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Date: 9 November 2020

Dear Councillor,

Planning Committee

A Meeting of the **Planning Committee** will be a **Virtual Committee**, held via Microsoft Teams on **Tuesday, 17 November 2020 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, 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 receive the Open Minutes of the following Meetings:

1st July 2020 **3 - 8**
- 3** To note any declarations of interest arising from any items on the Agenda
- 4** To receive any questions by Members of the Council pursuant to Council procedure Rule No. 11.
- 5** REPORT OF THE STRATEGIC DIRECTOR (SERVICE DELIVERY) **9 - 29**
- 6** SECTION 106 VARIATION AT BOULTON MOOR, THULSTON **30 - 31**
- 7** TREE PRESERVATION ORDER NO. 535 101 SCROPTON ROAD, HATTON **32 - 34**

Exclusion of the Public and Press:

- 8** 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.
- 9** To receive any Exempt questions by Members of the Council pursuant to Council procedure Rule No. 11.

PLANNING COMMITTEE

1st July 2020

PRESENT:-

Conservative Group

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

Labour Group

Councillors Dr Pearson, Gee Shepherd, Southerd and Tilley

PL/16 **APOLOGIES**

The Committee was informed that no Apologies for absence had been received.

PL/17 **DECLARATIONS OF INTEREST**

The Committee was informed that no Declarations of Interest had been received.

PL/18 **QUESTIONS BY MEMBERS OF THE COUNCIL PURSUANT TO COUNCIL PROCEDURE RULE NO.11**

The Committee was informed that no questions from Members of the Council had been received.

MATTERS DELEGATED TO COMMITTEE

PL/19 **REPORT OF THE STRATEGIC DIRECTOR (SERVICE DELIVERY)**

The Strategic Director (Service Delivery) submitted reports for consideration and determination by the Committee and presented oral reports to the Meeting to update them as necessary. Consideration was then given thereto and decisions were reached as indicated.

PL/20 **OUTLINE APPLICATION (MATTERS OF ACCESS TO BE CONSIDERED NOW WITH MATTERS OF LAYOUT, SCALE, APPEARANCE AND LANDSCAPING RESERVED FOR LATER CONSIDERATION) FOR THE RESIDENTIAL DEVELOPMENT OF UP TO 57 DWELLINGS WITH ASSOCIATED LANDSCAPING, PARKING AND SUSTAINABLE DRAINAGE ON LAND AT SK2531 3702, LUCAS LANE, HILTON, DERBY**

It was reported that Members of the Committee had attend a virtual site earlier in the day.

The Planning Delivery Team Leader presented an overview of the application and sought amendment to condition 15 to include the CIRIA standard for SuDS. The Planning Delivery Team Leader informed that Committee that this report was due to be brought before the March Committee and whilst no changes have been made to the initial document the Neighbourhood Development Plan for Hilton has now been submitted to the Council but due to the recent lockdown, consultation has not been undertaken. The Planning Delivery Team Leader informed Members of the key considerations and that the site was within the settlement confines for Hilton, which is a key service village, therefore under Policy H1 residential development of any size is considered appropriate. Biodiversity mitigation could also be met both either on or off site which is acceptable to the Wildlife Trust.

An Objector and the Applicant's Agent attended the Meeting to address Members on this application

Following the Objector's comments, where it was claimed that the Neighbourhood Development Plan was compliant with local and national policy and could be afforded due weight, the Planning Delivery Team Leader clarified that the application is not an allocation and does not have to be and proceeded to read the applicable section of the H1 Policy. The Planning Delivery Team Leader further stated that the Neighbourhood Development Plan was not at a stage where it could be afforded weight and read the relevant section of the Planning Policy Guidance supporting this position.

Members raised queries regarding the 5 year supply of housing need at the current time, the suitability of Lucas Lane for this development and possible damage to the verge by large vehicles. The Planning Delivery Team Leader informed the Committee that the test for the 5 year supply of housing is whether the Local Authority can meet the need for the next 5 years and not what the position is at any given time and that the site would have 2 points of access and ingress with only one new one onto Lucas Lane and added that the carriageway would be made wide enough for vehicles to pass without the need to use the verge.

Further points were raised by Councillor Patten which included concerns about the delivery of GP services for additional patients, Broadband, the Travel Plan, the lack of footway during construction and noise pollution from the A50. The Planning Delivery Team Leader explained that following consultation the response from the CCG was to request sums to mitigate against the costs for expansion of the GP service and that installation of highspeed broadband is now standard practice with new developments. The Planning Delivery Team Leader

closed by informing the Committee that currently residents walk on the lane but the end result would give them a footway to use and the County Highways is content with the Travel Plan which is there to encourage sustainable travel and finally confirmed that the Environmental Health Officers had no concerns with the mitigations to reduce the noise level from the A50.

RESOLVED:

That planning permission be granted as recommended in the report of the Strategic Director (Service Delivery), including amendment to condition/s.

PL/21 **CHANGE OF USE OF PART OF AGRICULTURAL PADDOCK FOR THE EXERCISING OF DOGS ALONG WITH THE ERECTION OF BUILDINGS FOR BOARDING KENNELS AND ASSOCIATED STORAGE AND THE CREATION OF A PARKING AREA ON LAND ADJACENT TO GREENACRE, BENT LANE, CHURCH BROUGHTON, DERBY**

The Planning Delivery Team Leader addressed the Committee explaining that this application had been before the Committee previously and was deferred to allow for a Noise Impact Assessment to be undertaken. This has now been submitted and the Environmental Health Officer finds that the impact will not be acceptable, and the mitigations proposed did not ameliorate those concerns.

An Objector and the Applicant's Agent attended the Meeting and addressed Members on this application.

RESOLVED:

That planning permission be refused as recommended in the report of the Strategic Director (Service Delivery).

PL/22 **THE VARIATION OF CONDITIONS 1 & 12 OF PLANNING PERMISSION REF. 9/2018/0592 IN RELATION TO PLOT 1 (GARDEN WALL) AND LANDSCAPING ON LAND ADJACENT TO MILL GREEN HOUSE, BROOK LANE, SCROPTON, DERBY**

It was reported that Members of the Committee had attend a virtual site earlier in the day.

The Planning Delivery Team Leader informed the Committee that the application was granted at appeal a number of years ago and that it had been brought before the Committee today for retrospective approval of a wall and the appropriate amendment to the planting of landscaping on the occupation of dwellings rather than planting prior to the commencement of build.

An Objector attended the Meeting and addressed Members on this application.

The Committee raised concerns of poor visibility on the highway due to the wall and wondered if any accidents have been recorded since the erection of the wall.

The Planning Delivery Team Leader explained that access from the property behind the wall was onto a private highway and the Highways Authority had no objection to the wall in regard to safety and that Council was not aware of any accidents since the construction of the wall

RESOLVED:

That planning permission be approved as recommended in the report of the Strategic Director (Service Delivery)

PL/23 **Change of use from hotel and drinking establishment to 4no. one-bedroom flats and 9no. two-bedroom flats (use class C3) along with alterations to the vehicular access and landscaping works at The Castle Hotel, Station Road, Hatton, Derby, DE65 5DW**

The Planning Delivery Team Leader presented the application explaining that it was subject to a Viability Appraisal which determined that it would not be viable to develop the site with the requested Section 106 contribution of £100K and without any contributions it would only just be feasible and subject to a lower profit threshold. The Planning Delivery Team Leader summarised the application informing the Committee that the development would provide low cost housing in an accessible location, and using an empty building and would improve the appearance of a property in a prominent position.

