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Date: 17 August 2020

Dear Councillor,

Planning Committee

A Meeting of the **Planning Committee** will be a **Virtual Committee**, held via Microsoft Teams on **Tuesday, 25 August 2020 at 18:00**. You are requested to attend.

Yours faithfully,



Chief Executive

To:- **Conservative Group**

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

Labour Group

Councillors Gee, Dr Pearson, Shepherd, Southerd and Tilley

AGENDA

Open to Public and Press

- 1** Apologies and to note any Substitutes appointed for the Meeting.
- 2** To note any declarations of interest arising from any items on the Agenda
- 3** To receive any questions by Members of the Council pursuant to Council procedure Rule No. 11.
- 4** REPORT OF THE STRATEGIC DIRECTOR (SERVICE DELIVERY) **3 - 67**
- 5** SECTION 106 VARIATION AT ROSLISTON ROAD SOUTH, DRAKELOW **68 - 70**
- 6** VIABILITY OF RESIDENTIAL DEVELOPMENT ON LAND AT SK2529 **71 - 76**
8189 (ADJACENT TO THE MANDARIN CHINESE RESTAURANT),
EGGINGTON ROAD, HILTON, DERBY

Exclusion of the Public and Press:

- 7** The Chairman may therefore move:-
That in accordance with Section 100 (A)(4) of the Local Government Act 1972 (as amended) the press and public be excluded from the remainder of the Meeting as it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that there would be disclosed exempt information as defined in the paragraph of Part I of the Schedule 12A of the Act indicated in the header to each report on the Agenda.
- 8** To receive any Exempt questions by Members of the Council pursuant to Council procedure Rule No. 11.
- 9** LAND AT SK2913 6212, ACRESFORD ROAD, NETHERSEAL,
SWADLINCOTE, DE12 8AP

Report of the Strategic Director (Service Delivery)

Section 1: Planning Applications

Section 2: Appeals

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

1. Planning Applications

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

Reference	Item	Place	Ward	Page
DMPA/2020/0489	1.1	Milton	Repton	6
DMPA/2019/1234	1.2	Findern (Littleover)	Willington and Findern	20
DMPA/2020/0517	1.3	Swadlincote	Swadlincote	32
DMPA/2020/0567	1.4	Hartshorne	Woodville	37
DMPA/2020/0647	1.5	Repton	Repton	41

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

25/08/2020

Item No. 1.1

Ref. No. DMPA/2020/0489

Valid date: 21/05/2020

Applicant: Mr Richards

Agent: Mr J Imber
JMI Planning
62 Carter Street
Uttoxeter
ST14 8EU

Proposal: The erection of single storey rear extensions to form a new kitchen, preparation area and extended dining area with the erection of a front porch to the existing public house and the erection of a block of 6 holiday lets to the rear with parking and associated works, including Relevant Demolition Consent for an outbuilding, at The Swan Inn, 49 Main Street, Milton, Derby, DE65 6EF

Ward: Repton

Reason for committee determination

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

Site Description

The site comprises a two-storey public house located within the Milton Conservation Area with a collection of outbuildings and structures to the rear. The building benefits from an existing access onto Main Street and a car park to the side/rear. The site is bounded by existing residential buildings to the north, south and west (across Main Street) and is open to the countryside at the rear. The public house is located within the settlement boundary for the village of Milton with the very rear of the site falling outside of the settlement boundary and in the rural area.

The proposal

Consent is sought for the erection of single storey extensions and a porch to the public house, to extend the proposed kitchen area and to accommodate further seating and covers, as well as the erection of six holiday lets to the rear of the site along with associated works to extend the car park and formalise amenity areas.

Applicant's supporting information

A Planning Statement describes the proposed development noting the tourist accommodation would have good accessibility to local attractions, services and facilities. The proposed holiday units are sited within the existing curtilage and are considered to be well related to existing built form. It is stated that the proposals would not therefore harm the character and appearance of the countryside or their rural surroundings, would not harm the amenities enjoyed by the occupiers of neighbouring dwellings and would not prejudice the safe or efficient use of the highway network. It is also stated that the proposals would not harm the character or appearance of the Milton Conservation Area.

The proposal has identified a demand for overnight tourist accommodation in the area. The proposed accommodation would cater for customers eating and drinking at the Swan Inn, as well as tourists visiting the area. It would also help to meet a shortfall in accommodation during major events at Donington Park including the Download Festival and the British and World Superbike race meetings. Having conducted this exercise before the current lockdown in support of holiday lets in nearby Kings Newton, it was clear that there is an unmet need in the area during these major events. It is therefore proposed to erect six purpose-built holiday lets within the existing beer garden. Four of the units would feature wheelchair access and two are suitable for family occupation.

Room

Issues

57.0m

28

38

44

50

Mealo House

MAIN STREET

The Old Forge

The Hollies

THE SITE

51

53

5m

Willington

Hunters Gate

Repton

Foremark

Milton

Mount Pleasant

Orange Hill

Bendale

Twir

Repton

Broken Flatts

The Hayes

Loscoe Fm

Seven Spout Fm

River

Cave

Wks

Askew Hill

Repton School Cemy

SOUTH DERBYSHIRE

5m

North Arrow

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The proposals are considered constitute sustainable development which accords with Policy INF10 of the Local Plan Part 1, Policy SDT1 of the Local Plan Part 2 and the National Planning Policy Framework. In accordance with the presumption in favour of such development established by Paragraph 11 of the Framework, and the significant weight attached to economic development prescribed by Paragraph 80, it is requested that the application be approved.

A Heritage Statement identifies that the proposal affects a designated heritage asset (the conservation area) and a non-designated heritage asset (The Swan Inn itself). The buildings to be demolished are considered to contribute very little to the character and appearance of the conservation area, and the contribution they make is quite capable of being matched and exceeded by a suitable new building. They are not singled out as significant in the conservation area appraisal. There would be no harm to the conservation area arising from the demolition works, provided replacement buildings are secured. There would be a degree of harm to The Swan Inn itself as a non-designated heritage asset, but in respect of such assets paragraph 197 of the NPPF requires only a 'balanced judgement' to be made. Whether considered as part of the conservation area or in its own right, it is advanced that the application should be considered in the context of The Swan Inn as a whole. Pubs are widely recognised as community assets, and therefore there is a benefit to the conservation area in allowing diversification and expansion. As with other types of business, improvement of the pub's offer would help to make it sustainable and encourage ongoing investment.

A Preliminary Bat Roost Assessment and Bird Survey has been provided. This concludes that no evidence of bats within the site has been found and the proposed demolition of the rear buildings would have a negligible impact. There was evidence of birds nesting in the main public house building and the outbuildings, with swallows nesting on the outbuilding. There are no opportunities for birds to nest in the toilets, the porch or the kitchen buildings. There are further nesting opportunities in the outbuilding on top of the timber frames but there was no evidence of birds nesting other than the swallows in the woodshed. Details of brick built bat boxes should be incorporated where possible within the development as new roosting opportunities for bats in new build developments should be encouraged in accordance with the NPPF and a method of working to minimise impact on local biodiversity.

An Arboricultural Impact Assessment with Tree Survey and Tree Protection Plan notes the retention of category A and B trees within the site would be appropriate, with some trees falling under category C and U to be removed. Trees listed as G1, G2, T1, T2, T3, T4, T6, T7 and T8 within the submitted Tree Survey should be retained with some pruning works to some trees and tree T5 has been listed to be removed. Protective fencing should be erected around the root protection areas of the trees that have been listed for retention prior to the beginning of the construction phase and retained throughout the construction process.

Relevant planning history

None relevant.

Responses to consultations and publicity

The Environmental Health Officer raises no objections. However, it is recommended that a condition is attached that details of any flues and odour and noise control from cooking operations are required.

The County Highway Authority does not object subject to the inclusion of conditions for a revised parking layout plan to omit or relocate a car parking space away from the existing footway. It is also noted that the proposed porch would appear to overhang the existing footway and highway, although a two-metre gap between the porch and the carriageway edge would still be achieved, therefore leaving sufficient room for pedestrian movement. A stopping up order would be required subsequent to any grant of planning permission.

Natural England has raised no objections.

Derbyshire Wildlife Trust has raised no objections subject to conditions.

Repton Parish Council objects commenting that the proposed development would not accord with policies H1 and BNE5 of the Local Plan and policy H1 of the Neighbourhood Development Plan.

There have been 41 representations, mostly of objection, received from nine different properties raising the following issues:

Social and economic benefits

- a) It is good to see a local public house is considering the needs of wheelchair users, with a disabled toilet and level access on offer meaning it is accessible to all;
- b) Suggest that one of the rooms is suitably adapted for a wheelchair users with level access, a DDA compliant toilet and washroom facility, as there is a distinct lack of similar suitable wheelchair accommodation in the area;
- c) The public house in its current form is unviable;
- d) The recent developments at The Boot in Repton and the Crewe and Harpur in Swarkestone show that the provision and expansion of overnight accommodation has become pivotal to the continued viability of the hospitality industry in the area;
- e) The proposed extensions to the rear of the pub would replace existing disjointed and dilapidated extensions and outbuildings with a higher quality development;
- f) The extensions would facilitate the expansion of the business by providing additional restaurant covers and would provide kitchen facilities more suited to modern standards;
- g) The proposed kitchen units would need to be sensitively placed;
- h) Provides an excellent place to socialise with many people that live in the village, primarily for those that would be otherwise isolated;
- i) With rural pubs closing at alarming rates under current circumstances, the expansion of an existing rural business should be supported and encouraged;
- j) Community facilities such as public houses are often the heart of a rural community and should be protected - once lost, it is highly unlikely to be reinstated;

Principle of development

- k) There is no demand for holiday lets in Milton as there are plenty of log cabins in the vicinity, and big events at Donnington Park are already serviced by local hotels/numerous places of accommodation or on-site camp facilities;
- l) The building of holiday accommodation for 3 events per year at Donnington Park cannot be justified considering the real problems regarding parking in Milton;
- m) There are adequate facilities in Repton, Willington, Newton Solney, Foremark (Home Farm holiday lets), Ingleby (John Thompson chalets), Bretby (holiday chalets), etc. and other areas for tourist accommodation would be considered more suitable;
- n) The proposed holiday lets and some of the proposed kitchen are outside of the settlement boundary and policy H1 of the NDP stipulates that development should only be carried out within the settlement boundary;
- o) This application is outside the Plan and, if granted, would create a precedent for future applications;
- p) Whilst the provision of a restaurant in the redundant outbuilding would increase the economic viability of the public house it should not be done at the expense of the local area;
- q) The space for the holiday lets should be used for parking;
- r) Accommodation provision is adequate in neighbouring villages so the application for the holiday lets should be refused;
- s) A high number of people meet in Milton and won't be able to if they cannot park;

Amenity impacts

- t) The only means of ventilation and light for some adjacent residents are through rooflights and windows that abut the boundaries of the site, and with windows open noise would increase and be unacceptable;
- u) Neighbours windows are adjacent to the outdoor eating area, where there could be up to 32 people eating outside;

- v) Residents have already had to install obscure glazing for privacy;
- w) The proposed eating area should be switched with the restaurant and the building should then provide a blank elevation to the one side;
- x) Villagers who live closest would be impacted by greater levels of disturbance and a lower quality of life;
- y) The existing private domestic garden appears to be changing use and would become a beer garden;
- z) The pub has a perfectly good beer garden at present;
- aa) Even the current roadside tables and chairs have increased noise levels, but when people are corralled inbetween the new buildings and the existing houses this would increase further due to the competing nature of voices in a more confined setting;
- bb) The proposed works would create significant noise issues but if a compromise could be reached, it would be positive as it is good for a village to have a local pub;
- cc) The holiday lets would create greater noise issues as these would not be constrained by pub opening hours;
- dd) The proposed works would result in high levels of anti-social behaviour;
- ee) Consideration needs to be given to the scope and detrimental effect on neighbouring properties of the beer garden;

Highway safety and capacity

- ff) There is difficulty in turning onto Main Street, caused by on-street parking as many villagers do not have access to off-street parking and leading to long strings of vehicles parked to one side meaning motorists have to travel significant distances on the wrong side of the road;
- gg) In the case of roadworks and to reduce the risk a set of temporary traffic lights would be installed, and additional traffic calming measures are currently being sought;
- hh) Any increase in visitor numbers without a commensurate increase to off-road parking provision would increase the risk of an accident to an unacceptable level;
- ii) The number of additional car parking spaces identified is insufficient;
- jj) The increase in car parking is just 4 spaces, 2 of which encroach on to the pavement, yet the proposal includes additional seating for 36 indoor tables for eating, an additional 32 in an outside seated area, the beer garden and guests in the holiday lets - all with only 19 car parking spaces;
- kk) The proposal would create illegal parking;
- ll) Two holiday lets would be a more suitable number as the parking would be consumed by holiday lets - 17 car parking spaces would not be sufficient;
- mm) The main road is like an A-road, with traffic issues especially during Friday to Sunday;
- nn) Milton is a hamlet, not a village, and cannot not sustain the parking problems;
- oo) When the pub is busy, the car parking overflows and people park up to go for walks;
- pp) The proposed restaurant, staffing and holiday lets would fill up the car park and there would be less spaces than exist presently;
- qq) The increase at The Boot and The Bull in Repton demonstrate the proposed parking issues;
- rr) There is no public transport in Milton or any public car parks;
- ss) There is a village hall that does not have parking and is open for parties and events which can create between 10-30 cars, and concurrent use could create dangers - an overflow car park would be needed;
- tt) The Neighbourhood Plan has recognised a problem with parking and issues with parking in Repton, and should be avoided elsewhere;
- uu) The encroachment onto the pavement could create pavement parking elsewhere;
- vv) Young children and elderly residents would be put at risk by the lack of parking;
- ww) Parking spaces 1 and 2 abut the highway and could not be used;
- xx) Milton is a farming community with large farm vehicles travelling down the road which would create a serious hazard;

Heritage, character and appearance

- yy) The proposed porch to the front would completely change the character of the building and create a pinch point with picnic tables outside to the front;

- zz) The proposed porch encroaches onto the pavement which is not in the ownership of the Swan Inn and would be cosmetic with the lobby inside;
- aaa) The Swan Inn is a prominent building in the centre of the village and the proposed porch would have a detrimental effect on the surrounding conservation area and conflict with the character and identity of the village - an open porch would be more suitable;
- bbb) The site falls within a Conservation Area and the proposed works would have a detrimental effect on the village; and
- ccc) The proposed works would be excessive and oversized for a rural pub but a smaller design could be more suitable.

Relevant policy, guidance and/or legislation

The relevant Development Plan policies are:

- 2016 Local Plan Part 1: S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), S6 (Sustainable Access), SD1 (Amenity and Environmental Quality), BNE1 (Design Excellence), BNE2 (Heritage Assets), BNE3 (Biodiversity), INF2 (Sustainable Transport), INF6 (Community Facilities), INF8 (The National Forest) and INF10 (Tourism Development);
- 2017 Local Plan Part 2: SDT1 (Settlement Boundaries and Local Distinctiveness), BNE5 (Development in Rural Areas), BNE7 (Trees, Woodland and Hedgerows), BNE10 (Heritage) and RTL1 (Retail Hierarchy);
- Repton Neighbourhood Development Plan (NDP): H1 (The Limits of Development), OS2 (The Impact of New Development on Views of and Views from the Countryside), CLE3 (Support for Existing and New Businesses) and T1 (Car Parking in New Developments).

The relevant national policy and guidance is:

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

The relevant local guidance is:

- South Derbyshire Design Guide Supplementary Planning Document (SPD)
- Milton Conservation Area Character Statement (CACS)

Planning considerations

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

- The principle of development
- Heritage, character and appearance;
- Impact on amenity; and
- Car parking and highway safety.

Planning assessment

The principle of development

The proposed development is defined by two different components, the first being the proposed extensions and intensification of the existing public house building and the second being the erection of the proposed holiday lets.

The position of the existing public house predominantly falls within the settlement boundary of the rural village of Milton as defined within policy SDT1 of the Local Plan. The rear of the site is within the rural area where policy BNE5 is relevant. However, the siting within or outside of the settlement confine is not necessarily the determining factor here - particularly when it allows for development which is supported by specific policies, including INF10, which states:

"A. Tourism development, including overnight accommodation and visitor attractions, will be permitted:

- i) within or adjoining the urban area or the Key Service Villages or;*
- ii) in other appropriate locations where identified needs are not met by existing facilities....*

C. In all cases the District Council will expect new tourism development to be:

- i) provided through the conversion or re-use of existing buildings or;*
- ii) accommodation of a reversible and temporary nature, or*
- iii) sustainable and well designed new buildings, where identified needs are not met by existing facilities, subject to all the other relevant policies in the Local Plan.*

D. New tourism development that is likely to give rise to undue impacts on the local landscape, natural environment or cultural heritage assets will be refused".

The supporting text to the policy identifies the importance of supporting tourism proposals in the National Forest:

"The District has a good range and diversity of visitor attractions and things to do. The National Forest offers an important opportunity to develop the visitor economy further, throughout the District, whilst recognising the need to protect the rural character of the area, which is in itself a key tourism asset. The Heart of the National Forest area is a particular focus for tourism development. New visitor attractions and accommodations that would diversify the appeal of the area throughout the year will be encouraged".

Policy INF6 also confirms that the Council will:

"...ii) Facilitate the efficient use of community facilities and the provision and upkeep of multi-purpose community facilities that can provide a range of services to the community at a single, accessible location".

Policy E7 is also relevant to the land outside of the settlement boundary as this supports the enhancement and expansion of existing businesses in rural areas and the open countryside provided that the proposed works are supported by a sound business case, is well designed and of a commensurate scale, and would not give rise to undue impacts on neighbouring amenity, the highway network and would not have a harmful visual impact.

The premises currently operates as a drinking establishment and small scale restaurant (use classes A3 and A4). This use extends to the external areas of the site, with any residential element ancillary to it, such that it would not constitute a material change of use to intensify the existing use through increasing external seating arrangements. The proposed extensions to the existing public house would allow for the existing kitchen to be extended and for new seating and covers, along with an outdoor seating area, to be created. This would expand the existing business and seek to increase the level of dining that could be supported at the premises so to ensure that the public house would remain competitive in relation to nearby public houses and restaurants in Repton. Competition from national online take-out services should also not be ignored. Expansion of this existing use is supported by the principles of policies RTL1 and INF6 which promote the retention and appropriate expansion of existing provision.

Whilst the incorporation of proposed tourist accommodation to the rear of the site would combine a mixed commercial and leisure use, the premises would still be operating broadly as a public house and restaurant and the proposed works would not result in a loss of a 'retail' use or a community use in the local vicinity. Para 4.3.2 of the NDP identifies the need to retain retail outlets in Milton.

Policy CLE3 of the Repton Neighbourhood Plan supports the expansion of existing businesses provided that the proposed works would not require more than 15 members of staff and that the expansion would not exceed 0.2 hectares in additional area. The proposed expansion to the public house that would be brought would not exceed these thresholds. Provided that the proposals do not have an adverse impact on the amenity of neighbouring properties, highway safety or are out of scale with the existing building, then the proposed extensions and business expansion would accord with policy CLE3 of the NDP. Assessment of these matters is covered below.

Turning to the proposed holiday lets, the area of the site where they would be positioned would fall outside of the settlement boundary, at the rear of the site and would be located in the countryside. As noted above, policies BNE5 and INF10 of the Local Plan are 'blind' to settlement confines where there is existing facilities in the area are not adequate. Whilst some concerns have been raised in respect of the business case made, the site lies within the National Forest where there is a much wider need for overnight tourist accommodation, and the National Forest Strategy evidences this. The Economic Development Manager also lends support to the demand for overnight tourist accommodation in the area and this would satisfy a rising need. The principle of the proposal is therefore considered acceptable against this policies, provided that the development would not harm the visual amenities of the area, heritage features or the amenity of neighbouring residential properties, and again these matters are considered further below.

