

Report of the CHIEF Executive

[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.

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

1. The issues of fact raised by the report of the Chief Executive 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 Chief Executive arise from a Member's personal knowledge of circumstances on the ground that lead to the need for clarification that may be achieved by a site visit.
3. Implications that may be demonstrated on site arise for consistency of decision making in other similar cases.

Glossary of terms

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

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

Item No. 1.1

Ref. No. [DMPA/2020/0743](#)

Valid date: 23/10/2020

Applicant: Senzeni Kamere

Agent: Berrys Chartered Surveyors and Valuers

Proposal: Change of use from dwelling (use class C3) to residential home for young people (use class C2) (**retrospective**) at 14 Morley Walk, Church Gresley, Swadlincote, DE11 9DQ

Ward: Church Gresley

Reason for committee determination

This item is presented to the Committee at the request of Councillors' Perry, Stuart & Haynes as local concern has been expressed about a particular issue and there are special personal circumstances of the applicant which members should consider.

Executive Summary

The application is retrospective for the change of use of a dwelling (Use Class C3) to a residential home for one child (use class C2). There have been objections relating to amenity, noise and highway issues from neighbouring residents. No objections have been received from statutory consultees regarding the change of use subject to conditions. Therefore, it is recommended for approval subject to the conditions contained within the report.

Site Description

The site is a modern semi-detached house and garden on a recently built housing estate. The front elevation of the south facing property is accessed via a pedestrian walkway only, the front being part of an enclosed 'square' and properties are located closer than the usual distance standards with primary windows being as close as approximately ten metres apart. To the rear of the property accessed from Hope Way is a single garage and parking space directly to the north of the rear garden - part of a garage block and dwelling over. There are also some visitor parking spaces in this parking court to be shared by the residents of the houses on Morley Walk and Hope Way.

The proposal

The proposal simply involves the change of use of the dwelling (C3) to a residential home for young people (C2). No external alterations are proposed.

Applicant's supporting information

Planning Application Drawings

Location Plan K37094-02 Rev C (February 2022)

Block Plan KA37094-2 Rev 2 (February 2022)

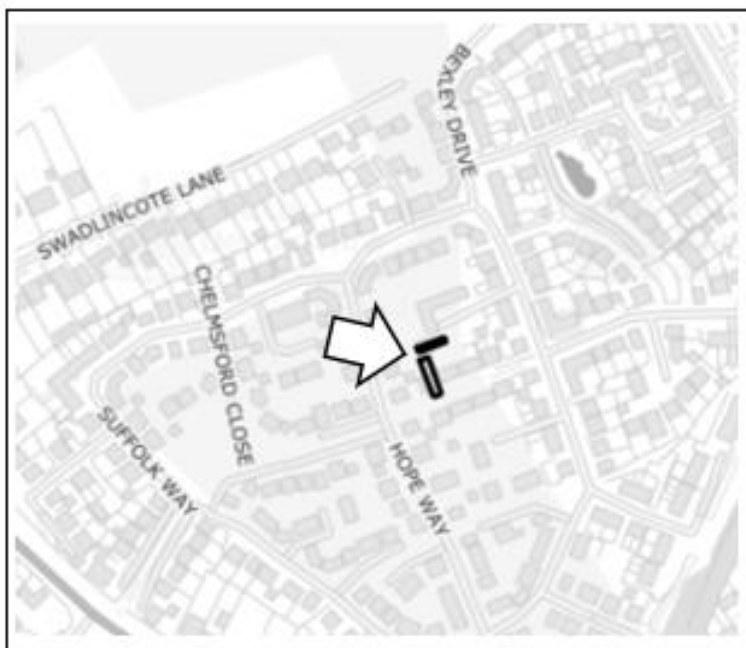
Proposed Floor Plans (25 June 2020)

Existing Floor Plans (25 June 2020)

The Planning Statement (25 June 2020) sets out the aim of the proposed service that is being provided through the change of use from C3 to C2, who the home has the potential to cater for and how the home will continue to work with external partners to help deliver a semi-independent living provision through high levels of support.

The Revised Statement of Purpose (April 2024) sets out the range of needs of the child whom the home is intended to provide accommodation for, the type of accommodation offered by the home and the approach to behavioural support and the management of the care home.

DMPA/2020/0743 – 14 Morley Walk, Church Gresley, Swadlincote, DE11 9DQ



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South
Derbyshire
District Council

South Derbyshire District Council, LA 100019461.2020

Relevant planning history

No relevant history

Responses to consultations and publicity

Environmental Health Officer- Request an appropriate planning condition in order to control the risk of noise impacts.

County Highway Authority - No objection.

46 objections have been received from neighbours to the proposal. These can be summarised as follows:-Inadequate parking provision either at the site or in the surrounding area.

- a) Use not appropriate as the location is currently a safe location for young children which could be jeopardised. (Pedestrianised front access).
- b) Shift work operation too intensive for the location bearing in mind limited car parking.
- c) Potential noise and anti-social behaviour problems.
- d) Neighbour concerns about safety, health and well-being.
- e) Already there are comings and goings of young adults.
- f) The operators appear to have no other business premises or training to undertake such work.
- g) Consultation should have been wider.
- h) Potential safeguarding issues.
- i) Impact on the amenity of the area.
- j) Possible fire risk within the property if rooms are 'self contained'.
- k) The garage is not big enough for a car to be parked inside.
- l) Bicycle parking spaces are referred to but where?
- m) Owners of application dwelling regularly using visitor car parking space in Hope Way for second car.
- n) Close proximity of dwellings in Morley Walk not appropriate for this type of proposal creating amenity issues.
- o) The proposal will negatively impact on house prices in the area.
- p) This application should be decided by Councillors not by Officers.

Following a re-consultation in May 2024 eleven objections were received. These can be summarised as follows:

- a) This will impact upon house prices;
- b) The house has been used incorrectly for the last three years;
- c) The applicants have not engaged with the community;
- d) This is a quiet area where children play outside with very few anti social issues;
- e) There is an issue with parking in the area, there is not space for the minimum of the four cars that are at the property at one time;
- f) There is inconsistencies within the Revised Statement of Purpose;
- g) If it is a care home for one child with SEN there is no objection otherwise there is objection;
- h) No respect is shown for neighbouring properties by the occupiers;
- i) There are a lot of young families this could raise an impact from a safety and security aspect

Relevant policy, guidance and/or legislation

The relevant Development Plan policies are:

South Derbyshire Local Plan Part 1 2016 (LP1): Policy S1 Sustainable Growth Strategy; Policy S2 Presumption in Favour of Sustainable Development; Policy S6 Sustainable Access; Policy SD1 Amenity and Environmental Quality; and Policy INF2 Sustainable Transport.

South Derbyshire Local Plan Part 2 2017 (LP2): SDT1 Settlement Boundaries and Development.

The relevant local guidance is:

South Derbyshire Design Guide Supplementary Planning Document (SPD)

The relevant national policy and guidance is:
National Planning Policy Framework (NPPF)
Planning Practice Guidance (PPG)

Planning considerations

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

- The principle of the development;
- The effect of the proposal on the residential amenity of the nearby occupiers; and
The effect of the proposal on the highway network;

Planning assessment

The Principle of Development

The proposal is for a residential use within a residential area. The site is centrally located within the urban area of Swadlincote, and within walking distance to local services and facilities, therefore a sustainable location.

The proposed change of use would allow the property to be used as a young person's (between ages 8-17) home, providing long-stay accommodation for young persons who, for various reasons, are supported and cared for by the state, though locally-organised provision. The property would provide accommodation for one young person with either a learning disability or long-term condition in a family-type setting. A dedicated team of care and other support staff would look after the young person, ensuring their daily needs – physical, social, health, emotional – are met. Consequently, there would be a permanent staff presence on the site (when the child is present).

The home would be operated so as to provide an environment as close to that of a family home as possible. The young person would attend their school and other places of support on a daily basis, alongside any visits necessary as part of specialist support services, be that for health or other well-being. 'House rules', with associated boundaries for expected behaviours would apply, just as they would in any household.

The home would be operated by a registered provider, contracted by the local authority. Lundi Education and Care Services Limited are the applicant and occupier who would operate and manage the home.

The Department for Levelling Up, Housing and Communities Message from Chief Planner (dated 19 June 2023), which draws on the Planning for Accommodation for Looked After Children Ministerial Statement (dated 23 May 2023) states:

'The planning system should not be a barrier to providing homes for the most vulnerable children in society. The purpose of the statement is to remind local planning authorities that, as set out in paragraph 62 of the National Planning Policy Framework, local planning authorities should assess the size, type and tenure of housing needed for different groups in the community and reflect this in planning policies and decisions. Local planning authorities should consider whether it is appropriate to include accommodation for children in need of social services care as part of that assessment. Local planning authorities should give due weight to and be supportive of applications, where appropriate, for all types of accommodation for looked after children in their area that reflect local needs and all parties in the development process should work together closely to facilitate the timely delivery of such vital accommodation for children across the country.'

It is also necessary to be mindful of the Public Sector Equality Duty and the Best Interests of the Children in respect of human rights.

It is a well established principle that small care homes are considered acceptable within residential areas. The model in recent decades particularly has been to disperse children into smaller more familial environments and away from larger institutional accommodation. This has been an overall positive change in social care provision in society.

There are no external changes proposed to the property, consequently there are no design concerns for this application. A mix of housing is required throughout the District as highlighted within Policy H20 which acknowledges the need for a mix of dwellings to be built throughout South Derbyshire.

The South Derbyshire Strategic Housing Market Assessment (SHMA), published in 2020, identifies a need for new shared housing for children and young persons with a physical disability or long-term condition. Site specific criteria applies for the location of such housing, requiring accommodation for people with disabilities and learning difficulties to be located on a bus route, near to shops and community services. Given the unmet need for supported living accommodation for children and young persons with a physical disability or long-term condition and the locational requirements, Morley Walk fulfils the requirement of a suitable and sustainable location for housing cared-for young persons. Policies H1 and H20 of the LP1 supports the creation of inclusive communities through the provision of a varied housing size, mix and choice. As such the principle of development is acceptable.

It is therefore concluded that the principle of the development is considered acceptable and complies with policies H1 , H20 , S1, and S2 of the South Derbyshire Local Plan Part 1 2016; the NPPF and the PPG.

Neighbour amenity

Policy SD1 states that the Council will support development which does not lead to an adverse impact on the environment or amenity of existing and future occupiers within and around proposed developments. In relation to its recent use as a single residential dwelling, there would be a negligible change to impact on the amenity of nearby properties.

14 Morley Walk includes a semi-detached dwelling and therefore has one neighbour (no. 16) immediately adjacent. No. 12 is separated from the dwelling by its driveway. There are neighbouring dwellings also to the north and south. The applicant has submitted a Management Statement, which sets out how staffing arrangements will work alongside the living conditions for the child. In addition, support would also be provided by other public bodies such as social services and OFSTED. Overall, the external effects would be similar, if not indistinguishable, from those of a single dwellinghouse.

Within the recent appeal decision at 61 Ashby Road , Woodville (DMPA/2022/1202, appeal reference: APP/F1040/W/23/3319968) it is acknowledge by the Planning Inspector that although there is a difference in use between a property as a care home and property as a dwelling (C3 use class), it was concluded that the proposal would not have any unacceptable impacts upon the living conditions of neighbouring residents and the development would result in a similar level of disturbance and activity experienced from a C3 dwelling.

The proposal contributes towards an identified housing need for a young person with long-term conditions, in a highly sustainable location. All rooms are good sized, with access to a spacious rear garden. Further public space is readily accessible from the property, as well as a range of local amenities and facilities. The standard of living within the property is considered to be high and reflective of an authentic family home in which the occupants can thrive. As a much needed facility, the change of use would allow for a young person to live safely and effectively with the necessary support network, within the local community.

Taking these main issues into account, the proposal would not result in a conflict with the policy requirements of the Local Plan and is considered to be acceptable. The relevant constraints have been considered in the planning balance and no material harms have been identified that would warrant refusal of the application. There would therefore be no detrimental impact on the amenity of nearby properties and the proposal would accord with the relevant criteria of Policy BNE1 and SD1 of the South Derbyshire Local Plan Part 1 and there would be no undue effects upon neighbouring amenity.

The effect of the proposal on the highway network

Two vehicle parking spaces by way of a single garage and single parking space, as existing, are provided to the rear of the property. Two full-time staff will be on site at all times, to which private

vehicles can be accommodated within the existing provision. The Highway Authority are content with this level of provision for the development proposed with the proposals and the provision at the site for the two staff and one child, and therefore would not be significantly different to how the dwelling could operate as a normal family dwelling in these circumstances. There may be more movements during change over times, but these can be managed adequately to not result in any additional detriment to highway safety. There is a request that the parking facilities remain in place for use for the lifetime of the development.

It is concluded that the proposal would comply with policy INF2 of the South Derbyshire Local Plan Part 1 2016.

Conclusion and Planning Balance

Section 38 (6) of the Planning and Compulsory Purchase Act (2004) sets out that the determination of applications must be made in accordance with the development plan, unless material considerations indicate otherwise. In the specific case of this application there is no specific policy relating to the provision of children's care homes within the Adopted Local Plan. Therefore, the Department for Levelling Up, Housing and Communities Message from Chief Planner (dated 19 June 2023) and Planning for Accommodation for Looked After Children Ministerial Statement (dated 23 May 2023) are material considerations in the principle of this case. There has been representations received objecting on highways grounds, noise levels, and amenity impacts from neighbours and members of the public. The Local Highway Authority is content that there would be no material impact upon the safety of the public highway and that sufficient parking provision is provided. It is also noted that the building would be occupied by only 1no. child. With conditions in place to control the intensity of the use, it is considered that the proposal would be in accordance with the development plan policies related to highways and amenity. Accordingly, the application is recommended for approval subject to conditions.

None of the other matters raised through the publicity and consultation process amount to material considerations outweighing the assessment of the main issues set out above, noting that conditions or obligations have been attached where meeting the tests for their imposition. Where relevant, regard has been had to the public sector equality duty, as required by section 149 of the Equality Act 2010 and to local finance considerations (as far as it is material), as required by section 70(2) of the Town and Country Planning Act 1990 (as amended), as well as climate change, human rights and other international legislation.

Recommendation

1. The development hereby permitted shall be carried out in accordance with plan(s)/drawing(s) ref:

Block Plan drawing received 4th March 2021; and
Proposed Floor Plans drawing received 25th June 2020; and

unless as otherwise required by condition attached to this permission or following approval of an application made pursuant to Section 96A of the Town and Country Planning Act 1990.

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

2. The use hereby approved will accommodate a maximum of 1no. child and 3 no. carers (including 1no. manager) within the site at any one time as per the Revised Statement of Purpose (received 02/04/2024). This arrangement will be retained for the lifetime of the development.

Reason: To enable the Local Planning Authority to retain a degree of control over the development with respect to amenity considerations and parking, and to avoid unsustainable development in accordance with Policies BNE1 and INF2 of the Local Plan.

3. The existing parking spaces at the site shall be retained for the lifetime of the development.

Reason: In the interests of highway safety.

4. Prior to commencement of the development, a scheme for the control and mitigation of noise emanating from the building shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be fully implemented before the use hereby permitted commences and thereafter operated in accordance with it with any mitigation maintained in situ/in working order.

Reason: In the interest of the amenity of the locality and in accordance with Policies BNE1 and SD1 of the Local Plan.

5. Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 2015 (as amended) the premises shall be used solely for the purposes of a children's home, as defined by Class C2 of that legislation, and for no other purposes whatsoever. Proposals to use the premises for any other purpose within that class shall not take place unless a separate formal planning application has first been submitted to and approved in writing by the Local Planning Authority.

Reason: To enable the Local Planning Authority to retain a degree of control over the development with respect to amenity considerations and parking, and to avoid unsustainable development in accordance with Policies BNE1 and INF2 of the Local Plan.

Item No. 1.2

Ref. No. [DMPA/2023/1566](#)

Valid date: 01/12/2023

Applicant: John and Gaynor Bowler **Agent:** Rural Solutions

Proposal: **The erection of a new dwelling with associated landscape and biodiversity enhancement measures Land near Covert View, Cropper Lane, Ashbourne , DE6 5BL**

Ward: Etwall

Reason for committee determination

The development would constitute a departure from the Development Plan as the application proposes the erection of a new dwelling within a rural location.

Executive Summary

The application proposes a house of exceptional quality that would be deemed acceptable under the provisions of the NPPF at Paragraph 84 e. The design of the proposed dwelling has been reviewed and amended by an independent Design Review Panel. The proposed application has not raised objection from any statutory consultee subject to the inclusion of conditions. Officers consider that based upon the findings of the Design Review Panel and the submitted information the proposal is suitable for acceptance.

Site Description

That application site lies to the east of Cropper Lane and extends to around 2.8 hectares. The application site is previously undeveloped and last understood to be grazed agricultural use and classified as grade 3 land. The site is accessed via an existing field access from Cropper Lane and is of an irregular form. It lies adjacent a woodland and 'wraps around' the woodland boundary, with the eastern part of the site being perpendicular to the rest of the site and Cropper Lane. The site is within Flood Zone 1.

The proposal

The application proposes the erection of a new dwelling with landscaping proposed around the site to offer biodiversity enhancements and support the integration of the dwelling into the landscape. The dwelling is proposed to use the sloping topography of the land to integrate, the lower ground floor will be enclosed with only the ground and first floor being visible at the existing ground level from Cropper Lane to the west.

Above ground there are two components, the first has the appearance of a small 2 storey dwelling designed to look like an agricultural workers dwelling and the second is a single storey building that will house a gym but is designed to look like a chicken shed. The two components are joined beneath the ground by the lower ground floor which takes access from the two storey annex as well as a hidden access which leads from the driveway down to the northern side of the lower ground floor.

Parking is proposed to the front of the dwelling with a wall extending from the primary elevation to the north. The lower ground floor is proposed to have a grass roof where it extends from the floors above and provide access to the lawns and landscaped areas.

DMPA/2023/1566 – Land near Covert View, Cropper Lane, Ashbourne, DE6 5BL



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South Derbyshire District Council. LA 100019461.2020

Applicant's supporting information

Biodiversity Net Gain Report, Land opposite Covert View, prepared by FCPR, dated October 2023, received 01/12/2024

The biodiversity net gain report appraises the baseline of habitats and hedgerows both in terms of the unit value and the level of distinctiveness of the habitats. It provides hedgerow and habitat plans for the proposed development and biodiversity calculations which show a potential 9.04 increase in habitat units which is representative of 120.67 net gains. The proposed gain for hedgerows is 0.59 units or 14.97%.

Design and Access Statement

The Design and Access Statement (DAS) sets out the site context and narrative of the proposed development describing the design evolution in terms of the aesthetic design of the dwelling. It discusses the incorporation of the family history into the design of the proposed development and the use of materials to tie into the local vernacular and setting of the building. It further discusses the sustainability measures in reference to re-use of materials where possible and the selection of other materials and design choices to make the building more energy efficient (in terms of loss of energy) and the use of systems and design to reduce the buildings consumption of energy.

Ecological Appraisal (EA), Land opposite Covert View, prepared by FCPR, dated October 2023, received 01/12/2024

The EA recommends that following measures in the site design:

- Sympathetic management of retained hedgerows
- Enhancement of retained grazed pasture (over-sowing and instatement of low intensity grazing and/or once-twice annual mowing)
- Provision of new native, species-rich hedgerows with trees

These recommendations are set out to be included within a biodiversity net gain assessment to provide measured outcomes for wildlife.

Recommendations are made for sensitive working practices having regard for the suitability of the site to provide foraging and habitat for different protected and priority species. The report sets out that due to the transient nature of species further survey work will be required prior to the commencement of development. Further recommendations for species enhancement and appropriate lighting for the proposed development are also made.

Energy Statement, Land near Covert View, dated 24th October 2024, received 01/12/2024

The energy statement sets out the assessment of the proposed energy saving measures that are to be included within the proposed development. It confirms the performance of these measures in relation to Part L of the Building Regulations. It confirms there are 92.3% savings in CO2 emissions, 67.6% saving in primary energy a 9.2% saving in fabric energy efficiency.

Land opposite Covert View, Thurstaston, Landscape Study and Design Approach, ref 10410-FCPR, Rev D, October 2023, received 01/12/2023

The submitted document introduces the landscape methodology implemented to assess the impact upon the landscape as a result of the proposed development. It identifies the site's location within the Derbyshire Sandstone Slopes and Heaths Landscape Character Type and sets out the key characteristics that define the landscape character. They note that the landscapes are not locally or nationally designated and assess the relevant policy context. They note the opportunities and enhancements that could be explored as part of the landscape strategy for the proposed development that is shown within the Illustrative Masterplan.

Landscape and Visual Appraisal, Land opposite Covert View, dated August 2023, prepared by FCPR, received 01/12/2024

The LVA assesses the visual impact of the development upon the landscape noting the visibility of the site by receptors, including people and those using the public right of way network. It bases the conclusions of the impact upon the GLVIA3 in terms of major, moderate, minor and negligible impacts and includes a number of photographic viewpoints from which the site is visible to establish the

baseline and assess the impact. It discusses the landscape effects in terms of operation and construction and the visibility and impact from the assessed receptors having regard for the existing baseline. It concludes through there are inevitable impacts, the design of the dwelling and proposed landscaping mean that the effects are judged to be localised and limited in the geographical extent and will not result in unacceptable harm to the landscape in the long term.

Renewable Energy Feasibility Study, Land near Covert View, dated 12th October 2023, received 01/12/2024

The feasibility study recommends the following measures to be installed:

- A reversible GSHP system delivering 10 kW for space heating and domestic hot water at -3.1C design temperature and 35C water flow temperature.
- Wet underfloor heating throughout.
- MVHR to maintain good indoor air quality when windows are closed.
- One active 150 ltr DHW cylinder and one stand-by 150 ltr DHW cylinder.
- 11.1 kWp Solar PV with a 10kWh battery.
- Rainwater harvesting to maintain the green roof.

The Hen House, Statement on Design, Landscaping and Planning Matters, received 01/12/2024

The statement sets out the benefits perceived to be derived from the proposed development in planning terms. It further expands upon the design evolution and how the design has been amended to reflect planning history and planning advice during the pre-app process as well as including (Part 2) details of the design review panel feedback and how these have been addressed. The statement also makes recommendations for planning conditions to secure the benefits and prevent harm arising from the scheme to neighbouring amenity.

Whole Life Carbon Snapshot Report, Land near Covert View, dated 12th September 2023, received 01/12/2024

The findings of the report conclude that the proposed design will significantly improve whole life carbon against the aspirations of RIBA 2030 sustainable outcomes in support of the UN Sustainable Development Goals, while meeting highest aspirations of the Low Energy Transformation Initiative (LETI) in making the house fit for purpose.

Relevant planning history

9/2014/1130 -Erection of a dwelling house – refused.

Responses to consultations and publicity

Derbyshire County Council – Local Highway Authority – No objection subject to conditions 17/04/2024
Final comments - Noting the submission of visibility splays at the site access which were previously requested the submitted information is considered to be acceptable. Taking this into account there are no highway objections to the application subject to the impositions of conditions. The conditions are summarised as:

- Construction Management Plan
- Installation of access
- Surface treatment of access
- Restrictions to the installation of gates
- Maintenance in perpetuity of the visibility splays

Initial comments – Request it is demonstrated that the proposed access has appropriate visibility splays in both directions for the speed limit in place or the recorded 85th percentile speeds. Detail on the position at which the visibility splays are requested is included (0.6m above carriageway level at the centre of the access and 2.4m back from the near side edge of the adjoining carriageway, measured perpendicularly, and measured along the nearside edge of the adjoining carriageway and offset a distance of 0.6m from the edge of the carriageway and free of all obstructions over 0.6m above carriageway level). Further comments will be issued upon receipt. Object – 28/12/2024

Derbyshire County Council - Rights of Way – no comments received at the time of writing

Derbyshire Wildlife Trust – No objection subject to condition 11/03/2024

Note review of the redacted EclA and make comments on this basis. Recommend that precautions will be taken to protect protected species which may use the site during construction activities and note these should be included in the Construction and Environmental Management Plan (Biodiversity)

Note the proposed habitat creation and enhancement which will provide additional foraging resources. Raise concerns re the infilling of pond P1 due to records of great crested newt within this pond and also some good terrestrial habitat adjacent. Strongly advise that as part of the proposals an open water feature is reinstated in a suitable location onsite with good marginal and bankside habitat enhancement as compensation for the loss of P1. The potential presence of GCN on site should remain a consideration and precautions should be included in a Construction and Environmental Management Plan (CEMP: Biodiversity) just in case they are encountered during works.

They describe the baseline habitats, which include lowland mixed deciduous woodland which has been designated as Boden Sticks Local Wildlife Site (LWS). The woodland and hedgerows on site are priority habitats which appear to be retained, and to some extent buffered, within the scheme with the habitat loss restricted primarily to areas of modified grassland. Observe that retained habitats including the LWS, mature trees and hedgerows should be protected from direct damage and noise/dust pollution during construction with details of how this will be achieved to be included in the CEMP.

The CEMP should also include precautionary working methods to protect species including amphibians, reptiles, badgers and hedgehogs which may be present and impacted by site clearance and construction activities. Details of non-native invasive plant species removal and precautions to avoid spread during works should also be covered.

A small number of mature trees were identified as having features which could be used by roosting bats. The report suggests these will be retained. If this is not the case or if significant tree works are needed then further assessment will be required. The lighting scheme should be designed to avoid introduced light in the vicinity of these trees and also on habitats which could be utilised by commuting/foraging bats and roosting bird in particular woodland edge, planted tree lines and hedgerows.

The Landscape plan provided looks to be appropriate with woodland edge planting, species rich grassland and native scrub all providing diversity and acting as a buffer to the LWS. Tree lines introduced will provide additional commuting and foraging for bats once established.

Landscape details should be provided as part of a Landscape and Biodiversity Enhancement and Management Plan (LBEMP) which should also include species biodiversity enhancement such as integral bat and bird features on retained trees and/or the new dwelling

Peak and Northern Footpath Society – No objection 14/12/2023

Severn Trent Water - no comments received at the time of writing

South Derbyshire District Council – Environmental Health Officer (EHO) – No objection subject to condition 22/12/2024

Conditions requested are summarised below:

- No burning of materials or vegetation during the construction period
- Time restrictions for construction
- Phase 1 contaminated land study

South Derbyshire District Council -Tree Officer – No comments received

Members of the public:

1 comment from a member of the public was received in objection to the proposed development this is summarised as:

The effort to make the development sustainable is appreciated, however this can't detract from the fact that a prime agricultural greenfield is being developed unnecessarily which leads to avoidable detriment to the local habitat, particularly the parcel of land directly next to the development site known as 'Boden Thorns' which has been an undisturbed wildlife refuge for many years. The ongoing destruction of our natural habitat is shameful.

17 responses have been received from members of the public (excluding one response received in duplicate from the same person). The comments are summarised below:

- a) I / We support the application.
- b) The design is of a good quality and will fit well into the landscape and enhance the surroundings.
- c) The design is sympathetic and will blend with the woodland and environment
- d) The dwelling will be environmentally sustainable and highly energy efficient and new homes that meet net zero carbon are required
- e) The development will lead to significant enhancements to the landscape and biodiversity
- f) The materials, height and massing are good quality and support integration into the landscape
- g) The landscape plans will attract biodiversity, enhancements to biodiversity are a positive, biodiversity will be promoted
- h) The design is sympathetic to the landscape and will fit well, this is an improvement compared to other development in the area which neither enhances it nor fits in
- i) The scheme is innovative
- j) There seems to be a really efficient drainage system which is impressive.
- k) Good for climate

Relevant policy, guidance and/or legislation

The relevant Development Plan policies are:

(2016) Local Plan Part 1 (LP1): Policy S1: Sustainable Growth Strategy; Policy S2: Presumption in Favour of Sustainable Development; Policy S3: Environmental Performance; Policy S4: Housing Strategy; Policy S6: Sustainable Access; Policy H1: Settlement Hierarchy; Policy E7: Rural Development; Policy SD1: Amenity and Environmental Quality; Policy BNE1: Design Excellence; Policy BNE3: Biodiversity; Policy BNE4: Landscape Character and Local Distinctiveness

(2017) Local Plan Part 2 (LP2): SDT1: Settlement Boundaries and Development; BNE5: Development in Rural Areas; BNE7: Trees Woodland and Hedgerows; BNE10: Heritage Assets

The relevant local guidance is:
South Derbyshire Design Guide

The relevant national policy and guidance is:
National Policies and Guidance
National Planning Policy Framework 2023

Planning considerations

Taking into account the application made, the documents submitted and supplemented where relevant, the site and its environs; the main issues central to the determination of this application are:

- Policy and principle of development
- Design and impact upon the character of the area
- Highway safety and access
- Residential Amenity
- Ecology and Biodiversity
- Drainage

Planning assessment

Policy and principle of development

The Planning and Compulsory Purchase Act (2004) sets out in Section 38 (6) that planning

applications that accord with an up-to-date development plan should be determined without delay unless material considerations indicate otherwise. The development plan for this area comprises the South Derbyshire Local Plan Part 1 (2016) and the South Derbyshire Local Plan Part 2 (2017). The National Planning Policy Framework is a material consideration in planning decisions as is the requirement that planning decisions must reflect relevant international and statutory requirements.

The NPPF identifies the purpose of the planning system is to contribute to the achievement of sustainable development. Paragraph 11 of the NPPF specifies that planning decisions should apply a presumption in favour of sustainable development and elaborates in paragraphs c - d ii what this means for decision making.

Paragraph 12 then states that the presumption does not change the statutory status of the development plan as the starting point for decision making, and advises that when an application conflicts with an up-to-date plan, permission should not usually be granted. A local authority should only take a decision that departs from an up-to-date development plan if material considerations in a particular case indicate that the plan should not be followed.

