

# **REPORT OF THE HEAD OF PLANNING SERVICES**

## **SECTION 1: Planning Applications**

## **SECTION 2: Appeals**

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

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## 1. PLANNING APPLICATIONS

This section 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) and responses to County Matters.

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9/2006/1163	2.1	Linton	Linton	7

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 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 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.



21/11/2006

**Item** 1.1**Reg. No.** 9/2006/1058/O**Applicant:**

Mr Mrs J Halliwell  
 Measham  
 Swadlincote  
 Derbyshire  
 DE12 7EN

**Agent:**

Mr. D. Granger  
 David Granger Architectural Design  
 The Old Dairy Mill Street  
 Packington  
 Ashby De La Zouch  
 Leicestershire  
 LE65 1WN

**Proposal:** Outline application (all matters reserved except for siting and access) for the erection of two detached bungalows on land at the rear of 11 13 Princess Avenue Linton Swadlincote

**Ward:** Linton

**Valid Date:** 08/09/2006

**Reason for committee determination**

The application is brought before Committee at the request of Councillor Southern in order that the special circumstances relating to access can be considered by Members.

**Site Description**

The land is generally flat and comprises part of the rear gardens of two dwellings fronting Princess Avenue. The gardens are currently enclosed by fences and planting and there are small domestic outbuildings on the site together with various fruit trees and one deciduous tree close to the boundary between numbers 13 and 15. Access to the site is via a track between numbers 3 and 5 Princess Avenue that formerly served Council owned garages that have been demolished. The track currently provides pedestrian or vehicular access to the rear of houses fronting Princess Avenue and to the fields beyond.

**Proposal**

It is proposed to erect a single storey dwelling in each of the rear gardens of numbers 11 and 13 Princess Avenue. Whilst this is an outline application access and siting are submitted for determination at this time and an indicative scheme for the design of the buildings accompanies the application.



South Derbyshire  
District Council  
Civic Offices  
Civic Way  
Swadlincote  
DE11 0AH

9/2006/1058/O Land at rear 11 & 13 Princess Ave  
Linton  
Swadlincote

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Date Plotted 10/11/2006

NORTH ↑

Plot centred at 427331 316647 Scale 1:2500

## **Applicants' supporting information**

The applicant has submitted a design and access statement with this proposal. In summary it says that the land is already in residential use. It is well located for services in the village and would be use of previously developed land in line with government guidance. The buildings would be of an appropriate scale for their location and are compliant with standards for parking and access.

## **Planning History**

This land is part of the gardens to two former Council owned properties. There is no planning history for these particular houses, however, there have been recent applications on the gardens of similar houses nearby. Outline permission was granted in July 2004 for one dwelling to the rear of number 5 (the details for which are for consideration later in this agenda) with a further single storey dwelling permitted in January 2006 on part of the garden of number 15.

## **Responses to Consultations**

The County Highways Authority and Severn Trent Water Authority have no objections subject to conditions and the Council's Property Services Manager comments that the access is Council owned and the owner will need to enter into a new agreement for use of the access.

## **Responses to Publicity**

Two letters have been received in response to publicity objecting for the following reasons:

- Additional traffic would cause noise and disturbance during the construction of these properties and there would be increased traffic when they are occupied.
- There is concern about safety issues between vehicular and pedestrian traffic as the track is used by persons going to the recreation field and farmers to access their land.
- Loss of privacy
- The plans show land that is in the ownership of the adjoining property and permission to use this land has not been granted. (Comment – The applicant has served the appropriate notices on all landowners and whether or nor an owner agrees to sell or lease land for the purposes of development is a matter between the parties concerned.)

## **Development Plan Policies**

The relevant policies are:

RSS8: Spatial Policy 3

Joint Structure Plan: General Development Strategy Policies 1, 2 and 3;

Housing Policy 5; Transport Policy 1 and 4

Local Plan: Housing Policy 5; Transport Policy 6

## Planning Considerations

The main issues central to the determination of this application are policy, design, highway safety and amenity.

## Planning Assessment

The application site is previously developed land and it lies within the village envelope. There is no policy objection to the proposal indeed it would be compliant with guidance in PPG3 which urges Council's to make the most efficient use of land and to direct development to previously developed sites.

Whilst design is reserved for subsequent approval, the layout is acceptable and the indicative design that accompanies this application raises no concerns. As to amenity, the rear gardens of the application site and adjoining gardens are all currently open and completely devoid of two storey buildings. The rear gardens all have a relationship with open countryside to the south. Whilst the proposal is compliant with the Council's space about dwellings guidance, in the interests of maintaining the character of the area and the privacy of occupants of the frontage properties only single storey buildings would be acceptable and a condition requiring landscaping to assimilate the buildings into this semi-rural location is appropriate. This reflects the permission already granted for number 15.

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. Approval of the details of the design and external appearance of the buildings and the landscaping and means of enclosure of the site 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. This permission shall be for the erection of only single storey dwellings.  
Reason: Two storey dwellings in this location would appear obtrusive and incongruous.
4. Before any other operations are commenced new vehicular access shall be formed for numbers 11 and 13 Princess Avenue in accordance with the application drawings. The accesses shall be laid out, constructed and provided with 2m x 2m x 45° pedestrian intervisibility splays. The land in advance of the



splays shall be maintained throughout the life of the development clear of any object greater than 0.6m in height relative to the adjoining nearside carriageway channel level.

Reason: In the interests of highway safety.

5. Before any other operations are commenced, apart from as required by Condition 4 above, parking shall be provided for use in association with numbers 11 and 13 Princess Avenue in accordance with the application drawings. The parking spaces shall be laid out, surfaced and maintained throughout the life of the development free from any impediment to their designated use.

