

Date: 17 September 2018

Dear Councillor,

**Planning Committee**

A Meeting of the **Planning Committee** will be held in the **Council Chamber**, Civic Offices, Civic Way, Swadlincote on **Tuesday, 25 September 2018 at 18:00**. You are requested to attend.

Yours faithfully,



Chief Executive

To:- **Conservative Group**

Councillor Mrs Brown (Chairman), Councillor Mrs Coe (Vice-Chairman) and Councillors Ford, Harrison, Muller, Stanton and Watson

**Labour Group**

Councillors Dr Pearson, Shepherd, Southerd and Tilley

**Independent / Non-Grouped Members**

Councillors Coe and Tipping

## **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 - 46**

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

- 5** 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.
- 6** To receive any Exempt questions by Members of the Council pursuant to Council procedure Rule No. 11.

# **REPORT OF THE STRATEGIC DIRECTOR** **(SERVICE DELIVERY)**

## **SECTION 1: Planning Applications** **SECTION 2: Appeals**

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

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## 1. PLANNING APPLICATIONS

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

Reference	Item	Place	Ward	Page
9/2017/0893	1.1	Aston	Aston	5
9/2018/0472	1.2	Swadlincote	Swadlincote	22
9/2018/0615	1.3	Church Gresley, Newhall, Swadlincote	Church Gresley Stanton & Newhall Swadlincote	27

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

**Item** 1.1

**Ref. No.** 9/2017/0893/NU

**Applicant:**  
**Mr Matthew O'Brien**  
**C/O Agent**

**Agent:**  
**Mr Philip Brown**  
**Philip Brown Associates Ltd**  
**74 Park Road**  
**Rugby**  
**CV21 2QX**

**Proposal:** **THE CHANGE OF USE OF AGRICULTURAL LAND FOR USE AS RESIDENTIAL CARAVAN SITE FOR 6 GYPSY FAMILIES, INCLUDING THE ERECTION OF TWO AMENITY BUILDINGS, LAYING OF HARDSTANDING AND ACCESS IMPROVEMENTS ON LAND AT SK4229 2454 SHARDLOW ROAD ASTON ON TRENT DERBY**

**Ward:** **ASTON**

**Valid Date** 14/09/2017

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

The item is presented to Committee at the request of Councillors Watson and Coyle as local concern has been expressed about a particular issue, and that the Committee should debate the issues of the case which are finely balanced.

#### **Site Description**

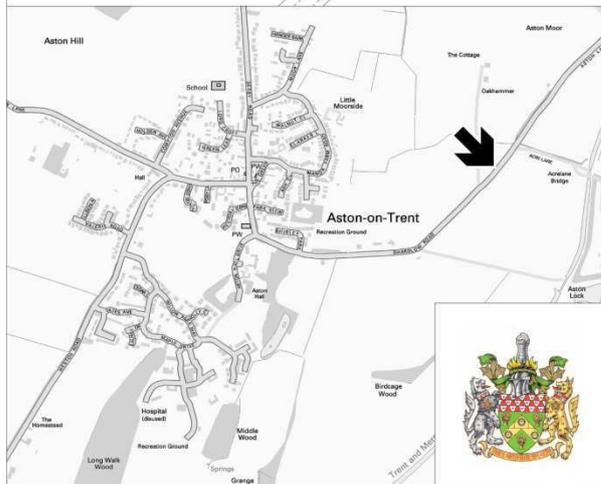
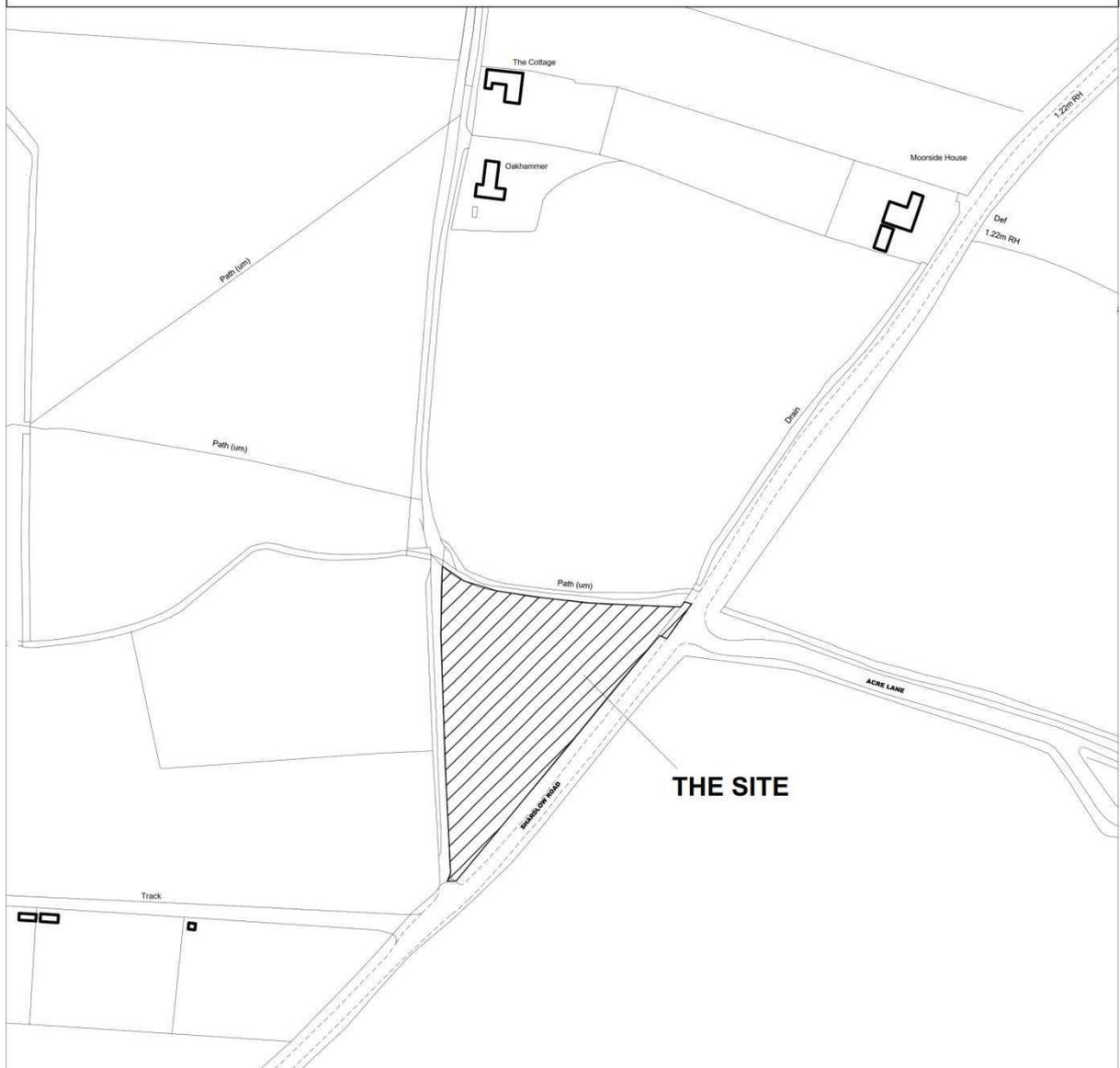
The application site is located within the open countryside, to the east of Aston on Trent. The field the subject of this application is triangular in shape and currently in agricultural use. The field is to the western side of Shardlow Road, and this south eastern boundary of the site comprises a mature hedgerow with a number of hedgerow trees. The northern boundary is also marked by a hedgerow beyond which there is a small watercourse with another hedge and Public Right of Way beyond (Aston on Trent Footpath No 6). The eastern boundary of the site by contrast is formed by a post and wire fence. Another Public Right of Way (Aston on Trent Footpath No 8) runs along the eastern boundary of the site along an access track beyond which there is another mature hedgerow forming the adjacent field boundary.

#### **Proposal**

The application seeks permission for the change of use of land to provide 6 Gypsy pitches, and the erection of two amenity buildings. Each pitch would be able to accommodate two caravans (with no more than one static caravan per pitch) and parking for two vehicles. Vehicular access is proposed via the existing field access to the north-east of the site.

The pitches are proposed along the eastern boundary of the site behind the existing hedgerow with the site owner's pitch located along the western boundary of the site. The amenity buildings would provide kitchen, laundry and bathroom facilities in one building with shower and toilet facilities in the other. The buildings are proposed in red brick with a slate roof. The area proposed for the siting of the caravans and buildings would be surfaced in

9/2017/0893 - Land at SK4229, Shardlow Road, Aston on Trent DE72 2AQ



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

permeable stone. The remainder of the field is to be retained as a grass paddock enclosed by timber post and rail fencing.

The proposals include two areas of new landscaping in the form of tree/shrub planting, one to the south of the site access, and one to the southern corner of the site extending along the western boundary.

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

A Design & Access Statement has been submitted which describes the proposal and the layout of the site. The need for the communal building containing toilets and showers is to avoid the necessity for site residents to use toilets and showers within their caravans for cultural reasons. The site access and visibility splay provision is considered to be suitable for the site, with a vehicle turning area for refuse and emergency vehicles provided within the site.

The proposals being single storey in height are not considered to be prominently or obtrusively located, and are not considered to have an unacceptable impact upon the character or appearance of the surrounding area. The site is considered to be reasonably well screened by the roadside hedgerow and the proposals include extensive tree and shrub planting to close off views.

The site is not considered to be 'away from' an existing settlement, located 600m from Aston on Trent, and as such the site is not isolated for the purposes of the Planning Policy for Traveller Sites (PPTS) and the site is considered to be an appropriate location for a traveller site in principle. The proposal is considered to comply with the requirements of the PPTS; noting the need for sites in rural and semi-rural locations to provide soft landscaping and positively enhance the environment.

The statement goes on to consider that there is a significant unmet need for gypsy sites in South Derbyshire, and with no allocated sites the need for sites is not being met. In addition the report considers that the Council is unable to demonstrate a five year supply of deliverable land for gypsy sites and as such is reliant on the development management system to satisfy unmet need. In addition, the proposal is considered to fully comply with the requirements of policy H22 of the local plan.

A Geophysical Survey of the site has been undertaken, which concluded that despite the sites proximity to a varied and expansive landscape of historical occupation, very little of archaeological potential was detected. However, as two anomalies to the eastern part of the site were detected additional investigations are recommended.

A Speed Survey was undertaken at the site in both directions i.e. northeast bound and southwest bound. The survey was undertaken between Thursday 9 November 2017 and Wednesday 15 November and identified mean average speeds of 43.2 mph northeast bound and 45.8 mph southwest bound. The 85<sup>th</sup> percentile speeds (51.7 mph northwest and 54.6 southwest bound) demonstrates that the achievable visibility splays of 2.4m x 160m are suitable for the site access in accordance with Manual for Streets.

### **Planning History**

None relevant to the current application.

### **Responses to Consultations**

Environmental Health has no comments on the proposal.

The Environment Agency has not formally commented but refers to their standing advice.

Derbyshire County Flood Risk has no comments and refers to their standing advice.

The Highway Authority considers that the achievable visibility splays of 2.4m x 160m are suitable, and achievable given the results of the speed survey undertaken at the site. As such there is no objection to the proposal on highway safety grounds subject to conditions requiring the provision of visibility splays, the provision of on-site car parking and any gates (or other barriers) to be set back at least 15m from the highway boundary.

Derbyshire County Planning Authority (Minerals) does not wish to raise any concerns regarding the safeguarding of mineral resources.

