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Date: 15 September 2020

Dear Councillor,

**Planning Committee**

A Meeting of the **Planning Committee** will be a **Virtual Committee**, held via Microsoft Teams on **Tuesday, 22 September 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 receive the Open Minutes of the following Meetings:  
  
30th June 2020 **4 - 10**
- 3** To note any declarations of interest arising from any items on the Agenda
- 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) **11 - 99**
- 6** SECTION 106 INTERPRETATION AT PARK ROAD, NEWHALL **100 - 103**
- 7** SECTION 106 VARIATION AT ACRESFORD ROAD, OVERSEAL **104 - 105**
- 8** LAND AT SK2531 3702, LUCAS LANE, HILTON, DERBY **106 - 108**

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

- 9** 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.
- 10** To receive the Exempt Minutes of the following Meetings:  
30th June 2020
- 11** To receive any Exempt questions by Members of the Council pursuant to Council procedure Rule No. 11.



PLANNING COMMITTEE

30<sup>th</sup> June 2020

**PRESENT:-**

**Conservative Group**

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

**Labour Group**

Councillors Dr Pearson, Richards (substituting for Councillor Gee) Shepherd, Southerd and Tilley

PL/01 **APOLOGIES**

Apologies for absence were received from Councillor Gee (Conservative Group)

PL/02 **DECLARATIONS OF INTEREST**

It was noted that Councillor Ford declared that Items PL/05 and PL/08 to be of personal interest by virtue of being a County Councillor and would leave the Chamber prior to the Item PL/08 being discussed.

PL/03 **QUESTIONS BY MEMBERS OF THE COUNCIL PURSUANT TO COUNCIL PROCEDURE RULE NO.11**

The Committee was informed that no questions from Members of the Council had been received.

**MATTERS DELEGATED TO COMMITTEE**

PL/04 **REPORT OF THE STRATEGIC DIRECTOR (SERVICE DELIVERY)**

The Strategic Director (Service Delivery) submitted reports for consideration and determination by the Committee and presented oral reports to the Meeting to update them as necessary. Consideration was then given thereto and decisions were reached as indicated.

PL/05

**OUTLINE APPLICATION WITH ALL MATTERS RESERVED, EXCEPT FOR PART ACCESS INTO THE SITE FROM MOIRA ROAD, FOR THE RESIDENTIAL DEVELOPMENT OF UP TO 300 DWELLINGS, A LOCAL CENTRE COMPRISING A 1,600SQM FOOD STORE (CLASS A1 USE), 700SQM RESTAURANT/FAST FOOD (CLASS A3 USE) AND 550SQM PUB (CLASS A4 USE), TOGETHER WITH EMPLOYMENT LAND CONSISTING OF 2,000SQM CLASS B1(B) RESEARCH AND DEVELOPMENT AND/OR B1(C) LIGHT INDUSTRIAL USES, 4,000SQM CLASS B2 GENERAL INDUSTRIAL USES AND 8,000SQM CLASS B8 STORAGE AND DISTRIBUTION USES, TOGETHER WITH ACCESS FROM THE WOODVILLE REGENERATION ROUTE (TO BE DELIVERED BY OTHERS), AND PUBLIC OPEN SPACE, LANDSCAPING AND ASSOCIATED DRAINAGE INFRASTRUCTURE ON LAND NORTH OF OCCUPATION LANE (WOODVILLE REGENERATION AREA), WOODVILLE, SWADLINCOTE**

It was reported that Members of the Committee had attend a virtual site visit earlier in the day.

The Planning Delivery Team Leader outlined the application in detail and requested that the Committee considered amendments to condition 12 to include SuDS CIRIA standards.

An Objector attended the Meeting to address the Committee but joined the meeting after the Committee had reached a resolution.

The Applicant's Agent attended the Meeting and addressed Members on this application.

Members raised queries regarding the ponds and SuDs, the lack of affordable housing and asked for clarity regarding the percentage profit. Concern was also raised in respect of additional traffic accessing Moira Road and the Tollgate Island. The Committee was informed that the existing pond would remain in place and finer details would be dealt with a later stage within reserved matters, whilst the proposal would assist in the delivery of the Regeneration Route which would assist in alleviating traffic problems in the area. The Planning Delivery Team Leader added that whilst Homes England funding could not be subject to a planning condition, Homes England had indicated that this site would qualify for funding but planning permission must be granted before funding would be considered. The Planning Delivery Team Leader also confirmed that the profit was modelled at 17.5% as per the national guidance.

Councillor Richards asked if a Community Levy would be placed on these properties. The Planning Delivery Team Leader explained that an obligation will be in place to ensure that any Service Charge in relation to the upkeep of open space and SuDs would be a reasonable one and any increases should be in line with inflation.

Councillor Mrs. Wheelton, raised concern about the impact on wildlife and asked if the Committee could be updated about the Homes England funding. The Planning Delivery Team Leader informed Members that an update could be brought to this Committee and Members were assured that the Wildlife Trust

had informed the application content regarding Biodiversity and that this would be covered through reserved matters and that conditions will be sufficient to ensure the biodiversity gain on this site.

**RESOLVED:**

***That planning permission be granted as recommended in the report of the Strategic Director (Service Delivery), including amendment to condition 12.***

PL/06 **APPROVAL OF RESERVED MATTERS FOR LAYOUT, SCALE, APPEARANCE AND LANDSCAPING OF OUTLINE PERMISSION REF. 9/2015/0218 (FOR THE ERECTION OF 8 NO. DWELLINGS AND ASSOCIATED WORKS) ON LAND AT SK3826 7702 (OFF SMITH AVENUE), MAIN STREET, KINGS NEWTON, DERBY**

It was reported that Members of the Committee had attend a virtual site earlier in the day.

The Planning Delivery Team Leader addressed the Committee outlining the application and pointed out a minor correction to Condition1 which was a plan number error. The Committee was informed that two late representations had been received following the publication of the report. The Planning Delivery Team Leader summarised the project explaining that the site bordered the conservation area and access had been considered in detail. The Committee was then asked to consider landscaping, layout, scale and appearance as well as to take note of the purpose of each turning head and refuse collection point. It was further noted that the proposed new footpath included permissive routes already being walked.

An Objector and the Applicant's Planning Consultant attended the Meeting and addressed Members on this application.

The Planning Delivery Team Leader addressed some issues raised by the speakers and highlighted that the Conservation Officer had scrutinised the application and that the application was policy compliant.

Members raised concerns about the narrow lane to north of the site and the lack of openness from the end of the lane as well as the visibility of the garden wall at plot 8. Clarity was also requested regarding the number of properties that the refuse collection point would service.

The Planning Delivery Team Leader informed the Committee that brick walls are used as they are considered to be long lasting and unlikely to be moved or changed in the future and unfortunately feeling of openness will be limited due to the width of site.

Concerns were raised regarding the use and appearance of the bollards on the site and it was therefore suggested that a Condition be added about the

materials and appearance of the bollards to be worded “*that notwithstanding the plans hereby approved, a revised scheme for provision of bollards shall be submitted to be approved in writing by the Local Authority*”, which would then enable officers to seek the view of the County Highways Authority to ensure that the width for pedestrians is appropriate and to consider the bollards’ appearance.

**RESOLVED:**

***That planning permission be granted as recommended in the report of the Strategic Director (Service Delivery), including amended condition 1 and the additional condition regarding style and position of bollards.***

PL/07 **EMPLOYMENT DEVELOPMENT COMPRISING THE ERECTION OF BUILDINGS TO PROVIDE USES WITHIN B1 AND B2 OF THE USE CLASSES ORDER AND OTHER ASSOCIATED ANCILLARY DEVELOPMENT INCLUDING EXTERNAL ALTERATIONS (TO UNIT D), DEMOLITION OF EXISTING STRUCTURES AND THE RECONFIGURATION OF EXISTING EXTERNAL HARD STANDINGS AND PARKING AREAS ON LAND OFF SINFIN LANE, BARROW UPON TRENT, DERBY**

The Planning Delivery Team Leader highlighted an amendment to condition 14, regarding the Biodiversity Offsetting Scheme. Members were informed that this was an application for industrial economic development which presented a strong business case supported with evidence gleaned from the South Derbyshire Economic Development Strategy and that the proposal would provide job opportunities currently lacking in the area. The Planning Delivery Team Leader added that there were no highway concerns, landscape, biodiversity, amenity or drainage issues that could not be appropriately mitigated through conditions.

An Objector attended the Meeting and addressed Members on this application.

Following concerns raised by the speaker the Planning Delivery Team Leader informed Members that flooding risks will be mitigated through the proposed drainage / storage crate system which controls the outflow from the site into the ditch and has the potential to improve the current situation which is unregulated. The Planning Delivery Team Leader added that the loss of a private view is not a material planning consideration and it was the opinion of Environmental Health that the proposed development is placed far enough away from residential properties that there would not be any demonstrable impact.

Cllr Shepherd asked for clarity regarding the pedestrian refuge improvement, cycle facilities and concern regarding the position of the weight restriction signage on Deep Dale Lane. The Planning Delivery Team Leader informed the Committee that the footpath and pedestrian refuge would be widened and included provision for cyclists and the Highway Authority were responsible for the position of Weight Restriction signage.

Cllr Wheelton asked that we could make sure that the high quality lowland meadow habitat will happen and raised concerns regarding the protection of pond life. The Planning Delivery Team Leader informed the Committee that there will be a detailed management plan for a 15 year period in relation to the site and there is a detailed scheme for dewatering and as part of the proposals there will be toad habitat proposed on the site as it is known that toads are in the vicinity. There is also a Method Statement for removing fish and other pond life that the applicants must adhere to.

**RESOLVED:**

***That planning permission be granted as recommended in the report of the Strategic Director (Service Delivery), including amendment to condition 14 and condition 17 to include a watching brief in relation to the pond drainage.***

Councillor Ford left the Committee Meeting

PL/08 **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**

It was reported that Members of the Committee has attend a virtual site earlier in the day.

The Planning Delivery Team Leader outlined the variation to Condition 1 to include the re-installation of the hedgerow along the boundary to the canal and sought authority to add a condition to allow the retention of low powered decorative lighting and the restriction of any additional lighting in the future.

**RESOLVED:**

***That planning permission be granted as recommended in the report of the Strategic Director (Service Delivery), including amendment to add a condition relating to lighting.***

Councillor Ford re-joined the Committee Meeting

PL/09 **THE RETENTION OF A SEPTIC TANK AND FORMATION OF A VEHICULAR ACCESS TO SERVE TIDDLY FROG BARN, UNNAMED ROAD FROM TWYFORD ROAD TO BUCKFORD LANE, STENSON, DERBY, DE73 7GB**

It was reported that Members of the Committee has attend a virtual site earlier in the day.

The Planning Delivery Team Leader presented this application informing Members that part of track had already installed under temporary Permitted Development Rights and the application seeks retention of that part and for the track it be extended up to Buckford Lane. The applicant is willing to plant trees between the existing and proposed tracks. The Highway Authority has no safety concerns and supports the additional access.



A Supporter on behalf of the Applicant attended the Meeting to address the Committee but lost internet connection and therefore the Planning Delivery Team Lead read out the speaker's statement.

Members supported this application and agreed that the tree planting would be of benefit

***Councillor Brown suspended standard items***

***RESOLVED:***

***Contrary to the recommendation in the report of the Strategic Director (Service Delivery), planning permission was granted subject to conditions in relation to approved plans and planting and species of trees.***

## PL/10 **PLANNING AND OTHER APPEALS**

The Committee noted the planning appeal decisions in relation to the following applications/enforcement cases:

9/2018/0911	Dish Lane, Sutton on the Hill	Hilton	Dismissed	Delegated
9/2019/0583	The Castle Way, Willington	Willington & Findern	Allowed	Committee
9/2019/0651	St. Brides, Stanton by Bridge	Melbourne	Allowed (costs refused)	Delegated
E/2018/00110	Acresford Road, Netherseal	Seales	Upheld with variation to Notice	Delegated

PL/11 **TREE PRESERVATION ORDER 519: LAND NORTH OF SNELSMOOR LANE, BOULTON MOOR, DERBY**

The Planning Delivery Team Leader addressed the Committee explaining that due to Covid-19 this had been carried out under the powers of the Chief Executive and asked the Committee for its endorsement.

**RESOLVED:-**

***That the Committee endorsed the use of emergency powers in confirming this Tree Preservation Order subject to the modifications as set out in the report***

PL/12 **TREE PRESERVATION ORDER 526: PRIMAVERA, TRENT LANE, NEWTON SOLNEY**

The Planning Delivery Team Leader addressed the Committee regarding this Tree Preservation Order.

**RESOLVED:-**

***That the Committee confirmed that the Tree Preservation Order be subject to the modifications set out in the report.***

PL13 **LOCAL GOVERNMENT ACT 1972 (AS AMENDED BY THE LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985)**

**RESOLVED:-**

***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 was 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 paragraphs of Part 1 of the Schedule 12A of the Act indicated in brackets after each item.***

**EXEMPT QUESTIONS BY MEMBERS OF THE COUNCIL PURSUANT TO COUNCIL PROCEDURE RULE No 11.**

***The Committee was informed that no questions had been received.***

The meeting terminated at 7.45 pm.

COUNCILLOR MRS L BROWN

CHAIRMAN

# **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.**

<b>Reference</b>	<b>Item</b>	<b>Place</b>	<b>Ward</b>	<b>Page</b>
DMPA/2020/0592	1.1	Melbourne	Melbourne	13
DMPA/2020/0543	1.2	Mickleover	Etwall	36
DMPA/2020/0422	1.3	Woodville	Woodville / Midway	51
DMPA/2019/1285	1.4	Willington	Willington and Findern	62
DMPA/2019/1288	1.5	Ingleby	Repton	86

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/2020/0592

**Valid date:** 30/06/2020

**Applicant:** Mr Henderson  
Davidsons Developments Ltd &  
Alexander Bruce Estates Ltd

**Agent:** Tom Collins  
nineteen47  
4 Innovate Mews  
Lake View Drive  
Sherwood Park  
Nottingham  
NG15 0EA

**Proposal:** The erection of 46 dwellings including new vehicular and pedestrian access, garages, parking, roads, footpaths, infrastructure, drainage and attenuation/detention basin, footbridge, landscaping and open space on Land at SK3925 1974, Station Road, Melbourne, Derby

**Ward:** Melbourne

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

The item is presented to the Committee at the request of Councillor Fitzpatrick as local concern has been expressed about a particular issue.

#### **Site Description**

The site is located to the eastern side of Melbourne to the south of Station Road and adjacent to the existing Sweet Leys Way development. Overall the site extends to 2.24ha. The site is currently rough grassland, with a 2-3m high hedge forming the site boundary to Station Road. The Carr Brook runs along the south-eastern boundary of the site. A drainage ditch runs along the south-western boundary of the site in-between the site and the development on Sweet Leys Way, with further ditches to the centre of the site and along its north-eastern boundary. The site is a rectangular and slopes to the south east towards the Carr Brook.

The whole site is allocated for residential development within the Local Plan Part 2 under policy H23D and is included within the Melbourne settlement boundary as identified within the Local Plan Part 2.

#### **The proposal**

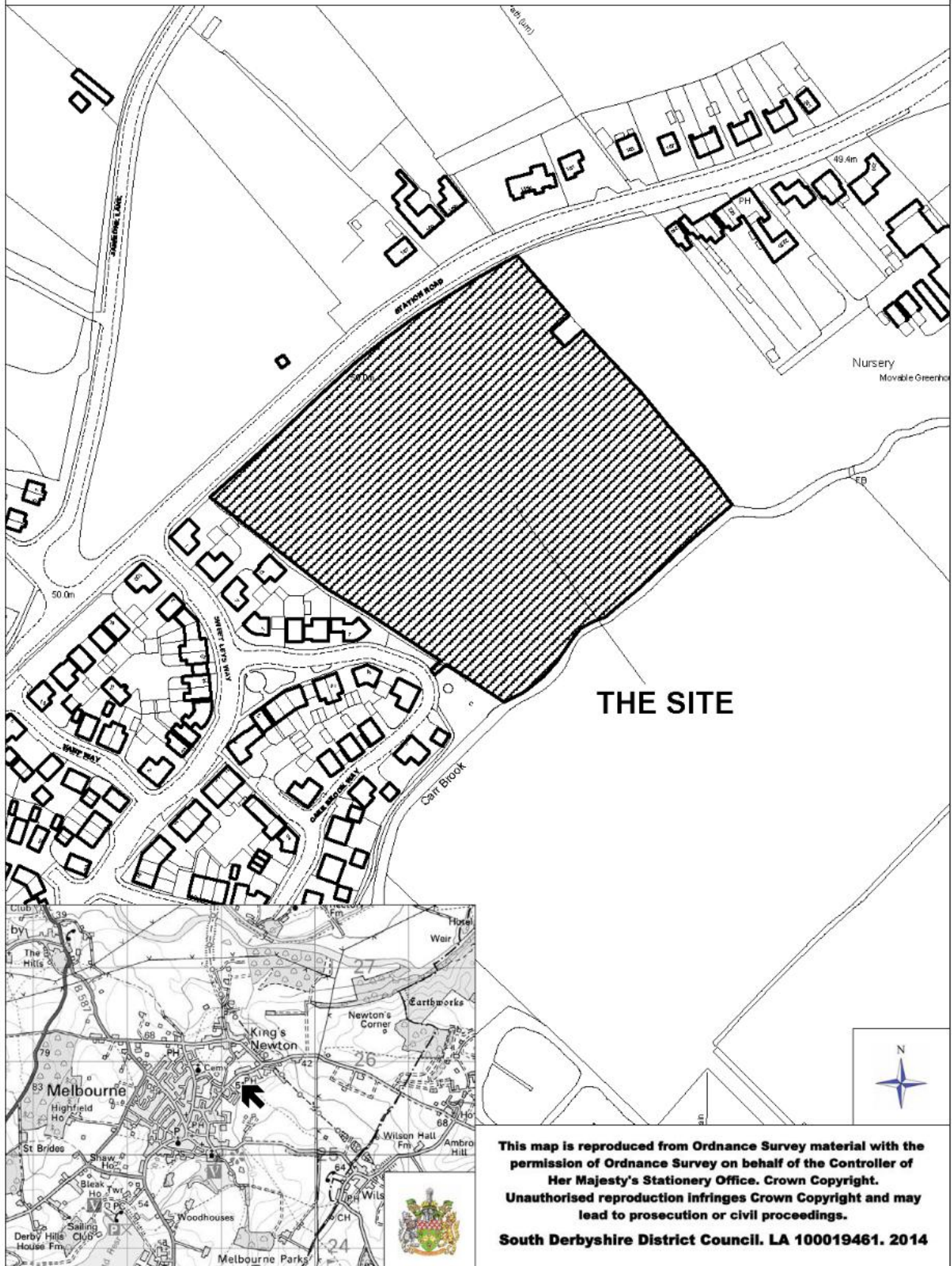
The application proposes the development of the site for 46 dwellings including new vehicular and pedestrian access, garages, parking, roads, footpaths, landscaping and associated infrastructure. The dwellings are proposed on 1.52ha of the site with the remaining 0.72ha made up of open space, surface water attenuation, buffers to the north eastern and south eastern boundaries and the proposed pedestrian links.

A single estate road would serve the development, accessed from Station Road and creating an access point through the existing hedge. The layout is designed to create a 'sense of place' with the creation of a key arrival space facing the site entrance, with a perimeter block form of development providing an active and attractive development. In addition to pedestrian access to Station Road, a footbridge is proposed (and required by policy) linking this development to the existing Sweet Leys Way development (also developed by the applicant).

A mix of adopted highway and private cul-de-sacs are proposed, with a minimum of 2 parking spaces per dwelling provided. Drainage is proposed in the form of a basin to the south-eastern side of the site (at the lowest point of the site) in-between the dwellings and the Carr Brook with an area of POS



**DMPA/2020/0592 - Land at SK3925 1974 Station Road, Melbourne, Derby  
DE73 8LH**



(including a LEAP in the form of a naturally designed 'trim trail') also proposed in this area. Save for the proposed access, the hedgerow to Station Road would be retained, and corridors are proposed along the south-western and north-eastern boundaries to allow for the retention of existing trees and field boundary hedgerows.

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

The Planning Statement sets out a description of the application site and the proposed development outlining the range of benefits that the scheme will deliver including rapid delivery of additional housing in a sustainable location by a local, reputable house builder; provision of a market housing mix which reflects current evidence of housing demand; delivery of affordable housing to meet local needs; creation of a high-quality development in a landscaped setting; provision of public open space; retention and enhancement of key landscape and ecological features within and around the site; economic benefits arising from the construction of the development, with new employment and training opportunities both on the site and in the wider supply chain; and increased local expenditure from the new residents, helping sustain and support local services and facilities. Sections and summaries of the NPPF, PPG and Local Plans are provided in the usual way.

The statement highlights the fact that the principle of development on the site has been established given the site is allocated for residential development in the Local Plan and has previously been granted permission. Davidsons (the applicant) are looking to build upon the success of the adjacent Sweet Leys development and have developed the site proposals based on the following key concepts: the creation of an arrival space within the scheme that takes inspiration from the form of existing spaces of a similar scale within Melbourne; completion of perimeter blocks partially defined against the southern boundary by the adjacent residential area, and the use of a perimeter block formation across the remainder of the scheme; provision of a pedestrian link to the adjacent residential area; provision of buffer zones to allow for the retention of existing trees and boundary hedgerows and to allow for these features to continue to function as ecological corridors; houses addressing Carr Brook and providing natural surveillance to the proposed area of open space; and surface water attenuation at the low point of the site.

The statement goes on to discuss the other submitted supporting statements detailed below. The statement concludes with the planning balance setting out that the principle of development on the site is wholly acceptable, that there would be no significant residual adverse effects arising from the development. The application seeks full planning permission for a very high-quality development in a sustainable and accessible location, with 12 green ratings in the Building for Life assessment contained within the Design and Access Statement. There are no material considerations which indicate that this fully policy-compliant application for residential development on an allocated site should not be approved without delay.

The Design and Access Statement has undertaken an assessment of the character of the surrounding area, including connections to the site, an assessment of local facilities, heritage and landscape. The character of Melbourne is assessed in particular the character of Station Road. The opportunities the site presents and its constraints are identified including assessing the existing site features (Carr Brook, existing hedges and trees, and the sloping nature of the site). The development at 30 dwellings per hectare is considered to make the most efficient use of land whilst also taking into account what is appropriate for the surrounding built and natural environment. Publicly accessible open space is proposed along the Carr Brook which proposes a 'trim trail', and 4-5m wide buffers are proposed to important site boundaries to allow for the retention of existing trees and field boundary hedgerows.

An assessment of access and street hierarchy is undertaken along with identification of key spaces, views and landmark buildings – the key concepts developed are outlined above within the summary of the Planning Statement. In terms of architectural style and visual attractiveness the statement highlights Davidsons' track record of building attractive houses which are informed by traditional house designs at the adjacent Sweet Leys Way development – the same style is utilised across this development which includes a varied architectural character (including Georgian references), varied window and door styles, and varied detailing with high quality materials. Overall, it is maintained that



the proposed development will enhance the character and appearance of the local area and that a distinctive new place will be created which integrates with the high quality built environment that Davidsons have recently delivered adjacent to the site.

The Statement of Community Involvement acknowledges the importance of community consultation and outlines the events it had planned in the community prior to lockdown restrictions as a result of the Covid-19 pandemic. A drop in event was planned at Amalfi White in Melbourne along with a specific meeting with Melbourne Civic Society. Unfortunately both of these events had to be cancelled but an online facility for comments and to view the proposals was developed and details circulated. 6 written representations were received including an email of comment from the Civic Society. The statement responds to the questions and queries raised and notes that the comments received have been largely positive in nature and those requiring points of clarification.

The Noise Assessment was undertaken during lockdown. As a result, residual sound levels were not representative and therefore the usual survey technique was modified to extract robust information on which to base the assessment (agreed with the Council's Environmental Health Manager). The site is affected by aircraft movements to/from East Midlands airport and whilst many passenger flights were not operating at the time of the survey, freight movements were still operating overnight. The site is considered a medium risk site when considered in accordance with guidance. Expert acoustics advice has been sought and good acoustic design processes will be followed to reduce sound levels across the site. The site risk of noise impact under overheating conditions within properties has been considered in accordance with guidance. The assessment results in a medium to high risk of noise impact during the night but subject to mitigation the assessment demonstrates that the site is suitable for residential development subject to the recommendations included in this report and noise need not be a reason to refusal of planning permission.

The Flood Risk Assessment considers the current policy relating to flood risk, including the National Planning Policy Framework and Local Policy from Derbyshire County Council and South Derbyshire District Council including the Preliminary Flood Risk Assessment, Strategic Flood Risk Assessment and the local Flood Risk Management Strategy. The majority of the site is located within Flood Zone 1, with an area of land along the southern boundary located within the edge of the flood plain associated with the Carr Brook watercourse; Flood Zones 2 and 3. The report demonstrates that the proposed development is safe from the identified sources of flood risk and does not increase the flood risk to adjacent people and property the current EA mapping for surface water flood risk indicates that most of the site is at very low risk. An area of surface water flood risk is present in low lying areas along the southern boundary which is consistent with surface water flowing into Carr Brook and the adjacent low lying land. Similarly, there is a potential fluvial/surface water flood risk along the three ditches located on the west and east boundaries and down the middle of the Site. However, development is not proposed within the area most at risk.

A Transport Statement has been submitted in support of the development and details that the site will be accessed via a new priority-controlled T-junction on Station Road. The access junction would be designed to standard with appropriate visibility splays within the public highway. There are opportunities for sustainable travel, proportionate to the scale of the development, including linking in to the existing footway on the southern side of Station Road which enables pedestrian connectivity to the facilities within Melbourne, all of which are within the preferred maximum walking distance of the site. The closest bus stops from the site are on Station Road and are within 100m walking distance from the proposed site access. The bus stops on Station Road provide service to the hourly route from Burton to East Midlands Airport. With regards to the traffic generated by the proposed development, the 46 dwellings would generate up to 27 two-way car trips in a peak hour. This increase would not materially alter the operation or safety of the local highway network. There have been no accidents at the site access between January 2014 and June 2018, and the required visibility in both directions is achievable. Hence, there would be no material capacity or safety impacts because of the development and no mitigation measures are necessary. The statement concludes that safe and suitable access can be achieved by all modes of travel, and the proposed development would not result in a severe impact and the development is acceptable in highway safety terms.

An Archaeological Desk Based Assessment has established that the site does not form a meaningful part of the setting or contribute to the significance of any Scheduled Monuments outside of the site and development within it will therefore have no adverse impacts upon those assets. Data available from Historic England shows that there are no non-designated heritage assets within the proposed development site and no non-designated heritage assets outside of the site are assessed as sensitive to development within the site. Geophysical Survey and Trial Trenching were undertaken on the land immediately adjacent to the site to the south-west of the site in 2008 in support of a planning application for residential development (reference: 9/2006/0305). No significant archaeological remains were identified during these works. Based on the results of the fieldwork undertaken and the archaeological evidence for the site and surrounding area, the study site is considered to have a low/negligible potential for significant (i.e. non-agricultural) remains of all periods.

The Extended Phase 1 Habitat Survey 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. The survey area comprises an area of species-poor semi-improved grassland of low intrinsic nature conservation value. Where features of greater value are present, these are restricted to the boundary features such as hedgerows, trees, the Carr Brook, areas of successional scrub and the field boundary ditches. No evidence of any significant locally rare plants or plant communities within or around the site area surveyed was identified during the survey. The scale of the development proposed will enable a significant part of the field area surveyed close to Carr Brook to remain undisturbed and significant ecological enhancement and habitat creation is being proposed adjacent to the brook and retained field boundary hedgerows and drainage ditches which will potentially be of significant benefit to the local environment. Having considered the proposed development plan provided, it is considered likely that development of the site area surveyed could be carried out in a manner that does not have any significant impact on local biodiversity. It is recommended that prior to any groundwork commencing the working area is inspected by an ecologist to confirm that protected species are absent and that the proposed work does not put at risk any of the boundary features identified as being of potential interest to such species. It is also recommended that as part of landscaping works biodiversity enhancements should be incorporated. Bat boxes, bird nest boxes, hedgehog refugia, and habitat creation should be included within any development proposals.

A Utilities Appraisal confirms that appropriate investigations have been undertaken to establish that connections to the main water, gas, electric and fibre optic cables are all feasible for the site.

### **Relevant planning history**

9/2014/0287: Outline application (all matters except for access to be reserved) for the residential development of 22 dwellings with associated open space and highways works. Approved March 2015. (Phase 1).

9/2015/0119: Outline application (all matters except for access to be reserved) for the erection of 24 dwellings with associated infrastructure and landscaped open space. Approved May 2016. (Phase 2).

9/2017/0524: Phase 1 reserved matters application granted outline permission under (including access) 9/2015/0119 for 17 dwellings. Approved January 2020.

9/2017/0525: Phase 2 reserved matters application granted outline permission (including access) under 9/2014/0287 for 23 dwellings. Approved January 2020.

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

The County Highway Authority has requested clarification on a number of detailed matters relating to the proposed layout but this is acknowledged that the point of access has previously been approved and as such there is no objection in principle to the development. A full response is expected prior to the meeting and this will be reported to members as an update.

They have also commented on the proposals specifically the concerns raised in respect of traffic

speeds and safety on Station Road in particular those raised by Councillor Fitzpatrick and the following is a summary of their detailed response:

Having considered the previous permissions for the development of 46 dwellings on Station Road there is reference to a highways contribution for highway improvements on Station Road of £8,000. However, it is not something that the County asked for and it is not considered that it would be justified to require a new crossing from a development for 46 houses, when it was not requested for the adjacent development which was for considerably more units. Speeding in general is a problem on many roads throughout the County and the Government is trying to address this issue nationally through education.

The County supports this initiative with local campaigns and works in close partnership with the Police to identify other methods of reducing speed. Whilst concerns are appreciated it should be acknowledged that as vehicle ownership rises, so do traffic volumes. This scenario is something that exists on many roads across the county and far outweighs the limited resources the County have available. A system of prioritisation is employed which includes the interrogation of pertinent data, such as the number and severity of collisions which may have occurred at any requested location. This helps to ensure that resources are firstly used in locations where there is the greatest need and where most benefits can be achieved in terms of road safety. Funds must therefore be directed to those roads where there is a history of reported injury collisions and where there is a trend in those collisions which a highway improvement scheme to be identified which would effectively reduce the number of collisions occurring. This use of identifiable known 'hard' facts and figures is a methodology adopted by highway authorities across the country and provides a robust basis and justification for the use of funds. An investigation of the police database for recorded injury collision shows that thankfully there are none recorded for the last three years (the standard assessment period).

The County are very conscious that some residents may perceive this approach as meaning that a death or serious injury has to occur before action will be taken. However, it would be irresponsible of the County to commit funds to a location where few or no injury collisions have occurred, whilst there remain very many other sites with known collision histories, and trends in those collisions, which could be resolved through the introduction of safety measures. Whilst this may appear reactive rather than preventative the County do have a dedicated Road Safety Team where officers work closely with Derbyshire Constabulary on a co-ordinated programme of road safety training, education and publicity campaigns with the objective of raising awareness with the motoring public and reducing road traffic casualties.

The County are also mindful that physical traffic calming, such as road humps, is not universally popular with either motorists or residents. They are often considered a nuisance due to the noise and vibration caused by vehicles passing over them and it is questionable whether residents of properties fronting on to Station Road would be in support of such a 'trade off'. It is therefore important to be able to justify such works that can have a negative effect on emergency vehicles, public transport and local residents alike. However, the County have raised a job to install 'SLOW' carriageway markings on both approaches to the entrance adjacent to Blakemore Avenue on Station Road.

