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Our Ref: DS

Your Ref:

Date: 27 January 2020

Dear Councillor,

**Planning Committee**

A Meeting of the **Planning Committee** will be held in the **Council Chamber**, Civic Offices, Civic Way, Swadlincote on **Tuesday, 04 February 2020 at 18:00**. You are requested to attend.

Yours faithfully,



Chief Executive

To:- **Conservative Group**

Councillor Mrs. Brown (Chairman), Councillor Mrs. Bridgen (Vice-Chairman) and Councillors Angliss, Brady, Ford, Muller, Watson and Mrs. Wheelton

**Labour Group**

Councillors Gee, Dr Pearson, Shepherd, Southerd and Tilley

## **AGENDA**

### **Open to Public and Press**

- 1** Apologies and to note any Substitutes appointed for the Meeting.
- 2** To note any declarations of interest arising from any items on the Agenda
- 3** To receive any questions by members of the public pursuant to Council Procedure Rule No.10.
- 4** To receive any questions by Members of the Council pursuant to Council procedure Rule No. 11.
- 5** REPORT OF THE STRATEGIC DIRECTOR (SERVICE DELIVERY) **3 - 60**
- 6** SECTION 106 PLANNING OBLIGATIONS FOR BOULTON MOOR PHASE 2 (BM2) **61 - 67**

### **Exclusion of the Public and Press:**

- 7** The Chairman may therefore move:-  
That in accordance with Section 100 (A)(4) of the Local Government Act 1972 (as amended) the press and public be excluded from the remainder of the Meeting as it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that there would be disclosed exempt information as defined in the paragraph of Part I of the Schedule 12A of the Act indicated in the header to each report on the Agenda.
- 8** To receive any Exempt questions by Members of the Council pursuant to Council procedure Rule No. 11.

# **Report of the Strategic Director (Service Delivery)**

**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).

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## 1. Planning Applications

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

Reference	Item	Place	Ward	Page
DMPA/2019/1183	<a href="#">1.1</a>	Swadlincote	Swadlincote	5
DMPA/2019/1182	<a href="#">1.2</a>	Swadlincote	Swadlincote	23
9/2019/0699	<a href="#">1.3</a>	Willington	Willington & Findern	31
9/2019/0366	<a href="#">1.4</a>	Drakelow	Linton	37
DMOT/2019/1331	<a href="#">1.5</a>	Newhall	Newhall & Stanton	45
DMOT/2019/1405	<a href="#">1.6</a>	Newhall	Newhall & Stanton	48

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 report of the Strategic Director (Service Delivery) 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 Strategic Director (Service Delivery), 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 No.** 1.1

**Ref. No.** [DMPA/2019/1183](#)

**Valid date:** 14/10/2019

**Applicant:**

LNT Care Developments

**Agent:**

Tracey Spencer  
LNT Construction  
Helios 47  
Isabella Road  
Garforth  
Leeds  
LS25 2DY

**Proposal:** The erection of a 66 bed residential care home and two buildings containing 8 no. retirement apartments and associated works at the former South Derbyshire District Council Depot, Darklands Road, Swadlincote, DE11 0PJ

**Ward:** Swadlincote

**Reason for committee determination**

The item is presented to Committee as the site is Council owned.

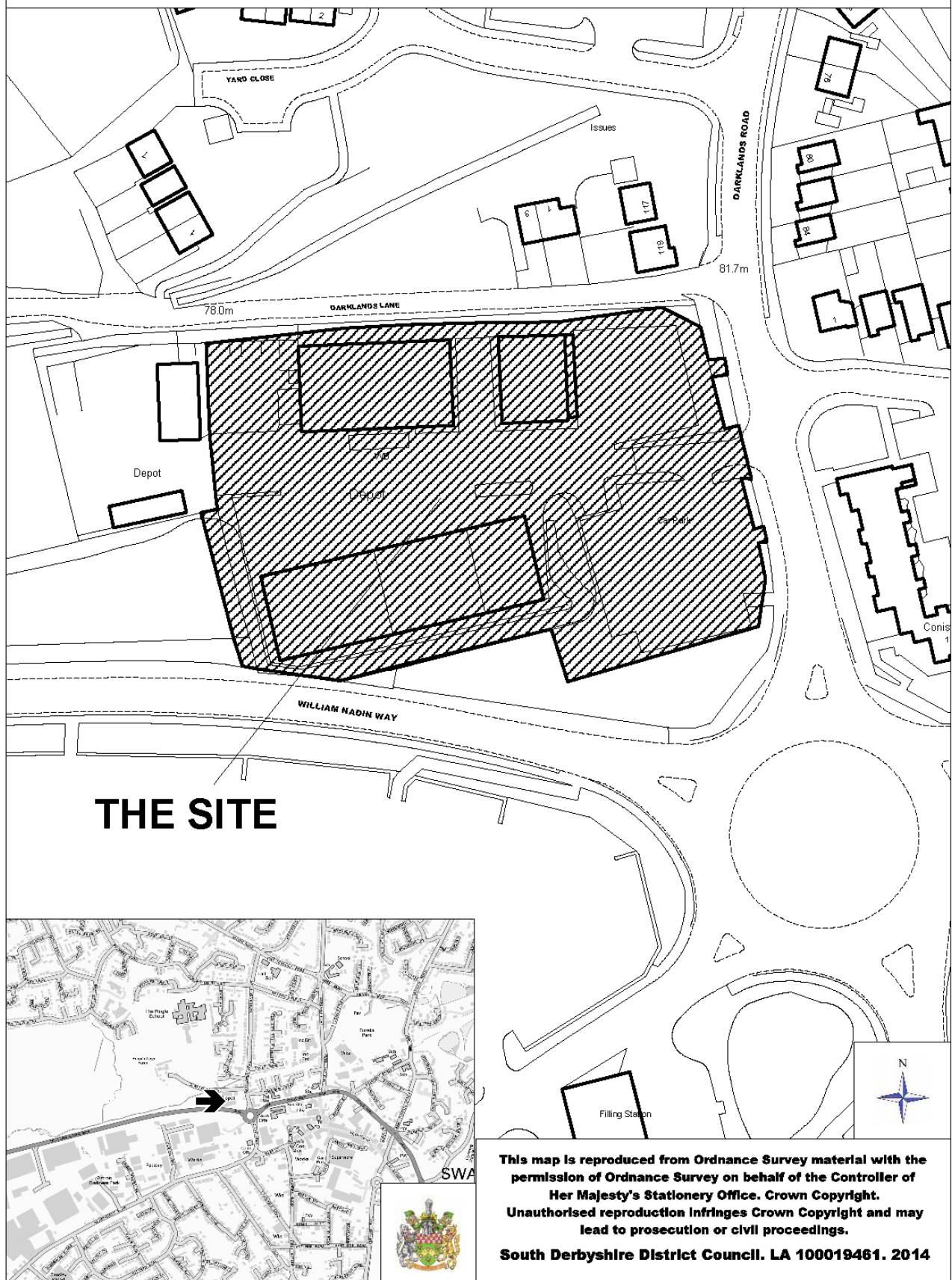
**Site description**

The site is located within the urban area of Swadlincote, covering an area of approximately 0.76 hectares, and lies within the Swadlincote Town Centre as defined in the Local Plan. The site is not within a Conservation Area, nor are there listed buildings within the vicinity which might have their setting influenced by the site. There are no Tree Preservation Orders on the site, but it is located within the National Forest.

The site is previously developed land comprising a public car park (eastern part) and, until recently, the former Council depot (western part). To the north, the site is bound by Darklands Lane, beyond which lies the Darklands Brook and residential properties fronting on to Darklands Road, Middle Close and Yard Close. To the east is Darklands Road beyond which lie residential properties off Darklands Road and Toulmin Drive, including Coniston Court. A toucan crossing also exists to the east, close to the junction of Toulmin Drive and the existing access to the car park and depot. To the south east is the A514 Civic Way/William Nadin Way and Sainsbury's supermarket roundabout, with William Nadin Way forming the southern boundary beyond an area of tree planted highway verge. To the west beyond part of the former Council depot site the subject of application DMPA/2019/1182 being considered concurrently with this application, lie existing allotments accessed via Darklands Lane, with the residential properties recently constructed by Morris Homes beyond.

The site itself has been recently cleared pursuant to permission granted in 2018, with hardstanding left in part along with the retaining wall to William Nadin Way. There is a considerable change in levels between William Nadin Way and the site itself, with this gradient also notable across the car park and the wider site as a whole, leading towards the Darklands Lane beyond the site boundary. Darklands lane is also the route of public footpath Swadlincote 46 and National Cycle Network Route 63 (NCN63).

**DMPA/2019/1183 - Former South Derbyshire District Council Depot,  
Darklands Road, Swadlincote DE11 0PJ**



## **The proposal**

It is proposed to utilise the existing access from Darklands Road and to re-develop the site to provide a three-storey, sixty six bed residential care facility (use class C2) for older people and two two-storey buildings containing 8 supported living units (use class C3). The residential care facility would provide assisted living and care to adults. The supported living facility offers a lifestyle largely independent of care but with care facilities close by should they be required.

The care home takes an 'L' shape form with the building sited to the north-western corner of the site, with landscaped gardens provided in-between the building and the site boundaries. To the south of the care home a landscaped area is proposed along with the main entrance to the home. Car parking is provided to the southern boundary of the site adjacent to the existing retaining wall. The two supported living buildings are proposed to the east of the site and present a frontage to Darklands Road, car parking for these units are proposed in-front of the southernmost unit and behind the northern unit. The scheme would represent the redevelopment of a brownfield site within the town centre.

## **Applicant's supporting information**

The Planning Statement sets out the background to the developers outlining that LNT Care Developments, who specialise in the development of care facilities for older people. The Group has developed a series of care homes in a number of locations across Yorkshire, Lancashire, the Midlands and south of England. The development would provide a local community care facility where residents are expected to emanate from an area no more than three miles from the site. A description of the site and surroundings are set out along with the planning history. The economic benefits are set out including the significant weight that Planning Inspectors place on the need to support economic growth. The development would generate between 50-60 full-time equivalent jobs, the majority of which are expected to be offered to suitable candidates from the local area. A summary of the NPPF and Local Plan is provided - In principle the proposal is considered to represent sustainable development with good access to the town centre and sustainable modes of transport. The planning benefits of the scheme are considered to carry significant weight. In particular, the scheme will provide a new landmark development that will positively contribute to the character and appearance of the area. It will function as a transition between the residential to the north and commercial uses of the edge of town centre in a generously landscaped setting appropriate to its use and community function.

The Design and Access Statement has undertaken an assessment of the character of the surrounding area noting the variety of built form and character in the area, ranging from the 3/4/5 storey development along Civic Way to the new traditionally designed residential development to the west. The design and internal layout of the main care building is based on the improved standards of the National Care Standards Act 2000 - These facilities will be fully compliant with the Care Standards, provide single-room accommodation with en-suite facilities and a much improved ratio of communal/recreational space for residents. The home is designed to be able to provide both general residential and residential dementia care, with secure landscaped gardens provided. The associated landscaping and amenity space would provide an appropriate landscaped setting to the building. The site layout is considered to have a number of benefits and addresses the sites key characteristics and assets as follows: Affords the opportunity to provide an attractive modern building worthy of its setting and surrounding; Maintain the current topography of the site; Permits the main day lounges to be provided, where residents can have attractive views out across landscaped gardens and their immediate surrounds; Provides adequate enclosed garden/amenity space that contributes to the setting of the building and enhances the general character of the area; and Enables safe vehicular access and egress, whilst providing visually contained parking in a secure relationship with the proposed building. The building and site is designed and laid out to provide direct and level access for all users. The site provides natural surveillance with the entrance to the care home manned 24 hours a day. Appropriate lighting, boundary treatments and security measures will be implemented whilst maintaining a relatively open and non-institutional feel. The proposed care home is designed to be of a modern nature and will incorporate materials such as brick and render with detailing and features



that reflect the character of the area. Elevations are intended to offer appropriate levels of variety, interest and articulation. The main roof is proposed to be of a gabled form with hipped end features covered using smooth grey tiles. Overall it is considered that a positive design approach has been adopted in respect of the proposed development scheme. The proposed care home scheme should provide a form of development that would positively enhance the character of the surrounding area, whilst also offering an important local community service and employment.

An Arboricultural Impact Assessment considers that the arboricultural impact of this development proposal is low with only the loss of one tree necessary, however it is a roadside tree that does offer greening of the street scene. The wider boundary tree screening is retained to provide a sylvan backdrop to the proposals. There is sufficient space for replacement tree planting throughout the site.

The Ecological Appraisal of the site finds there are no habitats of international, national, county or local importance that would be directly or indirectly affected by the proposals especially given the site has now been cleared of all buildings. The site is of overall low ecological value, and the species recorded on the site can be described as common or abundant, with no evidence of protected species recorded. Although there are considered to be no ecological constraints to the proposals, a series of generic mitigation measures could be implemented to reduce any impact the development proposals may have on local wildlife. There is also an opportunity to implement some enhancement measures to increase the nature conservation value of the site in the long term in accordance with planning policy. A series of bird/bat boxes could be installed on some of the existing trees to be retained and/or incorporated into the new build to provide enhanced nesting/roosting opportunities. Where any new planting is proposed, it should aim to use native species, and although the site is currently well lit, new lighting should be designed to minimise light spillage and pollution.

The Transport Statement sets out that the level of traffic generation of the proposed development would be less than the previous use of the site as a Council Depot and car park, that can be accommodated satisfactorily within the existing highway network. The site is located within walking distance of the Town Centre, and the services contained therein with good footpath links providing safe access. Cycle parking provision would be made within the site. The site's location also affords access to the numerous bus routes running out of the town centre bus station. The existing vehicular access to the site is to be retained, with provision made within the site for 24 car parking spaces (including mobility spaces) to serve the care home, with 6 spaces allocated for each of the apartment blocks (4 units within each block). In terms of servicing requirements, the frequency and size of vehicle is relatively low. On average the proposed home would generally receive only one delivery vehicle per day in the form of one 7.5 tonne vehicle delivering foodstuffs, perishables and clinical products.

The Preliminary Geo-environmental Investigation notes there is one known mine shaft within the site boundary which has been drilled, grouted and capped, and sets out that there shall be no 'hard' development within 3m of the mineshaft. Made ground at the site varies in thickness from 0.6m to 1.7m across the site although was absent in the central area. Natural ground was encountered in each of the exploratory holes and typically comprised completely weathered Coal Measures. Methane was not detected during any of the previous GEA monitoring visits, carbon dioxide was recorded at a maximum concentration of 3.9% v/v and negligible flows were detected. On this basis the site would be classified as Green/CS1 with no special gas protection measures being required. This site is located within a Development High Risk Area. Several coal seams underlie the site at shallow depth. These appear to dip at shallow depth towards the south. There are no historical records of workings in shallow seams beneath the site and no evidence of workings were encountered within any of the boreholes such as voids, broke ground or loss of flush returns.

A Flood Risk Assessment notes that the Darklands Brook lies approximately 10m north of the north-west corner of the site, with the majority of the site in Flood Zone 1, where the annual probability of fluvial flooding is assessed as less than 1 in 1000 years. Approximately 1% of the site (the north-western tip) lies in flood zone 2 (between 0.1 and 1% annual probability of fluvial flooding). Modelling was undertaken on the Darklands Brook and this indicated only the north-west corner of the site would be affected by a 1 in 100-year event. Hence, fluvial flooding is not considered a substantial risk



to the site. Mapping, however, shows localised areas of low to high risk from surface water ponding from pluvial events. It is proposed that surface water is to be collected by a new drainage network which may include parts of the existing network, and discharge to the Darklands Brook. Foul water is proposed to be discharged in two sections to the combined sewer on Darklands Lane and to the combined sewer in Darklands Road. However, an accompanying Drainage Strategy indicates only a single foul outfall onto Darklands Lane would be utilised. A 30% reduction of current surface water discharge rates has been proposed, to contain a 1 in 30-year event including allowances for climate change and a 10% allowance of impermeable area for urban creep.

### **Relevant planning history**

9/2018/0451: Erection of a mixed use development incorporating a public house with restaurant (Use Class A4) with ancillary accommodation, a fast food restaurant with drive through (Use Class A3/A5), a residential care home facility (Use Class C2) and 15 supported living apartments (Use Class C3) along with creation of ancillary car and cycle parking provision, amenity space, soft landscaping and improvements to pedestrian links - Approved December 2018.

9/2018/0225: Demolition of buildings and removal of hardstandings – Approved March 2018.

9/2010/1113: Outline planning permission (all matters reserved except for access and layout) for the erection of 2 non-food retail units, a dental surgery, improvements to Darklands Lane, access, ancillary works and demolition of depot – Approved April 2011.

9/2006/0320: Outline planning permission (all matters reserved) for the erection of 2 non-food retail warehouse units, an associated garden centre, car parking landscaping and service arrangements – Approved February 2006.

### **Responses to consultations and publicity**

The Highway Authority notes that the care home and apartments are intended to be accessed from Darklands Road via the existing vehicular access, albeit slightly modified. Considering the existing/previous use of the site, it is not considered that the proposed use would result in an increase in the number of vehicular movements generated by the site. The number of parking spaces proposed are considered to be adequate for the proposed uses. Whilst there are some concerns about the loss of a public car park on the site - this loss would be mitigated by the concurrent application for the provision of a new car park to the rear of the site (DMPA/2019/1182). Therefore there are no objections to the proposal subject to conditions relating to the provision of a construction management plan, provision of a modified access and parking and manoeuvring space, no access to be provided from Darklands Lane, and the provision of cycle facilities.

The Head of Environmental Services considers that the key environmental impacts of the development are from existing sources of contamination and air quality. To this end there are no objections to the proposal subject to a condition relating to contaminated land and the provision of electric vehicle charging points.

The Lead Local Flood Authority has no objection in principle to the proposed development subject to conditions relating to the submission and approval of a detailed drainage scheme, including measures to avoid surface water run-off during the construction phase.

Derbyshire Wildlife Trust notes the previous permission for the re-development of the site and due to the site having been cleared concur with the Ecological Assessment undertaken that the site has low ecological value with no protected species issues. The Trust recommend that the trees along the northern boundary are retained as they provide a green corridor and foraging/commuting route for bats. The provision of bird and bat boxes within the new buildings is supported and the scheme offers opportunities to create new habitats to benefit wildlife and increase the biodiversity of the site.

The Development Control Archaeologist notes that whilst there may be surviving shafts and other remains associated with the small-scale colliery operations present below ground on the site, it is difficult to see any archaeological value in requiring a record to be made of these remains, or indeed how such a record could be safely be achieved. For this reason no archaeological investigations or conditions are required.

The Environment Agency has no objection subject to a condition relating to contamination.

The National Forest Company comments that whilst the development is not of a scale where woodland planting is required, policy BNE1 does expect development within the Forest to follow the National Forest Design Charter. The Design Charter encourages new development to contribute to the creation of a National Forest character through the visible use of timber in construction, the use of green walls and roofs, incorporating sustainable building design and going beyond standards as set out in the Building Regulations. The submission does not reflect these points and does not appear to have taken policy BNE1 into account. The NFC requests that amendments are sought to incorporate a National Forest character within the proposals. The retention and incorporation within the scheme of the existing trees is welcomed. There is a good opportunity for additional tree planting within the development. The NFC requests that a condition is imposed for these details to be agreed.

Derbyshire County Council Planning Policy whilst not requesting any financial contributions, does raise concern in respect of an oversupply of residential care beds.

Derby and Derbyshire NHS (CCG) has commented on the scheme and requested a contribution of £14,208 in order to fund some internal reconfiguration at Swadlincote Surgery Darklands Road, to provide additional clinical space and improve access to a treatment room.