The Derbyshire County Development Control Archaeologist notes that the site is located around 30m from the remains of the Aston cursus and other associated cropmark features. Following a geophysical survey of the site it is considered that trial trenching of the site could be adequately secured by condition and there are no objection subject to such a condition being imposed.

Historic England does not wish to offer any comments.

### **Responses to Publicity**

Aston on Trent Parish Council objects to the proposal on the following grounds:

- a) The site is not linked to the village by a footpath;
- b) The road is subject to a national speed limit, with no street lighting;
- c) The visibility splay for the site is a concern, especially with additional traffic flow from recent developments;
- d) Grazing horses require water and shade, no provision has been made for this;
- e) The development with hardstanding represents significant domestication and would be harmful to the countryside;
- f) The development would not be locally inspired and would not add value to the landscape and village character;
- g) The loss of high grade agricultural land;
- h) Concern that the land lies on a flood plain;
- i) GP services are overstretched, no buses pass the site;
- j) Specialist support for the schools will be required if the families are transient.

Shardlow Parish Council objects to the proposal for the following reasons:

- a) Increase in flooding due to run-off from the tarmac drive;
- b) Loss of agricultural land;
- c) Road safety due to gravel lorries traversing the road frequently;
- d) Increased burden on doctors and schools;
- e) Reference to the recent refusal of 9/2017/0503 as this property is next door and the proposal would set a precedent for the area.

281 objections have been received, including from SAVE (Save Aston and Weston Village Environments) raising the following concerns/points:

#### Principle

- a) The site is outside the settlement boundary.
- b) The GTAA suggests that South Derbyshire needs 14 sites between 2014-2019 6 have already been fixed, and the other 8 can be found in the time remaining this application is premature;

- c) Policy H22 requires the allocation of traveller sites, which was adopted last year to say the Council is doing nothing is wrong;
- d) Government Policy states that site should be limited in the open countryside and where possible brownfield sites should be used, which should be well planned with soft landscaping. This application meets none of these criteria;
- e) As the traveller community is changing and choosing to live in mobile homes which are near permanent buildings not envisaged by legislation this application should be judged on the same criteria as permanent houses;
- f) It would be more economic and green friendly to use an existing brown site;
- g) In the LP2 600 new dwellings have been allocated including in Aston, SDDC should consider other villages before more dwellings in Aston;
- h) The proposal does not comply with policy H22 as it would damage the character of the area and would not integrate well with the existing community;
- i) The proposal would constitute the loss of best and most versatile land;
- j) Being less than 600m from permanent dwellings contravenes policy and denotes an inappropriate site;
- k) The proposal does not promote peaceful and integrated co-existence between the site and local community given it is less than 600m distance from residential settlements;
- l) As the site is not allocated this brings in to question the purpose and validity of the plan and will undermine public trust in the planning system;
- m) This represents undesirable 'ribbon development';
- n) This is little different in principle to permanent dwellings;
- o) The site is prime agricultural land which would be lost forever;
- p) Whilst gypsy places are needed it is understood that cross/authority numbers are being achieved at Hemington (North Leicestershire) and Derby City within the radius of this site and this negates the requirement for more pitches;
- q) This business development is outside the settlement boundary;
- r) Is there a significant need for sites like this in South Derbyshire?
- s) Comments on the Governments policy for Traveller Sites;
- t) The Council can demonstrate in excess of a 5 year housing supply of housing land;
- u) The fact that the Council have approved gypsy pitches at 28% of the requirement in 30% of the time means that there has been success in approving sites;

#### Environmental

- a) Aston, Weston and Shardlow will soon be connected, not rural farming areas of individual character;
- b) The loss of fertile and versatile land would be a disaster for the local community;
- c) The caravans and community blocks would not be conducive to the look of our village;
- d) No details of the proposed planning is provided and no survey of the hedge has been undertaken;
- e) No provision has been made for waste storage or collection;
- f) Policy BNE4 states that development which impacts on local landscape should be mitigated. The proposal considers the impact from the highway but not across the fields, as a minimum suitable trees and hedges should be planted;
- g) It is vandalism to cover a green field in hardcore and brick;
- h) Concern at potential 'fly-tipping';
- i) Impact on the 'striking' view in to the centre of the village from London Road, and will be prominent from most views within Shardlow;
- j) Gross overdevelopment of a relatively small site;
- k) Impact on the village landscape and integrity linking villages;
- l) The site is on a floodplain and gets heavily waterlogged;
- m) At only 600m from housing in Aston this will impact on permanent dwellings;
- n) The nearby canal gets heavily waterlogged;

- o) The cumulative effect of this and other developments on the village environment;
- p) If the hedge to the site is maintained as on the opposite side of the road then the caravans will be visible and spoil the approach to the village;
- q) Damage to the character of the area. Both Aston and Shardlow are rural villages with conservation areas;
- r) Potential contaminated discharge in to the nearby watercourse;
- s) The site is near Witches Oak Water Nature Reserve;
- t) The site will ruin the beauty of walking in the countryside;
- u) Visual blight on the canal area;
- v) The amenity and wash block will impact on the character and openness of the area;
- w) The hardstanding would be suburban in style, and there would be significant domestication of this open land which would be harmful to the character of the area;
- x) Increase in air and noise pollution;
- y) Landscaping should be done first, allowed to grow than the application should be considered in 5 to 7 years as permanent structures;
- z) A retrospective application adjacent to the site was rejected as not being in-keeping with the rural area. The amenity block and caravans is also not in keeping with the rural area;
- aa) Concern at the impact of the proposed drainage, with insufficient details submitted;
- bb) Concern at potential noise generated by generators on-site;
- cc) No accompanying ecological reports accompany the application and the proposal has the potential to disturb habitats;

#### Highway safety

- a) Unsafe access on to narrow road;
- b) Lack of a hard surfaced public footpath linking the site to the village;
- c) Aston village centre can take no more traffic;
- d) No street lighting in the area;
- e) Caravans manoeuvring in to the site will create a hazard to other road users;
- f) Poor visibility at the site especially problematic due to the national speed limit;
- g) This will add to the extra traffic from recent permissions and the crematorium;
- h) The current bus services for Aston are inadequate;
- i) The access is in a dangerous position opposite the entrance to the quarry frequently use by heavy goods vehicles;
- j) The visibility splay is nowhere near 160m and is no more than 100m which falls below the highway requirements;
- k) Concern at children having to walk along the grass verge;
- l) Insufficient road distance to safely overtake cyclists, and recently a young mother with a double buggy was walking along the road. The Council should complete the path from Aston to Shardlow to avoid a fatality;
- m) Danger that refuse lorries would have to reverse across Shardlow Road;

#### Services

- a) Aston Primary School is already overcrowded;
- b) The Doctors is overcrowded;
- c) Impacts on the local shop;
- d) Lack of public transport facilities;
- e) General increased pressure on all services;
- f) Are the developers paying for the services to be connected to the site?
- g) Are the Council going to collect the bins?
- h) There are no street lights in the area which is a safety hazard;

#### Other

- a) There are archaeological sites in the vicinity of Aston and these need to be properly surveyed before any development takes place;

- b) The proposal is for 12 caravans not 6 as described in the application;
- c) What is there to stop 12 families residing on the site;
- d) The application is not clear whether this is for long-term residents or those who move on after a short stay;
- e) The generation of rubbish from the site;
- f) The proposal is not conducive to a middle class Derbyshire village;
- g) No discussions with the local community of Planning Authority;
- h) The toilet facilities are insufficient for 6 families;
- i) The kitchen block shows a bathroom, which should be included within the toilet block not where food is stored;
- j) Concern at personal safety;
- k) Concern at potential failure of drainage facilities;
- l) Impact on biodiversity;
- m) The site is much larger than needed for 6 caravans and amenity and it represents the first stage of a larger planned development;
- n) Impact on the value of houses in the village;
- o) Aston residents pay high taxes to live in the village, why should gypsy travellers be exempt from paying equivalent taxes and land purchase fees as per every other resident;
- p) Crime has risen in the village by 40% in the last year. If this development does ahead who will provide additional funds for 24/7 policing to ensure the safety of villagers;
- q) I hope the Council will lower council tax if this goes ahead!;
- r) Impact on standard of living and business operations;
- s) This could result in 50+ people on the site if the plans get the go-ahead;
- t) We as residents pay the Council Tax so should have a better say!;
- u) Proposing to house children so close to a hazardous environment (the quarry) would be highly irresponsible;
- v) Will this business development be subject to business tax?
- w) Will this be subject to S106 funding?
- x) This could open the gates for the Richborough and Gladman sites to appeal on the basis of equality of treatment;
- y) Concern at the impact of developing the site on the amenities of the gypsies due to the adjacent footpath;
- z) The site has the potential to end up like Dale Farm, with no police presence in the area;
- aa) The Derby Telegraph recorded an article explaining how residents supported this. This is not the case;
- bb) The land dedicated for the grazing of horses is insufficient in horse welfare terms for even one horse;
- cc) The watercourse to part of the site represents a danger to young children;
- dd) Any commercial activity on the site would be a major concern;
- ee) This would completely ruin the existing bridlepaths in the area;
- ff) Whilst the travelling community have historically made significant contributions to the area, with Shardlow developed out of the transport of goods via canal. However, the site in question is in the wrong location;
- gg) This proposal would seriously impair quiet and peaceful enjoyment of retirement for older residents;
- hh) A copy of a newspaper article detailing a stolen caravan has been submitted.
- ii) There is a danger that there could be overspill as happened Dale Farm in 2011, as this sprang up next door to a small legal one.

A letter of support has been received which states that the proposal is a great idea for communities which seem stuck in another generation and which will hopefully see new families in the village soon.

A letter has also been received from Mrs Heather Wheeler MP who objects to the proposal based on the access, the amount of parking proposed, the probable disruption in the area, and the lack of pavement all of which make this an unacceptable site.

## **Development Plan Policies**

The relevant policies are:

- 2016 Local Plan Part 1 (LP1): S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), S4 (Housing Strategy), S6 (Sustainable Access), H1 (Settlement Hierarchy), H22 (Sites for Gypsies and Travellers and for Travelling Showpeople), SD1 (Amenity and Environmental Quality), SD3 (Sustainable Water Supply, Drainage and Sewerage Infrastructure), SD4 (Contaminated Land and Mining Legacy Issues), BNE1 (Design Excellence), BNE2 (Heritage Assets), BNE3 (Biodiversity), BNE4 (Landscape Character and Local Distinctiveness), INF2 (Sustainable Transport).
- 2017 Local Plan Part 2 (LP2): SDT1 (Settlement Boundaries and Development) and BNE7 (Trees, Woodland and Hedgerows), BNE10 (Heritage).

## **National Guidance**

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- Planning Policy for Traveller Sites (PPTS)

## **Local Guidance**

- Derby, Derbyshire, Peak District National Park Authority and East Staffordshire Gypsy and Traveller Accommodation Assessment 2014
- South Derbyshire Design Guide SPD

## **Planning Considerations**

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

- Policy considerations
- Principle of development;
- Impact on the landscape and visual amenity
- Highway safety
- Drainage and biodiversity
- Impact on neighbouring amenity; and
- Archaeology

## **Planning Assessment**

### Policy considerations

The Development Plan forms the primary policy consideration for this application, with the NPPF and PPTS being material considerations is considering the suitability of new applications for Gypsy and traveller pitches.

