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Our Ref: DS
Your Ref:

Date: 20 November 2017

Dear Councillor,

Planning Committee

A Meeting of the **Planning Committee** will be held in the **Council Chamber**, Civic Offices, Civic Way, Swadlincote on **Tuesday, 28 November 2017 at 18:00**. You are requested to attend.

Yours faithfully,



Chief Executive

To:- **Conservative Group**
Councillor Roberts (Chairman), Councillor Mrs Brown (Vice-Chairman) and
Councillors Mrs Coe, Ford, Mrs Hall, Harrison, Muller, Stanton and Watson

Labour Group
Councillors Dr Pearson, Shepherd, Southerd and Tilley

AGENDA

Open to Public and Press

- 1** Apologies and to note any Substitutes appointed for the Meeting.
- 2** To receive the Open Minutes of the following Meeting:-

Planning Committee 17th October 2017 Open Minutes **3 - 6**
- 3** To note any declarations of interest arising from any items on the Agenda
- 4** To receive any questions by Members of the Council pursuant to Council procedure Rule No. 11.
- 5** REPORT OF THE DIRECTOR OF COMMUNITY AND PLANNING **7 - 86**
SERVICES

Exclusion of the Public and Press:

- 6** The Chairman may therefore move:-
That in accordance with Section 100 (A)(4) of the Local Government Act 1972 (as amended) the press and public be excluded from the remainder of the Meeting as it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that there would be disclosed exempt information as defined in the paragraph of Part I of the Schedule 12A of the Act indicated in the header to each report on the Agenda.
- 7** To receive the Exempt Minutes for the following Meeting:-
Planning Committee 17th October 2017 Exempt Minutes
- 8** To receive any Exempt questions by Members of the Council pursuant to Council procedure Rule No. 11.

PLANNING COMMITTEE

17th October 2017

PRESENT:-

Conservative Group

Councillor Roberts (Chairman), Councillor Mrs Brown (Vice-Chairman) and Councillors Mrs Coe, Coe (substituting for Councillor Mrs Hall), Ford, Harrison, Muller, Stanton and Watson

Labour Group

Councillors Dr Pearson, Southerd and Taylor (substituting for Councillor Tilley)

In attendance

Councillor Mrs Patten (Conservative Group)

PL/67 **APOLOGIES**

Apologies for absence were received from Councillors Mrs Hall (Conservative Group), Shepherd and Tilley (Labour Group)

PL/68 **MINUTES**

The Open Minutes of the Meetings held on 27th June 2017, 18th July 2017, 8th August 2017 and 5th September 2017 were taken as read, approved as a true record and signed by the Chairman.

PL/69 **DECLARATIONS OF INTEREST**

The Committee was informed that no declarations had been received.

PL/70 **QUESTIONS BY MEMBERS OF THE COUNCIL PURSUANT TO COUNCIL PROCEDURE RULE NO.11**

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

MATTERS DELEGATED TO COMMITTEE

PL/71 **REPORT OF THE DIRECTOR OF COMMUNITY AND PLANNING SERVICES**

The Director of Community and Planning Services submitted reports for consideration and determination by the Committee and presented oral reports to the Meeting to update them as necessary. Consideration was then given thereto and decisions were reached as indicated.

PL/72 **RETROSPECTIVE APPLICATION TO VARY CONDITION 15 OF PLANNING PERMISSION REF: 9/2012/0505 TO READ: THE STORE HEREBY PERMITTED SHALL NOT BE OPEN TO THE PUBLIC OUTSIDE THE FOLLOWING TIMES: 08.00 TO 22.00 MONDAY TO SATURDAY AND 10.00 TO 17.00 ON SUNDAYS; AND NO DELIVERIES TAKEN AT OR DESPATCHED FROM THE SITE OUTSIDE THE FOLLOWING TIMES: 07:00 - 19.00 MONDAY TO SATURDAY. 09.00 - 17.00 SUNDAY ALDI FOOD STORE LTD, HUNTSPILL ROAD, HILTON, DERBY**

It was reported that members of the Committee had visited the site earlier in the day.

The Planning Services Manager summarised the options available to Members in this case, namely to refuse this application and enforce the previously agreed conditions or grant the application with its mitigation measures, albeit with longer opening hours.

Mr Richard Conway (applicant's agent) attended the Meeting and addressed Members on this application.

Councillor Mrs Patten addressed the Committee as Ward Member for Hilton, referring to the confined location, its proximity to residential dwellings, opening times, traffic issues and landscaping. The Councillor also questioned why Aldi had chosen to disregard the original conditions and the lack of enforcement action. Although the community had wanted Aldi in the village, the Councillor expressed a view that the company had not, to date, proved to be good neighbours.

Other Members commented that whilst the store was an asset to the community, deliveries had been made outside the agreed hours, that the current application could be an opportunity to improve matters for residents. Other issues raised included the proposed fence size, design, location and materials, landscaping content, parking, customer notices, car park barriers, banksman responsibilities, the potential for setting up a local liaison group, health and safety considerations in relation to pedestrians, drivers, the banksman and vehicles, council liability and the need for enforcement where applicable.

All matters were addressed by the Planning Services Manager.

RESOLVED:-

That planning permission be granted as recommended in the report of the Director of Community & Planning Services, subject to additional / amended conditions to secure: amendment to condition 8 to cover collections, revised condition 9 to require revised Development Management Plan to include arrangements for banksmen to guide deliveries into the site from the public highway, avoiding unnecessary off-site movements; additional conditions to secure: closing of car park barriers outside opening hours, barrier to close off pedestrian access

from The Mease, on-site signage to remind customers to park considerably on surrounding residential streets.

Additional informative to be issued encouraging liaison meetings with residents.

PL/73 **CHANGE OF USE FROM USE CLASS A2 (ESTATE AGENTS) TO USE CLASS D1 (PHYSIOTHERAPY, NUTRITION AND WELLBEING CLINIC) AT 5 DERBY ROAD, MELBOURNE, DERBY**

RESOLVED:-

That planning permission be granted as recommended in the report of the Director of Community & Planning Services.

PL/74 **DISPLAY OF AN ADVERTISEMENT AT MIDWAY COMMUNITY CENTRE, CHESTNUT AVENUE, MIDWAY, SWADLINCOTE**

RESOLVED:-

That express consent be granted as recommended in the report of the Director of Community & Planning Services.

PL/75 **TO REPLACE THE WINDOWS OF SMISBY VILLAGE HALL ON 3 ELEVATIONS AT SMISBY VILLAGE HALL, MAIN STREET, SMISBY, ASHBY DE LA ZOUCH**

Mr Robert Hounslow (applicant) attended the Meeting and addressed Members on this application.

Councillor Stanton addressed the Committee as Ward Member for Repton, referring to the proposed windows being an improvement, it being difficult to tell the difference between the proposed windows and wooden examples, as well as such windows being permitted on houses in the vicinity.

Other Members referred to the need to maintain standards in accordance with policy, to consider each case on its own merits, the non-historic nature of the building, the design features of the proposed windows, the potential for treating the application as an exception, the responsibility of a public body in setting a good example, particularly in a conservation area, value for money considerations and the need to act reasonably, considering the application as an individual case.

RESOLVED:-

That planning permission be granted, contrary to recommendation, on the grounds that the design is more consistent with the historic environment than the existing pattern and therefore is justified as an exception to the policy.

PL/76 **PROPOSED TREE PRESERVATION ORDER 464 AT LAND AT 41 GROVE CLOSE, THULSTON**

RESOLVED:-

That this Tree Preservation Order (TPO) be confirmed with modifications as per the plan attached to the report.

PL/77 **LOCAL GOVERNMENT ACT 1972 (AS AMENDED BY THE LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985)**

RESOLVED:-

That, in accordance with Section 100(A)(4) of the Local Government Act 1972 (as amended), the press and public be excluded from the remainder of the Meeting as it was likely, in view of the nature of the business to be transacted or the nature of the proceedings, that there would be disclosed exempt information as defined in the paragraphs of Part 1 of the Schedule 12A of the Act indicated in brackets after each item.

EXEMPT MINUTES

The Exempt Minutes of the Meeting held on the 18th July 2017 were taken as read, approved as a true record and signed by the Chairman.

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

The Committee was informed that no questions had been received.

The meeting terminated at 7.15pm.

COUNCILLOR A ROBERTS

CHAIRMAN

REPORT OF THE DIRECTOR OF COMMUNITY AND 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 2015 (as amended) responses to County Matters and strategic submissions to the Secretary of State.

Reference	Item	Place	Ward	Page
9/2017/0343	1.1	Swadlincote	Swadlincote	9
9/2017/0613	1.2	Milton	Repton	18
9/2017/0618	1.3	Milton	Repton	28
9/2017/0955	1.4	Mickleover	Etwall	31
9/2017/0361	1.5	Mickleover	Etwall	36
9/2017/0631	1.6	Melbourne	Melbourne	45
9/2017/1032	1.7	Church Gresley	Church Gresley	49
9/2017/1052	1.8	Netherseal	Seales	54
9/2017/0431	2.1	Hartshorne	Woodville	58

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 Director of Community and 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 Director of Community and Planning Services, arise from a Member's personal knowledge of circumstances on the ground that lead to the need for clarification that may be achieved by a site visit.
3. Implications that may be demonstrated on site arise for consistency of decision making in other similar cases.

Item **1.1**

Ref. No. **9/2017/0343/FM**

Applicant:
Mrs Teresa Hawkins
21 Clayton Gardens
Hatton
Derbyshire
DE65 5EB

Agent:
Mrs Teresa Hawkins
21 Clayton Gardens
Hatton
Derbyshire
DE65 5EB

Proposal: **THE ERECTION OF A DETACHED BUNGALOW WITH ACCESS
AND PARKING AT LAND TO THE REAR OF 64 FABIS CLOSE
SWADLINCOTE**

Ward: **Swadlincote**

Valid Date **21/07/2017**

Members will recall deferring the determination of this application at its meeting of 7 November pending a visit to the site by the Committee. Otherwise, the report below remains unchanged.

Reason for committee determination

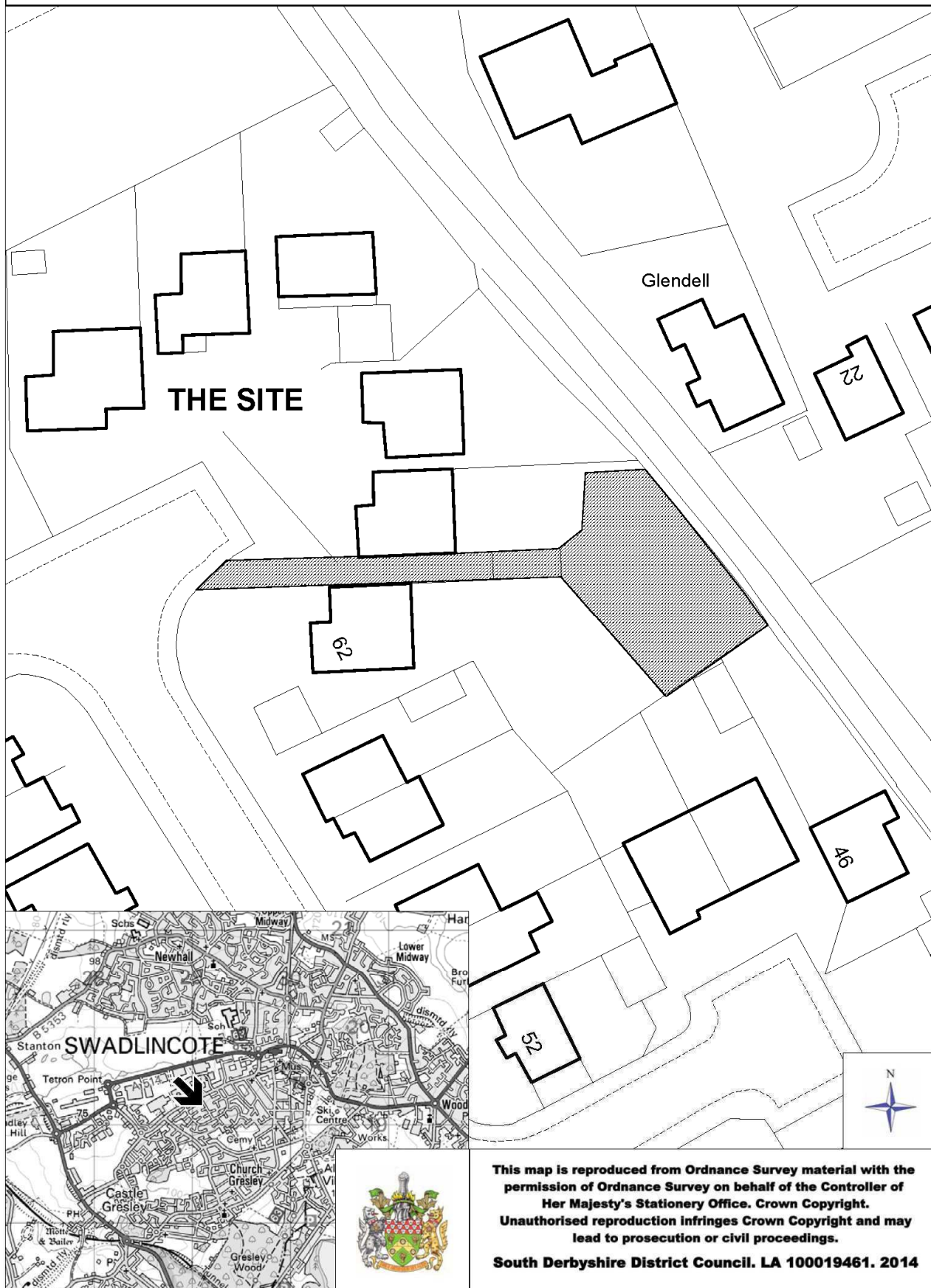
The item is presented to Committee has been called to Planning Committee by Councillor Neil Tilley with regard to local concern that has been expressed about a particular issue.

Site Description

The site is located within the Swadlincote Urban area within an established residential estate, characterised by semi-detached and detached dwellings. The site is located to the rear of an existing detached dwelling with an existing driveway and garage to the side, and is abutted to the rear by a public footpath.

Proposal

It is proposed to demolish the garage and erect a single storey detached bungalow with associated parking at the rear of the existing dwelling. The existing driveway to the side would provide to access. Two replacement parking spaces to the front would be provided for the existing dwelling.



Applicant's supporting information

A Coal Mining Risk Assessment identifies that there is some residual risk from mining legacy features. However, subject to the undertaking of site investigations and any potential necessary remedial measures, it is considered that the site can be made safe and stable for future development and the risk to ground stability reduced. The recorded coal mining legacy issues present within the site do not pose any particular implications for the layout of the proposed residential development.

Planning History

There is no relevant planning history.

Responses to Consultations

The Environmental Health Officer has raised no objections.

The County Highways Authority raises no objection subject to conditions to achieve suitable access and parking arrangements for both properties.

The Coal Authority has no objection subject to a condition that a site investigation is carried out prior to works commencing on site, and that any remedial works identified within the report are satisfactorily implemented.

The County Flood Risk Team has raised no objections.

Responses to Publicity

3 objections have been received, raising the following concerns/points:

- a) All existing properties are joined by garden to garden which gives occupiers the maximum level of light and privacy. Concerns that residents shall be overlooked;
- b) The proposed bungalow would be the same height as a gravel board and would be higher than the neighbouring gardens. This would cause the bungalow to be a dominant feature in the surrounding area;
- c) The property will have a gap of 2m to the rear of neighbouring properties and it is a concern that the proposed dwelling will overshadow the rear aspect of existing properties. The proposed ground level would be 2ft higher than neighbouring properties;
- d) If the dwelling could not be moved further away from neighbouring properties, it would be sensible for the ground to be excavated to be level with the neighbouring properties. This would reduce the risk of subsidence.
- e) There is excessive parking to the front;
- f) This would not be in-keeping with the layout of the estate and number 64 will have very little garden left;
- g) The proposed access drive is the width of a family car and in some cases. Most family size cars would not fit through it. Whilst there is a garage there, there are no instances of the garage being accessed by cars;
- h) The size of the access could result in damage to neighbouring properties;

- i) Number 64 currently has three cars parked at the property and the application only accommodates two car parking spaces. This will increase the risk of on road parking;
- j) This would be garden grabbing and there would be at least sixteen other properties in the immediate area that could do this;
- k) There are many elderly people who live in the area who enjoy their gardens. The proposed bungalow would completely overshadow these properties;
- l) This is very distressing and should be considered in the decision;
- m) The proposed bungalow would not be in-keeping with the surrounding area given that the cul-de-sac consists of detached properties;
- n) The garage forms a boundary wall; this would need to be re-instated;
- o) There is a side door to number 64 which opens directly out onto the driveway to the new property;
- p) There are concerns relating to the capacity of the existing foul drainage system and drainage to new properties;
- q) Neighbouring gardens have mature, established trees and there are concerns that the proposal would compromise their roots;
- r) Both properties currently enjoy a large garden; this could lead to excessive noise; and
- s) Concerns relating to subsidence due to unrecorded shallow depth mining and how this could affect the property.

Development Plan Policies

The relevant policies are:

- 2016 Local Plan Part 1: S2 (Presumption in Favour of Sustainable Development), S6 (Sustainable Access), H1 (Settlement Hierarchy), SD1 (Amenity and Environmental Quality), SD4 (Contaminated Land and Mining Legacy Issues), BNE1 (Design Excellence), INF2 (Sustainable Transport)
- 1998 Local Plan (saved policies): EV9 (Protection of Trees and Woodland).

Emerging Development Plan Policies

The relevant policies are:

- Submission Local Plan Part 2: SDT1 (Settlement Boundaries and Development) and BNE7 (Trees, Woodland and Hedgerows).

Note: the adoption of the Local Plan Part 2 is being considered at Full Council following the writing of this report, but before the Planning Committee meeting takes place. Members will be updated on the policy context at the meeting.

National Guidance

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

Local Guidance

- South Derbyshire Design Guide Supplementary Planning Guidance (SPD)

Planning Considerations

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

- Principle of the proposed dwelling;
- Impact on visual and neighbouring amenity; and
- Highways issues;

Planning Assessment

Principle of the proposed dwelling

Policy H1 of the Local Plan Part 1 stipulates that development of all sizes would be suitable within the urban areas of the district. The site is located within the Swadlincote Urban Area and therefore the principle of the development is considered acceptable. Whilst the NPPF indicates that local planning authorities should consider setting policies to control the use of gardens for development of housing, there are no relevant policies in the Development Plan and each case is instead assessed on its merits with respect to the impacts arising from the development.

