

Report of the Strategic Director (Service Delivery)

[Section 1: Planning Applications](#)

[Section 2: Planning Appeals](#)

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

1. Planning Applications

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

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

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

Glossary of terms

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

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

Item No. 1.1

28/06/2022

Ref. No. [DMPA/2021/1859](#)

Valid date: 14/01/2022

Applicant: Kang Agent: N Astle

Proposal: **Demolition of existing single storey shop and erection of new 2 storey building to accommodate 2 self contained flats at 160B Parliament Street, Newhall, Swadlincote, DE11 0SG**

Ward: **Newhall and Stanton**

Reason for committee determination

Cllr Sean Bambrick, Ward Member for Newhall & Stanton, has requested that the application is presented to the Planning Committee due to the unusual circumstances of the site.

It is understood that there are concerns in relation to a lack of off street parking for the development.

Site Description

The application refers to the site of an existing, flat roofed single storey building, built for commercial use, in the Newhall area of Swadlincote. The building is currently vacant although has been in previous use as a shop and tattoo parlour. The site lies within a predominantly residential area and there are residential properties lying on either side and to the rear of the application site.

The proposal

Planning permission is sought to replace the existing building on the site with a new 2 storey building which would provide 2 no. two bedroom residential flats. Although some minor alterations have been made to the plans this is largely a renewal of a previous permission granted in 2019.

Applicant's supporting information

The application is supported by the following plans and documents:

Site Location Plan
Block Plan
Existing Plans and Elevations
Proposed Plans and Elevations
CON29M Non-Residential Mining Report

Amended proposed plans have been received during the application in response to queries raised in the consultation in relation to the site layout and distance to boundaries. Alterations have also been made to the window layout.

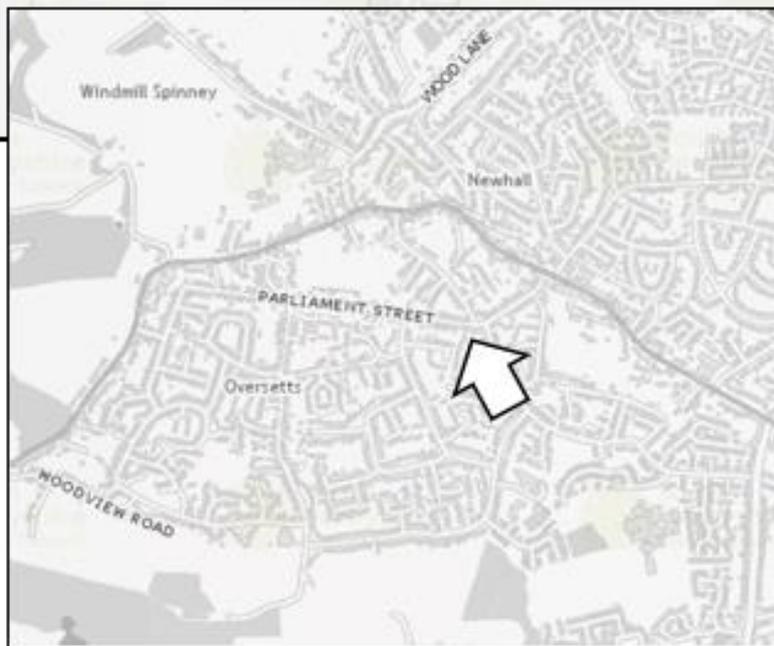
Relevant planning history

9/2018/1057 – Demolition of existing building with the erection of a replacement building for two flats. Approved 15 February 2019.

9/2016/1223 – The conversion of existing shop into self contained residential flat (Ground Floor) with first floor extension with new pitched roof over to contain another self contained flat (total of two flats). Approved 19 January 2017.

9/2002/0712 – The conversion into self-contained living accommodation of the detached garage and store at 160 Parliament Street Newhall Swadlincote Derbyshire. Approved 16 September 2002.

DMPA/2021/1859 – 160B Parliament Street, Newhall, Swadlincote, DE11 0SG



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South Derbyshire District Council, LA 100019481.2020

Responses to consultations and publicity

ClIr Sean Bambrick (Newhall & Stanton Ward) – It is queried whether car parking included in the proposals.

The Coal Authority - No objections to this current proposal, subject to the LPA placing a condition on the decision notice to secure the undertaking of intrusive ground investigations works to confirm the presence or otherwise of shallow coal mine workings / mine entry within the site and to inform the extent of any remedial and / or mitigation measures that may be required to ensure that the redevelopment of this site is safe and stable (NPPF paras. 183 and 184).

Environmental Health - No environmental concerns and therefore no comments to make.

Planning Policy - Local Plan Part 2 Policy RTL1 Part F states: “Loss of retail units in centres will be permitted where: i) The current use can be demonstrated to be no longer viable; and ii) The unit has been sufficiently and actively marketed for a range of retail uses over a 6 month period; and iii) The impacts arising from the resulting use do not cause an adverse effect on amenity, parking needs or highway safety”.

In regard to points (i) and (ii) recent amendments to the Use Classes Order mean that a change of use from retail (Use Class E(a)) to a dwelling (Use Class C3 – up to 1500 sqm) now represents permitted development subject to prior approval. Therefore, although the application is for redevelopment rather than a change of use, it is considered that to request a marketing exercise and evidence concerning viability would not be reasonable in this instance.

County Highways Authority - Bearing in mind the existing use of the site, it is not considered that approval of the proposal would have a negative impact on existing highway conditions.

Public Representations

Three public representations have been received. In summary the following points are made:

- a) Adding more housing without parking spaces will exacerbate parking problems on the street.
- b) Inaccuracies on the plans and application form are highlighted. The plot size has been deliberately misrepresented to give a more favourable view of the remaining “amenity” space at the side of the building. It may also compromise the legal right of way one respondent has through the site. It is also noted that the site can be seen from a public road, contrary to that stated on the application form.

Officer Note – Amended plans were submitted during the application which resolved these errors and discrepancies between the submitted plans.

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), S6 (Sustainable Access), H1 (Settlement Hierarchy), SD1 (Amenity and Environmental Quality), SD3 (Sustainable Water Supply, Drainage and Sewerage Infrastructure), BNE1 (Design Excellence) and INF2 (Sustainable Transport)
- Local Plan Part 2 (LP2): SDT1 (Settlement Boundaries and Development) and RTL1 (Retail Hierarchy)

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
- Design, scale & layout of the proposed development
- Residential amenity for the future occupiers of the building and potential impacts on the amenity of existing neighbouring properties.
- Highway safety and parking matters.

Planning assessment

Principle of development

The site lies within the defined urban settlement boundary for Swadlincote, which is the primary area supported for new residential development under the hierarchy set out in policy H1 of LP1. As such the proposal would accord with the aims of sustainable development set out under policy SDT1.

Policy RTL1 of LP2 seeks to protect existing retail units in existing and proposed centres. In this case the application site lies within a predominantly residential area and outside the main commercial area of Newhall, which is located along Main Street and High Street to the north. It is also noted that there is significant planning history of previous approvals on the site for new residential development and there is an existing convenience store close by on Orchard Street which will continue to serve the local community. The Planning Policy team has advised that, in light of the circumstances of the site and the permitted development legislation now in place, the marketing exercises advised under policy RTL1 to justify the change of use are not justified.

It is therefore considered that the proposal is acceptable in principle, subject to meeting the requirements of the other relevant policies.

Design, scale & layout of the proposed development

Policy BNE1 states that new development should be visually attractive, appropriate, respect important landscape, townscape and historic views and vistas, contribute to achieving continuity and enclosure within the street scene and possess a high standard of architectural and landscaping quality.

The existing building on the site is a flat roofed, rendered building. It is generally out of keeping with the age and character of the terraced rows of early 19th century housing, which predominantly lie along this section of Parliament Street. It makes no contribution to the character of the street scene or the visual amenity of the area. The replacement building would be built in the same location and have the same footprint of the existing building on the site but in contrast it would be a pitched roof, two storey building reflecting the appearance of the more traditional houses along the street.

The application form indicates that the new building would be rendered with concrete roof tiles. The existing building is also white rendered, as is the neighbouring property to the east, which is also of a similar scale. The remaining street is predominantly red brick, however, given the presence of the neighbouring building these materials are considered acceptable. A condition can be used to ensure that precise details relating to the proposed materials be submitted and agreed. Stone lintels and arched brick headers are indicated on the plans, which reflects the detailing of the older, terraced houses along the road. Overall, the new building should enhance the character and appearance of the area and represent an improvement to the street scene, according with the aims of policy BNE1.

The application form indicates that surface water drainage is to be directed to soakaways, which are a sustainable drainage system and a preferred method under policy SD3 of LP1. The water efficiency standards which new dwellings are expected to meet are detailed within policy SD3 and a condition is

added to state that the new flats should be built in line with this.

The pre-commencement condition recommended by the Coal Authority in relation to ground investigations has been agreed with the agent and forms part of the recommendation.

Residential amenity for the future occupiers of the building and potential impacts on the amenity of existing neighbouring properties.

Policy SD1 supports development that does not lead to adverse impacts on the environment or amenity of existing and future occupiers. Policy BNE1 requires development to not cause demonstrable harm to neighbouring amenity.

The floor area of the flats meets the national recommended space standards and all habitable rooms have a source of natural light. The two flats will share the existing amenity space to the rear of the building and the existing 1.92 metre gap between the building and the western boundary will be retained. It is indicated that this area will be used for bin storage. Overall, the flats should provide a good standard of amenity for future occupiers.

The new building will be sited in the same location as the existing building, with the front building line level with the neighbouring property to the east. The separation distances between the new building and both neighbouring properties are considered sufficient to mitigate any additional impact on the light or outlook of these properties.

There is one first floor window indicated for the western side elevation, however, this will only serve the enclosed staircase up to the first floor flat and therefore shall present no undue overlooking. The proposed windows on the north elevation face the highway and are approximately 12.5 metres from the existing dwellings lying opposite the site. This is less than the minimum distance guidelines recommended in the Design Guide SPD, however, as the respective properties are separated by a highway the guidance states that these guidelines can be relaxed. Given that there is an existing building, and the separation distance reflects that of other properties running along either side of Parliament Street, it is considered acceptable.

There is not considered to be any detrimental impact on the amenity of adjoining neighbours to the south of the site.

One respondent highlighted an existing right of access along the western side of the building and discrepancies in the plans in relation to width to the boundary. This was clarified during the application and a ramp leading up to the entrance to the first floor flat, which was originally proposed of the side elevation, was relocated to the rear elevation to provide additional space and ensure that access was not unduly restricted.

The proposal is therefore considered to accord with the aims of policies SD1 and BNE1 of the Local Plan in respect of neighbouring amenity.

Highway safety and parking

The Local Ward Member and some respondents have raised concerns that the new residential units will have no dedicated off-road parking. It is acknowledged that many of the properties along this section of Parliament Street have no off-road parking and therefore there is already a high demand for street parking. However, the Highways Authority has not raised an objection, on the basis that the existing retail use would also generate a level of demand for parking and whilst it is understood not to have been in use for a number of years could re-open at any point as such without any planning permission. Given this factor, the previous permission at the site for two flats and the generally sustainable location of the site, the proposal is considered to be acceptable without any dedicated off-road parking spaces.

Conclusion

The proposed application site is considered to be an acceptable location for new residential development and the replacement building on the site should enhance the character and appearance of the street scene. The proposal shall provide a good standard of amenity for future occupiers without compromising the amenity of neighbouring properties. The proposal is therefore deemed to comply with the relevant planning policies and is recommended for approval.

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

It is recommended that the application is approved, subject to conditions.

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

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

2. The development hereby permitted shall be carried out in accordance with the Site Location Plan, Block Plan and Existing Plans and Elevations (drawing number NA/MKPSN/1.b) and Proposed Plans and Elevations (drawing number NA/MKPSN/2.h); 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 shall commence on the site until a scheme of intrusive site investigation has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be carried out in full and a report of the findings arising from the intrusive site investigations, along with proposed remedial measures (if any), shall be submitted to and approved in writing by the Local Planning Authority prior to any works of construction commencing. The approved remedial measures shall be implemented prior to first occupation of the building hereby approved.

