

# **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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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.

**Item**            1.1

**Reg. No.**        9/2010/0991/U

**Applicant:**

Mr Miles Thornton  
Elmtree Homes  
College Business Center  
Uttoxeter New Road  
Derby  
DE22 3WE

**Agent:**

Mr Miles Thornton  
Elmtree Homes  
College Business Center  
Uttoxeter New Road  
Derby  
DE22 3WE

**Proposal:**        **THE CHANGE OF USE OF FORMER PUBLIC TOILETS  
TO OFFICES AT REPTON TOILETS BURTON ROAD  
REPTON DERBY**

**Ward:**            **REPTON**

**Valid Date:**      **09/11/2010**

**Reason for committee determination**

The site is owned by the Council.

**Site Description**

The application site is a disused public toilet block situated within a public car park in Repton Conservation Area. The Council owns both the toilet block and the car park.

**Proposal**

The application is made by an interested party looking to lease the premises from the Council for use as an administrative office associated with a building company. Minimal alterations are proposed to the external appearance of the building including the removal of an existing privacy wall fronting onto Burton Road and alterations to existing window openings. No extensions are proposed.

**Applicants' supporting information**

The Design and Access Statement submitted with the application advises that the building would be used for offices only and would accommodate up to a maximum of two administrative staff at any one time.

It is envisaged that parking would be available in the public car park adjacent to the building, subject to availability, with the office requiring a maximum of two spaces, predominantly one, between the hours of 8am to 5.30pm. Vehicles would not be left in

9/2010/0991 - Repton Toilets, Burton Road, Repton (DE65 6FL)



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South Derbyshire District Council. LA 100019461. 2010

the car park out of hours. From time to time there would be a need for small commercial vans to use the parking but not for long periods of time.

## **Planning History**

There is no relevant planning history.

## **Responses to Consultations**

The Design and Conservation Officer has no objections subject to conditions regarding treatment of external alterations.

The Highway Authority has advised that the existing vehicular access to the car park is substandard. Whilst no designated parking is proposed the former use of the premises as a public toilet would have had the potential to generate more vehicular movements and a greater requirement for parking than the office used proposed. As such it is not considered that it could be demonstrated that the proposed use would have any increased adverse impact on highway conditions within the vicinity of the site. The Highway Authority therefore has no objection.

The Finance and Performance Manager, responsible for car parks owned by the District Council, has advised that there is currently no enforcement in the adjacent car park in terms of parking restrictions. Access through the car park is required for emptying the recycling banks.

Environmental Health has no objection.

Repton Parish Council objects to any loss of public parking spaces and any impairment of access to the recycling containers.

## **Responses to Publicity**

One objection has been received commenting that the proposed office will use the adjacent parking spaces extensively used by local residents and visitors to the village, the reduction in parking having a significant impact on the area.

## **Development Plan Policies**

The relevant policies are:

Local Plan: Saved Employment Policy 5 and Environment Policy 12

## **National Guidance**

PPS4 & PPS7

## **Planning Considerations**

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

- Principle of change of use.
- Impact on the character and appearance of the Conservation Area.
- Highway issues.

- Impact on amenity.

## **Planning Assessment**

### Principle of Change of Use

PPS4 encourages proposals for sustainable economic development whilst PPS7 advises that planning authorities should support a wide range of economic activity in rural areas. The policies support the conversion and re-use of appropriately located and suitably constructed existing buildings for economic development in the countryside, particularly those adjacent to or closely related to towns or villages.

Saved Employment Policy 5 of the Local Plan allows for the conversion of existing buildings within villages for business use providing that the proposal is acceptable on environmental and traffic grounds.

The application property is located within the village confine and is suitable for conversion to business use with minimal alteration. The proposed use as an office is in accordance with the above policy requirements subject to there being no adverse environmental or traffic impacts.

### Impact on character and appearance of the Conservation Area

The alterations proposed would be minimal and include the demolition of an existing privacy wall adjacent to Repton Road and the enlargement of two window openings to the front elevation. Three of the existing windows to the rear elevation would be blocked up. Subject to appropriate detailing of the execution of the works the Conservation Officer has no objection. The proposal would bring back into use a redundant building within the conservation area and it is not considered that the alterations proposed would have any adverse impact on the character or appearance of the conservation area in accordance with Saved Environment Policy 12 of the Local Plan.

### Highway Issues

In view of the previous use of the premises as public toilets the limited vehicular movements and parking requirements associated with the proposed office use, which is less than 27 sq m floor area, are unlikely to have any significant adverse impact on parking or highway conditions within the vicinity of the site.

The Council would maintain an element of control over the operation of the premises by the terms of the lease agreement and maintain control over the operation of the public car park as owners.

### Impact on amenity

Residential properties are located to the east of the public car park. It is not considered that the proposed office use would lead to any increased adverse impact on the amenity of these neighbouring properties. Environmental Health has no objection.

## Conclusion

The proposed use is in accordance with the above planning policy and, with minimal alteration, brings a disused building within the conservation area back into use to the benefit of the appearance and character of the area.

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. Prior to the commencement of development a method statement for the bricking up of the three rear windows, and for making good the existing brickwork following removal of the existing privacy wall, shall be agreed in writing with the Local Planning Authority and the work shall be carried out in accordance with the agreed statement.  
Reason: In the interests of the appearance of the building and the character of the conservation area.
3. The external door and three windows proposed to be bricked up shall be infilled using bricks of a size, colour and texture to match the existing.  
Reason: In the interests of the appearance of the building and the character of the conservation area.
4. Notwithstanding the submitted details, the external joinery shall be in timber and the external joinery, roller shutters, shutter guides and shutter boxes shall be painted or colour coated to a colour and specification which shall have been previously agreed in writing by the Local Planning Authority. The joinery shall be painted in accordance with the agreed details within three months of the date of completion of the development unless otherwise agreed in writing by the Local Planning Authority.  
Reason: In the interests of the appearance of the building(s) and the character of the conservation area.
5. Large scale drawings to a minimum scale of 1:10 of new external joinery, roller shutters, shutter guides and shutter boxes, including horizontal and vertical sections, precise construction method of opening and cill and lintel details shall be submitted to and approved in writing by the Local Planning Authority before building work starts. The external joinery shall be constructed in accordance with the approved drawings.  
Reason: The details submitted are inadequate to determine whether the appearance of the building would be acceptable.

**Informatives:**

Unrestricted access to the adjacent recycling banks in the public car park should be maintained at all times.

Advertisement consent may be required for any signage proposed for the premises. You are advised to contact the Planning Department on 01283 595926 for further information in this regard.



**Item**            **1.2**

**Reg. No.**        **9/2010/1081/SMD**

**Applicant:**

Mr Mick Goodwin  
Goodwin Building Contractors  
98 Main street  
Linton  
Swadlincote

**Agent:**

Anthony Rice  
Urban Designs Ltd  
Beehive Farm  
Lullington Road  
Rosliston  
Derbyshire

**Proposal:**        **THE ERECTION OF 15 DWELLINGS AND ANCILLARY  
WORKS ON LAND AT WOOD STREET CHURCH  
GRESLEY SWADLINCOTE**

**Ward:**            **CHURCH GRESLEY**

**Valid Date:**      **25/11/2010**

**Reason for committee determination**

The application is a major one with more than 2 objections.

**Site Description**

This 00.31 hectare site is located on the corner of Wood Street and Charles Street in Church Gresley. The site was formerly the St Johns Ambulance meeting hall and this existing dilapidated building remains in the north eastern corner of the site. The north western, south western and south eastern boundaries have a variety of established trees covered by Tree Preservation Orders 63 and 65. Wood Street and Charles Street are characterised by traditional terraced properties with more modern infill detached properties.

**Proposal**

Planning permission is sought for the erection of 15 affordable dwellings around a central square. The majority of the properties are terraced with two pairs of semis in the north western part of the site. A row of four terraced properties would be on the frontage of Wood Street adjacent to existing properties with a central access and the semis would be at right angles to the road with an active elevation on the road frontage. Rear garden lengths would vary from 6.5 – 13m and 30 car parking spaces would be provided within the site for residents. Eight trees would be removed as part of the proposal with the majority remaining. The tree removal and maintenance works are the subject of a separate TPO application also before this committee.

The type of dwellings proposed are 11 two bedroom properties and 4 three bedroom properties. Twelve properties would be solely for rent by a Housing Association and

9/2010/1081 - Land at Wood Street, Church Gresley, Swadlincote DE11 9QB



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three would be shared ownership. The properties would be gabled roof, two storey dwellings with chimneys and uniform windows sizes with stone cills and lintels on the front elevations and a curved header with a semi-circular fanlight above the door as per the traditional terraced properties in the street.

### **Applicants' supporting information**

The Design and Access Statement describes the site and adjacent facilities in the vicinity. It provides examples of architectural styles nearby that informed the design. 3D streetscenes have been provided to aid visualisation and the 20 Building for Life criteria have been answered in detail.

A viability assessment has been submitted in order to justify the lack of Section 106 contributions for health, education and open space amounting to a total of £30,000. The applicant is a local building firm that have managed to survive the recession and have been working with a Housing Association to develop the site for 100% affordable housing. The current HA that they are in negotiations with is the second to show interest in the site but are offering £25,000 less than the first to be involved. The land would be transferred to the HA at minimal profit even without the S106 contributions.

The Arboricultural Survey accords with the BS5837 2005 guidance. The survey schedule proposes the removal of a Black Poplar, Ash and Goat Willow on the south eastern boundary, one Lime on the south western boundary and one Sycamore, one Horse Chestnut and two Limes on the Wood Street frontage. Works to remove ivy and dead wood and either pollard or reduce crowns of the Limes on the south western boundary is proposed which are categorised as of moderate value to the visual amenity of the area.

The Bat and Bird Scoping Survey Report concludes that the main building had no evidence of bat activity and has a low potential for utilisation. The extension to the main building has a low potential for utilisation for bats but a further survey is required. Both buildings had evidence of birds nesting and it is therefore recommended that works should be carried out outside of the bird breeding season from March – September and bird boxes be erected in the trees as mitigation. No evidence of owls was found.

### **Planning History**

None

### **Responses to Consultations**

The County Highways Authority states that the applicant has included this Authority's previous advice as the access proposed is as recommended (including 2.4m x 43m visibility splays) and sufficient on-site car parking spaces have been provided. There is also a proposed footway down the western side of the access and an adequate turning head to enable service and delivery vehicles to enter the site, turn and exit in a forward gear. Whilst the applicant is not intending to adopt any of the access road, the Design and Access Statement states that the access into the site will be built to adoptable standards but managed by the Housing Association's Management Company. Although the Highway Authority has no objections to this, the County Council will not adopt any part of the private street in the future should this be the applicant's intention.

Since the above response was written there have been some revised plans submitted showing a shared surface within the site rather than the more formal layout originally submitted. However, as there is no intention to adopt the road, which will stay private and the responsibility of the housing association, it is not considered that any impact on highway conditions will result. Therefore, subject to the conditions relating to a construction compound, the access, parking and manoeuvring and gates, there are no objections to the revised proposals from the highway viewpoint.

The Council's Tree Consultant considers the recommendations of the Arboricultural Survey to be acceptable and considers that when the ivy is removed from the Lime trees it will be more evident as to what tree management is required.

Severn Trent Water has no objection subject to a drainage condition.

The County Education Authority states that the proposal is within the normal area of Church Gresley Infant and Nursery School, Pennine Way Junior School and The Pingle School. 15 dwellings would generate approximately 3 primary age pupils and 2 secondary age pupils. This is calculated on the basis of a minimum of 20 primary places and 15 secondary places per 100 dwellings. If the number of other planning applications have/will be approved within the area then the cumulative effect would create over subscribed schools at Church Gresley Infant and Pennine Way Junior School therefore we would request a S106 Education contribution of £33,829.32 (3 primary pupils @ DFES Multiplier of £11,276.44) for the additional pupils generated from the development. If none of the other proposed developments have/will not be approved, the schools could accommodate all the pupils.

