

Please ask for Democratic Services
Phone (01283) 595722 / 595848
Typetalk 18001
DX 23912 Swadlincote
democraticservices@southderbyshire.gov.uk

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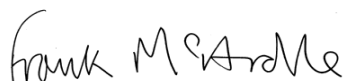
Date: 29th July 2019

Dear Councillor,

Planning Committee

A Meeting of the **Planning Committee** will be held in the **Council Chamber**, Civic Offices, Civic Way, Swadlincote on **Tuesday, 06 August 2019 at 18:00**. You are requested to attend.

Yours faithfully,



Chief Executive

To:- **Conservative Group**

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

Labour Group

Councillors Gee, Dr Pearson, Shepherd, Southerd and Tilley

AGENDA

Open to Public and Press

- 1** Apologies and to note any Substitutes appointed for the Meeting.
- 2** To note any declarations of interest arising from any items on the Agenda
- 3** To receive any questions by Members of the Council pursuant to Council procedure Rule No. 11.
- 4** REPORT OF THE STRATEGIC DIRECTOR (SERVICE DELIVERY) **3 - 79**
- 5** AMENDMENT TO SECTION 106 AGREEMENT RELATING TO LAND AT COURT STREET, WOODVILLE **80 - 82**

Exclusion of the Public and Press:

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

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

SECTION 1: Planning Applications

SECTION 2: Appeals

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

1. PLANNING APPLICATIONS

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

Reference	Item	Place	Ward	Page
9/2019/0583	1.1	Willington	Willington & Findern	5
9/2018/0405	1.2	Melbourne	Melbourne	15
9/2019/0621	1.3	Willington	Willington & Findern	24
9/2019/0720	1.4	Aston	Aston	29
9/2019/0728	1.5	Overseal	Seales	32
9/2019/0149	1.6	Findern	Willington & Findern	39

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

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

Item 1.1
Ref. No. 9/2019/0583
Valid Date 24/05/2019

Applicant:
 Mr Ben Golding
 G. D. Golding Skip Hire

Agent:
 Mr Neil Arbon
 DPDS Consulting
 3 Gleneagles House
 Vernon Gate
 Derby
 DE1 1UP

Proposal: **THE ERECTION OF A LIGHT INDUSTRIAL AND STORAGE/DISTRIBUTION UNIT (USE CLASSES B1(C) AND B8) ON LAND AT SK2828 2357 THE CASTLE WAY WILLINGTON DERBY**

Ward: **WILLINGTON & FINDERN**

This case was originally reported to the meeting of 16 July 2019 where the Committee resolved to defer the application to a later meeting to allow for a site visit to be undertaken and for assurances to be obtained from the County Highway Authority that its formal response had taken into account the cumulative and so intensified use of the site.

The report below remains as originally written with any additions in italics.

Reason for committee determination

This item is presented to Committee as the development could be contrary to Local Plan policy and other factors need to be considered.

Site Description

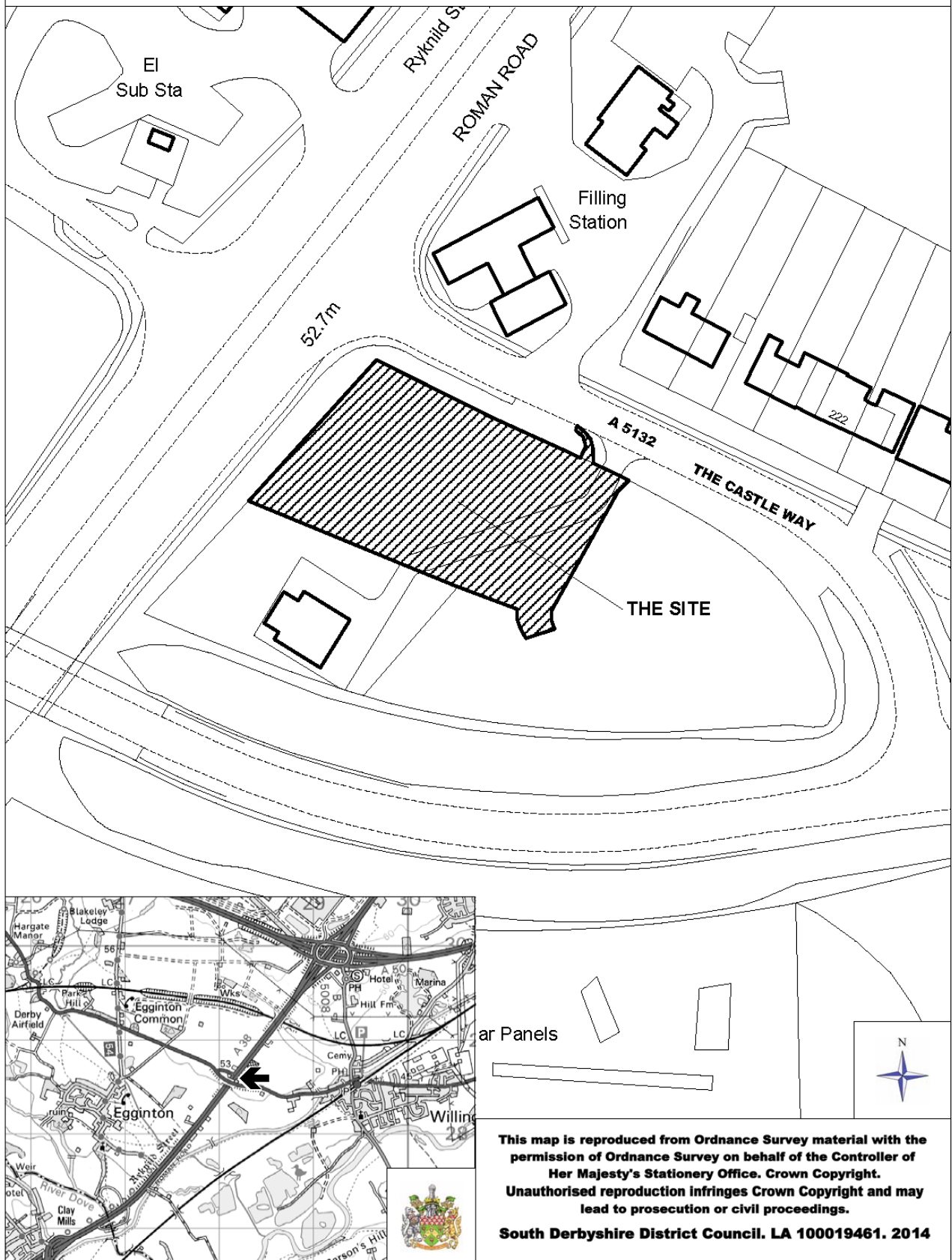
The site comprises a parcel of land of roughly 0.2ha forming part of a larger site contained within roads forming part of a grade separated junction to the A38 trunk road. The site in its entirety has been granted planning permission for skip storage and the development has been partially implemented, although the use is not fully operational. The A38 is a two-lane dual carriageway which runs directly alongside the western site boundary. The larger sites southern boundary abuts the raised section of the A5132 which crosses the trunk road. Access to the site is from the north, directly from The Castle Way which links to the on and off slip roads to the southbound carriageway of the A38. A mature belt of boundary landscaping encloses the wider site. Within the south eastern corner of the site is a pumping station, which would remain.

There is a counterpart site within a similar road arrangement on the opposite side of the A38, which contains a car sales operation. There are trunk road service facilities at both the off slips immediately north of this junction. The services on the east side have an exit onto The Castle Way. East from these there is frontage housing along the north-side of The Castle Way, which faces the site. These 1930s semi-detached houses pre-date the more recent changes to the road system. The large amount of traffic using the A38, and this junction, creates a relatively high volume of background noise within the area.

Proposal

The application proposes a single commercial unit subdivided into four units which would accommodate B1(c) (industrial process) and B8 (storage and distribution) uses. The building would

9/2019/0583 - Land at SK2828 2357 The Castle Way, Willington, Derby DE65 6BW



be steel portal framed, with the flexibility for units to be combined. The overall footprint of the building would be 22m x 30m, with each proposed unit having a width of 7.5m. The total gross floor area would be 660 sq. m and the overall height of the building to the ridge would be 7.7m. Each unit would have a dedicated pedestrian access and separate vehicular/loading access through roller shutter doors to the front. The existing (and upgraded) vehicular access from The Castle Way would serve the proposal. The new access layout achieves visibility splays of 2.4m by 73m to the east and 2.4m by 52m to the west. The access gates are to be retained but are proposed to be open throughout operational days, to avoid restricting access. 12 parking spaces are proposed, plus a single disabled parking bay with spaces allocated to each unit.

It was originally proposed to improve pedestrian accessibility into the site, through the construction of a pedestrian footpath. However following an objection from the Highway Authority, this element has been omitted from the scheme. The landscaping scheme, which is currently being implemented on the site as part of the previously approved change of use of the land for skip storage is to be fully implemented and retained.

Applicant's supporting information

The Planning Statement provides an overview of the proposed development, the site and surrounding area, the planning history and the legislative and policy context before providing an assessment of the planning considerations and the planning balance and conclusion. The statement sets out that the proposal is for a speculative commercial development and that given the location of the site to the strategic highway network, the development would be attractive to a number of businesses. An assessment of the developments performance against the three dimensions of sustainable development is included. In relation to the economic dimension it is stated that the proposal could accommodate the sustainable expansion of existing local business or the start-up of new SMEs, in a suitable location closely connected to the public highway that would benefit the local economy and contribute towards the creation of between 9 and 13 jobs. In terms of the social dimension it is explained that the retained and enhanced boundary hedgerows would safeguard the amenity of the local community and that the economic benefits would have 'knock on' social benefits and that through creating and securing local jobs, the vibrancy and health of communities would be improved, and the quality of life of local families, secured. In terms of the environmental objective it is acknowledged that the site is not subject to any sensitive landscape designation and whilst it is 'countryside' it is surrounded by the highway network and lies within close proximity of other development and man-made features, which together result in the site depicting an urban character. On the basis of the sites proximity to the public highway, its lack of connectivity with agricultural land and the surrounding urban character, it is considered that the quality of the immediate landscape is significantly reduced. Finally it is confirmed that no waste or pollutants would be produced as a result of the development and that the natural environment would be protected.

The Transport Statement considers the following aspects: traffic impact, access layout, parking provision, accessibility and highway safety. The document identifies that the recently constructed access and visibility splays have been upgraded on the basis of the traffic speed surveys. In terms of trip generation, it is considered that the proposal is likely to create approximately 33 vehicle movements per weekday and that these trips would quickly disburse into the local highway network. A review of accessibility is provided, which identifies that the level of pedestrian, cyclist and public transport infrastructure and services available are moderate to low, but would be accessible within acceptable distances to the site. A review of the latest 5 years' worth of recorded road traffic accident data is also included, which identifies that there are no trends or patterns that would signalise that the proposed development would exacerbate any existing accident issues.

The agent has provided a brief response to address matters discussed at the Committee Meeting relating to design, amenity and landscaping. The statement confirms that no design improvements are to be provided on the basis that the building would be in keeping with the character of the area and would not appear incongruous within its setting; that the location of the building and separation distance from the neighbouring dwellings would ensure that there would be no overbearing or overshadowing impacts on the nearby properties – the building would be approximately 45 metres from the building to the nearest property and that the enhanced landscaping for the previously

approved scheme has not yet been fully implemented and therefore at present , the site could be viewed as exposed.

Planning History

9/179/62 – Erection of a bungalow and garage – Refused 19/04/1979 and dismissed on appeal 7/12/1979

9/1080/978 – Erection of a stable and tack room – Approved 19/12/1980

9/787/326 – Siting of a mobile home – Refused 24/09/1987

9/0390/1360 – Erection of a single storey building to provide a water supply booster station – Approved 11/05/1990

9/2013/0093 - The change of use of land to use as residential caravan site for 4 gypsy families, each with two caravans including no more than one static mobile home, together with laying of hardstanding, landscaped bunds and the erection of two amenity buildings – refused 08/05/2013 and dismissed at appeal on 30/06/2014

9/2015/0670 - Change of use to residential gypsy caravan site for 3 pitches along with erection of amenity buildings and acoustic fencing and creation of bunds and hardstanding - Refused 11/11/2015

9/2016/0479 - Change of use of vacant land to an area of hard standing for skip storage (Use Class B8) – Approved 30/11/16. A Planning Appeal was subsequently submitted to remove a condition limiting the development to temporary period of 24 months (APP/F1040/W/17/3167369). The appeal was subsequently allowed on 4 May 2017 and the condition therefore removed.

Responses to Consultations

Highways England originally suggested that the application be held in abeyance for a three month period to allow additional information to be provided. The further information requested included details regarding the potential physical implications of the proposal on the integrity of the highway and specifically that this should include any proposed boundary treatment works and a drainage plan for the development. The applicant has committed to providing this information, and following further discussions, Highways England has withdrawn its original objection and provided a conditional response.

The County Highway Authority originally objected to the proposal on the basis that a pedestrian crossing had been shown in the plans, which would encourage pedestrians to cross the road in an unsafe location. It was requested that this detail be removed. The plans have been amended to reflect this request.

The County Highway Authority has confirmed that the application has been assessed on the basis of both the skip storage use and the use proposed by this application taking place simultaneously, and has raised no highway objection in this regard.

Responses to Publicity

Willington Parish Council object to the application on grounds of the resultant increased traffic, causing highway concerns, particularly related to the access and egress of the site and also on grounds of increased noise.

One letter of representation has been received raising the following issues:

- a) What does Class B1(c) and B8 mean?

- b) Concerns in relation to the application consultation process.
- c) This was agricultural land and part of the Green Belt until plans were passed for the skip storage – but this consent was subject to conditions to prevent harm to residential amenity.
- d) The proposal would result in a loss of privacy.
- e) The local highway network is dangerous and the proposal fails to take this into account. The area is an accident waiting to happen.
- f) The proposal would result in noise pollution.
- g) Why do pedestrians need specific consideration on this busy stretch of road?
- h) The skip storage business has not been implemented as parts of the consent remain outstanding.
- i) The only boundary treatment erected is a security fence.
- j) What does trade effluent mean?
- k) Why is the end user unknown?
- l) Is the intention to either sell/rent the building should planning be accepted?
- m) The proposed use is not acceptable within this residential area.
- n) It is unacceptable that the employment and hours of opening are unknown.

Development Plan Policies

The relevant policies are:

- 2016 Local Plan Part 1 (LP1): S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), S5 (Employment Land Need), S6 (Sustainable Access), E2 (Other Industrial and Business Development), E7 (Rural Development), SD1 (Amenity and Environmental Quality), SD3 (Sustainable Water Supply, Drainage and Sewage Infrastructure), BNE1 (Design Excellence), BNE3 (Biodiversity), BNE4 (Landscape Character and Local Distinctiveness), INF2 (Sustainable Transport), INF7 (Green Infrastructure)
- 2017 Local Plan Part 2 (LP2): BNE5 (Development in Rural Areas)

National Guidance

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

Local Guidance

- South Derbyshire Design Guide SPD

Planning Considerations

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

- Principle of Development
- Character, Appearance and Design
- Highway Safety
- Residential Amenity; and
- Other Issues

Planning Assessment

Principle of Development

At a strategic level policy S1 seeks to retain, promote and regenerate employment development on sites in urban areas and other locations which already are, or could be in the future, well served by infrastructure, including public transport and policy S5 identifies that provision across a range of sites; including allocations will be made for a minimum of 53ha net additional land for industrial and business development. More specifically policy E2 states that development for B1 and B8 uses will

be permitted where the sites lies within or on the edge of the Swadlincote Urban Area, Derby, Burton upon Trent, or a Key or Local Service Village, where the proposal is for the expansion of an existing business, or would be for the redevelopment of established industrial or business land or premises. Policy E7 identifies that development proposals which diversify and expand the range of sustainable employment activities on land outside settlement boundaries will be supported, provided that they support the social and economic needs of the rural communities along with adhering to five criteria. Finally, policy BNE5 is supportive of development which is comparable with policy E7.

The application site is technically designated as countryside by virtue of it being situated outside the settlement boundary of Willington; however the site benefits from excellent access as a result of its proximity to the strategic highway network and is within an area of suburban character, formed by the range of uses/development within its vicinity. In terms of the development in principle, there would be a slight conflict with policy E2 (i), on grounds that the site is not on the edge of an Urban Settlement, or Key or Local Service Village (being too far from the settlement boundary). Notwithstanding this however, as a result of the site's connectivity, the urban areas would be easily accessible. The development would also not be compliant with E2 (ii), for whilst the application has been made by an existing business, as identified within the supporting documentation, the proposal would not cater for the expansion of such. Finally, although there is consent for a skip storage use on the site, this business could not be considered established and neither does the application propose redevelopment of this use. Therefore the proposal would not conform with criterion (iii). Overall however, the general thrust of policy is supportive towards the principle of employment generating development in a wide range of locations and the proposal would contribute towards the identified need for industrial and business development.

Whilst the application is speculative, to address criterion (i) of Policy E7 a partial business case has been provided within the planning statement. This identifies that the applicants are a local company based in Burton on Trent who provide skip hire, waste disposal and recycling services to private and commercial customers. The case acknowledges that no end user has been identified, but that the building has inbuilt flexibility, with the possibility of the applicants accommodating it to further diversify their business, increase revenue and boost local employment. The site's position relative to the strategic highway network is also identified as a positive aspect of the proposal. In summary, it is suggested that the proposal could accommodate the sustainable expansion of an existing local business or the start-up of new SME in a suitable location closely connected to the highway, and that the applicants are willing to invest in order to benefit the economy and contribute towards the creation of between 9 -13 jobs local jobs (Employment Density Guide 2015- HCA). An overview of the social benefits are also identified including the creation of local jobs, which it is suggested will support strong, vibrant and healthy communities and secure a good quality of life.

On balance, as set out above, although there is some policy conflict, the level of harm in this case is considered minimal and on the basis of the site's position relative to the strategic highway network and the associated economic benefits, the development would, in principle be considered acceptable and the identified harm would thus be outweighed by those benefits.

Character, Appearance and Design

Policy BNE4 seeks to protect and enhance landscape character and local distinctiveness, Policy E7 (v) requires the development of new buildings to minimise visual intrusion and impacts on character. Policy BNE5 identifies that development acceptable in principle must not unduly impact on landscape character and quality and policy BNE1 expects new development to be well designed and embrace the principles of sustainable development.

Within the immediate vicinity of the site to the south west is a water pumping station and to the east is an area of hard surfacing, which serves the skip storage use. This development is situated on the larger parcel of land, which is also host to the application site. This land is dissected from the wider area by the strategic highway network, which surrounds its perimeter. Directly to the north, north east and northwest of this parcel are pockets of development comprising a range of uses. The existing development has resulted in the local area having an urbanised character. Further beyond,

the area is rural and more open in character. The application proposes a portal framed building with shallow pitched roof situated within the north western corner of the site. This would have a maximum height of approximately 7.7m and its main openings would be restricted to its south eastern elevation. The building would have a functional and monotonous appearance. The areas character, and the form and design of the existing modern buildings have been heavily influenced by the highway infrastructure, which dominates and so have a functional appearance. As such, despite its uninspiring design, it could not be argued that the proposed building would result in a level of harm to the established character that would warrant refusal of the application on these grounds. In terms of appearance, although there may be some views of the building from the highway, such views would be limited and fleeting in nature. In addition, views would be further restricted by the enhanced landscaping currently being implemented under the skip storage consent.

Overall the building and proposed use of the site would be in keeping with this areas specific character and by virtue of the siting and design of the building and the presence of the mature boundary hedgerow and there would be no materially harmful impacts in terms of appearance. Whilst the design of the building would be simplistic and lacking in detail, it would be functional and would not appear incongruous within its setting and so would be compliant with the applicable policies.

Highway Safety

Policy E7 (iii) seeks to ensure that the local highway network is capable of accommodating traffic generated by the proposal and Policy IF2 requires that travel generated should have no undue detrimental impact on local amenity, highway safety, the efficiency of transport infrastructure or the efficiency and availability of public transport, that appropriate provision is made for safe and convenient access and that car travel generated by the development is minimised relative to the needs of the development.

The development would be served by the existing access which has recently been upgraded, as previously detailed within this report. The site layout illustrates 12 parking spaces, 1 disabled space and 3 visitor space and the layout is formed by a priority arrangement. The accompanying Transport Statement concludes that “the existing access arrangements, coupled with minor alterations to the access gates, and provision of pedestrian infrastructure are suitable to serve the proposed development”.

The Highway Authority originally raised concerns on grounds that the proposed footway and tactile paving would be likely to create a highway safety issue whereby pedestrians would believe it to be safe to cross the road; which would not be the case in this location. To address this concern, amended plans have been provided which omit these features. On this basis the Highway Authority raises no objection to the proposal. In terms of impacts on the strategic highway network, Highways England has confirmed that it does not consider that the development would result in any material traffic impact on the strategic network, but suggested that further details were required regarding the potential physical implications of the proposal on the integrity of the highway, with such information including proposed boundary treatment works and a drainage plan for the development. In response, whilst the agent has clarified that a document is being prepared to address the concerns raised, this will not be ready for submission for a number of weeks. On account of this there has been further dialogue with Highways England which has confirmed that it will withdraw its objection subject to the imposition of a pre-commencement condition requiring the submission of a drainage scheme to illustrate that there would be no adverse impacts on Highway England assets. A condition to this effect would therefore be imposed. In terms of boundary landscaping, all landscaping works would be internal and would not encroach onto the Highway England asset.

On the basis of the amended plans and the recommended condition, it is considered that the proposal would not result in any adverse impacts in terms of highway safety and so would be compliant with policy E7.

Residential Amenity

Policy BE1 seeks to ensure that new development does not have an undue adverse effect on the privacy and amenity of existing nearby occupiers.

The closest residential properties are those to the north east of the site, on the opposite side of The Castle Way. On the basis of the use applied for, and given the design and siting of the proposed building, there would be no materially harmful impacts caused in terms of privacy or overshadowing. The most likely impacts would relate to noise and disturbance. In terms of the local environment, background highway noise is a dominant factor and whilst the proposed uses may result in some additional noise, on account of the specific uses applied for and having regard to the intervening separation distances between the development and the existing dwellings, any associated noise would be minimal and would be unlikely to be audible against the existing background noise. In addition it is proposed that working hours are controlled by condition. The proposal is therefore considered compliant with Policy BNE1.