LP1 Policy H22 (Sites for Gypsies and Travellers and for Travelling Showpeople) identifies that the Council will set targets for new pitches according to the most recent needs

assessment agreed by the Council. The policy states that allocations to meet identified needs will be made through a Site Allocations Development Plan Document (SADPD), and that sites for allocation or planning applications will be considered suitable provided they are of an appropriate scale and character and that 8 detailed criterion are met. The detailed criteria are as follows and are considered under the relevant headings of this report:

- i) development does not result in an unacceptable impact on the local environment, including biodiversity, heritage assets or conservation, the surrounding landscape (unless capable of sympathetic assimilation) and compatibility with surrounding land uses; and
- ii) safe and convenient vehicular and pedestrian access to the public highway can be provided with no undue adverse impact on the highway network; and
- iii) the movement of vehicles to and from the site will not cause undue disturbance or be inappropriate for the locality; and
- iv) there is adequate space for parking, turning and servicing on site; and
- v) the site is reasonably accessible to local services including health services, shops, education, public transport and other community facilities; and
- vi) the site is not located in an area at undue risk of flooding; and
- vii) suitable landscaping and boundary enclosures are provided to give privacy to both occupiers and local residents and minimise impact on the surrounding area; and
- viii) the site provides a safe and acceptable living environment for occupiers with regard to noise impacts, adequate on site facilities for parking, storage, water supply and electricity supply, drainage and sanitation.

The PPTS sets out the Government's planning policy for traveller sites, with the aim of ensuring fair and equal treatment for travellers, in a way that facilitates their traditional and nomadic way of life while respecting the interests of the settled community. Policy H relates specifically to determining applications for traveller sites and identifies the following issues (amongst other matters) that should be considered in determining planning applications:

- a) the existing level of local provision and need for sites;
- b) the availability (or lack) of alternative accommodation for the applicants;
- c) other personal circumstances of the applicant;
- d) that the locally specific criteria used to guide the allocation of sites in plans or which form the policy where there is no identified need for pitches/plots should be used to assess applications that may come forward on unallocated sites; and
- e) that they should determine applications for sites from any travellers and not just those with local connections.

The need to restrict new traveller sites in the open countryside away from existing settlements is acknowledged in the PPTS as is the need to ensure that sites in rural areas respect the scale of, and do not dominate, the nearest settled community. The PPTS goes on to identify four further matters which Local Planning Authorities should attach weight to in determining application for Gypsy and traveller sites;

- a) effective use of previously developed (brownfield), untidy or derelict land;
- b) sites being well planned or soft landscaped in such a way as to positively enhance the environment and increase its openness;
- c) promoting opportunities for healthy lifestyles, such as ensuring adequate landscaping and play areas for children;
- d) not enclosing a site with so much hard landscaping, high walls or fences, that the impression may be given that the site and its occupants are deliberately isolated from the rest of the community.

The PPTS also identifies the need to demonstrate an up-to-date 5 year supply of deliverable sites.

### Principle of development

The need for Gypsy and traveller pitch provision; The Derby, Derbyshire, Peak National Park Authority and East Staffordshire GTAA, published in June 2015, sets out the additional need for residential pitches across the area for 2014 – 2034. For South Derbyshire this need is 38 pitches. This is the most recent accepted requirement for the delivery of sites in South Derbyshire. The GTAA identified a need within the District for 14 new pitches over the 5-year period from 1 April 2014 to 31 March 2019, with a subsequent need for 7, 8 and 9 pitches for each 5-year period thereafter up to 2034. As detailed above, policy H22 commits the Council to allocating new sites to meet this identified need through a SADPD; this has not yet been prepared. Until a SADPD is adopted, the need for Gypsy and traveller pitches must be met through individual applications.

Since 1 April 2014, 14 pitches have been granted permission, which demonstrates that the need for additional pitches is being met and delivered to accord with the requirements of the GTAA. However, notwithstanding the fact that the Council is delivering the necessary pitches, there is also the requirement for the Council to identify a supply of specific sites sufficient to provide a rolling 5 years' worth of sites against the GTAA targets, as required by the PPTS. The current 5 year supply requirement lies at 8.4 pitches based on the need identified within the GTAA for the period 2018-2023. Despite the recent permissions to meet the need between 2014 and 2019, the Council is not currently in a position to demonstrate a sufficient supply of specific sites to meet the need identified within the GTAA i.e. those sites with permission (as no sites are allocated) that have not been implemented. Without a SADPD, providing a 5 year supply of sites will remain a challenge as sites do not generally remain unimplemented. The PPTS confirms that the lack of an up-to-date five year supply of sites is a significant material consideration in favour of new applications.

Specific needs of the applicant: The application is not advanced with any specific needs or personal circumstances of the applicant to weigh in the balance of the development proposal.

Sustainability of the site: This site is located approximately 600m from the village of Aston on Trent, which is identified with the LP1 as one of the Districts Key Service Villages (KSV) where there are a range of local facilities available. The proximity of the site (within walking distance) to Aston on Trent is such that the site is not isolated away from an existing settlement. It is noted that the development as proposed i.e. if the site is enclosed with the only pedestrian entrance being at the same point as the vehicular access that there is no pedestrian access to site as the public footpath from Aston along Shardlow Road ends before the site. In order that pedestrian access can be achieved from the site on to the adjacent public footpath network and local services a condition requiring the provision of a pedestrian gate on to this footpath is considered necessary and in the interests of the sustainability of the site.

The scale of development proposed falls below that which would normally demand financial contributions to offset increased pressures arising from the proposal and there is no evidence that existing services could not cope with the additional demands placed upon them.

Balance with the settled community: It is noted that the site would extend the Gypsy community in the District, however, the majority of established sites and recent permissions are located generally to the south and west of the District on established sites. In this instance the provision of 6 pitches (or families) would represent a very small increase in the

overall number of families in the area. In this vein, it is not considered that the settled community would be overwhelmed by the proposal given the scale of the Aston and Shardlow communities.

Subject to there being a need identified, policy H22 considers new sites to be suitable providing they are of an appropriate scale and character and the 8 criteria outlined above are met (these matters are considered in detail below). The PPTS identifies that decisions should be based on locally specific criteria (i.e. policy H22), and whilst the proposal is not for the redevelopment of brownfield land, the site is not considered to be isolated, or of such a scale so as to dominate area and as such these matters weigh in favour of the proposal subject to the considerations below.

#### Impact on the landscape and visual amenity

The site is located within the national 'Trent Valley Washlands' character area, and the local 'Lowland Village Farmlands' character area. These character areas are described as gently rolling, almost flat, lowland with river terraces, containing mixed farming with arable cropping and improved pasture, medium to large regular fields with thorn hedgerows, and discrete red brick villages with farms and cottages. It is considered that these character areas are reasonably accurate in describing the landscape character of the application site. It is acknowledged that the site does not exhibit the qualities that would deem it to be a 'valued' landscape, nor is it subject to any local landscape designations.

Policies S1, BNE1, BNE4, H22 and BNE5 all have relevance to consideration of the landscape and visual impact of the proposed development. These policies seek to ensure that that District's heritage assets, landscape and rural character are protected, conserved and enhanced through careful design and the sensitive implementation of new development.

The site is flat in a generally flat landscape with hedgerows forming the eastern and northern boundaries. There is also a mature hedgerow to the west of the PROW which runs along the western boundary. These hedgerows (with intermittent trees) visually enclose the site from its surroundings, and restrict view of the site to those in close proximity. The character of the surrounding area is such that it has a medium to low landscape value with little characteristics that would warrant its special protection. The main views of the site being those of residents, vehicular travellers and recreational users of the PROW close and adjacent to the site. There are no long distance or significant views of the site, with the Aston and Shardlow Conservation Areas sufficiently separated from the site not to be impacted upon.

Within this flat landscape there are few long distance views with the existing quarry and its associated structures to the east of the site (the vehicular access being opposite that of the site) dominating the local skyline which has a negative impact on the local landscape.

The key physical impacts of the development arise from the use of the site, the provision of hardstanding, the construction of the access, two amenity buildings, and the caravans themselves. Due to the depth of the grass verge to Shardlow Road suitable visibility splays can be achieved without any loss of the hedgerow, and this mature boundary would remain in place. The proposal overall would not result in the loss of any features that contribute to the value of the site itself, and with the addition of new landscaping proposed on the current bare boundary (to the west) this addition to the landscape would result in some beneficial effect on the landscape once the development is in place and the new landscaping matures.

Whilst there are a number of dwellings with potential views of the site, the site is generally screened by intervening landscaping such that there would be no significant impact on nearby dwellings directly. There would also be a slight adverse effect on road users from a

glimpsed view of the site during the winter months and across the site access. However these impacts are not considered to be significant.

Whilst the addition of new buildings and caravans on the site could result in incongruous additions to the landscape, given the modest scale of the site, caravans and buildings are not considered to lead to an unacceptable impact on the landscape or the character of the area given the limited existing visibility of the site and the mitigation measures proposed such that the landscape is considered to be capable of accommodating the proposed development without any significant adverse impacts on the landscape.

The only significant landscape and visual effect arising would be from users of the adjacent footpath, especially in the short term due to this boundary being open. However, these effects would be mitigated against and removed as the proposed areas of landscaping mature. The openness of the area to the north west of the site would provide views of the caravans across the open paddock and an extension to the proposed landscape planting along this western boundary is considered appropriate in order to provide an additional natural screen of the caravans and buildings proposed.

Whilst finely balanced, the proposed development is not considered to result in such a significant impact on the character of the local and surrounding landscape. The only major visual effects that have been identified are from close viewpoints on the adjacent public footpath and only over a short distance, but these effects will reduce as the proposed screening landscape treatment begins to mature. As such the proposed development is considered to comply with the visual and landscape considerations of policies S1, BNE1, BNE4, BNE5 and H22.

#### Highway safety

Vehicular access to the site is proposed via an existing field access to the north eastern corner of the site which would be modified to provide a 5m wide access in to the site. This part of Shardlow Road was the subject of a speed survey undertaken over a week in November 2017, the survey identified that the 85<sup>th</sup> percentile speeds at the site access were lower than the 60mph speed limit such that the Highway Authority are content that the 2.4m x 160m visibility splays achievable in both directions are sufficient to provide safe access and egress to the site. A comment received during the consultation period raised a concern that roadworks were occurring during the survey. The Highway Authority is content that the survey results did not show large numbers of vehicles travelling slow in convoy at any particular time and that the 85<sup>th</sup> percentile speeds are what the Highway Authority would expect to see for this stretch of road; the speed survey data does not show anything which would cause concern.

Sufficient space is proposed within the site to ensure adequate parking and turning space is available to allow vehicles to leave the site in a forward gear. Vehicle movements generated by the proposal are unlikely to have a negative impact on the capacity of the wider highway network. It is noted that the Highway Authority raise no objection to the proposal. As such it is considered that the proposal would not adversely impact on highway safety to a point where which would reasonably justify refusal of the application. As such the proposal complies with the requirement of criterion ii, iii and iv of policy H22, and the requirements of policy INF2.

#### Drainage and biodiversity

The application site is located in Flood Zone 1, and as such the site is not at risk from flooding. The submitted forms state that proposal would include the provision of a package treatment plant for foul water and a sustainable drainage system for the surface water. The

site is currently an agricultural field and there is no evidence to suggest that this would result in any adverse impacts in terms of surface water flows, therefore complying with the requirements of vi of policy H22 and SD2 and SD3. In terms of biodiversity, the site is currently an area of improved grassland with no features suitable to host protected species. This is noting that the existing hedgerows are to be retained and would not be affected by the development. As such there is no evidence to suggest that the proposals would have an unacceptable impact on biodiversity complying with part i of policy H22 and policy BNE3.