The proposed holiday lets would be single storey and create six units in total. Each of the proposed units would provide a bedroom and en-suite, with no living room or kitchen facilities. The proposed holiday lets would therefore not be able to function as independent dwellinghouses under use class C3 and would be parasitic on the wider use of the site as a C1 use within the wider mixed use. This is an important aspect as the development would not create new housing outside of the settlement boundary.

Policy H1 of the NDP limits new housing development to within the confines of the settlement boundaries of Milton and Repton. Policy H1 is listed as a housing policy, under the housing section and amongst other policies covering the same topic and should be applied in this context. For this reason, it is not considered that this policy is applicable to the proposed development. To ensure that the proposed holiday lets would always remain part of the mixed use, and not later converted to self-contained residential uses (and so to ensure appropriate amenity and traffic impacts, as discussed below), a condition can be imposed to link the holiday lets to the host business.

For these reasons outlined above, the erection of extensions to facilitate the expansion of the existing business and the erection of the holiday lets are considered suitable in principle and would accord with policies BNE5, INF6, INF10 and E7 of the Local Plan and policy CLE3 of the NDP.

Heritage, character and appearance

Policies BNE1, BNE2 and BNE10 of the Local Plan stipulate that development should be visually attractive, reflect local character and pride and enhance and preserve this character as well as ensure that the buildings and features that make a positive contribution to the local area, and heritage assets, are retained wherever possible. In addition, policy OS2 of the NDP stipulates that the visual impact of development should be minimised through the careful design and location of buildings, as well as landscaping.

The existing public house is not listed building but is located within the Milton Conservation Area, the building recognised as making a positive contribution to local character of the area under the CACS. There are existing buildings to the rear of the site that are to be demolished to allow for the erection of the extensions and the holiday lets. The main building has been previously extended to the rear to include lightweight, highly glazed elements and heavier brick extensions to form toilets and a lightweight section that links the main building to the outbuildings. The extensions and outbuildings to the rear are not identified or recognised as making a positive contribution to the conservation area or street scene due to the buildings' lesser architectural significance and the lack of visibility of the buildings from the street scene. Whilst one of the outbuildings reflects age and character, there has been significant alterations to the patterns of openings and creation of larger openings, and it is considered that any positive contribution to the local character has now been lost. Therefore, the loss of the existing buildings to the rear would not be highly visible or result in a harmful visual impact or loss of a positive features to the conservation area or local area and would accord with policies BNE2 and BNE10 of the Local Plan.

The Heritage Statement makes reference to retaining the existing internal layout of the original public

house as much as practicable. In order to facilitate a suitable dining facility and larger kitchen, consent is sought for the erection of extensions to the rear. The proposed extensions have been designed to broadly follow the pattern of existing development to the rear and to minimise any further projection of the extensions to the south, beyond the existing structure, in order to reduce the visibility of the development when viewed from Main Street and the public realm. The proposed extensions would be single storey and would have a lower ridgeline to the existing building. Owing to the height, scale and the appearance of the proposed materials, the proposed extension would appear subservient and differentiated from the main form of the building and would reflect the historic form and proportions of the traditional properties to the rear. The proposed holiday lets would be a single storey detached structure and would be positioned to the rear of the site behind the proposed extension to the public house. The proposed footprint, positioning and orientation of the proposed holiday let building would follow a similar pattern to outbuildings elsewhere within the conservation area, and would retain views from Main Street out to the east which are identified as a positive feature in the CACS. The proposed works would therefore accord with policies BNE1, BNE2 and BNE10 of the Local Plan and policy OS2 of the NDP.

A porch extension is proposed to the front of the existing building and would enclose a proposed ramp to provide a disabled access to the ground floor of the public house. This is supported by policies BNE1 and INF6 of the Local Plan which encourage ease of use and for facilities to be accessible to all user groups. The existing front elevation benefits from a strong architectural string course. However, the proposed elevations and design shows that the proposed porch would not unreasonably cover this feature and that the retention of the string course can be achieved. The proposed porch would also enclose the proposed ramp so to have a lesser visual impact on the frontage. The existing building has a strong, continuous front elevation and whilst the proposed porch would depart from this, this would be a minor projection, and weighed against the justification of providing disabled access it is considered that this would be reasonable and proportionate.

The Conservation Officer has raised no objections to the proposal and notes that the proposals are well considered and would not harm the special architectural and historic character and appearance of the conservation area, thus preserving it as is described as a desirable objective within section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990. However, it is recommended that conditions relating to the details of the proposed materials and joinery details for windows, doors and balustrade/railings - in particular the front door - are attached.

The proposed works would not result in the loss of features that make a positive contribution to the wider conservation area and local area and the proposed extensions would reflect the historic forms and proportions of traditional neighbouring buildings. Subject to the use of suitable external materials, the development would make a positive contribution to the area and views into and out of the site would be preserved, according with BNE1, BNE2 and BNE10 of the Local Plan, the SPD and policy OS2 of the NDP.

Impact on amenity

Policies SD1, BNE1, E7, INF10 and BNE5 of the Local Plan support the creation of tourism facilities and the expansion of existing businesses provided that the proposed works would not result in a harmful or undue impact on the amenity of local residents. Policy CLE3 of the NDP echoes these requirements.

The proposed development would consist of single storey extensions and buildings. The Council's Design Guide specifies that the creation of single storey buildings shall be assessed on their merits in terms of aspects of overshadowing and overlooking, although this is mainly in respect of new housing development. Owing to the height and scale of the proposed buildings as well as the proposed uses, it is not considered that the proposed works would have a harmful impact on the amenity of local residents by way of overshadowing or overlooking and any inter-visibility could be addressed by the creation of suitable boundary screening, of which details can be required under a condition.

Concerns have been raised with regard to the likely levels of noise and disturbance that would be

experienced by the expansion of the public house and holiday lets, in particular, the experience of occupiers of the dwellings that are positioned closer to the boundaries of the site. Given the existing use of the site as a public house, this is a land use that could incur high levels of noise and disturbance and could continue to expand within the scope of the existing building and its curtilage without requiring planning permission (indeed aerial photography shows picnic benches in this area). Due to the nature of the existing use, there is already potential for greater levels of noise and disturbance depending on how the building is used and when it is used. It should be noted, however, that use of the external areas would depend on weather and seasonal conditions, immediately curtailing the extent of their use - especially later in the evening and during winter months. No external canopy, etc. is proposed over the formal seating area to facilitate use during inclement weather conditions, and such provision would likely be development requiring further permission. Furthermore, the position of this proposed seating area is well surrounded by the existing and proposed built form on and off the site, limiting the spread of noise outwards from this location. The Environmental Health Officer has not raised concerns that the expanded use would cause unacceptable impacts. Conditions are recommended to ensure that any extraction or ventilation equipment is appropriate prior to installation, so to ensure that this would not create adverse noise or odour effects on others.

The proposed holiday lets would introduce a new use to the site and an overnight presence. In the evening, any disturbance associated with comings and goings to these units would be indiscernible against the background of the public house use. In the morning, it is again unlikely to have a noticeable impact with rooms often vacated after breakfast and there only being a limited number of rooms. The proposed development is therefore considered to comply with policies SD1, BNE1, E7, INF10 and BNE5 of the Local Plan, and policy CLE3 of the NDP.

Car parking and highway safety

The proposed porch to the front would overhang onto the adopted highway, but would still achieve a two-metre separation distance between the carriageway edge and the furthest edge of the protruding porch. This would still provide a sufficient width of footway to allow pedestrians to pass one another travelling in different directions and would not cause detriment to pedestrian safety.

In addition, it is noted that the position of car parking space no. 1 would occupy part of the existing footway. A condition is recommended to provide a revised parking layout, to also incorporate some landscaping so to offer visual interruption and screening to parked vehicles, and to ensure its long-term availability. This could also consider the scope for the turning of service vehicles and a potential increase in the number of spaces presently on offer. At the time of writing, efforts are being made to secure these minor amendments and Members will be updated with any revised layout and need for revised conditions at the meeting.

Notwithstanding the above, concerns have been raised with respect to the numbers of car parking spaces that are proposed. The Council has no locally adopted standards and a judgement must be made on each case, based on its merits. The change internal dining/drinking floorspace is notable, at around 150% of the existing, but the external changes are considered to formalise existing seating arrangements more than materially intensify the use in this respect. Existing parking provision is largely informal and provides for around 11 spaces on the existing surfaced car park, with some overflow to the rear. 19 spaces are proposed and it is anticipated through amendments (discussed above) this could be increased further. The addition of 6 units of accommodation is also not considered to result in a direct need for an equivalent increase in parking provision as there would likely be linked use of the accommodation with use of the restaurant (i.e. an evening meal before retiring to bed). It is also acknowledged that the proposed holiday lets would likely be subject to greater demand during the summer months and would be unlikely to be 100% occupied all year round, freeing up parking spaces to a degree.

In addition, it is also acknowledged that the public house currently operates under a lawful existing use and could intensify its operations and offer greater dining opportunity without requiring planning permission to do so (e.g. the existing outbuilding could be internally converted as it sits as part of this lawful use of the site). The use of the additional seating areas and tables would be staggered

throughout the day and evenings, staggering the use of most parking spaces. Concerns regarding concurrent use of the village hall, which relies on on-street parking, are noted but it is considered that the level of proposed parking is commensurate with the increase in floorspace proposed. Crucially, the County Highway Authority raises no objection. Concerns in respect of access visibility are also not sustained by the Highway Authority. The proposed development would therefore comply with policies E7, INF2 and INF10 of the Local Plan and policies CLE1 and T1 of the NDP.

Other matters

The Tree Officer raises no objections to the proposals. Based on the submitted information, it is considered that the overall condition of the trees at the site would be described as fair with no trees of high quality and value (Category 'A') present, and there would be no trees that have 'outstanding amenity' value. The eight individual trees and two tree groups are of low quality and have a relatively low potential amenity value, and low landscape benefits. Therefore, the trees on this site would not be a constraint to the proposed development and the submitted Tree Survey, Arboricultural Impact Statement development and Tree Protection Plan would be suitable to make this assessment. Conditions are recommended to ensure that works are carried out as described in the submitted documents and that a suitable landscaping plan is submitted for approval. Noting the above potential for amended layout of parking areas, it may also be necessary to include a geotextile loading system to protect existing root protection areas.

The proposals would also create an increased demand for water consumption, so a condition pursuant to policy SD3 of the Local Plan is warranted. Furthermore, the need to provide for electric charging points for vehicles is justified in the context of the increased use of the site, lack of public transport options and the need to improve air quality, in line with policies SD1 and INF2.

Summary

Whilst the concerns of the local community are recognised, the principle of development here is in line with the strategy of the LP1 and LP2, and with the NDP. There is no conflict with policy H1 of the NDP - this being a policy intended for housing proposals, of which this is not. Policy CLE3 lends support to the proposals, as do the Local Plan policies designed to protect and enhance community facilities, of which this is one, and offer sustainable tourism and rural business opportunities in the National Forest and wider District. The extensions would not cause harm to the conservation area, or the character and appearance of the area; nor would it cause unacceptable impacts on neighbouring amenity and highway safety. The proposal would therefore accord with the Local Plan and the NDP.

None of the other matters raised through the publicity and consultation process amount to material considerations outweighing the assessment of the main issues set out above, noting that conditions or obligations have been attached where meeting the tests for their imposition. Where relevant, regard has been had to the public sector equality duty, as required by section 149 of the Equality Act 2010 and to local finance considerations (as far as it is material), as required by section 70(2) of the Town and Country Planning Act 1990 (as amended), as well as climate change, human rights and other international legislation.

Recommendation

Approve permission subject to the following conditions:

1. The development hereby 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 plans/drawings ref. 10 and 11 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 removal of buildings or structures shall take place between 1st March and 31st August inclusive unless a survey to assess the nesting bird activity on the site during this period and a scheme to protect the nesting birds has first been submitted to and approved in writing by the Local Planning Authority. No buildings or structures shall be removed between 1st March and 31st August inclusive other than in accordance with the approved bird nesting protection scheme. No development, including preparatory works, shall commence until a scheme for the provision of suitable alternative nesting sites for swallows along with a timetable for the provision of such measures, has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved scheme.

Reason: To protect protected species during the construction period of the development and to comply with the requirements of policy BNE3 of the Local Plan.

4. Prior to any construction above foundations level, a scheme of biodiversity enhancement based upon the recommendation in the Preliminary Bat Roost Assessment and Bird Survey report prepared by S. Christopher Smith dated 26th May 2020 shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include, as a minimum, the incorporation of integrated (inbuilt) features for roosting bats within the new buildings. The enhancement scheme shall be implemented in accordance with the agreed details as construction proceeds and completed prior to the first occupation of the development.

Reason: To protect protected species and to ensure biodiversity gain through enhancement requirements and to comply with policy BNE3 of the Local Plan.

5. Throughout the construction phase space shall be provided within the site curtilage for storage of plant and materials, site accommodation, loading and unloading of goods vehicles, parking and manoeuvring of site operatives and visitors vehicle, laid out and constructed in accordance with detailed designs to be submitted in advance to the Local Planning Authority for written approval and maintained throughout the contract period in accordance with the approved designs free from any impediment to its designated use.

Reason: In the interest of highway safety.

6. Prior to the installation of any extraction or ventilation equipment, a scheme containing full details of arrangements for internal air extraction, odour and noise control, and discharge to atmosphere from cooking operations, including any external ducting and flues, shall be submitted to and approved in writing by the Local Planning Authority. The works detailed in the approved scheme shall be installed in their entirety before the use hereby permitted is commenced. The equipment shall thereafter be maintained in accordance with the manufacturer's instructions and operated at all times when cooking is being carried out.

Reason: To protect the amenities of nearby residents.

7. The development shall proceed in accordance with the recommendations within section 6 and 7 of the submitted Tree survey/Arboricultural Impact Assessment/Tree Protection Plan dated May 2020.

Reason: In the interests of safeguarding existing habitat and the visual amenities of the area.

8. Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 (as amended) and the Town and Country Planning (General Permitted Development) Order 2015, or any Order(s) revoking and re-enacting either or both Order(s), with or without modification, the proposed holiday lets shall be used only for overnight tourism accommodation in connection with the existing public house at the site and for no other purpose.

Reason: In the interest of neighbouring amenity and the best interests of highway safety, noting that alternative uses may bring about undesirable associated impacts.

9. Prior to their incorporation into the buildings and extensions 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 protect the visual character of the area and the special character of the Conservation Area.

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

Reason: To protect the visual character of the area and the special character of the Conservation Area.

11. Prior to their incorporation into the development hereby approved details of the external joinery, shall be submitted to and approved in writing by the Local Planning Authority. The details shall include drawings to a minimum scale of 1:10 of the external joinery, including horizontal and vertical sections, precise construction and method of opening. The external joinery shall be constructed in accordance with the approved drawings

Reason: To protect the visual character of the area and the special character of the Conservation Area.

12. The premises, the subject of the application, shall not be occupied until space has been provided within the site curtilage for the parking and manoeuvring of vehicles, located, designed, laid out and constructed in accordance with the approved plans/drawings and maintained throughout the life of the development free from any impediment to its designated use as such.

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

13. Prior to the first use of the proposed holiday lets and extension, a revised scheme of hard and soft landscaping shall be submitted to and approved in writing by the Local Planning Authority. The revised scheme shall reallocate parking space no. 1 so it does not overhang the public highway and/or cause movement of vehicles along the footway, as well as introduce areas of soft landscaping within the parking area. All hard landscaping shall be carried out in accordance with the approved details prior to the first use of the proposed development, whilst all planting, seeding or turfing comprised in the approved scheme shall be carried out in the first planting and seeding seasons following the completion of the development, whichever is the sooner; and any plants which within a period of five years (ten years in the case of trees) from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species and thereafter retained for at least the same period unless the Local Planning Authority gives written consent to any variation.

Reason: To ensure no net loss of biodiversity and in the interest of the character and appearance of the surrounding area and highway safety.

14. Notwithstanding the plans hereby approved, prior to the construction of a boundary wall, fence or gate, details of the position, appearance and materials of such boundary treatments shall be submitted to and approved in writing by the Local Planning Authority. The boundary treatments shall be completed in accordance with the approved details before the respective buildings to which they serve are first brought into use or in accordance with a timetable which shall first have been submitted to and approved in writing by the Local Planning Authority.

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

15. Recharge points for electric vehicles shall be provided within the development at a ratio of 1 charging point for every 10 parking spaces (or part thereof) which may be provided in phases first submitted to and approved in writing by the Local Planning Authority. Charging points shall be supplied by an independent 32-amp radial circuit and equipped with a type 2, mode 3, 7-pin socket conforming to IEC62196-2. Alternative provision to this specification must be first submitted to and approved in writing by the Local Planning Authority. To prepare for increased demand in future years suitable and appropriate cable provision shall be included in the scheme design in accordance with details first submitted to and approved in writing by the Local Planning Authority. The electric vehicle charging points shall be provided in accordance with the stated criteria and approved details prior to the first occupation or use of the respective premises and shall thereafter be maintained in working order and remain available for use throughout the life of the development.

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

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

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

Informatives:

- a. The proposed development works entail the use of land which currently forms part of the public highway. No works may commence until the land in question has been stopped up. Pursuant to Section 247 of the Town and Country Planning Act 1990, a stopping up application should be made to the National Transport Casework Team at the earliest opportunity. As part of the consultation process associated with such applications, the Highway Authority and other interested parties will be given the opportunity to object to the proposed stopping up. It should be noted that the Highway Authority's acceptance of the proposals for planning purposes does not preclude an objection being raised by the Authority at this stage.

Item No. 1.2

Ref. No. DMPA/2019/1234

Valid date: 28/10/2019

Applicant: Meadowview Homes

Agent: Planning & Design Practice Ltd
3 Woburn House
Vernon Gate
Derby
DE1 1UL

Proposal: Approval of reserved matters (access, layout, scale, appearance and landscaping) for 44 dwellings and associated infrastructure, including new roads and junctions pursuant to outline permission ref. 9/2016/0592 on Land to the south and east of Hollybrook Way, Portico Road and Bowbank Close (Highfields Farm), Rykneld Road, Findern, Derby

Ward: Willington and Findern

Reason for committee determination

The application is referred to the Committee as the application is a major application and more than four objections have been received.

Site Description

The site is located amongst the housing site allocation under policy H12 of the Local Plan (Highfields Farm). The land benefits from the outline permission granted following the conjoined inquiry in 2009, extended in 2011 and revised in 2016, for the erection of up to 1,200 residential units with a local centre, a primary school and associated works across the wider site. The site is a narrow, linear strip of agricultural land which cuts into the wider site allocation and abuts the wider open space and proposed country park to the south. Beyond its northern tip is the original Highfields Farmhouse. Residential development from the wider site adjoins its north-east and south-west boundaries. It has a gentle gradient that slopes towards the south-east. The proposed development would be accessed from the two roads meeting the boundaries at the north-west and north-east of the site, off recently constructed limbs of Beeston Drive.