The Coal Authority confirms that the site is located within the defined development high risk area. They consider that the Geo-environmental Appraisal submitted is sufficient in demonstrating that the application site is safe and stable for the proposed development and therefore has no objection.

Derbyshire Police has no objection to the proposed development in principle. However, details are required of the boundary treatments, lighting, and security.

The Peak and Northern Footpath Society has no objection provided that the full width of Footpath 46 Swadlincote, which abuts the northern edge of the application site, remains unobstructed at all times.

Two letters of comment have been received raising the following issue:

- A lack of information with regard to Darklands Lane as part of the National Cycle Network Route - development should be in accordance with the standards laid out in Sustrans Paths for Everyone program.

### **Relevant policy, guidance and/or legislation**

The relevant Development Plan policies are:

- Local Plan Part 1 (LP1): S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), S4 (Housing Strategy), S6 (Sustainable Access), S7 (Retail), H1 (Settlement Hierarchy), H20 (Housing Balance), SD1 (Amenity and Environmental Quality), SD2 (Flood Risk), SD3 (Sustainable Water Supply, Drainage and Sewerage Infrastructure), SD4 (Contaminated Land and Mining Legacy Issues), BNE1 (Design Excellence), BNE2 (Heritage Assets), BNE3 (Biodiversity), BNE4 (Landscape Character and Local Distinctiveness), INF1 (Infrastructure and Developer Contributions), INF2 (Sustainable Transport) and INF8 (The National Forest);
- Local Plan Part 2 (LP2): SDT1 (Settlement Boundaries and Development), BNE7 (Trees, Woodland and Hedgerows) and BNE10 (Heritage).

The relevant local guidance is:

- South Derbyshire Design Guide Supplementary Planning Document (SPD)

The relevant national policy and guidance is:

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)

## **Planning considerations**

Taking into account the application made, the documents submitted (and supplemented and/or amended where relevant) and the site and its environs; the main issues central to the determination of this application are:

- The principle of development;
- Design and landscaping; and
- Highway safety matters and site access requirements.

## **Planning assessment**

### The principle of development

The site is located within both the urban area and town centre as defined within the Local Plan, and as such the principle of developing the site as a care home and for supported living accommodation is considered to be acceptable in accordance with policies S2, S4 and H1. The proposal would facilitate the re-use of an underused and currently vacant site. Vacant sites within the urban area are considered to be the most appropriate locations to support higher density developments to ensure an efficient use of land in the most sustainable locations, in accordance with Policy H20. The site represents a sustainable 'windfall' site providing development over and above that required by the Local Plan. The proposal would aid the Council in achieving the aspirations set out under policy H20 which seeks to achieve a mixture of housing tenures and types to meet the changing demographics and associated specialist needs of the District. The comments of the County questioning the need for additional care beds in the District are noted - but as with any sustainably located 'windfall' site be it traditional residential accommodation or care facilities need is catered for by the market and as such there is no objection to the scheme on this basis.

The sustainable credentials of the site both in terms of the employment offered and the benefits of such a development within the Town Centre should not be understated. The proposal would provide 50-60 full-time equivalent jobs in the most sustainable location within the District - this would allow the utilisation of sustainable transport modes, and have knock-on benefits for the vitality and viability of the Town Centre as a whole in terms of investment and overall spending for the area through residents and staff. The site is located in close proximity to the services and facilities required to complement such a use. Overall, the principle of the uses proposed draw direct support from the strategy of the Plan as a whole, in particular policies S1, S2, S4, H1 and H20.

### Design and landscaping

The site is located close to the junction of one of the main entrances into the Town Centre, and is prominent in terms of its relationship with both Darklands Road and Lane. The current (and previous) use of the site, comprising a surface car park on the Darklands Road frontage, and the now demolished Council depot buildings which present a neutral, and in some respects negative impact on the character and appearance of the area. The re-development of the site provides the opportunity to enhance the character and appearance of the area in location. The current proposals have been subject to considerable scrutiny, including input from the Council's design specialist.

The site layout has been informed by the desire to provide a strong built frontage to Darklands Road, and also to Darklands Lane - which would aid in providing Darklands Lane with some security though overlooking windows and activity. The blocks of apartments to Darklands Road, are unfortunately staggered with the southernmost block set back behind an area of car parking - this being as the result of an existing capped mineshaft preventing this building being sited any closer to the road. Notwithstanding this, the siting of the buildings will provide a positive sense of enclosure currently lacking in this area. Sufficient space is provided along this boundary in order to facilitate the provision of a tree lined landscaping strip to Darklands Road to enhance the sites position within the National Forest. The three-storey care home is sited in the north western corner of the site, with vehicular access provided in-between the apartment blocks that gives the main entrance to the home at attractive landscaped setting. The siting of the building away from the boundaries provides both the opportunity to retain the existing trees along Darklands Lane but also to provide garden areas for the residents.

One unfortunate consequence of the siting of the development is the loss of the existing Norway Maple tree along the Darklands Road frontage, which is an attractive and visually prominent tree - made more prominent by the current lack of planting and built development on the site. Following discussions with the Councils Tree Officer, in order to retain this tree and safeguard its future the building would need to be set back 5m from it's root protection area - which would result in the buildings to the north of the site being located too close together and the amenity of each set of occupiers being significantly impacted upon. As a result of this the most beneficial way forward would be to allow the removal of the tree and its replacement with a number (approximately 8) of street trees to front Darklands Road, which is time would provide an attractive tree lined entrance in to Darklands Road, which would be secured by condition.

The site is one which is surrounded by a wide variety of building designs, siting and scale - with no definitive character up which to draw. The mix is of two-storey traditionally detailed dwellings, larger scale residential and commercial buildings or varying appearance. The site therefore presents the opportunity to provide a built form which reflects the emerging character of the National Forest (noting that the comments above from the National Forest Company were received prior to revision to the design of the scheme). The design and appearance of the care home and supported living apartment is considered acceptable following amendments to the elevations, so to better reflect the emerging vernacular of the area. These amendments have included the addition of gable features to Darklands Road, and the care home and the use of locally distinctive materials including timber cladding and red brick to pick up on the emerging National Forest character which has proven successful on a number of developments in the local area (including Sainsburys and Oaklands Care Village). The finer detail of the materials would be secured by appropriately worded conditions.

In terms of boundary treatments, following discussions with the applicant in order to provide a secure but open appearance to the site it is envisaged that a railing type of boundary treatment would be suitable with the opportunity for the implementation of native hedgerow planting along the site boundaries. In addition, details of a lighting scheme would need to be secured under condition, with such a scheme designed so to minimise the effect on wildlife which may use the site. The proposed care home would present some habitable windows to the northern elevation looking towards the side of existing dwellings on Yard Close. However, these aspects would be outside of the 45 degree sector of view and sufficiently distant so not to cause undue overlooking of primary external amenity space, even when noting the three storey nature of the development.

Overall the layout and design of the proposed care home and apartments are considered to be appropriate and would improve the character and appearance of this key gateway site into the town centre though appropriate design and landscaping, without compromising the amenity of nearby residents. The proposed development is therefore considered to comply with policies SD1, BNE1, BNE4, INF8 and the Design Guide.

#### Highway safety matters and site access requirements

The comments of the County Highway Authority are outlined above. The re-use of the existing access

is considered acceptable in principle, subject to conditions to ensure minor amendments to it. The number of service vehicle movements to and from the site would likely be less than the former depot use and follow a generally similar swept path around the access. Hence it is not considered an objection could be sustained on this basis.

The level of parking provision and the effect on existing parking availability in the town has also been considered. The number of spaces proposed reflects that considered necessary to support the care home and apartments. It is noted that the proposal would lead to the loss of parking which is presently complimentary to shopping in the town centre, and local offices including the Council. It must be recognised that the previous permission for the re-development of the site established the principle of losing this parking area - siting the numerous alternative car parks in and around the town centre as justification. However, this application does not encompass the whole of the former depot site and concurrent outline application (DMPA/2019/1182) has been submitted to provide a replacement car parking area to the west of this site. This would provide some relief for the loss of the car parking and this alternative provision is noted in the response received from the Highway Authority and the consequential lack of objection.

The site adjoins the National Cycle Network Route 63 (NCN63), which runs along Darklands Lane, utilises the toucan crossing and continues along Civic Way and Toulmin Drive. The need to maintain a 3m wide footway/cycleway along the western side of Darklands Road is thus imperative, and is included for within this application. In addition, the development of the site also offers the opportunity to enhance the route along Darklands Lane by way of lighting, noting that the site itself would require illumination. Overall the proposed development is considered to provide safe access for all and sufficient car parking to accommodate the uses proposed as such the proposal is considered to comply with policy INF2.

#### Other matters

Infrastructure impacts and Section 106 requirements: The Derby and Derbyshire Clinical Commissioning Group has requested a financial contribution of £14,208 towards improvements to Swadlincote Surgery located in Civic Way. Due to the nature of the development this contribution is considered to be appropriate and proportionate in accordance with policy INF1.

Ground conditions: As noted in the Geo-environmental Investigation, the site is influenced by coal mining legacy. The main constraint being the location of the capped shaft, which presently sits more or less below the entrance area to the southern half of the existing car park. Consequently, this sterilises an area of the site from built development, heavily influencing the layout as discussed above. The scope for shallow mining workings has been further explored and a conditional approach can ensure risks to life and property are minimised in accordance with policy SD4.

Drainage matters: It is intended to connect foul drainage to the existing outfalls from the site, which run out onto Darklands Lane and Darklands Road. Surface water is presently draining from the site at a largely unrestricted rate. Coupled with the fact that the vast majority of the site is currently impermeable, the development would offer the opportunity for betterment, with appropriate attenuation and creation of permeable areas. As a result, whilst the rate of outfall would not be to greenfield rates, it would represent a 50% reduction in outfall rates compared to existing conditions such that the LLFA raises no objection subject to conditions. In addition, a condition restricting water usage is considered appropriate in order to for development to comply with policies SD2 and SD3.

Biodiversity: As noted above save for the existing trees within and adjacent to the site, the site has little biodiversity value. In the interests of securing biodiversity net gains in accordance with policy BNE3 a scheme of biodiversity enhancements to be secured by condition is considered appropriate - the features envisaged in addition to an appropriate landscaping scheme will include bat boxes and facilities for nesting swifts. As a result of such a condition the proposal is considered to comply with policy BNE3.



## Summary

The principle of development is firmly in support of the proposed development, and many technical matters relating to ground conditions, drainage and amenity impacts can be addressed or mitigated for by way of condition. The loss of an existing tree on the site frontage would be compensated for by a suitable landscaping scheme which would improve the landscape value of the whole site in the long term. This is an important gateway site where the proposed development would improve and enhance the character and appearance of the area whilst also providing notable economic and social benefits, and assist in delivering the mix of housing needed in the District.

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, noting that conditions or obligations have been attached where meeting the tests for their imposition. Where relevant, regard has been had to the public sector equality duty, as required by section 149 of the Equality Act 2010 and to local finance considerations (as far as it is material), as required by section 70(2) of the Town and Country Planning Act 1990 (as amended), as well as climate change, human rights and other international legislation.

## **Recommendation**

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

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

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

2. The development hereby permitted shall be carried out in accordance with the drawings detailed in the Drawing Issue Sheet dated 07/01/20, and the amended site location plan ref DE11 OJPJ-A-01 Revision A; unless as otherwise required by condition attached to this permission or following approval of an application made pursuant to Section 96A of the Town and Country Planning Act 1990.

Reason: For the avoidance of doubt and in the interests of achieving sustainable development.

3. Each unit of the residential care home hereby permitted shall be occupied only by:  
(a) persons over the age of 55 years;  
(b) persons living as part of a single household with a person or persons meeting criterion (a);  
(c) persons who were living as part of a single household with such a person or persons who have since died.

Reason: To ensure the provision of housing to meet particular needs in the interesting of delivering a socially inclusive and mixed community so to achieve the housing strategy of the Development Plan.

4. The occupation of the retirement apartments (use class C3) hereby approved shall be limited to persons over the age of 55 years.

Reason: To ensure the provision of housing to meet particular needs in the interesting of delivering a socially inclusive and mixed community so to achieve the housing strategy of the Development Plan.

5. During the period of construction, no ground, construction or fitting out works shall take place and no deliveries shall be taken at or dispatched from the site other than between 0800 and 1800 hours Monday to Friday and 0800 and 1300 hours on Saturdays. There shall be no construction works (except for works to address an emergency) or deliveries on Sundays or Public Holidays.

Reason: In the interests of protecting the amenity of the area and adjoining occupiers.

6. No development shall commence until details of the finished floor levels of the buildings and hard surfaces hereby approved, and of the proposed ground levels of the site relative to the finished floor levels, roads, footpaths/footways and circulation areas and adjoining land levels, shall be submitted to and approved in writing by the Local Planning Authority. Such details shall be supplemented with locations, cross-sections and appearance of any retaining features required to facilitate the proposed levels, including technical specifications where such retaining features are adjacent to the public highway. The development shall be constructed in accordance with the approved details.

Reason: To protect the appearance of the area generally, recognising that site levels across the site as a whole are crucial to establishing infrastructure routeing/positions and impacts on existing trees, as well as to maintain the integrity of the public highway.

7. No development shall commence until a scheme of biodiversity enhancement (as a minimum the incorporation of bat roosting and nesting swift features) has been submitted to and approved in writing by the Local Planning Authority. The submitted scheme shall also include a method of communicating the purpose of such biodiversity enhancement measures to occupiers. The approved scheme shall be implemented so that physical measures are incorporated before the first occupation of the development and thereafter retained and maintained in situ.

Reason: In the interests of protected species and biodiversity enhancement.

8. Notwithstanding the approved plans/drawings, no development shall commence until protective fences have been erected around all trees shown to be retained in the Arboricultural Impact Assessment (19-1075 dated 4 September 2019 prepared by Lockhart Garratt), such fencing shall conform to best practice as set out in British Standard 5837:2012 (or equivalent document which may update or supersede that Standard) and ensure that no vehicles can access, and no storage of materials or equipment can take place within, the root and canopy protection areas. The fences shall be retained in situ during the course of ground and construction works, with the protected areas kept clear of any building materials, plant, debris and trenching, and with existing ground levels maintained unless as otherwise approved; and there shall be no entry to those areas except for approved arboricultural or landscape works.

Reason: In the interests of safeguarding existing habitat and the visual amenities of the area, recognising that initial preparatory works could bring about unacceptable impacts and that current details are not considered satisfactory.

9. No development shall take place until a construction management plan or construction method statement has been submitted to and been approved in writing by the Local Planning Authority. The approved plan/statement shall be adhered to throughout the construction period. The statement shall provide for the storage of plant and materials, site accommodation, loading, unloading of goods' vehicles, parking of site operatives' and visitors' vehicles, routes for construction traffic, hours of operation, method of prevention of debris being carried onto highway and any proposed temporary traffic management.

Reason: To ensure safe and suitable access for all users, in the interests of highway safety, recognising that initial preparatory works could bring about unacceptable impacts.

10. No development, including preparatory works, shall commence until details of measures indicating how additional surface water run-off from the site will be avoided during the construction works have been submitted to and approved in writing by the Local Planning Authority. The applicant may be required to provide collection, balancing and/or settlement systems for these flows. The approved measures and systems shall be brought into operation before any works to create buildings or hard surfaces commence.

Reason: To ensure surface water is managed appropriately during the construction phase of the development, so as not to increase the flood risk to adjacent land/properties or occupied properties within the development itself; recognising that initial works to prepare the site could bring about unacceptable impacts.

11. No development shall take place until a detailed design and associated management and maintenance plan of the surface water drainage for the site, in accordance with the principles



outlined within:

- a. Proposed Commercial Development on land off Darklands Road, Swadlincote, Derbyshire, Flood Risk Assessment, referenced 9749, dated May 2017 and drawing title Preliminary Drainage Layout, referenced 12501-WMS-ZZ-XX-DR-C-39201-S8-P2 "including any subsequent amendments or updates to those documents as approved by the Flood Risk Management Team; and
- b. DEFRA's Non-statutory technical standards for sustainable drainage systems (March 2015). have been submitted to and approved in writing by the Local Planning Authority. The approved drainage system shall be implemented in accordance with the approved detailed design, prior to the use of the building commencing and thereafter maintained in accordance with the approved scheme.

Reason: To ensure that the proposed development does not increase flood risk and that the principles of sustainable drainage are incorporated into this proposal, and sufficient detail of the construction, operation and maintenance/management of the sustainable drainage systems are provided to the Local Planning Authority, in advance of full planning consent being granted.

12. No development shall take place until a detailed assessment has been provided to and approved in writing by the Local Planning Authority, to demonstrate that the proposed destination for surface water accords with the drainage hierarchy as set out in paragraph 80 reference ID: 7-080-20150323 of the planning practice guidance.

Reason: To ensure that surface water from the development is directed towards the most appropriate waterbody in terms of flood risk and practicality by utilising the highest possible priority destination on the hierarchy of drainage options. The assessment should demonstrate with appropriate evidence that surface water runoff is discharged as high up as reasonably practicable in the following hierarchy:

- I. into the ground (infiltration);
- II. to a surface water body;
- III. to a surface water sewer, highway drain, or another drainage system; and
- IV. to a combined sewer.

13. Prior to the premises first being taken into use, the new pedestrian accesses shall be formed to Darklands Road and the existing pedestrian route reinstated, all as indicated on the application drawing (DE11 OPJ-A-03 Revision C), laid out and constructed in accordance with Derbyshire County Council's specifications.

Reason: In the interests of highway safety.

14. Prior to the premises first being taken into use, the vehicular access shall be modified in accordance with the application drawing (DE11 OPJ-A-03 Revision C), laid out and constructed in accordance with Derbyshire County Council's specifications.

Reason: In the interests of highway safety.

15. Prior to the premises first being taken into use, the car parking and manoeuvring space shall be provided within the application site. Notwithstanding the application drawing (although the layout should be generally in accordance with that shown on submitted plan DE11 OPJ-A-03 Revision C), each space shall measure at least 2.4m x 5.5m and be provided with 6m manoeuvring space, all laid out in accordance with a scheme first submitted to and approved in writing by the local Planning Authority.

Reason: In the interests of highway safety.

16. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, or any statutory instrument amending, revoking and/or replacing that Order, no vehicular access shall be created to Darklands Lane without the prior grant of planning permission pursuant to an application made to the Local Planning Authority in that regard.

Reason: In the interests of highway safety.

17. Prior to the commencement of development details of secure cycle parking facilities for employees and visitors to the development shall be submitted to and approved in writing by the Local Planning Authority. These facilities shall be fully implemented and made available for use prior to the premises being taken into use and thereafter maintained free of any impediment to their designated use.

Reason: In the interests of highway safety and encouraging the use of sustainable modes of transport.

18. Notwithstanding the approved plans/drawings, prior to the first occupation of the development a revised scheme of soft landscaping shall be submitted to and approved in writing by the Local Planning Authority. The revised scheme shall include:
- a) details of below ground measures to ensure that trees planted in or adjacent to hard landscaped areas have sufficient rooting volume and access to air and water in order to mature;
  - b) feature tree planting along the Darklands and Lane boundaries, and within the site; and
  - c) a timetable for the provision of such planting relative to the occupation.

All planting, seeding or turfing comprised in the approved details of soft landscaping shall be carried out in accordance with the approved scheme and timetable; and any plants which within a period of five years (ten years in the case of trees) from the completion of the phase die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species and thereafter retained for at least the same period, unless the Local Planning Authority gives written consent to any variation.

