscape area shall be fenced with steel mesh fencing to 2.3m high supported by steel scaffold poles staked at 3 metre centres. The fencing shall be retained in position until all building works on adjoining areas have been completed unless otherwise agreed in writing with the local planning authority.

Reason: To protect the trees from undue disturbance during works to construct the dwelling.

17. The finished floor levels of the dwelling hereby approved shall be set at 73.8m AOD as specified in the submitted FRA. Thereafter, the development shall be constructed in accordance with the agreed level unless an alternative finished floor level has been agreed in writing with the Local Planning Authority following the submission of the details required by Condition 3 above.

Reason: To minimise the risk of flooding reaching the floor levels within the building in the interest of the future occupiers of the house.

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

Reason: To maintain control in the interest of the character and amenity of the area, having regard to the specific design of the building and the submitted documents in support of the application it is essential that the Local Planning Authority consider any alteration to the buildings prior to their erection in the interests of ensuring that such alterations are in keeping with the ethos of the development hereby permitted.

19. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008, the dwelling hereby permitted shall not be 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.

Reason: To maintain control in the interest of the character and amenity of the area, having regard to the specific design of the building and the submitted documents in support of the application it is essential that the Local Planning Authority consider any extensions to the buildings prior to their erection in the interests of ensuring that such extensions are in keeping with the ethos of the development hereby permitted.

20. Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 (as amended) and Article 3 and Part 3 of the Town and Country Planning (General Permitted Development) Order 1995, this permission shall relate to the use of the premises as a single dwelling as described in your application and for no other purpose.

Reason: To maintain control in the interest of the character and amenity of the area, having regard to the specific design of the building and the submitted documents in support of the application it is essential that the Local Planning

Authority consider any increase in the number of occupiers of the building prior to the establishment of additional households.

21. If during development any contamination or evidence of likely contamination is identified that has not previously been identified or considered, then the applicant shall submit a written scheme to identify and control that contamination. This shall include a phased risk assessment carried out in accordance with the procedural guidance of the Environmental Protection Act 1990 Part IIA, and appropriate remediation proposals, and shall be submitted to the LPA without delay. The approved remediation scheme shall be implemented in accord with the approved methodology.

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

22. Prior to the commencement of building works to construct Burnaston House following the discharge of pre-commencement conditions above written evidence of a conservation architect's appointment to oversee the building works to completion shall be provided to the local planning authority. The conservation architect shall be selected from the AABC (Architects Accredited in Building Conservation) register compiled under the authority of ACCON Ltd., trading as the AABC Register.

Reason: In order that the works to supervise the construction of the former Burnaston House is supervised by a suitably qualified conservation architect to ensure that the details of the development to be approved under the terms of this planning permission are implemented in accordance with submitted details.

23. External joinery shall be in timber and painted to a colour and specification which shall have been agreed in writing by the Local Planning Authority before any works to paint joinery are commenced. The joinery shall be painted in accordance with the agreed details within three months of the date of completion of the development unless otherwise agreed in writing by the Local Planning Authority.

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

24. 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, position and finish of heating and ventilation flue outlets shall be agreed in writing with the Local Planning Authority before development is commenced.

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

25. A sample panel of pointed brickwork/stonework 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. The works shall be carried out in accordance with the approved sample.

Reason: In the interests of the appearance of the building and the locality generally.

26. 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 dwelling or in accordance with the programme agreed with the Local Planning Authority.

Reason: To maintain control in the interest of the character and amenity of the area, having regard to the specific design of the building and the submitted documents in support of the application it is essential that the Local Planning Authority ensures that the hard and soft landscaping is implemented in accordance with the approved details in the interests of ensuring that such overall development is in keeping with the ethos of the development permitted.

27. Any other conditions deemed reasonably necessary by the Head of Planning Services to control the development hereby permitted.

Reason: To maintain control in the interest of the character and amenity of the area, having regard to the specific design of the building and the submitted documents in support of the application it is essential that the Local Planning Authority in the interests of ensuring that the development is constructed in accordance with the ethos of the documents submitted or received in response to the application.

Informatives:

Any interference with the Mickleover to Egginton Greenway would be of concern to its managers, Derbyshire County Council, you are advised that prior to carrying any works in the vicinity of the Greenway to contact the County Solicitor to demonstrate access rights.