The proposal

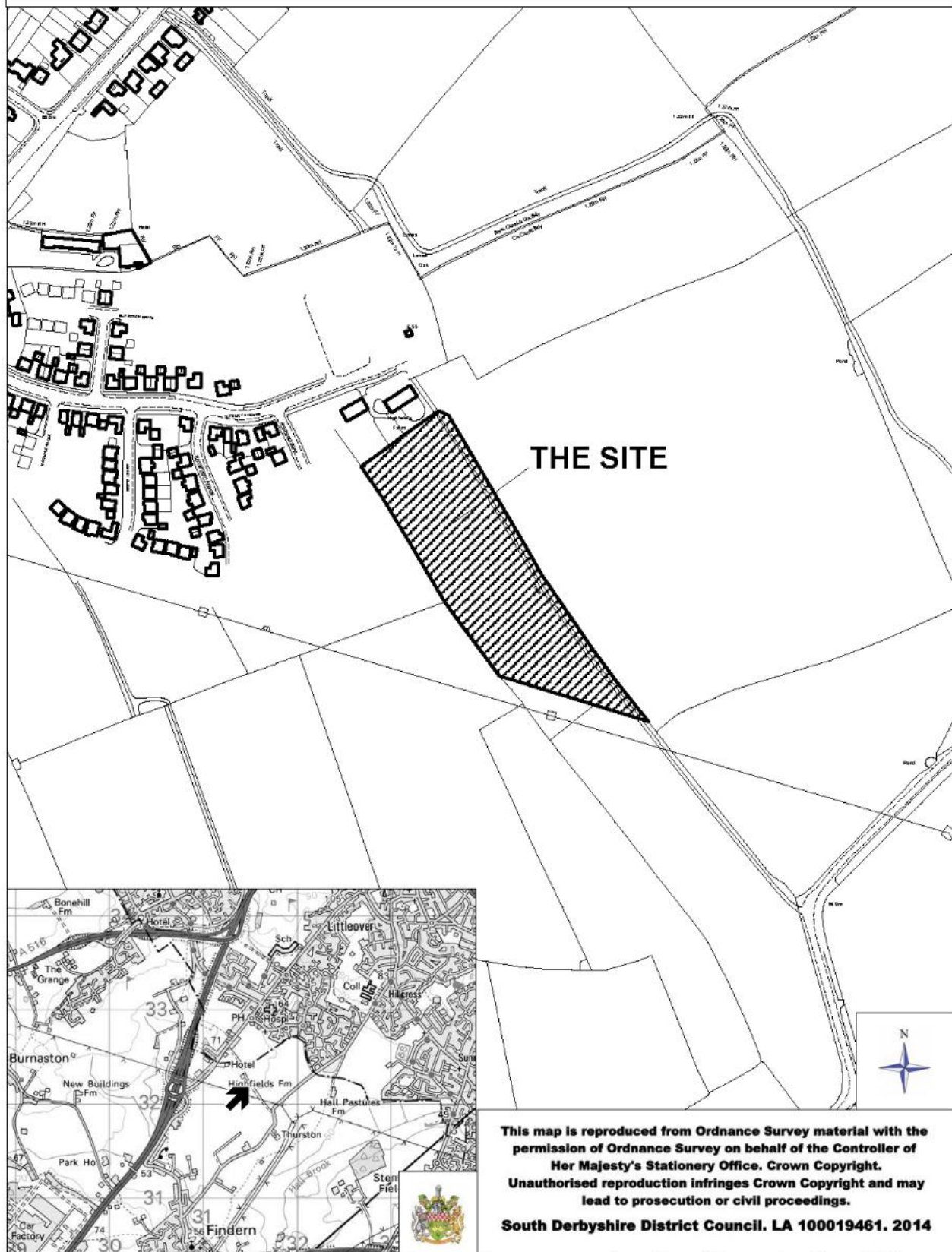
The application seeks consent for the reserved matters of access, layout, scale, appearance and landscaping for the erection of 44 dwellings as a mix of detached and semi-detached dwellings. Due to the original permission and associated section 106 agreement which binds this land, the dwellings are to be 100% for market sale. A small section of landscaping would be provided at the southern end of the site with a footpath provided between the site boundaries to enable linkages to the wider country park.

Applicant's supporting information

A Design and Access Statement states that in light of current national and local planning policies, the outline permission and an extant reserved matters approval from 2015 which exists for the site, the proposed development would be acceptable in principle. The scale and layout of the development proposed is commensurate with the site and its surroundings, and broadly in accordance with the scheme in the previous reserved matters permission. The architectural design is contextually appropriate and would create a sense of place. Impacts on existing neighbouring residential properties are considered to be acceptable, and there would be no issues of overlooking or overbearing.

A Tree Survey considers trees both within and outside of the site and assesses whether these would be within influencing distance of the proposed built form. Nine individual trees have been identified

DMPA/2019 - Land to the south and east of Hollybrook Way, Portico Road and Bowbank Close (Highfields Farm), Rykneld Road, Findern, Derby DE23 4AN



within influencing distance along with four hedges. The tree species are a mixture of Ash, Holly, Hawthorn and Field Maple. The hedges consist of Hawthorn and Blackthorn, with some Holly. There are a number of dead Elm in the south west corner of the site not noted on the plan. There is a Hawthorn growing nearby which would affect foundation design in this area. One Cypress has been identified in the grounds of the farmhouse to the north of the site.

Relevant planning history

9/2019/0211: Approval of reserved matters of planning permission ref: 9/2016/0592 for the provision of a one-form entry primary school, a sports pitch and a locally equipped area for play (leap) - Approved August 2019

9/2018/1314: Change of use to 3 no. Vacant units (use classes A1, A3 and A5) to children's day nursery (use class D1) - Approved June 2019

9/2018/0975: Approval of reserved matters of outline permission ref. 9/2015/1079 for 16 dwellings in lieu of 16 previously approved under 9/2014/0275 to swap house types and reposition adjacent plots and parking provision (Barratt Homes parcel A4 (in part)) - Approved December 2018

9/2018/0338: Approval of reserved matters on land subject to outline permission 9/2015/1079 for the retention of 4 dwellings in lieu of 4 previously approved under reserved matters approval 9/2014/0275 to re-orientate/re-position plots 1120-1123 (Miller Homes parcel C5 (in part)) - Approved May 2018

9/2017/1207: Approval of reserved matters on land subject to outline permission 9/2015/1079 for 5 dwellings in lieu of 5 previously approved under reserved matters approval 9/2014/0275 to re-orientate/re-position plots 724-728 (Taylor Wimpey homes parcel B4 (in part)) – approved February 2018

9/2017/0994: Approval of reserved matters for phase 2 of local centre to comprise four A1 or A3 units with associated car parking, means of enclosure and landscaping - Approved November 2017

9/2017/0713: Approval of reserved matters (appearance and landscaping) for local centre to consist of one A1 convenience store, one A1/A3 unit and one A5 unit with associated car parking, fencing and public spaces - Approved September 2017

9/2016/1195: Approval of reserved matters (189 dwellings in lieu of 182 previously approved across 3 parcels under 9/2014/0275 along with re-orientation/positioning of 44 dwellings (Barratt parcels A2 (in part), A3 & A5) - Approved March 2017

9/2016/1057: Approval of reserved matters 146 dwellings in lieu of 137 previously approved across 2 parcels under 9/2014/0275 along with re-orientation/positioning of 44 dwellings (Miller Homes parcels C4 & C5 (in part)) - Approved December 2016

9/2016/0912: Approval of reserved matters (relating to plots 7-11, 52-62 & 75-81 in lieu of that previously approved under 9/2015/0195) - Approved December 2016

9/2016/0862: Approval of reserved matters (relating to plots 406, 408, 416, 417, 419, 421 & 422 in lieu of that previously approved under 9/2014/0275) - Approved September 2016

9/2016/0843: Approval of reserved matters (relating to plots 423, 424, 425, 427, 428 & 429 in lieu of that previously approved under 9/2014/0275) - Approved September 2016

9/2016/0590: Approval of reserved matters for local centre to consist of one A1 convenience store, one A1/A3 unit and one A5 unit with associated car parking, fencing and public spaces - Approved August 2016

9/2015/1079: Removal of conditions 32 & 33 of permission 9/2011/0640 - Approved March 2016

9/2016/0592: The variation of condition 37 of planning permission ref: 9/2015/1079 (relating to the erection of up to 1200 residential units [C3], new primary school (up to 1.3ha), new community facilities and local centre (up to 1ha, including local retail units [A1], restaurants [A3], public house [A4] and hot food take away [A5]), associated infrastructure (including sewers, drainage and services)) in order to vary delivery hours at the local centre - Approved October 2016

9/2015/0195: Approval of reserved matters on land subject to outline permission 9/2011/0640 for 102 dwellings in lieu of 85 previously approved under 9/2014/0275 (Barratt Homes parcel A1 (in part)) - Approved April 2015

9/2015/0011: Approval of reserved matters relating to access, layout, scale and appearance on remaining land subject to outline permission 9/2011/0640 for 44 dwellings and associated infrastructure, including new roads and junctions - Approved April 2015

9/2014/0275: Approval of reserved matters on land subject to outline permission 9/2011/0640 for 979 dwellings and associated infrastructure, including new roads and junctions, footpaths and cycleways, drainage and public open space including play areas, pitches and strategic landscaping - Approved January 2015

9/2011/0640: Extension of time allowed for submission of reserved matters and implementation of 9/2006/0775 - Approved January 2012

9/2006/0775: Outline application (all matters to be reserved) for up to 1200 residential units, a new primary school, community facilities and local centre, associated infrastructure and landscaping including the provision of a new country park - Not determined but allowed at Appeal January 2009

Responses to consultations and publicity

The County Highway Authority has no objections subject to conditions with regard to the proposed surfacing and sight lines.

The Lead Local Flood Authority (LLFA) have no comments regarding the reserved matters application and await consultation regarding the discharge of condition 13 of permission ref. 9/2016/0592 for the surface water drainage details to be considered.

The Police Force Designing Out Crime Officer notes plots 1 and 20 have been amended to provide an active frontage to the side to provide natural surveillance. No objections have been raised.

The Environment Agency notes there has been no changes brought about by the proposed reserved matters application which would affect the conditions imposed by the original outline consent and there have been no objections raised.

Findern Parish Council objects and has raised the following issues:

- a) The height of 2.5 storey dwellings (Durham house type) causes concerns regarding privacy to the four existing properties that immediately back onto the site;
- b) Adjoining properties would be overshadowed or overlooked causing loss of privacy - residents are questioning of height of the proposed property and their privacy impacted upon by rooflights to the rear of the property;
- c) The application outlines cutting back of the existing hedges to the boundary of the properties, with concerns about the conservation of the hedges as a valuable wildlife habitat and what steps will be taken to ensure the preservation of this; and
- d) Many residents have had constant drainage problems since moving in and it is essential that sufficient drainage is in place to cope with all their needs and not add to existing problems where contractors/Severn Trent have had to be called in to rectify the problems.

There have been eight objections raising the following points:

- a) Overshadowing and loss of privacy due to plots 3 – 6 (Durham Style house). These particular properties are two and a half storeys high with rooflights to the rear. Whilst they are not truly three floors, there are no indications on the plans as to exactly how much taller they actually are, in comparison to the rest of the development.
- b) Concerns that when you look at other areas of the Highfields site, that the two and a half story properties do appear to be taller than the rest of the houses around them and, if this is the case, what is being done to ensure that these properties do not overshadow existing builds? How much taller will these properties be?
- c) Increase in the numbers of gardens at this point and create more noise and disturbance than what is currently experienced.
- d) The design of these four plots of the proposed development does not afford adequate privacy for adjacent residential properties, particularly with regard to their right to the quiet enjoyment of garden amenities (with the Human Rights Act Protocol 1, Articles 1 and 8 cited).
- e) There are four other properties of this nature on the plan, but they do not appear to overshadow other property, as this is a side elevation on the previous phase of builds.
- f) Concerns in connection with the conservation of nature in this area. Further assurances are sought to ensure that this will be addressed and maintained as a priority. The Bats in the area frequently fly around neighbouring gardens in the dusk.
- g) Concerned that homeowners with Bat boxes on their properties could contribute to bats spreading Covid-19.
- h) The developers have had to undertake a large number of repairs on this estate already, with contractors/Severn Trent being called in to rectify the problems. Residents have experienced (and continue to experience) drainage issues with the backflow of water and sewage. The existing drainage currently does not cope with the housing development in existence, without the addition of 44 more into the same outlet at the bottom of Stafford Drive.
- i) Concerns that the boundary hedges, which are overgrown in the area will be cut back to the boundary line. As the gardens of the dwellings look small and will have their own boundary fencing put in place, inbetween each dwelling/boundary, this could raise issues.
- j) How will the developer ensure that the protected boundary hedgerow and trees are not damaged/removed by the construction workers whilst erecting the boundary fencing between dwellings?
- k) As these boundary hedgerows and trees are protected, how will the developer ensure that these are not removed by the buyers as the gardens, particularly in plot 3, are very small? What will stop the residents destroying these protected areas?
- l) The proposed development shows retention of an existing treeline, which is protected due to the existence of a bat colony. A lot of supporting documents linked to the revised plans are not based on the original submission. Have the developers considered procedures from government guidelines on such ecological systems? Is the installation of bat boxes enough?
- m) The treeline will not hide the looming nature of four 2.5 dwellings behind them or indeed aid a safe haven for bats which are very active in the early evenings most nights within crammed gardens. I would also have concerns about the impact of increased noise upon this colony.
- n) Residents were told that the farmland was not being sold.
- o) The Hawthorn hedgerows require constant chopping back and the constant tidying of the sharp hawthorns. These need to be maintained. Happy with kind of hedges/trees but anything sharp (i.e. Holly, Hawthorns, Nettle, etc.) is not ideal next to residential properties.
- p) Concerns with the proposed plan as plot 15 has been designed in a way that it will overlook neighbouring residential properties. This does not appear to create a distance of 21m, as referred to within the distance guidelines in the Design Guide.
- q) The Hampton is a 5 bedroom house, the garden proposed is less than a third of the size of the plot which is particularly small compared to other houses of the plans - even the plots on the other side of the road (plots 22 - 25) have gardens that are at least twice as big.
- r) Loss of privacy through removal of hedgerows at a later date.
- s) It seems currently that plots 14 - 16 have been squeezed into the plan, if it were possible to make the road straight or lessen the bend moving plots 20 and 21 forward this would solve this problem. The site layout should be redesigned to move the house further away and provide a more generous garden for this large property.

- t) The existing site has public open spaces from Rykneld Road to bottom of Bolsover Road and from the bottom of Stafford Drive to Heatherton. The public space is split up in two by Highfield farmland at the bottom of the proposed new site. This public space is to be managed by Greenbelt Group which residents will have to pay when fully managed. Is this public space to be joined up as one to give access and are the new residents to pay Greenbelt for their access?
- u) Concerns regarding traffic on and off the site. Although two roads; the majority of traffic will be via Beeston Drive to the north-west edge as this is the quickest way to access Rykneld Road. Traffic will not go the other way unless they want to go to the proposed new school or Heatherton. Beeston Road is a narrow road and not built for traffic especially with houses facing and being near to the road.

Relevant policy, guidance and/or legislation

The relevant Development Plan policies are:

- 2016 Local Plan Part 1: S2 (Presumption in Favour of Sustainable Development), H12 (Highfields Farm, South West of Derby), SD1 (Amenity and Environmental Quality), BNE1 (Design Excellence), BNE3 (Biodiversity), BNE4 (Landscape Character and Local Distinctiveness) and INF2 (Sustainable Transport).
- 2017 Local Plan Part 2: BNE7 (Trees, Woodland and Hedgerows).

The relevant national policy and guidance is:

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

The relevant local guidance is:

- South Derbyshire Design Guide Supplementary Planning Document (SPD)

Planning considerations

This application seeks approval of reserved matters under a previous outline approval, and the proposed 44 dwellings would mean the overall provision remains under the threshold of 1,200 dwellings being proposed across the wider site. The principle of development has therefore been established and hence the following assessment takes into account only the matters which are relevant to the matters concerned. Concerns regarding drainage are therefore not relevant, with conditions attached to the outline permission in place to handle the detail required here. Taking these points into account along with 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:

- Layout and amenity;
- Scale and appearance;
- Access; and
- Landscaping.

Planning assessment

Layout and amenity

The proposed layout consists of largely semi-detached and detached dwellings. This mix would be consistent with the pattern of development that is already found on the neighbouring areas of the existing, wider site. Amended plans have been received which have largely adjust the layout at the southern end of the site so to incorporate connectivity between the site and the open space to either side of the development, and to allow it to integrate into the wider site. Various plots have been stepped back and amended to ensure that there would be no prominent gables stepping forward and that there would be strong forward building lines along the site frontages which would be consistent with the principles found within the Council's Design Guide. Furthermore, plots have been adjusted to ensure that there would be a minimum of a 21m separation distance between the proposed windows of the dwellings and the existing windows of neighbouring properties to the rear.

Concerns have been raised by local residents with regard to overlooking, overshadowing and noise and disturbance. The principle of the current site for residential dwellings has already been established through the wider site allocation. The level of noise and disturbance that would be experienced by the development of the site for 44 dwellings would be comparable with the level of noise and disturbance already experienced by occupiers of existing dwellings from their neighbours. The character would not be altered by way of this development and its development has been apparent by way of the 2015 reserved matters permission before the properties immediately abutting it were constructed.

The layout of plots 17, 18 and 19 have been amended to achieve at least 21 metres separation to existing habitable neighbouring windows to the rear. Furthermore, plots 3 to 6, whilst containing a room in the roofspace, would be comparable in scale and the rooflight to the rear serves an en-suite. Some 29 metres separation is achieved in any case. These separations are consistent with the amenity requirements of the Council's Design Guide and the proposed layout would achieve a good level of amenity for future and existing occupiers.

With adequate parking provision to each plot pursuant to the aspirational standards in the Design Guide SPD, and with outward looking development at the southern end of the site adding to surveillance of public routes and spaces along the access roads, the proposed layout would conform to policy BNE1 and the Design Guide SPD.

Scale and appearance

The proposed dwellings would be two-storey in height and massing which would be consistent with the dwelling heights of the immediate neighbouring properties. Concerns have been raised regarding the height of the Durham house type, which would contain a room in the roofspace. These plots would back onto existing residential properties to the rear, but the main rooflights are to the front, serving second floor bedrooms that would look into the proposed development. As noted above, the rear rooflight serves a non-habitable space. The eaves and ridge lines for this housetype is comparable with others proposed and the scale would therefore accord with policy BNE1 of the Local Plan and the Design Guide.

Access

The site would be accessed by both ends of Beeston Drive to the north-west and north-east of the site. The existing roads have been constructed up to the site boundary with the wider site laid out with the intention for the proposed site to be built out. Indeed, property numbers at either end account for intervening properties along the proposed section of Beeston Drive within the site.

Concerns have been raised with regards the level of traffic that would be experienced due to the increase in the number of dwellings at the site. However, the principle of the site for future residential development in addition to the wider site has already been assessed as part of earlier outline applications and the principle is considered to be suitable. Ultimately, whilst traffic may wish to travel north-west along Beeston Drive towards Rykneld Road, they may equally wish to travel in the opposite direction towards the local centre, school, Heatherton Village local centre or the City itself. Both routes are equally preferential - it all depends on the intended destination. The routes provide a good level of vehicular and pedestrian safety. There has been no objections raised by the County Highway Authority and the proposed works would therefore comply with policy INF2 of the Local Plan.

Landscaping

The proposed layout shows the basis of a good landscaping scheme with suitable landscaping, hedgerow retention and tree planting throughout the site and in the incorporation of hedgerows to the front of dwellings to soften the appearance of the street scene and contribute to a biodiversity gain at the site. Where possible, post and rail fencing would be erected along the north-eastern and south-western boundaries of the site in order to retain existing hedgerow for the life of the development, so that the post and rail fencing forms the boundary treatment of the proposed dwellings and the retained

hedgerow would have greater protection. A condition can be added to ensure this although it must be recognised that the hedgerows cannot be afforded statutory protection.

The land to the south of the site shows connectivity to the open space either side by the position of a walkway to provide access through the open space. A condition would be attached to provide a conveyancing plan to ensure that public areas such as these are not conveyed to individuals and form areas of open space, as well as more specific details of the layout of the walkway to the south in terms of its specific positioning and the form of hardstanding that would be used.

