

REPORT OF THE HEAD OF COMMUNITY AND PLANNING SERVICES

SECTION 1: Planning Applications SECTION 2: Planning Appeals

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

1. PLANNING APPLICATIONS

This section also includes reports on applications for: approvals of reserved matters, listed building consent, work to trees in tree preservation orders and conservation areas, conservation area consent, hedgerows work, advertisement consent, notices for permitted development under the General Permitted Development Order 1995 (as amended) responses to County Matters and submissions to the IPC.

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

1. The issues of fact raised by the Head of Community and Planning Services' 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 Head of Community and Planning Services, 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

Reg. No. 9/2010/0676/IPC1

Applicant:

MR MIKE PEEL
RWE N POWER LTD
WINDMILL HILL BUSINESS PARK
WHITEHILL WAY
SWINDON

Agent:

MR MIKE PEEL
RWE N POWER LTD
WINDMILL HILL BUSINESS PARK
WHITEHILL WAY
SWINDON

Proposal: PRELIMINARY CONSULTATION ON PROPOSED C GAS
PIPELINE TO SERVE WILLINGTON POWER STATION
TWYFORD ROAD WILLINGTON DERBY

Ward: WILLINGTON & FINDERN

Valid Date: 13/07/2010

Reason for committee consideration

This report is to enable Members to consider a draft Environmental Statement and draft Development Consent Order (DCO) submitted by RWE npower in relation to a proposed gas pipeline which is to be the subject of an application to be submitted to the Infrastructure Planning Commission (IPC). The pipeline is required in association with the permitted new power station at Willington.

The draft Environmental Statement and DCO have been submitted as part of a pre-application consultation process required prior to the submission of an application to the IPC and is intended to provide an opportunity for consultees, of which the Local Planning Authority is one, to raise any potential issues prior to a more formal second stage public consultation prior to application submission with the intention of hopefully negating the need for any further formal rounds of consultation and subsequent delay in submitting an application to the IPC.

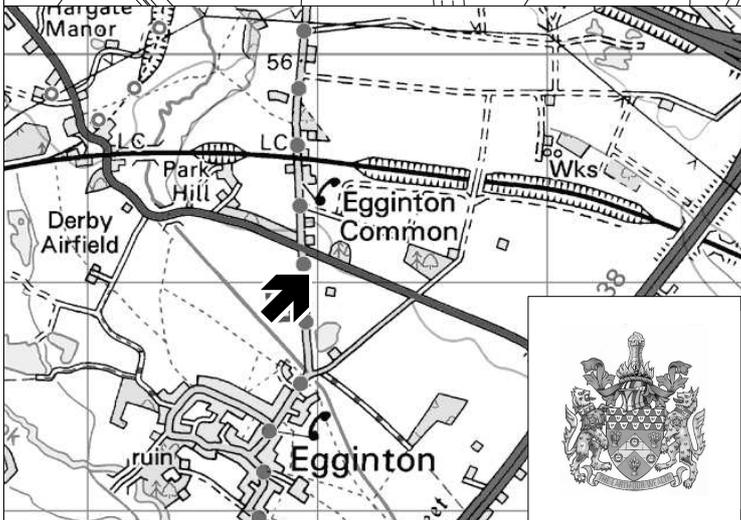
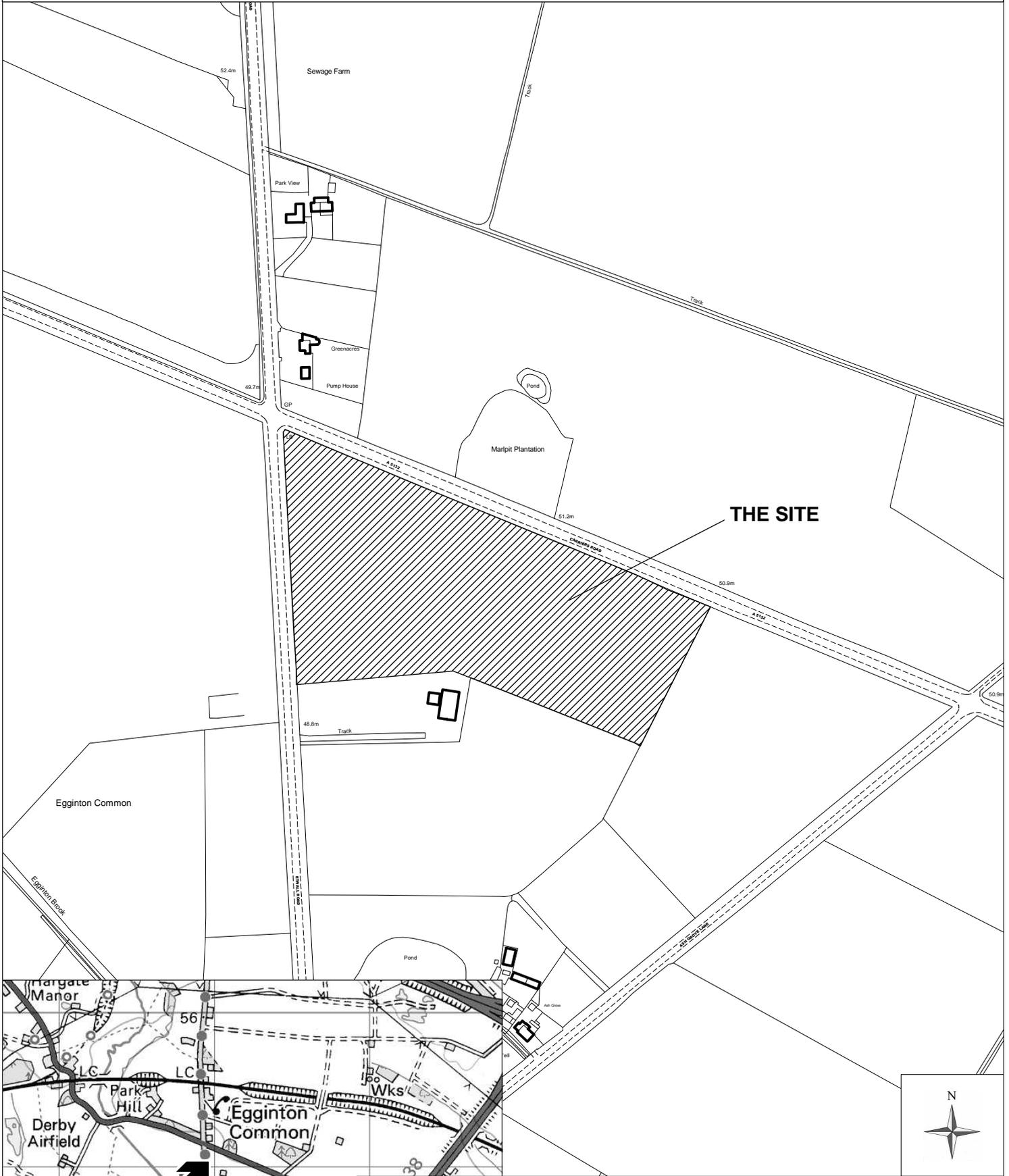
The IPC process is explained below.

A copy of the draft Environmental Statement is available to view on request and the draft Development Consent Order is attached as an appendix to this report.

Introduction

In March 2011 the Department for Energy and Climate Change under Section 36 of the Electricity Act granted consent to RWE npower to develop a new Combined Cycle Gas Turbine power station on the site of the former Willington Power Station.

**9/2010/0676 - Willington Gas pipeline (proposed compound),
Carriers Road, Egginton Common DE65 6GW**



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The power station will be fuelled by natural gas and requires a pipeline to link it to the National Grid.

The Willington C Gas Pipeline (WCGP) is a 'Nationally Significant Infrastructure Project' that requires authorisation under the Planning Act 2008. The application will be administered and determined by the Infrastructure Planning Commission (IPC) with the Local Authority acting as a consultee.

The pipeline would extend into East Staffordshire and hence, East Staffordshire District Council, Staffordshire County Council and Derbyshire County Council have also been involved in the consultation process.

The IPC Process

The IPC process is very much front-loaded with extensive publicity and consultation carried out prior to the developer submitting the application. This extensive pre-application process is intended to lead to applications which are better developed, ensuring that important issues have been articulated and considered in advance of the application and enables local communities to become actively involved at an early stage in helping shape proposals in advance of submission to the IPC which in turn will allow for shorter and more efficient examinations at application stage. The developer is responsible for consultation throughout the process. The application process to the IPC consists of 6 key stages as follows:

Pre-application No time limit	Developer informs IPC that they intend to submit an application. Applicant develops proposal and carries out pre-application discussion with stakeholders and the local community and agrees a Statement of Community Consultation with the relevant Local Authority.
Acceptance Up to 28 days	The IPC decides (within 28 days) whether the application meets the necessary standards and has been subject to adequate consultation to proceed to examination.
Pre-examination 2-3 months	Panel or single Commissioner appointed to assess issues and hold preliminary meeting. Public can register to have their say on application.
Examination Up to 6 months	IPC has 6 months to carry out examination. Public who have registered their views can provide more details in writing or request an open floor hearing.
Decision Up to 3 months	In most cases a recommendation to the Secretary of State (if National Policy Statement are still in draft) or a decision on the proposal will be issued by the IPC within three months of the close of the examination.
Post Decision 6 weeks	Once a decision is made there is a six-week window in which legal challenges can be made.

The Planning Act 2008 authorises Nationally Significant Infrastructure Projects through the issue of a DCO which is divided into two parts. Part 1 contains the general

provisions of the order, authorising the project and giving the undertaker the powers to undertake certain activities, such as surveying land. Part 2 contains the Development Requirements, the equivalent of planning conditions. The DCO will usually combine other permissions such as listed building consent or rights to compulsory purchase land. Local planning authorities are responsible for enforcing the implementation of conditions and also have enforcement powers against development requiring development consent but for which no order is in force or breaches of the terms of an order.

The Local Authority is a consultee in the IPC process whose role is as follows:

Pre-application	Local authorities for the site area are consulted by the applicant on the Statement of Community Consultation and participate in pre-application discussions. Local authorities begin evaluation of the local impacts of the proposed scheme.
Acceptance	Local authorities and neighbouring authorities make representations to the IPC regarding the adequacy of the consultation carried out by the applicant. If the application is accepted, the IPC invites local authorities to submit a Local Impact Report (LIR). The LIR is a written report compiled by the Local Authority giving details of the likely impact of the proposed development on the authority's area based on their existing body of knowledge and evidence on local issues.
Pre-examination	Commission sets deadline for LIRs.
Examination	Local authorities submit LIR within specified deadline and make other representations if they wish to do so.

The WCGP project is still at the pre-application stage. The Statement of Community Consultation was agreed and published in June 2010 followed by Phase 1 Consultation in August 2010 regarding the choice of the route corridor and 'Preliminary Environmental Information'. Phase 2 Consultation is intended to be carried out in April 2012 and will include the complete application including a final route, draft Development Consent Order and Environmental Impact Assessment. Following the completion of Phase 2 Consultation the developer will prepare a Consultation report containing reports of Community, Prescribed Consultees and Land interest consultations to be submitted to the IPC with the application.

Policy

The Planning Act 2008 established the principal of National Policy Statements (NPS) which will be used by the IPC as a starting point for determining the application along with the relevant National, Regional and Local Planning Policies. The relevant NPS for the pipeline will be: The Overarching National Policy Statement for Energy (EN-1); Gas Supply Infrastructure & Gas and Oil Pipelines NPS (EN- 4).