Other Issues

Although the skip storage application has secured additional boundary landscaping which covers the entirety of the site, as this development forms a new, standalone proposal, to ensure the landscaping is delivered on this parcel, a condition should be imposed to secure such.

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

Recommendation

GRANT permission subject to the following conditions:

1. The development permitted shall be begun before the expiration of three years from the date of this permission.
Reason: To conform with Section 91(1) of the Town and Country Planning Act 1990 (as amended by Section 51 of the Planning and Compulsory Purchase Act 2004).
2. The development hereby permitted shall be carried out in accordance with Drg Nos: 101 Rev B, C9881.PL.200, C9881.PL.120 Rev D unless as otherwise required by condition attached to this permission or allowed by way of an approval of a non-material minor amendment made on application under Section 96A of the Town and Country Planning Act 1990 (as amended).
Reason: For the avoidance of doubt and in the interests of sustainable development.
3. Prior to their incorporation in to the building hereby approved, details and/or samples of the facing materials to be used shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be constructed using the approved facing materials.
Reason: In the visual interest of the building(s) and the surrounding area.
4. Prior to the occupation of the unit a scheme of soft landscaping shall be submitted to and approved in writing by the Local Planning Authority. All planting, seeding or turfing comprised in the approved scheme shall be carried out in the first planting and seeding seasons following the first occupation of the unit or the completion of the development, whichever is the sooner; and any plants which within a period of five years (ten years in the case of trees) from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species and thereafter retained for at least the same period, unless the Local Planning Authority gives written consent to any variation.
Reason: In the interest of the visual setting of the development and the surrounding area.

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

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

6. No laying of services, creation of hard surfaces or erection of a building shall commence until a scheme for the drainage of surface water from the site has been submitted to and approved in writing by the Local Planning Authority in consultation with Highways England. The scheme shall be carried out in conformity with the approved details prior to the first use of the building served by the surface water drainage system.

Reason: In the interests minimising the likelihood of flooding incidents and damage to the environment, property or life.

7. Prior to the occupation of the building hereby permitted the parking and manoeuvring area shall be laid out in accordance with the approved plans and notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, or any statutory instrument amending, revoking and/or replacing that Order, such space shall be maintained throughout the life of the development free of any impediment to its designated use as such.

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

8. No items/materials/containers shall be stored at a height greater than 2 metres above current ground level.

Reason: In the interests of the visual amenities of the area and the openness of the land.

9. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015, as amended, or any order revoking and re-enacting that Order with or without modification, the building shall be used only for B1(c) and B8 use and for no other purpose whatsoever.

Reason: Only the approved use has been considered in establishing whether the proposal would have acceptable impacts in this location, and other uses would require further detailed consideration by the Local Planning Authority.

10. Any B8 operated from the building hereby approved shall not take place other than between 7.00am and 10pm Mondays to Fridays, and between 8.00am and 1pm on Saturdays, Sundays, public holidays and bank holidays.

Reason: To safeguard the amenities of nearby occupiers.

Informatives:

1. The applicant should note that in accordance with paragraph 50 of Circular 02/2013, no water run-off that may arise due to any change of use will be accepted into the highway drainage systems, and there shall be no new connections into those systems from third party development and drainage systems. Any change of use to the existing connections to the Highways drainage will be classed as a new connection and therefore will be refused in the first instance as stated within the aforementioned Circular.

2. The applicant and/or developer is reminded of the Council's responsibility to issue official addresses for all residential and business premises within South Derbyshire. All new addresses are allocated in line with our street naming and numbering guidance (search for 'Street naming and numbering' at www.south-derbys.gov.uk) and you are advised to engage with the Council as soon as possible to enable the issuing of street and property names/numbers created by this development. Any number and/or property name that is associated with identifying individual properties must be displayed in a clear, prominent

position that can be read from the roadside. It is the developers' responsibility to erect the appropriate signage once the build(s) is/are ready for occupation. There are two types of the name plate the Council uses: Type A carries the Council's crest, whilst Type B does not. You are advised that the Types are usually expected in the following locations:

- Type A: on classified (A, B and C) roads, at junctions with classified roads, and at the commencement of local distributor roads (roads acting as through routes within developments);

- Type B: intermediate name plates along local distributor roads, on collector roads (roads which run within a development providing access and linking small access roads and access ways), on access roads (roads serving a small number of houses which may also have a surface shared by pedestrians and vehicles), and access ways which have a different name from their access road; all unless at a junction with a classified road (where Type A will be expected instead).

Further advice can be found online at www.south-derbys.gov.uk or by calling (01283) 228706.

3. The developer is strongly encouraged, as part of the delivery of properties on the site, to provide full fibre broadband connections (i.e. from streetside cabinet to the property). Further details of initiatives to support the provision of full fibre connections as part of broadband installation at the site can be obtained from Digital Derbyshire on broadband@derbyshire.gov.uk or 01629 538243.

4. The developer is encouraged to install a sprinkler system to reduce the risk of danger from fire to future occupants and property.

5. The developer is encouraged to install recharge points for electric vehicles to comply with the following criteria:

- Residential: 1 charging per unit (dwellinghouse with dedicated parking) or 1 charging point per 10 spaces (or part thereof) where individual units have shared or courtyard parking;
- Commercial/Retail: 1 charging point for every 10 parking spaces;
- Industrial: 1 charging point for every 10 parking spaces;

To prepare for increased demand in future years, appropriate cable provision should be included in scheme design and development. Residential charging points should be provided with an IP65 rated domestic 13amp socket, directly wired to the consumer unit with 32 amp cable to an appropriate RCD. This socket should be located where it can later be changed to a 32amp EVCP. Non-residential charging points should be supplied by an independent 32 amp radial circuit and equipped with a type 2, mode 3, 7-pin socket conforming to IEC62196-2 (or equivalent standard that may replace it). Measures should be taken to prevent subsequent occupiers of the premises from removing the charging points.

Item 1.2
Ref. No. 9/2018/0405
Valid Date 10/05/2018

Applicant:
 Mr & Mrs Phil And Carla Shaw
 Melbourne Animal Farm

Agent:
 Mr And Mrs Shaw
 Ivy House
 The Common
 Melbourne
 DE73 8DH

Proposal: **CHANGE OF USE OF LAND FROM AGRICULTURAL AND EQUESTRIAN TO USE AS A FACILITY TO PROMOTE INTERACTION BETWEEN ANIMALS AND THE PUBLIC. THE ERECTION OF THREE BUILDINGS, TOGETHER WITH THE SITING OF A TEMPORARY CARAVAN TO PROVIDE MANAGER'S ACCOMMODATION, AND CONSTRUCTION OF ACCESS ROAD, CAR AND COACH PARK, PEDESTRIAN ACCESSSES AND THE CREATION OF WALK WAYS TO THE INDIVIDUAL ANIMAL PADDOCKS AND WOODLAND AREAS AT LAND AT SK3724 0194 ON THE NORTH SIDE OF THE COMMON MELBOURNE DERBY**

Ward: **MELBOURNE**

Reason for committee determination

The item is presented to Committee as it is a major application subject to more than two responses of support.

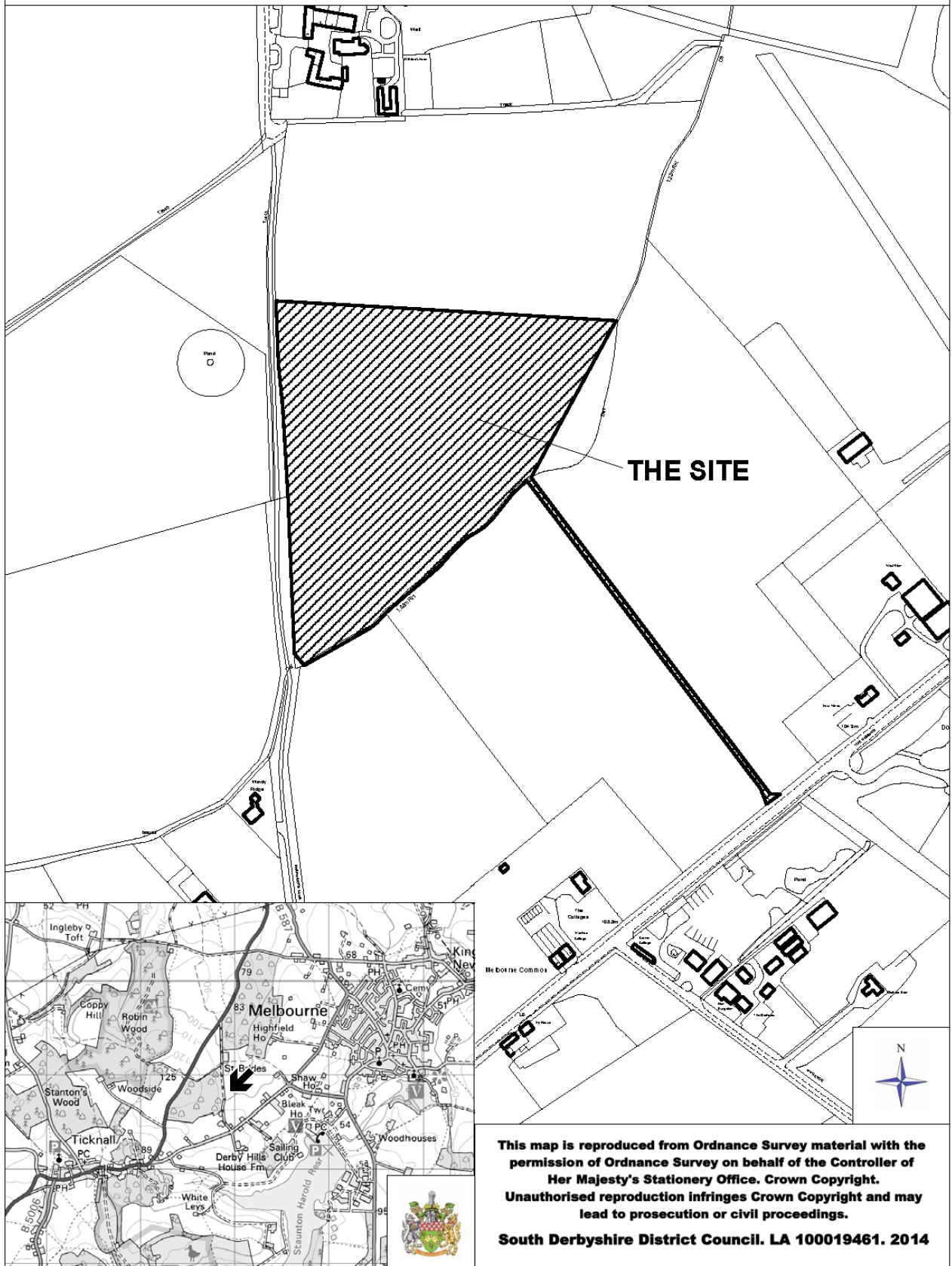
Site Description

The application site is triangular in shape covering a total area of 4.29 hectares, accessed via a 300m long track off The Common. The site comprises a number of equestrian paddocks with several small wooden stables scattered across the site, one agricultural storage building in the south west corner and two small woodland plantations in the north east and northwest corners of the site. The site lies within open countryside and is therefore separated from the nearest dwellings, with a number of converted farm buildings and a farmhouse 150m north and several dwellings located along The Common to the south, the nearest dwelling being Four Winds 90m north east of the access track. The site lies approximately 1km south east of the settlement boundary of Melbourne and 1.9km north east of the settlement boundary of Ticknall.

Proposal

The application proposes a change of use of the land from agriculture and equestrian to use as a facility to promote interaction between animals and the public. The proposal includes the erection of three new buildings; refreshment cabin, pole barn for straw and fodder storage and additional barn to be used for workshops and educational purposes. The existing access road is to be improved, with the addition of car and coach parking areas and new pedestrian accesses. Also proposed as part of the application is a temporary worker's dwelling in the form of a mobile home, to provide on-site manager's accommodation, this is to demonstrate the long term need for a permanent dwelling on the site.

9/2018/0405 - Land at SK 3724 0194, North side of The Common, Melbourne, Derby DE73 8DH



Applicant's supporting information

In addition to the proposed site plans, floor plans and elevations, the following supporting documents were received.

The Supporting Statement provides an overview as to the requirement for on-site managers' accommodation, with the statement broken down into the main principles to be considered for the requirement of 24-hour supervision. These include justification for each animal proposed on site. The viability of the business makes reference to the business plan and the requirement for only a 3 year temporary dwelling at this stage as the business is an unusual proposition and should be given an opportunity to demonstrate the need for a dwelling on site. Information is provided on the proposed staffing of the business, demonstrating the complexity of managing the business and the interaction between staff, visitors and animals. Lastly, justification as to why the applicants' existing residence (0.7km from the site) is not suitable with it being considered too far from the animals.

A Supporting Statement on The Impact of the Animal Welfare (Licencing of Activities Involving Animals) (England) Regulations 2018 on the Application considers that controls over the management of enterprises which involve the keeping or training of animals for exhibition has now been tightened. Guidance produced by DEFRA in support of the legislation describes the management expectations required to fulfil the requirements of the regulations and is referenced in the statement.

A Drainage Strategy considers that at this stage only the principles of the drainage strategy have been established to show that a sustainable drainage system with a variety of SuDS components is feasible on the site. The detailed design of the SuDS will be carried out following granting of planning permission. The storage volume estimates are only preliminary at this stage and the total volume of storage will be determined when the outflow location, surfacing details and SuDS components for the proposed development have been finalised. A supporting drawing details the possible location for swales, attenuation storage and rain water harvesting tanks.

A Surface Water Drainage Statement considers that whilst the mapping of the surface water flooding risk model produced by the Environment Agency shows that the site is potentially affected by surface water flooding, in practice the areas shown to be at risk within the site are sloping and drain freely into the brook course. There is a large area of open land contained within the application site which is at a lower elevation than the proposed buildings and hard-surfaced car parking and access areas; it is proposed that this land could be used for swales the design of which could be detailed through a planning condition on any consent granted.

A Biodiversity Statement considers the potential impact on birds, bats and great crested newts, concluding that there is no requirement for a full assessment of the sites existing habitats and noting there was no requirement for this on the adjacent site Whistlewood Common.

A Supporting Statement regarding Access and Parking Considerations submitted in response to the CHA's comments provides greater justification as to the amount of car parking proposed and further information relating to traffic generation. With reference to a comparable enterprise 'Paradise Farm' and supporting traffic figures which justified the required level parking for this scheme.

A Business Plan details the proposed venture and how it will operate on a day to basis and, a brief history of the site and how the business originally started at the Ivy House, The Common, and the venture demonstrated that there is demand for such a facility.

A Projected Financial Statement for the first 3 years of the business was submitted, detailing projected costs and income.

A Financial Statement for the current enterprise for the year ending 31st March 2018 was submitted, detailing the expenses, income and assets of the business.

A Supporting Statement on the Impact of the Animal Welfare (Licencing of Activities Involving Animals) (England) Regulations 2018 on the application details the changes in law.

A rebuttal of objections was submitted following a request from the agent for any comments on the application.

A response to the Council's agricultural consultant concludes that the Council the request for a temporary period of 3 years for the residential element is of great relevance to a proposal that is different from the norm. Urge that a grant of permission is recommended and that this application should be given a fair trial period in which to demonstrate the public response, potential viability and the need for residential supervision. If that is done, then the time for considering the long term future will be informed by the experience of the 3 years, with an entirely reversible process should the case not be proven.

Planning History

- | | |
|-------------|---|
| 9/2016/0833 | Change of use of agricultural land to the land used for the keeping of horses – Granted 11/10/2016. |
| 9/2014/0329 | The construction of an octagonal, timber-framed roundhouse, a Celtic roundhouse, 4 compost toilets, kitchen and store, creation of a pond, reinstatement of a stream and link to new pond, creation of tracks for deliveries and access and creation of parking spaces including disabled parking – Granted 07/07/2014. [adjacent site] |
| 9/2011/0702 | The erection of a general purpose agricultural building and new access – Granted 14/10/2011. |

Responses to Consultations

The County Highway Authority (CHA) requested amended plans relating to widening of the access track into the site and justification as to the proposed amount of parking. Based on the additional information received, which included the proposed widening of the access track and additional parking, the CHA has raised no objections subject to conditions on any consent granted.

The Lead Local Flood Authority (LLFA) initially raised a holding objection as insufficient information was provided regarding the proposed drainage strategy on site. After submitting a drainage strategy, the LLFA requested further information and as a result now has no objections subject to conditions being attached to a decision requiring more detailed information to be submitted relating to drainage.

Derbyshire Wildlife Trust (DWT) advised that there are unlikely to be any substantive ecological impacts associated with the proposed development and as such has considered that the submission of an ecological assessment is not required in this case. Therefore there are no objections, with conditions recommended for any consent granted.

The Environment Agency (EA) has no objections to the proposals and has provided advice on the government guidance contained within the PPG regarding water supply, waste water and water quality.

The National Forest Company (NFC) has noted that the site benefits from two areas of young woodland planting and parkland trees which have recently been planted with NF funding. As no planting is proposed as part of the application, it is requested that a condition be attached to any consent granted requiring a further 0.85ha of woodland planting, either on site or elsewhere within the National Forest.

The Council's Environmental Health Department has raised no objections to the proposal.

Responses to Publicity

13 letters of support have been received, raising the following points:

- a) Promotes and encourages interaction with animals;
- b) Educational for the public as they can learn more about animals and life skills;
- c) Supports people with learning disabilities;
- d) A safe environment for children to learn and play;
- e) Provides a pillar/asset to the local community;
- f) Important for the local economy and nearby businesses, attracting visitors to the area;
- g) Provides employment for young people and those with disabilities and benefits them working with animals and interacting with others;
- h) Important public attraction for the local area.

9 letters of objection have been received in addition to objections raised by Melbourne Civic Society, raising the following concerns:

- a) Information submitted as part of the application is inaccurate;
- b) The application documents reference the adjacent site Whistlewood Common as a prior example but fail to recognise that the site was approved as a result of its ethical and sustainability principles and standards;
- c) Sustainable materials are not proposed;
- d) Swales and ponds should be used to reduce flooding downstream;
- e) The proposed highway access is entirely inadequate for the volume of traffic and size of vehicles, two-way access is a minimum requirement;
- f) How and where will surface water run off the proposed new access;
- g) No parking provided for bicycles;
- h) Environmental impact study should be submitted;
- i) The development will impact Whistlewood Common due to the additional traffic and noise
- j) Disturbances to wildlife on and near to the site is a major issue;
- k) Objects to any permanent house being built on site;
- l) Trees should be used to screen views of the proposed development from the public realm;
- m) An ecological/wildlife survey should be undertaken;
- n) Reservations as to the long-term profitability and sustainability of the enterprise;
- o) The proposal is out of character for the rural area and considered intrusive;
- p) The scale of the hard landscaping and buildings is out of scale with the size of site and its rural location;
- q) The proposed access would have a detrimental impact on the existing hedge;
- r) Comparisons to adjacent site Whistlewood Common are inappropriate;
- s) Concerns over noise pollution and littering;
- t) The proposed business plan is not realistic;
- u) Concerns over animal welfare with no running water on site, development should be compliant with the relevant Riding Establishment Acts;
- v) Concerns over the proximity of the buildings to the existing water course;
- w) Evidence that there are no bats on site is inaccurate;
- x) Development better suited on a more established farm location;
- y) Concerns that the area designated as a field is not adequate for proposals set out in the business plan;
- z) Concerns over how and where the animal waste is to be disposed.

Development Plan Policies

The relevant policies are:

- 2016 Local Plan Part 1: S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), S3 (Environmental Performance), S4 (Housing Strategy), S6 (Sustainable Access), H1 (Settlement Hierarchy), H20 (Housing Balance), E7 (Rural

- Development), SD1 (Amenity and Environmental Quality), SD2 (Flood Risk), SD3 (Sustainable Water Supply, Drainage and Sewerage Infrastructure), BNE1 (Design Excellence), BNE3 (Biodiversity), BNE4 (Landscape Character and Local Distinctiveness), INF2 (Sustainable Transport), INF8 (The National Forest) and INF10 (Tourism Development)
- 2017 Local Plan Part 2: SDT1 (Settlement Boundaries), H25 (Rural Workers' Dwellings) and BNE5 (Development in Rural Areas)

National Guidance

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

Local Guidance

- South Derbyshire Design Guide SPD

Planning Considerations

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

- The Principle of Development;
- Design and Layout;
- Neighbouring Amenity; and
- Highway Safety.

Planning Assessment

The Principle of Development – Proposed Land Use

The proposed use of the site is for the erection of additional buildings and increased numbers of livestock in order to use the site as a facility to promote interaction between animals and the public. It is considered that the primary focus is not on expanding the range of employment activities but as tourism use and therefore the proposed land will be assessed against Policy INF10, which directly relates to tourism development and promoting new visitor attractions within the District.

Policy INF10 A (ii) permits tourism development where the site is not within or adjoining the urban area or key service villages, if it is in an appropriate location where identified needs are not met by existing facilities. The South Derbyshire Economic Development Strategy 2016-2020 identifies the following as an ambition:

'Promote development of the areas key sectors, such as manufacturing and tourism'. It identifies as an action, *'... continue to develop the tourism product, e.g. Rosliston Forestry Centre, Elvaston Castle, Sharpes Pottery Museum'*. The Council's Strategy identifies The National Forest as a potential catalyst for a range of wood-related and tourism businesses. These new industries have the potential to redress the decline of employment in predominantly rural sectors such as agriculture, mining and power generation.

In regard to the requirements of Policy INF10 A (ii), the support for continued development of the tourism product in South Derbyshire, and particularly within the National Forest, is established and it can therefore be concluded that identified needs are not yet being met in full by existing facilities therefore the proposal for a new tourism enterprise complies with Policy INF10.

The Principle of Development – Temporary Workers' Dwelling

The proposal is to be assessed against Part D of Policy H25 which directly addresses temporary rural workers' dwellings within the District. It states that outside settlement boundaries, planning permission will be granted for new temporary rural worker's dwellings which normally for the first

three years of operation will be provided by a caravan, a wooden structure which can be easily dismantled or other temporary accommodation, where it can be demonstrated that:

i) there is an essential need for a temporary dwelling for a worker to support a rural based activity; and

ii) the essential need cannot be fulfilled by an existing dwelling within the locality; and

iii) the enterprise in question has been planned on a sound financial basis and is capable of being carried on as such.