Policy S1 - the Sustainable Growth Strategy sets out that South Derbyshire District Council (SDDC) will promote sustainable growth to meet its objectively assessed housing needs over the plan period across Parts 1 and 2 of the Local Plan and identifies the provision for a minimum of 12,618 new dwellings over the period, emphasising encouragement for the re-use of previously developed land. It further identified it as essential that the District's landscape and rural character are protected, conserved and enhanced. The Policy seeks to ensure that schemes respond to and address environmental and social issues, including the need to tackle climate change, improve the quality of the natural environment.

Policy S4 of the South Derbyshire Local Plan (SDLP) Part 1 makes provision for more than 12,000 dwellings over the plan period and sets out that the Council will maintain a rolling five year housing land supply on specific, deliverable sites. Policy S6 sets out how the Council will seek to minimise the need to travel and encourage a modal shift away from private car use and how this will be achieved through patterns of development and the provision

Policy H1 of the SDLP Part 1 is the settlement hierarchy which defines the hierarchy based upon the range of services and facilities available in different settlements. It sets out that the level of development should be of an appropriate scale to the size and role of the settlement and that planning applications will be assessed on the merits of the site through the development management process. The settlement hierarchy is important in determining the acceptability of development proposals coming forward outside the allocations during the plan period. Policy SDT1 of the SDLP Part 2 sets out that within the defined settlement boundaries development proposals that accord with the development plan will be permitted, but that development outside defined settlement boundaries and allocations within rural areas will be limited to that considered acceptable under the requirements of Policy BNE5.

Policy BNE5 details the requirements for development in rural areas and sets out the context in which development in rural areas outside settlement boundaries will be permitted. The criteria are set out below:

- i. allowed for by policies H1, H22, E7, INF10, H24, H25, H26, H27 or H28; or
- ii. otherwise essential to a rural based activity; or
- iii. unavoidable outside settlement boundaries; or
- iv. considered to be infill that is in keeping with the character of the locality and represents the infilling of a small gap for not normally more than two dwellings, within small groups of housing; and
- v. will not unduly impact on: landscape character and quality, biodiversity, best and most versatile agricultural land, and heritage assets.

The proposals conflict with a number of policies contained within the local plan, specifically those designed to ensure that new development is sustainably located, both in terms of the land to be used and the proximity to services, facilities and transport routes. The proposals therefore depart from the development plan policies.

The supporting information acknowledges that the proposals conflict with the development plan but seek to argue that the proposed development meets with the criteria for rural housing set out in paragraph 84 of the NPPF which confirms the position of the development plan, in that planning policies and decisions should avoid the development of isolated homes in the countryside unless one or more than one specified criteria apply. The supporting information seeks to demonstrate that the criteria of 84 sub paragraph e apply in this instance. These are:

(e) the design is of exceptional quality, in that it:

- is truly outstanding, reflecting the highest standards in architecture, and would help to raise standards of design more generally in rural areas; and
- would significantly enhance its immediate setting, and be sensitive to the defining characteristics of the local area.

As set out above, the NPPF advises that an LPA should only make a decision that departs from an up-to-date development plan if material considerations in a particular case indicate otherwise. The NPPF also sets out that it is a material consideration in the determination of planning applications.

For the reasons set out above the proposed development is considered not to be acceptable in principle. It is therefore for the application to demonstrate that the proposed development meets with the criteria of paragraph 84 (e) for Officers to recommend approval, and in so doing, justify a departure from the development plan on material grounds. This is considered in the following sections which discuss the key planning issues in detail.

Design quality and impact upon design and character of the surrounding area

The National Planning Policy Framework emphasises the importance of good design. Design is set out as playing a role in shaping beautiful and safe places and sustainable communities within the social objective. Good design is also considered important to make effective use of land, assimilate development into the surrounding area, and, fundamentally, to provide places that are attractive and that people want to live in.

Section 12 concentrates on well-designed places and sets out that planning decisions should ensure that developments function well and add to the quality of an area for its' lifetime, is visually attractive due to the architecture, layout and landscaping and that it is appropriately sympathetic to the surroundings.

Paragraph 180 sets out that planning decisions should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes (in a manner commensurate with their statutory status or identified quality in the development plan).

The provisions of the NPPF in relation to dwellings of exceptional design quality contained within paragraph 84 are set out above.

Policy BNE1 of the Local Plan sets the districts requirements for good design quality setting out how this can be achieved using a number of design principles, of which the following are of relevance to this application: community safety, movement and legibility, ease of use and accessibility visual attractiveness, neighbouring uses and amenity and healthy lifestyles.

In respect of landscape character and pride Policy BNE1 sets out that development should create locally inspired character that responds to their context. Policy BNE4 relates to landscape character and local distinctiveness and sets out that the character and quality of the districts landscape will be protected and enhanced through careful design and sensitive implementation of new developments. It further requires that developers demonstrate that regard has been had to the landscape character of the area.

The application is supported by comprehensive statement on design, landscaping and planning statement which sets out the evolution of designs for a proposed residential dwelling at this site. The document shows the various iterations of design that have been developed, considered, and reconsidered, pictorial examples of the various projects and proposals are included within the

document and show a range of not insubstantially different designs. The project through its development has included the review of different designs by a design review panel. Following a previous refusal (2015) the design review panel are stated to have emphasised to the applicant the need for a comprehensive review of the context of the site and surroundings and that a comprehensive landscaping scheme was developed. Further advice on the form and height of the building is also stated to have been given. The feedback is stated to have informed the current design which has been reviewed twice by the East Midlands Design Review Panel.

Section 6.2 of the supporting statement relates to the architectural design of the proposed dwelling and sets out the applicant's vision to create a discreet dwelling on the site that is energy efficient. It further states that the key concepts of the brief were:

- A house which embodies the evolution of a modest chicken farmers cottage
- A house which allows the applicants to downsize from their current home and have adaptable and accessible living spaces as they grow older
- An innovative house which is energy efficient and utilises technology to reduce operational and embodied carbon
- A house designed explicitly for the location and context in which it sits
- A house which exploits the site in orientation, sunlight, levels, views and landscape connections (working with the topography of the site).
- A house which takes inspiration from the South Derbyshire vernacular, using locally sourced materials, where practicable

The dwelling is designed over three stories, with the lowest floor being set into the topography of the site which falls as it moves away from Cropper Lane in an easterly direction. Above the existing ground level the dwelling is proposed to comprise a small traditional house, providing a main entrance and guest accommodation formed on the ground floor of a cloakroom, guest WC and a combined kitchen, dining and living space, to the first floor a bedroom, bathroom and dressing room. This area of the dwelling is proposed as an annexe and for a future residential nurse. Also above the ground there is a proposed single storey building which is designed to look like a chicken shed, and has shutters to the outside which will be used as a gym.

The above ground components of the dwelling are connected by the main living accommodation which is accessed from the main entrance and from a driveway, sited behind a wall that leads down to the northern elevation and side entrance to the dwelling. The lower ground floor is enclosed by the land on the southern and western sides where it is built into the topography of the existing site. The eastern elevation is visible across the three levels of the dwelling where the lower ground floor spans the area beneath both the 'chicken shed' and the annexe. It is proposed that the lower ground floor roof, where it is situated behind the annexe and chicken shed will have a wild meadow garden roof.

The dwelling proposed, whilst visible from the road, is set back and separated from the road by a field that is not in the applicant's ownership. The design fronting the road is considered to be modest and in keeping with a rural location. The design uses the change in levels across the site to conceal the bulk, scale and massing of the development in order to support its integration into the surroundings.

The application is supported by a comprehensive Landscape Visual Assessment undertaken by FCPR that is stated to be undertaken in accordance with GLVIA3 (Current best practice guidance). The conclusions of the assessment set out that the worst effects of the development would be moderate adverse impacts for residential receptors at the point at which construction was complete, however that this would decline as landscaping matures to minor adverse or negligible impacts after 15 years. For users of the public rights of way from the assessed viewpoints the impacts would be minor adverse, declining to negligible over the 15 year period, similarly for users of the nearby roads the initial visual impact upon completion would be, at worst, minor adverse declining to negligible as landscape proposed establishes.

The landscape design for the proposed development divides the site into two character areas: 'traditional farm' and 'contemporary rural'. The traditional farm area is located surrounding the dwelling and is set out to comprise an orchard and chicken run to the front of the dwelling and a lawn to the rear which will connect to the contemporary rural landscaped area. The supporting information sets out that the structure of the landscape will be strengthened through the enhancement to the boundaries of the

site and infilling of the edges of the woodland block. The landscaping proposals are set out in the detailed planting plan which show the different character types, proposed planting and seating areas as well as the proposed biodiversity area. The planting detailed within this plan are substantial, as set out in both the supporting statement and planting plan. The supporting information further sets out that the development will work with the site topography and levels and not introduce substantial changes to these.

The East Midlands Design Review Panel is quoted within the supporting information as having assessed the landscape proposals as below:

The landscape proposals will result in a significant enhancement to the immediate setting and are sensitive to the defining characteristics of the surrounding area.

It is considered that the landscape impact of the development meets both the requirements of the local plan policy in that it does not result in a harmful impact upon the landscape and respects the characteristics of the landscape. The comments of the East Midlands Design Review Panel confirm that the second criteria of NPPF paragraph 84 e) is met and that the immediate setting would be significantly enhanced whilst the proposals are sensitive to the defining characteristics of the surroundings.

It is considered, given the importance within both the development plan policies and the NPPF that rural exception development sits well within the landscape and does not appear incongruous that the landscaping is secured by way of condition and further conditions are imposed to prevent development under permitted development rights that would diminish the landscape integration of the project and be at conflict with the detail of this submission and design ethos. It is also considered appropriate to secure the finished levels of the site to ensure that the project is delivered in a manner which integrates with such.

The supporting statement confirms that the proposed development will use materials that will include those of local style. Given the emphasis placed upon dwellings approved under this part of the NPPF being sensitive to the local area it is considered appropriate to include a condition to secure the approval of finishing materials that will be used in the construction of the external surfaces of the development to ensure the high-quality design in keeping with the south Derbyshire vernacular as set out in the supporting statement.

Sustainability

Policy S3 of the Local Plan Part 1 sets out that the Council will support developers in bringing forward more sustainable homes.

The responses of the design review panel (DRP) set out that in order for a dwelling to constitute exceptional architectural quality energy and climatic / environmental design should be incorporated into the dwelling to ensure that the dwelling is truly of the highest environmental standards. There is clear narrative through the various DRP responses is that the energy efficiency and high quality environmental design should be incorporated into the final design of the proposed dwelling and clear with supporting information submitted with the application.

The supporting information indicates that the design of the dwelling and use of low carbon materials as well as sustainable energy generation measures such as a building fabric with high insulation levels, integrated ground source heat pumps and solar panels supports the delivery of a sustainable dwelling. The Energy Statement sets out that the building, subject to the inclusion of the noted measures and design, will achieve beyond that which is required by building regulations.

Having regard for the importance placed upon energy and climatic / environmental design by the DRP to support the confirmation that the dwelling is one of exceptional quality it is considered appropriate to include conditions to secure the measures set out within the supporting information in order to ensure the necessary exceptional design quality.

Highway Safety and Access

The National Planning Policy Framework requires in paragraph 114b that development proposals

should ensure that safe and suitable access to the site can be achieved for all users. Where this is unachievable it advises that development can be refused.

It should be acknowledged that the thrust of the South Derbyshire Local Plan in respect of sustainable access (Policy SD6) steers towards development sustainably located and in close proximity to existing transport networks that encourage a shift from private car use to more sustainable modes of transport. The supporting information does not contain any information in support of the application that details access to, or the intention to use, sustainable transport methods. It is noted that the site may be accessible to the surrounding public right of way network and that this may in turn provide some opportunity for pedestrian travel to the dwelling.

Notwithstanding this, the NPPF does not make a requirement for dwellings for which permission is sought under paragraph 84 e) to benefit from these. The Local Highway Authority have been consulted throughout the application process and the applicant has provided additional information to demonstrate safe vehicular access to the dwelling from Cropper Lane can be achieved. It is appropriate in this instance to support the conditions requested by the Highways Officer in relation to highway safety and as such these are included in this recommendation. It is concluded that the proposals accord with policy in relation to safe vehicular access.

Residential Amenity & contaminated land

The NPPF requires in paragraph 135 f) that planning decisions should create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users.

Policy SD1 of the Local Plan part 1 sets out that the Council will support development that does not lead to adverse impacts in the environment or amenity of existing and future occupiers within or around proposed developments. The latter part of the policy considers the need for a strategic buffer between conflicting land uses in order that they do not disadvantage each other in respect of amenity issues such as noise. Policy BNE1 h) requires that new development should not have an undue effect on the privacy and amenity of existing nearby occupiers.

The South Derbyshire Design Guide expands upon policy BNE1 setting out considerations in relation to overlooking and overshadowing between developments. It further requires different separation distances of to avoid poor amenity.

Policy SD4 requires that applicants demonstrate that schemes in areas known to be at risk of instability or contamination demonstrate, through investigations, that the scheme will incorporate any necessary remediation methods to render the development proposed safe.

The Council's Environmental Health Officer requests conditions are included to secure a Phase 1 land contamination study, this is required, and the request supported, to ensure that the site or surrounding dwellings are not put at risk from past activity on the site that may result in adverse impacts upon health. Further conditions are requested to be imposed during the construction period to prevent noise and air pollution. These are considered to be appropriate having regard for the surrounding residential dwellings and quite and peaceful nature of the setting.

The application proposes to locate the dwelling within the confines of a relatively large plot. That is set away from the adjacent and facing dwellings. The proposal further includes enhanced plating at the boundaries of the site and therefore it is considered that the proposals would not result in a loss of amenity to the existing neighbouring dwellings and as such accords with the relevant development plan policies in this regard.

Ecology and Biodiversity

The National Planning Policy Framework (NPPF) sets out that planning decisions should contribute to and enhance the natural and local environment through the use of different mechanisms. Of relevance to this application is the requirement that development should minimise impacts on, and provide net gains for, biodiversity. Paragraph 186 expands upon this stating that planning permission should be refused if it is not possible to avoid, mitigate or compensate for significant harm to biodiversity resulting

from the development proposal.

Policy BNE3 of the Local Plan sets out that the LPA will support development that contributes to the protection, enhancement, management and restoration of biodiversity and delivers net gains in biodiversity wherever possible.

The application is supported by an Ecological Appraisal, which has been reviewed by Derbyshire Wildlife Trust. Officers have also reviewed this and note that the assumptions in relation to evidence of protected species habitat within or immediately adjacent the site are correct. Limited records of protected species were found to have been within the site and therefore it is considered appropriate that the Biodiversity Construction Management Plan include reasonable avoidance measures to prevent harm to protected species arising.

DWT confirm in their response the need for conditions to secure the enhancements set out within the application and to ensure that construction practices do not result in harm to any species or their habitats. Furthermore sensitive lighting, to prevent disturbance to local bat populations and integrated species enhancements are also sought via condition.

Drainage

The National Planning Policy Framework sets out that the planning system should take account of flood risk and new development should manage flood risk from all sources. All development should be directed away from areas of risk at flooding and no development should increase the risk of flooding. Paragraph 173 requires that new development does not increase flood risk in other locations.

Local Plan Policy SD2 sets out that the council will give priority to development in areas at lowest risk of flooding. It further requires suitable measures to manage surface water on all sites in order to minimise increasing the risk of local flooding as a result of the development. It sets out that development that could lead to changes in surface water flows or increase flood risk should utilise Sustainable Drainage Systems, unless it is demonstrated that ground conditions are not suitable for SUDS.

The application proposes to use attenuation and infiltration to manage surface waters and a private tank system to manage foul water. This is considered to accord with the relevant development plan policies and the drainage plan is included within the approved plans recommended condition.

Other issues

Policy BNE5 of the local plan requires that the new development in rural areas that is subject to exceptions complies with a number of criteria. The development is not recognised within exceptions to rural development set out in BNE5, however it is considered appropriate, given that the application seeks permission based on assertion that the development should be considered as an exception under the NPPF allowances for developments of exceptional quality in rural areas, that it is considered along with the criteria required for exception development. BNE5 requires that development does not unduly impact upon landscape character and quality, biodiversity, best and most versatile agricultural land, and heritage assets. Biodiversity and landscape character and quality are addressed in the preceding sections of the report

Best and most versatile agricultural land

In consideration of the application the agricultural land classification has been reviewed on the land classification mapping. This shows the land to be grade 3 agricultural land. It does not define whether this is grade 3a or grade 3b. The site area is more than 2 hectares, however the area proposed for the dwelling is smaller. Though the loss of agricultural land is acknowledged it is not considered to present a robust reason for the refusal in this instance.

Heritage assets

There are no heritage assets within or immediately adjacent the site. The nearest listed buildings are around 0.5km from the site and there are no conservation areas or archaeological sites of interest within or adjacent the site. As such the proposed development is not considered to detrimentally impact upon heritage assets so as to present a policy conflict with BNE5.

Conclusion and Planning Balance

The NPPF states that there are three dimensions to sustainable development, namely economic, social and environmental and that these should be considered collectively and weighed in the balance when assessing the suitability of development proposals.

The application is supported by comprehensive design documents and endorsed by a design review panel as being of exceptional quality. The design is not solely considered to be of exceptional quality on the basis of its aesthetic architectural design but also in the use of landscaping, biodiversity enhancements and sustainable and low carbon energy measures. The environmental benefits are considered to be derived through the substantial onsite net gain to biodiversity which is secured by condition of this approval as well as the sustainability credentials proposed for the energy systems and thermal efficiency of the building. The social and economic benefits of the scheme are less and predominantly confined to the social benefits offered to the applicant and their family from remaining in the area and the economic benefits through the construction period.

The application is considered to constitute a dwelling of exceptional quality as verified by the design review panel and this, coupled with the benefits of the scheme are considered to weigh in favour of the proposed development. The development will also provide a substantial net gain to biodiversity both in terms of the area of proposed enhancements but also in terms of the unit value increase, which is secured by condition of this recommendation. Though the development will result in the development of a dwelling outside a defined settlement boundary this is not considered to weigh against the application in this instance as the proposals are assessed to comply with the exception set out in paragraph 84e, as discussed above. The development would result in the loss of some agricultural land which weighs against the proposals in the planning balance. There would not be any harmful impacts upon amenity or the landscape such that would present a robust reason for the refusal of the application. The benefits of the scheme are therefore considered to outweigh the harms arising from the development.

Consequently, the Officer recommendation is for approval subject to the conditions set out in this recommendation.

None of the other matters raised through the publicity and consultation process amount to material considerations outweighing the assessment of the main issues set out above, noting that conditions or obligations have been attached where meeting the tests for their imposition. Where relevant, regard has been had to the public sector equality duty, as required by section 149 of the Equality Act 2010 and to local finance considerations (as far as it is material), as required by section 70(2) of the Town and Country Planning Act 1990 (as amended), as well as climate change, human rights and other international legislation.

Recommendation

Approve subject to the following condition:

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

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

2. The development hereby permitted shall be carried out in accordance with the following plans:
Site Location Plan, drawing no. W1-a1, Revision B
Block Plan, drawing no. W2-A1, Revision B
Site Plan, drawing no. W3-A1, Revision B
Floor Plans, Drawing no. W4-A1, Revision D
Roof Plan, drawing no. W5-A1, Revision B
Site Sections, drawing no. W6-A1, Revision B
Elevations, drawing no. W7-A1, Revision B
Drainage Plan, drawing no. W32-A1
Biodiversity Net Gain Report, Land near Covert View October 2023
Energy Statement, Land near Covert View, 23 October 2023
Detailed Planting Plan, drawing no. 10410-FPCR-XX-XX-DR-L-0004, rev P02

Illustrative masterplan, drawing no 10410-FPCR-XX-XX-DR-L-0002 rev 04

unless as otherwise required by condition attached to this permission or following approval of an application made pursuant to Section 96A of the Town and Country Planning Act 1990.

Reason: For the avoidance of doubt and in the interests of achieving sustainable development in accordance with the requirements of Policy BNE1 and Policy BNE3 of the Local Plan Part 1 and the National Planning Policy Framework.

3. Before the development hereby approved is commenced details of a Construction Management Plan (CMP) shall be submitted to and approved in writing by the Local Planning Authority. The plan/statement shall include but not be restricted to:
 - Parking of vehicle of site operatives and visitors (including measures taken to ensure satisfactory access and movement for existing occupiers of neighbouring properties during construction);
 - Any temporary access to the site;
 - Locations for loading/unloading and storage of plant, waste and construction materials;
 - Method of preventing mud and dust being carried onto the highway;
 - Arrangements for turning vehicles;
 - Arrangements to receive abnormal loads or unusually large vehicles;
 - Methods of communicating the Construction Management Plan to staff, visitors and neighbouring residents and businesses.

The development shall thereafter be undertaken in complete accordance with the approved plan throughout the construction period.

Reason: In the interests of safe operation of the adopted highway in the lead into development both during the demolition and construction phase of the development in accordance with the requirements of Policy S6 of the South Derbyshire Local Plan and the National Planning Policy Framework.

4. Before the development hereby approved is commenced the permitted the means of access for vehicles shall be constructed and completed as shown on the approved drawings.

Reason: For the avoidance of doubt and in order to ensure safe access to the development, which does not result in an adverse impact upon highway safety in accordance with the requirements of Policy S6 of the South Derbyshire Local Plan and the National Planning Policy Framework

5. Before the commencement of the development hereby approved:

a) A Phase I contaminated land assessment (desk-study) shall be undertaken and approved in writing by the local planning authority.

b) The contaminated land assessment shall include a desk-study with details of the history of the site use including:

- the likely presence of potentially hazardous materials and substances,
- their likely nature, extent and scale,
- whether or not they originated from the site,
- a conceptual model of pollutant-receptor linkages,
- an assessment of the potential risks to human health, property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes, adjoining land, ground waters and surface waters, ecological systems, archaeological sites and ancient monuments,
- details of a site investigation strategy (if potential contamination is identified) to effectively characterise the site based on the relevant information discovered by the desk study and justification for the use or not of appropriate guidance. The site investigation strategy shall, where necessary, include relevant soil, ground gas, surface and groundwater sampling/monitoring as identified by the desk-study strategy

The site investigation shall be carried out by a competent person in accordance with the current U.K. requirements for sampling and analysis. A report of the site investigation shall be submitted to the local planning authority for approval.

Reason: To protect the health of the public and the environment from hazards arising from previous uses of the site and/or adjacent land which might be brought to light by development of it, recognising that failure to address such matters prior to development commencing could lead to unacceptable impacts even at the initial stages of works on site. in accordance with the requirements of Policy S2, policy SD1 and Policy SD4 of the Local Plan Part 1 and the National Planning Policy Framework.

6. Before the commencement of the development hereby approved:

Where the site investigation identifies unacceptable levels of contamination, a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment shall be submitted to and approved in writing by the local planning authority.

The submitted scheme shall have regard to relevant current guidance.

The approved scheme shall include all works to be undertaken, proposed remediation objectives and remediation criteria and site management procedures. The scheme shall ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

The developer shall give at least 14 days notice to the Local Planning Authority (Environmental Health Division) prior to commencing works in connection with the remediation scheme.

Reason: To protect the health of the public and the environment from hazards arising from previous uses of the site and/or adjacent land which might be brought to light by development of it, recognising that failure to address such matters prior to development commencing could lead to unacceptable impacts even at the initial stages of works on site. in accordance with the requirements of Policy S2, policy SD1 and Policy SD4 of the Local Plan Part 1 and the National Planning Policy Framework.

7. The dwelling hereby approved shall be occupied until:

a) The approved remediation works required by 6 above have been carried out in full in compliance with the approved methodology and best practice.

b) If during the construction and/or demolition works associated with the development hereby approved any suspected areas of contamination are discovered, which have not previously been identified, then all works shall be suspended until the nature and extent of the contamination is assessed and a report submitted and approved in writing by the local planning authority and the local planning authority shall be notified as soon as is reasonably practicable of the discovery of any suspected areas of contamination. The suspect material shall be re-evaluated through the process described in 5b to 6 above and satisfy 7a above.

c) Upon completion of the remediation works required by 6 and 7a above a validation report prepared by a competent person shall be submitted to and approved in writing by the local planning authority. The validation report shall include details of the remediation works and Quality Assurance/Quality Control results to show that the works have been carried out in full and in accordance with the approved methodology. Details of any validation sampling and analysis to show the site has achieved the approved remediation standard, together with the necessary waste management documentation shall be included.

Reason: To protect future occupiers of the development, buildings, structures/services, ecosystems and controlled waters, including deep and shallow ground water.

8. Before the development hereby approved is commenced a further ecological survey to identify the presence or likely absence of badger setts within the site and adjacent woodland shall be submitted to and approved in writing by the Local Planning Authority.

Reason: For the avoidance of doubt and in accordance with the applicants stated intentions, to ensure that protected species are safeguarded during the development process in accordance with the requirements of Policy BNE3 of the Local Plan and the National Planning Policy Framework.

9. Before the development hereby approved is commenced (including demolition, ground works, vegetation clearance and movement of plant, machinery and materials) a Construction Environmental Management Plan (CEMP: Biodiversity) shall be submitted to and approved in writing by the local planning authority. The CEMP (Biodiversity) shall include the following:
 - a) Risk assessment of potentially damaging construction activities.
 - b) Identification of "biodiversity protection zones".
 - c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction.
 - d) The location and timing of sensitive works to avoid harm to biodiversity features.
 - e) The times during construction when specialist ecologists need to be present on site to oversee works.
 - f) Responsible persons and lines of communication.
 - g) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person.
 - h) Use of protective fences, exclusion barriers and warning signs.

The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details, unless otherwise agreed in writing by the local planning authority.

Reason: In order to adequately safeguard species and their habitats in accordance with the requirements of BNE3 of the South Derbyshire Local Plan and the National Planning Policy Framework.

10. Before the development hereby approved is commenced a Landscape and Biodiversity Enhancement and Management Plan (LBEMP) shall be submitted to, and be approved in writing by, the LPA. The aim of the LBEMP is to provide details for the creation, enhancement and management of habitats and species on the site post development, in accordance with the proposals set out in the submitted Biodiversity Metric (FPCR, October 2023) to demonstrate a net gain of 9.04 biodiversity units. The LBEMP should combine both the ecology and landscape disciplines and shall be suitable to provide to the management body responsible for the site. It shall include the following: -

- a) Description and location of features to be retained, created, enhanced and managed, as per the approved biodiversity metric and to include open water habitat.
- b) Aims and objectives of management, in line with desired habitat conditions detailed in the metric.
- c) Appropriate management methods and practices to achieve aims and objectives.
- d) Prescriptions for management actions.
- e) Preparation of a work schedule (including a 30-year work plan capable of being rolled forward in perpetuity).
- f) Details of the body or organization responsible for implementation of the plan.
- g) A monitoring schedule to assess the success of the habitat creation and enhancement measures at intervals of 1, 3, 5, 10, 15, 20, 25 and 30 years.
- h) Monitoring reports to be sent to the Council at each of the intervals above
- i) A set of remedial measures to be applied if conservation aims and objectives of the plan are not being met.
- j) Detailed habitat enhancements for wildlife, in line with British Standard BS 42021:2022.
- k) Requirement for a statement of compliance upon completion of planting and enhancement works.

The LBEMP shall also include details of the legal and funding mechanisms by which the long-term implementation of the plan will be secured by the developer with the management bodies responsible for its delivery. The approved plan will be implemented in accordance with the approved details

Reason: In order to secure a net gain to biodiversity and to ensure the satisfactory appearance of the development in accordance with the requirements of Policy BNE1 and Policy BNE3 of the South Derbyshire Local Plan Part 1 and Policy BNE4 of the Local Plan Part 2 and the National Planning Policy Framework.

11. Before the development hereby approved is commenced a full schedule of materials to be used in the construction of all external surfaces of the dwelling shall be submitted to and approved in writing by the Local Planning Authority.

The development shall thereafter be completed and retained in accordance with the approved details for its lifetime.

Reason: For the avoidance of doubt and in accordance with the applicant's stated intentions and in order to ensure a high quality development that accords with the requirements of Policy BNE1, BNE4 and BNE5 of the South Derbyshire Local Plan, the Sustainable Design SPD and the National Planning Policy Framework.

12. The site access shall provide visibility splays from a point 0.6m above carriageway level at the centre of the access and 2.4m back from the near side edge of the adjoining carriageway, (measured perpendicularly), for a distance of 90m in each direction measured along the nearside edge of the adjoining carriageway and offset a distance of 0.6m from the edge of the carriageway. These splays shall thereafter be permanently kept free of all obstructions to visibility over 0.6m in height above carriageway level.

Reason: For the avoidance of doubt and in order to ensure safe access to the development, which does not result in an adverse impact upon highway safety in accordance with the requirements of Policy S6 of the South Derbyshire Local Plan and the National Planning Policy Framework.

13. Before the commencement of development above slab level a scheme for the reinstatement of an open water feature with adjacent terrestrial habitat shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include sensitive methods of working to ensure the protection of Great Crested Newts and the inclusion of marginal bankside habitat.

Reason: In order to safeguard protected species and their habitats and ensure loss of habitats is compensated for in accordance with the requirements of Policy BNE3 of the South Derbyshire Local Plan and the National Planning Policy Framework.

14. No development, including preparatory works, shall commence until a scheme for the protection of trees and hedgerows has been submitted to and approved in writing by the Local Planning Authority. Such a scheme shall be based on best practice as set out in BS 5837:2012 and ensure that no vehicles can access, and no storage of materials or equipment can take place within, the root and canopy protection areas. The approved scheme of protection shall be implemented prior to any works commencing on site and thereafter retained throughout the construction period.