In terms of speeding, this is a general problem on many roads throughout the County and the Government is trying to address this issue nationally through education. This Authority supports this initiative with local campaigns and works in close partnership with the Police to identify other methods of reducing speed. Speeding vehicles is a responsibility of the Police to enforce as the law still classifies such offences as a moving traffic offence and therefore the County under civil parking enforcement powers is unable to address this.

The provision of a formalised crossing requires the site to meet certain criteria, such as volume of pedestrians against time it takes to cross the road, number of recorded injury accidents, as well as many others. This helps to ensure that the significant funds required for such measures are targeted to locations where they are most needed and will be widely used. The County use

a nationally recognised formula known as PV2 as guide criteria, when assessing requests; this seeks to establish traffic flow against the volume of pedestrians crossing the road. In order to meet assessment criteria, and consequently to ensure a new crossing will be well used, the County would be looking for numbers in the region of 1,000 vehicles, with 100 crossing pedestrians, for each of any four hours in the day. It is considered that numbers from the site or in this location are unlikely to be significant enough to attain the levels required.

Other factors are considered during the assessment process, which include the level of difficulty for pedestrians crossing; any facilities within the area; and whether there is an identifiable 'desire line' where pedestrians have a clear need to cross. The recorded injury collision history is also taken into account in regard to pedestrian-related incidents. To provide a pedestrian crossing where footfall is relatively light, can actually prove counter-productive to road safety. Department for Transport advice states that caution should be exercised when considering crossings on roads where pedestrian flows are light for long periods of the day. Drivers become accustomed to not having to stop at the crossing and may begin to ignore its existence. This can increase the risk for pedestrians who make the assumption it is safe to cross and may step out in front of a driver who has ignored/forgotten the crossing.

Given the above, a formal crossing would be something we could look at once the development is complete. Then an assessment could then be carried out to identify if a demand is present that would warrant future consideration of a crossing, be it a refuge (subject to the road width being available), a zebra or even a controlled crossing. It should be noted that even if a demand is proven, it will then be subject to making it onto the definitive scheme list in the future years Capital Programmes. Bearing these points and the above criteria in mind the County cannot recommend any further highway improvement schemes on Station Road at this time.

The County Planning Policy Officer has stated that in terms of primary school provision, analysis of the current and future projected number of pupils on the school role, together with the impact of approved planning applications show that the normal area infant school (Melbourne Infant School) would have sufficient capacity to accommodate the 4 infant pupils arising from the proposed development. The same situation exists for Melbourne Junior School which has capacity to accommodate the 3 infant places arising from the development. On this basis, no contribution is requested towards infant or junior school provision. In relation to Secondary level provision, following an analysis of the current and future projected number of pupils on role (At Chellaston Academy), it has been found that there would not be capacity to accommodate the 7 secondary and 3 post-16 pupils arising from the development. To mitigate against this, a contribution of £265,381.62 has been requested. In terms of the provision of broadband, it is requested that an advisory note be attached to any planning permission to ensure occupants have access to sustainable communications infrastructure.

The Development Control Archaeologist has no objection to the proposed development and considers that the likelihood of there being archaeological interest in the site is not sufficient to require any additional archaeological work.

Derbyshire Wildlife Trust do not anticipate and significant adverse ecological effects as a result of the development. The biodiversity enhancement measures identified are supported and whilst no detailed metric assessment has been undertaken the Trust are of the view that the development should not result in a net loss of biodiversity. Space for management of the boundary hedgerows is welcomed and subject to the imposition of a condition requiring the submission and approval of a construction environmental management plan there are no objections.

Natural England has no comments to make on this application.

The Lead Local Flood Authority has no objection to the proposed development subject to the submission of additional details to be secured by condition. These conditions relate to the submission of a detailed design and management plan for surface water based on the submitted drainage strategy, control of surface water during construction, and the submission of a verification report to ensure the approved scheme is implemented as approved.



The Environment Agency notes that the wider red line boundary does fall within flood zones 2 and 3 (south eastern portion of the site) all development will be located within flood zone 1. Therefore we have no fluvial flood risk concerns associated with the site.

East Midlands Airport (EMA) note that the site is 4.6km from the runway end, greater than 4km from the nearest part of the airport boundary and is very close to the extended EMA runway centreline, and so in a potentially very sensitive location. However, there are no objections subject to the imposition of a number of conditions.

The Environmental Health Officer considers that the key environmental impacts associated with the development are the potential impact of existing noise and impacts on air quality. Overall subject to appropriate conditions requiring compliance with the submitted Noise Assessment and the provision of electric vehicle charging points the proposal is considered to be acceptable in planning policy terms.

The Derby and Derbyshire NHS Clinical Commissioning Group (CCG) has provided a calculation which illustrates that the estimated population of the development would be 115 people. The population figure is subsequently inputted into a formula to establish the health-related requirements associated with the development. This calculation would amount to a sum of £22,080. The response further identifies that the contribution would be invested in enhancing capacity/infrastructure at Chellaston & Melbourne Medical Practice.

Melbourne Parish Council has no objections but requests that S106 funding is provided for the Packhorse Road Chapels.

Melbourne Civic Society have made detailed comments on the application raising the following matters:

- i) They were unimpressed by the previous applications for this site, the layout being 'pedestrian' with unimaginative house designs that won't win any design awards;
- ii) The new plans are even worse: more houses, poorer vernacular house designs and less open space;
- iii) Comments are made on Dr. Kruczkowski's Doctoral dissertation (2018) and the comments about Sweet Leys are a real eye-opener as to the banality of the later stages of that estate - the street elevations will end up looking like nothing else in Melbourne: rows of faux Georgian interspersed with banal garages;
- iv) Affordable housing is to be a poor man's Oddfellows Row shoved out of the way at the bottom of the site, opposite the obligatory Sustainable Drainage ditch and 'trim trail';
- v) The developer should be asked to comply with the requirements of the NPPF to create a visually attractive development as a result of good architecture, layout which is sympathetic to local character, etc. to help raise the standard of design in the area, at least approaching the level that they developed in Phase 1 of Sweet Leys Way. There really isn't a 'sense of place' in this proposal, just another inhuman anonymous estate, designed around the car.
- vi) Lack of a continuation of the strong and attractive street frontage along Station Road. The current proposal doesn't fit the bill in any way, shape or form.
- vii) There's nothing here about the 'eco' features in the houses. We would expect that all new builds in Melbourne should include the use of solar energy, Ground Source Heat Pumps (GSHPs), Mechanical Ventilation with Heat Recovery, Super-Insulated Zero Heat Loss Windows, Electric Vehicle Charging Points, Rainwater Harvesting (RWH);
- viii) In addition, the photograph in the brochure/board mentioning the Melbourne Civic Society is very misleading and does not show members of the Civic Society or our Civic Award.

Following re-consultation on the revised scheme the following additional comments have been made:

- i) Time allowed for commenting on the revised plans is insufficient - an attempt to avoid any proper democratic scrutiny;
- ii) There doesn't seem to be any improvement in the quality of the house type designs which has declined steadily over all the applications on this site. The street scenes are so depressing!

There is little here about ecological features (as we suggested) to be provided in the houses. A serious omission;

- iii) Of the three plots closest to/visible from Station Road, 41 seems to present an ugly blank wall to the road;
- iv) The County Flooding Team comments seemed fairly critical. The SUDS statement seems to be the usual glib assurance that everything will be alright, not questioning the open pond design nor offering any alternatives. The comments referred to a watercourse in the middle of the site, wanting clarification on what will be done - diversion or culvert? We can't see any response to this;
- v) There seem to be several green spaces. Some spaces could be planted as wild flower areas. This may seem foreign to developers who are just accustomed to green sward, but could be cheaper. They do not need to put topsoil on those areas and there's no need to mow as often, just once per year after seed set. Possible sites for this include the areas behind Alfred Drive to south along stream, to north between houses and the areas adjacent to Station Road;
- vi) Will there be any provision at the 'hammer heads' to ensure these remain clear for refuse trucks to turn round?
- vii) There is a nice bridge from the neighbouring estate, and footpaths at lower end of site, but there doesn't seem to be any pedestrian outlet from north side of this development to Station Road. Have we missed something on the plans?
- viii) The Statement of Community Involvement tries to paint the Society in a poor light, as 'not responding' to their request for discussions on consultation and 'late' responses. This is untrue, we did fully respond to the initial consultation but the developer made no effort to correspond with us in writing which would have been the proper thing to do. We do however agree with one of the applicant's chief consultants, who wrote *"Current planning processes place public consultation at the 'back end' of the design process. By the time a planning application is in the public domain, the specification has been set and thereby consultation is largely tokenistic"*.

15 representations of objection have been received raising the following matters:

- a) Enhanced traffic calming on Station Road should be considered as a condition of this development. The speed of traffic is regularly above the speed limit, particularly early morning and evenings. This is undetected by police and local speedway who only survey in daylight hours. Melbourne Industrial Estate also has heavy goods vehicles delivering throughout the day which is intrusive;
- b) If aircraft land over Melbourne, there will be significant noise intrusion on this site from commercial and cargo aircraft throughout the day and night that needs mitigating as part of the development.
- c) Comment on a missing housetype and a preference for the originally proposed single garage on one of the plots;
- d) object to the footpath connection at this blind bend where there are frequent near misses and collisions (including two occasions where ambulances have been called);
- e) Impact of the proposed footpath link on crime and anti-social behaviour;
- f) The footpath is not needed;
- g) If a footpath is necessary then this should be moved closer to the Carr Brook;
- h) The hedgerow at the Westerly boarder of the development (adjacent to Carr Brook Way) is essential to our privacy and must remain, and should be further strengthened on the development side of the brook;
- i) Concern about impact on foul drainage given experience on Sweet Lees;
- j) Concern about the look and appearance of the estate over time due to inappropriate extensions having taken place;
- k) Impact on properties on the opposite side of Station Road;
- l) Retention of the existing hedgerow should be enforced;
- m) The impacts of surface water - given that the water table in the area has risen naturally in recent years;
- n) Concern at lack of public consultation;
- o) Davidsons lack for care for the appearance of dwellings once they move off-site;
- p) Public facilities in Melbourne (schools and doctors) are currently full to capacity;

- q) Impact on traffic on Station Road;
- r) Disappointment raised about the lack of stipulation that 'ditch 3' should be dredged noting that the roadway was flooded in 2016 and 2018 owing to the pipe in to ditch 3 is inadequate.

1 representation in support has been received noting the following:

- a) Support the current plans as they stand including the footbridge which links the new development and Carr Brook Way but only if it is left in its current proposed position. Comments are made on the suitability of alternative positions which are not supported.

Councillor Fitzpatrick has made the following comments on the application:

- 1) Concern at the results of the Melbourne Community Speedwatch volunteer group who have undertaken measurements from the corner of Sweet Leys Way looking back along Station Road out towards the East Midlands Airport. As the road is very straight the straight open road encourages speeding in the area that is planned to be the highway opening onto the new development. 574 minutes of active speedwatch monitoring involved 691 vehicles of which 177 or 26% were speeding at or in excess of the community speedwatch guidelines.
- 2) The Melbourne Community speedwatch team feed our data into the Derbyshire Police Force Crest operation and they have been so concerned with the high % of speeding shown by our data that they have added Station Road onto their own Derbyshire database for sites that must be checked by Police officers. Further along Station Road in the direction of Melbourne Town Centre there is a busy rear entrance to Melbourne Infant and Junior School which serves as the main entrance for all children on the south side of the school (where entrance via Packhorse road would be further away). Children from the Sweet Leys area and any new development at Station Road would undoubtedly use this rear entrance which means they must cross Station Road at least twice per school day. Local residents have very serious concerns about the amount of speeding along Station Road and should the volume of vehicle movements increase with the new development, there are fears that the speeding problem on Station Road and the threat to life that it poses particularly for school children will only get worse. It is strongly suggested that both speed calming measures and a pedestrian crossing are installed on Station Road with the support of potential S106 monies available from the new development to ensure that the potential negative impact on the local community is minimized;
- 3) Concerns have been raised in respect of the need for and/or positioning off the footbridge and footpath; Residents close to this footpath have expressed concerns on the extra footfall that will be brought very close to their properties. There are concerns that the extra footfall will bring noise and disruption and they also fear that the footbridge would make a convenient "get away" route for any persons who might be engaged in crime or anti-social behaviour. Residents further along Carr Brook Way who already have a footpath running to the rear of their properties have also said that the existing path does bring with it some anti-social behaviour and they are keen to ensure that this would not increase with a potential linking of the path on the Sweet Leys development with the new pathway proposed for the Station Road development.
- 4) The Sweet Leys development stands as a testament to how well a new development can compliment the original buildings in a community and its is hoped that the new development on Station Road will bring new people and families into our thriving village. The residents of Carr Brook way are simply asking that the proposed footbridge and footpath should not dilute their quality of life which they enjoy.

### **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); H1 (Settlement Hierarchy); SD1 (Amenity and Environmental Quality); SD2 (Flood Risk); SD3 (Sustainable Water Supply, Drainage and Sewerage Infrastructure); BNE1 (Design Excellence); BNE2 (Heritage); BNE3 (Biodiversity); BNE4 (Landscape Character and Local Distinctiveness); INF1 (Infrastructure and Developer Contributions); INF2 (Sustainable Transport); INF6 (Community Facilities); INF9 (Open Space, Sport and Recreation);

- Local Plan Part 2 (LP2): SDT1 (Settlement Boundaries and Development); H23 (Non-Strategic Housing Allocations); BNE7 (Trees, Woodland and Hedgerows); BNE10 (Heritage).

The relevant local guidance is:

- South Derbyshire Design Guide Supplementary Planning Document (SPD)
- South Derbyshire Affordable Housing SPD (AHSPD)
- Section 106 Agreements – A Guide for Developers (S106SPD)
- Strategic Housing Market Assessment – January 2020 (SHMA)

The relevant national policy and guidance is:

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

## **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;
- Layout and design;
- Highway safety matters; and
- Section 106 contributions

## **Planning assessment**

### The principle of development

Whilst some time ago, Members may recall previous applications for the redevelopment of the site being considered and approved by the Committee as detailed in the planning history above. The principle of development on the site has therefore been established through the granting of the 2014 and 2015 outline permissions. Following these permissions, the site was allocated for residential development in the Local Plan Part 2 adopted in 2017 under policy H23D. The site allocation sets the following site specifics for the development of the site:

- Around 46 dwellings;
- Pedestrian access to be made to the adjacent Sweet Leys Estate;
- Enhance the existing hedgerow boundaries except for access requirements;
- A landscape buffer will be implemented and enhanced to the northern and eastern boundaries of the site; and
- No development within the part of the site subject to flood risk from the Carr Brook.

In addition, in allocating the non-strategic sites identified under policy H23, 6 key considerations are listed. These considerations are: transport impacts – including vehicular access points, visibility, pedestrian and cycle links and impact on the existing road network; impact on the surrounding landscape and/or townscape; management of flood risk and drainage; impact on designated and non-designated heritage assets and settings; biodiversity impacts; and the design and layout to take account of site characteristics. The development of the site for residential purposes of the quantum proposed is considered acceptable. That is, of course, subject to the more detailed considerations outlined above and considered in detail below.

### Layout and design

The layout of the site, has been the subject of detailed negotiations with the applicant and the Council's Design Officer and has resulted in the scheme presented. The amendments have primarily related to small amendments to the site layout and the detailed design of the dwellings proposed and their interaction with key spaces throughout the site.



Vehicular access in to the site from Station Road was considered in detail at the time of the previous approvals and this single access point serves the whole development, which follows the alignment of the access point before reaching a central feature space. The alignment of the proposed dwellings generally follow the principle access road, with private cul-de-sacs proposed off this main access road. POS is proposed along the southern boundary of the site adjacent to the Carr Brook along with the proposed SUDS feature. The POS and SUDS features are located within this area of the site due to its proximity to the Carr Brook and the increased risk of flooding in this area, enabling the development to comply with the requirements of H23D.

In accordance with the requirements of policy H23D the existing hedgerow to Station Road is to be retained save for the approved access point, with the proposed dwellings set behind the hedgerow. The layout fronting Station Road provides for a key dwelling to announce the site access in a similar vein to the adjacent Sweet Leys Way (SLW) estate in mind, with the other dwellings fronting Station Road proposed with hipped roofs to reduce their impact. The built form then loosens to the north east along Station Road and along the eastern boundary of the site as you leave the village with dwellings set well-back behind the hedge (which is set at a higher level than site itself) helping the development to integrate appropriately with the countryside beyond the site and also provide the opportunity for enhancing these boundaries as a landscape buffer required by the policy, which would be subject to a suitably worded landscaping condition.

The dwellings are sited in order to provide an outward facing development, addressing the internal access roads and the areas of proposed POS, such that the layout follows good urban design principles of providing active frontages (including providing dual fronted dwellings rather than blank elevations fronting the street). Generally the development is considered to provide a well spaced and laid out development with space about dwellings to provide an informal layout with pockets of landscaping to the dwelling frontages and in incidental spaces in-between dwellings and the highway including where boundary walls are drawn back from the back of the footway.

This layout provides for a mix of dwelling types and tenures reflecting the needs of the District with those dwellings fronting the main access road proposed with parking in-between them to break up the built frontages and also provide for dwellings rather than cars at prominent areas of the site. A mix of parking solutions assists in reducing the dominance of parked vehicles to private frontages, with a minimum of 2 spaces per dwelling provided for the 2 to 3 bed units and three spaces provided for each of the 4 and 5 bed dwellings proposed. In addition, where parking spaces are proposed adjacent to one another these are separated by a low hedgerow with an extra 0.5m width where the spaces abut a hard boundary (such as the dwellings themselves).

The site contains two ditches (drainage channels) which run north-west to south-east from Station Road down to the Carr Brook, which restrict the developable area of the site and require the provision of easements either side of them create 'green fingers' through the development which provide areas of amenity and biodiversity value through the site and would form part of the Landscape and Ecological Management Plan required. These areas also provide a buffer to the existing Sweet Leys Way (SLW) development. Part of the central ditch would be culverted under the access road and a new ditch provided to the side of plots 35 and 26.

A key driver in the layout of the site and the proposed pedestrian links is to ensure that this development integrates with the existing community and that the drainage channels do not inhibit pedestrian movement between the site and the adjacent SLW. This requirement is enshrined within the requirements of the policy which allocates the site for residential development. The provision and delivery of a bridge between the development and SLW requires the provision of infrastructure on land outside the application site, albeit that the POS within the SLW estate has now been adopted by the Council. To this end it is proposed that the delivery of the bridge is linked to the development through the required Section 106 Agreement. The comments from Councillor Fitzpatrick and residents in respect of the proposed footpath link are noted, the position of the bridge was chosen because it is well overlooked by the frontage of neighbouring properties on SLW and this area benefits from street lighting. In addition, the position and design of dwellings on the development have been laid out and

designed in order to ensure that this route is well overlooked in order to avoid any potential anti-social behaviour.

The quantum of informal and formal POS provided within the site exceeds the requirements of the Section 106 SPD. The design ethos for the POS and play area would be to provide an informal area with natural play features reflecting the sites location close to the countryside beyond, helping to preserve the 'green' feel of this part of the site adjacent to the Carr Brook.

This area of Melbourne, outside the conservation area, is characterised by a mix of dwelling types, sizes and ages resulting in there being no distinctive characteristics of dwellings to directly guide the appearance or scale of the proposed dwellings. The development itself would be visible from Station Road as you leave the village, but is somewhat screened due to it being set lower than Station Road itself and the existing hedgerow along Station Road which is to be retained in a similar vein to the adjacent SLW development.

The house types proposed reflect those characteristic of the more traditional areas of Melbourne (including within the conservation area) and include a variety of ridge and eaves heights, overall designs and mass. The house types themselves are simple in their traditional detailing (reflective of Melbourne itself) with accommodation provided within the roof, eyebrow dormer detailing, simple traditional canopies, and mix of cill and lintel detailing. The mix of house styles and scales helps to create a locally distinctive development which responds to local character whilst providing its own identity. Feature properties set in prominent locations including the key central space where the only 3 storey buildings are proposed provide good reference points in the development with additional windows proposed in side elevations where these front the street to provide good natural surveillance. Whilst the site is set lower than Station Road the site is not flat and the proposals include a number of retaining features which are mostly proposed to the rear of dwellings (central to the perimeter blocks) such that would not be readily discernible.

The appearance and scale of the development is considered to be visually attractive with a locally inspired character – and the success of the adjacent SLW in design terms is testament to the design quality of Davidsons' in-house design team and provides confidence that the scheme would be equally successful. Overall the proposed layout, landscaping and design of the proposed development is considered to be an appropriate response to developing the site taking into account the existing natural features of the site and the surrounding area, and ensuring an attractive development is provided (subject to detailed conditions). The proposal in terms of its layout is therefore considered to comply with the requirements of policies BNE1, BNE3, BNE4, BNE7 and H23D.

### Highway safety matters

Generally by virtue of the sites location within the Key Service Village of Melbourne and its allocation the site is considered to be a sustainable and accessible location, with services, public transport and educational facilities within walking distance or accessible by public transport. A single point of vehicular access is proposed from Station Road and this element takes the same form as was approved by the existing (and implementable) permissions for the site. The proposed access is in the form of a new priority controlled T-junction. The new access includes tying in a new footpath from within the scheme to the existing footpath along the southern side of Station Road.

The internal road layout is generally provided for adoption up to turning heads which will be offered for adoption and is therefore designed to adoptable standard. The layout ensures that service vehicles can enter, manoeuvre and exit the site in a forward gear, with the provision of suitable turning heads. The main access road leads from the new access point to a feature raised junction and has a 5.5m carriageway width with a 2m pavement on either side. The two secondary road off the main access both lead to the edges of the site and the proposed carriageway of these streets narrows down to 5m with a 2m pavement on one side and a grass verge on the other. Several shared private drives serving dwellings at the edge of the site are also proposed.

Different forms of car parking used across the site that work with the different character of streets proposed. On-plot parking to the side of houses, often with a garage allows houses to be located close to the footpath, creating an enclosed street typical of those found in Melbourne. Pockets of front car parking are also evident on the site, used at the edges of the development where streets are single-sided and have a more open character. These car parking arrangements place cars close to dwellings and mean that people can see their car from their home. The number of car parking spaces provided is in line with car parking standards and likely car parking demand. Some visitor car parking has been incorporated through over-provision of allocated on-plot parking to some dwellings and in areas of frontage parking. The proposed street structure defines the basis of a permeable place, with pedestrian movement provided in the context of a 20mph design speed for proposed streets.

The comments received in respect of traffic speeds on Station Road are noted as are requests for crossing facilities to be provided. These matters are addressed in the comments above from the County Highway Traffic & Safety Team and do not need to be repeated here but in concluding their comments the proposal is not considered to justify the provision of a new pedestrian crossing on Station Road. It should also be noted that the policy context and road conditions have not materially changed since the previous approvals and such provision is not an expectation under policy H23D. However, the applicants, in acknowledging residents concerns, propose to carry forward the £8,000 contribution secured on the previous application at the site to be allocated towards highway improvements on Station Road.

### Section 106 contributions

From a planning perspective, there are legal tests for when a s106 agreement can be utilised to secure developer contributions. These are set out in regulations 122 and 123 of the Community Infrastructure Levy (CIL) Regulations 2010, as amended (and within paragraph 56 of the NPPF). The contributions sought must address the specific impacts brought about by the new development. To ensure this, contribution requests must meet the following tests, they must be:

- Necessary to make the development acceptable in planning terms;
- Directly related to the development; and
- Fairly and reasonably related in scale and kind to the development.

Policies INF1, INF6 and H21 expect new residential development to be adequately supported by infrastructure and, where necessary, the impacts mitigated.

In respect of the provision of affordable housing there is a policy requirement for 30% provision on the site, which equates to 14 dwellings in total. The overall mix of affordable dwellings has been amended following negotiations with the Strategic Housing Team and a mix of 2 x 1-bed, 5 x 2-bed, 3 x 3-bed and 1 x 4-bed units for social rent and 2 x 2-bed and 1 x 3-bed units for shared ownership (intermediate) have been secured in order to comply with the requirements of the SHMA.

In terms of open space provision, as the development proposes in excess of 20 dwellings there is a requirements for on and off-site provision. In regard to on-site open space and play facilities, the site provides for areas in excess of that required by the Section 106 guidance and a Locally Equipped Area for Play (LEAP) in the form of a 'trim trail' is proposed. A built facilities contribution would still be required calculated at £122 per person (based on the number of bedrooms proposed) and giving a total of £17,568. Following discussions with the Cultural Services Manager, the current priority in Melbourne is funding towards improvements at Melbourne Assembly Rooms to which the fund will be allocated.

As part of the application, on-site SuDS would be provided. It is unknown at this stage whether the long term management and maintenance of the facilities would be the responsibility of a Local Authority or a private management company. As such an either/or clause along with a maintenance sum would be included within the legal agreement in a similar way to the proposed POS.

A key driver in the layout of the site and the proposed pedestrian links is to ensure that this development integrates with the existing community and that the drainage channels do not inhibit

pedestrian movement between the site and the adjacent Sweet Leys Way (SLW). This requirement is enshrined within the requirements of the policy which allocates the site for residential development. The provision and delivery of a bridge requires the provision of infrastructure on land outside the application site, albeit that the POS within the SLW estate has now been adopted by the Council. To this end it is proposed that the delivery of the bridge is linked to the development through the Section 106 Agreement.

In accordance with the assessment undertaken by the County Education Authority, Melbourne Infant and Junior Schools have sufficient capacity to accommodate the increase in pupil numbers. However, in relation to secondary level education provision, following an analysis of the current and future projected number of pupils on role, the County confirms that there would not be capacity to accommodate the 7 secondary and 3 post-16 pupils arising from the proposed development. To mitigate against this, a contribution of £265,381.62 has been requested. This would go towards expanding facilities at Chellaston Academy.

The CCG has provided a calculation which illustrates that the estimated population of the development would be 115 people. The population figure is subsequently converted to establish the health-related requirements associated with the development, resulting in a sum of £22,080. The response further identifies that the contribution would be invested in enhancing capacity/infrastructure at Chellaston and Melbourne Medical Practice.

As noted above the applicants have confirmed that they are willing to make a contribution of £8,000 towards highway improvements on Station Road. It must be noted however, that such a contribution would not be CIL compliant or justified by the County Highway Authority and as such whilst the contribution would be accepted it cannot be attributed weight in favour of the development in the overall planning balance. A requirement for the funds to be spent within 5 years of the completion of the development is considered reasonable as is a requirement for the payment to be paid prior to the occupation of 10 dwellings on the site.

In addition an obligation of £2,500 would also be sought to cover the Council's section 106 (s106) monitoring costs.

#### Other matters

Flooding/drainage: whilst it is acknowledged there are existing drainage problems in Melbourne particularly in this location the specific requirements of the drainage scheme (both surface and foul) will need to be provided to discharge the relevant imposed conditions. It is known that the applicants have engaged with the Lead Local Flood Authority (LLFA) and Severn Trent Water in order to develop the drainage strategy for the site prior to designing this scheme. In the interim the existing drainage ditches within the site and the Carr Brook itself have been cleared of debris by the applicant in order to alleviate the existing drainage issues in this area as much as possible. The SUDS features are located close to the play area and as such it is important to ensure that the SUDS are appropriately safe and this matter will need to be considered through the discharge of the relevant conditions. The SUDS ponds are positioned adjacent to the Carr Brook in order to function correctly by retaining surface water from the site before it is discharged at an appropriate rate in to the Brook.

Amenity impacts: the site layout due to its separation from the development on SLW, partly as required by the drainage ditch easement has ensured that the impact of the development on existing residents is minimised. The closest direct overlooking potential between the proposed and existing dwellings is well in excess of the Council's adopted standards. Any perceived overlooking or overshadowing is further reduced by existing intervening vegetation along the existing drainage ditch and as such the proposed development is not considered to result in significant overlooking or overshadowing.

Biodiversity: as noted above existing hedgerows and trees on the edge of the development would be retained and managed (subject to conditions). 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, facilities for nesting sparrows and hedgehog shelters and as such the proposal is considered to comply with policy BNE3.

### Overall planning balance and conclusion

The principle of development is firmly in support of the proposed development, the site benefits from an allocation within the Local Plan Part 2 and benefiting from previous (implementable) planning permissions. The development would contribute towards the Council's housing land supply and would provide for 30% affordable housing. As such, the principle of the development is considered acceptable. The many technical matters relating to highway safety, drainage and amenity impacts can be addressed or mitigated for by way of condition. The development would see the retention and enhancement of features of nature conservation value such to achieve a net gain in biodiversity.

To address the impacts of the development on the local infrastructure and services, a range of developer contributions have been requested. The detail of these have been assessed against the relevant legislation and are considered compliant and necessary to render the development acceptable. Finally, the character and appearance of the area has been appraised and on the basis of both the site area and the quantum of development proposed, it is considered that a form of development could be achieved which would respect and respond to the area's character and would not result in any material harm in terms of appearance.

On balance, it is not considered that there are any significant adverse impacts that significantly and demonstrably outweigh the multitude of benefits that this development would bring.

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**

**A.** Grant delegated authority to the Head of Planning and Strategic Housing to conclude negotiations on and complete an agreement under section 106 of the Town and Country Planning Act 1990 so to secure the planning obligations outlined in this report along with associated provisions for long term management of any public facilities provided; and

**B.** Subject to A, **Approve** the application subject to the following condition(s):

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 Drawing Schedule P03 (specifically those drawing numbers highlighted in yellow and white) submitted on the 10 September 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. No development, including preparatory works, shall commence until a site-wide phasing programme including the proposed sequence of providing:
  - (a) housing units including associated parking and boundary treatments;
  - (b) the footbridge linking this site to the adjacent Sweet Leys Way development;



(c) public and private highways including street lighting;  
(d) sustainable drainage systems and associated infrastructure; and  
(e) public open space including play areas and footpath links  
has been first submitted to and approved in writing by the Local Planning Authority. The details shall be provided with reference to plan(s) and a Gantt chart and define the extent and location of individual development phases or sub-phases and the associated interim access arrangements. The development shall not be carried out other than in accordance with the approved programme.

Reason: To ensure that the impacts of the development are appropriately mitigated at all stages of the construction phase, and so occupiers of the development are able to reach and access services and facilities at an appropriate time, in the interests of achieving sustainable development.

4. The development shall be carried out in strict accordance with the works, precautionary measures, and enhancement recommendations detailed in the Extended Phase 1 Habitat Survey prepared by C.B.E. Consulting dated 27 April 2020 and the letter Ref: Melbourne prepared by C.B.E. Consulting dated 28 August 2020. The ecological enhancement measures shall be retained and maintained as such thereafter.

Reason: In order to safeguard and enhance habitat on or adjacent to the site in order to secure an overall biodiversity gain.

5. No development, including preparatory works, shall commence until protective fences have been erected around all trees and hedgerows shown to be retained on the approved plans. 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; 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.

6. No development, including preparatory works, shall commence until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. The CEMP shall include the following:
- (a) a risk assessment of potentially damaging construction activities;
  - (b) identification of biodiversity protection zones (e.g. buffers to trees and hedges or to protected wildlife habitat);
  - (c) practical measures (both physical measures and sensitive working practices, such as protective fencing, exclusion barriers and warning signs) to avoid or reduce impacts during construction (particularly in relation to works within canopy and root protection areas for hedgerows or protected trees);
  - (d) the location and timing of sensitive works to avoid harm to biodiversity features (in relation to breeding birds in particular);
  - (e) the times during construction when specialist ecologists need to be present on site to oversee works (as required);
  - (f) responsible persons and lines of communication; and
  - (g) the role and responsibilities on site of an Ecological Clerk of Works (ECoW) or similarly competent person (as necessary).

The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details, unless the ECoW otherwise sets out alternative details which are subsequently agreed by the Local Planning Authority.

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.