The Project Description

The gas pipeline would be approximately 27km in length running predominantly across agricultural land from Yoxall in Staffordshire and terminating at Willington Power Station. The pipe would be 800mm in diameter and constructed of welded steel pipes and buried at a minimum depth of 1200mm. A temporary construction corridor of 30m in width would be required along the full length of the pipeline route which would be fenced and stripped of topsoil.

The submitted documentation states that the route has been selected carefully in order to minimise environmental impacts and avoiding proximity to residential properties predominantly locating the pipeline in farmed land that can be fully reinstated and returned to agriculture relatively quickly. The only permanent above ground installation (AGI) would be at Yoxall with a further AGI located within the Willington Power Station site.

For linear projects, such as pipelines, it is normal to include a 'limit of deviation' (LOD) within the consent. The purposes of the LOD is to give limited flexibility in the final position of the pipeline, for the following reasons –

- To allow for minor variations arising from the construction process
- To allow minor changes of the route in response to environmental or geotechnical factors
- To allow minor diversions of the pipeline to occur, post construction, if required.

The proposed Limit of Deviation for the pipeline is 30m either side of the proposed route (i.e. a corridor 60 metres wide). The DCO allows the pipeline to be located within the Limit of Deviation, subject to the requirement for the detailed alignment of the pipeline to be approved by the local planning authority in advance of construction.

The normal construction period for a cross-country pipeline is from March to October with preparatory works such as the creation of compounds carried out in the prior winter months with the development process lasting approximately 9 months in total.

Three temporary construction compounds would be required, the main compound being located on Carriers Road, Egginton with two further compounds located at Yoxall and within the Willington Power Station site. The compounds would be used for pipe storage during construction as well as containing portacabins for staff welfare facilities and offices, staff and site vehicle parking, equipment storage and fuel and lubricating oil storage. Pipes would be delivered in 15m lengths using articulated lorries with up to 10 deliveries per day. Approximately 400 loads of pipe would be required to be delivered to the compounds in total.

The Carriers Road compound has been chosen because of its proximity to the A38 resulting in approximately 1km of non-trunk road being used for the delivery of pipe into the compound. The detailed design of the compound and access will be undertaken post consent subject to the requirement for detailed approval, however, the submitted indicative layout plan shows approximately 36m of roadside hedgerow would need to be removed to provide sufficient access and visibility. The access would be required for approximately 9 months. Following initial discussions with the Highway Authority a temporary 30 mph speed limit is suggested 200m either side of the proposed compound access. The implementation of the temporary speed order would be by Derbyshire

County Council and would be the subject of a legal agreement regarding costs. Pipe would be delivered into the compound by articulated lorries and unloaded using a mobile crane. Lorries carrying pipe would follow approved routes (to be agreed with the relevant Local Authorities) to the access points onto the pipeline construction corridor and the pipes would be unloaded and laid out along side the construction working strip. The access, land and hedgerow would be restored upon completion of the development.

Pipeline construction involves making temporary gaps in hedgerows and the temporary impact upon them has been identified as a key environmental issue in terms of ecology, landscape and visual impact and also cultural heritage aspects in the Environmental Statement. A number of potential temporary construction access points are proposed along Etwall Road (Egginton), Carriers Road (A5132), Ash Grove Way, Castle Way, Etwall Road (Willington) and Findern Lane which would also require the temporary removal of some hedgerow which would be replanted.

For the majority of the pipeline route there will be no material removed from site. Surplus subsoil excavated from the pipeline trench and displaced by the pipeline will be spread across the working area before the topsoil is reinstated. Spreading of the soil is not allowed in the River Dove floodplain. Material from the AGI, road, rail and river crossings and the pipeline route across the River Dove floodplain will be taken to Willington Power Station.

A more general view of the potential impacts to be considered is summarised below in the draft Environmental Statement.

Draft Environmental Statement

The submitted Draft Environmental Statement includes the following details:

Geology

A survey of soils has been undertaken along the route of the pipeline and this will be used to inform the methodology for stripping and storing topsoil. The presence of the pipeline should not affect the agricultural potential of the land and post reinstatement there will be no loss of agricultural land.

There is limited potential for the sterilization of a small area of sand and gravel within the River Dove Floodplain. Should sand and gravel extraction take place here in the future it will be necessary either to protect the pipeline, by leaving a strip of land unworked, or diverting the pipeline to a position where no sterilisation is necessary.

Flood Risk

The Environmental Statement considers the potential impact of flooding upon the project as well as the potential of the project to have an impact upon flood risk. The Pipeline will cross the following watercourses in South Derbyshire

- River Dove
- Hilton Brook
- Egginton Brook
- Trent & Mersey canal

The crossing of the River Dove and the Trent and Mersey canal will be carried out by 'non-open cut' means (by tunnelling under these watercourses) whilst smaller watercourses will be 'open cut'. This will involve temporary damming and pumping the watercourse while the pipeline is installed.

The pipeline route extends for approximately 3.5km across the flood plain of the River Dove. The Environment Agency (EA) does not normally allow the stockpiling of construction materials within a flood risk zone and the EA identified that the bund of topsoil along the length of the construction corridor could potentially hold up floodwater, if a flood occurred during the construction period.

It is normal to include 'gaps' in the bund in such locations and a modelling exercise was carried out of various configurations of the bunds, in the event of a 1 in 100 year flood event. The modelling demonstrated that, providing the correct mitigation measures are implemented, there should be no increase in flood risk to residential properties as a result of the temporary construction work.

It is proposed that the River Dove floodplain is treated as a 'special section' and constructed and reinstated as quickly as possible, rather than only reinstating this section when the whole of the pipeline route has been constructed.

Ecology

A range of ecological surveys were carried out in 2010 and 2011 and the potential ecological impacts assessed and, where necessary, mitigation measures proposed.

Surveys conducted include

- Phase 1 Habitat Survey
- Great Crested Newt Surveys
- Breeding Birds
- Bats and Trees
- Badgers
- Hedgerows
- Riparian Mammals (otters and water voles)
- White Clawed Crayfish

The main mitigation measure has been 'avoidance' through the choice of route that is predominantly in agricultural land, minimizing the disturbance of sensitive habitats.

Arguably the most significant impact will be related to the loss of hedgerows and some hedgerow trees (likely to be 23) which cannot be avoided, as these will require removal to allow construction. In total 4.3km of hedgerows will be lost, of which 253m are important hedgerows and 594m are species rich. The applicants will seek to reduce hedgerow losses to the minimum necessary to allow pipeline construction and will replant lost hedgerows and trees post development.

Landscape

RWE npower consider that long-term landscape and visual impacts of the proposed pipeline have been avoided by the selection of a route that can be completely reinstated following construction as the route avoids woodland or habitats that are difficult to reinstate and would remain visible for a prolonged period.

The pipeline will however lead to the loss of some hedgerows (see Ecology section above). These will take a number of years before they become sufficiently established such that there is no landscape or visual impact. However, the applicants have sought to utilise existing hedgerow gaps and the hedge will be replanted with a suitable mixture of species so that it is an improved state following reinstatement.

Noise and Vibration

The development will have virtually no operational noise and construction noise will be temporary and short term. The cross-country construction involves daytime work, using excavators, bulldozers and other plant. The work will be transient in nature with activity moving along quickly from any one location. Noise levels generated are likely to be similar to that generated by agricultural tractors.

Environmental Health has no objection to the draft Environmental Statement but has requested that additional information is included in the ES relating to any dewatering equipment which may be required, specifically in relation to noise mitigation. As such, equipment may need to operate close to residential property and so details of a temporary acoustic barrier provision, specifically in relation to its provision where drilling activities on the Willington Power Station site gives rise to justified noise complaints, should be included.

Transport

The development will have virtually no permanent transport impacts. During the operational phase, the AGI at Yoxall will be unmanned and is likely to be visited only once a week.

In respect of construction heavy plant, such as excavators and bulldozers will be delivered to one end of the project and will then move along the pipeline route. At a few locations, plant will have to be loaded onto low loaders to be moved to the next section. Pipe will be initially delivered to and stored at the Carriers Road compound. This has been chosen because of its proximity to the A38. Approximately 400 loads of pipe will be delivered to this compound over a period of several months. Traffic impacts are expected to be short term at any location and controls will be implemented to prevent construction traffic using unsuitable routes.

Cultural Heritage

Studies have been undertaken into the potential impacts upon sites and features of archaeological and cultural heritage interest. Where effects cannot be avoided a programme of evaluation and mitigation measures has been identified to record the heritage assets.

Other Matters

Land use - Virtually the whole of the pipeline route is agricultural land where the installation of the pipeline will only have a temporary impact upon its use.

Amenity - The pipeline route only affects one section of amenity land; this is a Wildlife Site in East Staffordshire.

Public Rights of Way - The pipeline construction work will cross approximately 29 PRow, including 2 bridleways. A strategy has been agreed with Derbyshire County Council's Rights of Way officer to ensure the safety of PRow users during the construction period, whilst minimising their inconvenience. All footpaths will be fully reinstated at the end of the construction period.

Forestry - The pipeline route avoids all existing woodland in South Derbyshire.

Air Quality - The pipeline operation should not have any impact upon air quality, as there should be no release of gas under normal operating conditions. Construction works have a potential for temporary impacts arising from vehicle emissions and dust.

Socio-economics - Willington Power Station represents a £1 billion investment, creating approximately 100 new permanent jobs and up to 2,000 temporary construction jobs. The pipeline will cost approximately £35 million to construct and will provide opportunities for temporary local employment and generate a requirement for local contractors and service providers. Landowners and occupiers will receive payments for granting the pipeline lease and compensation for crop losses during the construction and restoration phases

Development Consent Order

The draft Development Consent Order with suggested 'conditions' is attached as an appendix to this report.

Recommendation

The works associated with the construction of the WCGP are of a temporary nature whilst the pipeline is installed. The land affected by the development will be restored to its agricultural use, temporary accesses removed and hedgerows replanted following completion, the details of which will be agreed under the Development Consent Order.

The relevant statutory bodies such as the Environment Agency, Natural England, have been consulted by the developer and will respond direct to the developer. Their comments will form part of a statement submitted to the IPC by the developer as part of the consultation process.

The contents of the submitted draft Environmental Statement and the draft Development Consent Order are considered acceptable and it is recommended that there is no objection.

Item 1.2

Reg. No. 9/2011/0510/SGO

Applicant:
B M LOGISTICS
C/O AGENT

Agent:
MR STEPHEN GREAVES
S G DESIGN STUDIOS LTD
202 WOODVILLE ROAD
HARTSHORNE
SWADLINCOTE

Proposal: **OUTLINE APPLICATION (ALL MATTERS EXCEPT FOR ACCESS AND LAYOUT TO BE RESERVED) FOR THE REDEVELOPMENT OF EXISTING SITE FOR B1, B2 & B8 USE AT B M LOGISTICS BOARDMAN INDUSTRIAL ESTATE BOARDMAN ROAD SWADLINCOTE**

Ward: **SWADLINCOTE**

Valid Date: **05/07/2011**

Members will recall deferring the determination of this case pending a visit to the site. There are no changes to the report since the last committee.

