

Report of the Strategic Director (Service Delivery)

Section 1: Planning Applications

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

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.

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

1. The issues of fact raised by the 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.

Glossary of terms

The following reports will often abbreviate commonly used terms. For ease of reference, the most common are listed below:

LP1	Local Plan Part 1
LP2	Local Plan Part 2
NP	Neighbourhood Plan
SPD	Supplementary Planning Document
SPG	Supplementary Planning Guidance
PPG	Planning Practice Guidance
NPPF	National Planning Policy Framework
NDG	National Design Guide
SHMA	Strategic Housing Market Assessment
SHELAA	Strategic Housing and Employment Land Availability Assessment
s106	Section 106 (Agreement)
CIL	Community Infrastructure Levy
EIA	Environmental Impact Assessment
AA	Appropriate Assessment (under the Habitat Regulations)
CPO	Compulsory Purchase Order
CACS	Conservation Area Character Statement
HER	Historic Environment Record
LCA	Landscape Character Area
LCT	Landscape Character Type
LNR	Local Nature Reserve
LWS	Local Wildlife Site (pLWS = Potential LWS)
SAC	Special Area of Conservation
SSSI	Site of Special Scientific Interest
TPO	Tree Preservation Order
PRoW	Public Right of Way
POS	Public Open Space
LAP	Local Area for Play
LEAP	Local Equipped Area for Play
NEAP	Neighbourhood Equipped Area for Play
SuDS	Sustainable Drainage System
LRN	Local Road Network (County Council controlled roads)
SRN	Strategic Road Network (Trunk roads and motorways)
DAS	Design and Access Statement
ES	Environmental Statement (under the EIA Regulations)
FRA	Flood Risk Assessment
GCN	Great Crested Newt(s)
LVIA	Landscape and Visual Impact Assessment
TA	Transport Assessment
CCG	(NHS) Clinical Commissioning Group
CHA	County Highway Authority
DCC	Derbyshire County Council
DWT	Derbyshire Wildlife Trust
EA	Environment Agency
EHO	Environmental Health Officer
LEP	(D2N2) Local Enterprise Partnership
LLFA	Lead Local Flood Authority
NFC	National Forest Company
STW	Severn Trent Water Ltd

Item No. 1.1

Ref. No. [DMPA/2020/0059](#)

Valid date: 21/07/2020

Applicant: S Singh

Agent: Mark Reynolds
Mark Reynolds Architect Ltd

Proposal: **Change of use from dwelling (use class C3) to a large House in Multiple Occupation (HMO) (sui generis use) and minor alterations to building at 14 Doles Lane, Findern, Derby, DE65 6AX**

Ward: Willington and Findern

Reason for committee determination

This item is presented to the Committee at the request of Councillor Ford as local concern has been expressed about a particular issue, and because the recommendation is contrary to the advice of the Highway Authority.

Site Description

The property is a two storey property which historically has been a dwellinghouse. It also formed part of the land owned by the former Archway Motors garage business, and was identified in 2004 as being part of the offices and reception area. It also has been used as a residential building. The access into the site is still owned by the former garage premises, and there are rights of access into and out of the site.

The two storey part of the 'L' shaped building sits very close to the back of the carriageway. There is no formal footpath on the eastern side of the street. The building has its origins in the Victorian era. It is brick built and finished in painted white. It has a fairly unattractive flat roofed garage building adjacent to the southern boundary. The double garage contains steps up to a flat roofed area with a parapet ledge around the outer edge. The building is also attached to another dwelling, which has a smaller cottage style building situated behind this. This area is not part of this application.

The disused car sales business has two vehicular entrances around a low brick wall along the front boundary. At one time it would have had some petrol pumps, but more recently was a car showroom and has a number of ancillary outbuildings for former workshops and other car related uses. This is currently vacant, and for sale, with a number of possible options for redevelopment that could come forward at a future date.

There is a grade II residential property which sits to the north of the site, the other side of another vehicular access to properties to the east of the site. There is good tree and shrub cover between the two properties. There is a pedestrian access to the north side of the property accessed via a pedestrian gate off the carriageway. The site is fenced off with post and rail fencing.

The proposal

The proposal is to change the use of the dwellinghouse at 14 Doles Lane into a seven-bedroom House in Multiple Occupation (HMO). As it is more than a 6 person use, it falls within the large HMO use category - a sui generis use. The parking layout would be the same as existing, comprising two garage spaces and three parking spaces shown at 90 degrees off the area which contains the access through to the other buildings on the larger garage site.

In terms of the layout, three bedrooms are located on the ground floor, and four on the first floor with two of the larger existing rooms sub-divided. The only external physical changes to the building are two new obscurely glazed en-suite windows on the east elevation at ground and first floor level.