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

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

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

A potential developer will need to satisfy the local authority that unacceptable risk from contamination will be successfully addressed through remediation without undue environmental impact during and following the development. In doing so, a developer should be aware that actions or omissions on his part could lead to liability being

incurred under Part IIA, e.g. where development fails to address an existing unacceptable risk or creates such a risk by introducing a new receptor or pathway or, when it is implemented, under the Environmental Liability Directive (2004/35/EC). Where an agreed remediation scheme includes future monitoring and maintenance schemes, arrangements will need to be made to ensure that any subsequent owner is fully aware of these requirements and assumes ongoing responsibilities that run with the land.

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

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

Item **1.2**

Reg. No. **9/2010/0827/FH**

Applicant:

Mr Robert Boss
11 Penkridge Road
Church Gresley
Swadlincote

Agent:

Mr Robert Boss
11 Penkridge Road
Church Gresley
Swadlincote

Proposal: **THE RETENTION OF A RADIO AERIAL AT 11
PENKRIDGE ROAD CHURCH GRESLEY SWADLINCOTE**

Ward: **CHURCH GRESLEY**

Valid Date: **16/09/2010**

Reason for committee determination

The applicant is an employee of the partner company of South Derbyshire District Council.

Site Description

The application property is a detached dwelling within a residential estate. The neighbouring property closest to the radio aerial in question is No.1 Leyburn Close, a house that sits approximately ½ m higher than the application site.

Proposal

The nature of the application is to retrospectively gain consent for the retention of a radio aerial.

Applicants' supporting information

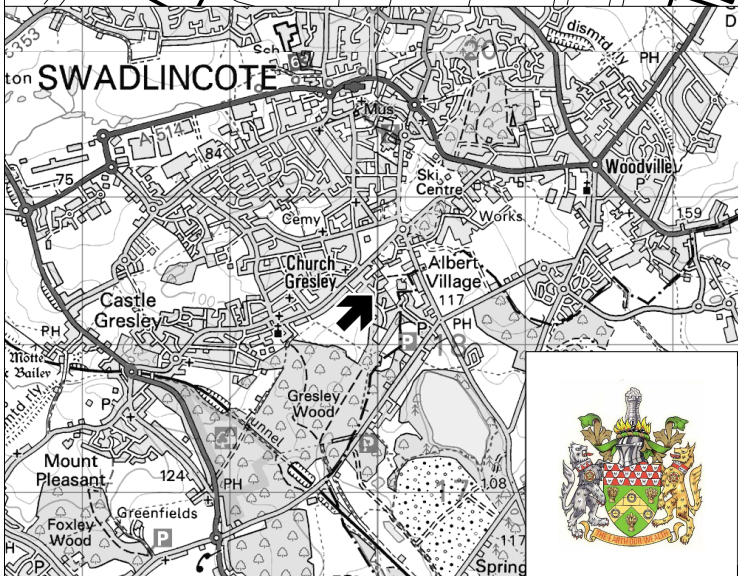
The applicant has provided information stating that the aerial has been moved from its original location at the front of the house to the rear of the house and is hopeful that it is now not found to be obtrusive or objectionable.

Planning History

None.

Responses to Consultations

None.



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Responses to Publicity

None.

Development Plan Policies

The relevant policies are:
Saved Local Plan Housing Policy 13

National Guidance

None.

Planning Considerations

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

- The appearance of the aerial in the street scene
- Impact upon neighbouring properties.

Planning Assessment

The application property is located within a residential estate and sits approximately ½ m lower than its closest neighbour at No.1 Leyburn Close.

The aerial as now sited to the rear of the property is considered not to be unduly intrusive and as such does not have a material adverse impact upon the street scene or upon the amenities of neighbouring properties.

Recommendation

GRANT permission.

Item 1.3

Reg. No. 9/2010/0894/NO

Applicant:
BOWLER ENERGY
BADGER FARM
WILLOWPIT LANE
HILTON
DERBY

Agent:
MR ANTHONY LEE
BOWLER ENERGY
BADGER FARM
WILLOWPIT LANE
HILTON
DERBY

Proposal: **THE INSTALLATION OF AN 18M HIGH SINGLE WIND
TURBINE AT BETTYS FARM CASTLE WAY
WILLINGTON DERBY**

Ward: **WILLINGTON AND FINDERN**

Valid Date: **24/09/2010**

Reason for committee determination

The application is brought to Committee at the request of Councillor Ford as local concern has been expressed about a particular issue and unusual site circumstances should be considered by the Committee.