Councillor Muller enquired whether it was a retrospective application as works are being carried out on the site. The Planning Delivery Team Leader informed the Committee that this was not a retrospective application and that works being carried out may not be in relation to the application and any work is done so at the Developer's own risk. Furthermore, any work undertaken that is not part of the application can be followed up by the Enforcement Team.

RESOLVED:

That planning permission be granted as recommended in the report of the Strategic Director (Service Delivery)

PL/24 **THE PRUNING OF VARIOUS TREES COVERED BY SOUTH DERBYSHIRE DISTRICT COUNCIL TREE PRESERVATION ORDER NO. 132 ON PUBLIC OPEN SPACE, WILSON CLOSE, MICKLEOVER, DERBY**

The Planning Delivery Team Leader outlined the request for the routine tree works

RESOLVED:

That planning permission be approved as recommended in the report of the Strategic Director (Service Delivery)

PL/25 **PRUNING BACK OF A WALNUT TREE AT NO. 7 PENN LANE AT THOMAS COOK MEMORIAL COTTAGES, 53 HIGH STREET, MELBOURNE, DERBY, DE73 8GJ**

The Planning Delivery Team Leader explained that it was before Committee as Councillor Hewlett, as a Trustee of the building, was the applicant and the request was to prune the tree to move it away from a listed building.

RESOLVED:

That the Committee did not object to the works as recommended in the report of the Strategic Director (Service Delivery).

PL/26 **TREE PRESERVATION ORDER 527: LAND OFF SWAN HILL, MICKLEOVER**

The Planning Delivery Team Leader explained that the Order had been before the Committee previously and granted but it was recently discovered that there was no evidence that the actual legal act of confirming the Order took place.

RESOLVED:

The Committee resolved that this Tree Preservation Order be modified to omit the area outside the main woodland and then confirmed as such.

PL/27 **PROPOSED TREE PRESERVATION ORDER 528: THE HAWTHORNS, 52 MAIN STREET, NEWTON SOLNEY**

The Planning Delivery Team Leader explained that again, the Order had been before the Committee previously and granted but it was recently discovered that there was no evidence that the actual legal act of confirming the Order took place

RESOLVED:

The Committee resolved that this Tree Preservation Order be confirmed.

PL/28 **LOCAL GOVERNMENT ACT 1972 (AS AMENDED BY THE LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985)**

RESOLVED:-

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 was 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 paragraphs of Part 1 of the Schedule 12A of the Act indicated in brackets after each item.

**EXEMPT QUESTIONS BY MEMBERS OF THE COUNCIL PURSUANT TO
COUNCIL PROCEDURE RULE No 11.**

The Committee was informed that no questions had been received.

The meeting terminated at 7:00 pm.

COUNCILLOR MRS L BROWN

CHAIRMAN

Report of the Strategic Director (Service Delivery)

Section 1: Planning Applications

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
DMPA/2020/0059	1.1	Findern	Willington and Findern	12
DMOT/2020/0987	1.2	Newhall	Newhall and Stanton	20
9/2018/1378	1.3	Melbourne	Melbourne	24

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 report of the Strategic Director (Service Delivery) 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.

Glossary of terms

The following reports will often abbreviate commonly used terms. For ease of reference, the most common are listed below:

LP1	Local Plan Part 1
LP2	Local Plan Part 2
NP	Neighbourhood Plan
SPD	Supplementary Planning Document
SPG	Supplementary Planning Guidance
PPG	Planning Practice Guidance
NPPF	National Planning Policy Framework
NDG	National Design Guide
SHMA	Strategic Housing Market Assessment
SHELAA	Strategic Housing and Employment Land Availability Assessment
s106	Section 106 (Agreement)
CIL	Community Infrastructure Levy
EIA	Environmental Impact Assessment
AA	Appropriate Assessment (under the Habitat Regulations)
CPO	Compulsory Purchase Order
CACS	Conservation Area Character Statement
HER	Historic Environment Record
LCA	Landscape Character Area
LCT	Landscape Character Type
LNR	Local Nature Reserve
LWS	Local Wildlife Site (pLWS = Potential LWS)
SAC	Special Area of Conservation
SSSI	Site of Special Scientific Interest
TPO	Tree Preservation Order
PRoW	Public Right of Way
POS	Public Open Space
LAP	Local Area for Play
LEAP	Local Equipped Area for Play
NEAP	Neighbourhood Equipped Area for Play
SuDS	Sustainable Drainage System
LRN	Local Road Network (County Council controlled roads)
SRN	Strategic Road Network (Trunk roads and motorways)
DAS	Design and Access Statement
ES	Environmental Statement (under the EIA Regulations)
FRA	Flood Risk Assessment
GCN	Great Crested Newt(s)
LVIA	Landscape and Visual Impact Assessment
TA	Transport Assessment
CCG	(NHS) Clinical Commissioning Group
CHA	County Highway Authority
DCC	Derbyshire County Council
DWT	Derbyshire Wildlife Trust
EA	Environment Agency
EHO	Environmental Health Officer
LEP	(D2N2) Local Enterprise Partnership
LLFA	Lead Local Flood Authority
NFC	National Forest Company
STW	Severn Trent Water Ltd

Item No. 1.1

Ref. No. [DMPA/2020/0059](#)

Valid date: 21/07/2020

Applicant: S Singh

Agent: Mark Reynolds
Mark Reynolds Architect Ltd

Proposal: Change of use from dwelling (use class C3) to a large House in Multiple Occupation (HMO) (sui generis use) and minor alterations to building at 14 Doles Lane, Findern, Derby, DE65 6AX

Ward: Willington and Findern

Reason for committee determination

This item is presented to the Committee at the request of Councillor Ford as local concern has been expressed about a particular issue, and because the recommendation is contrary to the advice of the Highway Authority.

Site Description

The property is a two storey property which historically has been a dwellinghouse. It also formed part of the land owned by the former Archway Motors garage business, and was identified in 2004 as being part of the offices and reception area. It also has been used as a residential building. The access into the site is still owned by the former garage premises, and there are rights of access into and out of the site.

The two storey part of the 'L' shaped building sits very close to the back of the carriageway. There is no formal footpath on the eastern side of the street. The building has its origins in the Victorian era. It is brick built and finished in painted white. It has a fairly unattractive flat roofed garage building adjacent to the southern boundary. The double garage contains steps up to a flat roofed area with a parapet ledge around the outer edge. The building is also attached to another dwelling, which has a smaller cottage style building situated behind this. This area is not part of this application.