Reason: In the interest of the visual setting of the development and the surrounding area, as well as to achieve National Forest objectives, noting that the current details are not considered satisfactory and revised proposals must be acceptable across the site as a whole.

19. Prior to the first occupation of the development a landscape management plan (LMP) shall be submitted to and approved in writing by the Local Planning Authority. The LMP shall include long-term design objectives, management responsibilities (including contact details and means of informing the Local Planning Authority of any change to those details) and maintenance schedules for all landscape areas. Where relevant, the maintenance schedules shall include means to annually review the condition of any hard surfaces, fixed play equipment or furniture, and replace/upgrade those surfaces, equipment and furniture on a rolling programme. The landscape management plan shall be carried out as approved.

Reason: In the interest of the visual setting of the development and the surrounding area over the lifetime of the development, and to ensure appropriate recreation facilities remain available to the public.

20. Notwithstanding the approved plans/drawings or the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, or any statutory instrument amending, revoking and/or replacing that Order; prior to the construction of a boundary wall, fence, gate or bin store, a scheme of boundary treatments shall be submitted to and approved in writing by the Local Planning Authority. This revised scheme shall include:

- a) means to treat the existing retaining wall adjacent to care home car park;
- b) a scheme to remove the existing palisade fence in part along Darklands Lane to allow pedestrian and visual permeability through the site and to replace it with suitable means to prevent vehicle movements onto the site; and
- c) means to enclose the bin store and services.

All boundary treatments shall be constructed/erected in accordance with the approved details prior to first occupation of the area of the site to which the boundary treatment relates and thereafter maintained as such.

Reason: In the interest of the visual setting of the development and the surrounding area, as well as to properly integrate the site with the surrounding area, noting that the current details are not considered satisfactory and revised proposals must be acceptable across the site as a whole.

21. Notwithstanding the approved plans/drawings, prior to the construction of a building or hard surface a detailed lighting strategy (designed in accordance with the guidelines issued by the

Institute of Lighting Engineers, or any equivalent guidelines which may supersede such guidelines) which shall include precise details of the position, height, intensity, angling and shielding of lighting, as well as the area of spread/spill of such lighting, shall be submitted to and approved in writing by the Local Planning Authority. The lighting strategy shall include means to provide light spill onto Darklands Lane. All lighting shall be installed in accordance with the approved strategy prior to the first occupation/use of the respective phase in which it sits and thereafter retained in conformity with it.

Reason: In the interests of protecting the amenity of the area and adjoining occupiers whilst to also secure infrastructure related improvements adjacent to the site so to encourage sustainable modes of transport, and to minimise light pollution at night.

22. No removal of trees, hedges and shrubs shall take place between 1st March and 31st August inclusive unless a survey to assess the nesting bird activity on the site during this period and a scheme to protect the nesting birds has first been submitted to and approved in writing by the Local Planning Authority. No trees, hedges and shrubs shall be removed between 1st March and 31st August inclusive other than in accordance with the approved bird nesting protection scheme.

Reason: In order to safeguard protected species from undue disturbance and impacts.

23. Prior to their incorporation into the building(s) hereby approved, details and/or samples of the facing materials to be used shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be constructed using the approved facing materials.

Reason: In the visual interest of the building(s) and the surrounding area.

24. Prior to their incorporation into the building(s) hereby approved, details of the eaves, verges, cills and lintels shall be submitted to and approved in writing by the Local Planning Authority. The details shall include drawings to a minimum scale of 1:10. The eaves, verges, cills and lintels shall be constructed in accordance with the approved drawings.

Reason: In the visual interest of the building(s) and local distinctiveness.

25. All verges shall be finished in a mortar finish. There shall be no use of dry verge (cloaking tile) systems.

Reason: In the visual interest of the building(s) and local distinctiveness.

26. Gutters and downpipes shall have a black finish.

Reason: In the visual interest of the building(s) and local distinctiveness.

27. If during development any contamination or evidence of likely contamination is identified that has not previously been identified or considered, a written scheme to identify and control that contamination shall be submitted to and approved in writing by the Local Planning Authority prior to any further works taking place on the site. This shall include a phased risk assessment carried out in accordance with the procedural guidance of the Environmental Protection Act 1990 Part IIA (or equivalent guidance which may subsequently update or replace it), and appropriate remediation/mitigation proposals. The approved scheme shall be implemented in accordance with the approved remediation/mitigation proposals.

Reason: To protect the health of the public and the environment from hazards arising from past coal mining which might be brought to light by development of the site, recognising that failure to address such matters prior to development commencing could lead to unacceptable impacts even at the initial stages of works on site.

28. Prior to the first occupation of the development a scheme of security measures for the development shall be submitted to and approved in writing by the Local Planning Authority. The measures identified shall be implemented in accordance with the scheme prior to the first occupation of the completion of the development, and thereafter retained for the life of the development unless the Local Planning Authority gives written consent to any variation.

Reason: In the interests of security and public safety.

29. Recharge points for electric vehicles shall be provided within the development to comply with the following criteria:
- Residential - 1 charging point per dwelling with dedicated on plot parking, or 1 charging point per 10 spaces (or part thereof) where the dwelling(s) are served by courtyard or roadside parking;
  - All other uses - 1 charging point for every 10 parking spaces (or part thereof) which may be provided in phases first submitted to and approved in writing by the Local Planning Authority. Residential charging points shall be provided with an IP65 rated domestic socket 13amp socket, directly wired to the consumer unit with 32 amp cable to an appropriate RCD. This socket shall be located where it can later be changed to a 32amp EVCP. Non-residential charging points shall be supplied by an independent 32 amp radial circuit and equipped with a type 2, mode 3, 7-pin socket conforming to IEC62196-2. Alternative provision to this specification must be first submitted to and approved in writing by the Local Planning Authority. To prepare for increased demand in future years suitable and appropriate cable provision shall be included in the scheme design in accordance with details first submitted to and approved in writing by the Local Planning Authority. The electric vehicle charging points shall be provided in accordance with the stated criteria and approved details prior to the first occupation or use of the respective premises and shall thereafter be maintained in working order and remain available for use throughout the life of the development.

Reason: In the interests of protecting and enhancing air quality through reducing and minimising emissions from vehicles.

30. Each residential unit and the care home shall be constructed and fitted out so that the estimated consumption of wholesome water by persons occupying/using the dwelling/unit/premises will not exceed 110 litres per person per day, consistent with the Optional Standard as set out in G2 of Part G of the Building Regulations (2015). The developer must inform the building control body that this optional requirement applies.

Reason: To ensure that future water resource needs, wastewater treatment and drainage infrastructure are managed effectively, so to satisfy the requirements of policy SD3 of the Local Plan.

Informatives:

- a. Pursuant to Section 184 of the Highways Act 1980 and Section 86(4) of the New Roads and Streetworks Act 1991 prior notification shall be given to the Department of Economy Transport & Environment at County Hall, Matlock regarding access works within the highway. Information, and relevant application forms regarding the undertaking of access works within highway limits is available via the County Council's website, by email [highways.hub@derbyshire.gov.uk](mailto:highways.hub@derbyshire.gov.uk) or contact Call Derbyshire on 01629 533190.
- b. Pursuant to Section 278 of the Highways Act 1980, no works may commence within the limits of the public highway without the formal written Agreement of the County Council as Highway Authority. Advice regarding the technical, legal, administrative and financial processes involved in Section 278 Agreements may be obtained from the Environmental Services Department at County Hall, Matlock. The applicant is advised to allow at least 12 weeks in any programme of works to obtain a Section 278 Agreement.
- c. Pursuant to Sections 149 and 151 of the Highways Act 1980, the applicant must take all necessary steps to ensure that mud or other extraneous material is not carried out of the site and deposited on the public highway. Should such deposits occur, it is the applicant's responsibility to ensure that all reasonable steps (eg; street sweeping) are taken to maintain the roads in the vicinity of the site to a satisfactory level of cleanliness.
- d. The application site is affected by a Public Right of Way (Footpath 46, Swadlincote as shown on the Derbyshire Definitive Map). The route must remain unobstructed on its legal alignment at all times and the safety of the public using it must not be prejudiced either during or after development works take place. Further information can be obtained from the Rights of Way Duty Officer in the Economy, Transport and Environment Department at County Hall, Matlock. Please note that the granting of planning permission is not consent to divert or obstruct the public right of way. If it is necessary to temporarily obstruct a right of way to undertake development works then a temporary closure is

obtainable from the County Council. Please contact 01629 533190 for further information and an application form.

- e. The recommendations of the highway authority for planning application assessment purposes do not include determination of highway boundaries. Prior to commencement of works, the applicant should obtain the formal confirmation of the highway authority that the proposed development works do not encroach upon, obstruct or otherwise adversely affect the public highway.
- f. Under the Coal Industry Act 1994 any intrusive activities, including initial site investigation boreholes, and/or any subsequent treatment of coal mine workings/coal mine entries for ground stability purposes require the prior written permission of The Coal Authority, since such activities can have serious public health and safety implications. Failure to obtain permission will result in trespass, with the potential for court action. In the event that you are proposing to undertake such work in the Forest of Dean local authority area our permission may not be required; it is recommended that you check with us prior to commencing any works. Application forms for Coal Authority permission and further guidance can be obtained from The Coal Authority's website at [www.gov.uk/get-a-permit-to-deal-with-a-coal-mine-on-your-property](http://www.gov.uk/get-a-permit-to-deal-with-a-coal-mine-on-your-property)
- g. 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.
- h. The applicant is advised to note and act up as necessary the following comments from the Lead Local Flood Authority:

The County Council does not adopt any SuDS schemes at present (although may consider ones which are served by highway drainage only). As such, it should be confirmed prior to commencement of works who will be responsible for SuDS maintenance/management once the development is completed.

Any works in or nearby an ordinary watercourse may require consent under the Land Drainage Act (1991) from the County Council. For further advice, or to make an application please contact [Flood.Team@derbyshire.gov.uk](mailto:Flood.Team@derbyshire.gov.uk).

No part of the proposed development shall be constructed within 3-8m of an ordinary watercourse and a minimum 3 m for a culverted watercourse (increases with size of culvert). It should be noted that DCC have an anti-culverting policy.

The applicant should be mindful to obtain all the relevant information pertaining to proposed discharge in land that is not within their control, which is fundamental to allow the drainage of the proposed development site.

The applicant should demonstrate, to the satisfaction of the Local Planning Authority, the appropriate level of treatment stages from the resultant surface water discharge, in line with Table 4.3 of the CIRIA SuDS Manual C753.

The County Council would prefer the applicant to utilise existing landform to manage surface water in mini/sub-catchments. The applicant is advised to contact the County Council's Flood Risk Management team should any guidance on the drainage strategy for the proposed development be required.

The applicant should provide a flood evacuation plan which outlines:

The flood warning procedure

A safe point of extraction

How users can safely evacuate the site upon receipt of a flood warning

The areas of responsibility for those participating in the plan

The procedures for implementing the plan

How users will be made aware of flood risk

How users will be made aware of flood resilience

Who will be responsible for the update of the flood evacuation plan

Flood resilience should be duly considered in the design of the new building(s) or renovation.

Guidance may be found in BRE Digest 532 Parts 1 and 2, 2012 and BRE Good Building Guide 84.

Surface water drainage plans should include the following:

Rainwater pipes, gullies and drainage channels including cover levels.

Inspection chambers, manholes and silt traps including cover and invert levels.

Pipe sizes, pipe materials, gradients, flow directions and pipe numbers.



Soakaways, including size and material.  
Typical inspection chamber / soakaway / silt trap and SW attenuation details.  
Site ground levels and finished floor levels.

#### On Site Surface Water Management;

The site is required to accommodate rainfall volumes up to the 1% probability annual rainfall event (plus climate change) whilst ensuring no flooding to buildings or adjacent land.

The applicant will need to provide details and calculations including any below ground storage, overflow paths (flood routes), surface detention and infiltration areas, etc, to demonstrate how the 100 year + 30% Climate Change rainfall volumes will be controlled and accommodated, also incorporating a sensitivity test to 40% Climate Change. In addition, an appropriate allowance should be made for urban creep throughout the lifetime of the development as per 'BS 8582:2013 Code of Practice for Surface Water Management for Developed Sites' (to be agreed with the LLFA).

Production of a plan showing above ground flood pathways (where relevant) for events in excess of the 1% probability annual rainfall event, to ensure exceedance routes can be safely managed.

A plan detailing the impermeable area attributed to each drainage asset (pipes, swales, etc).

#### Peak Flow Control;

For greenfield developments, the peak run-off rate from the development to any highway drain, sewer or surface water body for the 1 in 1 year rainfall event and the 1 in 100 year rainfall event, should never exceed the peak greenfield run-off rate for the same event.

For developments which were previously developed, the peak run-off rate from the development to any drain, sewer or surface water body for the 100% probability annual rainfall event and the 1% probability annual rainfall event must be as close as reasonably practicable to the greenfield run-off rate from the development for the same rainfall event, but should never exceed the rate of discharge from the development, prior to redevelopment for that event.

#### Volume Control;

For greenfield developments, the runoff volume from the development to any highway drain, sewer or surface water body in the 6 hour 1% probability annual rainfall event must not exceed the greenfield runoff volume for the same event.

For developments which have been previously developed, the runoff volume from the development to any highway drain, sewer or surface water body in the 6 hour 1% probability annual rainfall event must be constrained to a value as close as is reasonably practicable to the greenfield runoff volume for the same event, but must not exceed the runoff volume for the development site prior to redevelopment for that event.

Note:- If the greenfield run-off for a site is calculated at less than 2 l/s, then a minimum of 2 l/s could be used (subject to approval from the LLFA).

Details of how the on-site surface water drainage systems shall be maintained and managed after completion and for the lifetime of the development to ensure the features remain functional.

Where cellular storage is proposed and is within areas where it may be susceptible to damage by excavation by other utility contractors, warning signage should be provided to inform of its presence. Cellular storage and infiltration systems should not be positioned within the highway.

Guidance on flood pathways can be found in BS EN 752.

The Greenfield runoff rate which is to be used for assessing the requirements for limiting discharge flow rates and attenuation storage for a site should be calculated for the whole development area (paved and pervious surfaces - houses, gardens, roads, and other open space) that is within the area served by the drainage network, whatever the size of the site and type of drainage system. Significant green areas such as recreation parks, general public open space, etc., which are not served by the drainage system and do not play a part in the runoff management for the site, and which can be assumed to have a runoff response which is similar to that prior to the development taking place, may be excluded from the greenfield analysis.

If infiltration systems are to be used for surface water disposal, the following information must be provided:

Ground percolation tests to BRE 365.

Ground water levels records. Minimum 1m clearance from maximum seasonal groundwater level to base of infiltration compound. This should include assessment of relevant groundwater borehole records, maps and on-site monitoring in wells.

Soil / rock descriptions in accordance with BS EN ISO 14688-1:2002 or BS EN ISO 14689-1:2003.

Volume design calculations to 1% probability annual rainfall event + 30% climate change standard. An appropriate factor of safety should be applied to the design in accordance with CIRIA C753 – Table 25.2.

Location plans indicating position (soakaways serving more than one property must be located in an

accessible position for maintenance). Soakaways should not be used within 5m of buildings or the highway or any other structure.

Drawing details including sizes and material.

Details of a sedimentation chamber (silt trap) upstream of the inlet should be included.

Soakaway detailed design guidance is given in CIRIA Report 753, CIRIA Report 156 and BRE Digest 365.

All Micro Drainage calculations and results must be submitted in .MDX format, to the LPA. (Other methods of drainage calculations are acceptable.)

The applicant should submit a comprehensive management plan detailing how surface water shall be managed on site during the construction phase of the development ensuring there is no increase in flood risk off site or to occupied buildings within the development.



**Item No.** 1.2

**Ref. No.** [DMPA/2019/1182](#)

**Valid date:** 14/10/2019

**Applicant:**

LNTCD/South Derbyshire D.C

**Agent:**

Tracey Spencer  
LNT Construction  
Helios 47  
Isabella Road  
Garforth  
Leeds  
LS25 2DY

**Proposal:** Outline application (matters of access, layout, scale, appearance and landscaping reserved for later consideration) for the formation of a car park with access from Darklands Lane on land to the south of Darklands Lane, Swadlincote, DE11 0PJ

**Ward:** Swadlincote

**Reason for committee determination**

The item is presented to Committee as the site is Council owned.

**Site Description**

The site is located within the urban area of Swadlincote, covering an area of approximately 0.24 hectares. The site is previously developed land part of the former Council depot, and includes Darklands Lane itself (an adopted highway, public right of way (PROW FP46), and part of the wider cycle network). The site is bound to the north by existing dwellings on Darklands Road and Middle Close, in addition to Darklands Brook. To the east beyond the site of a current planning application (DMPA/2019/1183) for a new car home and apartments is Darklands Road and its residential properties. To the south east is the A514 Civic Way/William Nadin Way and Sainsbury's supermarket roundabout, with William Nadin Way beyond an area of tree planting to the south of the site. To the west lie existing allotments accessed via Darklands Lane, with the residential properties recently constructed by Morris Homes beyond. The site itself has been recently cleared pursuant to permission granted in 2018.

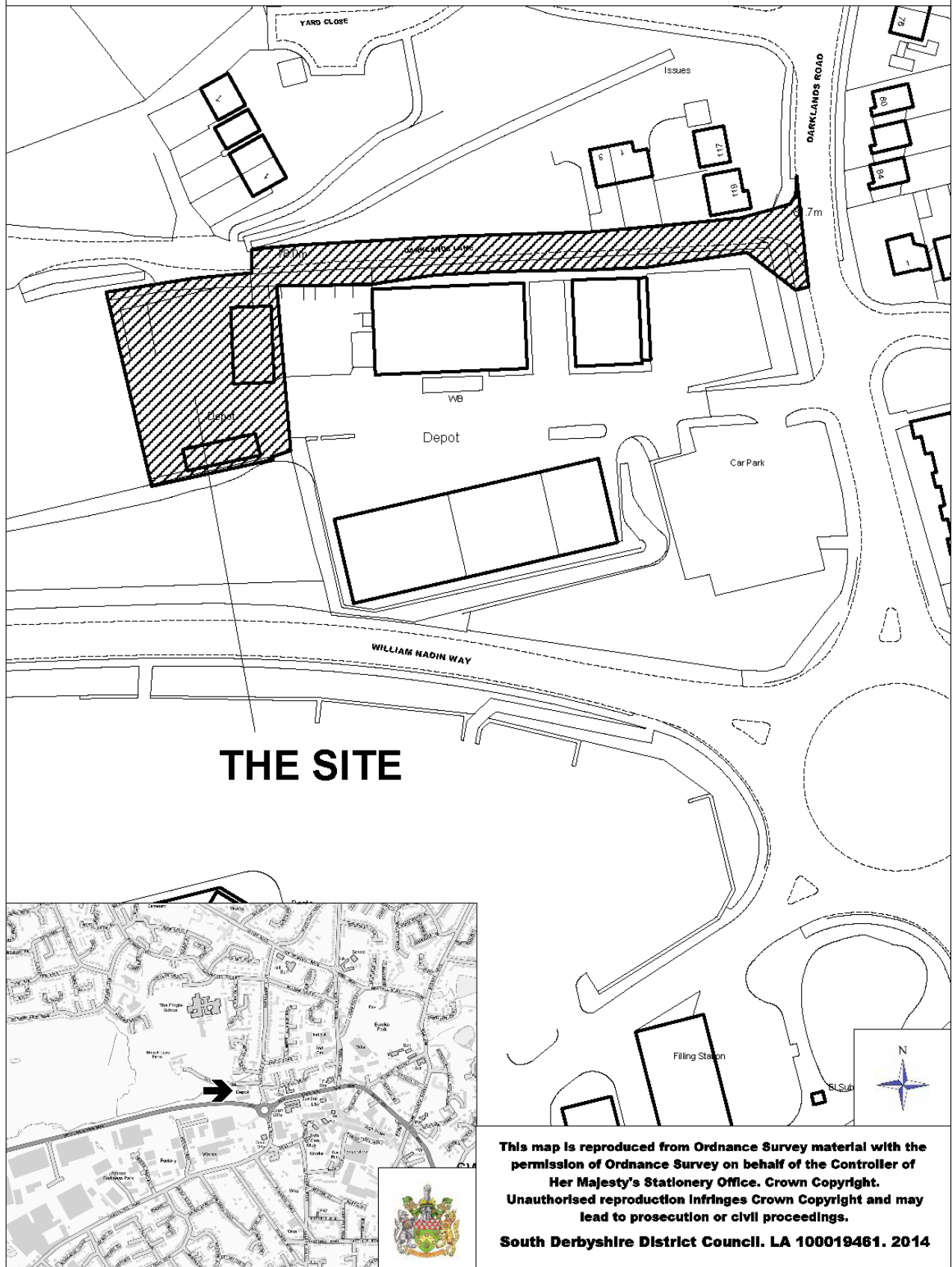
**The proposal**

The application has been submitted in outline with all matters reserved for future approval for the use of the site as a car park, this includes vehicular access to the site. Thus the application is seeking to establish whether the principle of using the site for car parking is acceptable. As part of this consideration it is necessary to assess whether matters such as access to the site are achievable especially in this instance given the nature of Darklands Lane.

