

REPORT OF THE HEAD OF PLANNING SERVICES

SECTION 1: Planning Applications

SECTION 2: Appeals

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

1. PLANNING APPLICATIONS

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

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

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

12/10/2010

Item **1.1**

Reg. No. **9/2010/0658/FH**

Applicant:

Mr Peter Kitchener
26 High Street
Repton
Derby

Agent:

Mr D Graham Campbell
The Yard House
Repton Road
Bretby
Burton on Trent

Proposal: **THE ERECTION OF AN EXTENSION AT OAKHURST
HOUSE 26 HIGH STREET REPTON DERBY**

Ward: **REPTON**

Valid Date: **14/07/2010**

Reason for committee determination

The application is brought to committee at the request of Councillor Bladen as local concern has been expressed about a particular issue.

Site Description

26 High Street is a detached 2-storey house on a back land site, which is accessed via a narrow, single lane track, situated off the High Street within Repton Conservation Area. There are glimpsed views of the application site from between the properties that front the main street through the village.

Proposal

This is a householder planning application for the erection of a two-storey extension which comprises a kitchen/dining area with utility and wc and integral double garage at ground floor level and 3 bedrooms at first floor level. The works also include new landscaping to the front of the existing dwelling and the removal of an evergreen tree to accommodate parking and turning of vehicles.

Applicants' supporting information

The Agent has submitted a Design and Access Statement, the main points of which are:

- The application property is an unremarkable brick built house, surrounded on 3 sides by private garden, and situated on a back land site which is accessed from High Street via a typical lane.



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South Derbyshire District Council. LA 100019461. 2010

- The applicant has a large and growing family and the current accommodation is not sufficient. The proposed extension will increase the current accommodation from 3 bedrooms to 5.
- The extension is located to the west of the existing property and will create a sizable forecourt for parking and turning of vehicles and access to the 2 new garage spaces. There is no alteration to the existing access from High Street. A specimen evergreen tree is to be removed and replaced with new planting. The existing hedge on the north and west sides of the site will remain.
- The proposed kitchen/dayroom is positioned to take advantage of the southern aspect and private garden. The existing dense hedge maintains privacy at ground level in regard to the adjacent house. The 2 bedroom windows at 1st floor level are at 90° to the adjacent house and are not considered an intrusion on the neighbouring property to the south any more than the existing 1st floor windows.
- The windows on the 1st floor of the west elevation of the extension serve 2 new bathrooms. At ground floor level, new windows to the kitchen and utility rooms are considered sufficiently distant from the house to the west so as to not affect privacy.
- All new walls will be rendered in an off-white colour to contrast with the existing brickwork. This mix of materials is common in Repton.
- Windows and doors will be painted timber in a Heritage colour to be agreed with the Local Planning Authority. The bay above one of the garage doors will be clad in untreated timber boards that will weather to a silver-grey, reminiscent of a traditional village workshop.
- Considerable thought has been given to the massing of the existing house and the extension. The scheme is broken up into 3 distinct elements with the span of the kitchen/dining area being slightly less than the existing house and the garage/utility area being lesser still.

Planning History

There is no planning history that is of relevance to this application.

Responses to Consultations

- The Council's Arboriculturalist has no objection to the removal of the evergreen Spruce Tree although he has advised that with extreme care and thought it may be possible to save the tree.

Response to Publicity

4 letters have been received, commenting/objecting as follows:

- The objector's property is a bungalow and the proposed extension would seriously invade their privacy. The proposed bedroom windows would look directly into all 3 of the objector's bedrooms, conservatory and garden.
- The elevations are incorrectly labelled on the plans.
- The proposed extension incorporates full width patio style doors on the ground floor. This appears to be an opening screen which would create the possibility of noise when it is open to the garden.
- The existing property is 6 metres from the rear boundary and the proposed extension will be 8 metres. Its private garden is therefore very small in relation to

the 5 bedroomed house being created and will place the extended property very close to adjoining gardens.

- The Design and Access Statement makes no mention of the objector's bungalow which is the closest dwelling. It refers only to "the house to the west".
- The proposal converts a modest house into a substantial family dwelling of a size which is out of proportion with the plot and surroundings within a conservation area.
- Provision of a double garage and increased parking area indicates a major intensification of use of the existing private access from High Street, which is narrow and constructed of loose gravel with minimal visibility.
- The objectors own the access lane over which the applicants have a right of way, and whilst no objection is raised to the proposed extension, there are extreme concerns over the potential for damage to the lane and the objector's property, which is at the entrance to the lane, during the construction stage. All the utilities for the surrounding houses run underneath the lane and there are concerns that the lane will not withstand the weight, width, size and frequency of traffic associated with a large build. The objector's have suggested that the applicant's make up the lane to a sufficient standard to withstand the increased load before any construction is commenced. Alternatively, vehicles accessing the lane should be limited by size, weight and frequency of trips. [Subsequent to the comments from this neighbour an agreement has now been reached between the between the parties regarding payment for any damage and the access owners now confirm they are now comfortable with the erection of the extension.]

Development Plan Policies

The relevant policies are:

South Derbyshire Adopted Local Plan: Saved Housing Policy 13 and Environment Policy 12.

National Guidance

Planning Policy Statement 5: Planning for the Historic Environment.

Planning Considerations

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

- Impact on the amenities of the neighbouring properties
- Impact on the character and appearance of the conservation area.

Planning Assessment

The proposal conforms to the above-mentioned policies and the Council's supplementary planning guidance 'Extending your Home'.

Although the proposed extension is substantially large in relation to the existing dwelling, it has been sympathetically detailed to be in keeping with its style. The extension complies with the distance guidelines in regard to the neighbouring properties and would therefore not adversely affect their amenities.

There are glimpsed views of the proposed extension from the main street of the village however the Heritage Officer has raised no objection as the impact on the character and appearance of the conservation area would be minimal.

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. This permission shall relate to the originally submitted plans, received 14/07/10, and the additional survey drawing no. 2525A, received 03/09/10.
Reason: For the avoidance of doubt.
3. No part of the development shall be carried out until precise details, specifications and, where necessary, samples of the facing materials to be used in the construction of the external walls and roof of the building(s) have been submitted to and approved in writing by the Local Planning Authority. The work shall be carried out in accordance with the approved details.
Reason: To safeguard the appearance of the existing building and the locality generally.
4. Large scale drawings to a minimum Scale of 1:10 of eaves, verges and all external joinery, including horizontal and vertical sections, precise construction method of opening and cill and lintel details shall be submitted to and approved in writing by the Local Planning Authority before building work starts. The external joinery shall be constructed in accordance with the approved drawings.
Reason: The details submitted are inadequate to determine whether the appearance of the building would be acceptable.
5. External joinery shall be in timber and painted to a colour and specification which shall have been previously agreed in writing by the Local Planning Authority. The joinery shall be painted in accordance with the agreed details within three months of the date of completion of the development unless otherwise agreed in writing by the Local Planning Authority.
Reason: In the interests of the appearance of the building(s) and the character of the area.
6. All plumbing and service pipework, soil and vent pipes, electricity and gas meter cupboards and heating flues shall be located inside the building unless specifically agreed in writing by the Local Planning Authority. The type, number, position and finish of heating and ventilation flue outlets shall be agreed in writing with the Local Planning Authority before development is commenced.

Reason: In the interests of the appearance of the building(s) and the character of the area.

7. Gutters and downpipes shall have a black finish and be fixed direct to the brickwork on metal brackets. No fascia boards shall be used.

Reason: In the interests of the appearance of the building(s), and the character of the area.

8. Pointing of the existing/ proposed building(s) shall be carried out using a lime mortar no stronger than 1:1:6 (cement:lime:yellow sand). The finished joint shall be slightly recessed with a brushed finish.

Reason: In the interests of the appearance of the building(s).

9. A sample panel of pointed brickwork 1 metre square or such other area as may be agreed by the Local Planning Authority shall be prepared for inspection and approval in writing by the Local Planning Authority prior to the implementation of any other works of pointing. The works shall be carried out in accordance with the approved sample.

Reason: In the interests of the appearance of the building(s) and the locality generally.

Item **1.2**

Reg. No. **9/2010/0672/FM**

Applicant:

Mr & Mrs Summerlin &
Alexander Bruce Estates Ltd
Kings Newton Hall
Kings Newton
Melbourne

Agent:

Mr Joe White
BHB Architects
Georgian House
24 Brid Street
Lichfield

Proposal: **THE ERECTION OF FOUR DWELLINGS AT 29 CHURCH STREET MELBOURNE DERBY**

Ward: **MELBOURNE**

Valid Date: **27/07/2010**

Reason for committee determination

The application is brought to Committee at the request of Councillor Hewlett because local concern has been raised about a particular issue.