Reason: To ensure that adequate parking provision is available.

6. The dwellings hereby permitted shall not be occupied until space has been provided within the application site in accordance with the application drawings for the parking/manoeuvring of 2 vehicles per dwelling. The space shall be laid out surfaced and maintained throughout the life of the development free from any impediment to its designated use.

Reason: To ensure that adequate parking provision is available.

7. The proposed access driveway shall be surfaced with a solid bound material (i.e not loose chippings) for the initial 5m measured back from the nearside highway boundary.

Reason: To avoid deleterious material being deposited on the highway in the interests of highway safety.

8. 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.

#### Informatives:

The proposed development lies within a coal mining area. In the circumstances Applicants should take account of any coal mining related hazards to stability in their proposals. Developers must also seek permission from the Authority before undertaking any operations that involves entry into any coal or mines of coal, including coal mine shafts and adits and the implementation of site investigations or other works. Property specific summary information on any past, current and proposed surface and underground coal mining activity to affect the development can be obtained from the Coal Authority. The Coal Authority Mining Reports Service can be contacted on 0845 762 6848 or at [www.coal.gov.uk](http://www.coal.gov.uk).

Pursuant to Section 184 of the Highways Act 1980 and Section 86(4) of the New Roads and Streetworks Act 1991, at least 6 weeks prior notification should be given to the Director of Environmental Services at County Hall, Matlock (telephone 01629 580000 and ask for the District Highway Care Manager on extension 7595) before any works commence on the vehicular access within highway limits.



21/11/2006

**Item** 2.1**Reg. No.** 9/2006/1163/D**Applicant:**

Mr T Higgs  
 Sycamore Road, Stapenhill  
 Burton Upon trent  
 Staffordshire  
 DE15 9NX

**Agent:**

Mr T Higgs  
 Flat 21 Chestnut Mews  
 Sycamore Road, Stapenhill  
 Burton Upon trent  
 Staffordshire  
 DE15 9NX

**Proposal:** Approval of reserved matters of planning permission  
 9/2004/0741/O for the erection of a dwelling on Land At  
 Rear Of 5 Princess Avenue Linton Swadlincote

**Ward:** Linton**Valid Date:** 16/10/2006**Reason for committee determination**

This application is brought before this Committee at the request of Councillor Southern in order that the special circumstances relating to access can be considered by Members.

**Site Description**

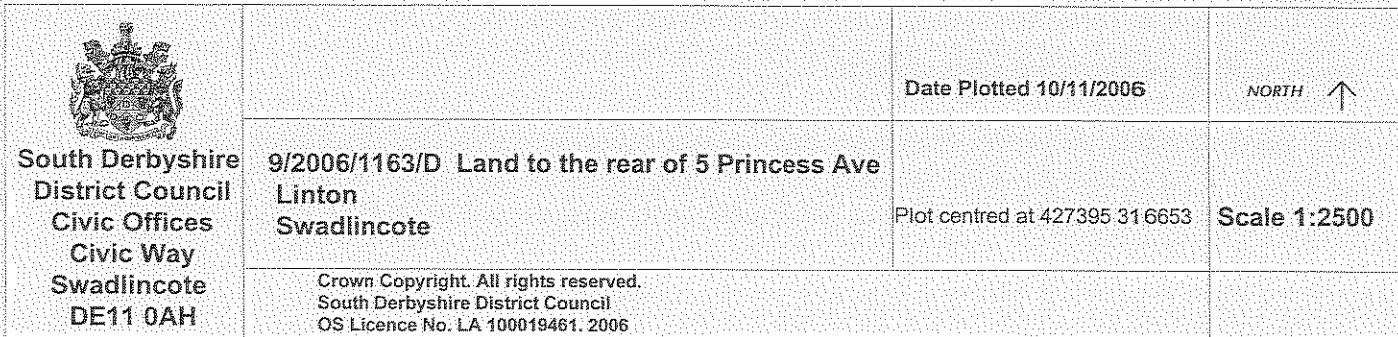
The land is triangular in shape and is generally flat. It formerly comprised part of the rear garden of the frontage dwelling number 5 Princess Avenue. Access to the site is via a track between numbers 3 and 5 Princess Avenue that formerly served Council owned garages that have been demolished. The track currently provides pedestrian or vehicular access to the rear of houses fronting Princess Avenue and to the fields beyond.

**Proposal**

This is a reserved matters application for the erection of a two storey dwelling. The three bedroom house would be just over 6m high to the ridge with two of the bedrooms within the roof space. The building would occupy a substantial amount of the plot and a new three metre wide driveway would be provided from the track.

**Applicants' supporting information**

The applicant has submitted a design and access statement with this proposal. In summary it says that the land already benefits from outline approval. The house would be one and a half storeys in order to minimise the impact on neighbours and it would be





sympathetic in the detail of the design and also in the use of materials. He says that consent for use of the access from the Council has been sought separately. The applicant says that the proposal complies with government guidance and the Council's space about dwellings guidelines.

### **Planning History**

This site is part of the garden of a former Council owned property. Outline permission was granted for one dwelling on this land in July 2004 and a similar outline application was approved for a single storey dwelling in the rear garden of number 15 in January 2006. An outline application for one single storey dwelling in each of the rear gardens of numbers 11 and 13 appears earlier on this agenda.

### **Responses to Consultations**

The County Highways Authority has commented that the proposal is inadequate in terms of parking and visibility and questions the rights to use the access. Any response from other consultees will be reported verbally.

### **Responses to Publicity**

At the time of drafting this report there had been no response to publicity. Any letters subsequently received will be reported verbally.