Reason: To ensure the stability and safety of the development to protect against coal mining legacy.

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

Reason: To safeguard the appearance of the existing building and the locality generally.

5. Each flat shall be constructed and fitted out so that the estimated consumption of wholesome water by persons occupying the 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.

6. Except in an emergency, no demolition, site clearance, construction, site works or fitting out shall take place other than between 08:00 to 18:00 hours Mondays to Fridays, and between 08:00 to

13:00 hours on Saturdays. There shall be no such activities whatsoever on Sundays, public holidays and bank holidays (other than emergency work).

Reason: To ensure neighbour amenity is protected.

Informatives:

- a. Under the Coal Industry Act 1994 any intrusive activities, including initial site investigation boreholes, and/or any subsequent treatment of coal mine workings/coal mine entries for ground stability purposes require the prior written permission of The Coal Authority, since such activities can have serious public health and safety implications. Failure to obtain permission will result in trespass, with the potential for court action. Application forms for Coal Authority permission and further guidance can be obtained from The Coal Authority's website at: <https://www.gov.uk/get-a-permit-to-deal-with-a-coal-mine-on-your-property>

Item No. 1.2

Ref. No. [DMPA/2022/0409](#)

Valid date: 21/03/2022

Applicant: Suzanna Chan **Agent:** Planning and Design Practice Ltd

Proposal: **Change of Use from Restaurant (Class E) to Restaurant (Class E) / Public House (Sui Generis)(Flexible Use) at The Mandarin Chinese Restaurant, Egginton Road, Hilton, Derby, DE65 5FJ**

Ward: Hilton

Reason for committee determination

Cllr Gillian Lemmon, Ward Member for Hilton, has requested that the application is presented to the Planning Committee due to local concerns.

Site Description

The application refers to the site of 'The Mandarin' restaurant, which is located off the A5132 Egginton Road to the south-east of the village of Hilton. The site is outside the defined settlement boundary for Hilton and classed as being within the rural area. The supporting statement advises that the restaurant is temporarily closed.

The main building is a fairly large, predominantly two storey brick building with some single storey extensions. There is living accommodation on the first floor that has been used in the past for staff accommodation. The principal elevation and main entrance faces south onto the car park associated with the site.

A residential estate, Astley Gardens, has recently been built around the application site and the parking area has been used partly by the developers during construction. The application site has an access from Astley Gardens in addition to the main access from Egginton Road.

The proposal

Planning permission is sought for the change of use of the building from the existing restaurant use, which now falls under class E of the Town and Country Planning (Use Classes) Order 1987, to a mixed use as a restaurant and public house, which is classed as Class E & Sui Generis Use.

No external alterations to either the building or the site are proposed under this application. An amended Location Plan was submitted during the application after it was clarified that some of the land on the west of the site had been transferred to the management company of the Astley Gardens residential estate.

Applicant's supporting information

The application is supported with the following plans and documents:

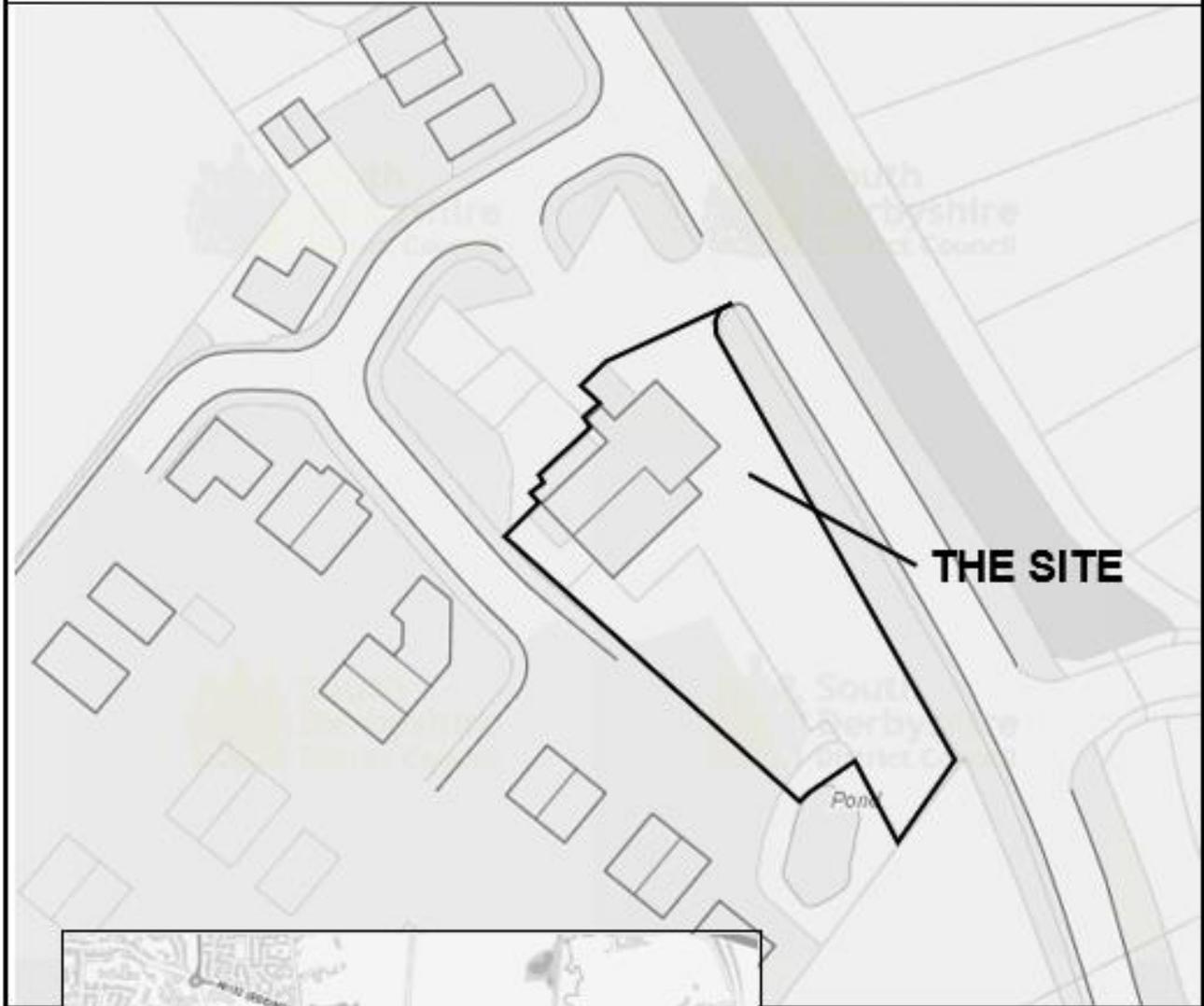
- A Site Location Plan
- Block Plan as Existing
- A Planning Statement (V. 02)

Relevant planning history

DMPA/2022/0390 - The erection of two commercial units. Application Withdrawn 25 May 2022.

DMPA/2021/1787 - Retention of existing Restaurant (Class E) and the creation of a Gastro Pub (Sui Generis) to provide a flexible Class E/ Sui Generis Use. Application Withdrawn 15 February 2022.

DMPA/2022/0409 – The Mandarin Chinese Restaurant, Egginton Road, Hilton,
Derby, DE65 5FJ



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South Derbyshire District Council, LA 100919451.2020

9/2003/1308 - Erection of single storey extension in order to increase existing dining area and extension to create toilet area at White Swan Inn Egginton Road Hilton Derby. Approved December 2003.

9/2003/1307 - Static flood lit fascia signs at White Swan Inn Egginton Road, Hilton, Derby. Consent granted December 2003.

Responses to consultations and publicity

County Highways Authority - No objection.

It is noted that as the proposed level of parking provision for the proposal reduces from 33 to 30, however, it is also evident that the 9 spaces allocated for the proposed commercial units to the north of the site will be available for use by the restaurant/public house customers during the evenings and weekends which are the busiest times for such facilities. It is also noted that cycle parking and motorcycle parking is to be provided within the site which is welcomed.

Taking this into account it is considered that on balance the proposed level of car parking provision is acceptable, and the highway authority therefore has no objections to the application, subject to a condition being imposed should approval be granted for the parking spaces to be implemented prior to the development being brought into use.

Environmental Health - Further information is requested in regards the use of external areas. It is advised that if the public house is to include provision of external seating then a noise impact assessment will be required for further consideration.

Responses to publicity

10 public representations have been received in relation to the proposal. In summary the following comments are made:

- a) The proposal will increase anti-social behaviour and disturbance in the area, which is a quiet, residential estate.
- b) The site is not accessible by public transport and the proposed uses should be located in the centre of town or village locations.
- c) There are plenty of nearby pubs and restaurants in Hilton and more are not needed.
- d) The proposal will result in customer parking and highway safety issues on the surrounding residential streets. It is queried whether the parking spaces are wide enough. It is highlighted that the footpaths are narrow and unlit and the road prone to speeding motorists.
- e) It is queried how deliveries of food stock and wet goods (alcohol/soft drinks) will be made to the pub.
- f) It is questioned how odours from the premises will be controlled.
- g) The trade waste and recycling arrangements are queried.
- h) It is queried what ecology surveys have been carried out.
- i) It is queried whether the foul sewage and existing drainage can cope with the increased capacity.
- j) It is queried whether the Noise Impact Assessment has been carried out in respect of outdoor areas, as requested by the Environmental Health officer.
- k) Errors within the application and Planning Statement are highlighted [*Officer Note – An amended statement was received during the application*].

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), E7 (Rural Development), SD1 (Amenity and Environmental Quality), SD3 (Sustainable Water Supply, Drainage and Sewerage Infrastructure), BNE1 (Design

Excellence), BNE4 (Landscape Character and Local Distinctiveness) and INF2 (Sustainable Transport).

- Local Plan Part 2 (LP2): SDT1 (Settlement Boundaries and Development), BNE5 (Development in Rural Areas).

The relevant local guidance is:

- South Derbyshire Design Guide Supplementary Planning Document (SPD)
- Hilton, Marston on Dove and Hoon Neighbourhood Development Plan (November 2021)

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 the change of use
- Impact on the amenity of surrounding residential properties
- Highway safety and parking.

Planning assessment

Principle of the Change of Use

Policy E7 of the Local Plan states that development proposals which diversify and expand the range of sustainable employment activities on land outside settlement boundaries will be supported by the Council, provided they support the social and economic needs of the rural communities in the District. Such development in rural areas is also supported under policy BNE5.

It is noted that the building originally provided the 'White Swan Inn' before being occupied by 'The Mandarin' restaurant, therefore permitting the proposed change of use would be a reversion to the original use of the building. The supporting statement advises that there has been local interest in re-opening the site as a 'gastro' pub with a primary focus on providing locally sourced food. A Business Case for the proposal is given within the Planning Statement, in accordance with policy E7, in which is advised that the Applicants own other similar premises within the local area and have considerable experience in the trade.

The Hilton, Marston on Dove and Hoon Neighbourhood Plan identifies that in Hilton there are just four pubs and three places to dine out. It notes that the consultation on the plan identified that many people felt that the local choice was too restrictive, considering there are limited places for a coffee, snacks or casual meeting and there are too few restaurants.

It is considered that permitting the additional, complementary use on the site is likely to enhance its prospects for providing a viable long term business which would serve the adjacent residential estate and the wider area. The existing business has been closed for some time and building and the site are in need of general maintenance and refurbishment. Permitting the new use could facilitate improvements to the site which will enhance the overall character and appearance of the area.

The principle of the change of use is therefore considered acceptable and deemed to accord with Local Plan policies and the economic and social objectives of the NPPF to support a prosperous rural economy and provide accessible local services and community facilities.