Impact on visual and neighbour amenity

Policy BNE1 stipulates that development should be visually attractive and should not have a harmful effect on the amenity of nearby existing occupiers. Policy SD1 seeks to achieve the same in amenity terms. The proposed dwelling would not be visible from Fabis Close and only the hipped roof to the rear and side would be visible from the public footpath that runs to the rear of the site. Indeed, a building of broadly similar scale could be achieved under permitted development rights. With this in mind, there would be very little visual impact and the proposed works would comply with policy BNE1 of the Local Plan Part 1.

As the proposed dwelling would be single storey, overlooking and shading impacts should be assessed on their merits in line with the Council's SPG. It would be possible to restrict any overlooking from the proposed ground floor windows to neighbouring properties by way of suitable boundary treatments. Existing first floor windows on number 48 Fabis Close look down onto the site and towards the proposed kitchen window. However, the proximity of the boundary fence to this window would all but prevent intervisibility between the two. On this basis, the proposal would pose no overlooking issue that could not be addressed through the use of suitable conditions and hence comply with the policies BNE1 and SD1 of the Local Plan Part 1, and the SPG.

Concerns have been raised by local residents with regard to the proximity of the dwelling to the boundary of neighbouring properties. The height of the proposed dwelling would be 4.2m and 2.5m at the eaves. The roof is also hipped to all sides and would further help to reduce the impact of the building when it is experienced at the boundaries to the site. As noted, the proposed building is only marginally higher

than what could be constructed under permitted development for a new outbuilding and hence it would be difficult to withhold permission on grounds of overbearance.

Consideration is also given to the use of the access by vehicles to reach the dwelling, with this route in close proximity to the side gable of the existing dwelling and number 62. However, there are no habitable windows to each of these side gables and the existing arrangement allows for vehicular movement commensurate with the use of a single dwelling. This would be no different under these proposals. With no objection from the Environmental Health Officer, it is considered the noise and disturbance impacts would be broadly comparable with that existing and thus compliant with policy SD1.

Highways issues

Policy INF2 supports the creation of safe and convenient access to serve development. Whilst there have been no objections raised by the County Highway Authority, concerns have been raised by residents regarding the narrowness of the proposed access and driveway. The proposed access is an existing access and serves a garage to the side of the existing property which would be demolished in order to accommodate the proposed development. On the basis of this, the access could be used at any time without requiring planning permission to access the rear of the property and it would not be likely that planning permission could be withheld on highways grounds.

There are two spaces proposed to accommodate parking for the existing dwelling, with this partly provided already – provided for under permitted development allowances. Concerns have been raised that the proposal would lead to more on-street parking, but the size of the existing property only warrants the provision of two spaces having regard to the SPG. The proposed dwelling would also be served by two spaces. Overall, the provision would be suitable.

Other matters

Concerns have been raised in respect of possible subsidence and previous mining activity at the site. The Coal Mining Risk Assessment has been assessed by the Coal Authority and deemed to be satisfactory, with suitable remedial measures possible if required as a response to further investigatory works. Therefore, subject to the imposition of a condition, the proposal satisfies policy SD4.

Conclusion

On the basis of the above assessment, it is considered that the proposed dwelling would be suitable in principle and not bring about unacceptable impacts on the local environs.

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

Recommendation

GRANT permission subject to the following conditions:

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

Reason: To conform with Section 91(1) of the Town and Country Planning Act 1990 (as amended by Section 51 of the Planning and Compulsory Purchase Act 2004).

2. The development hereby permitted shall be carried out in accordance with the Site Location Plan received on 9th October 2017 and plan/drawing 0741.1, received on 28th March 2017; unless as otherwise required by condition attached to this permission or allowed by way of an approval of a non-material minor amendment made on application under Section 96A of the Town and Country Planning Act 1990 (as amended).

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

3. No development shall commence until an adequate scheme of intrusive site investigation work has been undertaken and submitted and approved in writing by the Local Planning Authority. The submission shall include a scheme of intrusive site investigations; a report of the findings arising from these investigations; a scheme of proposed remedial works (if required); and a plan for the implementation of the remedial works (if required). Where required, the remedial works shall be implemented in accordance with the approved details and shall incorporate any measures shown in that assessment to be necessary for the stability of the development.

Reason: To protect the site and immediate area from the effects of ground instability, recognising that initial preparatory works could bring about unacceptable impacts.

4. Before the construction of the dwellinghouse commences, a new vehicular access shall be formed to Fabis Close, located, designed, laid out and constructed, all as first submitted to and approved in writing by the Local Planning Authority.

Reason: In the interest of highway safety, noting that sufficient access and parking provision is required throughout all stages of the development.

5. Prior to the construction of the proposed dwellinghouse, the replacement parking for the existing dwelling shall be provided to the frontage of 64 Fabris Close in accordance with drawings and details first submitted to and approved in writing by the Local Planning Authority, laid out, surfaced and maintained throughout the life of the development free from any impediment to its designated use.

Reason: In the interest of highway safety, recognising that initial preparatory works would lead to the loss of available parking for the existing dwelling.

6. Prior to the construction of the dwellinghouse, the entire site frontage shall be cleared, and maintained thereafter clear, of any obstruction exceeding 1m in height (600mm for vegetation) relative to the road level for a distance of 2m into the site from the rear edge of the highway boundary (footway/margin) in order to maximise the visibility available to drivers emerging onto the highway.

Reason: In the interest of highway safety.

7. Prior to their incorporation into the dwelling hereby approved, 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 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.

8. The premises, the subject of the application, shall not be occupied until space has been provided within the site in accordance with the approved drawings for the parking and manoeuvring of resident's vehicles, laid out, surfaced and maintained throughout the life of the development free from any impediment to its designated use.

Reason: In the interest of highway safety.

9. Notwithstanding any details submitted or the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, or any statutory instrument amending, revoking and/or replacing that Order; the dwellinghouse shall not be occupied 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 treatments shall be completed in accordance with the approved details before the dwelling is first occupied or in accordance with a timetable which shall first have been submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of the appearance of the area and amenities of adjoining properties.

10. There shall be no gates or other barriers within 5m of the nearside highway boundary and any gates shall open inwards only.

Reason: In the interest of highway safety.

Informatives:

1. Where development is proposed over areas of coal and past coal workings at shallow depth. The Coal Authority is of the opinion that applicants should consider wherever possible removing the remnant shallow coal. This will enable the land to be stabilised and treated by a more sustainable method; rather than by attempting to grout fill any voids and consequently unnecessarily sterilising the nation's asset. Under the Coal Industry Act 1994 any intrusive activities, including initial site investigation boreholes, and/or any

subsequent treatment of coal mine workings/coal mine entries for ground stability purposes require the prior written permission of The Coal Authority, since such activities can have serious public health and safety implications. Failure to obtain permission will result in trespass, with the potential for court action. Application forms for Coal Authority permission and further guidance can be obtained from the Coal Authority's website at:
www.coal.gov.uk/services/permissions/index.cfm.

Item **1.2**

Ref. No. **9/2017/0613/FH**

Applicant:
Chetwynd Road Ltd
26 Main Street
Milton
Derby
DE65 6EF

Agent:
Mr Nick Hutchings
Nick Hutchings Architect Ltd
Four Trees
Old North Road
North Muskham
Newark
NG23 6ET

Proposal: **DEMOLITION AND REPLACEMENT OF SUN ROOM AND CANOPY
AND THE INSTALLATION OF NEW DOORS AND WINDOWS,
ALONG WITH THE ERECTION OF FENCES & GATES AT COMMON
FARM 26 MAIN STREET MILTON DERBY**

Ward: **Repton**

Valid Date **26/06/2017**

Reason for committee determination

The item is presented to Committee at the request of Councillor Peter Smith as local concern has been expressed about a particular issue and there are unusual site circumstances which should be considered by the Committee.

Site Description

The site comprises the Grade II listed Common Farmhouse, forecourt and garden within the Milton Conservation Area. Dating from the 18th century, the farmhouse exhibits little in the way of contemporary alterations other than later additions to the rear wing which extends to and connects with the former barns, now under conversion. The front elevation is complete with symmetrical fenestration, typical of the early Georgian period, with narrower central windows and shallower top storey windows. The forecourt to the south provides for vehicular access to the property and parking space, whilst further garden space is situated to the north where an existing access onto Main Street exists.

Proposal

It is intended to demolish an existing lean-to on the rear wing and replace it with a similarly sized extension. A number of internal alterations are proposed resulting in the creation of new openings on the northern elevation and roof space to the rear range. This remodelling also includes the replacement of most of the existing

The plan shows a site layout with various buildings and features. Key elements include:

- THE SITE**: A large area hatched with diagonal lines, located in the upper left.
- Common Farm**: A building complex adjacent to THE SITE.
- Tank**: A circular feature near Common Farm.
- Mission Room**: A large rectangular building below Common Farm.
- Woodleigh**: A building complex to the right of THE SITE.
- Copper Beech**: A building complex below Woodleigh.
- Issues**: A building complex below Copper Beech.
- The Old Forge**: A building complex below Issues.
- The Hollies**: A building complex at the bottom right.
- The Threshing Barn**: A building complex at the top right.
- The Coach House**: A building complex below The Threshing Barn.
- The Dovecote**: A building complex below The Coach House.
- Brook House**: A building complex below The Dovecote.
- Parlour Barn**: A building complex at the top right.
- Kirby Holt**: A building complex at the top left.
- Track**: A road running along the right side of the plan.
- MAIN STREET**: A road running vertically through the center of the plan.
- Dimensions**: 58.5m and 57.0m are indicated for specific areas.
- Inset Map**: A small map in the bottom left corner showing the location of Milton within a larger area including Willington, Repton, and Foremark.
- North Arrow**: A compass rose in the bottom right corner.

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windows, thermal upgrading (new floors and dry lining) and the insertion of two new bathrooms and a shower room with the consequent array of externally visible building services.

The original scheme also included external works and alterations to a curtilage-listed wall to move an existing access slightly south, away from the boundary with 24 Main Street. The erection of a 1.8m trellis along the rear edge of this wall and partially along the boundary with 24 was also proposed. Both of these matters have been withdrawn from the application and thus do not form part of the following assessment, save for reporting the responses received.

Applicant's supporting information

A Heritage and Design & Access Statement identifies the property as significant for its local construction materials; its vernacular design, with evidence of polite styling; its social and historic connection to the centre of the village; and for its 18th century origins. The architectural styling and design of the farmhouse is one of traditional vernacular design. However, the additional detailing of the symmetrical fenestration, window head detailing, along with the decorative architraves and paneled doors internally and externally all indicative the elevated status and education of the original owner of the house and the farm buildings – similarly styled. The house contains many simple original features both internally and externally, which are to be retained and enhanced and secured for the long term by this renovation project. Many of the original fireplaces have been removed and replaced with mid to late 20th century fireplaces, with no historic significance. The internal doors are all paneled Georgian styled doors, with moulded architraves, again indicating the elevated status of the house and its owners and staff. The spatial layout of the house remains largely original and this is to be retained.

The overall high quality of design of the proposed extension and alterations is to complement the existing and enhance the surroundings without comprising the character of the property or of the immediate area. The proposed sun room has resulted in a simple functional link between the existing kitchen within the service wing and the courtyard entrance, drawing the internal views into the courtyard and externally drawing the eye, visually enhancing the southern elevation, maintaining the agricultural styling, whilst breaking the run of brickwork. The creation of the sun room also removes the lean to extension which visually detracts from this elevation, creating a visually more interesting feature and additional internal accommodation. The proposed sun room and open porch also creates a clearly defined modern entrance into the main house from the parking area, utilising the existing historic features without having a detrimental impact on the historic fabric, ensuring a long term use for a historic building as a modern family home. The internal alterations and renovation seek to create a modern useable and practical family home from a largely original 18th century farmhouse, without compromising the character, historic integrity or fabric. The materials specified would contribute to the character of the area and the village as a whole, complementing that existing within Milton and the local vernacular.

Planning History

None directly relevant to the farmhouse itself, but in respect of the adjoining barns:

9/2017/0084 & 0245: Amended scheme to permissions ref. 9/2015/0123 & 0152 - Approved July 2017

9/2015/0123 & 0152: Planning and listed building applications for the demolition of farm buildings/structures together with the conversion and extension of agricultural buildings to form 3 dwellings and garaging/carport space - Approved April 2015

9/2014/0697 & 0716: Planning and listed building applications for the demolition of farm buildings/structures together with the conversion and extension of agricultural buildings to form 3 dwellings and garaging/carport space together with the formation of a new agricultural vehicular access - Refused October 2014

9/2013/0722 & 0723: Planning and listed building applications for the demolition of farm buildings/structures together with the conversion and extension of agricultural buildings to form 3 dwellings and garaging/carport space together with the formation of a new agricultural vehicular access - Withdrawn

Responses to Consultations

The County Highway Authority recognises that the sole means of access to the paddock is through the garden gate onto Main Street and that this would not alter under the proposals. It is therefore considered that the proposal here would have no impact on existing highway conditions, and hence no objection is raised.

Responses to Publicity

Repton Parish Council objects stating that new developments and alterations should reflect and enhance those elements that contribute to the character of the area. The Orchard wall is deemed to be a listed structure and an application was refused to demolish part of it in 2014. The wall to the north of the farmhouse should have the same protected status. Development should reflect the existing buildings' alignment and aspect, and proposals for frontage and boundary features should be incorporated at the planning approval stage. The application forms contain no reference to the planned alterations to the wall and access, and in turn conflict with the submitted plan – a serious omission casting doubt on the validity and transparency of the application.

23 objections have been received across both the planning and listed building applications, raising the following concerns/points:

- a) there is no need to alter the northerly side of the property with new glazed doors;

- b) modernisation can be achieved without the need to interfere with the exterior of the property;
- c) alterations would have an impact upon the privacy of 24 Main Street;
- d) the 2014 refusal resisted demolition of the wall to the orchard, and the wall affected here is of the same age and bordering a green space, thus carrying the same importance to the character of the village;
- e) the wall is of historic importance, standing in-situ since at least 1942 and requiring permission for repair around 6 years ago in line with the (then) conservation officer's advice;
- f) the wall should not be altered without full details being provided;
- g) it is important for the village to retain the green aspects and views, and a fence will ruin this;
- h) the existing wall should be retained in-situ and privacy created through planting;
- i) any barrier hedge/trellis could be planted/erected a little way back from the existing wall to give a sense of space and avoid any overhanging greenery which would impact on the use of the pavement;
- j) in the original plans, the area immediately behind the listed wall was to remain a garden (not incorporating a driveway) with the paddock behind retained;
- k) creation of a driveway on agricultural land and affecting the setting of the listed building;
- l) the proposed roadway shown on the plan goes much further up the garden and on into to what was a paddock;
- m) the use of the driveway would have an impact on amenity;
- n) the current access has only been used by pedestrians;
- o) the access is not suitable for vehicles, with farm traffic and livestock previously having access to the paddock from the farmyard – instead this gate was only used by pedestrians as a garden gate, and this position opposite a phone box and a large drive used by farm machinery is not a safe access point given the farmhouse hides the entrance from oncoming traffic;
- p) it would make the walk along the pavement more hazardous in an already tight and narrow section of the road;
- q) the development has adequate garaging and parking in the yard, so why is a road necessary to run through the garden and paddock?;
- r) the gateway is already wide enough for the very occasional use that may be needed to access the paddocks;
- s) the driveway may affect the foundations and safety of the existing walls and adjoining building;
- t) land next to a curtilage building has been cleared, including a strip in the region of 20 feet which is not owned by the developer;
- u) work has already started on excavating and laying of hardcore;
- v) no Party Wall agreement was sought with the immediate neighbour prior to works being carried out;
- w) lack of respect for neighbours and planning rules;
- x) this appears to be preparing the paddock for further development;
- y) the description of development is not accurate, omitting the demolition of a curtilage listed building and the provision of a Breedon Gravel estate drive;
- z) the application form states no alterations to pedestrian or vehicle access and yet the plan clearly shows the wall opened up;

- aa) the plans cannot be used as a means to amend the scope of the application to include the works to the wall; and
- bb) inaccuracies between the application form, heritage statement and the plans.

Notwithstanding the above objections, one writer confirms the overall layout of the interior of the farmhouse is sensible and the replacement of the existing 20th century sun room is appropriate.

Development Plan Policies

The relevant policies are:

- 2016 Local Plan Part 1: S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), SD1 (Amenity and Environmental Quality), BNE1 (Design Excellence), BNE2 (Heritage Assets), BNE4 (Landscape Character and Local Distinctiveness) and INF2 (Sustainable Transport); and
- 2017 Local Plan Part 2: H27 (Residential Extensions and Other Householder Development) and BNE10 (Heritage).

National Guidance

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

Local Guidance

- Milton Conservation Area Character Statement (CACS)
- South Derbyshire Design Guide Supplementary Planning Document (SPD)

Planning Considerations

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

- The impact of the alterations to the farmhouse;
- The impact of the alterations to the residential curtilage; and
- Highway safety

Planning Assessment

The impact of the alterations to the farmhouse

It is apparent from the objections received the main concern was not to the proposed alterations to the dwellinghouse. Nonetheless, special regard needs to be had to the statutory duty to preserve and enhance the significance of heritage assets – both the listed building itself and the resulting impact of the alterations on the conservation area.

Whilst the principle of demolition and the replacement of the sun room and canopy is agreeable to the Conservation Officer, several items of other work and interventions

originally proposed would have required the loss of historic fabric and plan form which would likely have been damaging to the heritage asset – some of these actions contrary to pre-application advice which recognises that the farmhouse is sensitive to change. Since then, the Heritage Appraisal has been completed and supplied alongside a full window schedule and amended drawings, enabling a proper consideration of the applications. Whilst the window schedule is not as comprehensive as would have been liked, it is sufficient to establish that the alterations would be acceptable and detail of sections, etc. can be left to condition. The sun room extension has been amended in line with advice and a reduction in the width of an opening between the kitchen and hall has been accommodated.

In terms of openings onto the northern garden, French doors were considered inappropriate and these have been substituted for a single width, glazed door as well as retaining a window to the utility. All openings comply with the separation distances in the SPD. Glazing bars have been removed from the door to achieve a simpler design whilst roof lights have been reduced in number to reflect the less historically 'active' nature of this elevation. Furthermore, vents and service pipework has been relocated away from the exposed side (northern) gable of the main farmhouse along with a reduction in the number of vents. The finer details of these alterations can be made subject to conditions.