Reason: In order to protect the retained trees within and adjacent the site in accordance with the requirements of Policy BNE3 and Policy BNE4 of the South Derbyshire Local Plan Part 1 and Policy BNE7 of the South Derbyshire Local Plan Part 2 and the National Planning Policy Framework.

15. Prior to the commencement of any engineering earthworks a detailed plan showing the existing and proposed land levels and the proposed floor levels and spot heights to the dwelling.

Reason: For the avoidance of doubt and in order to ensure that the proposed dwellings does not have a harmful impact upon the landscape character of the area in accordance with the

requirements of Policy BE1, Policy BNE4 and Policy BNE5 of the Local Plan and the National Planning Policy Framework.

16. During the period of construction there should be no clearance of vegetation by burning, or disposal of other materials by burning owing to the proximity of neighbouring sensitive receptors.

Reason: In the interests of protecting the amenity of the area and adjoining occupiers, in accordance with the requirements of Policy SD1 of the South Derbyshire Local Plan and the National Planning Policy Framework.

17. Except in an emergency no site clearance, construction, site works or fitting out shall take place other than between 08:00 hours and 18:00 hours Mondays to Fridays, and between 08:00 hours and 13:00 hours on Saturdays. There shall be no such activities whatsoever on Sundays, public holidays and bank holidays.

Reason: To safeguard the amenities of the occupiers of nearby dwellings in accordance with the requirements of Policy SD1 of the Local Plan and the National Planning Policy Framework.

18. The development hereby permitted shall not be occupied until such time as the access drive has been surfaced with tarmacadam, or similar hard bound material (not loose aggregate) for a distance of at least 5 metres behind the highway boundary and, once provided, shall be so maintained in perpetuity.

Reason: To reduce the possibility of deleterious material being deposited in the highway (loose stones etc.) in the interests of highway safety in accordance with the requirements of Policy S6 of the South Derbyshire Local Plan and the National Planning Policy Framework.

19. No vegetation clearance shall take place between 1st March and 31st August inclusive, unless preceded by a nesting bird survey undertaken by a competent ecologist no more than 48 hours prior to clearance. If nesting birds are present, an appropriate exclusion zone will be implemented and monitored until the chicks have fledged. No works shall be undertaken within exclusion zones whilst nesting birds are present.

Reason: In order to safeguard birds and their nests and to prevent harm to habitat or species in accordance with the requirements of Policy BNE3 of the South Derbyshire Local Plan and the National Planning Policy Framework.

20. Within 3 months of the completion of the development hereby approved an energy statement compliance report shall be submitted to the Local Planning Authority. The statement shall confirm that the proposed measures detailed within the approved energy statement () have been installed in order to achieve the benefits set out within the statement.

Reason: In order to ensure the energy efficiency of the dwelling in accordance with the applicant's stated intentions and the requirements of the National Planning Policy Framework

21. Any proposed access gates must be set back at least 5m from the adjoining carriageway edge and made to open inwards only.

Reason: In the interests of highway safety and in accordance with the requirements of Policy S6 of the South Derbyshire Local Plan and the National Planning Policy Framework.

22. Prior to the installation of lighting fixtures, a detailed lighting strategy shall be submitted to and approved in writing by the LPA to safeguard bats and other nocturnal wildlife. This should provide details of the chosen luminaires, their locations and any mitigating features such as dimmers, PIR sensors and timers. Dependent on the scale of proposed lighting, a lux contour plan may be required to demonstrate acceptable levels of light spill to any sensitive ecological zones/features. Guidelines can be found in Guidance Note 08/23 - Bats and Artificial Lighting at Night (BCT and ILP, 2023). Such approved measures will be implemented in full.

Reason: To prevent disturbance to local bat populations and preserve the character of the rural area in accordance with the requirements of Policies BNE1, BNE3 and BNE4 of the Local Plan Strategy and the National Planning Policy Framework

23. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, or any statutory instrument amending, revoking and/or replacing that Order, the dwelling hereby permitted shall not be enlarged, extended or altered, and no buildings, gates, walls, fences or other means of enclosure (except as authorised by this permission or allowed by any condition attached thereto) shall be erected on the site without the prior grant of planning permission pursuant to an application made to the Local Planning Authority in that regard.

Reason: In order to prevent the over development of the site and safeguard the ecological and landscape benefits of the scheme in accordance with the requirements of Policy BNE1, BNE3 and BNE4 of the South Derbyshire Local Plan Part 1 and the National Planning Policy Framework.

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

Reason: For the avoidance of doubt and to ensure the proposed landscaping scheme in accordance with the requirements of Policy BNE1, Policy BNE3 and Policy BNE4 of the South Derbyshire Local Plan Part 1, Policy BNE7 of the South Derbyshire Local Plan Part 2 and the National Planning Policy Framework.

- 25 The dwelling shall be constructed and fitted out so that the estimated consumption of wholesome water by persons occupying the dwelling will not exceed 110 litres per person per day, consistent with the Optional Standard as set out in G2 of Part G of the Building Regulations (2015). The developer must inform the building control body that this optional requirement applies.

Reason: To ensure that future water resource needs, wastewater treatment and drainage infrastructure are managed effectively, so to satisfy the requirements of policy SD3 of the Local Plan.

Informatives:

- a. The construction of the access will require the extension of a verge and/or footway crossing from the carriageway under the Highways Act 1980 - Section 184 and the Applicant is required to obtain the permission of Derbyshire Highways before commencing any works on the highway, details can be found at: www.derbyshire.gov.uk/transport-roads/roads-traffic/licences-enforcements/vehicular-access/vehicle-accesses-crossovers-and-dropped-kerbs.aspx or email highways.hub@derbyshire.gov.uk.
- b. The applicant is advised to review the comments of Derbyshire Wildlife Trust in respect of the content of the documents required by conditions.

Item No. 1.3

Ref. No. [DMPA/2023/1614](#)

Valid date: 12/12/2023

Applicant: D Brandon

Agent: CT Planning

Proposal: Formation of a new access onto the highway, to serve an agricultural building and hardstanding on Land at SK2029 3587 off Scropton Lane, Scropton, DE65 5PS

Ward: Hilton

Reason for committee determination

This item is presented to the Committee at the request of Councillor Andrew as local concern has been expressed about a particular issue and that there is a discrepancy between the description of the purpose of the application and that provided on the plans, e.g. it is described as an agricultural building on one and a “rural business unit” on another.

Executive Summary

The proposal is to create a new access into the field to replace an existing, substandard access. There will be some loss of the established hedgerow to facilitate the works. Mitigation is proposed by way of replacement hedgerow which can be controlled by condition. There are no outstanding objections from statutory consultees including the CHA. The EA consider there to be no impact on flood risk. The impact on character of the area is not considered to be significant given the existing access points onto Scropton Lane. In light of such it is considered that the application is acceptable, subject to the conditions listed in the report.

Site Description

The site is situated to the south of Scropton Road, heading out of Hatton towards Scropton, between the dwelling Three Elms and Green Ends Lane. The Tutbury/Hatton railway line through to Uttoxeter bounds the site to the south. As it stands today, the field is predominantly laid to grass and bounded by hedgerow. There are no built forms on the land at present.

The proposal

The proposal is to create a new vehicular access into the site. New hedging would bound the access whilst a metal 5 bar gate would secure the site.

Applicant’s supporting information

The applicant has provided a Traffic Survey & Access Data report, a Planning Statement, an Ecological Statement and a Flood Risk Strategy document as well as working drawings, showing the alterations proposed.

Relevant planning history

DMPN/2023/1010 - The erection of an agricultural building - 6 September 2023 Prior Notification not required.

Responses to consultations and publicity

County Highways Authority (CHA) - following receipt of further requested information, CHA have no objection to the proposal, subject to the incorporation of conditions being included in any consent in the interests of highway safety.

DMPA/2023/1614 – Land at SK2029 3587 off Scropton Lane, Scropton, DE65 5PS



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South Derbyshire District Council, LA 190019461.2020

Environment Agency - it is considered that the works (new access) are de-minimis in terms of flood risk.

One neighbour comment was received through consultation believing this is the start of an industrial unit and the agricultural building is a smoke screen, the size of the field only capable of producing enough to fill 5% of the building; and that the access quoted in the prior approval application is good enough.

Relevant policy, guidance and/or legislation

The relevant Development Plan policies are:

(2016) Local Plan Part 1 (LP1): INF2 (Sustainable Transport); SD2 (Flood Risk)

(2017) Local Plan Part 2 (LP2) BNE5 (Development in rural areas); and BNE7 Trees, Woodland and Hedgerows

The relevant national policy and guidance is

National Planning Policy Framework (NPPF)

Planning Practice Guidance (PPG)

Planning considerations

The determining issues are as follows:

- Principle of the development including impacts on the character of the area;
- Other considerations incl Flood Risk

Planning assessment

Principle of the development including impacts on the character of the area:

The NPPF (Paragraph 111) states that: 'development should only be prevented or refused on highways ground if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.'

Policy INF2 sets the local policy framework for sustainable transport and states that planning permission will be granted for development where appropriate provision is made for safe and convenient access to and within the development for users of the private car and other modes of transport.

Policy BNE5 continues development would only be supported if unavoidable in the countryside whilst BNE7 states that removal of hedgerow could be considered if proportionate replacements were provided. In addition development will be supported that provides facilities essential to rural based activities, which includes forestry, agriculture and equestrianism. Where protected trees and/or hedgerows are subject to felling or removal, a replacement of an appropriate number, species, size and in an appropriate location will normally be required.

Any concerns in respect of the unit on the site do not form part of the consideration of this application (see relevant history), this field was found to form part of a wider agricultural land holding.

Under consideration here is simply the to the creation of an alternate vehicular access, due to the current access being considered to be wholly substandard, more an overgrown grass track (not of an adoptable level by the County Council for example) that doubles up as part of the Public Right of Way (PROW) footpath network.

In respect of the NPPF, County Highways have offered no objection to the proposal, subject to the detailed splay being created and maintained. The benefit of a significant pull-off area would also improve highway conditions - by that it is meant the gates to the field are set well back from the highway, this in turn avoids potential disruption whilst opening gates etc.. It is considered therefore that there is no unacceptable impact on highway safety. That view would also satisfy the requirements of Local Plan policy INF2

In respect of character impacts, the access would lie between the settlements of Scropton and Foston. Whilst the character along this stretch of road (approx. 1.3k long) is mainly hedgerow bound agricultural land, there are 3 sizeable access points/breaks in hedging along that stretch - 1. Facenda; 2. Firs Farm; and 3 the Edgmond/New House grouping. It is noted the proposed opening here would add to that number (by 1), any impacts are therefore considered not so incongruous as to offer a refusal based on character grounds; cumulative impacts not considered excessive, to the point of detriment. Some hedging will be lost but that loss will be compensated (to an equal if not greater level) with new planting lining the revised splay, the make up of that hedging in terms of species can be controlled by condition.

Other considerations incl Flood Risk

It should be noted that plans have been corrected and now consistently read, that the access is to serve an agricultural building only; the annotation in respect of a Rural Business Unit has been removed following discussion with the applicant, via their agent.

Thereafter whilst the land falls within the Flood Zone 2 and 3, it does fall within an area benefitting from flood defences, with de-minimis impacts subsequently caused by the nature of the development acknowledged by the Environment Agency.

By virtue of location, it would be unavoidable in this countryside location as its intention is to serve the permitted agricultural building. The requirements of BNE5 would as such be met.

Conclusion and Planning Balance

In conclusion, whilst there will be some loss of the established hedgerow to facilitate the access, it is considered that the improved access and mitigation planting proposed outweigh this harm in accordance with the aforementioned policies. There are no other relevant material considerations that would outweigh the principle of the development in this case. Accordingly, the application is recommended for approval subject to conditions.

None of the other matters raised through the publicity and consultation process amount to material considerations outweighing the assessment of the main issues set out above, noting that conditions or obligations have been attached where meeting the tests for their imposition. Where relevant, regard has been had to the public sector equality duty, as required by section 149 of the Equality Act 2010 and to local finance considerations (as far as it is material), as required by section 70(2) of the Town and Country Planning Act 1990 (as amended), as well as climate change, human rights and other international legislation.

Recommendation

Approve subject to the following conditions.

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

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

2. The development hereby permitted shall be carried out in accordance with Location Plan and Proposed Access Plan (received 12 December 2023) and the Proposed Site Plan (received 19 January 2024); unless as otherwise required by condition attached to this permission or following approval of an application made pursuant to Section 96A of the Town and Country Planning Act 1990.

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

3. The development hereby approved shall not be brought into use until the access has been provided as shown on the approved drawings listed under condition 2.

Reason: To ensure conformity with submitted details.

4. The development hereby approved shall not be brought into use until visibility splays are provided from a point 0.6m above carriageway level at the centre of the access to the application site and 2.4m back from the near side edge of the adjoining carriageway, (measured perpendicularly), for a distance of 116.4m to the west and 106.1m to the east measured along the nearside edge of the adjoining carriageway and offset a distance of 0.6m from the edge of the carriageway. These splays shall thereafter be permanently kept free of all obstructions to visibility over 0.6m in height above carriageway level.

Reason: In the interests of highway safety

5. The proposed access gates should be set back a minimum of 10m from the adjoining carriageway edge and made to open inwards only and retained as such for the lifetime of the development.

Reason: In the interests of highway safety.

6. In the first planting season following the formation of the access, a new mixed native species hedgerow, including native hedgerow trees, shall be planted behind the visibility sight line required by condition 4 in accordance with a planting and maintenance schedule which shall have first been submitted to and approved in writing by the Local Planning Authority. The hedgerow and trees shall thereafter be maintained in accordance with the approved maintenance schedule, for the lifetime of the development.

Reason: In the interests of biodiversity and the character of the area.

Informatives:

- c. The development hereby approved includes the carrying out of work on the adopted highway. You are advised that before undertaking work on the adopted highway you must enter into a highway agreement under Section 278 of the Highways Act 1980 with the County Council, which would specify the works and the terms and conditions under which they are to be carried out. Contact the Highway Authority's Implementation team at development.implementation@derbyshire.gov.uk allowing sufficient time for the preparation and signing of the Agreement. You will be required to pay fees to cover the Council's costs in undertaking the following actions: Drafting the Agreement, A Monitoring Fee, Approving the highway details, Inspecting the highway works. Planning permission is not permission to work in the highway. A Highway Agreement under Section 278 of the Highways Act 1980 must be completed, the bond secured and the Highway Authority's technical approval and inspection fees paid before any drawings will be considered and approved.

Item No. 1.4

Ref. No. [DMPA/2024/0198](#)

Valid date: 07/02/2024

Applicant: Trenport Investments Limited **Agent:** WSP

Proposal: **Outline planning application for a foodstore, commercial space for Small to Medium Enterprises, a drive-thru coffee shop, and community spaces with associated parking, servicing, drainage, landscaping and habitat areas as well as highway works (all matters reserved except for access) at Land North of Derby Road , Hilton, DE65 5JS**

Ward: Hilton

Reason for committee determination

The application is reported to committee as more than 4 objections from members of the public have been received.

Executive Summary

The application comprises main town centre uses outside of a defined town centre. The application has been reviewed by independent retail consultants who conclude that the requirements of the sequential test have been met and the proposed development would not have significant adverse impacts on defined town centre uses within the catchment area. The application has been submitted with a number of supporting plans including various parameter plans controlling phasing and scale amongst other matters. Subject to compliance with these plans the development will be undertaken in a coordinated way and will not comprise buildings of an excessive scale between the existing settlement of Hilton and the A50. The technical details of the application have been assessed by relevant statutory consultees, and subject to reserved matters details, recommended conditions and S106 agreement which are included in the recommendation, there will be no undue impact on design or landscape character and quality, biodiversity, best and most versatile agricultural land, trees, flood risk, contaminated land, heritage assets, noise and residential amenity, and traffic and transport. The application results in some benefits in relation to job creation, community space and biodiversity net gain which are also secured via condition and/ or the recommended agreement under S106 which the applicant will need to enter into.

Site Description

The application site lies to the northwest of the roundabout which connects the Derby Road and the A5132 in a southwest northeast trajectory, the site is at the northern periphery of the key service village of Hilton. The site lies outside the settlement boundary and within the rural area, currently the site is agricultural land that is bound to the west by an horticultural nursery, to the north by the Hilton Gravel Pits Site of Specific Scientific Interest, to the east by further agricultural land and to the south by the afore mentioned road infrastructure. Within the wider area of the site are the residential areas of Hilton, the A50 strategic road network and the Hilton Industrial Estate.

The site lies wholly within flood zone 1 where the risk of flooding from fluvial sources is minimal, some areas of the site, adjacent Derby Road are shown to be at risk from surface water flooding. The site is currently crossed by a public right of way, Hilton FP11, which extends from the A5132 to the east of the site through the site culminating in the field to the west of the site. There are no listed buildings or conservation areas within or immediately adjacent the site area. The site lies in both green and amber zones on the Great Crested Newt (GCN) heatmap. The site lies wholly within the Parish and Ward of Hilton which lie in the northwest of the district.

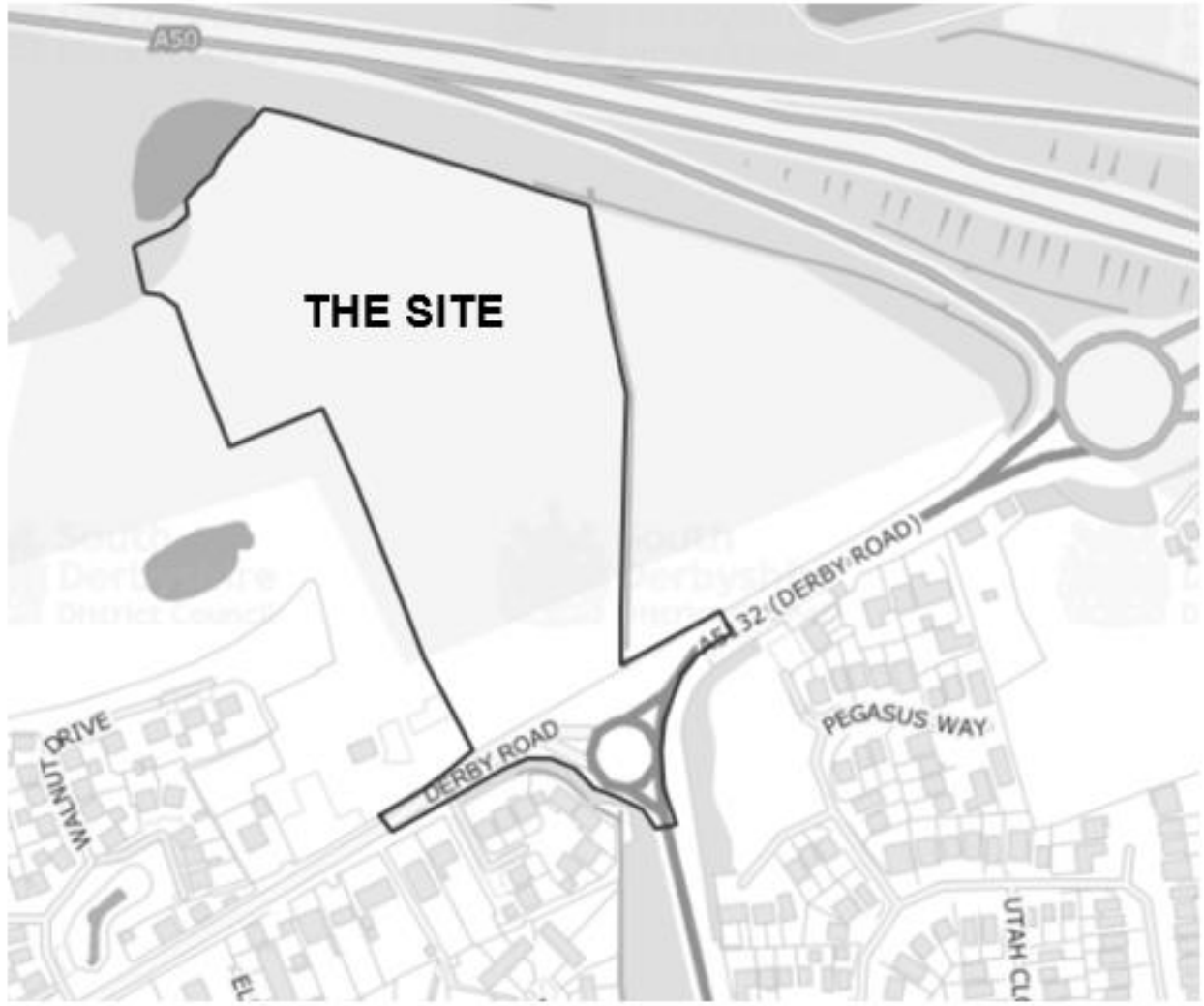
The proposal

The application seeks approval of outline planning permission with all matters reserved except access for the erection of a foodstore, commercial units, community space and a drive through coffee shop with associated parking and necessary works. The different elements as proposed at this stage are described individually below, noting that descriptions are brief due to the outline nature of the proposals:

Access

The proposed access off the existing Derby Road and A5132 roundabout would introduce a fourth entry / exit point to the roundabout for vehicles. The proposed access also includes landscape and highway alterations to facilitate pedestrian and cycle access adjacent the vehicular access and further pedestrian access to the southwest of the site from Derby Road. The footpath connects to a toucan crossing and from there to the existing pedestrian and cycle ways on the A5132 as it travels into the centre of Hilton.

DMPA/2024/0198 – Land North of Derby Road, Hilton, DE65 5JS



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Commercial Units

The proposed commercial units described as for small and medium sized enterprises (SMEs) are sited to the north east of the site adjacent in closest proximity to the A50 the building height here would be a maximum of 9m. The commercial units would deliver a gross internal area of 2909 sqm and be served by 47 parking spaces.

Drive-thru coffee shop

This is proposed to be located at the eastern side of the site, to the north of the point where the existing PROW enters the site. It will have a gross internal area of 155 sqm and a maximum height of 7m.

Community Open Space

400 sqm is reserved for community space in the eastern side of the site. The illustrative master plan shows this connects to paths leading to the public right of way crossing the site, the coffee shop and foodstore.

Landscaping and Ecological Works

Landscape enhancements are proposed across the site with additional landscaping around the highway works adjacent the A5132 and Derby Road. An ecological buffer zone of 6768 sqm is proposed to the north of the site between the SME units and the Hilton Gravel Pitts SSSI.

Applicant's supporting information

Planning and Retail Statement (PRS)

The PRS sets out the planning and retail context of the development outlining the result of household surveys and the planning considerations and benefits of the proposed development. It concludes that the development will comply with local plan policies (as specified) and provide for the needs of the growing population in Hilton, both through offering a greater choice locally and through the creation of jobs and workspaces.

Agricultural Quality of Land off Derby Road, Hilton, Report 2256/1, dated 27th November 2023, received 07/02/2024

The findings of the report state that quality of the land is primarily determined by draughtiness and wetness / workability, other factors assessed are set out not to affect the land grade. The quality of the land is summarised as being 1.1ha (27%) grade 3a and 3.0ha (73%) grade 3b

Air Quality Assessment, reference 7502r2, dated 02/02/2024, received 07/02/2024

The Air Quality Assessment (AQA) Identifies possible activities during the construction and operation periods that might impact air quality and the receptors which might be affected by changes to air quality. Mitigation measures are identified within the document which concludes that the proposed development has the potential to cause air quality impacts at sensitive locations during the construction and operational phases, noting that if good practice dust control measures are implemented during construction that the potential air quality impacts could not be significant. They also assess the operational impacts on air quality and conclude that the changes as a result of the development do not result in policy conflict.

Design and Access Statement, received 07/02/2024

The design and access statement sets out the context of the development, the opportunities and constraints and the evolution of the design. It lists the key opportunities as the provision of SME units, the ability of the foodstore to address the needs of the local population without requiring travel outside the area, the provision of a food and drink concession and area for community use the retention of landscape features and provision of Biodiversity Net Gain the use of the existing topography within the site to inform the drainage design using sustainable urban drainage systems, retention and improved access within the site to the PROW.

The conclusions of the DAS set out that the scheme has been designed sensitively to the context of the site and surroundings as well as to meet the needs of future operator without resulting in an undue impact upon the character of the surrounding area.

Economic Statement, Land North of Derby Road, Hilton, Project no: 70109234, dated January 2024, received 07/02/2024.

The Economic Statement identifies the conclusions of the South Derbyshire Economic Development and Growth Strategy 2023 – 2027 which identifies a limited supply and unmet demand for small and medium sized workspace within the district. It identifies economic benefits of £6.9m GVA generated per annum for South Derbyshire and that the proposed development will create 95 additional FTE jobs in South Derbyshire and 130 FTE net jobs in the East Midlands, generating £795000 in income tax and NI contributions. The phasing of development is timetabled within the economic statement setting out that the foodstore would be built with commencement and completion of 50% of the SME units to be at the point of the foodstore opening and the following 50% within 1 year. Phase 2 containing the community and drive-thru would be commenced 6 months after the proposed foodstore opens.

Landscape Visual Impact Assessment, Land North of Derby Road, dated January 2024, received 07/02/2024.

The conclusions of the Landscape Visual Impact Assessment state that the effects of the development have the highest impact to visual receptors within the site boundary, with the effect on the PROW being the highest and assessed as moderate adverse effects. The impact upon the character of the area is assessed as declining over time as the proposed landscaping matures from moderate adverse effects in the minimal adverse permanent impacts.

Ecological Impact Assessment (EclA), report No. E2181-R3, prepared by Bioscan, dated February 2024, received 07/02/2024.

The report sets out the relevant policy context and the methodology which includes both desk-based work and survey work undertaken on 3 separate occasions. The report confirmed a number of specially protected species and species groups to be present within or adjacent the site. It progresses to set out the potential effects of the development on ecological receptors and assesses both the effects in the absence of mitigation or compensation and the residual effects taking into account mitigation and compensation set out in the report. The conclusions of the report are that subject to mitigation proposed, in particular the introduction of a buffer zone comprising semi-natural grassland, wetland and scrub a positive effect upon the SSSI is likely to arise. The bolstering of existing hedgerows within the site is expected to achieve positive gains in the site, the above mitigation measures are considered to provide habitat enhancement for species observed as present.

Flood Risk Assessment, Trenport Investment Limited, Land north of Derby Road, Hilton, 680964-R1(03)-FRA, dated January 2024, received 07/02/2024.

The FRA submitted in support of the application sets out that flood risk from all sources has been considered in the proposed development and sets out that the site, located in Flood Zone 1 is outlined to have a less than 1 in a 1,000, or less than 0.1%, chance of flooding in any year from fluvial or other sources. The FRA states that discharge rates from the site will be limited to 7l/s which is a reduction in the rate required by local policy and has been achieved in response to comments from the Parish Council to provide a betterment to offsite drainage. It states that this will decrease the amount of surface water leaving the site and offer a reduction in downstream flood risk. The FRA further concludes that of the multiple sources of flooding considered no mitigation was required except for groundwater, this was assessed as a low to medium level of risk and monitoring was recommended to mitigate effects.

Foul Water Statement, Land North of Derby Road, Hilton, South Derbyshire, ref: 680964, dated 2nd February 2024, received 07/02/2024

The Foul Water Statement is supported by a response from Severn Trent confirming the capacity available within the existing foul water sewer and the requirements for connection to this.

Arboriculture Report & Impact Assessment at: Land North of Derby Road, Hilton, DE65 5FP, Reference: AWA5789 dated January 2024, received 07/02/2024

The report sets out the findings of assessment of the trees on site in respect of the health and classification of the trees and the detail of trees and groups of trees, and hedgerow that will be required to be removed in order to facilitate the development. It makes recommendation for tree protection and further assessment of T19.

Noise Assessment for Planning, AEC Report: P5122/R1/WJK, dated 26 January 2024, received 07/02/2024

The noise assessment sets out the methodology used and the baseline noise information gathered as well as putting forward assumptions on the expected noise levels from various activities associated with the proposed uses. The receptors for which assessment has been undertaken are Walnut Drive, Willowfields and Derby Road. Background noise levels note traffic noise as the main form of background noise at the receptors assessed during the study period. The conclusions of the report set out that the assessment outcome demonstrates low impact in terms of noise from the development during both the day and night at the sensitive receptors.

Noise Assessment for Planning, AEC Report: P5122/R1a/WJK: dated 19 April 2024, received 22/04/2024.

The updated report acknowledges the comments of the EHO in respect of LMAX noise and the potential impact this would have on the identified receptors. They state that the recommended maximum noise would be achieved in respect of increased movements. In respect of noise emissions from increased movement on the existing highway they state these would be negligible as a result of the development.

Preliminary Risk Assessment, Land off derby road, Hilton, ref: 323206-R01 (02) dated 19th January 2024, received 07/02/2024

The Preliminary Risk Assessment acknowledges the proposed use of the site and confirms the work undertaken was to identify any land contamination and, or, geotechnical constraints and to identify the need for any further investigation or remediation required to demonstrate the site is suitable for the proposed use. The information set out within the document comprises desk based work and a site reconnaissance. The recommendations of the report set out that an intrusive ground investigation study should be undertaken prior to commencement of development.

Transport Assessment, Land North of Derby Road, Hilton, Reference:237295, Rev: Final dated 6th February 2024, received 07/02/2024

The Transport Assessment concludes that the site is accessible and benefits from a range of sustainable transport opportunities including access to public transport and active travel within the vicinity. They note the local highway does not have a poor safety record and that subject to improvements to the roundabout safe access from the A5132 can be achieved. They summarise the development trip analysis and junction modelling, concluding that the assessed junctions are expected to operate within capacity, with minimal offsite delays at off-site junctions considered as negligible. They conclude that this demonstrates the development will be sustainable in traffic and transport terms and comply with relevant policy.