Impact on the amenity of surrounding residential properties

Policy SD1 of the Local Plan supports development that does not lead to adverse impacts on the environment or amenity of existing and future occupiers. Policy BNE1 requires development to not cause demonstrable harm to neighbouring amenity and policy E7 states that development should not give rise to any undue impacts on neighbouring land.

It is acknowledged that a number of surrounding residents have raised concerns in relation to potential noise, disturbance and anti-social behaviour which could arise from allowing the public house use on the site. However, the supporting statement advises that the primary function of the building will be as an eating establishment. Due to the location of the site, outside the main urban area, it is considered unlikely that there would be any noticeable change in general activity on the site above that which could exist if the site re-opened purely as a restaurant.

It is proposed that the business will operate between the hours of 12 noon to 11pm daily. These hours are considered reasonable. A condition is added to the permission to state that the premises should not be open to customers outside the hours of 12 to 23:30, to allow 30 minutes drinking up time (with the exception of New Years Eve).

In the event that excessive noise and disturbance to local residents is generated by the pub/restaurant this would be investigated as a noise nuisance by Environmental Health under the Environmental Protection Act and appropriate action taken. It is not considered that a reason for refusal could be sustained on grounds of potential levels of noise and anti-social behaviour which may occur. In contrast a pub/restaurant on the site may have the potential to provide a valued community asset for the area.

It has been advised that plans regarding the use of any external seating areas have not been finalised and therefore a condition is added to the permission for details of these to be provided for approval prior to their use, including the provision of a noise assessment as requested by Environmental Health. This should allow a full assessment to be made of the potential impact of any external seating areas before they are brought into use.

A number of other queries were raised during the consultation in relation to deliveries, refuse storage and collection, drainage and odour control. However, as the site has previously operated as a pub and restaurant there is already extraction equipment in place on the building and presumably arrangements for commercial refuse collection can easily be re-started. There is plenty of space within the site for refuse storage and, given the existing use of the site, it is not considered that further details are required. Likewise, as this application does not propose any structural alterations to the building or the site layout no ecology surveys are required.

In general, it is not considered that there would be any reasonable grounds to refuse the additional use. There is no reason to suggest that a well managed business would demonstrably harm the amenity of surrounding properties and there is other legislation in place to address these issues should they arise.

Highway safety and parking

It is noted that at the time the Highways Authority made comments on the proposal there was a concurrent application in place for the erection of two new commercial units on the site. The Highways comments cover this application as well. This application was subsequently withdrawn, however, the Highways Authority raised no objections to the proposal even with this more intensive use of the site.

The Planning Statement advises that the existing site car park can provide 33 spaces. While there are no adopted parking standards within the South Derbyshire Local Plan which sets out the levels of parking expected for different uses the Planning Statement points out that the number of spaces would meet the requirements of similar neighbouring authorities for a premises of this size. The existing access to the site from Egginton Road is to be closed in accordance with a condition attached to the outline planning permission for the residential estate, leaving just the single access from Astley Gardens.

The Highway Authority have raised no objection to the proposal. There would be no reason to suggest that the additional use of the site would necessarily result in more vehicular traffic than may exist with purely the restaurant use and the proposal is considered to comply with the requirements of Policies E7 and INF2.

Conclusion

The inclusion of the additional public house use on the site is complementary to the existing restaurant use and could increase the potential for a long term, viable business on the site, which would enhance local facilities and expand the range of sustainable employment activities on land outside of settlement boundaries. The appearance of the building, the car park and the immediate surroundings will not be negatively impacted and may well be improved with any proposed refurbishment and it is considered that the impact on neighbouring properties and traffic levels would not be dissimilar to the current restaurant use. It is therefore recommended that the application is approved.

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

It is recommended that the application is approved, subject to conditions.

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

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

2. The development hereby permitted shall be carried out in accordance with the Site Location Plan, drawing number 3548-001, revision A and Block Plan & Parking Plan as proposed, drawing number 3548-004, revision F; 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. Prior to their use, full details of any outdoor seating areas for customers shall be submitted to and approved in writing by the Local Planning Authority. The details shall include the provision of a noise impact assessment to assess the potential impact on surrounding residential properties. The outdoor seating areas shall be installed in accordance with the approved details and any approved noise mitigation measures shall be completed prior to the outdoor seating areas being brought into use and thereafter maintained.

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

4. The parking and manoeuvring areas indicated on the approved plans shall be made available prior to the new use commencing on the site and, 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, such spaces shall be maintained throughout the life of the development free of any impediment to their designated use as such.

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

5. The premises shall not be open for customers outside the hours 12:00 to 23:30 on any day, with the exception of New Year's Eve when the premises shall not be open for customers outside the hours 12:00 on 31 December to 02:00 on 1 January, nor shall any member of the public/customers remain on the premises outside these hours.

Reason: To safeguard the amenities of nearby occupiers.

Item No. 1.3

Ref. No. [DMPA/2022/0204](#)

Valid date: 11/02/2022

Applicant: Gillian Edwards

Agent: JJM Planning LTD

Proposal: **Outline application (matters of access and layout to be considered now with matters of scale, appearance and landscaping reserved for later consideration) for the erection of one dwelling at 29 Burton Road, Overseal, Swadlincote, DE12 6LQ**

Ward: Seales

Reason for committee determination

Councillor Amy Wheelton, Ward Member for Seales, has requested presentation of the application to the Planning Committee due to local concerns.

Site Description

The application refers to the site of a detached dormer bungalow in the village of Overseal. The property lies off the A444 Burton Road on the northern side of the village and has neighbouring, detached two storey houses on either side. To the rear the property has a garden around 65 metres long which backs onto open countryside.

The site lies within the catchment of the River Mease Special Area of Conservation (SAC).

The proposal

Outline planning permission is sought for the erection of a detached residential dwelling and double garage within the rear garden of the application site property. Approval is sought for the access and layout of the site, with appearance, scale and landscaping reserved for later approval.

Applicant's supporting information

The application is supported by:

- Outline Planning Drawings – Location Plan, Proposed Block Plan and indicative section (drawing number JJM/2022.108-001).
- A Planning Statement from the Agent, JJM Planning
- A Drainage/River Mease SAC Assessment

Relevant planning history

There is no relevant planning history on this site.

Responses to consultations and publicity

Overseal Parish Council - Object to the application.

Councillors consider that this is an overdevelopment of the site. This is a back land development, giving precedent to similar back garden developments in future. It is also detrimental to the rural setting.

The proposed development would be accessed by eight cars on to the busy A444, not far from a junction and on a steep incline, which is considered to be dangerous.

County Highways Authority - The application site takes access from Burton Road (A444), Overseal. Burton Road fronting the site is a busy classified road which carries a high number of HGV traffic and is subject to a 30mph speed limit.

DMPA/2022/0204 – 29 Burton Road, Overseal, Swadlincote, DE12 6LQ



South Derbyshire District Council

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South Derbyshire District Council, LA 100019461.2020

At an access onto a section of highway, such as Burton Road, which is subject to a 30mph speed limit, visibility sightlines of 2.4m x 47m are required in both directions measured to a distance of no more than 1m into the carriageway from the nearside carriageway edge. Notwithstanding the application drawing (JJM.2022.108-001), where the sightline is shown extending into the centre of the road in the northerly direction, the Highway Authority considers that adequate visibility is achievable in each direction. In addition, the Planning Statement refers to a reduction in the height of the boundary wall to maximise visibility.

However, in order to comply with current highway standards, an access which serves two dwellings needs to have a minimum width of 4.25m (preferably 5m) for at least the first 5m into the site from the highway boundary. This will allow two vehicles to enter and leave the site simultaneously thus avoiding the need for either a driver to waiting for longer than normal to turn into the site whilst another vehicles leaves or to avoid the need to reverse from the access onto the classified road whilst another vehicle exits the site.

It is considered that adequate parking and turning space is available within the site to accommodate vehicles associated with two dwellings.

Therefore, whilst there are no objections in principle to the proposal from the highway point of view, the applicant should address the above comments and submit a revised drawing.

Environmental Health Officer – There are no environmental concerns and therefore no further comments are made or conditions requested.

Natural England - No objection, subject to appropriate mitigation being secured.

The proposed development lies within the catchment of the River Mease SAC1, which is currently in unfavourable condition and is failing it's conservation objectives. This is as a result of numerous factors, including high levels of phosphorous in the water. Any addition of phosphorous from foul water (including via mains Sewage Treatment Works) or pollutants from poorly treated surface water will contribute to the site's unfavourable condition and the failing of its conservation objectives.

NE recognise that this is an outline application and there is scope for a cess pit to be used to deal with foul water so in theory they can avoid an impact on the SAC and if capacity within any new DCS becomes available then the applicant could contribute to this scheme instead.

However they are introducing new hardstanding and have not mentioned this anywhere in the application documents. They need to provide some treatment that can be quantified, it is completely up to the applicant how they demonstrate this but it does seem like the simple index approach would be really useful in this case.

It is considered that without appropriate mitigation the application would:

- have an adverse effect on the integrity of the River Mease Special Area of Conservation
- damage or destroy the interest features for which the River Mease Site of Special Scientific Interest has been notified.

The LPA, as competent Authority, should undertake a HRA for this development and in doing so ensure that there will be no harmful discharges of foul or surface water from the application site into the River Mease or its tributaries. Further advice is given on this, connection to non-mains drainage systems and achieving a biodiversity gain.

Responses to Publicity

1 public representation has been received. In summary the following comments are made:

- a) The proposals to lower the boundary fence are appreciated as it will improve visibility.
- b) Concerns are raised in relation to the impact on existing drainage systems.
- c) Concerns are raised in relation to the impact of construction traffic.
- d) Various inaccuracies in the Planning Statement are highlighted.

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), H1 (Settlement Hierarchy), SD1 (Amenity and Environmental Quality), SD3 (Sustainable Water Supply, Drainage and Sewerage Infrastructure), BNE1 (Design Excellence), BNE3 (Biodiversity), BNE4 (Landscape Character and Local Distinctiveness) and INF2 (Sustainable Transport).
- Local Plan Part 2 (LP2): SDT1 (Settlement Boundaries and Development)

The relevant local guidance is:

- South Derbyshire Design Guide Supplementary Planning Document (SPD)

The relevant national policy and guidance is:

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

Planning considerations

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

- Principle of development
- The suitability of the proposed access and layout of the site
- Biodiversity and drainage matters.

Planning assessment

Principle of development

The application site lies within the defined settlement boundary for Overseal, which is identified within the Local Plan as a key service village within the settlement hierarchy set out in policy H1. Residential development within the settlement boundaries of such villages is considered appropriate in principle.

The site for the proposed dwelling lies in a 'backland' location to the rear of an existing property. There are no policies specifically regarding this type of backland development within the Local Plan. In general policy BNE1 (g) of LP1 states that new development should be visually attractive, appropriate, respect important landscape, townscape and historic views and vistas, contribute to achieving continuity and enclosure within the street scene and possess a high standard of architectural and landscaping quality. This policy is expanded upon within the Design Guide SPD which discusses how street and plot layout and respect for existing building lines can contribute to the local character of an area, but it does not specifically address backland development.

The new dwelling itself should not be particularly visible from Burton Road. The extended driveway and glimpses of the dwelling may be apparent but given the siting of the proposed dwelling, and the fact the neighbouring properties lie close by, any views of the actual dwelling should be restricted. The indicative plans also indicate that the new dwelling would be a bungalow. Scale is a reserved matter, however, a single storey dwelling should not be overly prominent in views from the neighbouring properties, given the respective distances between the buildings.

Due to the length of the rear garden of the host dwelling it can be sub-divided to allow appropriate plots for both the existing property and the new dwelling to the rear, which are not out of character in size to

other properties within the area, particularly those to the north of the site.

It is noted that there is some precedent for similar forms of development within the area, notably a bungalow (no. 33 Burton Road) has also been built in a backland location, just to the north of the application site. Taking these factors into account it is considered that the proposed development would generally fit into the surrounding pattern and grain of development and would not harm the character and appearance of the area. The principle of development is therefore deemed acceptable, subject to meeting the requirements of the other relevant policies.