The impact of the alterations to the residential curtilage

Firstly, there has been commentary regarding the extent of the residential curtilage. The garden shown on the plans accords with the topographical survey undertaken in 2014, with a boundary fence at the western limits. The applicant has reaffirmed their view that this is the lawful extent of the curtilage. Aerial photography is inconclusive such that it is accepted that on the balance of probability, this extent is correct. Secondly, the laying of a driveway within the curtilage of a garden which is also a listed building does not require a grant of planning permission – it is permitted development. Accordingly, it is not necessary or relevant to consider that element of the proposed works. Finally, the paddock to the rear is presently landlocked without use of this access. Whilst some residents suggest access is possible from Mount Pleasant Road; that land is not in the control of the applicant. A reasonable balance must therefore be struck between allowing access to and maintenance of that land, and protecting heritage interests.

As noted above, the proposals have been modified following receipt of comments and some concerns raised by the conservation officer. Whilst the principle of 'moving' the opening by modifying the wall did not attract the conservation officer's concern – particularly as change in itself is not necessarily harmful to the significance of a heritage asset; the enclosure with trellis would have detracted from both the visual relief this space offers in the conservation area and to the setting of the listed building, and obstructed ground level views towards the farmhouse from Main Street to the north. The style of gates proposed was also less than ideal. The amendments now omit the proposed alterations to the boundary wall as well as the trellis work, save for some along the boundary wall to the outbuilding at number 24, which is exposed blockwork in the conservation area. This latter element is considered to provide an enhancement to the conservation area in its own right. The

new access gate would also be timber five-bar to reflect the agricultural character of the building and conservation area.

Highway safety

The County Highway Authority was consulted prior to the amendment to omit the access alterations. They have however considered the most current proposals (i.e. that no physical changes to the access are proposed, thus attention being solely on the implications of the use of this access). It is noted that the access is existing and could have solely served the paddock in the past. Given land ownership is beyond the control of planning, it could have also served a greater extent of land when it was part of the Church Commissioners' ownership. Equally, it could have only been used on the odd occasion, and residents indicate this is more akin to the actual situation. However, this does not change the fact that an access exists to a garden which in turn also facilitates access to agricultural land. It is also not unreasonable to assume that the limited use of the wider farm and property in more recent times has cemented the perception of an underused access. A more 'active' use of the farmhouse and of the paddock could be achieved without this application, and in turn the use of the access. In any case, a more suitable residential access and parking provision exists to the other side of the farmhouse such that the resulting number of vehicular movements associated with use of the paddock would be negligible in the overall context. As such, it is not considered it could be demonstrated that this application has a material effect on the safety of the public highway, and hence an objection could not be sustained.

Summary

Overall the works to bring the farmhouse back into a more active use and provide a more attractive offering for future occupants of it, along with the external works within the curtilage are not considered to harm the heritage assets affected here, with the public benefits of securing the long term use and stewardship of the property apparent. There would be no unacceptable impact on neighbouring amenity or highway safety as a result of the proposal.

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

Recommendation

GRANT permission subject to the following conditions:

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

Reason: To conform with Section 91(1) of the Town and Country Planning Act 1990 (as amended by Section 51 of the Planning and Compulsory Purchase Act 2004).

2. The development hereby permitted shall be carried out in accordance with drawings ref. 282 P 31B and 282 P 32B, along with the Window Schedule

dated October 2017, received on 17 October 2017; unless as otherwise required by condition attached to this permission or allowed by way of an approval of a non-material minor amendment made on application under Section 96A of the Town and Country Planning Act 1990 (as amended).

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

3. All external materials used in the development shall match those used in the existing building in colour, coursing and texture unless, prior to their incorporation into the development hereby approved, alternative details are first submitted to and approved in writing by the Local Planning Authority pursuant to an application made in that regard, whereafter the approved alternative details shall be incorporated into the development.

Reason: In the visual interest of the building(s), the significance of the heritage asset(s) and the surrounding area.

4. Pointing of the existing/proposed building(s) shall be carried out using a lime mortar mix of either lime putty or NHL 2 in a 1:2.5/3 ratio (lime:sand) using a sharp, well-graded aggregate unless alternative details are first submitted to and approved in writing by the Local Planning Authority, whereafter the approved alternative details shall be incorporated into the development. The finished joint shall be slightly recessed with a brushed back finish.

Reason: In the visual interest of the building(s), the significance of the heritage asset(s) and the surrounding area.

5. Prior to any pointing commencing, a sample panel of pointed brickwork/stonework no less than 1 sq. m shall be prepared for inspection and approval in writing by the Local Planning Authority. The works shall be carried out in accordance with the approved sample, with the approved sample retained on site throughout the duration of construction works.

Reason: In the visual interest of the building(s), the significance of the heritage asset(s) and the surrounding area.

6. Gutters, downpipes and soil and vent pipes shall be in cast metal and finished in black and be fixed direct to the brickwork on metal brackets. No fascia boards shall be used.

Reason: In the visual interest of the building(s), the significance of the heritage asset(s) and the surrounding area.

7. Prior to their incorporation in to the building(s) hereby approved, details of the rooflights shall be submitted to and approved in writing by the Local Planning Authority. The approved rooflights shall be installed.

Reason: In the visual interest of the building(s), the significance of the heritage asset(s) and the surrounding area.

8. Except for where allowed by the approved plans, all plumbing and service pipework, soil and vent pipes, electricity and gas meter cupboards and

heating flues shall be located inside the building(s) unless alternative details are first submitted to and approved in writing by the Local Planning Authority; whilst prior to their installation details of the type, number, position and finish of heating and ventilation flue outlets shall be submitted to and approved in writing by the Local Planning Authority. All approved details shall be incorporated into the development.

Reason: In the visual interest of the building(s), the significance of the heritage asset(s) and the surrounding area.

9. Prior to their incorporation into the development hereby approved details of the new external joinery, which shall be in timber, shall be submitted to and approved in writing by the Local Planning Authority. Such details shall include situations where existing joinery needs to be supplemented with new timber. The details shall include drawings to a minimum scale of 1:10 of the joinery, including horizontal and vertical sections, precise construction and method of opening. The external joinery shall be constructed in accordance with the approved drawings.

Reason: In the visual interest of the building(s), the significance of the heritage asset(s) and the surrounding area.

10. Notwithstanding the plans hereby approved, prior to the erection of a fence or gate, details of the appearance and materials of such boundary treatments shall be submitted to and approved in writing by the Local Planning Authority. The boundary treatments shall be completed in accordance with the approved details before the respective dwelling to which they serve is/are first occupied following completion of the works approved under this permission or in accordance with a timetable which shall first have been submitted to and approved in writing by the Local Planning Authority.

Reason: In the visual interest of the building(s), the setting of the heritage asset(s) and the surrounding area.

Informatives:

1. This permission should be read in conjunction with the Listed Building Consent under ref. 9/2017/0618 and conditions attached thereto.

Item **1.3**

Ref. No. **9/2017/0618/L**

Applicant:
Chetwynd Road Ltd
26 Main Street
Milton
Derby
DE65 6EF

Agent:
Mr Nick Hutchings
Nick Hutchings Architect Ltd
Four Trees
Old North Road
North Muskham
Newark
NG23 6ET

Proposal: **LISTED BUILDING CONSENT FOR THE DEMOLITION AND REPLACEMENT OF SUN ROOM AND CANOPY AND THE INSTALLATION OF NEW DOORS AND WINDOWS ALONG WITH INTERNAL ALTERATIONS AT COMMON FARM 26 MAIN STREET MILTON DERBY**

Ward: **Repton**

Valid Date **26/06/2017**

Please see the report under application ref. 9/2017/0613 for assessment of this proposal.

Recommendation

GRANT consent subject to the following conditions:

1. The works to which this consent relates shall be begun before the expiration of three years from the date of this consent.

Reason: To conform with Section 18(1) of the Planning and Listed Buildings and Conservation Area Act 1990 (as amended by Section 51 of the Planning and Compulsory Purchase Act 2004).

2. The development hereby permitted shall be carried out in accordance with drawings ref. 282 P 31B and 282 P 32B, along with the Window Schedule dated October 2017, received on 17 October 2017; unless as otherwise required by condition attached to this permission.

Reason: For the avoidance of doubt and in the interests of preserving and enhancing the heritage asset.

9/2017/0613 & 0618 - Common Farm, 26 Main Street, Milton, Derby DE65 6EF



3. Unless otherwise consented on the approved plans/drawings, all existing external and internal architectural details, including fireplaces, skirtings, cornices, doors and windows and their architraves shall be retained.

Reason: In the interests of protecting the significance of the listed building(s).

4. No works to install dry lining, DPM, floor and roof insulation shall take place unless details of such materials have been submitted to and approved in writing by the Local Planning Authority. The approved materials shall then be used.

Reason: In the interests of protecting the significance of the listed building(s).

Informatives:

1. This consent should be read in conjunction with planning permission ref. 9/2017/0613 and conditions attached thereto.

Item **1.4**

Ref. No. **9/2017/0955/NO**

Applicant:
Mr Chris Tolley
The Orange Tree Day Nursery
Staker Flatt Farm
Staker Lane
Mickleover
Derby
DE3 0DJ

Agent:
Miss Catherine Shipham
EDS
Kings Chambers
34 Queen Street
Derby
DE1 3DS

Proposal: **RETENTION OF PIPEWORK ASSOCIATED WITH A NEW
TREATMENT PLANT AT DAY NURSERY STAKER FLATT FARM
STAKER LANE MICKLEOVER DERBY**

Ward: **Etwall**

Valid Date **29/09/2017**

Reason for committee determination

The item is presented to Committee at the discretion of the Planning Services Manager as it is related to an application (9/2017/0361) that has been called in by Cllr Brown and, for clarity, should be presented together.

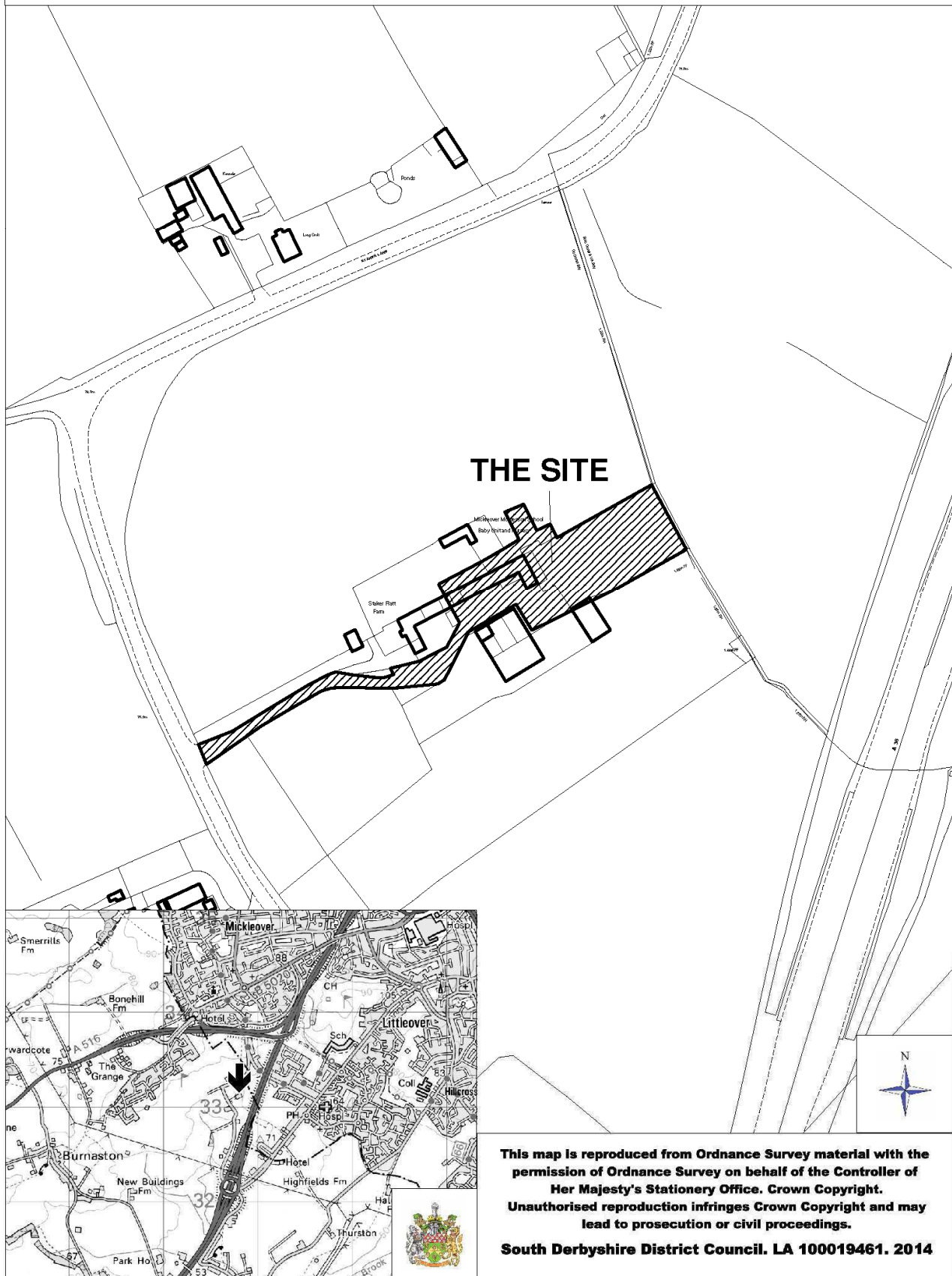
Site Description

The existing septic tank which was originally installed as a means of foul water disposal for the Nursery is located in the paddock to the north of the nursery itself and to the east of the rear garden of Staker Flatt Farm. The new pipework connects with the existing septic tank and is routed south onto nursery land to connect with the new Package Treatment Plant (PTP). The nursery occupies the converted agricultural barn previously associated with, and to the east of, Staker Flatt Farm. The site is flat and within open countryside but close to Mickleover and the urban area of Derby City.

Proposal

The proposal seeks the retention of new pipework associated with the new PTP in the paddock to the north of the Nursery and on land in the ownership of Staker Flatt Farm. The pipework connects the old septic tank in the paddock with the new PTP installed in the garden of Orange Tree Nursery, the subject of another retrospective application (9/2017/0361).

**9/2017/0955 - Day Nursey, Staker Flatt Farm, Staker Lane, Mickleover,
Derby DE3 0DJ**



Applicant's supporting information

The application form and associated plans identifying the location of the pipework and PTP.

Planning History

- 9/1996/0053 The extension and conversion to form a private day nursery of the range of outbuildings to the north east of the farmhouse – Approved November 96
- 9/2000/0093 The erection of a single storey extension to enlarge the day nursery – Approved March 2000
- 9/2008/0693 The demolition of existing building and erection of replacement building (for storage, distribution and part retail) and additional building (for storage, distribution and ancillary office accommodation) Approved August 2008, and amended under 9/2009/0417
- 9/2016/0182 Retrospective application to continue the use of the land for exercising recreational horses and retention of associated stables and hay barn – Pending
- 9/2016/1277 The retention of an existing portable building for use as part of the day nursery, retention of other existing buildings and structures – Withdrawn March 2017
- 9/2017/0361 The retention of an existing portable building for use as part of the day nursery, retention of other existing buildings and structures, staff car parking and package treatment plant (re-submission of withdrawn application ref. 9/2016/1277 with minor amendments) – Pending

Responses to Consultations

Whilst the Environmental Health Officer (EHO) initially objected to the associated application (9/2017/0361) which included the installation of a PTP, that objection was withdrawn. The EHO raises no objection to this application but wishes to stress that some of the pipework for the drainage field in the grounds of the nursery appears to extend on to land owned by the Nursery's neighbours, Staker Flatt Farm.

Responses to Publicity

No responses have been received in writing, but on the associated application the owners of Staker Flatt Farm considered this application should also be determined by the Committee as the two applications are intrinsically linked.

Development Plan Policies

The relevant policies are:

- 2016 Local Plan Part 1: S2 (Presumption in Favour of Sustainable Development), E7 (Rural Development), SD1 (Amenity and Environmental Quality), SD3 (Sustainable Water Supply, Drainage and Sewerage Infrastructure)
- 2017 Local Plan Part 2: BNE5 (Development in the Countryside)

National Guidance

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

Planning Considerations

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

- Principle of Development
- Drainage impacts

Planning Assessment

Principle of development

The proposal, part of the expansion of an existing rural business, is supported by Policy E7 of the Local Plan Part 1 and improves the existing foul water disposal to the existing nursery and additional temporary building in accordance with policy SD3. In turn the proposal is considered to be in accordance with policy BNE5 of the Local Plan Part 2.

Drainage impacts

The original permission in 1996 required the means of foul water disposal to be submitted to and approved. A septic tank was installed on what is now land within the ownership of Staker Flatt Farm. The applicant contends that they have access to this land via a covenant to maintain the septic tank and has provided an extract of the deeds. This application seeks consent for a new pipework to divert foul water to the new PTP, the subject of application 9/2017/0361. This pipework between the old septic tank and the new PTP is partially on land in the ownership of Staker Flatt Farm and hence this separate application has been made to seek retrospective consent for this work.

The EHO has confirmed no formal objection to the concurrent application. Given the drainage concerns can be satisfactorily resolved by way of providing the new PTP and associated pipework, the development is considered to comply with policy SD3 of the Local Plan Part 1. It is also noted that the Council's Building Control officer has issued a completion certificate for all drainage works.

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.

Item **1.5**

Ref. No. **9/2017/0361/NO**

Applicant:
Miss Jacqui Mason
The Orange Tree Day Nursery
Staker Lane
Mickleover
Derby
DE3 0DJ

Agent:
Miss Sam Tomlinson
EDS Derby
200 Mansfield Road
Derby
DE1 3RB

Proposal: **THE RETENTION OF AN EXISTING PORTABLE BUILDING FOR USE AS PART OF THE DAY NURSERY, RETENTION OF OTHER EXISTING BUILDINGS AND STRUCTURES, STAFF CAR PARKING AND PACKAGE TREATMENT PLANT (RE-SUBMISSION OF WITHDRAWN APPLICATION REF. 9/2016/1277 WITH MINOR AMENDMENTS) AT DAY NURSERY STAKER FLATT FARM STAKER LANE MICKLEOVER DERBY**

Ward: **Etwall**

Valid Date **02/05/2017**

Reason for committee determination

The item is presented to Committee at the request of Councillor Lisa Brown as local concern has been expressed about a particular issue.