Transport Assessment Addendum, Land North of Derby Road, Hilton, Reference:237295, Rev: 2, Dated 16th April 2024, received 16/04/2024

Following initial comments from the LHA an addendum to the transport assessment was provided. The addendum sets out that it addresses comments of the LHA in relation to baseline traffic flows, Saturday pass-by factors, assessment scenarios, committed development, geometries of modelled junctions, operational assessment and comments of Hilton Parish Council in respect of the survey flow discrepancy. It concludes that all concerns of DCC LHA have been addressed and it has been shown that the range in survey data, collected on two separate days as identified by the Parish Council that the base data provides an appropriate basis for assessment of the impact of the proposed development.

Workplace Framework Travel Plan, Land North of Derby Road, Hilton, Reference:237295, Revision: Final, dated 31st January 2021, received 07/02/2024

The document sets out methods by which sustainable transport modes will be promoted, monitored, reported and reviewed. It details responsibility and timings for different initiatives contained within the plan.

Relevant planning history

None

Responses to consultations and publicity

Environment Agency (EA) - No comments 19/02/2024

The EA confirm in their response that the development falls within flood zone 1 and they have no fluvial flood risk concerns with the site. They further confirm there are no other environmental constraints associated with the site.

National Highways (NH) - No objection 06/03/2024

The response from NH considers the location of the site in relation to the Strategic Road Network (SRN), the closest SRN is the A50 and associated slip roads to the north east of the site. They consider geo-technic effects on the SRN unlikely due to the distance between the site and the SRN. In respect of drainage they consider that surface water drains run away from the SRN and the proposed attenuation basin and storage will collect surface water when required. They advise that any water run off that may arise due to the change of use will be accepted into the highway drainage system and no new connections will be facilitated for third party development or drainage. Glint and glare concerns are considered to be negated by the existing wooded boundary and presence of existing street lighting. In respect of traffic impacts they agree with the findings of the assessment on the dumbbell roundabouts that the SRN junction continues to operate within capacity in the post development scenario and set out that they do not consider the impacts to be significant. They offer further standing advice.

Natural England – No objection subject to appropriate mitigation being secured 07/03/2024

The response from Natural England (NE) sets out that they consider that, without appropriate mitigation the proposed development would damage or destroy the interest features for which Hilton Gravel Pits Site of Specific Scientific Interest (SSSI) has been notified. The set out the following measures without which they consider the development would be unacceptable.

- Create a buffer between the development and SSSI
- Ensure surface water drainage is managed for impacts to the SSSI
- Ensure impacts to air pollution, water pollution, habitat loss and breeding birds are managed through a Construction Environment Management Plan (CEMP)

Derbyshire County Council – Local Highway Authority – No objection

Final comments – Updated information in relation to the traffic flows used to assess impact in the TAA are acceptable. The details set out within the Transport Assessment Addendum TAA and the proposed junction modelling work will ensure a robust assessment of the Saturday peak hour and is considered acceptable. Comments accept the proposed use of 2029 as the future year for modelling and retention of 2023 rather than 2024. Reinstatement of trip generation from existing Aldi store is welcomed and confirmed to provide a robust approach.

Review of previously requested geometric parameter plans confirm the data used within the operational assessment models is acceptable.

In assessing the operational assessments for the junctions requested the LHA Officer confirms that the site access junction is modelled at a worst case scenario and that the proposed access roundabout can accommodate traffic generated by the proposals. In respect of the A50 western dumbbell junction the comments confirm this would continue to operate within capacity with the additional traffic and that queue time at peak hour is forecast to increase by 10 seconds but will not result in queues extending beyond the off-slip or blocking the main line. The Eastern Dumbbell on the A50 will not be materially impacted. The comments refer also to the response of National Highways who confirm no concerns regarding the development. In respect of the other junctions assessed and in conclusion the LHA Officer states that there will not be a material impact upon the local road network particularly when taking account of the robust assessment undertaken.

Overall the Local Highway Authority has no objections subject to conditions being imposed securing:

1. No commencement of development before the site access works approved under Section 278 by the Local Highway Authority
2. Implementation and monitoring of the approved travel plan.
3. Prior commencement requirement for a Construction Management Plan

The inclusion of informative notes is also requested.

Initial comments (15/03/2024) – Accessibility – The Highway Officer noted the content of the TA in relation to accessibility and note that the site is located close to 2 bus stops with connection to Derby and Burton upon Trent and cycle and walking routes providing opportunities for active travel. They note the commitments of the TA in respect of provision of a toucan crossing linking the site with pedestrian and cycle infrastructure; upgrades to the PROW within the site; provision of secure and surveilled cycle spaces, provision of shared surfaces enabling off road travel within the parcels of the development and a Framework Workplace Travel plan to encourage future staff to use more sustainable modes of transport. They note the application is in outline and that the internal site measures will be considered as part of any future reserved matters application.

The comments requested additional information for the base traffic flows requesting survey dates be provided and the submission of the raw data for the ATC and turning count surveys.

The comments set out the personal injury collision data and accept the conclusions of the Transport Assessment in this regard.

Comments note the proposed works to the existing roundabout to facilitate the vehicular access, they state that amendments to the design of the roundabout will be required but this can be conditioned and form part of the section 278 works.

In respect of the internal road layout this is considered acceptable in principle with detailed comments to be supplied as part of the consideration of reserved matters. This approach is reflected in comments related to the parking strategy.

In respect of servicing and delivery the comments set out that access strategy will not cause disruption to the free flow of traffic or lead to an adverse effect on safety. The upgraded roundabout is considered able to accommodate HGV movements but that internal servicing will be considered as part of future reserved matters.

The comments considered that trip generation methodologies submitted were acceptable as was the resultant trip distribution onto the highway. It was requested that the assessment scenarios and operational assessments be updated to 2024 and 2029. In respect of committed development the comments request that trip generation from the existing Aldi store within Hilton should not be removed.

Further information on operational assessments of the modeled junctions be provided at which stage further comments will be issued.

Derbyshire County Council – Lead Local Flood Authority (LLFA) – No objection subject to conditions 22/03/2024

The LLFA issued a conditions response to the proposed application, in their site specific comments they note that it should be demonstrated that the watercourses have sufficient capacity and are in good condition for surface water discharge. The conditions requested are summarised as:

- Prior to commencement condition for detailed design and associated management and maintenance plan off the surface water drainage, in accordance with the submitted details.
- Prior to commencement condition for the submission of a detailed assessment of the proposed destination for surface water which accords with the drainage hierarchy within the Planning Practice Guidance.
- Prior to commencement condition for a construction surface water management plan

Derbyshire County Council – Public Rights of Way Officer – No objection 18/03/2024

Final comments – the applicant responded to the comments below in respect of the perceived potential crossover between the potential future access road and the public right of way. The applicant confirmed that the area in question was proposed as a pedestrian access. The PROW Officer confirmed that this addressed their concerns.

Initial Comments confirmed the presence of Hilton Public Footpath No. 11 running through the proposed development site. They stated there was no objection in principle to the proposal to divert the footpath and make it useable within the site and advised an application to SDDC would be required for the diversion. They observe the apparent route would run along what is intended to become an access road to the adjacent site, if one is needed in the future. They set out the importance of ensuring the path is kept separate from the access road, so that they may run parallel but not along the same line.

They set out that during the planning process additional regarding the width and surfacing of the path, and details of boundary crossings will be required. They note the footpath 11 is a cul de sac path, in that it does not link to the network at one end and has not been prioritised or used for some time, noting that public rights still exist they set out the footpath should be treated accordingly in respect of any required temporary closure during works and advice these will be permitted on application to DCC only where the path(s) remain unaffected on completion of the development or, where a diversion is required under the provisions of the Town and Country Planning Act 1990, that the Order has been Confirmed. They set out a confirmed Diversion Order will therefore be needed before a temporary closure could be granted. And note that construction works could be delayed if the Order is not confirmed in good time. The applicant should be advised that an application can be submitted for the diversion of the public footpath in advance of planning permission being granted.

East Staffordshire Borough Council – No objections 28/02/2024

The Comments reflect the findings detailed within the supporting information that advise no significant impact on the vitality or viability of Burton or Uttoxeter Town Centres or on any existing, committed or planned public or private investment in those locations. They further state that the evidence advises that the cumulative impact of the proposal with planning application SDDC ref DMPA/2023/1062 (ESBC ref P/2024/00136) is not considered to have a significant adverse impact upon these centres or any planned or public or private investment in these centres. They note the impact forecast upon the retail provision at Tutbury and Rolleston on Dove. The comments conclude on the basis of the information submitted and the level of convenience, comparison and commercial floorspace proposed, it is considered that Tutbury and Rolleston on Dove will retain the ability to function as Rural Centres and offer a basic level of shopping and service function for each settlement and its immediate rural hinterland, as is their role as a Tier 1 Strategic village. The comments offer no objection but request consultation in the event that the commercial and comparison floor space are proposed to be changed.

Derbyshire Wildlife Trust (DWT) – No objection subject to condition

Subsequent comments – The additional comments received note recently discovered species activity in the site surroundings. Having regard for the activity they consider it necessary to attach a further condition to the application to ensure that the species needs are fully considered during the construction of the development and as part of the biodiversity enhancement works.

Initial comments - DWT confirm review of the submitted documents and confirm the ecological assessment is considered to provide the Council with sufficient information to assess the potential impacts and review the proposed mitigation and compensation. They note the relationship between the site and Hilton Gravel Pits SSSI.

They note the type and value of habitats present at the site and the quality of the pond within the SSSI. Commentary is made upon the likelihood of different species using the site. Comments confirm the proposals within the BNG assessment and review the landscaping and habitat enhancement and creation proposed. Noting the figures referenced of a post development gain of 15.98% of habitat and 11.49% of hedgerows. They welcome this gain given the proposed development was submitted prior to BNG becoming mandatory. They consider that there will be some uncertainty in the figures, but note that with more than 10% sufficient cushioning is present to ensure a net gain

The comments conclude that the impacts of the project have been fully considered within the ecological assessments and habitat loss is minimal. They set out that the mitigation hierarchy has been applied and it has been demonstrated that on-site net gain is achievable. They note Natural England have not objected to the proposed development and recommend the conditions put forward are secured. They note that any changes to the proposals may affect BNG and should these be proposed further

consultation with NE and DWT would be required.

They request conditions in relation to:

- Construction Environment Management Plan for Biodiversity
- Species enhancement
- LEMP
- Lighting

South Derbyshire District Council

South Derbyshire District Council – Biodiversity Officer – No objection subject to conditions and obligations – 10/05/2024

Final comments – The final comments of the Biodiversity Officer state that water quality monitoring will provide empirical evidence based assessment of water quality of the pond within the SSSI and this would be in accordance with the Council's Ecological Emergency declaration. They note that conditions will be required to secure the on site biodiversity net gain and obligations under S106 to secure the required fee to enable the LPA to monitor the BNG at the required intervals.

Previous Comments - request the Water quality within the pond located within the SSSI is tested as well as observed in order to provide evidential monitoring as well as observational monitoring.

South Derbyshire District Council – Design Officer – No objection 25/03/2024

The Design Officer confirms the illustrative masterplan is in accordance with their recommendations and they are content that the proposals reflect these and have no further comment.

South Derbyshire District Council – Economic Development Manager – No objection subject to conditions

Subsequent comments – requested further detail be added to the Local Labour strategy condition proposed wording to define the details of the condition. 10/05/2024

Initial comments – requested clarification on the delivery of the proposed SME units, querying why half of the development would be built prior to the opening of the food store. The sustainability measures proposed and the scope for inclusion of local labour initiatives to secure employment opportunities for the foodstore and drive-thru. They note the inclusion of potential to provide access through the site to other areas of Hilton. Concerns are expressed regarding the potential for SME units being a mix of customer facing business eg hairdressers, and manufacturing/logistics businesses with their distinctly different characteristics. – Request clarification 22/03/2024.

South Derbyshire District Council – Environmental Health Officer (EHO) No objection

Final comments – Confirm that sufficient further information has been provided that given this is an outline planning permission the principle of the development is acceptable. They recommend conditions should permission be granted and set out that if significant changes to the layout are proposed additional noise mitigation may be required. The offer no objection subject to conditions for

- Construction period restrictions in relation to burning of vegetation or other materials
- Limiting the hours of construction
- Conditions in relation to contaminated land investigation, any necessary remediation and validation; the occupation of units is not commenced until any remediation and verification are validated.

Subsequent comments – state that the noise levels could impact properties on Walnut Drive and request further information on the noise barrier detailed within the calculation. 01/05/2024

Initial comments – In respect of the noise assessment the Environmental Health Officer requested further consideration of the impact on Receptor D of the Noise assessment and included detail of this, it also requested the assessment consider the LMAX noise levels on the residential receptors at Walnut Close from the commercial properties. Object - 09/04/2024

South Derbyshire District Council – Tree Officer – No objection 07/03/2024

The Tree Officer notes the proposed removal of trees and hedges and states they are in poor structural and physiological condition and require removing in the interests of safety and good tree management: They note that no works are required to protected trees outside the site. They note T19 is classed as a veteran tree and it is recommended that a more detailed risk assessment is advised and any remedial works recommended should be undertaken to enable the tree to be retained within the development. They note the proposed tree protection measures and advise these are secured via condition of any forthcoming approval.

Hilton Parish Council (HPC) – Object

Comments from the Parish Council are received in objection to the proposed development. These are summarised below:

Access, Highway Capacity and Safety

- The surrounding road network would not cope with the increased traffic and the development would not satisfy the requirements of Policy E7
- The A5132 roundabout will be unable to cope with the increased traffic flows at certain times
- There are discrepancies in the traffic and transport data
- The TA does not account for the proposed Aldi store and fails to model the specific issues in relation to this that will arise on the A5132 / Derby Road roundabout due to the difference in routing to and from existing and proposed stores.
- The Parish Council request the modelling account for higher vehicle numbers and period is extended to 2035.
- Further issues will arise to the roundabout as a result of traffic turning right into the proposed Aldi store – It would be preferable for all traffic to entre both sites via the fourth arm created to access the Trenport site and then through the site or a fifth arm – The Parish Council consider these options should be modelled prior to any decision being made. The Parish Council requested dialogue between the developers.
- The comments welcome the provision of a Toucan crossing but dispute this will connect to the existing pedestrian and cycle infrastructure stating there is a gap between the existing and proposed cycle route on the A5132. They state this should be joined in order to comply with policy INF2 B(i).
- They request assurances that the effects of the Toucan crossing on traffic flows have been fully considered in the Transport Assessment queuing analysis.
- Concerns are raised regarding the impact of increased traffic on school children utilising local routes and the absence of pedestrian or crossing aids at junctions in the vicinity.
- Concerns are raised that the relocation of the bus stop will result in increased traffic congestion and request positioning is reassessed

Drainage

- The comments challenge the findings for the Flood Risk Assessment (FRA) stating it fails to recognise the reality of the site.
- The comments state that the assessment is based on conditions prior to the construction of the A50 and that water from the SSSI on the north side of the A50 is now directed via a culvert under the A50.
- They state the presence of at least two springs serve to maintain a high level of groundwater, surface water is not retained on site.
- The FRA underestimates groundwater levels and the surface water mitigation proposals will be rendered ineffective.
- Flooding is already experienced at the southern end of the site onto the bus layby on Derby Road.
- SDDC Councillors should visit and be made to understand the extent of the problems.
- THE EclA contains photos in April which show surface water present at the higher part of the site which show surface water.
- HPC believes that as submitted the proposals do not meet flood risk policy SD2 A and B.

- HPC suggest that a reappraisal of the development is undertaken to understand the balance of the benefits of the development against the flood risk. They consider this should include downstream effects of surface water runoff as a result of the connection to existing drainage systems that direct water to an area which experiences flooding in heavy rain and it the subject of a current investigation.
- They suggest reduced area of development to be managed without SUDS and reiterate the need for a thorough reappraisal of flood risk and mitigations is required.
- They query why submissions to Severn Trent are redacted in relation to the sewerage connection.
- They raise concerns regarding adding to the sewerage system and capacity. Noting that Severn Trent at times deploy tankers during heavy rain to pump out the Mill Lane pumping station.
- They state a more transparent appraisal of the sewage disposal is required for the whole system, not just the Trenport development.

Biodiversity

- The Ecological Impact Statement fails to properly identify presence of protected species in
- Comments recognise that providing the buffer zone of wetlands is a good way of achieving the biodiversity net gain, but state that it is not clear that the green corridors and connectedness that the parish council, DWT and policy BNE3 A (iii) are seeking, would be best served by this
- Whilst a 10% gain in biodiversity can be demonstrated, it is not clear that there will not be 'significant harm'.
- Request the environmental buffer is left as grazing land that would better support local species

Development outside the settlement Boundary

- They state it is unclear if the proposal complies with BNE5 (iii) as at least some of the development, if not all, is avoidable outside the settlement boundary. Comments refer to areas of Lowman Way allocated for commercial units.

Commercial units

- Query the proposed height of the commercial units for the types of businesses that are cited as being interested and suggest lesser heights. Refer to a 2018 permission (application 9/2018/0824), with maximum ridge heights of 4.2m. State this would lessen the visual impact and request the heights are reduced to less than 7.5m

Other issues and recommendations

- They consider that a smaller development, not including commercial units, and resulting in less development would be more appropriate
- Note the provision of play facilities consider that whilst these serve a purpose for users of the development they are unlikely to be a destination as there are other playgrounds away from such busy areas.
- They state it was hoped that the development could provide for much needed allotments in Hilton and this is disappointing. Though they acknowledge that groundwater conditions may not be suitable for allotments
- In order to align with Neighbourhood Plan policy H4, the Parish Council requests the maximum use of solar panels and heat pumps in all buildings.

Objections on behalf of the neighbouring land owner:

Representations are received from Avison Young on behalf of Aldi Stores Limited, Avison Young act in capacity of planning agent for Aldi who are the neighbouring land owner.

The comments state they consider whether the key policy requirements in the Local Plan have been addressed by the application and conclude that these have not. They identify the site as outside the settlement boundary for Hilton as defined by the Local Plan and Neighbourhood Plan for the area. They set the policy context for Rural Development within the Local Plan identifying Policy E7 stating that

it only allows for the development of new buildings in the Rural Area where those proposals satisfy five criteria, with criterion i) being that such proposals must be supported by a sound business case; The comments state that in order to comply with the requirements of E7i) (sound business case) the applicant should submit a Financial Viability Assessment.

The comments state that submissions do not demonstrate that a “sound business case” exists, so that Policy E7 criterion i) is not satisfied, and that this is a conflict with the local development plan so that planning permission should be refused.

The comments then highlight key features of the application and case put forward in support of the proposals. These are summarised here:

- The application is submitted in outline and is supported by an Illustrative Masterplan showing a foodstore drive-thru, and Commercial space for SMEs
- In the absence of a named operator for the foodstore they consider it is not possible for the LPA, or any other party, to reach any conclusion on the intended operator.
- They consider as the operator is unnamed it cannot be assumed that interest is secured from any operator, meaning that the application is speculative in relation to the foodstore element. They state that as the Community Use is not defined it is not possible to reach any conclusions on the potential benefits that might arise from this part of the application
- Parameter Plans are provided with the application. Trenport expects that compliance with the Parameter Plans will be secured by way of planning condition having regard to WSP’s comment at para 1.1.4 of the Planning & Retail Statement (PRS) that the Parameter Plans will give [the Council] greater control over the finished development. That being so, it is reasonable to interpret the intended outcome with reference to the Parameter Plans.
- Comments set out due to the proposed phasing there is a risk that the foodstore may be built out but the commercial, drive-thru and community uses may not come forward.
- Comments describe the layout of site and commercial units and the proposed floorspaces indicated on the land use parameter plan.
- The comments state that if the LPA is to give weight to the benefits set out to be derived from the commercial units the phasing of delivery should be adjusted to prevent the foodstore opening before the commercial units are constructed and suitable for occupation.
- The comments state that in addition to demonstrating a sound business case for commercial use proposals, E7 i) must also be satisfied through the demonstration that the foodstore and drive-thru are necessary to render the commercial use viable.
- Comments state the Economic Statement is a commentary on evidence base documents, and is not robust evidence that could be characterised as a “sound business case” to satisfying the requirements of Policy E7 i). It relies upon the conclusions of conversations with agents, occupiers and the Economic Development Officer at SDDC. Minutes and meeting notes from those discussions are not provided. A sound business case must at least be one that is demonstrably capable of withstanding scrutiny.
- Considers the supporting information is anecdotal and conclusions should not be relied upon as satisfying the requirements of Policy E7 i).
- Section 5 of the Economic Statement is drafted on the basis that the foodstore (Phase 1A) and drive-thru (Phase 2) are needed to render the Commercial Units (Phase 1B) viable. This is consistent with the comments at para. 3.1.1 of the PRS. This is a fundamental part of Trenport’s case, notwithstanding the reference at 1.1.1 of the PRS to this being an application for retail-led mixed use development. It is immaterial whether the scheme is retail-led or commercial-led as Trenport have asked the LPA to treat the uses “collectively” and as a “comprehensive package” for reasons of viability. Put another way Trenport presents its proposals on the basis that its scheme is indivisible.
- The LPA should not accept an approach to phasing that would allow the foodstore to be completed first, with no guarantee that the commercial uses would follow.
- It also makes it incumbent on Trenport to provide robust evidence that its assertions in relation to viability are reasonable.
- When an applicant claims that elements of a scheme are unviable on their own, it is essential that this claim is proven by an appropriate assessment of viability. Comments state, the appropriate assessment in this case should be the preparation of a Financial Viability

Assessment (FVA) adopting the residual appraisal methodology. This is stated to be accepted methodology for assessing viability and recommended in the PPG, NPPF and RICS guidance. The comments set out what they consider the FVA should include. Summarised as testing of alternate scenarios of the proposed development components.

- Comments set out that without this type of assessment it is not demonstrated that the commercial floorspace is not viable in isolation because of the development cost and fails E7 i) on this basis for the mix of uses proposed.
- Comments consider that the sequential test should be applied not only for the site as a whole but also on a disaggregated basis in the absence of a viability assessment that sets out the need for uses to be delivered as a whole. They consider the LPA should direct the applicant to either provide evidence on viability to support its approach to the sequential test, or re-do the sequential test and search for sites and opportunities that can accommodate the drive-thru unit and foodstore separately.
- The comments refer to the Aldi PRS and the approach taken to the search for more centrally located sites, having regard to relevant judgments and appeal precedent, which is that any more centrally located sites must be suitable for the “broad type of development that is proposed” (as per the ‘Mansfield’ Judgment). The comments state that this approach is legitimate for Aldi’s submissions, given that the operational requirements of a Limited Assortment Discount foodstore provide the basis for setting the reasonable limits to the flexible approach that is required by the NPPF (para 92). They set out that in assessing other sites, this submission, which states it could be occupied by either a regular or discounted foodstore should undertake a disaggregated sequential assessment on this basis.
- The comments conclude that the application does not satisfy the criteria of E7 i) to provide a sound business case either in relation to the commercial uses or in relation to the need for the foodstore and drive-thru to render the commercial uses viable. They state for this reason the application cannot be positively determined on the basis of information submitted to date.
- They conclude there is a risk that the foodstore will be developed and open prior to construction of the commercial and community uses and that these may then not be delivered. In the absence of amended timing for delivery, which the comments infer would add weight to the benefits, the comments state that the benefits set out through the delivery of commercial units should be disregarded

The comments reiterate they consider the applicant should evidence better a sound business case for the commercial units, additional evidence demonstrating the commercial uses are not viable without the foodstore and drive through, stating a FVA is required. Finally that a disaggregated sequential assessment should be provided.

Comments of Members of the Public

Comments were received in response to the application from members of the public both in support and objection to the application. 8 of the comments object (noting one submission is received verbatim from the same member of the public) 12 comments of support and one stating no objection were received.

Comments of objection are summarised as:

- a) The roads and roundabouts in that area are already extremely busy and approval would make things far worse even with the proposed road alterations.
- b) When the A50 is closed this increases lorry traffic in this location and the proposed amendments to the roundabout would exacerbate this.
- c) The increased traffic volume will be a danger to pedestrians, school children and vehicle users. Safe use of the highway and footpaths for vehicles and pedestrians in this congested area must be guaranteed.
- d) Most residents will have to drive to this location as it is too far and too unsafe from the village to walk. Other locations should have been considered.
- e) Nothing has been done about traffic using Hilton as a rat run.
- f) More traffic calming measures are required within the village.
- g) The traffic survey is incorrect

- h) There is already a proposed Aldi store adjacent that will significantly increase traffic. Hilton does not need two supermarkets next to each other. The developers do not acknowledge the other application in their application.
- i) This is more like a services. The development will become Hilton Services.
- j) People of Hilton will experience increased noise, pollution and traffic
- k) Greedy developers target Hilton and are only interested in making large amounts of money at the expense of local people. There is no benefit to the people of Hilton who require more amenities.
- l) Green spaces should be left alone. This is a grazing field with valuable farming uses and this sort of development is not appropriate here; a brown field site would be better.
- m) The development of the site results in a loss of farmland and open countryside and livestock grazing land.
- n) The site is enjoyed by people walking in the north of Hilton.
- o) If the biodiversity of green farmland is not as high as other environments it is clearly higher than a concrete shopping centre. It is surely against the SDDC Climate Change commitments to build a car-centred, drive-thru development on working farmland green space.
- p) Wildlife and other environmental issues are not appropriately dealt with in the submission. The findings of the EclA in respect of protected and priority species on and adjacent the site.
- q) If permission for the development were to be Granted then the water table on the whole of the site must not be lowered as it may cause the SSSI lake area to drain through the gravel layers so totally destroy it, and damage the wet grazing area around the lake for the nesting birds to feed.
- r) This will set a precedent in Hilton for destruction of the countryside.
- s) Concerns regarding drainage, road flooding and the impact on Hilton Brook. Developers have not considered the impact of the loss of green land on flood risk. Flooding has increased since the Lucas Lane development.
- t) There is a risk that the development could result in offsite flooding to neighbouring land if the capacity of the proposed attenuation is exceeded due to limited discharge rates to existing drainage infrastructure.
- u) Would like to know that with the expanse of hard standing, there would be sufficient prevention of potential floodings further afield to the requested development.
- v) Speculative applications are not wanted or needed.
- w) The land has been farmed by a tenant producing milk for circa 20 years, it is fertile and productive providing silage and grazing land for dairy cattle. This seems to suit the SSSI and allow for nesting birds to use the land, low fertilizer rates avoid contamination of the SSSI.
- x) If the land is lost there would be an impact on the existing business as they would have to import grass and transport cattle to alternate grazing sites which would increase the carbon footprint of the business.
- y) Strongly recommend a visit to the site by the Planning Committee before making a decision, in order to see for themselves the SSSI and surrounding area to see the full devastation and impact this proposed new development would have upon such a beautiful area of the village.

Comments of Support are summarised as:

- a) Local businesses have written to express support for the proposals considering this provides opportunities for their business to have premises / suitable spaces for expansion in the area.
- b) Local businesses have been unable to find suitable spaces within the local area.
- c) This provides much-needed space for SME enterprises and is a great asset for the community of Hilton.
- d) References are made to the opportunity to provide opportunities for different kinds of businesses including:
 - o Hilton Creative Hub studio and recording space for musicians, musical tuition, rehearsal space, studio days and rental space for music teachers
 - o Roofing and solar PV business that is expanding and requires additional office and storage space. (business growing since 2009 and have aspirations to purchase space)
 - o Sole traders
 - o Rural enterprises
 - o Space for start-ups

- e) Support identified need and policy objectives from South Derbyshire District Council and the Hilton, Marston on Dove and Hoon Neighbourhood Plan
- f) No concerns regarding the appearance and size of the buildings, the effect upon highway safety, access or parking provision
- g) The plans and proposals provided are sound and provide suitable safe entry and exist points.
- h) Hilton is growing and current infrastructure for amenities does not cater for the community
- i) The development provides a great opportunity to provide jobs for local people, other than the limited existing number in pub and amenity roles, this would also reduce their need to travel for work.
- j) The location makes sense – in particular because of the planned development on the adjacent site, construction at the same time would be better than separate construction phases. The increased traffic is most likely to only affect a small section of roads from the A50 to the site and avoids increased traffic flow through the main part of the village.
- k) Strong support for the creation of a new foodstore / supermarket. Aldi is insufficient to meet current needs and as such they travel for 20 – 30 minutes. This provides more opportunity for a greater choice and variety enhancing convenience, accessibility and shopping experience for residents.
- l) The village needs more amenity and the associated job creation is a good opportunity for the people of Hilton.
- m) Swift action is urged for implementation as the project will greatly benefit the Hilton and South Derbyshire Community.
- n) The inclusion of a coffee shop is welcomed, this should be a sit down as well as drive-thru facility.
- o) There has been a lot of change in the past 30 years, progress and these facilities are now needed rather than traditional butchers etc.
- p) Understand other residents concerns about traffic but don't think these make sense, there is currently traffic chaos at times near the existing Aldi as people come from surrounding areas, this new development would remove that issue and keep traffic closer to the A50. Similar developments in other towns also have ample parking provision.
- q) The development can only be good for our village as it will provide more food shopping choice, less need to drive out of the area for your shopping (especially important for so many reasons), More local jobs, Local facilities for socialising, including a play area and a coffee shop with a drive-thru, Local business space for start-ups and small-to-medium enterprises and opportunities for rural enterprise
- r) Supporting information set out the proposals meet the requirements of the South Derbyshire Economic Development and Growth Strategy 2023-27 as well as the Derby and South Derbyshire Employment Land Review (October 2023) and that South Derbyshire has a shortage of B2/B8 Premises of all sizes - despite there being demand, and particularly a shortage on industrial units of 500-1,000sqm - (PLANNING AND RETAIL STATEMENT - Page 12)

Relevant policy, guidance and/or legislation

The relevant Development Plan policies are:

(2016) Local Plan Part 1 (LP1): Policy S1: Sustainable Growth Strategy; Policy S2: Presumption in Favour of Sustainable Development; Policy S3: Environmental Performance; Policy S5: Employment Land Need; Policy S6: Sustainable Access; Policy S7: Retail; Policy E2: Other Industrial and Business Development; Policy E7: Rural Development; Policy SD1: Amenity and Environmental Quality; Policy SD2: Flood Risk; Policy SD3: Sustainable Water Supply, Drainage and Sewerage Infrastructure; Policy SD4: Contaminated Land and Mining Legacy Issues; Policy SD5: Minerals Safeguarding; Policy BNE1: Design Excellence; Policy BNE3: Biodiversity; Policy BNE4: Landscape Character and Local Distinctiveness; Policy INF1: Infrastructure and Developer Contributions; Policy INF2: Sustainable Transport; Policy INF7: Green Infrastructure

(2017) Local Plan Part 2 (LP2): Policy SDT1: Settlement Boundaries and Development; Policy BNE5: Development in Rural Areas; Policy BNE7: Trees, Woodland and Hedgerows; Policy RTL1: Retail Hierarchy

Hilton, Marston on Dove & Hoon Neighbourhood Development Plan (NDP) (2021): Policy N1: Noise Mitigation; Policy A1: Air Quality; Policy CP-T1: Highway Safety and Traffic Management; Policy F1: Flood Mitigation; Policy E4: Nature Conservation; Policy E5: Biodiversity; Policy L1: Recreational Facilities

The relevant local guidance is:

South Derbyshire Design Guide Supplementary Planning Document (SPD)
Employment Land Review (2023)

The relevant national policy and guidance is:

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

The relevant legislation is:

The Town and Country Planning Act (1990)

Planning considerations

Taking into account the application made, the documents submitted (*and supplemented and/or amended where relevant*) and the site and its environs; the main issues central to the determination of this application are:

- The location of the proposed development outside the defined settlement boundary
- Retail and economic impact and need
- Access, highway capacity and safety
- Design and impact upon the character of the area
- Residential Amenity
- Ecology and Biodiversity
- Trees and Landscaping
- Flood risk and drainage
- Developer contributions
- Other issues
 - Contaminated land
 - Agricultural land
 - Amenity spaces

Planning assessment

Policy and principle of development

Section 38 (6) of the Planning and Compulsory Purchase Act (2004) sets out that the determination of applications must be made in accordance with the development plan unless material considerations indicate otherwise. The Development Plan for the application site comprises the Local Plan, Part 1 (2016) and Part 2 (2017), in this location the Hilton, Marston on Dove and Hoon Neighbourhood Development Plan was made on 4th November 2021 and, as such, carries full material weight in decision making.