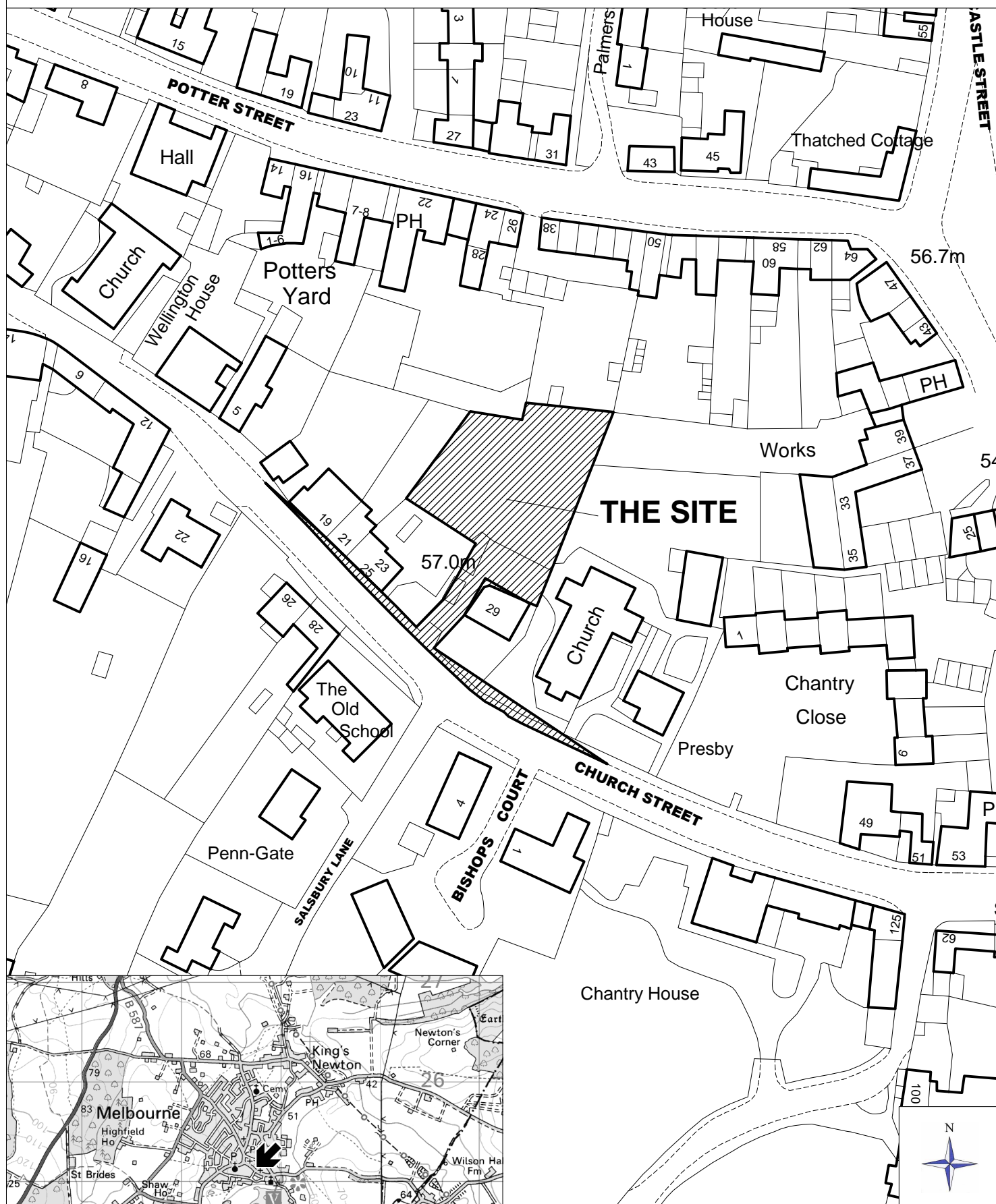
Site Description

The site is vacant land behind Nos 23, 25 and 29 Church Street. Whilst the site is overgrown there are no substantial trees. Two recently permitted dwellings, on the site of the former bungalow at No 29, are presently under construction.

Proposal

The application proposal would be connected to Church Street via a new vehicular access that would also serve the two permitted dwellings. The layout would comprise two pairs of traditional design semi-detached houses, two of which would have two bedrooms, with one three bed and one five bed unit. The latter unit would include a garage and parking space within its curtilage. A separate garage block and parking court would provide two spaces for the other units. In addition two spaces would be provided for the previously approved Unit 1 (see History below).

The layout includes a visibility splay over land in front of the adjoining Roman Catholic Church. This would involve lowering the boundary wall to a height of 1 metre, from its present height of 1.1 metres. The plans have been amended to provide turning space within the site to the Highway Authority's standards.



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Applicants' supporting information

The submitted Design and Access Statement makes reference to the existing patterns of development and historic architecture in the town to justify the traditional design approach employed. Reference is also made to the provision of two parking spaces for the previously approved plot fronting Church Street.

Planning History

Two dwellings were permitted at the site frontage last year at 29 Church Street (9/2009/0461) to replace the bungalow that previously occupied the site. Because that application did not provide adequate visibility splays the Highway Authority was opposed to intensification of use of the access. Therefore the smaller of the two units was permitted without off-street parking provision. A subsequent application for a minor amendment permitted some small changes to external design and siting (9/2010/0256).

Responses to Consultations

The Parish Council has no objection.

Melbourne Civic Society has no objection to the design of the new dwellings but would not wish to see the visibility splays becoming part of the highway. (Comment the proposal shows the retention/rebuilding of boundary walls, the height of which can be controlled by condition).

The Development Control Archaeologist has no objection principle.

The Highway Authority comments that the layout is not considered to be ideal and would prefer to see a 9m x 9m manoeuvring area within the site. However, as two car parking spaces per dwelling have been provided within the site, with space to manoeuvre, this is not considered to be sufficient reason for refusal. Conditions are recommended to protect highway safety interests.

Responses to Publicity

Two neighbours object as follows:

- a) The plan does not show what happens to the boundary with 21 Church Street. The private pedestrian access to the rear of that property should be retained.
- b) Due to the narrow congested nature of Church Street, its use as a bus route and its alignment, the development would increase risk to highway users.
- c) The parking facilities within the site would not be adequate and there would be increased parking in Church Street with associated increased risk to safety.
- d) It is unlikely that the all the parking spaces would be capable of practicable use. Furthermore visitors would not able to assess whether spaces would be available when viewed from Church Street.
- e) It is likely that vehicles would be unable to turn within the site and thus would have to reverse into the classified road.
- f) The access would be unsuitable for service vehicles, which would therefore park in the street causing congestion and danger.
- g) Access to a neighbouring driveway would be impeded by the additional parked vehicles in the highway, causing increased risk of accident.

h) Church Street is already heavily congested with parked vehicles.

Development Plan Policies

The relevant policies are:

South Derbyshire Local Plan Saved Housing Policies 5 & 11, Environment Policies 12, 13 & 14 and Transport Policy 6.

National Guidance

PPS1 PPS3 PPS5 PPG13

Planning Considerations

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

- The principle.
- Impact on the character and appearance of the conservation area.
- Residential amenity.
- Highway safety.
- Archaeology.
- Hazardous Installation.

Planning Assessment

The site lies within the village confine as defined in the Local Plan and Melbourne is a settlement with a wide range of facilities and options to travel by means other than the private car. Therefore the proposal accords with sustainability principles set out in PPS1 PPS3 and PPG13 in terms of location.

The design of the scheme takes account of the historic grain and style of buildings found in the Melbourne Conservation Area. The Design and Conservation Officer affirms the design approach for this site. In conjunction with the approved frontage development the scheme would yield an enhancement to the character and appearance of the conservation area. There would be no impact on the setting of the various listed buildings in the area. None of the trees and shrubs on the site has high public amenity value.

The proposal meets the tests set out in the supplementary planning guidance for new housing. As such the living conditions of existing neighbours would not be materially harmed.

On the advice of the Highway Authority the access, manoeuvring and parking arrangements would meet the requisite standards. As such there would be no demonstrable harm to highway safety interests. The layout shows a positive benefit insofar as the small frontage unit previously permitted would be provided with off-street parking.

Subject to the recommendations of the Development Control Archaeologist this heritage asset would be adequately safeguarded.

The site lies within an area influenced by a hazardous installation (Melbourne Water Treatment Works), being in the 'Outer Zone' of risk. The development is acceptable in accordance with the Health and Safety Executive's standing advice (PADHI).

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

Recommendation

GRANT permission subject to the following conditions:

1. The development permitted shall be begun before the expiration of three years from the date of this permission.
Reason: To conform with Section 91(1) of the Town and Country Planning Act, 1990 (as amended by section 51 of the Planning and Compulsory Purchase Act 2004).
2. Notwithstanding the originally submitted details, this permission shall relate to the amended drawing nos. 2440-11 Rev F, 12 Rev F, 13 Rev F, 14 Rev E, 31 rev A and 220 Rev B.
Reason: For the avoidance of doubt, the original submission being considered unacceptable.
3. Prior to being incorporated in the development precise details, specifications and, where necessary, samples of the facing materials to be used in the construction of the external walls and roof of the buildings, including boundary walls and their capping material, have been submitted to and approved in writing by the Local Planning Authority. The work shall be carried out in accordance with the approved details.
Reason: To safeguard the appearance of the existing building and the locality generally.
4. Prior to being incorporated in the development precise details, specifications and, where necessary, samples of the materials to be used in the construction of all external hard surfaces shall be submitted to and approved in writing by the Local Planning Authority. The work shall be carried out in accordance with the approved details.
Reason: To safeguard the appearance of the existing building and the locality generally.
5. Pointing of the existing/ proposed buildings and boundary walls shall be carried out using a lime mortar no stronger than 1:1:6 (cement:lime:yellow sand). The finished joint shall be slightly recessed with a brushed finish.
Reason: In the interests of the appearance of the buildings.
6. A sample panel of pointed brickwork/stonework 1 metre square or such other area as may be agreed by the Local Planning Authority shall be prepared for inspection and approval in writing by the Local Planning Authority prior to the implementation of any other works of pointing. The works shall be carried out in accordance with the approved sample.

Reason: In the interests of the appearance of the buildings and the locality generally.

7. External joinery shall be in timber and painted to a colour and specification which shall have been previously agreed in writing by the Local Planning Authority. The joinery shall be painted in accordance with the agreed details within three months of the date of completion of the development unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interests of the appearance of the buildings and the character of the area.

8. All plumbing and service pipework, soil and vent pipes, electricity and gas meter cupboards and heating flues shall be located inside the building unless specifically agreed in writing by the Local Planning Authority. The type, number, position and finish of heating and ventilation flue outlets shall be agreed in writing with the Local Planning Authority before being incorporated in the development.

Reason: In the interests of the appearance of the buildings and the character of the area.

9. Gutters shall be cast metal (with cast metal fall pipes) and shall be fixed direct to the brickwork on metal brackets. No fascia boards shall be used.