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South Derbyshire District Council. LA 100019461. 2014

Applicant's supporting information

The applicant considers that the additional one person within the property would have no material impact on the highway network. HMOs tend to have lower rates of car ownership than a large family dwelling. It is claimed that the DLCC Residential Car Parking Research (2007), which determines car ownership against the number of rooms within a dwelling, states that an 8-bedroom dwelling generally has a car parking need of 1.7-2.1 spaces. The applicant's scheme achieves this with three spaces. It also allows for motorcycle parking and bicycle storage in the garages.

The site is within walking distance of the village centre and facilities like the Post Office, newsagents and amenities, and public transport, thus reducing the dependence on private transport. Potential occupants who are car owners would also likely be discouraged from occupying the premises if there is not sufficient off street parking.

The existing access is available for use via the right of way to the rest of the site which is owned as part of the former Archway Motors site.

Relevant planning history

There is no relevant planning history for this particular part of the former garage site. There were previously a number of planning applications for various related applications when Archways Motors was in use.

Responses to consultations and publicity

The County Highway Authority notes that the access to the site is adjacent to the existing garage which is part of the application site. The access is severely substandard. They consider that the majority of occupants would own a car and the change of use would result in an increase in the number of vehicle movements generated from the site, as well as increase demand for parking. In the event of spaces being full occupants are likely to park on Doles Lane. Whilst it would be difficult to sustain a refusal reason on the grounds of on-street parking being detrimental to highway safety, the Highway Authority considers that the use of the access to 14 Doles Lane would be contrary to the best interests of highway safety and, as such, recommends refusal of the proposal on the basis that the increase in the use of the access onto the classified road, which is severely substandard in terms of visibility, is contrary to the best interest of highway safety.

The Environmental Health Officer has no objection to the proposal.

Findern Parish Council objects on the following grounds:-

- a) the conversion seems to be over development and out of keeping with other houses in the vicinity;
- b) there are 8 bedrooms within the property with two people per room;
- c) the plans show double rooms which could means more than 7 people in the property, and parking provision would therefore be inadequate;
- d) any visitors are likely to park on the lane; and
- e) on road parking is a problem, and any on-street parking would lead to congestion.

8 objections and comments have been received, along with representation from the owners of the adjacent Archway Motors site, raising the following concerns:

- a) there is limited parking for this property, and conversion to a HMO would result in an increase in parking in the village and volume of traffic;
- b) further on-street parking would be detrimental to the village as inappropriate parking creates hazards and traffic congestion;
- c) Doles Lane is a bus route and there is concern about parking and cars exiting from the property;
- d) some on-street parking is conducted by nearby businesses;
- e) Archway Motors used to have a one way system as vision is poor due to the presence of the garage building;

- f) the HMO is unsuitable for the village, and there could be up to 13/14 individuals in the property;
- g) access could be blocked to the adjacent property and residents could not manoeuvre adequately to leave in a forward gear;
- h) privacy would be affected if cars are parked outside the neighbour's property;
- i) visibility out of the site is poor due to the presence of the garage building limiting visibility to the north;
- j) how the bins will be emptied and collected;
- k) additional vehicles are likely to cause additional noise disturbance;
- l) the use of the proposed roof terrace would result in loss of privacy to a bedroom opposite the site;
- m) there would be overlooking and loss of privacy to the adjacent property attached to this site;
- n) the site could be used for a family home or change of use to a pub;
- o) there is concern over who could live in the property, and this could affect property values and people's safety;
- p) consideration needs to be given to this proposal in the light of the potential re-development of the adjacent site and a possible new access into the Archway Motors site;
- q) the internal rooms are of inadequate size to accommodate the proposed bedrooms;
- r) the garden size is inadequate; and
- s) assurance should be given that there would not be a issue with noise with the party wall with the attached property.

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); H1 (Settlement Hierarchy); H20 (Housing Balance); SD1 (Amenity and Environmental Quality); SD3 (Sustainable Water Supply, Drainage and Sewerage Infrastructure); BNE1 (Design Excellence) and INF2 (Sustainable Transport); and
- Local Plan Part 2 (LP2): Policy SDT1 (Settlement Boundaries and Development).

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 residential use at the site;
- The effect of the proposal on the character and appearance of the street scene;
- The effect of the proposal on the residential amenity of nearby occupiers; and
- The effect of proposal on the highway network.

Planning assessment

The principle of residential use at the site

The property was originally constructed as a dwellinghouse. It seems from the evidence of the use of the property, and the adjacent site, that it was subsumed into the use of the garage site, as there is evidence of the property being used as offices and a reception area. It has also more recently been considered as a dwelling in its own right. It may therefore have had a dual use.