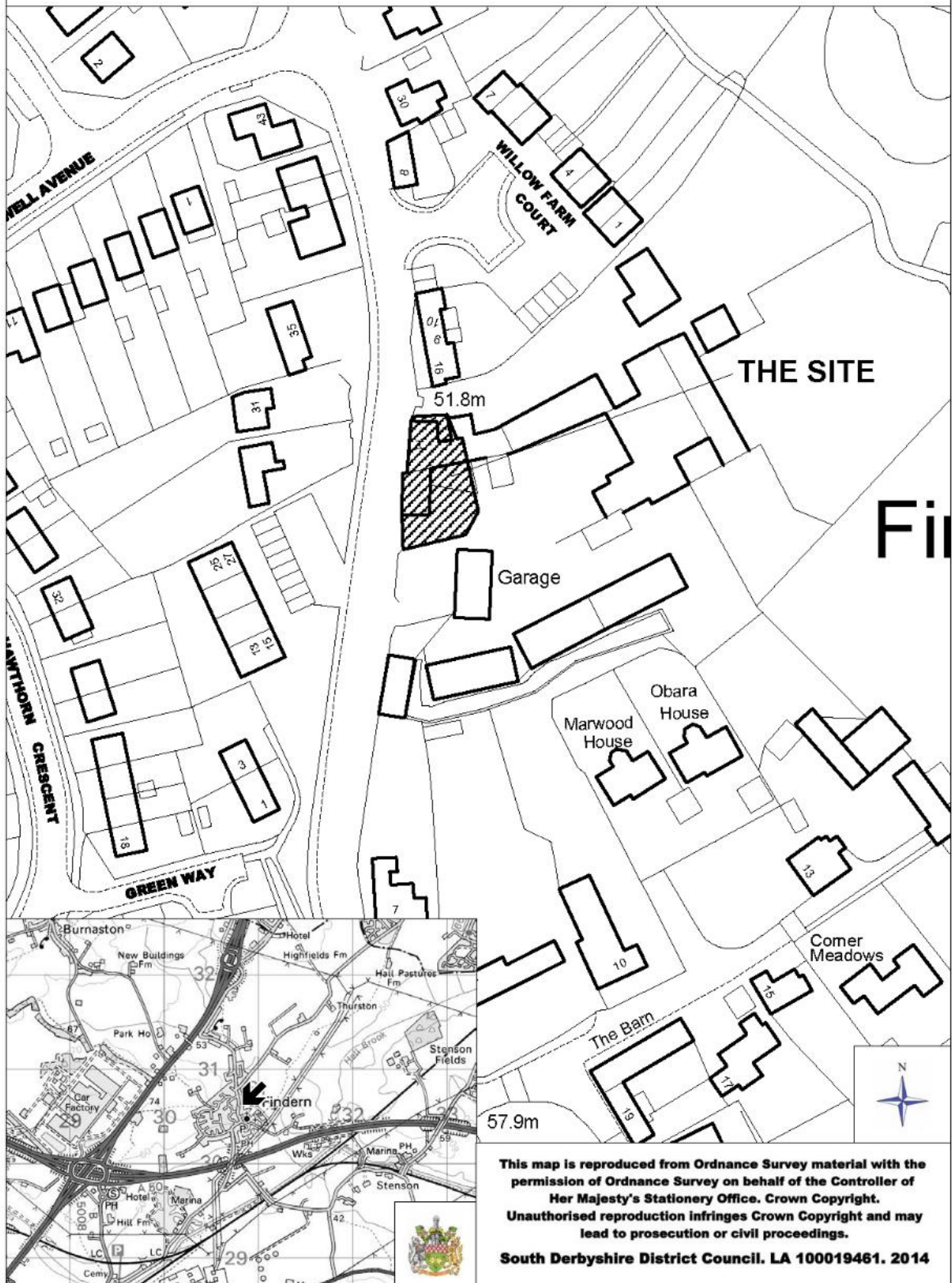
The disused car sales business has two vehicular entrances around a low brick wall along the front boundary. At one time it would have had some petrol pumps, but more recently was a car showroom and has a number of ancillary outbuildings for former workshops and other car related uses. This is currently vacant, and for sale, with a number of possible options for redevelopment that could come forward at a future date.

There is a grade II residential property which sits to the north of the site, the other side of another vehicular access to properties to the east of the site. There is good tree and shrub cover between the two properties. There is a pedestrian access to the north side of the property accessed via a pedestrian gate off the carriageway. The site is fenced off with post and rail fencing.

The proposal

The proposal is to change the use of the dwellinghouse at 14 Doles Lane into a seven-bedroom House in Multiple Occupation (HMO). As it is more than a 6 person use, it falls within the large HMO use category - a sui generis use. The parking layout would be the same as existing, comprising two garage spaces and three parking spaces shown at 90 degrees off the area which contains the access through to the other buildings on the larger garage site.

In terms of the layout, three bedrooms are located on the ground floor, and four on the first floor with two of the larger existing rooms sub-divided. The only external physical changes to the building are two new obscurely glazed en-suite windows on the east elevation at ground and first floor level.



Applicant's supporting information

The applicant considers that the additional one person within the property would have no material impact on the highway network. HMOs tend to have lower rates of car ownership than a large family dwelling. It is claimed that the DLCC Residential Car Parking Research (2007), which determines car ownership against the number of rooms within a dwelling, states that an 8-bedroom dwelling generally has a car parking need of 1.7-2.1 spaces. The applicant's scheme achieves this with three spaces. It also allows for motorcycle parking and bicycle storage in the garages.

The site is within walking distance of the village centre and facilities like the Post Office, newsagents and amenities, and public transport, thus reducing the dependence on private transport. Potential occupants who are car owners would also likely be discouraged from occupying the premises if there is not sufficient off street parking.

The existing access is available for use via the right of way to the rest of the site which is owned as part of the former Archway Motors site.

Relevant planning history

There is no relevant planning history for this particular part of the former garage site. There were previously a number of planning applications for various related applications when Archways Motors was in use.

Responses to consultations and publicity

The County Highway Authority notes that the access to the site is adjacent to the existing garage which is part of the application site. The access is severely substandard. They consider that the majority of occupants would own a car and the change of use would result in an increase in the number of vehicle movements generated from the site, as well as increase demand for parking. In the event of spaces being full occupants are likely to park on Doles Lane. Whilst it would be difficult to sustain a refusal reason on the grounds of on-street parking being detrimental to highway safety, the Highway Authority considers that the use of the access to 14 Doles Lane would be contrary to the best interests of highway safety and, as such, recommends refusal of the proposal on the basis that the increase in the use of the access onto the classified road, which is severely substandard in terms of visibility, is contrary to the best interest of highway safety.

The Environmental Health Officer has no objection to the proposal.

Findern Parish Council objects on the following grounds:-

- a) the conversion seems to be over development and out of keeping with other houses in the vicinity;
- b) there are 8 bedrooms within the property with two people per room;
- c) the plans show double rooms which could means more than 7 people in the property, and parking provision would therefore be inadequate;
- d) any visitors are likely to park on the lane; and
- e) on road parking is a problem, and any on-street parking would lead to congestion.

8 objections and comments have been received, along with representation from the owners of the adjacent Archway Motors site, raising the following concerns:

- a) there is limited parking for this property, and conversion to a HMO would result in an increase in parking in the village and volume of traffic;
- b) further on-street parking would be detrimental to the village as inappropriate parking creates hazards and traffic congestion;
- c) Doles Lane is a bus route and there is concern about parking and cars exiting from the property;
- d) some on-street parking is conducted by nearby businesses;
- e) Archway Motors used to have a one way system as vision is poor due to the presence of the garage building;

- f) the HMO is unsuitable for the village, and there could be up to 13/14 individuals in the property;
- g) access could be blocked to the adjacent property and residents could not manoeuvre adequately to leave in a forward gear;
- h) privacy would be affected if cars are parked outside the neighbour's property;
- i) visibility out of the site is poor due to the presence of the garage building limiting visibility to the north;
- j) how the bins will be emptied and collected;
- k) additional vehicles are likely to cause additional noise disturbance;
- l) the use of the proposed roof terrace would result in loss of privacy to a bedroom opposite the site;
- m) there would be overlooking and loss of privacy to the adjacent property attached to this site;
- n) the site could be used for a family home or change of use to a pub;
- o) there is concern over who could live in the property, and this could affect property values and people's safety;
- p) consideration needs to be given to this proposal in the light of the potential re-development of the adjacent site and a possible new access into the Archway Motors site;
- q) the internal rooms are of inadequate size to accommodate the proposed bedrooms;
- r) the garden size is inadequate; and
- s) assurance should be given that there would not be a issue with noise with the party wall with the attached property.