#### Impact on neighbouring amenity

Policy H22 requires the movement of vehicles to and from the site not to cause undue disturbance whilst policy SD1 states that the Council will only support development that does not lead to adverse impacts on the environment or amenity of existing occupiers. The site is such that it is sufficiently separated from existing dwellings and other land uses so as to not impact on the amenity any of these surrounding land uses. The application site is located such that the amenities of occupiers of the site would not be unduly impacted upon by noise and disturbance with sufficient space provided for amenity and play. In this respect the proposal complies with the requirements of criterion i, vii and viii of policy H22, policy SD1 and the provision of the PPTS.

#### Archaeology

The site is located within an area of known archaeological activity, located around 20m to the north of a the 'Aston Cursus Monument', with other prehistoric activity recorded on the eastern side of Shardlow Road and crop markings on land to the north and west of the site. A geophysical survey of the site has been undertaken, which identified only small anomalies to the eastern boundary of the site. As such it is considered necessary for a scheme of archaeological investigation to be conditioned in order that a scheme of trial trenching can be undertaken on the site to characterise any remains in accordance with the requirements of policies BNE2 and BNE10.

#### Agricultural land

The site is identified as Grade 3 agricultural land, and whilst only Grade 3a is considered to be 'Best and Most Versatile' (BMV), the classifications available for the site do not identify the grade of the site in any more detail. Policy BNE4 of the LP1 and paragraph 170 of the NPPF seek to protect such quality agricultural land, and wherever possible direct development to areas of lower/poorer quality land. Although development of the site would result in the loss of BMV agricultural land, it is a relatively small site which is constrained by its triangular shape and as such, its loss is unlikely to harm the rural economy. Although the loss of this land weighs against the environmental sustainability of the proposal, it does not do so to a significant degree that would outweigh the general conclusions that the site is sustainable in overall terms.

#### Conclusion

Whilst the concerns of local residents are noted, the development of the site for 6 Gypsy pitches would not result in any significant adverse impacts as outlined above which would warrant refusal of the application. This is recognising and accepting the weight that needs to be given to meeting the needs of the district in terms of Gypsy pitch provision and the lack of a rolling 5 year supply which is a significant material consideration which adds weight to the acceptability of the scheme.

None of the other matters raised through the publicity and consultation process amount to material considerations outweighing the assessment of the main issues set out above.

## Recommendation

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

1. The development hereby approved shall be begun before the expiration of three years from the date of this permission.  
Reason: To conform with Section 91 of the Town and Country Planning Act 1990 (as amended by Section 51 of the Planning and Compulsory Purchase Act 2004).
2. The development hereby permitted shall be carried out in accordance with the SITE LAYOUT PLAN received 14 August 2017, the AMENITY BUILDING elevations and floor plans received 14 August 2017, and the PROPOSED SHOWER BLOCK elevations and floor plans received 14 September 2017; unless as otherwise required by condition attached to this permission or following approval of an application made pursuant to Section 96A of the Town and Country Planning Act 1990.  
Reason: For the avoidance of doubt and in the interests of achieving sustainable development.
3. The site shall not be occupied by any persons other than gypsies and travellers as defined in the Government guidance 'Planning Policy for Traveller sites' (August 2015), or any Government guidance which amends or replaces that guidance.  
Reason: The creation of a residential use in this location would not normally be permitted and an exception has been made to provide accommodation solely for gypsies/travellers who satisfy these requirements.
4. There shall be no more than 6 pitches on the site and no more than two caravans, as defined in the Caravan Sites and Control of Development Act 1960 (as amended) & the Caravan Sites Act 1968, shall be stationed at any time of which only one caravan per pitch shall be a residential mobile home/static caravan.  
Reason: The creation of a residential use in this location would not normally be permitted and an exception has been made to provide accommodation solely for gypsies/travellers who satisfy these requirements and to the number that has been justified, so to preserve the character of the locality and ensure the occupation of the site does not dominate the nearest settled community.
5. No more than one commercial vehicle per pitch shall be kept on the land for use by the occupier(s) of that pitch hereby permitted, and they shall not exceed 3.5 tonnes in weight. No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.  
Reason: To safeguard the amenities of nearby occupiers and in the interests of highway safety.
6. No commercial activities shall take place on the land, including the storage of materials.  
Reason: To safeguard the amenities of nearby occupiers and in the interests of highway safety.
7. a) No development, including preparatory works, shall commence until a Written Scheme of Investigation for archaeological monitoring (WSI) has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include an assessment of significance and research questions, and:
  - i) the programme and methodology of site investigation and recording;
  - ii) the programme and provision to be made for post investigation analysis and reporting;

iii) provision to be made for publication and dissemination of the analysis and records of the site investigation;

iv) provision to be made for archive deposition of the analysis and records of the site investigation; and nomination of a competent person or persons/organisation to undertake the works set out within the WSI.

b) The development shall take place in accordance with the approved WSI and shall not be occupied until the site investigation and post investigation reporting has been completed in accordance with the programme set out in the approved WSI and the provision to be made for publication and dissemination of results and archive deposition has been secured.

Reason: To enable potential archaeological remains and features to be adequately recorded, in the interests of the cultural heritage of the District, recognising that initial preparatory works could have unacceptable impacts.

8. 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.

9. 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 pitch to which they serve is/are first occupied or in accordance with a timetable which shall first have been submitted to and approved in writing by the Local Planning Authority. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, or any statutory instrument amending, revoking and/or replacing that Order, no further boundary treatments shall thereafter be erected without the permission of the Local Planning Authority pursuant to an application made in that regard.

Reason: In the interests of the character and appearance of the area, in particular to maintain the character of public realm as secured under the plans hereby approved.

10. Prior to the construction of a hard surface, details including patterns, and samples if necessary, of the materials proposed to be used on the hard surfaces shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out using the approved materials.

Reason: In the interests of the character of the site and the surrounding area.

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

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

12. Prior to the occupation of a pitch a scheme of soft landscaping shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include landscaping of the full extent of the western boundary of the site. 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 a pitch or the completion of the development, whichever is the sooner; and any plants which within a period of five years (ten years in the case of trees) from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species and thereafter retained for at least the same period, unless the Local Planning Authority gives written consent to any variation.

Reason: In the interest of the visual setting of the development and the surrounding area.

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

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

14. All planting, seeding or turfing comprised in the approved details of soft landscaping shall be carried out in the first planting and seeding seasons following the first occupation of the buildings 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 phase die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species and thereafter retained for at least the same period, unless the Local Planning Authority gives written consent to any variation.

Reason: In the interest of the visual setting of the development and the surrounding area.

15. No development, including preparatory works, shall commence until the existing access to Shardlow Road has been modified in accordance with the application drawings. The junction shall be laid out, constructed and provided with visibility sightlines of 160m in both directions, both measured to a point 1m in from the nearside edge of the carriageway, as measured from a point located centrally and 2.4m back into the access. The area within the sightlines shall thereafter be kept clear of any object greater than 1m in height (0.6m in the case of vegetation) above the nearside carriageway channel level.

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

16. Prior to the first occupation of any pitch hereby permitted, details of a pedestrian gate and access from the site to the adjacent public footpath (to the west) shall be submitted to and approved in writing by the Local Planning Authority. The approved works shall be carried out prior to the first occupation of any pitch and thereafter retained available for use by occupiers of the site.

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

17. The premises, the subject of the application, shall not be occupied until space has been provided within the application site in accordance with the application drawings for the parking (of 2 vehicles per pitch) and manoeuvring of residents and service and delivery vehicles, laid out, surfaced and maintained throughout the life of the development free from any impediment to its designated use.

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

18. Any entrance gates erected in the private driveway shall be set back by a minimum distance of 15m as measured from the nearside edge of the carriageway.

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

Informatives:

1. The application site is abutted by a Public Right(s) of Way Aston on Trent Footpath No. 8, as shown on the Derbyshire Definitive Map). The route must remain unobstructed on its legal alignment at all times and the safety of the public using it must not be prejudiced either during or after development works take place. Further information can be obtained from the Rights of Way Duty Officer in the Economy, Transport and Environment Department at County Hall, Matlock.

2. Pursuant to Section 184 of the Highways Act 1980 and Section 86(4) of the New Roads and Streetworks Act 1991 prior notification shall be given to the Department of Economy, Transport and Communities at County Hall, Matlock regarding access works within the highway. Information and relevant application forms, regarding the undertaking of access works within highway limits, are available via the County Council's website [www.derbyshire.gov.uk](http://www.derbyshire.gov.uk), email [Highways.Hub@derbyshire.gov.uk](mailto:Highways.Hub@derbyshire.gov.uk) or telephone 01629 533190.

3. Pursuant to Sections 149 and 151 of the Highways Act 1980, the applicant must take all necessary steps to ensure that mud or other extraneous material is not carried out of the site and deposited on the public highway. Should such deposits occur, it is the applicant's responsibility to ensure that all reasonable steps (eg; street sweeping) are taken to maintain the roads in the vicinity of the site to a satisfactory level of cleanliness.

4. The Highway Authority recommends that the first 5m of the proposed access driveway should not be surfaced with a loose material (i.e. unbound chippings or gravel etc.). In the event that loose material is transferred to the highway and is regarded as a hazard or nuisance to highway users the Authority reserves the right to take any necessary action against the householder.

**Item** 1.2

**Ref. No.** 9/2018/0472/U

**Applicant:**  
Mrs Sue Weng  
5 Rosy Cross  
Tamworth  
B79 7JR

**Agent:**  
Mr Khuram Ghufar  
Ak Innovative Design Solutions Ltd  
128 Oaklands Avenue  
Derby  
DE23 2QL

**Proposal:** CHANGE OF USE OF GROUND FLOOR FROM RETAIL (USE CLASS A1) TO A HOT FOOD TAKE AWAY (USE CLASS A5) AND CHANGE OF USE OF FIRST FLOOR TO CREATE 2 FLATS 9 (USE CLASS C3) WITH THE CREATION OF A MEZZANINE FLOOR AND CHANGE OF USE OF SECOND FLOOR TO CREATE 1 FLAT (USE CLASS C3) AT 10 WEST STREET SWADLINCOTE

**Ward:** SWADLINCOTE

**Valid Date** 28/05/2018

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

The item is presented to Committee as the proposed development does not strictly accord with the Development Plan.

#### **Site Description**

The site is a vacant retail property located within the Town Centre and is located on the Primary Frontage on West Street and within the Swadlincote Conservation Area. The property is currently vacant and has not been occupied for some years.

#### **Proposal**

Consent is sought to change the use from retail (use class A1) to a hot food take away (use class A5) with the erection of an extractor flue to the side. It is also proposed to change the first floor to two residential flats and the second floor to a single flat. It does not appear that the previously approved D1 use was implemented.