Reason for committee determination

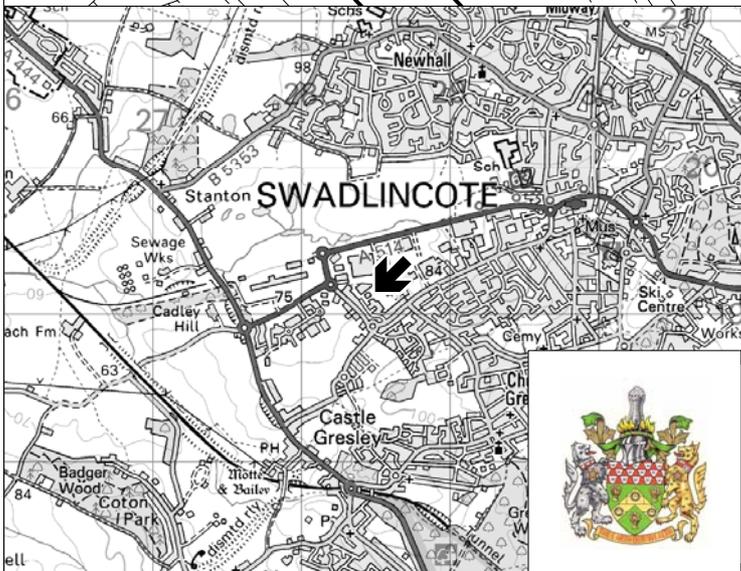
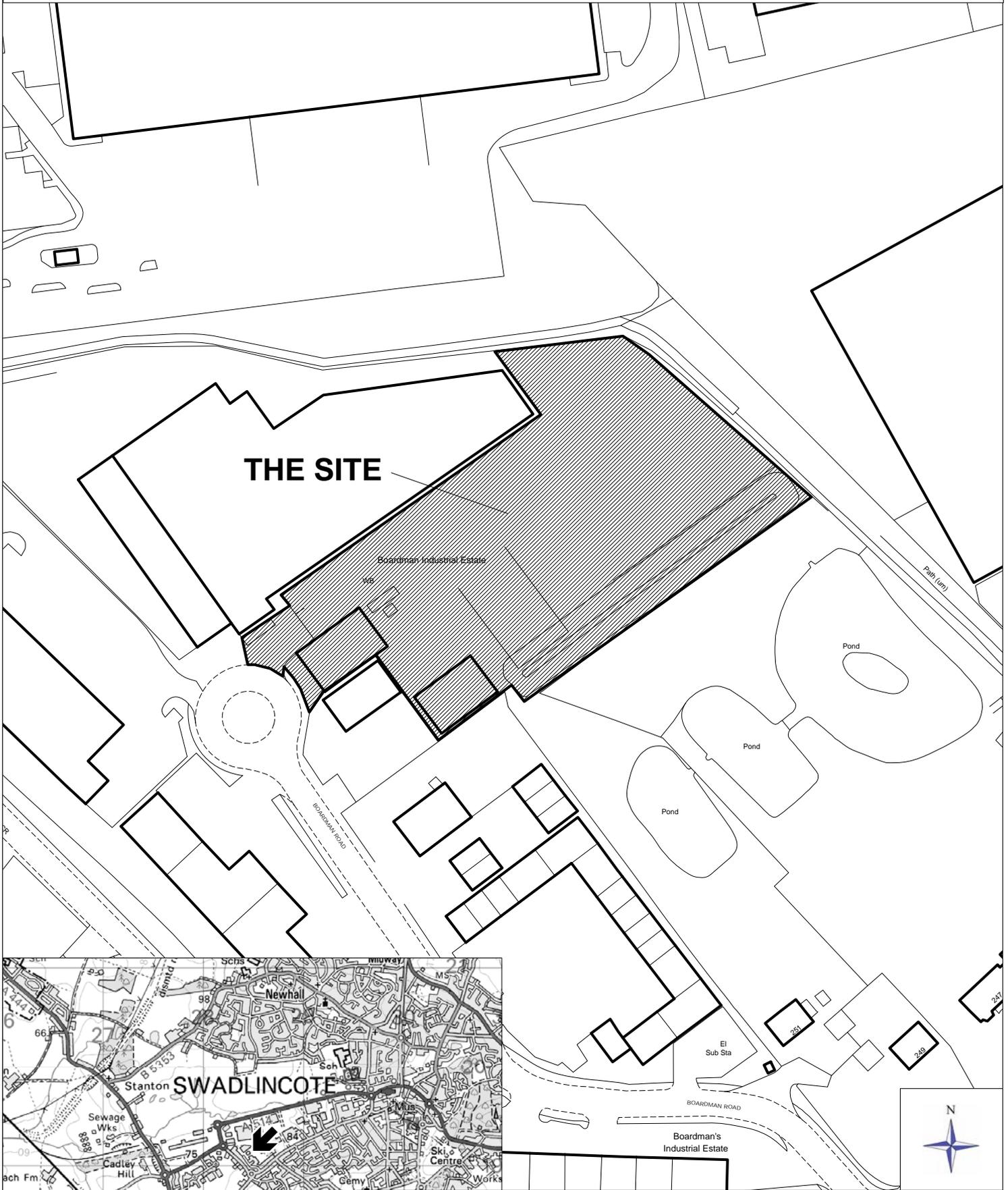
The application is brought to Committee as it is a major application with more than two objections.

Site Description

The application site is approximately 8,643m² in area and situated within the Swadlincote Urban Area in the northeastern corner of the Boardman Industrial estate. To the southeast of the site, beyond a tree-lined bund, lies the extensive garden of No. 247 Hearthcote Road beyond which are situated further residential properties and a public house. The bund is some 2m in height with a row of conifers on the application site side and poplar trees along the neighbouring residential boundary. Swadlincote Footpath 42 extends along the eastern and northern boundary. To the northwest and southwest are industrial units. The trees on the neighbouring boundary of No. 247 are protected by an area TPO No. 213. With the exception of the bund, which extends along the northeastern boundary, the site is relatively flat.

The site is currently used as a haulage yard and occupied by two existing units, which would be demolished under the proposed scheme. A large area of hardstanding covers the remainder of the site with an area of rough scrubland and demolition rubble in the northeastern corner.

9/2011/0510 - B M Logistics, Boardman Industrial Estate, Boardman Road, Swadlincote DE11 9DL



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South Derbyshire District Council. LA 100019461. 2010

Proposal

The application is in outline with access and layout for consideration only and proposes the erection of 12 two-storey units combining B1 (Business), B2 (General Industry) and B8 (Storage and Distribution) uses with proposed floor areas consisting of a minimum of 186m² and a maximum of 664m². A permission would allow any of the units to be occupied for any uses in these classes although the assessment of noise etc. has assumed the possibility that all could be B2.

The scheme has been amended, following discussions with Environmental Health, to include a 3m high acoustic timber fence along the southeastern boundary of the bund with No. 247 Hearthcote Road.

Applicants' supporting information

A Design and Access Statement has been submitted with the application which includes the following details:

- The proposal is to provide high quality, affordable units, including starter units, for B1, B2 and B8 uses, which are flexible for alteration/expansion where occupants can expand into neighbouring units.
- Individual units will be provided with adjacent parking with overflow parking, if required, and secure cycle storage.
- A footpath link to the neighbouring public footpath to the east is included.
- The proposal is for a total of twelve units, although flexibility is included for this number to be reduced, creating larger units.
- The use of additional landscaping will serve to enhance the visual appearance of the area.
- The buildings would be of mainly traditional brick and tiled roof construction with powder coated aluminium windows and doors, feature corner windows and panels possibly constructed in cedar cladding.

A Phase 1 Ecology Survey Report has been submitted in relation to concerns regarding a known historical presence of Smooth Newt, Grass Snake and the potential for Great Crested Newts on the adjacent residential site to the southeast at 247 Hearthcote Road which has three large ponds situated within the garden. The report acknowledges that the trees and hedgerows on site have potential as nesting areas and any works that may disturb these areas should be carried out outside of the bird-breeding season. No buildings or mature trees provide suitable habitat for roosting bats. A Great Crested Newt Survey may be required in relation to the potential for newts to be present in the ponds on the adjacent site however no other signs of protected species were found during the survey.

Planning History

There is no relevant planning history.

Responses to Consultations

Environmental Health has no objection following the receipt of amended plans showing the provision of a 3m high noise attenuation fence along the boundary with 247 Hearthcote Road and subject to conditions requiring limited working hours, no outdoor working, restricting noise levels of vehicle reversing alarms to vehicles for loading/unloading outdoors and restricting internal noise levels and the storage of materials outdoors.

The County Highway Authority has no objection subject to conditions relating to site storage and vehicle manoeuvring/accommodation during construction and the provision of parking and manoeuvring space prior to occupation in accordance with the submitted details.

The Contaminated Land Officer has advised that the site has potential for contamination from previous uses and activities and has no objection subject to a condition requiring the submission and implementation as required of a scheme to identify and control contamination prior to commencement of development.

The County Development Control Archaeologist is satisfied that there are no archaeological impacts.

Derbyshire Wildlife Trust (DWT), following the submission of a Phase 1 Ecological Survey Report, has no objection. The adjacent land at 247 Hearthcote Road has historically supported a population of Smooth Newt and Grass Snake and has the potential for Great Crested Newts to be present as well. An area of demolition rubble is located in the northeastern corner of the application site which represents a potentially suitable refuge for hibernating amphibians and reptiles. DWT recommend that a precautionary approach be taken with any clearance of the pile of demolition rubble which should take place during the period April-October inclusive when any reptiles and amphibians or reptiles will have left their winter refuge.

The County Footpaths Officer has no objection.

The Coal Authority has no objection subject to a condition requiring that site investigation works be carried out prior to commencement in accordance with the submitted Coal Mining Risk Assessment and remedial works carried out as required.

Responses to Publicity

Seven letters of objection have been received from three objectors commenting as follows:

- a) Danger of lorries turning into and out of Boardman's Estate.
- b) Noise and vibration during day and night seven days a week will increase greatly with proposed development.
- c) Noise of lorries.
- d) Design of junction with Boardman's Estate from Hearthcote Road is not suitable for increase in number of lorries and cars proposed.
- e) The Council should consider the requirement of a link road from the roundabout on Boardman Road to either the existing Cadley Hill roundabout or Dennis Barsby Close, thus relieving HGV and light vehicle traffic on Hearthcote Road, reducing danger of accident at Boardman's Road/Hearthcote Road junction and improving quality of living of surrounding residencies.

- f) Increased traffic and increased danger of accident at Boardman's Road/Hearthcote Road.
- g) Currently this estate has both HGV and LGV's operating on a 24 hour, 7 days per week basis causing disturbance to surrounding and adjoining residencies.
- h) The plans show that they will be eating onto a neighbours land and sound bund.
- i) The increased noise will spoil the ambience and enjoyment of the gardens which we will look potentially to at some stage apply for planning for detached properties.
- j) The development will de-value land and property and cause financial blight.
- k) This will be a 24hr site so noise nuisance and pollution will increase significantly as well as lighting.
- l) Soakaways are not an option.