Reason: In the interests of the appearance of the buildings, and the character of the area.

10. Large scale drawings to a minimum Scale of 1:10 of eaves, verges, chimneys and external joinery, including horizontal and vertical sections, precise construction method of opening and cill and lintel details shall be submitted to and approved in writing by the Local Planning Authority before being incorporated in the development. The eaves, verges, chimneys and external joinery shall be constructed in accordance with the approved drawings.

Reason: The details submitted are inadequate to determine whether the appearance of the building would be acceptable.

11. The first and second floor windows in the side elevation of Unit 6 shall be permanently glazed in obscure glass.

Reason: To avoid overlooking of adjoining property in the interest of protecting privacy.

12. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008, the dwelling hereby permitted shall not be altered, enlarged or extended, no satellite dishes shall be affixed to the dwelling and no buildings, gates, walls or other means of enclosure (except as authorised by this permission or required by any condition attached thereto) shall be erected on the application site (shown edged red on the submitted plan) without the prior grant of planning permission on an application made in that regard to the Local Planning Authority.

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

13. Notwithstanding any details submitted or the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended), no development shall take place until there has been submitted to and approved in

writing by the Local Planning Authority plans indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed in accordance with the approved details before the development is occupied or in accordance with a timetable which shall first have been agreed in writing with the Local Planning Authority.

Reason: In the interests of the appearance of the area and residential amenity.

14. The development shall not be brought into use until the boundary wall in front of Unit 2 has been constructed in accordance with planning permission 9/2010/0256/B to a height of 1 metre relative to the carriageway nearside edge and the Church boundary wall has been lowered to a similar height, and capped in accordance with Condition 3 of this permission.

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

15. Before any other operations are commenced (excluding demolition/ site clearance), space shall be provided within the site curtilage for storage of plant and materials/ site accommodation/ loading and unloading of goods vehicles/ parking and manoeuvring of site operatives and visitors vehicles, laid out and constructed in accordance with detailed designs first submitted to and approved in writing by the Local Planning Authority, and maintained throughout the contract period in accordance with the approved designs free from any impediment to its designated use.

Reason: In the interests of highway safety.

16. Prior to any other works commencing, the access shall be provided onto Church Street in accordance with drawing no. 2440-11 Rev F. The access shall have a minimum width of 4.8m, be constructed as a splayed vehicular crossover and be provided with 2.4m x 43m visibility sightlines the area forward of which shall be cleared and maintained in perpetuity clear of any obstruction exceeding 1m in height (600mm in the case of vegetation) relative to the nearside carriageway edge.

Reason: In the interests of highway safety.

17. Prior to the occupation of the first dwelling, any remains of the original access not included in the new access shall be reinstated as footway in accordance with a scheme first submitted to and approved in writing by the local Planning Authority.

Reason: In the interests of highway safety.

18. Prior to the occupation of the first dwelling, the car parking and manoeuvring space shall be laid out in accordance with the amended application drawing and shall include the additional area shown hatched on the attached plan and maintained thereafter free of any impediment to its designated use.

Reason: In the interests of highway safety.

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

Reason: In the interests of highway safety.

20. No development shall take place until a Written Scheme of Investigation for archaeological work has been submitted to and approved by the local planning authority in writing. The scheme shall include an assessment of significance and research questions; and

1. The programme and methodology of site investigation and recording
2. The programme for post investigation assessment
3. Provision to be made for analysis of the site investigation and recording
4. Provision to be made for publication and dissemination of the analysis and records of the site investigation
5. Provision to be made for archive deposition of the analysis and records of the site investigation
6. Nomination of a competent person or persons/organization to undertake the works set out within the Written Scheme of Investigation

Reason: To enable items of archaeological interest to be recorded/and or preserved where possible.

21. No development shall take place other than in accordance with the archaeological Written Scheme of Investigation approved under condition 20.

Reason: To enable items of archaeological interest to be recorded/and or preserved where possible.

22. The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the archaeological Written Scheme of Investigation approved under condition 20 and the provision to be made for analysis, publication and dissemination of results and archive deposition has been secured.

Reason: To enable items of archaeological interest to be recorded/and or preserved where possible.

Informatives:

Pursuant to Section 184 of the Highways Act 1980 and Section 86(4) of the New Roads and Streetworks Act 1991, at least 3 months prior notification should be given to the Director of Environmental Services at County Hall, Matlock (telephone 01629 580000 and ask for the District Highway Care Manager on extension 7595) before any works commence on the vehicular access within highway limits.

Pursuant to Section 163 of the Highways Act 1980, where the site curtilage slopes down towards the public highway, measures should 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 dished channel or gulley laid across the access immediately behind the back edge of the highway, discharging to a drain or soakaway within the site.

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.

Pursuant to Section 149 and 151 of the Highways Act 1980, the applicant/developer must take all necessary action 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/developer's responsibility to ensure that all reasonable steps (e.g. street sweeping) are taken to maintain the roads in the vicinity of the site to a satisfactory level of cleanliness.

Item **1.3**

Reg. No. **9/2010/0674/NO**

Applicant:

MR ADRIAN DAWSON
THE HILL LODGE
DEEP DALE LANE
BARROW ON TRENT
DERBY

Agent:

MR CHRISTOPHER THORP
CHRIS THORP PLANNING LTD
20A HAZLEWOOD ROAD
DUFFIELD
BELPER

Proposal: **THE FORMATION OF NEW ACCESS AND ENTRANCE
GATES AT THE HILL LODGE DEEP DALE LANE
BARROW ON TRENT DERBY**

Ward: **ASTON**

Valid Date: **28/07/2010**

This application was deferred at the last committee to enable members to visit the site.

Reason for committee determination

The application is reported to Committee at the request of Councillor Watson because local concern has been raised about a particular issue.

Site Description

The Hill Lodge is located close the Canal Bridge on Deepdale Lane. The property has been extend and altered and there are free standing buildings in the curtilage. At present the means of access to the site is shared with The Hill, from a private drive. The Deepdale Lane boundary consists of a mix of fencing, conifers and a deciduous hedge species.

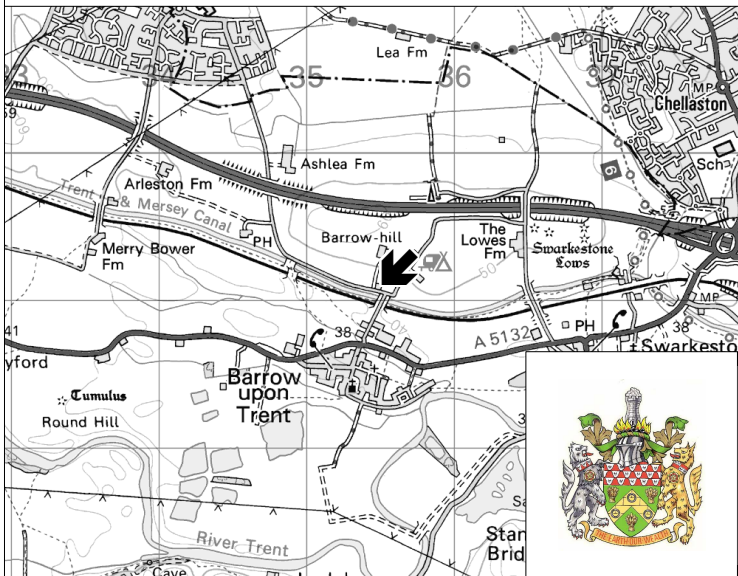
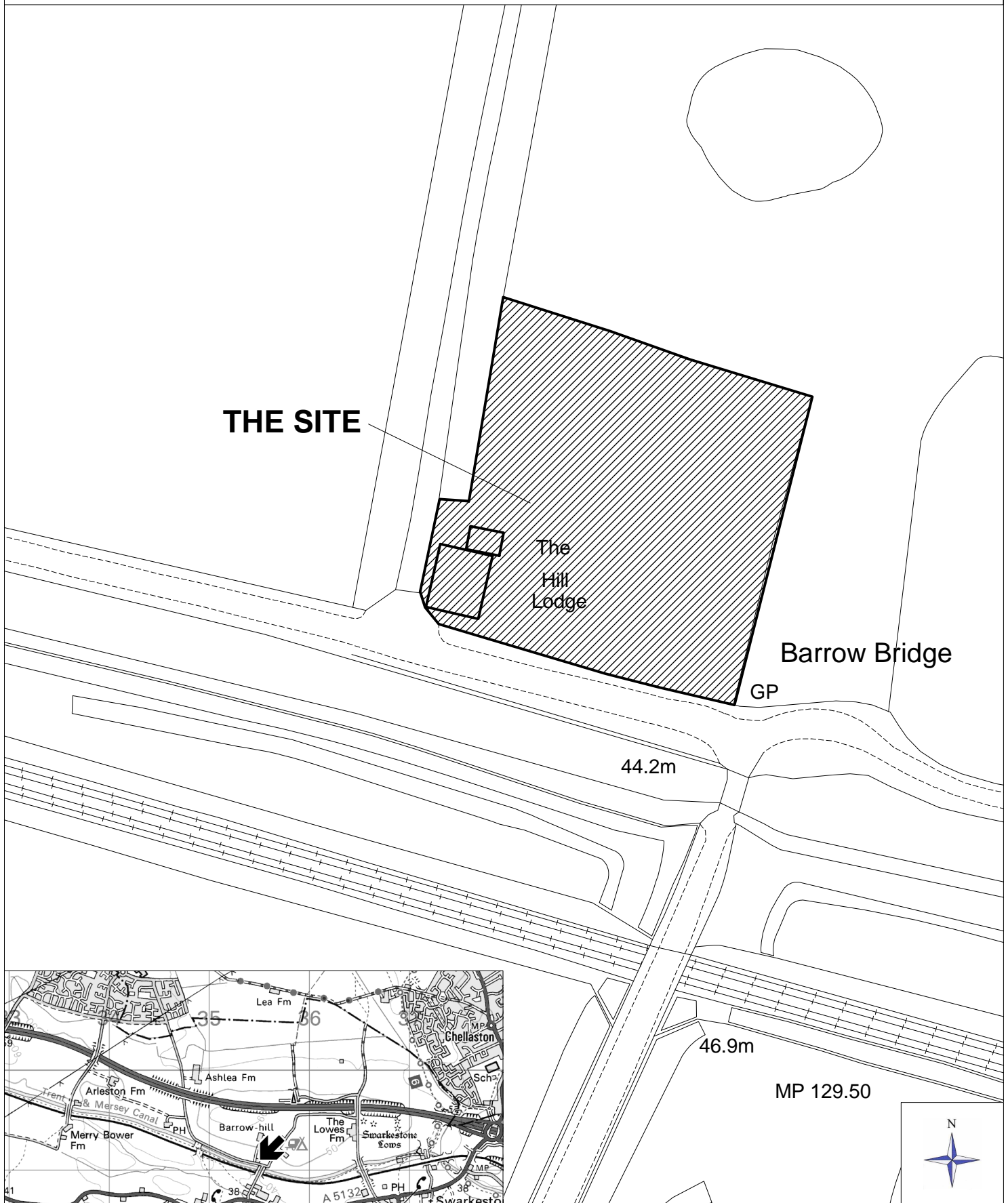
Proposal