Crime Prevention Design Advisor states that this is generally a good layout with "gatekeeper" protection to the car parking courtyard and surveillance to the on plot parking. All boundaries are enclosed and adequate with small setbacks to the frontages for privacy. The additional gable windows are welcomed.

Rear access gates from parking and open access areas are always a cause for concern and gates must be lockable from both sides to remain secure. Funding conditions via the HCA should ensure secure by design basic physical security measures are incorporated and all properties remain tenure blind.

The Primary Care Trust considers that the development would result in the Gresleydale practice having a list size above the recommended levels and as such they would seek a contribution of £7,688.40 (£512.56 x 15 dwellings).

The Contaminated Land Officer states that the development site is in an area which may be affected by off site sources of ground gas and from unrecorded made ground on site and therefore a phased contamination condition is recommended.

Derbyshire Wildlife Trust advises that the Ecological Survey undertaken is not adequate as the mature trees on site with deadwood and dense ivy have the potential to provide conditions for roosting bats and trees proposed for removal should have formed part of the bat assessment. Further survey work for Building 2 is also required. They therefore recommend that determination of the application is deferred until this additional survey work has been undertaken at an appropriate time of the year.

## Responses to Publicity

Thirty letters of objection have been received together with a petition with 41 signatures and the concerns are summarised below:-

- a) Wood Street already has too many cars and desperately needs a car park nearby.
- b) The increase in traffic would be dangerous to children and mothers walking to and from nearby schools.
- c) The proposal would probably double the traffic.
- d) There is a lack of on street parking on Wood Street and parked cars reduce the road to one way which would be a problem for emergency vehicles.
- e) The proposal should incorporate a community car park for residents for 12 spaces to alleviate parking in the area.
- f) Loss of privacy as plots 12-15 would face directly onto and into their property.
- g) The properties should face a different direction or set back further from the road as Wood Street is already overcrowded.
- h) Making Wood Street one way should be considered.
- i) Visibility on the street is poor for properties with driveway due to on-street parking.
- j) There would be restricted visibility from the proposed access.
- k) Construction traffic would find it difficult to access the site.
- l) Visitors parking within the site would attract crime.
- m) There would be a threat to wildlife such as foxes, birds, bats and owls.
- n) The existing building may have asbestos, which is a health and safety concern.
- o) The local school does not have enough places due to the closure of Gresley School and the increase in other developments.
- p) Visitors to the street often can't park.
- q) When extending their home they were requested to provide a garage due to parking problems on the street.
- r) The loss of on street parking would be 10 spaces as you cannot park opposite or within 15m of a junction.
- s) A suggestion to alleviate the parking problems would be making both Wood Street and Charles Street cul-de-sacs and this should be considered or provision of rear accesses to existing properties from the service road at the cemetery.
- t) If planning permission is granted the proposed chain link boundary fence to the south east edge of the plot (behind plots 5-11) should be constructed to the full extent of the plot as there is currently a gap at the car parking area end which may encourage misuse/ access.
- u) Most households own more than 2 cars and thus the parking is woefully inadequate and the residents would park on Wood Street.
- v) As the proposed properties have frontages on Wood Street this would encourage on street parking.
- w) The proposal is overdevelopment similar to the dense terraces of bland, architecturally worthless design destined to be slums of the future.
- x) The social and shared ownership properties should be split 50/50 to increase the future value of the properties.
- y) The proposal would cause devaluation of existing properties.
- z) Council policy is 1.5 spaces per dwelling plus visitors which would be 23 spaces plus visitor spaces which should be an additional 15 spaces.
- aa) The side windows of Plots 4 and 5 would overlook 22 Charles Street.
- bb) The parking area adjacent to the boundary with 22 Charles Street should have subdued lighting that can be directed away from their property.

## **Development Plan Policies**

The relevant policies are:

RSS: Policies 2, 3, 12, 14, 48

Saved Local Plan: Housing Policies 4, 9 & 11, Environment Policies 9 & 10, Transport Policy 6 and Recreation and Tourism Policy 4.

## **National Guidance**

PPS1

PPS3

## **Planning Considerations**

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

- The principle of development
- Design and Building for Life Criteria
- Residential Amenity
- Highways issues
- Trees and Ecology
- S106 Viability

## **Planning Assessment**

The principle of residential development is considered acceptable as the site is substantially surrounded by development and the site is previously developed land within the existing urban area of Church Gresley.

The design and layout is such that it fits well within the context of the existing street which is dominated by Victorian terraces and design features have been used effectively to complement these existing properties. A row of four terraces is proposed adjacent to the existing terraces on Wood Street and a junction to provide access to the car parking areas is essential to meet the needs of the site. The semi-detached property on the other side of the proposed access is dual aspect with a main elevation facing the street. The majority of existing trees would be retained to soften impact on the streetscene which would be improved by further landscaping.

The scheme has been assessed by the Council's Design Excellence Officer in relation to the Building for Life Criteria and scores 16, which exceeds the minimum score of 14 advocated in the 'Better Design for South Derbyshire' guidance published in March 2010. The assessment summarises the scheme as responding well to its context and the traditional architectural detailing appears to be of a good quality. The attempt to create a 'square' within the development is welcomed and this space is strengthened by landscaping and the level block paving surface, satisfying a number of different BfL criteria. The scheme scores well in terms of its access to facilities and public transport and accommodation mix. The proposed architecture and plan layout are successful in creating a strong character which is enhanced by the feature square and the existing mature landscaping. The agent has confirmed that the scheme will meet Code for Sustainable Homes Level 3.

In terms of residential amenity, plots 12-15 on the Wood Street frontage would be 1-3 metres below the Council's space standards in terms of their distance from the detached properties where the elevations are separated by gardens, however, the guidelines allow for these to be lower where separated by a road.

Retention of the character of the streetscene of having terraced properties close to the footway is particularly important in this scheme and as such the Council's SPG on Housing and Layout does give some leeway where it states that :- *"Where there are opposing elevations, separated by public areas, such as a highway, and having regard to the overall character of the surrounding area, the guidelines may be relaxed"*.

The proposed side windows on plot 4 would overlook the main parking area providing natural surveillance. The windows are secondary and serve the living room and a bedroom. These windows face to the south east and therefore they would not overlook the bungalow to the south west. The proposed side windows on plot 5 would be 18.5 metres from the south western boundary and 25 metres from the nearest window on the rear elevation of the bungalow 22 Charles Street. There is extensive tree screening along the length of the south western boundary with a 2 metre fence and thus overlooking and overshadowing of 22 Charles Street is not considered to be significant.

A large amount of objections are concerned about the lack of existing parking on both Wood Street and Charles Street and the difficulties that this creates. Suggestions by objectors that the development should provide additional parking for the existing residents of Wood Street are not considered to be possible as in planning terms the proposal simply has to provide sufficient parking for the additional dwellings created. It is also not possible to provide rear accesses to existing properties by way of this application as the land in question is not owned by the applicant.

With regard to parking to meet the proposed new properties 'Manual for Streets' advocates a mix of allocated and communal car parking. The communal car parking should be based on *"average levels of car ownership and allows for changes in car ownership between individual dwellings over time. It also provides for both residents' and visitors' needs; and can cater for parking demand from non-residential uses in mixed-use areas, which will tend to peak during the daytime when residential demands are lowest"*. (MfS Paragraph 8.3.11). The proposed layout indicates one space per dwelling plus 1 visitor space. The visitor spaces are within one communal area and as such the scheme follows the guidance within Manual for Streets. 30 spaces for 15 dwellings is considered adequate and the County Highway Authority does not have any objections to the proposal in relation to parking levels or highway safety.

The Highway Authority have assessed the scheme in detail and do not consider the proposed parking and access to be a highway safety concern and as such measures such as making Wood Street and Charles Street one way or the creation of cul-de-sacs is not considered to be warranted in this case. The Housing Association will have to manage this scheme in the future and would not proceed with the scheme if they were not comfortable with the parking provisions. On street parking is currently limited to one side of the street due to the width of the road, so the creation of a junction to serve the new housing will not result in any loss of parking provision.

The Arboricultural Survey makes recommendations that eight trees be removed. Four trees on the Wood Street frontage, one on the south western boundary and three on the south eastern boundary. These recommendations are endorsed by the Council's Tree

Consultant who considers that the trees on the Wood Street frontage are poor specimens which could be replaced by additional trees and landscaping. One Lime tree would be retained on the frontage adjacent to the access. The majority of Limes and Ash trees that line the south western boundary would be retained as would the trees within the adjacent woodland to the south east of the site.

The significant landscape features of the site would therefore be retained and the trees maintained to increase their lifespan and overall appearance. Plots 1-5 which would have these trees in their rear garden areas would be rented by the Housing Association (HA) and as such responsibility for their maintenance would rest solely with the HA. The works within the Root Protection Areas of the protected trees would be kept to a minimum and the layout has been designed in order to avoid conflict between the future residents and the trees. The main tree canopies are at a height whereby sufficient sunlight should be afforded to the properties. Where the parking areas encroach into the root protection areas a no dig construction and permeable material shall be used to avoid damage and this shall be a condition of any permission.

The Bat and Bird Scoping Survey was submitted with the application and only some birds nests were found in evidence on the existing buildings. Further survey work is required for one of the buildings and recommendations are to avoid works within the bird breeding season (March – September) and provision of bird boxes within the existing trees as mitigation. Derbyshire Wildlife Trust advises that the Ecological Survey undertaken is not adequate as the mature trees on site with deadwood and dense ivy have the potential to provide conditions for roosting bats and trees proposed for removal should have formed part of the bat assessment. Further survey work for Building 2 is also required. The applicant's have been asked to undertake the further survey work to establish if there is any potential for bats within the roof area of building 2 and the trees to be removed and this shall be reported verbally at committee.

A survey of the buildings to establish if asbestos is present has been undertaken and none was found.

The proposed scheme would generate Section 106 contributions of £7,688.40 for medical provision, £24,276 for open space provision, a possible £33,829.32 for education provision the latter being required if other developments have/ will not be approved. If S106 contributions of £30,000 were sought then the developer would have a very modest profit of 4.79% of the development cost and if they were waived a profit of 6.97% could be achieved. This compares with 20% of the gross development value and 18% of the development cost being adopted by the District Valuer on two recent viability appraisals completed on behalf of SDDC. The Council's Affordable Housing Officer has assessed the viability reports received from the applicant and the HA involved and concurs with the view that if the S106 contributions were sought the proposed scheme would not be viable.

The Homes and Communities Agency have confirmed that funding is agreed in principle subject to planning permission being secured in January. Should this not be achieved, then the funding will be re-allocated elsewhere in the East Midlands, with little prospect of securing future funding.

The mix of tenures of rented and shared ownership has been determined following consultation with Housing Services and with regard to South Derbyshire Strategic Housing Market Assessment.



The Community Infrastructure Levy Guidance (whilst not directly applicable in this case) as the Council has not yet adopted a CIL) states that for Charity and Social Housing Relief (CLG, The Community Infrastructure Levy - An Overview, Nov 2010, Paragraph 49). "the regulations provide 100% relief from the levy on those parts of a chargeable development which are intended to be used as social housing". Therefore in the future for 100% affordable schemes contributions may be waived. The decision is therefore before members as to whether to grant permission for a 100% affordable housing scheme in a sustainable location which has a high quality design and layout, without the provision of contributions for facilities normally required.

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. Notwithstanding the originally submitted details, this permission shall relate to the amended drawing no's 2009-172-00, 2009-172-01.J, 2009-172-02B, 2009-172-05.A, 2009-172-06.A, , 2009-172-07.A,  
Reason: For the avoidance of doubt, the original submission being considered unacceptable.
3. 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.
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. Prior to the first occupation of the development hereby permitted, measures to minimise the risk of crime to meet the specific security needs of the application site and the development shall be implemented in accordance with a scheme previously submitted to and approved in writing by the Local Planning Authority.

Reason: In pursuance of the Council's duty under section 17 of the Crime and Disorder Act 1998 to consider crime and disorder implications in exercising its planning functions; to promote the well-being of the area pursuant to the Council's powers under Section 2 of the Local Government Act 2000 and to reflect government guidance set out in PPS1.