Development Plan Policies

The relevant policies are:

East Midlands Regional Plan: Policy 1 & Policy 18

Local Plan: Employment Policy 3, Transport Policy 6

National Guidance

PPS4, PPS9, PPG24 & PPG13

Planning Considerations

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

- Principle of development
- Noise
- Highways
- Ecology
- Drainage
- Other issues

Planning Assessment

Principle of development

PPS4 advises that Local Planning Authorities should adopt a positive and constructive approach towards planning applications for economic development that secures sustainable economic growth. All planning applications for economic development should be assessed against limiting impacts on climate change, accessibility by varied means of transport, securing high quality and inclusive design and the impact on economic and physical regeneration of the area. Employment Policy 3 of the Local Plan allows for new industrial and business development in Swadlincote providing that the proposal is not detrimental to the amenity and character of the locality on environmental and traffic grounds.

The site is a brownfield with an existing employment use as a haulage yard located within an industrial site within the urban area. The site has good access to the surrounding road networks and is within close proximity to bus stops located nearby on

Hearthcote Road with cycle storage also proposed on site providing alternative means of transport for employees.

There is a recognised shortage of small and "grow-on" workspace in the District. This is identified as a weakness in the South Derbyshire Economic Development Strategy 2008-2012. The shortfall in accommodation for smaller businesses is also identified in the Derby Housing Market Area Employment Land Review (March 2008). The intensification of employment use on the site would assist in increasing the provision of good quality employment units within the District to meet this outstanding need.

Details of design and appearance would be dealt at reserved matters stage.

The principle of employment use is considered acceptable subject to their being no detrimental impact on amenity or on environmental and traffic grounds.

Noise Issues

The nearest residential property, No 251 Hearthcote Road, is situated approximately 116m from the edge of the application site to the southeast with the extensive garden of No. 247 Hearthcote Road adjoining the length of the south eastern boundary of the site and the dwelling of No. 247 itself situated approximately 140m away.

Following consultation with Environmental Health the scheme has been amended to include a 3m acoustic timber fence along the south eastern boundary to be situated on a 1.8m high retaining wall on the application site side of the existing landscaped bund in order to mitigate any potential significant adverse noise impacts on these adjacent residential properties to the southeast.

Further conditions as recommended by Environmental Health to control potential noise emanating from the site would assist in mitigating any significant adverse impacts on adjacent residential amenity. The amended scheme, subject to the conditions proposed, is considered to comply with the requirements of PPG24 and Employment Policy 3.

Highways

The site would be served by the existing access from Boardman Road with on-site parking and manoeuvring space provided. The Highway Authority has no objection subject to the conditions outlined above and the proposal is considered to be in accordance with the requirements of PPG13 and Transport Policy 6.

The Highway Authority incident records have been checked and the Traffic Team has not highlighted the junction of Boardman Road and Hearthcote Road as a 'problem' junction.

Ecology

PPS9 seeks to ensure that protected species are protected from adverse impacts of development. The Phase 1 Ecology Survey Report submitted in relation to concerns regarding a known historical presence of Smooth Newt, Grass Snake and the potential for Great Crested Newts on the adjacent residential site to the southeast at 247 Hearthcote Road which has three large ponds situated within the garden has shown no

evidence of any protected species. Derbyshire Wildlife Trust recommends a precautionary approach to the removal of demolition rubble on site and subject to this condition the proposal is in accordance with the requirements of PPS9.

Drainage

Drainage details would be required by condition. The development if built would be subject to Building Regulation Approval whereby the suitability of a use of a soakaway would be assessed.

Other Issues

The adjacent landowner at 247 Hearthcote Road has queried the extent of land ownership along the south eastern boundary. The applicant's solicitor has submitted information which demonstrates that the application site is under his ownership. Any further dispute of land ownership is a civil matter between the parties involved.

Conclusion

The application site is an existing employment site within the urban area. Whilst the application proposes an intensification of employment use it is considered that the proposed conditions would assist in mitigating any significant adverse impacts on the amenity of adjacent residential properties. The proposal complies with both national, regional and local policy requirements as outlined above and is considered acceptable.

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. (a) Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.
(b) The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the reserved matters to be approved.

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

2. Approval of the details of the scale, appearance and the landscaping shall be obtained from the Local Planning Authority in writing before any development is commenced.

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

3. Notwithstanding the originally submitted details, this permission shall relate to the amended drawing nos. 211_07.01 received 27 July 2011 and 211-07.02 revision A received 1 September 2011 and 211_07.04 rev A received 27 September 2011.

Reason: For the avoidance of doubt, the original submission being considered unacceptable.

4. Notwithstanding any details submitted or the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended), no development shall take place until there has been submitted to and approved in writing by the Local Planning Authority plans indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed in accordance with the approved details before the development is occupied or in accordance with a timetable which shall first have been agreed in writing with the Local Planning Authority.

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

5. No part of the development shall be carried out until precise details, specifications and, where necessary, samples of the facing materials to be used in the construction of the external walls and roof of the building(s) 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.

6. Prior to the development hereby approved commencing, details of the finished floor levels of the buildings hereby approved and of the ground levels of the site relative to adjoining land levels, shall be submitted to, and approved in writing by, the Local Planning Authority. Thereafter, the development shall be constructed in accordance with the agreed level(s).

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

7. No development shall take place until there has been submitted to and approved by the Local Planning Authority a scheme of landscaping, which shall include indications of all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection in the course of development.

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

8. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

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

9. No development shall take place until details of a scheme for the disposal of surface and foul water have been submitted to and agreed in writing by the Local Planning Authority. The scheme shall be carried out in conformity with the details which have been agreed before the development is first brought into use.

Reason: In the interests of flood protecting and pollution control.

10. A) The development shall not be commenced until a scheme to identify and control any contamination of land, or pollution of controlled waters has been submitted to, and approved in writing by, the local planning authority (LPA); and until the measures approved in that scheme have been implemented. The scheme shall include all of the measures (phases I to III) detailed in Box 1 of section 3.1 the South Derbyshire District Council document 'Guidance on submitting planning applications for land that may be contaminated', unless the LPA dispenses with any such requirement specifically and in writing.
- B) Prior to occupation of the development (or parts thereof) an independent verification report shall be submitted, which meets the requirements given in Box 2 of section 3.1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.
- C) In the event that it is proposed to import soil onto site in connection with the development, this shall be done to comply with the specifications given in Box 3 of section 3.1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.
- D) No development shall take place until monitoring at the site for the presence of ground/landfill gas and a subsequent risk assessment has been completed in accordance with a scheme to be agreed with the LPA, which meets the requirements given in Box 4, section 3,1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.
- Reason: To protect the health of the public and the environment from hazards arising from previous contamination of the site which might be brought to light by development of it.
11. If during development any contamination or evidence of likely contamination is identified that has not previously been identified or considered, then the applicant shall submit a written scheme to identify and control that contamination. This shall include a phased risk assessment carried out in accordance with the procedural guidance of the Environmental Protection Act 1990 Part IIA, and appropriate remediation proposals, and shall be submitted to the LPA without delay. The approved remediation scheme shall be implemented in accord with the approved methodology.
- Reason: To protect the health of the public and the environment from hazards arising from previous contamination of the site which might be brought to light by development of it.
12. The development shall be implemented in accordance with the recommendations of the submitted Coal Mining Risk Assessment, in particular with regard to intrusive site investigation works (which shall be undertaken prior to the commencement of any other development) and any resultant remedial works identified by the site investigation.
- Reason: To ensure the stability and safety of the development, having regard to the Coal Mining Risk Assessment undertaken.
13. Before any other operations are commenced (excluding demolition/site clearance), space shall be provided within the site curtilage for storage of plant and materials/ site accommodation/ loading and unloading of goods vehicles/ parking and manoeuvring of site operatives and visitors' vehicles, laid out and constructed in accordance with detailed designs to be submitted in advance to the Local Planning authority for written approval and maintained throughout the

contract period in accordance with the approved designs free from any impediment to its designated use.

Reason: In the interests of highway safety.

14. The premises, the subject of the application, shall not be taken into use until space has been provided within the application site in accordance with the application drawings for the parking and manoeuvring of visitors/ staff/ customers/ service and delivery vehicles (including a secure cycle parking bay), laid out, surfaced and maintained throughout the life of the development free from any impediment to its designated use.

Reason: In the interests of highway safety.

15. There shall be no gates or barriers within 15m of the nearside highway boundary and any gates shall open inwards only.

Reason: In the interests of highway safety.

16. There shall be no working outdoors with the exception of vehicle movements. Vehicle loading/unloading outdoors should be undertaken with vehicles with broadband type audible reversing alarms or by other non-audible methods and shall be between the hours of 7am-7pm Monday to Friday and 8am-5pm Sundays, Bank Holidays and Public Holidays only.

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

17. Windows and doors opening onto any internal areas which generate noise levels which would be in excess of the background L90 noise level at the site boundary, to be agreed in writing with Environmental Health, must be kept closed except for access and egress.

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

18. Internal noise levels shall not exceed a limit of 85 db(A) leq (5mins) and the structure designed to mitigate these noise levels so that it is 10 db(A) below background L90 levels at the boundary of the nearest noise sensitive premises the details of which shall be submitted to and approved in writing by the Local Planning Authority prior to occupation of the development hereby permitted. The development shall be carried out in accordance with the agreed scheme and maintained in perpetuity.

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

19. All fixed plant and equipment including externally mounted fans, exhaust or compressors shall be suitably attenuated so that they are at or below the agreed background L90 noise level at the boundary of the nearest noise sensitive premises.

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

20. There shall be no storage of materials outdoors.

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

21. Prior to the first occupation of the development hereby permitted, details of the 3m acoustic timber fence as shown on the amended plan 211-07.02 rev A and

211-07.04 shall be submitted to and approved in writing by the Local Planning Authority. The fence shall be erected in accordance with the approved details prior to the occupation of the development and shall be maintained in perpetuity.

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

22. No machinery shall be operated, no process shall be carried out and no deliveries taken at or despatched from the site outside the following times: 7am to 7pm Monday to Friday, 8am to 5pm Saturday, Sunday and public holidays.

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

Informatives:

The phased risk assessment should be carried out in accordance with the procedural guidance of the Environmental Protection Act 1990 Part IIA. The contents of all reports relating to each phase of the risk assessment process should comply with best practice as described in the relevant Environment Agency guidance referenced in footnotes 1-4, to the relevant conditions attached to this permission.

For further assistance in complying with planning conditions and other legal requirements applicants should consult "Developing Land within Derbyshire - Guidance on submitting applications for land that may be contaminated". This document has been produced by local authorities in Derbyshire to assist developers, and is available from http://www.south-derbys.gov.uk/business/pollution/contaminated_land/default.asp Reports in electronic formats are preferred, ideally on a CD. For the individual report phases, the administration of this application may be expedited if a digital copy of these reports is also submitted to the pollution control officer (contaminated land) in the environmental health department: pollution.control@south-derbys.gov.uk. Where development is proposed over areas of coal and past coal workings at shallow depth, The Coal Authority is of the opinion that applicants should consider wherever possible removing the remnant shallow coal. This will enable the land to be stabilised and treated by a more sustainable method; rather than by attempting to grout fill any voids and consequently unnecessarily sterilising the nation's asset.

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

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.

Swadlincote Public Footpath No 42 is situated outside the application site along the northeastern boundary. 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 advice can be obtained by calling 08456 058 058 and asking for the Rights of Way Duty Officer.

With regard to Condition 17, to contact Environmental Health on 01238 595903 to agree the background L90 noise level.