The application site lies in the open countryside outside the built up limits of a settlement. In the interests of sustainable development, paragraph 79 of the NPPF indicates that isolated dwellings within the countryside should be avoided. In addition to being assessed against the requirement of Policy H25; when assessed against the principles of the NPPF it states that one of the exceptional circumstances for permitting development for homes within the countryside is to meet an essential need for a rural worker to live permanently at, or near, their place of work in the countryside.

The NPPF does not provide a definition as to what constitutes an essential need. It seems that in order to determine whether a need is essential, it is necessary to establish whether there is a physical need for someone to be on site all of the time (e.g. to care for animals or work the land), but also, in this case where a temporary dwelling is being proposed, whether the proposed operation itself has reasonable short to medium term prospects of success.

The applicant has submitted supporting statements, including financial projections for the proposed enterprise and business accounts for the year ending 31st March 2018. This has been reviewed by the Council's specialist consultants who have provided an independent appraisal of the proposed enterprise at the site. Their appraisal combined with the applicants response to the points raised is reviewed in the following sections of this report.

Functional Need

The test for establishing essential need requires evidence that a rural worker needs to live permanently at or near their place of work in the countryside; if workers are needed to be on hand day and night in case animals or agricultural processes require essential care at short notice or to deal with emergencies which could otherwise lead to serious loss of stock. When considering the essential need for an agricultural worker to live, temporarily, on site, it is both the scale and nature of the proposed enterprise, at the end of the three-year period, which forms the basis for this assessment.

The proposed enterprise as advanced by the applicant is for a relatively small-scale agricultural activity, with a current stock of 40 animals of a wide variety of species living on the applicants' current holding at Ivy House, The Common, which is intended to expand to 85 animals. It is not clear from the applicants' supporting statement how quickly it will take the enterprise to expand to this figure. It is acknowledged that there are increased welfare requirements associated with livestock at and around birthing; nevertheless, these periods of increased activity would be limited.

As stated within the applicants' supporting documents, it is known that the applicants currently live 0.7km away from the site, it is considered that this close proximity of the applicants' dwelling to the application site is not time intensive to travel to and from the site on a daily basis. It is suitable to meet the requirements of Animal Welfare Regulations, animals can be treated/examined within a time that would not demonstrably harm their welfare as result. Having had a review of the existing number of livestock/animals, the Council's Agricultural Consultant is in agreement that there is any functional requirement for a 24-hour presence on the site. The business itself and the existing and proposed number of livestock do not generate a functional requirement for one farm worker on the site to fulfil the welfare requirements of the livestock/animals. This is not an example of intensive livestock farming, where 24hour on site management may be required to fix machinery or

infrastructure such as fencing. It is considered that the proposal is not an agricultural enterprise, it is instead a rural business based on a recreational use, which does not demonstrate a functional requirement for the provision of a temporary rural workers dwelling. As such it is considered that the applicant has failed to demonstrate that there is an essential functional need for a worker to be accommodated on the site and in addition that a temporary permission for a dwelling would lead to a reasonable prospect of an essential functional need being established.

Financial Viability

The Council's agricultural consultant in their assessment of the financial projections of the business has expressed concerns, with no detailed marketing plan for the business being submitted, which is considered vital for its success moving forward and only a modest amount being spent annually to market the business. No audited financial figures or evidence from the comparison site have been submitted to support the potential growth of the business proposed, therefore the reliability of the projected income is not known. The financial statement of the applicants' previous enterprise from a nearby site at Ivy House was submitted in support of the proposal, showing a healthy profit. However, the reliability of these figures is not known and it is not known how comparable this enterprise is to the one proposed. It is noted that although less weight is now carried to financial viability within the NPPF, Policy H25 requires that the enterprise should be planned on a sound financial basis. It is considered that there is insufficient evidence submitted as part of the application to determine that the enterprise has a sound financial base from which to grow and would fail to comply with Policy H25 of the Council's development plan.

Having assessed the proposal against the 3 requirements of Policy H25, it is considered that the proposal fails to comply with all 3 points outlined in detail above and as such the proposal is not acceptable in principle as it does not comply with Policy H25 of the Local Plan Part 2 and the NPPF.

Design and Layout

There are views into the site from The Common, with the highway running parallel to the site, but separated by an arable field with a distance in excess of 300m, therefore although there are views from the public realm they are limited. In addition, the ground level of the southern side of the site appears lower than that of the highway, only by approx. 1-2m further reducing the visibility and impact on the area. The existing layout of the animal holdings appears to be retained as existing with the proposed new buildings to the south west part of the site. The buildings would appear adjacent to the existing building and therefore reduces the visual harm when viewed from the public realm. The proposed size and design of the buildings matches their rural context and would integrate well with the existing building. As such the proposed design and visual impact of the buildings is considered compliant with Policies SD1 and BNE1.

Neighbouring Amenity

Policy SD1 supports development that does not lead to adverse impacts on the environment or amenity of existing and future occupiers. In relation to the impacts on the residential amenities of neighbouring occupiers that surround the site, the nearest property is Windy Ridge, Shepherds Lane that is approx. 200m away from the closest proposed building. Therefore there are no concerns regarding overshadowing of neighbouring properties, as there are none close enough to be demonstrably impacted by the development. There is considerable separation from the site to all of the neighbouring dwellings within the locality of the site. The nature of the proposal is that it would be visited by members of the public during daytime hours only, with the number of visitors constrained by the size of the site and the size of the car park. It is noted that the Council's Environmental Health Department raised no objections. As such it is considered that the proposed dwelling would not demonstrably impact the residential amenities of neighbouring properties and therefore is compliant with Policies SD1, BNE1 and the SPD.

Highway Safety

Vehicular access for the site is proposed via the existing access off The Common, with improvements being made to what is currently a gravel track to make it wider and improve the road surface with tar bound quarry tailings or recycled road planings, concerns were initially raised by the County Highway Authority with the current access considered unsuitable to serve the proposal. It is noted that the CHA has now raised no objections regarding the impact on highway safety, subject to conditions being attached to any consent granted. This is a result of an amended plan improving the parking provision on site to include an area for coach parking and justification as to the proposed number of car parking spaces for visitors to the site. As such the access is considered sufficient to facilitate the proposed development and would not adversely impact on highway safety to a point where permission should be withheld. It is also considered that the proposal has provided sufficient parking provision for both cars and coaches. As such the proposal complies with the requirements of Policy INF2.

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

Recommendation

REFUSE permission for the following reason:

1. Policy H25 of the Local Plan Part 2 seeks to ensure that where a temporary rural worker's dwelling is proposed outside of the settlement boundary, it needs to be demonstrated that there is an essential need for a worker to support a rural based activity, the essential need cannot be fulfilled by an existing dwelling within the locality, and the enterprise has been planned on a sound financial basis and is capable of being carried on as such. This is to comply with the core principle in the NPPF of supporting sustainable economic growth, together with Paragraph 79 which seeks to avoid development of isolated homes in the countryside unless one of the special circumstances listed applies.

Due to the scale and nature of the proposed enterprise and the land holding itself, a case demonstrating an essential need for a rural worker to live permanently on site in connection with the functional requirements of the business has not been made. Moreover, the distance from the applicants' property to the site is considered to be reasonable to carry out the safe management of livestock on the site. The financial basis on which the enterprise is proposed is not considered to be fully substantiated with a lack of evidence as to the projected income figures and the proposed operating costs considerably understated in submitted estimates. Thus, the applicants have not demonstrated an essential need for a mobile home on site to be used as a temporary worker's dwelling, one of the special circumstances listed in paragraph 79 of the Framework, and has failed to comply with the three requirements of Policy H25. The development would therefore be contrary to Policy H25 of the Local Plan Part 2, Paragraph 79 of the National Planning Policy Framework (NPPF) and associated Planning Practice Guidance (PPG).

Item 1.3
Ref. No. 9/2019/0621
Valid Date 11/06/2019

Applicant:
 Mr Matt Bartram
 Gladman

Agent:
 Mr Ian Humphries
 West Hart Partnership Ltd
 5 Aldergate
 Tamworth
 B79 7DJ

Proposal: CHANGE OF USE FROM RETAIL (USE CLASS A1) TO BEAUTICIANS (USE CLASS SUI GENERIS) AT UNIT D TUTBURY AVENUE LITTLEOVER DERBY

Ward: WILLINGTON & FINDERN

Reason for committee determination

The item is presented to Committee because the application does not strictly comply with Local Plan Policy RTL1 but the Committee needs to take into account other material considerations.

Site Description

The site forms part of the recently completed local centre which is located within the Highfields Farm site, a new housing development which is currently still under construction. The design of the local centre follows pre-application work to create an active frontage onto the main spine road from all approaches. The orientation of the shopfronts and relationship to the phase 1 block of the development sustains this principle further across the parking and pedestrian areas. The building and shopfronts themselves take on a contemporary appearance, built from mainly red brick and render, which complement the approach for the school as well as contrasting with the more traditional housing design ethos. At the time of this report, two of the units are open for business, being the supermarket (co-op) and a hot food takeaway. All units have been fully constructed and are currently being advertised for let, both on the site and online.

Proposal

A change of use is proposed to Unit D from retail (Use Class A1) to beauticians (Use Class Sui Generis). No external alterations to the unit are proposed as part of this application.

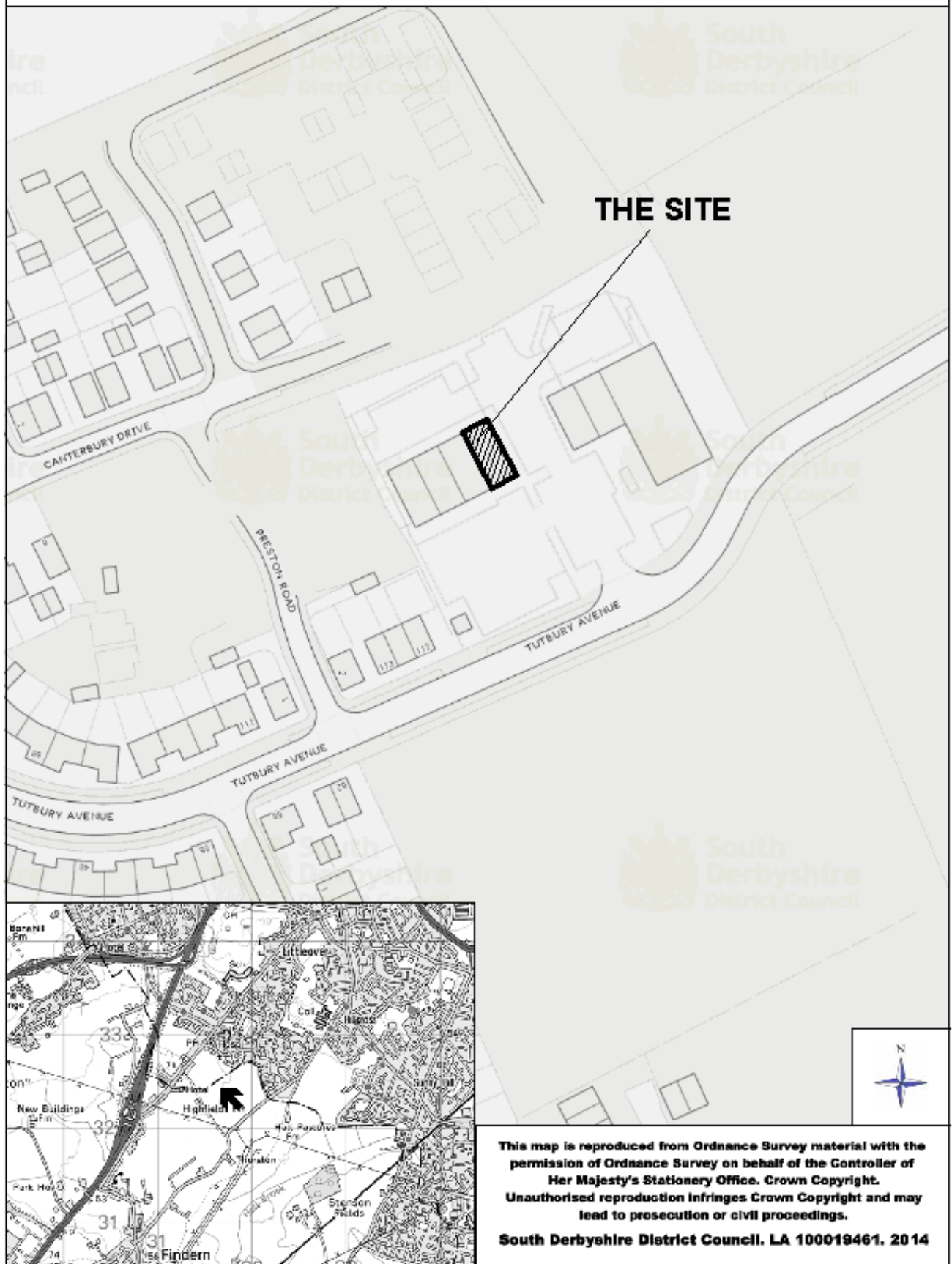
Applicant's supporting information

Supporting Marketing Evidence has been submitted to demonstrate that the unit has been fully marketed for a period of 6 months; this includes a report detailing all of the enquiries received.

Planning History

- 9/2018/1314 Change of use to 3 no. vacant units (Use Classes A1, A3 and A5) to children's day nursery (Use Class D1) – Approved June 2019.
- 9/2017/0994 Non Material Minor Amendment to 9/2017/0994 relating to a change in the permitted use classes of the units – Approved October 2018.
- 9/2017/0994 Approval of reserved matters of planning permission ref: 9/2016/0592 for the construction of phase 2 of new local centre to comprise of four a1 or a3 units with

9/2019/0621 - Unit D, Tutbury Avenue, Littleover, Derby DE23 3AT



associated car parking, means of enclosure, landscaping and access – Approved November 2017.

- 9/2017/0713 Approval of reserved matters (appearance and landscaping) for local centre to consist of one A1 convenience store, one A1/A3 unit and one A5 unit with associated car parking, fencing and public spaces - Approved September 2017.
- 9/2014/0275: Approval of reserved matters on land subject to outline permission 9/2011/0640 for 979 dwellings and associated infrastructure, including new roads and junctions, footpaths and cycleways, drainage and public open space including play areas, pitches and strategic landscaping - Approved January 2015.

Further planning applications relating to the Highfields Site are not considered to be relevant to this application.

Responses to Consultations

The Council's Environmental Health Department has raised no objections but has recommended an informative on any decision granted, requesting that the applicant contacts Licensing/Environmental Health as certain beauty treatments require registration with the Council before they can commence.

The County Highway Authority has raised no objections.

Responses to Publicity

The public consultation period ends 1st August 2019, at the time of writing this report no responses had been received. Any responses received by the consultation end date will be reported at the committee.

Development Plan Policies

The relevant policies are:

- 2016 Local Plan Part 1 (LP1): S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), S7 (Retail), H12 (Highfields Farm, South West of Derby), SD1 (Amenity and Environmental Quality), BNE1 (Design Excellence) and INF2 (Sustainable Transport).
- 2017 Local Plan Part 2 (LP2): SDT1 (Settlement Boundaries and Development) and RTL1 (Retail Hierarchy).

National Guidance

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

Local Guidance

- Design Guide Supplementary Planning Document (SPD)

Planning Considerations

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

- Principle of Development
- Neighbouring Amenity
- Highway Safety

Planning Assessment

Principle of Development

Retail Units D is currently vacant. The seventh schedule of the original Section 106 agreement (attached to application 9/2014/0275), is to ensure that this area of the site was disposed of for primarily retail use and which has now been fully constructed. The S106 defines the local centre as '*a centre to provide facilities for residents of the development to include retail units (A1) restaurants (A3), public house (A4) a hot food takeaway (A5) and residential dwellings (C3)*'. Although only five use classes are listed under the definition, it does not mean that other use classes would not be acceptable in principle. Although the proposed use is not listed under this definition for a local centre, given the similarities in character of the use it is considered to be acceptable in principle and indeed could attract linked trips to the other units, helping to improve the retail sustainability of the centre as a whole.

Map 3 of Policy RTL1 identifies the proposed local centre within the Highfield Farm site, which has now been built out. Point F of Policy RTL1 refers to the loss of retail within local centres; it states that the loss of retail units in centres will be permitted where:

- i) The current use can be demonstrated to be no longer viable; and
- ii) The unit has been sufficiently and actively marketed for a range of retail uses over a 6 month period; and
- iii) The impacts arising from the resulting use do not cause an adverse effect on amenity, parking needs or highway safety.

As a result of this requirement supporting marketing evidence has been submitted as part of this application. However the enquiry report submitted shows that two enquirers were interested in the units but were rejected as their intended use would conflict with the use of another unit on the site. Therefore the marketing evidence submitted fails to demonstrate that the current use of the unit is no longer viable as such it is considered that the proposal does not fully comply with policy RTL1.

Notwithstanding this, it is considered that the proposed use would be of benefit to residents occupying the site and is considered to be sustainable development that would support the needs of a growing community, as the site continues to be built out and the local population increases. With other units within the local centre also under the retail use class, if permission was granted as a beauticians it would allow for a more mixed use local centre and community hub, with residents on the site being able to walk to their appointments and also use the other retail units before or after. It is therefore considered that the proposed change of use would be a sustainable business location for what is currently a vacant unit within the local centre, being within walking distance of many new dwellings and therefore is supported by Policy S2. In addition, there are further retail units approx. 500m to the north of the local centre situated on Hollybrook Way.

Neighbouring Amenity

The applicant proposes that the opening hours of the unit would be 0830 to 1830, Monday to Saturday. It is considered that the proposed business hours and subsequent noise/traffic generated as a result of the change of use would not unduly impact on the amenity of neighbouring properties that surround the site, and no more so than the current permitted use; it is also noted that Environmental Health raises no objection; and as such the proposed use is considered to comply with Policy SD1 and iii) of part F of Policy RTL1.

Highway Safety

There are no car parking spaces included within the red line of the application site, as shown on the location plan. However the local centre overall includes approx. 50 car parking spaces. It is noted that the County Highway Authority raises no objection to the proposal. It is therefore considered that the car parking to the front of the site already provided for the local centre is sufficient parking provision for the requirements of the change of use and as such it is considered that the proposal complies with Policy INF2 and iii) of part F of Policy RTL1.

Conclusion

Although technically the applicant has failed to demonstrate that the current use is no longer viable and therefore not compliant with Policy RTL1, when considering the planning balance, the benefits of adding a beauticians to the newly constructed housing that surrounds the site, would outweigh the negative impacts of the potential loss of a retail unit within the local centre.

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

Recommendation

GRANT permission subject to the following conditions:

1. The development permitted shall be begun before the expiration of three years from the date of this permission.
Reason: To conform with Section 91(1) of the Town and Country Planning Act 1990 (as amended by Section 51 of the Planning and Compulsory Purchase Act 2004).
2. The development hereby permitted shall be carried out in accordance with the Location Plan, Block Plan and Floor Plan received on 10 June 2019; unless as otherwise required by condition attached to this permission or following approval of an application made pursuant to Section 96A of the Town and Country Planning Act 1990.
Reason: For the avoidance of doubt and in the interests of sustainable development.
3. The premises shall not be open to the public other than between 0830 hours and 1830 hours Mondays to Saturdays. The premises shall not be open to the public whatsoever on Sundays, public holidays and bank holidays.
Reason: To safeguard the amenities of nearby occupiers.

Informatives:

1. The applicant is advised to contact the Council's Licensing and Environmental Health Department as certain beauty treatments require registration with the Council before they can commence.

Item **1.4**

Ref. No. **9/2019/0720**

Valid Date **03/07/2019**

Applicant:
Mr Martin P Buckley
SDDC

Agent:
Mr Martin P Buckley
SDDC
Civic Offices
Civic Way
Swadlincote
DE11 0AH

Proposal: **THE PRUNING OF TREES COVERED BY SOUTH DERBYSHIRE DISTRICT COUNCIL TREE PRESERVATION ORDER NO. 131 ON LAND ADJACENT TO 153 WESTON ROAD ASTON ON TRENT DERBY**

Ward: **ASTON**

Reason for committee determination

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

Site Description

The trees, three Oaks, are located on a small area of open land between Yates Avenue and Weston Road.

Proposal

The larger of the trees, a 19m high mature specimen would be crown cleaned. Another mature tree, at 15m high, would be pruned to reduce branch end weight. The smallest tree, at 9m height, would be subject to removal of Ivy.

Works to a fourth tree (a small Willow) are also identified but this tree is not subject to the Tree Preservation Order.

Applicant's supporting information

The works have been identified by the Council's Tree Officer to be either essential or urgent for public safety reasons.

Planning History

The trees became subject to statutory protection (TPO131) when the former Aston Hall Hospital was re-developed in the late 1990s.