6. 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.

7.
  - 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. Before any other operations are commenced a new vehicular access shall be created to Wood Street in accordance with the application drawings, laid out with 6m radii, constructed with a 1.8m wide footway down the western side and provided with 2.4m x 43m visibility splays in either direction, the area in advance of the sightlines being maintained throughout the life of the development clear of any object greater than 1m in height (0.6m in the case of vegetation) relative to adjoining nearside carriageway channel level.

Reason: In the interests of highway safety.

13. The premises, the subject of the application, shall not be occupied until space has been provided within the application site in accordance with the application drawings for the parking and manoeuvring of residents', visitors', service and delivery vehicles, 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.

14. There shall be no gates or other barriers within 10m of the nearside highway boundary and any gates shall open inwards only.

Reason: In the interests of highway safety.

15. Where works are proposed within the Root Protection Areas of the TPO trees on site there shall be no dig construction and suitable surfacing shall be submitted and agreed in writing by the Local Planning Authority.

Reason : To ensure the health of the retained trees.

16. Notwithstanding the submitted details, prior to the commencement of building operations on adjoining areas, the boundary with the area of protected trees shall be fenced with steel mesh fencing to 2.3m high supported by steel scaffold poles staked at 3 metre centres. The fencing shall be retained in position until all building works on adjoining areas have been completed unless otherwise agreed in writing with the local planning authority.

Reason: To protect the trees from undue disturbance

17. Prior to the commencement of development a lighting scheme shall be submitted and agreed in writing by the Local Planning Authority and the scheme implemented in accordance with the approved details.

Reason: To protect the amenity of neighbouring properties.

18. Tree removal and building demolition shall be undertaken during the period October to February inclusive as recommended in Section 5 of the Evolution Ecology report.

Reason : To avoid disturbance to breeding birds.

19. Prior to the commencement of development a scheme detailing the number and location of bird boxes in the adjacent trees shall be submitted and approved in writing by the Local Planning Authority and the boxes shall be erected prior to the occupation of any of the dwellings.

Reason : To mitigate against the loss of nests within the existing buildings.

#### 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](http://www.groundstability.com). Any security measures implemented in compliance with the approved scheme should seek to achieve the 'Secured By Design' accreditation awarded by Derbyshire Constabulary. Written confirmation of those measures should then be provided to the Local Planning Authority.

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](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](mailto:pollution.control@south-derbys.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 3 months prior notification should be given to the Strategic Director, Environmental Services at County Hall, Matlock (tel: 01629 580000 and ask for the Administration Officer, Mrs G Mordey) before any works commence on the vehicular access within highway limits.

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

**Item**            **1.3**

**Reg. No.**        **9/2010/1137/TP**

**Applicant:**

Mr Mick Goodwin  
Goodwin Building Contractors  
98 Main street  
Linton  
Swadlincote

**Agent:**

Anthony Rice  
Urban Designs Ltd  
Beehive Farm  
Lullington Road  
Rosliston  
Derbyshire

**Proposal:**        **THE PRUNING AND REMOVAL OF TREES COVERED  
BY SOUTH DERBYSHIRE DISTRICT COUNCIL TREE  
PRESERVATION ORDER NUMBER 63 & 65 AT LAND AT  
WOOD STREET CHURCH GRESLEY SWADLINCOTE**

**Ward:**            **CHURCH GRESLEY**

**Valid Date:**      **13/12/2010**

**Reason for committee determination**

This is a linked application with 9/2010/1081 and should be determined at the same time.

**Site Description**

The site is located on the corner of Wood Street and Charles Street in Church Gresley. The site was formerly the St Johns Ambulance meeting hall and this existing dilapidated building remains in the north eastern corner of the site. The north western, south western and south eastern boundaries have a variety of established trees covered by Tree Preservation Orders 63 and 65.

**Proposal**

TPO consent is sought for the removal of a Black Poplar, Ash and Goat Willow on the south eastern boundary, one Lime on the south western boundary and one Sycamore, one Horse Chestnut and two Limes on the Wood Street frontage. Works to remove ivy and dead wood and either pollard or reduce crowns of the Limes on the south western boundary is proposed.

**Applicants' supporting information**

The Arboricultural Survey accords with the BS5837 2005 guidance. The survey schedule proposes the removal of a Black Poplar, Ash and Goat Willow on the south eastern boundary, one Lime on the south western boundary and one Sycamore, one Horse Chestnut and two Limes on the Wood Street frontage. Works to remove ivy and



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**South Derbyshire District Council. LA 100019461. 2010**

dead wood and either pollard or reduce crowns of the Limes and Ash trees on the south western boundary is proposed which are categorised as of moderate value to the visual amenity of the area.

### **Planning History**

9/2010/1081 - The erection of 15 dwellings and ancillary works considered earlier on this committee agenda.

### **Responses to Consultations**

The Council's Tree Consultant considers the recommendations of the Arboricultural Survey to be acceptable and considers that when the ivy is removed from the Lime trees it will be more evident as to what tree management is required.

### **Responses to Publicity**

One comment has been received through the website regarding foxes and bats living on the land.

### **Development Plan Policies**

The relevant policies are:

EMRP: Policy 30

Local Plan: Environment Policy 9

### **National Guidance**

None relevant

### **Planning Considerations**

The main issues central to the determination of this application are the impact on the amenity of the area and health and visual amenity of the trees.

### **Planning Assessment**

The proposed tree removal and works have resulted from negotiation with the Council's Tree Consultant. The Arboricultural Survey makes recommendations that eight trees be removed. Four trees on the Wood Street frontage, one on the south western boundary and three on the south eastern boundary. These recommendations are endorsed by the Council's Tree Consultant who considers that the trees on the Wood Street frontage are poor specimens which could be replaced by additional trees and landscaping. One Lime tree would be retained on the frontage adjacent to the access. The majority of Limes and Ash trees that line the south western boundary would be retained as would the trees within the adjacent woodland to the south east of the site.

The significant landscape features of the site would be retained and the trees maintained to increase their lifespan and overall appearance. Plots 1-5 which would have these trees in their rear garden areas would be rented by the Housing Association (HA) and as such responsibility for their maintenance would rest solely with the HA. The works within the Root Protection Areas of the protected trees would be kept to a



minimum and the layout has been designed in order to avoid conflict between the future residents and the trees. The main tree canopies are at a height whereby sufficient sunlight should be afforded to the properties. Where the parking areas encroach into the root protection areas a no dig construction and permeable material shall be used to avoid damage and this shall be a condition of any planning consent.

The proposed works to the trees to be retained involves the removal of ivy and deadwood and pollarding or crown raising to improve the health and appearance of the trees. The trees in the woodland adjacent to the south eastern boundary are owned by the Council.

The concern raised with regard foxes and bats has been considered as part of the residential application, however, Derbyshire Wildlife Trust have commented that the Ecological Survey did not include an assessment of the trees to be removed which may have a potential for bat roosts and as such any consent should be deferred until such time as this work is completed. Further survey work to establish if any of the trees proposed for removal have the potential for bats has been requested and the conclusions of which shall be reported verbally at committee. The Wildlife Trust have identified that trees which are covered in ivy and have deadwood would have potential for bats and one of the Lime trees proposed for removal on the south western boundary does have this potential. If this is found to be the only tree with potential then it is possible to remove it from the application as it would not preclude the proposal for residential development.

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

## **Recommendation**

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

1. The works hereby granted consent shall be carried out within two years from the date of this permission.  
Reason: To enable the Local Planning Authority to retain control over the works.
2. The works hereby permitted shall be in accordance with the amended Arboricultural Survey submitted on the 7th January 2011, unless otherwise agreed in writing by the Local Planning Authority.  
Reason: For the avoidance of doubt and to ensure the health and appearance of the protected trees.
3. Once the ivy has been removed from the trees marked Tree 3 and 4 and Group 2 and 3 re-assessment of the tree management shall be carried out and submitted and approved in writing by the Local Planning Authority and works carried out in accordance with these agreed details.  
Reason: To protect the health and appearance of the trees.

**Item**            2.1

**Reg. No.**        9/2010/1085/U

**Applicant:**

Charles, Simon & Charles Doherty  
& Patrick Donovan  
Sutton Road  
Church Broughton  
Derby

**Agent:**

Mr Philip Brown  
Philip Brown Associates  
74 Park Road  
Rugby

**Proposal:**        **A RETROSPECTIVE APPLICATION FOR THE CHANGE  
OF USE OF LAND TO USE AS A RESIDENTIAL  
CARAVAN SITE FOR FOUR GYPSY FAMILIES, EACH  
WITH TWO CARAVANS, INCLUDING LAYING OF  
HARDSTANDINGS, IMPROVEMENT OF ACCESS AND  
ERECTION OF AMENITY BLOCKS ON LAND AT  
SUTTON ROAD CHURCH BROUGHTON DERBY**

**Ward:**            **NORTH WEST**

**Valid Date:**     **29/11/2010**

**Reason for committee determination**

This application is brought to Committee at the request of Councillor Bale on the basis that there are issues of local concern.

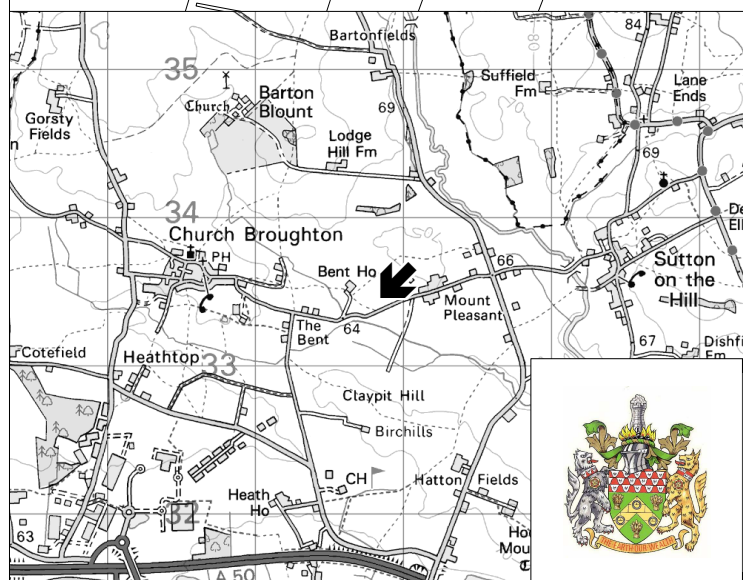
**Site Description**

The site lies to the north of Sutton Road and occupies approximately half of the land owned by the applicants. The ground is generally flat and is enclosed on three sides by hedges with two of those hedges having had a concrete post and panel fence erected inside them. A concrete post and panel fence about 1.8 metres high defines the fourth side that separates the site from the rest of the owners' land. The access to the site is from Sutton Road. In the field to the west of the boundary fence is a public footpath that turns towards the farm at Bent House. There is another public footpath that runs through the field to the north of the application site.

**Proposal**

In addition to seeking to retain the use of the land as a gypsy site, the application proposes that the site be divided into 4 pitches, one for each of the current landowners/occupiers. Within each pitch would be two caravans, a mobile home that complies with the definition of a caravan, together with a touring caravan. The applicants argue that setting the caravans away from the west boundary means that there is less chance of the caravans dominating the footpath that lies adjacent to that boundary.

# 9/2010/1085 - Land at Sutton Road, Church Broughton, Derby (DE65 5BA)



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An amenity block for each pitch is also proposed that would measure 6m x 4m with a render and tile finish. Each of these would contain a bathroom and a laundry/amenity area.

The plan proposes that the entrance area to Sutton Road would have a tarmac finish with the area on which the caravans and amenity blocks would stand and the drive to each pitch having a gravel finish.

It is accepted that the areas of hardcore that have been laid are too large and a substantial reduction of the hardstanding is proposed in this application. The site would be landscaped with a hedge planted on the 'outside' of the west boundary on other land in the control of the applicant. This landscape feature may affect a small part of the public footpath that crosses the applicants' land. Each pitch would be sub-divided with hedges. Existing hedges are shown as retained. Additional tree and shrub planting is proposed in the vicinity of the access to Sutton Road. An area to the east of the drive would be laid to grass.