The existence of demolition rubble in the northeastern corner of the application site represents a suitable refuge for hibernating amphibians and reptiles which have historically been present on the adjacent site to the southeast, which potentially include protected species. You are advised that it is an offence to harm protected species and any clearance of this demolition rubble should take place during the period April-October inclusive when any hibernating amphibians or reptiles will have left their winter refuge.

That the trees/hedgerows on the application site may contain nesting birds. It is an offence under the Wildlife and Countryside Act 1981 to intentionally kill, injure or take any wild British breeding bird or its eggs or damage its nest whilst in use or being built. The nesting season normally encompasses the months March to July inclusive. If you are in doubt as to requirements of the law in this regard you should contact English Nature, Peak District and Derbyshire Team, Manor Barn, Over Haddon, Bakewell, Derbyshire, DE4 1JE.

Notwithstanding the layout drawing, this permission allows for the occupation of any unit by uses classes B1, B2, B8.

Item 1.3

Reg. No. 9/2011/0785/B

Applicant:
MR DAVID BRANDON
MOOR LANE
RUGELEY
STAFFORDSHIRE
WS15 3LT

Agent:
MR DAVID BRANDON
MOOR LANE
RUGELEY
STAFFORDSHIRE
WS15 3LT

Proposal: **THE REMOVAL OF AN AGRICULTURAL OCCUPANCY
CONDITION AT THREE ELMS SCROPTON ROAD
SCROPTON DERBY**

Ward: **HILTON**

Valid Date: **24/10/2011**

Reason for committee determination

Councillor Bale has requested that this application be brought to Committee as there are special personal circumstances of the applicant that the Committee should consider as well as unusual site circumstances.

Site Description

The site occupies a plot that lies between Hatton and Scropton; it is a flat site with a boundary hedge to the roadside from where access is taken to the site. The other boundaries are a mix of post and rail fence and hedges.

Proposal

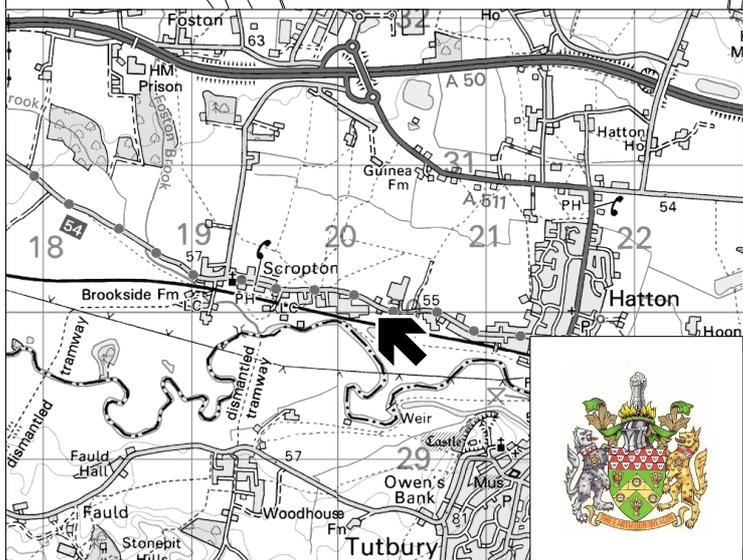
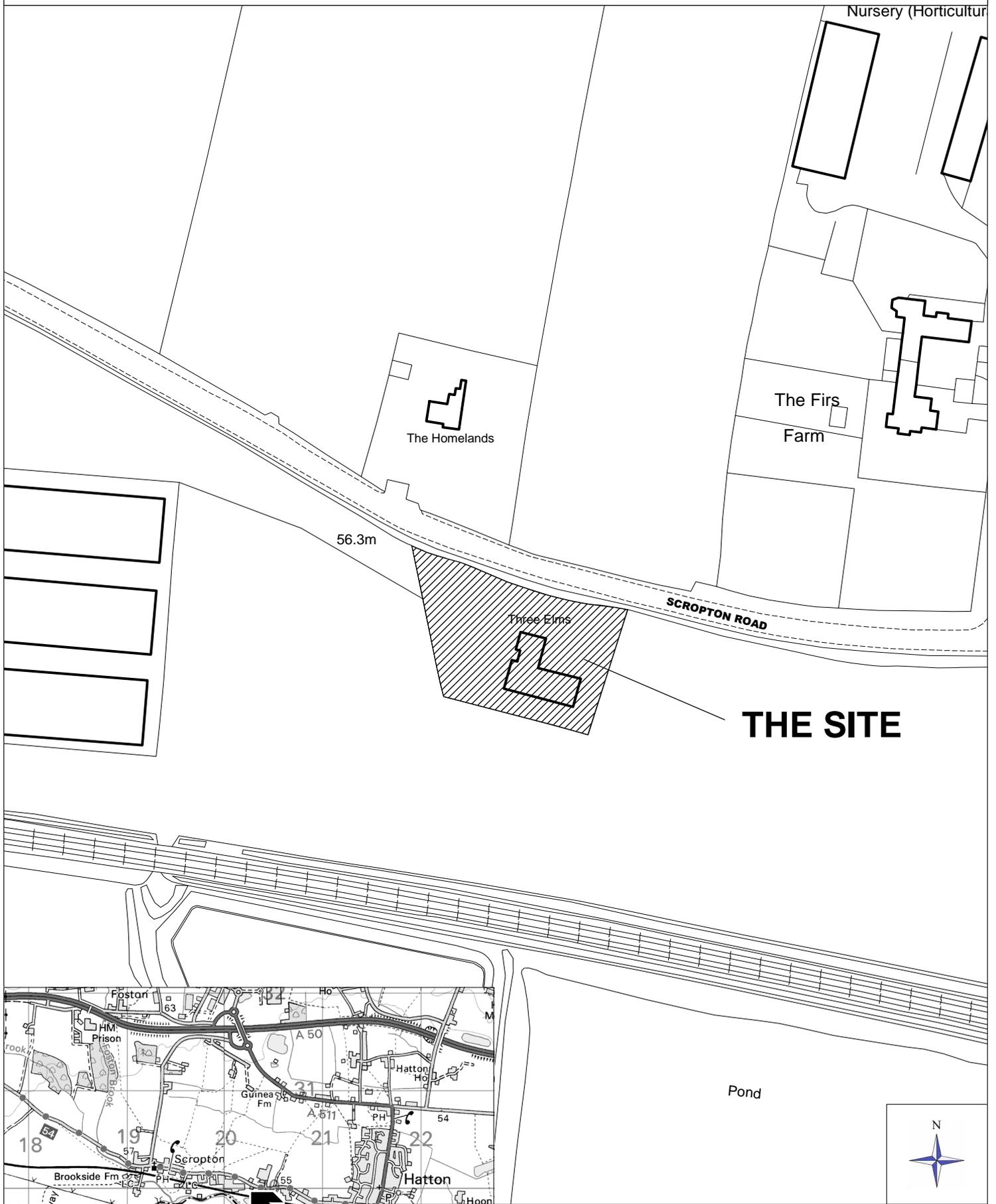
This application seeks the removal of an agricultural occupancy condition imposed in 1975.

Applicants' supporting information

The applicant has marketed the site over a 12 month period and whilst there have been expressions of interest in the property; no firm offers had been received. The bungalow and garden was advertised with a guide price of £280,000 but offers were invited. The marketing exercise ended just prior to this application being submitted.

Planning History

9/2011/0785 - Three Elms, Scropton Road, Scropton DE65 5PS



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The permission for the bungalow dates back to the mid 1970's as stated above. In 2010 an application to remove the condition was withdrawn as the price charged did not, in the opinion of the District Valuer (DV), accurately reflect the presence of the condition.

Responses to Consultations

Foston and Scropton Parish Council object to the removal of the condition on the basis that the condition was properly imposed and should not be removed.

Responses to Publicity

None.

Development Plan Policies

The relevant policies are:
Local Plan: Housing Policy 8.

National Guidance

PPS7.

Planning Considerations

The main issue central to the determination of this application is whether the marketing exercise undertaken by the applicant represents a reasonable attempt to sell the property with the condition intact and if so whether the condition continues to serve a useful planning purpose.

Planning Assessment

PPS 7 contains wording to the effect that, where an occupancy condition has reached the end of its useful life and the applicant has made a meaningful attempt to market the property to persons who can comply with the condition at a price that reflects the presence of the condition; then the condition should not be retained in place just because it was relevant at the time the dwelling was permitted.

In the current market, it is difficult to assess whether the asking price of £280,000 accurately reflects the necessary reduction on free market value of the property. It is certainly a reduction on the asking price in 2010 of £350,000 that the DV considered was an open market value at that time. The DV had recommended that a reasonable price for the dwelling with the condition in place would be £280,000. The applicant withdrew the original application and carried out a new marketing exercise that ceased just prior to the submission of this application. A brief check on the Internet of similar sized bungalows in the area shows an asking price in the vicinity of £350,000 for dwellings albeit that most of these do not have a countryside location.

The marketing exercise, based on DV advice in 2010 that £280,000 was a reasonable price to reflect the occupancy condition, is considered to have established that there is no market for agricultural workers in the vicinity of the site and as such consideration

should now turn to whether there is justification for retaining the condition in place in the light of the evidence accompanying the application.

In the light of Government advice, it would be difficult to sustain an argument that the condition should remain in place. Accordingly, it is considered that the retention of the condition is not now justified.

Recommendation

GRANT planning permission.

Item **1.4**

Reg. No. **9/2011/0848/B**

Applicant:
MR DAVID LANGSDALE
40 HOLDEN AVENUE
ASTON ON TRENT
DERBY

Agent:
MR DAVID LANGSDALE
40 HOLDEN AVENUE
ASTON ON TRENT
DERBY

Proposal: **THE VARIATION OF CONDITION THREE OF PLANNING
PERMISSION 9/2008/0261 AT 40 HOLDEN AVENUE
ASTON ON TRENT**

Ward: **ASTON**

Valid Date: **24/10/2011**

*Members will recall deferring the determination of this case pending a visit to the site.
There are no changes to the report since the last committee.*

Reason for committee determination

This application is brought to committee at the request of Councillor Watson (ward member), due to local concern about a particular issue and unusual site circumstances.

Site Description

The existing annex, the subject of the application is located in the southeast corner of the property adjacent to the highway. The applicant's house is in the opposite corner. The annex and 40 Holden Avenue share an access (from Chellaston Lane) and car parking spaces. There is lay-by parking in front of the annex, and a public footpath runs northeast of the application site.

Proposal

In 2008 planning permission was granted for the conversion of a garage into a granny annex at 40 Holden Avenue. Condition 3 of planning permission 9/2008/0261 states "The living accommodation hereby permitted shall be occupied solely by members of the household of 40 Holden Avenue, Weston-on-Trent or by domestic staff, and shall not be severed from the main house as a separate and unconnected dwelling." This application is for the variation of condition 3, to allow a third party tenant to occupy the existing annex. A previous application for the removal of condition 3 was refused earlier in the year on highway safety grounds.