Site Description

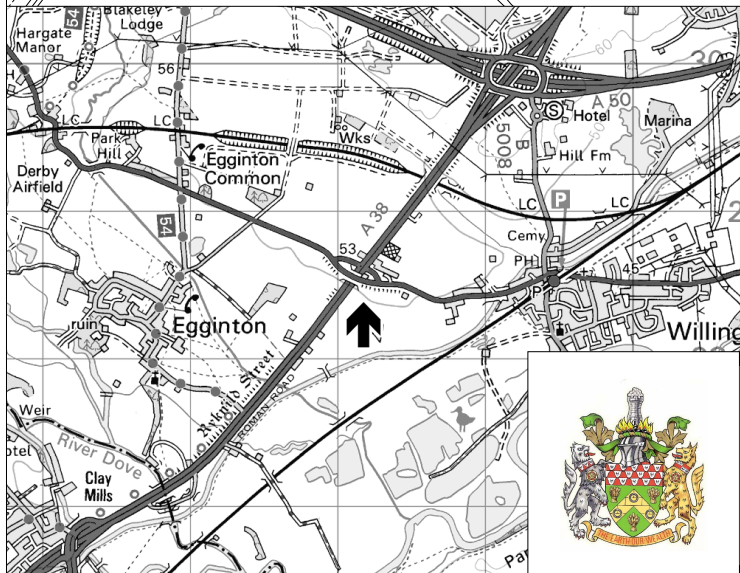
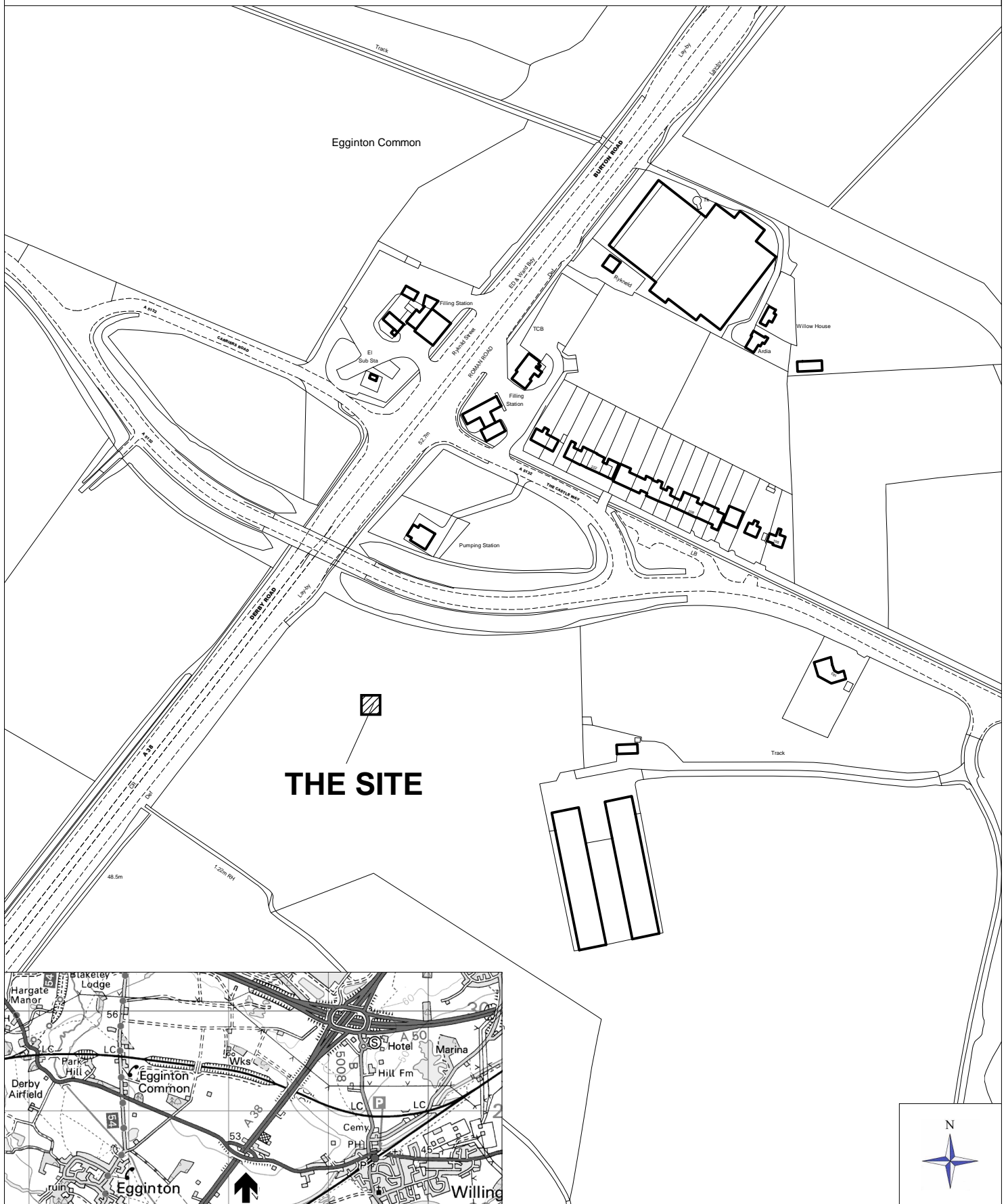
The site comprises an area of flat agricultural land situated to the east of the A38 and bordered to the north by The Castleway. An area of woodland lies to the south beyond which is further agricultural land under separate ownership and the Trent and Mersey Canal Conservation Area. The site is occupied by two 12,000 bird free range egg production units and temporary mobile home associated with the agricultural activity on site with the remainder of the land used as a ranging area for the free range hens. The proposed wind turbine would be situated to the west of the production units and to the east of the A38.