**Applicant's supporting information**

The Supporting Letter sets out that the application is submitted in order to establish the principle of the use of part of the former Council depot for use as a car park - noting that the concurrent application would remove the existing car park on-site. The application is supported by a plan showing an indicative car parking layout but full details of the access and car parking layout would be provided at the reserved matters application stage.

**DMPA/2019/1182 - Land to the south of Darklands Lane, Swadlincote  
DE11 0PJ**



An Arboricultural Impact Assessment (provided with the main application for the re-development of the adjacent site) notes that two hawthorn trees would be removed as a result of the car park development - however, these trees are not considered to be significant or worthy of retention. The assessment sets out the necessary RPA's for the retained trees which includes the full width of Darklands Lane.

The Ecological Appraisal of the site finds there are no habitats of international, national, county or local importance that would be directly or indirectly affected by the proposals especially given the site has now been cleared of all buildings. The site is of overall low ecological value, and the species recorded on the site can be described as common or abundant, with no evidence of protected species recorded.

### **Relevant planning history**

9/2018/0451: Erection of a mixed use development incorporating a public house with restaurant (Use Class A4) with ancillary accommodation, a fast food restaurant with drive through (Use Class A3/A5), a residential care home facility (Use Class C2) and 15 supported living apartments (Use Class C3) along with creation of ancillary car and cycle parking provision, amenity space, soft landscaping and improvements to pedestrian links - Approved December 2018.

9/2018/0225: Demolition of buildings and removal of hardstandings – Approved March 2018.

9/2010/1113: Outline planning permission (all matters reserved except for access and layout) for the erection of 2 non-food retail units, a dental surgery, improvements to Darklands Lane, access, ancillary works and demolition of depot – Approved April 2011.

9/2006/0320: Outline planning permission (all matters reserved) for the erection of 2 non-food retail warehouse units, an associated garden centre, car parking landscaping and service arrangements – Approved February 2006.

### **Responses to consultations and publicity**

The Highway Authority notes the accompanying application, and that Darklands Lane is an adopted road which carries a PROW (FP46) but has only been maintained to the standards of its usage - access to the allotments. In order to accommodate the increase in pedestrian and vehicular traffic that would result from the use of the site for car parking, and to protect existing users it is considered necessary for the layout and construction of the road to be upgraded and a footway provided. As the proposal is in outline there are no objections in principle subject to conditions relating to the submission of a detailed scheme of improvements for Darklands Lane (to include a 4.8m wide carriageway and 1.2m wide footway), access width and gradient requirements, the positioning of any gates and the minimum sizes for the proposed car parking spaces (2.4m x 5.5m).

The Head of Environmental Services considers that the key potential environmental impact associated with the development relates to air quality, and as such recommend a condition requiring the provision of electric vehicle charging points.

The Lead Local Flood Authority has no comments on the applications.

The Development Control Archaeologist notes that whilst there may be surviving shafts and other remains associated with the small-scale colliery operations present below ground on the site, it is difficult to see any archaeological value in requiring a record to be made of these remains, or indeed how such a record could be safely be achieved. For this reason, no archaeological investigations or conditions are required.

The Coal Authority confirms that the application site is within the defined Development High Risk Area. However, the nature of development is listed as exempt and accordingly, there is no requirement for a Coal Mining Risk Assessment to be submitted with any planning application.

Derbyshire Police has no objection to the proposed development in principle - no details have been provided regarding tenure of the car park. Further details are required in respect of the boundary treatments, lighting, and security.

The Peak and Northern Footpath Society notes that Darklands Lane is a public highway with the status of a public footpath. It is an offence for motorised vehicles to drive over a public footpath unless they have lawful authority to do so. If the council is minded to approve this application, the safety of walkers on the footpath must be a paramount concern. If there is currently no foot way long the lane, one must be constructed.

Three letters of comment have been received raising the following issues:

- A lack of information with regard to Darklands Lane as part of the National Cycle Network Route - development should be in accordance with the standards laid out in Sustrans Paths for Everyone program.
- Concern that the car park would be used out of hours and would be used for unsavoury activities.

### **Relevant policy, guidance and/or legislation**

The relevant Development Plan policies are:

- Local Plan Part 1 (LP1): S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), S6 (Sustainable Access), SD1 (Amenity and Environmental Quality), SD2 (Flood Risk), SD3 (Sustainable Water Supply, Drainage and Sewerage Infrastructure), SD4 (Contaminated Land and Mining Legacy Issues), BNE1 (Design Excellence), BNE3 (Biodiversity), BNE4 (Landscape Character and Local Distinctiveness), INF2 (Sustainable Transport) and INF8 (The National Forest);
- Local Plan Part 2 (LP2): SDT1 (Settlement Boundaries and Development), BNE7 (Trees, Woodland and Hedgerows) and BNE10 (Heritage).

The relevant local guidance is:

- South Derbyshire Design Guide Supplementary Planning Document (SPD)

The relevant national policy and guidance is:

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)

### **Planning considerations**

Taking into account the application made, the documents submitted (and supplemented and/or amended where relevant) and the site and its environs; the main issue(s) central to the determination of this application is/are:

- The principle of development;
- Highway safety matters, access requirements, and security considerations; and
- Trees.

### **Planning assessment**

#### The principle of development

The use of land for surface car parking is generally held to be a sui generis use i.e. a use not falling within one of the main land use classes. In principle therefore there is no explicit support or objection

to such a use where it is located within the urban area. The acceptability of the proposed use therefore needs to be considered in light of the specific circumstances of the case. The proposal would effectively re-locate an existing area of car parking from its current prominent position fronting Darklands Road, to the site proposed - to the west of the currently proposed care home and apartments (DMPA/2019/1183). The relocation of this parking area would have significant benefits for the character and appearance of the area though relocating the car park to a less visually prominent site and allowing the re-development of existing car park. In principle therefore, the relocation of the car parking area from one site within the urban area to another of less visual importance is considered to be acceptable - in accordance with policies S2, SDT1 and BNE1 which support sustainable development within the urban area and urge new developments to take opportunities available to improve the character and appearance of an area.

#### Highway safety matters, access requirements, and security considerations

Darklands Lane is an adopted highway, so whilst it is also PROW (Swadlincote FP 46) and a Cycle way there is a legal right of access for vehicles to use the lane. Currently the lane is maintained to the standard of its use and as the only vehicular access along it is to the allotments it has not been maintained for intensive use. There is no doubt that the proposed use of the lane for access to the proposed car parking area would increase its use by vehicular traffic and also pedestrians.

In order to accommodate the increase in pedestrian and vehicular traffic and also protect existing users of the lane it is considered necessary for the layout and construction of the road to be upgraded and a footway provided. Whilst the proposal is in outline there are no objections in principle to the use of the lane to provide access to the new car parking area, this is subject to the reserved matters submission relating to the submission of a detailed scheme of improvements for Darklands Lane, which should include a 4.8m wide carriageway and 1.2m wide footway.

The comments provided requesting a segregated 3m wide footway are noted, and if the lane was to be opened up to an intensive and continuous flow of through traffic this would be appropriate. However, it is likely that due to the proximity of the site to the town centre, and the availability of closer alternative short stay car parks the car park would be used for 'all day' parking and as such there is unlikely to be a continual stream of two-way traffic using the lane. Given the likely limited additional traffic flows it is considered that the majority of the time the lane would be in use effectively as a shared space with its main use being for cyclists and pedestrians other than during the am and pm peaks for people accessing the car park, and as a result the proposal is not considered to compromise the safety of pedestrians or cyclists and would maintain Darklands Lane as a public right of way and cycle route.

No information has been submitted in respect of the proposed use or tenure of the car parking area, it would be Council owned but it has not yet been established what the specific end use of the car park would be, i.e. solely for staff parking or for staff and members of the public. Irrespective of the end users of the parking area, and whilst the car parking area would be overlooked by the new care home (noting that the home is staffed 24/7) some form of security provision would be necessary to prevent anti-social behaviour. This could take the form of bollards, gates, security cameras or barriers and a scheme of security measures will need to be secured through a suitably worded condition. Subject therefore to the provision of a suitably designed and detailed scheme to appropriately cater for the safe use of Darklands Lane the proposed development would not have a significant impact on highway safety, or the safety of users of the existing lane and as such would comply with the requirements of policy INF2.

#### Trees

In assessing the potential impact of the proposed development on trees, consideration must be given to the necessary access width required, the root protection areas of the existing trees along Darklands Lane (those significant trees remaining on the site), and the previous permission for the re-development of the site which due to the proximity of car parking and buildings effectively approved the removal of all trees within the site.



The most significant trees are those located along Darklands Lane itself, and as the root protection area for these trees extends in to Darklands Lane there is significant potential for the development to impact upon the health of these trees which would run contrary to policies BNE4 and BNE7. However, as this application is in outline it is considered appropriate to attach conditions to the permission requiring a detailed survey of the trees and their appropriate root protection areas once final details of the precise position and levels of the improved carriageway are known - this may allow for the retention of these trees with suitable root barriers or means of construction within the root protection areas undertaken. If the loss of these trees is proven necessary then there is scope within the site to provide a suitable scheme of compensation including appropriate species an approach agreed with the Councils Tree Officer, which would also meet the aims of policy INF8 which seeks to increase tree cover within the National Forest.

### Summary

In principle the use of this brownfield site within the urban area and town centre as a car park is considered to be acceptable, and will facilitate the re-development of the existing car park which is located in prominent position fronting Darklands Road, which would enhance the character and appearance of the area. Whilst the use of Darklands Lane for vehicular traffic would increase subject to the provision of an appropriate scheme of surfacing (to be detailed at the reserved matters stage) this is not considered to compromise highway safety or the safety of users of the lane.

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, noting that conditions or obligations have been attached where meeting the tests for their imposition. Where relevant, regard has been had to the public sector equality duty, as required by section 149 of the Equality Act 2010 and to local finance considerations (as far as it is material), as required by section 70(2) of the Town and Country Planning Act 1990 (as amended), as well as climate change, human rights and other international legislation.

### **Recommendation**

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

1. Before any development is commenced the further approval of the Local Planning Authority is required with respect to the following matters (herein referred to as the reserved matters) on an application made in that regard:
  - (a) access,
  - (b) appearance,
  - (c) landscaping,
  - (d) layout, and
  - (e) scale.

Reason: This permission is granted in outline under the provisions of Article 5(1) of the Town & Country Planning (Development Management Procedure) (England) Order 2015 and section 92 of the Town and Country Planning Act 1990 (as amended by Section 51 of the Planning and Compulsory Purchase Act 2004).

2. (a) Application for approval of the reserved matters listed at condition 1 shall be made to the Local Planning Authority before the expiration of three years from the date of this permission; and  
(b) The development hereby permitted shall be commenced before the expiration of two years from the date of approval of the last of the reserved matters to be approved.

Reason: To conform with Section 92 of the Town and Country Planning Act 1990 (as amended by Section 51 of the Planning and Compulsory Purchase Act 2004).

3. No development shall commence until details of the finished floor levels of the hard surfaces hereby approved, and of the proposed ground levels of the site relative to the finished floor

levels, roads, footpaths/footways and circulation areas and adjoining land levels, shall be submitted to and approved in writing by the Local Planning Authority. Such details shall be supplemented with locations, cross-sections and appearance of any retaining features required to facilitate the proposed levels, including technical specifications where such retaining features are adjacent to the public highway. The development shall be constructed in accordance with the approved details.

Reason: To protect the appearance of the area generally, recognising that site levels across the site as a whole are crucial to establishing impacts on existing trees, as well as to maintain the integrity of the public highway.

4. No development, including preparatory works, shall commence until a scheme for the protection of trees and hedgerows has been submitted to and approved in writing by the Local Planning Authority. Such a scheme shall be based on best practice as set out in BS 5837:2012 and ensure that no vehicles can access, and no storage of materials or equipment can take place within, the root and canopy protection areas. The approved scheme of protection shall be implemented prior to any works commencing on site and thereafter retained throughout the construction period.

Reason: In the interests of safeguarding existing habitat and the visual amenities of the area, recognising that initial preparatory works could bring about unacceptable impacts and that current details are not considered satisfactory.

5. Prior to the installation of any external lighting a detailed lighting strategy (designed in accordance with the guidelines issued by the Institute of Lighting Engineers, or any equivalent guidelines which may supersede such guidelines) which shall include precise details of the position, height, intensity, angling and shielding of lighting, as well as the area of spread/spill of such lighting, has been submitted to and approved in writing by the Local Planning Authority. All lighting shall be installed in accordance with the approved strategy and thereafter retained in conformity with them.

Reason: In the interests of protecting the amenity of the area and adjoining occupiers whilst to also secure infrastructure related improvements adjacent to the site so to encourage sustainable modes of transport, and to minimise light pollution at night.

6. Prior to the first use of the development a scheme of security measures for the development shall be submitted to and approved in writing by the Local Planning Authority. The measures identified shall be implemented in accordance with the scheme prior to the first occupation of the completion of the development, and thereafter retained for the life of the development unless the Local Planning Authority gives written consent to any variation.

Reason: In the interests of security and public safety.

7. The reserved matters application shall include a detailed scheme for the proposed improvement works to Darklands Lane. The scheme shall include the layout and construction of a 4.8m carriageway and a 1.2m footway on the southern side of the lane. The approved scheme implemented prior to the proposed car park being taken into use.

Reason: In the interests of highway safety

8. The access to the proposed car park from Darklands Lane shall have a minimum width of 5m and be provided with visibility sightlines of 2.4m x 25m in each direction. The area forward of the sightlines shall be cleared and maintained throughout the lifetime of the development clear of any obstruction exceeding 600mm in height relative to the nearside carriageway edge.

Reason: In the interests of highway safety.

9. The gradient of the access shall not exceed 1:20 for the first 5m into the site from the highway boundary. The access shall be surfaced in a solid bound material and provided with measures to ensure that surface water does not flow form within the site onto the footway.

Reason: In the interests of highway safety.



10. Prior to being taken into use, the car park shall be laid out generally in accordance with the application drawing but specifically in accordance with a scheme first submitted and approved as part of any future full or reserved matters application. Notwithstanding the submitted drawing, each parking space shall measure at least 2.4m x 5.5m and be provided with 6m manoeuvring space.

Reason: In the interests of highway safety

11. Any entrance gates or barriers erected shall be hung to open away from the highway and set back by a minimum distance of 5m as measured from the nearside edge of the carriageway.

Reason: In the interests of highway safety

12. Recharge points for electric vehicles shall be provided within the development to comply with the following criteria:
- Residential - 1 charging point per dwelling with dedicated on plot parking, or 1 charging point per 10 spaces (or part thereof) where the dwelling(s) are served by courtyard or roadside parking;
  - All other uses - 1 charging point for every 10 parking spaces (or part thereof) which may be provided in phases first submitted to and approved in writing by the Local Planning Authority. Residential charging points shall be provided with an IP65 rated domestic socket 13amp socket, directly wired to the consumer unit with 32 amp cable to an appropriate RCD. This socket shall be located where it can later be changed to a 32amp EVCP. Non-residential charging points shall be supplied by an independent 32 amp radial circuit and equipped with a type 2, mode 3, 7-pin socket conforming to IEC62196-2. Alternative provision to this specification must be first submitted to and approved in writing by the Local Planning Authority. To prepare for increased demand in future years suitable and appropriate cable provision shall be included in the scheme design in accordance with details first submitted to and approved in writing by the Local Planning Authority. The electric vehicle charging points shall be provided in accordance with the stated criteria and approved details prior to the first occupation or use of the respective premises and shall thereafter be maintained in working order and remain available for use throughout the life of the development.

Reason: In the interests of protecting and enhancing air quality through reducing and minimising emissions from vehicles.

Informatives:

- a. The applicant/developer is advised to liaise with the Local Planning Authority prior to submitting details of reserved matters for approval. It is strongly encouraged that, in addition to the requirements set out in any conditions, adequate details are supplied so to negate the need for further conditions upon approval. For example, details and locations of boundary treatments and species and size for soft landscaping should be provided pursuant to matters of landscaping.

**Item**                **1.3**

**Ref. No.**           [9/2019/0699](#)

**Valid Date**       **28/06/2019**

**Applicant:**

Mr P Hammond

**Agent:**

Mr Michael Congreve  
biDesign Architecture Ltd  
79 High Street  
Repton  
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DE65 6GF

**Proposal:**        **THE VARIATION OF CONDITION 1 AND REMOVAL OF CONDITION NO. 4 OF PERMISSION REF. 9/2018/0959 (RELATING TO THE ERECTION OF A SUN CANOPY) AT 11 THE GREEN WILLINGTON DERBY**

**Ward:**             **Willington & Findern**

**Reason for committee determination**

This item is presented to Committee at the discretion of the Head of Planning and Strategic Housing, the Committee having considered previous applications for the site recently.

**Site description**

The application site is part of the existing beer garden and seating area at the rear of the Dragon public house adjacent to the canal towpath. This land is owned by Derbyshire County Council but leased to the owner of The Dragon.