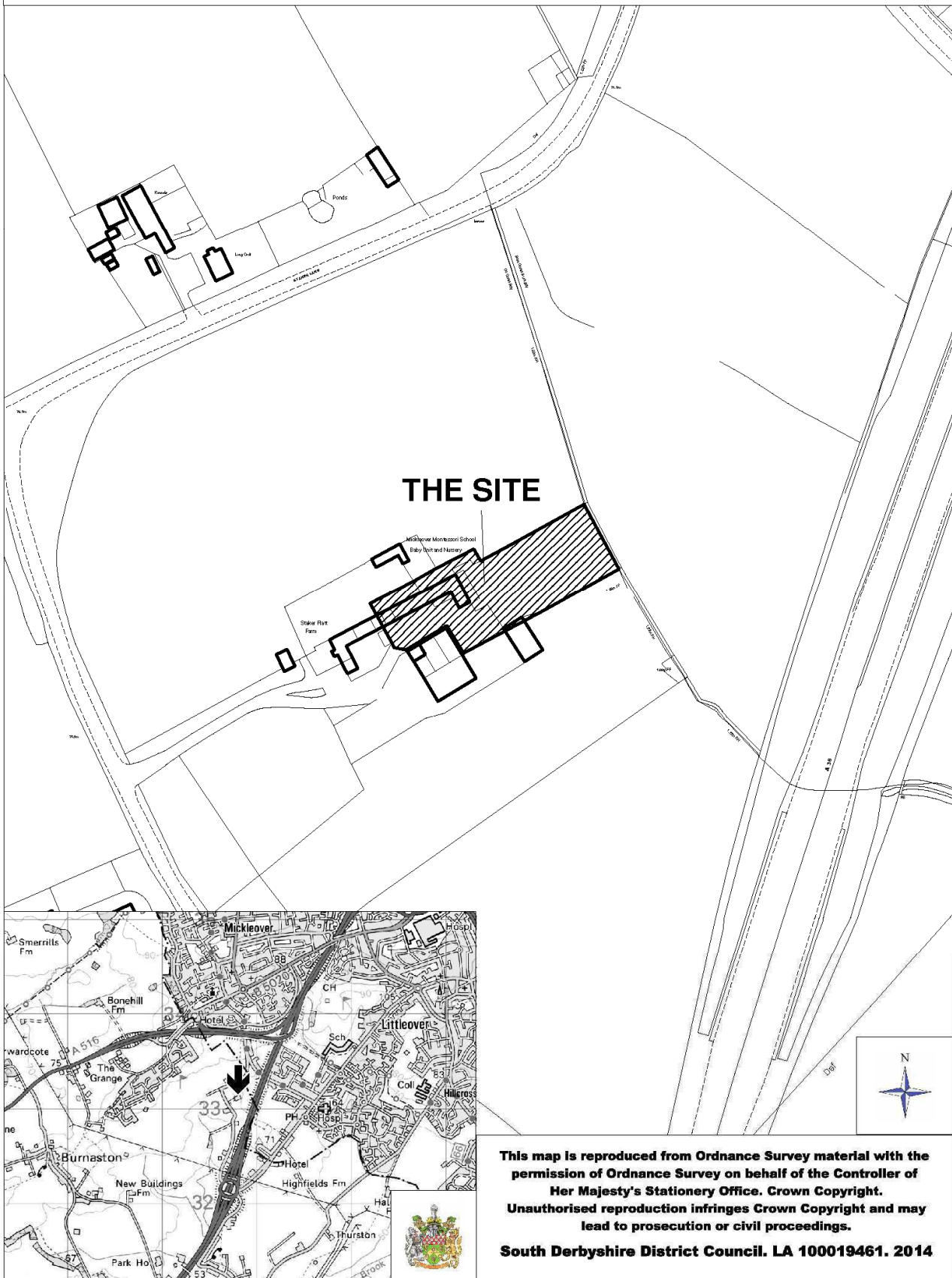
Site Description

Orange Tree Nursery occupies the converted agricultural barn previously associated with, and to the east of, Staker Flatt Farm. To the south of the access road, a private drive owned by the occupier of Staker Flatt Farm, are two industrial units. All three uses share the same access off Staker Lane. The site is flat and within open countryside but close to Mickleover and the urban area of Derby City. This access is also used by the tenant currently keeping horses in the fields associated with Staker Flatt Farm.

Proposal

The application seeks to retention an existing portable building for use as part of the day nursery along with other buildings and structures, additional staff car parking and a package treatment plant (PTP). These additional structures are located in the garden of the nursery and comprise a timber framed roof canopy, two timber play equipment storage sheds, a raised decked outdoor play area, grass covered hard standing (additional parking), a timber boot room, timber gazebo, mop store, growing

9/2017/0361 - Day Nursey, Staker Platt Farm, Staker Lane, Mickleover,
Derby DE3 0DJ



area, mud kitchen, chicken coop, rabbit hutch, pirate ship, climbing frame, slide area and swings.

Not all of these require planning permission but the applicant was advised to include all existing structures within the nursery given that this was an opportunity to regularise any unauthorised development.

Applicant's supporting information

Supporting Information

Submitted with the application form and plans is a table of pick-up and drop-off times over a typical week from 07.30 to 09.30 and 16.30 to 18.30. It also states that on the nursery's busiest day there are 13 staff employed on staggered shifts from a pool of 18 staff on the books. Staff that can car-share are rostered together to enable this to happen.

Nursery Numbers

An email response to the County Highway Authority's initial objection setting out the relationship between the OFSTED limit of 80 registrations and the 116 children currently on roll. It also considers the operating models to which the Nursery could operate as well as the preferred method, to take as many children for a full day as possible.

Photos

These CCTV images show a lorry delivering to the adjacent business units in separate ownership to both the nursery and the occupants of Staker Flatt Farm which are also accessed along the private drive, using the parking area to the nursery for turning.

Planning History

There are a number of applications for different uses on this site including the sub-division of the barns into two dwellings, siting of a mobile building for use as a farm shop, parking of haulage vehicles and the creation of a karting circuit on land to the north east of the farmhouse, all of which have been refused. Other proposals such as a replacement building (for use for storage, distribution and part retail) and an additional building (for storage, distribution and ancillary office accommodation) have been approved. Relevant permissions and applications are as follows:

- 9/1996/0053 The extension and conversion to form a private day nursery of the range of outbuildings to the north east of the farmhouse – Approved November 96
- 9/2000/0093 The erection of a single storey extension to enlarge the day nursery – Approved March 2000

- 9/2008/0693 The demolition of existing building and erection of replacement building (for storage, distribution and part retail) and additional building (for storage, distribution and ancillary office accommodation) Approved August 2008, and amended under 9/2009/0417
- 9/2016/0182 Retrospective application to continue the use of the land for exercising recreational horses and retention of associated stables and hay barn – Pending
- 9/2016/1277 The retention of an existing portable building for use as part of the day nursery, retention of other existing buildings and structures – Withdrawn March 2017
- 9/2017/0955 The installation of pipework associated with a new treatment plant – Pending

Responses to Consultations

The County Highway Authority originally objected as the proposal appeared to intensify the use of the site which has a sub-standard access off Staker Lane. Additional information was requested relating to staff and child numbers and whether the applicant could provide any improvements to the access. Following receipt of additional information, the Highway Authority concludes that given that there was no restriction of numbers on the original permission and a further permission to extend the nursery (not implemented) also did not restrict the number of children, and that in any case the current number could be accommodated in the existing building without the outbuilding subject of this application while the applicant is willing to have maximum numbers placed on any consent given here; an objection on highway grounds could not be sustained subject to a condition relating to parking and the cap on numbers of children attending.

The Environmental Health Officer (EHO) originally objected as the PTP, which is to serve the portable building and the main building, had not yet received approval from Building Control. A Notice under the Building Act was subsequently served by Environmental Health to make satisfactory provision for foul drainage of the building, and the applicant was subsequently notified that they had met the requirements of the notice – albeit the owner of Staker Flatt Farm disputes the placement of some of the associated pipework, believing it to be sited on his land. The EHO has now withdraw the objection although retains some concern as to ownership.

Responses to Publicity

Burnaston Parish Council raises no objections.

19 representations have been received including 15 letters of support. The 4 letters objecting to the application raise the following concerns:

- a) The portable building was erected by the current applicant without planning or legal consent;

- b) The siting of the portable building in its current location reduces the overall car parking spaces of a minimum of 13 and manoeuvring space within the nursery site;
- c) The current operator of the nursery cannot comply with Condition 3 of the original permission (9/1996/0053) relating to the maintaining of hedge to ensure sufficient visibility adjacent to Staker Lane as the applicant does not control the land;
- d) Over time there has been a significant increase in vehicles using the site on a daily basis;
- e) Lack of drop-off parking spaces for parents;
- f) The proposed additional parking for staff is totally unrealistic and unworkable;
- g) Shuffling of cars by staff may affect staff/children ratios given the staggered shift pattern used;
- h) Staff and parents 'illegally' park on the neighbour's driveway;
- i) A neighbour has, at significant expense, had to install speed humps and 'no parking' signage to stop ad hoc parking on driveway and at the entrance to the commercial premises;
- j) There is no land within the nursery site for turning of delivery and other large vehicles;
- k) No evidence of two spaces being rented on Staker Lane and no parents are likely to use these to drop off children;
- l) Access to Staker lane is poor, particularly during late spring to autumn when the lack of verge cutting and legal restrictions on brushing hedgerows during bird nesting;
- m) The Highway Authority objected to application 9/2016/0182 relating to the exercising of recreational horses and the retention of a stable and hay barn stating *'they would not wish to see any increase in use of the access which is sub-standard in terms of visibility'*;
- n) The various unauthorised structures on the site demonstrate that the nursery has expanded its operations and existing parking provision is no longer sufficient;
- o) The foul sewage arrangement is not fit for purpose;
- p) The doors on the north elevation created without consent have significant amenity impacts on the adjacent domestic garden as a result of children playing in this area;
- q) Development does not comply with Policy E7;
- r) Development does not comply with emerging policy BNE5;
- s) Delivery vehicles for the nursery use the industrial unit's yard as a turning area as there is now no provision to turn on their own property;
- t) Parents/carers drive too fast and ignore signs for speed limit and parking restrictions along driveway;
- u) Soakaway for the sewage treatment plant sited on land owned by Staker Flatt Farm is inadequate;
- v) Play areas identified on plan are inappropriate as they are adjacent to Staker Flatt Farm's garden. The noise and nuisance caused is annoying and distressing. This area is the subject of a restrictive covenant set out in the deeds.

The 15 letters of support raise the following points:

- a) The nursery provides amazing early years experiences for young children in a rural setting;
- b) The way the nursery is set up means the children can access the outdoor play area anytime;
- c) New parking for staff has been created providing more space for parents.
- d) The nursery offers the best experiences and opportunities in the Mickleover area;
- e) The addition of the portable building provides older children with great value. They benefit from the orchard garden;
- f) Our children are flourishing at the nursery and the garden, used all year round is a big part of that;
- g) The facilities at the nursery are unrivalled in the area but are essential to the well-rounded childcare solution;
- h) The nursery continues to develop and provide the highest standard of care for its children;
- i) The improvements applied for seem necessary and the new parking is working well;
- j) The change of use of the area to parking has no impact on anyone else.
- k) Changes to parking have made things easier given the lack of flexibility from the adjoining farm;
- l) These amendments are of no impact to any neighbour given that they are at the back of the site and not visible from the A38;
- m) Inappropriate speed humps and restrictions to access with unclear metal barriers should be of more council concern than anything that this application covers;
- n) The provision of two additional staff parking spaces at Staker House, Staker Lane for as long as required;
- o) Whilst traffic on Staker lane has increased due to new housing in the area, the nursery has not contributed to any congestion as children are dropped off and picked up at staggered times.

Development Plan Policies

The relevant policies are:

- 2016 Local Plan Part 1: S2 (Presumption in Favour of Sustainable Development), S6 (Sustainable Access), E7 (Rural Development), SD1 (Amenity and Environmental Quality), SD3 (Sustainable Water Supply, Drainage and Sewerage Infrastructure), BNE1 (Design Excellence), BNE4 (Landscape Character and Local Distinctiveness) and INF2 (Sustainable Transport)
- 2017 Local Plan Part 2: BNE5 (Development in the Countryside)

National Guidance

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

Planning Considerations

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

- Principle of development;
- Residential amenity;
- Highway safety; and
- Drainage.

Planning Assessment

Principle of development

Members should bear in mind throughout this assessment that neither the original permission in 1996, nor the subsequent extension, included conditions capping the potential number of children attending the nursery.

The building is to the east of Staker Flatt Farm, away from the public highway. Since the change of use of the agricultural building to a nursery, two industrial units have been erected to the south and east of the nursery. The expansion of an existing rural business is supported by Policy E7 of the Local Plan Part 1 and meets the criteria set out relating to the policy other than criterion (ii). This is dealt with under the highway safety discussion below. The siting of the portable building adjacent to the existing nursery and industrial units minimises the impact of the building on the wider area. Whilst the nursery is visible from Staker Lane to the north, the portable building and associated timber sheds, decking, climbing frame and other incidental structures are not visible from public view and the nursery itself is not visible from the south, east or west. The portable building is functional in design and its scale and mass are considered acceptable particularly given that the building is well screened from public aspects. The building is therefore considered to be in accordance with Policy BNE1 of the Local Plan Part 1 and Policy BNE5 of the Local Plan Part 2.

Residential amenity

The 1996 permission extended to the whole of Staker Flatt Farm, including the farmhouse, outbuildings and fields to the north and south of the buildings. As such, the whole site was capable of being used in connection with the nursery use. When the nursery was sold in 2003, this use of the land remained albeit to a lesser extent given a smaller land 'take' was conveyed. This excludes the driveway, which remains in the ownership of Staker Flatt Farm. No restrictions were placed on the original permission in terms of the removal of permitted development rights or to control the use of external areas as part of the everyday activities associated with the nursery. It is understood that the owner of Staker Flatt Farm placed a number of controls on the land when sold in 2003, which passed onto the current owners in 2014.

Any impact that the use now has on Staker Flatt Farm in terms of residential amenity is unlikely to be significantly different from that possible under the original permission. The creation of the external doors on the northern elevation, whilst noticeable to the neighbour, has little impact on whether in planning terms this land

could or should be used since it would be in accordance with the original permission. The openings simply facilitate a more convenient means of access between the building and this area. Given the restricted views and the existence of a close boarded fence on the boundary of the two properties, the flexibility this creates for the nursery is considered acceptable.

The owner of Staker Flatt Farm states that the applicant has ignored restrictions of use set out on the deeds of sale. However, these restrictions post-date the planning permission and are a civil matter and not a matter for the Council to consider.

Highway safety

The siting of the portable building reduced the nursery's provision of parking and manoeuvring on site from 13 to 11 parking spaces. This application includes a revised layout for 24 parking spaces with 11 of the 13 spaces at the front of the nursery designated as drop-off spaces. A further 12 spaces are provided for staff at the rear of the buildings, behind gates. Whilst this layout is not ideal, being captive in part and requiring up to seven cars to reverse out in order to allow other cars to exit, this is still an improvement in overall parking provision. In addition to on-site parking, the applicant rents two parking spaces at Staker House, Staker Lane for use by two members of staff. Whilst this cannot be conditioned since the applicant does not have control of that land, this is a useful addition to parking off-site and the owner at Staker House wrote to confirm that this facility is presently available for as long as the applicant wishes to retain these spaces.

As noted above, the nursery is accessed via a private drive off Staker Lane which is owned by Staker Flatt Farm. The County Highway Authority initially objected to the proposal as the application appeared to intensify the use of the nursery whilst the existing access is sub-standard in terms of visibility. However, following additional information demonstrating that the number of children could be accommodated in the existing building, inspection of the nursery's OFSTED reports both stating that the nursery is registered for 80 places, and no cap on numbers was previously conditioned in the original or subsequent permission to extend the nursery; the County Highway Authority now considers the proposal acceptable subject to conditions. Given their position, the impact on highway safety is considered acceptable and would satisfy policy INF2 of the Local Plan Part 1.

Drainage

The original permission required the means of foul water disposal to be submitted under condition, and a septic tank was installed on what is now land within the ownership of Staker Flatt Farm. This application seeks consent for a Package Treatment Plant (PTP) on land now owned by the Nursery for the discharging of foul water associated with the portable building, and is a modern version of the septic tank. A PTP discharges to a 'drainage field' or 'infiltration system' – a series of perforated pipes that allow the liquid to pass into the soil. Prior to and during installation of the PTP, several instances of effluent spillage from the septic tank occurred onto the field owned by Staker Flatt Farm and the EHO initially objected as outlined above. In response, the applicant switched all of the foul water discharge to the new PTP as it had the capacity – albeit new pipework was required to provide

connections. This additional pipework requires planning permission but is outside of this application site such that it is the subject of a concurrent application (ref. 9/2017/0955) also before Members for consideration. It is noted that the owner of Staker Flatt Farm contends that part of the drainage field is constructed on his land.

The EHO has since notified the nursery advising them that they have complied with their notice, such that the objection has been withdrawn. Given the above drainage issues have been satisfactorily resolved, the development is considered to comply with policy SD3 of the Local Plan Part 1.

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 parking provided in accordance with drawing no EDS_0430_01 Revision C shall be maintained in perpetuity free from any obstruction to its designated use.

Reason: In the interests of highway safety.

2. The nursery shall not exceed a registration of more than 80 childcare places during the working day. A list of names shall be recorded and retained on a daily basis and be made available for inspection on request by the Local Planning Authority.

Reason: In the interests of limiting the expansion of the business accessed from a substandard access, in the interests of highway safety.

Item **1.6**

Ref. No. **9/2017/0631/NO**

Applicant:
Marcus Radcliffe
The Walnuts
Ingleby Road
Stanton-By-Bridge
Derby
DE73 7HU

Agent:
Marcus Radcliffe
The Walnuts
Ingleby Road
Stanton-By-Bridge
Derby
DE73 7HU

Proposal: **THE ERECTION OF TWO BRICK PLAYER DUGOUTS ALONGSIDE
THE MAIN FOOTBALL PITCH AT MELBOURNE SPORTS PAVILION
COCKSHUT LANE MELBOURNE DERBY**

Ward: **Melbourne**

Valid Date **20/09/2017**

Reason for committee determination

This item is presented to the Committee under Regulation 3, as the proposal would be carried out on land that belongs to the Council.

Site Description

The recreation ground is located to the west of Cockshut Lane. The site consists of an all-weather football/soccer pitch which is floodlit, three rugby pitches, a further two football pitches a recreational cricket pitch and a tennis court which is located to the north west of the site.