Relevant policy, guidance and/or legislation

The relevant Development Plan policies are:

- Local Plan Part 1 (LP1): S1 (Sustainable Growth Strategy); S2 (Presumption in Favour of Sustainable Development); S6 (Sustainable Access); H1 (Settlement Hierarchy); H20 (Housing Balance); SD1 (Amenity and Environmental Quality); SD3 (Sustainable Water Supply, Drainage and Sewerage Infrastructure); BNE1 (Design Excellence) and INF2 (Sustainable Transport); and
- Local Plan Part 2 (LP2): Policy SDT1 (Settlement Boundaries and Development).

The relevant local guidance is:

- South Derbyshire Design Guide Supplementary Planning Document (SPD)

The relevant national policy and guidance is:

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

Planning considerations

Taking into account the application made, the 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:

- The principle of residential use at the site;
- The effect of the proposal on the character and appearance of the street scene;
- The effect of the proposal on the residential amenity of nearby occupiers; and
- The effect of proposal on the highway network.

Planning assessment

The principle of residential use at the site

The property was originally constructed as a dwellinghouse. It seems from the evidence of the use of the property, and the adjacent site, that it was subsumed into the use of the garage site, as there is evidence of the property being used as offices and a reception area. It has also more recently been considered as a dwelling in its own right. It may therefore have had a dual use.

In essence, the principle of re-use for residential dwellings within the village, in a sustainable location, is considered acceptable. The proposal would add to the variety of housing types within the settlement, and it is not considered that the proposal would result in an imbalance in the mix of house types within the village or have a material detrimental impact on the balance of the community. The proposal is considered to comply with policies H1 and H20.

The effect of the proposal on the character and appearance of the street scene

The proposed change of use of the building would have no material impact on the external appearance of the building. There is only a small change in the external appearance by virtue of the insertion of two obscurely glazed en-suite windows on the inner eastern side. On this basis, the proposal has a neutral effect on its impact on the street scene. It is possible that with the re-use of this under-utilised building, it could be improved by virtue of repainting and some cosmetic enhancements. The proposal is considered to comply with policy BNE1.

The effect of the proposal on the residential amenity of nearby occupiers

Objections have been received in terms of the impact on residential amenity of nearby occupiers. In terms of the use of the building, it is referenced that the roof terrace could be used and views could be had to houses opposite resulting in detrimental impact. As described above, this roof terrace is already there and could be used now. In any event, the views to houses in Doles Lane would have no more impact than the current situation. There are existing views from the first floor of the existing house. Houses on the western side of Doles Lane are also set higher, so there is less of an issue in terms of overlooking or overbearing impact on residential amenity of nearby neighbours. It is not considered reasonable to withhold permission or restrict use of the proposal based on views towards the front rooms of dwellings opposite the site.

It is not considered the use would result in any harmful impacts by virtue of noise or disturbance to the adjacent occupier at 16 Doles Lane as a result of the use of the property. There is a proposed pedestrian access to the north of the building, but there is no intention or indication that this would be used by residents to park cars here, as the access is provided for other dwellings and is outside the site boundary. Any vehicles parked on private land would be a civil matter.

The proposed development abuts another residential property and shares a party wall. There are no proposed physical changes along this boundary, and there would be no detrimental effect on this property from the two new en-suite bathroom windows which are obscurely glazed and face a blank brick wall.

Details of the bin storage would need to be considered by the applicant - whether this is likely to be a larger communal bin, or several smaller bins. The applicant would need to ensure that gated access is wide enough to present the bin to the curtilage of the property ready for collection. It is not considered that this is a significant issue and can be controlled through on-site management of the property. There is no objection to the proposal from the Environmental Health Officer.

Objection has been raised about the size of the rooms and the garden space. The Council does not have adopted minimum standards for these matters and each case is assessed on its merits. For the purposes of a HMO, internal spaces are considered appropriate and there is considered to be adequate outdoor space for the residents to enjoy.

No objection has been raised by the Environmental Health Officer.

It is concluded that there would be no material detrimental impacts upon nearby residential amenity sufficient to refuse the proposal. The proposal would therefore comply with policy SD1.

The effect of proposal on the highway network

The access into the site and the proposed parking provision would result in no physical changes over the existing situation. The application site boundary includes land outside of the ownership of the applicant, and notice has been served appropriately on that owner. That joint access to the south of the building would allow access to the parking in front of the building for the three spaces as shown on the submitted plan and leads to access to the rest of the former Archway Motors site.

The garage site is up for sale and has potential for redevelopment. It is likely therefore that the area to the south of the application site and the three identified parking spaces would be retained for dual access purposes, to both the car parking spaces for this use, and to commercial buildings on the garage site. The applicant who owns the building, and the open area in front of the building, may need to negotiate with the owner if future redevelopment of the site occurs, as there is a right of access established with the sale of the site. This is a separate matter between the applicant and the adjacent landowner.

This site and the wider garage site have two existing vehicular entrances off Doles Lane. Anecdotal evidence indicates that there was a one way system in place with vehicles exiting at the most southern entrance; however this does mean a quick turn left out of the workshop area in front of the shop building for vehicles exiting the rear ancillary buildings. It is likely that most vehicles would have come straight out to the road without going past the front reception building to turn onto Doles Lane. Vehicles would have exited with care and attention, due to the presence of the garage building limiting views to oncoming traffic to the right, noting the poor visibility to the north.

The site, as it is, could be re-used and re-opened for its approved use, and there would be no controls over the vehicular movements into and out of the site. Even with a redevelopment, it would not be clear how access would be provided and this will depend on the design of any future proposals. This may well provide a betterment and closure of the existing arrangement, addressing the existing concerns relating to the application property, but there is no certainty of that at this time. It is equally possible that the existing access could be retained in some form - not least for the application property, and at the current time this is the 'fallback' position.

The Highway Authority recommends refusal on the basis of an increased use of the access as a result of the development. They acknowledge that the proposal could not be reasonably refused based on the potential of increasing car parking demand on Doles Lane itself.

It is considered that although the garage spaces are shown, these are unlikely to be used for parking. If they are, access to get out of the garage would be difficult if cars are also parked in front of the proposed garden. Equally, the internal dimensions are below current standards meaning that larger cars are unlikely to be parked within. In reality, therefore, the proposed arrangement of 3 car parking spaces in front of the garden would be the optimum use. The garage spaces could, however, serve occupants with space for a moped or motorcycle, and there is cycle storage. This would add to reducing demand for car parking at the site by facilitating alternative forms of transport.

It must be remembered that there are permitted development rights available to the applicant to change the dwelling from a C3 dwellinghouse use to a C4 HMO for up to 6 residents, irrespective of whether this has already occurred. This is therefore a very strong 'fallback' position which weighs heavily in the assessment of this proposal. The real assessment, therefore, is whether the additional pressure put on the use of the property from a further person brings about a noticeable and material change in the traffic and highway safety implications, and whether this would be so materially detrimental as to result in refusal of the application.

The dwelling could also be used, for example, by a large family who could have 3 to 4 cars in any event (e.g. two parents with one car each and children of driving age also with one car each. In addition, visitors to the property could also bring about further vehicles. This is also a material consideration. A judgement is therefore required to be made as to the impact of the possible differences between the fallback position and the proposed situation.

The applicant has stated that, based on the Government's own figures from the Research Document from 2007, average car demand from an 8-bedroom house is 1.7-2.1 cars per dwelling (by 2026, rising from 1.5-1.8 in 2001). Having considered this claim, this figure relates to urban environments and thus would include a high number of properties used by students or younger professional in cities with good public transport so that there are other, more preferable and convenient, alternatives for transport available and many facilities and services were close to the accommodation. This site is considered to fall within the 'rural' grouping where the appropriate figures (by 2026) is 2.3-2.7 cars per dwelling. Even then, these figures indicate that the proposed provision of 3 spaces would be appropriate to cope with the demand arising from a HMO for 7 residents. Further analysis of the same information also shows that 74% of occupiers of single room flats (the nearest comparable to the proposal) do not own a vehicle, whilst just 1% own two vehicles or more.