The nearest residential properties are in excess of 150m to the north with a further dwelling situated in excess of this to the east beyond the production units.

Proposal

The application proposes the erection of a single 11kw Gaia wind turbine to generate electricity to provide heating and power to the two egg production units on site. The turbine would consist of an 18m galvanised steel tube mast with twin blades measuring 6.5m each in length giving the turbine a maximum height of 24.5m and would be

9/2010/0894 - Betty's Farm, Castle Way, Willington, Derby DE65 6BW



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mounted on a 25 sq m concrete base. The mast would be grey with pale grey/off white colour blades.

Applicants' supporting information

A supporting statement has been submitted which includes the following details:

- Various forms of alternative energy technology have been considered. When comparing the energy demands of the site to the potential electricity generated by turbines and solar PV panels it is evident that wind power is by far the most appropriate.
- The turbine will generate approximately 33% of the total electricity usage of the farm...and will help to move towards the Government's commitment to achieve 30% of the nation's electrical requirements from renewable resources by 2020.
- The two existing free range egg production units do not have any heating and the only source of power is electricity.
- The site, design, colour and materials for the turbine have been chosen to minimise the impact in the landscape.
- Views of the turbine from the canal conservation area will be screened by existing trees and bushes.
- The grey and metal colours will blend in with the rural background and skyline.
- The turbine has been sited a significant distance from residential properties to ensure that there are no issues associated with noise, shadow flicker or safety.
- Any intrusion will be minimal and far outweighed by the economic, social and environmental benefits of the proposal.

A Conservation Area Appraisal has also been submitted which concludes that the turbine will not be visible from the Trent and Mersey Canal and that the turbine will not have an adverse effect on the character or appearance of the Conservation Area.

Planning History

9/2007/1152 & 9/2007/1153 - The erection of a 12000 bird free range egg production unit. Permitted 6.02.08

Responses to Consultations

Environmental Health has no objection.

The Conservation Officer has no objection.

Willington Parish Council has commented that the turbine is not very discreet and does not provide a good view for visitors entering The Castleway. The Parish has no specific objection but wind turbines can sometimes be intrusive and cause concern for some people.

East Midlands Airport and the Highway Agency have no objection.

Responses to Publicity

Derby Aero Club has no objection.