The proposed landscaping would be consistent with policies BNE1 and BNE7 of the Local Plan. In addition, a condition would be attached to ascertain the particular species of the planting of the hedgerows, planting and tree planting as well as the maturity of the proposed tree planting as well as the long term protection of the existing hedgerows and future tree planting, noting that whilst the plan lists such detail it does not specify exact locations, etc.

Other matters

As noted, concerns have been raised with regards to the impact of the development on surface and foul water drainage, as well as the impact on the development on bats and the existing hedgerows and tree planting.

All aspects of site drainage were assessed as part of a wider scheme for the wider site so sufficient capacity is available. Irrespective of the recommendation below, details would still need to be submitted to be discharged under the outline permission and would need to satisfy the Lead Local Flood Authority (LLFA) and Severn Trent.

The site would be subject to the same ecological enhancement requirements as the remainder of the overall site and the implications of developing the current site for residential purposes was a point of consideration in all earlier applications. A tree protection condition is already attached to the outline permission to ensure that existing trees and hedgerows to be retained are protected through the construction period and can be integrated into the long-term landscaping scheme at the site. The introduction of bat boxes would enhance this existing provision and there is no evidence of health concerns from live bats in and around the site.

Summary

The proposed development would achieve a suitable design which would be consistent with policies BNE1 and SD1 of the Local Plan as well as the principles of the South Derbyshire Design Guide, with the scale and density consistent and comparable with the wider development at Highfields Farm.

None of the other matters raised through the publicity and consultation process amount to material considerations outweighing the assessment of the main issues set out above, noting that conditions or obligations have been attached where meeting the tests for their imposition. Where relevant, regard has been had to the public sector equality duty, as required by section 149 of the Equality Act 2010 and to local finance considerations (as far as it is material), as required by section 70(2) of the Town and Country Planning Act 1990 (as amended), as well as climate change, human rights and other international legislation.

Recommendation

Approve permission subject to the following conditions:

1. The development hereby permitted shall be carried out in accordance with plans ref. LITT-002, LITT 001 Rev F, LITT-020 (Sheet 1) and LAY-BT/01 Rev D; housetype drawings ref. Guildford LITT-021 (received on 27 July 2020), Bamburgh LITT-012 Rev A (received on 27 July 2020), Chepstow LITT-006 Rev A (received on 27 July 2020), Worcester LITT-020 (received on 27 July 2020), Oxford LITT-004 Rev A, Richmond LITT-008, Colchester LITT-013, Warwick LITT-011, Winchester LITT-005, Conway LITT-007, Durham LITT-003, Canterbury LITT-009 and Hampton

LITT-010; and garage drawings ref. LITT-014 Rev A and plots 23/24 LITT-014, 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.

2. No development, including preparatory works, shall commence until protective fences have been erected around all trees and hedgerows shown to be retained on the approved plans. Such fencing shall conform to best practice as set out in British Standard 5837:2012 and ensure that no vehicles can access, and no storage of materials or equipment can take place within, the root and canopy protection areas. The fences shall be retained in situ during the course of ground and construction works, with the protected areas kept clear of any building materials, plant, debris and trenching, and with existing ground levels maintained; and there shall be no entry to those areas except for approved arboricultural or landscape works.

Reason: In the interests of safeguarding existing habitat and the visual amenities of the area, recognising that initial preparatory works could bring about unacceptable impacts.

3. Prior to any works exceeding demolition and site clearance, a construction management plan or construction method statement shall be submitted to and be approved in writing by the Local Planning Authority. The approved plan/statement shall be adhered to throughout the construction period. The Statement shall provide for parking of vehicles of site operatives and visitors; routes for construction traffic, including abnormal loads/cranes, etc; method of prevention of debris being carried onto the highway; and pedestrian and cyclist traffic restrictions.

Reason: To ensure highway safety during the period of construction.

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

Reason: To ensure that the proposed estate roads and footways would be constructed to an adoptable specification and in the interest of vehicular and pedestrian safety.

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

Reason: In the interest of highway safety.

6. The new estate street junction between plot numbers 1 and 36 shall be provided with visibility sightlines extending from a point 2.4 metres from the carriageway edge, measured along the centreline of the junction for a distance of 25 metres in both direction measured along the nearside carriageway edge, the area in advance of the sightlines being levelled, forming part of the new street constructed as footway/verge and not forming part of any plot or other sub-division of the site.

Reason: In the interest of highway safety.

7. The dwellings and structures to which this permission relates shall be constructed in accordance with the external materials details contained within the Schedule of Materials document, received on 27 July 2020, with boundary walls to be constructed using the same brick used in the construction of the host dwelling (with no perforated engineering bricks left exposed on header courses to walls) unless prior to their incorporation into the development, alternative details are

first submitted to and approved in writing by the Local Planning Authority whereafter such approved details shall be used.

Reason: To protect the visual character of the area and the wider development.

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

Reason: To protect the visual character of the wider development.

9. Gutters and downpipes shall have a black finish and be fixed direct to the brickwork on metal brackets. No fascia boards shall be used.

Reason: To protect the visual character of the area and the wider development.

10. Prior to their incorporation into the dwellings hereby approved, details of the external appearance of eaves, verges, cills and headers shall be submitted to and approved in writing by the Local Planning Authority. The details shall include drawings to a minimum scale of 1:10 and avoid the use of stub cills over feature stone/brick cills. The eaves, verges, cills and headers shall be constructed in accordance with the approved drawings and thereafter maintained/retained as such.

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

11. Prior to the occupation of each respective dwelling, the boundary walls, fences and gates serving that dwelling shall be constructed in accordance with the approved plans unless prior to their incorporation into the development, alternative details are first submitted to and approved in writing by the Local Planning Authority. Notwithstanding the approved drawings, details of a post and rail fence to abut the retained hedgerows along the north-eastern and south-western edges of the site shall be submitted to and approved in writing by the Local Planning Authority, with the approved post and rail fencing installed prior to the first occupation of each respective dwelling. No boundary treatments running perpendicular to these hedgerows shall intercept the hedgerow. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, or any statutory instrument amending, revoking and/or replacing that Order, no further boundary treatments shall thereafter be erected between those approved and the highway or public open space(s) whilst the approved post and rail fencing abutting the retained hedgerows shall not be altered or removed.

Reason: To maintain control in the interest of the character and amenity of the area hereby designed, having regard to the setting and size of the development, the proximity to existing features on or adjacent to the site, including those of biodiversity significance, and the effect upon neighbouring properties and/or the street scene.

12. Prior to the first occupation of the development, details of secure cycle parking facilities for the occupants of, and visitors to, the development hereby approved shall be submitted to and approved in writing by the Local Planning Authority. These facilities shall be fully implemented and made available for use prior to the occupation of the development and shall thereafter be retained for use at all times.

Reason: In the interest of highway safety and to ensure that there is safe parking and storage for cyclists.

13. Prior to the occupation of each dwelling a new vehicular access shall be formed to the new estate street in accordance with the approved plans, provided with visibility sightlines extending from a point 2.4 metres from the carriageway edge, measured along the centreline of the accesses, for a distance of 25 metres in each direction measured along the nearside carriageway edge (with the exception for plot numbers 17-21 inclusive) or any other visibility splay dimension that may be agreed in writing with the Local Planning Authority. The land in advance of the visibility sightlines shall be retained throughout the life of the development free of any object greater than 1 metre in

height (0.6 metres in the case of vegetation) relative to adjoining nearside carriageway channel level.

Reason: In the interest of highway safety and to ensure that the access to the site is safe and suitable.

14. Prior to the first occupation of each dwelling, space shall be provided for the parking of vehicles associated with that dwelling in accordance with the approved plans 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 space shall be maintained throughout the life of the development free of any impediment to its designated use. For the avoidance of doubt, where a garage is to be counted as a parking space, the internal dimensions shall not be less than 3m wide by 6m long with any service or vehicular doors opening outwards.

Reason: In the interest of highway safety and to ensure safe movement of vehicles within the site.

15. Prior to the first occupation of a dwelling on the site, a conveyancing plan identifying areas of open space that are not to be sold/taken into private use shall be submitted to and approved in writing by the Local Planning Authority. These areas should include areas required for public highway (including visibility splays) and areas to the southern end of the site (outwith the curtilage of plots 19 and 20) and shall be retained as adopted highway or public open space for the lifetime of the development.

Reason: To provide visual relief throughout the site and to ensure that these areas are properly landscaped and accessible throughout the lifetime of the development.

16. Notwithstanding the plans hereby approved, prior to the laying out of landscaping associated with or the occupation of a dwelling, a revised scheme of soft landscaping shall be submitted to and approved in writing by the Local Planning Authority. The revised scheme shall stipulate the species, exact location, mix and standard/maturity of the trees and planting within public areas and private gardens, and also ensure delineation of public and private spaces by use of hedgerows alongside footways/service margins. All planting, seeding or turfing comprised in the approved scheme shall be carried out in the first planting and seeding seasons following the first occupation of each respective dwelling or the completion of the development, whichever is the sooner; and any plants which within a period of five years (ten years in the case of trees) from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species and thereafter retained for at least the same period, unless the Local Planning Authority gives written consent to any variation.

Reason: To ensure no net loss of biodiversity and in the interest of the character and appearance of the surrounding area.

17. Recharge points for electric vehicles shall be provided within the development at no less than 1 charging point per dwelling with dedicated on plot parking. 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. Alternative provision to this specification must be first submitted to and approved in writing by the Local Planning Authority. To prepare for increased demand in future years suitable and appropriate cable provision shall be included in the scheme design in accordance with details first submitted to and approved in writing by the Local Planning Authority. The electric vehicle charging points shall be provided in accordance with the stated criteria and approved details prior to the first occupation or use of the respective premises and shall thereafter be maintained in working order and remain available for use throughout the life of the development.

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

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

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

Informatives:

- a. The first 5 metres of the proposed access driveways shall not be surfaced with a loose material (i.e. unbound chippings or gravel etc)
- b. Pursuant to Sections 149 and 151 of the Highways Act 1980, the applicant must take all necessary steps to ensure that mud or other extraneous material is not carried out of the site and deposited on the public highway. Should such deposits occur, it is the applicant's responsibility to ensure that all reasonable steps (e.g. street sweeping) are taken to maintain the roads in the vicinity of the site to a satisfactory level of cleanliness.
- c. Pursuant to Section 163 of the Highways Act 1980, where the site curtilage slopes down towards the public highway measures shall be taken to ensure that surface water run-off from within the site is not permitted to discharge across the footway margin. This usually takes the form of a dish channel or gully laid across the access immediately behind the back edge of the highway, discharging to a drain or soakaway within the site.
- d. Pursuant to Section 38 and the Advance Payments Code of the Highways Act 1980, the proposed new estate roads should be laid out and constructed to adoptable standards and financially secured. Advice regarding the technical, financial, legal and administrative processes involved in achieving adoption of new residential roads may be obtained from the Strategic Director of Environmental Services at County Hall, Matlock (tel: 01629 580000). The applicant is advised to allow approximately 12 weeks in any programme of works to obtain a Section 38 Agreement.
- e. Highway surface water shall be disposed of via a positive, gravity fed system (i.e: not pumped) discharging to an approved point of outfall (e.g: existing public sewer, highway drain or watercourse) to be sanctioned by the Water Authority (or their agent), Highway Authority or Environment Agency respectively. The use of soakaways for highway purposes is generally not sanctioned.
- f. Pursuant to Section 278 of the Highway Act 1980 and the provisions of the Traffic Management Act 2004, no works may commence within the limits of the public highway without formal written agreement of the County Council as Highway Authority. It must be ensured that public transport services in the vicinity of the site are not adversely affected by the development works. Advice regarding the technical, legal, administrative and financial processes involved in Section 278 Agreements may be obtained from Mr K Barton in Development Control at County Hall Matlock (tel: 01629 538658). The applicant is advised to allow approximately 12 weeks in any programme of works to obtain a Section 278 Agreement.
- g. Pursuant to Sections 219/220 of the Highways Act 1980, relating to the Advance Payment Code, where development takes place fronting new estate streets the Highway Authority is obliged to serve notice on the developer, under the provisions of the Act, to financially secure the cost of bringing up the estate streets to adoptable standards at some future date. This takes the form of a cash deposit equal to the calculated construction costs and may be held indefinitely. The developer normally discharged his obligations under this Act by producing a layout suitable for adopting and entering into an Agreement under Section 38 of the Highway Act 1980.

Item No. 1.3

Ref. No. DMPA/2020/0517

Valid date: 01/07/2020

Applicant: South Derbyshire District Council **Agent:** Andrew Bennett
South Derbyshire District Council
(Housing)
Civic Offices
Civic Way
Swadlincote
DE11 0AH

Proposal: Change of use from office building (use class B1(a)) and replacement entrance door and windows to create one bed unit of temporary accommodation (use class C3) at 75-89 Alexandra Road, Swadlincote, DE11 9AY

Ward: Swadlincote

Reason for committee determination

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

Site Description

The site comprises a two-storey block of eight 1-bed flats constructed as a mother and baby unit and recently converted to flats for use as temporary accommodation. The building dates from the 1990s. It is situated adjacent to two-storey Victorian properties on Alexandra Road. These properties step down the hill as the land falls steeply to the north. There are similar houses opposite. There is two-storey housing to the rear on Stanhope Road situated at a slightly lower land level.

There is a central pedestrian entrance into the block. There is a small car parking area to the south side for approximately 4 cars. There is a communal garden to the rear. There are several mature trees within the rear garden area including a Willow quite close to a single storey extension which was later attached to the main building. This single storey extension is described as currently being used for office purposes. It was originally a garage and has been converted into an office since construction. The extension is set back into the site from the main residential block and has a central pitched roof. The bricks and roof tiles match the main building. There is a small window in the front gable elevation and an entrance door at the side. There are windows on the inner side.

To the south of the site there is currently open wasteland. There is a 1.5m high timber solid fence between the site and the adjacent land. There is a 1.8m timber fence which returns back to the building behind the open car parking area.

The proposal

The proposal is to use the existing ancillary office as an additional one-bedroom unit for temporary accommodation, alongside the use of the main block. There are no proposals to physically change the external appearance of the building apart from a new entrance door and escape windows to the rear.

Applicant's supporting information

The applicant indicates that the Housing Department record and investigate any complaints of anti-social behaviour at the site and appropriate action is taken when required to do so. There is a Temporary Accommodation Officer who oversees such accommodation and deals with reports of such behaviour. Tenants sign an agreement with regard to behaving responsibly within the property with potential action possible if they fail to comply.

DMPA/2020/0517 - 75-89 Alexandra Road, Swadlincote DE11 9AY



Relevant planning history

9/0891/0496: Two storey flat block for 9 x 1 bedroom units for a mother and baby unit - approved September 1991

9/2004/0153: Minor external alterations to convert to 8 x 1 bed flats - approved February 2004

9/2016/0787: Removal of condition 4 of 9/0891/0496 to widen the use of the flats from mothers and babies to general residential use - approved September 2016.

Responses to consultations and publicity

The County Highway Authority considers that there would be no detrimental highway impacts from the proposed use given its central location.

The Environmental Health Officer notes that there is potential for exposure to noise sources from construction and potential on air quality of the development. The site is located on a busy road, although the nearest room is a bathroom. due to the proximity to the existing housing. A construction hours condition should be imposed. To improve air quality, it is recommended that the property is future proofed and provision of electric charging points are provided through imposition of an appropriate condition. No burning of waste should take place on the site to protect residential amenity. No solid fuel combustion appliance should be allowed within the new accommodation.

One objection from a neighbour raises the following concerns:

- a. The use causes disturbance to residents as it is, with regular anti-social behaviour incidents;
- b. They have to live with their blinds closed most of the time; and
- c. The proposal would bring more noise, mess and disruption to the street.

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), INF2 (Sustainable Transport);
- Local Plan Part 2 (LP2): SDT1 (Settlement Boundaries and Development).

The relevant local guidance is:

- Design Guide Supplementary Planning Document (SPD)

The relevant national policy and guidance is:

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

Planning considerations

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

- The principle of a new dwelling in this location;
- The effect of the proposal on the character and appearance of the street scene;
- The effect of the proposal on the residential amenity of nearby occupiers;
- The effect of the proposal on the highway network; and
- The effect on the air and water environment.

Planning assessment

The principle of a new dwelling in this location

The proposed new residential unit is situated within the urban area of Swadlincote, and within walking distance to shops, facilities, public transport nodes and other community services. It is located within a sustainable location. It is therefore considered that the principle of residential development in this location is acceptable and complies with policies S1, S2, S3 and S6 of the Local Plan.

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

There are no physical changes to the proposed building that would be noticeable in the street scene apart from a new entrance door. The proposal would therefore have a neutral impact on the character and appearance of the area and comply with policy BNE1.

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

There are properties to the rear. It is concluded that there could be some minor impact from additional noise and disturbance from normal domestic use, but this is set in the context of the use of the rear garden area by other flat users in the complex and noting that there are other residential occupiers in the vicinity, so this is not likely to result in materially detrimental impacts from normal domestic use.

The proposed building is closest to existing properties within the two-storey flat block. There is the potential for disturbance during the conversion works, although these are mainly internal and surrounded by the brick outer building. The works are mainly non-structural and internal fitting out. Nevertheless, it is reasonable that this be limited to normal daytime hours and limited at weekends to Saturday mornings. A condition limiting the burning of waste on the site, to protect residential amenity, is not reasonable given the limited extent of works necessary to convert the building.

Concerns have been raised regarding anti-social behaviour at the site. The nature of the use of the site and the residents may occasionally give rise to some concerns. However, the site is owned and managed by the Council, and the applicant has indicated that there are procedures in place to limit any potential detrimental impacts on others from residents placed within the premises. The existing 8 flats are in use and would continue to be used on the same basis.

The building concerned only has a small window on the front elevation and solid walls at the site. There is likely to be no detrimental impacts on neighbours from the use. There may be some additional disturbance from people coming and going, but any anti-social activities within the external environment would be monitored and controlled by the Housing Department and the Police. Noise disturbance can also separately be controlled through the Environmental Protection Act 1990 in the event of residents making unreasonable levels of noise at quiet times. It is therefore concluded that the proposal would comply with policy SD1.

The effect of the proposal on the highway network

There are no objections to the proposal from the County Highway Authority, who acknowledge that the building is already on the site attracting traffic from its use, and that the existing arrangements would not materially change.

The effect on the air and water environment

The proposal is a new unit of residential accommodation. There are no proposed changes to the foul water proposals as the toilet and sink are already in use within the building. There is potential for greater use of water. It is therefore appropriate to impose a condition to limit water usage to 110 litres a day. The proposal would thereby comply with Policy SD3.

It is also recommended that due to the desire to support the reduction in carbon emissions and achieve carbon neutrality by 2050, the dwelling should provide for an electric charging point facility so that future occupiers who may own an electric car can charge their vehicle from the property. It is recommended that a condition be imposed to secure this so to comply with policies S3 and INF2.

None of the other matters raised through the publicity and consultation process amount to material considerations outweighing the assessment of the main issues set out above, noting that conditions or obligations have been attached where meeting the tests for their imposition. Where relevant, regard has been had to the public sector equality duty, as required by section 149 of the Equality Act 2010 and to local finance considerations (as far as it is material), as required by section 70(2) of the Town and Country Planning Act 1990 (as amended), as well as climate change, human rights and other international legislation.

Recommendation

Approve subject to the following conditions:

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

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

2. The development hereby permitted shall be carried out in accordance with the Site Location Plan and Block Plan No. 04 dated 14 May 2020 unless as otherwise required by condition attached to this permission or following approval of an application made pursuant to Section 96A of the Town and Country Planning Act 1990.

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

3. Prior to the first occupation of the dwelling hereby approved, details of the replacement door and windows 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 materials.