### **Development Plan Policies**

The relevant policies are:

RSS8: Spatial Policy 3

Joint Structure Plan: General Development Strategy Policies 1, 2 and 3; Housing Policy 5; Transport Policies 1 and 4

Local Plan: Housing Policies 5 and 11; Transport Policy 6

### **Planning Considerations**

The issues in consideration of this application are identical to those reported in the earlier application relating to land close-by namely policy, design, highway safety and amenity.

### **Planning Assessment**

The application site is previously developed land within the village envelope that benefits from outline permission. There is therefore no policy objection to the proposal.

With regard to design, amenity and highway safety, the site is very constrained having a maximum length of some 30m and it is some 9.5m at its widest point. The proposed dwelling would be sited around a metre and a half from the rear boundary of number 5, half a metre from the side boundary with the neighbouring property at number 7 and would be within half a metre of the access track at one point necessitating the removal of the existing hedge. Furthermore the layout makes no provision for car parking space to the County Council's standard size. Given the tightness of the site the applicant has been asked to provide an accurate survey drawing to demonstrate that there is

sufficient land to accommodate a building of this size and to make provision for car parking. No additional information has been received.

The layout appears cramped and in the absence of an accurate site survey it is highly questionable whether the site can satisfactorily accommodate the proposed building, parking and amenity space.

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**

**REFUSE** for the following reason

Housing Policy 11 in the South Derbyshire Local Plan requires, amongst other things, new housing developments to be well designed and the Council has produced guidance in Housing Design and Layout that states that new built development should be sympathetic to the landscape in which it is situated. This Policy and guidance are reinforced in PPG3 which seeks to promote good design in new housing developments. Transport Policy 6 in the Local Plan and Transport Policy 4 in the Derby and Derbyshire Joint Structure Plan require new development to have adequate access and parking space. Insufficient information has been provided to demonstrate that the site is large enough to accommodate the development. Thus the proposed dwelling would result in cramped development which appears to have shortfalls in terms of space to provide parking and visibility splays. To permit the development would be contrary to the above mentioned policies.

## 2. PLANNING AND OTHER APPEALS

There are no appeals relating to application within South Derbyshire to report to this Committee.

However, Members may be interested to see the Inspector's Report into the appeal for that part of the Walton Bypass application that lay within East Staffordshire Borough Council's area and which that authority originally refused. The report is attached. The appeal was allowed.







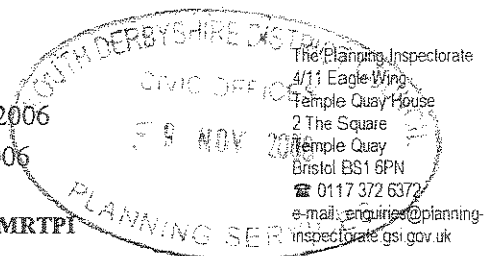
## Appeal Decision

Inquiry held on 5<sup>th</sup> - 6<sup>th</sup> September 2006

Site visit made on 7<sup>th</sup> September 2006

by **B C Wilkinson** BEng DipTP MRTPI

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



Date

06 NOV 2006

Appeal Ref: APP/B3410/A/05/1187474

Land North of Station Lane and West of Walton-on-Trent

- 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 Roger Bullivant Ltd against the decision of East Staffordshire Borough Council.
- The application Ref PA/28617/001, dated 17<sup>th</sup> December 2003, was refused by notice dated 15<sup>th</sup> July 2005.
- The development proposed is the construction of a new road with a bridge over the River Trent.

**Summary of Decision :** The appeal is allowed, and planning permission granted subject to conditions set out below in the Formal Decision.

### The Planning Background

1. The appellant company occupies a large site close to Drakelow Power Station and generates high volumes of HGV (heavy goods vehicle) traffic. About three quarters of these movements are to the A38 trunk road which passes to the west of Burton-on-Trent (hereafter referred to simply as Burton) on an approximately NE/SW alignment. At present the main alternative routes to A38 from the appellants' premises are through Burton via Stapenhill (Rosliston Road) or through Walton-on-Trent (hereafter referred to as Walton). Both have to cross the River Trent and both have disadvantages. The northern route passes through large built-up areas, whilst the southern one involves the use of a single carriageway Bailey bridge controlled by traffic lights. This bridge is limited to cars and light vans, and for this reason HGV traffic using the southern route usually diverts further southwards to join the A38 at Alrewas, a choice which necessitates the use of rural roads and a low headroom railway bridge. Despite these disadvantages the use of this route generates about 100 HGVs per day passing through Walton.
2. In order to meet problems referred to in the preceding paragraph the appellants explored various options. These were soon narrowed down to the construction of a bypass around Walton leading to the A38 junction known as Barton Turn, and 4 options were identified. Each required the construction of a new bridge across the River Trent, either to replace the Bailey bridge or at a different location. These options were examined more closely and that considered by the appellants to be the best formed the subject of two planning applications. Both were necessary because the River Trent in this vicinity forms the boundary between South Derbyshire DC and East Staffordshire BC (as well as between Derbyshire and Staffordshire and the East and West Midlands Planning Regions).
3. The application submitted to South Derbyshire DC was approved on 27<sup>th</sup> May 2005 subject to a number of conditions and a planning obligation entered into by the appellants. That which gave rise to the present appeal was refused by East Staffordshire BC on 15<sup>th</sup> July

2005. Following this refusal the appellants embarked upon discussions with the various authorities and amenity groups involved and in due course provided further information and made substantial alterations to that part of the proposals to the west of the Trent. In due course East Staffordshire considered the amended proposals, in the light of the fresh information, and resolved to support them, indicating that had they been able to consider them afresh, they would have been likely to grant permission for the scheme.