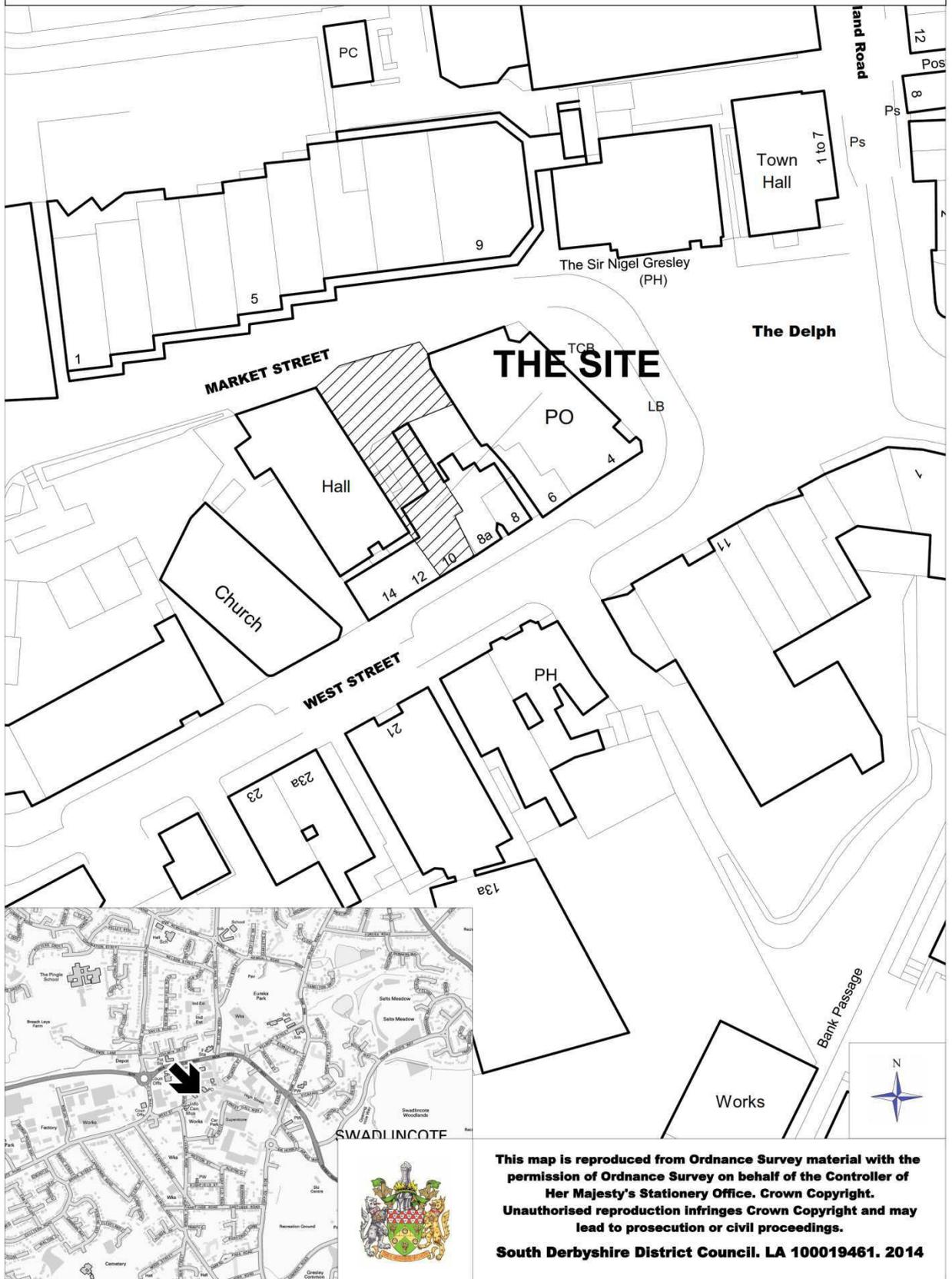
#### **Planning History**

Planning application 9/2011/0856 was submitted for the change of use from A1 (use as shop mobility) to D1 (community use). The application was approved with conditions.

#### **Responses to Consultations**

The County Highways Authority has no objections owing to the position of the property within the main town centre.

9/2018/0472 - 10 West Street, Swadlincote DE11 9DN



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The Environmental Health Officer has no objections subject to a condition regarding the control of noise and odours from the kitchen extractor flue.

The Conservation Officer has no objections due to the submission of amended plans that have been submitted which have moved the flues to the side of the building which has reduced the visibility from the rear and front.

The application has been verbally discussed with the Councils Licensing Officer, the forms stipulate that they do not wish to operate past 11pm and there would be no requirement for a license. It has been advised that an informative should be attached should the applicants wish to extend the opening times in the future.

### **Responses to Publicity**

There have been no emails/letters of objection received from local residents for the application.

### **Development Plan Policies**

The relevant policies are:

- 2016 Local Plan Part 1: S2 (Presumption in Favour of Sustainable Development), S6 (Sustainable Access), H1 (Settlement Hierarchy), SD1 (Amenity and Environmental Quality), SD4 (Contaminated Land and Mining Legacy Issues), BNE1 (Design Excellence), BNE2 (Heritage Assets) and INF2 (Sustainable Transport).
- 2017 Local Plan Part 2: SDT1 (Settlement Boundaries and Development), BNE10 (Heritage) and RTL1 (Retail Hierarchy).

### **National Guidance**

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

### **Local Guidance**

- South Derbyshire Design Guide SPD
- Swadlincote Town Centre Character Statement

### **Planning Considerations**

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

- Principle of Development
- Impact on Amenity
- Visual Impact

### **Planning Assessment**

#### Principle of Development

The site is located within the primary retail frontage of Swadlincote Town Centre and has been identified as a focal building for alterations within the Heritage Lottery Bid.

Part F of policy RTL1 of the Local Plan Part 2 notes that the loss of retail uses within the town centre could be permitted where it has been demonstrated that there that a retail use would no longer be viable. Whilst the agent has not been able to provide details confirming that the property has been marketed in excess of six months in accordance with the policy, the agent has been able to demonstrate that the property has been vacant for over two years and is in a state of disrepair internally. Given the extent of time that the property has been vacant, it would seem that this would justify the loss of the retail unit and the change to a hot food take away and would allow a viable use within the property again.

The change of use of the first floors of properties within primary frontages to residential uses would be suitable and would accord with policy RTL1 of the Local Plan Part 1 and the proposed first floor uses as residential would be encouraged within the town centre.

### Impact on Amenity

The proposed change of use would involve the erection of an extractor flue to the rear of the property. There have been no objections raised by the Councils Environmental Health Officer subject to the flue being fitted in accordance with the specification submitted. There have been no objections raised by the County Highway Authority owing to the town centre location and extensive parking in the locality. The proposed works would comply with policies SD1 and INF2 of the Local Plan Part 1.

There would be no residential properties identified to the rear of the property which could result in any inter-visibility between proposed and existing residential windows. Whilst there are residential properties to the front of the property, this is divided by a public highway and is set back. It is not considered that the proposed residential floor space in the first and second floor would have a harmful impact on the amenity of local residents and would comply with policy SD1 of the Local Plan Part 1.

### Visual Impact

Amended plans have been submitted which have moved the flue to the side of the property so that it cannot be seen from Market Street or from the front on West Street and the wider conservation area. Whilst the top does protrude from the top of the roof line to the rear, this is essential for the extractor function. There are no other alterations proposed as part of the application and there would be no harmful visual impact as part of the proposed works. The proposed works would comply with policy BNE1 and BNE2 of the Local Plan Part 1.

None of the other matters raised through the publicity and consultation process amount to material considerations outweighing the assessment of the main issues set out above.

### **Recommendation**

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

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

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

2. The development hereby permitted shall be carried out in accordance with plan/drawing Location Plan, dated on 26th May 2018; plan/drawings; A100; A101; and A102 (Amended Plan received 9th July 2018); unless as otherwise required by condition attached to this permission or allowed by way of an approval of a non-

material minor amendment made on application under Section 96A of the Town and Country Planning Act 1990 (as amended).

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

3. Prior to the first use of the kitchen facility for the hot food take away, a scheme for the control of odour and noise emissions from the kitchen flue shall be submitted to and agreed in writing by the Local Planning Authority. The measures shall be implemented in accordance with the approved scheme and shall be retained thereafter for the lifetime of the development.

Reason: To ensure that any concentration of air pollutants in the vicinity is minimised and to protect the amenity of the locality, especially for people living and working nearby.

4. The extractor flue and vents shall not be installed until precise details, specifications and, where necessary, samples of the facing materials to be used in the construction of the external flue and vents have been submitted to and approved in writing by the Local Planning Authority. The work shall be carried out in accordance with the approved details.

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

Informatives:

1. A lobby shall be required to each toilet

The developer should contact the Environmental Health Section on all matters relating to food hygiene and health and safety.

Food businesses must register with the local authority at least 28 days prior to opening for business.

2. The applicant is advised to have regard to the DEFRA guidance provided in the document: Guidance on the Control of Odour and Noise from Commercial Kitchen Exhaust Systems.

**Item**            **1.3**

**Ref. No.**       **9/2018/0615/NO**

**Applicant:**  
**Miss Kate Allies**  
**Unit 1a Rosliston Forestry Centre**  
**Burton Rd**  
**Rosliston**  
**Swadlincote**  
**DE12 8JX**

**Agent:**  
**Miss Kate Allies**  
**Unit 1a Rosliston Forestry Centre**  
**Burton Rd**  
**Rosliston**  
**Swadlincote**  
**DE12 8JX**

**Proposal:**    **AMENDMENTS TO APPLICATION 9/2017/1160 FOR THE REPOSITION OF THE HERITAGE PLAQUES AND LECTERNS AND FOR AN ADDITIONAL PLAQUE ON THE DELPH, SWADLINCOTE, AN ADDITIONAL PAVEMENT PLAQUE ON COMMON ROAD, CHURCH GRESLEY, & A WALL PLAQUE ON 39 OVERSETTS ROAD, NEWHALL**

**Ward:**         **CHURCH GRESLEY, NEWHALL, SWADLINCOTE**

**Valid Date**   **07/06/2018**

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

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

#### **Site Description**

Permission was granted under application reference 9/2017/1160 for the fixing of plaques to pavements and walls and the erection of lecterns throughout Swadlincote Town Centre, the Pipeworks, Church Gresley, Midway Hartshorne and Woodville as part of the Swadlincote Heritage Trail. The plaques and lecterns are part of a Heritage Trail that has been designed to commemorate previous occupants who have previously lived in the buildings concerned or historic events that have taken place throughout the town centre and wider area. The "site" consists of the front of the Town Hall on the Delph, the corner of Common Road in Church Gresley and Oversetts Road in Newhall. The Delph forms the most sensitive location within the application as this would be positioned adjacent to the Town Hall which is a grade II listed building.

#### **Proposal**

Consent is now sought for an additional pavement plaque on the Delph and for the existing and proposed pavement plaques at the Delph to be moved closer to the Town Hall with the lectern at the Delph to be moved around 1m to the side. An additional pavement plaque is proposed on Common Road in Church Gresley as opposed to the lectern that was approved under application 9/2017/1160 and a further wall plaque is proposed on Oversetts Road in Newhall on the wall of number 39.