Development Plan Policies

The relevant policies are:

Local Plan: Saved Environment Policy 1

National Guidance

PPS22 & PPS7

Planning Considerations

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

- Sustainability
- Impact on the landscape
- Impact on amenity

Planning Assessment

Sustainability

PPS22 advises that the Government's energy policy seeks to reduce carbon dioxide emissions by some 60% by 2050 and recognises and encourages the development of renewable energy, including small-scale projects, which will make a vital contribution to these aims. In considering proposals for renewable energy projects consideration should be given to the wider environmental and economic benefits, whatever their scale, whilst demonstrating that environmental and social impacts have been minimised through careful consideration of location, scale, design and other measures. Whilst wind turbines are likely to have the greatest visual and landscape effects these impacts can be temporary if conditions are attached requiring future decommissioning.

PPS7 advises that proposals for development that enable farming to become more competitive, sustainable and environmentally friendly and allow for sensitive exploitation of renewable energy sources in accordance with PPS22 should be supported whilst recognising the need to protect the rural landscape.

It is estimated that the proposed turbine would generate 33% of the total electricity used by the farm and at times of low demand on the farm would also feed energy back to the national grid. As such the proposal would contribute towards the Government's targets for reducing carbon dioxide emissions.

Impact on the landscape

Saved Environment Policy 1 of the Local Plan seeks to protect the countryside from development that is unavoidable in the countryside but advises that if development is permitted it should be designed and located to create minimal impact. The proposed structure is unavoidable in this location as it is required in association with the adjacent

egg production units. The location of the wind turbine follows on from pre-application discussion and has been submitted as discussed. The turbine would be largely obscured from view by existing roadside trees and vegetation when travelling eastwards out of Willington.

The site is more exposed along its immediate boundary with the A38 trunk road and views of the turbine would be more prominent when travelling northwards along this route and into Willington from the west along The Castleway. However, despite its predominantly rural setting, the turbine would be viewed in conjunction with the existing lighting columns that line the A38 and in conjunction with an adjacent road bridge that crosses the trunk road. The turbine is not uncharacteristic of such modern day structures viewed within the rural landscape and the slender design and use of grey colouring would assist in assimilating the structure into the surrounding skyline. A condition could be imposed requiring the removal of the structure once decommissioned.

The turbine would be some considerable distance from the Trent and Mersey Canal Conservation Area and where the canal passes closest to it, the proposed site is already well screened. The turbine would be visible as a distant feature but its presence would have no material impact on the character and setting of the conservation area.

Impact on amenity

The turbine would be located in excess of 150m away from the nearest residential properties and is not considered to have any adverse impact on the amenity of the occupiers of these properties. Environmental Health has no objections.

Conclusion

Whilst it is acknowledged that the turbine would be visible within the landscape the overall harm to the rural landscape is not considered to be so significant that it outweighs the environmental benefits of the proposed renewable energy source. The proposal is therefore considered to be in accordance with the requirements of PPS22 and PPS7 and Local Plan Environment Policy 1.

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

Recommendation

GRANT permission subject to the following conditions:

1. The development permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To conform with Section 91(1) of the Town and Country Planning Act, 1990 (as amended by section 51 of the Planning and Compulsory Purchase Act 2004).

2. Within 3 months of the date that the turbine is no longer used for power generation, the turbine shall be permanently removed from the site and the site

reinstated to its current use unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interests preserving the character of the countryside and removing the structures from the landscape once the turbines are no longer required for power generation.

Item **1.4**

Reg. No. **9/2010/0966/B**

Applicant:

MR DEWAN REZA
30 KING EDWARD ROAD
LOUGHBOROUGH

Agent:

MR DEWAN REZA
30 KING EDWARD ROAD
LOUGHBOROUGH

Proposal: **THE VARIATION OF CONDITION 4 OF PLANNING
PERMISSION 9/2010/0785 TO PERMIT OPENING
BETWEEN THE HOURS OF 17:30-23:00 MONDAY TO
SUNDAY INCLUDING BANK HOLIDAYS AT 61 DERBY
ROAD MELBOURNE DERBY**

Ward: **MELBOURNE**

Valid Date: **19/10/2010**

Reason for committee determination

The application is reported to Committee at the discretion of the Head of Planning Services because the planning permission to which the condition relates, was only recently granted by members at the meeting held on 12 October 2010.

Site Description

The property is situated at the corner of Derby Road and South Street. The ground floor is to be used as a restaurant (see planning history below). The upper floor is in residential use. Whilst the immediate area is predominantly residential in land use, the adjoining property is the Alma public house and the Liberal Club is situated opposite. However Derby Road, from the town centre to Victoria Street, contains a wide mix of land uses, typical of a settlement of Melbourne's size and historic pattern of development.