The NPPF advises that local planning authorities (LPA's) should work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area and that decision makers at every level should seek to approve applications for sustainable development where possible.

Section 6 of the NPPF requires in paragraph 85 that planning decisions create the conditions in which businesses can invest, expand and adapt. Requiring that significant weight be placed on the need to support economic growth and productivity. Paragraph 87 sets out planning decisions recognise the specific location requirements of different sectors including provision for storage and distribution operations at a variety of scales and in suitably accessible locations. Para 89 recognises that land may not be available within rural settlements that provides for growing needs and as such lands adjacent or close to the settlements, but outside boundaries may be required for development to support local economic and business needs. The framework discuss how such sites should relate to the existing settlements physically and be served by appropriate transport facilities and access so as not to have an unacceptable impact on local roads.

In order to ensure the vitality of town centres LPAs should apply a sequential test to planning applications for main town centre uses which are neither in an existing centre nor in accordance with an up-to-date plan. Advising that only if suitable sites are not available or expected to become available should out of centre sites be considered. It further advises that when considering edge of and out of centre proposals preference should be given to accessible sites which are well connected.

The application site lies outside the settlement boundary of Hilton as defined by Policy SDT1 of the LP2, which defines Hilton as a Key Service Village. The Policy sets out that where development proposals are outside the settlement boundary, within rural area, development will be limited to that which are considered acceptable inter alia by Policy BNE5.

Policy BNE5 further defines the types of development acceptable in Rural Areas, stating that planning permission will be granted where the development is allowed for subject to a number of criteria, of relevance to this proposals are the following criteria:

- i) allowed for by policies H1, H22, E7, INF10, H24, H25, H26, H27 or H28; or
- iii) unavoidable outside settlement boundaries; and
- v) will not unduly impact on: landscape character and quality, biodiversity, best and most versatile agricultural land, and heritage assets

It should be noted that the proposals must satisfy one of the criteria from i - iiiii and the requirements of criteria v.

This application is assessed against whether or not it is allowed for by policy E7 - Rural Development and Policy E2 - Other industrial and Business Development. Though not listed within BNE5, Policy E2 Part A sets out that the development of land for uses defined by classes B1 (b), B1 (c), B2 and B8 of the Use Classes Order will be permitted where:

- i) the site lies within or on the edge of the Swadlincote urban area, Derby or Burton upon Trent, or a Key or Local Service Village; or
- ii) the proposal is for the expansion of an existing business; or
- iii) the proposal is for the redevelopment of established industrial or business land or premises.

Though Policy E2 is not included within policies specified the exception to development within rural areas set out in BNE5 part i) the appeal decision at the immediately adjacent Talbot Nursery site (APP/F1040/W/20/3246651) concluded that the omission of Policy E2 from the exceptions within BNE5 i) "appears to be an omission since it is difficult to envisage how a proposal that is expressly supported by Policy E2 could be in conflict with other policies that seek to control development outside of the settlement boundaries (Paragraph 9)".

Policy E2 is included in consideration of this application in order to ensure that the different uses of the site, including the proposed SME units are considered.

Policy E2 predates changes to the Use Class Order in 2020 which now places Use Class B1 within Use Class E, for the purposes of Policy E2 these include: former use B1(b) - Research and development of products or processes and B1(c) For any industrial process (which can be carried out in any residential area without causing detriment to the amenity of the area).

Policy E7 sets out that the Council will support development proposals which diversify and expand the range of sustainable employment activities on land outside of settlement boundaries provided that these support the social and economic needs of the rural communities of the District. It sets out that the Council will support proposals for the re-use, conversion and replacement of existing buildings and the development of new buildings where:

- i) it is supported by a sound business case
- ii) the local highway network is capable of accommodating the traffic generated
- iii) development will not give rise to any undue impacts on neighbouring land;
- iv) it is well designed and of a scale commensurate with the proposed use

Similarly to Policy E7, part B of E2 secures the proposals are in scale with existing built development and should not give rise to undue impacts on the local landscape, natural environment or cultural heritage assets.

In consideration of the application the different uses of the site are assessed against the criteria laid down in Policy BNE5 in respect of the development allowed outside the settlement boundary and including both Policy E7 and Policy E2. Policy E2 is included having due regard for the above referenced appeal decision which is a material consideration.

The application site lies adjacent to the settlement boundary of Hilton which is a key service village. The site proposes different uses falling within classes E and B of the use class order. Though adjacent the settlement boundary the site is undeveloped and within the rural area.

The policy context for the types of development proposed outside of the defined settlement boundaries is set within the NPPF and the Local Plan. Policy E7 sets out support for development proposals that will diversify and expand the range of sustainable employment activities on land outside settlement boundaries provided that support the social and economic needs of the rural communities. The NPPF recognises that the social and business needs of rural communities may need to be served by development on land outside the settlement itself.

In respect of this, the application has undertaken pre-submission work to establish the need for units to support small businesses within Hilton and the surrounding areas, a number of letters from such businesses in support of the application are received. Furthermore, the Council's Economic Development Manager confirms there is a need for such provision within the area, this is considered to demonstrate compliance with the latter part of the introductory text to the policy.

It is not considered that it is essential for either the diversification or the expansion of sustainable employment activities required by E7 to be mutually affiliated - the proposed development will expand the provision of jobs within the retail sector and diversify and expand service industry providing jobs within the drive through coffee shop. The opportunities for small and medium sized businesses to expand and operate within Hilton is a need identified by the Council's Economic Development Manager and flexibility within the end use will allow for a range of businesses thus providing opportunities for the diversification and expansion of employment activity.

Furthermore, the applicant has agreed to implementing a local employment agreement for both the foodstore and the coffee shop during their operational phases to ensure the expansion of opportunities at this site. In addition to providing jobs and thus economic benefits the application proposals provide community outdoor space adjacent to the coffee shop thus providing some extent of social benefit.

In satisfying the requirements of Policy E7 and E2 it is considered the development proposed complies with criteria i) of Policy BNE5 and that development in this site is acceptable in principle.

Retail and economic impact and need

For out of centre proposals the NPPF requires a sequential assessment to be undertaken as set out above. It states that when considering proposals for main town centre uses these should be located in the town centre, then in edge of centre locations and only if suitable sites are unavailable and not expected to become available should out of centre sites be considered. In consideration of out of centre sites, preference should be given to accessible sites, well connected to the town centre. The Framework advises that in assessing applications for retail and leisure development outside town centres, which are not in accordance with an up-to-date plan, local planning authorities should require an impact assessment if the development is over a proportionate, locally set floorspace threshold. It advises the assessment should include

a) the impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal; and

b) the impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and the wider retail catchment (as applicable to the scale and nature of the scheme).

The NPPF outlines the governments commitment to delivering a strong and competitive economy. It requires that a network and hierarchy of town centres are defined and their vitality and viability are promoted by allowing centres to diversify and respond to retail and leisure industry changes. It also sets out that where suitable and viable sites are unavailable within the defined town centre boundaries that policies should allocate edge of centre sites, and where there are insufficient edge of centre sites policies should explain how identified needs can be met in other well connected (to the town centre) accessible locations.

Policy S7 (LPP1) sets out that Part 2 of the local plan will consider the role of other retail provision within the District. Policy RTL1 (LPP2) states that applications for main town centre uses outside the centre of Hilton will be subject to the sequential test. Part E of the policy requires that all retail proposals over 1000m square will be required to submit a detailed retail impact assessment to measure the impact of the proposal on the vitality and viability of nearby centres and on committed and planned investment in those centres.

Policy E7 i) sets out that development that expands and diversifies the range of sustainable employment activities outside of settlement boundaries will be supported where the proposal is supported by a sound business case.

Policy B1 of the Hilton, Marston on Dove and Hoon Neighbourhood Plan (HMHNP) states that appropriate development proposals for small-scale and micro-businesses will be supported through the conversion of buildings within the plan area or the development of new buildings within the settlement boundary of Hilton. It states businesses would be restricted to uses within Class E and subject to other requirements. The plan further requires uses demonstrate that access and parking do not impact residential or other public amenity and that parking and EV charging are required as appropriate.

Retail Impact and the Sequential test

The Retail Impact Assessment has been reviewed and additional data provided to the consultancy undertaking the review. The Planning and Retail Statement (PRS) sets out that in undertaking the sequential assessment they have assessed sites capable of accommodating the foodstore including servicing and a drive-thru café with parking and circulatory route. The approach in order to demonstrate flexibility has been disaggregated and a 10% buffer (for sites 10% larger or smaller) has been applied to the considered site area requirements in order to demonstrate further flexibility. The conclusions of the report set out that the sequential test has been met and that there are no other suitable sites available or likely to become available. The requirements of paragraph 91 of the NPPF are considered to be met in respect of the sequential test.

The application site is near the strategic road network and adjacent main roads leading to the centre of Hilton, the Mease is served by footpaths and a cycle way. Existing residential development is near the site across Derby Road and to the southwest and west of the site. The application further proposes improvements to the highway network to facilitate access. The site is therefore considered to be well connected to the existing centre of Hilton as per the requirements of the NPPF for out of centre sites.

In respect of the impact of the development upon Hilton and other local centres within the study area the report concludes that, though some trade is likely to be drawn from these centres, it would not be drawn at a level that would unacceptably impact the vitality or viability of the centres.

The report concludes that it agrees there are no sequentially suitable sites available to accommodate the proposed development, either as a single development or with the two town centre uses considered separately.

The review of the supporting information considers trade will predominantly be drawn from and have the greatest impact upon the existing out of centre Aldi in Hilton, the report believes this draw may be higher than stated. They consider the impact upon the existing out of centre Tesco Express in Hilton will be lower than suggested. The review concludes that the convenience impact upon town centre foodstores will be limited.

In assessing the impact of the proposed drive-thru the review sets out that there is anticipated to be an impact upon the TLC Bakery and the Hilton Brook Public House, through the provision of an alternative food and beverage outlet. The impact upon the TLC bakery is stated to be a planning concern due to the town centre location, but that given the specialist offer provided (by TLC Bakery) loss of trade would be limited. The public house is stated not to be a planning concern due to the out of centre location.

In respect of the food and drink impacts the report concludes there will not be a significant adverse effect on any centre when considered in isolation. They also consider that trade draw from centres impacted by the foodstore will be limited and will not noticeably increase the forecast retail impacts.

Following the quantitative assessment of the impact the review sets out the implications in planning policy terms -the *impact of the proposal on existing, committed and planned public and private investment in a centre or centres*. The review has considered sites not included within the supporting information in addition to those included.

It confirms that the proposed development would not affect local centre investment proposals at Highfields Farm, Hackwood Farm, Land West of Mickloveror Wragley Way. They consider within Hilton the potential impact upon the Hilton Depot site and the Neighbourhood Plan site at Hilton Garage. There is potential that the scheme would adversely impact upon the Hilton Garage site stating that the increased out of centre provision of convenience retail (with or without the proposed Aldi) decreases the likelihood of attracting a convenience store to the site.

The report concludes that though supporting retail use, Neighbourhood Plan Policy L3 does not specifically require the inclusion of it. This, combined with the uncertainty as to if and when the site will come forward for redevelopment draw the conclusions within the report that the potential or impact on this proposal is not a reason for the refusal of this proposal.

In respect of the Hilton Depot site, the review concludes that as the majority of the site has been developed and they are not aware of any remaining undeveloped parts that are suitable for retail development the proposal will not adversely impact this allocation.

In addition to the above the review considered a development allocation at Hatton but noted that though the allocation required consideration to be given to retail provision to meet the proposed residential needs of the development, the submitted application did not include retail development.

Section 6 of the review progresses to consider the Impact of the proposal on centre vitality and viability, including local consumer choice and range and quality of the comparison and convenience retail offer. The findings of this summarise that even though the existing Aldi is an out of centre store (and therefore any impact is not a planning consideration) it is not expected to affect the future trading of the store. Considering after draw from this store is accounted for the next main draw would be from the Tesco Express (also out of centre), again the review concludes that any trade lost to the proposals would not be expected to affect the future trading of the store.

The review confirms that after the draw from the existing Aldi in Hilton the proposed development would draw from Tesco in Micklover but that the impact on the centre will not be significantly adverse due to the current health of the centre. It sets out that the impact on Hilton centre is harder to quantify and set out concerns that, if the levels forecast within the supporting information were reached there would be concerns regarding impact. The review progresses to state that it consider that the convenience impacts have been overstated in the WSP assessment and that in practice increasing foodstore provision in Hilton where there is already an Aldi store that is known to be significantly overtrading, would be unlikely to affect local convenience provision in either Hilton centre or the surrounding

villages.

The conclusions of the report confirm that the proposals have been assessed against retail and town centre policies at national and local levels. They note compliance with the sequential test demonstrated and that the proposed development would not have significant adverse impacts on defined town centre uses within the catchment area.

They suggest any recommendation for approval be supported by conditions to secure the uses stated and assessed. These are noted to include a requirement to restrict the net sales area of the foodstore to a maximum of 1,331sqm ; no more than 1,065 sqm retail floorspace to be devoted to convenience sales, nor more than 266sqm for comparison sales.

Commercial Units

The application is supported by a Planning and Retail Survey and an Economic Statement that consider local policy the South Derbyshire Employment Land Review and the South Derbyshire Economic Development and Growth Strategy 2023-27 (EDGS). The EDGS is correctly referenced as identifying the limited supply of small and grown on workspaces, including managed workspaces on flexible terms, which it considers a weakness to business support and productivity. The 2023 Employment Land Review also identifies a shortage of B2 and B8 units and concentrates on the A50 corridor as a strategic location for future growth. The need for space within Eg (office use and the shortage of provision is also identified.

The proposed SME units are therefore considered to contribute to addressing this weakness and support wider planning policy objectives of creating spaces where businesses can grow and develop. As confirmed above the proposed units are considered to accord with the requirements of Policy E2 in respect of other industrial or business development which lies on the edge of key service villages. The Councils Economic Development Manager further confirms the need for units such as those proposed. Data within section 3 of the Economic Statement demonstrates that growth rates in South Derbyshire exceed the national and regional levels and that the majority of businesses within the District employ less than 10 people. Further summary on the demand for office space is derived from data on high market rents, and lower availability of units within the Derby submarkets. Additional data is provided on the pre-letting of industrial units that are in construction in South Derbyshire.

It is acknowledged that representatives of the adjacent Aldi application consider that the information provided does not represent a sound business case, both because of the lack of a viability study, in the absence of which they consider the requirements of Policy E7 i) are not met.

Policy E7 sets out one of the criteria for developments to be allowed for is that they are supported by a sound business case. The application is supported by an Economic Statement and a Planning and Retail Statement. The Planning and Retail Statement has been assessed by a retail planning consultancy and the details of the assessment confirm the proposed food store will trade without adversely affecting existing centres in the catchment.

The case for the commercial units is further supported by the survey work undertaken during local consultation which indicates that there is need for the proposed SME units both from the commercial property market and from existing local businesses seeking to grow in the area.

Having reviewed the supporting information it is considered that the retail impact assessment is concluded to demonstrate that the foodstore can operate without affecting the vitality or viability of existing stores in Hilton or elsewhere.

Similarly there is an evidenced need within the Councils studies that SME units are required in the district, in particular those which are managed, as is proposed. The comments of support for the application and the support within the neighbourhood plan for small units is also acknowledged. The supporting information sets out that the proposed SME units will be managed and therefore this is considered to accord with the identified need. Regard is had for the comments received in relation to delivery of the proposed SME units, the applicant has agreed to a condition securing the development

of a minimum of 50% of the units at the point the foodstore opens and the remaining development undertaken and units available for occupancy within 12 months of the foodstore opening. This is considered to provide a mechanism by which to secure these units.

Finally, in determining whether the proposals meet the criteria set out in E7 i) regard has been had for the previously discussed appeal decision which set out the development proposed complied with E7 and E2 and therefore with BNE5 i), review of this case file shows has been unable to find reference to a viability assessment within either the appeal or application documents.

It is concluded that the proposed development meets the relevant policy requirements for the development of industrial and business units and retail and main town centre uses at the proposed site. Officers have worked with the applicant to secure conditions to ensure the economic benefits to the local labour market and the delivery of the SME units are secured via condition of the planning recommendation. The advice of the retail consultant in respect of the need to ensure the quantum of space for retail convenience and retail comparison uses as assessed is retained within the development is considered to meet the relevant tests and included within this recommendation.

Design and impact upon the character of the surrounding area

Section 12 of the NPPF sets the policy and decision making context for achieving well-designed and beautiful places and notes the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. Paragraph 135 sets out that planning decisions should ensure that developments function well and add to the quality of an area for its' lifetime, are visually attractive due to the architecture, layout and landscaping and that it is appropriately sympathetic to the surroundings, optimise the potential of a site to accommodate and sustain an appropriate amount and mix of development (including green and other public space) and create places that are safe, inclusive and accessible.

Paragraph 180 sets out that planning decisions should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes (in a manner commensurate with their statutory status or identified quality in the development plan).

Policy BNE1 of the Local Plan sets the districts requirements for good design quality setting out how this can be achieved using a number of design principles. The following principles are of relevance to this application: community safety movement and legibility, diversity and community cohesion, ease of use and accessibility visual attractiveness, neighbouring uses and amenity and healthy lifestyles.

Policy E2 and Policy E7 both make requirements in respect of the types of development allowed setting out that the scale should be appropriate and not result in undue impacts on the local landscape (E2) and that it is well designed and of a scale commensurate with the proposed use (E7 iv) and minimises visual intrusion and the impact on the character of the locality (E7 v).

This is an outline application and as such the final design of the different uses will be determined through subsequent application for reserved matters. Consideration of design within this application is limited to the illustrative masterplan and storey heights plans with other elements such as trees and highway design covered in the appropriate sections of the report.

The application is supported by a design and access statement that sets out the level of impact both on the landscape character of the area and from visual receptors will not be significant. The impact upon the landscape character this is assessed as declining from the medium term moderate adverse impacts to permanent moderate adverse effects from within the site and minimal adverse effect on the overall character of the area. The development will introduce built form to a previously undeveloped area this is considered in the context of the surroundings within the supporting LVIA however based upon the assessment the proposed development does not raise significant concerns nor do they indicate policy conflict that would present a reason for the refusal of the application.

The layout of the application including the proposed junction amendments have formed part of the applicant's discussion with the Council's Design Officer. In their consultation response to this application the Design Officer confirms that their comments are reflected in the illustrative masterplan

and they have no further comments to make. It is noted that approximately 47% of the site is retained as green and open space.

In terms of the layout this is considered to offer good connectivity both within the site and to form connections to the existing road layout and pedestrian and cycle network. The internal arrangement offers connectivity between the different uses of the site. The development is therefore considered subject to compliance with the illustrative masterplan and heights plan to comply with the relevant development plan policies in this regard.

The application includes a proposed building height and parameter plan which shows the commercial space at the northern part of the site adjacent to the A50 to be a maximum of 9m in height, the food retail unit to the south of this would be a maximum height of 7.5m and the smaller drive-thru to the east of the site would be a maximum height of 7m. These heights are considered to be acceptable subject to the detailed design issues which will be considered at Reserved Matters stage.

Access, highway safety and capacity

Section 9 of the National Planning Policy Framework offers advice on Promoting sustainable transport and advises that transport issues should be considered at the earliest stages of development for a number of reasons, of relevance to proposals are that potential impact from the development on existing transport networks can be addressed, so that opportunities to promote walking, public transport and cycling are identified and pursued and so that the patterns of movement, streets, and parking as well as other transport consideration are integral to the design and contribute towards high quality places.

It further advises that in considering development proposals opportunities to promote sustainable transport modes can be taken up, having regard for the type and location of development proposed, that safe and suitable access to the site can be achieved for all users, that the design of transport related features reflects current standards. Paragraph 115 advises that development should only be refused on highway grounds if there would be an unacceptable impact upon highway safety or if the residual cumulative impacts upon the road network would be severe.

Local Plan Policy S6 sets out that the Council will seek to minimise the need to travel, make the most efficient use of transport infrastructure and services, encourage a modal shift away from car use and support transport measures that address accessibility, safety, amenity, health, social, environmental and economic needs. This will be achieved through seeking patterns of development that minimise travelling distances and make the best use of transport infrastructure and services; the provision of new or enhanced sustainable transport infrastructure or by providing new or enhanced parking facilities and using promotional measures and improved communication to encourage sustainable transport choice. Policy E7 ii) sets out that development permitted by E7 will be supported where the local highway network is capable of accommodating the traffic generated.

Policy INF2 Sustainable Transport part A states that planning permissions will be granted for development subject to a number of criteria. Firstly traffic generated as a result should not have an undue detrimental impact upon local amenity, the environment or highway safety, the efficiency of transport infrastructure and the efficiency and availability of public transport services, secondly that appropriate provision for access that is safe and convenient for all modes of transport is made and finally that car travel is minimised relative to the needs of the development. In respect of public transport (C) the policy advises that development should be designed to ensure wherever possible that public transport services are within convenient walking distance of all visitors and staff. In respect of parking (E) advises development includes appropriate parking provision having regard to a number of criteria.

Sustainable transport and highway design were considered during the pre-application stages of the proposed development with feedback offered to the applicant. Further work has been undertaken throughout the planning process in respect of this.

The proposals include the reconfiguration of the roundabout between the Derby Road and the A5132 to include the installation of a fourth arm to provide access to the site. This will also require the relocation

of an existing bus stop on Derby Road. Extensions are proposed to the footways on the northern side of Derby Road adjacent the development to facilitate pedestrian and cycle access to the site. There will be an access point in the south-west corner of the site leading to the internal footpath and foodstore area, a shared pedestrian cycle way in adjacent the vehicular entrance on the western side and a further pedestrian footway on the eastern side of the vehicular entrance. This will link to the proposed toucan crossing on the A5132.

An internal network of footways, both diverting the existing public right of way and connecting the different uses within the site is proposed on the illustrative master plan. Parking is proposed within each area of the development with 117 car parking spaces (inclusive of accessible and EV charging spaces) and additional spaces for cycles to serve the foodstore. The commercial units will be served with 47 spaces and the drive-thru coffee shop 14 spaces.

The application is supported by a Transport Assessment and following initial comments from the Local Highway Authority (LHA) Officer an Addendum to this was provided. In addition a Workplace Framework Travel Plan is submitted.

The proposed uses are likely to be predominantly accessed by private car use by virtue of their need. Notwithstanding this, provision is made for cycle and pedestrian access and a framework travel plan for employees is submitted.

The LHA Officer has requested additional information during the application process to ensure they were able to understand the impacts of the increased vehicle movements likely to be generated from the proposed development. Following the submission and review of the information they confirm, subject to requested conditions, that they have no concerns regarding either highway safety nor that the volumes of traffic generated by the development will have a material impact upon the capacity of the junctions modelled within the submitted information.

The comments of the Parish Council in respect of concerns that the road network which express concerns that the road network would not cope with the increased traffic levels, and as such the development would not comply with the requirements of policy E7, are acknowledged. The TAA sets out that the modelling submitted is robust and is presented at the request of DCC. It is considered that as the Statutory Consultee for these matters is satisfied the development can progress without raising highway capacity or safety concerns that the application accords with policy and those concerns raised by the Parish do not present a robust reason for refusal of the application. The conditions requested by the LHA Officer from DCC are considered necessary and have been included within the recommendations in order to ensure that the development accords with the requirements of the relevant development plan policies and the National Planning Policy Framework.

Residential Amenity

The National Planning Policy Framework sets out that development should be appropriate for the location, and take account of the likely effects of pollution on living conditions and the natural environment and in doing so mitigate and reduce to a minimum potential adverse impacts resulting from noise from new developments.

Policy SD1 of the Local Plan part 1 sets out that the Council will support development that does not lead to adverse impacts in the environment or amenity of existing and future occupiers within or around proposed developments. The latter part of the policy considers the need for a strategic buffer between conflicting land uses in order that they do not disadvantage each other in respect of amenity issues such as noise.

Policy E7 iii) reiterates this setting out that development will be acceptable where it does not give rise to any undue impacts on neighbouring land.

The application site is bound by a SSSI, agricultural land, a road, and an adjacent site currently in use as a nursery with planning permission for commercial units and for which an application for the development of a foodstore is under consideration. The nearest residential receptors are located west of the adjacent nursery site, on the opposite side of Derby Road and the opposite side of the A5132.

The EHO has reviewed the submitted information and further information submitted to respond to their requests. They confirm, that given the nature of the application which is submitted in outline at this stage, the noise assessment and predicted noise levels arising are acceptable.

Further conditions are requested from the EHO regarding site investigation and any further remediation, validation and verification of contamination reports as necessary.

The site is sufficiently distant from residential development to alleviate other concerns regarding amenity of local residents. Furthermore, other adjacent land uses are considered not to conflict with those proposed so as to unduly impact either current occupiers of adjacent sites or future occupiers.

No concerns are raised from the Environmental Health officer regarding the findings of the Air Quality Assessment, nor are any conditions requested in relation to this. The proposals are considered to accord with the development plan policies that serve to safeguard residential amenity and therefore, subject to the recommended conditions, are considered acceptable.

Ecology and Biodiversity

Biodiversity and the need to protect the natural environment are contained within the environmental objective of the NPPF. Section 15 expands upon how decisions and plans should conserve and enhance the natural environment by protecting sites of biodiversity value and minimising impacts on, and providing net gains to, biodiversity

Policy BNE3 of the Local Plan set out the LPA's commitment to supporting development that contributes to the protection, enhancement, management and restoration of biodiversity and delivers net gains to biodiversity through the protection of sites of importance from inappropriate development within and adjacent to those sites, and, in v) protecting veteran trees from loss unless benefits clearly outweigh the loss. In B the policy states that proposals that could have a direct or indirect effect on sites, including SSSIs will need to be supported by appropriate surveys or assessment that allow the authority to fully understand the likely impacts of the scheme and the mitigation proposed.

Policy E5 of the Hilton, Marston on Dove and Hoon Neighbourhood Development Plan states proposals that would result in a net loss of biodiversity will not be supported and that proposals for new commercial development in the Plan area should seek to deliver no net loss and a measurable net gain. It further sets out that if significant impacts are identified appropriate mitigation or compensation measures will be required. These measures should be targeted to benefit local conservation priorities and all designated sites, including the SSSI will be protected from development

The application is supported by an Ecological Impact Assessment (EclA) that confirms the presence within and around the site of protected species and priority habitats. The study includes the recommendation to enhance existing hedgerows and introduce a 50m buffer between the southern areas of the SSSI and the nearest built form within the proposals. The proposed buffer is incorporated into the biodiversity planning for the site and is proposed to include wetland, grassland and scrub which are considered to provide habitat improvements and opportunities for foraging for species.

In response to consultation the LPA's biodiversity Officer, NE and DWT all consider that the buffer zone is required in order to safeguard the SSSI from unacceptable impacts as a result of the proposed developments. Further requests for conditions are made by each expert.

The SSSI is notified for its breeding bird interest and Natural England consider it necessary that development is undertaken outside nesting season in order to ensure that any heavy construction activity does not result in light, noise or vibration disturbance. They note it may be possible to avoid adverse impacts through construction mitigation measures but that wherever possible activity should be outside breeding season.