Parking at the site is also likely to be self-policing (i.e. prospective tenants with cars would perhaps not consider the premises appropriate without allocated parking). The site is located close to public amenities and services so occupants can travel further afield without a car. The bus service into Derby is considerate adequate, with an hourly service, and a less regular service runs 5 times a week. Findern is overall identified as a local centre and a Local Service Village. It is therefore a sustainable settlement.

Objections have been raised with regard to double beds being shown on the plans within each room. This has been done on the basis that the rooms can accommodate a double bed, and that even single adults prefer double beds to single beds. This is no indication that there would be two people per room and, given the above assessment, it would be possible to impose a condition to limit the maximum number of residents. This has been tested at a number of appeal decisions in the last few years, including a decision in Newbury earlier in the year where there was a limit of 7 persons imposed. Inspectors have therefore assessed this issue on a number of occasions. Some have dealt with this by identifying the number of persons within the description of development, and some have imposed a condition limiting the number. On this basis, it is considered reasonable to impose the condition as it can be enforced.

The view of the Highway Authority to recommend refusal of the proposal is understandable. Nevertheless, the increase in traffic is likely to be less than significant and given the historic use of the site, and the fallback position of the use of the access for significant numbers of vehicles at the adjacent commercial site; the increase would result in a fraction of the potential vehicular use of the site. There is no evidence of accidents recorded at this location. The presence of the garage building adjacent to the access acts as a natural speed restriction when exiting the site for users of the on-site parking spaces, but it is recognised this would not likely to change the habits of those drivers coming along Doles Lane from the north. Nevertheless, cars at this point are travelling within the urban area and are likely to be travelling at speeds well below 30mph, and travelling uphill making braking shorter if necessary, noting the close presence of buildings and vehicular entrances on their left, and the presence of the garage.

The NPPF states that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network is severe. Policy INF2 has a similar approach in more detail. Whilst acknowledging the views of the Highway Authority and local concern, it is not considered that there would be a sufficiently material detrimental impact on the safe operation of the highway network to sustain a reason for refusal on highway grounds as a result of, what is essentially, an additional occupancy of one person. The historical use and fallback position of this access also weigh into this consideration. On this basis, the proposal is considered to comply with policy INF2.

Conclusion

The principle for re-use for residential development is considered to be acceptable. The physical changes would be negligible. There would not be material detrimental impacts on residential amenity. Whilst there is the potential for negligible detrimental impacts on highway safety, these are not considered sufficiently material to refuse the proposal given permitted development rights, the historic use of the access and the potential for former use(s) to recommence.

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, noting that conditions or obligations have been attached where meeting the tests for their imposition. Where relevant, regard has been had to the public sector equality duty, as required by section 149 of the Equality Act 2010 and to local finance considerations (as far as it is material), as required by section 70(2) of the Town and Country Planning Act 1990 (as amended), as well as climate change, human rights and other international legislation.

Recommendation

Approve subject to the following conditions:

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

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

2. The development hereby permitted shall be carried out in accordance with the Site Plan, Floor Plans and Elevations drawing No. 50357-2019-S3-03B received 10th January 2020 unless as otherwise required by condition attached to this permission or following approval of an application made pursuant to Section 96A of the Town and Country Planning Act 1990.

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

3. The tenancy of the property shall be limited to a maximum occupancy of 7 tenanted persons at any one time. No other persons shall reside in the property as their main or secondary place of residence, other than on a short term emergency basis.

Reason: In order to limit the occupancy of the dwelling in the interests of highway safety and residential amenity.

4. The 3 car parking spaces shown on the layout plan shall be provided prior to first occupation of the development hereby approved and be retained and made available for use by the residents of the development for the purposes of parking vehicles throughout the lifetime of the development.

Reason: To ensure the retention of the spaces in the interests of highway safety.

5. The new windows to the en-suite on the eastern side of the building shall be fitting with obscure glazing and thereafter retained as such throughout the lifetime of the development.

Reason: To reduce the impact on the residential amenity of the adjacent property.

Item No. 1.2

Ref. No. [DMOT/2020/0987](#)

Valid date: 11/09/2020

Applicant: Dave Barratt

Agent: Steve Manning
Fairview Arborists Ltd

Proposal: The felling of a sycamore tree covered by South Derbyshire District Council Tree Preservation Order no. 130 at 61 Bretby Hollow, Newhall, Swadlincote, DE11 0UE

Ward: Newhall and Stanton

Reason for committee determination

This item is presented at the request of Councillor Richards, the Committee asked to debate the issues in this case, which are very finely balanced.

Site Description

This is a large modern housing estate situation (houses some 20+ years old). The property in question is detached, its rear garden (the site of the tree) backing onto the longer established houses/gardens on Thorn Tree Lane.

The proposal

The proposal is to fell the tree.

Applicant's supporting information

The supporting [Tree Report](#) states the tree dominates the majority of the garden and is unbalanced, its companion having been removed sometime in the past. The report continues that the tree has a number of cavities in some of the large limbs which have signs of decay and could potentially fail and that the tree takes a lot of light from the house and garden. The applicant has offered to plant a new tree of more suitable species, this tree seen to have outgrown its space.

Relevant planning history

The TPO was made in 1996 around the time this estate was built; the reason given to protect the trees being they provide relief to the otherwise built up nature of the surrounding area. The order appears to show there were four protected sycamores in this garden originally; this however is the last remaining one of the four.

2018/0743: Pruning of sycamore. Approved September 2018.

2017/0845: Felling of sycamore tree. Refused September 2017 and dismissed at appeal April 2018.

2012/0697: Pruning of sycamore to rebalance crown. Approved October 2012.

2011/0659: Pruning of 2 sycamores. Approved October 2011.

Responses to consultations and publicity

Three neighbour comments have been received, one in support to fell, two objecting:

- a) I fully support this application to fell this tree as it limits daylight to my property and causes many young sycamore trees to grow in the garden;
- b) I am saddened and disappointed that once again a tree preservation order is being questioned;
- c) The tree was there before the house, and we should embrace the spirit and the principles of the Tree preservation Order;
- d) I will appeal if the tree preservation is order overruled and the tree is felled;

DMOT/2020/0987 - 61 Bretby Hollow, Newhall, Swadlincote DE11 0UE



- e) We are against the felling, all the trees on this housing estate were well-established mature trees when Bloors were allowed to build on the fields;
- f) Surely the people who purchased the properties understood that the trees would grow;
- g) We campaigned to get preservation orders on several trees on Bretby Hollow this being one of them;
- h) We all know the importance that trees play in the environment also this area is classed as being in the National Forest so surely we should be saving trees not felling them;
- i) Last year this tree was pollarded and no mention of any decay was made;
- j) We feel this tree may have become an expensive feature in the garden because of the need to pollard;
- k) Naturally the bird population rely on these trees, we have the Green Woodpecker, Owls, British Buzzards and many other common birds that nest around the area;
- l) We have a very large old Oak tree next to our boundary which also takes a lot of our garden and at the moment we have a lawn full of acorns as yet we haven't asked the council to come and fell it.

Relevant policy, guidance and/or legislation

The relevant Development Plan policies are:

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

The relevant national policy and guidance is:

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

The relevant legislation is:

- The Town and Country Planning (Tree Preservation) Regulations 2012

Planning considerations

In taking account of the submitted documents and individual site circumstances, the main issues central to the determination of this application is whether the proposed works are appropriate, given the protected status of the tree.