The suitability of the proposed access and layout of the site

Access

The access to the new dwelling would be via the existing driveway which serves No. 29 Burton Road. The access currently extends as far as the garage attached to the southern side of no. 29. This garage would be removed as part of the proposal, and the access extended to run along the boundary with No. 25, the neighbouring property to the south.

It is acknowledged that the Parish Council has raised concerns in relation to highway safety, however, the Highways Authority has confirmed that it would be possible to ensure a safe access to the site, with adequate visibility in each direction. It is noted that the existing boundary wall is to be lowered, which the owners of the neighbouring property to the north have advised will be of benefit to them.

The Highways Authority also advised that the access would need to be widened to a minimum width of 4.25 metres (preferably 5 metres) for at least the first 5 metres into the site from the highway boundary, in order to comply with current highway standards and allow two vehicles to enter and leave the site simultaneously. The Agent declined to amend the plans to indicate this during the application, however, there is space within the site for this requirement to be met and it is considered that a condition could be placed on the permission for a detailed plan for the access to be provided prior to occupation of the new dwelling.

Conditions are therefore proposed in relation to the provision of visibility splays, access width, surfacing and the provision of parking spaces prior to occupation of the dwelling. Whilst some disturbance during construction is inevitable, there should be sufficient on-site space for construction vehicles and the storage of materials. With these conditions the proposal is considered to be acceptable in terms of the access and highways impacts and in accordance with policy INF2.

Site Layout

A plan has been submitted to indicate the proposed site layout. The new dwelling would lie directly behind the existing property, with a detached garage lying between the dwelling and the new rear garden boundary of the existing property. The plans indicate that the new dwelling would lie level with the existing dwelling at no. 33, which has also been built in a backland location.

The existing property would retain a rear garden of approximately 18 metres in length and the rear garden of the new dwelling would be around 25 metres. The plans indicate that a double garage, two parking spaces and a turning space to allow vehicles to leave the site in a forward gear are provided within the proposed layout.

The resulting plots for the existing and the new dwelling should not appear cramped or overdeveloped. The footprint of the dwelling indicated on the submitted plans is large in comparison to surrounding properties, however, scale is a reserved matters and will be assessed further at the time of the reserved matters application.

The access driveway to the new dwelling would run along the side of the neighbouring property at no. 25, which lies on the boundary with the application site. However, it would not be expected that the level of noise and disturbance as a result of the driveway being extended to serve the new dwelling

would be significant, and the number of additional vehicle movements for 1 new dwelling of the scale proposed should also not be significantly greater than the existing use of the driveway. There are no windows in the side elevation of the neighbouring property.

A new dwelling within the rear garden of the application site property would introduce new activity and a more intensive use compared to the existing situation, however, given the relative positions and distances of the neighbouring properties it is considered that there should not be any long term demonstrable harm to the living conditions of neighbouring properties with regard to noise, disturbance and privacy, subject to final approval of the scale and appearance at reserved matters.

Policy SD1 supports development that does not lead to adverse impacts on the environment or amenity of existing and future occupiers. Policy BNE1 requires development to not cause demonstrable harm to neighbouring amenity. In this case the proposed layout is considered acceptable and deemed to accord with these policies.

Biodiversity and drainage

Policy BNE3 supports development which contributes to the protection, enhancement, management and restoration of biodiversity or geodiversity and delivers net gains in biodiversity wherever possible.

The application site lies within the catchment area of the River Mease Special Area of Conservation (SAC), which is also a Site of Special Scientific Interest (SSSI). As the habitat of this area is under threat from pollution and poor water quality, mainly due to high phosphorus levels and drainage works, policy SD3 (iv) of the Local Plan states that all relevant developments within the catchment area should support the delivery of the River Mease Water Quality (Phosphate) Management Plan by means of financial contribution.

The Developer Contributions Strategy devised to allow this contribution is currently closed due to reaching capacity. Work is ongoing on a new development contribution scheme (DCS3). It has been requested whether arrangements could be put in place for a future contribution to a new scheme to be agreed, however, at this stage in the development of this scheme this is not deemed to be practicable.

As the site is within 30m of the existing foul network, it is feasible that a connection can and should ultimately be made. It is proposed as an alternative solution that a temporary non-mains drainage solution could be offered on the site until such time as either a future developer contribution scheme (DCS) or a bespoke solution scheme is in place. This approach has been taken for other applications which have been recently approved.

Policy SD3 states that where connection to the foul sewer is not feasible the Council will pursue drainage options in the following order :

- Discharge to package treatment
- Discharge to septic tanks
- Discharge to a cess pit.

Within the Drainage Statement submitted with the application the first two options are assessed and it is concluded that due to the circumstances of the site a package sewage treatment plant or septic tank would not be acceptable for the proposed development.

It is therefore proposed that a cess pit is included within the development. This would be installed on a temporary basis until the Council has secured further capacity under a further developer contribution scheme and a full connection to the foul network can be made. Approval of this application would be made subject to agreement of a S106 Unilateral Undertaking between the Council and the Applicant to agree this course of action. A condition would also be added to the permission for full details of the proposed cess pit and its maintenance to be submitted for approval. With this in place it is considered that the proposal complies with the requirements of policies SD3 and BNE3.

Conclusion

The principle of residential development in this location is considered acceptable under the Local Plan. A suitable means of access can be provided and the proposed layout of the development is deemed appropriate. Adequate protection can be put in place to protect the River Mease Special Area of Conservation. It is therefore recommended that outline permission is approved, subject to agreement on the Unilateral Undertaking.

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

The application is recommended for approval, subject to conditions and the signing of a Unilateral Agreement in respect of maintenance of a cess pit throughout the lifetime of the development or until connection can be made to the mains sewer.

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

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

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

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

3. The development hereby permitted shall be carried out in accordance with the Site Location Plan and layout indicated on the Proposed Block Plan on drawing reference JJM.2022.108-001; 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.

4. No construction or installation of services/utilities shall take place until details of the proposed cess pit for foul drainage discharge have been submitted to and approved in writing by the Local Planning Authority. The cess pit shall thereafter be emptied and maintained in working order throughout the lifetime of the development, or until connection to the mains sewer can be made in accordance with the requirement of the unilateral undertaking.

Reason: To ensure the protection of the River Mease Special Area of Conservation and in the interests of minimising the pollution of the environment.

5. Prior to the first occupation of the dwelling, details of the visibility splays to be provided within the site and on either side of the proposed vehicular access shall be submitted to and approved in writing by the Local Planning Authority. The visibility splays must be constructed in accordance

with the approved details before the development hereby permitted is occupied or first brought into use. The visibility splays shall thereafter be maintained free from any obstruction exceeding 0.6m above the level of the adjacent highway carriageway.

Reason: To ensure safe and suitable access for all users, in the interests of highway safety.

6. Prior to the first occupation of the dwelling, details of the required improvements to the access to serve two residential dwellings shall be submitted to and approved in writing by the Local Planning Authority. The access private driveway shall be laid out to a width of not less than 4.25 metres for a minimum distance of 5.0 metres back from the highway boundary. The access and driveway shall be surfaced in a hard bound material (not loose gravel) for a minimum of 5 metres behind the highway boundary. The development hereby permitted must not be occupied or first brought into use until the vehicular access has been constructed in accordance with the approved details. Thereafter the access must be retained to this specification throughout the lifetime of the development.

Reason: To ensure safe and suitable conditions are maintained on the public highway, in the interests of highway safety.

7. Prior to occupation of the dwelling a recharge point for electric vehicles shall be provided within the development. 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. To prepare for increased demand in future years suitable and appropriate cable provision shall be included in the scheme design. The electric vehicle charging point 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.

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

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

Informatives:

- b. The scale of the dwelling will be approved at reserved matters stage and the detail shown on approved plans number JJM/2022.108-001 is indicative only and not approved under this permission. In the interests of the protection of the amenity of neighbouring properties the dwelling should be single storey in height.

Item No. 1.4

Ref. No. [DMOT/2021/0754](#)

Valid date: 10/05/2021

Applicant: V Kotecha

Agent: a.i.architecture

Proposal: **Approval of details required by condition 1 attached to ref. DMPA/2020/0915 (two-storey side and single storey rear extension along with attached garage) at 247 Hearthcote Road, Swadlincote, DE11 9DU**

Ward: Swadlincote

Reason for committee determination

This item is presented to the Committee at the request of Councillor Mick Mulgrew based on local objection.

Site Description

The site has an area of 0.6ha and is roughly rectangular in shape. The site is host to a large detached dwelling set back from the highway by a hard surfaced parking area and driveway. A mature belt of landscaping, including a number of protected trees, of which some have been removed, forms the front boundary of the site; this feature provides substantial screening. The property has an extensive garden which is host to two large ponds along with clusters of protected trees. The garden is predominantly enclosed by mature conifers, again of which some have recently been removed. The land levels fall to the north.

The application site is situated within a mixed use area host to building that are highly varied in terms of their design. Dwellings along Hearthcote Road consist of a mixture of traditional and relatively modern properties, semi-detached and detached properties, two storey properties and bungalows. Dwellings are set back from the road at varying intervals and are finished in a range of materials including facing brickwork and render of various colours.

The proposal

This application seeks approval of details required by condition 1. iv), as set out in the appeal decision APP/F1040/D/21/3266987 which states;