4. The two main components of the local development plan are the Staffordshire and Stoke-on-Trent Structure Plan, adopted in 2001, and the East Staffordshire Local Plan. The latter was adopted in July 2006 in replacement of that version of the local plan which was in force when the application was originally determined. The parties have relied almost entirely on policies in the 2006 local plan and any policies referred to in this decision are from that plan unless they are specifically identified as being from another.

#### The Main Issue

5. Policy NE1 provides that in rural areas outside development boundaries planning permission for development may be permitted if it cannot reasonably be located within settlements and is development otherwise appropriate within the countryside. The proposed new road clearly meets the first of these requirements and, in my view, a bypass road is appropriate within countryside areas. The requirements of this policy also imply that the development should not adversely affect the amenities enjoyed by occupiers of residential and other properties within Walton, should be compatible with the character of its surroundings, should safeguard nature conservation interests, should have suitable landscaping, and should be acceptable in terms of highway safety and convenience. Bearing these matters in mind I consider the main issue in determining this appeal to be whether the development would cause harm sufficient to outweigh any benefits arising from it.

#### The Benefits of the Development

6. At the present time considerable volumes of traffic from the appellant company have to travel along one of two routes. The northernmost of these involves HGVs using busy urban road through a built-up area, and crossing a bridge already subject to considerable traffic problems. The second involves a substantial volume of heavy traffic passing along unsuitable rural roads and through the village of Walton. The construction of the proposed road would mean that very few HGVs would have to use such routes, and could instead use a stretch of road and a bridge which meets modern standards of safety and convenience. It would also mean that hardly any HGVs (and few other vehicles) would have to pass through Walton unless seeking a destination in or near that village.
7. The proposal would also mean that a single track, unsatisfactory Bailey bridge over the River Trent would no longer have to be used. This would allow for better public transport between the vicinity of Walton and areas to the west of the A38, particularly for pupils of a secondary school in Barton-under-Needwood. There would also be an attractive, segregated route between Walton and Barton for pedestrians, cyclists and horse riders on the line of the old Station Road.

## **The Effects of the Development**

### **Flooding**

8. Planning Policy Guidance 25 indicates that development in functional flood plains should be limited to that which is essential in such a location. However, any road which crosses the River Trent will almost certainly have to affect the flood plain and so the stricture in PPG25 does not help in resolving the present appeal. Local Plan Policy NE26 provides that development proposals in flood risk areas will not be permitted where they would cause unacceptable harm to various water related functions of such areas. The Environment Agency (EA) was not prepared to accept the appellants' initial proposals but, following various discussions, amended proposals were in due course submitted. These included culverts under the proposed embankment, compensation works and other measures. Following modelling the EA found the proposal acceptable in terms of flood risk and related matters and the Council accepted their advice.
9. Some local residents have expressed concern over the risk of flooding but no-one has seriously challenged the EA's analysis or provided contradictory evidence on the subject. I conclude that, subject to a condition preventing blockage of the flood plain during construction, and the withdrawal of permitted development rights to erect fences and similar structures in the flood plain without formal planning permission, the proposal would not be a source of harm in terms of flood risk.

### **Archaeology**

10. The proposed road would run through an area which, whilst not including any known major features, includes a number of items of interest such as bronze age crop marks, evidence of Romano-British field systems, and scattered prehistoric flint artefacts. However, consultations have taken place with archaeological advisers to both Derbyshire and Staffordshire. The latter has advised that this development is acceptable subject to the implementation of a "strip, map and record" exercise along the line of the road. East Staffordshire BC are prepared to accept that advice. I have seen no evidence or arguments that such a procedure would not be sufficient to protect archaeological interests. I am satisfied that, subject to the inclusion of a condition to secure the implementation of the exercise referred to by the County Adviser, the proposal would not be a source of harm in archaeological terms.

### **Noise, Vibration and Air Quality**

11. The Environmental Statement supporting this application includes observations, studies and predictions relating to each of these factors during construction and when the road is in full use. Whilst concern over them has been expressed by some local residents no-one has substantiated any challenge to the conclusions or methodology of these studies, or submitted contradictory evidence. The Council accepts them, and I find no reason to criticise the methodology employed, or doubt the accuracy of the recordings made or the conclusions reached.
12. The study on noise and vibration indicates that the changes in traffic patterns brought about by the use of the new road would substantially reduce noise levels within some parts of the village, but that noise levels would increase slightly at a number of dwellings on Main Street South. The overall impact is predicted by the study to be a moderate beneficial

effect. Construction of the road would result in a short term increase in noise at some nearby properties, but good working practices would prevent any problems from being serious. Because of the distance of the road from properties it is not anticipated that vibration would be a significant problem.

13. On air quality the studies indicate that the changes in traffic flow in the area would have only a small impact on pollutant concentrations at any location. A very slight deterioration in air quality at some properties close to Walton and Rosliston Road to the north of Walton would be outweighed by improvements in air quality in the village itself arising from a decrease in HGVs passing through it. At no property will concentrations of pollutants exceed statutory objectives. Impact from construction works is likely to be negligible and temporary except for small levels of dust creation in adverse (dry and windy) weather conditions. The intention is to minimise this by appropriate mitigation measures.
14. I am satisfied that during both construction and subsequent use the overall impact of the road in terms of noise, vibration and air quality would be slightly beneficial at some properties, negligible at many and a source of very slight increases in noise and dust at the remainder. I do not consider that living conditions would be significantly altered at any property except, perhaps, for short periods during construction works. I do not consider that the level of this temporary harm would be sufficient to necessitate the imposition of specific conditions requiring mitigation works.