7. 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, robust measures to control dust and smoke during construction, robust measures to be taken to prevent birds being attracted to the site. No pools of water should occur and prevent scavenging of any detritus, 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 and flight safety, recognising that initial preparatory works could bring about unacceptable impacts.

8. 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) Drainage Strategy report dated 19/05/20 and drawing No's: E175-70-02, E175-10-15, E175-40-10, E175-10-01 and E175-60-01 including any subsequent amendments or updates to these documents as approved by the Flood Risk Management Team;
  - (b) And 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 scheme shall be carried out in conformity with the approved details prior to the first occupation of each respective dwelling served by the surface water drainage system.

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.

9. Prior to commencement of the development, the applicant shall submit for approval to the LPA details indicating how additional surface water run-off from the site will be avoided during the construction phase. 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.

10. Prior to the first occupation of the development, a verification report carried out by a qualified drainage engineer must be submitted to and approved by the Local Planning Authority. This must demonstrate that the drainage system has been constructed as per the agreed scheme (or detail any minor variations), provide the details of any management company and state the national grid reference of any key drainage elements (surface water attenuation devices/areas, flow restriction devices and outfalls).

Reason: To ensure that the drainage system is constructed to the national Non-statutory technical standards for sustainable drainage and CIRIA standards C753.

11. The maximum height of any buildings on the site is restricted to 65m AMSL (circa 9.5m AGL).

Reason: In the interests of flight safety – EMA's safeguarded zones restrict development that would infringe the protected surfaces.

12. Prior to the construction of a boundary wall, fence or gate, details of the position, appearance and materials of such boundary treatments shall be submitted to and approved in writing by the Local Planning Authority. The boundary treatments shall be completed in accordance with the approved details before the respective dwelling to which they serve is/are first occupied or in accordance with a timetable which shall first have been submitted to and approved in writing by the Local Planning Authority. 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 further boundary treatments shall thereafter be erected between those approved and the highway or public open space(s).

Reason: To maintain control in the interest of the character and amenity of the area, in particular the character of public realm as secured under the plans hereby approved.

13. Notwithstanding the submitted details, prior to their provision, further details of the following building elements shall be submitted to and approved in writing by the Local Planning Authority:
- (a) the windows and doors including the reveal, material and finish;
  - (b) the eaves, verges, cills and lintels;
  - (c) rainwater goods including their method of fixing;
  - (d) any retaining structures; and
  - (e) canopies.

These elements shall be provided in accordance with the approved details and maintained as approved throughout the lifetime of the development.

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

14. 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.

15. All verges shall be finished in a mortar finish. There shall be no use of dry verge (cloaking tile) systems. 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, there shall be no later installation of a dry verge system.

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

16. Prior to the occupation of a dwelling a scheme of hard and soft landscaping shall be submitted to and approved in writing by the Local Planning Authority. Details of soft landscaping should evidence compliance with British Standard (BS) 3936: 'Part 1 - Specification for trees and shrubs', BS3969 - 'Recommendations for turf for general purposes' and BS4428 - 'Code of practice for general landscape operations (excluding hard surfaces)'. All hard landscaping (including kerb heights for the block paved areas which shall be a maximum of 25mm) shall be carried out in accordance with the approved details prior to occupation of each respective dwelling, whilst all planting, seeding or turfing comprised in the approved scheme shall be carried out in the first planting and seeding seasons following the first occupation of each respective dwelling or the completion of the development, whichever is the sooner; and any plants which within a period of five years (ten years in the case of trees) from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species 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.

17. Prior to the occupation of a dwelling 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, other than small, privately owned, domestic gardens. 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.

18. No more than 23 dwellings shall be first occupied before a Locally Equipped Area for Play (LEAP) has been provided in accordance with details first submitted to and approved in writing by the Local Planning Authority. Such details shall accord with the England 'Guidance for Outdoor Sport and Play' produced by Fields In Trust (as may be updated or superseded by equivalent guidance) and include specifications of equipment, any safety fencing and gates, seating facilities, refuse/animal waste bins, signage and surfacing materials.

Reason: To ensure adequate provision for outdoor play and recreation is provided for occupiers of the development.

19. Where estate streets provided are not to be adopted by the Local Highway Authority, prior to the first occupation of a dwelling, details of the management company that shall be responsible for the future maintenance of all the shared/unadopted roads, footways and parking areas within the site, along with an ongoing maintenance strategy, and timescales for their transfer to such a company, shall be submitted to and approved in writing by the Local Planning Authority. Such areas shall be transferred to the management company in accordance with the approved details.

Reason: In the interests of maintaining suitable access and turning space within the site for occupants', visitors', service and emergency vehicles throughout the life of the development, and ongoing maintenance of street furniture, lining, lighting, etc. in the interests of highway safety.

20. 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 garage(s) and parking space(s) to be provided in connection with the development shall not be used other than for the parking of vehicles except with the prior grant of planning permission pursuant to an application made to the Local Planning Authority in that regard.

Reason: To ensure adequate parking and turning provision, in the interests of highway safety.

21. Bin collection points shall be provided within private land at the entrance to shared private accesses and/or courtyards, as detailed on the approved plans. The bin collection points shall be provided prior to the first occupation of a dwelling to which they serve and shall be retained thereafter free from any impediment to their designated use as such.

Reason: To ensure safe and suitable conditions are maintained on the public highway, in the interests of highway safety, and to ensure appropriate waste/refuse facilities are provided for the occupiers of the development.

22. 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, the area of spread/spill of such lighting, all exterior lighting shall be capped at the horizontal to prevent upward light spill, shall be 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 it.

Reason: In the interests of protecting the amenity of the area, protected species, the interests of East Midlands Airport and adjoining occupiers and/or transport routes from undue illumination impacts or distraction, and to minimise light pollution at night.

23. The glazing of all aspects of the proposed dwellings shall meet the specifications contained in Table 5.2 of the Noise Assessment, May 2020, Report Ref 2001130-02 "Proposed Residential Scheme – Land at Station Road, Melbourne." 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, there shall be no replacement of windows that do not meet the same or equivalent noise attenuation. Specifically, all noise sensitive bedrooms shall be double glazing to a weighted sound reduction index of at least 44 Rw. All other noise sensitive rooms (i.e. living rooms, dining rooms, recreation rooms) shall be double glazing to a weighted sound reduction index of at least 32 Rw. The rooms to which this condition applies shall be provided with sufficient ventilation with windows closed (other than for purge ventilation) to meet the requirements of Tables 5.2a to 5.2d of Building Control Approved Document F (Ventilation) or its successor depending on the design of the ventilation system and shall be retained for the lifetime of the development. Trickle vents or other passive ventilation openings shall be designed to meet a specification  $D_{n,e,w}$  of 41 dBA or better.

Reason: To protect those living in the dwellings from traffic or other external noise sources.

24. Each 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 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.

25. Recharge points for electric vehicles shall be provided within the development to comply with the following criteria: 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; 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 unless an alternative scheme is submitted to and approved in writing 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. This permission is the subject of a unilateral undertaking or agreement under Section 106 of the Town and Country Planning Act 1990. All formal submissions to discharge obligations of the undertaking or agreement, or queries relating to such matters, must be made in writing to [s106@southderbyshire.gov.uk](mailto:s106@southderbyshire.gov.uk) with the application reference included in correspondence.

b. The Lead Local Flood Authority advises:

-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; and 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; and 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 + 40% Climate Change rainfall volumes will be controlled and accommodated. 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 + 40% 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.

c. East Midlands Airport advises:

-If any changes/amendments to the SuDS scheme are proposed, or any new ponds, swales or similar features proposed then EMA should be consulted before they are approved.

-If any changes to the planting scheme are proposed EMA should be consulted before they are approved.

-Any use of renewable energy sources must seek prior approval from EMA's Safeguarding department.

-The applicant's attention is drawn to the new procedures for crane and tall equipment notifications that will be effective from October 2020.

**Item No.** 1.2

**Ref. No.** DMPA/2020/0543

**Valid date:** 23/07/2020

**Applicant:** Will Martin  
CEG Land Promotions Ltd & Robert  
William Walmsley  
c/o CEG Number One  
Great Exhibition  
Kirkstall Forge  
Leeds  
LS5 3BF

**Proposal:** The variation of condition 39 of outline permission ref. 9/2017/0349 (relating to the residential development of up to 1,100 dwellings, an extra care facility, a local centre comprising: a small supermarket with a floorspace not exceeding 1000 sqm (net); a smaller retail unit with a total floorspace not exceeding 200sqm (net); a cafe/restaurant with a floorspace not exceeding 200 sqm (net); a public house with a floorspace not exceeding 650 sqm (net); a doctors surgery or crèche; and a community facility, as well as a primary school together with associated playing fields and the provision of associated infrastructure (including roads, footpaths, cycleways, sustainable urban drainage and open space)) on Land at New House Farm, Etwall Road, Mickleover, Derby, DE3 0DN

**Ward:** Etwall

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

This application is presented to the Committee as it is a major application subject to more than 4 objections.

#### **Site Description**

The site is situated to the west of Mickleover and extends to approximately 50.9ha (125.9 acres) and comprises mainly improved grassland. A section of the site is now under development by Avant Homes, pursuant to a reserved matters approved under the existing outline permission (see below). The site is located to the north of the A516 Etwall Road, which connects Mickleover with the A38 to the east and the A50 further west. The northern boundary of the site is defined by the former Mickleover railway line which is now the National Cycle Network (NCN) route 54, which passes through Black Wood. Radbourne Public Footpath no. 8 runs along the eastern edge of the site but just off it, accessed off Greenwood Court. Residential properties on Greenside Court and west of Ladybank Road back onto the site, as well as those under construction on the adjacent phase 1 New House Farm site, being developed by Barratt and David Wilson Homes.

#### **The proposal**

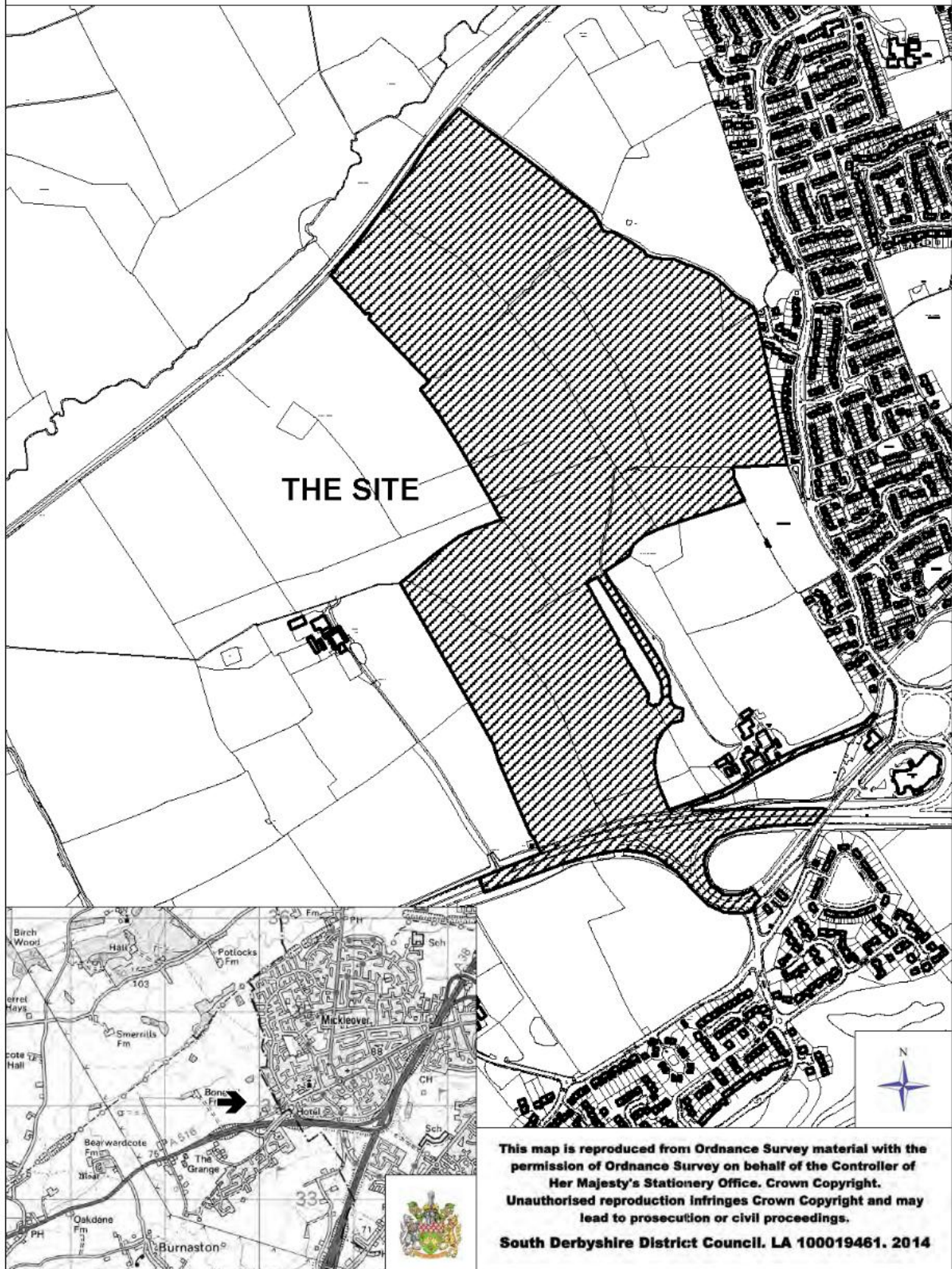
The existing outline permission was granted subject to a condition (number 39) to limit the number of dwellings which might be occupied prior to the completion of the grade separation works at the A38/A5111 Kingsway junction. The upper limit was specified as 317 dwellings. This application seeks not to raise the threshold but alter the status in relation to the works at the Kingsway junction, through preventing the occupation of more than 317 until the works on the junction *commence*.

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

A Covering Letter confirms that Highways England were consulted prior to submission and agreed that it would be reasonable to amend the condition. It is considered that, given this and the enclosed justification, the variation can take place without detriment to the purpose of the condition and allows



**DMPA/2020/0543 - Land at New House Farm, Etwall Road, Mickleover, Derby  
DE3 0DN**



for an increased housing delivery on an allocated, sustainable site in South Derbyshire.

A Supporting Statement summarises the delivery timescale for the A38 Derby Junctions grade separation scheme. This confirms that the Secretary of State's decision is expected in Autumn 2020 with construction works to start in March 2021. It anticipates that all 3 junctions will be open for traffic by September 2024 although it is noted that the Development Consent Order (DCO) application for the works includes a Traffic Management Plan which identifies that completion of the Kingsway Junction could be completed early in the 1st Quarter of 2023.

It is said that the effect of the current wording of condition 39 when combined with this timeline is that the marketing of the next phases of development (i.e over the 317 dwelling threshold) could not begin until mid-2021 which is the point at which the A38 Junction Schemes will be at delivery stage (i.e construction will have started). This is due to no prospective housebuilder taking the risk of purchasing a phase and investing considerably in developing detailed schemes, with accompanying marketing, whilst the works are not at construction stage. No housebuilder would acquire the site with such a restrictive occupation condition which is linked to works outside their control and the impact is to push back the delivery of the next phases of housing to well beyond 2024. It is said that this would push back the Council's housing delivery for the site and impact on the 5-year housing land supply. A projection of housing occupations is also provided:

- By the start of works on the A38 Junctions (March 2021): 65 dwellings
- By the opening of the Kingsway junction (March 2023): 255 dwellings
- Current occupation limit reached (October 2023): 317 dwellings
- All junctions open for traffic (September 2024): 435 dwellings

It is highlighted that the likely occupation of 317 dwellings would occur well after the opening of the Kingsway junction and that there is no prospect of unacceptable pressures arising under the current limits. It is stated that the practical effect of amending the condition to allow effective marketing and delivery of phases of development in parallel with each other would not change the impacts on the Kingsway junction.

An EIA Supporting Statement notes the original outline application was supported by an Environmental Statement (ES) due to the development being within Schedule 2 of the Town & Country Planning (Environmental Impact Assessment) Regulations. It is contended that the proposed change does not impact upon the scale of development, the nature of the development, or the type of development. It does not therefore alter the impacts identified within the original ES, nor does it change the mitigation proposed, and the change would not have a practical implication with the condition remaining effective in safeguarding the operation on the A38. It is therefore considered that the original ES remains valid and further environmental information is not required to support the current application.

### **Relevant planning history**

9/2017/0349: Outline permission for the residential development of up to 1,100 dwellings, an extra care facility, a local centre comprising: a small supermarket with a floorspace not exceeding 1000 sqm (net); a smaller retail unit with a total floorspace not exceeding 200sqm (net); a cafe/restaurant with a floorspace not exceeding 200 sqm (net); a public house with a floorspace not exceeding 650 sqm (net); a doctors surgery or crèche; and a community facility, as well as a primary school together with associated playing fields and the provision of associated infrastructure (including roads, footpaths, cycleways, sustainable urban drainage and open space) - Approved October 2018

9/2018/1240: Approval of reserved matters of appearance, landscaping, layout and scale, pursuant to outline permission ref. 9/2017/0349 for the construction of 311 dwellings, public open space and associated infrastructure (New House Farm phase 3) - Approved March 2019

DMPA/2019/1459: Approval of reserved matters for layout, scale, appearance and landscaping of outline permission ref. 9/2017/0349 (for the erection of 317 plots in lieu of 311 plots) previously approved under reserved matters approval ref. 9/2018/1240 along with substitution of plot 101 - Approved August 2020



DMOT/2020/0342: Approval of details required by condition 8 (materials) attached to permission ref 9/2017/0349 (for the residential development of 311 dwellings, public open space and associated infrastructure pursuant to reserved matters approval ref. 9/2018/1240) - Under consideration

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

Highways England has no objection.

County Highway Authority has no objection.

8 objections have been received from up to 7 separate addresses, raising the following concerns:

- a) do the suburbs of Derby need to expand any more;
- b) the initial objection by Highways England was based on the increased traffic down the A38 corridor, above 317 dwellings, which is already very busy and congested at peak times;
- c) based on the A52 work east of Derby, the period of work to complete the task could significantly increase, creating chaos for a much longer period;
- d) once the planned A38 work commences, there will be severe gridlock over an extended area, impacting all other major and minor routes and emergency vehicles, so adding further vehicles is counter-intuitive;
- e) with many other developments already happening in the area, have these extra dwellings have been taken into consideration already;
- f) there should still be significant restrictions, such as limiting the number that could be built prior to commencement of the work, and a sensible cap on occupation before completion of the A38 works;
- g) an assessment of the associated construction traffic impact should also be made, with possible restrictions of delivery times to avoid rush hours;
- h) the development is not sustainable as it totally relies on existing infrastructure, primarily supplied by the City (especially schools and doctors, both of which are in short supply);
- i) despite encouragement to walk and cycle, few are taking note meaning that at peak school times in particular, most parents are taking & collecting their children from school using cars;
- j) signage now also directs traffic across the A516 island into Micklegate instead of the former slip road, slowing traffic flow heading out of Derby toward Etwell;
- k) the proposal would be significantly detrimental to the safe and free flow of traffic;
- l) the current Kingsway, Markeaton and Little Eaton Junctions are significant bottlenecks on the A38, regularly resulting in congestion and it appears to be accepted that junction improvements are urgently required;
- m) the current limit on occupied houses would permit c. 600 additional cars, and with employment and retail opportunities in the City, it is reasonable to believe that a significant amount of additional traffic at the 3 junctions would arise from the development;
- n) should the proposed variation be adopted, there will be no way of limiting the number of houses being occupied, and if all houses are built (1,100 houses), this could lead to c. 2500 additional vehicles using the 3 junctions;
- o) only completion of the junction improvements works will allow for better traffic management;
- p) there is no guarantee that the junction improvement works will be completed on time;
- q) the new A516 roundabout is notorious and has been the site of countless incidents;
- r) the national framework (paragraph 102(a)) states the potential impacts of development on transport networks should be addressed;
- s) the applicant's desire is motivated by financial profit with no benefit to local needs, nor any measurable improvement of the standard of living within the area;
- t) the condition was also for safety reasons and we have seen no evidence to disclaim this;
- u) at the present time any accident or holdup on the A38 causes traffic into Derby from Micklegate to be gridlocked including the Royal Derby Hospital Island; and
- v) the number of houses has already been extended from 260 to 317.

Councillors M Holmes, A Holmes and M Pattison for the Micklegate Ward (Derby City) have raised concerns and strongly oppose the application. They believe that the condition should remain with it not



acceptable to allow the occupation of more than 317 dwellings until the completion of the A38 Derby junction grade separation works. They contend that the argument that amending the conditions would assist with housing supply is not credible as there is a demonstrable supply, if not over supply. It is not an excuse to weaken a condition that seeks to avoid a severe transport impact in line with national policy. They consider the application is opportunistic and based on accelerating financial gain regardless of the impacts it would have. They further state that the specific condition met, and still meets, national policy tests for imposition, and nothing has changed in terms of the impact on local transport infrastructure since the application was agreed. Without the condition, it is considered doubtful that the development would have met the tests of national policy and if the Council agree to this change on such a major site it would severely impact on the future credibility of any conditions it places on applications and damage public confidence in the local planning process. They feel that the applicant is seeking a way to circumvent policy and retrospectively disregard the very considerable efforts that the public made to engage in the planning process and that resulted in the condition being imposed - for very good reason. Despite a long-standing opposition to urban extensions to the boundary of Mickleover in South Derbyshire, they accepted the proposals on the basis that major improvements would be made to key transport infrastructure prior to housing occupancy beyond a reasonable number. Therefore, they object that a planning condition of such importance and significance could be changed retrospectively.

At the time of writing, the application is subject to a re-consultation following receipt of the Supporting Statement outlined above. Any further comments in respect of this document received by the close of the consultation will be reported verbally to the Committee.

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

The relevant Development Plan policies are:

- Local Plan Part 1 (LP1): S2 (Presumption in Favour of Sustainable Development), S4 (Housing Strategy), H19 (Land West of Mickleover) and INF2 (Sustainable Transport);

The relevant national policy and guidance is:

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

### **Planning considerations**

This application seeks to vary or remove conditions attached to a previous approval, pursuant to section 73 of the Town and Country Planning Act 1990 (as amended). The principle of development has therefore been established and hence the following assessment takes into account only the matters which are relevant to the conditions concerned. Taking this into account along with the documents submitted (and supplemented and/or amended where relevant) and the site and its environs; the main issue central to the determination of this application is whether the proposed variation of condition 39 would bring about unacceptable impacts on the strategic highway network.

Furthermore, as a grant of permission under section 73 of the 1990 Act results in a further permission, leaving the original permission and its conditions in tact and it subsequently open for the developer to implement either permission; consideration also needs to be given to the remaining conditions and whether they have been discharged (either in part or in whole).

### **Planning assessment**

#### The variation of condition 39

The existing outline permission was granted subject to condition 39 which limited the number of dwellings which might be occupied prior to the completion of the grade separation works at the A38 Kingsway island:

*"No more than 317 dwellings shall be occupied until the delivery of the A38 Derby Junctions grade separation scheme at the A38/A5111 Kingsway junction is complete and open to traffic, unless otherwise agreed in writing by the local planning authority in consultation with Highways England".*

The reason given for the condition was "to ensure that the A38 trunk road continues to serve its purpose as part of a national system of routes for through traffic in accordance with Section 10(2) of the Highways Act 1980 by minimising disruption on the trunk road resulting from traffic entering and emerging from the application site and in the interests of road safety". It is thus important to note therefore that this condition was not intended to mitigate impact on the local highway network. Indeed, it was not requested by Derby City Council or the County Highway Authority.

The applicant seeks to vary the wording of the condition to:

*"No more than 317 dwellings shall be occupied until commencement of construction works of the A38 Derby Junction grade separation scheme at the A38/A5111 Kingsway Junction unless otherwise agreed in writing with the Local Planning Authority in consultation with Highways England".*

Whilst there are no other conditions preventing the building of the remaining housing at the site, there has been notable progression towards securing of permission and funding for the grade separation works since the original grant of outline permission. This is the material change in circumstances, with there being uncertainty in 2018 as to when the scheme might be delivered and/or funded. The examination of the proposed DCO closed on 8 July and a decision is due from the Secretary of State this autumn. The scheme at the Kingsway junction is due to commence in Spring 2021 and be open to traffic by March 2023. Furthermore, once works have commenced at the Kingsway junction, there is certainty of its completion.

The applicant's submission indicates Avant Homes would have brought forward 60 dwellings by March 2021, whereas the Council's latest housing trajectory indicates this would be 102 of the 317 consented. Either way, this would leave some 209 to 251 to deliver over the following two years before exceeding the existing threshold - requiring a rate of delivery that no housebuilder would be likely to achieve.

There is, of course, concern that by lifting any control on the number of occupations could allow for multiple additional phases to be delivered simultaneously. However, the physical constraints of the site mean that the next phase could only be delivered from the existing estate road through the adjacent Barratt Homes development (also connecting with the northern limb out of the Avant Homes phase). This, in itself, makes it attractive for one further developer, but not a second in the immediate term, given that they would be reliant on the first delivering further extensions to the estate roads in advance. Given the lead time in securing a further developer and detailed approvals, as well as clearing pre-commencement conditions and site preparation works, any further developer is unlikely to deliver meaningful housing numbers until the 2022/23 year.

Drawing all this together, the applicant's trajectory indicates that by March 2023, 180 dwellings would be delivered on the Avant Homes phase, leaving room for 137 dwellings to be delivered by a second housebuilder. The Council's trajectory puts this at 258 and 59 respectively. Even when taking this higher rate of delivery from Avant, and an average delivery rate per annum of 60 dwellings for a further developer (which is considered to be at the upper end of delivery rates); the lead-in times mean it would be unlikely that more than 317 dwellings would be occupied before March 2023.

The response of 'no objection' from Highways England confirms that unacceptable impacts would be unlikely to arise as a consequence of the proposed variation.

Thus, whilst the Council's housing supply is not considered to be threatened by the wording of the existing condition - this having already been factored into the trajectory when arriving at a supply of 5.92; allowing the earlier release of a further phase would allow for the prospect of bringing forward additional housing delivery from the next Plan period (noting that the New House Farm is anticipated to

deliver housing beyond 2028). At the same time, the above assessment finds that the effect of the variation would not have a material effect on the strategic highway network. Accordingly, there appears is no planning reason to resist the proposed change.

### Status of remaining conditions

The existing conditions have been discharged in part where they relate to the Avant Homes site. They remain to be satisfied across the remainder of the site, so the wording of the conditions have been adjusted to reflect that set out below. In addition, the necessity of various conditions have been revisited with it noted that conditions should not be used on outline permissions to control matters which would be expected under the reserved matters approvals.

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**

**A.** Secure the completion of a section 106 agreement (a Deed of Variation) to carry forward the obligations from the existing outline permission, with delegated authority given to the Head of Planning and Strategic Housing to agree the finer detail of that agreement;

**B.** Subject to A, **APPROVE** permission subject to the following conditions:

1. a) Application for approval of the reserved matters shall be made to the Local Planning Authority before 19 October 2028.  
b) The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the reserved matters to be approved.

Reason: To conform with Section 92(2) of the Town and Country Planning Act 1990.

2. Approval of the details of the appearance, landscaping, layout and scale (hereinafter called 'the reserved matters') for each phase or sub-phase of the development shall be obtained from the Local Planning Authority in writing before any development is commenced in that phase or sub-phase. Plans and particulars of the reserved matters for each phase or sub-phase of the development shall be submitted in writing to the Local Planning Authority and the development of each phase shall be carried out as approved.

Reason: The application is expressed to be in outline only and the Local Planning Authority must ensure that the details are satisfactory.

3. The development hereby approved shall be implemented in accordance with the following plans approved under outline permission ref. 9/2017/0349. The approved plans are:
  - a) Site Location Plan (Ref: IL50105-000 Rev C);
  - b) Parameter Plan - Land Use & Extents (Ref: PS50105-063 Rev C);
  - c) Parameter Plan - Access & Movement (Ref: PS50105-067 Rev C);
  - d) Parameter Plan - Heights (Ref: PS50105-065 Rev C);
  - e) Parameter Plan - Density (Ref: PS50105-066 Rev C);
  - f) Parameter Plan - Landscape & Open Space (Ref: PS50105-064 Rev C); and
  - g) Proposed Shared Footway (Old Etwall Road) (Ref: 10-117-TR-048).

Reason: For the avoidance of doubt and to specify the plans to which the permission relates.

4. The Phase 2 Proposed Shared Footway/Cycleway on Old Etwall Road, Ref: 10-117-TR-048 shall be provided prior to the occupation of the 50th dwelling in accordance with details that have been

submitted to and approved in writing by the Local Planning Authority. The route shall be maintained throughout the lifetime of the development available for public use along its entire length.

Reason: In the interests of providing a sustainable development.

5. The development shall proceed in accordance with the phasing plan ref. AC50105 08 107 Rev F and the phasing scheme ref. 50105/11/JG/NMi (dated 18 December 2018), as approved pursuant to condition 6 of outline permission ref. 9/2017/0349 unless, prior to the commencement of a phase or sub-phase pursuant to this permission a revised scheme for phasing of the development has been submitted to and approved in writing by the Local Planning Authority. The scheme for phasing shall show the boundaries of the proposed phases of the development and shall include reference to the provision of the children's play spaces and other open spaces. The development shall be carried out in accordance with the approved scheme.

Reason: The application is expressed to be in outline only and the Local Planning Authority has to ensure that the details are satisfactory and that the development proceeds in an orderly manner.

6. Notwithstanding the submitted master plan, the reserved matters submitted in accordance with condition 2 shall include the following urban design principles and details with each application for a phase or sub-phase:
  - a) the creation of separate character areas in accordance with the principles set out in the submitted Design and Access Statement [D&AS] [§§7.15-7.18];
  - b) the provision of greenway routes/green corridors to connect key green spaces in accordance with the principles set out in the submitted D&AS [§§7.42-7.53 and the Green Infrastructure Plan, Planting Plan & Play Areas Plan];
  - c) provision for future pedestrian and cycle access as indicated in the submitted D&AS [§§8.3-8.7 and the Movement Plan];
  - d) the creation of a 'village centre' comprising an area of shops, community facilities and open space as described in the submitted D&AS [§7.19-7.22 and §§7.28-7.29] as well as Indicative Local Centre and Playing Field Detail ID50105-091;
  - e) the provision of a centrally located primary school as described in the submitted D&AS [§§7.23-7.27];
  - f) measures to minimise the risk of crime to meet the specific security needs of the application site and the development;
  - g) details of the lighting to roads and footpaths, and where relevant the public areas, shared driveways and courtyards;
  - h) the internal layout of the site shall accord with the Highway Authority's Design Guide and national guidance set out in Manual for Streets;
  - i) the gradient of the new estate street junctions shall not exceed 1:30 for the first 10m and 1:20 thereafter, whilst driveway gradients shall not exceed 1:20 for the first 5m and never exceed 1:12;
  - j) space for the parking of vehicles on the basis of 2 spaces for 2 or 3 bedroom dwellings, and 3 spaces for 4 or 4+ bedroom dwellings. For the avoidance of doubt, where a garage is classed as a parking space, the internal dimensions shall measure at least 3m x 6m for a single and 6m x 6m for a double garage;
  - k) a swept path analysis to demonstrate that service and emergency vehicles can successfully enter and manoeuvre within the site;
  - l) bin collection points placed within private land at the entrance to shared private accesses so to prevent refuse bins and collection vehicles standing on the new estate street for longer than necessary causing an obstruction or inconvenience for other road users;
  - m) a detailed scheme of noise mitigation measures to demonstrate how the development will be protected from traffic noise as set out in the recommendations of the Chapter J of the Environmental Statement: Noise, dated March 2017, as received with application ref. 9/2017/0349.