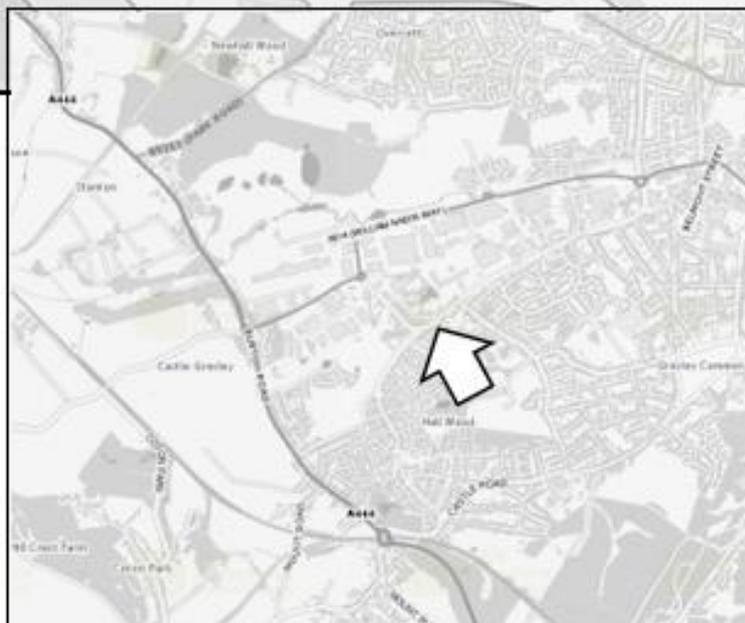
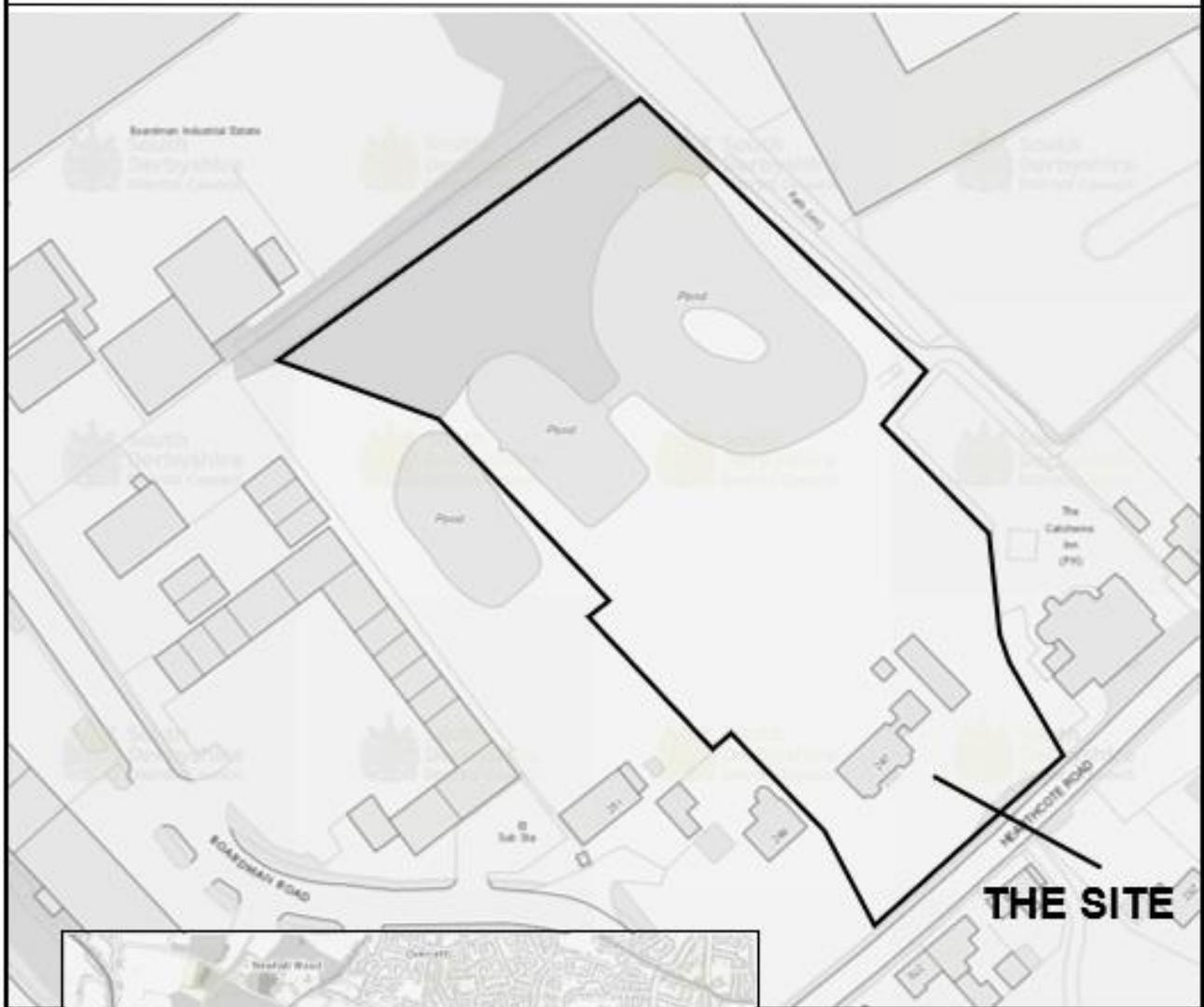
'iv) No development shall commence until details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. These details shall include, but not limited to, means of enclosure and retaining structures, boundary treatments, hard surfacing materials and indications of all existing trees and hedgerows on the land, identification of those to be retained and the measures for their protection throughout the course of development;'

Applicant's supporting information

Submitted with the application is;

- Tree Survey and Protection Plan
- Tree Plan Ref: 582/21
- Existing Hard and Soft Landscaping Details
- Proposed Hard and Soft Landscaping Details
- Tree Removal Plan Dr No. WD020
- Proposed Externals Dr No. WD023
- Proposed Externals Dr No. WD019 A

DMOT/2021/0754 – 247 Hearthcote Road, Swadlincote, DE11 9DU



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South Derbyshire District Council LA 100019461.2020

Relevant planning history

This application seeks approval of details required by condition iv), as set out in the appeal decision:

DMPA/2020/0915 – Two-storey side and single storey rear extension along with attached garage. Refused, Dec 2020. Appeal Ref. APP/F1040/D/21/3266987 – Decision overturned, Feb 2021.

Responses to consultations and publicity

Tree Officer – No objections. Recommended that the points within the Tree Report are in place at all times during construction.

1 letter of Objection was received outlining the following concerns;

- a) The tree survey undertaken by BB Trees Ltd deals with trees at G1 and references 2,3, and 4 that are outside the ownership of the applicant and to be clear I do not give any consent for any works to be approved by your Council or undertaken by the applicant and proper root protection must be afforded by the applicant in undertaking any consented works that proximate.
- b) The BB Trees Ltd document also proposes a tree protection methodology that the applicant has disregarded entirely in undertaking the main development to the property.
- c) The application is superficial in nature and fails to show any detail of the proposed hard landscaping areas (being the patio to the rear and drive extension to the front) and purports to represent that only the tree screen indicated under reference G33 is to be removed.
- d) The screen of trees at reference G33 is stated in the BB Trees Ltd document as requiring no works at present and having considerable future growth expectancy. The planning officer at Committee was at pains to assure members that these trees would be retained to protect our amenity. I would request that in determining this application that this screen of trees is directed to remain with whatever adjustments have to be made to the hard landscaping to ensure they are not damaged.
- e) To the front of the property the existing bed of shrubs and trees is represented on the proposed plan to be retained and yet the applicant prior to any determination has undertaken a very substantial excavation of this area that was the only breach by this applicant that your enforcement officer halted and required topsoil to be reinstated. It is therefore clear that the current application fails to correctly represent either the position on the ground nor the intention of the applicant notwithstanding the declaration of truth made in the application form.
- f) The trees to the boundary, reference G24, are shown in the BB Trees Ltd report to be reduced in height. Given the clear overgrowth of these trees this is essential. However, no provision is made as to how our amenity is to be protected through any replacement screening and I would request that the Council directs that suitable screening must be installed.
- g) I should be grateful if the Council would carefully consider imposing appropriate screening measures to ensure that our amenity is appropriately protected, in particular a wall to the western end of the patio to a minimum height equivalent to the eaves height of the new garage would be of assistance.

Relevant policy, guidance and/or legislation

The relevant Local Plan policies are:

- 2016 Local Plan Part 1 (LP1): S2 (Presumption in Favour of Sustainable Development), SD1 (Amenity and Environmental Quality), SD2 (Flood Risk), SD4 (Contaminated Land and Mining Legacy Issues), BNE1 (Design Excellence), INF2 (Sustainable Transport)
- 2017 Local Plan Part 2 (LP2): H27 (Residential Extensions and Other Householder Developments), BNE7 (Trees, Woodland and Hedgerows)

The relevant National Guidance is:

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

The relevant Local Guidance is:

- South Derbyshire Design Guide SPD (Design SPD)

Planning considerations

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

- Impact on trees and hedgerows
- Visual appearance

Planning assessment

Impact on trees and hedgerows

Drawing WD020 has been submitted and outlines which trees are to be removed from the site. It should be read in conjunction with the Tree Plan Ref: 582/21. The trees to be removed include;

- Tree 4 – Whitebeam
- Tree 5 – Himalayan Contoneaster
- Tree 6 – Japanese Cherry
- Tree G7 – Laural and Holly
- Tree G11 – Various
- Tree G12 – Various
- Tree 13 – Cypress
- Tree 15 – Grand Fir
- Tree G33 – Lawson Cypress

All the trees to be removed are situated at the front of the site apart from Tree G33 which is where the new garage and patio area will be.

It is acknowledged that some trees had previously been removed before the application 2018/0774 was made. To make up for any loss a number of trees are proposed to be planted through out the site. To the front of the site a New Silver Birch will be planted on the south western corner and a New Field Maple and New Beech tree will be planted on the south easter corner. New Beech planting will also be planted in a line along the front boundary.

To the rear of the site, six new trees will be planted within the existing group of trees. These includes two new Ash trees, two new Field Maple trees and a Silver Birch and a Beech tree.

Taking into account that a significant number of trees and hedging would be retained within the site and combined with the further planting proposed, the works still provide a sufficient level of screening to the host property and the green character and appearance of the site and wider area is retained.

The Tree Officer has reviewed the submitted documents and is satisfied the Tree Survey and Protection Plan ensures that trees within the site are fully protected from damage that could occur during construction works.

Visual Appearance

As stated above, a significant level of vegetation would be retained within the site and combined with the replanting of a number of trees and hedging to the front boundary would result in minor changes when viewed from the street scene. The site would provide an adequate amount of the greenery to maintain the verdant character and appearance of the surrounding area and would be considered acceptable.

The proposed landscaping works include the addition of block paving, a retaining wall, a low level wall surrounding an ornamental fountain, a new wall to the front boundary including a pedestrian gate and electric gates at the entrance of the site. These features are commonly found in residential development such as this and raise no concerns. Furthermore, the amount the vegetation on site will

soften the impact of the additional hard landscaping and overall, the additions are acceptable and the condition can be discharged with the detail submitted.

Land Ownership

A letter of complaint was received from the neighbour outlining land ownership issues. They have stated that *'the trees at G1 and references 2,3, and 4 that are outside the ownership of the applicant and to be clear I do not give any consent for any works to be approved by your Council or undertaken by the applicant'*

This discharge of condition application relates specifically to the original application DMPA/2020/0915 where any issues over ownership of land needed to have been brought forward then. It would not be reasonable to hold up the determination of this discharge of condition application for issues of land ownership which does not amount to a material planning consideration.

Conclusion

Overall, no objections have been raised from the Tree Officer and the details submitted are considered to be acceptable for the discharge of the planning condition.

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

That the condition can be discharged according to the submitted documents.

1. Discharge of Condition 4 – The submitted details of the hard and soft landscape works, the Tree Survey and Protection Plan and Tree Planting and Removal details are considered to be acceptable and the condition can be discharged in relation to the application DMPA/2020/0915.

Item No. 1.5

Ref. No. [DMPA/2022/0059](#)

Valid date: 14/01/2022

Applicant: Joynes

Agent: TUKArchitecture

Proposal: **The removal of condition no. 7 (relating to the permissive footpath) of permission ref. 9/2015/0543, relating to the erection of a dwelling and a forestry building with solar PV along with installation of access track, hardstandings, drainage pond and creation of garden space at Land At Broadstone Holt, Bog Lane, Melbourne, Derby, DE73 8HU**

Ward: Melbourne

Reason for committee determination

Councillor Martin Fitzpatrick, Ward Member for Melbourne, has requested presentation to Planning Committee due to the concerns raised by members of the public about the loss of the footpath, and the sensitive issues involved.

Site Description

The application refers to site of a residential dwelling at 'Broadstone Holt', constructed around 5 to 6 years ago and located in countryside between the settlements of Melbourne and Ticknall. It is accessed via a long track at the end of Bog Lane. The dwelling is surrounded by a large area of land owned by the Applicant which secured a National Forest planting scheme grant in 2006. Planting started in approximately 2007 and there are now groups of woodland planted across the estate.

The site lies within the designated area of the National Forest. Staunton Harold Reservoir lies to the south-east. Historically permissive footpaths have been allowed through the estate which run between the reservoir and a Public Right of Way, Melbourne Footpath 27, which runs along the north-western edge of the site ownership.

The proposal

The application seeks permission for the removal condition 7 of planning permission reference 9/2015/0543. This permission was granted as a variation to an original permission (9/2014/0725), which permitted the erection of the new dwelling at Broadstone Holt, along with a forestry building, solar PV, an access track, hardstandings, drainage pond and garden space.

Condition 7 of permission 9/2015/0543 states the following :

"The alternative permissive routes through Broadstone Holt, as approved under condition 8 of planning permission ref: 9/2014/0725, shall be maintained and kept open, free of any obstruction to their use as such.