#### Ecology

15. Since the submission of the original proposals, and criticism of certain aspects of them on ecological grounds, considerable further studies of these aspects of the proposals have been carried out and a number of detailed changes have been made following discussion with the Staffordshire Wildlife Trust and others. The proposals now include a number of measures which seek to encourage the continued use of (or return to) the area by rare species such as bats, otters and water voles, as well as the more common types of creature. In addition, the appellants propose to increase biodiversity by the planting of selected species of trees, shrubs and wild flowers, and the creation of areas of wetland habitats and species rich amenity grassland. There would also be provision for the maintenance and management of such areas in the interests of ecological, as well as landscape objectives.
16. Whilst these changes have met some of the criticisms made, some remain and there are a number of objectors who still consider that the ecological aspects of the proposals are flawed or insufficient. At least one local resident is qualified in the ecological field and I have given due weight to that fact, as well as to the local knowledge possessed by her and other residents of Walton. However, local amenity societies and councils also possess local knowledge and expertise, and it seems to me important to note that not only all of the Councils involved in this development regard the ecological proposals as acceptable, but also expert bodies such as English Nature and the Staffordshire Wildlife Trust.
17. I do not doubt that the construction works would have some temporary harmful effects upon local wildlife, and that not all predictions involving wild creatures are reliable. I recognise, too that some movement corridors might be permanently affected and that the presence of the road would fragment an area of reed beds proposed following the anticipated extraction of gravel in the area.

18. However, I believe that the proposals contain substantial measures to minimise such disturbance and to encourage the subsequent return of affected creatures. Roads are a characteristic and common feature of the English countryside and experience shows that in the long term, and in most cases, wild animals and birds learn to co-exist with them without serious harm. I regard several features of the proposals as conferring ecological benefits in that they encourage biodiversity and provide several areas of potential habitat value. I also attach considerable weight to the fact that there would be enforceable measures put in place to manage such areas. On balance, I conclude that the proposals would be at worst neutral in ecological terms and would probably be slightly beneficial.

#### **Traffic**

19. Three highway authorities consider the proposals to be acceptable in terms of highways and traffic and the Council shares their views to the point of positively supporting the proposals. However, there have been criticisms of this aspect of the development from local residents, most of which fall within four main areas. The first of these relates to the intentions to build a "third crossing" of the River Trent, mentioned in the deposit draft of the local plan. However, following the recommendation of the Inspector who held an inquiry into objections to that plan, the Council decided that all references to this scheme should be deleted. The Council may resurrect proposals of this kind at some stage but all parties accept that this will not take place in the near future.
20. The present proposal is not an effective substitute for such a scheme, in part because it is inappropriately located for such purposes but also because much of the rural area around Drakelow is within a Traffic Regulation Area wherein movement of HGVs is strictly limited. Nor would its implementation significantly prejudice the resurrection of proposals for a river crossing such as that proposed in the deposit draft local plan. The current scheme is for a road which would serve a specific perceived need, and would contribute relatively little to the wider need which led to the original "third crossing" proposals. There is no evidence that the present scheme would commit the Council to accepting further development in the vicinity of the former Drakelow Power Station site. Nor, in my view, need it significantly affect any proposals in the Burton–Swadlincote Regeneration Corridor.
21. Another criticism of the proposal is that the new road will lead to more HGV traffic on rural roads ill-suited to cope with it, in particular the road from Drakelow to Walton. There is concern that the attractiveness of the new route might also mean that HGVs currently using other roads (and reaching them via narrow country roads) might be tempted instead to use this route and the A38 rather than other trunk roads. I accept that on some roads there will be increases in traffic, but I doubt that there will be many where this occurs, particularly on roads within the Traffic Regulation Area which severely limits journeys through the area. Moreover, examples of increased use must be weighed against the number of roads where HGV traffic will be substantially lower, notably the roads through Walton and the built-up area to the north of the appellants' premises. The highway authorities believe that the balance falls clearly on the side of the proposals and I have seen no evidence which leads me to take a different view.
22. I take a similar view in regard to the situation at the bridge over the railway line close to the A38. Some local residents believe that the traffic lights proposed there will lead to long queues at peak times, sometimes stretching onto the A38. However, this junction has been thoroughly modelled and the both the Highways Agency and Staffordshire County Council

are confident that this will not happen often enough to cause significant problems. Local objectors have not reinforced their fears with any quantitative evidence, and I have also taken into account that timings on traffic signals can, if necessary, be altered to reduce any problems which do occur. I conclude that this factor does not add significantly to the arguments against the proposals for the new road.

23. Finally, concern has been expressed by several people that the old road between Walton and Barton might be used for illegal tipping, and might also be dangerous for users at night. I recognise that tipping might occur but there are well-tried means of preventing such a problem and I see no reason why they should not be successful in this case. I find the anxieties over possible danger to be somewhat less well founded. I do not see why a dark road should be any less of a danger to pedestrians or cyclists than a dark footpath, particularly as the risk of traffic collision is not present in the latter instance. I note, too, the County Council's view that the presence of the new road might lead to better public transport between the Walton Area and the secondary school at Barton.
24. A conclusion on the traffic implications of the present proposals demands the balancing of advantages and disadvantages, and it is clear that for some local people the balance weighs against the proposals. On the other hand three highway authorities and Staffordshire BC regard the balance as falling in the opposite direction. On the information before me, and having travelled many of the roads concerned, I conclude that the proposed development would be beneficial in terms of traffic and highway safety.