In essence, the principle of re-use for residential dwellings within the village, in a sustainable location, is considered acceptable. The proposal would add to the variety of housing types within the settlement, and it is not considered that the proposal would result in an imbalance in the mix of house types within the village or have a material detrimental impact on the balance of the community. The proposal is considered to comply with policies H1 and H20.

The effect of the proposal on the character and appearance of the street scene

The proposed change of use of the building would have no material impact on the external appearance of the building. There is only a small change in the external appearance by virtue of the insertion of two obscurely glazed en-suite windows on the inner eastern side. On this basis, the proposal has a neutral effect on its impact on the street scene. It is possible that with the re-use of this under-utilised building, it could be improved by virtue of repainting and some cosmetic enhancements. The proposal is considered to comply with policy BNE1.

The effect of the proposal on the residential amenity of nearby occupiers

Objections have been received in terms of the impact on residential amenity of nearby occupiers. In terms of the use of the building, it is referenced that the roof terrace could be used and views could be had to houses opposite resulting in detrimental impact. As described above, this roof terrace is already there and could be used now. In any event, the views to houses in Doles Lane would have no more impact than the current situation. There are existing views from the first floor of the existing house. Houses on the western side of Doles Lane are also set higher, so there is less of an issue in terms of overlooking or overbearing impact on residential amenity of nearby neighbours. It is not considered reasonable to withhold permission or restrict use of the proposal based on views towards the front rooms of dwellings opposite the site.

It is not considered the use would result in any harmful impacts by virtue of noise or disturbance to the adjacent occupier at 16 Doles Lane as a result of the use of the property. There is a proposed pedestrian access to the north of the building, but there is no intention or indication that this would be used by residents to park cars here, as the access is provided for other dwellings and is outside the site boundary. Any vehicles parked on private land would be a civil matter.

The proposed development abuts another residential property and shares a party wall. There are no proposed physical changes along this boundary, and there would be no detrimental effect on this property from the two new en-suite bathroom windows which are obscurely glazed and face a blank brick wall.

Details of the bin storage would need to be considered by the applicant - whether this is likely to be a larger communal bin, or several smaller bins. The applicant would need to ensure that gated access is wide enough to present the bin to the curtilage of the property ready for collection. It is not considered that this is a significant issue and can be controlled through on-site management of the property. There is no objection to the proposal from the Environmental Health Officer.

Objection has been raised about the size of the rooms and the garden space. The Council does not have adopted minimum standards for these matters and each case is assessed on its merits. For the purposes of a HMO, internal spaces are considered appropriate and there is considered to be adequate outdoor space for the residents to enjoy.

No objection has been raised by the Environmental Health Officer.

It is concluded that there would be no material detrimental impacts upon nearby residential amenity sufficient to refuse the proposal. The proposal would therefore comply with policy SD1.

The effect of proposal on the highway network

The access into the site and the proposed parking provision would result in no physical changes over the existing situation. The application site boundary includes land outside of the ownership of the applicant, and notice has been served appropriately on that owner. That joint access to the south of the building would allow access to the parking in front of the building for the three spaces as shown on the submitted plan and leads to access to the rest of the former Archway Motors site.

The garage site is up for sale and has potential for redevelopment. It is likely therefore that the area to the south of the application site and the three identified parking spaces would be retained for dual access purposes, to both the car parking spaces for this use, and to commercial buildings on the garage site. The applicant who owns the building, and the open area in front of the building, may need to negotiate with the owner if future redevelopment of the site occurs, as there is a right of access established with the sale of the site. This is a separate matter between the applicant and the adjacent landowner.

This site and the wider garage site have two existing vehicular entrances off Doles Lane. Anecdotal evidence indicates that there was a one way system in place with vehicles exiting at the most southern entrance; however this does mean a quick turn left out of the workshop area in front of the shop building for vehicles exiting the rear ancillary buildings. It is likely that most vehicles would have come straight out to the road without going past the front reception building to turn onto Doles Lane. Vehicles would have exited with care and attention, due to the presence of the garage building limiting views to oncoming traffic to the right, noting the poor visibility to the north.

The site, as it is, could be re-used and re-opened for its approved use, and there would be no controls over the vehicular movements into and out of the site. Even with a redevelopment, it would not be clear how access would be provided and this will depend on the design of any future proposals. This may well provide a betterment and closure of the existing arrangement, addressing the existing concerns relating to the application property, but there is no certainty of that at this time. It is equally possible that the existing access could be retained in some form - not least for the application property, and at the current time this is the 'fallback' position.

The Highway Authority recommends refusal on the basis of an increased use of the access as a result of the development. They acknowledge that the proposal could not be reasonably refused based on the potential of increasing car parking demand on Doles Lane itself.