### **Applicants' supporting information**

#### **a) General Points in support of the application**

In support of the application it is stated that the site is in the countryside that has no additional protection and as such is an acceptable location for siting a gypsy site as promoted in Circular 01/2006. The test for this site is not just whether the site causes harm, all caravan sites cause some harm to the character of the countryside, but whether it causes unacceptable harm that cannot otherwise be mitigated.

The applicants also state that Circular 01/2006 makes it clear that the use of landscaping particularly where indigenous species are utilised in such a scheme can help to blend sites into their surroundings as well as give structure and privacy to a site but this does not mean that sites have to be hidden from view. This point has been accepted at appeal and a relevant appeal decision is appended to the supporting information. This application site it is argued, is well screened from public vantage points and would not be unduly prominent or intrusive – it therefore meets the criterion in Housing Policy 15 that requires such sites to be so located.

In terms of sites being located in sustainable locations, the applicants argue that it is inevitable that gypsy sites will be found in such locations and members of the Gypsy/Traveller community are likely to be car dependant. Again reference is made to an inspector's decision in Oxfordshire, and to paragraphs in Circular 01/2006, that accept that sustainable locations may not be available such that the use of the private motorcar is minimised. The wider objective is to provide an adequate supply of new Gypsy/Traveller sites.

It is acknowledged that the site lies some 4/5 kilometres from the nearest villages where a full range of services are available but it is argued that these are reasonably accessible to services at Hatton and Hilton, indeed the site is closer to Hatton than the Woodyard Lane site.

Overall, it is argued that the site, with the proposed amendments to the layout fully complies with the requirements of Housing Policy 15 in the adopted South Derbyshire Local Plan.

Sewage disposal would be dealt with by means of a package treatment plant and surface water would be allowed to drain to the ground and drainage ditches that are on the east and south boundaries. These would be cleaned and cleared of vegetation so there would be no increased risk of surface water flooding arising from the proposals.

#### b) Gypsy/Traveller Site Provision in South Derbyshire

The applicants acknowledge that the minimum requirement for Gypsy/Traveller pitches in South Derbyshire has almost been achieved in accordance with the 2007 Gypsy and Traveller Accommodation Assessment (GTAA).

However, the applicants consider that this is a minimum figure and does not preclude proposals coming forward or indeed fetter the Council from granting planning permission for additional pitches should there be a need for additional pitches over the 19 identified in the GTAA as a minimum requirement. The word minimum implies that additional pitches will be required. The Local Planning Authority does not expect its Core Strategy to be adopted until September 2010 and a Site Allocations DPD will follow well after that date, by that time a further assessment of need would be required and additional pitches identified to meet needs between 2012 and 2017.

The Local Planning Authority would need to demonstrate that this site is inherently unsuitable for use as a small gypsy site and it is argued that it would be premature to refuse planning permission, even of a temporary nature before the need for additional sites and the suitability of this site is assessed through the LDF process.

#### c) The Needs of the Applicant Families

The applicants have been in need of a lawful site for at least 10 years. They have been resident on some derelict land in Derby and whilst the City Council had sought to have them and others removed from that land, it was prevented from doing so by a Judge who ordered that they should not be removed until an alternative site had been provided. A part of this group has obtained planning permission for a permanent site at Hilton and this group wishes to establish a home for themselves at Church Broughton having waited at least 6 years for a site to be provided in Derby.

The families wish their children to be educated and to that end have made appointments with the Traveller Education Service to help with the enrolment of the 8 school age children at their chosen school. There are currently two babies on the site and a mother is expecting her fifth child shortly. There are no special health problems amongst the residents of the site.

#### d) Grant Temporary Planning Permission for the site.

When considering whether to grant a temporary planning permission, the applicants state that the LPA must give substantial weight to need, which may be a general need, or the personal accommodation needs of the families concerned. One of the main intentions of Circular 01/2006 is to avoid making gypsies homeless by eviction from unauthorised sites when they have no lawful alternative site to go to. Thus, irrespective of whether the Council believes it has fulfilled its "quota", need and the absence of alternative sites will still be an issue unless the Council can demonstrate that there are alternative sites available to these families. The RSS only set a minimum requirement

and, as such, it was always inevitable that additional provision, over and above the RSS figure, would be required.

#### e) Conclusion

It is respectfully requested that planning permission be granted for the reasons set out above or if the Committee is minded to accept that there is an ongoing need for gypsy accommodation in South Derbyshire, then permission be granted on a temporary basis pending the publication and consideration of the Core Strategy and the Site Allocations DPD. The publicly available information suggests adoption will be the end of 2012. The suggested period for temporary planning permission is three years.

### **Planning History**

Prior to the occupation of the land, its use was as a field. An incomplete planning application form was deposited with the Council that purported to apply for planning permission for 4 static caravans, 8 touring caravans, 4 amenity blocks and 4 horse stables. A temporary stop notice was served on the landowners on 8<sup>th</sup> November that expired on 6<sup>th</sup> December 2010. On 3<sup>rd</sup> December 2010 a temporary injunction was granted to the Council that freezes the situation on the ground until such time as the planning application and any subsequent appeal have been determined. Subsequently the court amended the Injunction to expire on 31<sup>st</sup> January 2011 unless the Court prior to that date has extended it. A hearing into the extension of the Injunction will be held before the Committee meets and the outcome of that hearing will be reported at the meeting.

### **Responses to Consultations**

Church Broughton Parish Council has objected to the development for the following main reasons:

- a) The development is intrusive in this rural area and will cause harm to the amenity value of the area. It is by its nature an ugly, highly visible development not suitable for the location. The application should be refused on this basis, as the proposed planning does not ameliorate the significant negative impact of the development on the countryside. Environment Policy 1 seeks to protect the countryside from harmful development that cannot be demonstrated to be essential in the countryside (as to which see points (e) and (f) below). Housing Policy 15 sets criteria against which proposals for Gypsy/Traveller sites will be assessed. It is the Parish Council's view that the development is intrusive and its impact cannot be minimised as required by the policy so it fails to meet criteria (ii) (iii) and (v) of the policy.
- b) The proposed development is not in keeping with the scale of Mount Pleasant. It is about as large as the whole of the existing residential area of Mount Pleasant and virtually doubles its population. It does not therefore "respect the scale" of Mount Pleasant but instead dominates and overwhelms it as the nearest settled community, all contrary to Circular 01/2006, and is not capable of "sympathetic assimilation" as Housing Policy 15 requires.
- c) The access to the site is from Sutton Road that is 'an unclassified road generally less than 4 metres wide' and with hazardous blind bends in places.

Local residents are aware that increases in traffic are causing problems along this narrow road and the presence of towing vehicles in the locality of the site access is likely to cause a hazard to other road users. This does not meet criteria (vi) of Housing Policy 15.

- d) The applicants heavily rely upon Circular 01/2006. This Circular has been described as 'flawed' by the Secretary of State for Communities and Local Government who has announced his intention to abolish this Circular. In view of this, the Parish Council consider that its provisions should be ignored. In any event, the site does not meet the criteria set out in the Circular for the reasons given above and there is also no need for additional pitches in South Derbyshire or in the immediate locality. There is therefore no need to apply the rural exceptions policy proposed in the Circular so none of the normal policies against development in the countryside or the terms of Environment Policy 1 should be set aside in this case. The development was undertaken without planning permission and the fact that it is already in place should not be taken as a factor in support of the planning application.
- e) A recent appeal decision at Hartshorne in South Derbyshire confirms that there is no need for this site. The Inspector concluded in that case that the need for sites in South Derbyshire was 'slight'. Accordingly the impact of the site can be assessed in the light of the adopted Housing Policy 15 without ignoring any of its criteria and there is insufficient need for additional plots to justify overriding the provisions of Environment Policy 1.
- f) If the Local Planning Authority were minded to grant planning permission, then the Parish Council would be very concerned about the likelihood of further development within the site and on other land in the control of the applicants. Examples of sites expanding once permission is granted can be found at Hatton and there is a current application at Hilton to expand that site following a recent initial grant of planning permission. One of the applicants has stated at a public meeting of the Parish Council that his intention was for the site to provide a base for all his family as it grew. In the Parish Council's view, it is highly likely in the circumstances that the occupier will want to expand this large site from the 4 pitches and/or 8 caravans applied for. The Parish Council would wish this concern to be clearly addressed in any decision as the site as originally formed, as opposed to now applied for, is clearly capable of accepting many more caravans than the 8 for which the applicants are seeking planning permission.
- g) If planning permission were refused, the Parish Council would support the Local Planning Authority in removing the materials from the site prior to seeking to recover the cost of that work from the applicants. It wishes to see the site restored to its original condition as soon as possible.

Foston and Scropton Parish Council and Hilton Parish Council have written in support of Church Broughton Parish Council's objection to this development. In particular Hilton Parish Council considers that there must be a maximum number of sites that are needed in the North West Parishes and wishes Church Broughton Parish Council success in opposing the retrospective application.

The County Highway Authority has stated that the access to the site for which planning permission is requested is sub-standard but that there is sufficient frontage available to

the applicants to allow safe access to the site. In the event that the applicants seek to retain the existing access, then the County Highway Authority would object to the development.

The Environment Agency has no comment on the proposals – it is satisfied that the proposals would have no significant impact on flooding, surface water drainage or pollution.

The Director of Education has advised that the Church Broughton Primary School has a capacity of 105 and in January 2011 the roll is estimated to be at 92 with a potential fall over the coming four years. It is considered that space exists to accept the numbers suggested in the application.

The Head of Environmental Services has commented as follows in respect of complaints he has received:

Noise - Complaints alleging noise from this site is affecting other properties in the vicinity have been made. It is accepted that caravans without a mains electrical supply can cause problems relating to noise from generators, particularly in the summer months when residents may sleep with windows open. This is further compounded by the countryside location, which means that nighttime background noise levels will be low. Whilst I am concerned about generator noise, it is accepted that the site would need mains electricity at some point. However, I am also concerned about the four goods vehicles, which may of course come and go from the site at any time of day or night. A condition to control noise emanating from the site is recommended. The condition would normally only be applied to applications for commercial premises where they may affect housing. However, given the nature of some of the machinery likely to be used at this site, and the likely timescale for getting the site connected to mains electricity, it is considered appropriate.

Sewage effluent disposal - There are concerns in relation to the treatment of sewage generated at the site. The application indicates that a package treatment plant will be required and this would of course require an electricity supply. The Environment Agency should see this application and comment accordingly because there is at least one drinking water borehole located nearby that might be affected. The Environment Agency would give discharge consent to any treatment plant that applies conditions to the effluent discharge quality should planning permission be granted albeit the EA would normally require the plant to be installed prior to the occupation of the site.

Contaminated Land - A large volume of crushed material has been imported to site to raise levels and to allow for trafficking of vehicles. Crushed material can often be contaminated with hazardous material such as asbestos and fuels/oils. The suitability of the imported material is not known in this case and would need to be established within a reasonable timeframe should retrospective planning permission be granted. If contaminated then the material would need to be removed from the site. Otherwise conditions to assess the potential contamination of the imported materials are recommended.

Given the above the recommendation however is that conditions be applied to the development in the event that planning permission were granted.

[In the light of the above comments the Environment Agency was re-consulted and it has confirmed its view that there is no objection to this planning application. Issues



such as discharge from an effluent treatment plant are dealt with under separate legislation, as is the removal of material from the site in the event of its restoration in the event that planning permission and enforcement action is successful. The Environment Agency Permitting Team would be responsible for these issues.]

The Derbyshire Gypsy Liaison Group confirms that this group of traveller is known to have travelled in the southern Derbyshire and Derby area. It confirms, in a document submitted with the consultation response that whilst not all Gypsies/Travellers have an aversion to living in brick and mortar accommodation, the vast majority of the community do have this aversion.