Proposal

The applicant wishes to extend the permitted opening hours to enable the restaurant to serve food between 1730 hrs - 2300 hrs.

Planning History

9/1997/0916 - The use as a wine bar of the retail premises - permitted
9/2001/0058 - Proposal: outline application (with all matters except siting and means of access reserved for further approval) for the erection of a single dwelling - refused
9/2002/0071 - The use as a computer training centre (D1) and wine bar (A3) - permitted



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9/2005/0014 - The use of the premises as a call centre for drain clearance company and the retention of gate - permitted

9/2010/0574 - Flue – permitted

9/2010/0785 – Use as a restaurant – permitted. A condition was imposed restricting hours of opening to those specified in the application;

“The use hereby permitted shall not be open to customers and no customers shall remain on the premises outside the following times: Monday to Saturday 1730 hrs - 2230 hrs.

The premises shall not be open for business on Sundays and Bank Holidays”

Responses to Consultations

The Parish Council has no objection.

Melbourne Civic Society considers the application premature and recommends a temporary permission to enable any problems to be assessed before a permanent permission is granted.

The Pollution Control Officer has no objection and comments that 11 pm closing time is not unreasonable for this type of activity in such a location. He notes that the Bay Tree (corner of Market Place and Potter Street) also closes at 11 pm.

Responses to Publicity

10 letters of objection have been received raising the following concerns:

- a) Permission to use the premises as a restaurant was granted on the basis of the previously stated opening hours and it is not reasonable to apply to extend them. Should the applicant not wish to accept the previous hours then an appeal should be made.
- b) The previous condition was imposed to protect the amenities of neighbours and it follows that the extended opening hours would cause harm to amenity, by way of noise.
- c) The area already suffers from disturbance associated with existing late night activities.
- d) The hours should not be extended until the impact of the use has been assessed after the restaurant has opened.
- e) It is likely that customers would remain on the premises after 2300 hrs.
- f) Sunday opening would be particularly unacceptable as this is when expectations of peace and quiet are at their greatest.
- g) There would be increased congestion from parked cars.
- h) The character of the area would be adversely affected.

Development Plan Policies

The relevant policies are:

South Derbyshire Local Plan Saved Environment Policy 12 and Transport Policy 6.

National Guidance

PPS1 PPS4 PPG13

Planning Considerations

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

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

Planning Assessment

The proposed extended opening hours would not give rise to a change in the character of the conservation area.

On the advice of the Pollution Control Officer, and having regard to the immediate proximity of the Alma Inn, the proposed use would not result in demonstrable harm to the living conditions of residential neighbours. The previous condition reflected the hours of opening then proposed by the applicant. It is procedurally appropriate for an applicant to seek to vary a condition by application. The advice of the Pollution Control Officer is made in the context of an area that already contains a number of town centre uses.

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 12 October 2013.
Reason: To conform with Section 91(1) of the Town and Country Planning Act, 1990 (as amended by section 51 of the Planning and Compulsory Purchase Act 2004).
2. The premises shall be used solely for a purpose falling within Class A3 of the Town and Country Planning (Use Classes) Order 1987 (as amended). In particular the premises shall not be used for the sale of hot food for consumption off the premises.
Reason: In the interests of highway safety and the amenity of the occupiers of nearby dwellinghouse.
3. Prior to the first use of the site hereby permitted, details of a fume extraction system (to include extraction rates and filtration systems, the means to secure its effectiveness, and a scheme to maintain its effectiveness) shall be submitted to and approved in writing by the local planning authority and implemented in accordance with the approved scheme. The approved scheme, including the maintenance scheme, shall be retained in place for the duration of the permitted use.
Reason: To protect the amenities of adjoining properties and the locality generally.
4. The use hereby permitted shall not be open to customers and no customers shall remain on the premises outside the following times: 1730 hrs - 2300 hrs.

Reason: For the avoidance of doubt, these being the hours specified in the application and to ensure that the use does not prejudice the enjoyment by neighbouring occupiers of their properties.

Informatives:

You should contact the Council's Environmental Health Section on all matters relating to food hygiene and health and safety. Food businesses must register with the local authority at least 28 days prior to opening for business.