Reason: The application is expressed to be in outline only and the Local Planning Authority has to ensure that the details are satisfactory, and in the interests of sustainable development and highway safety.

7. Unless details are approved in conjunction with the matters of scale and/or landscaping under condition 2, no development of a particular phase or sub-phase shall commence before details of the finished floor levels of each building within the phase or sub-phase and any regrading works have first been submitted to and approved in writing by the Local Planning Authority. The buildings within that phase or sub-phase shall be constructed and external areas and levels laid out in accordance with the approved details.

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

8. Each dwelling or unit shall be constructed and fitted out so that the estimated consumption of wholesome water by persons occupying the dwelling or unit 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.

9. No development of the relevant phase or sub-phase of the development which includes playing field provision as set out in the Phasing Scheme (approved in accordance with condition 5) shall take place unless and until:
  - a) a detailed assessment of ground conditions of the land proposed for the new playing field land shall be undertaken (including drainage and topography) to identify constraints which could affect playing field quality; and
  - b) based on the results of this assessment to be carried out pursuant to (a) above of this condition, a detailed scheme to ensure that the playing fields will be provided to an acceptable quality (including appropriate drainage where necessary) shall be submitted to and approved in writing by the Local Planning Authority.The works shall be carried out in accordance with the approved scheme within a timescale to be approved in writing by the Local Planning Authority

Reason: To ensure that the site surveys are undertaken for playing fields and that any ground condition constraints can be and are mitigated to ensure provision of an adequate quality of playing fields.

10. The playing fields laid out in accordance with condition 9 shall be used for Outdoor Sport and for no other purpose (including without limitation any other purpose in Class D2 of the Use Classes Order 1987 (as amended), or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).

Reason: To protect the playing field from loss and to maintain the quality of and secure the safe use of sports pitches.

11. The trading hours of the Class A1 floorspace hereby permitted shall be restricted to 07:00 to 23:00 daily and the Class A3/Class A4 floorspace hereby permitted shall not trade between the hours of 24:00 and 07:00 daily.

Reason: In order to minimise the impact of the proposed use upon the amenities of the residents of nearby properties.

12. All hard and soft landscape works approved pursuant to the landscaping reserved matters approval shall be carried out in accordance with the approved details and finished not later than the first planting season following completion of the relevant phase or sub-phase of the development. Any tree or shrub which forms part of the approved landscaping reserved matters approval which within a period of five years from planting (ten years for trees) fails to become,



established, or becomes seriously damaged or diseased, or dies, or for any reason is removed, shall be replaced in the next planting season by a tree or shrub of a species, size and maturity to be approved in writing by the Local Planning Authority.

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

13. No site clearance works or development of a phase or sub-phase shall take place until there has been submitted to the Local Planning Authority for their written approval a scheme showing the type, height and position of protective fencing to be erected around each tree or hedgerow to be retained in that phase. The scheme shall comply with BS 5837:2012. The area within each phase or sub-phase surrounding each tree or hedgerow within the protective fencing shall remain undisturbed during the course of the works, and in particular in these areas:
- a) There shall be no changes in ground levels;
  - b) No material or plant shall be stored;
  - c) No buildings or temporary buildings shall be erected or stationed;
  - d) No materials or waste shall be burnt within 20 metres of any retained tree or hedgerow; and
  - e) No drain runs or other trenches shall be dug or otherwise created; without the prior written consent of the Local Planning Authority.

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

14. For any phase or sub-phase no works which include the creation of trenches or culverts or the presence of pipes within the phase shall commence until measures to protect badgers and hedgehogs from being trapped in open excavations and/or pipe and culverts are submitted to and approved in writing by the local planning authority. The measures may include:
- a) creation of sloping escape ramps for badgers, which may be achieved by edge profiling of trenches/excavations or by using planks placed into them at the end of each working day; and
  - b) open pipework greater than 150 mm outside diameter being blanked off at the end of each working day.

The approved measures shall be implemented as part of the development of the phase.

Reason: To ensure adequate protection of the species.

15. For any phase or sub-phase, no development shall take place until an Ecological Design Strategy (EDS) addressing mitigation, compensation and enhancement has been submitted to and approved in writing by the local planning authority.
- The EDS shall include the following.
- a) details of retained habitats;
  - b) details of newly created habitats including ponds and swales;
  - c) identification of green corridors;
  - d) locations and specifications for a range of bird boxes in line with the recommendations in section 5.2.12 of the Ecological Appraisal dated February 2017 to include the installation of boxes in the fabric of the new houses for house sparrow, swift and starling, the erection of boxes on trees for cavity dwelling species and the installation of a barn owl box.

The EDS shall be implemented in accordance with the approved details and all features shall be retained in that manner thereafter.

Reason: To ensure ecology is adequately addressed.

16. For any phase or sub-phase, no development shall take place (including ground works and vegetation clearance) until a Construction Environmental Management Plan (CEMP: Biodiversity) has been submitted to and approved in writing by the local planning authority. The CEMP (Biodiversity) shall include the following.
- a) Risk assessment of potentially damaging construction activities.
  - b) Identification of "biodiversity protection zones"
  - c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (to include consideration of lighting) (may be provided as a set of method statements).
  - d) The location and timing of sensitive works to avoid harm to biodiversity features.



- e) The times during construction when specialist ecologists need to be present on site to oversee works.
  - f) Responsible persons and lines of communication.
  - g) The role and responsibilities on site of an Ecological Clerk of Works (ECoW) or similarly competent person.
  - h) Use of protective fences, exclusion barriers and warning signs
- The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details, unless otherwise agreed in writing by the local planning authority.

Reason: To ensure ecology is adequately addressed.

17. For any phase or sub-phase, no development shall take place until a Construction Management Plan (CMP) 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 signing or restrictions.

Reason: In the interests of highway safety and amenity.

18. For any phase or sub-phase, prior to the first occupation of each dwelling/use of each building therein, the new street(s) between each respective plot/unit and the existing public highway shall be laid out in accordance with the plan(s) approved under condition 2, constructed to base level, drained and lit in accordance with the County Council's specification for new housing development roads. Until final surfacing is completed, the footway base course shall be provided in a manner to avoid any upstands to gullies, covers, kerbs or other such obstructions within or abutting the footway. The carriageway and footway(s) in front of each respective plot/unit shall be completed with the final surface course within 12 months (or 3 months in the case of a shared surface road) from the first occupation of that plot/unit.

Reason: In the interests of highway safety.

19. For any phase or sub-phase, works shall not commence on site until a scheme for the disposal for highway surface water has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details and retained accordingly thereafter.

Reason: In the interests of highway safety.

20. The bin collection facilities approved pursuant to the reserved matters shall be provided prior to the first occupation of the dwellings to which they relate and shall be retained thereafter free from any impediment to their designated use.

Reason: In the interests of highway safety and the visual appearance of the development.

21. A detailed Travel Plan, to accord with the updated Framework Travel Plan dated April 2019, as approved pursuant to condition 29 of outline permission ref. 9/2017/0349, shall be submitted with each application for approval of reserved matters for each phase or sub-phase, approved in writing and implemented in accordance with the timescales specified therein, to include those parts identified as being implemented prior to occupation and following occupation, unless alternative timescales are agreed in writing with the Local Planning Authority. The approved Travel Plan shall be monitored and reviewed in accordance with the agreed Travel Plan targets.

Reason: In the interests of highway safety and sustainability.

22. For any phase or sub-phase, no development shall take place until a detailed design and associated management and maintenance plan of surface water drainage for the site, in accordance with DEFRA Non-statutory technical standards for sustainable drainage systems

(March 2015) and the CIRIA SuDS Manual C753, has been submitted to and approved in writing by the Local Planning Authority. All attenuation ponds and swales shall be fully designed and constructed in line with CIRIA SuDS manual C753. The approved drainage system shall be implemented in accordance with the approved detailed design prior to the use of the building commencing. Details to be submitted shall also include the regime for supervision, inspection and certification of each phase of the surface water system by suitably qualified professionals.

Reason: To ensure that the principles of sustainable drainage are incorporated into this proposal and sufficient detail of the construction, operation and maintenance of sustainable drainage systems is provided.

23. No building works which comprise the erection of a building required to be served by water services shall be undertaken in connection with any phase or sub-phase of the development hereby permitted until full details of a scheme including phasing, for the provision of mains foul sewage infrastructure on and off site has been submitted to and approved in writing by the Local Planning Authority. No building shall be occupied until the works have been carried out in accordance with the approved scheme.

Reason: To prevent flooding, pollution and detriment to public amenity through provision of suitable water infrastructure.

24. No rainwater, contaminated with silt/oil from ground disturbed as a result of the construction phase of the development, shall drain to a surface water sewer or watercourse, without sufficient settlement. Under the Environmental Permitting Regulations 2010, the prior agreement of the Environment Agency is required for any discharge of dewatering water, from excavations, to controlled waters.

Reason: To prevent pollution of the Etwall Brook and its tributaries.

25. a) For any phase of sub-phase, no development shall take place until a Written Scheme of Investigation for archaeological work has been submitted to and approved by the local planning authority in writing, and until any pre-start element of the approved scheme has been completed to the written satisfaction of the local planning authority. The scheme shall include an assessment of significance and research questions; and
- i. The programme and methodology of site investigation and recording;
  - ii. The programme for post investigation assessment;
  - iii. Provision to be made for analysis of the site investigation and recording;
  - iv. Provision to be made for publication and dissemination of the analysis and records of the site investigation;
  - v. Provision to be made for archive deposition of the analysis and records of the site investigation; and
  - vi. Nomination of a competent person or persons/organization to undertake the works set out within the Written Scheme of Investigation.
- The evaluation phase of the archaeological scheme shall have taken place, and the report submitted to the local planning authority, before the submission of a reserved matters application with details of layout.
- b) No development shall take place other than in accordance with the archaeological Written Scheme of Investigation approved under condition (a).
- c) The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the archaeological Written Scheme of Investigation approved under condition (a) and the provision to be made for analysis, publication and dissemination of results and archive deposition has been secured

Reason: To enable items of archaeological interest to be recorded/and or preserved where possible.

26. No phase or sub-phase of the development shall take place until a scheme has been submitted to and approved in writing by the Local Planning Authority that specifies the provision to be made for dust mitigation measures and the control of noise emanating from the site during the period of

construction of the phase. The approved measures shall be implemented throughout the construction period.

Reason: To protect the amenities of nearby residents.

27. During the period of construction, no construction work shall take place within 200 metres of the eastern boundary of the site outside the following times: 0730 - 1900 hours Monday to Friday and 0730 - 1330 hours on Saturdays and at any time on Sundays, Bank and Public Holidays.

Reason: To protect the amenities of nearby residents.

28. a) No phase or sub-phase the development shall be commenced until a scheme to identify and control any contamination of land, or pollution of controlled waters has been submitted to, and approved in writing by, the Local Planning Authority; and until the measures approved in that scheme have been implemented. The scheme shall include all of the measures (phases I to III) detailed in Box 1 of section 3.1 the South Derbyshire District Council document 'Guidance on submitting planning applications for land that may be contaminated', unless the LPA dispenses with any such requirement specifically and in writing. Local Planning Authority
- b) Prior to occupation of any phase of the development (or parts thereof) an independent verification report shall be submitted, which meets the requirements given in Box 2 of section 3.1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.
- c) In the event that it is proposed to import soil onto site in connection with the development, this shall be done to comply with the specifications given in Box 3 of section 3.1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.
- d) If required by the conceptual model, no development shall take place until monitoring at the site for the presence of ground gas and a subsequent risk assessment has been completed in accordance with a scheme to be agreed with the Local Planning Authority, which meets the requirements given in Box 4, section 3.1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.

Reason: In the interests of pollution control.

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

Reason: In the interests of pollution control.

30. The development shall be implemented in accordance with the approved noise mitigation measures approved pursuant to the reserved matters and such measures retained as approved throughout the lifetime of the development.

Reason: To protect future occupiers from noise.

31. No more than 317 dwellings shall be occupied until construction works have commenced on the A38 Derby Junctions grade separation scheme at the A38/A5111 Kingsway junction.

Reason: To ensure that the A38 trunk road continues to serve its purpose as part of a national system of routes for through traffic in accordance with Section 10(2) of the Highways Act 1980 by minimising disruption on the trunk road resulting from traffic entering and emerging from the application site and in the interests of road safety.

#### Informatives:

- a. For further assistance in complying with planning conditions and other legal requirements applicants should consult 'Developing Land within Derbyshire - Guidance on submitting applications for land that may be

contaminated'. This document has been produced by local authorities in Derbyshire to assist developers, and is available from: [www.southderbyshire.gov.uk/our-services/environment/pollution/contaminated-land](http://www.southderbyshire.gov.uk/our-services/environment/pollution/contaminated-land). Reports in electronic formats are preferred, ideally on a CD. For the individual report phases, the administration of this application may be expedited if a digital copy of these reports is also submitted to the Environmental Health Department. Further guidance can be obtained from the following:

- i. CLR 11: Model Procedures for the Management of Contaminated Land
  - ii. CLR guidance notes on Soil Guideline Values, DEFRA and EA
  - iii. Investigation of Potentially Contaminated Land Sites - Code of Practice, BSI 10175 2001.
  - iv. Secondary Model Procedure for the Development of Appropriate Soil Sampling Strategies for Land Contamination, R & D Technical Report P5 - 066/TR 2001, Environment Agency.
  - v. Guidance for the Safe Development of Housing on Land Affected by Contamination Environment Agency. ISBN 0113101775.
  - vi. BS 8576:2013 Guidance on investigations for ground gas. Permanent gases and Volatile Organic Compounds (VOCs).
  - vii. BS 8485:2015 Code of practice for the design of protective measures for methane and carbon dioxide ground gases for new buildings.
- b. Activities such as dust suppression during construction, filling of any ponds/lakes and maintaining pond/lake levels may require an abstraction license. The proposed development site lies within the Lower Trent and Erewash abstraction licensing strategy (ALS) area. Under the Water Resources Act 1991, any abstraction of water greater than 20 cubic metres per day, requires an abstraction licence from the Environment Agency. Whilst this catchment abstraction management strategy (CAMS) area is open to new applications for abstraction from ground and surface waters, local conditions may apply. Further information is available at: [www.gov.uk/guidance/water-managementabstract-or-impound-water](http://www.gov.uk/guidance/water-managementabstract-or-impound-water).
- c. The developer is advised that in regards to the surface water drainage condition they will need to demonstrate, to the satisfaction of the Local Planning Authority, the appropriate level of treatment stages from the resultant surface water in line with Table 3.3 of the CIRIA SUDS Manual C697. This type of development usually requires >2 treatment stages before outfall into surface water body/system which may help towards attainment of the downstream receiving watercourse's Water Framework Directive good ecological status.
- d. The applicant is advised that in regards to the surface water drainage condition to ensure all of the below parameters have been satisfied:
1. The production and submission of a scheme design demonstrating full compliance with DEFRA's Non-statutory technical standards for sustainable drainage systems:
    - a) Limiting the discharge rate and storing the excess surface water run-off generated by all rainfall events up to the 100 year plus 30% (for climate change) critical duration rain storm so that it will not exceed the run-off from the undeveloped site and not increase the risk of flooding off-site to comply with S2 & S3.
    - b) Provision of surface water run-off attenuation storage to accommodate the difference between the allowable discharge rate/s and all rainfall events up to the 100 year plus 30% (for climate change) critical rain storm to comply with S7 & S8.
    - c) Detailed design (plans, cross, long sections and calculations) in support of any surface water drainage scheme, including details on any attenuation system, and the outfall arrangements.
    - d) 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.
    - e) Production of a plan showing above ground flood pathways where relevant for events in excess of 1 in 100 year rainfall event to comply with S9.
    - f) Where reasonably practicable demonstrate that the runoff volume of the site reflects the requirements of S4.
- e. The applicant is advised that the reserved matters should include a footpath route along the western boundary to service that side of the development with a traffic free route.
- f. In granting planning permission the Local Planning Authority has taken into account the environmental information submitted in the original Environmental Impact Assessment, as now supplemented by the supported statement.
- g. This permission is the subject of a unilateral undertaking or agreement under Section 106 of the Town and Country Planning Act 1990.
- h. In order to minimise the need to attach further conditions on a reserved matters approval, the developer is encouraged to provide the following information pursuant to the reserved matters listed under condition 2:
- a) details of surfacing materials for roads, driveways, footpaths, car parking areas and courtyards, and

details of facing materials to the external surfaces of the buildings;

b) details of the position and appearance of boundary treatments, including the provision of walls where gardens abut/face onto public areas, public routes and shared parking areas; and

c) details of verges, eaves, reveals, headers and cills.

**Item No.** 1.3

**Ref. No.** DMPA/2020/0422

**Valid date:** 28/05/2020

**Applicant:** Sally Smith  
Bellway Homes (East Midlands)

**Agent:** Georgina Doyle  
Pegasus Planning Group  
4 The Courtyard  
Lockington  
Derby  
DE74 2SL

**Proposal:** Approval of reserved matters (layout, scale, appearance and landscaping) for erection of 148 dwellings along with creation of roads and public open space pursuant to outline permission ref. 9/2016/0882 (phase 3) on Land at Broomy Farm (east of Lincoln Way and Salisbury Drive), Woodville Road, Hartshorne, Swadlincote

**Ward:** Woodville / Midway

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

This item is presented to the Committee at the request of Councillor Taylor as local concern has been expressed about a particular issue.

#### **Site Description**

The site subject of the current reserved matters submission comprises phase 3 of the residential allocation known as Broomy Farm. This phase covers the parcel of land to the west of the allocation, which shares the majority of its external boundary with Granville Academy. Internally the parcel is sited in-between phase 1 (adjacent to Lincoln Way and accessed off the A511 (Burton Road)) and phase 2a (adjacent to and accessed from Hartshorne Road).

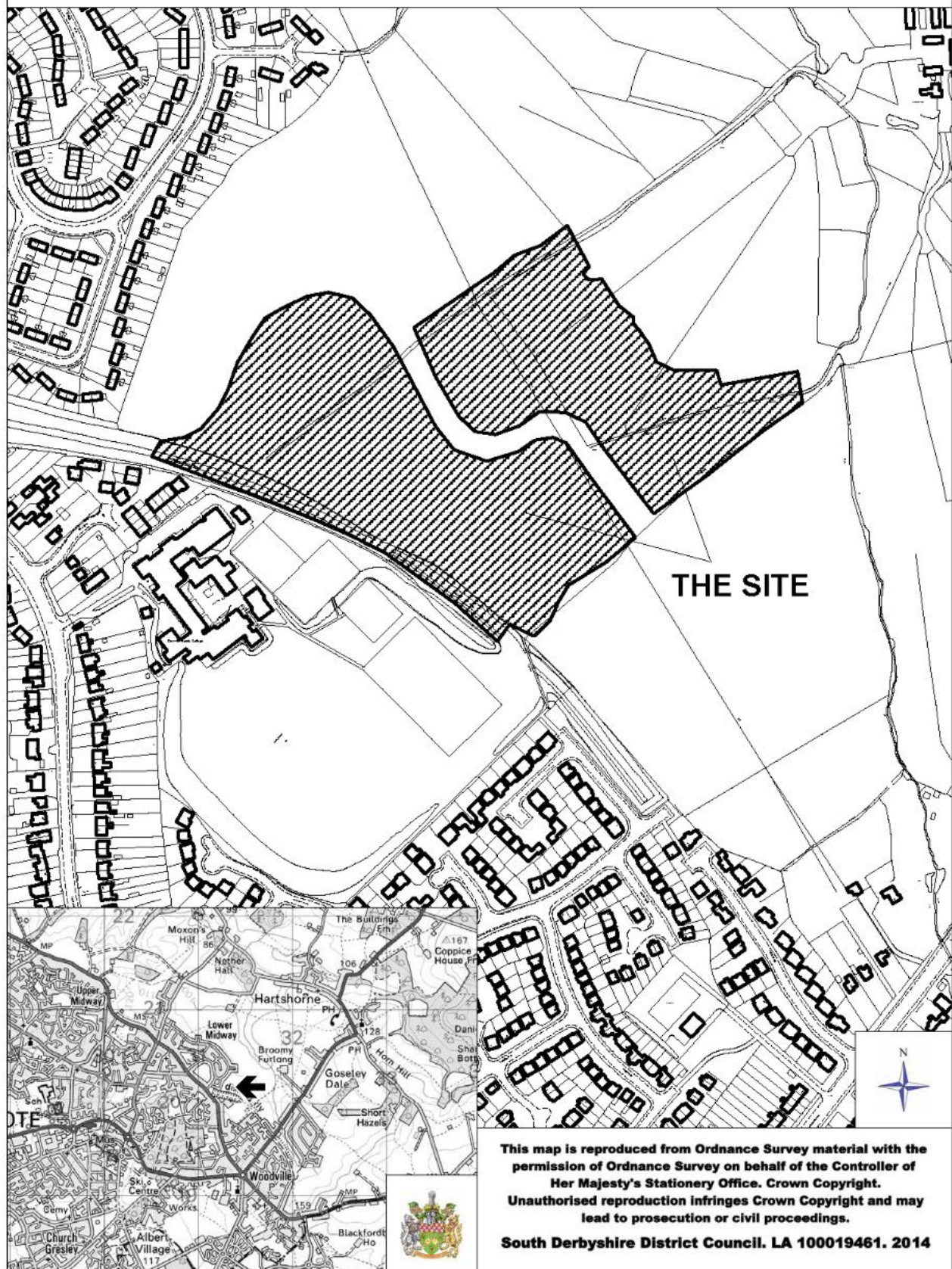
The allocation amounts to a total area of 27.5 hectares and occupies an area of former arable land, and a disused railway cutting to the east of Granville Academy. The site also falls within the National Forest and geographically it is adjacent to the settlements of Midway and Woodville. Land levels vary considerably across the site, with levels falling to the west. A mature belt of landscaping currently exists along the western boundary, but many internal landscape features have been cleared. The site accesses (approved under the outline) have been constructed and lead to this phase and the development of phases 1 (70 dwellings) and 2a (180 dwellings) are currently underway.

#### **The proposal**

This application seeks approval for the layout, scale, appearance and landscaping relating to Phase 3, for the erection of 143 dwellings along with the provision of open space facilities. The application proposes a mix of 1, 2, 3 and 4 bed detached semi-detached and terraced properties including 16 affordable dwellings arranged in two clusters across the site. A large open space accommodating the LEAP, sited to the east of the dwellings is illustrated along with two other parcels of open space; one adjacent to the western boundary and the other within the sites eastern tip. Formal and informal pathways are shown throughout the development connecting this phase to adjacent phases. Dwellings would front onto the tree lined spine road (previously approved) which meanders through the wider development, continuing the development pattern previously secured. Leading from the spine road would be range of more minor streets, including cul-de-sacs. The design of the dwellings are characterised by traditional details such as tile creasing cills and brick heads combined with fascia and soffits eaves details and the window and door styles are a cottage style to pick up on vernacular references.



**DMPA/2020/0422 - Land at Broomy Farm (east of Lincoln Way DE11 7LB and Salisbury Drive 7LE), Woodville Road, Hartshorne, Swadlincote DE11 7EY**



## Applicant's supporting information

The Design Compliance Statement provides a brief explanation of the minor deviations and enhancements to the outline scheme which, it is stated will result in a development that is not substantially different in scale and nature from the scheme identified on the original Masterplan/Outline submission. The document continues that a full site analysis and study of the surrounding context has previously been included in the Design and Access Statement submitted with the Outline. The document includes sections on use and amount, layout and scale, landscaping, appearance and access.

The Arboricultural Method Statement provides the methods of protection and pruning requirements for retained trees at the site. This statement is supported by an updated Tree Survey Plan and Tree Retention Plan produced in April 2020 and submitted alongside the reserved matters application. The report outlines the methodology by which construction will be undertaken in order to safeguard trees in a satisfactory condition during the construction. This method statement sets out a definitive account for the treatment of retained trees and specifies industry approved construction methods.

The Framework Travel Plan mirrors the approved Travel Plans prepared for the earlier phases of the development. It sets out the opportunities to travel by sustainable modes of transport that would be available to the new residents. It explains the forecast modal split of journeys to the whole development of 400 houses, using figures agreed during the outline planning application. Various objectives are set, along with a primary target of reducing single occupancy car journeys by 10%. Timescales for achieving that target, and further secondary targets are explained, along with a list of measures that Bellway are committed to implement to achieve the targets. Those measures include the appointment of a Travel Plan Co-ordinator to implement and monitor the Travel Plan process and the provision of travel information via travel welcome packs. A monitoring regime is also proposed to ensure that the Travel Plan achieves the objective and targets, including annual travel surveys and the preparation of annual monitoring reports. Finally an action plan summarises the various elements, who is responsible for them, along with their timescale.

The Drainage Statement explains that Phase 3 of the Broomy Farm development comprises part of a wider development area which is subject to a comprehensive drainage strategy. Specifically in relation to phase however the drainage would comprise of the following:

- Foul water drainage - Foul water flows will connect into a conventional sewer system and pass flows generally downhill towards the north east where they will connect onto an existing 375mm diameter foul sewer operated by Severn Trent Water Ltd.
- Land drainage - This phase of development would intercept an existing land drain from the railway cutting to the west. The diverted drain skirts around the development and falls with the topography of the site to an open section to the south of the proposed public open space. The existing open section of ditch would be retained within open space and its alignment is modified to allow it to meander. Downstream of this point a further piped section is returned to open channel to allow for ecological enhancement.
- Surface water drainage - Surface water flows would connect to a conventional sewer system and pass flows generally downhill towards the north east. At the extent of the development the sewers would discharge into a large attenuation feature permitted as part of a previous reserved matters phase. This feature includes areas of permanent water, varying bank slopes and bed swales to allow for water quality improvements and ecological enhancement. Flows will be attenuated to the pre-development greenfield run off rate as identified in the flood risk assessment that accompanied the Outline Planning Consent for this development. Surface water will be attenuated up to the 1 in 100 year level plus a 40% allowance for climate change before being discharged into the Watercourse.

The Landscape and Ecological Management Plan (LEMP) provides guidance for the continued management of public open space/landscaped areas associated with the development. This LEMP covers phases 1-3 as phases 1 and 2 LEMPs have already been approved. Therefore this report seeks to demonstrate the management of phase 3 only (albeit phase 1 and 2 are included to provide context).



The document sets out the management and maintenance regimes for the public open space (associated with residential phases 1, 2 & 3), including the structural landscape areas to primary highways, the linear green routes for pedestrian and cycle use, open space associated with the children's play area, the existing riparian corridors and proposed attenuation areas, existing retained field boundary tree, shrubs and hedgerows, and the areas of proposed National Forest planting, within the site and in the area to be known as Jessie's Wood. It is explained that the procedures set out are based on the initial five-year period, to enable the establishment of the landscape elements. In the long term it is explained that these procedures should be utilised and adjusted (where appropriate) to help provide ongoing maintenance methods that will serve to protect and enhance the landscape for years to come. It is explained that management procedures will be monitored in terms of their success in delivering the 'desired status' within the various landscape and ecological management areas, and if necessary alternative measures will be adopted/considered as part of an annual review of the management plan. In regards to the ecological and landscape objectives, it is explained that the key objectives of the landscape scheme that accompany this proposal are to enhance the existing landscape and ecological resource (retaining any existing vegetation of good quality where appropriate), provide public access as indicated on the plans and secure appropriate habitat for the wildlife identified/surveyed to be in existence on the site.

The Ecological Appraisal Update sets out that the Extended Phase 1 Habitat Assessment was completed on 14th April 2020 to identify any significant changes in habitat composition recorded on surveys undertaken in March 2013, April 2014, March 2017 and April 2018. The report initially provides a description of the site, its habitats and the species considered. It then continues to confirm that the site is not covered by any statutory designated site and that no statutory sites with local, national or European level designation exist within a 1km radius, that there are no SSSI's within a 2km radius and no Special Protection Areas, or Special Areas of Conservation within a 5km radius of the site.

In regards to Non statutory sites, it is identified that the Woodville Disused Railway (pLWS) is situated in the south west of the site, which has been highlighted as a potential unimproved grassland site. However within the assessment, the habitats in this area were not identified as meeting the criteria to be designated as unimproved grassland and therefore the loss of this was not considered to be detrimental. Further, through the implementation of areas of species rich grassland and future management of the species rich grassland, the development proposals were identified as ensuring no net loss to biodiversity and likely positive affects to biodiversity locally.

The report acknowledges that development of the site would result in loss of the waterbody which was present in the north of the site. It is explained that this habitat was of local level value only and its loss would therefore be unlikely to result in significant negative effects to the local biodiversity resource and that mitigation for this loss has been provided within the balancing facilities constructed as part of the wider development. It is also recognised that the layout has been designed to retain as much of the existing hedgerows on the boundaries of the site as feasible, and whilst there would be some loss of hedgerow within the central area of the site, to comply with the NPPF, mitigation for loss of the hedgerows will be provided through the creation of new native species hedgerow in the wider development. The report also identifies that the development would provide 30% of the site area as green space in-line with the planting guidelines detailed in The National Forest Strategy (2014-24). In regards to bats, the report identifies that no features have been noted on site with potential to support roosting bats and consequently the proposed development would not impact on roost sites. Great Crested Newts have not been recorded as present within the site or accessible neighbouring waterbodies during targeted surveys undertaken in 2013 and 2018 and therefore this species is not considered likely to be present and is not considered to be a constraint to development. Similarly no evidence of reptile species has been recorded and therefore reptiles are considered likely absent from the site and are not considered to be a constraint to the development.

### **Relevant planning history**

DMPA/2019/1327 - Approval of reserved matters for layout, scale, appearance and landscaping of outline permission ref. 9/2016/0882 (for the erection of 10 plots in lieu of 8 previously approved under reserved matters approval ref. 9/2018/0767, along with substitution of remaining housetypes and

adjustment to plot boundaries, relating to former plots 117-120, 144-145 & 160-161) – Approved December 2019

DMPA/2019/0893 - Approval of reserved matters for layout, scale, appearance and landscaping of spine road through phase 1a and 1b (in part) and approval of reserved matters for layout, scale, appearance and landscaping of the public open space areas for phase 1a and 1b (in part) - Approved October 2019

9/2019/0382 - Approval of reserved matters for layout, scale, appearance and landscaping relating to phase 2a only for the erection of 70 dwellings, along with layout, scale, appearance and landscaping of public open space areas and layout, scale, appearance and landscaping of the spine road for phase 1b (re-plan) and 2a.under outline permission ref. 9/2016/0882 - Approved August 2019

9/2019/0355 - The erection of a boundary entrance feature – Approved August 2019

9/2019/0291 - Approval of reserved matters for layout, scale, appearance and landscaping of outline permission ref. 9/2016/0882 (substitution of housetypes relating to plots 82-87, 93-95, 110 and 113-114) – Approved May 2019

9/2019/0290 - Approval of reserved matters for layout, scale, appearance and landscaping of outline permission ref. 9/2016/0882 (substitution of housetype relating to plot 18) – Approved May 2019

9/2019/0289 - Approval of reserved matters for layout, scale, appearance and landscaping of outline permission ref. 9/2016/0882 (substitution of housetype relating to plot 3) – Approved May 2019

9/2018/0767 - Approval of reserved matters for layout, scale, appearance and landscaping relating to phases 1a and 1b only for the erection of 180 dwellings, along with layout & landscaping of public open space areas for phase 1 only (re-plan) under outline permission ref. 9/2016/0882 - Approved November 2018

9/2017/0730 - Approval of reserved matters (in so far as layout & appearance for the spine road for the whole site and layout & landscaping of public open space areas for phase 1 only) - Approved June 2018

9/2016/0882 - Variation of conditions of outline application ref. 9/2014/0740 - Approved June 2018

9/2014/0740 - Outline application (all matters except for access reserved) for the erection of up to 400 dwellings and provision of new school pick up/drop off area, together with associated highway works, public open space, landscaping, parking and attenuation facilities - Approved July 2016

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

Derbyshire Wildlife Trust has raised no objection.