It is considered that although the garage spaces are shown, these are unlikely to be used for parking. If they are, access to get out of the garage would be difficult if cars are also parked in front of the proposed garden. Equally, the internal dimensions are below current standards meaning that larger cars are unlikely to be parked within. In reality, therefore, the proposed arrangement of 3 car parking spaces in front of the garden would be the optimum use. The garage spaces could, however, serve occupants with space for a moped or motorcycle, and there is cycle storage. This would add to reducing demand for car parking at the site by facilitating alternative forms of transport.

It must be remembered that there are permitted development rights available to the applicant to change the dwelling from a C3 dwellinghouse use to a C4 HMO for up to 6 residents, irrespective of whether this has already occurred. This is therefore a very strong 'fallback' position which weighs heavily in the assessment of this proposal. The real assessment, therefore, is whether the additional pressure put on the use of the property from a further person brings about a noticeable and material change in the traffic and highway safety implications, and whether this would be so materially detrimental as to result in refusal of the application.

The dwelling could also be used, for example, by a large family who could have 3 to 4 cars in any event (e.g. two parents with one car each and children of driving age also with one car each. In addition, visitors to the property could also bring about further vehicles. This is also a material consideration. A judgement is therefore required to be made as to the impact of the possible differences between the fallback position and the proposed situation.

The applicant has stated that, based on the Government's own figures from the Research Document from 2007, average car demand from an 8-bedroom house is 1.7-2.1 cars per dwelling (by 2026, rising from 1.5-1.8 in 2001). Having considered this claim, this figure relates to urban environments and thus would include a high number of properties used by students or younger professional in cities with good public transport so that there are other, more preferable and convenient, alternatives for transport available and many facilities and services were close to the accommodation. This site is considered to fall within the 'rural' grouping where the appropriate figures (by 2026) is 2.3-2.7 cars per dwelling. Even then, these figures indicate that the proposed provision of 3 spaces would be appropriate to cope with the demand arising from a HMO for 7 residents. Further analysis of the same information also shows that 74% of occupiers of single room flats (the nearest comparable to the proposal) do not own a vehicle, whilst just 1% own two vehicles or more.

Parking at the site is also likely to be self-policing (i.e. prospective tenants with cars would perhaps not consider the premises appropriate without allocated parking). The site is located close to public amenities and services so occupants can travel further afield without a car. The bus service into Derby is considerate adequate, with an hourly service, and a less regular service runs 5 times a week. Findern is overall identified as a local centre and a Local Service Village. It is therefore a sustainable settlement.

Objections have been raised with regard to double beds being shown on the plans within each room. This has been done on the basis that the rooms can accommodate a double bed, and that even single adults prefer double beds to single beds. This is no indication that there would be two people per room and, given the above assessment, it would be possible to impose a condition to limit the maximum number of residents. This has been tested at a number of appeal decisions in the last few years, including a decision in Newbury earlier in the year where there was a limit of 7 persons imposed. Inspectors have therefore assessed this issue on a number of occasions. Some have dealt with this by identifying the number of persons within the description of development, and some have imposed a condition limiting the number. On this basis, it is considered reasonable to impose the condition as it can be enforced.

The view of the Highway Authority to recommend refusal of the proposal is understandable. Nevertheless, the increase in traffic is likely to be less than significant and given the historic use of the site, and the fallback position of the use of the access for significant numbers of vehicles at the adjacent commercial site; the increase would result in a fraction of the potential vehicular use of the site. There is no evidence of accidents recorded at this location. The presence of the garage building adjacent to the access acts as a natural speed restriction when exiting the site for users of the on-site parking spaces, but it is recognised this would not likely to change the habits of those drivers coming along Doles Lane from the north. Nevertheless, cars at this point are travelling within the urban area and are likely to be travelling at speeds well below 30mph, and travelling uphill making braking shorter if necessary, noting the close presence of buildings and vehicular entrances on their left, and the presence of the garage.

The NPPF states that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network is severe. Policy INF2 has a similar approach in more detail. Whilst acknowledging the views of the Highway Authority and local concern, it is not considered that there would be a sufficiently material detrimental impact on the safe operation of the highway network to sustain a reason for refusal on highway grounds as a result of, what is essentially, an additional occupancy of one person. The historical use and fallback position of this access also weigh into this consideration. On this basis, the proposal is considered to comply with policy INF2.

Conclusion

The principle for re-use for residential development is considered to be acceptable. The physical changes would be negligible. There would not be material detrimental impacts on residential amenity. Whilst there is the potential for negligible detrimental impacts on highway safety, these are not considered sufficiently material to refuse the proposal given permitted development rights, the historic use of the access and the potential for former use(s) to recommence.