**Proposal**

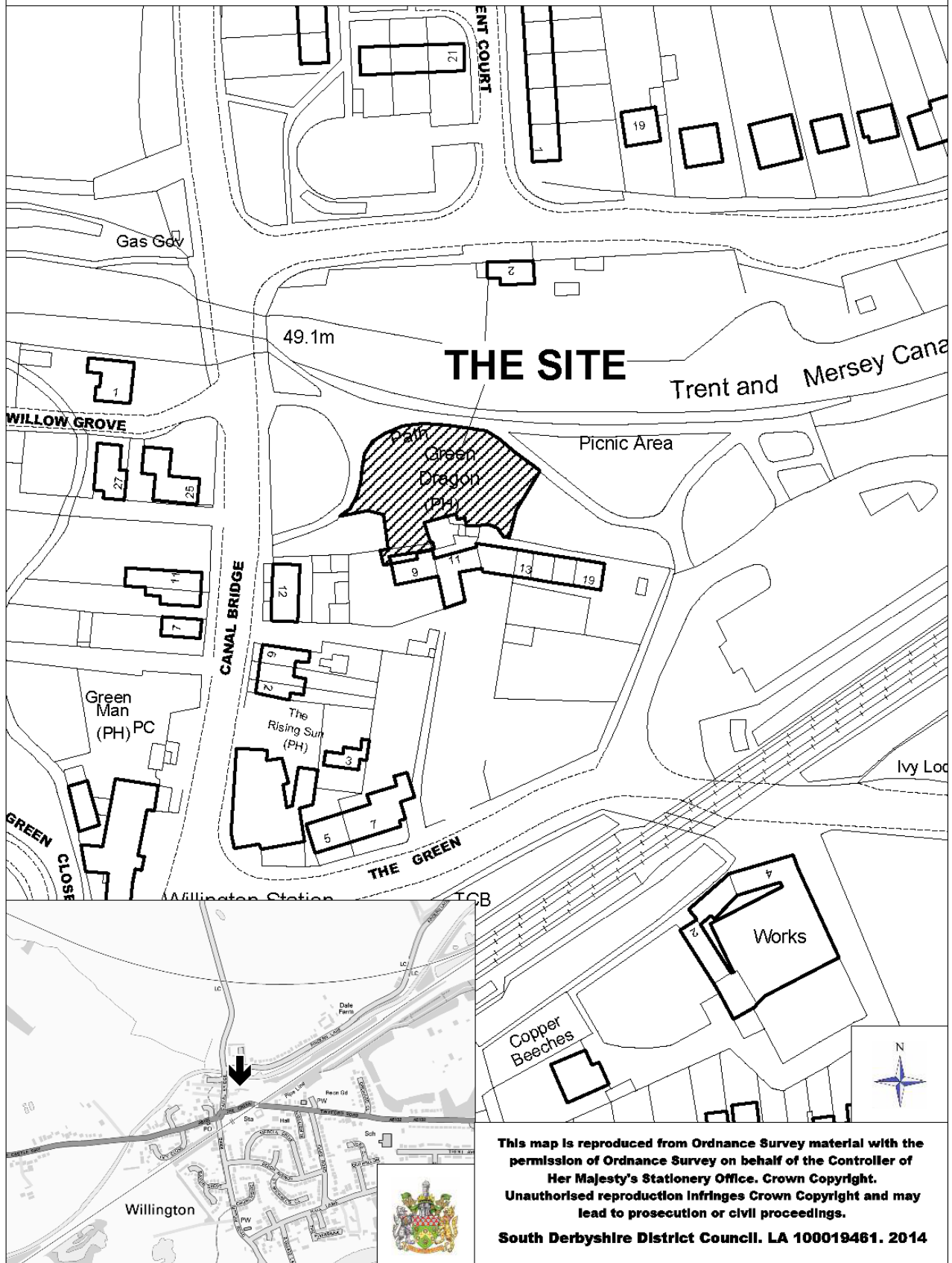
Following the submission of two separate applications for variation of different conditions (9/2019/0699 – Lighting and 9/2019/0741 – approved plans) which referred to two separate permissions the applicant was advised that the only way to achieve a valid consent which could be implemented was to amalgamate the two applications. 9/2019/0741 was therefore withdrawn and this proposal now seeks to vary conditions 1 and 4 of planning permission 9/2018/0959 relating to the retention of a sun canopy within the existing seating area at the rear of The Dragon. Condition 1 relates to the approved plans and condition 4 states that the lighting shall be for a limited period of six months following the first use. This application for the variation/removal of conditions is to allow the applicant to retain the lighting on a permanent basis to the structure and vary the approved plans.

**Applicant's supporting information**

The applicant has submitted relevant plans and elevations of the canopy structure and, in addition, has provided details of the proposed lighting installation in terms of location, number and brightness.

**Planning history**

9/2010/0982        Alterations to existing public house to rearrange kitchen, toilets and living accommodation, provision of new access from canalside including new external eating/dining/drinking area, erection of a smoking shelter and alterations to car parking layout – Approved 23-12-10



9/2010/1012	The demolition of rear toilet block and store, porch and bay window to allow for alterations – Granted 23-12-10
9/2011/0461	Retrospective application for the erection of front & rear extensions and alterations to canal side ground levels to form new seating area. The erection of smoking shelter, fencing to rear seating area, external lighting, timber bin store, rebuilding of existing garage and installation of ventilation duct indicated – Approved 18-01-12
9/2012/1037	The erection of a glazed verandah and retention of minor landscaping works – Approved 01-02-13
9/2013/0627	Shed demolition, store extension, glazed screen, patio extension, wickerwork screening & kitchen/cellar extension – Approved 16-10-13
9/2013/0966	Change of use of existing dwelling to public house with extensions and alterations (retrospective in part) to provide for relocated kitchen, additional seating, external terrace and smoking shelter at ground floor, and offices, welfare facilities and 2 units of independent accommodation at first floor; along with conversion of existing garage to ancillary accommodation, conversion of existing prep room to micro-brewery, and relocation of vehicular access and reconfiguration of car parking – Approved 13-02-14
9/2015/0130	Change of use of land to extend beer garden, rep of retaining wall, formation of pathway and steps, and erection of gate on land to the canal side – Approved 22-04-15
9/2015/0375	Single storey extensions to the kitchen and restaurant areas – Approved 24-06-15
9/2017/0520	The retention of fixed external bar – Approved 11-07-17
9/2017/0649	The erection of an extension to the restaurant – Approved 09-08-17
9/2017/1357	The erection of a sun canopy – Approved 16/03/2018
9/2018/0449	The retention of fixed external bar (revised scheme to that approved under application ref. 9/2017/0520) – Refused 20-07-18
9/2018/0503	The retention of a sun canopy (revised scheme to that approved under permission ref. 9/2017/1357) Approved 03-07-18
9/2018/0959	The variation of conditions 1 & 3 of planning permission ref: 9/2018/0503 (relating to the retention of a sun canopy (revised scheme to that approved under permission ref. 9/2017/1357) – Approved 28-11-18
9/2018/1192	The retention of a sun canopy – Refused 24/12/2018
E/2018/00205	Enforcement notice requiring the removal of the structure upheld on appeal Inspectors decision notice dated 3 <sup>rd</sup> October 2019 gave the applicant two months notice to remove the structure.

### **Responses to consultations and publicity**

The Environmental Health Officer notes that the lighting proposed is low intensity decorative lighting of lower power than domestic internal lighting. Their output would be insufficient to impact upon neighbouring residential amenity significantly when compared to the levels in the Institute of Lighting Engineers guidance on intrusive lighting.

The Conservation Officer states that the sun canopy is a well-designed lightweight glazed structure of contemporary design offering additional seating space in inclement weather and enhances the viability of the business as well as help animate the space. The impact on the conservation area is considered to be moderately beneficial. Provided that there has been no discernible increase in neighbour nuisance (specifically noise and light pollution) no objection is proposed.

Nine letters of objection have been received, raising the following concerns/points:

- a) The sun canopy structure is subject to enforcement action. How can something not compliant be amended?
- b) Lighting detrimental to the character of the conservation area.
- c) Planning committee added this condition, they should determine this application.
- d) Potential for stress and anti-social behaviour
- e) Lights will cause lack of sleep and lead to health issues.
- f) The Dragon cannot facilitate the customers it already has never mind accommodate more customers. Parking is insufficient.
- g) External speakers continue to play music.
- h) Conditions relating to noise limits ignored.
- i) Impact on neighbours including narrow boats.
- j) Conditions are put on for a reason, why would the council change their mind?
- k) The character of the conservation area is important and should not be degraded.
- l) Lights a distraction to the wildlife including the bats
- m) The area is part of public open space and forms an integral part of the conservation area. The sun canopy spoils the CA and resident's peaceful enjoyment of it.
- n) The applicants have consistently ignored planning conditions and regulations.

## **Development Plan Policies**

The relevant policies are:

- 2016 Local Plan Part 1 (LP1): S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), SD1 (Amenity and Environmental Quality), BNE1 (Design Excellence), BNE2 (Heritage Assets).
- 2017 Local Plan Part 2 (LP2): SDT1 (Settlement Boundaries and Development), BNE9 (Advertisements and Visual Pollution), BNE10 (Heritage).

## **National Guidance**

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)

## **Local Guidance**

- South Derbyshire Design Guide SPD
- Trent and Mersey Canal Conservation Area Character Statement (CACS) 2013

## **Planning Considerations**

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

- Design and impact on the character of the conservation area; and
- The effect of lighting on residential and visual amenities of the area;

## Planning Assessment

### Background

The original application (ref. 9/2017/1357) for the canopy structure was presented to the Committee in February 2018. Permission was given in March 2018 following a confirmation of no objection from the Canal and Rivers Trust. A further application was submitted to agree the structure in the same location but rotated by 90 degrees (ref. 9/2018/0503). This was approved under delegated powers in July 2018. Both permissions include a condition preventing the affixing of lights to the approved structure.

A further Section 73 application was made (9/2018/0959) which also came before Committee seeking to vary conditions 1 and 3 of 9/2018/0503 which Members agreed to approve subject to the addition of a condition limiting the lighting to a six-month period after the first use to assess the effect of the lighting on the local amenity.

It should be noted that a further application was submitted (9/2018/1192) for the retention of the sun canopy as built with full glazing on all sides. This application was refused under delegated authority due to the lack of visual permeability.

Following refusal of this application enforcement action was instigated. The applicant appealed but the appeal was dismissed. The applicant was given two months to remove the structure. This has not been done as the applicant had made an application to amend the design of the canopy and, at the same time, remove the temporary lighting condition. Action has not been taken to allow this application to be determined.

It should also be noted that Derbyshire County Council, the owners of the land on which the beer garden is located, has a number of conditions set out in the lease with the applicant. DCC has made it known that it is not happy with certain aspects of the applicant's use of the site. As landlord, it is in a position to cease any activity that may not comply with the conditions of the lease. However, as landlord, it is also the subject of the Enforcement Notice.

### Design and impact on the character of the conservation area

As can be seen from the above planning history the sun canopy has had three separate permissions. Unfortunately, since it was first installed it has not been built in accordance with any of the approved plans. This current application which in part seeks the variation of condition 1 for an amended design lowering the glazing on the structure to a height of 1.5m, the same height as previously approved in 9/2018/0959 but with the introduction of gravel boarding at ground level to a height of approximately 500mm.

Previous reports have discussed the importance of the sun canopy to appear lightweight and visually permeable. The removal of the full height glazing on the existing structure which was considered unacceptable appears to suggest that the applicant has gone some way towards complying with the enforcement notice and would implement the details of this proposal, should it be considered acceptable. Whilst full height glazing might appear permeable, in different lighting conditions and in cold weather the structure can appear solid and impermeable. This proposed 'half-height' glazing – provides a gap of 1.1m between the top of the glazing and the upper horizontal metal bar of the structure. This gap provides valuable permeability allowing views through the structure at all times and helps the structure to be part of the landscape whilst also providing an element of protection from the sun and moderately inclement weather. The gravel boarding would be predominantly screened by the boundary hedge and therefore would have little impact on the permeability of the structure. However, whilst previous approvals have all shown the continuation of the hedgerow on the canal side of the structure, this proposal reflects that the structure is on the boundary of the land being rented by the applicant and as such the replacement of the hedgerow would be outside of land in use by the applicant. An alternative to a hedgerow outside of the applicant's control would be the addition of an artificial hedgerow attached to the gravel panels retaining the appearance of a continuous



hedgerow maintaining the appearance of the previously approved scheme which could be required by condition. The revised design with this addition is considered to comply with BNE1, BNE2 and BNE10 of the Local Plan.

#### The effect of lighting on residential and visual amenities of the area

As was previously noted when temporary permission was granted for the lighting (9/2018/0959), the installation of lighting would not enable patrons to sit outside in less inclement weather any longer than they currently could, particularly when low level lighting could be used on tables without the need for planning permission. Environmental Health has commented that the lights to be retained, 48 1 watt bulbs on a string around the structure are low density decorative lighting (lower than domestic internal lighting) and unlikely to impact on residential amenity when compared to the levels provided in the Institute of Lighting Engineers guidance on intrusive lighting. The previous application provided a lighting spill plan and this showed light levels quickly diminish to 0.2 and 0.1 lux on the canal towpath and drop to less than 0.1 lux before reaching the water. A similar drop in lighting levels is seen in the remaining directions. This is not considered to bring about an undue adverse effect, and given there are no objections from the Environmental Health Officer, particularly as it has confirmed that they have not had any formal complaints regarding lighting from the above premises in the last 12 months, the proposal is considered to comply with policy SD1.

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 hereby permitted shall be carried out in accordance with drawing ref. 23L, unless as otherwise required by condition attached to this permission or allowed by way of an approval of a non-material minor amendment made on application under Section 96A of the Town and Country Planning Act 1990 (as amended).

Reason: For the avoidance of doubt and in the interests of sustainable development.

2. Notwithstanding the the approved plans, prior to the first use of the reconstructed sun canopy an artificial hedgerow to match the existing boundary hedgerow shall be afixed to the north elevation gravel boarding and thereafter maintained in situ throughout the life of the development.

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

3. Notwithstanding the approved plans, before their installation, the materials to be used in the creation of the solid floor beneath the canopy shall be submitted to and approved in writing by the Local Planning Authority. Only the approved materials shall then be used.

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



**Item No.** 1.4

**Ref. No.** 9/2019/0366

**Valid Date** 11/04/2019

**Applicant:**

Mr & Mrs Jackson

**Agent:**

Mr James Mcleod  
Redesign Architecture  
No 1 Mill The Wharf  
Shardlow  
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DE72 2GH

**Proposal:** THE ERECTION OF A REPLACEMENT DWELLING AT SPRING FARM COTTAGE  
ROSLISTON ROAD DRAKELOW SWADLINCOTE

**Ward:** Linton

**Reason for committee determination**

This item is presented to Committee as it is not in strict conformity with the Development Plan.

**Site Description**

The site occupies an isolated location within the National Forest approximately 4 miles south of Burton-on-Trent and on the northern outskirts of the village of Rosliston. The site is well set back from the public highway and is accessed via an extensive driveway. The site extends to approximately 2 acres and is host to a detached, extended two-storey property along with a range of detached outbuildings of various scale and construction. There are grassed garden areas to the front and rear of the property, as well as extensive areas of hard surfacing used for parking. There is a row of conifers which extend along the majority of the north eastern boundary of the site.

**Proposal**

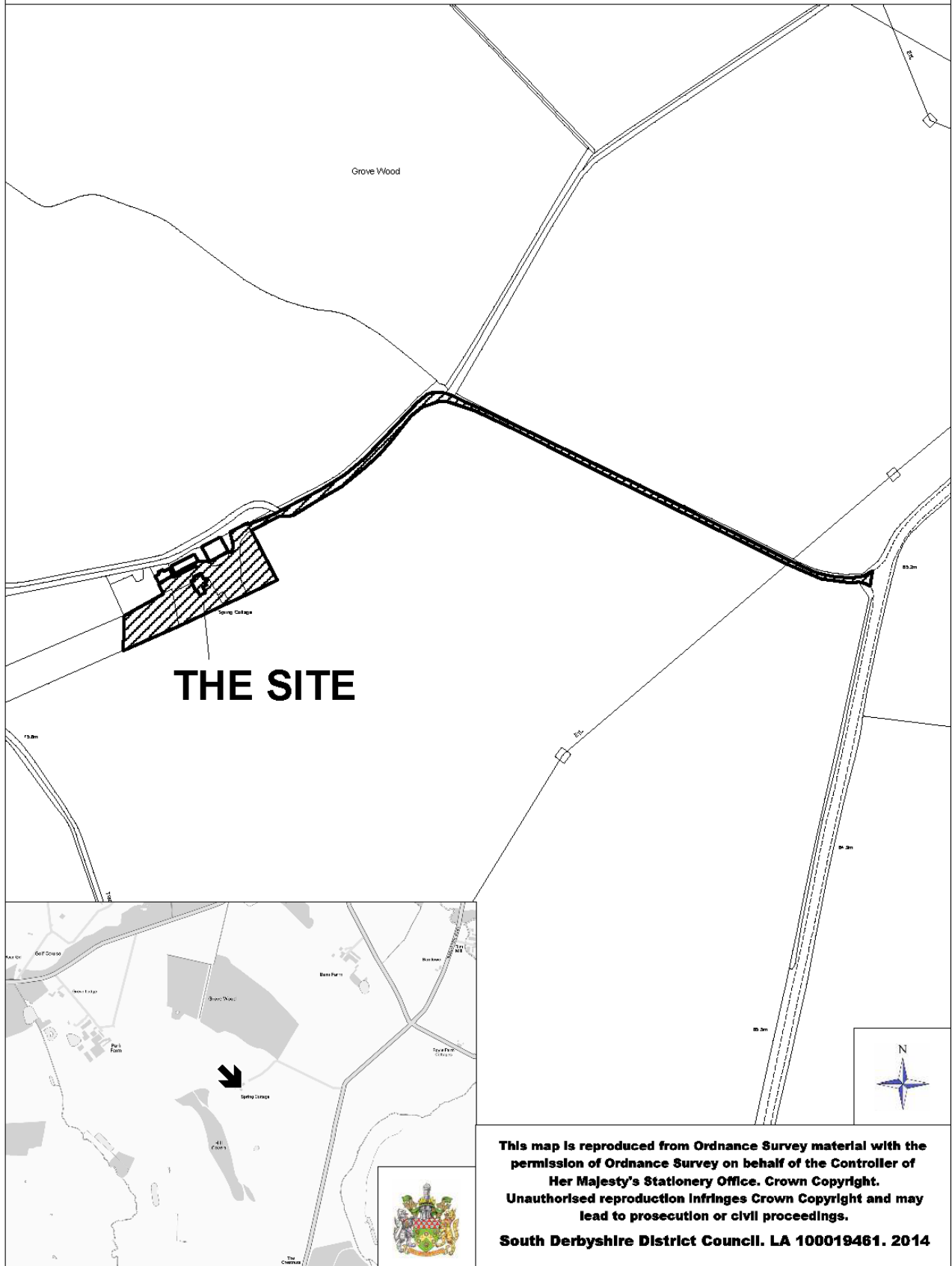
The application proposes to demolish the existing dwelling and detached kennels building and replace them with a 2.5 storey property, situated just south west of the footprint of the existing dwelling.

Throughout the course of the application the proposal has been subject to significant design related changes, resulting in the submission of amended plans.

**Applicant's supporting information**

The Design and Access Statement (DAS) provides justification for the design approach along with a brief appraisal of the proposal against the applicable Local Policy. It is deemed that the new dwelling does not substantially exceed that of the original dwelling and that it would be no more intrusive in the landscape. It is acknowledged that the site benefits from a high level of natural landscaping which would serve to soften any visual impacts. Justification is provided for the siting of the replacement dwelling, in that the presence of a large cellar and water well would make substructure works very challenging if it were to be sited directly above the existing. The statement continues that the new site is not deemed substantially different to that of the existing on the basis of its isolated location and that the remoteness may also render the policy irrelevant, as the intention appears to be to guard against the impact of development on any neighbouring buildings. In terms of the scale of the proposal, whilst a larger footprint than that of the existing farmhouse is proposed, it is contended that the scale is not substantially larger especially given the natural features and the extent to which the plot can afford. In addition, it is stated the former owners appear not to have fully exploited permitted development

**9/2019/0366 - Spring Farm Cottage, Rosliston Road, Drakelow, Swadlincote  
DE15 9UF**



rights, which would allow for a far greater scale of development than that existing (which the DAS diagrammatically illustrates).