Planning assessment

The felling of this tree has been considered on a number of occasions before, most recently April 2018, where the Planning Inspectorate dismissed the request to fell, opining at that time that the tree appeared to have no major defects and no readily visible evidence of disease or decay and that its removal would leave a significant gap which it would take some time for any replacement tree to mature and fill, concluding that the loss of the tree would result in significant harm being caused to the character and appearance of the area.

Back to the present, it is the view of the Council's Tree Officer that other options should be explored before felling and that the arborist's report offers only limited information in that regard, indeed the primary reason for felling (signs of decay) is not supported by any great weight of scientific evidence, more an informed observation.

Policy BNE4 of the Local Plan Part 1 and policy BNE7 of the Local Plan Part 2 seeks to preserve trees of notable standing in the local landscape; their felling only agreed to when properly substantiated. To think differently would undermine the special status these trees deserve.

It should be noted the tree has been regularly assessed and the owner has carried out regular upkeep/maintenance of it. It should also be noted other trees that have been allowed to be removed

here have had significant die back present in their respective crowns and that die back is not present here or offered as a further reason for refusal.

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, noting that conditions or obligations have been attached where meeting the tests for their imposition. Where relevant, regard has been had to the public sector equality duty, as required by section 149 of the Equality Act 2010 and to local finance considerations (as far as it is material), as required by section 70(2) of the Town and Country Planning Act 1990 (as amended), as well as climate change, human rights and other international legislation.

Recommendation

Refuse for the following reason:

1. This sycamore tree is a prominent landscape feature in an area and makes a positive contribution to the visual amenity of the area; indeed as recently as 2018, the Planning Inspectorate opined that the loss of the tree would result in significant harm being caused to the character and appearance of the area.

Policies BNE4 of the Local Plan Part 1 and BNE7 of the Local Plan Part 2 seeks to preserve trees of notable standing in the local landscape unless the reasons for work (felling in this instance) can be properly substantiated; in short a TPO tree should only be removed in exceptional circumstances. The lack of proper substantiated evidence (in the form of a scientific report or similar) here is a significant concern thus to allow its removal notwithstanding, would undermine the principle of the TPO and put other similar local trees unnecessarily at risk. To that end, the application is contrary to the provisions of those current policies and guidance of the National Planning Policy Framework (NPPF) which adds weight to protecting and enhancing valued landscapes.

Item No. 1.3

Ref. No. [9/2018/1378](#)

Valid Date: 10/01/2019

Applicant: Mr Tim Shone
Melbourne Sporting Partnership

Proposal: **The creation of 3no. artificial grass tennis courts with 3m high perimeter fencing at The Melbourne Sports Pavilion, Cockshut Lane, Melbourne, Derby**

Ward: Melbourne

The application was deferred at the meeting on 16 April 2019, for the applicant to investigate the provision of additional parking at the site. Changes to the body of the report are in italics.

Reason for committee determination

This item is presented to Committee because the Council is associated with the Melbourne Sporting Partnership (MSP).

Site Description

The site lies to the north-western corner of the playing fields immediately adjacent to existing tennis courts. There are dwellings to north and one on the opposite side of Cockshut Lane.

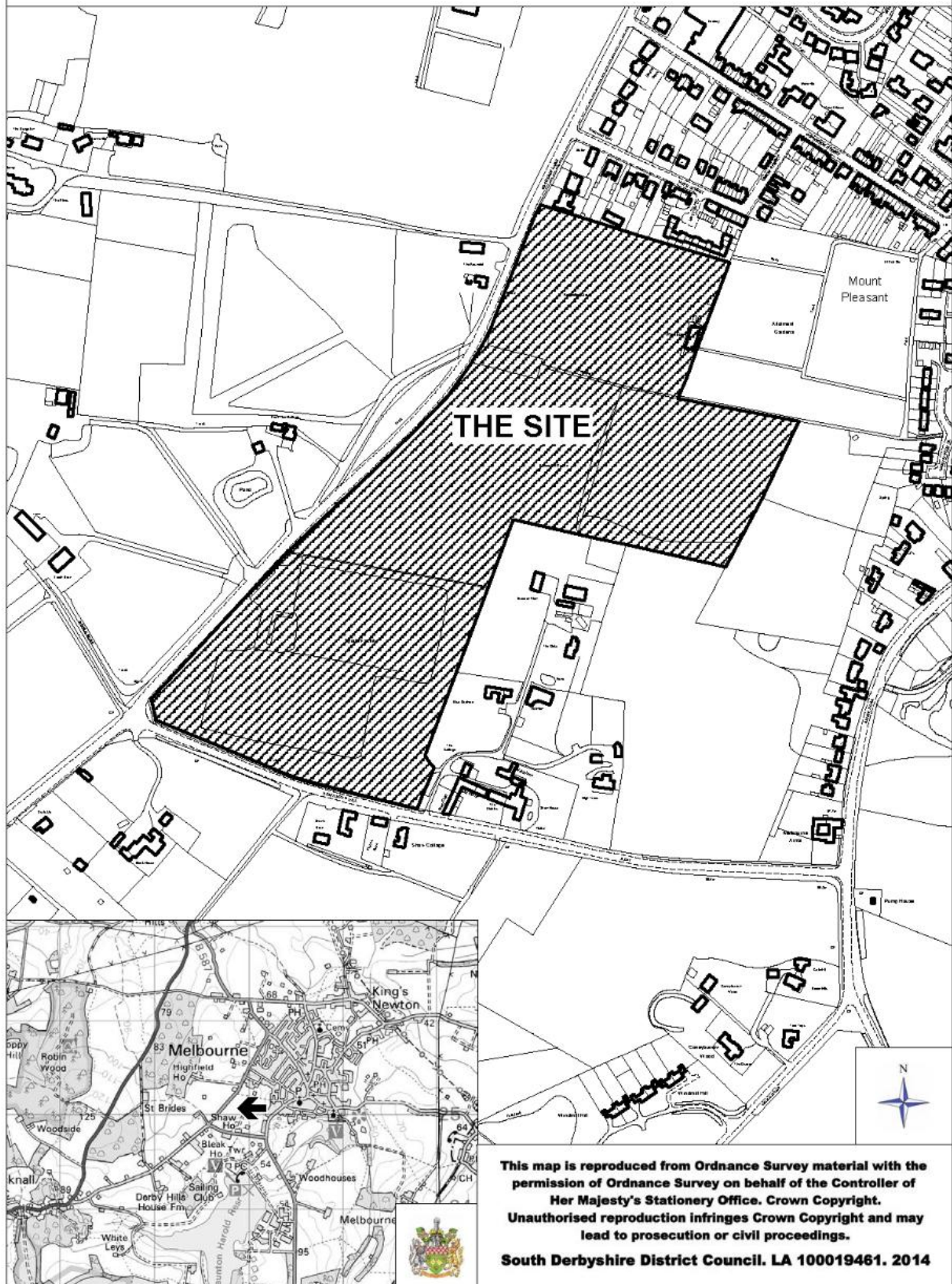
Proposal

The application proposes three all artificial grass courts with 3m high perimeter fencing, coloured green. There are two trees to the north of the application site but within the playing fields and the application indicates that these will be protected by deployment of a cellular mesh construction over the roots. A Tree Survey has informed the extent and nature of the measures. No floodlighting is proposed.