The proposal seeks to form direct access to Deepdale Lane through the boundary hedge. Work has commenced. There is a large tree, a Beech, immediately to the west of the access.

Applicants' supporting information

The applicant has supplied an arboricultural survey, which makes recommendations about the method of construction so as to avoid damage to the tree.

Planning History



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9/0390/1320/F - Stable block. Permitted. Work commenced within five years of the grant of permission.
 9/2002/1020/F - Conservatory. Permitted
 9/2002/1038/F - Two storage sheds (one in the garden and one in the paddock) and revised plan for stables. Permitted
 9/2002/1211/F - Hardstanding and access - permitted.
 9/2003/0267/F Erection of feed store and tack shed to be attached to stable. Permission refused on the grounds of visual impact.
 9/2003/0480/F - Conservatory and garage - permitted.
 9/2003/1026/U - Change of use and alterations to stables for office use. Refused on the grounds of traffic and the visual impact of the proposed changes.
 9/2004/0534/FH - The installation of a balcony, and alterations to previously approved shed - permitted.
 9/2005/0194/F - Animal rearing shed. Refused on the grounds of visual impact.
 9/2005/0040/F – Garage (revised elevations) - permitted.
 9/2005/0807/U – Change of use of stable to office and retention of hardstanding - permitted.
 9/2006/0423/F – Animal rearing shed. Refused on the grounds of visual impact.
 9/2007/0076/F – Extension to office. Refused on policy, visual impact and sustainability grounds. Appeal dismissed.
 9/2008/0579/U – Change of use of paddock to garden - permitted
 9/2008/1059 – Covered structure attached to garage – permitted.

Responses to Consultations

The Parish Council objects for the following reasons:

- a) The block plan is out of date and does not show extra buildings on the site that are now dwellinghouses, which do not have planning permission and another building is shown as 'proposed annex'.
- b) The access is close to a hazardous bridge crossing and corner, with poor visibility. Increased usage of the site for dwellings would increase risk.
- c) The access has been blocked with tarpaulins.
- d) The drive would be within 20 metres of a watercourse, the canal, contrary to the application form (Comment – this part of the form relates to flood risk. The form refers to a watercourse as river, stream or beck. The access has no flood risk implications).
- e) The site is already occupied by several dwellings, contrary to the application form.
- f) The arboricultural statement postdates the felling of existing trees and hedges and does not give a true representation of the original state of the site.
- g) A site visit should be undertaken.
- h) This is another retrospective application that makes a mockery of the planning process and prejudices the council's ability to protect the environment from undesirable development.

The Highway Authority has no objection subject to the provision of a visibility sight line in the easterly (bridge) direction.

Responses to Publicity

None.

Development Plan Policies

The relevant policies are:

South Derbyshire Local Plan Saved Environment Policy 1.

National Guidance

PPS7

Planning Considerations

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

- The principle.
- Highway safety.
- Visual impact.
- Trees.

Planning Assessment

Because the access would serve an existing planning unit the principle is in accord with Environment Policy 1.

Subject to the recommendation of the Highway Authority, highway safety interests would not be demonstrably compromised. However the visibility splay in the easterly direction would necessitate the cutting back, or loss, of the remainder of the hedgerow.

The access would be clearly visible. However, subject to control over the materials used for the wall and gates, and subject to landscaping to compensate for the loss of vegetation to form the visibility splay, the visual impact would not be demonstrably harmful.

The arboricultural report demonstrates that the tree could be preserved. Conditions would be needed to ensure implementation of the report's recommendations.

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

Recommendation

GRANT permission subject to the following conditions:

1. Before any further development takes place a scheme of landscaping shall be submitted to and approved by the Local Planning Authority; the scheme shall include indications of all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection in the course of development.

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

2. 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.

3. Before any further development takes place details and specifications of the foundations of the west wall and the methodology of the driveway construction, which shall follow the principles set out in the submitted arboricultural report, shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented strictly in accordance with the approved details and specifications unless as may otherwise be agreed in writing with the local planning authority.

Reason: To ensure that the Beech tree is adequately protected from damage.

4. Before the access is brought into use, visibility splays shall be provided extending from a point 2.4 m from the carriageway edge, measured along the centreline of the access, for a distance of 160m in the westerly direction, and in the easterly direction from a point 2.4m from the carriageway edge measured along the nearside carriageway edge to the junction with Moor Lane, in accordance with a scheme that shall first be submitted to and approved in writing by the local planning authority. The land in advance of the visibility splays shall be maintained throughout the life of the development clear of any object greater than 1 m in height (0.6 m in the case of vegetation) relative to the adjoining nearside carriageway channel.

Reason: In the interests of highway safety.

5. No gates shall be erected within 5m. of the highway boundary and any gates shall open inwards only.

Reason: In the interests of highway safety.

6. No further development shall be carried out until precise details, specifications and, where necessary, samples of the facing materials to be used in the construction of the new walls, including the capping, have been submitted to and approved in writing by the Local Planning Authority. The work shall be carried out in accordance with the approved details.

Reason: To safeguard the appearance of the walls and the locality generally.

Informatives:

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.

Pursuant to Section 184 of the Highways Act 1980 and Section 86(4) of the New Roads and Streetworks Act 1991, at least 3 months prior notification should be given to the Director of Environmental Services at County Hall, Matlock (telephone 01629 580000 and ask for the District Highway Care Manager on extension 7595) before any works commence on the vehicular access within highway limits.

Item **1.4**

Reg. No. **9/2010/0731/U**

Applicant:

Mrs Sarah Davies
32a Willow End
Regina Crescent
Ravenshead

Agent:

Mrs Sarah Davies
32a Willow End
Regina Crescent
Ravenshead

Proposal: **CHANGE OF USE FROM AGRICULTURAL LAND TO
RESIDENTIAL GARDEN AT ROSEHILL CROPPER LANE
OSLESTON ASHBOURNE**

Ward: **NORTH WEST**

Valid Date: **04/08/2010**

Reason for committee determination

The application does not strictly comply with Local Plan Environment Policy 1 and the recommendation is one of approval.

Site Description

The site is part of a field adjacent to Rosehill Cottage and is generally unseen from public vantage points. The cottage lies at a significantly lower level than the application site which is enclosed on its eastern boundary by a hedge. Currently there are no boundaries to the north and west sides of the site that comprises part of an agricultural field.

Proposal

The extended garden would align with the roadside hedge where it adjoins Cropper Lane and the existing west boundary to the cottage as illustrated on the site plan.

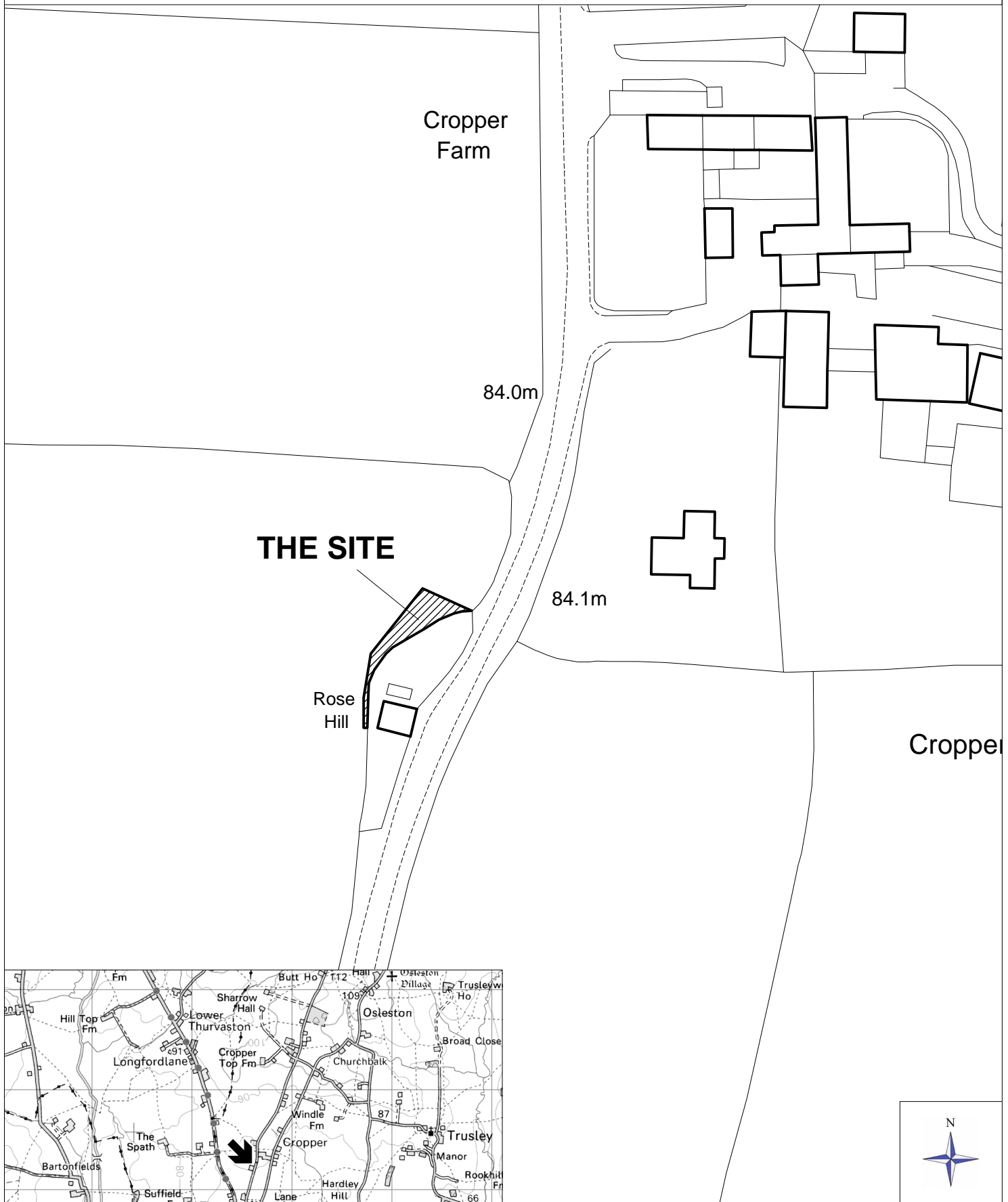
No boundary details have been submitted as a part of the application.