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

Approve 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 Site Plan, Floor Plans and Elevations drawing No. 50357-2019-S3-03B received 10th January 2020 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. The tenancy of the property shall be limited to a maximum occupancy of 7 tenanted persons at any one time. No other persons shall reside in the property as their main or secondary place of residence, other than on a short term emergency basis.

Reason: In order to limit the occupancy of the dwelling in the interests of highway safety and residential amenity.

4. The 3 car parking spaces shown on the layout plan shall be provided prior to first occupation of the development hereby approved and be retained and made available for use by the residents of the development for the purposes of parking vehicles throughout the lifetime of the development.

Reason: To ensure the retention of the spaces in the interests of highway safety.

5. The new windows to the en-suite on the eastern side of the building shall be fitting with obscure glazing and thereafter retained as such throughout the lifetime of the development.

Reason: To reduce the impact on the residential amenity of the adjacent property.

Item No. 1.2

Ref. No. [DMOT/2020/0987](#)

Valid date: 11/09/2020

Applicant: Dave Barratt

Agent: Steve Manning
Fairview Arborists Ltd

Proposal: The felling of a sycamore tree covered by South Derbyshire District Council Tree Preservation Order no. 130 at 61 Bretby Hollow, Newhall, Swadlincote, DE11 0UE

Ward: Newhall and Stanton

Reason for committee determination

This item is presented at the request of Councillor Richards, the Committee asked to debate the issues in this case, which are very finely balanced.

Site Description

This is a large modern housing estate situation (houses some 20+ years old). The property in question is detached, its rear garden (the site of the tree) backing onto the longer established houses/gardens on Thorn Tree Lane.

The proposal

The proposal is to fell the tree.

Applicant's supporting information

The supporting [Tree Report](#) states the tree dominates the majority of the garden and is unbalanced, its companion having been removed sometime in the past. The report continues that the tree has a number of cavities in some of the large limbs which have signs of decay and could potentially fail and that the tree takes a lot of light from the house and garden. The applicant has offered to plant a new tree of more suitable species, this tree seen to have outgrown its space.

Relevant planning history

The TPO was made in 1996 around the time this estate was built; the reason given to protect the trees being they provide relief to the otherwise built up nature of the surrounding area. The order appears to show there were four protected sycamores in this garden originally; this however is the last remaining one of the four.

2018/0743: Pruning of sycamore. Approved September 2018.

2017/0845: Felling of sycamore tree. Refused September 2017 and dismissed at appeal April 2018.

2012/0697: Pruning of sycamore to rebalance crown. Approved October 2012.

2011/0659: Pruning of 2 sycamores. Approved October 2011.

Responses to consultations and publicity

Three neighbour comments have been received, one in support to fell, two objecting:

- a) I fully support this application to fell this tree as it limits daylight to my property and causes many young sycamore trees to grow in the garden;
- b) I am saddened and disappointed that once again a tree preservation order is being questioned;
- c) The tree was there before the house, and we should embrace the spirit and the principles of the Tree preservation Order;
- d) I will appeal if the tree preservation is order overruled and the tree is felled;

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- e) We are against the felling, all the trees on this housing estate were well-established mature trees when Bloors were allowed to build on the fields;
- f) Surely the people who purchased the properties understood that the trees would grow;
- g) We campaigned to get preservation orders on several trees on Bretby Hollow this being one of them;
- h) We all know the importance that trees play in the environment also this area is classed as being in the National Forest so surely we should be saving trees not felling them;
- i) Last year this tree was pollarded and no mention of any decay was made;
- j) We feel this tree may have become an expensive feature in the garden because of the need to pollard;
- k) Naturally the bird population rely on these trees, we have the Green Woodpecker, Owls, British Buzzards and many other common birds that nest around the area;
- l) We have a very large old Oak tree next to our boundary which also takes a lot of our garden and at the moment we have a lawn full of acorns as yet we haven't asked the council to come and fell it.

Relevant policy, guidance and/or legislation

The relevant Development Plan policies are:

- Local Plan Part 1 (LP1): BNE4; and
- Local Plan Part 2 (LP2): BNE7.

The relevant national policy and guidance is:

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

The relevant legislation is:

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

Planning considerations

In taking account of the submitted documents and individual site circumstances, the main issues central to the determination of this application is whether the proposed works are appropriate, given the protected status of the tree.

Planning assessment

The felling of this tree has been considered on a number of occasions before, most recently April 2018, where the Planning Inspectorate dismissed the request to fell, opining at that time that the tree appeared to have no major defects and no readily visible evidence of disease or decay and that its removal would leave a significant gap which it would take some time for any replacement tree to mature and fill, concluding that the loss of the tree would result in significant harm being caused to the character and appearance of the area.