The County Highway Authority has raised no objection subject to conditions.

Peak and Northern Footpaths have raised no objection subject to the footpath adjacent to the site remaining unobstructed and a safe road crossing point being provided for users of the footpath.

The Council's Landscape Architect has requested that hedgehog access is incorporated into boundary wall and fences.

The Strategic Housing Officer has raised no objection.

The Police Architectural Liaison Officer has raised concerns in relation to the use of post and wire fencing as a form of boundary treatment on specific plots.

Hartshorne Parish Council objects to the application on grounds that there is not enough consideration to health and safety regulations with regard to the security of the site and that there appears to be no clear indication of the entrance from off the estate into Granville School.

Two representations have been received, one of neutral stance and one objecting. These raise the following points:

- a) Queries relating to landslip and associated boundary and landscaping issues (including falling branches) along with land ownership queries.
- b) There is no access from this development to Granville School, which would provide a safe route to the school and encourage them to access the school by foot.
- c) An administrative boundary between Woodville and Hartshorne dissects the site, the road layout should be realigned along this route to avoid future confusion in democratic processes.

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

The relevant Development Plan policies are:

- 2016 Local Plan Part 1 (LP1): S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), H4 (Land at Broomy Farm, Woodville), SD1 (Amenity and Environmental Quality), BNE1 (Design Excellence), INF2 (Sustainable Transport) and INF8 (The National Forest)
- 2017 Local Plan Part 2 (LP2): BNE7 (Trees, Woodland and Hedgerows)

The relevant local guidance is:

- South Derbyshire Design Guide Supplementary Planning Document (SPD)
- Affordable Housing SPD

The relevant national policy and guidance is:

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

### **Planning considerations**

The wider site received outline planning consent for up to 400 dwellings and ancillary infrastructure in 2016. The outline permission 'fixed' the access points to Burton Road and Woodville Road. Since this time there have been subsequent applications made, including a variation of conditions application to the outline consent, along with a number of reserved matters submissions. The outline permission requires the submission of certain details alongside each reserved matters submission (in so far as relevant to that submission), including:

*"...(b) except where to the rear of existing dwellings, retained hedgerows and trees shall, as far as practicable, not form boundaries to proposed dwelling houses and be incorporated into public spaces/green infrastructure;*

*(d) a Landscape and Ecological Management Plan (LEMP) for all retained and created habitats outside of private areas, including grassland creation where feasible to mitigate for the loss of suitable habitat for ground nesting birds and details of the legal and funding mechanism(s) by which the long-term implementation of the LEMP will be secured by the developer with the management body(ies) responsible for its delivery;*

*(e) a site wide Phasing Programme including details of the proposed sequence of development across the site, strategic drainage and SuDS infrastructure, the extent and location of individual development phases or sub-phases and the associated access arrangements, programme and methodology for infilling of the former railway cutting, and timescales for implementation thereof;*

*(f) a Framework Travel Plan, including Travel Plan targets (relating to each phase or sub-phase where relevant) comprising immediate, continuing and long-term measures to promote and encourage alternatives to single-occupancy car...;*

*(h) detailed design for the provision of bin stores within private land at the highway end of private shared accesses to prevent refuse bins and collection vehicles standing on the*



*residential street for longer than necessary causing an obstruction or inconvenience for other road users...;*  
*(j) details and specifications of improvements (to an adoptable standard of at least 2 metres width) of the existing footpaths within the site; and*  
*(k) details of subterranean tree and hedgerow root protection/facilitation measures...".*

Policy H4 also requires:

*"...iii) High quality pedestrian and cycle links shall be provided within the site and connecting to existing and proposed network..."*

This reserved matters submission relates to phase 3 of the wider development, proposing 143 dwellings. It encompasses the western most parcel of the site which largely shares its boundary with Granville School. A large central open space, encompassing the LEAP, along with a landscaped buffer along the western boundary and a smaller informal space to the eastern tip of the site make up the remaining open space provision for the wider development.

At the outline stage an opportunity was identified whereby the development could facilitate an improved parking and access solution for the adjacent Granville Academy, through the provision of a collection/drop off area. It was, however, not possible to secure this facility by way of legal agreement or planning condition as the necessary legal tests were not met. Whilst this facility was illustrated on the conditioned masterplan, in acknowledging the above, flexibility in terms of compliance with this document was built-in with future reserved matters being required to be 'broadly in accordance' with this document.

The facility does not form part of the current reserved matters submission. Discussions have taken place between the developer and the school in an attempt to secure this. However, despite considerable efforts, within a letter to the developer the school has confirmed that they do not wish to pursue the offer on grounds of site security and safeguarding mechanisms. As such, it is not considered reasonable to pursue the matter as this would require obsolete infrastructure to be provided by the developer. When considered as a whole, the drop off/collection facility comprises a very minor element of the overall development and thus in this context the development would still be considered as 'broadly in accordance' with the masterplan.

In taking account of the application documents submitted (and supplemented and/or amended where relevant) and the site and its environs, and noting that the principle of development established such that matters relating to the impact on local services and facilities, ground conditions, ecology and flood risk have all been previously considered acceptable (subject to conditions and/or obligations); the main issues central to the determination of this application are:

- Layout and landscaping; and
- Scale and appearance of the dwellings.

## **Planning assessment**

### **Layout and landscaping**

The proposed layout ensures that key principles established under the outline consent are presented in detail within this submission.

During the course of this application, various amendments have been sought; Throughout the development the extent of frontage parking has been reduced or its appearance enhanced through the provision of a more robust landscaping solution, providing a 'soft' edge. Dwellings have been realigned and set further back in their plots (where appropriate) to ensure they follow a consistent building line. Specific clusters of dwellings have been re-planned to reduce amenity impacts on adjacent dwellings, to enhance rear amenity space, to improve the usability of parking provision and to ensure views are terminated by a focal point. Bin storage and collection facilities has been identified within convenient locations and additional architectural detail has been provided to key elevations to add interest. More

minor amendments have also been secured including the 'handing' of gabled plots to ensure a more rhythmical pattern of development and the addition of chimneys on key plots to enhance the roofscape. Boundary treatments have also been revised to ensure consistency between the different phases of the development.

The layout would achieve both well surveilled and strong frontages to routes and would ensure interest at key views/focal points. Corner properties would have dual aspects, whilst the orientation and separation between properties (both existing and proposed) would ensure occupiers would benefit from suitable levels of privacy and would not suffer any harmful overshadowing or overbearing impacts. Public routes and open spaces would be adequately overlooked through appropriately oriented dwellings, and connectivity between the housing parcels, the open spaces and the wider area would be secured through a comprehensive network of paths, routed where possible, along desire lines. Turning specifically to the layout of open spaces, these would provide for a range of uses. The LEAP has been conveniently positioned to benefit from natural surveillance, but also to ensure that there would be adequate areas remaining for more space intensive activities such as informal games of football or cricket. Other areas have been planted with clusters of trees which may better lend themselves to quieter pursuits such as reading, yoga or family picnics. The chosen landscaping, especially within the vicinity of the LEAP would also facilitate natural shading along with biodiversity enhancements.

Comments have been received requesting that hedgehog access points be provided within the boundary treatments. This request does not feature within the ecological report recommendations and has not been requested by Derbyshire Wildlife Trust. As such there are no reasonable grounds on which to impose this as a condition. As such the developer will be made aware of the request via an informative.

The principal route would be delineated by metal railings, with hedgerow set behind, and dwellings would be set back an equal distance from the highway edge - thus aiding legibility throughout. On corner plots, rear gardens would be enclosed by walls, aligned with the corresponding dwelling to ensure adequate space for landscaping. The perimeter of the development and the individual parcels of dwellings would also be framed by a soft landscaped border, supplemented by a timber knee rail, which would delineate public/private space and embed the areas character, strengthening its relationship with the National Forest.

Parking provision would be to the side of dwellings along the primary route, preventing this from becoming a dominant feature of the streetscene, and whilst there would be occurrences of frontage parking on secondary routes; adverse impacts associated with such would be mitigated by soft landscaping, including additional tree planting. Parking provision throughout would be compatible with the guidance as set out in the Design SPD in terms of its quantum and dimension. In regards to the proposed road layout and visibility splays, the County Highway Authority have raised no objection subject to the imposition of conditions. Each of these have been considered in detail to ensure they meet the necessary legal tests. One condition raises concern, however. This seeks to ensure that "the vehicular access shall be formed to the new estate street in accordance with the application drawings". There is no access proposed by the development and thus it is considered that this condition must have been suggested in error. The approved plans condition below requires adherence to the layout plans in any case, so the imposition of a further condition would not be necessary.

Affordable housing provision is proposed within two areas of the site. There has been discussion in respect of one cluster, which would marginally exceed the suggested number of 10 units, by 2. The layout in this area has been reorganised to integrate additional market dwellings, and whilst there would remain 12 units within the wider area, their distribution would now be more dispersed. The mix and size of affordable units has also been addressed to better reflect local demand, resulting in the provision of bungalows, 1 bed and 4 bed properties. Concerns have been raised in regards to the proposed rear boundary treatment for these dwellings (post and wire fencing). This solution is not considered acceptable and a condition is proposed, requiring alternative details.

Overall the proposed layout and landscaping would result in a legible, well-connected and inviting development that would be complimentary to and in keeping with the areas existing characteristics. In

this regard the proposal would be consistent with the intentions of policies BNE1 and the Design Guide SPD, and the overarching principles of the NPPF.

### Scale and appearance of the dwellings

A mix of 1, 2 and 2.5 storey dwellings are proposed throughout, with those of greater scale reserved for the spine road. In terms of their individual design, the dwellings would take on a predominantly traditional appearance owing to their specific architectural features and materials. During the course of the application, amendments have been requested to a number of house types, predominantly to secure balanced and detailed elevations. Aside from those discussed below, the requests were addressed by the developer. Concern was raised with the maisonette house type owing to the inconsistent siting of its openings within its principal elevation. The developer has commented that this house type has been accepted on other phases and that there would be no practical way of amending the elevation. The openings have been considered in relation to the internal layout and although there may have been a workable solution, this would not have been straightforward. On this basis and on balance, the original elevations, when considered in the wider context of the development would not result in a significant degree of harm and a refusal could not be warranted on such grounds. It was also raised that the first floor window of the Blacksmith house type should be aligned with the porch. In response, the developer has provided a street scene illustrating how this house type would appear in context; on this account of this, the original elevational detail is considered acceptable.

Details of materials have also been submitted for consideration. Originally a combination of six brick variations were proposed along with two types of tile, with two colour finishes. Of the proposed materials, two brick types were not considered acceptable as they failed to reflect the local vernacular. The remainder of the materials have been considered in the context of the approved materials on other phases and the wider area and on this basis are considered compatible. When considering the distribution of materials across the site, however, some amendments have been requested to ensure a consistent pattern is achieved.

Overall, the dwellings would appear well balanced and would have a symmetrical appearance, resulting in an aesthetically pleasing and legible form of development. Adequate design detail has been secured including decorative brick detailing, including brick string courses, a variety of header and cill finishes, ground floor bay windows and porches (of varying style) finished in high quality materials. Fenestration would be set within a legible reveal and would be of narrower proportion at first floor, as common within traditional forms of architecture, and chimneys would be provided on key plots. The development would therefore be consistent with policy BNE1 and the Design Guide SPD and the overarching principles of the NPPF.

### Conclusions

On balance this reserved matters submission would result in a well detailed and laid out development, enhanced through the use of appropriate landscaping rendering it both complementary to, and consistent with existing development within the vicinity. The proposal would be broadly consistent with the details of the approved masterplan, with the relevant policies of the Local Plan, with the NPPF and the Council's SPDs. The resultant scheme would therefore comprise of sustainable development and would assist in the delivery of the councils identified housing need, both in terms of market and affordable homes.

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** permission subject to the following conditions:

1. The development hereby permitted shall be carried out in accordance with the drawings and plans listed in the Drawing Schedule dated 09/09/2020 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 approved drawings, all boundary walls erected pursuant to this approval shall include the use of a bullnose brick of a matching colour in the header course where changes in ground levels need to be accommodated.

Reason: In the interests of securing a high quality finish reflective of local vernacular.

3. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015, or any statutory instrument amending, revoking and/or replacing that Order, no further boundary treatments shall be erected forward of any walls, fences or other means of enclosure which are exposed to a highway, footpath, shared courtyard or driveway or public open space/forest planting.

Reason: In the interests of overall design, in order to maintain the character of green and public spaces as secured under the plans hereby approved.

4. There shall be no gates or other barriers within 5m of the nearside highway boundary (proposed highway boundary) at any of the private driveways or vehicular accesses within the site. Any gates beyond 5m from the highway boundary (proposed highway boundary) shall open inwards only.

Reason: In the interests of safety on the public highway.

6. Throughout the period of development vehicle wheel cleaning facilities shall be provided and retained within the site. All construction vehicles shall have their wheels cleaned before leaving the site in order to prevent the deposition of mud and other extraneous material on the public highway.

Reason: In the interests of highway safety.

7. Prior to any works commencing on site, excluding site clearance, details of the residential estate roads and footways (including layout, levels, gradients, surfacing and means of surface water drainage) shall be submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of highway safety.

8. Prior to the first occupation of any new dwelling hereby permitted, the carriageways and footways between the dwelling and the existing highway shall be constructed up to and including base course surfacing to ensure that each dwelling has a properly consolidated and surfaced means of access. Until final surfacing is completed, the footway base course shall be provided in a manner to avoid any upstands to gullies, covers, kerbs or other such obstructions within or abutting the footway. The carriageways, footways and footpaths in front of each dwelling shall be completed with final surface course within twelve months (or three months in the case of a shared surface road) from the occupation of such dwelling, unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interests of highway safety.

9. No part of the development shall be occupied until each junction has been provided with visibility sightlines extending from a point 2.4m from the carriageway edge, measured along the centreline

of the junction, for a distance of 25m in each direction measured along the nearside carriageway edge. The land in advance of the sightlines being levelled, constructed as footway and not being included in any plot or other sub-division of the site.

Reason: In the interests of highway safety.

10. No dwelling shall be occupied until space has been provided within the site for the parking of residence and visitors vehicle, laid out in accordance with the application drawings and maintained throughout the life of the development free of any impediment to its designated use.

Reason: To ensure adequate parking provision in the interests of highway safety.

11. The gradient of the new estate streets shall not exceed 1:30 for the first 10m into the site from the existing highway boundary and 1:20 thereafter.

Reason: In the interest of highway safety.

12. The proposed access driveways to the new estate streets shall be no steeper than 1 in 14 for the first 10m from the nearside highway boundary and 1 in 10 thereafter.

Reason: In the interests of highway safety.

13. Notwithstanding the plans hereby approved, prior to the construction of plots 45-50 (inclusive) plots 79-81 (inclusive) and plots 89-94 (inclusive) details of the rear boundary treatment shall be submitted to and approved in writing by the Local Planning Authority. The boundary treatments shall be completed in accordance with the approved details before the respective dwelling is first occupied or in accordance with a timetable which shall first have been submitted to and approved in writing by the Local Planning Authority.

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

14. The development shall be constructed in accordance with the materials and details specified on the approved materials layout plan which shall thereafter be retained.

Reason: In the visual interest of the buildings and the surrounding area.

Informatives:

- a. The developer may wish to provide hedgehog access within boundary walls and fences having dimensions of 150mm x 150mm.



**Item No.** 1.4

**Ref. No.** DMPA/2019/1285

**Valid date:** 04/03/2020

**Applicant:** Central England Co-operative

**Agent:** Olivia Morris  
Harris Lamb Property Consultancy  
75-76 Francis Road  
Edgbaston  
Birmingham  
B16 8SP

**Proposal:** Outline application considering the matter of access and the matters of layout and scale (in part) (matters of appearance and landscaping reserved for later consideration) for the development of up to 25 dwellings with associated open space and infrastructure at Land south of Castle Way, Willington, Derby, DE65 6BT

**Ward:** Willington & Findern

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

This item is presented to the Committee at the discretion of the Head of Planning and Strategic Housing due to this being a major application that is subject to a significant level of controversy and which conflicts with the Development Plan.

#### **Site Description**

The site is triangular shaped, fronting The Castle Way (A5132) to the north, with eastern/southern boundaries to the Trent and Mersey Canal and its Conservation Area. The site spans approximately 1.35ha. The site is currently an agricultural field with hedgerows lining the boundaries to the highway and canal, perforated by some trees and to the highway these boundary treatments are set back slightly by a grass verge. The site has slightly varying topography declining from west to east and from north to south towards the canal. The Castle Way transitions from 40mph to the west of site to 30mph on the approach to the canal bridge to the east, with pavement only to the northern side. To the north eastern corner of the site is the canal bridge with pavement to either side of the highway over the bridge and towpath to the eastern side of the canal accessed by steps from the bridge.

Beyond the canal and over the bridge to the east is the County depot and Willington Old School Community Centre. To the north/west of site beyond the highway and beyond the site is a ribbon of dwellings comprising single storey, predominantly hipped roof detached bungalows, two storey gable/hipped roof detached houses and two storey gable/hipped semi-detached houses. These dwellings are set on generous long and narrow plots, with building lines set back by their driveways/front garden areas, yet fronting the highway. Beyond these plots is open countryside. Beyond the bridge and canal towpath (a Public Right of Way (PRoW)) to the east is the edge of the settlement boundary of Willington which has rail and bus services, shops, a pharmacy, a church, pubs, etc.

#### **The proposal**

The application is made in outline, with the matter of access considered now and with matters of layout and scale considered in part, for up to 25 dwellings, public open space and associated infrastructure. The density proposed is 29.4 dph (net) indicatively comprising of 17 market dwellings and 8 affordable dwellings (four 2-bed and four 3-bed) with tenure unknown. An indicative mix of four 2-beds, 16 3-beds and five 4-beds is proposed. The layout proposes solely two-storey dwellings, with varying eaves heights from 4.8m to 5m and ridge heights from 9 to 9.5m. It would appear from the layout a mixture of detached and semi-detached dwellings are proposed.

**THE SITE**

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

The proposals include one vehicular access into the site from the north-west onto The Castle Way and three pedestrian entrances from The Castle Way. Leading from the main vehicular access, internal roads would comprise two cul-de-sacs and private driveways. An attenuation basin is proposed to run parallel with the canal to the immediate south of the dwellings, whilst to the north-eastern corner public open space (POS) is planned and to the south-western corner a Local Area for Play (LAP), totalling 0.54ha (40% of site area) of green infrastructure.

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

A Planning Statement considers the proposal to represent sustainable development in compliance with the development plan as it proposes up to 25 dwellings at a site adjacent to an existing settlement, Willington, a Key Service Village with 30% affordable to be provided via a section 106 (s106) agreement. They consider that the development is in compliance with policies H1 of the LP1 and SDT1 and BNE5 of the LP2 as a result of recent appeals within the District which in their opinion clarifies what is meant by an 'exceptions' site in policy H1. They consider that should the development not be considered in compliance with the development plan, that the Council is also unable to demonstrate a Five Year Housing Land Supply (5yrHLS), thus there is a housing shortfall and the 'tilted balance' set out in paragraph 11(d) of the NPPF is engaged, lending further weight to a grant of planning permission for the development.

A Housing Supply Review considers that the Council do not have a 'recently adopted' plan and that as a result of this, when considering paragraph 73 of the NPPF and the undeliverability of allocated housing sites, that the calculated housing land supply is incorrect and that the supply is actually 3.79 years.

The Design and Access Statement (DAS) considers the scheme to propose a high-quality development of up to 25 dwellings with associated public open space, landscaping, parking and access. They consider Willington is a sustainable and desirable location to live, benefiting from a range of local amenities and transport links. The applicant considers the scheme proposals will bring forward housing to meet local needs, including 32% affordable housing. They consider the proposals are of a scale proportionate to the size of the settlement and would not have any adverse impacts in terms of highways safety, amenity of neighbours, flood risk, heritage, ecology or any other environmental requirements. An indicative mix of 4 two-beds, 16 three-beds and 5 four-beds, with all the two-beds and 4 three-beds as affordable. The applicant considers the scheme complies with all relevant national and local planning policies to create a high-quality development which respects and complements the existing character of the surrounding area and local village context.

A Statement of Community Involvement notes the applicant sought pre-application advice in April 2019 and conducted a meeting with Willington Parish Council July 2019. It is noted that the pre-application advice given raises concern as to whether the site is considered to be adjacent to the settlement boundary of Willington. It is the applicant's opinion that it is. The meeting with the Parish Council was well attended and comments raised included an in-principle objection to the scheme, location of site access on the Castle Way and prospect of extending 30mph limit beyond the access to the site, number of vehicle movements associated with the site, Willington has experienced enough development and no further housing is required to support the growth of the village, the capacity of infrastructure - particularly the school as a result of the development, and queried of the Co-Ops ownership within the village and whether there is the possibility of land being gifted to the community as open space.

A Geo-Environmental Desk Study reviews the earliest available historical maps and reveals the site to be agricultural up to present day, with its surrounding predominantly agricultural land interspersed with residential property. The site, nor adjacent sites, are determined as contaminated land under Part 2A of the Environmental Protection Act 1990 and is thus determined as medium/low risk. The site is not in a Coal Authority reporting area, nor increased Radon probability area. Ground conditions to the south of site were considerably waterlogged in areas with a section of canal bank noted to be absent in the south-western corner. Potential variable degrees of thickness and composition of superficial deposits in the south of the site may mean shallow foundations are not suitable and deep foundations are required.



The site is considered to pose a low risk in respect to human health, a low to medium risk to controlled waters and a low to medium risk in respect to geotechnical constraints. It is recommended a ground investigation is carried out to attain more certainty in these assessments and obtain site-specific data to support any planning application for the site, earthworks and foundation design.

The Flood Risk Assessment (FRA) considers that the site lies within an appropriate location for the proposed land uses in accordance with the vulnerability classifications of the NPPF. It is considered management of extreme event flood risk can be achieved through appropriate finished floor levels above adjacent roads/open space levels in areas where designated overland flood routes are identified. They consider the responsibility for the operation/maintenance of SuDS features can be confirmed prior to construction and maintained in accordance with manufacturer recommendations and current best practice/guidance to ensure routine operation. The proposed drainage strategy would mimic the behaviour of existing greenfield land through the utilisation of attenuation storage and flow control devices allowing for storage volumes and climate change allowance. The proposed drainage strategy is considered in compliance with local policy and site specific requirements, and shows the development can be undertaken in a sustainable manner without increasing the flood risk either at the site or to third party land in line with NPPF requirements.

A Noise Assessment considers that the noise levels from sources such as the railway, road and operational activities at the depot to the east are below the WHO criterion for serious annoyance at the majority of selected receptor points, other than those closest to The Castle Way or railway where a negligible exceedance is predicted. The applicant considers that with the use of a landscape buffer between the depot and the closest properties to the east with 2.1m high close board fencing around gardens (included within the assessment) most exposed to noise from The Castle Way and the railway, with specifications for appropriate glazing units and ventilators; that satisfactory mitigation that is suitable and commensurate protection against noise and vibration can be provided to protect occupants of the proposed development.

A Service Supply Assessment considers that following discussions with suppliers such as South Staffs Water (water), UK Power Networks (electricity), Cadent (Gas) and BT (Telecoms) that these assets do not represent constraints to the development and that service supplies are not prohibitive.

The Heritage Assessment (as updated) states that there is a moderate/low potential to contain remains of prehistoric, Roman and Medieval date, as well as low potential to contain post-Medieval, remains, subject to remnants of agricultural activity. It considers any buried remains are likely to be of no more than local significance, but if unexpected remains of prehistoric and Roman date are present which are well preserved, these could be regionally significant, with any remains that may be at the site not thought to be of such significance that they require preservation in-situ, or preclude development of the site. They would require a programme of archaeological works to determine their extent and level of preservation secured by planning condition. No Scheduled Monuments, Registered Parks and Gardens and Registered Battlefields would be impacted by development of the site. The site does not contain, nor is it located in the vicinity of, any locally listed buildings, which are non-designated heritage assets. The applicant considers that the seven Grade II listed buildings to the east and south east of the site (in survey area) are of sufficient distance from the site, with modern development lying between the site and the assets, that this development would not impact their settings or significance. The applicant feels that the set-back nature of the development, low density-housing of sensitive design and retention of existing vegetation to the banks of the canal would preserve the significance of the Trent and Mersey Canal Conservation Area with none of the essential aspects of its significance affected.

A Transport Assessment advances that the 25 dwellings can be served by a priority junction with The Castle Way, connecting with a network of internal roads designed to adoptable standards and with due regard to Manual for Streets. The access can be provided to required standards and with visibility splays appropriate to measured vehicle speeds, using land that is either under the control of the applicant or is part of the adjacent public highway. The applicant proposes reducing the speed of The Castle Way to 30mph 75m to the west of the proposed access, which they consider would positively impact on road safety. A new footway along the southern side of The Castle Way to connect the development with the existing pedestrian network would enhance pedestrian provision for existing

residents. They consider that the development is in comfortable walking distance from the village centre and facilities, with the railway station providing links to Derby, Nottingham, Tamworth and Birmingham, attractive for employment, retail and leisure opportunities. The site connects with towpaths and the National Cycle Network to the west which forms part of a cycle route to Burton upon Trent. The applicant considers the site to be well connected to bus stops 600m away in the village providing links to Burton upon Trent and Derby. Available records of personal injury accidents provide no evidence of any road-safety related-issues on the highway network adjacent to the site. The applicant considers that the capacity of the site access junction has been assessed with forecast traffic flows at the end of the Local Plan period allowing for traffic growth and committed developments, and the sensitivity test indicates that the proposed access would comfortably accommodate additional development on land to the west of the application site should this come forward for consideration in the future. The applicant states that car parking within the scheme would be provided for each dwelling in accordance with standards.

A Landscape and Visual Appraisal (LVIA) acknowledges that it is important to recognise that any change to a site which is partially greenfield land will result in landscape and visual implications. The applicant considers that the landscape of the site does not possess qualities or characteristics which would indicate that is of more than local value. The applicant considers that the site would sit within the visual context of existing properties on The Castle Way and is seen in the setting of Willington. They consider that the north of the site would not be seen but rooflines of the development would be, due to limited hedgerow and tree planting to the northern boundary. They consider that the site is visible from the south due to the flat landform and limited south eastern boundary vegetation, but that it would be viewed in the same context from the south as the existing properties on The Castle Way. They consider that the strengthening of south-eastern boundaries with scattered tree planting and a landscape buffer along the canal would respect the setting and visual character of the area and that positioning of houses to the north and west of the site respects the setting of existing settlement form. This landscape buffer and public open space would also bring ecological and perceptual benefits to area quality. Recreational routes through the site connecting to Willington and surrounding footpath network would improve recreational aspects of the site. The applicants consider that the development is in keeping with the local landscape character.

A Preliminary Ecological Appraisal (PEA) notes that the site is dominated by improved grassland bordered by species poor hedgerows and the Trent and Mersey Canal, and towards the canal wet grassland species have encroached. There is also a dry ditch present within the field. An Extended Phase I Habitat Survey was carried out in October 2018, then a Phase II survey including reptile, water vole, otter and bat survey, and then an updated Phase I was undertaken in May 2019. These found no evidence of use of the site by reptiles, low level bat activity associated with the canal, low suitability for and no signs of water vole near the canal. The applicant considers retention of hedgerows and planting of new hedgerow, shrub and grassland along the canal would enhance ecological values.

### **Relevant planning history**

None applicable. Pre-application advice for the proposal was given in May 2019 (ref. PRE01307).

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

The County Planning Policy Officer seeks financial contributions for education, namely four secondary and two post-16 places totalling £156,276.62, for the provision of education facilities at John Port Spencer Academy.

The Public Footpaths Officer has no objection.

The Development Control Archaeologist has no objection subject to a condition seeking a Written Scheme of Investigation for archaeological work given the proximity of the site to complex multiperiod archaeological sites and due to lack of historical disturbance suggesting some possible archaeological features.

The Environmental Health Officer has no objections subject to recommendations in the Geo-



Environmental Desk Study with regards to ground contamination and that further assessments should be undertaken in the form of intrusive site investigation, the findings of which should be submitted and agreed with the Council. A Noise Mitigation Strategy would need to be submitted once the final site layout is determined, and should include a detailed assessment of glazing units, ventilators and overheating control measures. Dust and noise mitigation for the construction period, and set construction hours, are also requested.

The County Highway Authority (CHA) has no objection subject to conditions relating to construction access, plant/materials/vehicle storage during construction, wheel washing facilities, a construction management plan, further swept path analysis, construction details of estate roads and footways, adequate visibility sightlines, new estate streets with adequate visibility sightlines, highway drainage, laying out of parking prior to occupation, garages/parking spaces being retained for the lifetime of the development, adequate gradients for driveways onto new estate streets, driveways not to be gravel, secure cycle parking facilities and that gates only open inwards.

The Derby and Southern Derbyshire NHS CCG has no objection and makes no request for a financial contribution due to the size of the development.

Natural England has no comments to make and defer to the local wildlife trust for assessment.

Derbyshire Wildlife Trust has no objection subject to conditions for breeding birds protection during the construction period, a Construction Environmental Management Plan, a Landscape and Biodiversity Enhancement Management Plan, and submission of a wildlife friendly external lighting scheme.

The Lead Local Flood Authority has no objection subject to conditions to secure detailed design and associated management and maintenance plan of surface water drainage for the site in accordance with DEFRA standards and FRA recommendations, a surface water run-off capture scheme for the construction phase, and a verification report of implemented drainage schemes.

The Local Flooding Officer has no objection.

The Environment Agency has no objection as the site lies fully within Flood Zone 1 and therefore there are no fluvial flood risk concerns associated with the site along with no other environmental constraints.

Severn Trent Water Ltd has no objection subject to conditions and informatives covering disposal of surface water and foul sewage.

The Canal and River Trust has no objection noting that the canal is designated as a Conservation Area and as it passes under the A5132 and heads south west, the character of the canal setting rapidly changes to a very rural character, with no built development adjoining either side of the canal once past the depot site. While the application is outline, layout and scale are considered as such any reserved matters application would reflect this layout. They consider the layout to be acceptable as the built development and associated road infrastructure would be set back from the canal edge, leaving a broad landscaped area adjoining the canal which incorporates a play area, attenuation pond and footpaths, avoiding creating an overly urbanised character near the canal and helps retain much of the semi-rural feel of the canal corridor as it sits on the edge of Willington. This is dependent on the detailed design and layout of the landscaped area alongside the canal and it would be important to ensure appropriate landscaping scheme is secured incorporating suitable native species. Layout could secure a significant enhancement to the biodiversity value and ecological interest of the canal corridor, and they seek further involvement at the reserved matters stage. There is also no objection in principle to the discharge of surface water to the canal at an attenuated rate, though the discharge arrangements require further assessment in detail and long term SuDS elements of a drainage scheme should be secured as part via planning condition or s106. External lighting details should be secured by suitably worded planning condition to mitigate impacts on wildlife.