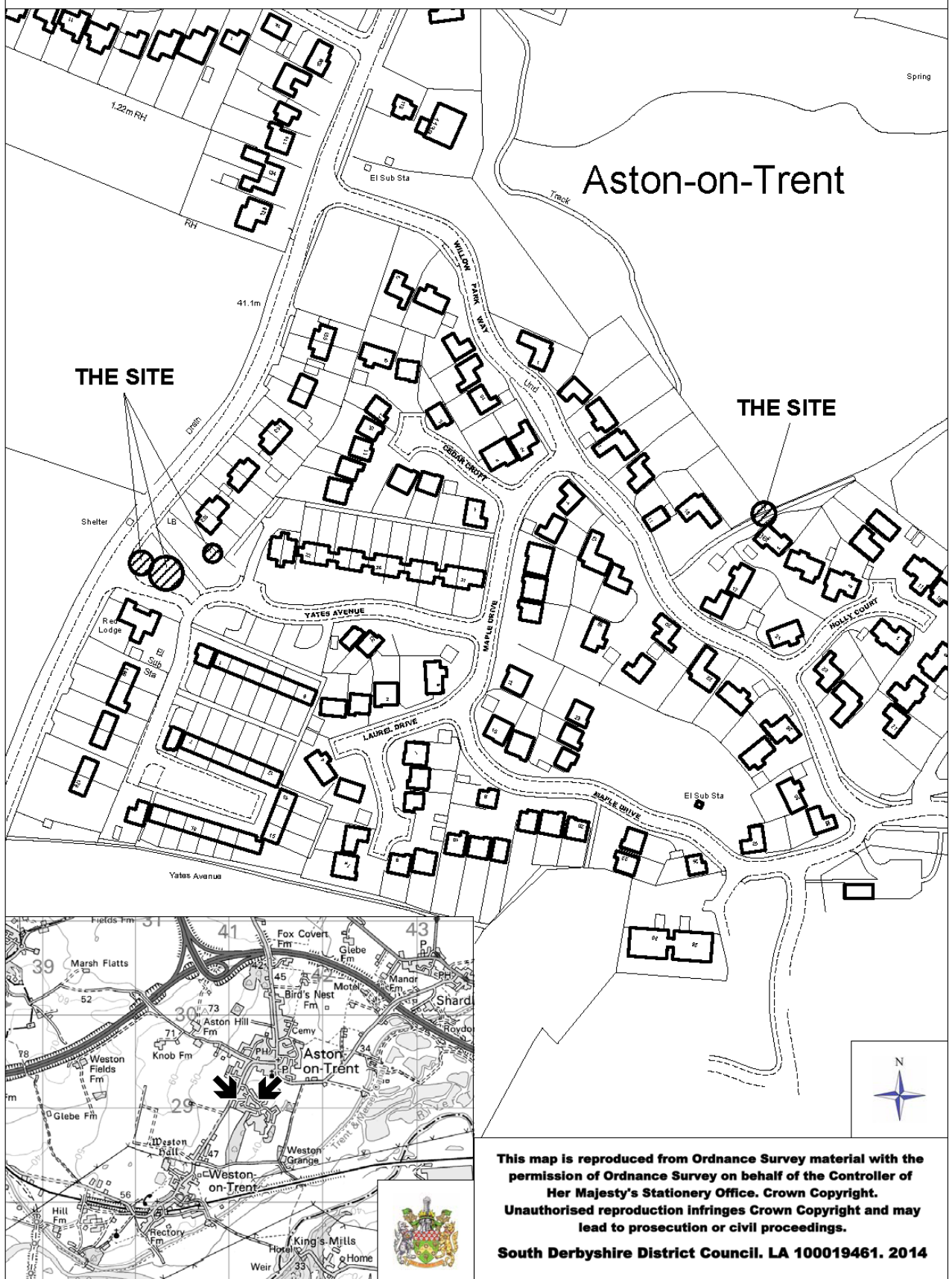
Responses to Publicity

Any representations received will be reported verbally.

Development Plan Policies

The relevant policies are:

**9/2019/0720 - Land adjacent to 153 Weston Road, Aston on Trent, Derby
DE72 2BA**



- Local Plan Part 1 (LP1): BNE4
- Local Plan Part 2 (LP2): BNE7

National Guidance

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

Planning Considerations

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

- Whether the works are justified; and
- Whether the resultant amenity value remains acceptable.

Planning Assessment

Whether the works are justified

The submitted report identifies various defects and recommends essential works and, in the case of one tree, urgent action on safety grounds. These circumstances amount to very strong justification.

Whether the resultant amenity value remains acceptable

The trees are prominent features in Weston Road. The proposed works would be confined to those necessary to deal with defects and safety issues and thus carry a high degree of inevitability. Nevertheless the trees would continue to retain high amenity value. The relevant policy tests, to respect landscape character and amenity, are thus satisfied by the proposals.

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 consent subject to the following conditions:

1. The work hereby approved shall be carried out within two years of the date of this consent.
Reason: To conform with Regulation 17(4) of the Town and Country Planning (Tree Preservation) (England) Regulations 2012, in order to enable the local planning authority to consider any proposals beyond this period in the interests of safeguarding the amenity value of the tree(s).
2. The work shall be carried out in accordance with BS3998:2010 - Tree Work.
Reason: To safeguard the health of the tree(s).

Item **1.5**

Ref. No. **9/2019/0728**

Valid Date **04/07/2019**

Applicant:
South Derbyshire District Council

Agent:
Mr Riyan Dalal
Franklin Ellis Architects
5 The Ropewalk
Nottingham
NG1 5DU

Proposal: **THE VARIATION OF CONDITION NOS. 2, AND 14 OF PERMISSION REF. 9/2018/0925 (RELATING TO THE ERECTION OF SIX TWO BEDROOM HOUSES WITH ASSOCIATED PARKING GARDENS AND ACCESS) TO VARY THE MATERIALS AND APPROVED PLANS TO INCORPORATE A RENDER FINISH ON THE DWELLINGS ON LULLINGTON ROAD OVERSEAL SWADLINCOTE**

Ward: **SEALES**

Reason for committee determination

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

Site Description

The site is located within the settlement boundary of the village of Overseal. The land has previously been used as allotments and for storage purposes. The site is sloped in a westerly direction away from the adjacent neighbouring residential properties and is open to the countryside on the northern boundary and abutting the highway. There is residential development to the eastern and southern boundaries of the site which incorporates a different mix of external materials such as red brick and render.

Proposal

Consent was granted under application reference 9/2015/1092 for the erection of six dwellings, in three pairs of semi-detached properties. This application was later varied under planning application 9/2018/0925. Consent is now sought to vary conditions 2 and 14 of planning application 9/2018/0925 to change the approved plans and proposed external materials from the use of red brick to a combination of red brick and render.

Planning History

- | | |
|-------------|--|
| 9/2015/1092 | The erection of six two bedroom houses with associated parking gardens and access
- Approved with conditions |
| 9/2018/0925 | The variation of conditions 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14 and 15 of planning permission ref: 9/2015/1092 (relating to the erection of 6 two bedroom houses with associated parking gardens and access) to amend the approved plans (condition 2), to amend the proposed materials (condition 3), the provision of surface water drainage details (condition 4), the provision of a construction management plan (condition 5), details of likely contamination (condition 6), to amend temporary access details (condition 7), to amend position of plant and materials (condition 8), details of wheel washing (condition 9), to amend footway details (condition 10), |

9/2019/0728 - (Land at SK2915, 0614), Lullington Road, Overseal,
Swadlincote DE12 6NG



the provision of vehicular access details (condition 11), to amend parking layout (condition 12), to amend boundary treatment details (condition 14) and to amend landscaping details (condition 15) – Approved with conditions.

Responses to Consultations

No comments have been received.

Responses to Publicity

There have been no representations received.

Development Plan Policies

The relevant policies are:

- 2016 Local Plan Part 1 (LP1): S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), S6 (Sustainable Access, H1 (Settlement Hierarchy), H21 (Affordable Housing), SD1 (Amenity and Environmental Quality), SD3 (Sustainable Water Supply, Drainage and Sewerage Infrastructure), SD4 (Contaminated Land and Mining Legacy Issues), BNE1 (Design Excellence), BNE4 (Landscape Character and Local Distinctiveness), INF2 (Sustainable Transport) and INF8 (The National Forest).
- 2017 Local Plan Part 2: SDT1 (Settlement Boundaries and Development).

National Guidance

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

Local Guidance

- South Derbyshire Design Guide SPD

Planning Considerations

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

- The incorporation of render

Planning Assessment

The incorporation of render

Consent is sought to change the approved plans and materials from the use of red brick to the use of red brick at ground floor level and the use of render at first floor level to the front, sides and rear elevations of all of the dwellings.

Policy BNE1 of the Local Plan supports development that responds positively to the local character and vernacular of the immediate area and is visually attractive. The proposed use of a combination of brick and render is reflective of the materials in the immediate area with various properties using either render or brick. The existing residential development adjacent to the site uses a combination of red brick and render in much the same way that is proposed as part of the application. The proposed changes to the materials would allow the current development to respond better to the adjacent development across the road through the use of the same materials. On the basis of this, it would be considered that the proposed use of brick and render would be suitable and would have a

positive visual impact on the wider area and would comply with the principles of policy BNE1 and the South Derbyshire Design Guide.

Conclusion

The proposed changes to include a combined brick and render appearance for the dwellings would incorporate suitable materials and would respond positively to the residential development that is adjacent to the site and would comply with the principles of policy BNE1 and the Councils Design Guide.

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

Recommendation

GRANT permission subject to the following conditions:

1. The development hereby permitted shall be carried out in accordance with drawings/plans ref. LRO-FEA-BU-ZZZ-DP-A-15000 Rev E, LRO-FEA-BU-ZZZ-DP-A-15001 Rev C and drawings/plans ref. LRO-FEA2485-EX-XXX-DX-A-05000 Rev D; LRO-FEA2485-EX-XXX-DX-A-05001 Rev D; LRO-FEA2485-EX-XXX-DX-A-05002 Rev D with application ref. 9/2018/0925, unless as otherwise required by condition attached to this permission or allowed by way of an approval of a non-material minor amendment made on application under Section 96A of the Town and Country Planning Act 1990 (as amended).

Reason: For the avoidance of doubt.

2. The walls of the dwelling houses shall be constructed using Maxwell Bricks in an Irish Rose colour in a stretcher bond coursing and using render in Onyx 90 SA82 (from the permarock colour chart). The roof shall be tiled in Fortecrete Gemini Twin Locking roof tiles in slate grey colour, unless prior to their incorporation into the development, alternative details are first submitted to, and approved in writing by the Local Planning Authority.

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

3. Prior to the occupation of the dwellings, all surface water drainage details shall be constructed in accordance with the approved application drawings (drawing number 11803-WMS-ZZ-XX-DR-C-39201-A-C3), unless prior to their incorporation into the development, alternative details are first submitted to and approved in writing by the Local Planning Authority.

Reason: To safeguard and improve the water quality within the River Mease Site of Special Scientific Interest (SSSI)/Special Area of Conservation (SAC).

4. The proposed development shall be carried out throughout the construction period in conformity with the submitted Construction Management Plan (CMP), received on 24th August 2018, unless an alternative Construction Management Plan is first submitted to and approved in writing by the Local Planning Authority and shall be carried out in accordance with the approved details.

Reason: To safeguard and improve the water quality within the River Mease Site of Special Scientific Interest (SSSI)/Special Area of Conservation (SAC), noting that initial works have the potential for unacceptable impacts unless appropriately controlled.

5. 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 2A, and appropriate remediation proposals, and shall be submitted to the LPA without delay. The approved remediation scheme shall be implemented to the satisfaction of the LPA.

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.

6. The storage of plant and materials, site accommodation, loading and unloading of good vehicles, parking and manoeuvring of site operatives and visitors vehicles, shall be laid out and constructed in accordance with plan/drawing; the Site Setup and Logistics Plan, received on the 24th August 2018. Unless prior to the layout of the storage and manoeuvring area, alternative details are first submitted to and approved in writing by the Local Planning Authority. The approved layout shall be maintained throughout the contract period with all storage of materials and wheel washing clear of the highway.

Reason: In the interest of highway safety, noting that initial works have the potential for unacceptable impacts unless appropriately controlled.

7. Throughout the period of construction within any phase vehicle wheel cleaning facilities shall be provided and retained within the site. All construction vehicles shall have their wheels cleaned before leaving the site in order to prevent the deposition of mud or other extraneous material on the public highway.

Reason: In the interests of highway safety.

8. Prior to the first occupation of any dwelling, a new footway shall be provided fronting the application site. The footway shall be constructed at the rear of the existing highway, have a width of 2m and be constructed to the adoption standards in accordance with Derbyshire County Council's specification for adopted highways. For the avoidance of doubt, the remaining highway margin shall be retained as grass verge and any damage caused during construction phase shall be reinstated prior to the first occupation.

Reason: In the interest of highway safety and to achieve safe access.

9. Prior to the first occupation of any dwelling, the new vehicular accesses shall be formed to Lullington Road, laid out and constructed in accordance with Derbyshire County Council's specifications for adopted highways.

Reason: In the interest of highway safety.

10. Prior to the first occupation of any dwelling, the car parking and manoeuvring space as shown on the approved drawings shall be laid out and maintained throughout the life of the development free from any impediment to its designated use.

Reason: In the interests of highway safety.

11. Any gates shall be set back at least 5m from the highway boundary and open inwards only.

Reason: In the interests of highway safety.

12. The proposed boundary treatment as shown on plan/drawings LRO-FEA-EX-XX-DP-A-1800 Rev C; LRO-FEA-EX-XX-DP-A-1801 Rev A and LRO-FEA-EX-XX-DD-A-6900 Rev B; shall be erected and planted prior to the first occupation of the proposed dwellings, unless prior to their incorporation into the development, alternative details are first submitted to and approved in writing by the Local Planning Authority. The boundary treatment shall be erected in accordance with the approved details prior to the first occupation of the dwellings.

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

13. The landscaping scheme as shown on plan/drawings; LRO-FEA-EX-XX-DP-A-1801 Rev A and LRO-FEA-EX-XX-DP-A-1800 Rev C; shall be planted prior to the first occupation of the proposed dwellings, unless prior to their incorporation into the development, alternative details have first been submitted to and approved in writing by the Local Planning Authority. The landscaping scheme shall be planted in accordance with the approved details.

Reason: In the interests of the appearance of the area, recognising that initial clearance and groundworks could compromise the long term health of the trees/hedgerows affected.

14. 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.

Informatives:

1. In dealing with this application, the Local Planning Authority has worked with the applicant in a positive and proactive manner through seeking to resolve planning objections and quickly determining the application. As such it is considered that the Local Planning Authority has implemented the requirement set out in paragraphs 186 and 187 of the National Planning Policy Framework.
2. Pursuant to Section 184 of the Highways Act 1980 and Section 86(4) of the New Roads and Streetworks Act 1991 prior notification should be given to the Department of Economy and Transport & Environment at County Hall, Matlock regarding access works within the highway. Information, and relevant application forms, regarding the undertaking of access works within highway limits is available via the County Councils website: http://www.derbyshire.gov.uk/transport_roads/roads_traffic/development_control/vehicular_access/default.asp email ETENetmanadmin@derbyshire.gov.uk or telephone call Derbyshire on 01629 533 190.
3. Pursuant to Section 163 of the Highways Act 1980, where the site curtilage slopes down towards the public highway measures shall be taken to ensure that surface water run-off from within the site is not permitted to discharge across the footway margin. This usually takes the form of a dish channel or gulley laid across the access immediately behind the back edge of the highway, discharging to a drain or soakaway within the site.
4. The Highway Authority recommends that the first 5m of the proposed access driveway should not be surfaced with a loose material (i.e. unbound chippings or gravel etc.). In the event that loose material is transferred to the highway and is regarded as a hazard or nuisance to highway users the Authority reserves the right to take any necessary action against the householder.
5. 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.
6. Pursuant to Section 278 of the Highways Act 1980 and the provisions of the Traffic Management Act 2004, no works may commence within the limits of the public highway without the formal written Agreement of the County Council as Highway Authority. It must be ensured that public transport services in the vicinity of the site are not adversely affected by the development works. Advice regarding the technical, legal, administrative and financial processes involved in Section 278 Agreements may be obtained by contacting the Director of Environmental Services at County Hall, Matlock (tel: 01629 580000 and ask for the Area Development Manager). The applicant is advised to allow approximately 12 weeks in any programme of works to obtain a Section 278 Agreement.
7. The proposed development lies within a coal mining area which may contain unrecorded coal mining related hazards. If any coal mining feature is encountered during development, this should be reported immediately to The Coal Authority on 0345 762 6848. It should also be noted that this site may lie in an area where a current licence exists for

underground coal mining. Further information is also available on The Coal Authority website at: www.gov.uk/government/organisations/the-coal-authority. Property specific summary information on past, current and future coal mining activity can be obtained from: www.groundstability.com.

8. It would be advisable to ensure that any new hard surfaces are constructed of permeable materials to control and contain surface water runoff.

Item **1.6**

Ref. No. **9/2019/0149**

Valid Date **11/02/2019**

Applicant:
Mrs Linda Copeland

Agent:
Mr Dave Robinson
Thompson Tree Services (Midlands) Ltd
Ashleigh House
Cromford Road
Matlock
DE44FR

Proposal: **THE FELLING OF A SYCAMORE TREE COVERED BY SOUTH DERBYSHIRE DISTRICT COUNCIL TREE PRESERVATION ORDER NUMBER 417 AT 23 WALLFIELDS CLOSE FINDERN DERBY**

Ward: **WILLINGTON & FINDERN**

Reason for committee determination

This item is presented to Committee at the request of Councillor Martyn Ford who states that: local concern has been expressed about a particular issue; there are personal; circumstances of the applicant which members should consider; and unusual site circumstances should be considered by the Committee.

Site Description

The application site forms part of a narrow strip of grass/garden on the western side of Wallfields Close, within a modern residential estate and is clearly visible from the adjacent highway. The site was originally formal public open space for the estate but is now in the applicant's ownership. The Sycamore tree, which is subject to Tree Preservation Order No. 417, is one of a pleasant group situated in what is otherwise an urbanised setting.

Proposal

The application seeks consent for the felling of one Sycamore tree, which is part of group of three trees, the other two being Norway Maples.

Applicant's supporting information

Other than the application form and an aerial photograph showing the tree within the street, no other supporting information has been submitted.

The reason for the felling of the tree, according to the application form, is as follows:

"Fell due to excessive shading. The tree is also inappropriate for its location in a small cul-de-sac and its potential mature size. There are 2 more suitable trees for retention already established adjacent to this tree. Its removal will allow these to develop, unaffected by shade from the taller tree. At the same time these trees are smaller species and unlikely to create the same issues in the future. Due to the enclosed nature of the trees' location, adjacent to housing, removal of the adjacent Sycamore is unlikely to have a significant effect on the stability of the trees to be retained. Due to the shortage of space and presence of 2 established trees it would be appropriate to waive the condition to replant in this location".

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South Derbyshire District Council. LA 100019461. 2014

Planning History

The tree was made the subject of the TPO as, prior to its protection, its retention was put in doubt. The TPO was confirmed (following an objection) by the Planning Committee and the order was made final on 16th October 2015. Prior to the Order being confirmed an application to fell the tree was submitted (9/2016/0865). This was refused under delegated powers on the following grounds:

“The Sycamore tree is a prominent (tree) in the public realm and makes a significant positive contribution to the visual amenity of the area. The removal of the tree would reduce that level of amenity in what is otherwise an urban context, whilst potentially undermining the health of the adjacent tree (of equal stature) given they exist as companions. Despite the reasons given to support its removal the proposed felling is considered to be unacceptable and contrary to policy BNE4 of the Local Plan 2016, saved policy EV9 of the Local Plan 1998, emerging policy BNE7 of the Local Plan Part 2 and paragraphs 17, 109 and 118 of the National Planning Policy Framework”.

A subsequent appeal to the Secretary of State (Reference APP/ENV/3162624) was dismissed by decision dated 9th May 2017, with the Inspector stating that “...*the proposed works would result in the loss of a tree that makes a positive contribution to the character and appearance of the area. Based on the available evidence as presented, I conclude that there are insufficient grounds to justify the proposed works, and that consent should not be granted*”.

Responses to Consultations

Commenting of the previous (2016) application, the Council's Tree Officer believed all three trees added significant value to the area and that as the Sycamore and close-by Norway Maple are companion trees, the loss of the either would have significant health impacts on the other. There were no apparent obvious defects and the tree had a fair/good form. He considered that remedial pruning back of overhanging branches away from the overhead telecommunication wires would not be onerous for the tree owner and that the tree was in keeping with the area and in no way too large or 'out of scale' with the cul-de-sac.

Commenting on the current application with regard to amenity and overview, the Tree Officer considers that Wallfields Close is a small cul-de-sac and within it only a few houses have trees to the front, and they are mostly small immature specimens. There are very few large mature trees in the immediate locality. The (application) tree is one of three large trees located on the grass verge adjacent to the road and, owing to the lack of mature trees in the area they are a prominent landscape feature on Wallfields Close. The broad canopy of the application tree is an obvious feature seen throughout the street.

Overall, the Sycamore tree provides significant local amenity value which adds to the visual amenity of the area. Moreover, the tree has individual specimen amenity value and makes a significant contribution to the character of the area. The felling of the tree would have a harmful effect on the local environment and its enjoyment by the public, as well as having a potentially detrimental effect on the health of the adjacent tree as its companion. This is in direct conflict with the opinion and claim by the agent.

Excess shading is not the case here, nevertheless this could be somewhat remedied by comparatively modest works to prune, trim back and thin the branches within the crown rather than felling the tree. There is no sound arboricultural reason why the tree would not successfully withstand this level of pruning and continue to make a positive contribution to public amenity. He recommends the canopy is thoroughly crown cleaned and thinned by 15%, which would also assist in reducing the amount of shading and improve grass growth underneath the canopy.

In conclusion he considers that the proposed felling would result in the loss of a tree that makes a positive contribution to the character and appearance of the area and that, based on the applicant's

reasons for felling, there are insufficient grounds to justify the proposed works and therefore the application should be refused.

In the event of the application being allowed he argues that, contrary to what the agent states, a replacement tree of agreeable genera should be conditioned as there is an opportunity to require replacement planting. Nonetheless, the suggestion of a replacement tree is not sufficient in its own right to make the loss of this tree reasonable and justified.

Responses to Publicity

There is support for the felling of the tree from two households, raising the following concerns/points:

- a) The height of the tree is totally out of control and it is not fit for a Close of this size and is extremely overbearing;
- b) The proximity of the tree to the neighbouring houses and cars is dangerous and once all the leaves are back there is always a very high chance of damage being done from falling branches etc., especially with the high winds we experience more frequently;
- c) The tree blocks early evening sunshine from the back garden, which was more noticeable last year when the summer was good;
- d) BT had to carry out works last year to untangle the wires from the branches which is inconvenient to all residents of the Close particularly when the branches pull the telephone lines away from the fixings on the houses;
- e) The telegraph pole supporting the wires is now leaning owing to point d) above. Who will pay the bill for repairing broken telephone lines?
- f) It is never maintained and is now just a nuisance, an eyesore and dangerous to properties and cars;
- g) The associated problems have been ongoing for too long and the tree should have been taken down years ago.

In addition to these comments, a copy of the petition containing 20 names that was sent in objecting to the (then temporary) TPO has also been re-submitted.