Reason: To maintain the visual and environmental quality of the site and surrounding area.

4. 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.

5. During the period of construction, no ground, construction or fitting out works shall take place and no deliveries shall be taken at or dispatched from the site other than between 0730 and 1800 hours Monday to Friday and 0800 and 1300 hours on Saturdays. There shall be no construction works (except for works to address an emergency) or deliveries on Sundays or Bank Holidays.

Reason: To protect the residential amenities of nearby occupiers.

6. No solid fuel combustion appliance shall be installed within the development.

Reason: To protect the residential amenities of nearby occupiers.

Item No. 1.4

Ref. No. DMPA/2020/0567

Valid date: 26/06/2020

Applicant: Mr Andrew Bennett
South Derbyshire District Council (Housing)
Civic Offices
Civic Way
Swadlincote
DE11 0AH

Proposal: The erection of an extension and external alterations at 20 Tower Road, Hartshorne, Swadlincote, DE11 7EU

Ward: Woodville

Reason for committee determination

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

Site Description

The subject property is a semi-detached inter-war house within a street of similar properties. It has a hipped roof covered with plain clay tiles and is constructed from a red brick. A small garden exists to the front with further garden to the rear, overlooking farmland. Further post-war properties lie opposite.

The proposal

The application proposes a single storey extension of some 5 metres to create an accessible bedroom.

Applicant's supporting information

Other than the drawings, none supplied.

Relevant planning history

None.

Responses to consultations and publicity

None received.

Relevant policy, guidance and/or legislation

The relevant Development Plan policies are:

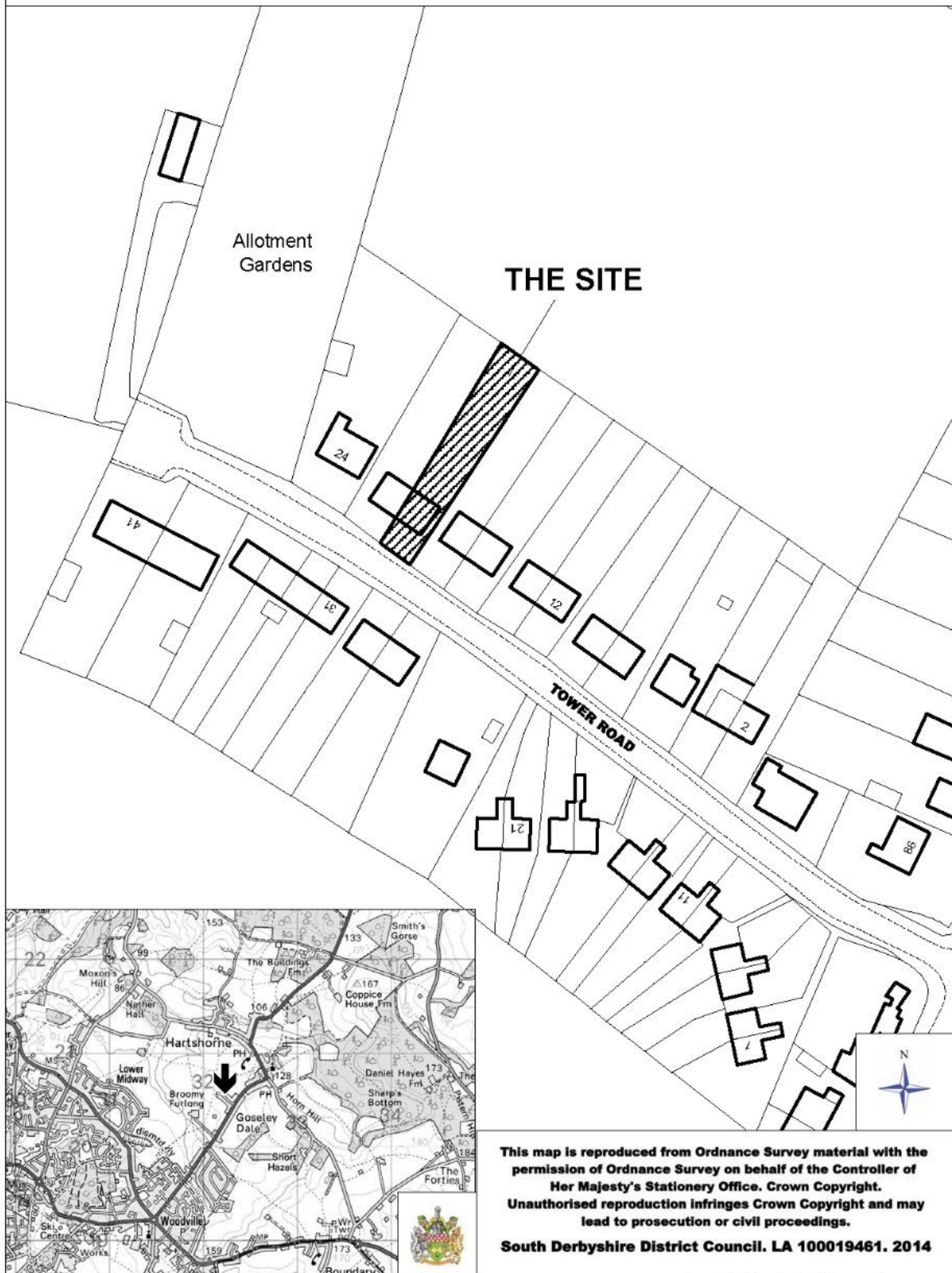
- Local Plan Part 1 (LP1): S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), SD1 (Amenity and Environmental Quality), SD4 (Contaminated Land and Mining Legacy Issues), BNE1 (Design Excellence), INF2 (Sustainable Transport),
- Local Plan Part 2 (LP2): BNE5 (Development in the Countryside), H27 (Residential Extensions and Other Householder 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

In taking account of the application 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:

- Design; and
- Amenity.

Planning assessment

Design

The rear extension would have minimal impact on the public realm and there would be no harm to the general character of the area in accordance with Policies BNE1 & H27. Some minor retaining wall works would need to take place to the rear to reflect the existing stepping up to the garden area.

Amenity

There would be glazed doors facing towards the garden fence with No 22 and there would be a degree of overlooking to a main window in the adjoining property. However, the doors would be some 2.6 metres from the boundary and if a section of the low fence were to be raised to screen height (1.8 metres) the impacts on the neighbours would not result in unreasonable loss of privacy. The necessary increased fence height could be secured by condition. In respect of all other neighbours the proposal is wholly compliant with SPD separation guidelines. The impacts on neighbours' living conditions would thus be acceptable and in accordance Policies SD1 & H27.

Mining legacy

The site lies in an area affected by previous coal mining activity. An appropriate informative, drawing attention to Coal Authority standing advice, would adequately safeguard this issue in accordance with Policy SD4.

None of the other matters raised through the publicity and consultation process amount to material considerations outweighing the assessment of the main issues set out above, noting that conditions or obligations have been attached where meeting the tests for their imposition. Where relevant, regard has been had to the public sector equality duty, as required by section 149 of the Equality Act 2010 and to local finance considerations (as far as it is material), as required by section 70(2) of the Town and Country Planning Act 1990 (as amended), as well as climate change, human rights and other international legislation.

Recommendation

Approve subject to the following conditions:

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

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

2. The development hereby permitted shall be carried out in accordance with drawing No. BMG 02 submitted with the application 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.

3. All external materials used in the development be as described in the application unless, prior to their incorporation into the development hereby approved, alternative details are first submitted to

and approved in writing by the Local Planning Authority pursuant to an application made in that regard, whereafter the approved alternative details shall be incorporated into the development.

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

4. Prior to the first habitable use of the extension hereby approved a fence or wall to a height of 1.8 metre shall be erected (or the existing fence shall be raised to that height) along the boundary with No. 22 Tower Road for a distance of at least 1.5 metres measured from the rear wall of the existing dwelling. The fence or wall shall thereafter be retained in situ with any replacement thereafter no less than 1.8 metres in height for a distance of at least 1.5 metres measured from the rear wall of the existing dwelling.

Reason: To protect the amenities and living conditions of adjoining occupiers.

Informatives:

- a. The proposed development lies within an area that has been defined by The Coal Authority as containing potential hazards arising from former coal mining activity. These hazards can include: mine entries (shafts and adits); shallow coal workings; geological features (fissures and break lines); mine gas and previous surface mining sites. Although such hazards are seldom readily visible, they can often be present and problems can occur in the future, particularly as a result of development taking place. It is recommended that information outlining how the former mining activities affect the proposed development, along with any mitigation measures required (for example the need for gas protection measures within the foundations), be submitted alongside any subsequent application for Building Regulations approval (if relevant). Your attention is drawn to The Coal Authority Policy in relation to new development and mine entries available at www.gov.uk/government/publications/building-on-or-within-the-influencing-distance-of-mine-entries. Any intrusive activities which disturb or enter any coal seams, coal mine workings or coal mine entries (shafts and adits) requires a Coal Authority Permit. Such activities could include site investigation boreholes, digging of foundations, piling activities, other ground works and any subsequent treatment of coal mine workings and coal mine entries for ground stability purposes. Failure to obtain a Coal Authority Permit for such activities is trespass, with the potential for court action. Property specific summary information on past, current and future coal mining activity can be obtained from www.groundstability.com. If any of the coal mining features are unexpectedly encountered during development, this should be reported immediately to The Coal Authority on 0345 762 6848. Further information is available on The Coal Authority website at www.gov.uk/government/organisations/the-coal-authority.

Item No. 1.5

Ref. No. DMPA/2020/0647

Valid date: 02/07/2020

Applicant: Andrew Churchill

Agent: Mr Darryn Buttrill
bi Design Architecture Ltd
79 High Street
Repton
Derby
DE65 6GF

Proposal: The retention of an existing boundary fence and the erection of a shed and replacement garage at 33 High Street, Repton, Derby, DE65 6GD

Ward: Repton

Reason for committee determination

This item is presented to the Committee as the applicant is Councillor Andrew Churchill.

Site Description

The application property is a Grade II listed late 16th Century detached house located within the conservation area of Repton, one of the Districts Key Service Villages. The property is a two-storey timber framed house that fronts High Street, the main thoroughfare through the village, the house has a large established garden to the rear.

The proposal

The proposal seeks planning permission to retain a length of new timber fencing erected along the northern boundary with 31 High Street which replaces a previous fence on a like for like basis which was beyond repair. The proposal also includes a new pitched roofed replacement garage in the same location and on the same footprint as the existing flat roofed garage, which is proposed to be demolished. A new single storey timber shed is proposed adjacent to the new timber fence. The proposed structures would be located to the east end of the garden at a distance from the rear of the listed host.

Applicant's supporting information

The supporting Design, Access and Heritage Statement sets out the design principles of the proposed development and considers that the proposals represent high quality design comprised of a bespoke garage, shed and retention of close boarded fencing. The scheme has been designed to incorporate local vernacular architecture, which would allow for the removal of an existing concrete panel flat roofed garage and its replacement with a traditional looking garage which sits well within the site and the surrounding area. The use of traditional details and palette of materials result in the proposals enhancing the site with the new garage seen as a positive change.

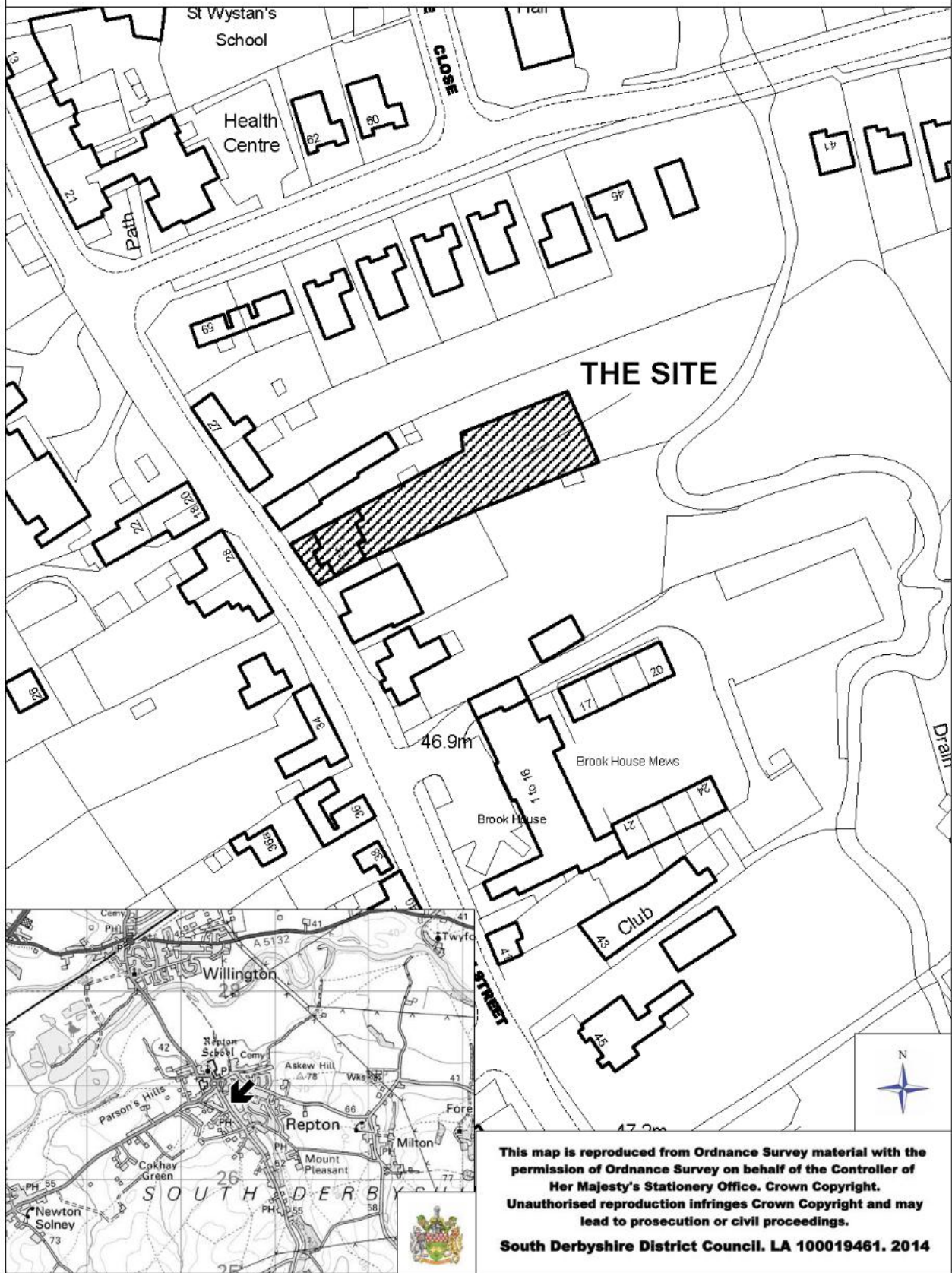
Relevant planning history

9/2017/0150/L – Clean and repair structural timber frame, infill panels and stone plinth, replacement windows to front (west) elevation and one windows to south elevation, install a gather hood and flexible liner to the ground floor fireplace flue and clean the internal exposed structural timbers – Listed Building Consent granted on 6th April 2017.

Responses to consultations and publicity

None received.

DMPA/2020/0647 - 33 High Street, Repton, Derby DE65 6GD



Relevant policy, guidance and/or legislation

The relevant Development Plan policies are:

- 2016 Local Plan Part 1 (LP1): Policy S2 (Presumption In Favour of Sustainable Development), Policy SD1 (Amenity & Environmental Quality), Policy BNE1 (Design Excellence), Policy BNE2 (Heritage Assets)
- 2017 Local Plan Part 2 (LP2): H27 (Residential extensions and other householder development), BNE10 (Heritage)

The relevant local guidance is:

- South Derbyshire Design Guide Supplementary Planning Document (SPD)
- Repton Conservation Area Character Statement (CACS) – Adopted 2013

The relevant national policy and guidance is:

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

Planning considerations

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

- The impact on the setting of the listed building and the character and appearance of the conservation area; and
- The impact on the living conditions of the adjoining properties and the general character and appearance of the area.

Planning assessment

The impact on the setting of the listed building and the character and appearance of the conservation area

The host property is a Grade II listed building located within the Repton Conservation Area. The building is one of a handful of timber framed houses in Repton and dates to the late 17th century, it is possible that the stone plinth of the building utilises stone robbed/salvaged from the old priory following the dissolution. All of the proposed works (as well as the retention of the fence) are at the rear of the property where they would not be visible from the public realm. The property has also had previous extensions at the rear, including single storey flat roofed elements which obscure much of the principal rear elevation of the building.

The fence to be retained replaces a former close boarded fence in the same position which was beyond repair. Replacement of such a fence needs planning permission by virtue of its location within the curtilage of the listed building. The effective change on the ground is neutral on the significance of the listed building, being effectively a like-for-like change.

The proposed shed would sit away from the listed building tucked into a small return in the site boundary where it would largely be hidden in views from the listed building. There is therefore be no objection to the provision of this small outbuilding and the proposed location would be discrete and sensitive within the site so as to avoid any adverse impacts on the rearward setting of the host listed building.

There is an existing detached double garage scale outbuilding on the site (a dated pre-fabricated structure with a flat corrugated sheet roof) which is nearing the end of its life. The proposal is for a replacement building in a similar position and of a similar footprint but in a more conventional form with a pitched roof. Whilst this would be taller than the current flat roofed structure there are a number of trees between it and the main house which would provide some screening of the structure. The rear of

the house also includes a significant single storey extension which hides a large proportion of the original timber framed building. As such there are no concerns with regard to the design, position and scale of the proposed replacement garage with its impact on the setting of the listed building considered by Officers (including the Councils Conservation officer) to be neutral. The extra height would add slightly to its impact but the improved design, detailing and materials would entirely compensate for this leaving the overall effect neutral and avoiding harm.

It is therefore concluded that the existing fence, proposed shed and proposed replacement garage would have no impact upon, and would thus preserve, the special character and appearance of the conservation area and the significance of the listed building as derived from its setting, being the objectives described as desirable within Sections 72 and 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990. As such the proposal would comply with the requirements of the NPPF and with the objectives of Policy BNE2 of the LP1 and BNE10 of the LP2 in that the setting of the listed building and the character and appearance of the conservation area would not be harmed.

The impact on the living conditions of the adjoining properties and the general character and appearance of the area

The replacement of the timber fencing along the northern edge of the site boundary with 31 High Street was carried out on a like for like basis as the former fencing was beyond repair. As such, the re-instatement of the fence has had no increased impact on the above-mentioned neighbour and the former privacy levels between their amenity spaces has been maintained in line with the Council's SPD.

The proposed single storey timber shed is a non-habitable structure and would be located adjacent to the new timber fencing that has already been erected. The proposed shed would be of a typical timber design and would have openings on its south elevation only which would face the amenity space of the host property. The erected fencing to the side and rear of the proposed shed would aid in maintaining the current privacy levels in line with SPD.

The proposed single storey replacement garage is also a non-habitable structure as it would be used for storage only and would be located in the same position as the existing flat roofed garage. Window and door openings in the proposed garage would be restricted to elevations that face the host property's amenity space with the rear (south) elevation that faces towards the site boundaries with 35 and 37 High Street being blank. Although the replacement structure would be taller than the existing garage, its roof ridge would be orientated east-west such that the roof would slope away from the boundary thereby minimising its visual and overshadowing effect on the amenity spaces of these identified neighbours in line with SPD guidelines.

The existing and proposed works are/would be confined to the rear garden of the property where no public views are available and as such the existing street scene and general character of the area would not be affected.

The proposal is therefore considered to be in accordance with the requirements of NPPF and with Policy BNE1 of the LP1 and Policy H27 of the LP2 in that the existing and proposed development would be of a scale and ancillary character in keeping with the garden setting of the host property and would not be unduly detrimental to the living conditions of adjoining properties or the general character of the area.