Applicants' supporting information

THE SITE

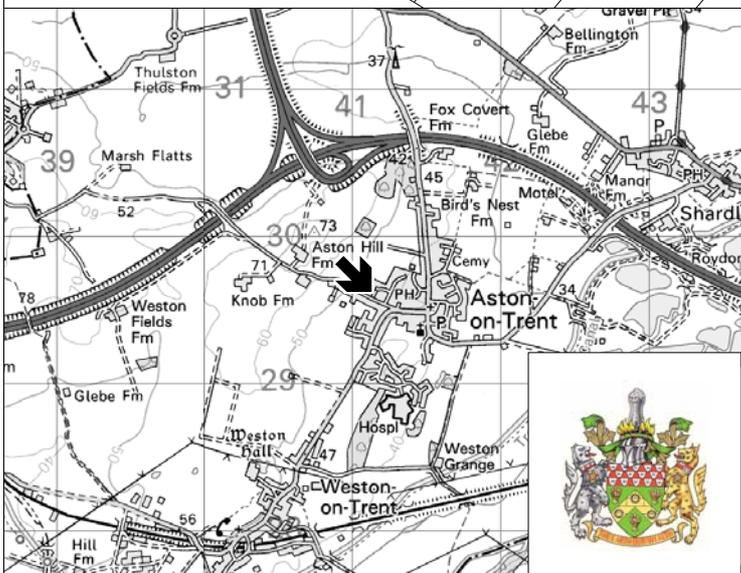
EI
Sub
Sta

HOLDEN AVENUE

CHELLASTON LANE

44.2m

42.1m



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South Derbyshire District Council. LA 100019461. 2010

The applicant has submitted supporting details on how access viability at 40 Holden Avenue could be improved. The applicant proposes to remove the existing gateposts, and cut the hedge bordering Chellaston Lane down to 600mm, to give a 2.4m x 43m visibility splay to comply with the County Highway Authority's requirements.

Planning History

9/2011/0413: Application for the variation of condition three of planning permission 9/2011/0413– Refused on highways grounds. County Highways considered visibility to be substandard at the site access onto Chellaston Lane, and an increase in vehicle movement generated by occupation of the premises, other than by household members of 40 Holden Avenue or by domestic staff, would lead to the intensification of the substandard access, contrary to the best interests of highway safety.

9/2008/0261 – Application for the conversion of the existing garage into a granny annex – Granted.

9/2004/0790 – Application for the erection of a two-storey side, single storey front extension and a detached double garage – Granted.

Responses to Consultations

The Parish Council registers their strongest objection to this proposal. The enlarged entrance to the two properties would reduce parking for residents who have nowhere else to park and would increase congestion, which the Parish Council has sought to reduce. It is felt that there has been flagrant abuse of the planning process; the first a large garage was constructed which was subsequently converted into a dwelling for "family members", and is now being "let out" to a private resident. The Council feel that this "stealth" approach should not enable residents to construct properties in front gardens. Neighbouring residents have voiced their objections and have pointed out the property has been privately let for some time.

The County Highway Authority comments that visibility at the site access onto Chellaston Lane is considered substandard due to the boundary hedge. However, it considers that there is scope to improve visibility by reducing the height of the hedge to the left when exiting the site, to an extent that would achieve an acceptable visibility splay. Therefore, it considers that the removal of condition 3 to allow third party occupation of the annexe would not have a detrimental highway impact, subject to the inclusion of a condition being included on any consent granted. It has no concerns regarding on site parking and considers that at this location an increase in roadside parking would be more of an inconvenience and not necessarily a road safety hazard.

Responses to Publicity

There has been three neighbour objections to this proposal, their concerns are:

- It is not clear how the visibility for any vehicle exiting 40 Holden Avenue onto Chellaston Lane would be improved by lowering the hedge. It is whatever is parked in the parking area that stops any view of traffic coming up the lane from the village. From the opposite direction the view is restricted by the fact that the end of the drive/entrance is recessed back from the line of the road and the hedge along the field restricts the view.

- If planning permission is granted it would make travelling along Chellaston Lane more dangerous
- The increase in vehicle movement generated by the occupant of the bungalow/annex (other than by members of the household of 40 Holden Avenue) has already intensified, causing problems for the residents of Holden Avenue and Chellaston Lane. Many of the houses on Holden Avenue have no vehicle access to their properties so have to rely on lay-by parking.
- Parking spaces here are already limited, and the problem of parking would be exacerbated especially for people who have no access to their house to park.
- The windows installed in the annex face a neighbours dwelling.
- 40 Holden Avenue have been in breach of planning consent by renting out to at least two separate tenants since the conversion of the garage. The Council appears to be turning a 'blind eye' to this. If condition three was removed it would start a precedent in the locality, and it would not be long before it is inundated with planning applications to build bungalows in people's gardens.

Development Plan Policies

The relevant policies are:

Local Plan: Transport Policy 6 and Housing Policy 5.

National Guidance

PPG 13 and PPS3

Planning Considerations

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

- The introduction of a self-contained dwelling on the site
- Highways safety implications

Planning Assessment

The whole property is within the village confine of Aston on Trent, therefore the principle of a new dwelling within this location is acceptable under Housing Policy 5.

The annex is already established, and is not detrimental to neighbouring dwellings in terms of amenity, overlooking and overshadowing, and is not harmful to the street scene. The introduction of the annexe as a self-contained dwelling would not alter any of this situation. The main issue is whether allowing third party occupation of the annex would cause any highway safety issues.

Objectors are concerned about the parking situation along Chellaston Lane causing a danger to road users. However, given that 2 - 4 vehicles can park on the drive of 40 Holden Avenue and there is lay-by parking south of the annex, and on the advice of the County Highways Authority, reducing the hedge facing Chellaston Lane would achieve an acceptable visibility splay. Therefore the removal of condition 3 would have no detrimental highway safety impacts.

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. Before first occupation of the annex, the subject of the application, the existing access to Chellaston Lane shall be modified in accordance with the letter/drawing submitted as part of the application and provided with a visibility splay extending from a point 2.4m from the carriageway edge in the south eastern direction, measured along the centreline of the access, for a distance of 43m in each direction, measured along the nearside carriageway edge. The area in advance of the sightlines shall be cleared and permanently maintained clear of any object greater than 1m in height (0.6, in the case of vegetation) relative to adjoining nearside carriageway channel level. The hedge boundary to the right of the access, in the north western direction, shall be permanently maintained at a height no greater than 600mm, relative to the nearside carriageway channel level.

Reason: In the interests of highway safety.

2. Notwithstanding any details submitted or the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended), no development shall take place until there has been submitted to and approved in writing by the Local Planning Authority plans indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed in accordance with the approved details before the development is occupied or in accordance with a timetable which shall first have been agreed in writing with the Local Planning Authority.

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

3. Notwithstanding the provision of the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008, the dwelling hereby permitted shall not be enlarged or extended without the prior grant of planning permission on an application made to the Local Planning Authority in that regard.

Reason: To maintain control in the interest of the character and amenity of the area, having regard to the setting and size of the development, the site area and effect upon neighbouring properties and/or the street scene.

4. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995, the existing parking space shall not be used other than for the above stated purpose except with the prior permission of the Local Planning Authority granted on an application made in that regard.

Reason: To ensure that adequate parking provision is available.

Item 1.5

Reg. No. 9/2011/0935/NO

Applicant:

SDDC Culture & Community
Rosliston Forestry Centre
Burton Road
Rosliston
Swadlincote

Agent:

Ms Ruth Frudd
SDDC Culture & Community
Rosliston Forestry Centre
Burton Road
Rosliston
Swadlincote

Proposal: **The erection of an outdoor shelter / teaching space at
Rosliston Forestry Centre Burton Road Rosliston
Swadlincote**

Ward: **Linton**

Valid Date: **12/12/2011**

Reason for committee determination

This application is brought before this committee because the Council is the applicant.

Site Description

The application site lies well within the boundaries of the Forestry Centre on Burton Road in Rosliston. A belt of trees along the road frontage and an internal car park separate the application site from the nearest public highway that lies around 50m away.

The site is part of Rosliston Forestry Centre located within the main complex of buildings. The application site is to the west of the existing classroom building adjacent to the car park.

Proposal

Planning permission was given in 2009 for a covered external teaching area to the side of the existing classroom building (but fronting the car park) under application number 9/2009/0510 but the design brief did not fit the requirements of the forestry centre therefore this application has been resubmitted under this current application. Its purpose (as before) would be to provide an additional teaching space for school children and other social groups to meet before exploring the surrounding natural woodlands as well as shelter from the weather. It would enable two further classes of children to be taught per day.

The overall size of the proposed building would be 14.8m in length x 4m in depth x 2.4m in height (max). It would be built from timber posts with timber cladding at a height of 1m on three elevations and would have a polycarbonate roof with a shiplap panel with roll down side panels being terracotta in colour.

Applicants' supporting information

The submitted design and access statement describes the Environmental Education project concept, the purpose of the building, its scale and design within the overall site context.

Planning History

9/2009/0510 - The erection of a covered external teaching area – approved 29 July 2009.

Responses to Consultations

The County Highway Authority does not raise any objections to the development as proposed.

The Contaminated Land Officer does not raise any objections to the development as proposed and advises that no land contamination conditions are required.

Responses to Publicity

None.

National Guidance

Planning Policy Statements 4 and 7

Development Plan Policies

The relevant policies are:
Saved Policies from the Local Plan: Environment Policy 10 and Community Facilities Policy 1

Planning Considerations

The main issue central to the determination of this application is the scale and appearance of the building in relation to the existing buildings and surrounding area.

Planning Assessment

The proposed building would be significantly lower than the existing classroom building (and previously approved scheme) and due to its open nature would be viewed against this building. The existing fence would be retained and due to the low eaves proposed the shelter would be barely visible above this fence.

There is a residential property to the southwest adjacent to the site exit approximately 22 metres from the proposed building, which is occupied by the manager of the Forestry

Centre. The impact on the amenity of this property is therefore not considered significant.

The proposal to provide an additional covered teaching area is directly related to the established Forestry Centre and relates to operations in the National Forest and is therefore acceptable in planning policy terms.

The design of the proposed building would be in keeping with the existing visitors centre and classroom building and would not be highly visible due to its open nature.

As set out in the description above, the site is well screened from the public highway, there would be no effect on occupants of neighbouring properties as the site lies within the countryside and there are few residential properties in the locality.

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 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).

Informatives:

The proposed development lies within a coal mining area which may contain unrecorded mining related hazards. If any coal mining feature is encountered during development, this should be reported to The Coal Authority.

Any intrusive activities which disturb or enter any coal seams, coal mine workings or coal mine entries (shafts and adits) requires the prior written permission of The Coal Authority.

Property specific summary information on coal mining can be obtained from The Coal Authority's Property Search Service on 0845 762 6848 or at www.groundstability.com

Item 1.6

Reg. No. 9/2011/0957/NO

Applicant:
Mr David Cash
34 Wye Close
Hilton

Agent:
Mr David Cash
34 Wye Close
Hilton

Proposal: **THE ERECTION OF AN AGRICULTURAL BUILDING AT
LAND AT SK2333 3066 COMMON LANE SUTTON ON
THE HILL**

Ward: **HILTON**

Valid Date: **05/12/2011**

Reason for committee determination

Councillor Bale has requested that the application be brought to Committee as issues of local concern need to be considered.

Site Description

The site as a whole occupies an elevated position above Common Lane from which access is taken. The application building is set back from the road by some 48 metres. It would be sited in the corner of the field as illustrated on the plan displayed at the meeting.