Development Plan Policies

The relevant policies are:

- 2016 Local Plan Part 1 (LP1): SD1 – Amenity and Environmental Quality; BNE4 – Landscape Character and Local Distinctiveness.
- 2017 Local Plan Part 2 (LP2): BNE7 – Trees, Woodland and Hedgerows

National Guidance

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

Local Guidance

- South Derbyshire Design Guide SPD

Planning Considerations

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

- Visual Amenity
- The Appeal decision

Planning Assessment

Visual Amenity

The application proposes felling of the protected tree. Therefore, as part of this deliberation, it is worth re-visiting the reasons why the Order was originally made. These were as follows:

1. The Sycamore is of good quality and contributes to the amenity of the area and the existing tree offer here.
2. Its future is uncertain following a recent development enquiry by the landowner. The majority of the trees in the immediate vicinity are covered by a long standing County TPO; this tree however is not covered, seen to be too young to have been included in the County Order.
3. Based on the uncertainty in its future and the potential loss to the landscape offer here, it is felt expedient to safeguard this tree by way of a Tree Preservation Order.

Whilst the Wallfields Close development has been built since the original DCC TPO was made in 1964 it does, nevertheless, remain relevant to the current application since the reason for placing an Order on the application tree in 2015 cited this earlier TPO (see 2. above).

There is very little in the way of natural vegetation within this development other than small domestic-size trees and shrubs. This fact, therefore, is an important consideration when assessing this proposal. The group of trees, and in particular, the Sycamore provides some much needed natural backdrop to the essentially urban character of the street scene and assists in integrating the development into the surrounding countryside to the north and east.

Part B of LP2 Policy BNE7 provides insight into what the Council wishes to achieve when assessing proposals to fell protected trees, groups of trees or woodland. This states: *"The felling of protected trees, groups of trees or woodland and/or removal of important hedgerows will be considered in accordance with the relevant national guidance and regulations, taking account in particular of their amenity, ecological, landscape and historic value. Where protected trees and/or hedgerows are subject to felling or removal, a replacement of an appropriate number, species, size and in an appropriate location will normally be required"*.

The relevant national guidance can be found within the National Planning Policy Framework (NPPF) and the National Planning Practice Guidance (NPPG).

Paragraph 170 of the NPPF states that planning policies and decisions should contribute to the natural and local environment by (*inter alia*):

b) recognising the intrinsic character and beauty of the countryside and the wider benefits from natural capital and ecosystem services – including the economic benefits of the best and versatile agricultural land and of trees and woodland.

Paragraph 8 discusses what is meant by achieving sustainable development, stating that the planning system has three overarching objectives which are interdependent and need to be pursued in mutually supportive ways. These are:

- a) An economic objective;
- b) A social objective; and
- c) An environmental objective, which is to contribute to protecting and enhancing our natural, built and historic environment.

Turning now to the PPG, paragraph ID36 states that in considering an application the local planning authority should assess the impact of the proposal on the amenity of the area and whether it is properly justified, having regard to the reasons and the additional information put forward in support of it.

The Appeal Decision

The appeal against the decision of the Council to refuse a similar application in 2016 is a material consideration in the determination of the current proposal. Moreover, the appeal was determined just two years ago, which is relatively recent in planning terms. The Inspector considered the tree, together with its two companions, to be a prominent landscape feature on Wallfields Close, with the broad canopy of the subject tree being an obvious feature seen throughout the street. He considered that, overall, the Sycamore tree provides significant local amenity value which adds to the visual amenity of the area. In this context the tree has a degree of individual specimen amenity value and makes a significant contribution to the character of the area. Furthermore, he considered that the protected tree contributes to the amenity of its surroundings and felling the Sycamore tree would have a harmful effect on the local environment and its enjoyment by the public as well as having a potentially detrimental effect on the health of the adjacent tree.

Whilst recognising that the upper branches of the tree do interfere with the telephone wires and in windy conditions have the potential to be a hazard, he, nevertheless, considered that this could be remedied to some extent by comparatively modest works to prune, trim back and thin the branches within the crown rather than felling the tree. He saw no reason why the tree would not successfully withstand this level of pruning and continue to make a positive contribution to public amenity, whilst also addressing some of the concerns of the appellant and local residents.

Conclusion

Notwithstanding the local support for the proposal, in agreement with the tree officer's comments (and the planning Inspector's comments and decision in May 2017), it is felt the reasons for felling the tree do not outweigh the benefits of its retention where the tree is seen to be healthy and situated far enough away from buildings, windows and gardens such that its size could be deemed to be oppressive or cause excessive shading. Removal as such would be contrary to the aforementioned policy/guidance which seeks to protect trees of merit in their context for the benefit of the wider community.

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 permission subject to the following reason:

1. The sycamore tree is prominent in the public realm and makes a significant positive contribution to the visual amenity of the area. The removal of the tree would reduce that level of amenity in what is otherwise an urban context, whilst potentially undermining the health of the adjacent tree (of equal stature), given they exist as companions. Despite the reasons given to support its removal, the proposed felling is considered to be unacceptable and contrary to LP 1 policy BNE4, LP2 policy BNE7 and paragraphs 8 and 170 of the National Planning Policy Framework.

2. PLANNING AND OTHER APPEALS

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

Reference	Place	Ward	Result	Cttee/Delegated	Page
9/2017/0786	Osleston	Etwall	Dismissed	Delegated	46
9/2018/0709	Hartshorne	Woodville	Allowed	Delegated	62
9/2018/0867	Linton	Linton	Dismissed	Delegated	69
9/2018/0977	Castle Gresley	Linton	Dismissed	Delegated	77

Appeal Decision

Inquiry Held on 11 -13 June 2019

Site visit made on 11 June 2019

by G D Grindey MSc MRTPI Tech Cert Arb

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

Decision date: 8th July 2019

Appeal Ref: APP/F1040/W/18/3217891

Boden's Sticks, Cropper Lane, Osleston, Ashbourne, Derbyshire DE6 5BL

- 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 and Mrs R Lewis against the decision of South Derbyshire District Council.
 - The application Ref 9/2017/0786, dated 21 July 2017, was refused by notice dated 6 June 2018.
 - The development proposed is the change of use of existing woodland to a site for the location of six log cabin holiday letting units falling within the definition of caravans.
-

Decision

1. The appeal is dismissed.

Applications for costs

2. At the Inquiry an application for costs was made by each party against the other. These applications are the subject of separate decisions.

Background matters

3. A pre-inquiry meeting (PIM) was held on 2 April 2019 to briefly discuss procedural and administrative matters. At that meeting, the Council stated that they needed to screen the proposed development under Regulation 7 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017. They later provided a Screening Opinion dated 17 April 2019, to confirm that they did not consider the scheme to be EIA development and that it would not require the submission of an Environmental Statement in accordance with the Regulations.
4. At the beginning of the inquiry the appellants stated that, at the time of the application, the appeal site was owned by their Directors' Pension Fund but that lately it had been transferred into their private ownership.

The scheme applied for

5. The full application was made for "six **log cabin** holiday letting units falling within the definition of caravans¹" [my emphasis]. Units falling within the definition of 'caravans' (in the Caravan Sites Act 1968) have a maximum size

¹ The application form, question 3, CD1.1

and must be capable of transportation to the site. To my mind a "log cabin" is not usually a caravan in the conventional sense. Mrs Lewis refers to "lodges" repeatedly in her statement; one of the Ecological Surveys refers to "glamping pods". The statement of Market Demand² talks of "timber lodges".

6. Thus there is ambiguity in the description of development and I sought clarification, both at the PIM and at the inquiry. Mrs Lewis stated that there are twin-unit caravans which are produced pre-clad in timber which can be fitted together on site and it is this type of unit she plans to station here. I appreciate that stationing a caravan is a use of land and thus a caravan unit can be replaced with any other unit. However, as I said at the PIM, it would have been helpful to have some literature or drawings of a typical timber-clad unit, just for information as to intentions and to add flesh to the proposals.
7. The Phase 1 Habitat Survey³ was prepared in 2015 but is only valid for 2 years⁴ and so is out-of-date (a matter I raised at the PIM). In any event, the report states that the survey was conducted outside of the optimum season and also suggests other surveys are required. It is of limited value now and Mr Mellor, for the appellants, agreed it was out of date. Some later surveys were carried out, mainly in 2016, so they are also rather dated.
8. The Planning Statement⁵ refers to 2 septic tanks to be located in the "the clearing away from the root system of mature trees". This was not shown on any of the submitted plans even though Planning Policy Guidance (PPG) states that "applications for development relying on anything other than connection to a public sewage treatment plant should be supported by sufficient information to understand the potential implications for the water environment"⁶. The application should contain full details. This location was contradicted by Mrs Lewis's statement that the septic tank, and/or the drainage field, could be located within an adjacent field, although that would then place it outside the application site edged red. On the second day of the inquiry a drawing was produced⁷, for the first time, of possible sites for 2 tanks within the woodland, leading to a rectangular drainage/soak-away area outwith the application site.
9. Given the belated production of this plan in the inquiry, I doubt that porosity tests have been done, or that the appellants have any idea whether these would work in practice. The underlying impermeable clay nature of the soil at the appeal site was obvious at our site inspection and also from the photographs in the Ecological Survey June 2016⁸ and comments in appeal documents.
10. The Planning Statement talks of the existing hedgerow on the western boundary and lists an objective "to maintain and enhance the existing species-rich hedgerow". An application plan contradicts this and shows the removal of some of this hedgerow and re-planting to the rear of visibility splays. During the course of the inquiry, the appellants referred to the comments of the highway authority⁹ and their response to the standard consultation on an earlier application. The appellants interpret the highway's comment: "In view

² CD1.7

³ CD1.11

⁴ CD1.11 paragraph 3.6

⁵ CD1.5

⁶ Planning Policy Guidance paragraph 020 Ref ID: 34-020-20140306

⁷ APP1

⁸ CD1.12

⁹ Letter of 21 November 2016, CD1.21

of this and that the plans show that visibility sightlines of 2.4m x 120m can be achieved, there are no highway objections” as meaning that, provided the existing hedgerow is reduced to 0.6m high and regularly maintained at that height, it could remain. The appellants then withdrew the visibility splay drawing from consideration on the second day of the inquiry.

11. I am by no means certain that the highway authority did mean they were content with a reduced-height hedgerow only. They refer to “the plans” which, at that time, would have included whatever plans were submitted with the earlier application. They also suggest a condition be attached to any permission granted that requires the new vehicular access to be created in accordance with the application plans.
12. In any event, this late change of intention conflicts with the proposals as set out in the Biodiversity Management Plan¹⁰ (BMP). This states that the hedge will be laid and then left unmanaged for two to three years and then left at a height of 2m. The Biodiversity Management Plan states that “continual annual trimming will lead to deterioration”, although to retain the hedgerow at 0.6m continual trimming must be required. We had no way of testing this interpretation of the highway authority’s position at the inquiry as no highway authority persons were present and, obviously, the appellants can choose to present their case as they wish.
13. Overall, I find there is a lack of clarity and detail and some contradiction with the proposals as described in some of the documents submitted with this scheme. It should have been obvious, from my lead at the PIM that I was asking for clarity and certainty so that we saved inquiry time. Instead we had to waste inquiry time sorting out, as best as I was able, as to what was under consideration.
14. For the avoidance of doubt I shall deal with the appeal as for 6 caravans in the locations shown on drawing ref no L70/1b and with the existing hedgerow reduced to and retained at 0.6m in height. I will deal with the septic tanks and soak-away in general terms and the visibility plan as withdrawn.

Main Issues

15. From the representation made at the inquiry and in writing and from my inspection of the site and surroundings I find that there are two main issues. These are (i) whether the scheme would have a detrimental impact on the protected woodland and thus on the landscape character and (ii) whether the scheme would have an adverse impact on the integrity of the woodland priority habitat and on protected species.

Reasons

Issue (i) whether the scheme would have a detrimental impact on the protected woodland and thus on the landscape character

16. My starting point must be the development plan. The South Derbyshire Local Plan 2016 (LP) states, at policy BNE4, that the character, local distinctiveness and quality of South Derbyshire’s landscape will be protected and enhanced through the careful design and sensitive implementation of new development. Policy BNE7 seeks to ensure that the felling of protected woodland is

¹⁰ 1.13

considered in accordance with national guidance taking into account the amenity, ecological, landscape and historic value. Policy INF10 is generally permissive and encouraging of tourist development unless it is likely to give rise to undue impacts of the local landscape or natural environment.

17. The appeal woodland is a broadly rectangular parcel of 2.64 ha on the east side of a largely single width lane running approximately north to south. In brief, the woodland is mixed deciduous in character, dense and impenetrable in places and with an understorey of snowberry and immature trees¹¹. There is a path, which we used for access during my site inspection, apparently created as a local hunt trail; it was muddy and waterlogged. This broadly passes to the north of the area shown for the caravan locations; it leads to a clearing. The parcel of land abuts Cropper Lane and thus is highly visible to passers by; there is a hedgerow on the outer limits of the woodland parcel and a grass verge.
18. I found at my site inspections that the woodland has considerable visibility from public viewpoints in Cropper Lane as well as from the public footpaths to the south and east. Although individual trees are not readily distinguished there is no doubt that their combined canopies add a natural and softening effect to the locality and form a skyline feature. The woodland contributes to the pleasantness of the locality and adds maturity to the character and appearance of the area. The locality is generally agricultural fields with hedgerows and hedgerow trees but I did not see any other woodland in the immediate vicinity.
19. The works would entail the introduction of a 'tar bound'¹² surfaced driveway at the entrance, leading to an access into the woodland variously described as of "traditional construction methods or the use of no dig"¹³. This generally means a cellular confinement system forming a stiffened layer above the root zone capable of spreading the load of vehicles passing along it while protecting the roots and soils below. This would pass through the southern area of the woodland, leading to a "communal parking area" – referred to in the Planning Statement although the location is unknown and onwards to 6 sites for caravans sited along the main driveway.
20. The roadside hedge on the west side of the woodland is described, variously, as 'species rich'¹⁴ or of 'limited value'¹⁵ by the appellants. At my accompanied site inspection we found Wych Elm, Ash, Hawthorn, Elder, Blackthorn, Dogrose, Hazel, Bramble, Field Maple and Snowberry to be present. It was thick and in full growth at the time of the inspection; this would need to be reduced in height to provide the required 2.4m x 120m visibility splays. I suspect it would be an onerous task to keep a growing and vigorous hedge to this height in perpetuity.
21. The introduction of the new access would inevitably change the nature of the lane at this point, both visually and in practical terms. The appearance of the lane at present is entirely rural, with scattered dwellings along it. The scheme would introduce a vehicle-width, surfaced, splayed and inevitably more suburban aspect to the appearance of the lane at this point. There would be

¹¹ Biodiversity Management Plan CD1.13

¹² CD1.5, Planning Statement

¹³ Mr Murat's evidence paragraph 4.19

¹⁴ CD1.11 Phase 1 Habitat Survey paragraph 5.2.5

¹⁵ Mr Murat's evidence paragraph 4.06

signs and possibly some illumination visible. The hedgerow would be continually trimmed back to 0.6m in height, leading to a manicured and 'domestic' appearance; retained trees would need some crown lifting to permit movement underneath. These are the first adverse impacts.

22. A percentage figure of 5.5% of the area of woodland vegetation loss to facilitate the proposal has been quoted by the appellants; the Council calculated this to be 8%¹⁶. Whichever is correct, both these figures only calculate the footprints of the access road and caravan standings. The appellants made numerous assurances that they intended only to remove vegetation where necessary to station the caravans and their intention is to have vegetation immediately outside and all around the caravans and the access drive. I find this implausible and impractical – that the caravans would have vegetation up to and abutting the windows/walls on 3 sides.
23. I consider that there would be a much greater loss than the 5.5% quoted, not least to permit occupiers to spill out, move around the caravans, sit outside and have some illumination from the windows. Practically I simply cannot accept that woodland growth would be tolerated right up against the caravans, preventing maintenance and promoting damp and mossy conditions on the fabric of the caravans over time. While I can understand that the appellants unique selling point is that customers would be attracted to a holiday in a woodland setting, I consider that most people would not want the woodland right up against their caravan walls and windows.
24. The limited 5.5% - 8% minimum vegetation clearance claimed would be so restrictive to typical expectations of normal human activity. There is absolutely nothing that the occupants could do within the woodland, except to move in and out along the driveway. There would be nowhere to sit outside, walk, cycle or play, no destination other than leaving the site altogether. However, the Planning Statement says that "by definition a rural escape would not be seeking to indulge in travelling to other destinations". This statement, therefore, suggests that visitors would stay within this very small woodland, constrained even further by dense and impenetrable vegetation; this is most unlikely. Mrs Lewis, in answer to my question, stated that visitors could bring cycles and join a nearby cycle route, which conflicts with the Planning Statement quoted above.
25. Mr Murat mentioned the Rosliston Forestry Centre as a place with lodges within woodland and with no evidence that visitors there generate pressure for tree removal or other pressures on the environment. However there is simply no comparison with that destination and the proposals here on 2.6ha. Rosliston is about 62ha, and has a shop, a cycling and footpath network, environmental education, a café, cycle hire and soft play. The photographs at LPA 8 show the individual lodges have outside decking, seating areas and are set within mown glades. It seems to me that visitors there have activities on-site and plenty of space in which to move about, unlike the appeal scheme.
26. While Mrs Lewis said that there could be timber boardwalks/woodchip paths, it is unclear where these would be, as the Planning Statement says that the proposal "leaves the largest part of the woodland undisturbed". I take that to mean that the northern part would have no public access. The Biodiversity

¹⁶ LPA5.

Management Plan (BMP)¹⁷ talks of raised walkways that will “not impact on mature trees”, although I am not aware of much evidence of what routes these might follow so it is hard to see how this assurance can be given any weight.

27. The BMP also states that “the main walkway along the hunt track will be managed as a ride and the open central area will be managed as a glade with graded diverse edge habitat”. Two points here then: (i) the use of the term “main” suggests there will be more than one walkway, although there are no plans which show where any of these might be and (ii) 2/3rds of the the existing hunt track lies to the north of the proposed vehicular access, so surfacing this and creating a timber boardwalk would encroach into the supposedly undisturbed northern area. Mr Mellor also referred to open areas in the central and southern woodland areas¹⁸ to be managed as glades although he agreed, at the inquiry, that these were not shown on any plan.
28. Possibly, therefore, this existing track is to be utilised for visitor entertainment, although it only goes to the eastern edge of the wood and it would be a matter of minutes to walk from one end to the other; it has no other possible destination. Whilst trying to view this positively, I find this would probably not be a memorable or valued visitor attraction. Any walkways and boardwalks would, of course, add a further, unknown, vegetation clearance figure. Mrs Lewis also said that she would do whatever she was advised to do – her intentions were fluid and a ‘moveable feast’. There is a frustrating lack of information here and I find it unsafe to rely on dated and contradictory information.
29. All in all, I find the Council’s alternative calculations of 14% or possibly 27% woodland loss to be far more likely, if not inevitable, simply to facilitate normal visitor expectations, bearing in mind these figures do not even take into account boardwalks.
30. I note that the Morfe Valley Arboriculture¹⁹ report suggests that a cellular confinement “no dig” system for the access driveway may not work under such wet conditions as are found on the appeal site. The track might move and distort making it unsuitable for vehicle use and leading to more invasive solutions. Further, the report also suggests that changes in hydrology of the woodland could lead to tree loss, particularly mature trees.
31. While a plan was produced as to foul drainage and septic tank locations late in the inquiry, I am still no clearer as to a route for electricity and drinking water entering the site and supplying the units. I have to assume both would be available in the lane and could be brought in along the route of the access driveway. Mrs Lewis states in her evidence that all these excavations would be done with a mini-digger. The Planning Statement refers to the need for these to generate “incursion into the soil” but details are unclear; there may be additional associated vegetation loss.
32. At this point it is useful to consider the inherent nature of trees in woodland. On the appeal site (as is often the case with woodland trees) individually, they are far from perfect, many are poor shapes or are suppressed. The closely

¹⁷ CD1.13

¹⁸ Mr Mellor’s evidence, appendix 11 paragraph 3

¹⁹ CD1.19 page 9

growing trees have been 'pulled up' to reach the light, but most appeared to me to be growing well; they had come into entirely typical leaf for this season.

33. Little of this arboricultural detail is visible from public viewpoints however; overall the appearance is of a pleasing deciduous woodland area. Many of the trees are spindly; it would be inevitable that, if some trees are felled for the development, then others remaining will be exposed to wind throw as they are exposed to gusts from which they were formerly protected. Thus there may well be unexpected tree loss in addition to that necessary for the development, whatever percentage is accepted.
34. Any areas to which the public will have access will have to be the subject of a risk assessment and routine arboricultural examinations. Mr Murat and Mr Northrop both agreed, in answer to my questions, that the surveys, of themselves, do not need to be an onerous burden and I agree, as the overall woodland area is small. Nevertheless, the surveys will generate requirements to fell or 'tidy up' trees for safety reasons. At the inquiry we discussed the publication Common Sense Risk Management of Trees²⁰.
35. It is clear that the trees would be an asset to the business and would be seen to add to the enjoyment of the visitors, so there would be an incentive to preserve them. However, meeting the most basic of a balanced tree safety management regime would mean that poor quality woodland trees would need to be assessed for any hazards and defects. In a woodland with no public access their retention would not be a problem, no matter what the defects. This would not be the case with public access, when those responsible must be able to make a balanced judgement of risk and benefits. I consider this to be another reason why there would be greater clearance than the appellants claim.
36. Mrs Lewis was not clear about how or whether visitors would be excluded from the remainder of the wood, again she simply stated she would do whatever she was advised to do. The appendix to her statement suggested proposed rules for visitors to the caravans, with compliance enforced by a financial loss if visitors create noise, enter protected areas that are "fenced off"²¹ or behave otherwise inappropriately. As there would be no manager on site however this would tend to be an "after-the-event" response and damage might have been done before it is noticed by the management.
37. I agree with Mr Northrop that visitors are unlikely to feel welcome if they are within a fenced compound limited to the immediate areas around the access drive and the 6 caravans. Part of the unique selling point of the proposal is a "luxurious escape in a beautiful and unique place," to sample the simple joys of countryside living²². But I return to my previously stated puzzlement as to what the visitors will do with themselves if all they are able to do is journey up and down a short access driveway. I am hampered by the failure to identify specific visitor activities, visitor management measures or contradictions therein.
38. But, if a whole-wood pathway is created then there would be a need for further risk assessment, inevitably leading to a general tidying and removal of

²⁰ National Tree Safety Group

²¹ Suggested Rule for visitors number 15

²² Mrs Lewis's statement

defective or risky trees and regular clearing of vegetation away from the paths to prevent over-growing (we could hardly get through the existing path at my site inspection).