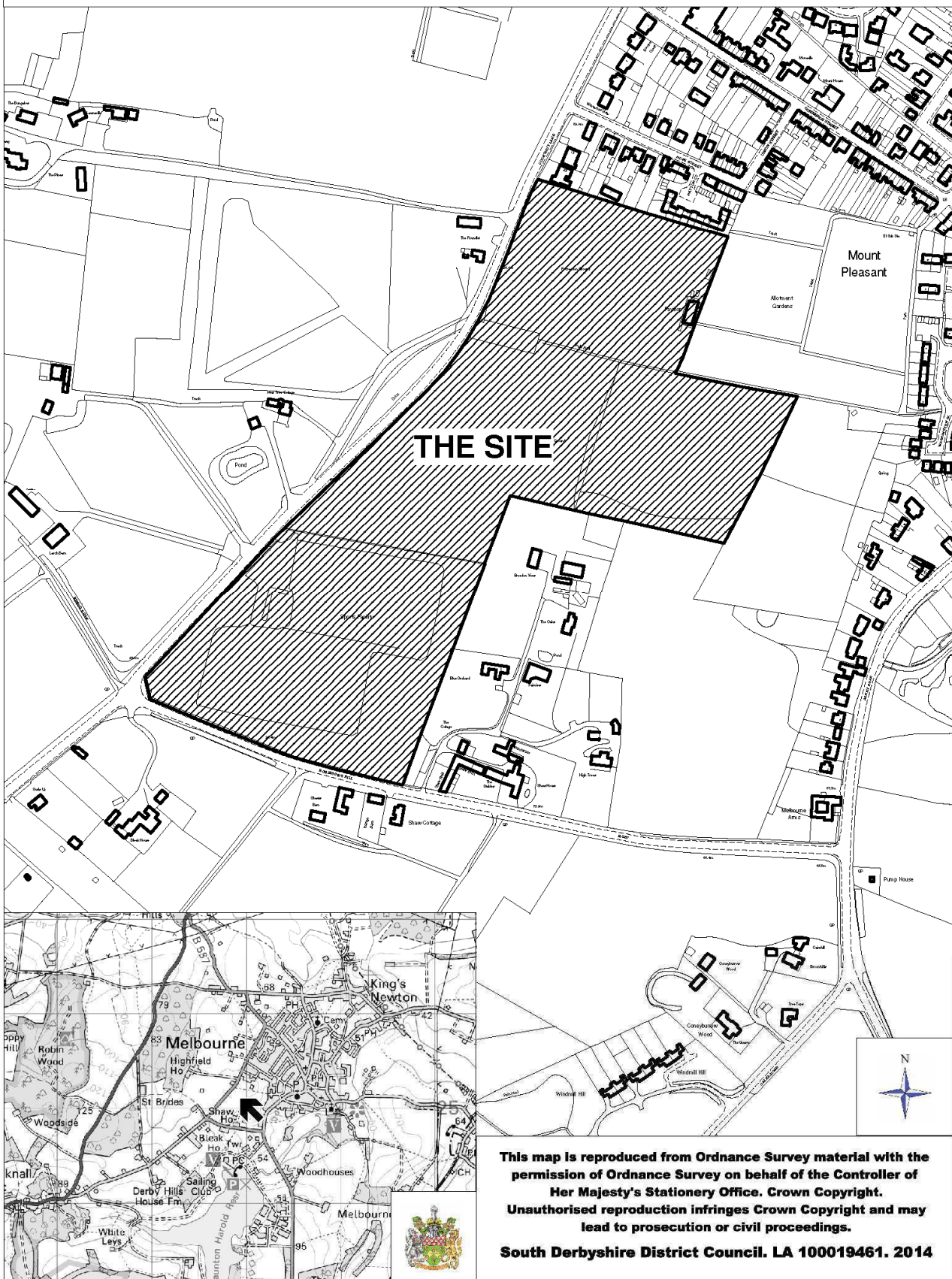
Proposal

Consent is sought for the erection of two dug out structures that would be positioned adjacent to the current football pitch. The structures would be 1.2m in width, 3m in length and 2.1m in height and would be used for shelter during matches.

Planning History

9/2011/0910 Proposed redevelopment to form new facilities for rugby, football, cricket, tennis and bowls; the erection of a new club house floodlighting and creation of parking facilities – Approved with conditions

9/2017/0631 - Melbourne Sports Pavilion, Cockshut Lane, Melbourne, Derby
DE73 8DG



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South Derbyshire District Council. LA 100019461. 2014

- 9/2017/0331 Use of the floodlights on the artificial grass pitch overnight on May 27/28 – Approved with conditions
- 9/2017/0369 The variation of condition 4 of planning permission ref: 9/2013/0759 to use the flood lights through the night beyond 9.30pm for one event a year – Approved with conditions

Responses to Consultations

The Environmental Health Officer has no objections.

Melbourne Civic Society has no objections to the application.

Melbourne Parish Council has no objections to the application.

Responses to Publicity

There have been no emails/letters of objections or support received.

Development Plan Policies

The relevant policies are:

- 2016 Local Plan Part 1: S2 (Presumption in Favour of Sustainable Development), BNE1 (Design Excellence), INF6 (Community Facilities) and INF9 (Open Space, Sport and Recreation).
- 2017 Local Plan Part 2: SDT1 (Settlement Boundaries and Development) and BNE5 (Development in the Countryside).

National Guidance

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

Planning Considerations

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

- Appearance of the structures
- Use of the structures

Planning Assessment

Appearance of the structures

The structures would be positioned adjacent to the existing football pitch. Despite the structures being positioned in the open area, they would be small structures that would be marginally higher than standard 2m high boundary treatment. Owing to the size of the structures and their position to the existing playing pitch, it would not be considered that there would be a significant level of wider visual impact. On the basis

of this, the proposal would comply with policy BNE1 of the Local Plan Part 2 and BNE5 of the Local Plan Part 2.

Use of the structures

The dug outs would be used for shelter during football matches, which would mean that the pitches could be used more during poor weather conditions. This would have a positive impact on the wider site and make the facilities more widely available. On the basis of this, the proposal would comply with the principles of policies INF6 and INF9 of the Local Plan Part 1.

Conclusion

On the basis of the information that has been submitted, it would appear that the proposed dug outs would have a minimal visual impact on the wider area. The dug outs could allow the pitches to be more frequently available and would make a positive contribution to the current sports facility.

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 under regulation 3/4 subject to the following conditions:

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

Reason: To conform with Section 91(1) of the Town and Country Planning Act 1990 (as amended by Section 51 of the Planning and Compulsory Purchase Act 2004).

2. The development hereby permitted shall be carried out in accordance with plan/drawing 01, received on 20th September 2017; unless as otherwise required by condition attached to this permission or allowed by way of an approval of a non-material minor amendment made on application under Section 96A of the Town and Country Planning Act 1990 (as amended).

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

3. The dug outs shall not be erected until precise details, specifications and, where necessary, samples of the materials to be used in the construction of the dug outs 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.

Item **1.7**

Ref. No. **9/2017/1032/FH**

Applicant:
Mr S Smart
2 Napier Close
Church Gresley
Swadlincote
DE11 9RY

Agent:
Mr Andrew Bennett
South Derbyshire District Council
Housing Adaptations
Civic Offices
Civic Way
Swadlincote
DE11 0AH

Proposal: **THE ERECTION OF A REAR EXTENSION AT 2 NAPIER CLOSE**
 CHURCH GRESLEY SWADLINCOTE

Ward: **Church Gresley**

Valid Date **22/09/2017**

Reason for committee determination

The item is presented to Committee as the applicant is an employee of the Council.

Site Description

This two storey property is situated on a modern housing estate; the immediate house types featuring a mix – i.e. some detached, some semi-detached, some mews style terraced units. The plot (which within this house sits) affords a detached single garage with two drive based car spaces and a rear garden; the garden space principally enclosed by 2m high fencing. In terms of site levels, there is a noticeable (but not extreme) difference across the immediate with levels higher at No. 2 than they are at 4 and 6 Napier Drive.

Proposal

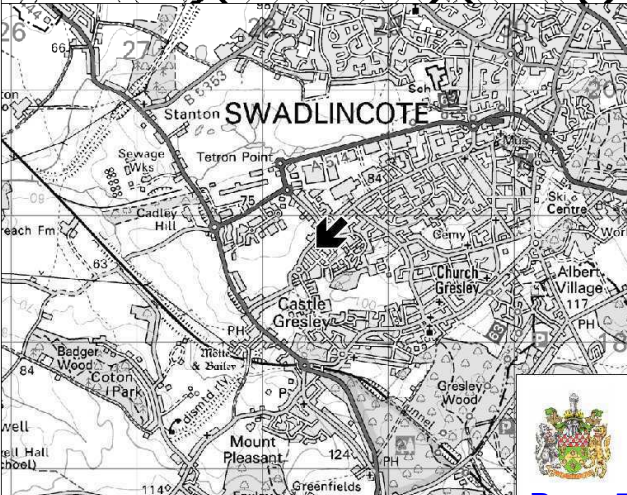
The application proposes the erection of a single storey rear extension to provide a ground floor bedroom and shower room for a disabled occupant.

Applicant's supporting information

The extension is to be funded by a disabled facilities grant.

Planning History

None



South Derbyshire District Council. LA 100019461. 2014

Responses to Consultations

None

Responses to Publicity

None

Development Plan Policies

The relevant policies are:

- 2016 Local Plan Part 1: S1, BNE1
- 2017 Local Plan Part 2: H27

National Guidance

- National Planning Policy Framework (NPPF) in particular paragraph 58
- Planning Practice Guidance (PPG) ID21b, ID26

Local Guidance

- South Derbyshire Design Guide Supplementary Planning Document (SPD)

Planning Considerations

The main issues central to the determination of this application are the design of the proposed extension and the impact it would have on neighbouring properties.

Planning Assessment

The proposal seeks to gain consent for a single storey rear extension. It would extend some 5.8m from the rear wall, be 3.8m wide with eaves at 2.4m and ridge at 3.3m.

The form presented is generally in keeping with the area, brick finished with a tiled roof. There are garages of similar form, visible from the rear windows of neighbours; equally it reads as a subordinate to the host.

The protrusion of the extension (some 5.8m) is without doubt worth close consideration especially given the context and the relatively small garden sizes here. However any significant concern in that regard has been offset, the extension featuring of a lower than standard ridge height (feasible by using a lower pitch on the roof) and the fact that the structure is set away from the boundary, admittedly by only 0.5m but that in turn allows the current fence(s) to soften.

The new space has been designed (in terms of its fenestration) to relate/interact solely with the host garden space. By that it is meant that all of the openings face south eastwards. Any depth of view there however is severely limited by the hosts'

garage which in turn curtails any view towards neighbouring windows/primary spaces.

It was noted that levels here are to the detriment of nos. 4 and 6, they being on lower ground. The level change however is not so severe that this structure would read as anything other than a single storey addition.

A condition that ensures the use of similar materials will safeguard sympathetic execution of the development.

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

Recommendation

GRANT permission subject to the following conditions:

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

Reason: To conform with Section 91(1) of the Town and Country Planning Act 1990 (as amended by Section 51 of the Planning and Compulsory Purchase Act 2004).

2. The development hereby permitted shall be carried out in accordance with drawing ref: 4850 AMB, received on 22nd September 2017; unless as otherwise required by condition attached to this permission or allowed by way of an approval of a non-material minor amendment made on application under Section 96A of the Town and Country Planning Act 1990 (as amended).

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

3. All external materials used in the development to which this permission relates shall be of a similar appearance to those used in the existing building in colour, coursing and texture unless prior to their incorporation into the development hereby approved, alternative details have been first submitted to and approved in writing by the Local Planning Authority.

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

Informatives:

1. The proposed development lies within an area that has been defined by The Coal Authority as containing potential hazards arising from former coal mining activity. These hazards can include: mine entries (shafts and adits); shallow coal workings; geological features (fissures and break lines); mine gas and previous surface mining sites. Although such hazards are seldom readily visible, they can often be present and problems can occur in the future, particularly as a result of development taking place. It is recommended that

information outlining how the former mining activities affect the proposed development, along with any mitigation measures required (for example the need for gas protection measures within the foundations), be submitted alongside any subsequent application for Building Regulations approval (if relevant). Your attention is drawn to The Coal Authority Policy in relation to new development and mine entries available at: www.gov.uk/government/publications/building-on-or-within-the-influencing-distance-of-mine-entries. Any intrusive activities which disturb or enter any coal seams, coal mine workings or coal mine entries (shafts and adits) requires a Coal Authority Permit. Such activities could include site investigation boreholes, digging of foundations, piling activities, other ground works and any subsequent treatment of coal mine workings and coal mine entries for ground stability purposes. Failure to obtain a Coal Authority Permit for such activities is trespass, with the potential for court action. Property specific summary information on past, current and future coal mining activity can be obtained from: www.groundstability.com. If any of the coal mining features are unexpectedly encountered during development, this should be reported immediately to The Coal Authority on 0345 762 6848. Further information is available on The Coal Authority website at: www.gov.uk/government/organisations/the-coal-authority.

Item **1.8**

Ref. No. **9/2017/1052/TP**

Applicant:
Mr Martin P Buckley
South Derbyshire District Council
Civic Offices
Civic Way
Swadlincote
DE11 0AH

Agent:
Mr Martin P Buckley
South Derbyshire District Council
Civic Offices
Civic Way
Swadlincote
Derbyshire
DE11 0AH

Proposal: **THE PRUNING OF OAK TREES COVERED BY SOUTH**
 DERBYSHIRE DISTRICT COUNCIL TREE PRESERVATION ORDER
 NUMBER 360 AT GRAVEYARD MAIN STREET NETHERSEAL
 SWADLINCOTE

Ward: **Seales**

Valid Date **29/09/2017**

Reason for committee determination

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

Site Description

Netherseal Graveyard has a number of trees in its grounds, some of which are protected by TPO 360. A school and tennis courts bound the southern boundary of the graveyard, then surrounded by a residential area of the village.

Proposal

The application proposes the pruning of two TPO protected Oak trees.

Tree 1: Approximately post pruning dimensions: north 10m, east 8m, south 6.5-7m and west 8m.

Reduction work in the upper crown is to be limited to around 2m of apical growth, ensuring that once pruned the crown structure retains an aerodynamic overall form. Growth borne from the hollowed out primary stem is reduced slightly beyond the remaining crown periphery to lessen the likelihood of the branches being heavily loaded during future windy weather. Any remaining significant deadwood

MANOR

Hall

War Meml

MAIN STREET

Hall Farm

Seale House

Graveyard

Netherseal St Peter's C of E Primary School

L Twrs

Tennis Court

THE SITE

Tennis Courts

L Twrs

78.6m

FB

Donisthorpe

Netherseal PH

Acresford

Stratton B

Chilcote

Park Fm

Grange Wood

Grange Wood Hall

Grangewood Lodge

Woodfields Fm

West View Fm

Hollows Fm

The Grange

Seal Pastures

Yew Tree Fm

Stones Br

Seal Fields

73.5m

Old H

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overhanging the tennis court should be selectively reduces or removed, however where deadwood overhangs the hedge line to the north this should remain.

Tree 2: Crown clean, removing all deadwood and defective material. Shorten secondary growth overhanging the tennis courts by approximately 1m.

Applicant's supporting information

An arborist report has been submitted in relation to both Oak trees and contains the following information;

Tree 1: The tree is of a high value specimen of a squat form with significant branch failing and the presence of a closed lip seam showing evidence of a previous damage. Test drilling found a primary stem to be substantially hollow.

A hollowed out section of the tree would pose a safety hazard to people and structures surrounding it and also compromise the integrity of the crown structure.

The growth born from the hollowed out primary section should be reduces to slightly beyond the remaining crown periphery to lessen the likelihood of future damage from overload of the branches.

Tree 2: This tree is accredited with being the granddaughter of the Boscobel Oak, therefore being of a high value and in fair condition.

It is expedient at the same time the works to Tree 1 are carried out, that the deadwood to the tennis court side of this tree is removed also.

Planning History

TPO 360 was made in April 2012 that protected both of the trees subject of this application.

Responses to Consultations

None.

Responses to Publicity

None.

Development Plan Policies

The relevant policies are:

- Local Plan Part 2: BNE7 (Trees, Woodlands and Hedgerows)

National Guidance

- National Planning Policy Framework (NPPF): paragraphs 109 and 118

- Planning Practice Guidance (PPG): ID36-008

Planning Considerations

The main issues central to the determination of this application is whether the works to the trees are suitable and justified.

Planning Assessment

The works proposed are in the interests of both safety and sound tree management and are therefore considered acceptable.

Recommendation

GRANT permission subject to the following conditions:

1. The work hereby approved shall be carried out within two years of the date of this consent.

Reason: To conform with Regulation 17(4) of the Town and Country Planning (Tree Preservation) (England) Regulations 2012, in order to enable the local planning authority to consider any proposals beyond this period in the interests of safeguarding the amenity value of the tree(s).

2. The work shall be carried out in accordance with BS3998:2010 - Tree Work.

Reason: To safeguard the health of the tree(s).

Item **2.1**

Ref. No. **9/2017/0431/FM**

Applicant:
Mr Peter Burchell
c/o Agent

Agent:
Ms Kay Davies
Fisher German LLP
Estates Office
Norman Court
Ivanhoe Business Park
Ashby De La Zouch
Leicestershire
LE65 2UZ

Proposal: **THE ERECTION OF AGRICULTURAL/FORESTRY WORKERS**
 DWELLING AT MANOR FARM CHURCH STREET HARTSHORNE
 SWADLINCOTE

Ward: **Woodville**

Valid Date **21/04/2017**

Reason for committee determination

The item is presented to Committee at the discretion of the Planning Services Manager.

Site Description

The site is located on an existing farm located on the outskirts of Hartshorne. The existing farmhouse is a grade II listed building and the proposed site is positioned close by but behind stables and historical farm outbuildings. The buildings to be demolished are not considered to be part of the listed curtilage and are more contemporary dilapidated lean-to elements to a Dutch barn (to be retained). The site is located on a gradient which slopes away to the north of the site but is largely obscured from views by existing trees and hedgerows. The land to the south of the site rises and also obscures the site from the surrounding area. Access to the dwelling would be through the farmyard, with the existing driveway passing in front of Manor Farmhouse

Proposal

Permission is sought for the erection of an additional dwelling house at the farm, to serve a worker. This would be in addition to the existing farmhouse. The additional dwelling is proposed on the basis that it would be to support the livery yard and

THE SITE

Manor Farm
Pond
Daisy Nook
Cherry Leys
Woodhill
St Peter's Church
Path
Track
Quarry (disused)
Foxes Den
The Paddocks
CHURTON STREET
PH
106
128
Cop Hou
rne
Horn

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South Derbyshire District Council. LA 100019461. 2014

forestry businesses that are, or will be, run from the farm as well as its existing functions.