Planning History

Rosehill Cottage is currently being redeveloped and extended to form a larger dwelling under planning permission 9/2010/0423.

Responses to Consultations

There have been no responses to consultation.



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South Derbyshire District Council. LA 100019461. 2010

Development Plan Policies

The relevant policies are:

Local Plan: Environment Policy 1

Planning Considerations

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

- The principle.
- Landscape impact.
- Neighbour impact.

Planning Assessment

The extended garden would square off the residential curtilage and would have minimal impact on the character and appearance of the countryside. Appropriate conditions would enable control over any new buildings and the detail of a new boundary that would otherwise be permitted development. In these circumstances the change of use would not prejudice the policy for development in the countryside. There is no impact on neighbours.

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

Recommendation

GRANT permission subject to the following conditions:

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

Reason: To conform with Section 91(1) of the Town and Country Planning Act, 1990 (as amended by section 51 of the Planning and Compulsory Purchase Act 2004).
2. Notwithstanding any details submitted or the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended), no development shall take place until there has been submitted to and approved in writing by the Local Planning Authority plans indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed in accordance with the approved details before the development is occupied or in accordance with a timetable which shall first have been agreed in writing with the Local Planning Authority.

Reason: In the interests of the appearance of the area.
3. 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.

4. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008, no buildings and no gates, walls, fences or other means of enclosure shall be erected on the application site, except as authorised under the submitted application without the prior grant of planning permission on an application made in that regard to the Local Planning Authority.

Reason: To ensure that any such structures are appropriate to the appearance of the area and are not detrimental to the character of the countryside hereabouts.

Informatives:

Further to the requirements of Condition 2 above the submitted details should include the precise height of a post and rail boundary fence to the extended garden, details of a mixed thorn hedge that shall have a mix that includes Guelder Rose and Holly together with details of how the young hedge would be protected from wild life and livestock whilst it becomes established.

Item **1.5**

Reg. No. **9/2010/0785/U**

Applicant:

Mr Dewan Reza
30 King Edward Road
Loughborough

Agent:

Mr Dewan Reza
30 King Edward Road
Loughborough

Proposal: **THE CHANGE OF USE FROM CALL CENTRE TO
RESTAURANT AT 61 DERBY ROAD MELBOURNE
DERBY**

Ward: **MELBOURNE**

Valid Date: **23/08/2010**

Reason for committee determination

The application is reported to Committee at the request of Councillor Hewlett because local concern has been raised about a particular issue.

Site Description

The property is situated at the corner of Derby Road and South Street. The ground floor is presently vacant. The upper floor is in residential use. Whilst the immediate area is predominantly residential in land use, the adjoining property is the Alma public house and the Liberal Club is situated opposite. However Derby Road, from the town centre to Victoria Street, contains a wider mix of land uses, typical of settlement of Melbourne's size and historic pattern of development.

Proposal

The applicant wishes to use the ground floor as a restaurant (use Class A3). Whilst a takeaway element was also proposed at the outset (Use Class A5) this has now been withdrawn. No external alterations to the building are proposed.

The proposed hours of opening are: Monday to Saturday 1730 hrs – 2230 hrs. The premises would be closed on Sundays and Bank Holidays.

Planning History

9/1997/0916 - The use as a wine bar of the retail premises – permitted
9/2001/0058 - Proposal: outline application (with all matters except siting and means of access reserved for further approval) for the erection of a single dwelling - refused
9/2002/0071 - The use as a computer training centre (D1) and wine bar (A3) – permitted
9/2005/0014 - The use of the premises as a call centre for drain clearance company and the retention of gate - permitted

9/2010/0785 - 61 Derby Road, Melbourne, Derby DE73 8FE



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South Derbyshire District Council. LA 100019461. 2010

Responses to Consultations

The Parish Council expressed concern about the lack of off-street parking and additional parking in Derby Road and South Street by persons collecting takeaways, resulting in a traffic hazard. (Comment: The takeaway element has been withdrawn)

Melbourne Civic Society has no objection.

The Highway Authority objected to the takeaway element but has no objection to the use of the premises as a restaurant. The authority draws attention to the previously permitted wine bar, to which no highway objection was raised, and considers that the creation of a restaurant would not have a demonstrable impact on highway safety or roadside parking in the vicinity of the site.

The Pollution Control Officer has no objection subject to conditions relating to odour control.

Responses to Publicity

19 letters of objection have been received raising the following concerns:

- a) The area is already congested with parked cars, particularly in the evening when the restaurant would be open. The proposal would exacerbate the problem and result in danger to highway users.
- b) The locality has been the scene of accident.
- c) There is no convenient public car park.
- d) The yard to the rear of the property would not provide meaningful parking.
- e) The proposed use would exacerbate existing noise and anti-social behaviour issues by encouraging congregation in the area to the detriment of crime prevention objectives and the amenities of local residents.
- f) The proposal is contrary to the development plan.
- g) There would be loss of amenity because of cooking odours.
- h) There could be an increase in vermin, attracted by food waste.
- i) There would be litter.
- j) The village already has sufficient food and drink premises.
- k) The character of the conservation area would be adversely affected.
- l) Properties would be devalued.
- m) Existing driveways would be blocked.
- n) The closing time is likely to be later than the applicant states.

Development Plan Policies

The relevant policies are:

South Derbyshire Local Plan Saved Environment Policy 12 and Transport Policy 6.

National Guidance

PPS1 PPS4 PPG13

Planning Considerations

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

- The principle.
- Impact on the character of the conservation area.
- Residential amenity.
- Traffic and highway safety.

Planning Assessment

The site is within a settlement containing mixed use and transport alternatives, and would re-use an existing building. As such the basic sustainability tests of the relevant government guidance are met. The property has been in use for economic purposes for many years including recent use as a wine bar.

Given the mixture of land uses in Derby Road, and the historic usage of the application site, the use of the premises as a restaurant would not give rise to a change in the character of the conservation area.

On the advice of the Pollution Control Officer, and having regard to the immediate proximity of the Alma Inn, the proposed use would not result in demonstrable harm to the living conditions of residential neighbours, subject to the recommended condition. A condition restricting the opening hours to those specified in the application would eliminate late night disturbance arising from the use.

On the basis of there being no takeaway facility at the premises, the Highway Authority indicates that the use would not have a demonstrable impact on highway safety or roadside parking in the vicinity of the site.

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 premises shall be used solely for a purpose falling within Class A3 of the Town and Country Planning (Use Classes) Order 1987 (as amended). In particular the premises shall not be used for the sale of hot food for consumption off the premises.
Reason: In the interests of highway safety and the amenity of the occupiers of nearby dwellinghouse.

3. Prior to the first use of the site hereby permitted, details of a fume extraction system (to include extraction rates and filtration systems, the means to secure its effectiveness, and a scheme to maintain its effectiveness) shall be submitted to and approved in writing by the local planning authority and implemented in accordance with the approved scheme. The approved scheme, including the maintenance scheme, shall be retained in place for the duration of the permitted use.

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

4. The use hereby permitted shall not be open to customers outside the following times: Monday to Saturday 1730 hrs - 2230 hrs.

The premises shall not be open for business on Sundays and Bank Holidays.

Reason: For the avoidance of doubt, these being the hours specified in the application and to ensure that the use does not prejudice the enjoyment by neighbouring occupiers of their properties.

Informatives:

You should contact the Council's Environmental Health Section on all matters relating to food hygiene and health and safety. Food businesses must register with the local authority at least 28 days prior to opening for business.

2. PLANNING AND OTHER APPEALS

(reference beginning with a 9 is planning appeal and
reference beginning with an E is an enforcement appeal)

Reference	Place	Ward	Result	Cttee/delegated
9/2009/0620	Church Gresley	Church Gresley	Dismissed	delegated
9/2009/1016	Castle Gresley	Linton	Dismissed	delegated
9/2009/1017	Swadlincote	Swadlincote	Dismissed	committee
9/2010/0301	Church Gresley	Church Gresley	Dismissed	delegated



Appeal Decision

Site visit made on 17 August 2010

by Chris Hoult BA BPhil MRTPI MIQ

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

**Decision date:
16 September 2010**

Appeal Ref: APP/F1040/A/10/2124101

83 Church Street, Church Gresley, Derbyshire, DE11 9NR

- 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 Marcus Simpson against the decision of South Derbyshire District Council.
- The application Ref 9/2009/0620/U, dated 20 July 2009, was refused by notice dated 21 December 2009.
- The development proposed is described as "private hire business use".