Within its summary, the DAS contends that the amended proposal would not cause any adverse impact on residential amenities, would contribute positively to the visual amenities of the locality and would therefore accord with the relevant planning policy. The resulting scheme is considered to represent and provide a high-quality living environment both visually and environmentally and the bespoke designed house is identified as a positive enhancement to the local area whilst providing excellent family accommodation.

The Ecology Survey initially acknowledges that once the new dwelling has been constructed, the Farmhouse and a wooden former kennel unit are to be demolished. The report sets out that a Preliminary Ecological Appraisal was undertaken on the 17<sup>th</sup> September 2019, with a Preliminary Roost Assessment of the Farmhouse completed on the same date and a preliminary Roost Assessment of the free-standing wooden kennel undertaken on the 5<sup>th</sup> November 2019.

The report contains the following summary of impacts: - the new residential dwelling would be within an ecologically poor area of recently cleared ground to the west of the existing Farmhouse. There would be no impact on areas of amenity grassland to the west of the site or on the existing tree line / outgrown hedgerow. Vehicle access would utilise the existing unmade farm track to the property as well as extensive areas of existing hardstanding and pebble drives / parking areas. The proposed work would result in the permanent loss of the existing dwelling (Farmhouse) which is known to support Whiskered Bats as well as having the potential to affect other species that may be roosting in the loft or other suitable features across the building. The loss of the kennel unit would be unlikely to affect day roosting bats (assessed as being of low roosting potential). The loss of both of these buildings could also impact on breeding birds. The proposed new dwelling would be constructed on an area of recently cleared land, now comprising disturbed ground and as such would not result in any direct ecological impacts. None of the habitats or species listed on the Lowland Derbyshire BAP would be affected by the proposals.

The report considers it appropriate that the construction element of this project be approved in absence of the results of bat activity surveys. It is stated that bat activity surveys are to be completed in the peak bat active season 2020 (June –August) and that the results will be used to inform the demolition approval for the existing Farmhouse. The bat activity survey report will also be sent to the Local Planning Authority and the results of the surveys will be used to inform an application to Natural England for an European Protected Species Licence (EPSL) for the demolition of the existing Farm House and, if required, the kennel unit.

In terms of mitigation, it is advised that a bespoke bat loft is provided within the new dwelling and that additional mitigation or enhancement to the new dwelling and the wider site will be completed based on the results of the activity surveys. The mitigation and enhancement package would ultimately be signed off by Natural England when applying for the EPSL.

Planning History

None relevant

### **Responses to consultations and publicity**

No objection has been received from the County Highways Authority.

No objection has been received from Environmental Health.

Derbyshire Wildlife Trust (DWT) initially objected to the application on grounds that insufficient information had been provided. In response additional surveys were undertaken and provided. Upon the content of these surveys, the Trust has raised no objection subject to the imposition of conditions to secure the mitigation outlined within the submitted ecology report. The response further advises

that as the works will need to be undertaken under a Natural England licence (to derogate from the offence of destruction of a bat roost) that in reaching a decision the Council should demonstrate how the three tests as set out at Regulation 55 of the Conservation of Habitats and Species Regulations 2017 have been considered, and state the evidence for conclusions drawn on each test, as to whether the test can be met. In this regard DWT confirm that while they are unable to advise on the first two “non-ecology” tests, they would advise that, on the basis of the proposed mitigation outlined in section 4.3.2 of the Ecological Survey it is likely that the favourable conservation status of the local bat population would be maintained and, as such, test (iii) would be met.

## **Development Plan Policies**

The relevant policies are:

- 2016 Local Plan Part 1 (LP1): S1 – Sustainable Growth Strategy; S2 – Presumption in Favour of Sustainable Development; S4 – Housing Strategy; H1 – Settlement Hierarchy; SD1 – Amenity and Environmental Quality; BNE1 – Design; BNE3 – Biodiversity; BNE4 – Landscape Character and Local Distinctiveness, INF2 – Sustainable Transport; INF8- The National Forest.
- 2017 Local Plan Part 2 (LP2): SDT1 – Settlement Boundaries and Development; H24 – Replacement Dwellings; BNE5 – Development in Rural Areas.

### National Guidance

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)

### Local Guidance

- South Derbyshire Design Guide SPD

## **Planning Considerations**

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

- Principle of Development
- Design, Character and Appearance
- Ecological Issues; and
- Other issues (parking)

## **Planning Assessment**

### Principle of Development

Insofar as the principle of development is concerned, and in accordance with the provisions of Section 38(6) of the Planning and Compulsory Purchase Act 2004, the starting point for the determination of the application is the development plan which, in this instance, includes the adopted South Derbyshire Local Plan Part 1 and Part 2.

The application site occupies an isolated location within the countryside. At a strategic level, policies S1, H1 and STD1 seek to direct new development, and more specifically, new residential development to the most sustainable locations. As this application proposes a replacement dwelling however, the intent of the strategic policies become less relevant and criteria based policies BNE5 and H24 are primary. Policy BNE5 offers support to identified exceptions of development in rural areas, subject to them causing no undue impact on landscape character, biodiversity, the best and most versatile agricultural land and heritage assets. In the case of the development proposed by this application, criterion i) offers ‘in principle’ support for developments allowed for under policy H24 (subject to the design related caveat). On the face of it, this proposal does constitute a replacement

dwelling and so Policy H24 is most relevant. Policy H24 allows for replacement dwellings, subject to their compliance with the identified criteria. The proposal will be appraised against each of these in turn:

Criterion i) relates to the form and bulk of the development, seeking to ensure that it would not substantially exceed that of the original dwelling, or that which could be achieved as permitted development. Whilst this application proposes a considerable 2.5 storey property, the DAS includes a comparison of this dwelling in relation to the footprint and form of the existing property and that which could be achieved under permitted development. In this regard, whilst the proposed dwelling would, in both of these circumstances be larger, it would not be materially so and by virtue of this, the proposal is considered in compliance with criterion i).

Criterion ii) seeks to ensure that the development would be no more intrusive in the landscape. The sites setting have been briefly described in the introductory paragraphs of this report. As identified, the site occupies a secluded position at the end of an extensive drive. The site is set back from the nearest road by arable fields. At closer proximity the site benefits from a screen of coniferous trees. Although the development proposed would be of a greater scale than that existing, when viewed from the nearest public vantage points, which in this case would be the highway, any views gained would be long distance and the increased scale would not be appreciable in this context. On this basis the development is considered no more intrusive.

Criterion iii) requires the replacement dwelling to have substantially the same siting as the existing. The policy justification explains that this is to ensure that there would be no net gain in dwellings and essentially that the proposal would be 'new for old'. It is this requirement with which the proposal would conflict. The proposed dwelling would be sited just to the south west of the existing house. The DAS has explained that this is due to both practical and technical reasons. The applicants have a young family and during the build of the new property it would cause less upheaval for them to occupy the exiting house for as long as practically possible. In terms of technical reasons, the DAS explains that the presence of a large cellar and water-well would make substructure works very challenging if the property were to occupy the same footprint. Subject to a condition being imposed to secure demolition of the existing property and clearance of the site, it is considered that the intensions of the policy would be met and that there would be no remaining conflict in this regard.

In regard to criterion iv) the dwelling to be demolished is not considered to be of historic merit and so there would be no conflict here.

Overall, whilst there would be a degree of conflict with policy H24, the associated harm would be limited and could be overcome through the imposition of an appropriately worded condition.

Subject to the development meeting the technical requirements set out in criterion v) of policy BNE5, (which will be further appraised under the relevant headings below) the development is considered to be acceptable in principle.

### Character, Appearance and Design

Policy BNE1 expects new development to be well designed, embrace the principles of sustainable development, encourage healthy lifestyles and enhance quality of life and policy BNE4 seeks to ensure that the character, local distinctiveness and quality of the landscape and soilscape is protected and enhanced through the careful design and sensitive implementation of new development.

Turning first to character, the site is situated within a largely undeveloped rural landscape, which is predominantly characterised by a loose network of arable fields and scattered farmsteads. The application site conforms to this character and the replacement dwelling would cause no further conflict. Due to the sporadic nature of build development within the vicinity, there is no definable character in terms of dwelling style or design and as such, there would be no conflict in this regard. In terms of appearance, as identified above, there may be some long distance views of the development, however these would be further limited as a consequence of the intervening vegetation.

On this basis, any further impacts on appearance as a consequence of the increased scale and slightly amended siting of the replacement dwelling would at worst, result in very limited harm.

In addition to policy BNE1, further guidance in terms of design is set out in the Design SPD. The advice contained has been instrumental in refining the development proposed. Whilst the dwelling remains considerable in terms of its scale, its bulk and massing have been reduced through staggering its footprint, introducing gabled elements and architectural detail and through providing a consistent approach to the design, detail and alignment of fenestration along with the use of a sympathetic and consistent palette of materials. This has resulted in a well-proportioned and detailed property, which would adhere to the fundamental principles of good design.

On this basis the proposal is considered compliant with policies BNE1 and BNE4 of the Local Plan along with the guidance set out in the Design SPG.

### Ecology

Criterion B of policy BNE3 sets out that proposal which could have a direct or indirect effect on sites with potential or actual ecological importance need to be supported by appropriate surveys or assessments to ensure there is comprehensive understanding of the likely impacts of the scheme and the mitigation proposed. The policy continues that where mitigation measures, or exceptionally, compensation cannot sufficiently offset the significant harm...and/or where the development can potentially be located on an alternative site that would cause less harm, planning permission will be refused.

The planning application has been accompanied by an ecological report, in which the result of various surveys have been provided. The report identifies that, as a consequence of the demolition of the existing farmhouse, a habitat for Whiskered Bats would be lost. A schedule of mitigation is set out to compensate for this loss, along with other measures to maintain and improve biodiversity across the site. The findings of the report have been considered by DWT and on the basis of the suggested mitigation, they have raised no objection subject to conditions. Within their response, they have further identified the three tests set out at Regulation 55 of the Conservation of Habitats and Species Regulations 2017, which, in reaching a decision, the LPA must demonstrate have been satisfied. These are as follows:-

- (i) *The action will be undertaken for the purpose of preserving public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment (Regulation 55(2)(e))*
- (ii) *That there is no satisfactory alternative (Regulation 55(9)(a))*
- (iii) *That the action will not be detrimental to the maintenance of the population of the species concerned at favourable conservation status in their natural range (Regulation 55(9)(b))*

In regards to (i) the proposal has been appraised against the relevant planning policy and no significant conflict and so, harm has been identified. The development has been specifically designed to cater for the requirements of a young family, thus resulting in social benefits and economic and environmental benefits relating to the construction and energy efficiency of the proposed dwelling would be improved (over and above those associated with the existing dwelling). Furthermore appropriate mitigation has been identified in relation to the habitat lost along with other biodiversity improvements, thus resulting in further environmental improvements. On account of this it is considered that criterion (i) has been satisfied.

In relation to (ii), there is no other dwelling on the site which could be replaced and so there would be no satisfactory alternative.

In regard to (iii), DWT have confirmed that on the basis of the proposed mitigation outlined, it is likely that the favourable conservation status of the local bat population would be maintained and, as such, test (iii) is met.



On account of the above, and subject to the necessary mitigation being secured, the development is not considered to result in any materially harmful impacts in terms of ecology and therefore the development would be compliant with policy BNE3.

### Other Issues

The existing access would be used and there would be more than adequate parking and turning provision on the site. As such the proposal would not result in any impacts in terms of highway safety.

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 hereby approved shall be begun before the expiration of three years from the date of this permission.  
Reason: To conform with Section 91 of the Town and Country Planning Act 1990 (as amended by Section 51 of the Planning and Compulsory Purchase Act 2004).
2. The development hereby permitted shall be carried out in accordance with plan(s) ref. Site Location & Block Plan Rev C, Proposed Ground Floor Plan Rev A, Proposed First Floor Plan Rev A, Proposed Loft Plan Rev A, Proposed Roof Plan Rev A, Proposed Elevations 1 Rev A, Proposed Elevations 2 Rev A unless as otherwise required by condition attached to this permission or following approval of an application made pursuant to Section 96A of the Town and Country Planning Act 1990.  
Reason: For the avoidance of doubt and in the interests of achieving sustainable development.
3. Within one month of the development hereby approved being first occupied, the existing dwelling shall be removed from the site in its entirety and disposed of lawfully (if it has not already been removed by that date), and the land restored to its former condition in accordance with a scheme which shall have been previously submitted to and been approved in writing by the Local Planning Authority.  
Reason: The creation of an additional independent unit of residential accommodation in this location is contrary to the provisions of the Development Plan.
4. Prior to their incorporation into the building hereby approved, details and/or samples of the facing materials to be used shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be constructed using the approved facing materials.  
Reason: In the visual interest of the building and the surrounding area.
5. Prior to their incorporation into the building(s) hereby approved, details of the eaves, verges, cills and lintels shall be submitted to and approved in writing by the Local Planning Authority. The details shall include drawings to a minimum scale of 1:10. The eaves, verges, cills and lintels shall be constructed in accordance with the approved drawings.  
Reason: In the visual interest of the building(s) and local distinctiveness.
6. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, or any statutory instrument amending, revoking and/or replacing that Order, the dwelling hereby permitted shall not be enlarged or extended, and no buildings shall be erected on the site without the prior grant of planning permission pursuant to an application made to the Local Planning Authority in that regard.  
Reason: To maintain control in the interest of the character and amenity of the area, having regard to the setting and size of the development, the proximity to existing features on or adjacent to the site, and the effect upon neighbouring properties and/or the street scene.

7. The dwelling shall be constructed and fitted out so that the estimated consumption of wholesome water by persons occupying the dwelling will not exceed 110 litres per person per day, consistent with the Optional Standard as set out in G2 of Part G of the Building Regulations (2015). The developer shall inform the building control body that this optional requirement applies.

Reason: To ensure that future water resource needs, wastewater treatment and drainage infrastructure are managed effectively, so to satisfy the requirements of policy SD3 of the Local Plan.

8. The development shall be carried out in strict accordance with the bat mitigation strategy detailed in sections 4.3.2 and 4.3.3 of the Ecological Survey Report prepared by Turnstone Ecology dated December 2019, including the need for the works to be carried out under a Natural England licence, a copy of which shall be provided to the LPA once issued.

Reason: In order to safeguard protected and/or priority species from undue disturbance and impacts, noting that initial preparatory works could have unacceptable impacts; and in order to secure an overall biodiversity gain.

9. Prior to occupation a recharge point for electric vehicles to comply with the following criteria shall be installed and retained thereafter:

- Residential: 1 charging per unit (dwellinghouse with dedicated parking)

To prepare for increased demand in future years, appropriate cable provision should be included in scheme design and development. Residential charging points should be provided with an IP65 rated domestic 13amp socket, directly wired to the consumer unit with 32 amp cable to an appropriate RCD. This socket should be located where it can later be changed to a 32amp EVCP. Measures should be taken to prevent subsequent occupiers of the premises from removing the charging points.

Reason: To encourage the use of more sustainable modes of transport.

Informatives:

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

**Item No.** 1.5

**Ref. No.** [DMOT/2019/1331](#)

**Valid date:** 11/11/2019

**Applicant:**

Martin Buckley  
South Derbyshire District Council

**Agent:**

Martin Buckley  
South Derbyshire District Council  
Civic Way  
Swadlincote  
DE11 0AH

**Proposal:** The felling and pruning of trees covered by South Derbyshire District Council Tree Preservation Order no. 157 on Land at Bretby Heights and Bretby Hollow, Newhall, Swadlincote

**Ward:** Newhall & Stanton

**Reason for committee determination**

This item is presented to Committee as the Council is the applicant.

**Site Description**

The site where the trees stand is public open space opposite the dwellings on Bretby Hollow and to the rear of Bretby Business Park. The land is bunded and consists of rough grass, brambles and various trees. The trees in the group are the subject of Tree Preservation Order No. 157.

**The proposal**

The proposal is for general tree maintenance, including felling, dead wooding, pruning and crown lifting on trees covered by the Order.

**Applicant's supporting information**

The Council's Tree Officer has provided a Tree Report which lists each tree individually, it provides the species of each tree along with its current condition and a recommendation of works to be carried out, along with the priority levels of such works.

**Relevant planning history**

None relevant to the trees on this application. However other trees within this area covered by Order No. 157 have previously been heard by the Committee.

**Responses to consultations and publicity**

None received.

**Relevant policy, guidance and/or legislation**

The relevant legislation is:

- Town and Country Planning (Tree Preservation) (England) Regulations 2012

**THE SITE**

BRETRY HOLLOW

Four Winds

Park Gate Farm

Bretby Business Park

Bretby Hollow

North Arrow

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**South Derbyshire District Council. LA 100019461. 2014**

The relevant Development Plan policies are:

- Local Plan Part 1 (LP1): BNE3, BNE4
- Local Plan Part 2 (LP2): BNE7

## **Planning considerations**

Taking into account the application made, the documents submitted and the site and its environs; the main issue central to the determination of this application is whether the proposed works are justified balanced against the impact on the visual amenity of the area.

## **Planning assessment**

Policy BNE7 states that:

*The felling of protected trees, groups of trees or woodland and/or removal of important hedgerows, will be considered in accordance with the relevant national guidance and regulation, taking account in particular of their amenity, ecological, landscape and historic value.*

The general maintenance of several trees, including felling, dead-wooding, pruning and crown lifting are essential to the safety of the public and/or the avoidance of damage to nearby properties and their fences.

It is considered that the visual amenity impact of the proposed tree works will be limited. The trees are of low amenity value given they are situated in area of high tree density. Therefore, the works are justified.

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, noting that conditions or obligations have been attached where meeting the tests for their imposition. Where relevant, regard has been had to the public sector equality duty, as required by section 149 of the Equality Act 2010 and to local finance considerations (as far as it is material), as required by section 70(2) of the Town and Country Planning Act 1990 (as amended), as well as climate change, human rights and other international legislation.

## **Recommendation**

**GRANT** consent for the works subject to the following conditions:

1. The work hereby approved shall be carried out within two years of the date of this consent.  
Reason: To conform with Regulation 17 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012, in order to enable the Local Planning Authority to consider any proposals beyond this period in the interests of safeguarding the amenity value of the tree(s).
2. The works shall be carried out in accordance with BS3998:2010 - Tree Work.  
Reason: To ensure that the works are carried out in the best interests of the health of the tree(s).

**Item No.** 1.6

**Ref. No.** [DMOT/2019/1405](#)

**Valid date:** 05/12/2019

**Applicant:**

Martin Buckley

**Agent:**

Martin Buckley  
South Derbyshire District Council  
Civic Way  
Swadlincote  
DE11 0AH

**Proposal:** The removal of deadwood and minor crown reduction of a mature oak tree(s) covered by South Derbyshire District Council Tree Preservation Order no. 273 on Land adjacent to 62 St Johns Drive, Newhall, Swadlincote, DE11 0SU

**Ward:** Newhall & Stanton

**Reason for committee determination**

This item is presented to the Committee due to this being for an application for works to a tree covered by a Tree Preservation Order by the Council on Council owned land.

**Site Description**

The site is a small open area of grassland with two mature trees located on it. The adjacent housing is circa 1970s, predominantly two storey semi-detached dwelling. There is a mature Sycamore to the north of the mature oak. This application relates to proposed works to the Oak. The tree is closest to two dwellings. Firstly to the south lies number 17 Ashover Road. The tree is situated close to the rear boundary wall of the dwelling. There is a flat roofed garage close to the trunk of the tree. To the west of the site lies number 62 St Johns Drive. This has been extended sideways at two storey level.

The Oak tree has a large crown spread of around 12-14m wide. It is approx. 16-18m high.

**The proposal**

The proposal is to remove deadwood from the tree and undertake a minor crown reduction.