#### **Landscape and Visual Impact**

25. Walton stands close to the edge of the Trent floodplain and the proposed road would travel through the generally flat land on the bottom of the valley. Views in that direction from the village look over grassland (with somewhat sparse hedges) towards Burton, and beyond that the far slopes of the valley. There is a line of pylons close to the line of the proposed road. Whilst the views across this area are pleasant and are, I am sure, valued by many local people, I do not consider that they have special merit in scenic terms. However, planning permission has been granted for gravel extraction over an extensive area through which the road would pass. Consequently the landscape valued by local people will be seriously marred for a number of years whether or not the road goes ahead. On the other hand I recognise that the road would remain whereas gravel extraction will eventually cease and the area will be restored.
26. Not very many of the houses in the village look out over the area, but it can be seen from public vantage points such as the slightly elevated area around the church and the cricket ground which, I am told, forms a focus for a number of village gatherings. The road would be close to the latter and would be a prominent feature of the outlook from that area. Much of the proposed road would be at a relatively low level, and most of its visual impact would arise from the traffic moving along it, road furniture such as signs and lighting columns, and the bridge across the Trent with its supporting embankments. The latter and other areas will be subject to landscaping using trees shrubs and herbaceous plants.
27. The landscaping proposed in connection with the road will in time make a valuable contribution to the character of the area in landscape terms, as well as being beneficial for its contribution to ecology and biodiversity. Nonetheless, I consider that the road and the operations required to construct it would have some adverse effect upon the appearance and

character of the area. Relatively few houses would be affected by this, but the harm would be apparent from some roads and footpaths as well as the public areas I have referred to.

#### **Other Matters**

28. Some local residents have expressed concern that traffic and construction operations would have an adverse effect upon the village church and some archaeological sites because of vibration. However, no significant evidence has been adduced to substantiate these concerns and, based upon my experience of such matters, I consider that a road and construction works as far away from the church as these would be would be extremely unlikely to give rise to significant harm due to vibration.
29. Another cause of public concern arises from the disruption of at least one public footpath. However, this will have to be the subject of a separate application to divert or close the rights of way concerned and such matters will be best considered under the aegis of such an application. Consequently, whilst I have taken into account the visual and environmental impact of the proposed development upon users of these footpaths, I have attached relatively little weight to matters relating to the principle of footpath closure.

#### **Overall Conclusions**

30. I have taken into account the above matters and all others raised during the course of this appeal. On balance I consider that the benefits of the proposed development would outweigh its disadvantages and that its overall effect would be beneficial in planning terms. On that basis, and considering all of the relevant policies, I am satisfied that it would not be contrary to the provisions of the local development plan. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed.

#### **Conditions**

31. I have referred already to the need to include certain conditions. Others were suggested to me by the main parties and I have considered the appropriateness of those conditions. In view of the many changes during the course of this application and appeal I believe that a condition is required attaching the permission to a specified schedule of plans. I consider, too that conditions should be imposed to ensure the implementation and subsequent maintenance of landscaping and ecological measures. The need to avoid prejudice to the safety and convenience of traffic safety justifies conditions requiring that the new road should not be brought into use until the closure of the Bailey bridge to traffic, the signalisation of the railway bridge, and measures ancillary to both of these, have been carried out in accordance with the details proposed. The construction of the road will involve major operations lasting for an appreciable time. I shall therefore impose a condition governing construction operations.
32. The above conditions are, in principle, acceptable to both the appellants and the Council. They disagree on two others, the first of which relates to the diversion of the public footpath affected by the development. I take the view that when, as here, it is clear that the development cannot go ahead in this form without closure or diversion of a footpath, then it would not be acceptable for the development to be taken into use prior to gaining the necessary permissions to alter the footpath.

33. The second disagreement relates to a condition requiring that, if contamination is found, operations should cease pending arrangements for dealing with the problem being put into place. There are two main sources of advice on conditions of this kind, namely Circular 11/95 and Annex 2 to PPS23.<sup>1</sup> The former advises the imposition of conditions of the kind suggested when "it is known or strongly suspected" that the site is contaminated (Para 74), when "there is only a suspicion" (Para 75), and when the proposal involves "significant unsuspected contamination encountered during redevelopment". (Para 76) It does not refer to a situation where there are no overt signs of contamination and where there is no redevelopment involved.
34. PPS23 advises that investigations on the subject should take place before an application is determined but recognises that "there may remain a possibility of unsuspected contamination or risks being discovered during the course of development". To cover this eventuality Paragraph 2.63 of Annex 2 recommends that for all development involving disturbance to land, consideration should be given to imposing a condition requiring the reporting of any contamination found and the submission and implementation of schemes for remediation. I have given such consideration in this case.
35. These proposals do not involve redevelopment and, despite the preparation of an environmental statement, a very lengthy period of consideration of the proposals, and the consultation of various bodies and authorities, no-one has identified evidence that the area contains any significant contamination. As the site is almost entirely open land the likelihood of previous development upon it is low, and the risk of contamination is slight. Even if it were to be found, in the absence of houses or other premises nearby it is unlikely that significant harm would arise. I recognise the sensitivity to pollution of rivers and their environs but the Environment Agency has powers other than planning to combat any problems of this kind, should they arise. On balance, I do not consider that a condition of the kind suggested is necessary.