Back to the present, it is the view of the Council's Tree Officer that other options should be explored before felling and that the arborist's report offers only limited information in that regard, indeed the primary reason for felling (signs of decay) is not supported by any great weight of scientific evidence, more an informed observation.

Policy BNE4 of the Local Plan Part 1 and policy BNE7 of the Local Plan Part 2 seeks to preserve trees of notable standing in the local landscape; their felling only agreed to when properly substantiated. To think differently would undermine the special status these trees deserve.

It should be noted the tree has been regularly assessed and the owner has carried out regular upkeep/maintenance of it. It should also be noted other trees that have been allowed to be removed

here have had significant die back present in their respective crowns and that die back is not present here or offered as a further reason for refusal.

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

Refuse for the following reason:

1. This sycamore tree is a prominent landscape feature in an area and makes a positive contribution to the visual amenity of the area; indeed as recently as 2018, the Planning Inspectorate opined that the loss of the tree would result in significant harm being caused to the character and appearance of the area.

Policies BNE4 of the Local Plan Part 1 and BNE7 of the Local Plan Part 2 seeks to preserve trees of notable standing in the local landscape unless the reasons for work (felling in this instance) can be properly substantiated; in short a TPO tree should only be removed in exceptional circumstances. The lack of proper substantiated evidence (in the form of a scientific report or similar) here is a significant concern thus to allow its removal notwithstanding, would undermine the principle of the TPO and put other similar local trees unnecessarily at risk. To that end, the application is contrary to the provisions of those current policies and guidance of the National Planning Policy Framework (NPPF) which adds weight to protecting and enhancing valued landscapes.

Item No. 1.3

Ref. No. [9/2018/1378](#)

Valid Date: 10/01/2019

Applicant: Mr Tim Shone
Melbourne Sporting Partnership

Proposal: **The creation of 3no. artificial grass tennis courts with 3m high perimeter fencing at The Melbourne Sports Pavilion, Cockshut Lane, Melbourne, Derby**

Ward: Melbourne

The application was deferred at the meeting on 16 April 2019, for the applicant to investigate the provision of additional parking at the site. Changes to the body of the report are in italics.

Reason for committee determination

This item is presented to Committee because the Council is associated with the Melbourne Sporting Partnership (MSP).

Site Description

The site lies to the north-western corner of the playing fields immediately adjacent to existing tennis courts. There are dwellings to north and one on the opposite side of Cockshut Lane.