**Applicant's supporting information**

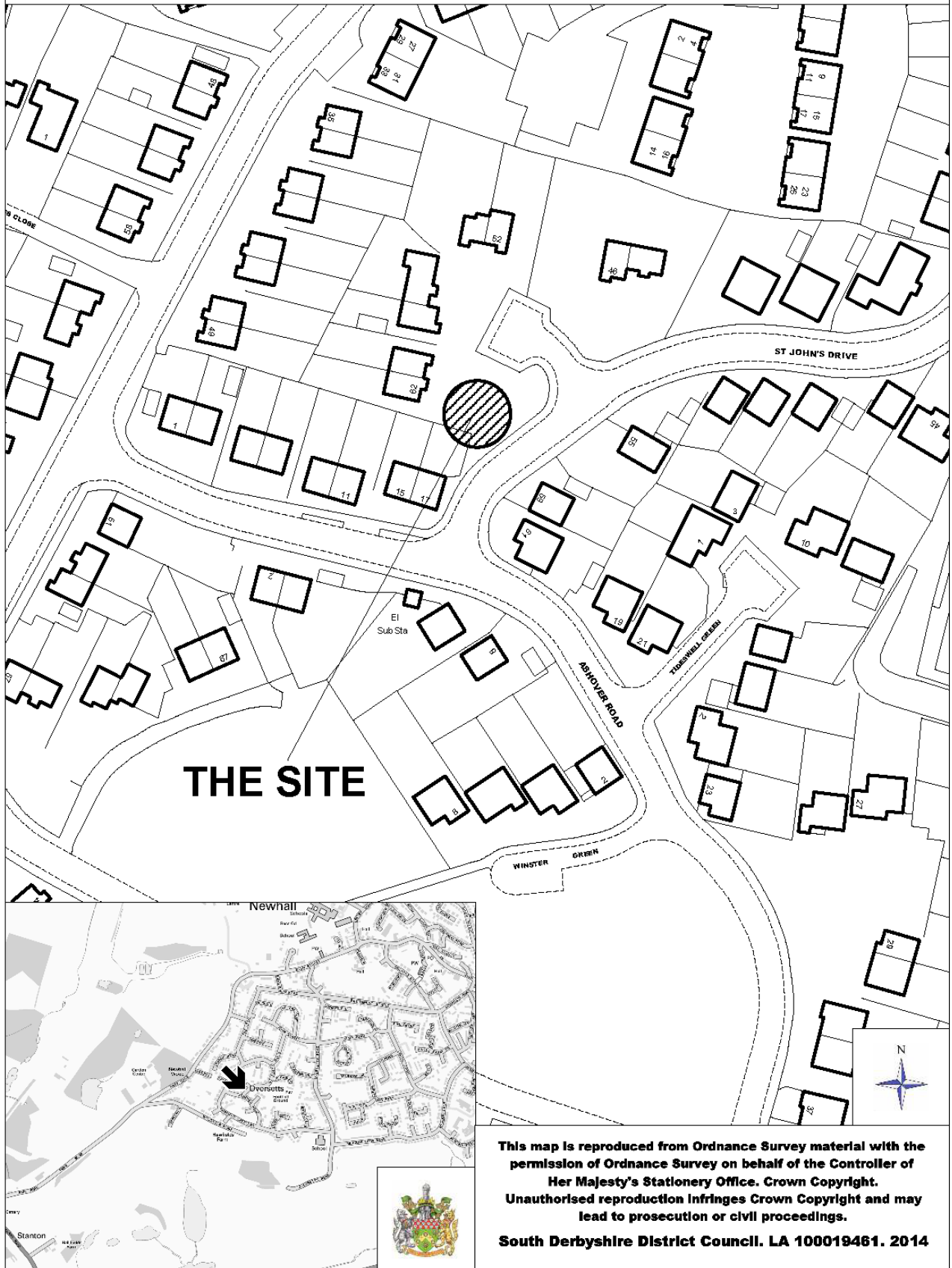
The applicant has had a detailed tree surgeons report carried out on the tree and the reasons for the works. the tree has had previous works during its life. Due to its proximity to the two nearest houses the tree represents a high risk in the event of failure. It was found that one Y shaped limb approx. 5m above ground level on the west side of the tree showed signs of decay within the woody structure. It is recommended that this limb be removed at the parent stem following pruning guidance given in BS3998:2010. Other minor works include providing adequate clearance over the garage at 17 Ashover Road, and reduction via thinning of a small proportion of primary foliage bearing branches back to naturally occurring pruning points and secondary branches overhanging the driveway to 62 St Johns Drive.

**Relevant planning history**

No relevant planning history.



**DMOT/2019/1405 - Land adjacent to 62 St Johns Drive, Newhall,  
Swadlincote DE11 0SU**



## Responses to consultations and publicity

No response to public consultation.

## Relevant policy, guidance and/or legislation

The relevant Development Plan policies are:

- Local Plan Part 1 (LP1): BNE3 Biodiversity
  - Local Plan Part 2 (LP2): BNE7 Trees Woodland and Hedgerows
  - The National Planning Policy Framework section 15, paragraph 170.
- Planning Practice Guidance- paragraph 090 ID: 36-090-20140306

## Planning considerations

The main issue is whether there is a justifiable reason to carry out works to the tree, and what impact this has on the visual amenity of the protected tree.

## Planning assessment

The Oak tree is large and mature and close to houses on its south and west side. It has historically had works carried out to it in the past, possibly due to the ongoing need to control its growth and maintain its amenity value. Both trees here perform an important function in adding amenity value to this part of the estate, and were there prior to the houses being constructed.

It has been inspected by professional tree surgeons and they have recommended the proposed works. It is considered that these are proportionate and reasonable and are necessary to help maintain the ongoing quality and value of the tree and for the purposes of public safety given its close proximity to dwellings and garden areas.

The works would be carried out by a suitably qualified professional in accordance with British standards. It is concluded that the proposed works are acceptable. It is recommended that consent is granted.

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, noting that conditions or obligations have been attached where meeting the tests for their imposition. Where relevant, regard has been had to the public sector equality duty, as required by section 149 of the Equality Act 2010 and to local finance considerations (as far as it is material), as required by section 70(2) of the Town and Country Planning Act 1990 (as amended), as well as climate change, human rights and other international legislation.

## Recommendation

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

1. The work hereby approved shall be carried out within two years of the date of this consent.  
Reason: To conform with Regulation 17 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012, in order to enable the Local Planning Authority to consider any proposals beyond this period in the interests of safeguarding the amenity value of the tree(s).
2. The works hereby permitted shall be carried out in accordance with the submitted inspection details dated 22nd November 2019, as submitted with the application. The works to be carried out in accordance with BS3998:2010.  
Reason: To define the consent for the avoidance of doubt.

## **2. Planning and other Appeals**

(References beginning with a DMPA, DMPN, DMOT or 9 are planning appeals and references beginning with an ENF or E are enforcement appeals)

<b>Reference</b>	<b>Place</b>	<b>Ward</b>	<b>Outcome</b>	<b>Decision level</b>
9/2019/0505	Alexandra Road, Swadlincote	Swadlincote	Dismissed	Delegated
E/2014/00149	Lowes Lane, Swarkestone	Aston	Split decision	Delegated

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## Appeal Decision

Site visit made on 17 December 2019

by J Williamson BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23<sup>rd</sup> January 2020

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**Appeal Ref: APP/F1040/W/19/3238343**

**Land south of 75-89 Alexandra Road, Swadlincote, DE11 9AY**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr M Khan against the decision of South Derbyshire District Council.
  - The application Ref 9/2019/0505, dated 29 April 2019, was refused by notice dated 2 August 2019.
  - The development proposed is described as "construct 6 apartments".
- 

### Decision

1. The appeal is dismissed.

### Main Issues

2. The main issues are:
  - the effect of the proposed development on the street scene and the character and appearance of the area, and
  - the effect of the proposed development on the living conditions of existing neighbouring occupants, with particular regard to privacy and outlook.

### Reasons

#### *Character and appearance*

3. The site comprises a vacant piece of land located at the southern end of Alexandra Road. The road rises uphill from the north, levels out for a short stretch in the location of the site, and continues to rise a little further to the south along Church Avenue. The site slopes down a little from the adjacent pavement on Alexandra Road towards Stanhope Street. In planning policy terms, the site is located within a predominantly residential area, though there are some commercial/light industrial buildings positioned around the crossroad junction of Alexandra Road, Church Avenue and Stanhope Street. The site is bounded by car parking immediately to the west and south and residential development to the north, ie a two-storey block of flats, and to the east, on the opposite side of the road, ie two-storey, terraced properties. The neighbouring residential properties are characterised by dual-pitched roofs mainly constructed of red brick under tiled roofs.
4. The proposal consists of a three-storey block of 6 flats, 2 on each level, and associated on-site car parking. At three-storeys high the eaves would be

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<https://www.gov.uk/planning-inspectorate>

significantly higher than those of the neighbouring residential properties. The building would have a flat roof and all fenestration would have a vertical emphasis, including vertical bay windows on the front and rear elevations extending over the upper two floor levels. The proposed building would be of a form and design more akin to the form and design of one of the existing two-storey commercial properties on Stanhope Street, rather than the neighbouring residential properties on Alexandra Road. Although the external elevations would be primarily constructed of brick, the proposed bay windows would consist of white aluminium cladding, which is a material that does not feature on neighbouring residential properties.

5. Given the relatively large gap that would remain between the proposed building and the two-storey block of flats to the north, along with the existing car parking uses at the southern side of the site, the proposed building would stand alone, prominent within the street scene. Along with its prominent position, at three-storeys high with a flat roof design, the proposed building would draw attention to itself, appearing as an incongruent feature in the street scene.
6. I acknowledge the existence of the commercial/light industrial properties in the area, including those that are vacant, and some of their design features, such as tall gables fronting Alexandra Road. I also acknowledge that the commercial/light industrial properties on Stanhope Road and the properties on Church Avenue would be part of the context within which the proposed building would be viewed as one travels south along Alexandra Road. However, the residential properties on Alexandra Road would form a significant part of the context. Furthermore, as one travels north down Church Avenue and when viewed from Stanhope Street, the proposed residential building would be seen in its primary context of other residential properties.
7. Within the context of the site's surroundings, I conclude that the proposal would result in a residential development that would be out of keeping with the street scene and consequently harmful to the character and appearance of the area.
8. As such the proposal would not accord with Policy BNE1 of the South Derbyshire Local Plan Part 1 (2016) (LP Part 1), guidance in the South Derbyshire Design Guide: Design Supplementary Planning Document (2017) (SPD), or the design requirements of the National Planning Policy Framework (the Framework). These policies and guidance require, among other things, new development to be well designed, relate to their street context, be sympathetic to local character and contribute to local distinctiveness.

*Living conditions – existing neighbouring occupants*

9. The closest neighbouring dwellings to the proposed building would be those located opposite the site on the eastern side of Alexandra Road, comprising a terrace of 6 two-storey dwellings, made up of 3 pairs of 2, each pair having a different set-back. Although I have not been provided with any evidence regarding the type of rooms served by the windows on the front, western facing elevations of these properties, their design suggests that it is highly likely that there are habitable rooms at both ground and first-floor levels.
10. As well as bathroom windows, the eastern facing elevation of the proposed building includes habitable room windows serving bedrooms on all 3 levels. I

consider that the windows on 4 of the properties opposite, ie Nos 90 to 96, would fall within the splay of vision from the proposed bedroom windows. However, only 2 of the properties, ie Nos 94 and 96, would be directly opposite them. I note that Nos 94 and 96 are set-back further from the pavement than the other 4 properties in the terrace. The SPD provides guidelines regarding distances between existing and proposed windows<sup>1</sup>. The distances vary, depending on room types and the guidance advises that other factors need to be considered, such as floor level, the nature of any intervening land and whether or not windows are primary or secondary. For dwellings of 3 or more storeys, greater distances are required to those listed in the table. Although I have not been provided with the resultant distances, and applying the guidance flexibly as advised in the SPD, my observations on site suggest that the proposed bedroom windows on the third-storey would not meet the required standards and would result in an unacceptable level of overlooking. The three-storey design of the proposed building would also harm the outlook from at least Nos 94 and 96.

11. The northern facing elevation of the proposed building would have a secondary lounge/kitchen window on each of the 3 levels. I note that there is a window on the southern facing gable elevation of the apartment block immediately north of the site. I do not know the type of room served by this window. However, should the appeal be allowed a condition could be attached requiring the secondary windows proposed to be obscure-glazed and non-opening, which would ensure privacy levels are maintained for occupants of the neighbouring block of flats.
12. Most of the habitable room windows in the proposed building are located on the western facing elevation. Information submitted by the appellant, which I have no reason to question, suggests that the nearest relevant windows on dwellings on Stanhope Street would be around 50 m away. As such, the proposal would not harm the living conditions of occupants of properties to the west of the site. There are no properties at a distance that would cause any concern beyond the southern boundary of the site.
13. Bearing the above factors in mind, I conclude that the proposal would result in some unacceptable loss of privacy in respect of Nos 90 to 96 Alexandra Road and some unacceptable loss of outlook as regards Nos 94 and 96. Consequently, the proposal would cause harm to the living conditions of existing occupants of Nos 90 to 96 Alexandra Road in respect of privacy and outlook. As such the proposal would not accord with policies SD1 and BNE1 of the LP Part 1 or guidance in the SPD and paragraph 127 of the Framework which, among other things, require development not to have an adverse impact on the amenities of existing occupiers.

### **Other Matters**

14. The appellant has pointed out that the site benefits from previous planning approvals. Although this is the case, the concerns arise from the current proposal primarily due to its design and three-storey height. The appellant also points out that the location of the site is suited to residential development, which I acknowledge is the case. The proposal would support some strands of sustainable development as outlined in the Framework. Thus, the additional housing would provide some social and economic benefits. These

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<sup>1</sup> The Table is provided on P70 of the SPD.



considerations weigh in favour of the proposal. However, neither of them individually or collectively outweighs the considerable harm I have identified in respect of character and appearance of the area and the living conditions of occupants of existing neighbouring properties.

**Conclusion**

15. For the reasons outlined above, I conclude that the appeal is dismissed.

*J Williamson*  
INSPECTOR



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## Appeal Decision

Site visit made on 22 October 2019

by **Stephen Brown MA(Cantab) DipArch RIBA**

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

Decision date: 20<sup>th</sup> January 2020

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**Appeal Ref: APP/F1040/F/18/3215353**

**Lowes House, Lowes Lane, Swarkestone, Derby DE24 8ST**

- The appeal is made under section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeal is by Simon Skominas against a listed building enforcement notice issued by South Derbyshire District Council.
  - The listed building enforcement notice, ref. E/2014/00149, was issued on 5 October 2018.
  - The contravention of listed building control as alleged in the notice is the installation of 13 no. timber double-glazed windows comprising 11 on the front (south) elevation, 1 on the side (west) elevation and 1 on the rear (north) elevation of the Grade II listed building.
  - The requirements of the notice are to:
    - Remove the 13 no. timber double-glazed windows from the building.
    - Replace the windows with timber single-glazed windows in accordance with the schedule attached to the notice as appendix GJR1.LHWS.
  - The period for compliance with the requirements is 24 months.
  - The appeal is made on the grounds set out in section 39(1)(e), (g) and (h) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
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### Decision

1. It is directed that the listed building enforcement notice be varied by:

OMISSION of the requirement to: *Remove the 13 no. timber double-glazed windows from the building;* and,

SUBSTITUTION with the requirements to: *Remove the double-glazed sliding sashes from Windows W1 to W12 inclusive, and remove Window W13 in entirety, all as identified on the drawing attached to the listed building enforcement notice as Appendix 1 and the Window Schedule attached as Appendix GJR1.LHWS.*

OMISSION of the requirement to: *Replace the windows with timber single-glazed windows in accordance with the schedule attached to the notice as appendix GJR1.LHWS;* and,

SUBSTITUTION with the requirement to: *Replace the sliding sashes of Windows W1 to W12 inclusive with single glazed sliding sashes and replace Window W13 in entirety in accordance with the schedule attached to the notice as Appendix GJR1.LHWS.*

Subject to those variations the appeal is allowed insofar as it relates to the sash box frames of Windows W1 to W12 inclusive, and listed building consent is granted for the retention of the sash box frames and replacement of the sliding sashes subject to the following conditions:

- i. Prior to incorporation into the works hereby granted consent, details of the external joinery, which shall be in timber, shall be submitted to and approved in writing by the Local Planning Authority. The details shall include drawings to a minimum scale of 1:5 of the external joinery, including horizontal and vertical sections, precise construction and method of opening. The external joinery shall be constructed in accordance with the approved drawings.
- ii. External joinery shall be in timber and painted to a colour and specification which shall have been previously submitted to and approved in writing by the Local Planning Authority.

The appeal is dismissed and the listed building enforcement notice is upheld as varied, insofar as it relates to the double-glazed sliding sashes of Windows W1 to W12 inclusive and to Window W13, and listed building consent is refused for the retention of the works carried out in contravention of section 9 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.

#### **Preliminary matters**

2. The appeal property is part of a Grade II listed building described as "Lowes Farmhouse and attached farm buildings". I have therefore paid special regard to the desirability of preserving the listed building, its setting, and any features of special architectural or historic interest it possesses, as required under section 16(2) of the Planning (Listed buildings and Conservation Areas) Act 1990 as amended (the Act).
3. The Council have put forward development plan policy regarding protection of heritage assets. However, I should make clear that the development plan is not determinative in listed building, and listed building enforcement cases. Nevertheless, I shall take such policy as indicating the Council's stance on listed building matters.

#### **Background matters**

4. The appeal property stands to the western side of Lowes Lane. I understand it was built in the second half of the 18<sup>th</sup> century as a house with racing stables. The complex of buildings was converted to five separate dwellings following grant of planning permission and listed building consent in 1995<sup>1</sup>. The principal building is essentially L-shaped with relatively minor projections, partially enclosing a central garden area. The appeal property itself comprises most of the east-west leg of the 'L', with the principal elevation facing south towards the garden and entrance drive.
5. The windows subject of the notice comprise the five ground floor windows and 6 first floor windows on the south front, one on the western gable elevation, and one on the northern elevation. Those on the ground floor front are six-over-six sashes, on the first floor they are three-over-six sashes. Window W13, on the north elevation, is a four-over-four sash with the box-frame wholly exposed, a timber lintel and a lead cill.

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<sup>1</sup> Decision notices ref. 9/0595/0100 and 9/0595/0101, dated 2 October 1995

6. A listed building consent application to retain the present windows was refused in 2017<sup>2</sup>. A further application to retain the present sash boxes, replace the double-glazed sashes with 'slim-line' double-glazed units, replace the existing applied timber glazing bars with true glazing bars, and remove the Victorian style horns was refused in 2018<sup>3</sup>.