2. PLANNING AND OTHER APPEALS

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

Reference	Place	Ward	Result	Cttee/delegated
9/2008/1176	Woodville	Woodville	Dismissed	Delegated



Appeal Decision

Site visit made on 18 August 2010

by **Mr J P Sargent BA(Hons) MA MRTPI**

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

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

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Decision date:
21 October 2010

Appeal Ref: APP/F1040/E/09/2118609

21 Moira Road, Woodville, Swadlincote DE11 8DG

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) against a refusal to grant listed building consent.
- The appeal is made by Mr Stephen Davey against the decision of South Derbyshire District Council.
- The application Ref 9/2008/1176/LD, dated 4 December 2008, was refused by notice dated 10 June 2009.
- The works proposed are the removal of the existing Church Rooms.

Procedural matters

1. On the Appeal Form the Appellant is said to be the Reverend T Vale and the PCC of St Stephen's Church. However, the right of appeal rests only with the original applicant who, I understand, is willing for the appeal to proceed.
2. The description on the application form included various works to St Stephen's Church itself. However, the Appellant has confirmed that these are subject to what is known as ecclesiastical exemption under the Faculty system so they do not form part of the appeal before me. Furthermore, as the proposal would involve the removal of just the Church Rooms and not the main church building as well, it cannot be considered as an act of demolition under the terms of the Act. Rather, it must be viewed as an alteration to the listed building as a whole. I have therefore amended the description accordingly.

Decision

3. I dismiss the appeal.

Main issue

4. The main issue is whether the removal of this building would result in an unacceptable loss of a historic asset and/or fail to preserve the setting of St Stephen's Church, a Grade II listed building.

Reasons

5. St Stephen's Church is a stone church that was built in 1846 and stands on the north side of its grounds. Running along the southern boundary, and separated from the church by the main part of the churchyard, is a long narrow building called the Church Rooms (the hall). The main part of this building dates from 1905, though it was extended in the 1950's. It is built of red brick with a slate roof and has a limited amount of decorative detailing.

6. The hall is of a markedly different design to the church. Its appearance is not particularly distinctive and it has been subject to various alterations over the years that fail to sympathise strongly with its original character. While the hall partially encloses the churchyard, the sense of enclosure and seclusion in this area is more dependent upon the size of the churchyard and the effect of the existing boundary trees. It is also some distance from the main church and the functional link between the 2 buildings is not strong. Therefore, these factors limit the contribution the hall makes to the setting of the church.
7. However, the hall does not harm the setting of the church. It is also an important part of the historic evolution of the site, showing how there was a need for increased facilities at the premises. Therefore, despite the comments above, the hall constitutes a heritage asset, and its removal would cause substantial harm to the setting of the principal listed building as it would result in its historic role no longer being apparent.
8. The *Historic Environment Planning Practice Guide* (the Guide) that accompanies Planning Policy Statement 5 *Planning for the Historic Environment* (PPS5) says the destruction of a heritage asset is very much the last resort after every other option has been exhausted. It acknowledges though that the substantial harm arising from the removal of buildings can be acceptable if there are substantial public benefits or if the building is genuinely redundant.
9. In this respect the Appellant has highlighted how the works would be freeing the church community of a financial burden and allowing investment in the principal building. However, I have received little information to support this or to demonstrate the importance of the proposed alterations to the church. While there is an intention for the site of the hall to be redeveloped, no revised scheme has planning permission and so the weight I can attach to any financial benefits from that are limited. I also consider the contribution the building makes to the appearance of the surroundings could be improved to a certain degree if some general maintenance works were undertaken.
10. While I noted its elongated floor plan I have no substantive evidence to demonstrate that the building is genuinely redundant or that there are no viable alternative uses. Furthermore, little has been presented to show that the structural condition means its repair or refurbishment would be unrealistic. While the hall may well duplicate some of the facilities that are to be included in the works to the church, that in itself does not justify its removal or indicate that no other uses, unrelated to the church activity, could be found.
11. Accordingly, I conclude that the removal of the hall would constitute the unacceptable loss of a historic asset that would cause substantial harm to the setting of St Stephen's Church, a Grade II listed building, and it has not been shown that substantial public benefits would arise from its removal or that the building is genuinely redundant. Consequently, the scheme would conflict with national policy in PPS5 and advice in the Guide. I therefore conclude the appeal should be dismissed.

J P Sargent

INSPECTOR