Applicant's Supporting Information

- The sports ground is run by the MSP Management Committee, a partnership of the multi sports using the sports ground.
- The proposal does not seek to change the current use of the sports ground.
- At peak times all courts are full, players have to wait to play.
- Since opening the tennis court usage has grown to its current level, to the extent that additional courts are required to avoid the overcrowded organised juniors, school and adult coaching sessions and reduce court waiting times for players.
- Evidence is supplied to demonstrate existing overcrowding of the facility.
- The 3 proposed additional courts back onto the existing courts with an access gate between the two sets of courts. This would facilitate coaching/lesson coordination, use for school – supervision etc
- The surface would be “synthetic grass” on a sand blinding, porous macadam subbase, which is proven to be a better surface for both juniors (truer bounce and faster surface) but more importantly does not cause as much trauma to the joints. It would allow some of the club's existing players suffering from conditions such as arthritis, rheumatism etc. to enjoy more playing time; current members/players age range 4 years to 84 years.
- The two existing trees would be retained and protected. The proposal would not damage the trees.

9/2018/1378 - Melbourne Sports Pavilion, Cockshut Lane, Melbourne, Derby
DE73 8DG



- The existing car parking area on the site was formed to serve the sports field including a facility on the same site area as this proposal. There would be no increase in numbers of people using the site. Membership numbers are capped at the current level.
- *The reconfigured car parking area adjacent to the all Weather AGP Football pitch now provides 53 parking spaces*
- *The tennis courts would be located in lieu of bowling green which was part of the original planning approval at the Melbourne Sports Park, thus reducing the car parking requirement.*

Planning History

Redevelopment of the playing fields was permitted under planning permission 9/2011/0910 (amended by 9/2013/0458). The application site was identified in those permissions as an area for a bowling green.

Responses to Consultations

The Environmental Health Manager has no objection on the basis of acceptable impacts on the local area.

Derbyshire Wildlife Trust has no objection subject to a condition relating to nesting birds in the Lombardy Poplars.

Responses to Publicity

Melbourne Civic Society has no objection.

Objections have been received from four neighbours on the following grounds:

- a) There would be increased noise and disturbance, and loss of privacy due to the close proximity of neighbouring dwellings.
- b) The existing playing fields and clubhouse generate unacceptable noise 7 days a week.
- c) Any floodlighting would be a nuisance.
- d) Existing parking is inadequate and vehicles park in the road causing danger to pedestrians.
- e) The existing courts are not used to their full potential so need is questioned.
- f) Existing drainage is inadequate and the area becomes waterlogged. This could impact on neighbouring property.
- g) The benefits of the development would not outweigh the adverse impacts on neighbours.
- h) Adjoining property values would be diminished.

Development Plan Policies

The relevant policies are:

- Local Plan Part 1 2016 (LP1): BNE1 (Design) BNE4 (Landscape) S2 (Presumption in Favour of Sustainable Development), SD1 (Amenity), SD2 (Flood Risk), SD3 (Sustainable Drainage) INF 2 (Highway Safety and parking) and INF9 (Open Space, Sport and Recreation).
- Local Plan Part 2 2017 (LP2): BNE7 (Trees)

Emerging Policies

The relevant policies are:

- Melbourne Neighbourhood Development Plan (NDP): No relevant policies to date.

National Guidance

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

Planning Considerations

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

- The principle;
- Impact on the amenities of neighbours;
- Drainage and flooding;
- Trees;
- Visual impact; *and*
- *Parking*

Planning Assessment

The principle

Policy INF9 seeks to provide sufficient high-quality recreation facilities to meet the needs of new development and, where possible, to meet the needs of the existing population. The principle of the use of the site for sport and recreation is long established and while the recent permissions for re-development of the playing fields indicate a bowling green, the provision of tennis courts supports the policy objective to enhance facilities at Cockshut Lane.

Impact on the amenities of neighbours

The proposal would bring sporting activity closer to neighbours. However the hours of use of the new courts would be no longer than the remainder of the playing fields. The Environmental Health Manager has considered noise and does not feel that neighbours would experience unreasonable impacts. The nearest part of the new tennis courts would be some 7-8 metres away from neighbouring boundaries and there would be no significant overlooking. As such the proposal satisfies the requirements of Policy SD1 to avoid adverse impacts on existing occupiers.

Drainage and flooding

The proposal does not specify how surface water would be disposed of. Drainage issues have been identified across the site and MSP has submitted an application for the laying of a new surface water drainage system (application ref: 9/2019/0271) which proposes to mitigate known drainage issues and to facilitate enhanced infrastructure to the MSP playing fields. Policies SD2 & SD3 encourage any developments that could lead to changes in surface water flows or increase flood risk to be managed through the incorporation of Sustainable Drainage Systems (SUDS), which mimic natural drainage patterns, unless this is not technically feasible, or where it can be demonstrated that ground conditions are unsuitable for such measures. *The new surface water system (9/2019/0271) is in the process of implementation and the applicant has also provided information in respect of an independent soakaway scheme. Nevertheless,* a pre-commencement condition is necessary in order to comply with the aforementioned policies, requiring a scheme for surface water drainage to be submitted for approval, along with a program for implementation.

Trees

The submitted tree survey identifies the root protection areas (RPA) of the two trees to the north of the site. It proposes the installation of a root protection system which would adequately safeguard the trees in conformity with Policy BNE7.

Visual Impact

The main visual impact would arise from the perimeter fencing, which would be seen from road above the existing boundary hedges. Nevertheless it would, visually be a lightweight mesh construction similar to the existing adjacent tennis courts and would not adversely affect the general character of the area of the surrounding countryside in accordance with Policies BNE1 & BNE4.

Parking

Since last reported to the Committee, the parking area adjacent to the all-weather pitch has been upgraded with a hard surface and parking bays marked out. This has yielded a net increase of 3 no. spaces in this area along with a more convenient and attractive area for parking all year round. The area next to the rugby pitches is temporarily unavailable, being in use as the contractor's compound for drainage works to undertaken, following which the car park will be reinstated and made available for its designated purpose.

The applicant asserts that if the bowling green were to be brought into use on the site of the proposed courts, the demand on parking could be greater. This is a reasonable argument; on its own merits the proposal would not increase demand for parking at the MSP facility.

Other

The condition suggested by the DWT is not necessary as it would duplicate existing statutory protection afforded to nesting birds.

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

Approve 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 drawing nos. MSP 02 & MSP 03, and the tree protection measures detailed in Document Ref: MSP 04 submitted with the application, 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. Development shall not begin until details of a surface water drainage scheme for the site, which shall include a program for implementation, has been submitted to and approved in writing by the Local Planning Authority. The scheme shall subsequently be implemented in accordance with the approved details and program.

Reason: To prevent increased risk of flooding, acknowledging that there is a concurrent proposal to provide mitigation for known drainage issues and to facilitate enhanced infrastructure to the MSP playing fields, such that it is essential to be able to provide adequate drainage at the outset.

4. The tennis courts shall not be used for any other sporting activity other than tennis without prior written approval from the Local Planning Authority.

Reason: To prevent uses on the tennis courts which could result in excessive noise.

5. The tennis courts hereby permitted shall not be used from 9:30 pm until 8.00 am the following day, unless as may otherwise be agreed in writing with the Local Planning Authority.

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

REPORT TO:	PLANNING COMMITTEE	AGENDA ITEM: 6
DATE OF MEETING:	17th NOVEMBER 2020	CATEGORY: Delegated
REPORT FROM:	HEAD OF PLANNING AND STRATEGIC HOUSING	RESTRICTED
MEMBERS' CONTACT POINT:	LUCY MITCHELL lucy.mitchell@southderbyshire.gov.uk	DOC:
SUBJECT:	SECTION 106 VARIATION AT BOULTON MOOR, THULSTON.	REF: 9/2005/0611 and 9/2010/1134
WARD(S) AFFECTED:	ASTON	TERMS OF REFERENCE:

1.0 Recommendations

- 1.1 That the Committee approves the request to amend the Section 106 Agreement (S106) and subsequent Deeds of Variation (DoV) by means of a further DoV to include a standard Mortgagee in Possession (MiP) clause into the agreement and other minor amends as the Strategic Housing Team feel appropriate.
- 1.2 That the Committee delegate authority to the Head of Planning and Strategic Housing to agree the finer detail and wording of the obligations to be secured under the DoV.