The proposal would conform to Policy SD1 of the LP1 in that it would not lead to adverse impacts on the environment or amenity of existing and futures occupiers within and around the proposed development.

None of the other matters raised through the publicity and consultation process amount to material considerations outweighing the assessment of the main issues set out above, noting that conditions or obligations have been attached where meeting the tests for their imposition. Where relevant, regard has been had to the public sector equality duty, as required by section 149 of the Equality Act 2010 and

to local finance considerations (as far as it is material), as required by section 70(2) of the Town and Country Planning Act 1990 (as amended), as well as climate change, human rights and other international legislation.

Recommendation

Approve permission subject to the following conditions:

1. The development hereby 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 submitted plans and supporting documents, received on 30th June 2020 and made valid on 2nd July 2020; unless as otherwise required by condition attached to this permission or following approval of an application made pursuant to Section 96A of the Town and Country Planning Act 1990.

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

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
9/2019/0299	Talbot Turf, Derby Road, Hilton	Hilton	Allowed (costs awarded to appellant)	Committee
DMPA/2019/1356	South Street, Melbourne	Melbourne	Dismissed	Delegated
9/2019/0725	Staker Lane, Mickleover	Etwall	Dismissed	Delegated

Appeal Decision

Site visit made on 20 July 2020

by Paul Singleton BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30th July 2020

Appeal Ref: APP/F1040/W/20/3246651

75 Derby Road, Hilton, Derby DE65 5FP

- 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 Talbot Turf/Talbot Farm Landscapes against the decision of South Derbyshire District Council.
 - The application Ref 9/2019/0299, dated 16 May 2018, was refused by notice dated 6 November 2019.
 - The development proposed is demolition of existing dwelling (Use Class C3) and nursery buildings (sui generis use) and construction of 9 light industrial/office buildings (Use Class B1c) with the creation of a new access to Derby Road and associated works at Talbot Farm, 75 Derby Road, Hilton.
-

Decision

1. The appeal is allowed and planning permission is granted for demolition of existing dwelling (Use Class C3) and nursery buildings (sui generis use) and construction of 9 light industrial/office buildings (Use Class B1c) with the creation of a new access to Derby Road and associated works at Talbot Farm, 75 Derby Road, Hilton in accordance with the terms of the application, Ref 9/2019/0299, dated 16 May 2019, subject to the conditions set out in the attached schedule.

Application for costs

2. An application for costs was made by Talbot Turf/Talbot Farm Landscapes against South Derbyshire District Council. This application is the subject of a separate Decision.

Procedural Matter

3. The original description of development set out in the application was amended by agreement with the Council. I have adopted the amended description in this decision.

Main Issues

4. The main issues in the appeal are:
 - (a) the effect on the character and appearance of the site and its surroundings;
 - (b) the likelihood of increased use of the restricted section of Derby Road, to the west of the appeal site, by HGVs as a result of the development; and
 - (c) the effect on highway safety.
-

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

Reasons

5. Although it may historically have been used as a plant nursery, the principal use of the site now appears to be for offices and the storage of vehicles, plant, equipment and materials for the appellant's commercial landscape contracting operations. With the exception of the garden to the 2 storey dwelling, the majority of the site is covered by buildings or hard standings and the three poly tunnels are now used for storage rather than for plant cultivation. The Council accepts that the site should be regarded as being in an existing business use with ancillary storage. I saw nothing on my site visit to contradict that conclusion.

Character and appearance

6. There is open land to the north and east but the site is fully screened from this land by tall and well established hedging and trees to both of these boundaries. The site has no visual or functional relationship with that open land and there are no views across the site into that land. It appears to have developed in an organic way with an unplanned arrangement of buildings, storage areas and space for the circulation of vehicles. The existing buildings are visually unattractive, with mainly portacabin type structures in the centre of the site and an assortment of generally poor quality storage/maintenance sheds to the rear. The two site accesses and a number of gaps in the frontage hedge afford open views from Derby Road of an extensive parking area in the front portion of the site and a large number of vehicles, plant (including large earth-moving equipment), machinery and materials stored in the yard.
7. The Council's contention that the site complements the largely rural character of the land to the north side of Derby Road in the village is misplaced. The site may have had such a character in the past but this has been substantially eroded by virtue of its current use and general appearance. In addition, planning permission has been granted for the extensive new residential development that is currently under construction to the north west and west of the site. With the exception of an area of open space forming part of the flood attenuation scheme for that proposal, the frontage along Derby Road to the west of the appeal site will be fully developed.
8. In medium distance views from the west, the hedge and conifers to the roadside boundary of the appeal site appear as a green frontage seen against the backdrop of other vegetation further to the east. However, on drawing closer, the commercial nature of the site's use becomes apparent as views of the large areas of parking and storage are opened up. For those entering Derby Road from the east, the vehicle parking and open storage occupy the centre of their view as they exit the roundabout. With the existing accesses and gaps, the boundary hedge provides only limited screening of the site and the activities on it as the viewer passes by on Derby Road.
9. The appeal proposal would result in a more compact and ordered form of development on the site, with buildings and their allotted parking spaces arranged around a central vehicle turning area and with one, single access from Derby Road. Access, parking and circulation areas would be finished with a permanent, sealed surface in place of the rough stone finish of the existing area of hardstanding. Although of varying size, the buildings would be of uniform design and appearance with a common palette of materials to their

external surfaces. This would bring a uniformity of appearance and a much increased sense of order to the site.

10. The use of contrasting colour cladding to the roller shutter doors and of glazing to the proposed office components of the buildings would break up and add visual interest to their front elevations. The proposed design is representative of modern small industrial/business units and would achieve an appropriate quality of development in this location. The removal of one of the access points and provision of enhanced landscape treatment, including formal tree planting along the front boundary and the filling of gaps in the existing hedge, would provide an attractive frontage and would restrict and filter views into the site.
11. Although formally outside of it, the site immediately adjoins the defined settlement boundary for Hilton, which is designated in the South Derbyshire Local Plan Part 1 (adopted 2016) (Local Plan) as a Key Service Village. Given this location on the edge of Hilton, the site's redevelopment for business or industrial use is consistent with Part A i) of Local Plan Policy E2 which states that the development of such sites will be supported. The proposal also derives support under Part A iii) of the policy as it comprises the redevelopment of existing industrial/business land. I note that the appellant intends to occupy 3 of the proposed 9 units but am not persuaded that this would equate to an 'expansion' of the existing business for the purposes of Part A ii) of the policy given that the company currently occupies the majority of the site.
12. Part B of Policy E2 requires that all development should be '*in scale*' with existing built development and should not give rise to undue impacts on the local landscape, natural environment or cultural heritage assets. In relation to these requirements, I consider that the site fits within the category of small development sites on the edge of a key service village referred to in paragraph 6.15 of the explanation to the policy. I also consider that the buildings would be small commercial units, targeted at the lower end of the market in terms of size requirements and at users who would be compatible with the site's location adjacent to a residential area.
13. As demonstrated in the appellant's evidence, the new buildings would be no taller than some of the existing and proposed houses nearby but I accept that scale is not measured by height alone. However, as the policy clearly contemplates, and provides positive support for both industrial and business development, I do not think the requirement that development should be '*in scale*' with its surroundings can, sensibly, be read as requiring that new buildings on such sites should be no larger than a residential property.
14. It would seem more appropriate to address this requirement in terms of whether the proposal is of an appropriate scale given its relationship with existing (and proposed) residential and other buildings in the immediate locality. With the site layout, eaves and ridge heights as proposed, the appeal scheme would achieve that outcome. The proposed layout and landscaping treatments would also be effective in minimising the visual impact of the new buildings and their potential effect on the outlook from houses on the south side of Derby Road.
15. The largest individual units would be arranged along the rear boundary of the site, at a considerable distance from the road frontage. The visual impact of Units 1-3 and Units 4 & 5 would be significantly reduced because it would be the gable ends rather than the front elevations of those buildings that face the

road. With Unit 3 set back some 6m from the site boundary, its gable elevation would be more than 30m from the nearest residential properties on Derby Road. This would provide adequate separation to avoid the new units having an overbearing or oppressive effect on the outlook from those houses. The separation distance between the new houses facing the eastern half of the site and the gable wall to Unit 4 would be considerably in excess of 30m and there would be no adverse effect on the outlook from those dwellings. The views of this end gable would be filtered by the enhanced landscaping to the site frontage and would represent an improvement over the views that these residents currently have of the parking and open storage within the existing yard area.

16. Overall, the proposed development would result in a positive enhancement in the character and appearance of the site and the contribution it makes to the visual amenity of this part of Derby Road. I consider that it would represent an appropriate form and quality of development at this end of the village and that it would not cause material harm either to visual amenity or to the character and appearance of the settlement. Accordingly, I find that the proposal complies with Local Plan Policy BNE1, which requires that all development should be well designed and related to its context.
17. The appeal scheme would result in the loss of 4 trees covered by the Tree Preservation Order.¹ Due to their location at the rear of the site these make a limited contribution to the amenity of the wider area and my observations on site support the findings of the appellant's arboricultural report as to the condition of these trees. Whilst their loss is to be regretted, I am satisfied that the other TPO trees on the site could be protected during the construction works and be retained within the development. The new landscaping proposed would provide some compensation for the loss of these existing trees and would not have a significant adverse effect on the landscape character of the area such as to give rise to any conflict with Local Plan Policy BNE4.
18. The Council has not objected to the proposal on cultural heritage grounds and adequate protection for nesting birds and other ecological interests could be secured by suitable planning conditions. In this context, and in the absence of any undue effect on the local landscape, I find that the proposal complies with and derives support from Policy E2.
19. Development that is permitted under Policy E2 is not listed in part i) of Policy BNE5 as one of the forms of development that is also permitted under that policy. This appears to be an omission since it is difficult to envisage how a proposal that is expressly supported by Policy E2 could be in conflict with other policies that seek to control development outside of the settlement boundaries. The proposal is, however, consistent with Policy E7 as this gives support to proposals that would diversify and extend the range of sustainable employment opportunities on land outside of settlement boundaries. In addition to the appellant's own accommodation requirements there is strong potential occupier interest and market demand for the proposed units has been confirmed by the Council's Economic Development Unit. There is, accordingly, good evidence that the development would achieve those objectives. As Policy E7 is listed in

¹ The South Derbyshire District (Land North of Derby Road, Hilton) Tree Preservation Order No. 475 (2017).

part i) of BNE5 it can be concluded that the proposal also complies with Policy BNE5.

Use of the restricted section of Derby Road by HGVs

20. Derby Road forms a secondary route through the village, with most traffic seeking to access its employment and residential areas using the Hilton Bypass. A maximum weight restriction of 7.5 tonnes has been introduced along this part of Derby Road, Main Street and Uttoxeter Road to discourage HGV traffic from using this route through the village. The weight restriction is clearly signed at the exit from the roundabout into Derby Road to the east of the site with the sign indicating that the limit applies "*except for access*". There is an equivalent sign at the western end of Uttoxeter Road and extensive traffic calming measures are in place along Main Street in the central section of this route.
21. The appeal site benefits from existing licences for HGVs to be stored and operated from the site and I saw that it is visited by large vehicles including low-loaders capable of carrying heavy plant. I have not been provided with any evidence that the existing use of the site has resulted in breaches of the weight restriction. I see no reason why the redevelopment proposals should have that outcome.
22. The Council has produced no evidence to demonstrate that there would be an increase in HGV movements as a result of the proposal or, even if it did have that effect, that drivers of those vehicles would wish to drive through the village. The new entrance to the site would be less than 100m from the roundabout and within 500m of the junction with the A50. This, in turn, provides east-west access across the sub-region and connects with other parts of the Strategic Road Network for travel north and south. Very few, if any, HGVs visiting the completed development are likely to have started their journey within the centre of Hilton and, even if they did, such movements would fall within the "*except for access*" provision within the weight restriction order. The large majority of HGVs visiting the site can be expected to travel there via the A50 and to use the A50 to get to their onward destination when leaving the site.
23. It is difficult to imagine why any HGV driver would not follow the shortest and most convenient route back to the A50 when the alternative, of travelling through the village centre, would be more difficult and slower because of the 30 MPH speed limit and traffic calming, and would involve the risk of incurring a penalty for breaching the weight limit. The chances of drivers opting to use that alternative in breach of the weight restriction would be very small and I find no evidence to substantiate the Council's concerns over this matter. Accordingly, I conclude that the proposal does not conflict with the requirement, in Local Plan Policy INF2, that travel generated by the development should not have an undue detrimental impact on local amenity.

Visibility Splays

24. The clear advice given in the Local Highway Authority's consultation response was that the requisite visibility splays at the site access are 2.4m x 101m to the south west and 2.4m x 71m to the north east and that these can be achieved within land controlled by the appellant. This was confirmed to members in the Planning Officer's report. The plan showing the visibility splays

was omitted from the original appeal documents but has subsequently been submitted and the Council has had the opportunity to comment on it.

25. Having examined the position on site I am satisfied that the visibility splays shown on that plan can be achieved within the site ownership. The splay to the south-west would require the removal of conifers to the front of the dwelling and the cutting back of other vegetation. There would be ample room for replacement and enhanced landscaping behind the visibility splay. The access proposals would not, therefore, result in any detriment to highway safety and no conflict with Policy INF2 arises in this regard. It may be helpful for signs to be erected at the site exit to advise HGV drivers to turn right out of the site. However, no harm to highway safety has been demonstrated so as to require that such mitigation is put in place.

Conditions

26. I have had regard to the Council's suggested conditions, as set out in its appeal statement and officer report, including the proposed pre-commencement conditions and to the various conditions recommended in the consultation responses to the application. The applicant has had the opportunity to comment on those suggested conditions and I have taken account of the matters raised in the appellant's final comments. In some of the conditions I have adopted Planning Inspectorate standard wording where I consider that this adds clarity.
27. Approval is granted in accordance with the application but, for the avoidance of doubt, I have attached a condition requiring that the development is carried out in accordance with the approved plans. In line with the findings of the ecological survey and comments of Derbyshire Wildlife Trust, conditions have been attached to require approval of a scheme for alternative swallow nesting sites and a risk assessment or method statement for the protection of any amphibians or reptiles found on the site, and for nesting surveys to be carried out before the removal of vegetation or buildings. All of these conditions are necessary to safeguard birds and other species that may be found on the site.
28. In the interests of maintaining and enhancing the site's biodiversity a condition has been attached to require the implementation of the measures identified in the Preliminary Ecological Appraisal. As a number of TPO protected trees and existing hedges are to be retained a scheme is required to ensure adequate protection of these trees and their identified root protection areas during the construction works. I have attached a condition that requires the approval of and adherence to such a scheme.
29. As detailed drainage proposals were not submitted with the application a condition is needed to require the submission and approval of those details to ensure adequate drainage for the development. For the same reason, conditions have been attached that require the developer to demonstrate where surface water would be discharged to and ensure no surface water runoff to the highway during the construction works.
30. Due to the risk of ground gas, a scheme for the monitoring of this and/or the prevention of ground gas ingress is required to ensure the safety of the development and adjoining properties. I have attached a condition that requires those measures. In the interests of minimising the risks to highway safety and of protecting the amenity of nearby residential properties during the

construction works, I have also attached conditions that require adequate provision for the storage of plant and materials, the parking and manoeuvring of vehicles, and for wheel washing facilities, and that restrict the hours within which construction works may be carried out.

31. To ensure an appropriate quality of development, and that the potential visual effects are as I have assessed them, conditions have been attached that require the prior approval of finished floor and ground levels and of the details of materials to be used in the external construction of the new buildings. In the interests of highway safety, conditions are also needed to ensure that the new vehicular access and visibility splays are completed and that existing accesses are closed off and made good. For the same reason, a condition has been attached that requires that the parking and vehicle turning areas are completed before the buildings are brought into use.
32. Although some details of the proposed landscaping were submitted with the application, I consider that a full and detailed scheme of hard and soft landscaping works is needed to ensure an appropriate quality of development and satisfactory screening of the completed scheme. Conditions have been attached to require the approval and implementation of those works. In the interests of ensuring the effective operation of the completed scheme and safeguarding the amenity of nearby residential occupiers, conditions have also been attached requiring the approval of arrangements for waste collection and recycling and a lighting strategy for the site.
33. The Council has suggested a condition relating to water consumption but the draft wording appears to relate to residential rather than commercial development. Neither have I been provided with a copy of Local Plan Policy SD3 which the Council cites as the policy justification for the proposed condition. In the absence of that information I am unable to conclude that the suggested condition meets the test of necessity set out in paragraph 55 of the National Planning Policy Framework. I have not included it in the schedule of conditions for these reasons.

Other Matters

34. A Neighbourhood Plan for Hilton has been approved for consultation but has not yet been submitted for examination. Its policies can, therefore, be afforded only very limited weight. Given my conclusions as to the effects on character, appearance and landscape of the site and its surroundings and on biodiversity, I do not consider that the proposal conflicts with draft Policies E4 or E5 of the Neighbourhood Plan. As the proposed units are for Class B1 use, these would fall within the scope of development envisaged in draft Policy B1. I note that the policy relates only to development within the settlement boundary but such development is also supported on sites immediately adjoining a Key Service Village by Local Plan Policy E2.

Conclusions

35. For the reasons set out above, I conclude that the proposal complies with the relevant policies of the Local Plan and with the development plan as a whole. I have not identified any significant adverse effects or other considerations which would support a refusal of planning permission contrary to the provisions of the development plan. Accordingly, I conclude that the appeal should be allowed

and that permission should be granted in accordance with the conditions set out in the attached schedule.

Paul Singleton

INSPECTOR

Schedule of Conditions for Appeal Reference APP/F1040/W/20/3246651

- 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:
 - 1385 - 001 - Site Location Plan
 - 1385 - 003 Rev B - Site Plan as Proposed
 - 1385 - 004 Rev B - Units 1-3 Plan and Elevations
 - 1385 - 005 Rev A - Units 4 & 5 Plan and Elevations
 - 1385 - 006 Rev A - Units 6 & 7 Plan and Elevations
 - 1385 - 007 Rev A - Unit 8 Plan and Elevations
 - 1385 - 008 Rev A - Unit 9 Plan and Elevations
- 3) No development, including preparatory works, shall commence until a scheme for the creation of suitable alternative nesting sites for swallows and a timetable for the provision of such measures, has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved scheme.
- 4) No development, including preparatory works, shall commence until a risk assessment/method statement for amphibians and reptiles, including details of any Reasonable Avoidance Measures deemed to be appropriate, has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved risk assessment/method statement.
- 5) No development, including preparatory works, shall commence until a biodiversity enhancement strategy has been submitted to and approved in writing by the local planning authority. The details shall include (but not exclusively relate to) the biodiversity enhancement measures outlined in sections 5.17 and 5.20 of the Preliminary Ecological Appraisal report prepared by Absolute Ecology dated January 2018. The approved measures shall be implemented in full as construction proceeds and be completed prior to the first occupation of the development and shall thereafter be maintained for the duration of the development.
- 6) No development, including preparatory works, shall commence until protective fences have been erected around all trees and hedgerows shown to be retained on the approved plans. Such fencing shall conform to best practice as set out in British Standard 5837:2012 and ensure that no vehicles can access, and no storage of materials or equipment can take place within the root and canopy protection areas as identified in Drawing No. THL-0757 included within Tree Heritage Limited's Arboricultural Report dated 24 May 2019. The fences shall be retained in situ until all ground and construction works have been completed, with the protected areas being kept clear of any building materials, plant, debris and trenching and with the existing ground levels maintained. No entry to those protected areas shall be permitted during the construction programme other than for the carrying out of the approved arboricultural or landscape works.