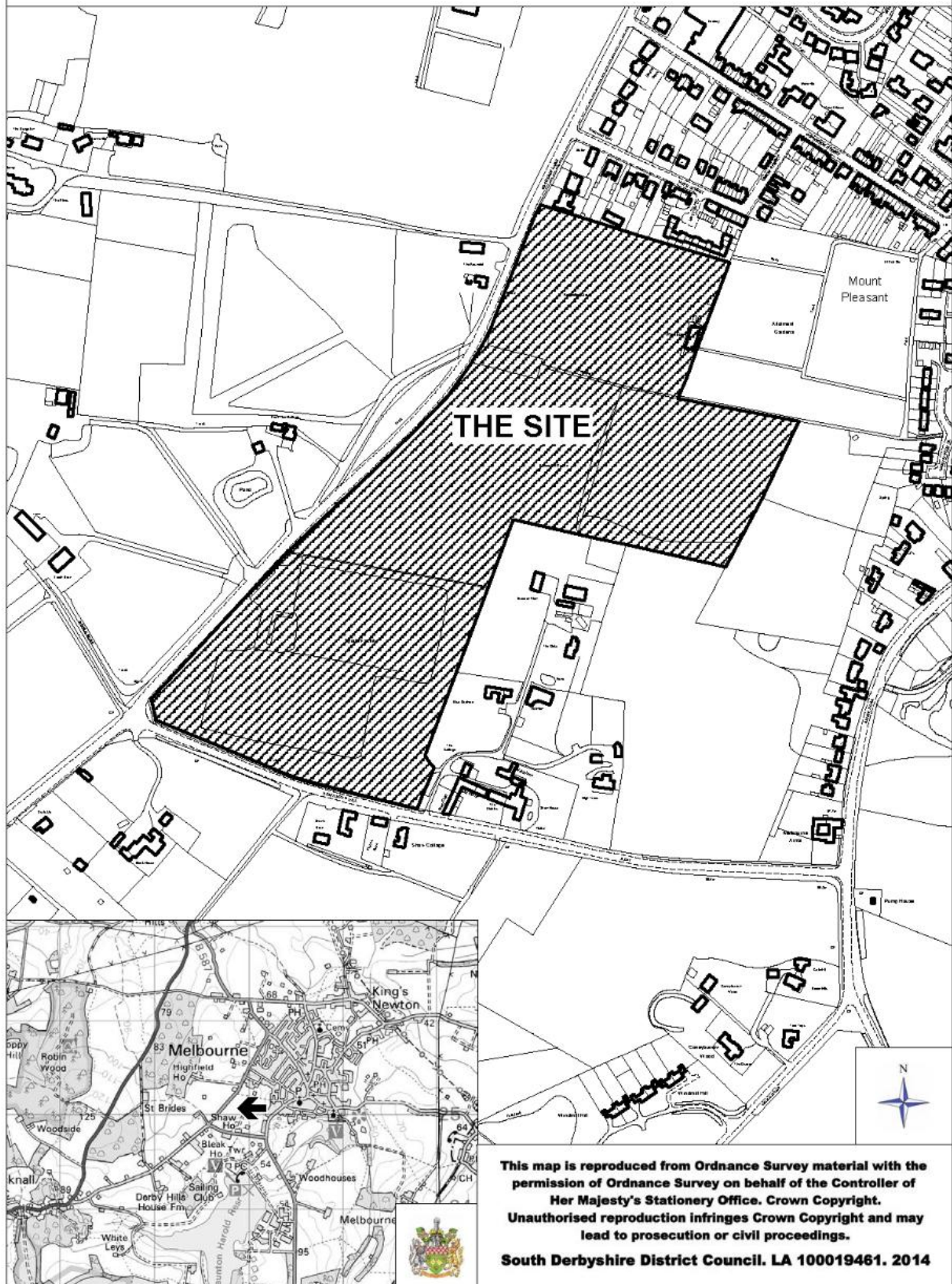
Proposal

The application proposes three all artificial grass courts with 3m high perimeter fencing, coloured green. There are two trees to the north of the application site but within the playing fields and the application indicates that these will be protected by deployment of a cellular mesh construction over the roots. A Tree Survey has informed the extent and nature of the measures. No floodlighting is proposed.

Applicant's Supporting Information

- The sports ground is run by the MSP Management Committee, a partnership of the multi sports using the sports ground.
- The proposal does not seek to change the current use of the sports ground.
- At peak times all courts are full, players have to wait to play.
- Since opening the tennis court usage has grown to its current level, to the extent that additional courts are required to avoid the overcrowded organised juniors, school and adult coaching sessions and reduce court waiting times for players.
- Evidence is supplied to demonstrate existing overcrowding of the facility.
- The 3 proposed additional courts back onto the existing courts with an access gate between the two sets of courts. This would facilitate coaching/lesson coordination, use for school – supervision etc
- The surface would be “synthetic grass” on a sand blinding, porous macadam subbase, which is proven to be a better surface for both juniors (truer bounce and faster surface) but more importantly does not cause as much trauma to the joints. It would allow some of the club's existing players suffering from conditions such as arthritis, rheumatism etc. to enjoy more playing time; current members/players age range 4 years to 84 years.
- The two existing trees would be retained and protected. The proposal would not damage the trees.

9/2018/1378 - Melbourne Sports Pavilion, Cockshut Lane, Melbourne, Derby
DE73 8DG



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- The existing car parking area on the site was formed to serve the sports field including a facility on the same site area as this proposal. There would be no increase in numbers of people using the site. Membership numbers are capped at the current level.
- *The reconfigured car parking area adjacent to the all Weather AGP Football pitch now provides 53 parking spaces*
- *The tennis courts would be located in lieu of bowling green which was part of the original planning approval at the Melbourne Sports Park, thus reducing the car parking requirement.*

Planning History

Redevelopment of the playing fields was permitted under planning permission 9/2011/0910 (amended by 9/2013/0458). The application site was identified in those permissions as an area for a bowling green.

Responses to Consultations

The Environmental Health Manager has no objection on the basis of acceptable impacts on the local area.

Derbyshire Wildlife Trust has no objection subject to a condition relating to nesting birds in the Lombardy Poplars.

Responses to Publicity

Melbourne Civic Society has no objection.

Objections have been received from four neighbours on the following grounds:

- a) There would be increased noise and disturbance, and loss of privacy due to the close proximity of neighbouring dwellings.
- b) The existing playing fields and clubhouse generate unacceptable noise 7 days a week.
- c) Any floodlighting would be a nuisance.
- d) Existing parking is inadequate and vehicles park in the road causing danger to pedestrians.
- e) The existing courts are not used to their full potential so need is questioned.
- f) Existing drainage is inadequate and the area becomes waterlogged. This could impact on neighbouring property.
- g) The benefits of the development would not outweigh the adverse impacts on neighbours.
- h) Adjoining property values would be diminished.