2.0 Purpose of Report

- 2.1 To inform the Committee of the proposed changes to the S106 including the addition of a MiP clause.

3.0 Background

- 3.1 Members may recall that the site, known as Shardlow Road, Boulton Moor was granted planning permission at appeal in January 2009 for up to 1058 homes and associated infrastructure for a site of this size. The original S106 agreement called for a 40% affordable housing contribution, however, this was revised down to 30% in the 2015 DoV along with a revised tenure mix of 75% of the affordable homes provided as affordable or social rented homes and 25% provided as intermediate (affordable home ownership) homes.
- 3.2 To date, the developer has made significant progress in the delivery of affordable homes across the various different phases of the scheme which has contributed to alleviating housing need within the District.
- 3.3 A different Affordable Housing Provider (AHP) has been selected to purchase the affordable homes on the most recent phase of the scheme, Phase 1E, 9/2019/0658.

4.0 Discussion

- 4.1 The Strategic Housing Team have been approached by the AHP who wish to purchase the affordable homes on the most recent phase on the site. They would like to propose a variation to the formally agreed affordable housing definitions across the site by means of a DoV.

- 4.2 The proposed change would include a MiP clause, which means that in the instance that an AHP defaults on their loan payments or mortgage terms, their lender can take control of their affordable housing assets against which the loan is secured. In such instances, the clause offers protection and allows for another AHP, including the Council, to purchase the affordable homes within a specified time period, however, in circumstances where a buyer cannot be found, they lender is free to sell the homes without the affordable housing restrictions to allow them to regain some or all of the loan provided. The Council now includes the MiP as a standard clause in all S106 agreements in order to allow an AHP to borrow money to purchase the S106 affordable homes on sites. This S106 agreement pre-dates the use of this clause and therefore these changes seek to rectify this.
- 4.3 The Strategic Housing Team would like to take the opportunity to update the S106 and various DoVs to be more aligned with current working practice by amending the definition of the AHP and other minor amends to the agreements.

5.0 Financial Implications

- 5.1 There are no financial implications associated to the Council for this change as the costs of the DoV will be paid for by the AHP.

6.0 Corporate Implications

- 6.1 None.

7.0 Community Implications

- 7.1 There would be the same number of affordable homes delivered on the site.

8.0 Background Information

- a. Section 106 Agreement
- b. Deed of Variations

REPORT TO:	PLANNING COMMITTEE	AGENDA ITEM:7
DATE OF MEETING:	17th NOVEMBER 2020	CATEGORY: Delegated
REPORT FROM:	STRATEGIC DIRECTOR (SERVICE DELIVERY)	OPEN
MEMBERS' CONTACT POINT:	JAMES NORTON (01283) 595745 james.norton@southderbyshire.gov.uk	DOC:
SUBJECT:	TREE PRESERVATION ORDER NO. 535: 101 SCROPTON ROAD, HATTON	REF:
WARD(S) AFFECTED:	HILTON	TERMS OF REFERENCE:

1.0 Recommendations

- 1.1 That this Tree Preservation Order should be confirmed.

2.0 Purpose of Report

- 2.1 To consider confirmation of this Tree Preservation Order.

3.0 Detail

- 3.1 This Tree Preservation Order (TPO) was made on 18 May 2020 in respect of a single mature Cedar tree, situated to the rear of 101 Scropton Road, Hatton.
- 3.2 The TPO was made following a request from the owner of 101 Scropton Road who was concerned about inappropriate works to the tree where it overhangs the boundary with 105 Scropton Road.
- 3.3 One letter of objection has been received stating:
- The owner of the tree is trying to use the TPO process to negate responsibilities in respect of the trees and to (misguidedly) negate the neighbours' common law rights;
 - The government's own advice is that in only the most exceptional of circumstances should a TPO be placed on a tree that is not visible (in its entirety) from a public space. This means, in general, trees in rear gardens or on within gated communities, that are not visible should not be protected;
 - The tree in questions drops needles for a large percent of the year which have to be removed so that children are able to run around on the grass in bare feet in the summer;
 - The tree is not being properly maintained as it has grown massively in the last 5 years, their satellite dish has had to be relocated 3 times, and it now blocks out a significant amount of sunlight;
 - Several times a year their guttering has to be cleared out and they have to dispose of huge amounts of needles that get into everything when the weather is bad; and
 - They are unable to use solar panels for power on a home that used to get the sun all day because of the amount of light the tree now blocks out.

3.4 In answer to the comments made, officers have the following response:

- There is no evidence to demonstrate that the TPO has been sought in order for the owner to negate their responsibilities. The request for a TPO came from the owner in response to what he perceived as a threat to the health and appearance of the tree due to its location on the boundary of his land, and concerns about the appearance of the tree should the neighbour lop overhanging branches. The existing tree was assessed for its amenity value, and so to ensure its immediate protection the TPO was progressed. There is no requirement for neighbours to be notified in advance.
- The Planning Practice Guidance (PPG) confirms that the Council can make a TPO if it appears to them to be *“expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area”*. It goes on to state that *“Orders should be used to protect selected trees and woodlands if their removal would have a significant negative impact on the local environment and its enjoyment by the public”*. Contrary to that stated, the PPG states *“the trees, or at least part of them, should normally be visible from a public place, such as a road or footpath, or accessible by the public”* [emphasis added]. To this end, even trees not in a publicly visible position can be protected. In any case, the subject tree here is clearly visible from the public highway and merits protection as it offers amenity value in both directions along Scropton Road.
- Whilst mature Cedar trees are likely to shed needles on a regular basis, this is balanced against the amenity value of the tree and in this case is outweighed by its public amenity, and biodiversity, value. Whilst it appears still to be growing, it is predominantly within the owner’s boundary and needle drop would largely be within that boundary. The dropping of needles, similar to leaf or fruit drop, is seldom a justification to allow works to take place to/removal of a tree, and thus the objection on this basis cannot be sustained.
- The securing of a TPO is not a reason in itself stop any maintenance of the tree, should it be necessary but it will require the approval of works to any protected tree which should be undertaken in accordance with the relevant British Standards. The relocation of the satellite dish is unfortunate but again, the tree has been in the same location for some time and the location of the dish is something that could have been foreseen.
- The tree is to the south east of the neighbours dwelling and as such would not stop solar gain entirely, although may block some sunlight. Recent aerial photography indicates little shading during the day in the spring. However, there appear to be no panels in place currently and in any case there is no right to unobstructed sunlight for the purposes of energy generation.

4.0 Planning Assessment

- 4.1 It is expedient in the interests of amenity to make the tree the subject of a TPO in accordance with advice set out in the PPG.

5.0 Conclusions

- 5.1 It is expedient in the interests of amenity to preserve.

6.0 Financial Implications

- 6.1 None.

7.0 Corporate Implications

- 7.1 Protecting visually important trees contributes towards the Corporate Plan theme of Sustainable Development.

8.0 Community Implications

- 8.1 Trees that are protected for their good visual amenity value enhance the environment and character of an area and therefore are of community benefit for existing and future residents helping to achieve the vision for the Vibrant Communities theme of the Sustainable Community Strategy.

9.0 Background Information

- a. 18 May 2020 – Tree Preservation Order.
- b. 25 June 2020 – Letter of objection.