Willington Parish Council objects to the proposal for the following summarised reasons:

- i) The applicants interpretation of policies H1 and H21 are incorrect and as the proposals are for 25 dwellings that is not adjacent to a settlement (Key Village) and where a totally affordable housing/rural exception scheme is not proposed and is also not a cross subsidy scheme the development is contrary to policies SDT1, BNE5, H1 and H21.
- ii) The applicants have contested that the Council have incorrectly calculated their five-year housing land supply and therefore contest if the housing policies H1 and H21 are up to date. However the SDDC Housing Position Paper February 2020 states there is a housing supply of 5.92 years for the period of 2020/21 and 2024/25 and as such there are no material considerations related to housing supply or delivery which warrant a departure from the development plan.
- iii) The Trent and Mersey Canal is considered to be of national importance as part of the country's industrial heritage. When viewing from the south side of the Canal towards the site, there is a feel of openness and that users of the canal are within a rural context. Whilst development to the north is evident, this is ribbon in nature and crucially sufficiently distant to maintain the rural character of the canal. The application site therefore acts as a buffer between development and the more tranquil, rural environment of the canal. Although the proposed layout incorporates a buffer of open space between the canal and built development, the proximity of houses to the canal, including front facing dwellings, is much changed. This will have an adverse impact on the character and the appearance of this section of the canal and we submit would cause 'less than substantial' In accordance with Paragraph 196 of the NPPF, the test is therefore whether there are public benefits which outweigh this harm. We submit that no public benefits of the scheme would outweigh the harm. The proposal represents development outside of the settlement boundary and is contrary to the spatial strategy of the Development Plan (Policy H1). Further, SDDC advise that they can demonstrate a five-year supply of housing. Even in a context where the principle of residential development was deemed acceptable, it is considered that the harm to the character and appearance of the canal should be give significant weight and is sufficient alone to justify the refusal of the application. The proposals are contrary to policies BNE2 and BNE10.
- iv) Willington Parish Council wish to advise that their Footpaths Group is currently liaising with Cemex and Derbyshire Wildlife Trust who are undertaking great work for the benefit of the community. Proposals are that the section of the towpath, adjacent to the site, will form an important part of a new five-mile nature walk around the nearby Willington Wetlands area. They advise that this is a significant project for Willington which will hopefully see the release of a beaver colony into the wetlands. This is an indicative example of the rural recreational function of the canal and its value to its users.
- v) The proposed development is at odds with the character of the area in that it is presently ribbon village edge development with little or not depth, with one or two examples of dwellings set back from the Castle Way frontage, which creates a clear pattern of development that these proposals would significantly erode due to depth of the layout. The proposals are contrary to policies BNE1, BNE2, BNE4, BNE5 and BNE10.

56 representations of objection have been received, raising the following concerns:

Principle of the development

- a) Willington has already had many houses built in the last few years like at Kingfisher Way, Peace Haven and the new site on Repton Road, with many awaiting sale, so why build more.
- b) Development of brownfield before greenfield should be considered first. The brownfield land at the power station should be targeted for development first over this site.
- c) DMPA/2019/1196 at Ivy Close nearby was refused on several grounds including insufficient and unsafe access, flooding concerns and erosion of green corridor of the Trent and Mersey canal.

- d) Further housing in the area is not required as there is a housing land supply with sufficient land available elsewhere in South Derbyshire for development, in settlements and closer to areas of employment and this site is not the only option for development being already saturated.
- e) The development is not sustainable as it is not located near employment areas and this would increase length of travel.
- f) The pre application advice identifies a number of concerns including principle of development, impact on Conservation Area, unsafe access and lack of infrastructure.
- g) Loss of agricultural land for long horn cattle grazing.
- h) While the proposals are for 25no. Units in line with the plan the rest of the site to the west is not currently being considered and may be subject to future applications as two access points are shown in supporting information. If approved there should be a condition to limit the remaining portion of land to the west to prevent further residential development in the area that Central England Co-operative own.
- i) The development is contrary to policies SDT1, BNE5, H23 and does not fulfil requirements of H24, H25, H26, H27 and H28.
- j) The housing boom in Willington is as a result of Toyota which while it brought jobs to the community has exacerbated issues in a small village as a result.

#### Local character

- k) The development of green fields will eat away at the character of the village.
- l) The development would result in over-massing.
- m) Development of the site would block the lovely views of agricultural land towards the canal and the visual appearance of Willington, taking away from its village feel impacting the Landscape character.
- n) The development is not in keeping with the properties in the immediate area with most houses being traditional style having large plots/gardens that back onto green pasture-land.
- o) No direct access to the canal or wider area for pedestrians or to any green infrastructure.
- p) The canal towpath is a danger to young children if left exposed.
- q) The development is not in keeping with the properties in the immediate area as they will be two storeys and over.
- r) It is not clear from the plans if the height of the proposed houses included any height added to the ground level which would further impact amenity.
- s) The 2.1m acoustic fencing proposed close to the road and depot would be out of character and unsightly for the site and being urban in nature.
- t) The development would lead to a loss of community and sense of the feeling of living in a village.

#### Residential amenity

- u) The development will detrimentally impact the privacy of houses along Castle Way from windows looking onto these properties.
- v) Impact of several more car headlights creating light pollution for existing and future residents of Castle Way.
- w) The full height and position of houses will also result in overshadowing and loss of light to the existing Castle Way dwellings due to proximity of the development and the position and movement of the sun. There should be height restrictions attached to any approval, no windows facing existing dwellings and construction hours.
- x) The development could result in unacceptable noise impacts from traffic noise and construction.
- y) The Noise Assessment was undertaken during the Covid-19 pandemic when traffic movements were artificially low.
- z) Noise mitigation can only be achieved when windows are closed and that night-time noise levels are high also.

#### Heritage

- aa) The appearance of the Trent and Mersey Canal Conservation Area would be affected dramatically.

- bb) The Trent & Mersey Canal Conservation Area Character Statement 2014 states that “the distinctive characteristics of the Trent & Mersey canal can be summarised as a long meandering corridor of wildlife ecological value, bordered by trees and native hedgerows.”
- cc) Also, that “long stretches of uninterrupted water with relatively few structures”, and “an important recreational route within the east midlands, the towpath is popular with walkers, cyclist and anglers and the canal is regularly used by narrow-boats.” The Area Character Statement further notes that “Willington is unusual as the building that front the canal face away from it, focussed upon the narrow lanes and paths”, “this network of footpaths has a private character”. Emerging from bridge 24 travelling south-west down the canal, the development would be immediately visible on the right, with the Council depot on the left. This would be hugely detrimental to the character of the canal.
- dd) Screening to the canal area from trees or noise barriers would be detrimental to the character and setting of the asset and will erode sense of transition to a rural setting and give the canal a built-up character.
- ee) Insufficient consideration of archaeological remains in the reports undertaken.

#### Highways safety, traffic and parking

- ff) The development will be detrimental to existing high traffic levels, particularly at rush hour queuing to get into Willington village and consequentially increasing the possibility of road accidents for vehicles and pedestrians.
- gg) There have been a number of near misses on Castle Way and Willington village Zebra-crossings already.
- hh) Vehicle users already ignore the 40mph speed limit at the site and on Twyford Road where the school is located which is a safety issue.
- ii) Small double roundabout is not capable of accommodating more vehicles.
- jj) Double mini-roundabouts cause a bottle-neck of traffic, including lorries, during rush hour and is already overburdened/congested (sometimes up to 30 mins) without adding to this with this development.
- kk) A38 and A50 will be impacted by a further 50-60 cars created as a result of the development as this route is already used as an escape route for this traffic.
- ll) 14 two-way trips during rush hour peak trips for 25 dwellings is inaccurate, as it would be 2 cars per household, so 50 extra trips which adds significant traffic to the existing issues.
- mm) The Transport Assessment is from March 2019 and the traffic in the last 12 months and would exceed the 5000 cars per 24 hours stated.
- nn) The single lane road is not designed for such heavy traffic.
- oo) Exiting the site onto Castle Way will take several minutes for new occupants of the development as it does for existing residents, thus making it worse for existing residents to access onto the highway.
- pp) The measuring equipment for speed in the traffic report was located near the canal bridge and had it been 200m closer to the A38 the speeds recorded would have exceeded 48mph and more like between 50mph and 55mph.
- qq) A vehicle will still be travelling in excess of 37mph at the 30mph stopping distance, and, when travelling at 55mph, will again, coincidentally, still be travelling in excess of 37mph. These figures are not good for existing residents, who, even as pedestrians walking along the one and only narrow pavement into the village, risk their lives whether the planning application is granted or not. Yet another access in an area of multi-driveway activity will not make it any better.
- rr) Castle Way should be made a 30mph zone with speed cameras to deter speeding into the village on this road.
- ss) Cyclists have to take a lengthy walk into the village down a narrow pavement due to the fast road.
- tt) The development will not meet the needs of the disabled and those with reduced mobility who be restricted to the confines of the development.
- uu) The bus stop is ½ mile away from the site on Etwall Road and Repton Road.
- vv) Highways readings in the Traffic Assessments were taken at the start of Covid and do not represent the ‘normal’ circumstances nearby the site.

- ww) The proposed entrance on leaving the village westwards is to be shortly after a blind canal bridge, traffic speed reduction will not alleviate hazard, even with the housing development entrance being planned further to the west of the site.
- xx) The existing pavements need to be widened but no space to accommodate.
- yy) The layout of the access for the development will negatively impact existing residents getting out of their properties onto the highway, causing visibility issues.
- zz) There is no path to the south side of Castle Way or crossing point which may impact additional pedestrians and existing as a result of the development in terms of safety.

#### Pollution

- aaa) The vehicles at a stand-still in congested traffic sometimes for up to 40 minutes on Castle Way increase pollution levels from fumes emitted by exhausts of waiting vehicles.

#### Biodiversity

- bbb) The erosion of the fields will impact animal species through habitat destruction on site such as rabbits, mice, foxes, rates, bats, buzzards, kingfishers, owls, herons, newts, kestrels, sparrow hawks, grebe, water vole, swans, geese, ducks and birds of prey.
- ccc) The development is contrary to BNE3 which states that local green space will be protected from development except in very special circumstances and this scheme does not fit in.
- ddd) The appraisal was undertaken by a Harris Lamb employee and doesn't properly reflect the issues on site and should not be treated as evidence.
- eee) Marshy grassland needs to be conserved at the site and should be considered to be of nature conservation importance at local level.
- fff) The hedgerows on site are not species poor and should be retained.

#### Flooding

- ggg) Flooding in the area is already an issue and this development would further detrimentally impact this.
- hhh) Run off into the canal will eventually end up in the river and have a serious impact on flooding on the houses nearest the river and within the flood zone.
- iii) Willington suffered its worst flooding in 2019/2020 and while this site is located in Flood Zone 1, it was totally covered with water. If the site was developed where would this water go, green space should be retained for this reason.
- jjj) The site is waterlogged for the majority of the year and with this site development it will spill into the highway.
- kkk) Due to the recent housing developments in the village the flooding this year has been the worst ever in Willington with nearby Repton Road in the village closed for nearly a week in February 2020.
- lll) The existing sewage system is already at maximum capacity and the proposed development is below the road level to enter the main sewer.
- mmm) Question the effectiveness of flood amelioration ditches in the frequent extreme rainfall, given the high-water table in the flood plain of the Trent.
- nnn) There is a watercourse between 86 and 88 Castleway that comes from fields behind into the ditch proposed development field, which is often filled with water and not dry as reported.
- ooo) The flooding will impact the post office, chip shop, hairdressers, florist, beauty salon and restaurants which could change the face of Willington overnight.
- ppp) The brook on Repton Road would struggle with additional waters as a result of the development in an area with inadequate flood defences.
- qqq) If the development goes ahead the residents would be seeking compensation for flood damages.
- rrr) The Flood Risk Assessment appears to have been written by junior representatives and are hardly professional in the quest for answers.
- sss) In autumn 2019 the flooding was so bad that the canal was breached by the flooding.

#### Local facilities



- ttt) The GP surgery already cannot service its population adequately, so increasing the population even by less than 100 would add further significant strain.
- uuu) The school is already full.
- vvv) Development would overload the existing shops with only one small supermarket ½ mile way away.
- www) The existing pre-school is full.
- xxx) Monetary contributions will not fix the existing issues with demand for school places in Willington and existing residents have to drive to other local schools for education for their children like Findern. Willington schools have long waiting lists and have appeals for places. Classrooms need to be built at considerable cost.

#### Other matters

- yyy) The existing houses on Castle Way facing the development will have their views impacted as they will now look over an eye-sore of new development as opposed to far-reaching views over the green fields towards the canal.
- zzz) Due to the Covid-19 situation there should be no deadline placed on this application.
- aaaa) The public consultation period for the development should be extended due to the Covid-19 pandemic so that a Parish Council/Neighbour meeting can be held.
- bbbb) The development would decrease the values of properties in the area.
- cccc) The development should be heard at Planning Committee and not left to one or two persons to decide.
- dddd) The amended description of development and references to planning documents are unclear.

### **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), S3 (Environmental Performance), S4 (Housing), S6 (Sustainable Access), H1 (Settlement Hierarchy), H20 (Housing Balance), H21 (Affordable Housing), 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), INF6 (Community Facilities), INF7 (Green Infrastructure), INF9 (Open space, sport and recreation);
- Local Plan Part 2 (LP2): SDT1 (Settlement Boundaries and Development), BNE5 (Development in Rural Areas), BNE7 (Trees, Woodland and Hedgerows), BNE10 (Heritage)

The relevant local guidance is:

- South Derbyshire Design Guide Supplementary Planning Document (SPD)
- South Derbyshire Affordable Housing SPD (AHSPD)
- Section 106 Agreements - A Guide for Developers (SPG)
- Strategic Housing Market Assessment: January 2020 (SHMA)
- Housing Position Paper: February 2020 (HPP)
- The Landscape Character of Derbyshire: Part 1.7 - Trent Valley Washlands
- Trent and Mersey Canal Conservation Area Character Statement (2014) (CACS)

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 the development
- Impact of the development on highway safety;
- Impact of the development on local character;
- Impact of the development on heritage assets;
- Impact of the development on landscape character;
- Impact of the development on biodiversity;
- Impact of the development on residential amenity;
- Impact of the development regarding flood risk and water management;
- Risk to the development arising from land contamination; and
- Developer contributions.

## Planning assessment

### Principle of the development

The site lies to the west of the settlement boundary of the Key Service Village of Willington - the boundary of which is defined as abutting the eastern side of the Trent and Mersey canal. The western bank of the canal forms the eastern/southern boundary of the site, with the A5132 The Castle Way and adjacent fields adjoining further countryside. The proposal is for residential development and to this end the most applicable policies to consider are S1, S2, S4, H1, H20 and H21 of the LP1, and SDT1 and BNE5 of the LP2, assisted by the AHSPD and SHMA.

Policy S1 states *"South Derbyshire will promote sustainable growth to meet its objectively assessed housing and commercial needs in the plan period 2011-2028"*. It goes on to say *"The two parts of the Local Plan will ensure that the economic, social and environmental objectives set out in this Plan are fully addressed: i) Over the plan period (2011-2028) at least 12,618 dwelling will be built within South Derbyshire. The housing sites required will be met on a mixture of brownfield and greenfield sites with encouragement given to the re-use of previously developed land"*. Policy S4 follows on from S1 in that it specifies that the provision of these dwellings will be split between the LP1, directed to strategic sites and allocations within Urban Areas and Key Villages, with others allocated across non-strategic sites (less than 100 dwellings) in the LP2. Policy S4 stipulates that *"The Council will maintain a five year rolling land supply of specific deliverable sites with additional buffers in accordance with the NPPF"*. This site is not a housing allocation within the Local Plan.

Policy H1 states *"The Settlement hierarchy is based on the range of services and facilities that are offered by each settlement. The level of development for each settlement will be of a scale appropriate to the size and role of that settlement. As planning applications are received the merits of each individual site will be assessed through the Development Management Process"*. It goes on to say that for Key Service Villages like Willington *"development of all sizes within the settlement boundaries will be considered appropriate and sites adjacent to settlement boundaries as an exceptions or cross subsidy site as long as not greater than 25 dwellings"*.

Policy H20 states:

- "A. The Council will seek to provide a balance of housing that includes a mix of dwelling type, tenure, size and density. The overall mix of housing will take account of Strategic Housing Market Assessment (SHMA) and Local Housing Needs Study.*
- B. The density of any site will be considered individually as there is no evidence to support a set density across all sites.*
- C. Any housing development would be expected to make the most efficient use of the land whilst taking into account what is appropriate for the surrounding local built and natural environment.*
- D. The viability of a development will be considered through determining a schemes housing mix.*
- E. The Council will also promote a mix of housing that is suitable and adaptable for different groups of people such a single occupiers, people with disabilities, people wanting to build their own homes and the ageing population of the District"*.

Policy H21 states:

*"A. The Council will seek to secure up to 30% of new housing development as affordable housing as defined in the NPPF on sites of over 15 dwellings.*

*B. Consideration will also be given to the:*

- i) The local housing market;*
- ii) the viability of any proposed scheme which will be assessed through independent viability assessments;*
- iii) the tenure mix and dwelling type on the site will be based on the SHMA or other up to date housing evidence in conjunction with the Council;*
- iv) The phases of development that are being proposed.*

*C. Rural exception sites that are kept in perpetuity (subject to the affordable product being considered) as affordable housing for local people, will be permitted adjoining existing Key Service Villages and Rural Villages, the number of dwellings to be in accordance with Policy H1 as an exceptional circumstances to normal policy where:*

- i) The homes meet a clearly identified local need;*
- ii) the development provides a majority of affordable homes;*
- iii) the need cannot reasonably be met within the development limits of the village concerned of the sub-market area the site falls within as detailed in the SHMA; and*
- iv) the development is in a scale relative to the settlement size and facilities available particularly public transport and does not have any unacceptable adverse impacts on natural and built environment".*

The AHSPD seeks a provision of 30% affordable housing to be provided on sites of 15 dwellings or more.

Policy SDT1 states *"Settlement boundaries define the built limits of a settlement. Within settlement boundaries as defined on the policies map and in Appendix A, development will be permitted where it accords with the development plan. Outside of settlement boundaries and allocated sites, within the Rural Areas as defined in Policy H1, development will be limited to that considered acceptable inter alia by Policy BNE5..."*.

Policy BNE5 states *"Outside of settlement boundaries (as defined in policy SDT1) within the Rural Areas of the district planning permission will be granted where the development is:*

- i) allowed for by policies H1, H22, E7, INF10, H24, H25, H26, H27 or H28; or*
- ii) otherwise essential to a rural based activity; or*
- iii) unavoidable outside settlement boundaries; or*
- iv) considered to be infill that is in keeping with the character of the locality and represents infilling of a small gap for not normally more than two dwellings, within small groups of housing; and*
- v) will not unduly impact on: landscape character and quality, biodiversity, best and most versatile agricultural land, and heritage assets".*

The applicant considers the development is in compliance with policies H1, SDT1 and BNE5 as it provides a scheme of no more than 25 dwellings adjacent to the existing settlement boundary of a Key Service Village, and would provide 30% affordable housing. They consider that the appeal decisions for Askew Lodge, Milton Road, Repton (ref. APP/F1040/W/17/3191604) and land north of Blackwell Lane, Melbourne (ref. APP/F1040/W/17/3171029) clarify what is meant by an 'exceptions' site when interpreting policy H1. They contend that 'exception' means the development be solely confined to a maximum of 25 dwellings and be positioned adjacent (dictionary definitions have been provided for adjacent) to settlement boundaries.

The applicant also argues that the Council presently cannot demonstrate a five year housing land supply, and that a 3.79 supply of housing land is available. The applicant's argument regarding housing land supply is provided in the Housing Land Review, and this forms the 'fallback' argument in the event it cannot be concluded that the development is plan compliant as an exceptions site, and thus the tilted balance in the NPPF is engaged due to a housing supply deficit. They also consider that the Council's

latest Housing Position Paper (HPP) does not provide sufficient information to demonstrate that a notable proportion of the sites within it are 'deliverable', and as such they contest that whether the 5yrHLS figure stated is accurate.

Policy officers have considered the applicant's arguments. They strongly oppose the development as the site falls outside the settlement boundary of Willington and does not represent a Local Plan housing allocation. The proposal does not comply with policies H1 and H21 as it proposed that only 30% of the homes to be provided should be affordable, whereas these policies seek 100% affordable provision if it is considered the site is adjacent to a settlement boundary - which it is considered it is not. The Strategic Housing officer supports this stance, considering that, as a market site is proposed with a 30% affordable contribution, the proposal presently undermines the maximum delivery of affordable homes sought on an exception site. They suggest the application should be amended to provide a wholly affordable site to meet the demonstrable demand for affordable housing in the parish of Willington.

In response to the argument that the NPPF presumption in favour of development is engaged due to lack of five year housing land supply, policy officers note that the latest HPP identifies that the District has a 5.92 year housing land supply, from a base date of 1 April 2020. In addition, when considering the applicant's Housing Land Review and other accompanying letters (in which several appeals are also cited) against this updated HPP, it is noted that the status of most of the sites referred to now have a different status following either grants of outline permission or have detailed consents in place, or are underway. Notable examples include Boulton Moor phase 1; Court Street, Woodville; Derby Road, Hilton and Milton Road, Repton. In any case, most of those identified are small sites which are projected to deliver well within the next 5 years and any slippage would still see the site being delivered within 5 years - not, as the applicant suggests, lead to a wholesale removal of the site from the supply calculations. The fact that the applicant's case carries inaccuracies on the sites listed only supports the conservative and continuous monitoring approach taken by policy officers to inform the HPP.

To this end, the view that a 5yrHLS cannot be demonstrated is not accepted and the relevant housing policies are up to date. It is considered that the application must be determined in accordance with the Development Plan unless there are material considerations that indicate otherwise. Paragraph 1.8 of the LP1 states *"...the Local Plan should be read as a whole as more than one policy may apply to any planning application"*.

Policy H1 sets out the settlement hierarchy. Willington is defined as a Key Service Village (KSV) where the scale of development should respect the capacity of services and facilities to support the development in principle. Policies SDT1 and BNE5 work alongside, and must be read in conjunction with, policy H1, as do the numerous allocations made in the LP1 and LP2 which steer new housing development to the most sustainable locations whilst providing the balance of protecting the intrinsic qualities of the South Derbyshire countryside. Collectively, the policies of the Plan successfully execute the strategic aims of Policy S1 (and S4 in specific terms of housing delivery) and provide a plan-led system for the District, reflecting paragraph 15 of the NPPF and the definition of sustainable development at paragraph 8. This predictability is achieved by way of these aforementioned policies and supported, where relevant, by the policies maps which define whether a site is influenced by the scope of a particular policy. This, from a public point of view, provides a clear presumption in favour or not of a particular development proposal - very much securing one of the aims of the government's Planning White Paper. Use of settlement confines, policy designations and allocations are a key tool in providing this clarity and are not a new concept. This all ties back to paragraph 1.8 of the LP1 which further states *"this Local Plan will set the basis for deciding individual planning applications and will provide some certainty to residents, service providers and investors as to how and where development including infrastructure requirements is likely to take place..."*.

The settlement confines for Willington were reviewed and set under the LP2. This site does not benefit from an allocation in either part of the Plan and is outside of the settlement confines and in a rural area. Here, policy BNE5 seeks to limit development to that which is essential to a rural activity, truly unavoidable or allowed for by specified policies. These specified policies are an exception to the 'normal' policy approach to restrict development in rural areas, noting that paragraph 4.2 of the LP2



states that *“in order to support sustainable development, and preserve and protect the countryside including the best agricultural land, development in the Rural Areas of the district requires control. This policy aims to balance preserving the character of the countryside with supporting development and the rural communities within it”*.

Nonetheless, policy H1 is listed as supporting an ‘exception’ to the normal policy approach - it allowing a slight relaxation to the locational strategy of housing so to advance delivery of affordable housing schemes where there is a particular local need. Policy H1 makes allowance for affordable housing delivery around a KSV where the number proposed is not greater than 25 dwellings and the site lies adjacent to a settlement confine. Policy H1 cannot be read in isolation either. Policy H21 is a ‘partner’ to this policy, with part C of H21 making clear reference back to Policy H1 and using the words *“as an exceptional circumstance to normal policy”*. The basis for this allowance under Policies H21 and H1 is explained further in paragraph 5.85 which states *“rural exception sites could help to deliver housing to some settlements that will see little or no housing growth or where a particular housing need warrants an exception to normal policy. The houses provided on a ‘rural exception site’ will be for identified locally specific needs through evidence collected by the Strategic Housing team”*.

Whilst the LP1 Glossary contains a definition of ‘exception site’ related to policies H1 and H21, there is a slight deviation to the wording of the policies. This has led to a number of appeals resulting in varying outcomes including those cited in the applicant's supporting information. More recently than those appeals, however, an appeal in Hartshorne (ref. APP/F1040/W/19/3232081) was allowed mere days after the dismissal of one in Linton (ref. APP/F1040/W/19/3223811). The Inspectors reached polar opposite views on the interpretation of policy H1 – namely what an ‘exception site’ meant in terms of the Plan. Consequently, the Council made an application under s288 of the Act to have the Hartshorne decision quashed, contending that the Inspector had failed to correctly apply the case law relating to interpretation of Plan policies and reading of the Plan as a whole. The s288 application made was quite clear and can be carried across to this proposal:

- The concept of settlement boundaries and rural exception sites outside of settlement boundaries is not a new one. It is a well-established practice repeated up and down the country in Local Plans over a number of decades. Any reasonable interpretation of the above policy discussion means there should be no ambiguity in the meaning of their terms, with any market housing proposal outside of the settlement boundary, of the quantum and manner proposed here, quite simply outside the scope of Policy H1.
- In *Mansell v Tonbridge and Malling Borough Council [2017]*, the judge underscored the vigilance that the Planning Court is expected to exercise over *“excessive legalism infecting the planning system”* by which, *“...planning officers and inspectors are entitled to expect that both national and local planning policy is as simply and clearly stated as it can be, and also – however well or badly a policy is expressed – that the court’s interpretation of it will be straightforward, without undue or elaborate exposition. Equally, they are entitled to expect – in every case – good sense and fairness in the court’s review of a planning decision, not the hypercritical approach the court is often urged to adopt...”* [paragraph 41]. This cautionary statement was echoed by the Chancellor of the High Court who stated *“Appeals should not, in future, be mounted on the basis of a legalistic analysis of the different formulations adopted in a planning officer’s report.... Such reports are not, and should not be, written for lawyers, but for councillors who are well-versed in local affairs and local factors. Planning committees approach such reports utilising that local knowledge and much common-sense. They should be allowed to make their judgments freely and fairly without undue interference by courts or judges who have picked apart the planning officer’s advice on which they relied”*.
- The above point has been a long standing principle and was crystallised in the 2012 Supreme Court ruling in *Tesco v Dundee* where Lord Reed stated *“the development plan is a carefully drafted and considered statement of policy, published in order to inform the public of the approach which will be followed by planning authorities in decision-making unless there is good reason to depart from it. It is intended to guide the behaviour of developers and planning authorities... policy statements should be interpreted objectively in accordance with the language used, read as always in its proper context.... That is not to say that such statements should be construed as if they were statutory or contractual provisions. Although a development*



*plan has a legal status and legal effects, it is not analogous in its nature or purpose to a statute or a contract.... many of the provisions of development plans are framed in language whose application to a given set of facts requires the exercise of judgment. Such matters fall within the jurisdiction of planning authorities, and their exercise of their judgment can only be challenged on the ground that it is irrational or perverse”.*

- Read as a whole, the Plan contains a spatial vision for the delivery of housing with a clear hierarchy of acceptable locations. Housing development in locations other than those identified in the policies cannot be said to accord with the Plan; nor can the Plan be said to be silent as to housing in other locations. Rather, the proposed development is in conflict with the policies and with the Plan overall. The fact that policies might be expressed in permissive terms does not exclude the obvious corollary that proposals without their explicit support are not in accordance with the Plan. This is the error the Inspector made in the decision which led to the *Gladman v Canterbury* ruling in 2019. That High Court decision emphasises the importance of reading the development plan as a whole rather than reading of particular sentences or policies in isolation.

Thus, in the Hartshorne case, the Secretary of State acceded to judgement and appropriate Orders to quash the permission have been issued (ref. CO/4505/2019). The appeal has been remitted back to the Inspectorate for a fresh decision. This is extremely significant - it confirms the Council's long-standing interpretation of policy H1, even at the time of the Melbourne and Repton appeals, and its application as part of a suite of policies to strike a balance between growth and protection of the environment. That is the Development Plan in a nutshell, and the Court Order cements the predictability that the policies of the Plan provide. As to whether this site is 'adjacent', an interpretation must be reached under the context of reading the Plan as a whole. The policy refers to settlement boundaries which determine the outer limits beyond which housing development would not be appropriate. It is drawn as a definitive line and not a 'region' where there is a matter of judgement required, so to again provide coherent and reasonably predictable decision making, in the public interest. Hence, to be adjacent, the site must be touching that line. It does not.

It is clear that the Local Plan policies and those in the National Framework only support small developments of affordable housing on the edge of the more sustainable villages. The proposal is not adjoining the settlement and is not advanced for affordable housing purposes. In this light, the proposal is contrary to the Plan, offending policy H1 and in turn policies BNE5, SDT1 and S1, failing to represent sustainable development in the round to which policy S2 and the NPPF promote. The principle of the development is therefore not accepted.

#### Impact of the development on highway safety

The Castle Way is a single lane, dual flow A-classification route which transitions from 40mph to the west of site to 30mph on the approach to the canal bridge to the east, with a footway only to the northern side. To the north-eastern corner of the site is the canal bridge with footway to either side of the highway and towpath to the eastern side of the canal, accessed by steps from the bridge. The proposal includes a vehicular access into the site from the north-west corner onto The Castle Way and three pedestrian entrances. Leading from the main vehicular access, roads within the site result in two cul-de-sacs and other areas of private driveway being created.

The most applicable policies and guidance to consider are S6, BNE1 and INF2 of the LP1 and the guidance contained within the Design SPD which between them seek that new development provide safe access and egress onto the highway, sufficient parking and manoeuvring space, etc. The policies also seek to promote development within sustainable locations with existing highways infrastructure and access to public transport/pedestrian/cycle routes to minimise the need to travel and promote measures to encourage sustainable travel/transport options. The application considers access in detail, with layout considered in part. The layout is considered to the extent of 'setting' developable parcels and the broad location of roads, housing, drainage features and landscaping.

Despite concerns raised regarding the reliability of the Transport Assessment, study work was undertaken prior to the COVID-19 pandemic restrictions in 'normal' circumstances. A 2m footway would be provided to the south side of The Castle Way which would connect the existing network. It would be

possible to secure the footway by way of condition alongside proposed internal connections to it. The new access proposed is demonstrated to meet visibility requirements for both the existing 40mph limit, though noting it can also meet a 30mph limit as the applicants propose to extend the 30mph limit 75m west of the access following the speed/trip survey results. No issue is raised in terms of site access junction capacity, which appears would have sufficient capacity for the development. The amount and size of parking spaces indicated on the accompanying plans is consistent with the standards laid out in the Design SPD. The applicants also propose a secure cycle parking facility within the curtilage of each dwelling.

The County Highway Authority originally objected on the grounds that insufficient information had been provided, as a swept path analysis for refuse vehicles and visibility splays throughout the site had not been provided. Furthermore, layout did not show internal roads to be at least 5m with 1m margins around full extent of both turning heads. Amendments have overcome this objection, and planning conditions and informatives are now considered appropriate. With the site also reasonably close to Willington, and services therein, it is considered the proposal would comply with the aforementioned highway related policies.

#### Impact of the development on local character

The most applicable policies and guidance to consider are H1, H20, BNE1 and BNE4 of the LP1 and the Design SPD. Between them, these policies seek that new development is well sited and responds to local character in terms of architectural design, townscape, layout and visual attractiveness.

Whilst made in outline, layout and scale is considered in part so as to understand in greater detail the impacts this development could have on local character, designated heritage assets and landscape character with further and finer details to be considered in any future reserved matters application. A site plan, indicative levels/storeys plan and the Design and Access Statement provide the basis for this assessment, with the layout seeking to 'set' the broad areas of the site to be used for different purposes (e.g. roads, housing, open space, etc.). In a similar vein, the indicative levels/storeys plan assists in establishing which parts of the site can support higher eaves and ridge lines, so to inform the latter detailed application stage.