#### Formal Decision

Appeal Ref: APP/B3410/A/05/1187474

I allow the appeal, and grant planning permission for the construction of a new road with a bridge over the River Trent at Walton-on-Trent in accordance with the terms of the application, Ref PA/28617/001, dated 17<sup>th</sup> December 2003 and various plans subsequently submitted, subject to the following conditions :

- 1) *The development hereby permitted shall begin before the expiration of five years from the date of this decision.*
- 2) *This permission shall relate to the amended and additional drawings and documents set out in Appendix A to this decision unless otherwise agreed in writing by the local planning authority.*
- 3) *No development shall take place within the application area until the appellants have secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted by the appellants and approved by the planning authority*

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<sup>1</sup> Circular 11/95 - The Use of Conditions in Planning Permissions and Planning Policy Statement 23 - Planning and Pollution Control



- 4) *All planting and seeding illustrated on Plans CPM2047/96d and CPM2047/97d shall be carried out in the first planting and seeding seasons following the completion of the development, and any trees or plants which within a period of five years from 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.*
- 5) *A landscape and ecology strategy, including the provision of a management plan and provision for the protection and diversification of the landscape and wildlife in accordance with Staffordshire Biodiversity Action Plan objectives, shall be submitted to the local planning authority for approval, and their approval secured, prior to the commencement of development of the bypass. The approved scheme shall be implemented in accordance with its agreed terms.*
- 6) *Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking, re-enacting or modifying that Order), no fences or obstructions to flood flows other than those permitted under Condition 4 above shall be constructed within the part of the application site in the floodplain without a permission granted on an application made in that regard.*
- 7) *Development shall not commence until temporary access, site accommodation, plant and materials storage, lorry loading/unloading, parking and manoeuvring space, employee and visitor parking and manoeuvring space shall have been provided in accordance with a scheme previously submitted to and approved by the local planning authority. The approved facilities shall be maintained free of any impediment to their designated use throughout the construction period.*
- 8) *No temporary works accommodation, vehicles, plant and materials shall be stored in the floodplain during the course of construction.*
- 9) *Before the new road is brought into use the existing Bailey bridge west of Station Lane in Walton-on-Trent shall have been closed to vehicular traffic in accordance with the scheme submitted to the local planning authority on 19<sup>th</sup> June 2006 on TDHA Drawing 05-0187/100 Revision C unless an alternative scheme shall have been agreed in writing by the local planning authority.*
- 10) *Unless otherwise agreed in writing by the local planning authority, the new road shall not be brought into use until the signalisation of the railway bridge in accordance with the submitted scheme shown on Drawing STS 69312 Issue 1 has been implemented*
- 11) *The bypass shall not be opened for use until footpath 30 has been lawfully diverted as shown on Drawing 05-0187-114A.*

*B C Williams*

## **APPEARANCES**

### **FOR THE APPELLANTS :**

Mr M Kingston QC

Instructed by Pinsent Masons

He called

Mr D Tucker MSc CEng David Tucker Associates  
MICE MIHT

Mr J Berry BA(Hons) CPM Environmental Planning and Design  
DipLA AIEEMA MLI

Mr J Arthur BSc MSc CPM Environmental Planning and Design  
MIEEM CEnv

Mr R Wood DipTP FRICS Framptons Planning

### **FOR THE LOCAL PLANNING AUTHORITY :**

Mr G Machin

Of Counsel, Instructed by D Duckitt, Council Solicitor

He called

Mr A Khan BA DipTP Team Leader (Planning Control) E Staffs B C  
PGCert MRTPI

### **INTERESTED PERSONS:**

Mr H M Timms

The Old Rectory, Walton-on-Trent DE12 8NA

Mrs M Tomlin

3 Mewies Close, Walton-on-Trent DE12 8NA

Mr C Tomlin (Representing Walton  
Residents' Association)

3 Mewies Close, Walton-on-Trent DE12 8NA

Mrs J Leay

4 Rosliston Rd, Walton-on-Trent DE12 8 NA

Rev L De Pomeroy

Walton Rectory, 2 Station Road, Walton-on-Trent DE12  
8NA

Mrs B Chapman

Secretary of Walton Cricket Club, 30 Rosliston Rd,  
Walton-on-Trent DE12 8NA

21/11/2006

**Item** 1.2**Reg. No.** 9/2006/1053/M**Applicant:**

Nestle U K Ltd  
Nestle Uk Ltd Marston Old Lane  
Hatton  
Derby  
DE13 9LY

**Agent:**

Nestle U K Ltd  
Nestle Uk Ltd Marston Old Lane  
Hatton  
Derby  
DE13 9LY

**Proposal:** The erection of an extension to an existing warehouse to form a new filling and packing area at Nestle Uk Ltd Marston Old Lane Hatton Derby

**Ward:** Hatton

**Valid Date:** 07/09/2006

**Reason for urgency**

Nestle is a major employer within the District and the Company has indicated that it requires a decision one way or the other before the end of November to enable it to make a commercial decision.

**Reason for committee determination**

The application is brought before Committee at the request of Councillor Whyman so that Members can give consideration to the special circumstances relating to the proposal.

**Site Description**

The site lies on the east side of the village with access off Marston Lane. Immediately to the east of the factory site is the Salt Brook that was recently the subject of flood improvement work undertaken by the Council. Security fences enclose the site and it is generally level.

**Proposal**

The development involves the extension of the packing building on the northeast corner of the site that is some 130 metres from the rear of the nearest houses on Hoon Road/Mercia Close. An extension to the car park is shown on the submitted drawings in the vicinity of the houses on Mercia Close.

The building is different in design from other buildings on the site. It proposes a glazed wall in the north elevation to provide light to the interior of the building. It would have



smooth panels to the rest of the building but the ridge height would be no higher than the ridge of the existing building.

The application states that the development would result in the creation of 100 extra staff employed on the site and would bring the total employed on the site to 386. In addition to staff vehicles there would be 2 additional lorry movements to the site. The site would continue to operate on a shift system that would allow the factory to work 24 hours a day.