Applicant's supporting information

A Planning Design and Access Statement (PDAS) states that Manor Farm extends to 66 hectares and has diversified over the years. A significant amount of the land remains for sheep grazing and hay/haylage crop, but 39 acres have been planted as woodland around 2001 & 2002 through the National Forest Tender Scheme. This woodland now requires thinning and management. PA Forestry operates off-site but it is the intention to run this from the farm and combine this with the farm/forestry operations. A Woodland Management Plan is submitted in support of this. The farm currently grazes 100 sheep but this may change as the farm diversifies, in particular with the livery business. It is submitted that there are 23 stables which are full with a waiting list, comprising of 2 DIY liveries, 5 part liveries and 16 full liveries, with the hope to expand in future years. The proposed dwelling would be two storeys with three bedrooms and would be located to minimise its impact on the listed building and so to appear subservient.

A Justification Statement confirms the forestry operations and sheep herd as outlined in the PDAS. It also confirms the livery numbers outlined. It also outlines there are further income streams such as income from the shoot, from LANTRA chainsaw instruction /training and from fostering which takes place at the current dwelling. The applicant (Peter Burchell) has recently taken over the day to day management of the holding which is held in partnership with Peter's mother and father (David Burchell) who reside in Manor Farmhouse. In addition to managing the holding, the applicant runs a forestry and arboricultural business in the local area.

The woodland felling and thinning works would be completed by hand in order to maximise the amount of timber which is extracted and to ensure that the work is done in a sustainable and sympathetic way. This would also enable the efficient processing of the timber extracted and create an additional source of income. There is an established equine business with Peter Burchell responsible for the day to day running and operations of the forestry enterprise and Alyson Burchell managing the equine side of the business and dealing with the administration for the combined enterprises. It is stated that the applicant's parents, whilst having a capital interest in the holding, have no interest in PA Forestry and are no longer involved in any of the farming/forestry or equine activities carried out by the business, both on and off the holding. Following the parents' decision to retire from active farming, both enterprises utilise seasonal and local labour as required depending on the respective workloads. It is advanced that Manor Farmhouse is not available to be used for the applicants. The grassland is managed intensively and is used by the livery side of the business either for hay and haylage or grazing.

Standard Man Days (SMD) have been calculated, giving a general estimate of the labour requirement. A SMD is 2,200 hours per year, and this converts to 275 notional 8-hour SMDs. Whilst there are no standard man day figures available for forestry works and operations, experience and the Woodland Management Plan can provide suitable figures, whilst other enterprise requirements are taken from industry guidance. The total business requirement is 2,425 SMDs, or 8.81 persons.

The applicants are ultimately responsible for the horses in their care whilst they are on the holding. Equine welfare is regulated by the Animal Welfare Act 2006 and there are also the Equine Codes of Practice. At smaller sites with fewer horses, whilst desirable, it is not a necessity for someone to be on site 24 hours per day. However, it is argued that with 23 horses at the farm and plans to increase this number, there is a requirement for someone to be on site for animal welfare and security reasons. The applicant currently lives in Woodville, approximately 1.5 miles away. Although the distance is short, at peak times of day the journey is taking up to 30 minutes which is not sustainable and it is not practical to manage the business, in particular the horses, from a remote location. A search of other locations within a 10 mile radius from which both a forestry and equine enterprise could be run on the same scale has not found any sites which would be affordable or suitable.

Accounts for PA Forestry have been submitted covering the previous 3 years and shows the business as financially stable and viable. In relation to Manor Farm, this has been operating for generations. The enterprise is established and has diversified significantly over the years. This attracts various income streams including grants. It is argued that the livery already brings about a considerable turnover and this would increase with the move of part-liveries to full-liveries. It is noted that there has been a significant amount of investment in the livery business over the past 18 months with resurfacing on the manege and new fencing. The financial effect of terminating the employment of a former manager for the livery is also discussed, and it is advanced this is not representative of the overall picture. The precise financial details must remain confidential, but where necessary these are explored further below.

An Ecological Appraisal outlines that owing to the small scale of the proposal and its distance from important sites, it is considered that no designated sites would be affected by the development. As there has been no evidence of invasive species such as Japanese Knotweed recorded there are no constraints to the site clearance as long as nesting birds are considered. Any clearance of hedgerow would be carried out outside of nesting season. The presence of Great Crested Newts is considered to be very unlikely and it is considered that there are sufficient barriers surrounding the site which would mean that they would be extremely unlikely to be affected by the development. Whilst there are a number of records of badgers within 2km of the site, given its isolation the presence of badger setts on the site would be highly unlikely. There was evidence of bats roosting in buildings at the farm, but these buildings would not be affected by the development. Nonetheless, measures must be taken to ensure that the proposed flight-lines of the bats would not be disrupted by an increase in lighting.

Planning History

There is no relevant history.

Responses to Consultations

The County Highway Authority notes that whilst the unadopted part of Church Street carries the route of Footpath 23, and it is not considered suitable to serve an increase in use, it is unlikely to result in an increase in impact terms given the

proposal for a workers dwelling. They have no objection subject to an informative that the existing footpath shall remain open.

Derbyshire Wildlife Trust has no objections subject to a condition for an enhancement strategy to be provided prior to works commencing on site.

The Lead Local Flood Authority has no objections and refers to standing advice.

The Environmental Health Officer has no objections.

The Contaminated Land Officer has no objections.

Responses to Publicity

There have been 5 letters/emails of support that have been received, raising the following points:

- a) It is good to see one of the farms in the Parish trying to make a living from the land/trees.
- b) Both the existing woodland and the new planting are being managed sympathetically as a long term timber resource and as a valuable habitat for the local wildlife.
- c) The farm has won a BASC Conservation Award in 2016.
- d) The conversion of the existing agricultural buildings into stables is versatile and flexible. There has been considerable investment in the form of new fencing and manege surface, showing their confidence and enthusiasm for the future. Surely the amount of work justifies a dwelling for the next generation for this established farming family.
- e) From experience of running Bondwood Farm Stud, it is essential to ensure that someone is onsite 24/7 in the event of any emergencies which are unfortunately all too common when dealing with horses. Horses are checked last thing at night and again first thing in the morning. This is particularly important when operating a livery yard where owners are reliant on the proprietor to ensure the welfare of their animals.
- f) It's good to see that the surrounding woods will be looked after with a management plan. It's also good news that the farm will be handed down to Mr Burchell's son and to keep a small farm in the family.
- g) This is a dedicated family run farm, with long term intentions to keep it that way, with significantly proactive woodland management and outstanding biodiversity; an ideal school visit for children to learn about nature. It makes sense, with the amount of hours required on the farm to maintain it, that it would be beneficial for the family to live together there.
- h) As a livery client at Manor Farm, they are in strong favour of having someone on site 24/7. This would be peace of mind knowing that someone is on hand and there to keep an eye on their horse(s). There is also a growing rise in horse/tack and trailer theft around the UK. Recently, there have also been deliberate fires started at livery yards/stables with devastating effects.

Hartshorne Village Residents Association supports the application as the dwelling would be located on brownfield land within the curtilage of the farmyard environs and would be essential for the management of the farm, particularly the forestry element. The Association states they support any activity, which promotes or encourages farming and other rural activities.

Hartshorne Parish Council has no objections subject to the proposed dwelling only being used for the purposes outlined in the application.

Development Plan Policies

The relevant policies are:

- 2016 Local Plan Part 1: S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), S6 (Sustainable Access), H1 (Settlement Hierarchy), SD1 (Amenity and Environmental Quality), SD4 (Contaminated Land and Mining Legacy Issues), BNE1 (Design Excellence), BNE2 (Heritage Assets), INF2 (Sustainable Transport) and INF8 (The National Forest).
- 2017 Local Plan Part 2: SDT1 (Settlement Boundaries and Development), H25 (Rural Workers Dwellings), BNE5 (Development in the Countryside) and BNE10 (Heritage).

National Guidance

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

Local Guidance

- South Derbyshire Design Guide Supplementary Planning Document (SPD)

Planning Considerations

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

- Principle of the proposed dwelling
- Whether there is an essential need
- Business justification
- Heritage and visual impacts

Planning Assessment

Principle of the proposed dwelling

The site is located outside of a settlement boundary and would represent housing development in the open countryside. The Local Plan Part 1 (LP1) and Part 2 (LP2), whilst generally resisting such development, carry some exceptions – one of which is housing for rural workers. The principle policy is therefore H25 of the LP2, and the proposal must comply with its provisions for it not to also conflict with policies S1 and

H1 of the LP1, and SDT1 and BNE5 of the LP2. Paragraph 55 of the NPPF also specifies that “*local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances*” – one example being listed as the essential need for a rural worker to live permanently at or near their place of work in the countryside.

Policy H25 of the LP2 stipulates that for a new permanent rural worker’s dwelling, it is necessary for the applicant to clearly demonstrate that:

- *there is an established existing essential need for an additional worker’s dwelling;*
- *the rural-based activity has been established, is sustainable and has the prospect of remaining so; and*
- *the essential need cannot be fulfilled by an existing dwelling within the locality.*

The enterprise already benefits from a dwelling for a rural worker, that being Manor Farmhouse. It follows that in order for the principle of the development to be deemed acceptable, it is necessary to demonstrate an established, essential functional need for a further worker to reside at the site, and that the enterprise is both existing and established, and that it is and is likely to remain sustainable. Furthermore, there must be no prospect of meeting the need by utilising an existing dwelling in the locality. Whilst these criteria set the bar high, this is deliberately so given the ‘special circumstances’ test in paragraph 55 of the NPPF and the otherwise unsustainable nature of the development in principle.

It must also be noted that it is not normal for a permanent agricultural dwelling to be granted at the first ‘stage’ where the enterprise and associated functional need is not yet established. In these circumstances, policy H25 makes allowance for a temporary workers dwelling to be permitted before the sustainability of the enterprise is reviewed a few years later in considering whether to allow a permanent dwelling.

Whether there is an essential need

Whilst the standard man days (SMDs) required to carry out all the day-to-day work point to the need for multiple workers at the enterprise, this is not the test here. Functional need differs from labour need. Functional need is where the particular circumstances of an activity require a worker to be readily available at most times of the day or night. Such examples might include rearing of a beef or dairy herd where it would be impractical or contrary to welfare requirements for the worker to live away from the farm.

The overall enterprise is in a state of transition from established farming operations, as specified in the justification statement (i.e. renting of land for grazing of sheep, the shoot and some DIY, part and full livery), to include forestry/woodland management and shift the equine use towards solely full liveries. A diversification income from fostering would also continue. It is apparent, therefore, that the existing established essential need can only relate to the historic components of the business and the forestry (given that has been evidenced as established, albeit off the farm) – not the proposed move to full livery activities. The existing components are already served by a workers dwelling. The forestry business does little to change the functional

requirements here. Whilst it is desirable to run PA Forestry and store equipment from one site, the current operation of that business as a separate entity in the manner it presently exists demonstrates that there is no functional requirement to live at or near to the place of work. The fact that the woodland now requires ongoing management may represent a change to circumstances, but it does not demonstrate an established need. Pest control in the early hours of the morning does also not change this view, it being an ad-hoc and seasonal requirement. The livery element would therefore need to be of a scale or nature that would take the essential need to two or more workers.

Seldom does a livery use justify the need for a worker to live at the site. There would be no breeding taking place and the facilities are not geared towards 'high value' racehorses such that the livery could be handled by way of shifts – the daily requirements only being for the turning out, mucking out and grooming of the animals, with it being possible to perform routine checks on welfare throughout the day. Whilst the Equine Code of Practice recommends frequent checks on horses by a suitably qualified person, it also states this does not mean that there must be a twenty-four hour presence on site – particularly when those present during the day should be suitably qualified/trained to the same Code. Should any horse show signs of illness, this could be spotted and addressed during these daytime shifts. Furthermore, with an existing worker at Manor Farmhouse, any ad-hoc requirements to deal with illness late in the day/overnight are already provided for – as is the overall security of the farm. It also follows that the SMDs associated with the livery can therefore be addressed by work activities carried out as part of daytime shifts/routine.

It is noted that the justification alludes to Mr David Burchell having retired. This is at odds with subsequent discussion with both the applicant and Mr D Burchell. At the current time, he remains a worker of the enterprise and resides in a dwelling which forms part of the holding. His retirement cannot be guaranteed or enforced by way of planning condition or obligation. As such, for the purposes of this assessment, the main farmhouse still forms part of the enterprise and should be taken into account as available to meet any functional needs of it. In the same vein, it is noted that the justification statement talks of "utilising seasonal and local labour as required depending on the respective workloads", and this also raises the question of whether there is a functional need to reside at the site.

It is therefore considered that it has not been demonstrated that there is an essential need for a worker to reside at the farm. The existing worker already provides for any functional requirements of the day-to-day management of the enterprise, and the justification advanced for the extra accommodation stems from a fledgling or non-established element of the wider enterprise. In instances such as these, a temporary dwelling might be a more suitable proposition (supported by a viable business plan) as this would allow the proposal to be 'tested' with the applicant demonstrating in time a sustainable business in functional and financial terms. However, that is not the proposal being considered – the application documents seek a permanent dwelling and whilst the temporary alternative has been suggested to the applicant, they are not willing to amend the proposal.

Business justification

It has been established from the submitted justification statement, recent site visits and a meeting with the applicant, that the current farmhouse remains part of the enterprise. Whilst it may be the intention to sever this in the future (i.e. by way of Mr Burchell retiring); the application must be assessed on the current circumstances for the reasons already outlined above.

The justification statement specifies that there is a well-established equine business that has increased in the last 5 years from 10 to 23 liveries, with the majority operating as full livery. However, the submitted financial records dating back to 2014 do not substantiate this number of liveries being present at the yard, instead being more consistent with 8 to 10 DIY liveries. This inconsistency raises doubt over the sustainability of the livery business. Furthermore, the statement specifies that there were significant losses in recent years due to legal costs, and there remains a lack of clarity over income generated and outgoings. Discussions with the applicant have confirmed that the livery enterprise has changed significantly in the last couple of years, and the accounts to December 2016 contained very little full livery income as these only came 'on stream' last winter. This overall point is also notable in supporting the above concerns as to the lack of an *established* essential need, given DIY livery requires less intervention and support from a worker.

When assessing the enterprise as a whole, it is noted that there are other income streams such as the chainsaw instruction/ training that Mr D Burchell provides, the grazing land and the shoot, as well as the income stream from the foster care provided. These elements would all be considered as financially established and have a sound prospect of remaining so. Equally, if any of these elements were severed (e.g. the applicant has made it clear that Mr D Burchell would continue the foster care if he were to retire from the farm), these income streams would need to be separated from the farm business. PA Forestry can also be viewed as financially established given it is already operational elsewhere. Nonetheless, there would be increased overheads associated with the livery (given full livery carries the need to provide for all bedding, feed and other welfare costs) – particularly if additional labour is required. Equally, there would be increased revenue from shifting to full livery. The submitted accounts do not help given this is a projected change to the livery element of the business, and the projected turnover also fails to realistically account for these outgoings – particularly if Mr D Burchell does retire leading to additional labour requirements.

There remain significant discrepancies in the financial details submitted, whilst at the same time there have been losses in recent years. Whilst it may be that these losses are a one-off, and the enterprise may be strengthened by the addition of the forestry element and full-livery focus for the equine element; the latter is not established and thus has not been 'tested', and associated outgoings of these changes coupled with the inconsistencies and losses fail to confirm the business which justifies this particular proposal is established and economically sustainable in the round, with some uncertainty as to whether a clear and steady income would support a favourable financial status going forward. Policy H25 requires it to be demonstrated that the enterprise is economically sustainable and has the prospect of remaining so. It is considered to be a substantial risk to also load the capital investment in a

permanent dwelling (not a cheaper temporary alternative) onto the enterprise at this time of uncertainty. Overall, it is not considered the criterion is satisfied.

Heritage and visual impacts

The proposed dwelling would be positioned adjacent to existing agricultural buildings which would help to reduce its impact on the open nature of the countryside. This siting would also ameliorate any harmful impact on the setting of the listed building it drawing significance in both designed views out from the farmhouse and pastoral views towards it, with the remaining agricultural buildings shielding the new dwelling it in views out of and largely to the heritage asset.

The proposed dwelling would be of a suitable, traditional design that would complement the existing site and local vernacular whilst not causing harm to neighbouring amenity. The proposal would therefore comply with policies BNE1 and BNE2 of the LP1, and BNE10 of the Local Plan.

Conclusion

The policy test is whether there is sufficient justification to support an additional workers' dwelling at Manor Farm. The existing farmhouse remains available to provide for the day to day operation of the existing enterprise, which includes some livery already, whilst the forestry operations are already handled from afar. Any functional need which might arise from the overall activities is clearly already met such that it cannot be reasonably concluded that the essential need advanced rides on an 'established' and 'existing' need. When considering the changes to the livery operation, these are in their infancy with considerable uncertainty in recent years as to the financial stability of this part of the business. It cannot be said that this is 'established', nor can it be identified that this sufficiently moves the circumstances in justifying another worker to live at the site to address a new/additional functional need. As a consequence, the principle of the proposed dwelling cannot not be supported as an exception to otherwise very strict controls over housing development in the countryside. The conflict with policy H25 of the LP2 also leads to conflict with policies BNE5 and SDT1, and H1 and S1 of the LP1.

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

Recommendation

REFUSE permission for the following reason:

1. The existing established enterprise benefits from the availability of a workers' dwelling, which presently serves and will continue to serve the business. Any functional requirements of day to day operation of the holding are already met by this on-site dwelling and the recent and proposed changes to the business, particularly in respect of forestry/woodland management and shifting of the equine business towards full liveries (as opposed to a mix of DIY, part and full liveries), do not bring about a change in the existing circumstances and the

resulting essential need for another worker to reside at their place of work. In addition, whilst the enterprise appears to have been financially stable for a number of years, and the forestry business is already financially sustainable operating from a site nearby; the element of the business which is being advanced as the key justification for the need to reside at the site has not been proven to be financially sound in recent years and projections for the future development of the business are not properly justified. Crucially, with the proposal for the creation of a permanent dwelling, the test to demonstrate the activity is established and financially is not satisfied. The proposal is therefore contrary to policy H25 of the Local Plan Part 2 (LP2) and consequently policies BNE5 and SDT1 of the LP2, policies H1 and S1 of the Local Plan Part 1 (LP1) and paragraph 55 of the National Planning Policy Framework (NPPF).