The layout is proposed to follow the triangular shape of the site using a main access route from The Castle Way with two cul-de-sacs and private driveways and houses arranged around this, along with three points of pedestrian access from The Castle Way to the north. It is proposed that all dwellings would be two storeys in height with three variants in ridge/eaves heights scattered across the layout, though the taller dwellings of a 9.5m ridge height would be placed furthest to the west. The provision of the affordable units as two storey houses appears to be acceptable. It would appear from the layout, a mixture of detached and semi-detached dwellings are proposed most with a mix of garaging and on plot parking. An attenuation basin running along the south-eastern edge of the built form is proposed, to be constructed alongside the POS and green infrastructure, along with pathways leading to the LAP and other landscaped areas along the canal.

The Design Officer has considered the proposals and objects, considering it to be unacceptable from a conservation, landscape and character perspective. They consider built development of any kind on this site would be contrary to the area's character as where development does exist, this comprises ribbons of development along The Castle Way. These ribbons are also separate visually and functionally in terms of their design and from the main built up settlement of Willington, appearing more as a feature of the established rural landscape character. They further consider that ribbon developments are isolated features - they are strictly linear and have an inherent character of their own. It is considered that these form an area of transition between village and country which is defined by a mix of open fields and linear built form - a similar pattern to that replicated to the edge of many larger villages and towns across the country.

The site holds this distinctively different character than that of the main settlement and of these nearby ribbon developments, and its development would create moderate to severe harm to the character and appearance of the area. It is considered that the scale of solely two-storey development also does not

reflect the variations in the immediate area which is eclectic at both single and two-storey, whilst the 'depth' of the developed area also differs considerably where other existing properties follow the highway line and back onto further open land. It is considered the development would be contrary to policies H1, H20, BNE1 and BNE4 of the LP1, as well as provisions of the Design SPD.

#### Impact of the development on heritage assets

The site is immediately adjacent to the Trent and Mersey Canal Conservation Area and thus is within the setting of a designated heritage asset. In addition, the site is within a known area of archaeological potential with ridge and furrow remains. The most applicable policies and guidance to consider are BNE2 of the LP1 and BNE10 of the LP2, as well as the Trent and Mersey Canal Conservation Area Character Statement 2014 (CACS). Between them, these policies seek that developments which may impact a heritage asset including archaeology or its setting are accompanied by an appropriate assessment representing a level of detail proportionate to the assets significance which identifies the impact of the development and provides clear justification for the works. Developments should conserve and enhance the historic environment.

The Heritage Assessment was updated during the course of the application, in July 2020, following two letters dated April 2020 and June 2020 providing further comments in respect of archaeology and built heritage, in response to consultee comments.

The Development Control Archaeologist originally objected as the original Heritage Assessment did not provide a site walkover and further evaluation work (geophysical survey) to understand the below ground archaeological potential and ridge and furrow earthworks. This would have therefore resulted in a reason for refusal on the grounds of insufficient information, as per paragraph 189 of the NPPF and policy BNE10. The two letters originally rebutted the need for further submission of evidence prior to determination, but the updated Heritage Assessment included a geophysical survey. The Development Control Archaeologist has reviewed this additional survey and concurs with the findings that extensive or complex archaeological remains have not been identified, though some may exist towards the southern edge of the survey area, noting some features may be present and have been filled by gravel. To this end, whilst sufficient and proportionate prior to determination surveys/assessments have been undertaken, as there is a lack of historical disturbance there may be some archaeological features present and conditions requiring a Written Scheme of Investigation for archaeological work. along with the carrying out and reporting of that investigation, would be required.

The characteristics of the conservation area can be found in the CACS. At this section of the canal, there are open views across rising pastoral landscape and buildings that adjoin the canal face away from it, focussed on the narrow lanes and paths which were important routes to houses and workshops. The Conservation Officer has raised objection to the development on three occasions, on numerous grounds. Following each objection a rebuttal has been provided by the applicant in response to comments received, as per the documents listed above.

The Conservation Officer notes that the character of the conservation area and its setting, when viewed from the application site, is that of open rural setting and, other than grass, has little vegetation such as trees perforating the views towards this when looking from The Castle Way south-eastwards. Other than some broken up elements of hedgerow to the boundary with the canal, generally this view is clear. It is noted that the eastern side of the canal, where the towpath is located, and beyond is built up with residential and industrial buildings. When looking north towards the The Castle Way from the canal, the views capture some housing but the view is a middle distance backdrop that is semi-rural due to the low density and ribbon nature of the development (many of which are single storey bungalows allowing longer views) that backs onto open agricultural fields, again with little in the way of prominent trees or other soft landscaping, which helps to transition to more open rural setting experiences further to the west. It is considered moving development closer in proximity will erode this sense of transition and give the context of the canal a more built up character and a more rapid transition to a rural context further to the west. It is considered that despite what is argued by the applicant, the nature of development in the depth proposed on site, along with the more consistent two-storey height and close proximity to the canal, would change the nature of views with little opportunity for views over or

between buildings. The Conservation Officer also raises concern at the plan to 'restore' and 'retain' existing vegetation along the banks of the canal, though it is clear from site visits what is there is both patchy, low and broken up; and to provide a green/landscape buffer to these boundaries of the site to 'hide' the development is not ideal, noting that best practice guidance on the setting of heritage assets makes it clear that where screening is necessary this can only ever be by way of mitigation for harm, and mitigation should be regarded as secondary to the more desirable goal of *avoiding* harm. This consideration feeds back into just how necessary the development is - a matter discussed in principle above.

Other than the development itself due to its size, scale, depth and density being considered harmful when considering the characteristics and the setting of the conservation area, it is also considered that the combination of noise mitigation fencing at 2.1m (as shown in the Noise Assessment) throughout the scheme, plus landscaping - including planting screening immediately adjacent to the canal - would be harmful to the designated heritage asset as it would lead to the setting of the canal becoming enclosed and barely visible - the open setting in this area forming part of its special characteristic would be lost. Fleeting views to the canal would also not be available.

The Conservation Officer considers the harm to the setting of the conservation area would be less than substantial when considered against the conservation area holistically, but nonetheless paragraph 193 of the NPPF requires great weight to be given to the preservation of heritage assets and their settings. In this instance, as the argument in respect of housing need and supply is not accepted, there is not a necessity for the development to take place and in turn a demonstrable public benefit arising given there are other more appropriate sites available that can be brought forward to accommodate the objectively assessed housing needs where such a development would not harm heritage assets (including allocations and windfall sites within settlement confines). The development is contrary to policies BNE2 and BNE10 and the NPPF.

#### Impact of the development on landscape character

The site has an open, low land character with little other vegetation than grass with hedgerow to the northern boundary and partially to the eastern boundary. The site is located within the Trent Valley Washlands Landscape Character Area. The most applicable policies and guidance to consider are BNE4 and BNE7, and Landscape Character of Derbyshire (Part 1.7 Trent Valley Washlands).

The DAS, LVIA and a further letter from the applicant are relevant in this instance. The LVIA summarises the characteristics of the site as low lying landscape, gentle rolling, almost flat with lowland river terraces, limited tree cover, thinly scattered hedgerow, trees along northern and western boundaries, scattered locally dense watercourse trees along south eastern boundary, oak/ash and willow hedgerow trees and patches of ridge and furrow. The applicant considers that the landscape of the site does not possess qualities or characteristics which would indicate that is of more than local value, and that the site would sit within the visual context of existing properties on The Castle Way and the setting of Willington. They consider that the north of the site would not be seen, but rooflines of the development would be due to limited hedgerow and tree planting to the northern boundary. They consider that the site is visible from the south due to the flat landform and limited boundary vegetation, but that it would be viewed in the same context as the existing properties on The Castle Way (the same as for views from the canal towpath). Strengthening of south-eastern boundary with scattered tree planting and a landscape buffer along the canal would respect the setting and visual character of the area and that positioning of houses to the north and west of the site respects the setting of existing settlement form.

Whilst landscaping is not a matter for consideration at this time, layout and scale are being considered in part in which the layout of POS and green infrastructure can be assessed in the more general sense of what is indicated as potentially being provided in respect of landscape character. The amount of on-site POS would be compliance with policy and the SPG.

The application has been reviewed by the Council's landscape consultant. It is firstly noted that the LVIA has not used specific methodology and definition of the terminology used for the landscape



magnitude or significance, nor visual effects, in reaching the conclusions given in line with the Guidelines for Landscape and Visual Impact Assessment 3rd edition (GLVIA). They note that the visual assessment was undertaken in July when deciduous vegetation was in leaf and thus this did not assess the worst case scenario. This is not acknowledged or noted as a limitation within the LVIA. The consultant agrees the viewpoints selected are appropriate to assess the visual effects of the proposal, however.

The landscape consultant considers that the key characteristics of the site and the Derbyshire Trent Valley Washlands, Lowlands Village Farmlands Landscape Character Type (LCT), to be pastoral grassland with surrounding hedgerows. This site encompasses both. They note no consideration has been made of the susceptibility of these features, which in the case of pastoral grassland would be lost as part of the development. Clearly undue effects would be experienced, given this is a key characteristic. In turn it is noted that due to the proximity and indivisibility of the site to the Trent and Mersey Canal Conservation Area, the development would have an effect on the setting of the heritage asset and result in an increase in the overall sensitivity of the site. The loss of this pastoral grassland is considered to have a large magnitude effect and as a key characteristic features, the loss would result in at least a moderate adverse significance of effect. The consultant notes that while mitigatory landscaping in the form of a soft landscaping buffer and scattered tree planting, etc. is to be provided, the introduction of built form would still have an adverse effect, and while this may be 'softened' by additional planting, it would still be adverse in the long term.

The argument presented that the site would be read from key view points as part of the existing vista of properties is not accepted as the site and nearby ribbons of development on The Castle Way are not part of the defined settlement of Willington. When travelling along The Castle Way, the canal bridge to the north-east of the site is perceived as the western settlement edge to Willington, and the site provides a rural influence both to the road and canal. It is considered that the site has a stronger relationship to the rural fields to the south-west, than the existing rural ribbon along The Castle Way.

The LVIA provides no conclusion on the significance of the landscape effects. In terms of visual effects, it is considered the LVIA undervalues and underestimates the detrimental impacts of the development on viewpoints: residents of properties looking over the site along The Castle Way to the north of the site; transient users of The Castle Way to the north of the site; and recreational users of Willington Footpath 8 (LVIA viewpoints 3, 4 and 5). The landscape consultant considers the impact on these viewpoints to have greater adverse effects than predicted in the LVIA.

It is concluded that the landscape and visual effects of the development have been understated within the LVIA, and details of the analysis forming its conclusions have not been provided. It is clear that there are, at least, moderate adverse effects on both landscape and visual receptors. This is due to the urbanising effect the new built form would have on the character of the area which results in the loss of open pastoral land and the rural feel. It is not considered that the proposals to work within planting and management guidelines of the LCT would provide sufficient screening or enhancement to mitigate the adverse effects of the proposed development, with it also mindful that 'placed' rather than organically formed landscaping screening could be detrimentally harmful to the setting of the designated heritage asset with regards to its significance.

Adverse effects on landscape and visual receptors are typical when developing greenfield or open countryside, and justification is clearly required to outweigh the harm. The harm arising from the proposed development is not outweighed by a lack of five year housing land supply and therefore the proposals are contrary to policy BNE4 of the LP1 and policy BNE5, informed by the Landscape Character of Derbyshire (Part 1.7 - Trent Valley Washlands) document.

#### Impact of the development on biodiversity

The site is greenfield and has hedgerow boundaries which could provide habitat or foraging potential for animals, including protected species. The site is recognised as a site with potential, awaiting full assessment against the LWS selection guidelines (unconfirmed at this time). The most applicable policy to consider is BNE3 and BNE4 of the LP1 which, between them, seeks that new development



contributes to the protection, enhancement, management and restoration of biodiversity or geodiversity and delivers net gains in biodiversity where possible.

The application is supported by a Preliminary Ecological Appraisal (PEA). The applicant notes that the site is dominated by improved grassland bordered by species poor hedgerows and the canal, and towards the canal wet grassland species have encroached. There is a dry ditch present within the field and it is evident that the site has been heavily grazed by cattle. The site is not influencing distance of statutorily designated sites for nature conservation. The applicant considers retention of hedgerows and planting of new hedgerow, shrub and grassland along the canal would enhance ecological value.

The Wildlife Trust (DWT) have reviewed the proposals and raises no objection. Notwithstanding other comments received, DWT considers that a reasonable assessment of the biodiversity features and protected species present at the site has been undertaken and that further survey work is not required at this time. They concur with the findings of the PEA that the development would result in the loss of an area of semi-improved species grassland and a smaller area of marshy grassland both of which are considered to be species poor. They also accept that there could be indirect impacts, including pollution risk during and after construction, and long-term impacts from external lighting with regards to canal wildlife. It is not thought that the listed local wildlife sites would be detrimentally impacted as a result of the development. They note that detailed landscaping of the site is yet to be provided and that the mitigation for bats, birds, reptiles and amphibians set out in the PEA, and the 40% provision for on-site green infrastructure to provide suitable opportunities for biodiversity enhancements, can be sought through appropriately worded planning conditions which should result in biodiversity gains. It is therefore considered the development would be in compliance with policy BNE3 and could facilitate provide a net-gain in biodiversity in line with the NPPF.

#### Impact of the development on residential amenity

The most applicable policies are SD1 and BNE1 and the Design SPD, which between them seek that new development do not cause detrimental impacts on residential amenity both within the new development and regarding existing development, and where impacts are anticipated then mitigation must be provided. At this time the matters of layout and scale are considered in part, with a layout indicating the ground levels, eaves/ridge heights and number of storeys planned for each dwelling. The Design and Access Statement also provides a plan showing a mixture of 2, 3 and 4 bed units, though no detailed plans accompany the submission at this time, reserved for later consideration as part of detailed layout and scale, and appearance and landscaping.

Concerns have been raised by neighbours in respect of overlooking, overshadowing and loss of privacy/privacy, primarily in response to the dwellings proposed fronting The Castle Way. However, taking into account the layout provided and comparing this with the SPD separation distances; the proposals are in compliance with with policy guidance and it is considered that there is scope to accommodate the development without causing adverse impacts on amenity. In any case, a detailed assessment would take place at the reserved matters stage.

Concerns in respect of worsening existing queuing traffic, and increasing light pollution from car headlights turning in and out of the site, are noted. Existing screening on existing dwellings by way of boundary treatments and planting is noted, and it is not considered the level of additional movements onto the A-class route would be measurable nor sufficiently detrimental. In addition, concerns over the reliability of the noise assessment are unsupported, with the survey work conducted prior to the COVID-19 pandemic. Traffic levels were thus normal and taken over a 24-hour weekday period. External noise levels for gardens are considered to be within acceptable levels, and the Environmental Health Officer has no objection subject to a Noise Mitigation Strategy (and further conditions relevant to the construction stages).

#### Impact of the development regarding flood risk and water management

The site is located within a Flood Zone 1 and slopes gently towards the canal. It is expected that new development does not increase the risk of flooding and provides sufficient water management to serve

both the development and with regard to protecting the immediate area. The most applicable policies to consider are SD2 and SD3 of the LP1.

Concern has been raised that there has been recent flooding in Willington towards the end of 2019/early 2020, and that while the site is located in Flood Zone 1 it was covered in water (noted as waterlogged most of the year), and that if not dealt with correctly the development could detrimentally impact on existing issues. Residents also raise issue that the existing sewage system is at maximum capacity, with the proposal below the road sewer level. It is questioned how the site will be drained. Similar concern was raised as the nearby watercourse at 86/88 Castle Way, the canal and the brook on Repton Road struggle to cope in the event of high rainfall given the high water table in the area.

The application is supported by a Flood Risk Assessment which contains a drainage strategy. Given the site is Flood Zone 1 the sequential test is not required. The applicant considers management of extreme event flood risk can be achieved and a very low risk of surface water flooding was identified from Environment Agency mapping. No records of sewer flooding were found from Severn Trent research with their nearest foul water sewer to the north running west to east in The Castle Way. It is stated that discussions with Severn Trent Water confirms that the site could connect to the nearby sewer by way of a pumped solution). It is noted that, due to the topography of the site, further drainage design work in respect of the canal may be required.

The responsibility for the operation/maintenance of SuDS features can be confirmed prior to construction and them subsequently maintained in accordance with recommendations and current best practice/guidance to ensure routine operation. The suggested strategies are through filter strips, swales, pervious surfaces or attenuation basin (basin shown on plans), and the drainage would mimic the behaviour of existing greenfield land through the utilisation of attenuation storage and flow control devices allowing for storage volumes and climate change allowance. The Environment Agency raises no objection. Severn Trent Water also raise no objections subject to conditions. The LLFA also raises no objections subject to conditions requiring detailed design, associated management and maintenance plans of surface water drainage for the site in accordance with DEFRA standards and FRA recommendations. The need to ensure SuDS are designed to CIRIA adoptable standards can also be included. The Local Flooding officer also raises no objections.

In the event of an approval, a condition can also be attached to ensure that water consumption is not more than 110 litres per day per dwelling, as described in policy SD3.

#### Risk to the development arising from land contamination

The site is located in a buffer area for historical landfill, contaminated land in a sand and gravel mineral safeguarding area with the history of the site pointing solely towards agricultural use. Policy SD4 of the LP1 is relevant. The application is supported by a Geo-Environmental Desk Study which finds a low risk in respect to human health, a low to medium risk to controlled waters and a low to medium risk in respect to geotechnical constraints. It is recommended a ground investigation is carried out to attain more certainty in these assessments, and this is requested by the EHO. The proposal is considered to be compliant with policy in this respect.

#### Developer Contributions

The applicant acknowledges that due to the size of the development it would generate a requirement for infrastructure to support and mitigate for the pressures arising from development, as per policies INF1, INF6, INF7 and INF9 of the LP1 and the s106 SPG.

The CCG has confirmed that are not seek a contribution from the development due to the size of the site. It is noted that Willington has, relatively recently, seen the construction fo the new surgery whilst the CCG are also looking towards a new strategy for delivery of primary healthcare in the southern Derby area. The County Policy officer has also confirmed that there is sufficient space at primary school level to accommodate children arising from the development. Nonetheless, they also confirm that the development would result in the requirement for 4 secondary and 2 post-16 places at the John

Port Spencer Academy, with the contribution required to mitigate these impacts totalling £156,276.62.

Regarding community facilities, open space and recreation, whilst on-site open space is planned with a LAP, outdoor sports and built facilities at £220.00 and £122.80 per person respectively would be required. Taking the likely occupant numbers per dwelling, this would total circa £16,720.00 and £9,332.80 respectively, to be directed towards outdoor sports facilities at the Twyford Lane Recreation Ground and built facilities at Willington Village Hall. The on-site open space provision is in compliance with policy.

These sums are considered to be CIL compliant and could be secured under a s106 agreement, so to ensure compliance with the above policies.

### Other matters

Some concerns have been raised over the adequacy of consultation and publicity. The applicant has been subject to various rounds of publicity and was originally scheduled for a decision by mid-May. Appropriate involvement of interested parties has been undertaken, both before and during the COVID-19 pandemic, noting that additional time has been available up to the point of publishing this report.

### Conclusion

The principle of the development is not accepted as it is considered that it is not adjacent to the settlement boundary of Willington, and even if it were considered to be adjacent, it does not meet the definition of an exceptions site as only 30% affordable housing provision is proposed. The interpretation of this definition has been clarified by a Court Order. Despite the argument of the applicant that the Council does not have a demonstrable 5yrHLS, the latest HPP is evidently more robust and up-to-date than their submissions, with it clearly demonstrating a 5.92 year housing land supply. As such the relevant policies are considered to be up-to-date and the titled balance (presumption in favour of sustainable development) in the NPPF is not triggered. Even if it were, it is not considered the development is sustainable for the reasons set out below. The proposal is therefore contrary to policies S1, S2 and H1 of the LP1, and policies SDT1 and BNE5 of the LP2.

The development is also contrary to policies S1, H20, BNE1 and BNE4 of the LP1 and the Design SPD as it would not reflect the character, density, scale or layout of built development on the approach into Willington Village which as a result would detrimentally impact its rural, green, open and agricultural setting.

In addition, the development would result in harm to the setting of the Trent and Mersey Canal Conservation Area due to the sense of enclosure created by the development through the density, scale and depth of built form and provision of landscape screening in close proximity to the designated heritage asset that would erode the open, agricultural and green character of its setting. No public benefits have been identified in which to justify the identified harm. The development is therefore contrary to policies S1 and BNE2 of the LP1, policy BNE10 of the LP2 and the NPPF.

Finally, the development, as a result of new built development, would result in the loss of, and be detrimentally harmful to, the open and rural site encompassing pastoral grassland which is highlighted as a key characteristic of the Landscape Character Assessment with moderate to severe harm to landscape and visual receptors. The suggested mitigatory landscaping measures, including screening, would not overcome the identified harm and also results in further harm in itself as this would not reflect the characteristics of the landscape character area. The harm arising is not outweighed by other material considerations or the benefits arising from the proposal. The development is therefore contrary to policies S1 and BNE4 of the LP1 and policy BNE5.

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** permission for the following reasons:

1. Despite the applicant's claim, the Council can demonstrate a five-year housing land supply and, as such, the relevant development plan policies are considered up to date and the presumption in favour of sustainable development as set out in paragraph 11(d) of the National Planning Policy Framework (NPPF) and policy S2 of the Local Plan Part 1 (LP1) are not engaged. The development would result in the erection of dwellings outside of and not adjacent to a defined settlement boundary within a rural area, thus not representing plan-led and sustainable development. The development is therefore contrary to policies S1, S2 and H1 of the LP1, and policies SDT1 and BNE5 of the Local Plan Part 2 (LP2).
2. The development would not reflect the character, density, scale or layout of built development on the approach into Willington which, as a result, would detrimentally impact its rural, green, open and agricultural setting on this approach. The proposal is therefore contrary to policies S1, H20, BNE1 and BNE4 of the LP1, policy BNE5 of the LP2 and the Design Guidance Supplementary Planning Document (SPD) 2017.
3. The development would result in harm to the setting of the designated heritage asset of the Trent and Mersey Canal Conservation Area due to the sense of enclosure created through the development by way of its density, scale and depth of built form and provision of landscape screening in close proximity to the asset that would erode the open, agricultural and green character of its setting. No public benefits have been identified which justify the identified harm. The development is therefore contrary to policies S1 and BNE2 of the LP1, policy BNE10 of the LP2 and the heritage policies and guidance of the NPPF and Planning Practice Guidance (PPG).
4. The development would result in the loss of and be detrimentally harmful to the open and rural site comprising pastoral grassland, which is highlighted as a key characteristic of the Derbyshire Trent Valley Washlands Lowlands Village Farmlands Landscape Character Type as a result of new built development, with moderate to severe harm to landscape and visual receptors. It is considered that the suggested mitigatory landscaping measures including screening would not overcome the defined harm and also results in further harm as this would not reflect the characteristics of the landscape character area. The harm arising from the development is not outweighed by a lack of a five-year housing land supply. The proposal is therefore contrary to policies S1, H20 and BNE4 of the LP1 and policy BNE5 of the LP2.

## Informatives:

- a. For the avoidance of doubt, the documents subject to this refusal are plans/drawings ref.
  - Location Plan 3447-01;
  - Proposed Masterplan 3447-06 Rev C;
  - Proposed Indicative Levels and Heights 3447-08;
  - Development Layout - RCV Tracking SK03 Rev A; and
  - Development Layout - Visibility SK04 Rev A.

**Item No.** 1.5

**Ref. No.** DMPA/2019/1288

**Valid date:** 07/11/2019

**Applicant:** P Bishop

**Agent:** Craig Barks  
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Church Street  
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DE6 1AE

**Proposal:** The erection of a rural workers dwelling and associated works to support the existing kennels and cattery at Ash Farm Kennels, Ingleby Lane, Ticknall, Derby, DE73 7HW

**Ward:** Repton

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

This item is presented to the Committee at the request of Councillor Churchill as it is considered the Committee should debate the issues in the case which are finely balanced.

#### **Site Description**

The site is located adjacent to an existing farmstead (Ash Farm), on the outskirts of Ingleby and in the open countryside. The site is located on a gradient which slopes down towards the highway but is largely obscured from views by existing trees and hedgerows. Access to the dwelling would be through the existing farm access, which would serve the kennels and provide a connection to the proposed dwelling.

#### **The proposal**

Permission is sought for the erection of a rural workers dwelling to serve the manager of the dog kennels and cattery business at the site. The additional dwelling is proposed on the basis that it would be to support the kennels business.

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

##### Planning Statement and Justification

The kennels has been expanded since it began in 2006. The farm is owned by the Church Commissioners, of which the landlord is supportive of the proposal and is operated by the applicant's family on a historical basis. A freehold is currently being negotiated for the applicant in terms of ownership of the kennels and cattery, so to secure the future business which is currently on tenanted land. The farm is run by the applicant's son and the kennels are operated by the applicant. Consent is now sought for a permanent rural workers dwelling to serve the established kennels so that the two rural businesses can continue separately as there are no staff welfare facilities at the existing kennels.

The applicant has explored various alternative options in order to facilitate further accommodation on the farm. The farmhouse is currently occupied by the applicant with the applicant's son commuting each day to the farm, of which this is unsustainable and leaves one person with responsibility for both businesses. No alternative properties are available in the area and it is essential that both workers have sight and sound of the business. Further plans are to create a hydrotherapy unit to serve clients in the future which would incur another full time position.

The kennels business employs two full-time people and two apprentices, and part-time and casual



**THE SITE**

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labour and is overseen by the manager. There are approximately 25% of kennels housing animals which require specific medical care. It is essential that someone is on site 24 hours a day to ensure the welfare of the animals and that the best care is provided. The site needs to be monitored for theft of the animals and this needs to be carried out at night to make sure that intruders do not enter the site. The value of dogs has increased significantly since 2004 and at least one inspection is carried out after 9pm in accordance with the license and for the manager to live close to the kennels.

The proposed dwelling is considered essential to allow the farm diversification business to continue to operate. In accordance with the *Embleton* case, it would not be necessary for financial details to be submitted under paragraph 79 of the National Planning Policy Framework (NPPF). Financial details have been provided for the last three years and the business has expanded to create five members of staff. However, case law stipulates that there is no requirement to define the financial sustainability of the business - just the established need. The cost of the build would be offset by the sale of the business investment property without any loan.

This proposal seeks to achieve planning permission for the erection of a rural business dwelling and alterations to the access at Ash Farm. The proposed dwelling will solely serve Ash Tree Boarding Kennels and Cattery and approval of this scheme will facilitate the succession and ongoing viability of two rural businesses. A sensitive design has been prepared by the Architects which provides a functional dwelling to serve as the on-site manager and key worker accommodation. Part of this proposed dwelling also serves as a staff facilities and welfare area.

Two cases from elsewhere in the country are also advanced in support of the proposal. These are discussed below.

### **Relevant planning history**

9/2001/1014 – Erection of cattle housing – Approved with conditions

9/2004/0751 – The erection of a reception/storage area for 36 kennels for boarding – Approved with conditions

9/2007/1434 – Erection of a building as a cattery – Approved with conditions

9/2014/0900 – Prior notification for the erection of a steel portal frame agricultural building – Prior Approval not required.

9/2018/1244 - The erection of a rural workers dwelling and associated works to support the existing dog kennels – Withdrawn

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

There have been no objections raised by the Environmental Health Officer subject to the proposed dwelling being tied to the existing kennels business and that a pre-commencement condition to be attached if permission were to be granted for details of mitigating against contamination and ground gas ingress.

The County Highway Authority has concerns that the proposed access would be narrow. However, amended plans submitted as part of a previous application (ref. 9/2018/1244) are considered suitable subject to the incorporation of planning conditions for visibility splays to be provided prior to the first use of the proposed dwelling. Subject to this layout, the County Highway Authority consider that a safe and suitable access could be accommodated.

### **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), SD1 (Amenity

and Environmental Quality), SD3 (Sustainable Water Supply, Drainage and Sewerage Infrastructure), SD4 (Contaminated Land and Mining Legacy Issues), BNE1 (Design Excellence), INF2 (Sustainable Transport), INF8 (National Forest).

- Local Plan Part 2 (LP2): SDT1 (Settlement Boundaries and Development), H25 (Rural Workers Dwellings) and BNE5 (Development in the Countryside).

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:

- Principle of development;
- Essential need and business justification;
- Visual impact; and
- Highway safety matters.

### **Planning assessment**

#### Principle of development

The site is located outside of a settlement boundary and would represent housing development in the open countryside. Whilst the principle of the erection of an isolated dwelling in the open countryside would be considered unsuitable, there is scope within policies H25 and BNE5 of the Local Plan, as well as paragraph 79 of the NPPF, for the erection of a rural workers dwelling where it has been demonstrated to be essential to a rural based business and would not have a harmful visual impact on the character of the surrounding countryside.

In order for the principle of the development to be deemed acceptable under policy H25, it would be necessary to demonstrate that there is an established essential (functional) need for a worker to reside at the site in order for the business to operate. It would be necessary to demonstrate that the business and enterprise that the proposed dwelling would support is existing and established and would be likely to remain sustainable. This is to ensure that the business that underpins the need for the proposed dwelling would have sufficient longevity - if the rural based business were to fail, this would result in a vacant, isolated dwelling within the countryside. In addition, it would also be necessary to demonstrate that there would be no prospect of meeting the need by utilising an existing dwelling in the locality.

#### Essential need and business justification

The justification in respect of essential need centres on animal welfare and the need to be on site 24 hours a day to administer medicines, carry out checks on the animals and be able to respond to issues with security threats. A key aspect of the application relates to the need for looking after a large number of sick animals at the kennels. However, good housekeeping and veterinary practice of a dog kennel and cattery will ensure that any sick animal will be treated if needed. The Council's Agricultural Consultant does not accept it to be an everyday occurrence that an animal would require full time care in such a facility. It is noted that an ill animal (whether dog or cat) would need to be referred to a qualified vet, and possibly be kept in quarantine should there be a serious illness. It is highly unlikely that an owner would leave a pet with a pre-existing condition in a kennels or cattery, rather than taking the animal to a veterinary practice. Further to this, a kennels and cattery should not be accepting injured or diseased animals, for the health and well-being of the existing animals on site, and frequent

checks during normal daytime hours by staff would normally reveal any developing illnesses which might trigger the need to refer the animal to the vet, thus avoiding requirements for overnight attention on site.

In regard to a functional need for the dwelling, it is maintained that there is no legislative welfare requirement for permanent on-site accommodation to be within sight and sound of the dog kennel or cattery. The need is for one key worker to be on the site during periods when there are sick animals at the kennels. This could be done on an ad-hoc basis by the business providing a welfare and staff mess room which can also be used as occasional overnight accommodation for when the rare need arises to look after an ill animal at the site.

It is noted that there is an existing farmhouse on site where the manager (applicant) currently resides and oversees night time checks at the kennels this way. The applicant's son currently runs the farm and commutes to the site for work. Whilst this might not be convenient, this does currently provide a 24 hour presence and surveillance of the kennels and the farm. This would certainly address any security concerns, and modern security systems can further enhance this control.

The proposed development is sought for the applicant to move into the proposed dwelling to oversee the kennels business and for the applicant's son to move into the farmhouse to oversee the farming operation. Whilst there is an intention to split the farming and kennels business in the future, there is currently a residential dwelling on the site that will provide for both the kennels business and the farming operation. A letter from Savills, who represent the Church Commissioners for England and the owners of the site, states that the land would be sold to the applicant and that *"it would be impossible for the tenant farmer residing in Ash Farmhouse to have any association with the kennels, as these properties will be within separate tenure"*. However, whilst this is clearly a potential change in circumstances, severing the kennels business from the farm and farmhouse, the legal transfer has not yet taken place and the application needs to be assessed on its current circumstances. Furthermore, any new accommodation needs arising from new circumstances should normally be met by way of a temporary dwelling first.