### **Applicants' supporting information**

The success of a new product range has resulted in this application to extend the production line of the new product and this investment has been won in the face of significant competition from other Nestle factories in Europe – the company has stated that there is a real risk of the investment being lost to a mainland factory if this proposal is no successful.

The applicant recognises that the factory lies within the flood plain. It has stated that it will work with the council and the Environment Agency to ensure that the loss of any land within the flood plain is compensated for either within the factory or on other 'higher' ground in the vicinity of the factory. To date the company has identified some 1,000sqm. in the factory site that could be lowered to provide compensation for the loss of flood plain. There would remain some 1,500sqm lost to the flood plain.

The company has provided a flood risk assessment and indicated that it would be willing to seek to achieve further flood plain compensation on land outside the site. *Whilst the applicant has stated that it has identified other land above the flood level it is not currently in its ownership nor is it indicated on the submitted drawings.*

A Design and Access statement that conforms to the requirements of the Planning and Compensation Act 2004 accompanies the application.

### **Planning History**

The site has had a long history. In the 1990's applications were granted for the erection of new roaster buildings and more recently permission was granted for the adaptation of the warehouse building to allow for the installation of new packing equipment.

Other notable applications were extensions that required the closure of Marston Lane to facilitate a secure site and the provision of a replacement bridle way.

### **Responses to Consultations**

The County Highway Authority has no objection subject to the extended car park being provided prior to the occupation of the extended building.

The Environment Agency has objected to the development on the grounds that, in the absence of compensatory flood plain, the development would reduce the flood storage capacity of the land. If compensatory flood plain could be provided elsewhere then the objection would be removed.



*Whilst the FRA does not identify where the compensatory flood plain would be located, the agency has indicated verbally that it would be willing to accept a condition to constrain development prior to the provision of such compensatory flood plain. It is anticipated that written confirmation of the Agency's position will be received prior to the meeting.*

Severn Trent Water has no objection subject to foul and surface water drainage details being submitted.

The Environmental Protection Manager has no objection subject to bunds and landscaping to the boundary of the site adjacent to the dwellings next to the car park extension and a condition to control any illumination of the proposed additional car park. It is noted that there are ongoing noise complaints about the factory and the Environmental Protection Manager is willing to meet the company to discuss potential mitigation measures should that prove necessary.

The County Archaeologist confirms that proposed development would not threaten known archaeological interest.

### **Responses to Publicity**

One letter of objection has been received in response to the application and it comments that the extension itself is unlikely to affect the writer although the objector would be horrified if they had a direct view of the extension. There is strong concern about the proposed car park and the plans to cut down trees to provide it. They know that the company would plant replacements but these are likely to be conifers and that would not replace the horse chestnuts that would be lost. The company should have more consideration for its neighbours but it is recognised that the factory employs many people. The community has suffered many years from the smell of coffee, residue from the chimneys on windows and eills in the form of a film of coffee, although the company promise that something will be done, nothing seems to occur.

### **Development Plan Policies**

The relevant policies are:

RSS8: P36,

Joint Structure Plan: EC 4, T15

Local Plan: E1, Environment Policy 2 & T6.

### **Planning Considerations**

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

- The Development Plan policies
- The impact on neighbours
- The impact on the flood plain





## Planning Assessment

In terms of the development plan there is provision in both the Structure and Local Plans for the expansion of existing firms where there is no significant environmental or traffic impact. Where such impacts are present then the Local Planning Authority will seek to relocate the business in planned locations where the impacts will be lessened.

In this case, the Environment Agency has drawn attention to the potential flooding impacts arising from the loss of the flood plain without appropriate levels of compensatory flood plain being provided. Clearly some replacement flood plain is available, but not enough to provide full compensation. In these circumstances the provisions of Environment Policy 2 of the Local Plan come into play and suggest that grounds exist to refuse the application. However, officers are satisfied that there is potential to overcome these concerns and a condition is recommended to control this situation.

In relation to other matters, the impact of the additional car park could be mitigated by the imposition of conditions requiring the provision of bunds and landscaping and a condition requiring the submission of details of the illumination of the car park extension.

The design of the building is considered acceptable as it reflects a modern interpretation of the normal industrial shed. The glazing in the north wall would be a welcome break in the normally slab sided building that typifies the modern industrial building.

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** planning 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. Prior to the commencement of development a scheme for the provision of compensatory flood storage shall be submitted to and agreed in writing by the Local Planning Authority and the compensatory floodplain storage shall be provided in accordance with the approved scheme secured by a unilateral undertaking under Section 106 of the Town and Country Planning Act 1990  
Reason: In order to secure replacement flood plain compensation land for that lost as a result of the development
3. The development shall not be commenced until precise details of the intensity, angling and shielding, and the area of spread of the lights have been submitted to and approved in writing by the Local Planning Authority. The lights shall be installed in accordance with these details and thereafter retained in conformity



with them. The submitted scheme shall comply with the Institute of Lighting Engineers "Guidance notes for the Reduction of Light Pollution" (2000).

Reason: To preserve amenity and/or prevent danger to road users.

4. 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.

5. 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.

6. 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.

7. Prior to the extension being brought into use, the new car parking area shown on the submitted drawings shall be provided and laid out in accordance with the drawing and thereafter maintained free from any impediment to its designated use.

Reason: In order to secure sufficient parking provision to serve the overall development at the site.

#### Informatives:

You should be aware that the inability to provide flood plain compensation required by Condition 2 above will result in an inability to implement this planning permission. It will also be necessary to submit a separate application for planning permission to carry out these works on land outside the factory site.