The building abuts the boundaries of Willow Tree Cottage and Bank House both of which have hedges forming their boundaries. Behind the hedge to Willow Bank House is a group of trees in its southwest corner. The hedge to Willow Tree Cottage is of varying heights up to 4 metres but generally at 3 metres with the Bank House hedge having a height of about 1.3 metres. The site of the barn is currently scrubby grass but the majority of the rest of the site (approximately 1.5ha) is under cultivation including the land under the glasshouse.

Proposal

The proposed building would measure 13.82 x 9.14 metres overall. The ridge height would be 4 metres, have an eaves height on one side of 3 metres, south side, and the other 2.44 metres north side. The lower eaves height looks towards the north, Common Lane. The lower part of the roof would be protecting an open sided 'lean to' that has one end, east, clad in green plastic coated steel sheets that also enclose three sides of the remainder of the building. The fourth side of the building would be enclosed with timber boards. The roof would be clad in fibre cement sheet.

Applicants' supporting information

This land was purchased to grow organic produce for the business "Organic Pumpkin" and wholesale sales. A further 3.29 ha (8.1 acres) of land at Kirk Langley is rented.

During the last two years produce from this land and glasshouse has been sold to customers across South Derbyshire with more than one hundred families having deliveries.

This application addresses the matters objected to by the [appeal] Planning Inspector, the agricultural building now being located away from the road, with a low roof ridge height of 4 meters, eaves height of 3 meters to the south and 2.4 meters to the north. The level of the land, it is asserted, puts much of the building out of direct view from the road, with the glasshouse also screening it from "Common Lane".

Landscape planting for the glasshouse to the west of the field would, in coming years, also screen the agricultural building. Until then the west elevation could be seen from some distance on "Common Lane" on the approach to Sutton on the Hill.

The applicant asserts that vertical timber board cladding to the west elevation would give the appearance of an older agricultural building to give an aged appearance when approaching the village.

The agricultural building would be used to store machinery, tools, irrigation equipment, crop protection materials, growing media for plant propagation, cleaning, weighing and bagging of crops, and the crops themselves.

The steel portal framed agricultural building would have an enclosed area of 92 square meters, an open implement storage area of 34 square meters to the south elevation; total area 126 square meters.

Planning History

Planning permission for the glasshouse was granted in 2009 but the application for the agricultural storage building was refused at the same meeting when the building was proposed adjacent to Common Lane. The subsequent appeal was dismissed on the basis that the proposed siting would have an undue impact on the character of the area and the setting of the adjacent listed building. Notwithstanding that, the Inspector acknowledged the need for the business to have a building to store equipment but that the harm caused by the then proposed siting of the store building was sufficient to refuse planning permission.

Responses to Consultations

The County Highway Authority has no objection provided that the building is ancillary to the existing use of the land and the access provided in connection with the glasshouse has been properly implemented.

Environmental Health Enforcement Manager (Contamination) has no comments.

Responses to Publicity

11 responses to the application have been received and are summarised as follows:

- a) The occupier of Bank House states that if the proposal were reduced in height to 3.5m and timber cladding used on the south elevation then the proposal may be considered acceptable.
- b) The building would be detrimental to the setting of the village, as it would retain the stark functional appearance that the Inspector found unacceptable; all sides of the building should be timber clad.
- c) It would adversely affect the setting of listed buildings.
- d) It would cause traffic problems on Common Lane, particularly at the 'dog leg' next to the Mill that is frequently used by walkers, horse riders and cyclists.
- e) The existing access is inadequate
- f) The building would remain visible from Common Lane and Brook Lane and still have an adverse impact on the landscape. The inspector noted that the landscaping would take time to become established and it remains very small and ineffective. No additional landscaping is proposed.
- g) It would be visible to all buildings on Marlpit Lane and Brook Lane that back onto the site and directly affect the amenity of occupiers of Willow Tree Cottage and Bank House.
- h) The occupier of Willow Bank Cottage asserts that the building would present an unbroken façade 18 metres long to his property and be only 32 metres from the rear façade of Bank House. The proposal is only 28 metres from that property being within 3 m of the boundary and would have a detrimental effect on the bottom part of its garden.
- i) The building is too large for the holding albeit 25% smaller than the one originally proposed. It would be predominantly used as a warehouse to sort and distribute produce bought to the site from elsewhere and would be commercial/industrial rather than agricultural in nature and is totally inappropriate. Very little has been produced from the open land and glasshouse since the site started operating. The warehouse operation should be sited in a suitable unit in Hilton rather than in the attractive village of Sutton on the Hill.
- j) No new employment would be generated as a result of the development. The building would be better sited at the field in Kirk Langley. Other suitable buildings are available in the areas that are a more sustainable option.
- k) No suitable hand washing facilities appear available as produce is retailed from the site; this is essential.
- l) Light and noise pollution would cause disturbance to neighbours. Neighbours experience noise from the site already.
- m) The applicant's ultimate aim is to have a house on the land and residents vigorously oppose this.

Development Plan Policies

The relevant policies are:

Local Plan: Environment Policy 5 and Housing Policy 11

National Guidance

PPS 7 – Policies and guidance on agricultural development

PPS 4 – policies and guidance relating to encouraging the rural economy.

Planning Considerations

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

- The Development Plan and more up to date government advice.
- Impact on the character of the area
- Impact on listed buildings
- Impact on neighbours

Planning Assessment

Environment Policy 5 of the adopted Local Plan seeks to ensure that where agricultural development is controlled by planning policies, then it should be so designed and located such that its impact on the character and appearance of the countryside is minimised; appropriate screening is put in place and that the development is served by appropriate access and does not give rise to excessive noise or smell, and is located in close proximity to existing buildings.

The site is occupied by an established rural business in the form of a smallholding. When originally submitted, the proposal included an agricultural storage building on land next to Common Lane. That application was refused and the appeal dismissed for the reasons described above. The Inspector's main concerns in dismissing the appeal was the stark appearance of the store building on raised ground above Common Lane and the impact that would have on the setting of the nearby listed building – The Mill. The current proposal resites the building to a location well within the site further from the listed building and reduces its size. The dominance of the building next to Common Lane would be reduced. The ridge height of 4m is not excessive and from the direction of The Mill would be seen against a background of trees, albeit not in the control of the applicant. The conclusion is that the proposed siting addresses the concerns expressed by the Inspector at the appeal.

Neighbours are concerned that the storage building would be used as a warehouse/distribution centre for goods imported to the site. It is true that there would be a degree of importation of goods from the applicants other land as stated in the Applicants Supporting Information above, but given the limited size of the proposed barn and the other storage requirements, there would be little justification for a refusal on this basis.

There would be some loss of outlook from the existing houses adjacent to the site and the building would be visible from a wider area from other houses. It has never been a principle in planning for a loss of outlook to be a reason for refusing planning permission. The immediate neighbours are separated from the proposed building by distances of 32 and 28 metres respectively as mentioned by the objector. These distances far exceed those set out in the Councils SPD on Housing Design and Layout if that document was used as a guide to assessing the impact of this proposal. As such there is no reasonable justification for refusing the application on the basis of its impact on neighbouring dwellings.

A neighbour has requested that the building be clad in timber particularly on its south elevation and others have suggested that the whole building be so clad. The applicant has been asked to consider these requests and has advised that the cost of timber

cladding for the whole building would be excessive. However, he is willing to alter the proposed green colour of the cladding to a brown colour that may be more acceptable in the locality.

In conclusion it is considered that the building is of a scale and character in keeping with an agricultural building on the edge of a rural village and that the business is now well established and providing employment for the owner to the benefit of the rural economy. The materials of construction are in line with modern practice albeit the applicant has sought to 'age' the appearance of the west elevation through the use of timber cladding and is willing to consider other colours for the cladding. Subject to the recommended conditions, the proposal accords with Development Plan policy and government advice.

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 building hereby permitted shall be used solely in connection with the operation of the 'Organic Pumpkin' or other agricultural enterprise unless the Local Planning Authority has granted planning permission for an alternative user in response to an application made in that regard.

Reason: The permission is granted on the basis of the agricultural requirements of the business. Whilst an alternative agricultural user of the land can benefit from the permission, the Local Planning Authority seeks to control any other user of the building in the interests of the proper planning of the area.

2. PLANNING AND OTHER APPEALS

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

Reference	Place	Ward	Result	Cttee/Delegated
9/2011/0375	Walton	Seales	Allowed	Committee
9/2011/0387	Swadlincote	Swadlincote	Dismissed	Delegated
9/2011/0513	Willington	Willington & Findern	Dismissed	Delegated



Appeal Decision

Site visit made on 29 November 2011

by Stuart Hall BA(Hons) DipTP FRTPI MCIHT

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 7 December 2011

Appeal Ref: APP/F1040/A/11/2158362

Land rear of 45-61 Bells End Road, Walton-on-Trent DE12 8NF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Jacky Motts against the decision of South Derbyshire District Council.
 - The application Ref 9/2011/0375/U, dated 6 May 2011, was approved on 2 August 2011 and planning permission was granted subject to conditions.
 - The development permitted is to broaden use of land from agriculture to agricultural and dog exercise area including retention of chicken pens.
 - The condition in dispute is No 3 which states that: No more than 4 dogs shall be exercised at any one time, and they must be under supervision at all times.
 - The reason given for the condition is: In order to maintain control over the dogs.
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Decision

1. The appeal is allowed and the planning permission Ref 9/2011/0375/U to broaden use of land from agriculture to agricultural and dog exercise area including retention of chicken pens at land rear of 45-61 Bells End Road, Walton-on-Trent DE12 8NF, granted on 2 August 2011 by South Derbyshire District Council, is varied by deleting condition 3 and substituting for it the following condition:

Dogs shall not be allowed access to the land other than in the presence on the land of the appellant or her competent representative.

Main Issue

2. The objective behind the Council's decision to impose the contested condition is to protect the living conditions of occupiers of properties near to the appeal site in relation to noise and disturbance, in accordance with development plan and national planning policies. The merits of that objective are not in dispute. Accordingly, having regard to paragraph 14 of *Circular 11/95 The Use of Conditions in Planning Permissions*, the main issue in this appeal is whether the condition is necessary and effective in that respect.

Reasons

3. The triangular shaped appeal site, formerly part of a large field, runs for some 75 metres (m) behind properties on Bells End Road. It is narrowest adjoining No 45, the appellant's property, and extends some 50 m further to the rear of
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No 61. Nos 47, 57 and 59 also adjoin the site, the boundaries being marked by a variety of low fencing. A garage court stands between the site and the shorter rear gardens of Nos 49, 51, 53 and 55. The site is accessed on foot from the rear garden of No 45, and was in use as a dog exercise area prior to the planning application being made. Though initially it was stated that there may be up to eight dogs at the property, the Council considered the application on the accepted basis that up to 15 dogs were present.