The Council's Biodiversity Officer considers that though the application proposed monitoring of water levels within the SSSI through indicator factors and observations the testing of water at the baseline (pre-development) and 10 year intervals for a period of 30 years would provide empirical evidence to confirm any changes, both positive and negative, to the water quality.

The application is supported by a Biodiversity Metric which demonstrates that a net gain of 1.56 habitat units or 15.98% and an additional net gain of 0.9 hedgerow units, equivalent to 11.49% are achievable on site. Both DWT and the Biodiversity Officer welcome the proposed net gain to biodiversity on-site and set out in their comments the requirement for habitat management and monitoring for the proposed net gain. The Council's Biodiversity Officer also confirms that to facilitate monitoring of the net gain a contribution to the council will be required and that this should be secured via a legal mechanism.

Having regard for the SSSI it is considered necessary to include a condition regarding a biodiversity construction environment management plan (CEMP) that secures methods of working that will prevent adverse impacts on the SSSI as well as other habitats and species present. The CEMP included within this recommendation contains both the recommendations of Natural England and the Derbyshire Wildlife Trust.

In respect of protected species both the originally submitted documents in support of the application and subsequent third party survey work have been considered by DWT. Due to the presence of some protected species and geographic location some of this information is retained as confidential by the LPA as are relevant comments from DWT. Having reviewed the information DWT make request for conditions which serve to protect the biodiversity value of the site including foraging routes and these conditions are included in this recommendation.

Trees and Landscaping

The importance of trees within development and the contribution made by trees to the quality of the environment is recognised in paragraph 136 of the National Planning Policy Framework which requires that policies and decisions seek to incorporate trees into development and take measures to ensure the longevity of newly planted trees.

Paragraph 186 advises that development resulting in the loss of irreplaceable habitats such as veteran trees should be refused unless there are wholly exceptional circumstances.

Policy BNE3 v) sets out that development will be supported which contributes to the protection, enhancement and management of biodiversity wherever possible by protecting veteran trees from loss, unless the need for, and benefits of the development in that location outweigh the loss.

Policy BNE7 of Local Plan part 2 discusses the requirement for development affecting trees, woodland and, or hedgerows. Of relevance to this application, the policy sets out that where development could affect trees and hedgerows that have amenity, ecological, landscape or historic value development will be expected to demonstrate the development is informed by relevant surveys and that appropriate tree and root protection measures are taken.

The application is supported by an arboriculture report and impact assessment the findings of which are agreed by the Tree Officer. They confirm that further investigation of a veteran tree in order to properly secure its place within the development site are undertaken and the measures to secure the protection of trees during the construction phases are secured. It is considered appropriate to condition tree protection measures prior to commencement of the relevant phase and to secure the further assessment of T19 prior to submission of reserved matters applications for Phase 1b or 2 due to the siting of the tree in proximity to these phases by virtue of its location at the eastern periphery of the site.

In respect of landscaping this application is submitted in outline and therefore it is considered that full detailed landscaping proposals are appropriate to be secured as part of reserved matters applications.

The application is considered to accord with the relevant development plan policies in respect of the impact on trees and provision for landscaping.

Flood Risk and Drainage

Paragraph 173 of the NPPF requires that in determining applications LPA's should ensure that flood risk is not increased elsewhere and where appropriate applications should be supported by a site

specific flood-risk assessment. Paragraph 175 further required that major applications incorporate sustainable drainage systems unless clear evidence indicates this is appropriate.

The Hilton, Marston on Dove and Hoon Neighbourhood Plan sets out in Policy F1 that opportunities with landowners will be taken to explore better water management of upland areas including the use of sustainable drainage systems amongst other means.

Local Plan Policy SD2 explains that when considering applications the council will follow the sequential approach to flood risk management in giving priority to sites with the lowest risk of flooding. In respect of drainage Policy SD3 sets out that the council will work with other authorities and developers to ensure that the wastewater treatment and drainage infrastructure are managed effectively in a coordinated manner by employing a number of principles. These include working with the County Council to ensure that new development incorporate sustainable drainage schemes that reduce demand for potable water supplies and mimic natural drainage where possible. It further sets out an expectation that foul water connects to the mains sewer unless technically infeasible. It sets out that Sustainable Drainage systems, discharge to water courses or connection to surface water sewers will be expected to be utilised to manage surface water from new development.

The application site lies within Flood Zone 1 where there is the least likelihood of flooding from fluvial sources. The flood risk assessment (FRA) submitted in support of the application has assessed the level of risk from different sources of flooding, this concluded that there was a low to medium risk of groundwater flooding and that this should be monitored.

The application proposes to connect to the existing foul network and have submitted a foul water statement detailing a response from Severn Trent which does not raise issues regarding capacity of the sewer but does detail the requirement for a S106 agreement for formal connection to the foul water systems. It should be noted that this refers to S106 of drainage legislation rather than planning legislation. Further advice is offered in respect of surface water drainage.

The proposed surface water management strategy for surface water divides the development site into 3 catchment zones, one comprises the foodstore and associated parking area, the second the comprises the SME units and parking area and the third the drive through coffee shop and highway within the development.

The strategy introduces geocellular storage crates which will capture and store surface water flows from the foodstore and SME catchment areas before discharging these to the attenuation basin at the south western area of the site. The third catchment zone will flow directly into the attenuation basin. The attenuation basin is proposed to discharge into the existing drainage ditch at the western periphery of the site, the flows will be limited to 7l/s which is stated to be below the currently modelled rate for the site.

Conditions are recommended by the LLFA and supported by officers that set out the requirement for a detailed design of the surface water systems and confirmation of their suitability to provide adequate drainage, to the proposed development, in accordance with the drainage hierarchy. These conditions are considered to meet the tests for planning conditions and to ensure that the development is well served by drainage systems that do not increase flooding elsewhere. The application is considered to accord with the relevant development plan policies.

Developer Contributions

The NPPF advises that LPAs should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or obligations. The application proposes to deliver a net gain to biodiversity which is welcomed by the Council's Biodiversity Officer. They request a contribution to the ongoing monitoring of biodiversity reporting which is determined on the size and scale of the site, to be £10,242.80

Other Issues

Contaminated Land

Section 11 of the NPPF focuses on making effective use of land and sets out that planning decisions should promote this to meet the needs for different uses, while safeguarding and improving the environment. Paragraph 124 of the NPPF requires LPAs give substantial weight to the value of using suitable brownfield land in settlements for homes and other identified needs.

Policy SD4 requires that applicants demonstrate that schemes in areas known to be at risk of instability or contamination demonstrate, through investigations, that the scheme will incorporate any necessary remediation methods to render the development proposed safe.

The application is supported by a contaminated land assessment that makes recommendation for further investigation of the site prior to development. The Environmental Health Officer confirms the requirement for further investigate work in their response and it is therefore included by way of condition in this recommendation.

Agricultural Land

Policy BNE4 sets out that the Council will seek to protect Best and Most Versatile soils and direct development away from these areas.

The development proposes the use of land currently in agricultural use for non-agricultural purposes. The submitted Agricultural Land report considers that 27% of the site is grade 3a soil, and therefore best and most versatile. The site is currently used for grazing cattle. The supporting information and submissions from members of the public indicate this land is used for grazing and silage. Natural England have been consulted on this application and, though commenting on other matters, have not offered objection to this loss of grade 3a land.

Community Space

The comments of the Parish Council are acknowledged in respect of the proposed use of the community space as a play area, expressing a preference for allotments and concerns that the location is not optimal for a play area.

The application is made in outline and so final details for the use of this space may change. Notwithstanding this the play area is proposed in response to feedback from residents to the applicant during the consultation exercise and this in turn indicates a preference of local residents for such a use.

Conclusion and Planning Balance

The proposed development is acknowledged to lie adjacent the settlement boundary of Hilton and within the rural area where development is subject to a stricter degree of control in order to ensure the overarching objectives of sustainable development are achieved. The application proposes main town centre uses outside of a defined centre, and there will be impact on the area relating to the scale of the buildings proposed, the impact on the highway network, and the loss of some best and most versatile agricultural land. In response to publicity there have been additional concerns raised in relation to flood risk, biodiversity, noise and impact on neighbouring amenity.

It is accepted by independent retail consultants that the evidence submitted in support of the application demonstrates there is sufficient trade to support the foodstore. The South Derbyshire Economic Development and Growth Strategy 2023-27 and the Derby and South Derbyshire Employment Land Review (October 2023) identify a need for commercial units to accommodate SMEs, this position is supported in response to consultation from the Council's Economic Development Manager.

The application proposed would deliver benefits from the biodiversity enhancements (submission being prior to the mandatory requirement for BNG), providing improved amenity facilities for the residents of Hilton through the proposed amenity space and the prioritisation of jobs for local residents. These benefits are secured by conditions included in this recommendation.

These are considered to be economic benefits of the proposed development that weigh in favour of the proposed development. In environmental objectives the application, though occupying a site of previously undeveloped land, is capable of delivering environmental benefits through the creation of landscape and ecological areas to deliver a net gain to biodiversity. The proposed drainage system seeks to improve the drainage of the site through the outline surface water drainage system. The social benefits of the development are considered to be derived from the inclusion within the development of community play area, planting and open space for the benefit of local residents.

There are no technical objections from statutory consultees who consider that the application is suitable for approval subject to the inclusion of conditions to ensure its acceptability. Consequently, on balance the application is recommended for approval subject to the conditions set out in this recommendation.

None of the other matters raised through the publicity and consultation process amount to material considerations outweighing the assessment of the main issues set out above, noting that conditions or obligations have been attached where meeting the tests for their imposition. Where relevant, regard has been had to the public sector equality duty, as required by section 149 of the Equality Act 2010 and to local finance considerations (as far as it is material), as required by section 70(2) of the Town and Country Planning Act 1990 (as amended), as well as climate change, human rights and other international legislation.

Recommendation

- A. Grant delegated authority to the Head of Planning and Strategic Housing to conclude negotiations on and complete an agreement under section 106 of the Town and Country Planning Act 1990 so to secure the planning obligations outlined in this report; and
- B. Subject to A, **Approve** the application subject to the following conditions:

1. The development hereby approved shall be commenced either before the expiration of five years from the date of this permission, or before the expiration of two years from the date of approval of the last reserved matters to be approved, whichever is later. Applications for the approval of reserved matters shall be made to the Local Planning Authority no later than the expiration of 3 years from the date of this permission.

Reason: In order to comply with the requirements of Section 91 of the Town and Country Planning Act 1990, as amended.

2. Applications for reserved matters shall be submitted in accordance with the layout shown within the approved Illustrative Masterplan (23028-HCD-ZZ-00-DR-A-09-001 Rev P01, dated 02/02/2024) the Land Use and Floor Space Parameter Plan (23028-HCD-ZZ-00-DR-A-09-003, dated 02/02/2024) and the Building Heights Parameter Plan (23028-HCD-ZZ-00-DR-A-09-004, Rev P01, dated 02/02/2024), the Open and Green Space Parameter Plan (23028-HCD-ZZ-00-DR-A-09006, Rev P01, dated 02/02/2024) .

The reserved matters applications shall be supported by a statement that demonstrates the submitted details accord with the approved master plan and height parameter plan in respect of, but not limited to layout, access, parking and building heights.

Reason: To ensure the satisfactory layout and appearance of the development in accordance with the requirements of Policy S6, Policy BNE1, Policy E2 and Policy E7 of the South Derbyshire Local Plan Part 1, Policy BNE5 of the Local Plan Part 2 and the National Planning Policy Framework.

3. The development shall be undertaken in accordance with the approved Phasing Parameter Plan, ref: 23028-HCD-ZZ-00-DR-a-09-002.

Reason: For the avoidance of doubt and in accordance with the applicant's stated intentions in order to ensure the timely delivery of the commercial units and community space and the

associated social and economic benefits in accordance with the requirements of Policy E2 and E7 of the South Derbyshire Local Plan.

4. Before the development hereby approved is commenced in any phase confirmation that the detailed design for the site access works required have been submitted to and approved in writing by the Local Highway Authority shall be submitted to and approved by the Local Planning Authority.

The access shall thereafter be constructed in complete accordance with the approved details prior to the occupation of any building.

Reason: For the avoidance of doubt and in order to ensure safe access to the development, which does not result in an adverse impact upon highway safety or capacity in accordance with the requirements of Policy S6 and Policy INF2 of the South Derbyshire Local Plan and the National Planning Policy Framework.

5. Before the development hereby approved commences in any phase details of a Construction Management Plan (CMP) for that phase shall be submitted to and approved in writing by the Local Planning Authority. The plan shall include but not be restricted to:
 - a) Parking of vehicle of site operatives and visitors (including measures taken to ensure satisfactory access and movement for existing occupiers of neighbouring properties during construction);
 - b) Advisory routes for construction traffic;
 - c) Any temporary access to the site;
 - d) Locations for loading/unloading and storage of plant, waste and construction materials;
 - e) Method of preventing mud and dust being carried onto the highway;
 - f) Arrangements for turning vehicles;
 - g) Arrangements to receive abnormal loads or unusually large vehicles;
 - h) Highway Condition survey;
 - i) Methods of communicating the Construction Management Plan to staff, visitors and neighbouring residents and businesses.

The development in that phase shall thereafter be undertaken in complete accordance with the approved details.

Reason: In the interests of safe operation of the adopted highway during the construction phases of the development in accordance with the requirements of Policy INF2 of the South Derbyshire Local Plan and the National Planning Policy Framework.

6. Before the development hereby approved commences within any phase a construction surface water management plan (CSWMP) for that phase shall be submitted to and approved in writing by the LPA in consultation with the LLFA. The CSWMP shall include details of how additional surface water run-off from the site will be avoided during the construction of that phase. The applicant may be required to provide collection, balancing and, or, settlement systems for these flows. The development shall thereafter be undertaken in accordance with the approved details prior to the commencement of any and all works that may lead to increased surface water run off.

Reason: To ensure the development is adequately served by a suitable surface water drainage system during the construction period in order to minimise the likelihood of flooding incidents and damage to the environment, property or life in accordance with the requirements of Policy SD3 of the South Derbyshire Local Plan and the National Planning Policy Framework.

7. Before the commencement of the development hereby approved in any phase:

A Phase I contaminated land assessment (desk-study) shall be undertaken and approved in writing by the local planning authority.

The contaminated land assessment shall include a desk-study with details of the history of the site use including:

- the likely presence of potentially hazardous materials and substances,
- their likely nature, extent and scale,
- whether or not they originated from the site,
- a conceptual model of pollutant-receptor linkages,
- an assessment of the potential risks to human health, property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes, adjoining land, ground waters and surface waters, ecological systems, archaeological sites and ancient monuments,
- details of a site investigation strategy (if potential contamination is identified) to effectively characterise the site based on the relevant information discovered by the desk study and justification for the use or not of appropriate guidance. The site investigation strategy shall, where necessary, include relevant soil, ground gas, surface and groundwater sampling/monitoring as identified by the desk-study strategy

The site investigation shall be carried out by a competent person in accordance with the current U.K. requirements for sampling and analysis. A report of the site investigation shall be submitted to the local planning authority for approval.

Reason: To protect the health of the public and the environment from hazards arising from previous uses of the site and/or adjacent land which might be brought to light by development of it, recognising that failure to address such matters prior to development commencing could lead to unacceptable impacts even at the initial stages of works on site. in accordance with the requirements of Policy S2, policy SD1 and Policy SD4 of the Local Plan Part 1 and the National Planning Policy Framework.

8. Before the development hereby approved is commenced within any phase (including demolition, ground works, vegetation clearance and movement of plant, machinery and materials) a Construction Environmental Management Plan (CEMP: Biodiversity) shall be submitted to and approved in writing by the local planning authority. The CEMP (Biodiversity) shall include the following details.
- Measures to prevent impacts to the SSSI via dust mobilisation
 - Measures to prevent impacts from pollution of watercourses running to the SSSI should be outlined
 - Avoidance of works within the bird breeding season
 - Measures to prevent direct habitat loss or damage
 - Risk assessment of potentially damaging construction activities.
 - Identification of “biodiversity protection zones”.
 - Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts on species, habitats and trees during construction.
 - The location and timing of sensitive works to avoid harm to biodiversity features
 - The times during construction when specialist ecologists need to be present on site to oversee works.
 - Responsible persons and lines of communication.
 - The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person.
 - Use of protective fences, exclusion barriers and warning signs.

The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details, unless otherwise agreed in writing by the local planning authority.

Reason: To safeguard species and habitats and the adjacent SSSI in accordance with the requirements of BNE3 of the South Derbyshire Local Plan and the National Planning Policy Framework.

9. No works of any kind, including preparatory site clearance, shall begin until a scheme of mammalian mitigation and enhancement measures has been submitted and approved in writing by the Local Planning Authority. This shall include the results of a recent survey of the site and adjacent habitats, whether a development licence will be required and the location of any

protective fencing around habitats and commuting routes. All works shall proceed in accordance with the approved scheme of mitigation.

Reason: In order to safeguard the wellbeing of and prevent any harm to protected and priority species in accordance with the requirements of Policy BNE3 of the South Derbyshire Local Plan and the National Planning Policy Framework.

10. Before the commencement of the development hereby approved in any phase a Landscape and Biodiversity Enhancement and Management Plan (LBEMP) shall be submitted to, and be approved in writing by, the LPA. The aim of the LBEMP is to provide details for the creation, enhancement and management of habitats and species on the site post development, in accordance with the proposals set out in the Biodiversity Net Gain Assessment and the Statutory Metric (Bioscan 2024). Revisions to these assessments to be agreed with the LPA. The LBEMP should combine both the ecology and landscape disciplines and shall be suitable to provide to the management body responsible for the site. It shall include the following:-
- Description and location of features to be retained, created, enhanced and managed, as per the approved biodiversity metric.
 - Aims and objectives of management, in line with desired habitat conditions detailed in the metric.
 - Appropriate management methods and practices to achieve aims and objectives.
 - Prescriptions for management actions.
 - Preparation of a work schedule (including a 30-year work plan capable of being rolled forward in perpetuity).
 - Details of the body or organization responsible for implementation of the plan.
 - A monitoring schedule to assess the success of the habitat creation and enhancement measures at intervals of 1, 2, 3, 4, 5, 10, 15, 20, 25 and 30 years.
 - Monitoring reports to be sent to the Council at each of the intervals above
 - A set of remedial measures to be applied if conservation aims and objectives of the plan are not being met.
 - Details of offset gullies and drop kerbs in the road network to safeguard amphibians.
 - Detailed specifications for open water habitats to provide biodiversity benefits.
 - Requirement for a statement of compliance upon completion of planting and enhancement works.

The LBEMP shall also include details of the legal and funding mechanism by which the long-term implementation of the plan will be secured by the developer with the management body or bodies responsible for its delivery. The approved plan will be implemented in accordance with the approved details.

Reason: In order to secure a net gain to biodiversity and to ensure the satisfactory appearance of the development in accordance with the requirements of Policy BNE1 and Policy BNE3 of the South Derbyshire Local Plan Part 1 and Policy BNE4 of the Local Plan Part 2 and the National Planning Policy Framework.

11. Before the commencement of the development hereby approved: Where the site investigation identifies unacceptable levels of contamination, a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment shall be submitted to and approved in writing by the local planning authority. The submitted scheme shall have regard to relevant current guidance. The approved scheme shall include all works to be undertaken, proposed remediation objectives and remediation criteria and site management procedures. The scheme shall ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation. The developer shall give at least 14 days notice to the Local Planning Authority (Environmental Health Division) prior to commencing works in connection with the remediation scheme.

Reason:

To protect the health of the public and the environment from hazards arising from previous uses

of the site and/or adjacent land which might be brought to light by development of it, recognising that failure to address such matters prior to development commencing could lead to unacceptable impacts even at the initial stages of works on site. in accordance with the requirements of Policy S2, policy SD1 and Policy SD4 of the Local Plan Part 1 and the National Planning Policy Framework.

12. No buildings shall be occupied until:

- The approved remediation works required by 11 above have been carried out in full in compliance with the approved methodology and best practice.
- If during the construction works associated with the development hereby approved any suspected areas of contamination are discovered, which have not previously been identified, then all works shall be suspended until the nature and extent of the contamination is assessed and a report submitted and approved in writing by the local planning authority and the local planning authority shall be notified as soon as is reasonably practicable of the discovery of any suspected areas of contamination. The suspect material shall be re-evaluated through the process described in 11 to 12 above and satisfy 12a above.
- Upon completion of the remediation works required by 11 and 12a above a validation report prepared by a competent person shall be submitted to and approved in writing by the local planning authority. The validation report shall include details of the remediation works and Quality Assurance/Quality Control results to show that the works have been carried out in full and in accordance with the approved methodology. Details of any validation sampling and analysis to show the site has achieved the approved remediation standard, together with the necessary waste management documentation shall be included.

Reason: To protect future occupiers of the development, buildings, structures/services, ecosystems and controlled waters, including deep and shallow ground water in accordance with the requirements of policy S2, SD1 ad SD4 of the Local Plan Part 1 and the National Planning Policy Framework.

13. Before the development hereby approved is commenced a detailed design and associated management and maintenance plan of the surface water drainage for the site shall be submitted to and approved in writing by the Local Planning Authority. The details shall be in accordance with the principles outlined within:

RSK LDE Ltd. (January 2024). Land north of Derby Road, Hilton - Flood Risk Assessment. Ref: 680964-R1(03)-FRA "including any subsequent amendments or updates to those documents as approved by the Flood Risk Management Team" And DEFRA's Non-statutory technical standards for sustainable drainage systems (March 2015)

Reason: To ensure the development is adequately served by a suitable surface water drainage system in order to minimise the likelihood of flooding incidents and damage to the environment, property or life in accordance with the requirements of Policy SD3 of the Local Plan and the National Planning Policy Framework.

14. Before the development hereby approved is commenced a detailed assessment to demonstrate that the proposed destination for surface water accords with the drainage hierarchy as set out in paragraph 56 Reference ID: 7-056-20220825 of the planning practice guidance shall be submitted to and approved in writing by the Local Planning Authority. The assessment should demonstrate with appropriate evidence that surface water runoff is discharged as high up as reasonably practicable in the following hierarchy:

- into the ground (infiltration);
- to a surface water body;
- to a surface water sewer, highway drain, or another drainage system;
- to a combined sewer.

Reason: In order to ensure that surface water from the development is directed towards the most appropriate waterbody in terms of flood risk and practicality by utilising the highest possible priority destination on the hierarchy of drainage options in accordance with the requirements of

Policy SD3 of the South Derbyshire Local Plan, Policy F1 of the Hilton Marston on Dove and Hoon Neighbourhood Plan and the National Planning Policy Framework.

15. Before the development hereby approved in any phase is commenced including any site clearance, tree removal or any equipment, machinery or materials is brought onto site, a detailed tree protection plan to BS 5837:2012 shall be submitted to and approved in writing by the local planning authority.

The development shall thereafter be undertaken in complete accordance with the approved details, and retained for the duration of construction including any site clearance works. No fires, excavation, change in levels, storage of materials, vehicles or plant, cement or cement mixing, discharge of liquids, site facilities or passage of vehicles, plant or pedestrians, shall occur within the protected areas.

The approved scheme shall be kept in place until all parts of the development have been completed, and all equipment; machinery and surplus materials have been removed.

Reason: For the avoidance of doubt and in accordance with the applicants stated intentions, to ensure the satisfactory protection of trees and hedgerows within and adjacent the site in accordance with the requirements of Policy BNE3 and BNE4 of the South Derbyshire Local Plan and the National Planning Policy Framework.

16. The application for reserved matters in phase 1a (as approved by the phasing parameter plan) shall restrict the net retail sales area within the foodstore to a maximum of 1,331sqm, a maximum of 1,065 sqm retail floorspace to be devoted to convenience sales, and a maximum of 266sqm for comparison sales.

Reason: In accordance with the requirements of Policy S7 of the South Derbyshire Local Plan Part 1, Policy RTL1 of the South Derbyshire Local Plan Part 2 and the National Planning Policy Framework.

17. Prior to the submission of reserved matters applications in Phase 1b or Phase 2 a report detailing further assessment of Tree 19 to include the management and maintenance of the tree shall be submitted to and approved in writing by the Local Planning Authority.

Reason: In order to ensure the protection, retention and appropriate management of the veteran tree in accordance with the recommendations within the Arboriculture Report and the requirements of Policy BNE3 and BE4 of the South Derbyshire Local Plan and the National Planning Policy Framework.

18. Before the development hereby approved is commenced, within any relevant phase of development (as approved by condition 3), a timetable for the provision/improvement of on-site linkages to footpaths, footways and cycleways adjacent to that phase, shall be submitted to and approved in writing by the Local Planning Authority. The development of the phase there of shall be carried out in accordance with the approved timetable.

Reason: In accordance with the requirements of Policy BNE1 of the South Derbyshire Local Plan Part 1 and the National Planning Policy Framework.

19. Before the foodstore is first opened for trade, a minimum of 50% of the shell and core of the proposed SME unit shall be built and details confirming the progress of construction shall be sent to the LPA and acknowledged in writing prior to the opening of the foodstore. The remaining 50% shall be built and the units made available to businesses within 12 months of the opening of the foodstore.

Reason: For the avoidance of doubt and in accordance with the applicants stated intentions in order to ensure the timely delivery of the proposed commercial units in accordance with the requirements of Policy E7 of the Local Plan and the National Planning Policy Framework

20. Before the foodstore hereby approved is brought into use a Local Labour Strategy (LLS) shall be submitted to and approved in writing by the Local Planning Authority. The LLS shall set out details of local labour initiatives which the applicant / owner will implement to maximise the access of the local labour market within South Derbyshire and the surrounding area to employment opportunities at the foodstore. The LLS shall include, but not be limited to:
- Employment and Training Plan
 - Range of opportunities to be offered including traineeships, apprenticeships and work experience opportunities
 - Specific local advertising scheme
 - Targeting of long-term unemployed residents facing additional barriers (to include pre-employment training, guarantee of interviews)
 - The number of jobs to be created in various roles (traineeships, apprenticeships and work experience) and for those entering or re-entering the labour market as a proportion of the total number of jobs within 6, 12 and 18 months of opening
 - Monitoring reports to be sent to the LPA within 1 month of the 6, 12 and 18 month target dates above.

Reason: In order to ensure the proposed development provides local employment opportunities in accordance with the requirements of Policy S1 and Policy E7 of the Local Plan and the National Planning Policy Framework

21. Before the drive-thru coffee shop hereby approved is brought into use a Local Labour Strategy (LLS) shall be submitted to and approved in writing by the Local Planning Authority. The LLS shall set out details of local labour initiatives which the applicant / owner will implement to maximise the access of the local labour market within South Derbyshire and the surrounding area to employment opportunities at the foodstore. The LLS shall include, but not be limited to:
- Employment and Training Plan
 - Range of opportunities to be offered including traineeships, apprenticeships and work experience opportunities
 - Specific local advertising scheme
 - Targeting of long-term unemployed residents facing additional barriers (to include pre-employment training, guarantee of interviews)
 - The number of jobs to be created in various roles (traineeships, apprenticeships and work experience) and for those entering or re-entering the labour market as a proportion of the total number of jobs within 6, 12 and 18 months of opening
 - Monitoring reports to be sent to the LPA within 1 month of the 6, 12 and 18 month target dates above.

Reason: In order to ensure the proposed development provides local employment opportunities in accordance with the requirements of Policy S1 and Policy E7 of the Local Plan and the National Planning Policy Framework.

22. Before any phase of the development hereby approved is commenced above slab level a Species Enhancement Plan for the relevant phase or phases shall be submitted to and approved in writing by the Local Planning Authority. Approved measures shall be implemented in full and maintained thereafter. The Plan shall clearly show positions, specifications and numbers of features, which shall include (but are not limited to) the following:
- internal and/or external bird nest boxes x 4
 - integrated bat boxes x 2

Reason: In order to provide species enhancements in accordance with the requirements of Policy BNE3 and the National Planning Policy Framework.

23. The foodstore development shall be restricted to use Ea of The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020.

Reason: In accordance with the applicants stated intentions and to ensure the benefits of the scheme in accordance with the requirements of Policy E7 of the South Derbyshire Local Plan and the National Planning policy Framework.

24. The use of the commercial units hereby approved shall be restricted to uses falling within Use Class B2, B8, E c) and E g) of The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020.

Reason: In accordance with the requirements of Policy E2 of the Local Plan and the National Planning Policy Framework.

25. Notwithstanding the provisions of Town and Country Planning Act, General Permitted Development Order the commercial units within phase 1b of the development shall not be subdivided nor shall any mezzanine levels be inserted into the buildings.

Reason: To ensure the buildings are retained in their intended use in accordance with the requirements of Policy E2 of the South Derbyshire Local Plan and the National Planning Policy Framework.

26. Before the installation of lighting fixtures a detailed lighting strategy shall be submitted to and approved in writing by the LPA to safeguard bats and other nocturnal wildlife. This should provide details of the chosen luminaires, their locations and any mitigating features such as dimmers, PIR sensors and timers. Dependent on the scale of proposed lighting, a lux contour plan may be required to demonstrate acceptable levels of lightspill to any sensitive ecological zones/features. Guidelines can be found in Guidance Note 08/23 - Bats and Artificial Lighting at Night (BCT and ILP, 2023). Such approved measures will be implemented in full.

Reason: To safeguard species and habitats in accordance with the requirements of Policy BNE3 of the Local Plan and the National Planning Policy Framework.

27. Any tree lost within 10 years of planting and any shrub or hedge lost within 5 years of planting shall be replaced by a like for like species of a similar size unless otherwise agreed in writing by the local planning authority.

Reason: In order to ensure good design and the retention of trees within the site in accordance with the requirements of Policy BNE1, Policy BNE4 and Policy INF8 of the Local Plan Strategy and the National Planning Policy Framework.