## **Responses to Publicity**

The National Gypsy Council was established in 1966 to promote the rights of the Gypsy/Travelling community. It has advised the Government on Gypsy/Traveller issues and has promoted the idea of private gypsy sites as an alternative to public site provision. It is argued that the Gypsy/Traveller community has at least two ethnic groups within it and simply putting both groups on a single publicly owned site does not work. Establishing their own site gives the Gypsy/Traveller community the opportunity to establish a firm base for their families in areas they want to live and provide a base for children to attend school and get an education. This is what the applicants are seeking to do at Church Broughton and the Gypsy Council fully supports them and their application. The Council knows the families involved as a close knit group that have nowhere else they can legally go; given the opportunity they will prove themselves to be good neighbours. The Gypsy Council requests that planning permission be granted.

The National Farmers Union has written in support of local farmers' objections to the development. The letter cites the same policy objections that have been made by Church Broughton Parish Council and states that planning permission for this site could set a precedent for more sites in the countryside to the detriment of the rural character of the area.

111 objection letters to the development have been received with more than one, in some cases, being received from the same address. The main points of objection in addition to those made by the Parish Council are as follow:

- a) The character of local footpaths is altered by the presence of the site – there is a footpath that passes the site in its southwest corner.
- b) The caravans and potential amenity blocks are an additional intrusion into the countryside on top of the inappropriate fencing that has been put up. This is the wrong location for this development but there may be other more suitable locations for members of the Travelling community and the District Council should provide support to assist the families to relocate should permission for this site be refused. The privacy of the occupiers of Mount Pleasant dwellings has been compromised.
- c) With the additional caravans that would be inevitable as the families' children grow up, further impact on the countryside can be anticipated. It has the potential to 'swamp' Mount Pleasant with up to 60 caravans being capable of being accommodated on the site according to press reports.
- d) Trees and hedges have been removed from the land yet the application form states that there are no trees on or adjoining the site.

- e) The applicants acknowledged in a meeting with the Parish Council that had they applied for planning permission, they would not have received it. People should not be allowed to apply for retrospective planning permission when they flaunt planning law. No houses would be permitted on this land if planning policies for the area were followed.
- f) There is one law for Travellers and one for the settled community and this is unfair. The applicants claim they want to settle and put down roots but they want nothing to do with the settled community and want to take advantage of the services.
- g) The development would affect local land drainage and part of the site is thought to be in the flood plain albeit that the flood plain map does not show the site as being subject to flooding – local knowledge suggests that it does. Use of the site would add to the potential for pollution of local watercourses.
- h) The site also has a high water table.
- i) Local wildlife has been affected since the land was occupied. Local Environmental Stewardship schemes have sought to enhance the wildlife habitats of the locality
- j) There are no streetlights or roadside footpaths between the site and the villages; also the verges are very narrow in places. The provision of lights would be necessary to support the new community.
- k) The applicants have sought to get an enhanced price for the land in return for giving it up.
- l) There are already sufficient traveller sites in the locality and the Council has provided its share of sites to meet the requirements of the travelling community. There is room for these families on the Woodyard Lane site. The 2008 GTAA suggests that new sites should be sited up to 15 miles from existing ones to provide Travellers with choice and it recommended that Amber Valley and Derbyshire Dales be considered as alternatives to South Derbyshire.
- m) In recent press articles, the Gypsy Council states that the applicants want to be good neighbours but this is not shown by their actions so far.
- n) The local school is full and cannot take any more children. Access to the school is limited and members of the settled community may have difficulty accessing it. There are no other local services in the vicinity of the site such as shops or Doctors' surgery. The trip to access these services is along mainly narrow country lanes. The bus service along Sutton Road only runs once a week so the site is reliant on the private motorcar.
- o) The use of generators to produce electricity can be heard in nearby communities increasing ambient noise levels in a normally quiet location.
- p) An unauthorised sign has been erected. [This sign has since been removed]
- q) There is reference to the time it will take to remove the unauthorised site if planning permission were refused.
- r) If permitted it would set a precedent for others to set up homes on green field sites to meet the needs of their families.

## **Development Plan Policies**

The relevant policies are:

East Midlands Regional Plan Policies: 1, 3, 12 & 16 (and Appendix 2)

Local Plan: Environment Policy 1, Housing Policy 15 and Transport Policy 6.

## **National Guidance**

ODPM Circular 01/2006. Recently the government has indicated that:

- There is an intention to replace Planning Circular 01/06 Planning for Gypsy and Traveller sites with new light-touch guidance.
- Stronger planning enforcement powers would be introduced to help local authorities deal with breaches of planning control and limiting the opportunities for retrospective planning applications.
- Local Authorities would be encouraged to provide, in consultation with the local community, an appropriate number of Traveller sites that reflect local and historic demand. Incentives for site provision and innovative ways in which Traveller sites can be funded and maintained would be explored.
- DCLG would co-ordinate action across Government to tackle the discrimination and poor social outcomes faced by Gypsies and Travellers and seeking to remove barriers that are stopping them from taking part in the 'Big Society'.

If there are any further updates they will be provided at the meeting. At the time this report was prepared, the Circular was still in place. It is therefore a material consideration but the weight to be afforded to it is tempered by the statement above.

## **Other Guidance**

The Derbyshire Gypsy and Traveller Accommodation Assessment. [GTAA]

Published Government Guidance about the Design and Layout of Gypsy Sites.

## **Planning Considerations**

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

- The Development Plan & Government Advice.
- Alternative Sites
- Gravel Pit Hill Hartshorne – the Inspector's Decision.
- Temporary Planning Permission.
- Enforcement Considerations

## **Planning Assessment**

### The Development Plan and Government Advice

The Development Plan currently comprises the Regional Plan and the South Derbyshire Local Plan. For the time being the policies in the Regional Plan remain part of the Development Plan albeit that the recently published Localism Bill contains a clear intention to abandon all Regional Plans. The weight to be afforded to those policies is a matter for the decision maker. The Government continues however to make it clear that decisions should be based upon sound evidence.

Circular 01/06 works on the basis that a location in the countryside can be acceptable for Gypsy/Traveller sites and in circumstances where a potential private site is proposed in an appropriate location, such as the recent proposals in Hilton, provision is there to allow private sites to be established.

The East Midlands RSS (2009) supported by the evidence contained in the GTAA (2008) requires the provision of 19 new pitches in South Derbyshire between 2007 and 2012. The GTAA explains, however, that due to the lack of public sites in other authority areas, and therefore no waiting lists in those areas, the requirement was provisionally allocated to South Derbyshire by default. To rectify the imbalance the GTAA recommends that public sites be spread across a wider area of Derbyshire and that "Amber Valley Borough and Derbyshire Dales District be considered as the location of new public sites in the south of the County". This would provide greater choice to the Gypsy and Traveller community as to where they wish to live.

To date, 18 of the 19 required pitches have been provided although, subject to the signing of a S106 for a separate planning proposal, this will go back down to 17. All of these pitches have been provided on private sites.

The ODPM Circular 01/2006 *Planning for Gypsy and Traveller Caravan Sites* states that the following should be considered when determining an application for a Gypsy or Traveller site: the continuous assessment of unauthorised encampments; the numbers and outcomes of planning applications and appeals; levels of occupancy, plot turnover and waiting lists for public sites; the status of existing authorised private sites and; the twice-yearly caravan count. Paragraph 62 of the Circular states that "[Local Authorities] are entitled to refuse private applications in locations that do not comply with planning policies, especially where the authority has complied with this guidance and proceeded properly to ensure needs identified by accommodation assessments are being met".

In terms of the Development Plan, the criteria set out in Housing Policy 15 are relevant to the determination of this application subject to the provisions of Circular 01/2006. The applicants in their supporting information refer to these criteria. The policy states that gypsy caravan sites will be permitted provided that a site is:

- a) In an area frequented by Gypsies, and
  - b) Satisfactorily related in relation to other development; and
  - c) Acceptable in environmental terms; and
  - d) Reasonably accessible to community services and facilities; and
  - e) Capable of sympathetic assimilation into its surroundings; and
  - f) Adequate provision is made for vehicular and pedestrian access.
- a) South Derbyshire has always been an area frequented by Gypsies/Travellers. The GTAA has assessed the need for pitches and suggested a figure for South Derbyshire to meet the immediate needs of the community up to 2012. The Authority has been and is working towards meeting the 2012 figure of 19 pitches with a minimum of 17 pitches having been provided. The applicants have drawn attention to this being a minimum figure but the GTAA and the East Midlands Regional Plan both require that additional plots be provided after 2012. Paragraph 62 makes it clear that where the known requirements are being met, then the Local Planning Authority can refuse permission for sites in inappropriate locations. Accordingly, the proposal will now be assessed against the requirements of Housing Policy 15. If the application is found to be contrary to the requirements of Housing Policy 15 then it will also be contrary to the provisions of Environment Policy 1, as its location in the countryside will not have been justified.

- b) The location in the open countryside means that the site is not well located in relation to other development. If permitted it is accepted that the numbers of caravans are likely to increase as the families of the occupiers grow. The consequent increase in the numbers of caravans and population is likely to overwhelm the nearby settlement of Mount Pleasant that is something the advice in Circular 01/2006 states should be avoided. The site is not considered to satisfy this criterion in the policy.
- c) The site lies in the open countryside adjacent to a public footpath. From the wider area and from public footpaths the development of the site has significantly altered the rural character of the countryside. This is by virtue of the erection of urban style fencing, the laying of significant areas of hardcore and the formation of an access to Sutton Road. The County Highway Authority has set out a requirement that the access to the site be moved to the west. This would further open up views into the site from public vantage points and would reduce any of the mitigation measures proposed thus adding to the visual intrusion contrary to this criterion in Housing Policy 15. If the applicants seek to retain the access they have formed then the County Highway Authority has indicated that it would object to the development.
- d) It is the applicants' case that the site is reasonably accessible to community services. In terms of Education the site is reasonably accessible to the School at Church Broughton and there is also a public house, church and meeting room available in the village. Objectors have stated that the school is operating over capacity and that in the future members of the settled community may be denied access to the local school. The consultation response from the Director of Education referred to earlier states that this is not in fact the case. However, in terms of access to shops, doctors or other facilities, the occupiers of the site would be wholly reliant on the private motorcar to reach normal services. This is also the case for the settled community. However, the provision of additional houses to meet the needs of the settled community would not be allowed at this remote countryside location as the site is not readily accessible to normal local services. The advice in PPS 7 is that housing in the countryside should be provided only to meet the essential requirements of established rural businesses, which is not the case here. For this reason the site is not considered to meet the requirements of this criterion in Housing Policy 15.
- e) This application should be determined on the basis of the submitted plans and not on the actual situation on the ground. The applicants' are proposing significant changes to the site to provide a smaller area of hardcore, the provision of hedges around the fences that have been erected and subdivision of the plots by the provision of hedges. Landscaping is also proposed at the entrance to the site. The applicants' argue that this is sufficient to mitigate the impact of the development on the open character of the countryside. However, any mitigation measures would take time to become established and the hedge proposed on the west boundary may obstruct part of the public footpath although this could be avoided through a carefully detailed landscaping scheme. Mitigating the impact of the urban fencing on the open character of the countryside hereabouts will be difficult to achieve in a way that would make an otherwise unacceptable location acceptable. It is accepted that mitigation does not mean that a development should be wholly invisible as suggested by the applicants, but in the light of the

failure of the site to meet other criteria in Housing Policy 15, this element of potential compliance does not justify the grant of planning permission.

- f) The County Highway Authority has drawn attention to the need to move the access along the site frontage to provide a satisfactory safe access to the site. It has stated that if the access is to remain in its established location, then the County Highway Authority would object to the development. The applicants' have been asked to comment on the County Highway Authority comments, as meeting its requirements would have significant impact on the layout of the site. Any response that is received will be reported at the meeting. The removal of more of the frontage hedge would mean that the site would be further opened up to view from the public highway and, in the short-term, adding to its impact on the character and appearance of the area again contrary to the provisions of Housing Policy 15 and make mitigation of any impact of the development more difficult to achieve. If the applicants' wish to retain the access in its current location then, as stated above, the County Highway Authority would object to the development.