4. As the Council has not sought to control the number of dogs kept within the residential curtilage, it seems inevitable that neighbours will hear the dogs from time to time when they are contained within that area. Neighbours' long term interests are protected by other conditions not in dispute that limit the benefit of the permission to the appellant and will cause it to expire on 2 August 2012. Therefore, notwithstanding complaints about other alleged effects of the use, the main issue turns on whether during the currency of the permission the condition limits the amount of noise as intended.
5. During the site visit, when 11 dogs were present, the use of the appeal site was observed from the edge of the garage court adjoining No 49's rear garden, from where the part of the site closest to No 45 could be seen. This enabled the appellant to release dogs from her residential curtilage without them being distracted by the presence of other people. When four dogs were released to the exercise area their brief and limited barking was substantially less noisy than the more prolonged barking from other dogs still contained in No 45's rear garden. When all 11 dogs were released together, the initial noise was not noticeably louder, and was less prolonged, than when only four dogs were released. Barking was not excessive during the supervised exercise periods.
6. Whilst the site visit enabled only a limited trial, it bears out the appellant's submission that the dogs are less likely to bark, and can be more readily supervised, if they are all exercised and supervised together. Bearing in mind the total number of dogs likely to be present, the evidence weighs against the Council's apparent presumption that the difficulty of controlling the dogs, and therefore the potential for noise disturbance, increases as the number released to the exercise area is increased. Further, taking into account the other limiting planning conditions mentioned above, there are no grounds to support Council concerns about how future owners may operate the use.
7. Neighbours' representations forcefully express their perception that their living conditions are adversely affected by the use, which photographs show has been carried out in breach of the contested condition. However, from the evidence available I conclude that the condition is not effective in protecting those living conditions, and that it may well be counter-productive. It follows that it is not necessary. Therefore, the appeal should succeed. However, evidence of dogs straying beyond the fenced confines of the appeal site demonstrates the need to require that dogs at exercise are supervised at all times. Accordingly, a planning condition to that effect is substituted for the condition hereby deleted.

Stuart Hall

INSPECTOR



Appeal Decision

Site visit made on 29 November 2011

by Stuart Hall BA(Hons) DipTP FRTPI MCIHT

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 7 December 2011

Appeal Ref: APP/F1040/A/11/2158643

Hepworth Retail Park, off Coppice Side, Swadlincote, Derbyshire

- 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 Bowmer & Kirkland Limited against the decision of South Derbyshire District Council.
 - The application Ref 9/2011/0387, dated 3 May 2011, was refused by notice dated 6 July 2011.
 - The development proposed is to provide roller security shutters to units 3 and 8 on the new Hepworth Retail Park off Coppice Side, Swadlincote.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue in this appeal is the effect of the proposed roller security shutters at unit 8 on the vitality and attractiveness of the retail park. The Council's decision in respect of shutters at unit 3 is not in dispute.

Reasons

3. Unit 8, now occupied by a major food retailer, occupies an elevated and prominent position overlooking a main entrance to a new retail park on the edge of the town centre of Swadlincote. The park, on a former industrial site, has been developed in accordance with *The Swadlincote Town Centre Vision and Strategy*, published by the Council in 2001 and aimed at regenerating the area by making it a more attractive place to visit. The park contains another major food store, several substantial retail outlets framing a large surface car park, a cinema, and what appears to be a restaurant nearing completion. At the time of the site visit, all but one of the retail units were occupied.
 4. Unlike the fully glazed frontages of other units, the majority of unit 8's long main façade facing the car park consists mostly of solid brickwork. This is relieved by glazing on the three bays on the outer corner of the building and on the majority of the return elevation overlooking a busy road and mixed uses beyond. The proposal would cover those glazed areas with external security shutters when the store is closed between 2000 hours and 0800 hours.
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5. Whilst the punched design of the shutters would allow background artificial light within the unit to penetrate 55% of their surface area, the full effect would only be apparent at close quarters. Viewed from the middle distance, for example at the main entrance to the retail park and from public areas beyond, the shutters themselves would be the more dominant visual feature. Notwithstanding the intention to finish them in dark grey to match the glazing frames, by effectively completing the outer cladding of the public faces of the building they would harm its appearance and retail character.
6. Though external security shutters are common in some towns, the evidence is that there are very few in use in this town centre. There are none in the new retail park, which has been developed on the basis that shutters, where required, should be fitted internally in order to protect its welcoming ambience. Accordingly, the proposed shutters would not be in keeping with their surroundings. Though they may not deter people from visiting the area, they would detract from the overall visual experience of visitors and passers-by.
7. These considerations lead me to conclude that the proposal would harm the vitality and attractiveness of the retail park. This would conflict with saved policy S3 of the *South Derbyshire Local Plan*, adopted in 1998, which seeks to protect the character of the town centre, and with the Council's aim to enhance that character through redevelopment initiatives. The proposal could also be the precursor of other schemes that would create a fortified appearance which would further undermine the design aims of the overall development and the local regeneration strategy.
8. The user's concern regarding night time security is a material consideration carrying substantial weight. The cinema and restaurant are likely to draw significant numbers at times when the store would be closed. However, it does not follow that those numbers will increase the risk of criminal damage. Coupled with the site's visual prominence, the resulting public surveillance may help to deter such activity. The absence of external shutters on the other premises indicates the variety of ways in which security needs can be met. There is no evidence as to why internally-mounted shutters could not be used in this unit. The current user's common practice of fitting external shutters does not bear on the planning merits of their use at the appeal site.
9. Letters to Chief Planning Officers, to which reference is made, do not lend specific support to this scheme. That dated 31 March 2011 anticipates a strong presumption in favour of sustainable development that does not override existing development plan and national planning policies in support of good quality design. That dated 12 August 2011, issued in the wake of riots in some areas, does not supersede those policies. There is no substantive evidence to support submissions that the proposed installations would help to increase the vibrancy and vitality of the area. These other matters do not outweigh the harm to vitality and attractiveness, which remains a compelling reason why the appeal should not succeed.

Stuart Hall

INSPECTOR



Appeal Decision

Site visit made on 29 November 2011

by Stuart Hall BA(Hons) DipTP FRTPI MCIHT

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 7 December 2011

Appeal Ref: APP/F1040/A/11/2160614

Homeware, 45 Beech Avenue, Willington, Derby DE65 6DB

- 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 Dimitrius Miaou against the decision of South Derbyshire District Council.
 - The application Ref 9/2011/0513, dated 24 June 2011, was refused by notice dated 24 August 2011.
 - The development proposed is change of use from hardware shop to hot food takeaway outlet.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. Submissions on behalf of the appellant seek to question the actions of the Council in determining the application under powers delegated to its officers, having regard to the substantial public interest and comment it attracted. Whilst there is no evidence that the Council's powers were applied improperly, those submissions do not bear on my remit, which is to determine the appeal solely on the basis of the planning merits of the proposal.

Main issues

3. The main issues in this appeal are the effects of the proposed change of use on the living conditions of the occupiers of nearby dwellings, in relation to noise and disturbance, vibration, odours and outlook; and its effects on the character and appearance of its surroundings. Whilst the Council's decision did not refer specifically to this second issue, it takes into account the views of local residents expressed in the course of the appeal.

Reasons

4. The appeal premises comprise a shop unit at the end of a short terrace of commercial units, each with two floors of living accommodation above, on a corner site within a residential estate about 400 metres (m) from the village centre. The principal sources of potential noise and disturbance are the proposed extraction equipment and the comings and goings of customers.
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5. The appellant does not challenge the Council's suggestion, should I be minded to allow the appeal, that the extraction equipment should function so that noise levels do not exceed 16dBa at a distance of 15 m. I have no cause to disagree. Though technical details submitted with the application indicate noise levels well in excess of that standard, revised proposals submitted on 12 September 2011 in response to the Council's decision, involving the addition of a second silencer and an acoustic enclosure, suggest that levels well within it could be achieved. This is not challenged by the Council. Therefore, I conclude that a planning condition could ensure adequate external noise attenuation.
6. It appears reasonable to assume that sound insulation could be installed to restrict noise transmission from the unit to the living accommodation above. Residents may well be aware of customers' comings and goings, whether by car or on foot, especially on summer evenings when windows are more likely to be open. However, the general store in the terrace is open until 2100 hrs except on Sundays. Proposed opening hours, controllable by planning condition, are 1130 hours to 1400 hours and 1630 hours to 2130 hours on Mondays to Saturdays only. Therefore, whilst the proposal may well generate significant numbers of customers, there is no substantive evidence that this would cause material noise and disturbance in the late evening, when residents are most likely to value peace and quiet.
7. Vibrations from the extraction equipment would be a potential source of disturbance to residents living directly above the unit. However, technical specifications in the 12 September submissions indicate that this could be adequately mitigated. Therefore, I conclude that this too could be controlled by condition, were the proposal acceptable in all other respects. Odours would be less easily controlled, bearing in mind that the shop door would be opened often and that extraction equipment is rarely 100% effective in this respect. No planning obligation is in place to give effect to the suggestion that the unit and the flat above should remain in the same ownership, which in any event would not overcome the potential harm to occupiers of this and adjacent flats.
8. Turning to outlook, elevation drawings show a stainless steel flue pipe, with silencers, acoustic box, filter and cowl, mounted on the flank of the building forward of and rising to the same height as the roof ridge. Suppliers' diagrams show the structure mounted to the rear of and rising above the ridge. In either case, the 0.4 m diameter pipe, partly encased by the above additions, would exit the flank wall just below first floor level, extending over two thirds of the height of the three storey gable. Though facing dwellings are some 40 m from the gable, from my visit to 29 Oaks Road I saw that the structure would be an incongruous and dominant element of the outlook from main living rooms. It would be prominent but less intrusive in the outlook from within 20 Oaks Road.
9. The gable is a prominent feature occupying an exposed corner position in an area of predominantly one and two storey suburban development. The proposed extraction flue and its attachments would draw the eye and dominate the street scene in this part of Oaks Road. Its scale, position and utilitarian industrial appearance would detract materially from the otherwise domestic character of its surroundings. The suggestion that the structure could be coloured or encased in other material to match the gable's existing brickwork, whilst acknowledging its intrusive appearance, would not substantially mitigate the harmful visual impact of its scale and position.

10. Account has been taken of petitions and several individual representations from interested persons both for and against the proposal. They indicate that a large majority of residents who live close to the site oppose it. I conclude in relation to noise and disturbance that this opposition is not supported by substantive evidence, and that appropriate planning conditions would safeguard residents' interests. However, the risk that unpleasant odours may materially harm the living conditions of those living in the terrace, and the harm to the outlook of a small number of residents, are causes for concern. Such harm would conflict with the aim of saved Policy S3 of the *South Derbyshire Local Plan*, adopted in 1998, to protect neighbours' amenities.
11. The above considerations also lead me to conclude that the visual impact of the scheme on the wider street scene would cause unacceptable harm to the character and appearance of the site's surroundings. No saved development plan policies brought to my attention relate directly to this effect. However, it conflicts with objectives, set out in *Planning Policy Statement 1: Delivering Sustainable Development*, for high quality inclusive design and the prevention of design that is inappropriate in its context.

Other matters

12. Whether or not proposed close circuit television surveillance would be a wholly positive factor, it would not address a cause of potential harm that weighs heavily against the scheme. The possible re-location of refuse storage would only marginally reduce the risk of odours affecting flat occupiers. There is no substantive evidence to counter the local highway authority's view that car access and parking arrangements outside the premises are adequate. Rather than justifying the scheme, flues on commercial properties in the village centre are significantly less visually intrusive. The provision of litter bins would be beneficial if a waste removal and maintenance regime could be ensured.
13. The sum of all other matters raised does not outweigh the harm that the scheme would cause to the living conditions of occupiers of nearby dwellings and to character and appearance. The appellant's offers to modify the proposal would amount to a materially different scheme that should be first considered by the Council. References to addressing some areas of concern through planning obligations not yet in place are not matters that can be secured by planning condition. It follows that the appeal should not succeed.

Stuart Hall

INSPECTOR