2. PLANNING AND OTHER APPEALS

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

Reference	Place	Ward	Result	Cttee/Delegated
9/2014/1013	Blackwell Lane, Melbourne	Melbourne	Dismissed	Committee
9/2016/1086	Jawbone Lane, Melbourne	Melbourne	Dismissed	Delegated
9/2017/0205	Talbot Meadows, Hilton	Hilton	Allowed	Delegated

Appeal Decision

Inquiry held on 11 and 12 July 2017 and 21 September 2017

Accompanied site visit made on 22 September 2017

by G P Jones BSc (Hons) MA MRTPI

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

Decision date: 03 November 2017

Appeal Ref: APP/F1040/W/17/3171029

Land north of Blackwell Lane, Melbourne, South Derbyshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Melbourne Maintenance Fund, Melbourne Trust & Trustees of Lady Lothian's Settlement against the decision of South Derbyshire District Council.
 - The application Ref 9/2014/1013, dated 16 October 2014, was refused by notice dated 7 September 2016.
 - The development proposed is described as outline application (all matters except for access to be reserved) for the residential development of up to 15 dwellings.
-

Decision

1. The appeal is dismissed.

Preliminary and Procedural Matters

2. This is an outline application with all matters reserved except for means of access. When questioned at the Inquiry both parties agreed that as the proposed development has been amended since the original application then the correct description should be that as given on the Council's decision notice. I have used the site address details as provided on the planning application form.
3. Subsequent to issuing its decision notice, the Council submitted an e-mail in which it stated that a number of policies were omitted from its decision notice in error. These policies comprised Policies EV13 and EV15 of the South Derbyshire Local Plan, adopted 1998 (LP98) and Policies SDT1 and BNE5 of the emerging South Derbyshire Local Plan Part 2 (LP2). Although these policies were not cited in the Council's decision notice, nevertheless the appellant has considered them in its appeal statements. Therefore in reaching my decision I shall also have regard to these additional policies that have been cited by the Council.

Main Issues

4. From all that I have read, heard and seen I consider that the main issues are as follows:
 - the effect of the proposal on the significance of designated heritage assets; and

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

- whether or not the appeal site would be an appropriate location for housing having regard to the development plan and the National Planning Policy Framework (the Framework).

Reasons

Heritage assets

5. The appeal site comprises a semi-grassed/scrubland field with a modern portal shed with an attached lean-to extension, hereafter referred to as the barn, located towards the eastern boundary of the site, and a small shed adjacent to the rear boundary of no. 2 Blackwell Lane. At the time of my site visit the appeal site had a few abandoned and parked cars on it, the latter being parked in connection with the use of the allotments that adjoin the appeal site to the north. The access track to the appeal site is hard-surfaced at its junction with Blackwell Lane, although beyond the barn it becomes more akin to a mud track as it leads towards the allotments.
6. The appeal site lies within the Melbourne Conservation Area (MCA) and within the vicinity of the site are the Grade I Registered Park and Garden of Melbourne Hall. Melbourne Hall is a Grade II* listed building with Grade I listed Tea Room and Muniment Room buildings, and the outer walls of Melbourne Hall are Grade II listed. In addition, to the north-west of the appeal site lie the remains of Melbourne Castle which is a scheduled ancient monument (SAM).
7. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) requires that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of a conservation area. This means that considerable weight and importance must be given to any harm caused to heritage assets in the planning balance. Also, Section 66(1) of the Act requires that special regard should be had to the desirability of preserving the setting of listed buildings. Furthermore, footnote 9 to paragraph 14 of the Framework lists policies relating to designated heritage assets among the specific policies in the Framework that indicate development should be restricted.
8. It is not in dispute between the parties that the proposal would not have an impact on the setting of Melbourne Hall, the Registered Park and Garden or the SAM. The appeal site is wholly within the MCA and the main matter of contention is the effect of the proposal on the significance of the MCA.
9. The MCA covers much of the central part of Melbourne and also it extends to the south and south-east to incorporate Melbourne Hall and its surrounds and Melbourne Pool. Part of the eastern boundary of the MCA runs along the eastern edge of the field that is known as the 'cornfield' and which lies to the immediate east of the appeal site.
10. The MCA Character Statement (MCACS) was adopted in 2011 following public consultation. The MCACS states that: *"Perhaps the most important view approaching Melbourne is that from the east, from the eastern slope of Blackwell Brook...Looking in the other direction along Blackwell Lane, there is an equally important view out of the conservation area."*
11. Photographs representing the general view of the appeal site from further along Blackwell Lane to the east are depicted in Plates 1 and 2 of Dr Usher's Proof of Evidence and Figures 6 and 7 of Dr Hickie's Proof of Evidence. Based

on the evidence of my site visit, including assessing other approaches into Melbourne, I concur with the analysis of the importance of this view as described in the MCACS.

12. Furthermore, the MCACS considers that for Blackwell Lane: "*There is a sharp contrast between the strong unbroken line of walls which sweep along the edge of the road in a shallow and graceful curve (at over 6 metres high in places), and the small and intimate scale of the red brick cottages and low stone boundary walls running along the north side of Blackwell Lane.*"
13. The MCA Plan that is contained within the MCACS indicates one of the 'Principal views' as being from just east of the cornfield looking west. Whilst the appellant argued that this view is depicted facing south-west along only part of Blackwell Lane I consider that when read in conjunction with the text in the MCACS it actually incorporates a wider scope of view across both Blackwell Lane and the cornfield, which would also include the appeal site.
14. Along with nos. 1 and 2 Blackwell Lane, the appeal site and allotments represent the beginning of built development within this part of the MCA, albeit development that is of an agricultural and horticultural character and appearance. As depicted in the aforementioned photographs, the appeal site is clearly visible in views from further to the east along Blackwell Lane. The view is of the open space of the cornfield and then the barn on the appeal site with an area of grassland behind and to the side of it. Although of no great architectural merit the barn is of a restrained design and is typical of an agricultural building, and thus is not out of keeping with a countryside setting.
15. Heading west along Blackwell Lane, closer to the appeal site, the view becomes foreshortened such that the barn and the mature vegetation that borders the initial part of the access track obscure more of the view of the open space behind and to the side of the barn. However, even from closer views of the appeal site the grassland within the appeal site is still evident.
16. Therefore when approaching Melbourne from the east along Blackwell Lane the character and appearance of this part of the MCA is of a transition from the open space of the countryside beyond leading to the main settlement of Melbourne, as represented beyond the appeal site by the Castle Mews and Castle Mills developments. The appeal site forms an important element of this transition.
17. Although a proposed Site Layout Plan has been submitted the proposal is an outline application, and therefore the precise details of the layout and design of the dwellings are yet to be fully considered. Nevertheless, if this appeal were allowed there would inevitably be housing located in close proximity to the western boundary of the cornfield and there would be associated domestic paraphernalia.
18. In addition, amendments to the nature and appearance of the access would result in the removal of the brick wall that lies to the east of the entrance to the access track and the reconfiguration of the low stone wall that adjoins no. 2 Blackwell Lane. Also there would be a general widening and upgrading of the access track with a resultant change in character from a semi-rural track that is partially hard-surfaced to a more formal road along its entire length. Thereby the existing soft edge to the settlement would be replaced with a more formally-defined, suburban feature that would be visible in views looking west

along Blackwell Lane from east of the appeal site, and also when looking to the east from the stretch of Blackwell Lane that lies immediately to the west of the site access.

19. As a result the existing sense of transition when approaching Melbourne from the east, of open space leading on to an agricultural and horticultural hinterland and then to the main part of the settlement itself, would be lost. I consider that the proposal would give rise to a significant harm to this important view of the MCA, as recognised in the MCACS.
20. The appeal site was a former orchard belonging to Melbourne Hall. There is a clear hierarchical distinction within this part of the MCA between the main site of Melbourne Hall bounded by its high walls and then the small cottages of nos. 1 and 2 Blackwell Lane and open space beyond that formed part of its hinterland. The area outside the walls was clearly subordinate to the main building and grounds lying within the walls and that relationship is still reflected within the MCA.
21. The MCA Plan also indicates two 'Open spaces' that are each denoted by a star symbol. One of these lies within the area known as Melbourne Pool and the other lies within the southern part of the allotment site that borders the appeal site to the north. There was much debate about whether or not the appeal site is identified as open space on the MCA Plan and whether the allotments, cornfield and appeal site are three separate and distinct areas.
22. The cornfield is at a slightly lower level than the appeal site and is separated by a track and a broken line of vegetation. Furthermore, the southern boundary of the allotments site is bounded by a fence and there are a number of small sheds fairly near to the boundary with the appeal site. As such I concur with the appellant's contention that the three areas exhibit a difference in character and appearance.
23. Whilst it is evident that the star symbol is only located within the allotments site, to my mind it would be an overly-stringent interpretation of the MCA Plan to conclude that the open space it identifies only relates to the allotments. The reason for this is because the star symbol is not centrally located within the allotments site. Furthermore, the cornfield is clearly open space, and from the evidence of my site visit, when on the appeal site itself the overall experience is of a generally open area of scrubland and grassland except for the barn and its lean-to extension. To my mind the photograph that comprises Figure 8 of Dr Hickie's Proof of Evidence provides a fair representation of the appeal site when looking from broadly the north-western corner of the site towards the cornfield. Therefore the appeal site also predominantly 'reads' as open space. The fact that the reference made on page 8 of the MCACS is to the cornfield and allotments but not the appeal site does not, as the appellant contends, signify that the appeal site is not open space, as this reference is made in regard to views towards the SAM.
24. The appellant has argued that development *per se* would not necessarily be detrimental to the significance of the MCA, and has cited the Castle Mews development which is recognised in the MCACS as being other buildings which contribute positively to the special architectural or historic character. However, the Castle Mews site was formerly a haulage yard whereas the appeal site is predominantly open, and as a former orchard has historical associations with Melbourne Hall.

25. As such, and despite the presence of the barn and other discordant features such as a few abandoned cars and items of scrap, the appeal site can be considered as an area of predominantly open space that makes a positive contribution to the character and appearance of the MCA in its own right and as part of the wider area of open space that includes the cornfield. Therefore the removal of the barn and the construction of up to 15 dwellings with their associated parking spaces and domestic paraphernalia would detrimentally erode this sense of open space within this part of the MCA.
26. In addition, there was some disagreement between the parties as to whether the proposal would have an effect on the setting of that section of the Grade II listed walls located in proximity to the appeal site across Blackwell Lane. The proposal, and in particular the access amendments that I have previously described, would introduce a more formal and suburban form of development that would adversely alter the relationship between the setting of this stretch of the listed walls and the southern part of the appeal site, thereby affecting the significance of this designated heritage asset.
27. For these reasons, I consider that the overall proposal would give rise to less than substantial harm to the significance of the MCA, and also less than substantial harm to the setting of the Grade II listed walls.
28. In terms of the specific test in paragraph 134 of the Framework, the public benefits of the proposal would entail the removal of the barn and the small shed located on the site's southern boundary and the general tidying up of the site by removing the abandoned cars and other items. The proposal may also help to soften the rather stark view of Castle Mills when viewed from further to the east. In addition, the proposal would provide up to 15 dwellings that would help to boost housing supply and would have associated economic benefits through the construction operations and then the future patronage for the local services and facilities in Melbourne from future occupants.
29. However, it is my view that these public benefits would be relatively modest and would not outweigh the harm to the significance of the MCA and the listed walls that I have identified. Consequently the proposal would not accord with the relevant guidance in the Framework. In addition, the proposal would be contrary to Policy BNE2 of the South Derbyshire Local Plan Part 1 (LP1), adopted June 2016, saved Policies EV12 and EV13 of LP98, and Policy BNE10 (formerly Policy BNE11) of the emerging LP2. Taken together these policies seek, among other matters, to protect, preserve and enhance heritage assets and their settings, including preserving important views and open spaces in conservation areas. The Council has also made reference to LP98 saved Policy EV15. However, this policy relates to historic parks and gardens, and by common agreement there is no impact of the proposal in this regard.
30. Due to a high degree of consistency with the Framework I accord full weight to LP1 Policy BNE2 and significant weight to emerging LP2 Policy BNE10 and saved Policy EV13 of LP98. However, as LP98 Policy EV12 does not contain a requirement to weigh harm against public benefits, as contained in paragraph 134 of the Framework, I accord it only moderate weight.

Appropriateness of the location having regard to the development plan and the Framework

31. It is not in dispute between the parties that the appeal site lies outside of, but adjacent to, the designated settlement boundary for Melbourne. The Report on the Examination of the South Derbyshire Local Plan Part 2 (hereafter referred to as the LP2 Report) was published on 13 September 2017. Accompanying this, a Schedule of Main Modifications to the South Derbyshire District Council Submission Local Plan Part 2 recommended by the Inspector (LP2 Main Modifications) was also published. The Council stated its intention that LP2 will be adopted in November 2017, and I have no reason to doubt this. Although the settlement boundaries for Melbourne will be amended in LP2, the appeal site would not fall within the amended settlement boundary.
32. Policy H1 of LP1 identifies Melbourne as a Key Service Village and states that *"...development of all sizes within the settlement boundaries will be considered appropriate and sites adjacent to settlement boundaries as an exceptions or cross subsidy site as long as not greater than 25 dwellings."* The parties differed in their interpretation of what constituted an 'exceptions or cross-subsidy site'. I concur that there is a degree of ambiguity in regard to this aspect of the wording of LP1 Policy H1 and this is not helped by the lack of a clear definition in either the accompanying text or the LP1 Glossary. Instead the LP1 Glossary conflates the two terms by referring to a 'Cross subsidy Exceptions Site' as being, *"sites that would not normally secure planning permission, however development of the site is granted for both affordable and some private housing to allow the site to be viable."*
33. From a strict reading of LP1 Policy H1 it would seem to me that any site of less than 25 dwellings that is located adjacent to a settlement boundary could be classified as an exceptions site, as the exceptions element of this policy is based on the number of dwellings proposed. The Inspector's Report into LP1 adds weight to this interpretation since references to affordable housing were removed. Whilst I suspect this may not have been the Council's intention, I consider that is how this particular policy reads.
34. The Council contends that Policy H1 needs to be read together with Policy H21 of the LP1 in order to provide an interpretation of how exceptions sites are to be defined and considered. However, LP1 Policy HP21 specifically relates to affordable housing and it refers to 'rural exception sites' and 'development limits' rather than settlement boundaries. As such it is my view that Policy H21 does not provide a direct link to Policy H1 in terms of how an 'exceptions or cross subsidy site' is defined. In the same vein, I consider that the definition of 'rural exception sites' as provided in Annex 2 of the Framework, that specifically references affordable housing, is not directly applicable. Consequently, as the proposal would be for less than 25 dwellings and it is adjacent to the settlement boundary of a Key Service Village then I consider that it complies with LP1 Policy H1.
35. I then turn to the other policies referred to in the Council's first reason for refusal and its subsequent correspondence regarding relevant policies that it considered were omitted in error. LP1 Policy S1 seeks, among other things, to protect and enhance landscape and rural character and heritage assets. For the reasons I have already identified, by placing housing development on an important area of open space within the countryside the proposal would not protect landscape and rural character and thus would not accord with LP1 Policy S1.

36. The Council's first reason for refusal also lists LP1 Policies S2 and S4, which refer to a presumption in favour of sustainable development and provision for housing sites including allocations on strategic and non-strategic sites. However, whilst setting out general considerations governing housing and development, neither of these policies are of particular relevance to the proposal that is before me.
37. The Council contends that the proposal is contrary to LP98 saved Policies EV1 and H5. Saved Environment Policy 1 (EV1, but also referred to in some appeal statements as ENV1) of the LP98, which is intended to be replaced by LP2 Policy BNE5, states that outside settlements new development will not be permitted unless it is essential to a rural based activity or is unavoidable in the countryside and safeguards the character of the countryside, the landscape quality and historic features.
38. Consequently, saved Policy EV1 contains a degree of flexibility and does not impose a blanket restriction on all development in the countryside outside settlement boundaries. As indicated in the decisions of previous Inspectors¹ there is a degree of consistency between this policy and the objectives of the Framework and therefore I accord it a moderate degree of weight. However, Mr Stewart agreed in cross-examination that if there was a housing land supply shortfall then this would mean that the proposal would be considered unavoidable in the countryside and thus would comply with this aspect of LP98 Policy EV1.
39. In addition, saved Policy H5 of the LP98 seeks to restrict new development to within the confines of a number of named villages including Melbourne. However, this policy is based on a housing assessment undertaken some years ago and is due to be replaced by LP2 Policy STD1. Furthermore, Policy H5 does not contain any flexibility and therefore in my view does not chime with the more flexible requirements in this regard that are detailed in the Framework. Accordingly, I attach little weight to LP98 Policy H5.
40. Policy SDT1, as amended in the LP2 Main Modifications, essentially cross-references to LP2 Policy BNE5 in terms of development outside settlement boundaries in Key Service Villages. In turn, Policy BNE5 of the emerging LP2, as amended by the LP2 Main Modifications, states that outside of settlement boundaries planning permission will be granted where the development is allowed for by a number of policies of LP1 including Policy H1. As I have found that the proposal would not offend LP1 Policy H1 it therefore complies in this regard with Policies SDT1 and BNE5 of the emerging LP2.
41. In addition, there was discussion about the interpretation of paragraph 9 of the LP Part 2 Report which stated that, "*The Plan is also justified in excluding the curtilages which if developed could harm the character of the settlement. This applies to ... the parcel of land at Blackwell Lane in Melbourne*". In my view it is not possible to ascertain whether the Inspector was referring to the larger site that had originally been proposed, which also incorporated the allotments and the cornfield, or the smaller site that corresponds to the appeal site. Consequently, I attach little weight to the Inspector's comments on this matter.

Other Matters

¹ Appeal decisions reference APP/F1040/W/15/3132831 and APP/F1040/W/15/3139116

42. The appellant has provided two 'counterpart' planning obligations. These are both dated 1 November 2017 and signed by the Council, and are the same in all respects except each is signed by a different other party. This would provide financial contributions towards infant, junior, secondary and post-16 age education, healthcare, new children's play equipment, outdoor sports facilities and the refurbishment of Melbourne Assembly Rooms. The issue of contributions is not contested between the main parties and does not form a reason for refusal. As the appeal is being dismissed on other substantive issues it is not necessary for me to consider the planning obligation in detail.