Given that there is no legislative welfare requirement for permanent on-site accommodation to be within sight and sound of the dog kennel or cattery and that there is currently a residential dwelling at the site, within the control of the applicant; it is not considered that this would already satisfy the need for a further residential dwelling at the site as this need is currently being met by an existing dwelling. In addition, as there would be no specific welfare requirement for constant on-site presence for the kennels, this would not be recognised as an essential need for the erection of a dwelling to support the kennels business.

It is necessary to also demonstrate that the proposed business is economically sustainable with sufficient longevity to support the building of the proposed dwelling and that it would provide a livelihood for the worker who would be living in the proposed dwelling. If the kennels cannot demonstrate that a suitable living can be generated from it and cover the cost of the build, then this would fail to satisfy the test and could result in new dwelling be constructed in the open countryside before becoming surplus to requirements.

A full business case and details of the financial turnover have been formally assessed by the Agricultural Consultant, who has raised concerns regarding overall profit and net worth of the business and its need to be supported by other sources. It is noted that this does raise concern whether the business has the extra financial capacity to purchase the land from the Church Commissioners, finance the build cost of a new dwelling and support the applicants, without putting the business viability at risk. The agents have supplied a calculation that suggest that the build costs are manageable, with repayments of capital and interest. However, this does not include the purchase cost of the land which is, as yet, undefined.

It is argued by the agent that the profits of the business would be improved because there would be no rent due to the farm business for the site. However, the interest repayments per annum on the house build costs would exceed this and create additional business overheads. This also disregards the



interest on the loan required for the land purchase. On the basis of this information, the business would be less viable and sustainable than it is at the current time, unless the business benefits from a steady stream of external funds - something which would undermine the ability to demonstrate the business is self sufficient in the long term.

On the basis of the information that has been submitted to date, the proposed dwelling would fail to comply with policy H25 and in turn policies BNE5 and SDT1 of the Local Plan in that the existing farmhouse at Ash Farm provides 24 hour surveillance to the kennels as well as the farm business. Whilst there may be an intention to split the two businesses, this has not yet occurred and the application should be assessed on the current circumstances. In addition, the financial details that have been provided do not demonstrate the required economic sustainability of the business to support the erection of the proposed dwelling and sustain suitable income for the proposed occupants.

### Visual impact

The proposed dwelling would be single storey in height and would be located to the south of the site. Amended plans have been submitted which reduce the proposed floor area of the building. The position of the proposed dwelling would be located outside of the existing envelope of the built-up area of the existing kennels and agricultural buildings. There is a significant gradient at the site which rises up from the highway up to the site of around 2m in height difference. However, the site is heavily screened by tree coverage to the west, south and east and given the height of the proposed dwelling in combination with the reduction in proposed floor area; it would not be considered that the proposed dwelling would not have a harmful visual impact in its own right.

### Highway safety matters

Concerns were raised by the County Highway Authority in regards to the creation of a new access to serve the proposed dwelling at a point where there would be substandard visibility and with a narrow driveway for passing vehicles. However, they have confirmed that they do not have any objections to an amended plan that was submitted as part of a previous application, as set out above. This plan shows a wider driveway into the site to accommodate cars passing each other and greater visibility splays at the point of the access. Thus, subject to conditions to secure an access in a similar manner, taking in extra land within the control of the applicant, with visibility splays created prior to the first occupation of the dwelling; this layout would be suitable.

### Comparable cases

Two appeals are advanced in support of the proposal. The first is known as Willow Stables. Here, the appellant was already living in a caravan at the site that benefited from a lawful development certificate. This formed the only residential element at the site to support the business and provide an overnight presence at the site. The proposed dwelling replaced the longstanding caravan at a similar cost to replacing the caravan. This differs from the application site significantly as this appeal sought to replace an existing, long standing residential caravan with a dwelling as opposed to creating a new dwelling in addition to an existing dwelling at is already at the site.

The second relates to a site in Berkshire. This centred around an application for separate residential accommodation of a flat above garage space as a way of monitoring the kennels business at night so that the manager did not have to live in the existing dwelling at the site. Whilst the full details have not been submitted, this does present various differences between the appeal and the current application. The application does not seek a small area of ancillary residential accommodation, of which staff welfare areas could be incorporated into the existing buildings. The current application seeks consent for the erection of a new, permanent dwelling to support the business of which there is currently a sizeable residential building at the site.

Furthermore, the applicant mentions the *Embleton* ruling which concerned the interpretation of the NPPF in respect of paragraph 79. However, in light of the Court of Appeal decision in *Redhill Aerodrome v. SSCLG*, there is some doubt as to the correctness of the approach taken by the High



Court in that case.

### Summary

Based on the information that has been submitted, the proposed dwelling is unlikely to be sustained by income from the business, failing to support the economic sustainability of it, and that owing to the existing farmhouse at Ash Farm, the essential need is currently being met by an existing dwelling at the site. Whilst it is acknowledged that the circumstances may change in the future, there currently remains an existing dwelling at the site that is within ownership of the applicant, and it has not been demonstrated that a further dwelling would be essential to the long term viability of the kennel business. Thus, the proposed rural workers dwelling would not comply with policies H1, SDT1, H25 and BNE5 of the Local Plan.

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** permission for the following reason:

1. The essential need and justification for the erection of a rural workers dwelling at the site is underpinned by the essential need arising from the kennel business and the requirement for somebody to be on site throughout the night. However, there is no legislative welfare requirement for permanent on-site accommodation so that a worker is within sight and sound of the dog kennel or cattery, and the business currently benefits from the availability of an existing rural workers dwelling - the manager of which presently resides at in order to oversee the kennel and farm businesses. The likelihood of unforeseen welfare incidents arising is low due to business not forming the primary and sole place of care for animals and effective daily care and monitoring, as well as reliance on vets, sufficient in dealing with any issues arising during stays. Whilst it is argued that the kennel business would be severed from the farm and farmhouse in the future, the legal transfer has not taken place. The financial information and business plan that has been submitted also raises doubt of the likelihood of this occurring as such an action would appear to undermine the long term economic sustainability of the kennel business. This in itself fails to justify a further rural workers dwelling at the site. The proposal for the creation of a permanent dwelling would therefore fail to satisfy the tests of economic sustainability and essential need set out in policy H25 of the Local Plan Part 2, in turn failing to satisfy policies BNE5 and SDT1 of the Local Plan Part 2, policy H1 of the Local Plan Part 1 and paragraph 79 of the National Planning Policy Framework (NPPF).

## **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>
9/2019/0491	Brook Lane, Scropton	Hilton	Dismissed	Delegated

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## Appeal Decision

Site visit made on 3 August 2020

**by Zoe Raygen Dip URP MRTPI**

an Inspector appointed by the Secretary of State

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

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**Appeal Ref: APP/F1040/W/20/3253347**

**Land adjacent to Mill Green House, Brook Lane, Scropton, Derbyshire DE65 5PN**

- 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 Wayne Roper against the decision of South Derbyshire District Council.
  - The application Ref 9/2019/0491, dated 8 March 2019, was refused by notice dated 4 February 2020.
  - The development proposed is 6 detached dwellings to replace the proposals for two dwellings approved under APP/F1040/A/13/2204792.
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### Decision

1. The appeal is dismissed.

### Preliminary matter

2. The appeal site together with land to the west has planning permission for the erection of six houses which was granted on appeal<sup>1</sup>. At my site visit I saw that three had been constructed and one was under construction. The final two houses with planning permission under this consent had not been started. The appellant submitted the planning application the subject of this appeal for the erection of six houses, instead of the two under the extant permission leading to an overall increase of four houses on the wider development site.

### Main Issues

3. The main issues are:
  - the effect of the proposal on the character and appearance of the area; and
  - whether or not the appeal site is an appropriate location for housing with particular regard to local and national policy

### Reasons

#### *Character and appearance*

4. The appeal site lies between the railway line and the river Dove, south of the small village of Scropton. The main built up area of Scropton lies to the north

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<sup>1</sup> APP/F1040/A/13/2204792 (the previous appeal decision)

of the railway line mostly formed from linear development of a mixed character along the main road through the village.

5. The area to the south of the railway line where the appeal site is located is less populated with a scattering of dwellings. These are mostly set in large spacious plots, and surrounded by mature trees and shrubs, creating a particularly verdant rural character to the area.
6. The proposal to erect six dwellings where previously there were two would result in a number of much smaller plots in comparison to those both previously proposed and existing in the surrounding area. The layout would, particularly plots 5-8, create a uniform line of dwellings which is not typical of the existing development pattern of scattered houses with no particular regimented form. This would be exacerbated by the form of the access road serving those houses. This would also necessitate the removal of part of the mature hedge, which is an inherent part of the local character. As a result, the essential rural character of the area would be considerably eroded to give the form of a more suburban housing layout that would not respond effectively to its context and, consequently, fail to integrate appropriately with the housing immediately to the west. The small nature of the plots would also considerably limit the potential for significant planting in mitigation.
7. I appreciate that the site is fairly well screened, from the south by existing hedges and planting. However, the houses would be visible from a footpath which extends along Mill Lane past the western edge of the development and by the existing residents adjacent to the site. I am also mindful that the Inspector on the previous appeal considered that the siting of the houses in plots of generous proportions and the ability to provide opportunities for extensive tree and hedgerow planting around plot boundaries meant that harm to the form and setting of the village would not be of a high order. The provision of six dwellings instead of two would considerably erode the ability to provide such mitigation. As a result, the proposal would cause harm to the character and appearance of the area and therefore would be contrary to policy BNE5 of the South Derbyshire Local Plan part 2 adopted 2017 (LP part 2), and policies H20, BNE1 and BNE4 of the South Derbyshire Local Plan part 1 (LP part 1) adopted in 2016 in this respect. Together these require, amongst other things, that development is appropriate for its surrounding local built and natural environment that responds to its context and protects and enhances local character and distinctiveness.

#### *Location*

8. Policy H1 of the LP part 1 sets out the settlement hierarchy for the district that is based on the range of services and facilities offered by each settlement. Scropton is identified as rural village where development of a limited nature will be allowed mainly within the settlement boundary or adjacent to it as an exception.
9. The appeal site is neither within or adjacent to the settlement boundary and therefore would be contrary to policy H1. Instead, for the purposes of the Local Plan the appeal site is located within the Rural Area where due to the lack of services and facilities and defined settlement boundaries, only development of limited infill and conversions of existing buildings will be acceptable. This is further expanded in Policy BNE5 of the LP part 2 which states that development in rural areas will be supported where it is considered to be infill that is in



keeping with the character of the locality and represents the infilling of a small gap for not normally more than two dwellings, within small groups of housing

10. The appellant refers to an appeal decision where the issue of infilling as applied within the development plan at that time, prior to the adoption of the LP part 2 was considered by the Inspector<sup>2</sup>. She said that in a planning context, in her view 'infilling' means to fill or close a gap in between buildings or fill a gap in the continuity of development and consequently there must be development on at least two sides of that gap.
11. While the appeal site is adjacent to a small group of houses to the west and north, to the south and east there is open countryside. Furthermore, there is a considerable distance to built development to the north, formed by open land which is intersected by the railway line. In addition, the appeal site could not be considered to be a small gap as it is capable of accommodating six dwellings. Moreover, while the wording of the policy does not preclude the provision of more than two dwellings, in this instance the proposal is for six (albeit a net increase of four), which as I have found would not be in keeping with the locality. Therefore, even if I were to accept the Inspector's definition of infilling, in my view the appeal site could not be genuinely be considered as filling a gap between buildings or the continuity of development and therefore constitute infilling for the purposes of Policies BNE5 or H1.
12. It seems to me that the combination of policies regarding the settlement hierarchy and settlement boundaries seek to provide development in the most accessible locations, that does not harm the open character of the countryside.
13. In coming to a view on this issue, I have had regard to the findings of the Inspector dealing with the previous appeal on this site, who found that the appeal site is within walking distance of a bus stop which is on a bus route to the nearby village of Hatton where a school and shops are located. Hatton also has a railway station allowing commuting into Derby for jobs and services.
14. Yet this was six years ago. Local residents assert that there are no bus services, and I have seen no conclusive evidence to suggest that there remains a convenient local bus service in operation at this time. Scropton is a small settlement with very few local amenities and no shop. The appellant states that Hatton is within a recognised walking distance. However, I saw that even though the most direct route, along Scropton Road has a footway, it is narrow, and along an unlit road. This would not be particularly convenient for pedestrians in the winter or during inclement weather. Furthermore, there is no designated cycleway. Therefore, it is my view that the proposed occupiers would be reliant on the car to access local services and facilities which would be contrary to Policy S6 of the Local Plan part 1 and the National Planning Policy Framework (the Framework) which seek to minimise the need to travel and encourage modal shift away from the private car towards walking, cycling and public transport.
15. Additionally, the proposal before me would cause harm to the character and appearance of the area and there would be harm in this respect contrary to the development plan. Furthermore, while I accept that the appeal site has consent for two houses, the appeal proposal would result in a further four houses. As such the development would materially undermine the spatial strategy

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<sup>2</sup> APP/F1040/W/17/3176356



underpinning the development plan due to the location of the development within the Rural Area, bringing the development into conflict with Policies BNE5 and SDT1 of the Local Plan Part 2, and to policies H1, S6 and S1 of the Local Plan Part 1 and the Framework.

16. There is no dispute between the parties that the Council is able to demonstrate a five year housing land supply at the present time, in contrast to the position facing my colleague, where the parties were in agreement that there was no demonstration of the required supply. At the present time therefore, the Policies are up to date and I give conflict with them full weight. To develop the appeal site as proposed would be at odds with, and would undermine public confidence in, the plan led system. I am mindful in this regard, that the Framework recognises that the planning system should be genuinely plan led. In my view therefore, this would not be an appropriate site for development having regard to local planning policies that seek to manage the location of new development.

### **Conclusion**

17. I have found conflict with a number of Local Plan policies, including the development strategy envisaged for the District, which brings the proposal into conflict with the development plan as a whole. The policies cited above are the most important for determining the application and I find them to be effective and not out of date.
18. The provision of four new houses would be a benefit. Furthermore, the proposal would offer economic benefits through construction jobs and the contribution of future residents to the local economy. The number of dwellings may be an efficient use of previously developed land as required by paragraphs 117 and 122 of the Framework. However, in doing so the Framework also requires that consideration is made of the desirability of maintaining the area's prevailing character and safeguarding the environment. In this case, it would be in a manner that would be harmful to the character and appearance of the area.
19. Therefore, the benefits, even when taken together, would not be sufficient in my view to outweigh the conflict with the development plan and the harm that I have identified. There are no persuasive material considerations in this case to indicate that the proposal should be determined other than in accordance with the development plan.
20. I note that in determining the previous appeal the Inspector gave considerable weight to the provision of housing given the Council's lack of five year housing land supply, the proposals contribution to meeting an unmet demand from a particular sector of the housing market and the improvement to the appearance of the site which he considered outweighed the harm caused the proposal.
21. In this instance there is no dispute that the Council can demonstrate a five year housing land supply. I have been presented with no evidence regarding any unmet demand for the housing proposed, which would be considerably smaller than that previously proposed to meet the unmet demand for executive housing. Finally, the site already has planning permission to be developed in a more satisfactory manner that would improve the appearance area.

22. For the reasons set out above, and having regard to all other matters raised, I conclude on balance that the appeal should be dismissed.

*Zoe Raygen*

INSPECTOR

<b>REPORT TO:</b>	<b>PLANNING COMMITTEE</b>	<b>AGENDA ITEM: 6</b>
<b>DATE OF MEETING:</b>	<b>22<sup>nd</sup> SEPTEMBER 2020</b>	<b>CATEGORY: Delegated</b>
<b>REPORT FROM:</b>	<b>HEAD OF PLANNING AND STRATEGIC HOUSING</b>	<b>RESTRICTED</b>
<b>MEMBERS' CONTACT POINT:</b>	<b>CHRIS NASH</b> <a href="mailto:CHRIS.NASH@SOUTHDERBYSHIRE.GOV.UK">CHRIS.NASH@SOUTHDERBYSHIRE.GOV.UK</a>	<b>DOC:</b>
<b>SUBJECT:</b>	<b>SECTION 106 INTERPRETATION AT PARK ROAD, NEWHALL</b>	<b>REF: 9/2014/0886</b>
<b>WARD(S) AFFECTED:</b>	<b>NEWHALL AND STANTON</b>	<b>TERMS OF REFERENCE:</b>

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## **1.0 Recommendations**

- 1.1 That the Committee approves the issuing of a 'letter of comfort' to the site owners to clarify interpretation of relevant clauses in the Section 106 Agreement (s106) relating to the delivery of affordable housing.

## **2.0 Purpose of Report**

- 2.1 To inform the Committee of an intention to issue correspondence to sit alongside the existing s106 to provide prospective purchasers with comfort that the Council will not seek to exercise the clauses of the agreement to an extent which could allow for 'double counting' to the benefit of the Council.

## **3.0 Background**

- 3.1 Members may recall that the site, known as Site A, was granted outline planning permission in July 2019, following amendments to the site area and capacity following an earlier resolution of the Committee. This permission was subject to a s106.
- 3.2 At the time the existing agreement was drafted, the Council wished to have a right to acquire 2 affordable housing units (bungalows) if the developer couldn't achieve a transfer to an affordable housing provider (AHP). However, the existing agreement also allowed for a fallback position should the Council, in the end, decide not to acquire the units. This fallback would allow the units to be sold to the open market in return for an agreed commuted sum.
- 3.3 Since the agreement was signed and permission issued, the site has been marketed. A deal with a housing developer was struck but it emerged that a clause within the relevant section of the s106 was placed out of order, giving the impression that the Council could acquire the commuted sum and also bring about the transfer of the units to the Council for £1.00.



## **4.0 Discussion**

- 4.1 The above conflict is causing some concern amongst prospective housebuilders. Whilst officers have provided reassurance in that an attempt to secure the 'double counting' option would not be in the public interest. It would also not be CIL compliant.
- 4.2 Furthermore, the situation means that, subject to a suitable reserved matters approval in order to undertake minor works to implement the permission; the current owner could then mothball the site until July 2024 where it could then apply under section 106A to formally have the offending obligation deleted. This would not represent a proactive or reasonable option, and it would also lead to the delay in delivery of a site upon which the Council's 5-year housing supply features. Furthermore, delivery of much needed affordable housing would also be delayed.
- 4.3 It is therefore intended that a draft letter of comfort be prepared so to provide comfort on this point. In summary, the expected actions are:
- The developer must use reasonable endeavours to achieve a transfer of the 2 units to an AHP.
  - If that cannot be achieved, then the units become classified as 'de-restricted units' where they can then be disposed of on the open market unless the Council serves a purchase notice within 20 working days, in which case the parties have to try and agree the open market value for the purpose of calculating the purchase price payable by the Council (if not agreed, it gets decided by expert determination).
  - Then, if the units still are not transferred to the Council then the developer has to pay a commuted sum (set at 55% of open market value) for each derestricted unit prior to occupation of 80% of the open market housing units across the site.
- 4.4 This letter would be drafted by the Council's appointed solicitors, acting on behalf of the Head of Legal and Democratic Services, who has indicated no objection with this approach.
- 4.5 Nonetheless, it remains that the first and preferred option is for an AHP to bid for the 2 bungalows, alongside the Council if so desired by the Strategic Housing team. It has been advised that there is already interest by AHPs so it is unlikely that the latter clauses of the s106 set out above would be reached in any case.

## **5.0 Financial Implications**

- 5.1 There are no financial implications associated to the Council for this letter would be completed by our existing internal resource.

## **6.0 Corporate Implications**

- 6.1 The affordable housing contribution would still be secured, as previously agreed, and the certainty the letter of comfort would offer would ensure the timely delivery of housing from the site.



## **7.0 Community Implications**

- 7.1 Affordable housing provision would still be secured to address needs arising from the Council's housing waiting list.

## **8.0 Background Information**

- a. Section 106 Agreement:

[https://planning.southderbyshire.gov.uk/documents/DN/2014/9\\_2014\\_0886%20Section%20106%20Agreement.pdf](https://planning.southderbyshire.gov.uk/documents/DN/2014/9_2014_0886%20Section%20106%20Agreement.pdf)

<b>REPORT TO:</b>	<b>PLANNING COMMITTEE</b>	<b>AGENDA ITEM: 7</b>
<b>DATE OF MEETING:</b>	<b>22<sup>nd</sup> SEPTEMBER 2020</b>	<b>CATEGORY: Delegated</b>
<b>REPORT FROM:</b>	<b>HEAD OF PLANNING AND STRATEGIC HOUSING</b>	<b>RESTRICTED</b>
<b>MEMBERS' CONTACT POINT:</b>	<b>LUCY MITCHELL</b> <a href="mailto:LUCY.MITCHELL@SOUTHDERBYSHIRE.GOV.UK">LUCY.MITCHELL@SOUTHDERBYSHIRE.GOV.UK</a>	<b>DOC:</b>
<b>SUBJECT:</b>	<b>SECTION 106 VARIATION AT ACRESFORD ROAD, OVERSEAL</b>	<b>REF: 9/2018/0712</b>
<b>WARD(S) AFFECTED:</b>	<b>SEALES</b>	<b>TERMS OF REFERENCE:</b>

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## **1.0 Recommendations**

- 1.1 That the Committee approves the request to amend the Section 106 Agreement (S106) by means of a Deed of Variation (DoV) to alter the tenure mix and affordable rent type on site to allow all of the affordable homes to be let at social rent levels instead of the affordable rent and shared ownership mix originally proposed.
- 1.2 That the Committee delegate authority to the Head of Planning and Strategic Housing to agree the finer detail and wording of the obligations to be secured under the DoV.

## **2.0 Purpose of Report**

- 2.1 To inform the Committee of the proposed changes to the affordable housing tenure mix and affordable rent type at Acresford Road, Overseal (as originally agreed under permission ref. 9/2015/1063 and later carried forward through the implementation of a revised permission ref. 9/2018/0712).

## **3.0 Background**

- 3.1 Members may recall that the site, known as Acresford Road, was granted outline planning permission in March 2016 and later gained an allocation in the Local Plan Part 2. The scheme was proposed as a Local Plan compliant scheme providing a 30% affordable housing contribution; however, following a detailed site investigation a revised scheme was proposed to reduce the affordable housing contribution to 10% on viability grounds.

A reserved matters application was subsequently approved in December 2018, along with a DoV to alter the affordable housing contribution to 10%. The plans approved detailed a development of 70 homes on the site, 63 for market sale and seven affordable homes.

The tenure type prescribed for the affordable homes through the DoV is as follows:

- Two, two-bedroom bungalows for affordable rent
- Three, three-bedroom houses for affordable rent
- Two, two-bedroom houses for shared ownership

#### **4.0 Discussion**

- 4.1 The Strategic Housing Team would like to propose a variation to the formally agreed affordable housing tenure mix and affordable rent levels by means of a further DoV. These changes would allow all of the affordable homes on site to be let at social rent levels, changing the two homes from the shared ownership tenure to social rent and the remaining five homes from affordable rented to social rented homes.
- 4.2 The proposed changes will align the affordable housing mix on site with evidenced housing need from the recently adopted Strategic Housing Market Assessment (SHMA), which evidences an overwhelming need in the District for more affordable homes at social rent levels and will allow the Council to purchase all seven homes to add to its own housing stock to address identified housing need within the District.
- 4.3 The Council have had an offer to purchase the affordable homes accepted by the developer, Cameron Homes, and are currently in legal negotiations to secure the purchase. Without these changes to the tenure mix, the Council will be unable to progress with the option to purchase as it is currently unable to deliver shared ownership homes as a tenure choice.

#### **5.0 Financial Implications**

- 5.1 There are no financial implications associated to the Council for this change as the DoV will be completed by our existing internal resource.

#### **6.0 Corporate Implications**

- 6.1 A 10% affordable housing contribution will still be secured, as previously agreed, and the tenure would be more responsive to meeting the needs of residents in the District.

#### **7.0 Community Implications**

- 7.1 There will be an increase in affordable homes set at social rent levels, which as evidenced by the Council's recently adopted SHMA is the area of critical need within the District. A consequence of this potential increase will mean losing two homes for shared ownership.

#### **8.0 Background Information**

- a. Section 106 Agreement:  
[https://planning.southderbyshire.gov.uk/documents/DN/2015/9\\_2015\\_1063%20Section%20106%20Agreement.pdf](https://planning.southderbyshire.gov.uk/documents/DN/2015/9_2015_1063%20Section%20106%20Agreement.pdf)
- b. Deed of Variation:  
[https://planning.southderbyshire.gov.uk/documents/DN/2015/9\\_2015\\_1063%20Section%20106%20Deed%20of%20Variation%20\(13-12-18\).pdf](https://planning.southderbyshire.gov.uk/documents/DN/2015/9_2015_1063%20Section%20106%20Deed%20of%20Variation%20(13-12-18).pdf)

<b>REPORT TO:</b>	<b>PLANNING COMMITTEE</b>	<b>AGENDA ITEM: 8</b>
<b>DATE OF MEETING:</b>	<b>22<sup>nd</sup> SEPTEMBER 2020</b>	<b>CATEGORY: DELEGATED</b>
<b>REPORT FROM:</b>	<b>HEAD OF PLANNING AND STRATEGIC HOUSING</b>	<b>RESTRICTED</b>
<b>MEMBERS' CONTACT POINT:</b>	<b>CHRIS NASH</b> <a href="mailto:CHRIS.NASH@SOUTHDERBYSHIRE.GOV.UK">CHRIS.NASH@SOUTHDERBYSHIRE.GOV.UK</a>	<b>DOC:</b>
<b>SUBJECT:</b>	<b>LAND AT SK2531 3702, LUCAS LANE, HILTON, DERBY</b>	<b>REF: DMPA/2019/1143</b>
<b>WARD(S) AFFECTED:</b>	<b>HILTON</b>	<b>TERMS OF REFERENCE:</b>

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## **1.0 Recommendations**

- 1.1 That the Committee ratifies its previous resolution on this application, made at the meeting on 1 July 2020, and endorses the issuing of planning permission as per that resolution.

## **2.0 Purpose of Report**

- 2.1 To appraise the Committee of the latest circumstances relating to an application for outline permission on land at Lucas Lane, Hilton – the Committee having previously resolved to approve permission subject to conditions and a section 106 legal agreement (s106).
- 2.2 To also seek the Committee's confirmation that its previous resolution stands.

## **3.0 Background**

- 3.1 Members will recall resolving to approve outline planning permission for the site off Lucas Lane in Hilton at the meeting on 1 July 2020. The resolution was made subject to the prior completion of a s106 to secure planning obligations, with delegated powers given to the Strategic Director (Service Delivery) to agree the content of that s106. Accordingly, permission has not yet been issued due to the time required to negotiate the terms of the agreement and secure its signing and completion. The s106 has, however, now been completed.
- 3.2 In the meantime, the Council has been put on notice by Hilton Parish Council of their intent to seek a judicial review of the decision on the basis that officer advice in respect of the weight which could be afforded to the Hilton Neighbourhood Development Plan (NDP) was incorrect.

## 4.0 Discussion

- 4.1 It is a well-established principle that a planning decision is both not 'made' until the decision notice itself is issued, and that the decision made must be based on the most up-to-date policy position. Where material changes occur in respect of planning policy, the decision maker should review the circumstances surrounding the original recommendation made and determine whether any resolution still stands or whether it should be reviewed.
- 4.2 At the meeting in July, a representative of the Parish Council addressed the Committee and suggested that the emerging NDP could be afforded full weight. Officer advice at the meeting was that it could not be afforded weight due to it not yet reaching its Regulation 16 consultation. The report, originally written and published for the meeting in March (which was cancelled due to the COVID-19 pandemic) stated:

*"The emerging NDP is yet to be subjected to a formal public consultation through the Regulation 16 'publication stage'. Neither the draft NDP nor the consultation statement have been formally submitted to the Council and, as such, the extent of unresolved objections is unknown. As set out in the PPG, "the consultation statement submitted with the draft neighbourhood plan should reveal the quality and effectiveness of the consultation that has informed the plan proposals". For these reasons, it is too early in the NDP's preparation to afford it any weight".*

- 4.3 The officer updated the committee to confirm that, by the date of the July meeting, the draft NDP and consultation statement had since been received.
- 4.4 The officer also referred to the Planning Practice Guidance (PPG) and quoted paragraph 41-007:

*"...An emerging neighbourhood plan is likely to be a material consideration in many cases. Paragraph 48 of the revised National Planning Policy Framework sets out that weight may be given to relevant policies in emerging plans in decision taking. Factors to consider include the stage of preparation of the plan and the extent to which there are unresolved objections to relevant policies. A referendum ensures that the community has the final say on whether the neighbourhood plan comes into force as part of the development plan. Where the local planning authority publishes notice of a referendum, the emerging neighbourhood plan should be given more weight, while also taking account of the extent of unresolved objections to the plan and its degree of consistency with NPPF. The consultation statement submitted with the draft neighbourhood plan should reveal the quality and effectiveness of the consultation that has informed the plan proposals. All representations on the proposals should have been submitted to the local planning authority by the close of the local planning authority's publicity period..."*

- 4.5 The publicity period referred to here is the Regulation 16 consultation which commenced on 7 September and will close at 5pm on Monday 19 October 2020. Thereafter, responses will be compiled, and an examiner appointed who will consider fully the representations made and the compliance of the NDP with the 'basic conditions'. Only if this stage is passed can the Council organise a referendum, and if proceeding to this stage it must issue a Regulation 18 decision statement.



- 4.6 Normally, this action would allow a decision maker to begin affording some weight to an emerging NDP, with a referendum allowing this weight to elevate further. The obvious corollary is that if an emerging NDP, such as the Hilton NDP, has not yet completed the Regulation 16 consultation, then it cannot carry sufficient weight to override prevailing policies of the Local Plan.
- 4.7 The PPG has also been updated recently in light of the COVID-19 pandemic. It states that *“where the local planning authority has issued a decision statement (as set out under Regulation 18 of the Neighbourhood Planning (General) Regulations 2012) detailing its intention to send a neighbourhood plan to referendum, that plan can be given significant weight in decision-making, so far as the plan is material to the application”* (paragraph 41-107). Again, this step is some way off yet – likely a number of months given the closing date of the current consultation and the time then necessary to undertake an examination of the NDP.
- 4.8 Accordingly, it remains the professional opinion of officers that the NDP cannot be afforded meaningful weight which might alter the recommendation previously presented to the Committee. It is therefore recommended that the Committee’s resolution remains unchanged from that made on 1 July, and that given the s106 is now complete and there are no other reasons to withhold the grant of permission; the decision notice be issued without delay.

## **5.0 Financial Implications**

- 5.1 There are no financial implications associated with the issuing of the decision notice. The financial risk associated with a judicial review is no greater with this decision than any other decision made, with it possible for the Council to seek that its legal fees are paid in the event of an unsuccessful challenge.

## **6.0 Corporate Implications**

- 6.1 The delivery of housing would be secured in line with growth aspirations for the District, whilst a permission would assist in securing a 5-year housing land supply.

## **7.0 Community Implications**

- 7.1 Aspirations for the Lucas Lane site under the emerging NDP would be diminished by this decision. However, the decision would be in line with prevailing planning policies applicable to the site, of which the community was consulted upon during the creation of the Local Plan Parts 1 and 2.

## **8.0 Background Information**

- a. Committee agenda for 1 July 2020:

[https://south-derbys.cmis.uk.com/southderbyshire/Committees/tabid/62/ctl/ViewCMIS\\_CommitteeDetails/mid/489/id/499/Default.aspx](https://south-derbys.cmis.uk.com/southderbyshire/Committees/tabid/62/ctl/ViewCMIS_CommitteeDetails/mid/489/id/499/Default.aspx)