28. The development hereby approved shall be implemented and monitored in accordance with the regime contained within the approved Travel Plan (Workplace Framework Travel Plan, Land North of Derby Road, Hilton, Reference:237295, Revision: Final, dated 31st January 2021). In the event of failing to meet the targets within the Plan a revised Plan shall be submitted to and approved in writing by the Local Planning Authority to address any shortfalls, and where necessary make provision for and promote improved sustainable forms of travel to and from the site. The submitted details shall use Modeshift STARS Business to carry out this process and include mechanisms for monitoring and review over the life of the development and timescales for implementation. The approved Travel Plan shall be implemented, monitored and reviewed in accordance with the approved details.

Reason: For the avoidance of doubt and to reduce vehicle movements and promote sustainable travel in accordance with the requirements of Policy S6 and Policy INF2 of the South Derbyshire Local Plan and the National Planning Policy Framework.

Informatives:

- d. The applicants attention is drawn to the comments of the Derbyshire County Council Lead Local Flood Authority in their response dated 22nd March 2024 and advised to contact them directly should further clarification be required.
- e. The applicant is advised to review the content of Natural England's consultation response dated 7th March 2024 in respect of the proposed development and necessary mitigation measures.

- f. The applicant should note the contents of paragraph 59 of DfT Circular 01/2022, which sets out that no water run-off that may arise due to any change of use will be accepted into the highway drainage systems, and there shall be no new connections into those systems from third party development and drainage systems. Any change of use to the existing connections to the Highways drainage will be classed as a new connection and therefore will be refused in the first instance as stated within the aforementioned Circular.
- g. The developer is advised they should contact the Business Compliance Team on all matters relating to food hygiene. Environmental.Health@southderbyshire.gov.uk Food businesses must register with the local authority at least 28 days prior to opening for business.

Item No. 1.5

Ref. No. [DMPA/2023/1115](#)

Valid date: 31/08/2023

Applicant: J Ottewell

Agent: Copesticks

Proposal: The demolition of two dwellings, one partially built dwelling and associated structures and the erection of 6 new dwellings and associated landscaping at 36-44 Mount Pleasant Road, Mill Hill, Repton, DE65 6GQ

Ward: Repton

Reason for committee determination

This item is presented to the Committee at the request of Councillor Lowe as local concern has been expressed about a particular issue that should be considered by the committee and it is considered that the Committee should debate the issues which are very finely balanced. Cllr Lowe has outlined the reason for this call in is due to several residents showing concerns over the proposed development alongside the Parish Council.

Executive Summary

The proposal is to erect six new dwellings at 36-44 Mount Pleasant Road, Mill Hill in place of the existing two dwellings and one partially built dwelling. A further three dwellings have been previously approved but not built through planning permission 9/2005/0573 which remains extant due to part of the proposals (the storage buildings) being implemented. The site is located outside of the defined settlement boundary for Repton within both the Local Plan and the Adopted Repton Neighbourhood Plan. Objections have been received relating to the development not being in accordance with Repton Neighbourhood Plan, overlooking and increased traffic. There are no outstanding objections from statutory consultees including Derbyshire Wildlife Trust and the CHA. The proposed development will allow for the successful redevelopment of a brownfield site within a residential area. In light of such it is considered that the application is acceptable, subject to the conditions listed in the report.

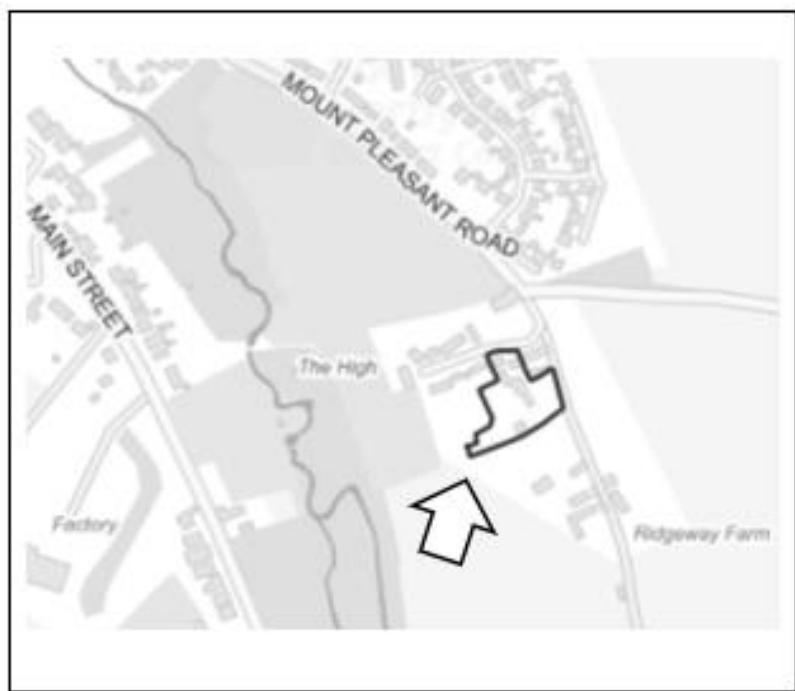
Site Description

The application site is located to the south-west of Repton. The entrance to the site is off Mount Pleasant Road and the site is outside of the Settlement boundary of Repton. 42-44 Mount Pleasant Road is a former builder's yard. The site is bordered by residential properties to the north, Mount Pleasant Meadow potential Local Wildlife Site is adjacent to the western boundary of the development site. Repton Footpath 5 runs to the eastern boundary of the site which overlooks the site.

The proposal

The application proposes the demolition of the two existing disused dwellings, one partially built dwelling and the construction of six new dwellings with the associated landscaping. The partially built dwelling was approved under 9/2007/0868 as a replacement dwelling however the permission has not been fully implemented. To the rear of the current dwellings is a former builders yard which has an implemented planning permission for three dwellings that have not been constructed.

DMPA/2023_1115 – 36-44 Mount Pleasant Road, Mill Hill, Repton, DE65 6GQ



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South Derbyshire District Council. LA 100019481.2020

Applicant's supporting information

Planning Application Drawings

Proposed Garage and Carport Plans 23 4289 28A 23 November 2023

Plot Two Floor Plans 23 4289 22 31 August 2023

Plot 2 Elevations 23 4289 21 31 August 2023

Location and Block Plan 23 4289 17B received 14 May 2024 Plot 6 Plans and Elevations 23 4289 27 31 August 2023

Plot 3 Plans and Elevations 23 4289 23 31 August 2023

Plot 5 Plans and Elevations 23 4289 26 31 August 2023

Site Plan and Roof Plan 23 4289 18D received 14 May 2024

Drainage Strategy 27420 01 230 01 31 August 2023

3D Visualisations 23 4289 32A & 23 4289 31A 31 August 2023

Proposed Street Scenes 1 23 4289 19 31 August 2023

Plot 4 Floor Plans 23 4289 25A 31 August 2023

Access Arrangements 27420 08 020 01c 31 August 2023

Plot 4 Elevations 23 4289 24A 31 August 2023

Plot 1 Plans and Elevations 23 4289 20 31 August 2023

Bat Survey Report produced by fpcr Environment and Design Ltd. September 2023, received 9 October 2024

The submitted report produced by fpcr provides information on an assessment undertaken to look at the potential of bats and their roosts at the application site. Recommendations are made for a Natural England licence to be sought prior to any demolition which will demonstrate that the development proposals will minimise any potential impacts upon the bats. The mitigation work includes the installation of bat boxes and works to be undertaken outside of hibernation period.

Biodiversity Net Gain Report by fpcr August 2023 , received 31 August 2023

The submitted report produced by fpcr provides details following a desk study and habitat surveys of the application site and the BNG calculation based upon the proposed development.

Ecological Appraisal by fpcr August 2023, received 31 August 2023

The submitted ecological appraisal prepared by fpcr provides an assessment of the ecological value of the proposed development and provides recommendations for the site design and further surveys. The assessment recommends that the site design provides a scheme of biodiversity enhancements proportionate to the level of habitat losses proposed.

Planning Statement, received 31 August 2023

Sets out the matters for consideration and the policy framework and states that the proposal is considered to be in accordance with the National Planning Policy Framework, in particular the presumption in favour of development. Detail is provided on the application site and its surroundings, the current use of the site as is - an existing dwelling, a partly build dwelling and former builders yard and the extant permission for three dwellings.

Relevant planning history

9/2002/0220 – Residential use of land (three dwellings) (outline application with all matters except access and siting to be reserved for further approval) – approved May 2002

9/2005/0573 - The conversion of a detached building to a dwelling and erection of two dwellings and a domestic storage building – approved June 2005

9/2007/0868 - The demolition of existing dwelling and the erection of a new dwelling and detached garage – approved September 2007

Responses to consultations and publicity

Derbyshire Highway Authority - (14 May 2024) - No objection subject to conditions

Second response (02 May 2024) – The applicant has confirmed that the highway will remain private. The proposed access should remain as a footway crossover and not a priority junction as shown on the site layout plans. The applicant is requested to amend the site layout accordingly. Visibility splays are required in each direction and should be free of obstructions. The parking is considered acceptable.

Initial response (September 2023) -Confirmation is required as to whether the proposed access road is to be offered for adoption by the local highway authority.

Derbyshire Wildlife Trust - (February 2024) - Further information on the replacement roost for brown long-eared bat has been provided by FPCR (letter 17th November 2023). The dimensions of the replacement roost are in line with current guidance and the proposals are acceptable. We also raised some minor concerns relating to the development achieving a measurable net gain in line with the NPPF. We have not received any further information on this and cannot comment further at this time.

Initial response (October 2023) – The Ecological Appraisal and the Bat Survey Report provide sufficient information for the Council to understand the nature of the impacts on protected species and habitats at the site. The most significant impact relates to the presence of daytime and night roosts of common pipistrelle, soprano pipistrelle and brown long-eared bat species in buildings B1a, B1b, B3a and B5 (as labelled in the Bat Survey Report). None of the roosts are maternity roosts. The Bat report has set out a scheme for mitigation and this will need to be submitted to Natural England to secure a licence to allow the works to go ahead. The proposed mitigation is acceptable, but the details for the creation of a replacement bat roost for brown long-eared bat needs further consideration.

The Biodiversity Net Gain report has quantified the impacts on habitats and hedgerows at the site. Whilst there is no loss of hedgerows due to their retention, there is a minor loss of habitat equating to a net loss of -0.19 biodiversity (habitat) units. In addition, the Trading rules for medium and low distinctiveness habitats have not been met through the on-site habitat creation and enhancement measures.

At present the approach to be adopted with regard to resolving the biodiversity loss has not been agreed. Given that it is a relatively minor loss it may be reasonable to attach a condition requiring a scheme for biodiversity net gain to be submitted for approval. However, any off site scheme may require a S106 agreement as acknowledged by FPCR in their BNG report.

In the first instance given that the loss of habitat is small the applicant should review the layout of the proposal to see if changes can be made that would allow for the habitats to be retained or created on-site post development. Any changes would also need to address the trading rules within the metric to ensure they are met.

The ecological assessments of the site provide sufficient information for the Council to have a thorough understanding of the site ecology and the nature of the impacts at the site. There are no statutory or non-statutory nature conservation designations and no Habitats of Principal Importance are affected. The losses relate to habitats of more local biodiversity value. Nonetheless the biodiversity assessment has reported a small net loss as a result of the development and at the current time it is not clear how the applicant intends to address this. As stated above it would be preferable to resolve this prior to the determination of the application and ideally for all of the biodiversity loss to be addressed through a suite of on-site measures including habitat retention, and post development habitat creation and enhancement. However, it is acknowledged that the loss is small, and it may be possible to resolve it at a later stage via a condition.

Further information is required in relation to the mitigation proposals for brown long-eared bats so there is a clear understanding of where the replacement roost will be located. Once that is known a condition can be attached to ensure a licence is secured from Natural England and the mitigation is implemented.

Environmental Health - No objection subject to conditions.

Lead Local Flood Authority – No comments to make. Due to current workload Derbyshire LLFA are only responding to major planning applications.

Repton Parish Council:

- a) Aware the existing 2005 permission is still valid;
- b) The developer has misread the Repton Neighbourhood Development Plan (NDP) that is in place and draws the wrong conclusions on its relevance to this application.
- c) The developer, in essence, quotes the arguments that were used in the successful appeal by Planning Application 9/2017/0194 (Askew Lodge, Milton Road, Repton). The successful appeal turned on the ambiguous wording in SDDC Local Policy H1 as referred to in the inspector's report (Paragraph 11). Therefore this application could be considered acceptable under the current SDDC Local Plan. The Repton NDP was only in draft at this time and the final, agreed Repton NDP (formally adopted by SDDC in Jan 2020)
- d) Not in accordance with Repton NDP Policy H1: The Limits of Development which defines the settlement boundary for both Repton and Milton which asserts that housing outside of the settlement boundary will only be permitted if it is solely or primarily for affordable housing of a scale and design appropriate to its context and in conformity with the SDDC Local Plan BNE5. The NDP Policy is more restrictive than the H1 Policy in the SDDC Local Plan.
- e) The application does not meet the requirements of SDDC Policy BNE5 (development outside the settlement boundaries to sections i), ii), or iii). Section iv) relates to infilling a small gap for not normally more than two dwellings. SDDC has refused applications of 'infilling' with four dwellings previously, this cannot be considered infilling and the applicant doesn't attempt to do this;
- f) Section v) of the BNE5 policy is dependent on the application meeting one of the requirements in sections i) to iv) or for an affordable housing development under Repton NDP Policy H1 and as such does not apply to this application.

14 representations have been received in objection to the application. A summary of the responses received is as follows:

- a) There will be increased pressure on the local roads;
- b) The development will add pressure to parking in the area, many residents currently use the frontages of the site and opposite;
- c) Outside of Repton Neighbourhood Plan settlement boundary;
- d) Directly next to areas of natural beauty (PROW's and farmland) with this part of Repton having had significant development already;
- e) The development will encroach onto the greenbelt;
- f) Will increase noise pollution;
- g) Welcome the two replacements for the derelict / abandoned properties but not another four homes;
- h) The large 'executive' homes do not respond to the local need for 'affordable' homes;
- i) The appearance is not in-keeping with the current row of eight cottages
- j) The established homes will be overlooked;
- k) No consideration given to local residents;
- l) Infrastructure is at capacity within the area;
- m) The development states that access to the garage / turning area at the rear of 50 & 48 Mount Pleasant Road is to be maintained, however at the rear of plot 5 it is proposed to build a wall which will restrict the access to the driveway;
- n) Contradicts Repton Neighbourhood Plan policies regarding trees and housing outside of the settlement boundary (OS3 and H1);
- o) Bats live in the vicinity so where are they to be located following development;
- p) Concerns over the felling of mature trees;
- q) During site clearance fire have been left burning throughout the night.

Relevant policy, guidance and/or legislation

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications shall be determined in accordance with the provisions of the development plan unless material considerations indicate otherwise.

The relevant Development Plan policies are:

2016 Adopted Local Plan Part 1 (LP1): S1 (Sustainable Growth Strategy) , S2 (Presumption in Favour of Sustainable Development), S4 (Housing Strategy), S6 (Sustainable Access), H20 (Housing

Balance), H24 (Replacement Dwellings in Rural Areas) , SD1 (Amenity and Environmental Quality), SD2 (Flood Risk), SD3 (Sustainable Water Supply, Drainage and Sewerage Infrastructure), SD4 (Contaminated Land and Mining Legacy) , BNE1 (Design Excellence), BNE3 (Biodiversity), BNE4 (Landscape Character and Local Distinctiveness), INF2 (Sustainable Transport).

2017 Adopted Local Plan Part 2 (LP2): SDT1 (Settlement Boundaries and Development) , BNE5 (Development in Rural Areas)

Repton Neighbourhood Development Plan (NDP) : H1 (Limits of Development) , H2 (Development within Settlement Confines) , H3 (Housing Mix) , H4 (Design of New Developments) , H5 (Design of Car Parking) , OS2 (The Impact of New Development on Views and Views From the Countryside) , OS3 (Important Trees and Hedgerows), and T1 (Car Parking in New Developments).

The relevant local guidance is:

South Derbyshire Design Guide Supplementary Planning Document (SPD)

The relevant National Policy and Guidance is:

National Planning Policy Framework (NPPF)

Planning Policy Guidance (PPG)

The relevant legislation is:

The Town and Country Planning (General Permitted Development) Order 2015 (as amended)

Planning considerations

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

- Principle of Development
- Access and Highway Safety
- Design, Character and Appearance
- Impact upon residential amenity
- Impact upon protected species
- Other Issues

Planning assessment

Principle of Development

As defined by Policy H1 and SDT1 of the South Derbyshire Local Plan and H1 of the Repton Neighbourhood Plan, the proposed development is located outside of the settlement boundary for development within the Key Service Village of Repton. Therefore the development is considered to be within the rural area. Policy H1 of the Local Plan states that development within rural areas is restricted to limited infill and the conversion of existing buildings. Within the Repton Neighbourhood Plan, Policy H1 states "*housing development outside of the settlement boundary will only be permitted if it is solely or primarily for affordable housing, of a scale and design appropriate to its context and generally in conformity with SDDC Policy BNE5*". In addition Policy STD1, states that outside of the settlement boundaries , within rural areas defined within H1, development will be considered acceptable inter alia by Policy BNE5.

Policy BNE5 states that outside of settlement boundaries, planning permission will only be granted if certain criteria is considered to be met. This includes that the development is considered to be infill, or is allowed by other policies of the Development Plan. It could be argued that in this instance policy H24 (Replacement Dwellings in Rural Areas) is relevant in this application. The development should also not have an undue impact upon the landscape character, quality, biodiversity, best and most versatile land and heritage assets.

The application site has a history of development and currently has dwellings (either complete or partially built) at 36 Mount Pleasant Road (9/2007/0868); 46 Mount Pleasant Road (9/2005/0573 – the planning permission was implemented through the erection of the storage building but the three

dwellings have not been constructed). This brings a total of 6 existing dwellings or previously approved dwellings implemented, therefore there is no net gain of dwellings through this permission.

Policy H24 (Replacement Dwellings in Rural Areas) states that the replacement of a dwelling will be permitted provided that

- *The form and bulk of the new dwelling does not substantially exceed that of...which could be achieved as permitted development; and*
- *Is not more intrusive in the landscape than that which it replaces; and*
- *The new dwelling has substantially the same siting as the existing; and*
- *The existing dwelling to be demolished is not of historic merit*

It is noted that, whilst implementable a number of the dwellings have not been built and therefore the proposals do not wholly accord with Policy H24 Local Plan and the same could be said for Policy BNE5 of the Local Plan and H1 of the RNP. The proposals do however provide for a more holistic redevelopment of the site than that permitted by the three separate permissions and further onsite benefits which could be considered to weigh it its favour.

Access and Highway Safety

Derbyshire County Council have been consulted on this application as the local highway authority. The applicant has confirmed that the intention is for the access to the development from Mount Pleasant Road is to remain private ownership. Following this the Highway Authority have said that the proposed access should remain as a footway crossover and not a private junction, therefore the site plans have been amended to show the proposed crossover. Appropriate levels of parking are provided for each plot with a minimum of two off-road parking spaces. Subject to the proposed conditions from the highway authority it is considered the development would therefore accord with Policy INF2.

Design, Character and Appearance

Policy BNE1 within the adopted Local Plan Part 1 sets out the principles for design, accompanied by further guidance and detail within the South Derbyshire SPD.

The development is proposed to have six dwellings in a courtyard formation. With Plots 1 and 2 flanking the entrance points to the development and have been designed to look like traditional two storey dwellings. Plots 3, 4 and 5 are set further back into the development and have been designed to look similar to that of barn conversions within the countryside. The design of which will then help to soften the impact of the new dwellings upon the landscape as it breaks into the countryside and is visible from the public footpath. The materials for the construction of the properties are to be agreed by condition to ensure that they remain in-keeping with the dwellings located upon Mill Hill. On plot landscaping is proposed for each dwelling and it is considered that the development takes on the local vernacular of its context. All the properties have been positioned so that they address the internal access road, excepting plots 1 and 6 which form the continuation of development on Mount Pleasant Road, which helps the development assimilate into the existing built form and provide natural surveillance within the site.

Impact on residential amenity

Policy SD1 of the adopted Local Plan states that the Council will support development that will not lead to an adverse impact on the amenity or environment of existing or future occupiers surrounding proposed developments.

Responses have been received from neighbours raising concern of overlooking onto the existing dwellings surrounding the site. Additionally, responses have also raised concerns regarding the size of the proposed dwellings in that they are executive homes rather than smaller homes that are required within Repton. The proposal is considered to comply with the space around dwellings requirements of the SPD, neither unduly oppressive in terms of massing (to where a harmful level of overshadowing could be cited to neighbouring properties) or where there would be an obvious breach of the minimum distance requirements of the SPD. The SPD (a long established document which guides when overlooking is raised) details a need for a minimum distance of 12m (between a blank elevation and primary windows) and that distance is met. The dwellings have been positioned so that they do not

directly face existing properties, excepting plot one, however this is separated by the existing road and is a relationship which is accepted across all housing developments.

Each property has its own contained amenity space, whilst some are bigger than others it is considered that all provide adequate gardens and are reflective of the different requirements of future homeowners.

Additionally, the site has a lawful use as a builders yard. Whilst this is not currently understood to be in use there would be no restriction on this use commencing again. This could, unrestricted, cause amenity issues to the occupants of the neighbouring properties through increased traffic and nature of vehicles accessing the site and noise. It is considered that the re-use of this brownfield site for residential purposes would be more in keeping with the locality and remove a use which has a greater potential of creating amenity issues for existing occupants of the area.

It is considered that the proposed development is in accordance with Policy SD1 of the Adopted Local Plan Part 1.

Impact on protected species

In respect of protected species, in particular bats as these are a protected species under The Wildlife and Countryside Act 1981 (as amended) and the Countryside and Rights of Way Act 2000, thus giving all bats legal protection, any structure which shows sign of bats currently or in the past, is classified as a bat roost.

If any works as a result of the proposed demolition and construction work would result in any illegal actions as listed under the legislation, then a licence must be obtained from Natural England prior to any work being undertaken. A "Bat Survey Report" has been provided, DWT has raised no objections to this stating "The dimensions of the replacement roost are in line with current guidance and the proposals are acceptable." It is therefore considered that the proposals would not result in any harm to a protected species and if any should be found during the development works then they are afforded protection under separate legislation. Conditions are attached in respect of other elements of the proposal, and it is considered that these would satisfactorily mitigate and minimise any potential harm as a result of the development.

Other Issues

The application is 0.25ha in size, therefore as it is below 1ha in size it is considered to be a minor planning application. Under Schedule 7A of the Town and Country Planning Act 1990 (as inserted by Schedule 14 of the Environment Act 2021), Biodiversity Net Gain became mandatory for minor applications made valid after 2nd April 2024. This application is exempt from Biodiversity Net Gain as it was made valid 31 August 2023. The applicant has submitted a Biodiversity Net Gain Report which has been reviewed by the DWT. It has been concluded that there is a loss of 0.19 units overall. This is something that will be met through a condition that requests a Landscape and Biodiversity Plan to be submitted prior to the commencement of development to address this loss.

Conclusion and Planning Balance

The proposal is considered to be contrary to Policy H1 and STD1 of the Adopted Local Plan and H1 of the Repton Neighbourhood Development Plan due to being located outside of the Repton Settlement Boundary therefore being located within a rural area and having to be considered in accordance with Policy BNE5 and H24. This policy conflict is considered to be outweighed by policy in the NPPF Paragraph 124 which states that planning decisions should give substantial weight to the value of using brownfield land. Concerns have also been raised regarding the potential impact on the neighbouring properties through overlooking however the proposed dwellings are located at a distance from existing properties and positioned such that there would be no direct overlooking. Currently there are dwellings constructed on the land, three dwellings that haven't been constructed but for which there is an implementable planning permission and in addition, buildings on the site relating to the use as a former builders yard. Therefore, it is considered suitable to approve the proposal subject to conditions.

None of the other matters raised through the publicity and consultation process amount to material considerations outweighing the assessment of the main issues set out above, noting that conditions or obligations have been attached where meeting the tests for their imposition. Where relevant, regard has been had to the public sector equality duty, as required by section 149 of the Equality Act 2010 and to local finance considerations (as far as it is material), as required by section 70(2) of the Town and Country Planning Act 1990 (as amended), as well as climate change, human rights and other international legislation.

Recommendation

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

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

2. The development hereby permitted shall be carried out in accordance with plans/drawings ref.
 - Proposed Garage and Carport Plans 23 4289 28A 23 November 2023
 - Plot Two Floor Plans 23 4289 22 31 August 2023
 - Plot 2 Elevations 23 4289 21 31 August 2023
 - Location and Block Plan 23 4289 17A 31 August 2023
 - Plot 6 Plans and Elevations 23 4289 27 31 August 2023
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 - Site Plan and Roof Plan 23 4289 18C 31 August 2023
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 - Access Arrangements 27420 08 020 01c 31 August 2023
 - Plot 4 Elevations 23 4289 24A 31 August 2023
 - Plot 1 Plans and Elevations 23 4289 20 31 August 2023

unless as otherwise required by condition attached to this permission or following approval of an application made pursuant to Section 96A of the Town and Country Planning Act 1990.

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

3. Each dwelling shall be constructed and fitted out so that the estimated consumption of wholesome water by persons occupying the dwelling will not exceed 110 litres per person per day, consistent with the Optional Standard as set out in G2 of Part G of the Building Regulations (2015). The developer must inform the building control body that this optional requirement applies.

Reason: To ensure that future water resource needs, wastewater treatment and drainage infrastructure are managed effectively, so to satisfy the requirements of policy SD3 of the Local Plan.

4. During the period of construction, no ground, construction or fitting out works shall take place and no deliveries shall be taken at or dispatched from the site other than between 0800 and 1800 hours Monday to Friday and 0800 and 1300 hours on Saturdays. There shall be no construction works (except for works to address an emergency) or deliveries on Sundays or Bank Holidays.

Reason: In the interests of protecting the amenity of the area and adjoining occupiers

5. No development shall take place (including demolition, ground works, vegetation clearance and movement of plant, machinery and materials) until a Construction Environmental Management Plan (CEMP: Biodiversity) has been submitted to and approved in writing by the local planning authority. The CEMP (Biodiversity) shall include the following.
 - a) Risk assessment of potentially damaging construction activities.

- b) Identification of “biodiversity protection zones”.
 - c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts on protected species and retained habitats during construction.
 - d) The location and timing of sensitive works to avoid harm to biodiversity features.
 - e) The times during construction when specialist ecologists need to be present on site to oversee works.
 - f) Responsible persons and lines of communication.
 - g) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person.
 - h) Use of protective fences, exclusion barriers and warning signs.
- The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details, unless otherwise agreed in writing by the local planning authority.

Reason: In order to safeguard protected and/or priority species from undue disturbance and impacts, noting that initial preparatory works could have unacceptable impacts; and in order to secure an overall biodiversity gain.

6. The Development hereby approved shall not be occupied until the access arrangements have been provided as shown on Drawing No. 23.4289.18D.

Reason: To ensure conformity with submitted details

7. A revised Biodiversity Net Gain Plan and revised biodiversity metric shall be submitted to, and be approved in writing by, the Local Planning Authority prior to the commencement of the development. The plan must demonstrate how a net gain will be achieved through on-site and/or off-site measures.

Reason: In order to ensure Biodiversity Net Gain in accordance with Policy BNE3

8. A Landscape and Biodiversity Enhancement and Management Plan (LBEMP) shall be submitted to, and be approved in writing by, the LPA prior to the commencement of the development. The aim of the LBEMP is to provide details for the creation, enhancement and management of habitats and species on the site post development, in accordance with the proposals set out in the submitted Ecological Appraisal (FPCR, August 2023) and Biodiversity Net Gain report (FPCR, August 2023 or as revised). The LBEMP should combine both the ecology and landscape disciplines and shall be suitable to provide to the management body responsible for the site. It shall include the following: -
 - a) Description and evaluation of features to be managed as per the approved biodiversity metric;
 - b) 6 integrated swift bricks 1 per dwelling in line with British Standard BS 42021:2022.
 - c) Aims and objectives of management, in line with desired habitat conditions detailed in the metric.
 - d) Appropriate management methods and practices to achieve aims and objectives
 - e) Prescriptions for management actions;
 - f) Preparation of a work schedule (including a 30-year work plan capable of being rolled forward in perpetuity).
 - g) Details of the body or organization responsible for implementation of the plan;
 - h) A monitoring schedule to assess the success of the habitat creation and enhancement measures at intervals of 1, 3, 5, 10, 15, 20 and 30 years;
 - i) Monitoring reports to be sent to the Council at each of the intervals above;
 - j) A set of remedial measures to be applied if conservation aims and objectives of the plan are not being met; and
 - k) Requirement for a statement of compliance upon completion of planting and enhancement works.

The LBEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery. The approved plan will be implemented in accordance with the approved details.

Reason: In order to safeguard and enhance habitat on or adjacent to the site in order to secure an overall biodiversity gain.

9. Prior to the installation of lighting fixtures, a detailed lighting strategy shall be submitted to and approved in writing by the LPA to safeguard bats and other nocturnal wildlife. This should provide details of the chosen luminaires, their locations and any mitigating features such as dimmers, PIR sensors and timers. Dependent on the scale of proposed lighting, a lux contour plan may be required to demonstrate acceptable levels of lightspill to any sensitive ecological zones/features. Guidelines can be found in Guidance Note 08/23 - Bats and Artificial Lighting at Night (BCT and ILP, 2023). Such approved measures will be implemented in full.

Reason: In order to safeguard protected and/or priority species from undue disturbance and impacts.