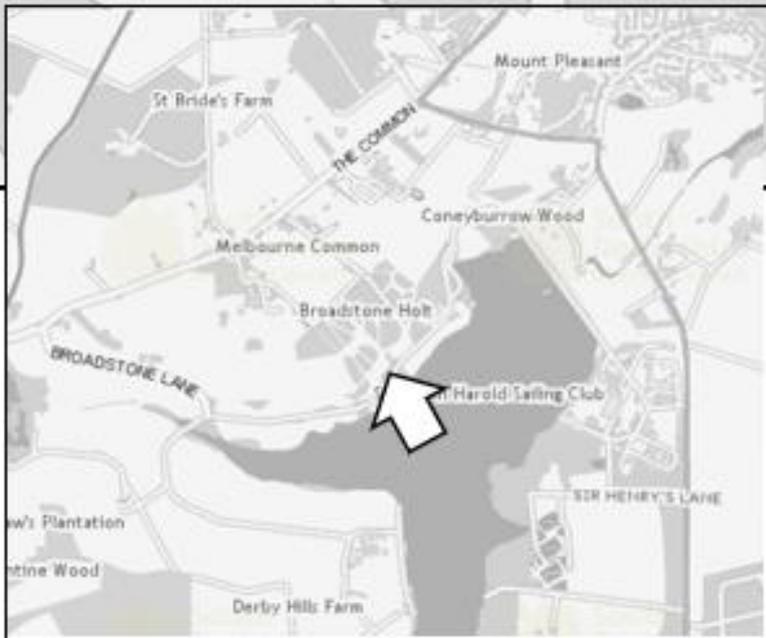
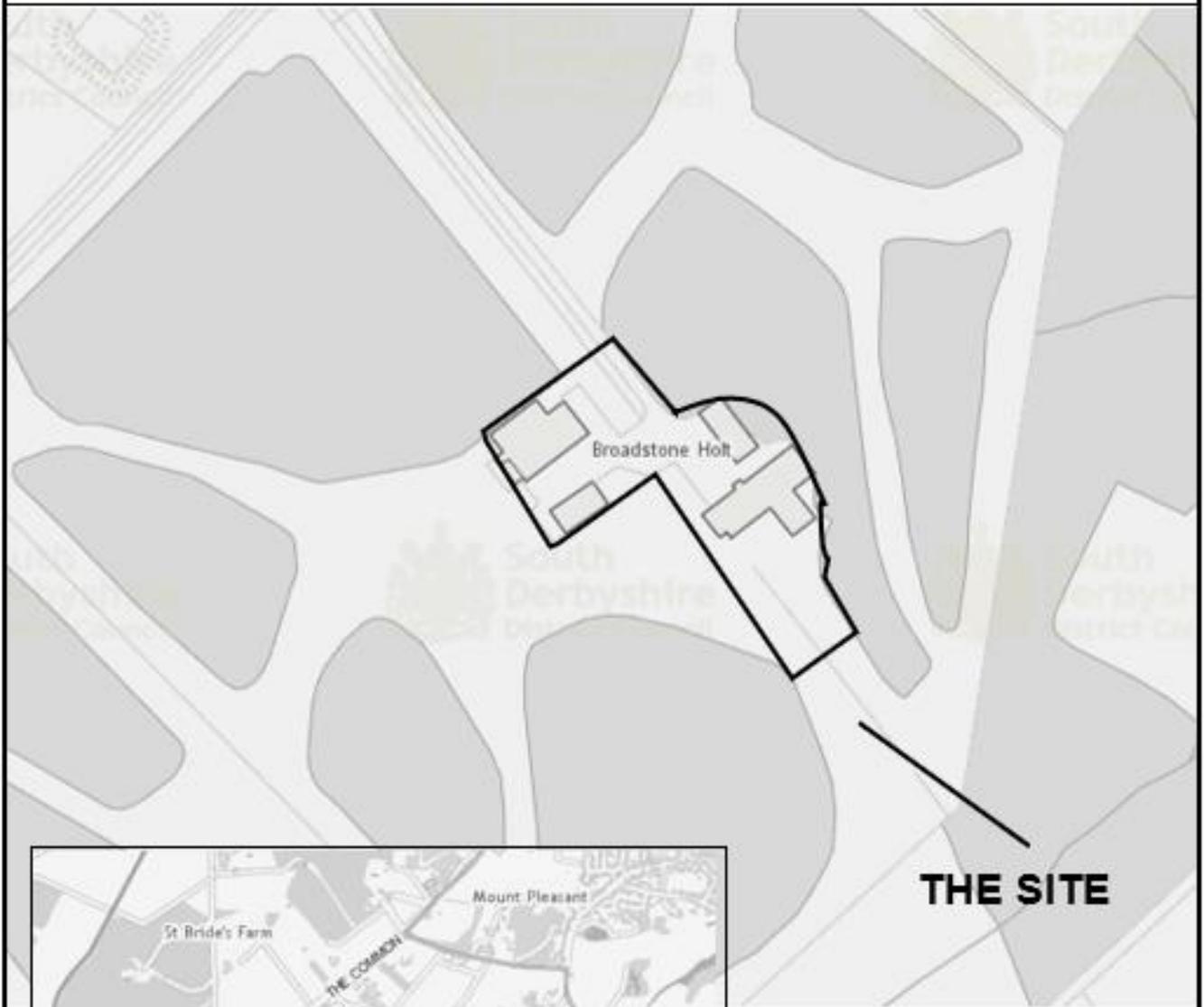
Reason: In recognition of the fundamental aim of the woodland and its very existence, noting that the development has led to the obstruction of a former permissive route."

Applicant's supporting information

The application is supported with the following information :

- Planning Statement.
- A Site Block Plan indicating the current route of the permissive path.
- A document providing a legal opinion from Hugh Richards, No. 5 Barristers Chambers.

**DMPA/2022/0059 - Land at Broadstone Holt, Bog Lane, Melbourne, Derby,
DE73 8HU**



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South Derbyshire District Council

South Derbyshire District Council, LA 100019461.2020

- An excerpt from Melbourne Police SNT Facebook account highlighting issues arising from illegal gatherings at the reservoir.
- An e-mail from Severn Trent Water confirming there is no legal agreement in place to allow access between the application site and the reservoir.
- An E-mail from Keith Beswick, Derbyshire Police Designing Out Crime Officer was also submitted with the application, although Mr Beswick requested that this was removed as a supporting statement as it was submitted in relation to a separate application (DMPA/2021/0972 - now withdrawn) and within a very different policing context with differing supporting information. An updated consultation response was subsequently provided for this application and is detailed below.

Relevant planning history

DMPA/2021/0972 - The removal of condition no. 7 of permission ref. 9/2015/0543 (relating to footpath 27). Application Withdrawn 18 August 2021.

9/2015/0543- The variation of condition 2 and removal of condition 17 of planning permission 9/2014/0725 relating to the erection of a dwelling and forestry building with solar PV along with the installation of access track, hardstandings, drainage pond and creation of garden space. Approved 21 December 2016.

9/2014/0725- Erection of new dwelling with forestry building with solar PV along with the installation of access track, hardstandings, drainage pond and creation of garden space. Approved 15 October 2014.

Responses to consultations and publicity

National Forest Company - For the avoidance of doubt it is confirmed that the woodland subject to the application was planted with grant funding and is subject to an Agreement that requires permissive access to the woodland for a set period of time. This agreement with the landowner pre-dates, and is separate from, the planning permission.

No comment can be made on whether the existing condition is necessary in addition to the contract. It is confirmed that work will continue with the applicant to re-open the permissive access as required by the contract once the current issues have been resolved. There is a written commitment from the applicant that this is their intention.

County Council Public Right of Way Officer – The Rights of Way section would like the path to be kept open as it provides a valuable contribution to the network and enables the public to have access to the woodland area. However, as it is a permissive path, permission can be withdrawn at any time, and the County Council cannot legally require it to be kept open. Therefore, there is no further comment in this matter.

Ramblers Association – The tree planting of Broadstone Holt was funded by the National Forest Company as part of their remit to increase forest cover within the boundary of the National Forest from 6% to around a third. The National Forest Company are creating woodlands with public access. The contract for the planting of Broadstone Holt lasts for 30 years from 2007 and included a permissive path from Public Right of Way Melbourne Footpath 27 to the reservoir.

Permissive paths are a major feature of the National Forest to enhance its attractiveness and accessibility, even parts of the National Forest Way are permissive paths. Irrespective of the decision of this Planning Application the permissive path must be reopened in line with the contract from the National Forest Company.

Statements are detailed from the associated documents for the original planning application for the house in 2014 (Application 9/2014/0725), which it is considered clearly state the intention to retain and enhance the permissive path and use the general public access to the site to advertise the environmental strategies used in the building.

Open Spaces Society - Object to the application on grounds the path is a useful and popular route allowing a shorter circuit of the reservoir. The applicant has a 35 year contract with the publicly funded National Forest Company (NFC) to provide access (not just a path) to the woodland and should be required to reopen it.

It is noted that the original permission stated that the replacement path should not be at the perimeter of the wood but this is not the case. It is also considered that as the house was granted permission under the NPPF on an exceptional design basis and would not have been granted permission unless public access and views of the house were kept.

The response also details statements from the associated documents for the original planning application for the house in 2014 (Application 9/2014/0725) which states that amenity will continue to be managed for the benefit of the local community with enhanced walking routes through both established public footpaths and newly provided permissive footpaths.

Derbyshire Constabulary Designing Out Crime Officer -

Initial comments were made upon a number of assumptions.

1. The path in question is permissive and not a public right of way.
2. Severn Trent Water were supportive of the application and had not agreed to any access from the Broadstone Holt woodland onto their land.
3. The applicants had been adversely affected by instances of public order both from within the woodland, and by those making an escape from the Staunton Harold reservoir along the permissive route.
4. The applicants intend only to restrict access into the woodland when necessary, and there is no intention to permanently close off public access into Broadstone Holt wood.

Within these assumptions there are clear points of contention, the legal position of the amended route being uppermost. If it is seen as a definitive right of way then it is very unlikely that we would support closure, and even so, only in the most extreme of circumstances where specific separate legislation allows.

However, on the information available, this does not seem to be the case, which clearly impacts upon what we would see as proportionate. Taking stock of recorded incidents relevant to the application is problematic because of the open nature of the environment and geo-coding locations. Consequently, what is recorded is unlikely to be definitive with some element of under reporting. This is before considering that police statistics are seen by the ONS as accounting only for up to 60% of actual incidents.

Incidents involving public nuisance at Broadstone holt land, at the Staunton Harold Sailing Club, the lower end of Broadstone Lane and any open space which falls within this area within the last two years are detailed as follows:

- 26.2.20 - Boats at the Sailing Club untied and let loose causing damage
- 25.4.20 - A visitor to the reservoir has their car window smashed on Broadstone Lane
- 25.6.20 - Boats at the Sailing Club released and damaged.
- 12.7.20 - Sailing club boats untied, launched and damaged
- 18.7.20 - Damage to boats and fencing at the Sailing Club
- 26.8.20 - A burglary at the Sailing club
- 24.10.20 - Damage to boats at the Sailing club
- 31.10.20 - 40+ youths drinking in woodland fail to disperse when requested (covid regulations)
- 18.1.21 - Large group of youths fail to disperse when requested
- 23.3.21 - Damage caused to Sailing Club windows
- 9.4.21 - Large gathering advertised on social media dispersed
- 26.4.21 - Damage to sailing club property 2
- 3.12.21 - A visitor to the reservoir has two tyres punctured on Broadstone Lane.

The two incidents on the 31.10.20 and 9.4.21 involved both drinking within and escaping through

Broadstone Woods.

To layer into this data there is anecdotal evidence that groups of both teenagers and occasionally adults regularly gather around the seating area between the sailing club and permissive path, mostly during weekend evenings in better weather to drink alcohol. This is unlikely to affect anyone other than walkers after dark, very close residents or Severn Trent Warden who are required to clean up the next day, so I suspect primarily goes unreported, and to some degree tolerated.

However, it is easy to see why a close neighbour might be disproportionately affected by the cumulative effect of all of the above, how this might skew the hierarchy of defensible space, and press such individuals sense of territoriality into more protective measures when needed.

Looking at the recognised principles of creating safer public rules, a rule of thumb is that when considering new or realigned footpaths, they should only exist to enable safe and convenient circulation, with over permeability being avoided as a generator of problems associated with enabling undetected searching behaviour/escapes and the weakening of defensible space already mentioned.