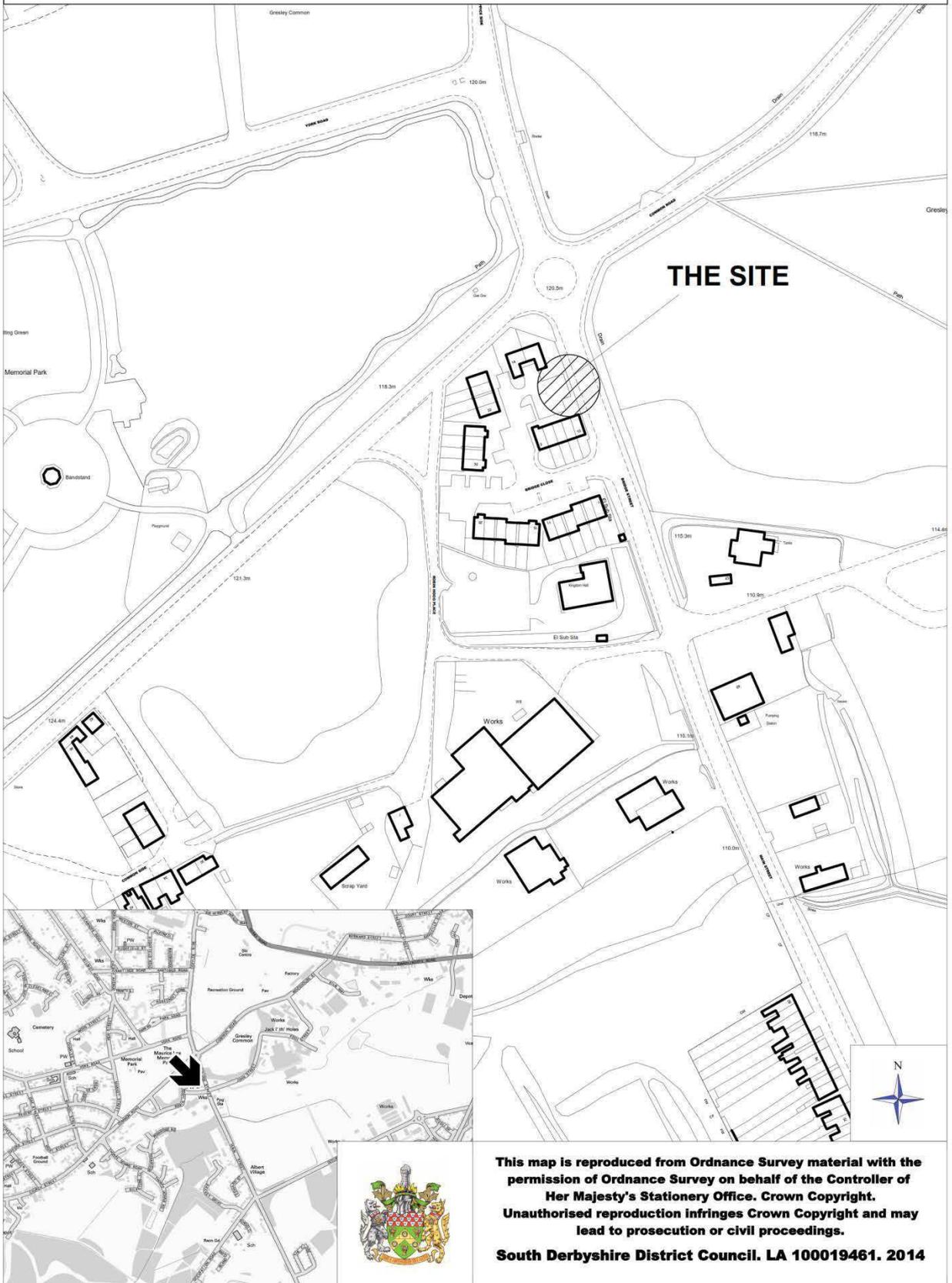
9/2018/0615 - The Delph, Swadlincote



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9/2018/0615 - Common Road, Church Gresley DE11 9NW



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## **Planning History**

The following applications have been approved with conditions at Planning Committee for the Swadlincote Heritage Trail:

9/2017/1160 - The erection of pavement plaques, wall plaques and lecterns was approved with conditions at Planning Committee

9/2018/0160 - Listed building consent to fix a plaque to the wall at Sharpes Pottery and Bretby Pottery in accordance with planning reference: 9/2017/1160 was approved with conditions at Planning Committee

## **Responses to Consultations**

There have been no objections raised by the Conservation Officer for the additional plaques and their amended locations.

## **Responses to Publicity**

There have been no objections received to the application.

## **Development Plan Policies**

The relevant policies are:

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

## **National Guidance**

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

## **Local Guidance**

- South Derbyshire Design Guide SPD
- Swadlincote Town Centre Character Statement

## **Planning Considerations**

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

- Visual Impacts on the all locations
- Heritage Impact on the Delph

## **Planning Assessment**

### Visual Impacts on the the locations

The proposed plaques would be of a high quality design and would be constructed out of hard-wearing material. Whilst the plaques would be large enough for people to read the

items about the Heritage Trail, they would be 300mm in diameter and would not be imposing enough to detract from the appearance of the existing building. The proposed plaques at the Delph and on Common Road would be recessed into the ground and would have a very limited visual impact. The relocation of the lectern on the Delph would be marginal and would have a minimal visual impact. On the basis of this, it is not considered that the proposed plaques would be large enough to have a negative or over dominant effect on the buildings or the public realm.

### Heritage Impact on the Delph

Policy BNE2 of the Local Plan Part 1 and Policy BNE10 of the Local Plan Part 2 stipulate that development should protect, conserve and enhance heritage assets within the District. Despite the proposed plaque and the two existing plaques being located closer to the Town Hall than the original application approved under application reference 9/2017/1160, the position of the proposed plaques would still have a neutral impact on the historic fabric of the Town Hall and would seek to promote the heritage of the Swadlincote Area. On the basis of this, it would be considered that the additional plaque and the re-position of the existing two plaques would have a positive impact on the heritage assets.

### Conclusion

The proposed plaques and repositioning of existing plaques would have a minimal impact on the appearance of the Swadlincote Conservation Area, Oversetts Road and Common Road. They would be well designed and would help to elevate and promote the history in the local area. On the basis of this, the proposal would comply with the principles of policies BNE1 and BNE2 of the Local Plan Part1 and policy BN10 of the Local Plan Part 2.

### **Recommendation**

**GRANT** permission under Regulation 3 subject to the following conditions:

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

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

2. The plaques hereby permitted shall be carried out in accordance with sizes and locations as specified within the Swadlincote Heritage Trail B: Swadlincote Town Centre Table 2, received on 7th June 2018; Revised Delph Plaque Positions, received on 29/08/2018 and Revised Delph Lectern Position, received on 29/08/2018; unless as otherwise required by condition attached to this permission or allowed by way of an approval of a non-material minor amendment made on application under Section 96A of the Town and Country Planning Act 1990 (as amended).

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

3. Any fixtures or fittings shall be affixed to the building through the mortar joints.

Reason: To limit any damage to the buildings and historic fabric and to ensure that the works are reversible.

## **2. PLANNING AND OTHER APPEALS**

(References beginning with a 9 are planning appeals and references beginning with an E are enforcement appeals)

<b>Reference</b>	<b>Place</b>	<b>Ward</b>	<b>Result</b>	<b>Cttee/Delegated</b>	<b>Page</b>
9/2017/1184	Hartshorne	Woodville	Dismissed	Committee	34
E/2012/00256	Shardlow	Aston	Dismissed	Delegated	39



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## Appeal Decision

Hearing Held on 22 August 2018

Site visit made on 22 August 2018

**by John Morrison BA (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 12<sup>th</sup> September 2018

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**Appeal Ref: APP/F1040/W/18/3200936**

**Land to the rear of Nos 45-59 Manchester Lane, Hartshorne, Swadlincote DE11 7BE**

- 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 George Dunicliff against the decision of South Derbyshire District Council.
  - The application Ref 9/2017/1184, dated 1 November 2017, was refused by notice dated 7 February 2018.
  - The development proposed is the siting of four cabins for holiday accommodation and creation of associated parking, along with the widening of the access.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. Between the determination of the planning application and this appeal, a revised version of the National Planning Policy Framework ('the Framework') has been published. I invited comments from the Council and the appellant as to whether it had any implications for the appeal and responses were heard at the event. I have had regard to these and the 2018 iteration of the Framework in reaching my decision.
3. I have taken the site address from the appeal form since it best identifies the site to which the proposed development relates. Indeed, this fact was brought up at the hearing. The site address as being land to the rear of 45-49 Manchester Lane is how it appears on the planning application form hence my reference to it at the hearing. As per normal practice, this is where such details are usually taken from. My use of the site address in the way I have above does not change anything fundamental and there were no objections to its use at the hearing. I am therefore content to proceed on this basis.

### Main Issue

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

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### Reasons

5. The appeal site is a roughly rectangular parcel of land to the rear of residential properties that front Manchester Lane. It is open and undeveloped and thus shares common characteristics with the undulating open arable field system that stretches east. It was cultivated at the time of my site visit. Access is via a narrower strip of land that leads north east from Manchester Lane, running between Numbers 49 and 59. There is a defined, dense and mature hedge comprising predominantly hawthorn trees running the entire length of the north eastern boundary. The south western boundary directly abuts the rear gardens of the frontage dwellings. The site falls on the incline of a hill landform, part of which crests roughly at the aforementioned rear garden boundaries.
6. The proposed development would site four detached single storey timber cabins roughly across the spine of the site in a staggered line abreast layout. Whilst intended to be occupied on a short term holiday let basis they would provide accommodation, access, parking and amenity space commensurate with that of a dwelling. The scheme intends to retain the dense tall hedge to the boundary and add to planting more generally. Manchester Lane itself does not benefit from a footway although there is a public footpath that runs along Slack Lane to the north of the site which turns roughly through 90 degrees to run almost parallel with the site's north eastern boundary, on the opposite side of the arable field that abuts it. This footpath is part of the promoted National Forest Way (NFW), the latter length of which as I refer to it being set lower in the landscape relative to the appeal site.
7. The appeal scheme would be something of a self-contained enclave of back land type built development, separate from and unrelated to the frontage dwellings. Whilst design and scale differs, frontage development defines the main character of built form in the immediate area around the appeal site which is a ribbon form of dwellings noticeably distinct from the main body of the village. They are enclosed entirely by open countryside and rural land uses. Gardens are generously proportioned and some ancillary buildings aside largely open and undeveloped. For all intents and purpose, the proposed development would comprise four new dwellings which would not be ancillary, but primary by their use and function. They would be read in both character and appearance terms as such. With the above in mind, it seems clear to me that the proposed development would jar with the established character of the lane in built form terms.
8. The appeal site is an open and undeveloped field. Whilst separated from the larger arable fields beyond, it shares many characteristics with the picturesque landscaped hillside to the southwest of the NFW. Being outside of a defined settlement it is part of the countryside in both character and planning terms.
9. Despite the extensive mature hawthorn hedge to the eastern boundary of the site, the proposed development would be far from invisible. The route of the NFW as it tracks towards Manchester Lane offers a number of clear views of the site courtesy of break in vegetative cover as well as field entrances. The somewhat tunnel like experience of the stretch of the NFW that joins the end of Slack Lane means that the eye is naturally drawn towards any breaks and views that are subsequently offered by them. This is particularly the case for those breaks that feature along the length running to the north of the site.