In the current case as opposed to the Gravel Pit Hill case referred to below, the application site has a material impact on the wider countryside and is not well screened. The screening provision proposed in the application would take a considerable time to become established and in that period the site and associated boundary features would remain prominent in the countryside. In addition the views from the public footpaths would be considerably altered with the fences forming an alien urban feature in this rural area. The site is not reasonably accessible to community services and facilities. The retention of the site is therefore considered contrary to the requirements of Housing Policy 15 particularly as the known requirement for the provision of Gypsy/Traveller sites for South Derbyshire is virtually being met.

#### Alternative Sites

Woodyard Lane Foston - this Council is no longer responsible for the management of this site. The site owners, Derbyshire County Council, have recently let a contract for a member of the Gypsy community to manage the site on its behalf. The contract makes provision for the new leaseholder to admit or refuse admission to the site and it is anticipated that the site would be managed as if it were a private Gypsy site. Some of the plots on the site would be available as Transit plots. Again the leaseholder will be responsible for controlling access to the site and there are insufficient plots currently available to accommodate these families as the new manager seeks to refurbish plots on the site.

The application documents state that the families moved to the site at Church Broughton from a 'tolerated' site within Derby City. The City Council has received a Government Grant towards the provision of a permanent site within the City boundary and to that end the site at Glossop Street would be removed following the provision of a permanent site. In the short term there appears to be space at Glossop Street with a longer-term prospect of a permanent site within the city to provide for the occupants of the current Glossop Street site. However, access to the site in Derby would be controlled by the City Council

In terms of Housing Policy 15 whilst the area is one that is frequented by gypsies, the need for Gypsy/Traveller sites in South Derbyshire is being met and the Authority is therefore able to refuse this private application at a location that is considered

unacceptable, particularly where there is the potential for the families to return to a tolerated site from which they state they have come into South Derbyshire.

#### Gravel Pit Hill Hartshorne – the Inspector's Decision.

In the Gravel Pit Hill decision, the Inspector took the view that with the revocation of the Regional Plan, the allocation by the Local Planning Authority of any new land for sites is uncertain. He accepted at that time the Council had granted planning permission for 12 pitches since the base date of the GTAA, which resulted in an outstanding need for seven pitches in relation to the Regional Plan. His view was that the Council could very likely argue these seven pitches should be redistributed to other local authority areas to provide Gypsies with the choice envisaged by the GTAA.

The Inspector states - 'My overall conclusion is that the degree of harm to the area's character and appearance and to highway safety is sufficient to outweigh the sustainability of the location and the need, both generally and of the appellant, for Gypsy and Traveller caravan sites.'

The Inspector's comments about the overall provision of sites in South Derbyshire reflect the situation considered at paragraph 62 of Circular 01/2006. He described the need for new sites in South Derbyshire as being 'slight' given that the requirements of the GTAA were being met. This position is considered even more so now that the outstanding requirement is down to 2 pitches between now and the end of 2012 rather than the 7 that the Inspector found to reflect a 'slight' need for pitches in South Derbyshire and this confirms the approach taken in relation to Housing Policy 15 above.

#### Temporary Planning Permission.

The applicants have made reference to the potential to grant a temporary planning permission pending the adoption of the Allocations DPD that will not be available until the end of 2012. Given the changes to the planning system proposed in the Localism Bill, it is unlikely that the Allocations DPD will be adopted in that timescale. The applicants state in their submissions that a temporary planning permission should be granted because there are circumstances where there may be an ongoing general need or the personal circumstances are such that permission should be granted to prevent persons being moved off unauthorised sites to another unsuitable location. However, ODPM Circular 01/2006 also states that where the allocations are being met, then it is appropriate to refuse planning permission especially where the authority has complied with that guidance and proceeded properly to ensure needs identified by accommodation assessments are being met.

The issue however is whether there is a shortage of available sites to meet the needs of the travelling community in a Local Authority area. This is not the case in South Derbyshire as the requirements of the GTAA and the Regional Plan are virtually met. In these circumstances there is no justification for the grant of a temporary planning permission in this location that fails to meet the requirements of the Development Plan.

#### Enforcement Considerations

The Council has sought to enforce against this unauthorised site through the medium of an Interim Injunction. The provisions of this are described above along with the Courts decision to amend the terms of the Interim Injunction. A hearing for the court to

consider whether to extend the end date will be heard on 12 January 2011. Alternative Enforcement tools are available in the form of an Enforcement and Stop Notice should the court decide not to extend the Interim Injunction and Members are minded to refuse planning permission.

### Overall Conclusion

The site is not well screened and is a dominant feature when viewed from the adjacent public footpath. It would represent an intrusion into the countryside to a point where refusal of planning permission is justified, as the development is contrary to the provisions in Housing Policy 15 and by association the provisions of Environment Policy 1.

In the absence of a shortage of sites in the short-term to accommodate Gypsies/Travellers in South Derbyshire, there is no justification to set aside the criteria in Housing Policy 15 as the requirements of Regional Policy and the GTAA are being met to a point of virtual compliance.

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** planning permission for the following reasons:

1. In the absence of a shortage of sites in the short-term to accommodate Gypsies/Travellers in South Derbyshire, there is no justification to set aside the criteria in Housing Policy 15. The requirements of Regional Policies and the GTAA are being met to a point of virtual compliance in accordance with the requirements of ODPM Circular 01/2006. In these circumstances, the Circular states that planning permission for private sites in inappropriate locations can be refused. The retention of the site has therefore been assessed in the light of the criteria in South Derbyshire Local Plan Housing Policy 15 and the advice in the Circular. Gypsy/Traveller sites in South Derbyshire shall be in an area frequented by Gypsies; be satisfactorily related in relation to other development; be acceptable in environmental terms; be reasonably accessible to community services and facilities; be capable of sympathetic assimilation into its surroundings and have adequate provision for vehicular and pedestrian access. Whilst accepting that South Derbyshire is an area frequented by Gypsies, this site lies in a remote location away from other development where mitigation of its impact is difficult to achieve. This remote location makes access to local services and facilities difficult and in its proposed form the site would represent a significant intrusion into the open countryside. Accordingly the development would be contrary to Housing Policy 15 and as an unjustified intrusion into the countryside to the detriment of the rural character of the area would be contrary also to Environment Policy 1.
2. The proposed development if permitted would lead to a material intensification of the use of a substandard access to Sutton Road (CIII) where visibility is severely restricted due to third party land thereby leading to potential danger and inconvenience to other highway users and interfere with the safe and efficient movement of traffic on the adjoining highway contrary to the requirement of



Transport Policy 6 and Housing Policy 15 that are saved policies in the adopted South Derbyshire Local Plan.

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

| <b>Reference</b> | <b>Place</b>    | <b>Ward</b> | <b>Result</b> | <b>Cttee/Delegated</b> |
|------------------|-----------------|-------------|---------------|------------------------|
| 9/2009/0961      | Netherseal      | Seales      | Dismissed     | Delegated              |
| 9/2010/0151      | Melbourne       | Melbourne   | Dismissed     | Delegated              |
| 9/2010/0236      | Weston on Trent | Aston       | Dismissed     | Delegated              |
| 9/2010/0416      | Swadlincote     | Swadlincote | Dismissed     | Delegated              |
| 9/2010/0495      | Stenson Fields  | Stenson     | Allowed       | Delegated              |
| E/2010/00091     | Stenson Fields  | Stenson     | Allowed       | Delegated              |



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# Appeal Decision

Hearing on 26 October 2010

Site visit made on 26 October 2010

**by Alan M Wood MSc FRICS**

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

**Decision date: 17 November 2010**

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**Appeal Ref: APP/F1040/A/10/2129633**

**Land adjoining Netherseal Road, Netherseal, Derbyshire, DE12 8BU**

- 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 Michael Adey against the decision of South Derbyshire District Council.
  - The application Ref 9/2009/0961/FM, dated 11 November 2009, was refused by notice dated 8 January 2010.
  - The development proposed is the conversion of an existing farm building to a live-work unit.
- 

## Decision

1. The appeal is dismissed.

## Procedural Matter

2. It was accepted by both parties at the hearing that paragraphs 17 and 18 of Planning Policy Statement 7: *Sustainable Development in Rural Areas* (PPS7) which relate to re-use of buildings in the countryside are no longer extant following the publication of Planning Policy Statement 4: *Planning for Sustainable Economic Growth* (PPS4).

## Main Issues

3. The justification for the proposed development in a countryside location.

## Reasons

4. The existing building on the appeal site is a redundant barn of modest height and scale sited immediately adjacent to the highway. The appeal site is located in open countryside outside of any settlement. Policy H7 of the South Derbyshire Local Plan (1998) [LP] stipulates that outside settlements the conversion of buildings to provide residential accommodation will be permitted provided that the building is of a form and bulk and general design in keeping with its surroundings; suitable for conversion without extensive alteration, rebuilding or extension; and the conversion is in keeping with the character of its surroundings. The Council has not relied on these criteria to oppose the proposed development and from the information before me and my observations I concur with that stance.
5. Policy EV1 of the LP however states that outside settlements new development will not be permitted unless it is essential to a rural based activity or is

unavoidable in the countryside. There is no evidence before me to conclusively demonstrate that the proposal would meet the requirements of either of these criteria.

6. Paragraph 10 of PPS7 indicates that isolated new houses in the countryside will require special justification for planning permission to be granted. The appellant has commented however that the proposal is essentially a barn conversion and should be considered accordingly rather than the creation of a new house. In support of that view, the appellant referred to a recent application (2008/0372/F) for a barn conversion to a live-work use in the South Derbyshire district which has received planning permission. From the information provided to me however that development formed part of a farm complex comprising a significant number of buildings and, in any event, the permission related to the renewal of a previous permission so the principle of the development had already been established. It does not therefore compare directly with the proposal as, in this case, the building stands alone on its plot in an isolated location. Nevertheless the proposed conversion of the barn would result in the creation of a new dwelling unit.
7. Planning Policy Statement 1: *Delivering Sustainable Development* (PPS1), Planning Policy Statement 3: *Housing* (PPS3) and PPS7 promote more sustainable patterns of development and place the focus for most additional housing in rural areas on existing towns and identified service centres whilst recognising the requirement to meet identified need in other villages.
8. Housing need however has not been raised as a consideration in this case and the appeal site is remote from the nearest village of Clifton Campville which is located about a mile to the south-west along Netherseal Road. The appellant acknowledged at the hearing that future occupiers of the appeal site would be car reliant but contended that other aspects of sustainability should be taken into account, for example, the re-use of an existing structure which was no longer necessary for its original purpose. Nevertheless, I agree with the Council that the appeal site is not in a sustainable location in the context of national planning policy.
9. The appellant stated that the barn is a type of agricultural building which is scarce and should be preserved. A viability report prepared on behalf of the appellant concluded that residential conversion would provide the most beneficial alternative use with or without a small home-office element and a condition survey of the building found that the barn is capable of conversion to a residential property with minimal building works. These matters are not disputed by the Council. The appellant further commented that the building makes a very important contribution to the local landscape, is in an attractive setting and should be preserved for re-use for visual amenity reasons.
10. Planning Policy Statement 5: *Planning for the Historic Environment* (PPS5), which postdates the notice of refusal, has introduced the concept of Heritage Assets. A Heritage Asset can include a building identified as having a degree of significance meriting consideration in planning decisions. Heritage assets are the valued component of the historic environment. From my observations, the barn is a relatively small rectangular structure with brick elevations and a pitched roof. As indicated above, it is in a fairly isolated location and has no predominant features or detailing which would give it significant architectural merit or aesthetic appeal. The appellant has acknowledged the building is of little or no archaeological interest. I was told that a number of similar

structures in the surrounding area have been lost in recent times adding to its rarity and I acknowledge that the barn is clearly a longstanding component in the landscape. Taking full account of the above factors however, I find that the barn's overall contribution to the historic environment is of limited significance.