- 7) No removal of trees, hedges, scrub, buildings or structures shall take place between 1 March and 31 August inclusive unless a survey to assess the nesting bird activity on the site has been carried out and a scheme to protect nesting birds has first been submitted and approved in writing by the local planning authority. No trees, hedges, scrub, buildings or structures shall be removed between 1 March and 31 August other than in accordance with an approved bird nesting protection scheme.
- 8) No development shall take place until a detailed design and associated management and maintenance plan for the surface water drainage for the site has been submitted and approved in writing by the local planning authority. The detailed proposals shall be in accordance with the principles outlined within the following documents:
 - (a) *'Flood Risk Assessment Business and Commercial Development of Land at Talbot Nursery, Derby Road, Hilton for Talbot Turf'* dated April 2019, including any subsequent amendment or update to the document approved by the Flood Risk Management Team; and
 - (b) DEFRA's Non-Statutory Technical Standards for sustainable Drainage Systems (March 2015).The approved drainage scheme shall be completed in accordance with the approved details prior to the first occupation of any of the buildings hereby permitted.
- 9) No development shall take place until a detailed assessment has been submitted to and approved in writing by the local planning authority, to demonstrate that the proposed destination for surface water accords with the drainage hierarchy as set out in paragraph 80 reference ID: 7-080-20150323 of the planning practice guidance.
- 10) No development shall take place until a scheme has been submitted to and approved in writing by the local planning authority to demonstrate how additional surface water run-off from the site will be avoided during the construction phase. The applicant may be required to provide collection, balancing and/or settlement systems for these flows. The approved system shall be brought into operation to the satisfaction of the local planning authority before the commencement of any works which could lead to increased surface water run-off from the site.
- 11) No development shall take place before a scheme has been submitted to and approved in writing by the local planning authority, either for the prevention of ground gas ingress or for the monitoring of the site for the presence of ground gas, with a subsequent risk assessment to be carried out in accordance with a scheme approved in writing by the local planning authority. The submitted scheme shall meet the requirements in Box 4, Section 3.1 of the Council's *'Guidance on submitting planning applications for land that may be contaminated'* and shall include relevant mitigation where necessary. The preventative or mitigation measures approved shall be incorporated in the construction of the development and, upon completion, verification of their correct installation shall be submitted to and approved in writing by the local planning authority prior to the first occupation of any of the buildings hereby permitted.
- 12) Throughout the construction phase space shall be provided within the site for the storage of plant and materials; site accommodation; the

manoeuvring, loading and unloading of goods vehicles; the parking and manoeuvring of employees' and visitors' vehicles. The designated spaces shall be laid out and constructed in accordance with detailed designs that have first been submitted to and approved in writing by the local planning authority and shall, thereafter, be maintained free from any impediment and kept available for their designated use throughout the construction period.

- 13) No ground, construction or fitting out works shall take place outside of the hours of 0730 and 1800 hours on Mondays to Fridays and 0800 and 1300 hours on Saturdays. No construction or fitting out works shall be carried out on Sundays or public holidays except in an emergency.
- 14) Facilities for the cleaning of vehicle wheels shall be provided and retained within the site for the duration of the ground and construction works. All construction vehicles shall have their wheels cleaned before leaving the site so as to prevent the deposition of mud and other extraneous material on the public highway.
- 15) No works for the installation of drainage and utility services for the development shall commence until details of the finished floor levels of the proposed buildings and finished ground levels of the completed development have been submitted to and approved in writing by the local planning authority. The development shall be constructed in accordance with the approved levels.
- 16) No above-ground works for the construction of any building hereby permitted shall be commenced before full details, specifications and samples of the materials to be used in the external construction of the buildings have been submitted to and approved in writing by the local planning authority. The works shall be carried out in accordance with the approved details.
- 17) None of the buildings hereby permitted shall be occupied until the new access to Derby Road has been formed and completed in accordance with the details shown on drawing No. 1385-003B.
- 18) The approved access shall not be brought into use, other than for construction traffic, until the requisite visibility sightlines have been provided as shown on Drawing 1385-101A Visibility Plan. For the avoidance of doubt, these shall extend from a point 2.4 metres from the edge of the carriageway (measured along the centreline of the access) for a distance of 120 metres to the south west and a distance of 71 metres to the north east (measured along the nearside carriageway edge). The approved visibility sightlines shall, thereafter, be maintained free of any object or obstruction greater than 1m in height (0.6m in the case of vegetation) relative to the adjoining nearside carriageway channel level for the lifetime of the development.
- 19) None of the buildings hereby approved shall be occupied until space has been laid out within the site, in accordance with drawing No 1385-003B, for 54 cars to be parked and for goods and other vehicles to turn so that they may enter and leave the site in forward gear. These facilities shall, thereafter, be maintained and retained exclusively for their designated use at all times.

- 20) No part of the development shall be occupied until details of arrangements for the storage of refuse and recycling bins and the collection of waste have been submitted to and approved by the local planning authority. The development shall be carried out in accordance with the agreed details and the approved facilities shall be retained for their designated purposes at all times thereafter.
- 21) No part of the development shall be brought into use until full 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;
 - i) a statement setting out the design objectives and how these will be delivered;
 - ii) trees and hedges to be retained;
 - iii) new trees/hedges and other soft landscape works;
 - iv) means of enclosure and retaining structures;
 - v) boundary treatments;
 - vi) hard surfacing materials;
 - vii) an implementation programme.
- 22) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the first occupation of any of the building hereby permitted or the completion of the development whichever is the sooner. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 23) Prior to the installation of any external lighting, a detailed lighting strategy (designed in accordance with the guidelines issued by the Institute of Lighting Engineers, or any equivalent guidelines which may supersede such guidelines) which shall include precise details of the position, height, intensity, angling and shielding of lighting, as well as the area of spread/spill of such lighting, has been submitted to and approved in writing by the local planning authority. All lighting shall be installed in accordance with the approved strategy and thereafter retained in conformity with the approved details.
- 24) Within 28 days of the new vehicular access being brought into use, the existing vehicular accesses to Derby Road shall be permanently closed with a physical barrier and the existing vehicle crossovers shall be reinstated as footway and verge in accordance with a scheme that has first been submitted to and approved in writing by the local planning authority.

End of Schedule of Conditions

Costs Decision

Site visit made on 20 July 2020

by Paul Singleton BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30th July 2020

Costs application in relation to Appeal Ref: APP/F1040/W/20/3246651 75 Derby Road, Hilton, Derby DE65 5FP

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Talbot Turf/Talbot Farm Landscapes for a full award of costs against South Derbyshire District Council.
 - The appeal was against the refusal of planning permission for demolition of existing dwelling (Use Class C3) and nursery buildings (sui generis use) and construction of 9 light industrial/office buildings (Use Class B1c) with the creation of a new access to Derby Road and associated works at Talbot Farm, 75 Derby Road, Hilton.
-

Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. The Government's Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. Local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the appeal, for example by unreasonably refusing an application or by a failure to produce evidence to substantiate each reason for refusal on appeal.
3. The word "*unreasonable*" in relation to the behaviour of any party is used in its ordinary meaning, as established by the courts in *Manchester City Council v SSE & Mercury Communications Limited*.¹ Unreasonable behaviour in the context of an application for an award of costs may be either:
 - Procedural - relating to the process; or
 - substantive - relating to the issues arising from the merits of the appeal.
4. The application is made on substantive grounds and seeks a full award of costs on the grounds that the refusal of planning permission was unreasonable and that the appeal should not have been necessary.
5. Where decisions on planning applications are made by members of the Council's Planning Committee those members are not bound by the

¹ *Manchester City Council v SSE & Mercury Communications Limited* (1998) JPL 774

recommendations made or advice given by their professional officers. It is open to members to reach a decision contrary to the officer recommendation provided that they set out clear reasons for the decision that they take. There is, therefore, no justification for an award of costs simply on the grounds that the Committee did not follow the officer recommendation or the advice given by the Local Highway Authority.

6. In relation to Reason for Refusal (RfR) 1, reaching a conclusion as to whether the proposal complies with the relevant Local Plan policies requires an assessment to be made of the site's context and surroundings and the effect of the proposal on the character and appearance of those surroundings. This is a matter of planning judgment. In reaching its judgement that the site complements the largely rural character of the land to the north of Derby Road, the Council relies upon the members' assessment of the site's relationship with the open land lying to the north and east.
7. I disagree with that assessment. I also consider that, in forming its view as to the prevailing character of the area to the north of Derby Road, the Council did not give appropriate consideration to the current use and appearance of the site or to the extant planning permission for residential development on the land to the north-west and west. However, I accept that the assessment of that character and the effect of the proposal on it is a matter of judgement. Accordingly, I find that the Council did not act unreasonably in refusing the application on this ground or in its defence of RfR1 in its appeal statement.
8. RfR2 has two parts, the second relates to access visibility splays and the first concerns the possible use of Derby Road to the west of the appeal site by HGVs. In respect of the second part, the clear advice in the highway authority's consultation response was that, following a recent site visit, it was "*evident*" that the necessary visibility splay to the north east, could be achieved over land controlled by the applicant. That is not a matter of planning judgement but of technical advice that the highways officer was best placed to provide to the Committee. That advice was relayed to members in the Officer Report.
9. The members did not have a plan in front of them showing the required splay. However, that omission could easily have been dealt with by means of a planning condition requiring the submission and approval of such a plan. PPG advises that refusing planning permission on grounds that could be dealt with by conditions risks an award of costs where it is concluded that a suitable condition could have allowed the development to go ahead. That is my conclusion in this case. I therefore find that the Council acted unreasonably in refusing the application on that ground.
10. The first part of RfR 2 relates to the Council's concerns that the proposal could result in an increased number of HGVs visiting the site and travelling on Derby Road through the village centre in breach of the weight limit restriction. This issue appears not to have been raised by the local highway authority and was not mentioned in its consultation response. Concerns about a possible future breaching of the weight restriction were among the comments from interested parties as summarised in the Officer Report. However, that matter was not addressed further in the report. I have seen nothing to indicate that the Committee had any information as to what number of HGV movements would be generated by the development or how this would compare with the existing use of the site.

11. On this basis, I am led to conclude that the Committee had no evidence either to inform or support its assertion that the proposal *"would attract a higher number of HGVs and vehicle movements to the site"* as stated in RfR2. In addition, although it may not be incorrect to say that HGVs could freely move to the site through the village, there was no evidence in front of the Committee to indicate that this was likely or that it should be expected. In including this part of RfR 2 in its decision the Council was guilty of making vague or generalised assertions about the impact of the proposal that are not supported by any objective evidence. I therefore find that the Council acted unreasonably in refusing permission on this ground.
12. The statement that the proposal would introduce a greater number of HGVs is repeated in the Council's appeal statement. Again, no evidence has been submitted to substantiate that assertion or to demonstrate why drivers of HGVs visiting the site would be likely to travel through the village in breach of the weight limit restriction. Hence, no evidence has been presented as to why there should be a need for any measures to control those flows as referred to in paragraph 3.5 of the Council's appeal statement. This failure to produce evidence to substantiate this part of RfR 2 also amounts to unreasonable behaviour on the Council's part.
13. I find that the grounds set out in RfR2 were not justified and that a refusal of planning permission on these grounds was unreasonable. I also find that the Council acted unreasonably in its failure to substantiate that reason for refusal in its appeal submissions. As a consequence, the applicant has incurred wasted and unnecessary expense by reason of the need to address and respond to RfR2 in their appeal submission and final comments. A partial award of costs is, therefore, warranted.

Costs Order

14. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that South Derbyshire District Council shall pay to Talbot Turf/Talbot Farm Landscapes, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in respect of the need to address and respond to the second reason for refusal as set out in the Council's decision notice; such costs to be assessed in the Senior Courts Costs Office if not agreed.
15. The applicant is now invited to submit to South Derbyshire District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Paul Singleton

INSPECTOR

Appeal Decision

Site visit made on 26 May 2020

by J Williamson BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd June 2020

Appeal Ref: APP/F1040/D/20/3245729

2 South Street, Melbourne, Derbyshire DE73 8GB

- 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 Humphries against the decision of South Derbyshire District Council.
 - The application Ref DMPA/2019/1356, dated 11 November 2019, was refused by notice dated 22 January 2020.
 - The development proposed is the replacement of existing UPVC windows.
-

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the proposed replacement windows would preserve or enhance the character or appearance of the Melbourne Conservation Area (CA).

Reasons

3. The statutory duty in Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that I pay special attention to the desirability of preserving or enhancing the character or appearance of a CA, which is therefore a matter of considerable importance and weight. In addition, the National Planning Policy Framework (the Framework) advises that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.¹
4. The site is located towards the northern edge of the CA. The Melbourne Conservation Area Character Statement (2011) (MCACA) provides a detailed analysis of the CA, where it is described as one of the best-preserved, important settlements in Derbyshire. The buildings are of high architectural quality and the CA has the highest concentration of Listed Buildings (LBs) in the district. I consider the architectural details of the buildings, including the windows, and the quality to which they have been maintained, repaired or replaced, to contribute substantially to the significance of the CA.

¹ Paragraph 193 National Planning Policy Framework

5. The appeal building is a red brick, two-storey residential property that fronts South Street. It is attached to number 63 Derby Road; the properties are positioned at right-angles to each other, with number 63 fronting Derby Road. The window openings, cills, lintels and windows currently installed on the properties have a uniform appearance. Most of the windows proposed to be replaced on the appeal property, 7 of them, are in the main elevation fronting South Street; another 2 are in the end elevation that faces Derby Road.
6. There are a range of traditional window types in the buildings within the CA, reflecting the historical development of Melbourne. Within the area surrounding the appeal site, a substantial proportion of the properties, though not all, have traditional windows installed, made of timber. Many of which are vertical or horizontal sliding sash windows of Georgian style, with narrow dividing bars between glass panes of varying sizes.
7. I consider that the proposed windows, which are described on the application form as UPVC sash effect with Georgian bars, would detrimentally alter the appearance of the property to an extent that would harm the character and appearance of the CA. As noted above, such development is required at minimum to preserve the character or appearance of the CA. I appreciate that the existing window frames are UPVC and therefore replacements made of the same material would not in itself be harmful. However, although I have not been provided with measurements of the existing frames, the proposed frames appear to have, overall, a wider outer frame and wider rails. Although Georgian bars and small glass panes are characteristic of the area, I consider the mock design of the proposed internal glazing bars would draw attention to the chunkier frames and rails and the UPVC material. As such, I conclude that the proposed replacement windows would substantially harm the appearance of the building, thereby eroding the contribution made by the quality of architectural details to the significance of the CA.
8. I acknowledge that the windows as proposed would ensure continuity throughout the property, with all windows displaying the same top and bottom ratio, thereby creating a more uniform appearance. However, within the context of the site, I do not agree with the appellant's suggestion that this would be more aesthetically pleasing. The appellant also notes that, comparing the frame to glass ratio, the increase in bulk of the frames would be limited, with a reduction of glass around 6%. Although this percentage of reduction is relatively small, I consider that the existing windows, as a baseline, detract from the character and appearance of the property and the CA. As such, any further harm would inevitably make the existing situation worse. For these reasons I conclude that the proposed replacement windows would fail to preserve or enhance the CA. I note that the proposed windows would have the highest security rating. However, I do not consider that this would outweigh the substantial harm to the character and appearance of the CA I have identified.
9. The proposal would therefore not accord with policies BNE2 of the South Derbyshire Local Plan Part 1 (2016), BNE10 of the South Derbyshire Local Plan Part 2 (2017), or the heritage and conservation policies in the Framework. These policies seek to protect, conserve and enhance heritage assets and their settings.

Conclusion

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

J Williamson

INSPECTOR

Appeal Decision

Site visit made on 24 June 2020

by K Savage BA MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 July 2020

Appeal Ref: APP/F1040/W/20/3250303

White Lodge, Staker Lane, Mickleover, Derby DE3 0DJ

- 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 A Nazir against the decision of South Derbyshire District Council.
 - The application Ref 9/2019/0725, dated 3 July 2019, was refused by notice dated 13 March 2020.
 - The development proposed is 2x replacement dwellings, replacement entrance gates and boundary treatments and change of use of paddock to garden.
-

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the proposal would represent an appropriate location for housing, having regard to relevant local and national policy relating to rural housing and the effect of the proposal on the character and appearance of the surrounding countryside.

Reasons

3. The appeal site is located outside of any defined settlement and therefore within the countryside for planning purposes. The development plan for South Derbyshire comprises the Local Plan Part 1 (13 June 2016) (LP1) and the Local Plan Part 2 (2 November 2017) (LP2). Policy H1 of LP1 sets out the settlement hierarchy for the district. Part 5 states that in rural areas, only development of limited infill and conversions of existing buildings will be acceptable.
4. Policy BNE5 of LP2 permits development outside of settlement boundaries subject to certain criteria, including where allowed for by other policies. This includes Policy H24, which permits replacement dwellings in rural areas subject to criteria relating to the form, bulk and siting of the proposed dwelling and its effect on the landscape. However, the proposal would not find support in principle under Policy H24 as it would increase the number of dwellings on site, rather than simply replace one.
5. The proposals would conflict with the relevant criteria of Policy H1 and criterion iv) of Policy BNE5, as the existing buildings would be replaced in their entirety, and the proposal could not be regarded as infill development given the nearest dwellings are some distance away along Staker Lane. The proposal would not be essential to a rural based activity or unavoidable outside of settlement boundaries, and so would conflict with criteria ii) and iii) of Policy BNE5.

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

6. The National Planning Policy Framework (the Framework) at Paragraph 78 states that to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. I have had regard to the planning permission¹ granted in 2018 for the change of use of the annexe to a separate dwelling, but which has not been implemented. Given the distance of the site from the nearest settlement, future occupants would be heavily reliant on the private car to access services and facilities, and I consider the dwellings would amount to 'isolated homes', which Paragraph 79 indicates should be avoided, unless certain exceptions apply. This includes the subdivision of an existing residential dwelling, which applies to the permitted scheme, but not the appeal scheme. The permitted scheme is supported under the Framework as its isolated location would be justified by the existing buildings being re-used. In contrast, the appeal scheme would create entirely new dwellings in the open countryside, some distance from the nearest settlement. Moreover, in comparison to the existing buildings, the proposed dwellings would be considerably larger and suited to larger family occupation, with consequent potential for greater numbers of car journeys than the permitted scheme. Given their different nature and scale, I do not regard the permitted scheme as justification in and of itself for a development of isolated homes which would be in conflict with the Framework.
7. The existing buildings comprise a two storey dwelling in white painted render, connected to another similar two storey building by a single storey link, with a single storey outbuilding attached to the rear and agricultural buildings beyond. The dwelling and annexe are traditional in appearance and together with the agricultural buildings and surrounding trees and fields the site has an demonstrably rural character which fits with the surroundings. The existing front-to-back layout means that the agricultural buildings are set well back into the site and are not prominent in views from the roadside.
8. In contrast, the proposed dwellings and their detached garages would stand side by side across the site, a layout which would present the entirety of development to the road in a more prominent and expansive layout. The footprint of the proposed dwellings is given as 551m², a significant increase of some 44% on the footprint of the existing dwelling and annexe (382m²). In addition, the height of the dwellings would be substantial, rising 1.6 metres higher than the existing buildings, but with considerably greater and more visible massing at high level compared to the existing structures. The spread of this massing across the width of the site would result in a substantial increase in the scale of development compared to the existing structures, even accounting for the potential removal of the agricultural buildings at the rear.
9. The appellant argues that if permitted development (PD) rights were exercised, extensions could be added to the existing buildings which would amount to a potential cumulative footprint exceeding that proposed. I have had regard to the case law² referred to by the appellant and recognise that the use of PD rights as a fallback position is a potential material consideration. However, in this case I do not have a lawful development certificate or other information before me to establish whether any potential extensions would in fact be PD, nor any plans showing the extensions and their potential visual impact or whether they would actually provide a functional layout or achieve a similar

¹ Council Ref 9/2018/0956

² R (Zurich Assurance) v North Lincolnshire Council [2012] EWHC 3708 (Admin)

standard of accommodation to that sought through this appeal. This aside, it is indicated that single storey extensions would be constructed which, even if PD, are unlikely to have the same visual impact as the two storey dwellings proposed. Therefore, I am not persuaded that the evidence before me demonstrates that the fallback position is either a realistic possibility or would be demonstrably more harmful than the appeal scheme, and I afford it only limited weight.