39. While I have no doubt that the intentions of the appellants are to proceed with a 'sensitive implementation' of new development, as the policy requires, I find the concept of all the access driveway and caravan standings being cleared and created with "hand held tools" to be unlikely in the extreme. The job is just too large; twin-unit caravans are delivered on large, heavy haulage vehicles which would require a durable road surface to turn and to enter the appeal site and deliver the units. I somehow doubt that they could be unloaded in the lane and then towed into place with a tractor as Mrs Lewis suggested, in answer to my question, not least because the wheels/tyres are not designed for road use.
40. While it could be arranged that the boundary trees are kept intact, I consider that there would be a significant reduction in density of trees within the internal area. Mr Northrop calculated that some 350 – 400 trees would be lost within the hatched area alone on the plan showing the minimum extent of development. While this figure was disputed, it seems to me that the various figures referred to slightly miss the point.
41. It should not be forgotten that, with a woodland TPO all trees are protected, at whatever stage of their life. The purpose of a woodland TPO is to safeguard a woodland as a whole.²³ So it follows that while some existing trees may lack individual merit, or may not be very big today, all trees within the wood are protected. Trees and saplings which grew naturally, after the Order is made are also protected by the Order.
42. So, while BS 5837:2012 states that, for a survey, all trees with a stem diameter over 75mm and, within woodland, only trees with stem diameters of over 150mm might need to be plotted, that is advice for a different situation than here. It seems to me that a rough calculation of 'trees that might be lost' should not just count the existing large ones, but also recognise the small ones that will become the woodland of the future. Similarly, arguments that trees to be lost are category C, or low quality trees, is also not particularly helpful since all of them add to the woodland as a whole. The argument that a Felling Licence offers further control also misses this point.
43. It seems to me more important that the areas where genuine, unconstrained woodland would be able to continue to grow must be very much reduced as a result of this scheme. Initially, the canopy would be absent or less dense over the developed area and possibly over the associated pathways too. In the longer term the woodland would be less likely to be able to develop "as a whole", as continual cutting back, tidying and clearance would reduce the numbers of young trees. I think this would have an appreciable effect on the inherent character and appearance of the protected woodland, and the landscape, in that it would no longer be wild and undisturbed. Also, viewed from public viewpoints outside it, and particularly at the entrance point it would appear more domestic and tamed in character and appearance and quite obviously less dense.
44. Woodland is not a prominent characteristic of the South Derbyshire Claylands Landscape area, the description of the area states that "woodlands are few".

²³ Planning Policy Guidance para 028 ref ID 36-028-20140306

The Claylands Area Action Plan²⁴ shows woodland to be just 2.5% of the total area, thus a reduction in area would be a significant loss.

45. In addition to some reduction in the canopy and woodland density there may well be some illumination perceptible from outside the woodland, and an increase in general activity around the site. I find an in-principle objection to a scheme which would result in the loss of a significant part of a woodland protected by a TPO. It would simply not be 'preserved' in the ordinary meaning of the word. The scheme would not accord with Local Plan policy BNE4, in that the character, local distinctiveness and quality of South Derbyshire's landscape would not be protected and enhanced. The scheme is vague and unformed and so I do not find that it could be described as a 'careful design' as the policy states.
46. Pulling all these threads together, I now total up the likely vegetation loss: the actual footprints of the 6 caravans and the access road, plus unknown circulation space around the units, plus unknown walkways, plus unknown but inevitable tree-loss for risk management and safety reasons, plus unknown tree loss for water/electricity and foul drainage routes, plus unknown damage and possible tree loss if the cellular confinement system on the access track fails to work and a more invasive solution is required, plus unknown tree loss flowing from the use of machinery within the woodland in pursuing these works.
47. Policy BNE7 seeks to ensure that the felling of protected woodland is considered in accordance with national guidance taking into account the amenity, ecological, landscape and historic value. The scheme would involve the clearing of a large proportion, certainly over 14% (and probably much more than that) of the existing woodland. I have seen nothing that convinces me that any re-planting proposed could make up for this loss as there simply is no vacant land to be planted up. The scheme would adversely affect the integrity of the woodland as a whole and the amenity, and landscape value of this woodland and the requirements of policy BNE7 would not be met.
48. While policy INF10 is generally permissive and encouraging of tourist development this scheme would give rise to undue impacts of the local landscape and thus would not meet the requirements of the policy.

Issue (ii) whether the scheme would have an adverse impact on the integrity of the woodland priority habitat and on protected species.

49. The woodland is a lowland deciduous woodland priority habitat selected as a type of habitat of principal importance for the conservation of biodiversity in England, originally under the Natural Environment and Rural Communities Act 2006. The woodland is also habitat for Great Crest Newt (GCN), badger, bats and 4 bird priority species: Song Thrush, Marsh Tit, Bullfinch and Dunnock. Government policy is given more detail and structure by later publications principally Biodiversity 2020 and carried into planning policy in the revised NPPF; decisions should recognise that some undeveloped land can perform many functions such as for wildlife, recreation or carbon storage²⁵.
50. Paragraph 170 states that decisions should minimise impacts on, and provide net gains for, biodiversity. Paragraph 174 sets out the requirement for plans to

²⁴ Mr Taylor's evidence, appendix 1

²⁵ NPPF paragraph 118

promote the conservation, restoration and enhancement of priority habitats and the protection and recovery of priority species, which is reflected in Local Plan policy BNE3. This states that proposals that could have direct or indirect effects on sites, including priority habitats and species, will need to be supported by appropriate surveys, sufficient to fully understand the likely impacts of the scheme and the mitigation proposed. Where mitigation cannot sufficiently offset significant harm then permission should be refused. The policy is consistent with the revised framework.

51. At the outset, it should be clear from my conclusions on the first issue that I find there to be a significant loss of woodland priority habitat; in conflict with the objectives of Biodiversity 2020 and the NPPF; I need not deal with this further.
52. Following the PIM and at my request, the Ecologists helpfully sought to narrow the issues between them, agreeing that the botanical survey data, supplemented by their joint findings in April 2019, was to a satisfactory standard. At their survey certain species were identified that met the standardised site selection criteria for designation as a Local Wildlife Site. The Council's witness stated that the site would be presented to the appropriate panel in October this year²⁶. I bear this in mind but can give this only limited weight at present.
53. One main difference between the parties are varying approaches to GCN and the need or otherwise for a licence. GCNs, their eggs, breeding sites and resting places are protected by law. The somewhat dated survey work found 2 juvenile GCNs in the transient pond P1 to the south of the site, and 3 adult GCNs were found in a second pond to the NW of the appeal site.
54. The appellants' out of date Phase 1 Habitat Survey states that the woodland "possesses optimum terrestrial habitat for resting, hibernation, commuting and foraging GCNs." The appellants GCN Method Statement of October 2016 states that the juvenile newts found are "likely to use the scrub and woodland edge for shelter and possibly overwintering". Thus while pond P1 is just outside the application site, the appeal site habitat of the woodland is found by the ecologists to be useful to GCNs.
55. Mr Mellor, for the appellants, was dismissive of pond P1, saying it dries out and there is no aquatic vegetation on which GCNs could lay eggs. Mr Taylor, for the Council, pointed out that GCNs are long lived creatures and even if a pond is dry one year that would not necessarily have a long-term impact on breeding success. It was also pointed out that they can lay eggs on fallen leaves, old logs, roots, stones and debris such as plastic bags²⁷, they do not necessarily exclusively require aquatic plants on which to place eggs. Lastly, a practical question – if juvenile GCNs are found in pond P1 and, this is not a breeding pond, then what were they doing there and where had they come from? Common sense seems to lead me to P1 most likely being a breeding pond in some years. The appellants' own Phase 1 Habitat Survey recommended that all ponds deemed suitable be subjected to survey at the appropriate time of year.²⁸

²⁶ Mr Taylor's proof, paragraph 5.12

²⁷ Great Crested Newt Conservation Handbook, LPA2

²⁸ CD1.11 paragraph 7.7

56. Notwithstanding these contradictory arguments, all I can know with certainty from the evidence provided to me are that some adults are about; GCNs are breeding somewhere in the vicinity (since juveniles have been found) and that the woodland is 'optimum terrestrial habitat' for GCNs.
57. The Council submitted that further terrestrial surveys should be undertaken to inform a mitigation strategy and that, in line with government advice, this information should be considered as part of the decision-making process and cannot be considered afterwards or dealt with by conditions. I agree.
58. The appellants argued that the Natural England (NE) Risk Assessment Tool indicates that an offence is highly unlikely provided that no more than 0.5ha of land within 100m – 250m of a breeding pond is lost or damaged²⁹. My problem with this submission is that the exact location of the breeding pond is unknown (and there must be one) and the habitat area that would be lost is not known (see my paragraph 46 above) but would be significantly greater than 0.5ha by my rough calculation.
59. Mr Mellor gave great weight to NE's publication of a Method Statement for Licence Applications and NE's concern about a trend towards increasingly precautionary applications. However, NE's advice is still based upon an expectation of being able to identify core, intermediate and distant habitats from breeding ponds. I cannot say with certainty where the breeding pond is, the survey information is, in any event, dated, so it cannot be said that the scheme would not be harmful to maintaining the population at a favourable conservation status in its natural range. Thus I cannot state that the two tests of the Habitat Regulations would be met.
60. While I am aware that mitigation is offered in the form of the construction of a new pond within the woodland area, this is to be constructed with a mini-digger according to the BMP³⁰, in the northern section of the woodland. Thus this would involve mechanical incursion into the northern area, inevitably causing some further loss of priority woodland habitat for the footprint of the pond and the route to it.
61. I have already referred to the hedgerow on the west side of the site in dealing with issue (i) in character and appearance terms. The appellants' belated proposal of maintaining the existing hedgerow at 0.6m in height would require constant trimming all through the growing season which is also the nesting season. The appellants' BMP³¹ states at 3.3.3 that continual annual trimming leads to deterioration and what the appellants now propose would be more frequent than annual. Further, the same document advises trimming only in January and February, to avoid the nesting season and to allow a berry crop. The Plan, which is a part of the appellants' case, advises an entirely different management regime that seeks to develop a thick bushy structure to maximise its value for nesting birds. The appellants abrupt change of course during the inquiry goes directly against their own case at this point.
62. Other species that may be affected include the badgers; there is a sett within the woodland and paths leading through the area to be developed to the edge of the woodland and out to adjacent pasture where they will forage. While the

²⁹ CD1.14 GCN Method Statement Mitigation Strategy & Enhancement October 2016

³⁰ CD1.13 paragraph 3.3.2

³¹ CD1.13

sett would not be affected, it is likely that there would be some disturbance to the animals from noise, disturbance and human activity; the long term outcome is simply not known.

63. The Statement of Common Ground agreed that, "as mature trees are to be retained", and subject to suitable lighting and arboricultural requirements in relation to bat roost features, there would be no likely significant adverse effects on the conservation status of bats. While acknowledging the limitations of this agreement, it seems to me that so much is uncertain as to what development is going where, and what the extent of public access might be throughout the woodland, it is difficult to state with certainty that defective trees, likely to be more attractive to bats, could be retained. However, it is possible that some favourable scheme could be reached.
64. As regard the 4 priority bird species Song Thrush, Marsh Tit, Bullfinch and Dunnock, it is clear that they find the woodland, in its present state, a place to breed as they have been recorded there. The appellants have given various vague and conflicting statements as to the extent of public access and the works possibly planned for the northern area. I think it likely that the sheer disturbance and human activity, and the inevitable clearance of vegetation and loss of seclusion that I discuss under issue (i) would limit the attractiveness to these species, if they find the present dense vegetation attractive. Given the small proportion of woodland in the area and in the Claylands generally, there would be nowhere for displaced creatures to move to.

Balancing the positive benefits

65. I have considered carefully the weight that I might attach to the proposed benefits offered by the scheme. The appellants intend to "achieve economic growth in our area and undoubtedly there will be a ripple effect into neighbouring locations".³² Short holiday breaks in the UK are a popular element now and the appellants argued that the scheme would cater for the known demand in woodland holidays, while creating a draw away from the Peak District hotspots.
66. I have already expressed my puzzlement as to the likely activities of visitors. I have conflicting evidence that rural escapees would not be seeking to indulge in travelling to other destinations as the Planning Statement says, but would also go out and add to the local economy by cycling from the site, eating out and making local purchases. I conclude that visitors to this very small woodland, constrained by dense and impenetrable vegetation, would have no obvious activity available to them except to leave the site, so there probably would be a modest spend elsewhere.
67. Mrs Lewis argued that the woodland was in need of "extensive management" and that sympathetic economic activity could be used to "restore" the woodland and manage it for enjoyment by subsequent generations. The BMP sets out that, generally, woodlands which are structurally diverse and have a range of habitats within them, glades, coppices etc, tend to support more biodiversity.
68. A range of actions are proposed at paragraph 3.3.1, such as clearing around mature trees to reduce competition for light and nutrients, thinning of

³² Mrs Lewis's evidence.

overcrowded immature trees, trimming and coppicing of shrubs in the woodland edges, tree planting and the removal of invasive species. All these suggestions sit alongside the statement that "the interior of the woodland will not be overly managed but retain areas of dense undergrowth." Given the likely extent of the development footprint, together with the possible boardwalks and the proposed pond, there seems to me to be little space left over, within the overall woodland appeal site, for an undisturbed northern area in addition to the creation of this new habitat by all these means.

69. Rather, it seems to me to represent the displacement of much of the present habitat and the replacement with another. This may be more biodiverse, but I do not have the evidence that there would be "measurable net gains for biodiversity" as the NPPF states. The scheme would conflict with policy BNE3 since it does not represent development which contributes to the protection and enhancement of biodiversity or deliver net gains in biodiversity. The policy continues that, regarding priority habitats and species, applications need to be supported by sufficient surveys so that the likely impact can be understood. Where mitigation measures cannot sufficiently offset the significant harm then permission will be refused. Such is the case here.

Other matters

70. All the neighbours who wrote in about the scheme were concerned about the additional traffic on a minor lane, among other issues. This was not a reason for refusal and, as I intend to dismiss the appeal, I need not deal with the matter further.

Conclusions

71. The NPPF at paragraph 2 requires applications for planning permissions to be "*determined in accordance with the development plan unless material considerations indicate otherwise*". The scheme would be in conflict with Local Plan policies BNE3, BNE4 and BNE7. It would result in landscape, character and appearance harm and the loss of priority woodland habitat and most probably harm to protected and priority species.
72. I acknowledge that the proposal would provide some novel holiday accommodation, together with modest economic benefits to the locality in terms of visitors eating out and making local purchases to which I attach a little weight. However having carefully weighed these benefits, they do not outweigh the harm I have identified above. Accordingly the proposal would conflict with local and national policy and the appeal is dismissed.

Gillian D Grindey

Inspector

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr J Smyth Barrister No 5 Chambers

He called	Mr T Taylor BSc(Hons) ACIEEM
	Mr C Nash BSc(Hons) MRTPI
	Mr N Northrop BA(Hons)

FOR THE APPELLANTS

Mr J Steedman

He called	Mrs C Lewis
	Mr I Murat MSc MCIEEM
	Mr R Mellor BA(Hons) MSc CIEEM

DOCUMENTS

CD1.1 – 1.26; 2.1 – 2.6; 3.1 – 3.12; 4.1 – 4.5 as listed previously in prepared Core Documents file plus Statement of Common Ground signed on 7 June 2019

Handed in at the inquiry:

LPA1 - CIEEM advice note

LPA2 - extract from Great Crested Newt Conservation Handbook

LPA3 - Extract Hedgerow Survey Handbook

LPA4 - not used

LPA5 - Area impact calculation 8%

LPA6 - Area impact calculation 14%

LPA7 - Area impact calculation 27%

LPA8 – Rosliston photographs

LPA9 – Landscape Character Descriptions Derbyshire Claylands

LPA10 – emails Taylor/Mellor May 2019

LPA11 Opening by Mr Smyth

LPA12 Closing submissions of Mr Smyth

LPA13 Costs application

APP1 –application plan L70/1b with position of foul drainage, septic tanks and drainage field added on, parts outwith application site edged red

APP2 – extract from Building Regulations re wastewater treatment

APP3 plan given to Mr Murat by Mr Smyth to show areas for re-planting

APP4 Closing submissions of Mr Steedman

Costs Decision

Inquiry Held on 11 - 13 June 2019

Site visit made on 11 June 2019

by G D Grindey MSc MRTPI Tech Cert Arb

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

Decision date: 8th July 2019

Costs application in relation to Appeal Ref: APP/F1040/W/18/3217891 Boden's Sticks, Cropper Lane, Osleston, Ashbourne, DE6 5BL

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr and Mrs R Lewis for a full award of costs against South Derbyshire District Council.
 - The inquiry was in connection with an appeal against the refusal of planning permission for the change of use of existing woodland to a site for the location of six log cabin holiday letting units falling within the definition of caravans.
-

Reasons

1. The Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
2. Mr Steedman argued that the Council had been aware of the appellants' intentions since the application was made. While claiming that the appellants caused delay, the real delay was awaiting the Council's assessment of their own arboricultural information. A meeting was held with the Planning Officer dealing with the application, but no progress was made and there was nothing to discuss as she stated she was waiting for the arboricultural report the Council had commissioned – the Morfe Valley report.
3. When it arrived (21 May 2018), the appellants had little opportunity to respond as the application was heading for the committee (5 June 2018). The appellants consider that the only opportunity to debate the case, based on the reasons for refusal, is at the inquiry and the issues relating to the appeal were not flushed out until the proofs of evidence were received and meetings were held between the technical experts following the Pre Inquiry Meeting (PIM) and prior to the Statement of Common Ground being agreed.
4. The appellants have had no alternative but to proceed with an appeal because there had been no indication that the Council would change their position. The Council has behaved unreasonably in taking the appellants to this stage.
5. Firstly, I think it is clear that the Council was not aware of the appellants' intentions, that has been a problem all along. Like me they have been struggling to understand the nature of the proposals and obviously had so little trust in the arboricultural report supplied with the application that they

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commissioned their own report – an unusual step for a Council in my experience.

6. The application is dated 21 July 2017; it is clear from consultation replies in CD1.21 that the normal consultations were undertaken and responded to in the later half of that year. These replies provide interesting reading. The consultation replies point out that the appellants own arboricultural report does not even mention that the woodland is a deciduous woodland priority habitat, I am not surprised the Council commissioned one of their own.
7. Other consultation replies indicate that “further consideration needs to be given to how the increased levels of human disturbance will be controlled and minimised through areas of non-intervention within the woodland”. And further down the same email, of 6 October 2017, Mr Taylor states “no specific measures have been provided in the supporting information to address [the issue of disturbance]. “insufficient information has been provided to...” As the email from Mr Taylor to Mr Lewis and Sarah Arbon dated 7 December 2017 states. Sarah Arbon writes on the same day that: “In order to establish if there would be any loss of hedgerow I requested...”. It is clear that the Council was not aware of the intentions of the appellants and suffered from the same lack of information as was apparent still at the appeal. These documents list the lack of information. Since one of these emails is to Mr Lewis it is not quite accurate to say that there had been no discussions and no opportunity to debate the case with the Council.
8. I find it incorrect to argue that an appeal had to be lodged because there was no indication that the Council would change their stance. I find that the Council did the best they could with the information they had when they gave it their formal consideration. The reasons for refusal refer to the need for “**details**” and “**how**” the access surface and foul drainage might work. They state that mitigation details have “**not been supplied**”. When the appeal was lodged and I read the file I decided a PIM might give some focus on exactly the areas of dispute between the parties, although, in the event I was still asking very similar questions and for the proposals to be fleshed out at the inquiry.
9. During the appeal the proceedings the Council had to deal with the same lack of information, or conflicting information, (and the appellants changing the nature of their case) as I have set out in the other costs decision. Again, I find that they dealt with the behaviour reasonably, effectively and with no delay or request for adjournment.
10. I consider that unreasonable behaviour, resulting in unnecessary expense as described in the PPG has not been demonstrated and I therefore conclude that an award of costs is not justified.

Decision

11. The application for an award of costs is refused.

Gillian D Grindey

Inspector



Appeal Decision

Site visit made on 28 May 2019

by M Russell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 July 2019

Appeal Ref: APP/F1040/W/18/3216847

Land rear of numbers 53 and 67 Woodville Road, Hartshorne, Swadlincote DE11 7ET

- 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 & Mrs Cartwright & Craner against the decision of South Derbyshire District Council.
 - The application Ref 9/2018/0709, dated 29 June 2018, was refused by notice dated 5 November 2018.
 - The application sought outline planning permission for residential development (approximately 14 dwellings) without complying with a condition attached to planning permission Ref APP/F1040/W/17/3167838, dated 4 July 2017.
 - The condition in dispute is No 9 which states that: The number of affordable housing units built on the application site shall exceed the total number of open market housing and no more than 80% of the open market units shall be occupied before the completion and transfer of the affordable housing units.
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Decision

1. The appeal is allowed and outline planning permission is granted for residential development (approximately 14 dwellings) at land rear of numbers 53 and 67 Woodville Road, Hartshorne, Swadlincote, Derbyshire, DE11 7ET, in accordance with application Ref. 9/2015/1215, dated 13 December 2015, and the plans submitted with it, subject to the 15 conditions set out in the attached Schedule.

Procedural Matter

2. The planning permission granted under appeal Ref APP/F1040/W/17/3167838 included a legal Obligation, made under section 106 of the Act. The previous Inspector was satisfied that the contributions in the Obligation were necessary and met the test in the National Planning Policy Framework (the Framework) and the appropriate Community Infrastructure Levy Regulations (CIL).
3. In order to ensure the previously agreed Obligations are secured under any new planning permission, the appellants have provided a Unilateral Undertaking (UU) (dated 5 July 2019) undertaking to provide contributions towards on-site open space, built facilities, healthcare and outdoor sports facilities. In respect of these contributions, the Council has provided a schedule to show where the policy requirement for the contribution comes from; how the contribution will be spent; and whether there are any other 'pooled contributions' under the terms of the CIL Regulations. The Council has confirmed that this schedule was also provided to the Inspector for the

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previous appeal on the site. I am satisfied that the UU is necessary and that it satisfies the tests set out in paragraph 56 of the Framework.