11. The work element of the proposed development relates to a room described as a 'home office' on Plan No HMD/PD/0176/01 which would be located at first floor level and directly accessed from the landing area which also serves the living accommodation at that level. The floor area of the office would form approximately 11% of the proposed development. The Council referred to two appeal decisions relating to live/work arrangements where in one case the Inspector concluded that 20% employment floorspace would be acceptable whereas in the other case another Inspector found that even a ratio of 20/80 work/residential floorspace respectively would not be in accordance with the live work principle. This evidence was not disputed by the appellant.
12. Policy EC12 (d) of PPS4 states however that applications for the conversion and reuse of existing buildings in the countryside for economic development, particularly those adjacent to or closely related to towns or villages, should be approved where the benefits outweigh the harm in terms of a number of criteria. The criteria relate to (i) the impact on the countryside, landscapes and wildlife which is not a concern in this case; (ii) local economic and social needs and opportunities, there is no evidence of local need before me; (iii) settlement patterns and accessibility, the site is in an isolated position and not adjacent to or closely related to a village; (iv) the need to conserve a heritage asset, in the light of my findings above there is no compelling case to preserve the building in this context; and (v) the suitability of the building and scales of re-use, the barn is capable of conversion.
13. Whilst each case has to be considered on its own merits, in my judgement, the proposal reads as the creation of a dwelling unit with ancillary office space and, taking full account of the above criteria, I conclude that any benefits of the very limited scale of economic use associated with the proposed development would not be sufficient to outweigh the harm in the context of PPS4.

## **Conclusion**

14. My overall conclusion is that my findings in relation to sustainable development, the historic significance of the existing building, economic development in rural areas, and that the proposed development would not be essential to a rural based activity or unavoidable in the countryside, and would result in the creation of new dwelling unit in an isolated location represent convincing reasons why permission should be withheld in this case. This is not altered by the support for the proposal in the context of Policy H7 of the LP. The justification for the proposal has not therefore been satisfactorily demonstrated.
15. The proposed development would therefore conflict with PPS1, PPS3, PPS4 and PPS7, and Policy EV1 of the LP.
16. Having considered all of the matters before me, for the reasons given above, the appeal does not succeed.

*Alan M Wood*

Inspector

## APPEARANCES

### FOR THE APPELLANT:

Stephen Clarke

Sansom Clarke, Chartered Surveyors, Property  
and Development Consultants

Joan Adey

Richard Adey

Robert Adey

### FOR THE LOCAL PLANNING AUTHORITY:

Sarah Arbon

Area Planning Officer, South Derbyshire District  
Council

## DOCUMENTS

### *Submitted by the Appellant:*

- 1) Copy of Policy H7 of the LP
- 2) Details of Planning Application 9/2008/0372/F determined by South Derbyshire District Council
- 3) Extract from 'Non-Designated Heritage Assets: Draft Criteria' (July 2010) published by Bassetlaw District Council
- 4) Two letters from Interested Parties both dated 23 October 2010 expressing support for the proposed development



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# Appeal Decision

Site visit made on 23 November 2010

**by Alan Novitzky BArch(Hons) MA(RCA) PhD RIBA**

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

**Decision date: 3 December 2010**

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**Appeal Ref: APP/F1040/E/10/2128439**

**55 Castle Street, Melbourne, Derbyshire DE73 8DY**

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
  - The appeal is made by Mr Adrian Walters against the decision of South Derbyshire District Council.
  - The application Ref 9/2010/0151/L, dated 11 November 2009, was refused by notice dated 14 April 2010.
  - The works proposed are *to replace two rotten non-original second floor front elevation windows with 'Bygone Collection' off-white timber effect sash windows. The new windows are identical in measurement to the existing rotten frames. The existing windows, in common with others in the terrace, were not crown glass.*
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## Decision

1. I dismiss the appeal.

## Preliminary Matters

2. 55 Castle Street is the end property in a short terrace of early 19<sup>th</sup> Century houses, Grade II listed for group value. It lies within the Melbourne Conservation Area. The works proposed have already been carried out.

## Main Issue

3. The main issue is the effect of the proposal on the character and appearance of the listed building and the Conservation Area.

## Reasons

4. The listed terrace comprises two pairs of three storey buildings fronting the street, in red brick with slate roofs. Each pair has an interesting Venetian arrangement of openings in stone, containing doors either side of a central doorcase with an arched fanlight. The proportions and details of the buildings are characteristic of their late Georgian period, with corbelled eaves, and stone lintols, sills and plinth.
5. The UPVC windows installed in the smaller windows to the top floor are not characteristic of late Georgian buildings such as this, having meeting rails of considerable visual weight and a broad appearance to the surrounding members, unmitigated by any planted mouldings which can be seen in some of the other sash windows. Although these other windows may not be original, some of them better capture the character for which the buildings were listed.

6. Moreover, the glazing of the UPVC windows appears to lack authenticity, comprising sealed units of substantial overall thickness, set behind UPVC cover moulded glazing bars rather than putty fillets, all of which can be seen from street level. Compared to those shown in the Council's archive photographs, the UPVC windows appear from the street to be clumsy and out of character with the proportions and details of the late Georgian elevations.
7. Ignoring the differences in detail and proportion of the windows, it is a little difficult to tell from street level that their material is UPVC. However, from inside the room, it is clear that the material, as well as the profiles of the members and the glazing details, is harmful to the character of this late Georgian building. The windows of a Georgian building are normally of great significance to its overall character, which is so in this case, both externally and internally.
8. I have no doubt about the high specification of the UPVC windows and the extent of research undertaken to source them, but they are not appropriate to their present use, whether or not the sashes they replaced were original. Nor would painting the frames make a significant difference, since the effect is unclear and the other harm identified would remain.
9. Regarding procedural matters, I see no lack of fairness in the Council processing the application through delegated powers, which is an established procedure. Moreover, the decision notice, in this section 20 case, does not need to meet the requirements of an enforcement notice in stating what is necessary to remedy a breach. It simply states that the proposal is unacceptable.
10. The proposal would not preserve the listed building or its features of special architectural or historic interest, nor the setting of the adjacent listed buildings in the group. The Melbourne Conservation Area encompasses the historic core of the settlement with its collection of buildings of interest of varying form and age. The listed terrace forms an important element within the Conservation Area and harm to the terrace reflects on the Conservation Area as a whole, failing to preserve its character and appearance.
11. The proposal would conflict with South Derbyshire Local Plan saved Policy EV13 (Listed or other Buildings of Architectural or Historic Importance) and saved Policy EV12 (Conservation Areas). It would also conflict with the aims of national guidance in PPS5. The effect of the proposal on the character and appearance of the listed building and the Conservation Area is unacceptable.

**Alan Novitzky**

Inspector





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# Appeal Decision

Site visit made on 29 November 2010

**by Chris Frost BSc(Hons) DipLD FLI CBiol MBS MRTPI**

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

**Decision date: 24 December 2010**

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**Appeal Ref: APP/F1040/A/10/2137773**

**Rio Vista, Swarkestone Road, Weston-on-Trent, Derby, Derbyshire DE72 2BU**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
  - The appeal is made by Mr Karl Griffiths against the decision of South Derbyshire District Council.
  - The application Ref 9/2010/0236/B, dated 10 March 2010, was refused by notice dated 18 May 2010.
  - The application sought planning permission for the erection of a replacement dwelling without complying with a condition attached to planning permission Ref 9/2007/0765/F, dated 12 September 2007.
  - The condition in dispute is No. 4 which states that: Unless as may otherwise be agreed in writing with the local planning authority the existing dwelling shall be demolished in its entirety within one month of the date of the first occupation of the dwelling hereby permitted.
  - The reason given for the conditions is: The site lies away from any established settlement and a net increase in the number of dwellings in this location would be contrary to policies for development in the countryside and sustainability.
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## Decision

1. The appeal is dismissed.

## Main Issues

2. The main issues are whether: a) the retention of this dwelling would accord with policies designed to restrict additional housing development in the countryside; and b) the appearance and character of the countryside would be harmed.

## Reasons

3. The removal of the disputed condition would essentially have the effect of allowing the creation of an additional dwelling unit in this countryside location. Saved Housing Policy 8 of the South Derbyshire Local Plan deals with housing development in the countryside and places restrictions on what should be considered appropriate. An essential feature of these restrictions is a linkage between a new dwelling and an established, viable, long term rural based activity. This stance is reinforced by saved Environment Policy 1 that requires development outside settlements to be essential to a rural based activity.

4. No argument is put forward to support the view that there is a need for this dwelling in connection with any rural based activity such as a farm or other rural business. Accordingly, the retention of this dwelling would not be in accord with these policies and this suggests that the disputed condition should be retained in order to ensure compliance with these restrictive policies.
5. The appellant refers to saved Housing Policy 6 which makes provision for infill development in other rural settlements (this is other than villages which are considered in Housing Policy 5). Here there is a cluster of 3 authorised dwellings on the south side of Swarkestone Road with further limited residential development on the north side. This isolated group of dwellings is separated from the main body of Weston-on-Trent by around 400m and the village school is 1100m away.
6. The site is outside the village, but the appellant considers that it should be considered in the same way as 'other rural settlements' for the purposes of interpreting saved Housing Policy 6. However, in view of the very limited size of this cluster and the complete lack of its own facilities it seems wholly unjustified to regard this as another settlement where, in accord with saved Housing Policy 6, new housing might be acceptable if it represented the infilling of a small gap and would be in keeping with the scale and character of the settlement. Accordingly, there is no good reason to find that this proposal gains any significant support from this policy. Nor is it supported by PPS 7 which at paragraph 9(ii) seeks to strictly control new house building (including single dwellings) in the countryside.
7. The appellant points out that insisting on the loss of the existing dwelling would result in an unsustainable outcome as it would fail to capitalise on the use of energy and materials that are already in place. This is undoubtedly true although it would be counterbalanced by the daily reliance on transport and services that would be associated with this relatively isolated location, although some local facilities might be reached by foot or cycle. While there is no easy way of assessing any net effect here, any argument against the scheme on the basis of sustainability, as advocated in PPS 3, PPS 7 & PPG 13 would not appear to be particularly strong.
8. The appellant also considers that the dwelling in question would fit into the group without appearing out of keeping with the scale and character of this cluster of dwellings. Here, I accept that the spacing between dwellings (including the original Rio Vista) is largely consistent. However, the new dwelling appears very much more imposing and significant than its neighbours and this gives the original Rio Vista a somewhat squeezed and cramped appearance among the group.
9. In contrast, the position envisaged in the permission that has been granted has no doubt taken account of the space that would be created by the removal of the original dwelling that would create a setting commensurate with the size and stature of the new dwelling. Accordingly, the retention of the original dwelling would lead to the creation of a cramped setting for the new house and for the house that would be retained. This fails to confirm that what is now proposed would give rise to a result that would be in keeping with the scale and character of the cluster. It also fails to support the view that the site might be regarded as suitable for infilling.
10. In conclusion, while there may be some penalties associated with the loss of an existing rural building, in this instance its retention would be contrary to

policies that seek to restrict the creation of additional residential accommodation in the countryside. It would also give rise to an unsatisfactory grouping in terms of the appearance and character of this isolated cluster of rural dwellings. This suggests that planning permission should be withheld and that the disputed condition should be retained and there are no overriding reasons to conclude otherwise.