For this instance it would appear that there are alternative public routes from footpath 27 to the reservoir in existence at both ends of the northern edge, so the permissive route in question offers minimal benefit in respect of convenience.

In conclusion, the broad support for the application in question is based upon the assumption that all of the supporting information is correct, and any which is not would clearly impact upon this support. This is seated in the view that it would be desirable for the applicants to both take control and know that they have the ability to take control of their own land in extreme circumstances, with this control assisting in discouraging misuse of both their own and Severn Trent's open spaces, whilst assisting our resources in policing major public order incidents such as that in April last year. It has been suggested that any approval of the application would be immaterial as there is ineffective enclosure of the paths connections points, and irrespective, those who are likely to misuse the path or make use whatever the legal position will carry on regardless. I would suggest that this is not the issue in hand, and the matter of appropriate enclosure would be subject to separate process.

County Highways Authority – No objection.

Melbourne Civic Society – Object to the application. It is doubted that the path will re-open if the condition is removed.

The original condition could have been appealed against within six months if the applicant felt it was unreasonable. Having not been appealed, it is believed it retains its validity, legal opinion notwithstanding.

Apart from the National Forest Company's involvement, it is noted that the public accessibility of the site was referred to in the committee report of 7/10/2014 as a means of better displaying the house to the public as an example of good design and energy efficiency.

Good public access and appreciation around and through the site was put forward as part of the reasoning for accepting this house as an outstanding design under the NPPF, and that it was a way of substituting a well-defined footpath in lieu of the previous open access through the site as part of the agreement with the National Forest Company.

Much is made of anti-social behaviour (ASB) in the applicants' submission but the path was closed in October 2020 many months before the first report from local police officers (May 2021). No detailed evidence has been submitted by the police force for further ASB beyond the Spring of 2021. It is understood that Severn Trent Water cannot provide any information of ASB themselves and are prepared to allow access to their land for the applicant.

Public Representations

48 public representations have been received, including responses from Melbourne Footpaths Group and Peak and Northern Footpaths. In summary the following points are made.

- a) Public accessibility of the site was part of the deal for the original permission for the house and referred to as a means of better displaying the house to the public as an example of good design and energy efficiency. The Council's planning condition and the contract with the National Forest mean that the path can no longer be accurately be described as "permissive". It is a path that the applicant is required to keep open as a consequence of being allowed to build a dwelling outside of normal planning constraints.
- b) The path is regularly used by local hikers, dog walkers, joggers, running clubs, etc. The path's removal would also be contrary to the approach promoted in Chapter 8 of the NPPF which seeks to ensure that planning decisions promote healthy and safe communities by promoting availability of walking routes. Severn Trent wish to promote access to the reservoir, not block it.
- c) The footpath is a right of way and should remain open.
- d) The path is part of a public access agreement with the National Forest Company made with the applicants in 2007 and lasting for 30 years.
- e) The reports of anti-social behaviour are considered extremely vague and from a long, exceptional period of Covid lockdown. Severn Trent and the Police have no recent records of anti-social behaviour. Individuals and groups intent on vandalism or other anti-social behaviour will not be deterred by the boarded off gates which currently block the path.
- f) The access for people of Melbourne and visitors should take priority over the entitlements of the people who live in the house. Anti-social behaviour of a few people should not affect the majority of people to enjoy an area.
- g) It is suggested that a fence and cameras could be erected along the path to restrict the chance of people spreading further into their land & therefore discouraging it's use as a gathering area.
- h) The path is not visible from the dwelling and noise from the path is unlikely to travel as far as the dwelling.
- i) The Council should not allow enforcement action of the original planning condition (which the Chief Executive promised would be discussed by the Planning Committee in January 2022) to be delayed by this application.
- j) The alternative route to the reservoir is long, very muddy & slippery after rain, usually involves going through field containing livestock and has several stiles – making it unsuitable for walking with a pushchair or large dog.
- k) Allowing planning permission for removal of the condition will mean the footpath can be closed for an indefinite period without any justification.
- l) Melbourne Footpaths Group wishes to put on record that it deeply resents the comments in Mr Richards's advice that the group 'orchestrated' objections to the application. MFG joined a protest which amounted to over 200 messages from individuals and it contributed some information in a small number of carefully-put Facebook posts. "As regards the idea that we might be willing or indeed able to put pressure on LPA members beyond legitimate democratic expressions of opinion, we regard as ridiculous and amounting to an attempted demonisation of a small and committed civil society organisation."

Relevant policy, guidance and/or legislation

The relevant Development Plan policies are:

- Local Plan Part 1 (LP1): S2 (Presumption in Favour of Sustainable Development), SD1 (Amenity and Environmental Quality), BNE1 (Design Excellence), BNE4 (Landscape Character and Local Distinctiveness) and INF2 (Sustainable Transport).
- Local Plan Part 2 (LP2): BNE7 (Trees, Woodlands and Hedgerows)

The relevant local guidance is:

- South Derbyshire Design Guide Supplementary Planning Document (SPD)
- Melbourne Neighbourhood Development Plan (Currently un-adopted and proceeding to referendum stage)

The relevant national policy and guidance is:

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

Planning considerations

Section 73 of the Town & Country Planning Act (1990) allows for an application to be made for planning permission "for the development of land without complying with conditions subject to which a previous planning permission was granted".

The legislation further states that "on such an application the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted".

Therefore the main issue central to the determination of this application is whether the removal of condition 7 from planning permission 9/2015/0543, and therefore the obligation to maintain and keep open the permissive path through Broadstone Holt, free of any obstruction to its use as such, is reasonable and acceptable.

Planning assessment

Planning background to application

Planning permission was originally granted in 2014 for a new dwelling on the application site land (9/2014/0725). At the date of the original application it was recognised that a permissive footpath ran through the site which would be obstructed by the construction of the proposed house. As there was no objection in principle to keeping a footpath through the site a condition (no. 8) was added to the permission as follows :

"No development shall commence until a scheme to amend signage and publicity material relating to permissive routes through and public use of Broadstone Holt has been submitted to and approved in writing by the Local Planning Authority. The existing preferential permissive route obstructed by the development shall be accommodated within the heart of the woodland and not to its perimeter, with details supplied to demonstrate satisfactory connection to public routes around the reservoir. The approved details shall be implemented and the new preferential route be open for use prior to any development commencing.

Reason: In recognition of the fundamental aim of the woodland and its very existence, and that desire lines from the public footpath to the reservoir are limited to two main north-south corridors."

The second part of the condition states that the new route(s) should be open for use prior to any development commencing. However, it did not require that the route(s) should be retained in perpetuity or prevent their closure at a later date.

Details were subsequently approved in relation to this condition which indicated that two alternative permissive paths would be provided through the site, finishing at a single point of access to the reservoir. However, in practice, only one path was provided, as detailed on the plan submitted with this application.

A further application was submitted in 2015 (9/2015/0543) to vary condition 2 and remove condition 17 attached to the original permission granted. Condition 2 related to the approved plans for the application, in which amendments were made to the house design. Condition 17 related to compliance with the Code for Sustainable Homes, which had been rescinded by the date of the application.

This application was approved in 2016 and the decision notice replaced the original permission for the site.

Under this new permission the original condition 8 in relation to the provision of permissive paths through the estate was replaced (and became condition 7). The condition was re-worded as follows :

“The alternative permissive routes through Broadstone Holt, as approved under condition 8 of planning permission ref: 9/2014/0725, shall be maintained and kept open, free of any obstruction to their use as such.”

The amended wording of this condition placed what could be viewed as an additional requirement to retain the permissive path open in perpetuity, which was over and above the intentions of the original permission. There is no evidence that this was the intention but the wording does imply a continuing provision and that the path be kept open and maintained. This could mean maintained in terms of not being obstructed during the time it is in place, or in perpetuity. However, it does seem to infer a requirement to keep the path in place.

In retrospect, as the requirements of condition 8 of the original permission had been fulfilled, it should have instead been simply removed at this time. As the amended application never requested or applied for this amendment it could be questioned whether it was reasonable and relevant to have altered the wording, however, notwithstanding this, the condition was not appealed within the relevant time by the Applicant, as highlighted in some of the representations.

It is now proposed under this new application to remove this condition from the permission.

Other contractual arrangements relating to the site

There is a separate agreement in place between the Applicant and the National Forest Company made under the National Forest Planting scheme. Funding is provided by the National Forest Company for woodland provision within the site, which also includes an element of public access. The Council is informed that this agreement is in place until 2036.

There is currently no contractual arrangement in place for access to be provided from Broadstone Holt to the Severn Trent land lying around the reservoir. However, access between the two areas of land has historically been allowed on an informal basis.

Current status of the permissive path

Following construction of the new house at Broadstone Holt a new permissive path was established along the south-western boundary of the woodland as set out in the submitted site plan. At the northern end the path adjoins public right of way no. 27. At the southern end there is a gate providing access onto the Severn Trent land next to the reservoir.

This permissive footpath was open until March 2020. After this date all accesses to the reservoir were closed by Severn Trent Water to comply with government regulations in response to due to Covid 19. Whilst there have been temporary periods when the path has been re-opened since this date it is currently closed due to ongoing anti-social behaviour around the reservoir, which it is argued is made harder to deal with by the access from Broadstone Holt.

Assessment of the proposed removal of condition 7.

The public opinion on the application is acknowledged and it is fully recognised that the path is highly valued by the local community, especially as a connecting route to the reservoir. The community benefits of this are not doubted and it would appear were fully recognised under the original assessment of the planning application.

The objections to the application are predominantly based on the fact that it is believed that this could lead to the permanent closure of the permissive path through Broadstone Holt to the reservoir. It is considered by many of the respondents that condition 7 of application 2015/0543 is in place to prevent this from occurring and, following on from this, the Council should take enforcement action to ensure the path is re-opened without delay.

When considering reasons to support or refuse the removal of condition 7 attention should be given to the government guidance on the ‘use of planning conditions’ under paragraph 56 of the National Planning Policy Framework, which states “Planning conditions should be kept to a minimum and only

imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.”

The Applicant’s reasons for requesting the removal of the conditions are set out in the planning statement. This is supported by formal legal advice obtained by the Applicant to reinforce their case. The reasons are fundamentally connected with the belief that the condition does not meet the above criteria of the NPPF, in that it is not relevant to planning, it is an unreasonable requirement and ultimately cannot be enforced.

The assessment of the original planning application recognised the value of the permissive path and put in place measures by which an alternative route may be established and advertised to the public. However, it contained no wording that placed a permanent obligation on the landowner to retain such a path, presumably as it was recognised that this would be unreasonable. Permissive paths are by their very nature only there by the good will of the landowner and do not have the same status as a Public Right of Way. In short, whilst the benefits of a permissive path through the site were recognised, the permanent provision of such a path was never a condition of the original planning permission.

The wording of the amended condition under the later permission has been taken to infer a requirement for the permissive path to be permanently provided, although the legal advice obtained by the Applicant disputes this. However, as stated above, it is agreed the wording does imply a continuing provision that the path be kept open, even though it is a permissive path which is only allowed by the landowner.

It is important to note that, although many respondents highlight the value of the permissive path in terms of its provision of a link to the reservoir, there is no existing formal agreement between the Applicant and Severn Trent to actually provide this access. Access to the reservoir is ultimately not within the control of the Applicant and can be closed by Severn Trent at any time deemed necessary, be it for general maintenance or due to cases of anti-social behaviour as recently experienced. In this respect it is not possible for the Applicant to comply with any permission which infers that a permissive path should be provided to connect to the reservoir. In addition, the permissive path is across private land and it is reasonably considered that the landowner should have rights to close this path at any time, to allow maintenance for example.

Taking the above factors into account it is agreed that the existing condition is unreasonable in its application and should be removed. The wording is unclear and it places an additional burden on the applicant, which does not seem to have been the intention through the wording of condition 8 of application 2014/0725.