10. The NFW is promoted as part of a network of public rights of way that traverse areas of the National Forest. I would anticipate them to be well used as a result and site evidence suggests a well-trodden path. Being used ostensibly for recreational reasons and to appreciate the quality of the open landform and forested areas I would be content to consider views from the NFW as being of a high sensitivity.
11. Taking this into account, the proposed buildings would be visible and noticeable. Whilst one could perhaps legitimately argue views would in the main be restrictive the discernibility and contrasting composition of the proposed development against the built backdrops I have identified above would make them clear and obvious, emphasising their awkwardness in the context of both built form and open space.
12. The frontage dwellings and their associated ancillary buildings contained within curtilages aside, the surrounding area is predominantly rural. Other built form, outside of the closest village, tends to be in the form of isolated farmsteads and commercial premises. Extensive swathes of grassland and arable fields adorn both the hillside and other areas. Dense areas of woodland enclose and surround some areas. Built form and development pattern is distinct and defined, clearly related to roads and generally not pocketed or self-contained like the appeal scheme would be. Whilst planted and appearing visually separate from the adjacent arable field, the appeal site shares this open character and rurality, reinforcing how the space surrounds frontage development. In this context the appeal scheme would, in my view, encroach built form beyond its defined limits and sprawl, reducing the open and undeveloped (arguably intrinsic) character of the countryside as a whole.
13. There is a school of thought, which in some cases is relevant and applicable, that different doesn't always mean harmful. In this case however, and taking into account the above reasons, I feel it would be. As I did earlier, I note the substantial mature hawthorn hedge to the north eastern boundary of the site which would perform something of a screening function for the appeal scheme. Along with enhancements, it has the potential to contribute to hiding the proposed buildings almost entirely. Be this as it may, I do not subscribe to the notion that obscuring development that would otherwise be harmful should make it acceptable. I am also mindful of the fact that with the information available to me and through discussion at the hearing it is unclear as to whom said hawthorn hedge belongs. In the absence of a definitive answer either way therefore, and putting my earlier comments on the role of the hedge briefly aside, I would not be comfortable relying on it for screening purposes in the long term.
14. All things considered above therefore, it is my conclusion that the proposed development would be harmful to the character and appearance of the area. To the extent that it would conflict with Policies S1, BNE4 and INF10 of the Local Plan Part 1<sup>1</sup> and Policy BNE5 of the Local Plan Part 2<sup>2</sup>. Amongst other things, these policies seek to ensure that the district's landscape and rural character are conserved and enhanced and character and local distinctiveness is protected against undue impacts (tourism development).

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<sup>1</sup> South Derbyshire Local Plan Part 1 (2016)

<sup>2</sup> South Derbyshire Local Plan Part 2 (2017)

15. The Council's reason for refusal also cites the adverse effect the proposed development would have on the felling of trees that form part of a tree preservation order (TPO 477). The group protected by 477 are a line of hawthorn trees at the boundary of the appeal site where it abuts the back edge of Manchester Lane. Whilst some of this group would be affected by the need to widen the existing access for visibility, it would not impinge on the entirety of the group which the TPO covers which according to the order totals 15 specimens. It appears on the available evidence that the majority of the group would remain; forming the main feature at what is a prominent street frontage entrance to the site. With this in mind, and considering the measures that could be employed to protect what is due to remain of the group through the development, I do not feel the appeal scheme would be harmful to the character and appearance of the area in respect of the loss of trees.
16. With this in mind, the proposed development would not conflict with Policy BNE7 of the Local Plan Part 2. BNE7 seeks to ensure, amongst other things, the appropriate and proportionate consideration of the effect of new development on trees, woodland and hedgerows.
17. The appellant has provided a body of evidence that demonstrates there is a demand for new tourist accommodation in the district and given the quality of the landscape, countryside and extensive rights of way infrastructure I would not disagree. I accept there needs to be some weight ascribed to this demand as well as acknowledging the subsequent benefits such development would have for the local economy.
18. However, this does not mean new tourist development at any cost, a matter attested by paragraph D of Policy INF10. Nor is it necessarily the case that the stated demand needs to be met by development at the appeal site. Accordingly in the balance, whilst noting the potential benefits of the appeal scheme, it is to the harm it would cause to the character and appearance of the area with regard to a number of factors and the subsequent confliction with the development plan that I attach the greater weight.

#### **Other Matters**

19. Both through attendance at the hearing and reading through representations made to both the Council at the time the application was under consideration and the process of the appeal it seems clear to me that there was local opposition to the appeal scheme. Amongst other things, those concerns related to how the operation of it would affect the living conditions of existing residents.
20. Given the degree of separation between the units and the existing dwellings, their orientation and height it does not strike me that the appeal scheme would give rise to any overlooking or overbearing impacts. The comings and goings associated with the units would not only be seasonal but also in relation to a contextually small number of units. The function of the proposed development would see their occupation as per that of a normal dwelling. People may elect to eat and drink outdoors and I note there would be hot tubs provided but these activities are not materially different to those that could occur in a normal residential garden.
21. The nature of the use of the units, such as by precisely whom, would be a difficult element to control by any reasonable means but equally one could not

control how a property owner may choose to have their own house occupied. I would therefore be content, putting aside my earlier findings on the harm the proposed development would cause, it would not be unduly harmful to the living conditions of existing neighbouring occupiers.

**Conclusion**

22. Whilst having regard to all other matters that have been raised, it is for the reasons I have set out above that the appeal is dismissed.

*John Morrison*

INSPECTOR

**APPEARANCES**

**FOR THE APPELLANT:**

Mr George Dunncliff	Appellant
Mr James Atkin	Pegasus Group
Mr Gary Lees	Pegasus Group

**FOR THE LOCAL PLANNING AUTHORITY:**

Mr David Bolt	Fairhurst
Mr Ian McHugh	IMCH Planning and Development
Mr Chris Nash	South Derbyshire District Council

**THIRD PARTIES:**

Mr Kevin Banton	Local Resident
Mrs Sandra Essex	Local Resident
Mr Darren Evans	Local Resident
Mrs Rachael Evans	Local Resident
Mr James Gosden	Local Resident
Mr Alan Jones	Parish Council
Mr Jim Malkin	Planning Advisor
Mrs Jane Orgill	Local Resident
Mrs Belinda Roberts	Local Resident



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## Appeal Decision

Site visit made on 22 August 2018

**by Chris Preston BA(Hons) BPI MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 07 September 2018

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**Appeal Ref: APP/F1040/C/18/3197040**

**The Lady in Grey, Wilne Lane, Shardlow, Derby DE72 2HA**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeal is made by Mr Gary McAleese against an enforcement notice issued by South Derbyshire District Council.
  - The enforcement notice was issued on 05 February 2018.
  - The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the land by the stationing of two static caravans within the grounds for residential purposes.
  - The requirements of the notice are: 1) Permanently remove the two static caravans from the Land; and 2) Permanently remove any and all chattels associated with the static caravans from the land.
  - The period for compliance with the requirements is one calendar month beginning with the date the notice takes effect.
  - The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended.
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### Decision

1. It is directed that the enforcement notice be corrected and varied by:
  - i) The insertion of the words "to a use as a caravan site including" immediately following the words "the material change of use of the land" within section 3 and the deletion of the word "by" which follows the words "the material change of use of the land" at section 3.
  - ii) The insertion of the following requirement at section 5 of the notice: "Cease the use of the land as a caravan site."
  - iii) The deletion of the words "one calendar month" as the time period for compliance at section 6 and the substitution of the following words "3 months".

Subject to these corrections and variations the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

### Procedural Matters

2. The breach relates to the siting of two static caravans that have been used for residential purposes. That amounts to a material change in the use of the land and, in planning terms, the residential occupation of caravans represents use as a caravan site. I have varied the description of the breach accordingly to

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add clarity and am satisfied that neither party will be prejudiced by my decision to do so because the change in terminology does not affect the planning merits or the arguments put forward.

3. In addition, in order to ensure that the requirements of the notice match the varied description of the breach I have amended the terms of the notice to require that the use of the land as a caravan site should cease, in addition to the existing requirements to remove the caravans and associated chattels. Again, I am satisfied that no injustice will be caused because the present requirements to remove the caravans would, to all intents and purposes, have the effect of ceasing the use.
4. The revised National Planning Policy Framework (NPPF) came into force on 24 July 2018 and the Planning Inspectorate wrote to the parties on 25 July 2018 to ask whether they would like to submit further comments having regard to those revisions. Neither party submitted further comments but I have, nonetheless, taken account of the NPPF in reaching my decision as it represents extant government policy.

#### **The Appeal on Ground (a)**

5. The main issues in the determination of the appeal on ground (a) are:
  - i) The effect of the development on the character and appearance of the Shardlow Conservation Area;
  - ii) The effect on the setting of The Lady in Grey which is a grade II listed building;
  - iii) Flood risk; and
  - iv) The weight that should be afforded to any security benefits that arise from a continued residential presence on the land.

#### *Character and Appearance of the Area*

6. The Shardlow Conservation Area (the CA) has two distinct elements; the western section of the village which includes Shardlow Hall and a number of properties strung out along London Road and the eastern section which is dominated by the wharves and development alongside the Trent and Mersey Canal. The Conservation Area Character Appraisal notes that the area was developed in the 1760s as an inland canal port where goods could be unloaded from the larger barges using the navigable River Trent for storage and onward shipment via the canal network. As one of only two such ports in the country (the other being at Stourport-on-Severn), the village contains some of the best preserved canal architecture in Britain.
7. Although last used as a restaurant, and prior to that as a public house, The Lady in Grey was originally built as a house for a family of local merchants who were associated with the development of the canal and its associated warehouses. The garden of the property is noted within the CAA for its size which is indicative of the wealth and status of the family within the village. The main façade of the dwelling points south to take advantage of the natural light and to avoid facing directly onto the canal which would have been seen as a working industrial zone at the time of construction. A high brick wall forms the boundary between the garden and the back edge of the towpath.

8. Thus, the building and the garden form a noted and integral part of the character of the village, with clear historical association. The garden is of importance in its own right as one of the notable open spaces within the CA and the CAA notes that, 'The east bank of the towpath is dominated by the garden wall of The Lady in Grey'. Notwithstanding the fact that the property is in an alarming state of disrepair, and that the garden is untended and overgrown, the original form and function of the building and its garden can be readily appreciated and the site continues to play an important role in shaping the character and appearance of the CA as a result.
9. It is the case that the garden wall provides an effective screen which limits views of the caravans from the canal towpath and from the opposite bank of the canal. The present position of the caravans in the north-eastern corner of the site also ensures that views from Wilne Lane are limited due to the screening offered by The Lady in Grey and adjacent houses. Fleeting views are available through the gateway which leads from the garden to the canal and the caravans do appear incongruous from that vantage point on account of their modern appearance, proportions and brightly coloured materials.
10. However, I am required to examine the effect on the character *and* appearance of the CA. To my mind, the character of an area is not dictated purely by what can be seen from outside the perimeter of the site. A whole range of factors will contribute to the character of a CA depending on the circumstances and, in this case, the space within the garden is important of itself as it depicts the status of the house and its historical association with the development of the canal. In that context, the way in which the caravans encroach into the garden is entirely out of character with the historic function of the space. Little thought appears to have been given to siting the caravans which are set at angles to one another on a seemingly random pattern. The result is a cluttered layout and the encroachment of sizeable structures into a space that would have been largely free from development. Further clutter will no doubt be added when cars and other paraphernalia associated with the use are present. Thus, the development has had a significant and harmful effect on the character of the garden. Given the important contribution that the house and garden make to the character of the area, as noted within the CAA, the development has failed to preserve or enhance the character of the CA.
11. For those reasons I find that the development has caused harm to the appearance of the area, when viewed from limited public vantage points but, more significantly to the character of the area due to the incongruous presence of the caravans which fail to take account of the historical function of the space within the garden. It follows that the development is contrary to the aims of policy BNE2 of the South Derbyshire Local Plan Part 1 (2016) (the LP) which states that development will be expected to protect, conserve and enhance heritage assets with particular attention being paid to the industrial heritage of areas including Shardlow. Moreover, it has failed to comply with the aims of policy BNE10 which, amongst other things, seeks to ensure that the loss of features which make a positive contribution to a heritage asset should be avoided through preservation or appropriate re-use. In this case, the re-use of the garden as a caravan site represents an inappropriate form of development that has eroded the character of an important feature within the CA.