Procedural matters

1. The description of the proposal on the application form is as set out above. It is for a change of use of the appeal property from residential to a mixed use of residential and use for the operation of a private car hire business, known as "First Class Cars". The business presently operates from a small control room on the ground floor of the property but the intention is to expand it, so the application is in part retrospective. I deal with the appeal on that basis.

Decision

2. I dismiss the appeal.

Main issue

3. The main issue is the effect of the proposed use on the safety of road users in the vicinity of the appeal site.

Reasons

Main issue

4. Church Street is the main road through the village and has along its length a concentration of shops and other buildings in commercial and community uses. It was busy at the time of my visit, mid-morning on a weekday, and the road was fairly heavily parked for that time. This included a line of parked cars on the northern side around and to the east of the "Rising Sun" Public House (PH), where a number of dwellings fronting the road rely on on-street parking. A similar line of cars were parked on the southern side opposite the property, near a doctor's surgery and the local Citizens Advice Bureau. When cars park on both sides, as was occurring at the property, there is room for only one vehicle to pass. Passing traffic included buses and heavy lorries. A kerb build-out at the junction with Queen Street outside the PH indicates that there may have been problems in the past with indiscriminate parking at this junction.

5. The appeal property is one of a pair of modern semi-detached houses set back from the road behind a frontage parking area which could physically accommodate up to three cars. It is flanked on both sides by properties which front the back edge of the footway. Cars parked in front of the house must either reverse in or out and would need to manoeuvre round cars where parked on-street in close proximity. Visibility is severely reduced by the side elevations of the flanking properties, both of the carriageway and the footway, and parked cars to either side further inhibit it as drivers manoeuvre into and out of the carriageway, needing firstly to cross the footway. These conditions present a risk to the safety of drivers entering and exiting the site, to traffic approaching the site from either direction and to pedestrians.
6. The business employs one full-time (FT) and two part-time (PT) employees but it is proposed to increase the numbers to two FT and three PT. The appellant says that three cars are used presently but it is unclear what this increase will mean for the number of cars which would be operating in the future. It operates on the basis of radio control, so drivers will normally be out on the road throughout shifts as far as possible. However, the appeal site would act as a base for them when not conveying passengers and the intention is to operate in the evening and at night when parking pressures around the site are likely to be at their greatest. Having a base in a village centre close to a PH would inevitably lead to an increase in activity around the site. I noted that one of the private hire cars was parked outside it at the time of my visit.
7. The appellant uses two spaces outside the PH under an informal agreement with his mother, who runs the PH. While that provides additional off-street parking capacity, room for manoeuvre is very limited and cars would still need to reverse into or out of them. It remains the case that conditions at the property are ill-suited for it to act as a base from which to run a private hire business. I acknowledge that the appellant has lived in the locality for a number of years and provides a service which appears to be valued in the local community. I considered whether a grant of temporary planning permission might allow it to continue pending him finding new premises into which he indicates that he is looking to move. However, I have no details as to premises which have been identified, whether they would be acceptable or the likely timing of any move, as a basis for justifying a grant of permission.
8. Accordingly, I conclude that the proposed use would give rise to harm to the safety of road users. It would conflict with Part B of saved Transport Policy 6 of the South Derbyshire Local Plan in so far as provision for access, parking and manoeuvring would be inadequate. There are no considerations which might outweigh the harm sufficient to justify a temporary permission. For these reasons, I conclude that the appeal should be dismissed.

C M Hoult

INSPECTOR



Appeal Decision

Site visit made on 7 September 2010

by **J R Colburn MA MRTPI**

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

Decision date:
23 September 2010

Appeal Ref: APP/F1040/A/10/2128866

Land East of 36 Bridge Street, Castle Gresley, Derbyshire DE119HH

- 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 Rowan House Estates Ltd against the decision of South Derbyshire District Council.
- The application Ref 9/2009/1016/FX, dated 2 December 2009, was refused by notice dated 26 February 2010.
- The development proposed is the erection of five dwellings and the formation of a new vehicular access.

Application for Costs

1. An application for costs was made by Rowan House Estates Ltd against South Derbyshire District Council. This application is the subject of a separate decision.

Preliminary Matters.

2. The development proposed is more clearly described in the Council's decision notice, as included in the header above. I have determined the appeal on that basis. The appeal documents included a draft Unilateral Planning Undertaking, under section 106 of the Town and Country Planning Act 1990. This undertaking is incomplete, unsigned and undated, and is therefore of no effect in relation to the appeal.
3. The site is the subject of a Tree Preservation Order, South Derbyshire District (Land adjacent to No.36 Bridge Street, Castle Gresley) Tree Preservation Order No.329 (2010), dated 19 February 2010 initially an Area Order, later superseded by a second Tree Preservation Order No.338 (2010) (Land at Bridge Street Castle Gresley), a Woodland Order dated 20 July 2010. I have had regard to the Tree Preservation Order in making this decision.

Decision

4. I dismiss the appeal.

Main issue

5. The main issue in this appeal is the effect of the development on the character and appearance of the area, having particular regard to the impact on trees the subject of a Tree Preservation Order.
-

Reasons

6. The appeal site comprises an area of open land, recently planted with a mix of deciduous trees, but in a neglected and untidy condition. The site is outside but adjoining the edge of the built up area of Castle Gresley. It is bounded on its north west and south western sides by existing housing, to the north by the A444, the main road serving the area, and to the east and south east by other open land in recreational and agricultural use.
7. The site forms part of a tract of open land serving as a buffer between the urban area and the A444, which is elevated along this section. Other land to the east has been recently planted with woodland trees, linking to the village recreation ground further to the south east. The site was planted as amenity woodland, for open space provision as part of the development of land on the opposite side of Bridge Street for residential development (now Castle Croft). No arrangements were entered into for its maintenance, and no public access has been provided to the site.

Planning Policy

8. National Planning Policy in Planning Policy Statement 3 Housing (PPS3) and Planning Policy Guidance 13 Transport (PPG13) establishes that in releasing land for housing development priority should be given to previously developed land and buildings ahead of the expansion of urban areas. No evidence has been submitted in this case to demonstrate a shortage of supply of deliverable sites for housing, or a shortage in the supply of previously developed sites.
9. At the local level, Housing Policy 4 of the South Derbyshire Local Plan (LP) generally supports residential development within or on the fringes of the built up area of Castle Gresley, on sites that are substantially surrounded by development, and which, among other things, do not result in a prominent intrusion into the rural landscape outside of the built up area, or involve the development of open spaces, gaps or landscape features which make a valuable contribution to the character or environmental quality of the area. The requirement to safeguard such areas is replicated in LP Environment Policy 8, whilst Environment Policy 9 protects areas of woodland or specimen trees of value to their local setting.
10. Housing Policy 11 requires that new housing developments provide adequate public open space, whilst Environment Policy 10 requires that development permitted within the National Forest is accompanied by appropriate tree planting. In this context it is clear that the proposal to develop a site that has previously been provided and laid out as open space and woodland planting as part of an earlier development, would not accord with the objectives of these policies. I recognise that local policies would allow such provision off-site through a Section 106 Agreement or Undertaking. No such agreement is in place in this case, and in my view the provision of a financial contribution towards the provision or improvement of facilities elsewhere would not adequately compensate for the loss of the open space required to serve the Castle Croft development or the value of the tree planting as part of the National Forest.

Character and appearance.

11. When seen from the A444 and from Bridge Street the appeal site appears as part of an arc of open land which provides a landscape framework for the settlement. It is not substantially surrounded by development, as it adjoins and links through to open land on its southern and eastern side and is bounded by a wide highway embankment to the north. The wider open area, although recently established, has a marked beneficial impact on the character and appearance of the settlement, providing a useful and attractive area for informal recreation and by the extent of planting softens the edge of the settlement, providing a buffer against the noise and disturbance of traffic on the A444.
12. As such and in terms of LP policies Housing 4 and Environment 8 the site is an important open space, part of a landscape feature that makes a valuable contribution to the character or environmental quality of the area. I do not agree with the appellant that the untidy condition of the site in any way negates its value in this sense or provides support or justification for its development, or that the proposal would amount to a rounding off or clarification of the edge of the settlement. The site does not meet the criteria of Housing policy 4.
13. In the absence of an agreement for adoption or maintenance of the site by the Council the responsibility for the condition of the site rests with its owner. I recognise that the Council could have been more proactive in securing compliance with the conditions of the earlier permission. Nevertheless it would undermine the proper planning of the area were the owner to benefit from any failure to maintain the site adequately.
14. Despite its untidy state, the site makes a valuable contribution to the landscape setting of the settlement. I therefore consider that the proposal would conflict with the purposes of Local Plan policies Housing 4 and Environment 8. The proposed development would be harmful to the landscape setting of the settlement and the character and appearance of the area. I find no planning policy considerations at national or local level in support of the proposal that would outweigh this harm.

Tree Preservation Order.

15. The value of the site in the landscape stems from its open character and its function as part of the wider area of open space. The trees on the site are small saplings of species common to the area, some have attained a height of 3-4m but many are much smaller. They have no significant value in themselves and, as a small woodland make a very limited contribution to the public amenity of the area. I do not consider that the removal of the trees from the area, whilst retaining it as an open space, would have a significant impact on the local environment or its enjoyment by the public. I can therefore give very little additional weight in my decision to the loss of the trees on the site.