10. In terms of wider impact on the landscape, the site is well screened to the northern side by tree cover, but is more open to the southern side where it adjoins an open field and lower and more intermittent roadside hedgerows permit views into the site. The scale of the dwellings would be exacerbated by the steeper roof pitches, tall gables and double height feature windows to the front elevations. Moreover, the garages would appear as two storey structures due to the inclusion of large dormers with full height windows on the front elevations which would add to the development's prominence on the site. Even allowing for screening from landscaping, the height and massing of the dwellings and their extensive coverage of the site means they would be visible on approach from the southern side of Staker Lane where the site boundary is open to the adjacent field and the roadside hedgerow is lower. The proposed design, together with the creation of a new access and large driveway areas, would result in the dwellings having a rather suburban character which would contrast harmfully with the overwhelmingly rural surroundings.
11. For these reasons, the proposal would not provide a suitable location for housing and would cause significant harm to the rural character and appearance of the area. There would be conflict with Policies BNE5 and H24, and also with Policies BNE1 and BNE4, which expect new developments to respond to their context and have regard to valued landscape characteristics. Consequently, the proposal would conflict with the overall settlement strategy set out under Policy H1 of LP1, and would further conflict with the aims the Framework to promote sustainable rural development and to avoid isolated homes in the countryside.

Other Matters

12. The proposal was not refused in respect of its effect on highway safety, ecology or the living conditions of neighbouring occupants. However, the absence of harm in these respects is a neutral factor in the planning balance.

Planning Balance and Conclusion

13. I recognise that the proposal would add to the housing supply, and would generate some economic benefits through construction of the dwellings and subsequent spending in the local economy by future occupants. However, given the size of the proposal, these benefits would attract only limited weight.
14. The benefits of the proposal, taken together, would not amount to material considerations which would outweigh the significant harms identified and consequent conflict with the development plan, to which I afford significant weight, and would not justify a decision being made other than in accordance with the development plan, taken as a whole. Therefore, the appeal is dismissed.

K. Savage INSPECTOR

REPORT TO:	PLANNING COMMITTEE	AGENDA ITEM: 5
DATE OF MEETING:	25th AUGUST 2020	CATEGORY: Delegated
REPORT FROM:	HEAD OF PLANNING AND STRATEGIC HOUSING	OPEN
MEMBERS' CONTACT POINT:	LUCY MITCHELL EXT. 8758 LUCY.MITCHELL@SOUTHDERBYSHIRE.GOV.UK	DOC:
SUBJECT:	SECTION 106 VARIATION AT ROSLISTON ROAD SOUTH, DRAKELOW	REF: 9/2014/0948
WARD(S) AFFECTED:	LINTON	TERMS OF REFERENCE:

1.0 Recommendations

- 1.1 That the Committee approves the request to amend the Section 106 Agreement (S106) by means of a Deed of Variation (DoV) to allow for the staircasing of the shared ownership dwellings from the current 80% equity threshold to full ownership (100%), by inclusion of a requirement for these dwellings to be sold back to the Affordable Housing Provider (AHP), or by nomination to another AHP, for a period of six months prior to allowing sale on the open market.
- 1.2 That the Committee delegate authority to the Strategic Housing Manager to agree the finer detail and wording of the obligations to be secured under the DoV.

2.0 Purpose of Report

- 2.1 To inform the Committee of the Designated Protected Areas (DPAs) within the District and how these can impact and influence affordable housing delivery, in particular the site at Rosliston Road South (9/2014/0948).

3.0 Background

- 3.1 Members may recall that the site, known as Rosliston Road South, was granted outline planning permission at appeal in February 2017. The scheme was proposed as a Local Plan complaint scheme providing 30% affordable housing. A reserved matters application was subsequently approved in June 2018 providing details of the development of 71 dwellings, with a 30% affordable housing contribution totalling 21 affordable dwellings, of which 14 were for affordable rent and 7 for shared ownership.
- 3.2 The development site sits within the Parish of Drakelow, and as such is covered by the protection afforded under the Housing and Regeneration Act 2008 which allows the Secretary of State to designate 'protected areas', which were subsequently set out in the Housing (Right to Enfranchise) (Designated Protected Area) (England) Order 2009.

- 3.3 The purpose of a DPA is to protect shared ownership homes being lost to the open market where they would be difficult to replace, predominantly rural areas. The exempted areas are often defined by parish or entire local authority areas and mirror the rural settlements exempted from the Right to Acquire in the 1990s. Within South Derbyshire most of the parishes within the District are covered by separate DPAs, with only Swadlincote and the Parishes of Church Gresley and Newhall being excluded from this protection.
- 3.4 The Order either:
- restricts the staircasing (the equity available to purchase) to a maximum of 80% ownership; or
 - in instances where staircasing is permitted to acquire more than 80% (i.e. up to full ownership), there is an obligation on the AHP, or a designated alternative AHP, specified in the lease that commits them to repurchase the property when the owner wishes to sell.
- 3.5 Shared ownership has been designed to help households to take a step on the ladder of homeownership when otherwise purchasing a home would be out of their means. Shared ownership purchasers qualify via financial eligibility and other criteria as assessed by the Help to Buy Agency:
- 3.6 The original S106 agreement for the site contained a clause to restrict the staircasing of shared ownership dwellings to a maximum purchase of an 80% equity share. The Strategic Housing Team has been approached by the AHP for this site, Midland Heart, to lift this restriction for the seven shared ownership dwellings to allow staircasing to full equity purchase, instead replacing this with a restriction at resale (the second of the restrictions allowed for within the Order) for Midland Heart, or another AHP, to purchase the property from the seller thus returning the dwelling back into an AHP's shared ownership stock.

4.0 Discussion

- 4.1 The Strategic Housing Team supports the request made by Midland Heart. The restrictions on staircasing to a maximum 80% equity share limits the availability of mortgages for most households, meaning some buyers will find it harder to secure a mortgage, or where this is possible, it will be at less favourable interest rate creating barriers to low income households getting onto the housing ladder.
- 4.2 In addition, the aim of retention of shared ownership homes created by the legislation is no longer an issue in some of the areas of the District that are covered by the DPA status due to the scale of historic (after 1990), current, and planned development in the area, indicating that shared ownership homes would not be hard to replace. Drakelow is one of these such areas given the proposed residential development at Drakelow Park, with land allocated for a sustainable urban extension through the Local Plan for 2,239 dwellings along with the close proximity to the urban area of Burton upon Trent and the continued development of affordable homes within the Parish of Stapenhill.

- 4.3 The Strategic Housing Team would not normally advocate changes which open affordable housing up to the possibility of this not being retained in perpetuity. However, on balance, the alternative potentially reduces the ability for the AHP to deliver the shared ownership dwellings on this site or could make the shared ownership dwellings more expensive for prospective purchasers by subjecting them to a smaller pool of mortgage providers and potentially higher interest rates. The proposal is allowed within the existing legislation and the risk of losing the homes to the open market is mitigated by the second clause being enacted. The related period proposed at six months is considered reasonable given current market conditions.

5.0 Financial Implications

- 5.1 There are no financial implications associated to the Council for this change as Midland Heart would the Council's legal fees associated with pursuing the DoV.

6.0 Corporate Implications

- 6.1 None noted. A 30% affordable housing contribution would be made from the development as originally agreed and the risk of losing the shared ownership homes to the open market has been mitigated against by adding in the second clause.

7.0 Community Implications

- 7.1 A policy compliant affordable housing contribution would still be made from the development as originally agreed so to secure the appropriate mix of housing tenures to support the local community.

8.0 Background Information

- a. Section 106 Agreement:
<https://planning.southderbyshire.gov.uk/ApplicationDetail.aspx?Ref=9/2014/0948>
- b. Deed of Variation (carrying forward the 2014 obligations to a revised layout):
<https://planning.southderbyshire.gov.uk/ApplicationDetail.aspx?Ref=9/2017/0887>

REPORT TO:	PLANNING COMMITTEE	AGENDA ITEM: 6
DATE OF MEETING:	25th AUGUST 2020	CATEGORY: Delegated
REPORT FROM:	HEAD OF PLANNING AND STRATEGIC HOUSING	OPEN
MEMBERS' CONTACT POINT:	ELEANOR OVERTON EXT. 5748 ELEANOR.OVERTON@SOUTHDERBYSHIRE.GOV.UK	DOC:
SUBJECT:	VIABILITY OF RESIDENTIAL DEVELOPMENT ON LAND AT SK2529 8189 (ADJACENT TO THE MANDARIN CHINESE RESTAURANT), EGGINGTON ROAD, HILTON, DERBY	REF: 9/2016/0162
WARD(S) AFFECTED:	HILTON	TERMS OF REFERENCE:

1.0 Recommendations

- 1.1 That the Committee approves an amendment to the Section 106 agreement (S106) by means of a Deed of Variation (DoV) to accept total financial contributions of £224,118 along with the provision of 6 affordable houses on site, 3 being for social rent and 3 for shared ownership (option C in paragraph 4.7 below).
- 1.2 That the Committee delegate authority to the Head of Planning and Strategic Housing to agree the finer detail and wording of the obligations to be secured under the DoV.

2.0 Purpose of Report

- 2.1 An approach has been made to the Council under the 'mutual agreement' allowances of section 106A of the 1990 Act, it being less than 5 years since the agreement was signed. This report considers the reasons why the approach has been made and the recommendations above are proposed.

3.0 Background

- 3.1 Members may recall that the site was granted outline planning permission on appeal in February 2017 (following refusal of application ref. 9/2016/0162). The scheme was proposed as a Local Plan complaint scheme providing 30% affordable housing and developer contributions totalling £303,981, to be directed towards education and play and open space provision.
- 3.2 A reserved matters application was subsequently approved in September 2019. Since September 2019, particulars associated with all pre-commencement conditions have been approved.

- 3.3 The original S106 agreement contained six schedules, three of which required the undertaking of works, the payment of financial contributions or the provision of infrastructure. These are summarised thus:

Second Schedule – Open Space

This schedule required the provision of onsite open space in accordance with the submitted details and triggers. (also identified within this schedule)

Third Schedule – Financial Contributions

This schedule identified that financial contributions would be sought towards education, built facilities, open space and outdoor sports facilities and set out the specific triggers.

Fourth Schedule - Affordable Housing

This schedule sets out the affordable housing requirements along with triggers for its provision. The development required 30% affordable housing which equated to 10 dwellings, 8 being for social rent and 2 for shared ownership.

4.0 Discussion

- 4.1 During the reserved matters application, a viability case was submitted. However, this was not pursued to resolution.
- 4.2 A further viability assessment has now been submitted which has been independently assessed by the District Valuer. This identifies that on the basis of the agreed design, build and abnormal costs, the development would not be able to withstand the full requirement of S106 contributions or affordable housing provision from the values that could be reasonably achieved from the site.
- 4.3 Since the S106 was originally agreed in 2017, the County Education Authority has confirmed that due to Primary School demand being met by the newly constructed school in Hilton, there would no longer remain the justification to request this element of the education contribution.
- 4.4 More specifically the (revised) education contribution of £158,940.72 would go towards secondary and post-16 requirements at John Port Spencer Academy. The analysis of the current and future projected number of pupils on roll, together with the impact of approved planning applications show that the normal area secondary school would not have sufficient capacity to accommodate the 6 secondary and 3 post-16 pupils arising from the proposed development.
- 4.5 The built facilities contribution of £122 per bedroom would go towards either an extension to the scout hut at Peacroft Lane or phase 2 extension works at Hilton Village Hall. The open space contribution of £373 per bedroom would go towards play facilities at Hilton Village Recreation Ground and the outdoor sports facilities contribution of £220 per bedroom would go towards either the Mease Playing Fields or the bike pump track at Hilton Village Hall.

- 4.6 On this basis, the total S106 contributions have been reduced from £303,981 by £79,793 to £224,188. The District Valuer has undertaken the assessment on account of this revised amount and it remains the case that the development would not be viable on the basis of the whole package of contributions.
- 4.7 Notwithstanding this, there are four alternative scenarios whereby the development could support a certain level of developer contributions and/or affordable housing, and these merit serious consideration:
- A. delivery of 10 affordable houses on site, on the basis of 5 being for social rent and 5 being for shared ownership, but on the basis the development could not support any other S106 contributions;
 - B. provision of a financial contribution of £435,964 to enable delivery of affordable housing elsewhere within the administrative area of the Council, but on the basis the development could not support any other S106 contributions;
 - C. provision of the full requirement of S106 contributions (£224,118) along with the provision of 6 affordable houses on site, 3 being for social rent and 3 for shared ownership; or
 - D. provision of the full requirement of S106 contributions (£224,118) along with a financial contribution of £214,001 to enable delivery of affordable housing elsewhere within the administrative area of the Council.
- 4.8 Policy INF1 of the Local Plan identifies that for development that is otherwise in conformity with the plan, but generates a requirement for infrastructure will normally be permitted if the necessary on and off-site infrastructure required to support and mitigate the impact of a development is either (i) already in place or (ii) secured.
- 4.9 Policy H21 of the Local Plan (part 1) states that the Council will secure up to 30% of new housing development as affordable housing on sites of over 15 dwellings. In terms of the tenure split, this should be in the region of 67% social rental housing and 33% affordable rented accommodation (as set out within the Strategic Housing Market Assessment (January 2020)).
- 4.10 Consideration of the required developer contributions and affordable housing was undertaken by the Inspector as part of the 2017 appeal decision. The Inspector concluded that the contributions sought met the identified legal tests and so were necessary to mitigate the impacts of the development. In relation to affordable housing, the proposal for 30% on-site provision weighed heavily as a positive material consideration within the overall planning balance.
- 4.11 In relation to development viability, the Planning Practice Guidance (PPG) sets out that the weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case. As the application site was unallocated, there is no previous viability information relating to it. The costs associated with the development have only been realised as a result of more detailed work undertaken as part, and following approval, of the reserved matters submission.

- 4.12 The viability information provided by the developer has been independently assessed and it has been confirmed that it would not be viable for the development to provide the full package of contributions and affordable housing, but that it could support a revised package. Whilst it is acknowledged that the associated benefits of the development would therefore be reduced in this regard; overall the disadvantages on housing delivery associated with non-delivery of the site are considered to be greater. On balance, therefore, a development which delivers a reduced level of contributions is considered preferable.
- 4.13 On accepting the above, it therefore falls to be considered which of the identified scenarios would be most suitable taking into account the applicable planning policy and local circumstances.
- 4.14 The Strategic Housing Officer has provided comments on the alternative options and provided useful background information to substantiate their recommendation. They have advised that, historically, affordable housing delivery in the Ward of Hilton has been significantly compromised by viability constraints, with the most recent example of this being at the former Hilton Depot development (off The Mease), which on average delivered only 7% affordable housing across the three phases, down from a target of 30%.
- 4.15 It has also been advised that the Ward of Hilton already has a lower than District average percentage of affordable homes (5% of the homes in Hilton are affordable in comparison to 10% across the District), and while the proportion of privately rented homes are slightly higher in the Ward than the District average (16% compared to 13%), the rents charged are often significantly in excess of the local housing allowance. As such, people on lower incomes who cannot afford to purchase a home would also struggle to afford to rent within the area putting greater demand on the existing affordable housing provision.
- 4.16 Considering housing need for rented accommodation from the Council's housing register, there are between 50 and 70 households looking to live in the Ward of Hilton. The development of the housing mix on this site was negotiated between the Developer and Planning and Strategic Housing Officers with this need in mind. The development at a full affordable housing contribution of 30% would have delivered a range of property types from one-bedroom flats, the ground floor having a level access shower to suit someone with a disability or mobility issues, two and three-bedroom homes, through to a four-bedroom house in order to house larger families in need of accommodation in the area (given the scarcity of provision of the latter, waiting times for these types of homes in this area can be excessive). It was also negotiated that the affordable homes would meet Nationally Described Space Standards, meaning their occupancy can be maximised to best meet housing need.
- 4.17 Accepting less than 30% delivery on this site would only seek to increase the disparity between the different tenure types in the Ward, it is therefore the recommendation of the Strategic Housing Officer that the maximum amount of affordable housing should be sought (option A) to deliver as close as possible to the required amount of affordable housing provision.

- 4.18 Whilst the affordable housing need within the area is significant, so too are the pressures on education and good quality and sufficient recreational facilities, and in the appeal decision the Inspector considered all of the identified contributions as necessary to make the development acceptable.
- 4.19 On this basis a more balanced approach to the split of contributions is recommended. Option C is therefore considered a more reasonable and preferable option. Whilst noting that this would result in 4 affordable units less than option A and that the tenure split would be 50/50, the full education and recreation contributions would be secured. On balance this is considered an acceptable compromise and is reflective of Corporate Plan aims to secure necessary infrastructure requirements to support development.
- 4.20 In respect of options B and D, whilst these vary in their suitability, both options propose a commuted sum towards affordable housing elsewhere within the District, which is not considered suitable. As set out within the supporting text to Policy H21, off-site financial contributions are the least preferable option for the delivery of affordable housing and should not be encouraged. Whilst such contributions can be combined with other similar contributions, there is no guarantee in terms of the location of the provision, which would be governed by land availability. There is also no certainty that either affordable dwellings or land would become available for purchase. Furthermore, if used towards site development, a large proportion of the contribution would be attributed towards architectural and professional fees, meaning that when taking into account the volatile nature of the property market, in reality the sums suggested would likely equate to between 2 and 4 affordable housing units - potentially far less.

5.0 Conclusions

- 5.1 The obligations set out above are proposed so as to ensure the impacts of the development are appropriately mitigated, and whilst the percentage of affordable housing would be reduced in this case, some benefits for the local community in this regard would remain. On balance, whilst there would be some conflict with Policy H21 this is considered marginal and the material considerations in favour of the development are considered to override this harm.

6.0 Financial Implications

- 6.1 The endorsement of the above recommendation would ensure that Corporate projects relating to sport and recreation and affordable housing delivery would be supported.
- 6.2 The Council's legal fees associated with pursuing a DoV would be covered by the developer.

7.0 Corporate Implications

- 7.1 Approval of the recommendation set out above would support the delivery of an approved housing site which has been included within the Council's calculations relating to housing land supply. If the variation to the S106 is not agreed, it may compromise the delivery of the whole site, reducing the available housing supply.

- 7.2 The proposal would contribute towards the key aims of the Corporate Plan including the measure to enable the delivery of housing across all tenures to meet Local Plan targets. Furthermore, it would ensure the improvement of infrastructure to meet the demands of growth, again in line with a Corporate Plan measure.

8.0 Community Implications

- 8.1 The principle of development has been established through approval of the outline and reserved matters applications and the required public consultation has been undertaken. Delivery of the scheme would contribute positively towards the social dimension of sustainable development through the provision of market housing, and more specifically would help address an identified local need in regard to the provision of affordable housing.
- 8.2 By securing the financial obligations set out, the communities created and impacted upon would be able to access suitable education and recreation facilities.

9.0 Background Information

- 9.1 The following background documents are available to view at the following link:

<https://planning.southderbyshire.gov.uk/ApplicationDetail.aspx?Ref=9/2016/0162>

- a. Existing section 106 Agreement:
- b. Developer's viability appraisal
- c. District valuer's viability appraisal report