An alternative form of wording has been explored with the Agent and Applicant, which would state that a permissive path should be provided through the site as indicated on the plan but would also allow some flexibility for the landowner in terms of the management of the path, with the ability to close it for periods of time as required and re-open it as soon as practicable. However, such a condition would require a determination of factors such as when it is acceptable for the footpath could be closed and for how long and under what circumstances should enforcement action be taken to force the Applicant to open the path.

All these factors are extremely subjective and impossible to define. For example, recently the path has been closed due to anti-social behaviour. Such incidents have been confirmed by the Designing out Crime Officer, although some respondents suggest that there have been no significant levels of such behaviour of late. This raises questions of what level of anti-social behaviour would justify the closing of the path and how would this be determined.

It is considered impossible to word a condition which would unambiguously set out the circumstances under which the landowner was allowed to close the path and for how long. The wording of such a condition which simply states the path should be open ‘whenever possible’ would not be ‘sufficiently precise to make it capable of being complied with and enforced.’ (Section 100 ZA of Town and Country Planning Act 1990). Furthermore, it is not considered reasonable to impose a condition which requires

a landowner to provide access to private land without any material planning reason.

It is stressed that the Applicant has advised the Council that in principle there is no objection to allowing public access across the land over a permissive route, and Severn Trent Water has no objection in principle to this route being used to access the land by the reservoir.

It is also noted that the separate funding agreement with the National Forest Company may include additional requirements for the permissive path to be provided for the public. It is hoped that the permissive path through the site from public footpath 27 can in time be re-opened and will continue to provide access Staunton Harold Reservoir up to and beyond the end of the NFC Tender Scheme.

However, it is not considered appropriate for the Council to be involved in the management or enforcement of these agreements. The removal of condition 7 would allow the Applicant to manage these arrangements and arrive at workable agreements to provide public access that are also jointly acceptable to Severn Trent Water and the National Forest Company.

Conclusion

In conclusion, condition 8 of the original permission 9/2014/0725 was complied with in such terms as an alternative permissive path was provided prior to any development commencing. Therefore, this condition was not longer required under the amended permission 9/2015/0543. Its replacement with condition 7 of the new permission, which additionally stated that the permissive path should be maintained and kept open and free of any obstruction to its use, is agreed to be unreasonable and unenforceable. It is therefore recommended that the application is approved and permission granted for the condition to be removed.

All other conditions attached to that permission which remain extant are carried forward onto this new permission.

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

The application is recommended for approval. Condition 7 of planning permission 9/2015/0543 will be removed. All other conditions attached to that permission which remain extant are carried forward onto this new permission.

1. The development hereby permitted shall be carried out in accordance with plans/drawings 13/10/00 Rev P, 13/10/01 Rev R, 13/10/02 Rev H, 13/10/20 Rev M, 13/10/21 Rev L, 13/10/10 Rev A (not in respect of floorplans), 13/10/11 Rev A (not in respect of floorplans) and 13/10/24; 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 achieving sustainable development.

2. The land known as Broadstone Holt, as outlined in blue on the appended location plan to decision notice ref: 9/2014/0725, shall not be sold off or separately let from the dwelling and forestry building subject of this permission.

Reason: In order to ensure the long term management of the woodland is overseen by occupiers of the dwelling hereby permitted, by way of use of the forestry building also hereby permitted, in the interests of maintaining the woodland for long term public benefit.

3. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, or any statutory instrument amending, revoking and/or replacing that Order; the dwelling(s) hereby permitted shall not be altered, enlarged or extended; no hard surfaces, buildings, gates, walls or other means of enclosure (except as authorised by this permission or required by any condition attached thereto) shall be erected on the site without the prior grant of planning permission on an application made in that regard to the Local Planning Authority.

Reason: To maintain control in the interest of the character and amenity of the area, the nature of the property and its long term energy and efficiency performance, having regard to the setting and size of the development.

4. 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 forestry buildings shall be erected, extended or altered; no private ways shall be formed or altered; or other operations shall take place without the prior grant of planning permission on an application made in that regard to the Local Planning Authority.

Reason: In the interests of preserving the setting of the woodland and to ensure the building hereby permitted remains in an appropriate form suitable for the management of that woodland.

5. The forestry building hereby permitted shall be used solely for purposes associated with the management of the woodland, defined as Broadstone Holt and outlined within the blue line on the location plan appended to decision notice ref: 9/2014/0725, and not be sold or let separately to the dwelling hereby permitted.

Reason: To ensure the stewardship of the woodland remains associated with the dwelling hereby approved so to reduce future pressure for additional buildings and/or dwellings, in order to protect the privacy of occupiers of the dwelling, and in the best interests of effective management of the woodland.

6. The car port and visitor parking space shown on the approved plans shall not be enclosed and remain unobstructed for the parking of vehicles.

Reason: To ensure that parking on the hardstanding adjacent to the dwelling is discouraged in order to ensure the design quality of the dwelling is not harmed when viewed from public aspects.

7. The renewable energy technologies and rain/grey water harvesting and recycling incorporated into the development shall be maintained throughout the life of the development, including securing their replacement with equivalent technologies where those existing have reached the end of their useful lifespan. The installed pico-hydroelectric unit shall be maintained in working order.

Reason: To secure a dwelling which provides more energy than it requires, averaged over an annual period, and to secure a carbon neutral or better dwelling.

8. Other than that previously approved, no external lighting shall be erected or installed unless prior to its erection/installation precise details of the intensity, angling and shielding, and the area of spread of the lights have been submitted to and approved in writing by the Local Planning Authority. The lights shall be installed in accordance with these details and thereafter retained in conformity with them.

Reason: To preserve the amenities of the area and prevent dark sky glow.

9. All plumbing and service pipework, soil and vent pipes, electricity and gas meter cupboards and heating flues shall be located inside the dwelling unless prior to their incorporation in the building details of the type, number, position and finish of such features have been submitted to and approved in writing by the Local Planning Authority. Any such features shall be incorporated in accordance with the approved details and thereafter maintained as such.

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

10. Space for the parking and manoeuvring of residents' and visitors' vehicles shall be maintained throughout the life of the development free from any impediment to its designated use.

Reason: In the interests of highway safety.

Informatives:

- a. Public Footpath 27 must remain open, unobstructed and on its legal alignment at all times. There should be no disturbance to the surface of the route without prior authorisation from the Rights of Way Inspector for the area. Consideration should be given to members of the public using the route at all times. A temporary closure of the route may be granted to facilitate public safety subject to certain conditions. Further information may be obtained by contacting the Rights of Way Section.

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)

Reference	Place	Ward	Outcome	Decision level
DMPA/2021/1583	Hilton	Hilton	Split decision	Delegated

Appeal Decision

Site visit made on 16 May 2022

by **Chris Forrett BSc(Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 26 May 2022

Appeal Ref: APP/F1040/D/22/3291280

38 Mill Lane, Hilton, Derby DE65 5GP

- 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 Richard Cohen against the decision of South Derbyshire District Council.
 - The application Ref DMPA/2021/1583, dated 14 October 2021, was refused by notice dated 9 December 2021.
 - The development proposed is extensions and alterations to existing dwelling including a first floor extension to create additional living space, demolition of the existing garage to construct a new detached garage with living accommodation above and the erection of a new front boundary wall.
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Decision

1. The appeal is dismissed insofar as it relates to the demolition of the existing garage to construct a new detached garage with living accommodation above. The appeal is allowed insofar as it relates to the extensions and alterations to existing dwelling including a first floor extension to create additional living space and the erection of a new front boundary wall and planning permission is granted at 38 Mill Lane, Hilton, Derby DE65 5GP in accordance with the terms of the application, Ref DMPA/2021/1583, dated 14 October 2021, so far as relevant to that part of the development hereby permitted and subject to the following conditions
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans:1648 101; 1648 102 and 1648 103 (insofar as they relate to the extensions and alterations to the dwelling and the front boundary wall).
 - 3) The materials to be used in the construction of the boundary wall hereby permitted shall match those used in the existing dwelling.
 - 4) Notwithstanding the submitted details, all rooflights in the rear elevation shall be no lower than 1.7 metres from the floor level of the room in which they are fitted.

Preliminary Matters

2. The appeal planning application includes works to the existing dwelling as well as the proposed garage with living accommodation and the front boundary wall. As I understand it, the Council have already granted planning permission

for the extension works to the dwelling¹ and they have indicated that the appeal proposal is identical in that respect. At my site visit I saw that works to the existing property had commenced.

3. The Councils reason for refusal is specific to the garage and wall aspects on the application and I have therefore concentrated my decision on these matters.

Main Issue

4. The main issue is the effect of the development on the character and appearance of the area.

Reasons

5. The appeal site is located in a residential area with a mixture of differing styles of property and boundary treatments. At my site visit I also observed the entrance wall feature and garage blocks with accommodation above in Mill Pond Close.
6. The appeal site itself contains the existing bungalow which is currently being enlarged with an additional storey as well as a blockwork mono-pitched garage to the front of the dwelling. There is also a timber boundary fence with concrete posts along the road frontage.
7. The appeal proposal would result in the replacement of the existing garage with a much taller and bulkier building, particularly given the steep pitch of the roof and the inclusion of dormer windows. Whilst this roof pitch would reflect that of the existing dwelling (as altered), and the surrounding buildings, it would nevertheless result in a building which would unacceptably dominate this part of the streetscene. This is particularly the case given its siting close to the front boundary with the highway and its overall height, massing and bulk.
8. In coming to that view, I acknowledge the presence of other similar sized garages on Mill Pond Close. However, none of these are as prominent as the proposal before me. I also acknowledge that the removal of the existing garage would result in a positive impact on the overall character and appearance of the area. However, this is not sufficient to outweigh the harm I have identified.
9. Consequently, I conclude that the garage and annex would harm the character and appearance of the area contrary to Policy H27 of the South Derbyshire Local Plan Part 2 (2017); Policy BNE1 of the South Derbyshire Local Plan Part 1 (2016) and the South Derbyshire Design Guide Supplementary Planning Document (2017) which amongst other matters seek to ensure that new development is well designed, visually attractive and respects the townscape and is in scale and character with the existing property.
10. Turning to the boundary wall, this would have 1.8 metre high brick piers with 1 metre high brickwork between them. There would also be timber panelling between the piers which would be lower than the piers themselves. The boundary treatment would therefore be higher than the existing timber fencing.
11. To my mind, the overall visual impact of the boundary treatment would not have an adverse impact on the streetscene, particularly when the existing boundary treatment, and the walling at Mill Pond Close, is taken into account. Whilst it would be greater in height to the boundary treatment opposite, and

¹ Reference DMPA/2021/0215

further along Mill Lane where it exists, it would not be excessive in height. In that sense, I find this boundary treatment acceptable.

12. I therefore find that the extension and alterations works to the existing dwelling, together with the proposed boundary wall, would not harm the character and appearance of the area and would accord with Policy H27 of the South Derbyshire Local Plan Part 2 (2017); Policy BNE1 of the South Derbyshire Local Plan Part 1 (2016) and the South Derbyshire Design Guide Supplementary Planning Document (2017).

Conditions

13. The Council has provided a list of suggested conditions in their appeal questionnaire that it considers would be appropriate. Other than the standard time limit condition, it is necessary to ensure that the development is carried out in accordance with the approved plans for the reason of certainty. In the interests of the character and appearance of the area, a condition relating to matching materials is also necessary (in respect of the wall).
14. In addition to these conditions, I am conscious of the conditions imposed on the previous planning permission which included details of materials and the height of the rooflights on the altered dwelling.
15. In respect of materials, I consider that such a condition is unnecessary as the application form specifies the details of the external materials. However, I consider that the condition in relation to the height of the rooflights in the rear elevation is necessary to protect the privacy of the occupiers of the dwellings to the rear.

Conclusion

16. For the reasons given above, I conclude that the appeal should be allowed in part and dismissed in part.

Chris Forrett

INSPECTOR