Development Plan Policies

The relevant policies are:

- Local Plan Part 1 2016 (LP1): BNE1 (Design) BNE4 (Landscape) S2 (Presumption in Favour of Sustainable Development), SD1 (Amenity), SD2 (Flood Risk), SD3 (Sustainable Drainage) INF 2 (Highway Safety and parking) and INF9 (Open Space, Sport and Recreation).
- Local Plan Part 2 2017 (LP2): BNE7 (Trees)

Emerging Policies

The relevant policies are:

- Melbourne Neighbourhood Development Plan (NDP): No relevant policies to date.

National Guidance

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

Planning Considerations

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

- The principle;
- Impact on the amenities of neighbours;
- Drainage and flooding;
- Trees;
- Visual impact; *and*
- *Parking*

Planning Assessment

The principle

Policy INF9 seeks to provide sufficient high-quality recreation facilities to meet the needs of new development and, where possible, to meet the needs of the existing population. The principle of the use of the site for sport and recreation is long established and while the recent permissions for re-development of the playing fields indicate a bowling green, the provision of tennis courts supports the policy objective to enhance facilities at Cockshut Lane.

Impact on the amenities of neighbours

The proposal would bring sporting activity closer to neighbours. However the hours of use of the new courts would be no longer than the remainder of the playing fields. The Environmental Health Manager has considered noise and does not feel that neighbours would experience unreasonable impacts. The nearest part of the new tennis courts would be some 7-8 metres away from neighbouring boundaries and there would be no significant overlooking. As such the proposal satisfies the requirements of Policy SD1 to avoid adverse impacts on existing occupiers.

Drainage and flooding

The proposal does not specify how surface water would be disposed of. Drainage issues have been identified across the site and MSP has submitted an application for the laying of a new surface water drainage system (application ref: 9/2019/0271) which proposes to mitigate known drainage issues and to facilitate enhanced infrastructure to the MSP playing fields. Policies SD2 & SD3 encourage any developments that could lead to changes in surface water flows or increase flood risk to be managed through the incorporation of Sustainable Drainage Systems (SUDS), which mimic natural drainage patterns, unless this is not technically feasible, or where it can be demonstrated that ground conditions are unsuitable for such measures. *The new surface water system (9/2019/0271) is in the process of implementation and the applicant has also provided information in respect of an independent soakaway scheme. Nevertheless,* a pre-commencement condition is necessary in order to comply with the aforementioned policies, requiring a scheme for surface water drainage to be submitted for approval, along with a program for implementation.

Trees

The submitted tree survey identifies the root protection areas (RPA) of the two trees to the north of the site. It proposes the installation of a root protection system which would adequately safeguard the trees in conformity with Policy BNE7.

Visual Impact

The main visual impact would arise from the perimeter fencing, which would be seen from road above the existing boundary hedges. Nevertheless it would, visually be a lightweight mesh construction similar to the existing adjacent tennis courts and would not adversely affect the general character of the area of the surrounding countryside in accordance with Policies BNE1 & BNE4.

Parking

Since last reported to the Committee, the parking area adjacent to the all-weather pitch has been upgraded with a hard surface and parking bays marked out. This has yielded a net increase of 3 no. spaces in this area along with a more convenient and attractive area for parking all year round. The area next to the rugby pitches is temporarily unavailable, being in use as the contractor's compound for drainage works to undertaken, following which the car park will be reinstated and made available for its designated purpose.

The applicant asserts that if the bowling green were to be brought into use on the site of the proposed courts, the demand on parking could be greater. This is a reasonable argument; on its own merits the proposal would not increase demand for parking at the MSP facility.

Other

The condition suggested by the DWT is not necessary as it would duplicate existing statutory protection afforded to nesting birds.

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

Approve permission subject to the following conditions:

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

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

2. The development hereby permitted shall be carried out in accordance with drawing nos. MSP 02 & MSP 03, and the tree protection measures detailed in Document Ref: MSP 04 submitted with the application, 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.

3. Development shall not begin until details of a surface water drainage scheme for the site, which shall include a program for implementation, has been submitted to and approved in writing by the Local Planning Authority. The scheme shall subsequently be implemented in accordance with the approved details and program.

Reason: To prevent increased risk of flooding, acknowledging that there is a concurrent proposal to provide mitigation for known drainage issues and to facilitate enhanced infrastructure to the MSP playing fields, such that it is essential to be able to provide adequate drainage at the outset.

4. The tennis courts shall not be used for any other sporting activity other than tennis without prior written approval from the Local Planning Authority.

Reason: To prevent uses on the tennis courts which could result in excessive noise.

5. The tennis courts hereby permitted shall not be used from 9:30 pm until 8.00 am the following day, unless as may otherwise be agreed in writing with the Local Planning Authority.

Reason: To ensure that the use does not prejudice the enjoyment by neighbouring occupiers of their properties.