4. Following comments on an earlier version of the UU, the Council has been provided with an opportunity to comment on the latest version and have confirmed that their previous comments have been addressed. I am therefore satisfied that the UU appropriately updates the Obligations required for a new planning permission on the site.

Background

5. Outline planning permission was originally granted on appeal in July 2017 for approximately 14 dwellings on the site. The appeal decision included Condition 9 the terms of which are set out in the above heading. The planning application subject to this latest appeal sought to remove this condition.

Main Issue

6. The main issue is whether Condition 9 is reasonable or necessary having regard to the principle of residential development in this location when considered against the development plan and national policy.

Reasons

7. The appeal site is located outside the defined settlement boundary for Hartshorne and in the countryside. This is not disputed by the parties. Policy SDT1 (Settlement Boundaries and Development) of the South Derbyshire Local Plan Part 2 (SDLP2) (2017) sets out that settlement boundaries define the built limits of a settlement. The explanatory paragraphs 2.3 and 2.4 under Policy SDT1 state amongst other things that 'other than in the circumstances permitted by Policy BNE5 and other relevant policies, development will not normally be permitted within the Rural Areas'. Policy BNE5 (Development in Rural Areas) of the SDLP2 states that outside settlement boundaries planning permission will be granted where the development is allowed for by policies including Policy H1 amongst others.
8. Policy H1 (Settlement Hierarchy) of the South Derbyshire Local Plan Part 1 (SDLP1) (2016) sets out that for 'Local Service Villages' including Hartshorne, development of sites adjacent to the settlement boundary will be considered as exceptions or cross subsidy sites as long as they are not greater than 15 dwellings. The appellants contend that the appeal scheme for approximately 14 dwellings adjacent to the settlement boundary is an exception under the terms of this policy. The Council's case however argues that 'exception' under Policy H1 should be taken to mean 'Rural exception site' and that Policy H1 should be read alongside Policy H21 (Affordable Housing) of the SDLP1 which sets out the requirements for 'Rural exception sites' and includes that such developments provide a majority of affordable homes.
9. Policy H21 does cross reference Policy H1, but only to state that the number of dwellings on a 'Rural exception site' is to be in accordance with Policy H1 as an exceptional circumstance to normal policy. Policy H21 does not provide a direct link to Policy H1 in terms of how an 'exceptions or cross subsidy site' is defined nor does it go as far as saying that an 'exception site' and a 'rural exception site' are one and the same thing. Similarly, the definition of 'rural exception sites' as provided in Annex 2 of the Framework, does not assist in resolving the differences in description within the Council's development plan.

10. Policy H1 has an 'or' between 'exceptions' and 'cross subsidy sites' and can only be taken to mean that these are two separate considerations. The definition in the SDLP1 Glossary, combines the terms and defines 'cross subsidy exception sites' and is therefore unhelpful in deciphering what is meant by 'exceptions'. There is no separate definition in the SDLP1 Glossary for 'exceptions'. In the circumstances, the word 'exceptions' can only be taken to mean what is specifically set out in Policy H1 and cannot be assumed to mean 'rural exception site' which is dealt with separately under Policy H21.
11. I therefore concur with the appellants and the conclusions of the Inspectors that dealt with appeals in Melbourne¹ and Repton² when considering the requirements of Policy H1. The Council suggests this is an overly legalistic and isolated interpretation of the text in Policy H1 and such an approach is not supported by the Courts. However, I find the Inspectors interpreted the plan policies objectively in accordance with the language used and could not be expected to conclude that Policy H1 says something that it does not. Accordingly, the proposal before me meets the exceptions under Policy H1 given its location adjacent to the settlement boundary and not being greater than 15 dwellings.
12. The Council has referred to another appeal in Repton³, however I am not persuaded that this appeal provides any further clarity on the definition of 'exceptions' under Policy H1.
13. I sympathise to a degree with the Council's stance that development of sites outside defined settlements and in the countryside for market housing could undermine a plan led system. I am also particularly mindful that the Council can demonstrate more than a 5-year housing land supply and has an up-to-date development plan. The Council argues that rural exception sites outside settlement boundaries are well established principle up and down the country and that there can be no ambiguity. It contends that the appellants' argument is flawed as without the disputed condition, 'exceptions' would allow for 100% market housing outside settlement boundaries. However, I must have regard to the specific wording of the policy and this is precisely what the policy allows for in this location provided the number of dwellings is not greater than 15. Whether or not this was what was intended when the policy was drafted is not a matter for me to determine under an appeal made under Section 73 of the Town and Country Planning Act 1990 (the Act).
14. The Council suggests the appellants' case gives little regard to the Affordable Housing Supplementary Planning Document (SPD) (2017) which it says makes clear that policies work together to facilitate affordable housing. I agree with the Inspector for the Repton² appeal that the SPD does not purport to interpret Policy H1, but simply provides a summary of how the policy can facilitate the delivery of affordable housing within the district.
15. For the above reasons, having given regard to the location and scale of the development the previously imposed Condition 9 is not necessary, and the development would be appropriate taking in to consideration the requirements of Policies S1 (Sustainable Growth Strategy), S4 (Housing Strategy), H1 (Settlement Hierarchy) and H21 (Affordable Housing) of the SDLP1 and Policies

¹ Ref APP/F1040/W/17/3171029

² Ref APP/F1040/W/17/3191604

³ Ref APP/F1040/W/18/3207758

SDT1 (Settlement Boundaries and Development) and BNE5 (Development in Rural Areas) of the SDLP2, which seek amongst other things to promote sustainable growth and development to a scale appropriate to the size and role of the settlement.

Other Matters

16. The Council identifies that the development would result in visual and landscape harm that, without the benefits secured by the contested condition, would weigh against the proposal. In reaching his decision on the original appeal, the Inspector found that the site does not play an important role visually in forming the edge of the village and would not be harmful to the street-scene or be out of place in the landscape when judged against the appearance of neighbouring development when viewed from the public footpath from the south-east. In any case, Section 73(2) of the Act makes it clear that in considering a proposal seeking to carry out development without complying with a condition, the decision maker "shall consider only the question of the conditions subject to which planning permission should be granted". The Planning Practice Guidance also confirms that it is only the disputed condition under consideration and not a complete re-consideration of the proposal.
17. I note the objections received by the Parish Council and other third parties. The Parish Council wrongly asserts that the Council previously granted planning permission but that this was dismissed on appeal. The previous appeal was allowed.
18. Concerns have been raised that there is a need for affordable housing in the area. As set out above, under the relevant Policies of the development plan, affordable housing is not a necessity to allow for a development of the scale proposed in this location. That the Inspector for the previous appeal made his own assessment of the proposal against the development plan and considered it appropriate to attach the condition corresponded with the considerations in the case before him at that time and is not on its own reason to dismiss the current appeal. Equally, I have assessed the proposal based on the evidence before me which includes a focus on the specific nuances of the wording within the relevant policies and reference to other appeal decisions that have considered similar matters. On the basis of my findings the condition previously attached does not pass the necessary test set out in the Planning Practice Guidance.
19. Any additional financial gain for the appellants if affordable housing is not required is not a material planning consideration. Reference is made to the other appeals referenced where the Inspectors have concluded that affordable housing was not a requirement related to sites adjacent to Melbourne and Repton and that these are 'Key service villages' in the settlement hierarchy and larger than Hartshorne. However, other than the maximum number of dwellings for an exception site in these villages being not greater than 25 dwellings, when compared with not greater than 15 dwellings for 'Local service villages' such as Hartshorne, the text in Policy H1 in terms of sites adjacent to settlements boundaries is the same.
20. Section 73 of the Town and Country Planning Act 1990 allows for applications seeking to carry out development of land without complying with conditions subject to which a previous planning permission was granted, and therefore the

appellants are not required to submit a full planning application as is implied in the written representations submitted.

21. The potential impact of the proposal on the privacy for the occupiers of existing dwellings was a matter considered under the previous appeal. The Inspector in that case noted that the proposal was in outline and that the specific scale of development was not committed and would be dependant on the subsequent detailed plans. It was acknowledged at the time that any subsequent reserved matters application would be considered in respect of the normal standards for new development and this would include ensuring neighbouring living conditions are protected.

Conditions

22. Other than Condition 9, none of the other conditions attached to the previous appeal on the site are being contested. The guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. As I have no information before me about the status of the other conditions imposed on the original planning permission, I shall impose all those conditions that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.
23. With regards to Condition 1 in respect of the time limit for submission of reserved matters, Section 73(5) of the Act and the Planning Practice Guidance confirms that planning permission must not be granted under this section to the extent that it has the effect of extending the time within which an application for approval of reserved matters must be made. Other than the condition contested under this appeal, which I have removed, I consider all remaining conditions are reasonable and necessary. The majority of conditions are therefore unaltered, including those with a pre-commencement requirement which I consider to be appropriate given the details relate to protection of habitats, safe access during the construction phase and disposal of surface water and foul sewage which may require works below the surface before hard surfacing is laid. However, the condition requiring a detailed lighting survey could reasonably be provided at a later point and I consider it reasonable to alter the wording to this condition requiring the details to be provided prior to any development beyond slab level.

Conclusion

24. For the reasons given the appeal is allowed.

Martin Russell

INSPECTOR

Schedule of conditions

- 1) Application for approval of the reserved matters shall be made to the Local Planning Authority before 4 July 2020. The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the reserved matters to be approved.

- 2) This permission is granted in outline under the provisions of Article 5(1) of the Town & Country Planning (Development Management Procedure) (England) Order 2015, and the further approval of the Local Planning Authority is required (before any development is commenced) with respect to the following reserved matters: Appearance; Landscaping; Layout; and Scale of the development.
- 3) Details submitted under condition 2 shall include the proposed finished floor levels to the dwellings, including existing and proposed surrounding land levels relative to the dwellings, as well as proposed boundary treatments and surfacing materials, and the retention of the landscaping buffer to Woodville Road.
- 4) No development shall commence until all retained hedgerows have been 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.
- 5) No development shall commence until a Landscape and Ecological Management Plan has been submitted to and approved by the Local Planning Authority. Temporary mitigation provisions shall be implemented prior to any works commencing on site and thereafter retained throughout the course of construction. Permanent mitigation and enhancement measures shall be implemented prior to first occupation of the dwellings hereby approved and thereafter maintained as such.
- 6) No development shall take place until a construction management plan or construction method statement has been submitted to and been approved in writing by the Local Planning Authority. The approved plan/statement shall be adhered to throughout the construction period. The statement shall provide for the storage of plant and materials, site accommodation, loading, unloading of goods vehicles, parking of site operatives' and visitors' vehicles, routes for construction traffic, hours of operation, method of prevention of debris being carried onto highway and any proposed temporary traffic restrictions.
- 7) No development shall be commenced on site until a temporary access into the site to Woodville Road for construction purposes has been provided in accordance with a detailed design first submitted to and approved in writing by the Local Planning Authority. The access shall have a minimum width of 5.5m, 10m radii, constructed to base level and be provided with visibility sightlines of 2.4m x 65m in each direction. The area forward of the sightlines shall be cleared and maintained throughout the period of construction clear of any obstruction exceeding 600mm in height relative to the nearside carriageway edge.
- 8) Before any development takes place beyond slab level, a detailed lighting strategy shall be submitted to and approved in writing by the Local Planning Authority. Such approved measures will be implemented in full.
- 9) No work shall take place on the site until details of schemes for the disposal of foul water and surface water drainage from the site have been submitted to and agreed in writing by the Local Planning Authority. The agreed schemes shall be carried out in conformity with the details which have been agreed before the development is first brought into use and the schemes shall be retained thereafter.

- 10) Prior to the first occupation of any dwelling on the site, the new access shall be laid out in accordance with application drawing, constructed to base level, drained and lit in accordance with Derbyshire County Council's specification for adoptable roads. The access shall have a minimum width of 5.5m, be provided with 2 x 2m footways, 6m radii and visibility splays of 2.4m x 65m in each direction. The area forward of the sightlines shall be level, form part of the public highway, be constructed as footway and not part of any plot or other sub-division of the site.
- 11) Prior to the first occupation of any dwelling, space shall be provided within each plot curtilage for the parking of two vehicles and maintained throughout the life of the development free of any impediment to its designated use. For the avoidance of doubt, where a garage is counted as a parking space, the internal dimensions should not be less than 3m x 6m.
- 12) The new dwellings shall not be occupied until the proposed new estate street, between each respective plot and the existing public highway, has been laid out in accordance with the approved application drawings, constructed to base level, drained and lit in accordance with the County Council's specification for new housing development roads.
- 13) Notwithstanding the submitted information, a subsequent reserved matters or full application shall include design of the internal layout of the site in accordance with the guidance contained in the 6Cs Design Guide and the "Manual for Streets" document issued by the then Departments for Transport and Communities and Local Government.
- 14) The gradient of the new estate street accesses shall not exceed 1:30 for the first 10m into the site from the highway boundary and 1:20 thereafter.
- 15) No removal of hedgerows, trees or shrubs shall take place between 1st March and 31st August inclusive, unless a competent ecologist has undertaken a careful, detailed check of vegetation for active birds' nests immediately before the vegetation is cleared and provided written confirmation that no birds will be harmed and/or that there are appropriate measures in place to protect nesting bird interest on site. Any such written confirmation should be submitted to the local planning authority.

Appeal Decision

Site visit made on 21 May 2019

by K Savage BA MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 July 2019

Appeal Ref: APP/F1040/W/19/3223811

The Bungalow, Colliery Lane, Linton, Swadlincote DE12 6PB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr M Lee against the decision of South Derbyshire District Council.
 - The application Ref 9/2018/0867, dated 8 August 2018, was refused by notice dated 17 December 2018.
 - The development proposed was originally described as '*Residential development of circa 11 dwelling houses on land in the ownership of The Bungalow, Colliery Lane, Linton. All matters are reserved for future consideration with the exception of access, which is included as a detail.*'
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant asserts that the Council changed the description of development from that given on the application form without agreement. For the avoidance of doubt, I have considered the appeal on the basis of the original description, as an outline application with the matter of access to be considered, and all other matters reserved for future consideration. I have treated the submitted plans as being for indicative purposes only, except for details of the site location and area, and the proposed access.
3. On 19 February 2019, the Government published an update to the National Planning Policy Framework (the Framework). This update does not materially alter the national policy approach in respect of the issues raised in this appeal and therefore the main parties have not been prejudiced by its publication.
4. The appellant signed Certificate A on the application form. The Council contends that this was the wrong certificate, as it points out that an area of land within the red line adjacent to Colliery Lane does not form part of the title deed supplied with the application. I have noted the appellant's points in response, including that there is no other claim on the land. The purpose of the certificate is to ensure that owners of land are aware of development proposals which affect their property, allowing them to engage in the application process. I note that the proposal was widely publicised, including by a site notice and press notice. Based on the evidence before me I am satisfied that, whether or not the correct certificate was signed, no party would be prejudiced by my determination of the appeal.

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Main Issues

5. The main issues in this appeal are:
- Whether the proposal would represent a suitable location for housing, having regard to relevant development plan policies and the guidance of the Framework;
 - The effect of the proposal on the character and appearance of the area;
 - The effect of the proposal on protected trees;
 - Whether, if necessary, satisfactory provision is made to mitigate the impact of the proposed development on local infrastructure.

Reasons

Location for housing

6. The appeal site is located to the edge of the village of Linton and comprises a bungalow and various outbuildings with spacious grounds bordered by mature trees and hedgerows and a further group of trees to the centre of the site. The settlement boundary of Linton as defined in the South Derbyshire Local Plan Part 2 (2 November 2017) (LP2) runs through the appeal site. The bungalow and a small part of its grounds towards the entrance are within the settlement boundary, where development would normally be acceptable in principle, with the rest of the site, where the proposal would be located, lying outside the boundary and therefore in the countryside for planning purposes.
7. The dispute between the main parties centres principally on the interpretation of the text of Policy H1 of the South Derbyshire Local Plan Part 1 (13 June 2016) (LP1) and its application to the appeal proposal. Policy H1 sets out the settlement hierarchy for the district. Linton is identified as a 'Key Service Village' in the second tier of the hierarchy. Under this tier, the policy states that *'development of all sizes within the settlement boundaries will be considered appropriate and sites adjacent to settlement boundaries as an exceptions or cross subsidy site as long as not greater than 25 dwellings.'*
8. The Council points to two definitions in the glossary to the LP1 which it considers define the terms *'exceptions or cross subsidy site'* in Policy H1:
- 'Affordable Housing Exception Site (or Rural Exception Site): A site which would not normally secure planning permission for housing due to being adjacent to a settlement boundary but is allowed for development solely for affordable housing.'*
- 'Cross subsidy Exceptions Site: Are sites that would not normally secure planning permission, however development of the site is granted for both affordable and some private housing to allow the site to be viable.'*
9. As such, the Council's position is that the proposal for around 11 market dwellings would not constitute an *'exceptions or cross subsidy site'* as defined in the glossary and given the site's location adjacent to, but outside of, the settlement boundary, the proposal would conflict with Policy H1 and the site would not represent a suitable location for housing.

10. The appellant argues that the LP1 provides no definition of an 'exceptions site' or a 'cross subsidy site', and that the 'exception' in the context of Policy H1 refers to the number of dwellings, which in the case of Linton would mean development of no more than 25 dwellings would be appropriate on sites adjacent to the settlement boundary, and thus the appeal proposal for around 11 dwellings would be supported under Policy H1.
11. The appellant has submitted appeal decisions in support of his position¹ where the Inspectors considered the meaning of the wording in Policy H1. In the *Melbourne* appeal, the Inspector considered there to be ambiguity between the language of the policy itself and the phrasing of the glossary definition of 'Cross subsidy Exceptions Site' as the latter conflates the two terms of the policy. As a result, the Inspector reasoned that the 'exception' in the policy related not to either of the glossary definitions, but to the number of dwellings. A similar conclusion was reached by the Inspector in the *Askew Lodge* appeal.
12. Two other decisions are referred to me by the Council in support of its position, one in *Hartshorne*² and my own decision on an appeal in *Repton*³. In the *Hartshorne* appeal, the Inspector cross referenced the requirements of Policy H1 with Policy H21, which relates to affordable housing requirements, having identified the 'exceptions or cross subsidy site' as referring to rural exception sites, before going on to consider the proposal, which included affordable housing, against the criteria of Policy H21.
13. In the *Repton* appeal, I stated that I had no evidence the site was promoted as an 'exceptions or cross subsidy site, which relates primarily to affordable housing led development.' The appellant contends, in the light of the other appeal decisions cited, that this was a misinterpretation of the policy. Neither the *Melbourne* nor *Askew Lodge* appeal decisions were put to me in evidence during that appeal, and consequently, I was unable to have regard to them. Moreover, the interpretation of Policy H1 was not central to the appellant's case in the *Repton* appeal. Therefore, I regard this decision to be of limited relevance to the present appeal.
14. I have had regard to each of these appeals as material considerations, although the evidence in each case is limited to the submitted decision letters. In doing so, I recognise that consistency in the planning process is important and like cases should be decided in a like manner. However, it is also important that each case is determined on its own merits and on the basis of the evidence before the Inspector at the time.
15. In that respect, the Council also refers to a recent Court of Appeal (CoA) judgement⁴, where it was held that when the disputed policy was read in combination with other policies, it formed a comprehensive spatial strategy, and that by doing so it was clear where development would be acceptable. The findings of the CoA indicate that when applying development plan policies decision-makers should have regard to the development plan as a whole. This judgement is of relevance to the appeal before me in light of the Council's position that other policies in the development plan need to be read in conjunction with Policy H1 to establish where development is permitted under

¹ Appeal Ref: APP/F1040/W/17/3171029 – Dismissed 3 November 2017 (the *Melbourne* appeal) and Appeal Ref: APP/F1040/W/17/3191604 – Allowed 20 April 2018 (the *Askew Lodge* appeal)

² Appeal Ref: APP/F1040/W/17/3167838 – Allowed 4 July 2017 (the *Hartshorne* appeal)

³ Appeal Ref: APP/F1040/W/18/3207758 – Dismissed 2 November 2018 (the *Repton* appeal)

⁴ Gladman Developments Ltd v Canterbury City Council [2019] EWCA Civ 669 – 16 April 2019

the spatial strategy, and of what type. Importantly, this judgement was not before the Inspectors in the other appeals referred to me.

16. On my reading of policy H1, there are two requirements for development to be considered appropriate adjacent to settlement boundaries. First it must be either an 'exceptions or cross subsidy site'. Secondly, the proposal must be for no more than 25 dwellings in this particular case. In this respect, I disagree with the interpretation of the Inspectors in the *Melbourne and Askew Lodge* appeals. If, as my colleague Inspectors considered, there is only one requirement, that being a limit on numbers, then the words 'or cross subsidy' in the policy text are superfluous, as the development would not need any other qualification to be permitted as an exception as long as it was 25 dwellings or fewer.
17. However, 'cross subsidy' is defined within the development plan, albeit the glossary definition adds the word 'exception' to the term used in the policy. But in my view, that does not confuse its meaning to such an extent that it cannot be seen that both it and the other glossary definition relate to matters of housing delivery, and that they relate to the terms used in Policy H1. This is reinforced by the fact that both definitions are similar in describing development which would not normally be granted planning permission but are allowed for specific reasons. The '*Affordable Housing Exception Site (or Rural Exception Site)*' definition further refers to the site being 'adjacent to a settlement boundary' which aligns with the locational qualification set out in Policy H1 and would apply to the appeal site. The definitions and their application to Policy H1 are further explained by the Council's Affordable Housing Supplementary Planning Document (November 2017).
18. Policy H21 reinforces the approach of Policy H1, stating that '*rural exception sites that are kept in perpetuity as affordable housing for local people will be permitted adjoining existing Key Service Villages, Local Service Villages and Rural Villages, the number of dwellings to be in accordance with Policy H1 as an exceptional circumstance.*' Policy H21 directly identifies rural exceptions sites as relating to affordable housing for local people; it specifies the location where such sites are permitted – adjoining Key Service Villages – and it is clear that the number of dwellings is to accord with that set out in Policy H1. These requirements of tenure, location and number therefore align with Policy H1.
19. Having regard to the CoA judgement, the development plan as a whole should be considered. When the wider spatial strategy is considered, it is clear to me that Policy H1 is not permissive of all development up to 25 dwellings adjacent to settlement boundaries, as argued by the appellant. Rather, the purpose of Policy H1 is to permit, as an exceptional circumstance, affordable housing schemes, whether fully affordable or cross-subsidised by private housing on sites adjacent to settlement boundaries, up to the limits specified for various settlement types, as part of the wider spatial strategy of the development plan. Such an approach accords with the balanced approach to rural development in the Framework. To read the policy as permissive of all development up to 25 dwellings adjacent to the settlement boundary would seriously undermine the purpose of having settlement boundaries at all, which the Council points out is a well-established planning policy tool, and would permit such a potential amount of development to all sides of a settlement that it could not sensibly be regarded as an exception.