#### **The appeal on ground (e)**

7. This ground is that listed building consent should be granted for the works alleged to be in breach of listed building control.
8. From my inspection of the appeal property and all that I have read I consider the main issue to be the effect of the unauthorised works on the special interest of the listed building in terms of its character and appearance.
9. The building is a good example of domestic architecture of the latter half of the 18<sup>th</sup> century. The regularly spaced double-hung sash windows, vertically proportioned on the ground floor and almost square on the first floor create a distinctive architectural make-up. The elegantly shaped stone lintels with carved 'keystones' provide restrained decorative elements.
10. The double-glazed windows appear as alien elements within this quite delicate composition. Notably the glass itself is modern, giving highly uniform reflections as compared with what would have been blown glass with a less perfect surface. Furthermore, the two sheets of glazing with separating plastic spacers result in very apparent double reflections, and at close range the spacers themselves are readily apparent. The glazing bars are clearly applied to the faces of the glazing rather than being integral elements supporting individual panes of glass. The bars are relatively wide as compared with a traditionally constructed sash, and the depth is excessive as a result of the internal spacers. Furthermore, externally the bars have little resemblance to the shape of traditional glazing bars with putty, and the internal bars have a somewhat over-elaborate moulding.
11. I consider the double-glazed sashes in all the windows enforced against are incongruous elements in the make-up of the listed building as a result of the modern materials used and their alien appearance.
12. The sash-boxes are essentially of traditional detail, but the Council argue that the original boxes would have been set back from the external wall face and hidden almost entirely in a structural rebate. I saw that the boxes of the replaced windows W1 to W12 are partially concealed but show part of the faces at the jambs and heads. I estimated something slightly less than 50mm at the jambs and 75mm at the heads. The faces of the Window W13 sash-box are entirely exposed.
13. This appears little different from the margins visible in the photograph of one of the single glazed six-over-six ground floor windows taken in July 1994, before the present replacements. The photograph is clearly of a window that had been in position for many years. This very likely pre-dated the listing of Lowes Farmhouse in 1987 only seven years before and would therefore have been a part of the listed building.

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<sup>2</sup> Decision notice ref. 9/2016/1207, dated 23 January 2017.

<sup>3</sup> Decision notice ref. 9/2017/0203, dated 15 February 2018.

14. The Council's arguments about the visibility of the sash-boxes are based to a great extent upon the general historic development of sash windows stemming from the 1709 and 1774 London Building Acts. While this provides an interesting and useful overview of the development of sash window design and indicates the broad type of windows that may have existed in this house, it does little to establish their specific detail. Although I saw an example of quite narrow visible box frame margins in one of the windows of The Stables, this appeared to be unusual rather than the rule, although I appreciate that many of the windows in parts of the complex other than Lowes House have been replaced.
15. The drawing attached to the listed building enforcement notice as Appendix 2 shows a plan detail of the required typical position of the windows in the brick openings. This shows exposed box frame margins that are little different from those of the majority of windows enforced against, or those of the 1994 photograph.
16. Overall, the evidence before me indicates it is likely the sash boxes of windows existing prior to listing were little different from those of the majority of the replacement windows, with the exception of W13 on the north elevation, which I understand was a casement window. I consider the existing sash boxes do not cause significant harm to the special interest of the listed building in terms of character and appearance. However, as I have found above the double-glazed sashes themselves cause significant harm to the special interest of the listed building. I also consider that the entirety of Window W13 is an incongruous feature.
17. The appellant has proposed that the double-glazed sashes should be replaced with painted timber single glazed sashes in accordance with the Council's specification set out in the listed building enforcement notice, but that the existing box frames be retained. It appears to me that the existing frames are well constructed and could be retained without significant modification. I consider this suggested approach would maintain the special interest of the listed building.
18. I conclude on ground (e) that it should succeed insofar as it concerns the box frames of windows W1 to W12 inclusive. However, it must fail insofar as it concerns the double-glazed sliding sashes of those windows and as it concerns Window W13. I shall vary the notice to require removal of the double-glazed sliding sashes in W1 to W12 and their replacement with single-glazed sliding sashes, and the removal of Window W13 in its entirety and its replacement with a side hung timber casement with a central horizontal glazing bar.
19. I have found that parts of the works subject of the notice have caused significant harm to the special interest of the listed building, but this must be regarded as less than substantial harm in terms of paragraph 196 of the National Planning Policy Framework. Such harm should be weighed against the public benefits of the proposal, including securing the optimum viable use. Lowes House is clearly in its optimum viable use as a dwelling. However, the unlawful works carried out provide no significant public benefits. I do not therefore find the harm caused by the unauthorised works to be outweighed by such matters.

### **The appeal on ground (g)**

20. This ground is that the requirements of the listed building enforcement notice exceed what is necessary for restoring the building to its condition before the works were carried out. Since I have found that the appeal succeeds in part on ground (e), in a manner proposed by the appellant, there is no need for me to go on to consider ground (g).

### **The appeal on ground (h)**

21. This ground is that the period specified in the notice as the period within which any step required by the notice is to be taken falls short of what should reasonably be allowed. The appellant argues that the extent of the works – which might include removal of sections of masonry and internal finishes and subsequent re-decoration in all affected rooms – would probably entail a long lead time and period for execution of the works. Furthermore, personal and financial problems severely restrict his ability to carry out the works within the 2 years allowed by the notice.
22. Regarding the extent of required works, the partial success on ground (e) will result in a significant reduction in the time needed. I consider the 24-month period stated in the notice would be quite adequate. Similarly, the reduction in extent of works will also mean a significant reduction in cost. The present situation of continuing harm to the significance of the listed building should be brought to a close within a reasonable period. The appellant appears to be a resourceful man, and I consider two years would be adequate to arrange finance and for the required works to be organised and executed. The appeal on ground (h) therefore fails.

### **Conclusions**

23. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant listed building consent for one part of the matter subject of the notice, but otherwise I will uphold the listed building enforcement notice with variations and refuse to grant planning permission on the other part.

*Stephen Brown*

INSPECTOR



<b>REPORT TO:</b>	<b>Planning Committee</b>	<b>AGENDA ITEM: 6</b>
<b>DATE OF MEETING:</b>	<b>4<sup>th</sup> February 2020</b>	<b>CATEGORY: Delegated</b>
<b>REPORT FROM:</b>	<b>Strategic Director Service Delivery</b>	<b>OPEN</b>
<b>MEMBERS' CONTACT POINT:</b>	<b>Chris Nash ext. 5926 <a href="mailto:chris.nash@southderbyshire.gov.uk">chris.nash@southderbyshire.gov.uk</a></b>	<b>DOC:</b>
<b>SUBJECT:</b>	<b>SECTION 106 PLANNING OBLIGATIONS FOR BOULTON MOOR PHASE 2 (BM2)</b>	<b>REF: 9/2016/0166</b>
<b>WARD(S) AFFECTED:</b>	<b>Aston</b>	<b>TERMS OF REFERENCE:</b>

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## **1.0 Recommendations**

- 1.1 That the Committee agree the planning obligations set out in this report, delegating authority to the Head of Planning and Strategic Housing to agree the finer detail and wording of the obligations to be secured by way of a Section 106 (s106) agreement.

## **2.0 Purpose of Report**

- 2.1 To consider and agree the broad detail of planning obligations.

## **3.0 Detail**

- 3.1 A planning application for the erection of up to 550 dwellings along with primary school, open space, drainage facilities and infrastructure was presented to Committee on 26 November 2019 where it was resolved to grant permission, subject to conditions and s106 agreement, but only after a further report to agree the planning obligations which would be secured under the agreement.
- 3.2 The main concerns raised by the Committee focussed on the request, at the meeting, to move the bus service obligation to a condition. This is discussed below, but in the interests of clarity and to ensure the Committee are fully appraised of the intended overall 'package', the report covers all the obligations to be secured.
- 3.3 As the application is in outline for up to 550 dwellings, it is not possible to provide exact figures at this point in time, as the calculations will depend on the number of dwellings provided, the number of bedrooms and, in terms of open space, the precise level of on-site provision. For the purposes of this report and so to illustrate estimates of contributions, where necessary, the following housing mix, reflecting the most recently approved phase on Boulton Moor Phase 1 (BM1), is applied:

1-bed	2-bed	3-bed	4+ bed
16 dwellings	151 dwellings	281 dwellings	102 dwellings

## **4.0 Planning Assessment**

### **Education**

- 4.1 The County Education Authority has indicated that the site would be served, at primary level, by the school to be constructed upon it. This is presently funded in so far as a one-form entry by BM1. It is requested that BM2 makes a proportionate contribution to allow the school to be extended to a two-form entry. Based on 550 dwellings, a total of £1,849,346.40 is required. This would be provided as payments upon commencement of each phase, proportionate to the number of dwellings in that phase.
- 4.2 As for secondary school provision, Noel-Baker School in the City is projected to be unable to accommodate children from BM2. Based on 550 dwellings, a sum of £3,009,272.86 is requested, to be put towards the provision of 83 secondary places and 33 post-16 places at the new South Derbyshire secondary school, off Infinity Park Way at Chellaston. This would be provided as payments upon commencement of each phase, proportionate to the number of dwellings in that phase.

### **Healthcare**

- 4.3 The CCG are presently working towards a southern Derby strategy for healthcare provision which makes it difficult for them to commit extensive funds from s106 to a particular site or project at this time. There is no doubt, however, that the development would have an unacceptable impact on nearby practices without mitigation being secured.
- 4.4 The CCG has a multiplier of £480.00 per dwelling, resulting in a total of £264,000.00 being required, based on 550 dwellings. This would be provided as payments upon commencement of each phase, proportionate to the number of dwellings in that phase.

### **Built facilities**

- 4.5 It was reported in November that built facilities contribution of £122.80 per bedroom would be directed towards the construction of the new swimming pool complex at Moorways in the city. As an approximate calculation using the indicative housing mix at §3.3 above, this results in a sum of £192,673.20, with this paid upon commencement of each phase, proportionate to the number of dwellings in that phase.

### **Outdoor sports facilities**

- 4.6 Again, the site would function as an urban extension to the city. BM1 is to provide some outdoor sports provision, but BM2 would increase demand over and above that provision. The contribution of £220.00 per bedroom would be put towards improvements to the cricket pavilion at Elvaston Cricket Club as well as either improvement to the outdoor sports provision at Chellaston Park or a shared facility at the new secondary school at Infinity Park Way.

- 4.7 Using the indicative housing mix at §3.3 above, this results in a sum of £345,180.00, with this paid upon commencement of each phase, proportionate to the number of dwellings in that phase. Provision would be made within the agreement to allocate a proportionate 'sub' split of the total amount as these projects progress towards the detailed stage, with it likely that timescales for delivery such projects mean one may receive funding over the other earlier on during the construction phase.

#### Open space provision

- 4.8 As noted in the November report, the Council's s106 guidance sets out the need for 25.4 sqm of public open space (POS) per bedroom created. Using the indicative housing mix, this equates to around 3.99 hectares. This would not include land which is fettered or not publicly accessible (i.e. swales and ponds, or 'closed off' landscaping buffers). The s106 would also require at least 2 Locally Equipped Areas for Play (LEAPs), applying the 400m walkability standard in the Design SPD, and a NEAP with Multi Use Games Area (MUGA) to meet the 800-1000m standards. Local Areas for Play (LAPs) should also be provided in addition.
- 4.9 The POS, LAPs, LEAPs and NEAP provision will however need to be considered in the context of what is proposed on Snelsmoor Grange (site to the west in the city) and BM1. A mechanism is therefore to be included to ensure that any shortfall in POS would be chargeable at a rate of £373 for each 25.4 sqm the on-site provision is deficient, with these sums directed towards improvements at Elvaston Country Park. As an approximate calculation using the indicative housing mix at §3.3 above and if the on-site provision were deficient by 15%, this results in a contribution of £87,785.55.

#### Bus service

- 4.10 BM1 is to be served by a bus service operating at frequent intervals. This service is to be extended through the BM2 and Snelsmoor Grange (SG) sites to offer sustainable modes of transport to the residents and public at large. Presently, the BM1 service is to be delivered by way of financial contributions to the City Council, who is then charged with securing an operator. A perpetuation of this process is considered less than ideal for all parties concerned as it could lead to delay in facilitating the service through BM2 and beyond. As indicated verbally at the November meeting, it is now proposed to require the developer to deliver the service through directly engaging the service provider under a Service Level Agreement. Thus, the proposed additional condition to those listed in the November report would read:

*31. Prior to the occupation of the 100th dwelling on the site, the developer shall enter into a minimum Service Level Agreement (SLA) with an operator to deliver a bus frequency of at least two buses per hour Monday to Saturday (6am-7pm) and an hourly off-peak service (Monday-Saturday 6pm-11pm and Sunday 9am-11pm). This SLA shall be submitted to and approved in writing by the Local Planning Authority and include a route map of the service to be provided, the length of the SLA and the maximum value of the bus service. The service, as set out in the approved SLA, shall be in operation prior to the occupation of the 250th dwelling and shall provide a service for all dwellings with a maximum 400 metre footway walk distance. Prior to the occupation of the 600th dwelling on the site or the 1000th dwelling across the BM2 and SG developments combined, whichever is the earliest, the frequency of the service shall be increased to three buses per hour on-peak, unless patronage assessments directly provided by the*

*bus operator to both the Local Planning Authority and Derby City Planning Authority, show that an increased frequency would not be viable and that this is subsequently agree in writing by the Local Planning Authority. The service shall provide for all dwellings within a maximum 400 metre footway walk distance.*

- 4.11 Accordingly, it is not proposed to use a planning obligation to secure the service, with this approach aligning with the NPPF in that conditions should be used in preference to obligations where possible.

#### Affordable housing

- 4.12 As set out in the November report, the level of on-site provision in BM1 to date against the general needs arising in part of the District mean that 100% on-site provision is not presently ideal. A 50:50 split between on-site provision and a financial contribution is sought to enable delivery of affordable housing elsewhere within the administrative area of the Council.
- 4.13 The on-site provision would be informed by the Strategic Housing Market Assessment through application of policy H21 of the Local Plan at the reserved matters stage. However, as with BM1, flexibility would be applied to allow some phases to deliver a higher or lower proportion of affordable housing in that phase, as well as variance in the mix, subject to the overall provision across the site meeting the required need (i.e. 15% overall provision with 40% shared ownership (consisting of an equal split of two and three bedroomed houses) and 60% affordable/social rent (comprising 10% one-bed houses, 40% two-bed houses, 6% two-bed wheelchair accessible bungalows including level access shower, 36% three-bed houses and 8% four-bed houses). The usual restrictions on clustering of affordable houses (no more than 10 houses or 6 flats) would apply, in accordance with the Affordable Housing SPD. Homes should also meet the Nationally Prescribed Space Standards.
- 4.14 The off-site contribution would be calculated at the time of submission of the reserved matters, noting that calculating the contribution based on current market and affordable values and build costs would fail to account for market conditions which might prevail at the time the phase progresses (i.e. this could be up to 7 years after the date the agreement is signed). Such a calculation would be made with reference to the District Valuer, following the same methodology recently deployed on sites elsewhere in the District.
- 4.15 For example, if an indicative market value of £210 per sq ft is applied, alongside an average size of 950 sq ft per dwelling and build costs of £139 per sq ft (inclusive of 15% allowance for externals), a contribution of £55,560.75 per dwelling is achieved. At 15% of 550 dwellings, this would secure a contribution of circa £4.5m across the site as a whole. Members should be conscious these are not absolute figures which would be enshrined in the s106 – instead the formula leading to this contribution would be included.
- 4.16 It is intended that the contribution have a ten-year period for allocation/spend and be paid in three tranches per phase; first payment at 50% occupancy, second at 75% occupancy and the final at 85%.
- 4.17 Further provision is intended, as with existing s106 agreements, to allow a financial cascade in case a registered provider (RP) cannot be secured and that the provider is a not-for-profit organisation, or the Council. An Affordable Housing Statement and

Affordable Housing Scheme would be required for approval in writing prior to commencement of each relevant phase.

#### Monitoring fees

- 4.18 In line with the amended CIL Regulations, it is intended to include a monitoring fee given the site would require frequent monitoring from the commencement of development through to its completion. This would span a number of years, requiring monitoring of build rates on site and triggering of thresholds in the s106 agreement, as well as the associated administration and communication with interested parties. Following benchmarking of the costs associated, it is intended this be set at £7,500.
- 4.19 The County Council also required a monitoring fee related to the Travel Plan. This would require monitoring over a 5-year period. The amount to be required is £5,000 with this paid upon the commencement of the development.

#### Other matters

- 4.20 As noted in the November report, the off-site highway improvements would be secured by condition, as would the provision of adequate sustainable drainage systems (SuDS) on the site itself. The wording of these conditions, at the time of writing, is yet to be finalised through agreement delegated to the chair of the Planning Committee and Head of Planning and Strategic Housing. However, the draft drainage condition is proposed to capture all management requirements of the SuDS meaning the s106 only need address the arrangements for the transfer of the SuDS to the Council or statutory body, or to a management company:

*13. No construction of a building or hard surface, setting of site levels or installation of drainage services/utilities within a phase or sub-phase shall take place until a detailed design of, and associated management and maintenance plan for, surface water drainage of the phase or sub-phase, in accordance with Defra non-statutory technical standards for sustainable drainage systems, has been submitted to and approved in writing by the Local Planning Authority. The scheme shall demonstrate that, as a minimum, suitable capacity is proposed to attenuate peak flows from the phase or sub-phase, making allowance for climate change and urban creep, and where necessary include measures to capture overland flows between proposed and existing properties. The scheme shall also include drawings and details, including the colour and appearance of safety railings, of all inlet and outfall structures to attenuation ponds, as well as details of any management company, responsible person(s), the mechanism of funding of the management company (including the details of any proposed service charge payable by the owners of the dwellings, justification for any amount proposed and the mechanism for calculating future increases in the service charge) so that the management company will be capable of carrying out the inspection, management and maintenance of the retained surface water drainage features. The surface water drainage infrastructure shall be installed in conformity with the approved details prior to the first occupation/use of each respective building/road/hard surface served by the surface water drainage system within that phase or sub-phase or in accordance with a phasing plan first submitted to and approved in writing by the Local Planning Authority. Those elements of the surface water drainage system not adopted by a statutory undertaker shall thereafter be maintained and managed in accordance with the approved management and maintenance plan.*

- 4.21 The clawback periods for the obligations would generally be set at 5 years from the receipt of payment of the balance of the overall sum due for that obligation. There



would be exceptions to this for affordable housing and the built facilities sums where the projects are likely to require further time to acquire match funding, etc.

## **5.0 Conclusions**

- 5.1 The obligations set out above are proposed so to ensure the impacts of the development are appropriately mitigated where conditions cannot serve the same function. The obligations also secure benefits of the development as advanced as part of the application, such as affordable housing provision.
- 5.2 Whilst a draft s106 agreement is under preparation, further negotiations will be required to agree the final wording relating to each of the above matters. However, considerable work has already taken place such that the above discussion broadly summarises the obligations which would be secured.

## **6.0 Financial Implications**

- 6.1 The endorsement of the above recommendation would ensure that Corporate projects relating to sport and recreation, and affordable housing delivery, would be supported. It would also support the City and County authorities in their statutory duties.
- 6.2 The securing of a s106 agreement brings about a need for monitoring its provisions. The CIL Regulations support the imposition of a monitoring fee to fund such monitoring, with this fee set out in the report above.

## **7.0 Corporate Implications**

- 7.1 Approval of the recommendation set out above would: support the delivery of the planned housing allocation made within the Local Plan Part 1 (LP1) in a timely manner and in a co-ordinated approach with Derby City Council and Derbyshire County Council; contributing towards the key aims of the Corporate Plan of improving the environment across the District and enhancing its attractiveness, tackling climate change, and supporting economic growth and infrastructure.

## **8.0 Community Implications**

- 8.1 The principle of development has been established under both allocation in the Local Plan Part 1 and the planning application linked to the s106 agreement discussed above. Both have been consulted on several times and were considered through either a public examination process or by the Planning Committee in November 2019.
- 8.2 By securing the obligations set out, the communities created and impacted upon would be able to access suitable education, healthcare and recreation facilities, as well as access affordable housing.

## **9.0 Background Information**

- a. Report of the Strategic Director (Service Delivery) (November 2019)
- b. Section 106 – A Guide for Developers (2010)