*Effect on the Setting of the Listed Building*

12. The Lady in Grey is a grade II listed property and its significance not only derives from the architectural features and detailing of the building but in its historical relationship with the development of the canal and the village. Despite the condition of the building its origins as a dwelling of a high status family within the village are clearly evident. The garden has a direct functional and historic relationship with the building and the space is integral to the setting of the property. As noted in the CAA, the orientation of the property and the way in which the garden wall provided a robust screen from the working canal are resonant of the evolution of the village and the high status of the original residents. Thus, the position of the garden is integral to the understanding of the listed building and there can be no doubt that the caravans are directly in its setting.
13. The 1881 Ordnance Survey Map shows that the northern end of the garden (where the caravans are located) was perhaps a kitchen garden or similar with an indication that it may have been walled off from the more formal garden to the south. The appellant accepts that the caravans appear as alien features that would not normally be found within the grounds of an 18<sup>th</sup> century listed building but contends that the impact is very limited on account of the siting of the units in the northern part of the garden and the fact that permission is only sought for a temporary period.
14. I shall address the issue of the temporary consent in the planning balance below but, in terms of the impact on the setting of the building I find the harm to be greater than suggested by the appellant. Precise details of the historical layout of the garden are limited but, even if the northern part was a kitchen garden or had some other ancillary function it would not lessen the contribution that part of the garden made to the understanding of the house in a historical sense. The modern utilitarian appearance and the bright materials of the caravans are hugely unsympathetic, whatever the function of the specific part of the garden. They would be no more suited to a kitchen garden than an area of more formal planting.
15. In any event, very little presently exists on the ground to delineate between different sections of the garden and the caravans are in clear view of the rear of the building. They appear as alien features that pay no regard to the historical use of the garden and they appear incongruous as a result. In my view they have a significant negative impact on the immediate setting of the structure.
16. I am required to have special regard to the desirability of preserving the setting of the listed building and that duty is not dependent upon whether the garden can be seen from public vantage points. The building and its setting are important for their own sake and the fact that the caravans are in the relatively well concealed northern section of the garden does not alter my conclusions on the harm caused to the setting of the building.
17. I am mindful of the perilous condition of the building and the harm caused by the caravans is clearly on a lesser scale than the harm arising from the neglect and disrepair which threatens to undermine the fabric of the structure itself. Nonetheless, the introduction of the caravans has added a further layer of harm to the already degraded state of the building and gardens and that harm is clearly contrary to the aims of policies BNE2 and BNE10 of the LP.

*Flood Risk*

18. The site is located within Flood Zone 3a as defined by the Environment Agency (the EA) which is described as an area with a high probability of flooding. I understand that a flood risk assessment (FRA) is being prepared to accompany a future application to redevelop the site but no FRA has been submitted in support of the development in this instance. Whilst the area may benefit from flood defences aimed at defending up to a 1 in 50 year flood event, no information is before me on the precise nature of those defences and no information has been presented to indicate whether any consultation with the EA has taken place. In the absence of any specific assessment I can do no more than follow published advice in relation to flood risk in high risk areas.
19. Caravans and mobile homes intended for permanent residential use are defined as highly vulnerable uses within The Planning Practice Guidance (PPG)<sup>1</sup>. Further, table 3 of the PPG identifies that highly vulnerable uses should not be permitted within areas at high risk from flooding, including flood zone 3a. Thus, government guidance seeks to avoid residential caravan sites in such areas.
20. I note that sites for short-let or holiday caravan sites are classified as 'More Vulnerable' by the PPG, subject to a specific warning and evacuation plan. However, the period for which permission is sought is over two years and could not be considered as a short-let term. Furthermore, no details of any warning or evacuation plan are before me and it would not be appropriate to secure such details by condition without some knowledge of what was proposed and whether it would be effective.
21. In view of the above, the PPG advises that permission should not be granted and I attach significant weight to that given the potential safety concerns for anyone living in the caravans. Policy SD2 of the LP advocates a sequential approach to development and flood risk and notes that development of sites with a higher risk of flooding will only be considered where essential for regeneration or where development provides wider sustainability benefits to the community that outweigh flood risk. I shall consider whether the occupation of the caravans achieves those objectives in the planning balance below.

*The weight that should be afforded to any security benefits that arise from a continued residential presence on the land*

22. As noted above, the building is in a state of disrepair having been vacant for many years. Its condition was apparently worsened as a result of criminal damage by an unknown party in 2012. The appellant maintains that the caravans are required in order to increase security on the site until permission has been granted for a scheme of redevelopment. I understand that discussions are on-going with the Council but no application has yet been made.
23. The precise arrangement in terms of security is not clear from the information before me. The appellant resides in one of the caravans and the other is apparently used by his children or other friends and family should they come to visit, either at weekends or if he is on holiday. The units are of substantial size

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<sup>1</sup> Paragraph: 066 Reference ID: 7-066-20140306

- and no convincing reason why two units are required has been given; visiting children could occupy the same caravan as the appellant for a weekend period or if he was away on holiday.
24. Moreover, the arrangement between the appellant and the owner of the site is not clear in terms of the provision of security. The appeal statement notes that the caravans enable a 24 hour presence but the Council notes that no-one has been present on the land at a number of their visits and Mr McAleese was not at the site at the time of my visit. Whether he works elsewhere is unclear. From the information presented, any security appears to be a casual knock on relating to the use of the caravans as opposed to a direct contractual engagement to provide security at the site.
25. In addition, despite the reported act of criminal damage in 2012, the caravans were not sited on the land until 2015. There are no reports of further incidents between those times and it may be that the previous incident was a one off. As noted by the Council, security at the site could be improved by other means such as securing the boundary to make access more difficult.
26. All in all, I am unconvinced that the rationale for placing the units at the site was entirely related to security measures and the benefits I attach to any knock on surveillance benefits are limited as a result of the lack of information about the exact nature of the appellant's whereabouts at different times and the fact that no alternative security measures appear to have been considered. Even in the absence of the caravans the neighbouring properties would provide a degree of surveillance and may be able to report incidents if criminal activity was taking place.

#### ***Conclusion and Planning Balance***

27. For the reasons given above, I have concluded that the development has caused harm to the character and appearance of the CA and has harmed the setting of the listed building. As identified at paragraph 193 of the NPPF I am required to give great weight to the conservation of heritage assets, irrespective of whether that harm amounts to substantial harm or less than substantial harm. In this case, the harm is less than substantial because the impact on the CA is localised and not felt across the wider area and, similarly, the position of the units is such that they only impact on part of the curtilage and setting of the structure.
28. Where a development would lead to less than substantial harm to the significance of a heritage asset, paragraph 196 of the NPPF requires that harm to be weighed against any public benefits of the proposal including, where appropriate, securing the optimal viable use. For the reasons given, I attach limited weight to the alleged security benefits arising from the occupation of the caravans and any modest benefit in that regard is clearly outweighed by the great weight I must attach to the negative effects on the heritage assets.
29. In addition, the use is highly vulnerable from a flood risk perspective and is located within an area with a high risk of flooding. National planning guidance strongly indicates that planning permission should not be granted in that scenario and I find no reason to depart from that advice in the absence of a specific FRA or any information from the EA relating to the use of the site. Thus, I attach significant weight to those concerns.

30. I acknowledge that permission is only sought for a temporary period and it follows that the harm identified would only arise for a temporary period. However, in the absence of any convincing reason for the presence of the caravans or any clear public benefit arising from them I find no justification to outweigh the harm to heritage assets, even for a limited duration. Similarly, flood risk is, by nature, unpredictable and I could not predict whether any flood events would occur within the roughly two year period requested by the appellant. I find no rationale in the PPG with regard to flood risk to indicate that a different approach should be taken with regard to a consent for a limited duration. Thus, the fact that permission is only sought for a limited period does not lead me to alter my conclusion with regard to the balance of harm against any benefit that may arise.
31. If planning permission is refused and the enforcement notice upheld, the appellant would be required to leave the site and find alternative accommodation. Article 8(1) of the European Convention on Human Rights, as enshrined in the Human Rights Act (1998) states that everyone has the right to respect for his private and family life, his home and his correspondence. To my mind this is undoubtedly a case where Article 8 is engaged because a decision to refuse planning permission and uphold the enforcement notice would interfere with the home and family life of the occupant.
32. Article 8(2) identifies that there shall be no interference by a public authority with the exercise of Article 8 rights except as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety, the economic well-being of the country, the prevention of crime and disorder, the protection of health or morals, or for the protection of the rights or freedoms of others.
33. In other words, rights under Article 8(1) are qualified rights and, in appropriate circumstances, interference may be justified in the public interest. Regulation of land use through development control measures is recognised as an important function of Government and is necessary to ensure the economic well-being of the country. In that sense, the regulation of development for legitimate planning aims can be said to be in the public interest. The aim is to strike the right balance between the general interests and rights of the wider community and the requirement to protect an individual's private rights. Central to the principle of a fair balance is the doctrine of proportionality.
34. It is in the interest of the public and the local community to conserve heritage assets and to avoid unsuitable development within areas at a high risk of flooding. Those matters of public and community interest attract substantial weight in the planning balance. The constraints relating to flooding also apply to the appellant who is residing at the site in highly vulnerable accommodation. As set out above my conclusions relating to flood risk and the impact on heritage assets attract substantial weight both in terms of the public interest and personal interest of any residents in terms of avoiding damage to property or risk to personal safety.
35. The impact of any decision would no doubt be significantly disruptive for the appellant. However, although arguments have been put forward in relation to ground (g) to the effect that he would need a greater period of time to arrange alternative living arrangements, nothing has been presented to indicate that he would be unable to find other accommodation or to suggest that he has a

specific need to live at the appeal site as opposed to elsewhere in the local area. Those are moderating factors that weigh in the balance.

36. Therefore, in the context of the significant risk of flooding and the associated harm to heritage assets I cannot conclude that the appellant's personal circumstances outweigh the very strong public policy presumption against the development. In the planning balance, the material considerations clearly point towards a refusal of permission. In addition, having regard to the information before me, I conclude that the interference with the human rights of the appellant, including the effect on his home and family life would be lawful, necessary and proportionate.
37. Having regard to all of the above I conclude that the appeal on ground (a) should not succeed and I shall refuse to grant planning permission for the development.

**The Appeal on Ground (g)**

38. The enforcement notice provides for a period of one month for compliance with the requirements. The appellant has suggested that a three month period would be more reasonable to enable him to find alternative accommodation and for the owner to put in place alternative security arrangements.
39. The physical act of removing the caravans would be a quick process, once suitable transport had been arranged but the appellant would need to organise the removal, as well as find somewhere to relocate the caravans and find somewhere else to reside, be that in the caravans or in other accommodation. He has lived at the site since 2015 and would also no doubt need to organise other matters such as postage and utility arrangements. Purely from a practical perspective I consider that the three month period requested is reasonable in the context of what steps the appellant would need to take. Conversely, the one month period set out within the notice would not provide sufficient time. Bearing in mind the disruption to the home and family life that would stem from the requirements I find that the requested period of three months to be reasonable. Accordingly, I shall allow the appeal on ground (g) and vary the terms of the notice.
40. I am not convinced that a period of more than one month would be needed to implement alternative security arrangements but that does not affect my decision, having regard to the above.

*Chris Preston*

INSPECTOR