20. For the foregoing reasons, therefore, I find that the proposal for market housing would not constitute an exceptions or cross-subsidy site and so would not be supported under the second tier of Policy H1. Moreover, as the proposal would extend the built form further along this side of Colliery Lane, it would not amount to limited infill or a conversion of an existing building so as to gain support under the fifth tier of the policy which relates to development in rural areas. Furthermore, the proposal would not constitute one of the permitted forms of development in rural areas under Policy BNE5. Therefore, the proposal would not represent a suitable location for housing and would conflict with Policies H1, SDT1 and BNE5 and by extension Policy S1 of the LP1, which together set out the sustainable growth strategy for the district.

Effect on character and appearance

21. The site at present contains a bungalow set back from the road with a number of outbuildings to the rear. The rest of the site is laid to grass with a stand of trees toward the centre of the site. A tall, dense boundary hedgerow starts at the site entrance on Colliery Lane and continues around and along the Seal Wood Lane side to the rear corner of the site. A tall row of trees forms a prominent feature along the rear boundary.
22. There are dwellings forming a continuous row to the opposite side of Colliery Lane as far as the junction with Seal Wood Lane, marking the extent of the built up area of the settlement. The adjacent side of the street is more sporadically developed, with the bungalow on the appeal site and the next door property both set in mature grounds with substantial tree cover giving a semi-rural appearance. Beyond the site to the side and rear are open fields and an evident rural character, with views of the site possible for some distance along Colliery Lane and Seal Wood Lane.
23. The proposal would see approximately 11 dwellings located on the site, with a reduced area of land retained for the bungalow. Access would be taken from a new entrance on Colliery Lane. An indicative site plan shows an L-shaped layout with dwellings roughly aligned with the side and rear boundaries, facing into the site where the circulation routes would be located.
24. The appellant points to the existing boundary hedgerow as marking the edge of the village envelope, and that development would infill up to this 'logical' boundary. The fairly uniform shape of the hedgerow did lend it a domestic character when I viewed it on site. This is reinforced when it is seen in context with the dwellings on Colliery Lane in views from the west. However, when approaching from the junction with Main Street/Linton Heath, the mature trees and hedgerows screen the dwellings on the appeal site side and give a sense of approaching a rural environment.
25. The stand of trees to the centre are classed as young in the appellant's arboricultural report, with a life expectancy of 40+ years, and a potential to reach up to 25m compared to around 4m at present. Such a height may not be achieved in reality given the proximity of the trees to the bungalow, but it is reasonable to think that they would become taller and more prominent in the landscape as time passes. At my visit, I saw that the trees were visible above the boundary hedge and, together with other surrounding trees, they form a notable green buffer between the built form on the opposite side of Colliery Lane and the open countryside.

26. I acknowledge the appellant's points that matters of appearance, scale, landscaping and layout are reserved for future consideration, and the details provided are indicative. However, the constraints of the site, such as its shape and access point, and the number of dwellings which are potentially sought means that there is a strong likelihood that all of the trees to the centre of the site would be lost to development. This would diminish the extent and visual presence of the green buffer. Whilst the design of the dwellings could change, they would likely form a distinctly more intensive, suburban form of development which would fail to relate to the short terrace and detached dwellings which exist on Colliery Lane. Moreover, should tall dormer bungalows or two storey dwellings be built, the development would be readily visible from Seal Wood Lane and Colliery Lane. I acknowledge that the appeal site does not lie within a valued landscape. However, the site provides an informal transition between the built-up area and the countryside which would be eroded due to the loss of trees and the building of dwellings where there are none.
27. I have had regard to other developments to the edge of Linton referred to by the appellant, which I observed on site. These differ from the appeal scheme in location, scale or use, but I do not have full details of these proposals to make meaningful comparisons with the scheme before me. Consequently, I cannot be sure that these are entirely representative of the circumstances in these appeals and, in any case, I have determined this appeal on its own merits.
28. For the reasons given, the proposal would cause harm to the character and appearance of the area, contrary to Policies BE4 of LP1 and BE5 of LP2, and in turn Policy S1 of LP1, which require that the character, local distinctiveness, and quality of South Derbyshire's landscape are protected and enhanced through the careful design and sensitive implementation of new development, including retention of key valued landscape components such as mature trees, established hedgerows and topographical features, unless their loss would not give rise to unacceptable effects on local landscape character.

Effect on protected trees

29. A tree preservation order (TPO) was placed on the site during the course of the planning application. The appellant considers the TPO 'inappropriate and unfair' as the trees are of no public amenity benefit. The Council states that the TPO has been confirmed as of 2 April 2019 and the Council's Tree Officer comments that the trees have moderate to high levels of amenity value.
30. I have already found it likely that the trees to the centre of the site would be lost to the development. I have had regard to the appellant's point that replacement planting could be secured at reserved matters stage. I am not convinced this could be achieved, however, as the indicative plans show dwellings with relatively short front and rear gardens which are unlikely to accommodate trees of any great size, given the potential for them to encroach upon the dwellings with possible effects on levels of light or shading leading to pressure to prune or remove the trees. I also note the comments of the Council's highways department which indicate that the internal roads and turning areas would need to be enlarged to meet relevant standards, which would reduce further the possible areas for replacement planting. Though the layout is indicative, I find it unlikely, given the site's shape and requirements for access and internal circulation, that a vastly different or more spacious

layout could be achieved which could accommodate sufficient replacement planting for the number of trees lost.

31. It is not within the scope of this appeal for me to consider the Council's reasons for imposing the TPO. However, for the reasons already set out, I find that the trees possess amenity value as part of a green buffer between built development and the open countryside to this side of Colliery Lane. I am not persuaded that the development would be able to suitably replace the lost trees in terms of their amenity contribution, and therefore I find that the proposal would conflict with Policy BE7 of LP2, which states that the felling of protected groups of trees will be considered in accordance with the relevant national guidance and regulations, taking account in particular of their amenity, ecological, landscape and historic value, and that where protected trees are subject to felling or removal, a replacement of an appropriate number, species, size and in an appropriate location will normally be required.

Effect on local infrastructure

32. The Council points to a number of impacts on local infrastructure arising from the development. These include additional demand for school places and use of public open space, sports facilities and other built facilities. The basis for the financial contributions sought to mitigate these impacts is set out in the Council's 'Section 106 Agreements - A Guide for Developers' (Version 8, April 2010). In addition, Derbyshire County Council has produced evidence of expected pupil numbers and predicted demand for primary and secondary places. The appellant does not challenge this evidence. On the basis of the evidence before me, I am satisfied that the contributions sought are necessary to mitigate the impacts of the development on local infrastructure and would accord with the tests for planning obligations at Paragraph 56 of the Framework.
33. However, the appellant has confirmed that no signed unilateral undertaking or Section 106 agreement has been submitted. Accordingly, the proposal would fail to secure appropriate financial contributions to mitigate the impact of the proposal on local infrastructure and so would conflict with Policy INF1 of the LP1 which requires that reliable mechanisms are in place to ensure the necessary infrastructure to mitigate the impact of the development is delivered. There would be further conflict with Policies INF6 and INF9 of LP1 which address provision of, and mitigation for impacts of development on, community facilities, open space, sport and recreation.

Other Matters

34. The appellant contends that the appeal site amounts to previously developed land (PDL). The Framework supports development that makes efficient use of land, though the definition of PDL excludes land in built-up areas such as residential gardens. The main parties differ on whether the undeveloped part of the site is within a built-up area or is a residential garden, and thus whether it would amount to PDL. The evidence before me is inconclusive, but even if I were to consider the site amounts to PDL, the proposal would not make efficient use of land as, given the harm I have found in respect of character and appearance, it would not maintain the area's prevailing character and so would not accord with Paragraph 122 of the Framework.

35. The Council did not find harm in respect of highway safety. I have had regard to the comments of interested parties on matters such as increased traffic and the condition of the road but I do not have substantive evidence to conclude differently to the Council. The absence of harm in this respect would, however, be a neutral factor in the planning balance.
36. An application for costs was initially made by the appellant against the Council, but this was later withdrawn. The Council indicated that it was considering making its own application for costs against the appellant, but a formal application has not been made. It is not necessary, therefore, for me to take these matters any further.

Planning Balance

37. The addition of around 11 dwellings to the District's housing stock would be an important benefit of the scheme weighing in favour of the proposal. There would be some economic benefits arising from the construction of the dwellings, though these would be temporary, and subsequently from spending by future residents in the local economy. Given the scale of the development, such benefits would not be significant, and I afford them limited weight.
38. Set against these benefits, I have found there would be significant harm arising from the location of the proposal, its adverse effect on the character and appearance of the area, the loss of protected trees and the failure to mitigate the effect on local infrastructure. This results in conflict with the development plan as a whole to which I give significant weight.
39. The appellant alludes to the marginal position of the Council's five year housing land supply, pointing to appeal decisions from 2016 and 2017 where supply was found to be as low as 4.37 years. I do not have details of these cases before me, however. The Council points to its latest Housing Position Paper showing supply at 5.5 years. The evidence before me in this respect is inconclusive. However, even if I were to conclude there is a shortfall in the five-year housing land supply on the scale suggested by the appellant, the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits and the proposal would not amount to sustainable development in terms of the Framework.

Conclusion

40. For the reasons given, and taking all relevant matters into consideration, the proposal would result in conflict with the development plan which is not outweighed by other material considerations. The appeal is therefore dismissed.

K. Savage

INSPECTOR

Appeal Decision

Site visit made on 9 July 2019

by **A Blicq BSc (Hons) MA CMLI**

an Inspector appointed by the Secretary of State

Decision date: **11 July 2019**

Appeal Ref: APP/F1040/W/19/3227659

Cedar Road, Castle Gresley, Swadlincote DE11 9JP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Sam Smith against the decision of South Derbyshire District Council.
 - The application Ref 9/2018/0977, dated 7 September 2018, was refused by notice dated 1 November 2018.
 - The development proposed is proposed single detached dwelling on land adjacent to No 7 Cedar Road, Castle Gresley.
-

Decision

1. The appeal is dismissed.

Procedural Matter

2. The evidence before me indicates that this is an outline application with all matters reserved except access, appearance, layout and scale.

Main Issue

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

Reasons

4. The appeal site is a tapered area of open space situated behind the footway at the corner of Cedar Road and Oak Close. It appears to have no formal recreational function, and given its size, open aspect and relationship to the footway it has the appearance of an oversized highway verge. Nonetheless, it is located at the end of the building line on Cedar Road and gives the tight building pattern a notable openness at the road junction. It also contributes to longer views along Oak Close and through the opposing Cedar Road building line to a nearby recreation area.
5. It is apparent that similar areas of grass behind the footway, located on corners and at the end of building lines, are commonplace in the immediate area. I also noticed that the layout of these verges appears to switch from side to side and I agree with the Council that they were part of the original estate design, located to reduce and relieve the visual impact of the built environment. I conclude that the site makes an integral and highly positive contribution to the character and appearance of the area.

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

6. The development would be a modest detached house. It would continue the Cedar Road building line but would intrude in to the openness at the junction. It would also project beyond the established building line of Oak Close. This currently aligns with the flank wall of 7 Cedar Road's (No 7's) garage, ensuring that the building line turns the corner at a significant distance from the road, giving spaciousness to the underlying layout. The dwelling would therefore significantly intrude into and reduce openness at the junction. It would also be prominent in views from the terraced dwellings on the other side of Cedar Road, which currently look up Oak Close.
7. In the light of the above, I conclude that the development would appear squeezed into a peripheral space within the building pattern and in so doing would fail to respect or reflect its surroundings. It would be detrimental to the character and appearance of the area and fail to comply with Policy BNE1 which requires new development to relate to its context. It would also fail to comply with guidance in the SPD with regard to local character and visual attractiveness, and the requirements of Paragraph 127 of the National Planning Policy Framework (the Framework) which states that development should add to the overall quality of an area, and to be visually attractive as a result of good architecture and layout.
8. Policy INF9, also cited by the Council, is primarily concerned with open space, sport and recreation. There is nothing before me to suggest that the site has a recognised, informal or formal recreational function. Consequently, I conclude that Policy INF 9 weighs neither for nor against the appeal. Nonetheless, this does not alter my conclusion that to extend the building line of Cedar Road into this space would be inappropriate urbanisation.

Other matters

9. The appellant has suggested that a contribution could be made to local open space provision if the appeal was allowed. However, this would not provide mitigation for the proposed intrusion into the building pattern. There is nothing before me to outline how provision elsewhere could compensate for the loss of this particular site. In any case, even if I concluded that this approach would compensate for the loss of openness, there is no completed obligation before me.
10. The alleged lack of a functional relationship between No 7 and the site is not determinative, as my reasoning is concerned with the impact of the development on the wider appreciation of the street scene. In any case, I am unable to see any particular functional relationship between the wide verges and other dwellings on Oak Close. Nonetheless, these spaces contribute to spaciousness within the building pattern. Moreover, if the appeal was allowed, the remaining limited and irregularly shaped space around the dwelling's footprint would appear as unplanned and awkward leftover space.
11. The argument is made that this is the best design that can be offered given the site constraints. However, it remains that it is incongruous. I appreciate that a previous application has been amended in order to address the Council's concerns but this does not alter my reasoning.
12. It is also argued by the appellant that this would be family sized housing. It is unclear what is meant by family sized housing but my experience of national

space standards suggests that this development would not meet the current space standards for a two-storey 3-bedroomed dwelling.

13. With regard to the cost of site upkeep, presumably the owner was aware of the maintenance implications when the site was purchased. In any case, the site, comprising grass only, appears to have received maintenance similar to that of other nearby sites. It is also argued that the site is vulnerable but it is unclear what is meant by this. In any case, reducing the height of the hedge between No 7 and the site would improve connectivity.
14. The appellant has referred me to Paragraph 97 of the Framework. However, this seems to me to be concerned with open space used for formal or informal recreation and there is nothing before me to suggest that this site is used for such purposes. In any cases, as noted above, I am satisfied that this space is not surplus to requirements for non-recreational reasons.
15. With regard to other successful applications for infill development, the only example which appears to have any comparability with this appeal in terms of underlying building pattern and visibility in the street scene, is 2 Pine Walk. Here a dwelling has been granted permission on what appears to be a large grass verge beside a turning point, but that site is more contained and enclosed. That site could conceivably have been used for informal recreation and consequently its loss could be offset by a contribution to a local play area. However, this site is open to the road on three sides and it seems unlikely to make any more than a visual contribution to the area. The situations are not comparable. In any case, each appeal is determined on its merits.
16. An interested party has raised a concern in relation to highway issues and parking. However, as I have found harm in relation to the main issue it is not necessary for me to consider this further.

Planning balance

17. I appreciate that the Framework sets out the need for effective use of land and the importance of housing supply. However, the presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making. Although windfall sites are useful, there is nothing before me to suggest that the Council does not have land allocated for a five-year housing supply or that I should give the development plan policies anything other than full weight in my reasoning.
18. Even if the Council does not have a five-year housing land supply, one small dwelling would make a limited contribution to local housing. Moreover, the adverse effects of granting permission would in any case significantly and demonstrably outweigh the benefits.

Conclusion

19. The development would be contrary to the relevant policies of the local plan, the SPD and the Framework. The appeal should be dismissed.

A Blicq

INSPECTOR

REPORT TO:	PLANNING COMMITTEE	AGENDA ITEM: 5
DATE OF MEETING:	6th AUGUST 2019	CATEGORY: DELEGATED
REPORT FROM:	STRATEGIC DIRECTOR (SERVICE DELIVERY)	OPEN
MEMBERS' CONTACT POINT:	RICHARD STEWART 01283 595730 (Richard.stewart@southderbyshire.gov.uk)	DOC:
SUBJECT:	AMENDMENT TO SECTION 106 AGREEMENT RELATING TO LAND AT COURT STREET, WOODVILLE	REF:
WARD(S) AFFECTED:	SWADLINCOTE AND WOODVILLE	TERMS OF REFERENCE: DC01

1.0 Recommendations

- 1.1 In recognition of this scheme now containing 100% affordable homes, the Committee endorses the amendment to the agreement to accept a financial contribution of £27,500 in lieu of the previously required financial contributions. It is recommended that the sum be allocated towards the delivery of the Swadlincote Regeneration Route or improvements works to mitigate traffic congestion at Tollgate Island.

2.0 Purpose of Report

- 2.1 An application has been received from the land owner of this site to review the Section 106 agreement under Section 106A of the 1990 Act. This report considers the reasons why the application has been submitted and a recommendation is proposed.

3.0 Executive Summary

- 3.1 The submitted amendment to the Section 106 agreement for the site shows that the site is being developed as a 100% affordable housing scheme. A design and build contract for the site has been agreed (which is currently under construction) and includes grant funding from Homes England. The application and supporting viability assessment concludes that the costs of the Section 106 agreement could not be met though the development of the site as a 100% affordable scheme. Whilst the viability assessment submitted indicates that no form of financial contribution would be viable, following an independent assessment of the detail of the scheme and its costs by the District Valuer, a financial contribution of £27,500 had been proposed which in accordance with the advice of the District Valuer should be accepted.

4.0 **Detail**

- 4.1 Members will recall that the site was granted outline planning permission at this Committee in December 2016 for 72 dwellings. The originally considered scheme was proposed as a local plan complaint market housing led scheme. However, although on the open market, the site was purchased by a Registered Provider of affordable homes.
- 4.2 A viability assessment has been submitted by the new land owner which has been considered by the District Valuer who has come to the conclusion that a scheme for the development of the site for 100% affordable housing would not be viable based on the design and build contract agreed at the site but that a contribution of £55,704 would be viable based on the use of BCIS build costs. However, it cannot be ignored that a design and build contract has been agreed on the site and development has commenced. In discussions undertaken following the submission of the viability assessment, an offer of £27,500 has been made by the applicant as a compromise. The advice of the District Valuer is that serious consideration should be given to accepting the proposed contribution.
- 4.3 The original agreement contained 6 schedules, 4 of which required the undertaking of works, the payment of financial contributions or the provision of infrastructure. For clarity each of the relevant schedules and the proposals put forward by the applicant for their amendment are set out below.
- 4.4 Second Schedule (Open Space); Part 1 - The provision of (or financial equivalent) of an off-site LEAP on land within the ownership of the Council (to the south of the site). Part 2 - Provision of on-site open space (including an option for transfer of the land to the Council or managed and maintained by a management company). Part 3 – Construction of the off-site LEAP. Part 4 – Payment of the off-site LEAP contribution. Part 5 – Off-site open space financial contribution if the quantum of open space provided on site is inadequate. The proposal is for the full quantum of open space to be provided on-site, and offered to the Council for adoption with a commuted sum to be provided for the sites maintenance, no provision or financial contribution is proposed for the delivery of the off-site LEAP.
- 4.5 Third Schedule (National Forest Planting); Part 1 – Approval of on-site planting. Part 2 – Provision and management of on-site planting. Part 3 – Payment of a financial contribution should the on-site provision not meet the national forest planting requirement. The applicant proposes to meet the requirements of this schedule in full.
- 4.6 Fourth Schedule (Financial Contributions); Built Facilities Contribution - £21,121.60. Outdoor Sports Facilities Contribution - £37,840. Education Contribution – Infant and Junior £159,586.14. Healthcare Contribution - £27,388.80. Highway Contribution - £41,475.36. TRO Contribution - £15,000. The proposed amendment would see a contribution of £27,500 paid for the Council to determine the most appropriate location for the contribution.
- 4.7 Fifth Schedule (Drainage Matters); The provision, management and maintenance of on-site SUDS, with options for maintenance by a management company or transfer to the Council and as required the payment of a maintenance sum. This schedule of the agreement is to remain unchanged.

- 4.8 The main changes to the agreement therefore relate to the required financial contributions. Consideration needs to be given to the allocation of the contribution deemed financially viable. In infrastructure terms, one of the key considerations as to the acceptability of the site for residential development is its impact on the highway network. To this end it is considered appropriate for the financial contribution to be allocated towards the delivery of the Swadlincote Regeneration Route or improvement works to mitigate traffic congestion at Tollgate Island.

5.0 Financial Implications

- 5.1 The amended agreement would result in the maintenance of schedules 3 and 5 without alteration, the removal of the requirement to deliver an off-site LEAP from Schedule 2, and a substantial alteration to the financial contributions required by Schedule 4.

6.0 Employee Implications

- 6.1 None.

7.0 Corporate Implications

- 7.1 The scheme would contribute towards facilitating and delivering a range of integrated and sustainable housing and community infrastructure.

8.0 Community Impact

- 8.1 **Consultation:** As carried out in the course of the planning application.
- 8.2 **Equality and Diversity Impact:** The delivery of affordable housing will assist in achieving greater equality.
- 8.3 **Social Value Impact:** The overall development would assist in access to affordable homes.
- 8.4 **Environmental Sustainability:** Mitigation of the impact of the development will contribute toward the achievement of environmental objectives.

9.0 Conclusions

- 9.1 As members will be aware the development of sites for the provision of 100% affordable dwellings rarely provide sufficient 'headroom' in development finance terms to provide the financial contributions that a predominantly market dwelling scheme would see; particularly as much of the funding for the development of the site is based on Homes England grant funding.
- 9.2 There are a number of strategic sites around the District which are unable to deliver the local plan requirement of 30% affordable housing, and sites such as this which are delivering 72 affordable dwellings are necessary in order to help make up 'the balance' and help deliver the affordable homes the District needs. Given the significant benefits associated with delivering such a quantum of affordable dwellings, the amendments to the agreement are recommended for approval.