Planning balance and conclusions

43. Paragraph 7 of the Framework indicates the three dimensions to sustainable development, namely economic, social and environmental. In accordance with paragraphs 14 and 49 of the Framework I have considered this proposal in the context of the presumption in favour of sustainable development. In terms of its benefits, the proposal would increase the supply of housing as required in paragraph 47 of the Framework, albeit by a reasonably modest amount, although none of this provision would be for affordable housing.
44. Although outside the settlement boundary the appeal site is nevertheless adjacent to existing housing and within easy walking distance of the shops and services provided in Melbourne. There would be some economic and social benefits arising from both the construction of the housing and the additional patronage for the local shops and services from future occupiers. In addition, the proposed planning obligation would make financial contributions to mitigate the effects of the proposal on education, healthcare and towards the provision of community facilities, although I do not consider the impact mitigation of these contributions to be of significant benefit.
45. However, the proposal would represent development in the countryside that would give rise to less than substantial harm to the significance of designated heritage assets, particularly the MCA but also the listed wall. Therefore it would not accord with the development plan in this regard and would not comply with key social and environmental facets of sustainable development. I afford considerable weight and importance to the overall harm to the significance of designated heritage assets that I have identified.
46. There was much discussion at the Inquiry about whether or not the Council could demonstrate a five-year supply of deliverable housing and a number of appeal decisions and legal judgments were referred to, particularly the recent Jawbone Lane appeal decision². Disagreement between the two parties centred around two issues: firstly, the base date from which the five years should be taken, and, secondly, the contribution made by of eight housing sites allocated in LP1, particularly in regard to their delivery rates. The Council contended that it could demonstrate either a five-year supply of either 5.75 or 5.34 years depending on whether an assessment base date of 2017 to 2022 or 2018 to 2023 respectively was used. The appellant contended that, using a base date of 2017 to 2022, the five-year housing land supply would be 4.47 years.
47. For the reasons I have identified I consider that the adverse effects of the proposal in terms of the impact on the significance of designated heritage assets would be considerable, whilst the overall benefits of the proposal that I

² Appeal reference APP/F1040/W/16/3147642

have identified would be modest. Therefore even if I were to conclude there is a shortfall in five-year supply of the scale suggested by the appellant and that relevant policies for the supply of housing should not be considered up-to-date, the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.

48. Therefore, for the reasons set out above, and having regard to all other matters raised including all other relevant development plan policies, I conclude that the proposal would not represent a sustainable form of development and the appeal should be dismissed.

GP Jones

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr J Smyth, No 5 Chambers, Instructed by South Derbyshire District Council

Mr Smyth called:

Dr D Hickie Principal Consultant, Heritage Matters
BSc (Hons), MA, PhD,
CMLI, CEnv, MIEMA, IHBC

Mr R Groves Planning Policy Officer, South Derbyshire District Council
BA (Hons), MRTPI

Mr R Stewart Area Planning Officer, South Derbyshire District Council
BSC (Hons), MA, MRTPI

FOR THE APPELLANT

Mrs J Harris Pinsent Masons, Instructed by Melbourne Maintenance Fund, Melbourne Trust & Trustees of Lady Lothian's Settlement

Ms F MacGregor Pinsent Masons

Mrs Harris called:

Dr R Usher Lanpro Services Ltd
BA (Hons), PgDip, MSc, PhD

Mr R Mowat Director, Johnson Mowat LLP
MA, MA, MRTPI

Mr A Duthie Director, Clarendon Planning & Development
Bsc (Hons), MRTPI

INTERESTED PERSONS:

Cllr J Harrison District Councillor, South Derbyshire District Council

Mr M Lee

Mr C Nash South Derbyshire District Council

Mr B Thomas

DOCUMENTS (Submitted at the Inquiry)

- 1 E-mail correspondence between Council and some developers concerning five-year housing land supply
- 2 Disputed Sites Commentary – Housing Land Supply
- 3 Five Year Supply 2014/15-2019/20 based on plan Period 2011-2028 using appellant's method of calculation, and Housing Position Paper November 2015
- 4 Main Modifications to South Derbyshire Local Plan Part 1, May 2016
- 5 Housing Land Supply Statement of Common Ground
- 6 E-mail from Derbyshire County Council concerning pooling of contributions
- 7 Amended list of planning conditions
- 8 S106 Planning obligations CIL Compliance Schedule, Land North of Blackwell Lane, Melbourne
- 9 Department for Communities and Local Government – press release published 24 August 2017
- 10 Report on the Examination of the South Derbyshire Local Plan Part 2
- 11 Schedule of Main Modifications to the South Derbyshire District Council Submission Local Plan Part 2 recommended by the Inspector
- 12 Local Plan Part 1 Glossary (full copy)
- 13 Sustainability Appraisal extract for larger site (referenced by Council as LPA 5.1)
- 14 Consultation response 062 (referenced by Council as LPA 5.2)
- 15 Proposed Site Layout Plan (referenced by Council as LPA 5.3) 2016
- 16 Sustainability Appraisal extract (referenced by Council as LPA 5.4)
- 17 Pre-submission Local Plan Part 2 response Form (referenced by Council as LPA 5.5)
- 18 Sustainability Appraisal extract (referenced by Council as LPA 5.6)
- 19 South Derbyshire Local Plan Part 2 Examination: Comments on behalf of Melbourne Estate on Issue 2b (referenced by Council as LPA 5.7)
- 20 South Derbyshire Local Plan Part 2 Examination: Comments on behalf of Melbourne Estate on Issue 3a (referenced by Council as LPA 5.8)
- 21 Council's closing submissions
- 22 Appellant's closing submissions

Appeal Decision

Site visit made on 10 October 2017

by **Andrew McGlone BSc MCD MRTPI**

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

Decision date: 3 November 2017

Appeal Ref: APP/F1040/W/17/3177842
Jawbone Lane, Kings Newton, Derby DE73 8BW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr and Mrs P Coates against the decision of South Derbyshire District Council.
 - The application Ref 9/2016/1086, dated 18 October 2016, was refused by notice dated 14 December 2016.
 - The development proposed is a one and a half storey dwelling and separate garage with new access from the highway.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are: (i) whether the development would accord with development plan policies relating to the location of development in the District; and (ii) whether the proposal would preserve or enhance the character or appearance of the setting of heritage assets.

Reasons

Location of development

3. Kings Newton is a rural village. The appellant accepts that the appeal site is outside of, and not next to, the settlement boundary. Thus, the proposed development would be in a rural area. While Charnwood and Blakefield House are to the south-east, these dwellings are also outside the confines of the village. The appellant does not challenge the Council's view that the proposal would not form part of a ribbon development or represent the infill of a small gap. Furthermore, the appeal scheme would not be associated with or essential to any rural based activity. As a result, the proposal would be contrary to Policy H1 of The South Derbyshire Local Plan Part 1 (LPP1) and saved Policies H5, H6, H8 and EV1 of the South Derbyshire Local Plan (Local Plan).
4. The emerging South Derbyshire Submission Local Plan Part 2 is progressing towards its adoption. It is not, however, part of the development plan. The settlement boundaries of Melbourne and Kings Newton have been reviewed and adjusted to account for strategic allocations or committed sites that are in the process of being built out. The appeal site falls outside of the settlement boundary of Kings Newton. Hence, the proposal would be contrary to emerging Policy H25 of the Schedule of Minor Modifications to South Derbyshire Submission Local Plan Part 2 (LPP2).

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

5. The Council have also drawn my attention to emerging LPP2 Policy SDT1. The modified version of LPP2 Policy SDT1 explains that *outside of settlement boundaries and allocated sites, within the Rural Areas as defined in Policy H1, development will be limited to that considered acceptable inter alia by Policy BNE5*. With regards to emerging LPP2 Policy BNE5, there is no suggestion by the appellant that the proposal would be unavoidable outside the settlement boundary or that it would represent an infill development of a small gap within a small group of housing. Consequently, the appeal scheme would conflict with emerging LPP2 Policies BNE5 and SDT1.
6. However, in terms of paragraph 55 of the National Planning Policy Framework (the Framework), the appeal site is not physically isolated or far away from nearby facilities and services. Hence, it is not necessary to consider whether there are special circumstances such as those listed in paragraph 55. While this is the case, the Framework is a material consideration in planning decisions that does not carry the same statutory weight as the development plan¹.
7. Paragraph 14 of the Framework explains that at the heart of the Framework is a presumption in favour of sustainable development. For decision taking this means that where relevant policies are out-of-date, granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or specific policies in this Framework indicate development should be restricted.
8. The main parties disagree as to whether the Council is currently able to demonstrate a five-year supply of deliverable housing sites in accordance with Framework paragraph 49. I note the respective evidence presented, which includes several appeal decisions² and the South Derbyshire Housing Position Paper, June 2017. However, regardless of whether a five-year supply of deliverable housing sites can be demonstrated, it remains necessary to apply Framework paragraphs 215 and 216 to the relevant policies in the existing and emerging plans.
9. Although the Local Plan was adopted in 1998, Framework paragraph 211 explains that these policies should not be considered out-of-date simply because they were adopted prior to the publication of the Framework. I note the appeal decisions³ cited. I consider that saved Local Plan Policies H5, H6, H8 and EV1 are not wholly consistent with the Framework. While the Framework does recognise the intrinsic character and beauty of the countryside and the need to protect and enhance valued landscapes, it also has a balanced approach to development, unlike the saved Local Plan policies which are more restrictive. Thus, I consider that the saved Local Plan policies are out-of-date and carry limited weight. However, I attach LPP1 Policy H1 full weight as it sets out of the district's settlement hierarchy, which is based on the range of services and facilities that are offered by each settlement. LPP1 Policy H1 is also in tune with the Framework's balanced approach to development.
10. The LPP2 is at an advanced stage following its examination in public earlier this year and the subsequent public consultation on the proposed main modifications. These both post-date the appeal decision on Jawbone Lane⁴. I

¹ Suffolk Coastal DC v Hopkins Homes Ltd & SSCLG and Richborough Estates Partnership LLP & SSCLG v Cheshire East BC [2017] UKSC 37

² Appeal Decision Refs: APP/F1040/W/16/3147682; APP/H2835/A/14/2212956 and APP/F1040/W/16/3160135

³ Appeal Decision Ref APP/F1040/W/15/3033436; APP/F1040/W/16/3147682 and APP/F1040/W/16/3160135

⁴ Appeal Decision Ref: APP/F1040/W/16/3147682

do not, however, know the extent of any unresolved objections to the relevant policies. Although policies BNE5, H25 and SDT1 appear to be broadly consistent with the Framework, and do, compared to the Local Plan policies, offer more prescriptive tests, they do not carry the same statutory weight. Consequently, I give the LPP2 policies referred to moderate weight in accordance with Framework paragraph 216.

11. On this issue, I conclude that the development would not accord with saved Local Plan Policies H5, H6, H8 and EV1, which attract limited weight. These policies seek to direct development to settlements, unless it is for a rural based activity or the infilling of a small gap within a small group of houses. I also conclude that the development would not accord with LPP1 Policy H1, as the proposal would be in a rural area and it does not represent a limited infill. This policy attracts full weight. In relation to the emerging LPP2, I conclude that the development would not accord with Policies H25, BNE5 and SDT1. These policies attract a moderate weight. They collectively seek to direct development to settlements, unless, it is for a rural worker or a rural based activity or infill development. The appeal scheme would accord with Framework paragraph 55. However, this does not outweigh the conflict that I have found in relation to the development plan or the emerging LPP2 policies.

Heritage assets

12. The appeal site is outside of the Kings Newton conservation area (KNCA), but it is common ground between the main parties that it forms part of its setting. I find no reason to disagree with this view. To the north of the appeal site are the former grade II listed outbuildings and barns at King Newton House. These date from the early 19th century and they are constructed in red brick with a stone plinth and a plain tile roof covering. Charnwood is referred to by the main parties as a non-designated heritage asset. This mid-18th century dwelling of random rubble with a stone plinth and stone coped gable has been extended. Charnwood also has a detached garage next to the appeal site's south-eastern boundary. As identified by Mel Morris, the buildings at Charnwood run east to west and contain regular roof forms. The same applies to Blakefield House. Both properties are of a traditional rural character. Opposite the site is a brick agricultural building and a number of shipping containers.
13. Jawbone Lane provides a narrow approach to the village and the KNCA. Views of the KNCA vary depending on the orientation of the lane. They include views across nearby fields which become enclosed by built form to the north of the appeal site on approach to the village. The walls of The Barns in particular contribute to this effect, and focus the eye towards the junction of Jawbone Lane and Main Street. This junction provides a setting for a number of grade II listed buildings at Kings Newton House, Cross House, Crofton House and the Village Cross. A tall dominant row of leylandii on the appeal site's south-west boundary screen views to the north-east and east. There is also limited visibility of the core of the village from the appeal site. As a result, the appeal site has a rural character which makes a moderate contribution to the significance of the heritage assets.
14. A timber frame and wide over-hanging eaves are proposed as part of the dwelling's design. Although there are timber frame buildings in Kings Newton which contribute to the authentic character of Main Street, the Council are correct in pointing out that the use of a timber frame on the proposed dwelling would be appear distinctly separate. Replicating this style would not preserve

- or enhance this local characteristic, even if the proposed use of materials would broadly reflect the variety in the area.
15. The appeal scheme includes a mixture of ridge heights due to the proposed use of a front gable cat slide roof and dormer windows in the front and rear roof planes. The proposed dwelling would be set back from the lane, unlike typical front gables that commonly relate to a medieval footprint which is positioned close to a road. The orientation of the proposed gable fronted roof would also be a stark contrast to the principal elevations at Charnwood and Blakefield House. Although Charnwood has gable elevations that face the lane these are to the side. Thus, I consider the orientation of the overly large roof planes and the front gable would emphasise the scale of the dwelling. As a result, the proposal would have a visual appearance that would not relate to the scale or orientation of neighbouring properties. It would not therefore blend into its surroundings or positively contribute to the enclosed setting of the heritage assets either side of the site on this side of the lane.
16. With regard to Framework paragraph 134 the harm to the designated heritage assets would be less than substantial. With regard to Framework paragraph 135 a limited harm would arise from the proposal's effect on the significance on Charnwood. Even so, both still amount to harmful impacts which adversely affect the significance of the heritage assets. Even if, the Council was unable to demonstrate a five-year supply of deliverable housing sites, footnote 9 to the fourth bullet point of Framework paragraph 14 indicates that specific policies include those relating to designated heritage assets. This means that the tilted balance of paragraph 14 would not apply in this case.
17. Nevertheless, modest public benefits would stem from the proposal's contribution to boosting the supply of housing in the district; from jobs and spending connected to the dwelling's construction; and through future occupiers spending in the local economy. Sufficient off-street car parking and turning facilities would be provided. There would also be no adverse effect on neighbouring occupiers living conditions. However, the harm to the heritage assets, and the site would, to which I attach considerable importance and weight, in my view, clearly outweigh these modest public benefits.
18. I conclude, on this issue, that the proposal would not preserve or enhance the character or appearance of the setting of heritage assets. The appeal scheme would conflict with LPP1 Policies BNE1 and BNE2, to which I attach full weight; emerging LPP2 Policy BNE10, to which I attach moderate weight; and paragraphs 134 and 135 of the Framework. Together these policies seek, among other things, development to be well designed and related to its context so they conserve and enhance the assets and their settings.

Conclusion

19. For the reasons set out above, I conclude that the appeal should be dismissed.

Andrew McGlone

INSPECTOR

Appeal Decision

Site visit made on 24 October 2017

by Elizabeth Pleasant DipTP MRTPI

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

Decision date: 14 November 2017

Appeal Ref: APP/F1040/D/17/3178603
5 Talbot Meadows, Hilton, Derby DE65 5JS

- 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 Miss Masauda Akhtar against the decision of South Derbyshire District Council.
 - The application Ref 9/2017/0205, dated 6 January 2017, was refused by a notice dated 22 May 2017.
 - The development proposed is the replacement of existing post and rail fencing with 1.4metre high feather edge board fencing.
-

Decision

1. The appeal is allowed and planning permission is granted for the replacement of existing post and rail fencing with 1.4metre high feather edge board fencing at 5 Talbot Meadows, Hilton, Derby DE65 5JS in accordance with the terms of the application, Ref 9/2017/0205, dated 6 January 2017, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Plot 5, Estate Layout, Scale 1:500 Rev B dated 18.03.2016; and Proposal at 5 Talbot Meadows, Hilton comprising Photographs illustrating Point A to Point B with feather edge board fencing.

Procedural Matter

2. The description of development set out above is altered slightly from that on the application form through the removal of narrative text not related to the development itself.

Main Issue

3. The main issue in this case is the effect on the character and appearance of the area.

Reasons

4. The appeal site occupies a prominent position on the roundabout junction of Derby Road and the A5132. It forms part of a small development of new

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

detached properties centred on a small cul-de-sac which takes its access from Derby Road.

5. The existing boundary treatment between this small development and the neighbouring highways varies considerably in its overall design and height. The development facing towards Derby Road is defined by black metal railings, whilst the boundary adjacent to the junction radii of Derby Road, and enclosing the side garden of No 4 Talbot Meadows, is a brick wall with supporting brick piers and feather edge boarding to a height of approximately 1.8metres(m). This wall then terminates, and the rear boundary of Nos. 4 and 5 Talbot Meadows is delineated by a 1.2m high open timber post and rail fence. It is a section of this timber fence which the appellant is seeking to replace with 1.4m high feather edge boarding.
6. I recognise that the existing low, open post and rail fencing enables the full elevations of Nos. 4 and 5 to be revealed, and provide a street frontage to the roundabout. However, it is understandable that the occupiers of these properties wish to provide a safe and secure living environment by enclosing what in reality is the back of their houses. Moreover, as I have described in the paragraph above, the existing boundary treatment along the highway is mixed in character and there is no consistency in its design and appearance. I am not therefore convinced that the proposed boarding, which would match that used as part of the means of enclosure to this property's side garden area, would appear incongruous. Nor would it have a significantly harmful effect on the overall character and appearance of the area.
7. I conclude that the appeal proposal would not have a harmful effect on the character and appearance of the area. It would not therefore conflict with the development plan, including Policy BNE1 of the adopted South Derbyshire Local Plan, Part 1, 2016 or emerging Policy H27 of the South Derbyshire Local Plan Part 2, which together with the Council's adopted Housing Design and Layout Supplementary Planning Guidance, seek to ensure that new development, including boundary treatments, protect the character of the area and are visually attractive and contribute to achieving continuity and enclosure within the street scene.

Conclusion

8. For the reasons given above and taking into account all other matters raised, I conclude that subject to a condition that the development is carried out in accordance with the approved plans, as this provides certainty, the appeal should be allowed.

Elizabeth Pleasant

INSPECTOR