Conclusions

16. I therefore conclude that the proposed development would be harmful to the landscape setting of the settlement and the character and appearance of the

area, and would conflict with the purposes of Local Plan policies Housing 4 and Environment 8. The proposal also conflicts with LP policies Environment 10 and Housing 11 in that it would involve the loss of open space and tree planting provided as part of an earlier development. My conclusions concerning the limited harm which would result from the loss of the trees the subject of the Tree Preservation Order does not mitigate or outweigh the harm that I have identified in relation to other aspects of the main issue in the appeal. The appeal should be dismissed

J R Colburn

INSPECTOR



Costs Decision

Site visit made on 7 September 2010

by **J R Colburn MA MRTPI**

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

**Decision date:
23 September 2010**

Costs application in relation to Appeal Ref: APP/F1040/A/10/2128866 Land east of 36 Bridge Street, Castle Gresley, Derbyshire DE11 9HH

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Rowan House Estates Ltd for a full award of costs against South Derbyshire District Council.
- The appeal was made against the refusal of planning permission for the erection of five dwellings and the formation of a new vehicular access.

Decision

1. I allow the application in the terms set out below.

Reasons

2. Circular 03/2009 advises that, irrespective of the outcome of the appeal, costs may only 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.
 3. The application followed the refusal of a previous application on the same site. Following a period of discussion and negotiation the appellant understood that the Local Planning Authority's (LPA) case officer supported the application and was to recommend it for approval. The application was subsequently refused following the receipt of further consultation responses and the making of a Tree Preservation Order.
 4. Whilst the advice relieved by the appellant in relation to the proposal before it was determined was largely supportive, this cannot prejudice the formal determination of the application. Whilst it is clearly preferable for the expressed views of the case officer, other officers and formal decision to coincide, this cannot always be the case when decisions relate to issues that are, to some degree, matters of judgement. Here the value of the site to the developing open space buffer alongside the A444 was one such issue.
 5. A decision taken by the LPA which is contrary to the initial advice given, does not amount to unreasonable behaviour when the decision can be justified in relation to the circumstances and planning policies prevailing. In this case the LPA provided cogent reasoning, related to adopted Development Plan policies concerning the protection of open spaces and landscape features, to support their decision. This does not amount to unreasonable behaviour, and therefore as the costs involved in making the appeal could not have been avoided I cannot make a full award of costs.
-

6. In relation to the making of the Tree Preservation Order (TPO), although the powers and duties of the LPA are widely cast, detailed advice is available in Government guidance included in "Tree Preservation Orders – A Guide to the Law and Good Practice". This advises that a TPO may be justified if the removal of the trees would have a significant impact on the local environment and its enjoyment by the public. An LPA should adopt a structured and consistent way of assessing the amenity value of trees in relation to listed criteria when considering making a TPO. From the information provided I consider that in this case no such detailed assessment was made, and the Council failed to properly consider this basic issue or to assess the amenity value of the trees or woodland, and distinguish that from the value of the area as open space.
7. I therefore regard the making of the TPO as unnecessary and unjustified, and adding little to the LPA case against the proposed development. I agree with the appellant that there was time available to the Council earlier in the process of determining the application to make a fuller assessment. The decision to make the TPO so late in the process appears hasty and taken without due consideration. The timing of its making compounds the unreasonable action of the LPA in making the TPO. This involved the appellant in unnecessary and wasted expense in employing specialist consultant arboricultural and planning advisors to rebut the Council's position.
8. I therefore find that unreasonable behaviour resulting in unnecessary and wasted expense, as described in Circular 03/2009 has been demonstrated and that a partial award of costs is justified.

Costs Order

9. In exercise of my powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other powers enabling me in that behalf, I HEREBY ORDER that South Derbyshire District Council shall pay to Rowan House Estates Ltd the costs of the proceedings so far as they related to the employment of arboricultural and planning consultants to advise on the issue of Tree Preservation Orders, such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal more particularly described in the heading of this decision.
10. The applicant is now invited to submit to South Derbyshire District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

J R Colburn

INSPECTOR



Appeal Decision

Hearing held on 14 September 2010

Site visit made on 14 September 2010

by **Andrew Jeyes BSc DipTP MRTPI**

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

**Decision date:
27 September 2010**

Appeal Ref: APP/F1040/A/10/2127010

Kwik Save, Alexandra Road, Swadlincote, South Derbyshire DE11 9AZ

- 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 George LB Ltd against the decision of South Derbyshire District Council.
 - The application Ref 9/2009/1017/MRF, dated 23 November 2009, was refused by notice dated 23 March 2010.
 - The development proposed is the demolition of existing food retail unit and construction of new retirement apartment [sheltered housing] complex with 60 apartments, warden apartment, communal facilities and associated car parking/communal gardens.
-

Decision

1. I dismiss the appeal.

Main Issues

2. I consider the main issues to be the effect on the character and appearance of the area and the effect on the living conditions of future residents of the scheme in respect of the provision of external amenity space and the proximity of habitable room windows to Alexandra Road.

Reasoning

Background

3. The site is on the south-western side of Swadlincote town centre and is part of a generally mixed area of transitional uses. It is occupied by a vacant single storey flat roofed building of utilitarian appearance set in a central position on the site that was previously occupied as a retail food store by Kwik Save. There are two access points to Alexandra Road, one towards the southern end serving a car park and one to the north providing servicing.
 4. A short two-storey block of retail premises at right angles to the road lies close to the northern boundary and a single story office building is adjacent to the southern boundary. Other adjacent property is generally two-storey of residential character. Alexandra Road rises up a steep hill to the south and traditional terraced housing close to the footway is a typical element of the appearance of the area. There are a number of existing trees on the site.
 5. The boundary of Swadlincote Conservation Area, which is based on the town centre, abuts the site on its eastern and parts of the northern and southern sides. On the opposite side of Alexandra Road and to the north is Sharpe's Pottery, a Grade II Listed Building including bottle kiln, now used as a museum and tourist information centre. The extent of the listed curtilage was not clearly defined, but was considered by the Council to include a small works building opposite the north end of the site and a
-

further detached building used by a timber merchant. Sharpe's Industrial Estate lies opposite the site to the south of the Listed Building, with the timber yard in the foreground and a substantial parking area with modern industrial units behind. To the south of this is a public car park backed by modern industrial buildings served from Rinks Drive. This area, together with the Kwik Save site, forms a break between the town centre and the traditional terraced development of surrounding streets.

6. The application was recommended for permission, but refused by the Development Control Committee. The Council has no objection to the principle of residential use of this site and I heard no arguments that would cause me to depart from this view.

Character and Appearance

7. The proposal is for 61 apartments in a single "U" shaped block, with the two arms extending to the west away from Alexandra Road enclosing a central communal garden. Access would be along the northern boundary serving a car park with 22 parking spaces between the building and the western boundary. The site slopes down from south to the north with a difference in level of around 5.7 metres along the road frontage. The building would have a two-storey height along the northern and southern elevations but, because of the level difference, the floors overlap across the centre of the building giving a three-storey central section to the Alexandra Road elevation and a three-storey elevation to the southern arm overlooking the central garden area. The eaves height is of the same magnitude as the existing parapet height of Kwik Save, with higher pitched ridge roofs.
8. The 35° pitched tiled roof would step down the Alexandra Road frontage but the internal floors, and their associated windows, run through at a constant level to give unimpeded internal access to living accommodation. The Alexandra Road façade would have two distinct insets along its length emphasised by a larger step in roof height. Vertical division would arise from the use of facing brickwork and wood panelling, with rainwater down pipes at the end of each roof section also adding to the vertical emphasis to the building. Whilst the Council object to the use of timber as it is not a typical material in this area, this was introduced at the suggestion of Council officers during negotiations. In my view, this material, subject to satisfactory detailing, would introduce a contemporary material into the scheme that would add to the vertical separation of built elements to reflect the terraced heritage of domestic scale architecture in the area.
9. Whilst the proposed building would be higher than traditional local terraced dwellings, the stepped roof and vertical emphasis would reflect, to my mind, the nature of terraced buildings within the vicinity. The building would have a different bulk and mass to other residential properties in the vicinity, but would still be of a domestic scale that, for the above reasons, would not appear as an unbroken mass and would not look inappropriate on this site, which to an extent, is partly divorced from surrounding development.
10. The two wings extending into the site are similarly in architectural style, with the addition of significantly lower roof elements that would form a break between the frontage buildings and the rest of the wing. The two wings would appear as two-storey in north-western and south-western views of the site and in only very limited views would the three-storey internal aspect of the building be apparent and then not in an intrusive manner.
11. The entrance to the building would not be at the focal north-west corner where a distinct doorway is contained within a chamfered corner of the building beneath a prominent over-sailing roof. Rather it would be further south along the building frontage and marked by a slight protrusion and different materials. Whilst I would not regard this as an element of good design for the site, it would allow level access to the

ground floor capable of supervision, which use of the north-west corner doorway would not. This aspect would not on its own justify dismissing the appeal.

12. The use of level internal floors presents design difficulties on this sloping site. These have been expressed by overlapping floors and use of different window depths to add to the impression of buildings stepping down the slope of the road. Whilst internal stairs and/or ramps were suggested to provide a greater impression of stepping down, this, in my view, would not provide for the long-term needs of future residents as mobility decreases and would restrict access for persons with disabilities. Overall, the combination of roof steps, overlapping floors and window sizes combine to provide a suitable design that respects the terraced tradition of the area.
13. Overall, I consider that the proposed building would not harm the character and appearance of the area and would replace a vacant building of unprepossessing appearance. It would enhance the appearance of the adjoining conservation area and would not adversely affect the setting of the nearby listed building, Sharpe's Pottery. The proposal would meet the objectives of saved Housing Policy 4 of the South Derbyshire Local Plan 1998 [LP] and of PPS3¹ that require a high standard of design of suitable character.