*Chris Frost*

**Inspector**



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# Appeal Decision

Site visit made on 7 December 2010

**by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI**

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

**Decision date: 23 December 2010**

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**Appeal Ref: APP/F1040/H/10/2135029**

**The Co-operative Travel, 38 High Street, Swadlincote DE11 8HY**

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 against a refusal to grant express consent.
  - The appeal is made by Mark Allen (The Midlands Co-operative Society Ltd) against the decision of South Derbyshire District Council.
  - The application Ref 9/2010/0416/A, dated 6 May 2010, was refused by notice dated 5 July 2010.
  - The advertisement proposed is fascia signs.
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## Decision

1. The appeal is dismissed.

## Reasons

2. 38 High Street is a mid-terraced property with a shop frontage at ground floor level. It is on the main shopping street in Swadlincote and is situated within the Swadlincote Conservation Area. Above the shopfront is an externally illuminated fascia sign and to the right of this sign is an internally illuminated projecting sign. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) requires that special attention be paid to the desirability of at least preserving the character or appearance of the Conservation Area.
3. The main issue is the effect of the signs on the visual amenity of the area, with particular regard to their effect on the character and appearance of the building and the Swadlincote Conservation Area.
4. National planning policy for advertisements is set out in Planning Policy Guidance 19 'Outdoor Advertisement Control' (PPG19). Paragraph 22 of PPG19 states that "It is reasonable to expect that more exacting standards of advertisement control will prevail in Conservation Areas". This is a material consideration as are the requirements of the Development Plan which, in this case, is the South Derbyshire Local Plan (LP). Saved LP Environment Policy 12 reiterates the requirement of Section 72(1) of the Act.
5. The appeal property is one of a pair of brick properties that was built in the mid 20<sup>th</sup> century. The two properties have similar original shopfronts. The appeal shopfront has a central inset doorway flanked by large plate glass windows with slender timber mullions. Above the shopfront windows of both units are fascias with cornices above. The fascias are moulded with a wider section above and slightly forward of a narrow lower section. The moulding of the fascias is carried through the mullions, doors and door frames and the delicate detailing of the shopfronts is a feature of the properties and of the Conservation Area.

6. The fascia sign is as wide as the shopfront and covers the whole of the fascia above the shopfront and below the cornice. Most importantly, the sign obscures the moulding that subdivides the fascia and it detracts from the delicate detailing of the shopfront. The sign, given its height and its bright orange colour, dominates the shopfront and is harmful to its character and appearance. The projecting sign is slightly higher than the fascia sign and is in the same bright orange colour. Together, the two signs, given their size and colour, are prominent in the street scene and detract from the visual amenity of the area.

7. The Council has adopted Supplementary Planning Guidance (SPG) 'Display of Advertisements'. Paragraph 3.4 states that "The sign should not detract from the scale, proportions and character of the building by being overly large..." and paragraph 3.5 states that "Within Conservation Areas...advertisements must be designed and located so as to respect the unique character of individual areas and buildings". The fascia sign, in particular, is overly large and does detract from the proportions and character of the building and, together, the two signs do not respect its unique character.

8. The two fascia signs have had a significant adverse effect on the character and appearance of the building and the Swadlincote Conservation Area and are detrimental to the visual amenity of the area. The proposed retention of the signs conflicts with advice in the SPG and guidance in PPG19 and with saved LP Environment Policy 12 and the requirement of Section 72(1) of the Act.

9. The Appellants have referred to several other fascia signs in the High Street. These signs are, generally, above modern shopfronts and, in any event, it is a well established planning principle that a development proposal should be considered on its individual merits.

*John Braithwaite*

Inspector



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# Appeal Decisions

Site visit made on 7 December 2010

**by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI**

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

**Decision date: 20 December 2010**

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## **Appeal A Ref: APP/F1040/A/10/2134225**

### **Land to the rear of Units A and B, Stenson Fields Industrial Estate, Stenson Road, Derby**

- 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 SBS Group against the decision of South Derbyshire District Council.
  - The application Ref 9/2010/0495/U, dated 25 May 2010, was refused by notice dated 21 July 2010.
  - The development proposed is retention of use of land for the storage of contractors' vehicles, equipment, machinery, and storage containers and materials.
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## **Appeal B Ref: APP/F1040/C/10/2134687**

### **Land to the rear of Units A and B, Stenson Fields Industrial Estate, Stenson Road, Derby**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeal is made by SBS Group against an enforcement notice issued by South Derbyshire District Council.
  - The Council's reference is E/2010/00091.
  - The notice was issued on 12 August 2010.
  - The breach of planning control as alleged in the notice is change of use of the land from use for purposes ancillary to the adjoining Business (Use Class B1) and Storage (Use Class B8) premises to use for the storage of civil engineering contractors vehicles, equipment, machinery and storage containers and materials.
  - The requirements of the notice are (1) Stop using any part of the land for the storage of civil engineering contractors vehicles, equipment, machinery and storage containers and materials; (2) Permanently remove the civil engineering contractors vehicles, equipment, machinery and storage containers and materials from the land; (3) Permanently remove the road planings and surfacing materials from the land and restore it to its previous condition by reseeding to grass.
  - The period for compliance with the requirements is 31 days.
  - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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## **Appeal C Ref: APP/F1040/C/10/2134891**

### **Land to the rear of Units A and B, Stenson Fields Industrial Estate, Stenson Road, Derby**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeal is made by NAC3 Ltd against an enforcement notice issued by South Derbyshire District Council.
  - The Council's reference is E/2010/00091.
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- The notice was issued on 12 August 2010.
  - The breach of planning control as alleged in the notice is change of use of the land from use for purposes ancillary to the adjoining Business (Use Class B1) and Storage (Use Class B8) premises to use for the storage of civil engineering contractors vehicles, equipment, machinery and storage containers and materials.
  - The requirements of the notice are (1) Stop using any part of the land for the storage of civil engineering contractors vehicles, equipment, machinery and storage containers and materials; (2) Permanently remove the civil engineering contractors vehicles, equipment, machinery and storage containers and materials from the land; (3) Permanently remove the road planings and surfacing materials from the land and restore it to its previous condition by reseeding to grass.
  - The period for compliance with the requirements is 31 days.
  - The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended. The prescribed fees have not been paid within the specified period so the application for planning permission deemed to have been made under section 177(5) of the Act as amended cannot be considered.
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## Decisions

### Appeal A Ref: APP/F1040/A/10/2134225

1. The appeal is allowed and planning permission is granted for the use of land for the storage of contractors' vehicles, equipment, machinery, and storage containers and materials on land to the rear of Units A and B, Stenson Fields Industrial Estate, Stenson Road, Derby in accordance with the terms of the application, Ref 9/2010/0495/U dated 25 May 2010, subject to the following conditions:

1. The use hereby permitted shall be carried on only by NAC3 Ltd and shall be for a limited period of three years from the date of this decision, or the period during which the land is used by NAC3 Ltd whichever is the shorter.
2. The land shall only be used for the delivery, storage and collection of vehicles, machinery, equipment and storage containers normally associated with a construction contractor.
3. No staff shall be employed on the land except for the delivery and collection of vehicles, machinery or equipment.
4. The land shall not be used at any time for the servicing or repair of vehicles, machinery or equipment.
5. The collection or return of vehicles, machinery and equipment shall only take place between 0730 and 1800 hours on Mondays to Fridays and between 0800 and 1330 hours on Saturdays, and no vehicles, machinery or equipment shall be operated on the land outside these times.
6. Reversing beepers on vehicles shall be turned off when the vehicles are being used on the land.
7. Within one month of the date of this decision a two metre high close boarded timber fence shall be erected along the south and east boundaries of the land.

### Appeal B Ref: APP/F1040/C/10/2134687

2. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely the use of the land to the rear of Units A and B, Stenson Fields Industrial Estate, Stenson Road, Derby, as shown on the plan attached to the notice, for the storage of civil engineering contractors' vehicles, equipment, machinery, and storage containers and materials, subject to the seven conditions set out in paragraph 1.

Appeal C Ref: APP/F1040/C/10/2134891

3. The enforcement notice is quashed.

### **Reasons**

Appeal A and ground (a) in Appeal B

4. Stenson Fields Industrial Estate was established following a grant of planning permission in February 2001 for the occupation of the land by a construction company and another planning permission was granted in November 2001 for the 'use of the land for B1(light industry) and B8(storage and distribution) purposes'. Condition 3 of the latter permission prevents the storage of goods, machinery and materials in the open within the site. Units A and B occupy a modern industrial building which is attached to outbuildings linked to a former dwelling used as office accommodation. In early 2008 planning permission was granted for the change of use of the office accommodation and outbuildings to an operational office and depot for a landscaping contractor. The former dwelling, now offices for the landscaping contractor, is attached to a two storey dwelling, Stenson Fields Farmhouse.

5. The appeal land is the rear part of the industrial estate behind the buildings. The land adjoins the rear garden area of Stenson Fields Farmhouse and is used by a civil engineering contractor to store vehicles, machinery and equipment. The land is surrounded by a high chain link fence. Between the appeal land and the buildings is an area used by the landscaping contractor for storage and for the parking of vehicles. Activity within the part of the industrial estate used by the landscaping contractor is restricted, by condition 4 of the planning permission, to between 0730 and 1800 hours on Mondays to Fridays and between 0800 and 1300 hours on Saturdays. The industrial estate is on the west side of Stenson Road and, together with Stenson Fields Farmhouse and its associated garden area, is surrounded by agricultural land.

6. The main issue is the effect of the use of the land for the storage of civil engineering contractors' vehicles, equipment, machinery, and storage containers and materials on the amenities of the residents of Stenson Fields Farmhouse, with regard to outlook, and noise and disturbance.

7. The appeal land is part of the industrial estate and whilst storage in the open of goods, machinery and materials is prevented by aforementioned condition 3 the land could be used for the storage of, for instance, vehicles and storage containers. The containers could also be used for the storage of goods, machinery and materials because these would not be stored in the open. Evidence indicates that the land was largely unused until the current use commenced but this use is not significantly or materially different to the potential lawful use of the land. The items of equipment and machinery on the land, at the time of the site visit, were stored neatly and close to the ground for ease of access. There is no reason to suppose that this situation is different at any other time.

8. The Appellants have agreed to a condition that would result in the erection of a two metre high close boarded timber fence along the east and south boundaries of the appeal land. This fence would effectively screen views of the land at ground level from the garden area at the adjoining residential property. The land is overlooked from first floor windows in the dwelling but glimpses of the equipment and machinery stored neatly on the industrial land from these windows is unlikely to significantly affect the outlook from Stenson Fields Farmhouse and is not thus likely to adversely affect the amenities of its residents.



9. The Appellants have also agreed to a condition that would restrict the hours of use of the land to those that are imposed on the landscaping contractors for the use of their property. This property adjoins Stenson Fields Farmhouse and the activity on it is closer to the dwelling than the activity on the appeal land. Another agreed condition would prevent use of the land by anyone other than the current operator and, given the nature of their operations, activity on the land during the working week is likely only to be for short periods in the morning and in the evening. The morning activity would be no earlier than 0730 hours and the evening activity no later than 1800 hours and if operating on Saturdays the morning activity would be no earlier than 0800 hours and activity would cease by 1300 hours.

10. Activity on the appeal land, with the aforementioned conditions in place, would be in addition to closer activity at the landscape contractors' property and is likely to be only for short periods. Noise would, furthermore, be attenuated to a degree by the construction of the close boarded timber fence and other agreed conditions would prevent the use of reversing beepers and the servicing or repair of vehicles, machinery or equipment on the land. The continued and controlled use of the land for its current use is not likely to result in any significant disturbance for the residents of Stenson Fields Farmhouse.

11. The continued use of the appeal land for the storage of civil engineering contractors' vehicles, equipment, machinery, and storage containers and materials, with the agreed conditions in place, would not have a significant adverse effect on the amenities of the residents of Stenson Fields Farmhouse.

#### Other matters

12. The use of the appeal land is not incompatible with the permitted use of the land for Class B1 and Class B8 purposes, which was considered to be an appropriate use of the land when planning permission was granted in 2001. The use of the land does not thus conflict with saved South Derbyshire Local Plan environment policy 1 and employment policy 5, or with policies in Planning Policy Statement 4.

#### Conditions

13. Both main parties have submitted similar suggested conditions and these been amended and/or combined where necessary in the interests of clarity and precision. The seven conditions imposed are required to protect the amenities of the residents of Stenson Fields Farmhouse.

#### Conclusion

14. Appeal A is allowed and planning permission subject to conditions has been granted. The ground (a) appeal in Appeal B succeeds, the enforcement notice has been quashed and planning permission subject to conditions has been granted on the application deemed to have been made. The ground (f) and (g) appeals in Appeal B do not therefore need to be considered.

#### Appeal C

15. The enforcement notice in Appeal C is the same as that in Appeal B. The Appeal B notice has been quashed so the Appeal C notice has also been quashed.

*John Braithwaite*

Inspector