Living Conditions: Amenity Space

14. In respect of amenity space to serve the proposed development, there would be a central formal garden area between the two arms of the "U" of some 800 square metres including adjoining pathways. To the south-west would be an additional area of space between boundary trees and the building that would provide a less formal garden area. The Council consider the principle of the garden area being internal to the built form and overlooked by residents to be sound, but that the number of units proposed, especially if occupied at capacity, is too many for the proposed garden size.
15. Saved LP Housing Policy 11 indicates that new housing developments should provide private amenity space and space for landscaping. Supporting Supplementary Planning Guidance: *Housing Design and Layout* [SPG], which has been adopted following public consultation and to which I attribute substantial weight, indicates that flats should have some level of amenity area for use by residents, with each case to be considered on its merits. An advisory document *Planning for Retirement Housing*², which has no policy basis, was referred to by the appellant. This indicates that occupants of retirement housing do not require or use large areas of garden space, but that external amenity areas should be landscaped to a very high quality to provide visual interest and that it is observable that residents generally value interesting outlooks, such as busy street scenes.
16. This scheme has several aspects for residents, with views over of the central formal garden, over Alexandra Road and over quieter areas facing north and south. Whilst the scheme would have a high density, this in itself is not out of place in this edge of town centre location. The amount of garden space provided is, in my view, suitable in location and adequate in amount for the number of units provided and involves a more formal garden that would provide seating areas and visual interest as well as a more informal shaded area to the south-west. Concern was raised that future residents should not have views over roads, but I consider that the provision of different aspects of view for residents is an important element of providing outlook that can cater for differing requirements.
17. I therefore conclude that the amount and type of garden space proposed would be satisfactory for the size and nature of the scheme and would not give rise to harm to

¹ Planning Policy Statement 3: *Housing*

² *Planning for Retirement Housing*: A good practice guide by the Planning Officers' Society and the Retirement Housing Group 2003

the living conditions of future residents. It would meet the aims of LP Housing Policy 11 and SPG for high quality design that provides private amenity space and space for landscaping.

Living Conditions: Security of Residents

18. The proposal, because of site levels, has a ground floor that extends southwards and becomes a semi-basement compared to the adjoining footway level. The building would be sited immediately to the rear of the footway and would have a residents' lounge and a visitor bedroom whose floor levels are significantly below the adjacent footway level. As a consequence the outlook from windows facing Alexandra Road would be at a low level, with the windows to the residents' lounge having a cill height of between 0.4 metres and 0.8 metres and the guest bedroom 0.2 to 0.4 metres above footway level.
19. The Crime Prevention Design Advisor of Derbyshire Constabulary, whilst generally satisfied with the proposals, indicated concern with the lack of defensible space along the road frontage, especially in relation to low windows that could be easily kicked and subject to constant damage and nuisance. The Council and local representations indicated that this area, in common with other areas close to the town centre, was subject to a degree of anti-social behaviour, especially during evening periods. The Police indicate that this is a well-used route for youngsters accessing the nearby leisure centre where nuisance and congregation by youths is a constant problem.
20. The footway in front of the windows is some 2.8 metres wide, narrowing to 1.8 metres to the south and widening to 3.8 metres to the north. The appellant indicates that in such situations pedestrians would tend to walk at a position on the footway based on the narrower portion, so that they would be passing some distance away from the front façade. I am not convinced that this would be the case along this stretch of footway, where the road carries reasonably high levels of traffic including commercial vehicles and the natural tendency would be to walk away from the carriageway. In any case, in dealing with anti-social behaviour, this would not prevent persons passing the front of the building or of inflicting damage.
21. Residents using the lounge would have a poor outlook. Their viewpoint would be at knee level when standing and lower when sitting. This prevents eye-to-eye contact with pedestrians that, in my view, would remove any aspect of preventing crime and anti-social behaviour through concern at being observed. In addition, this could compromise the privacy of users of the footway. Windows at this level would present a tempting target and the lack of defensible space in front of them would render them more vulnerable. The residents' lounge would be a focal point within the building for interaction, quiet enjoyment and relaxation, but I consider that the outlook and position of windows would not meet these objectives and would be likely to lead to concerns for safety and security. Whilst the proposal has two residents' lounges, I do not consider that this removes the need for each to provide an acceptable level of outlook and security.
22. I therefore consider that in relation to the security aspect of living conditions, the proposal would not represent high quality design and would be harmful to the living conditions of future residents, because of the relative position of windows to the footway, the outlook this would provide and concern for their security. As such, it would be contrary to the objectives of PPS3 and with saved LP Housing Policy 11 that aim to secure buildings that are well designed for their purpose and that provide a safe layout with reasonable amenities.

Other Matters

23. In respect of the living conditions of the residents of 45 and 51 West Street, I consider that the amendments submitted at application stage and the conditions proposed in

respect of obscure glazing to two kitchenettes and three access stair windows, combined with boundary treatment and planting, would ensure satisfactory outlook and prevent overlooking.

24. To the north lies a small retail development around a central car park with retail at ground and first floor levels adjacent to the site. Concern is expressed at the loss of visibility of this retail area from persons approaching down the hill arising from the siting of the building at the rear of the footway compared to the existing situation where the former Kwik Save store is sited more centrally. Whilst there would be a change in visibility of the site as far as potential customers are concerned this, as I have previously stated, does not have an adverse affect on the character and appearance of the area and does not detract from this aspect of the proposal.
25. Parking for 22 cars, including four disabled spaces, would be provided to the rear served by an access road along the northern boundary, which is wide enough at its eastern end to provide parking for removal lorries, refuse vehicles and ambulances. A parking assessment was submitted with the application; this was accepted by the Council and the Highway Authority as providing a reasonable basis for the level of parking provided. There are parking restrictions along Alexandra Road and there is adequate public town centre parking in the vicinity, including the long stay car park opposite the site. From the information before me, I consider that a satisfactory level of parking is proposed and that highway safety would not be compromised.
26. In relation to need, it was indicated that a recent housing needs survey, which was not a submitted document, did not show a need for this form of accommodation. However, it is not necessary for the appellant to prove a housing need for sheltered residential accommodation. Nor is it necessary to demonstrate the viability of the scheme to ensure future changes of use do not arise. Such cases must be considered on their individual merit.

Conclusions

27. I have concluded that the proposal would not harm the character and appearance of the area and would enhance the appearance of the adjoining conservation area and have no adverse affect on the setting of the nearby listed building. In addition, it would provide garden space for residents suitable for the size and nature of the scheme. However, I also conclude that the proposal would harm the living conditions of future residents through the outlook that would be provided from ground floor windows adjacent to the footway, giving rise to concern for the well-being, safety and security of residents. I consider this latter aspect to be of over-riding importance that would have direct and long lasting impact on the living conditions and environment of future residents. This objection outweighs the benefits of the scheme that I have identified. For this reason, and having considered all other matters, I dismiss the appeal.

Andrew Jeyes

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Susan Bolton BA[Hons] MRTPI

Phil Clay BA[Hons]

Nick Maguire

Graham Bolton Planning Partnership Ltd.

F J Architects Ltd.

George LB Ltd, the appellant.

FOR THE LOCAL PLANNING AUTHORITY:

Bryan Wolsey DipTP Dip Arch.Con MRTPI

Bryan Wolsey (Planning) Ltd.

INTERESTED PERSONS:

Joan Lane

Gill Farrington

District Councillor.

District and County Councillor and representing
Swadlincote 50 plus Forum and Derbyshire Older
Peoples Advisory Group.

Edward Shuttleworth

Ann McKay

BA[Hons] RGN RHV DipHS BA[Hons]

West End Development.

Local resident.

DOCUMENTS

- 1 List of persons attending the Hearing.



Appeal Decision

Site visit made on 7 September 2010

by **J R Colburn MA MRTPI**

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

**Decision date:
22 September 2010**

Appeal Ref: APP/F1040/D/10/2130729

19 Queen Street, Church Gresley, Swadlincote, Derbyshire DE11 9LY

- 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 Mrs Elizabeth Peach against the decision of South Derbyshire District Council.
 - The application Ref 9/2010/0301/FH, dated 29 March 2010, was refused by notice dated 19 May 2010.
 - The development proposed is a garden structure.
-

Preliminary matter

1. The development the subject of the appeal has already been constructed.

Decision

2. I dismiss the appeal

Reasons

3. The garden structure comprises a covered, raised seating area constructed as part of a complex of wooden garden structures around a raised fish pond. The structure has been erected at the bottom of the narrow garden of this mid-terrace property. Immediately to the rear of the site is a football ground, whilst to either side are the narrow gardens of adjacent houses. To the south these are separated from the appeal site by low fences. The boundary with 21 Queen Street to the north is marked by a taller vegetation covered fence.
 4. The structure is raised above ground level by 7 steps. From the seating platform looking back towards the house a direct elevated view is available over the entire length of the gardens of 15 and 17 Queen Street including the area immediately to the rear of the houses, where higher standards of privacy are expected. The elevation of the platform also provides views over the fence towards the rear windows of No.21 and over its garden.
 5. Housing Policy 13 of the South Derbyshire Local Plan aims to protect the amenities of adjoining properties. In this respect the extent of overlooking provided by the platform is far greater and more intrusive than that normally found between residential gardens, and I consider that the resulting loss of privacy for occupiers of adjoining houses would be harmful and distressing. I therefore conclude that the structure amounts to an unneighbourly development, harmful to the living conditions of adjoining occupiers which should not be permitted.
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6. I noted that at the time of the site visit a flimsy plastic sheet had been attached to the front of the structure, obscuring views out of the structure from the seat. This was not shown in the planning application details. Nevertheless the views available over the adjoining gardens from the steps and entrance to the shelter remain and compromise the privacy of the adjoining occupiers. Whilst I have determined the appeal on the basis of the details submitted with the application, I do not consider that the retention of this sheet would make any difference to the acceptability of the proposal. The proposal conflicts with the purposes of Local Plan Housing Policy 13. The appeal should be dismissed.

J R Colburn

INSPECTOR