10. No works affecting buildings B1a, B1b, B3a and B5 (as labelled in the Bat Survey Report, FPCR September 2023) shall take place until an appropriate bat licence has been obtained. Confirmation of this shall be submitted to the LPA. Upon receipt of a licence from Natural England, works shall proceed strictly in accordance with the approved mitigation, which should be based on the proposed measures outlined in the Bat Survey Report, FPCR September 2023 and the letter to the Council dated 17th November FPCR and amended as necessary based on any correspondence with Natural England. Such approved mitigation will be implemented in full in accordance with a timetable of works included within the licence and followed thereafter. A copy of the results of any monitoring works will be submitted to the LPA

Reason: In order to safeguard protected and/or priority species from undue disturbance and impacts

11. During the period of construction there should be no clearance of vegetation by burning, or disposal of other materials by burning.

Reason: To protect the amenity of the locality, especially for people living and/or working nearby.

12. Prior to the first occupation of each dwelling, space shall be provided for the parking of vehicles associated with that dwelling in accordance with the approved plan(s) and the 6Cs Design Guide (or any subsequent guidance that may amend or replace it); and notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, or any statutory instrument amending, revoking and/or replacing that Order, such space shall be maintained throughout the life of the development free of any impediment to its designated use. For the avoidance of doubt, where a garage is to be counted as a parking space, the internal dimensions shall not be less than 3m wide by 6m long with any service or vehicular doors opening outwards.

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

13. Bin collection points shall be provided within private land at the entrance to shared private accesses and/or courtyards, sufficient to accommodate two bins per dwelling served, in accordance with a scheme to be first submitted to and approved in writing by the Local Planning Authority. The bin collection points shall be provided prior to the first occupation of a dwelling to which they serve and shall be retained thereafter free from any impediment to their designated use as such.

Reason: To ensure safe and suitable conditions are maintained on the public highway, in the interests of highway safety, and to ensure appropriate waste/refuse facilities are provided for the occupiers of the development.

14. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, or any statutory instrument amending, revoking and/or replacing that Order, the dwellings hereby permitted shall not be enlarged, extended or altered, and no buildings, gates, walls, fences or other means of enclosure (except as authorised by this permission or allowed by any condition attached thereto) shall be erected or constructed on the

site without the prior grant of planning permission pursuant to an application made to the Local Planning Authority in that regard.

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

15. The development hereby approved shall not be occupied until visibility splays are provided from a point 0.6m above carriageway level at the centre of the access to the application site and 2.4m back from the near side edge of the adjoining carriageway, (measured perpendicularly), for a distance of 25m in each direction measured along the nearside edge of the adjoining carriageway and offset a distance of 0.6m from the edge of the carriageway. These splays shall thereafter be permanently kept free of all obstructions to visibility over 0.6m in height above carriageway level.

Reason: In the interests of highway safety.

16. Prior to commencement of the development hereby permitted details of a Construction Management Plan (CMP) shall be submitted to and approved in writing by the Local Planning Authority. The approved plan shall be adhered to throughout the construction period. The plan/statement shall include but not be restricted to:

- Parking of vehicle of site operatives and visitors (including measures taken to ensure satisfactory access and movement for existing occupiers of neighbouring properties during construction);
- Any temporary access to the site;
- Locations for loading/unloading and storage of plant, waste and construction materials;
- Method of preventing mud and dust being carried onto the highway;
- Arrangements for turning vehicles;
- Arrangements to receive abnormal loads or unusually large vehicles;
- Highway Condition survey;
- Methods of communicating the Construction Management Plan to staff, visitors and neighbouring residents and businesses.

Reason: In the interests of safe operation of the adopted highway in the lead into development both during the construction phase of the development.

17. Prior to occupation of each plot, a detailed scheme of hard and soft landscaping shall be submitted to and approved in writing by the Local Planning Authority. The scheme should include specifications of hard landscaping materials; and for soft landscaping evidence the proposed locations of each tree species, the size of each type of tree (standard, select standard, or heavy standard with girth dimensions), the mix of any proposed grass areas, and the proposed locations and sizes of any ornamental shrubs (in litre pots). The works shall be undertaken in accordance with the agreed details prior to occupation of the development. All planting, seeding or turfing comprised in the approved scheme shall be carried out in the first planting and seeding seasons following the date of this decision; and any plants which within a period of five years (ten years in the case of trees) from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species and thereafter retained for at least the same period, unless the Local Planning Authority gives written consent to any variation.

Reason: In accordance with policy BNE1 of the Local Plan and in the visual interest of the development.

18. Notwithstanding the information shown on the approved plans prior to the construction of a boundary wall, fence or gate, details of the position, 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 dwellings to which they serve are 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 character and appearance of the area.

19. Prior to their incorporation into the buildings hereby approved, details and/or samples of the facing materials to be used shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be constructed using the approved facing materials.

Reason : In the visual interest of the buildings and the surrounding area.

Informatives:

- h. If during the works contamination is encountered which has not previously been identified, then the additional contamination shall be fully assessed in an appropriate remediation scheme submitted to and approved in writing by the local planning authority.
- i. The Local Highway Authority has no objection to the above subject to the applicant obtaining a Section 184 license. The access will require the provision of a verge and/or footway crossing from the carriageway under the Highways Act 1980 - Section 184 and the Applicant is required to obtain the permission of Derbyshire Highways before commencing any works on the highway, details can be found at:
www.derbyshire.gov.uk/transport-roads/roads-traffic/licences-enforcements/vehicular-access/vehicle-accesses-crossovers-and-dropped-kerbs.aspx or email highways.hub@derbyshire.gov.uk.

Item No. 1.6

Ref. No. [DMPA/2024/0037](#)

Valid date: 08/01/2024

Applicant: V Kotecha

Agent: Ian / Adam Ray

Proposal: Formation of an ingress only vehicular and pedestrian access with dropped kerb and footpath crossover to serve 247 Hearthcote Road at 247 Hearthcote Road, Swadlincote, DE11 9DU

Ward: Swadlincote

Reason for committee determination

This application seeks to overcome the reasons for refusal set out in ref. DMPA/2022/0302 which was determined by Planning Committee.

Supplementary Report

The application was previously considered at the meeting held on 2 April 2024 but was deferred to allow further clarifications with regard to the planning history for the site. The previous report is attached as an appendix.

Relevant planning history

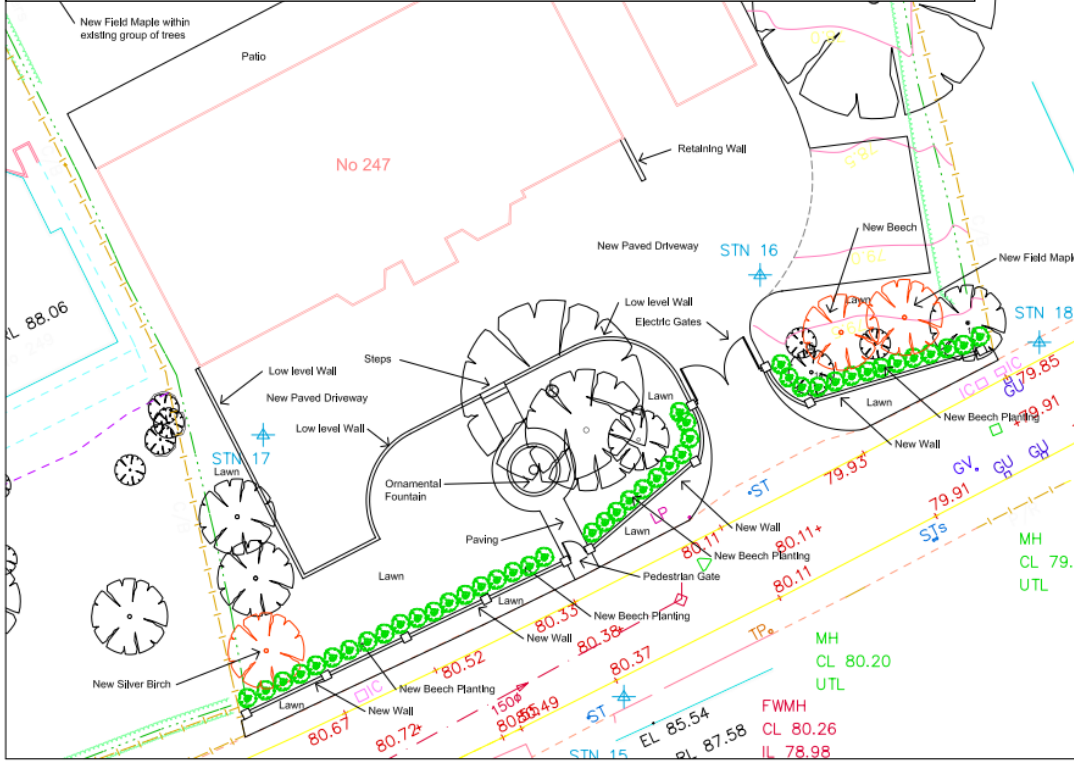
Planning Reference DMPA/2020/0915 Two-storey side and single storey rear extension along with attached garage. Refused, Dec 2020. Appeal Ref. APP/F1040/D/21/3266987 – Decision overturned, Feb 2021. The appeal decision included conditions including the requirement to submit details of hard and soft landscaping.

Planning Reference DMOT/2021/0754 Approval of details required by condition 1 attached to ref. DMPA/2020/0915 (two-storey side and single storey rear extension along with attached garage) – Approved Sep 2022 by Planning Committee. The wording of condition 1 iv) was as follows:

- iv) No development shall commence until details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. These details shall include, but not limited to, means of enclosure and retaining structures, boundary treatments, hard surfacing materials and indications of all existing trees and hedgerows on the land, identification of those to be retained and the measures for their protection throughout the course of development;

The details for this condition approved by Planning Committee in September 2022 are included below. As well as the hard and soft landscaping details for the site, the details discharged included the felling of a number of trees. The layout of a boundary wall was incorporated as part of the hard landscaping details and significant boundary planting was shown immediately adjacent to but behind the wall.

Hard and Soft Landscaping: Details discharged under DMOT/2021/0754



IF IN DOUBT ASK

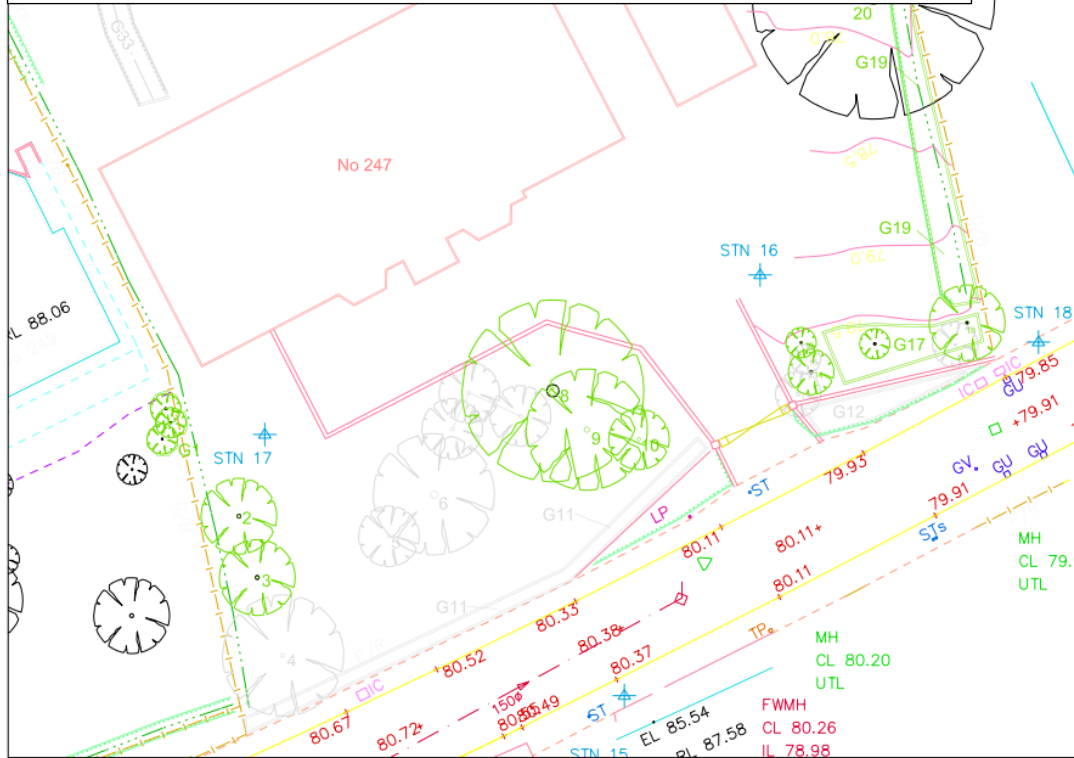
247 Heathcote Road Swadlowcote DE11 9DU

2023

WD019

architecture

Tree Removal Plan: Details discharged under DMOT/2021/0754



IF IN DOUBT ASK

247 Heathcote Road Swadlowcote DE11 9DU

2023

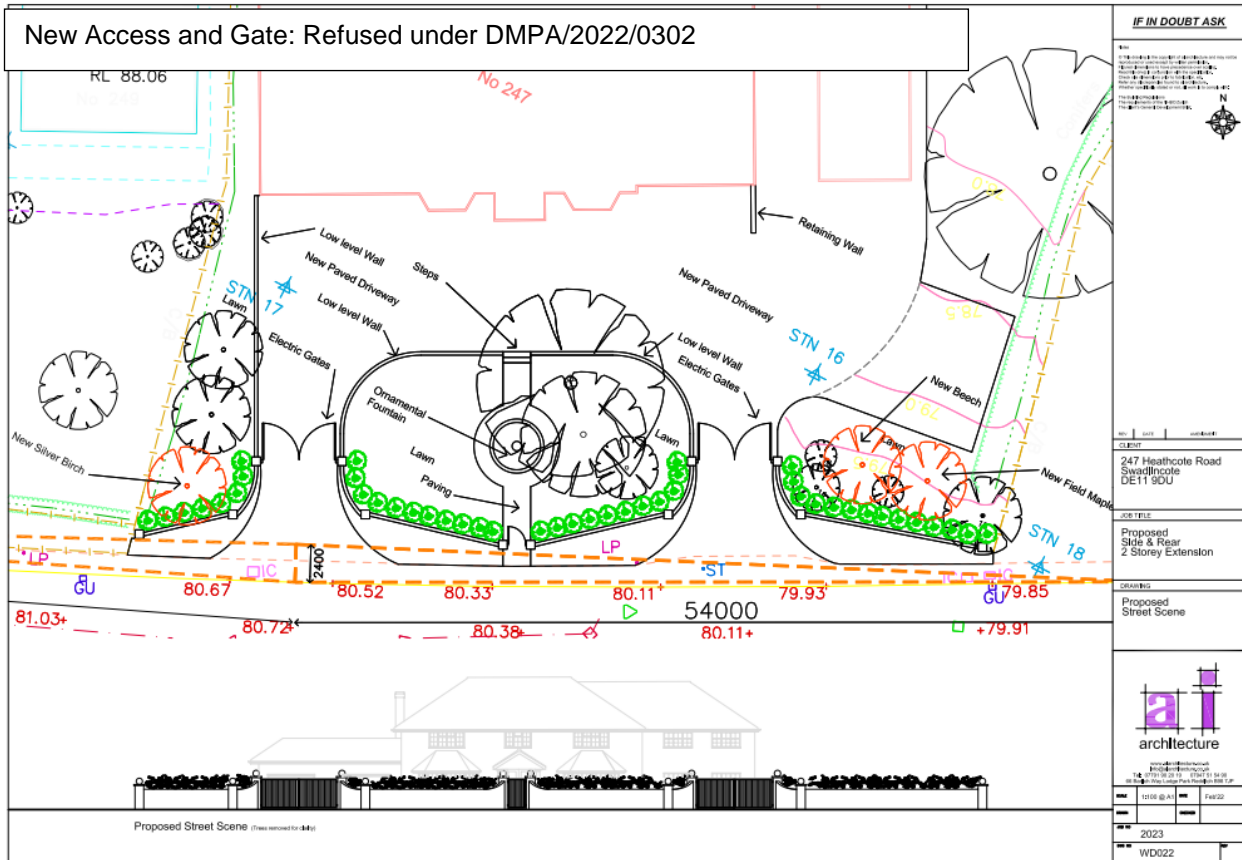
WD020

architecture

Trees to be removed

- Tree 4 - Whitebeam
- Tree 5 - Himalayan Cotoneaster
- Tree 6 - Japanese Cherry
- Tree 7 - Laurel & Holly
- Tree 8 - Yew
- Tree 9 - Yew
- Tree 10 - Yew
- Tree 11 - Grand Fir
- Tree 12 - Laminar Cypress

Planning reference DMPA/2022/0302 The felling of 9 trees covered by South Derbyshire District Council Tree Preservation Order no.213 and the formation of a vehicular and pedestrian access – was refused by Planning Committee in August 2023. The decision has been appealed and the outcome is pending. Note that the inclusion of the felling of trees in description of the 2022 application is now unnecessary as the details were previously discharged, as approved by planning committee in September 2022.



IF IN DOUBT ASK

247 Heathcote Road
Swardincote
DE11 9DU

Proposed
Side & Rear
2 Storey Extension

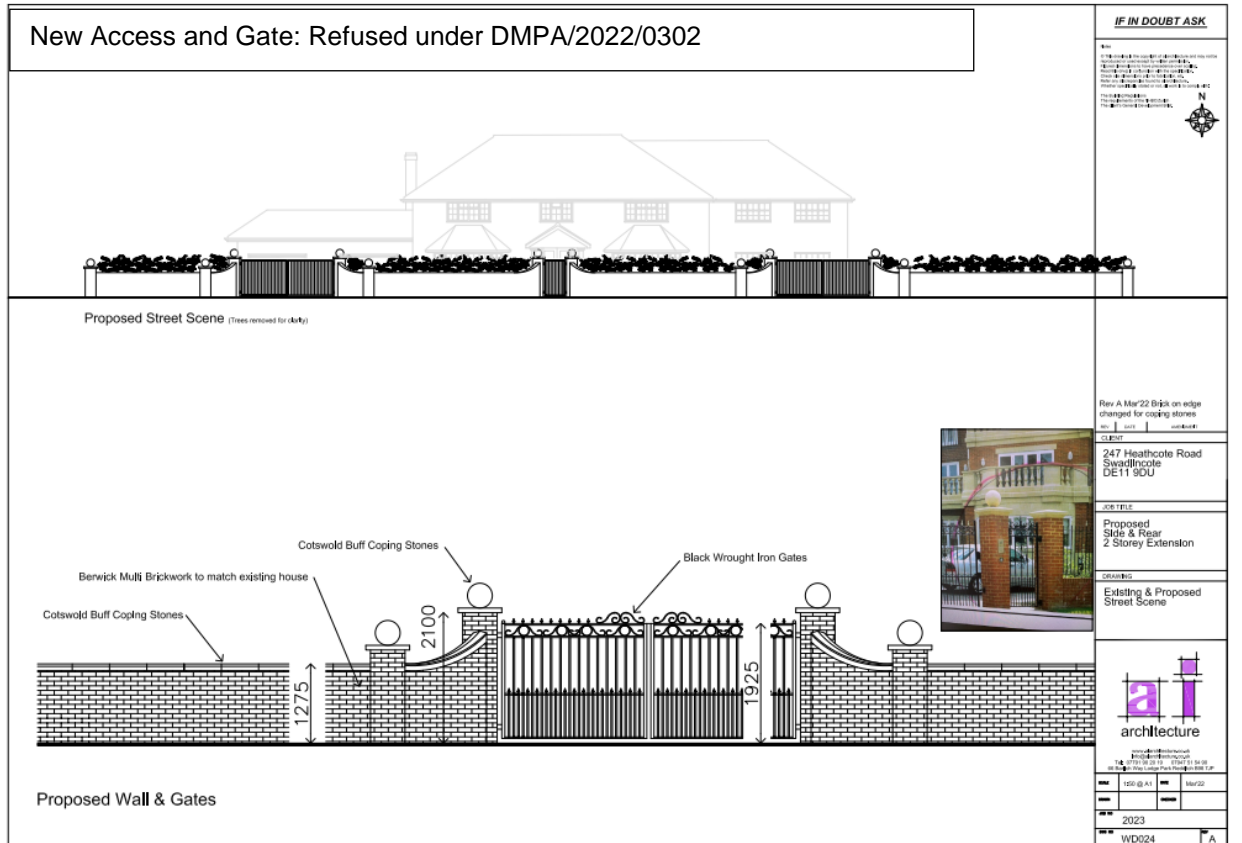
Proposed
Street Scene

architecture

1506 @ A1 Mar 22

2023

WD022



IF IN DOUBT ASK

247 Heathcote Road
Swardincote
DE11 9DU

Proposed
Side & Rear
2 Storey Extension

Existing & Proposed
Street Scene

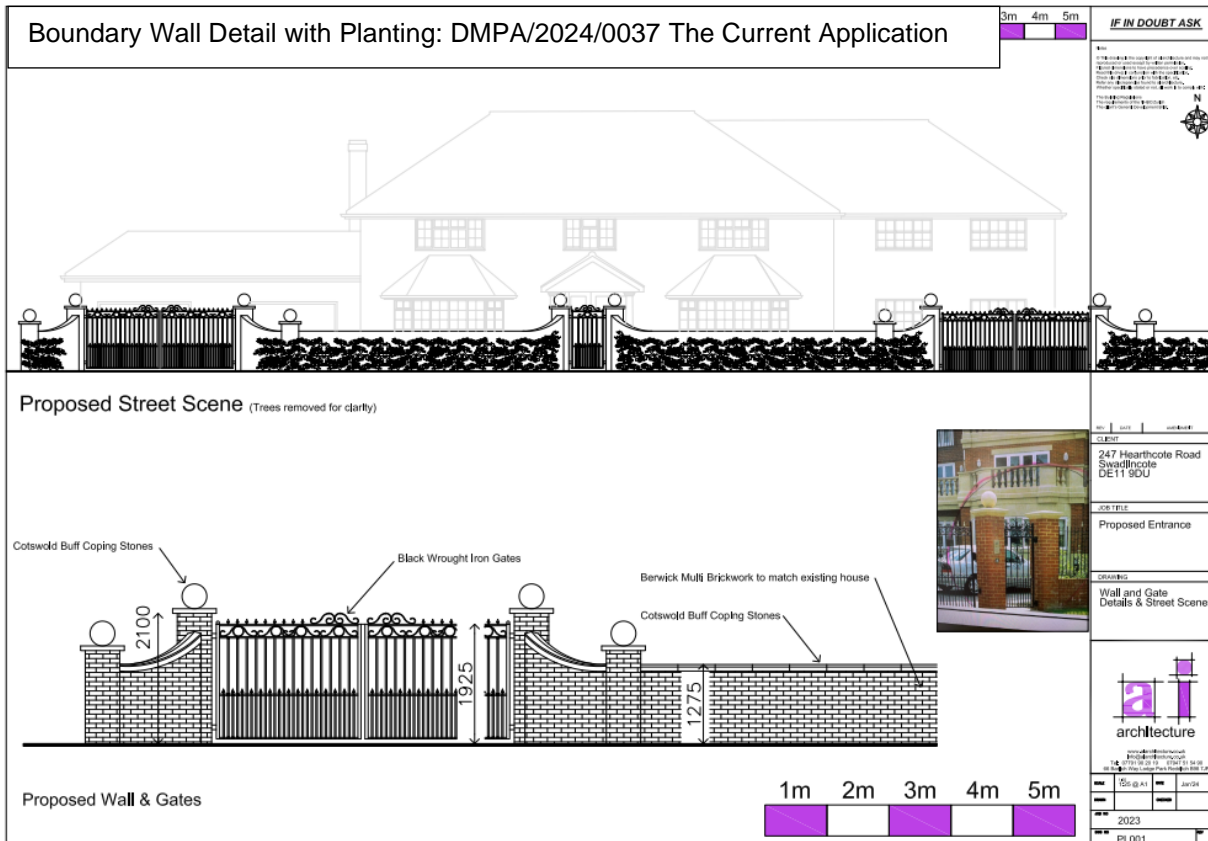
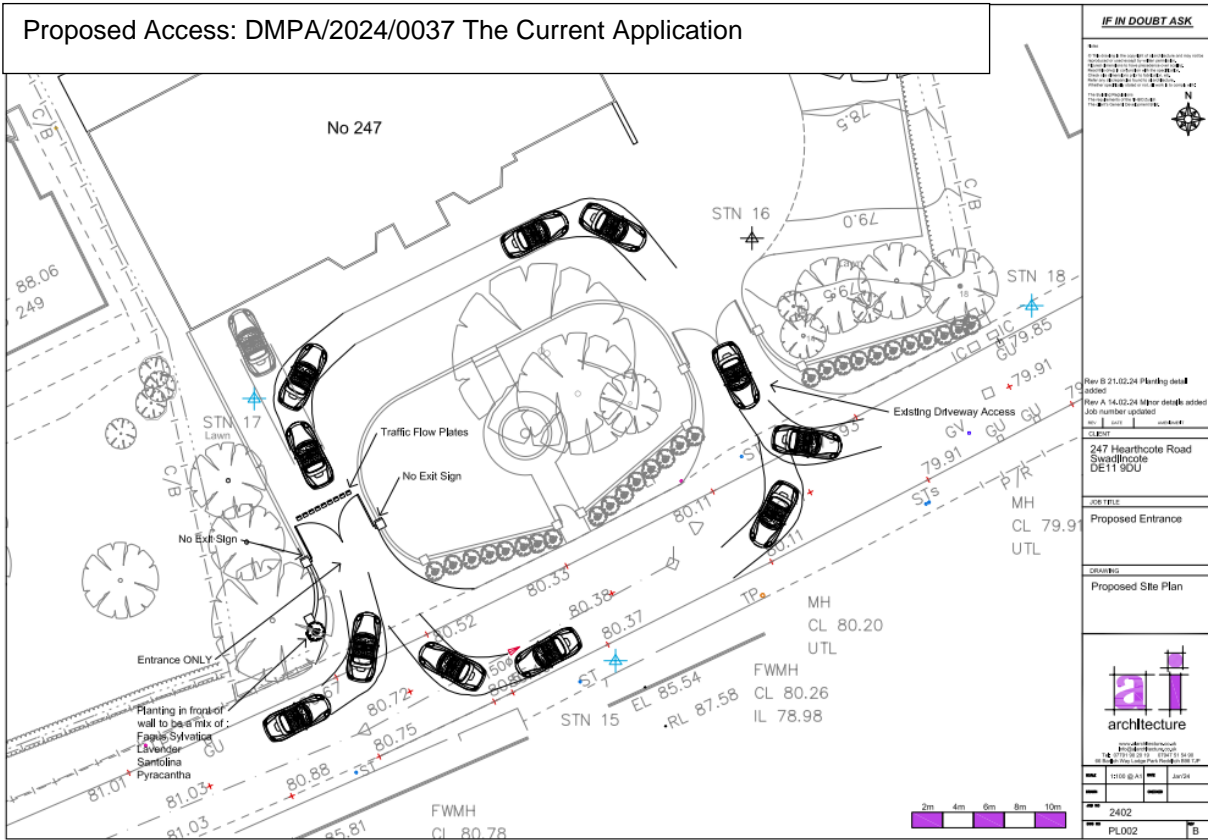
architecture

1506 @ A1 Mar 22

2023

WD024 A

Planning reference DMPA/2024/0037 – the current application – seeks formation of an ingress only vehicular and pedestrian access with dropped kerb and footpath crossover. The proposal would modify the positioning of the boundary wall as approved under DMOT/2021/0754 and move the planting that was previously approved behind the wall so that it is fronting Hearthcote Road. The details of this are shown below.



Proposed Street Scene (Trees removed for clarity)



Proposed Wall & Gates

Summary

The main differences between each proposal are that the first discharge of condition application (ref. DMOT/2021/0754) contained a wall with significant planting behind over the majority of the site frontage. The refused application (ref. DMPA/2022/0302) introduced additional access gates and railings in close proximity to the densely landscaped neighbouring property to the west with no additional hedging planted in front of the wall. The current proposal (ref. DMPA/2024/0037) now seeks to introduce hedge planting immediately in front of the wall. The applicant's agent has confirmed that all of this landscaping in front of the wall is to be planted and is not to be in pots. The planting now proposed is in line with recommendations from the Council's Tree Officer.

Recommendation

The Committee is recommended to resolve that planning permission be granted in accordance with the recommendations in the previous report, attached as an appendix.

Item No. 1.8
Ref. No. DMPA/2024/0037
Valid date: 08/01/2024
Applicant: V Kotecha **Agent:** Ian / Adam Ray
Proposal: Formation of an ingress only vehicular and pedestrian access with dropped kerb and footpath crossover to serve 247 Hearthcote Road at 247 Hearthcote Road, Swadlincote, DE11 9DU
Ward: Swadlincote

Reason for committee determination

This application seeks to overcome the reasons for refusal set out in ref. DMPA/2022/0302 which was determined by Planning Committee.

Site Description

The site has an area of 0.6ha and is roughly rectangular in shape. It is host to a large detached dwelling, with extensions permitted under planning reference DMPA/2020/0915 (allowed on appeal ref. APP/F1040/D/21/3266987), which is set back from the highway by a hard surfaced parking area and driveway. The application site is situated within a mixed-use area host to building that are highly varied in terms of their design. Dwellings along Hearthcote Road consist of a mixture of traditional and relatively modern properties, semi-detached and detached properties, two storey properties and bungalows. Dwellings are set back from the road at varying intervals and are finished in a range of materials including facing brickwork and render of various colours. Until recently, there was a mature belt of landscaping on the property's frontage to Hearthcote Road.

Planning reference DMOT/2021/0754 approved the felling of a number of trees as part of the hard and soft landscaping details required by condition under DMPA/2020/0915 (allowed on appeal).

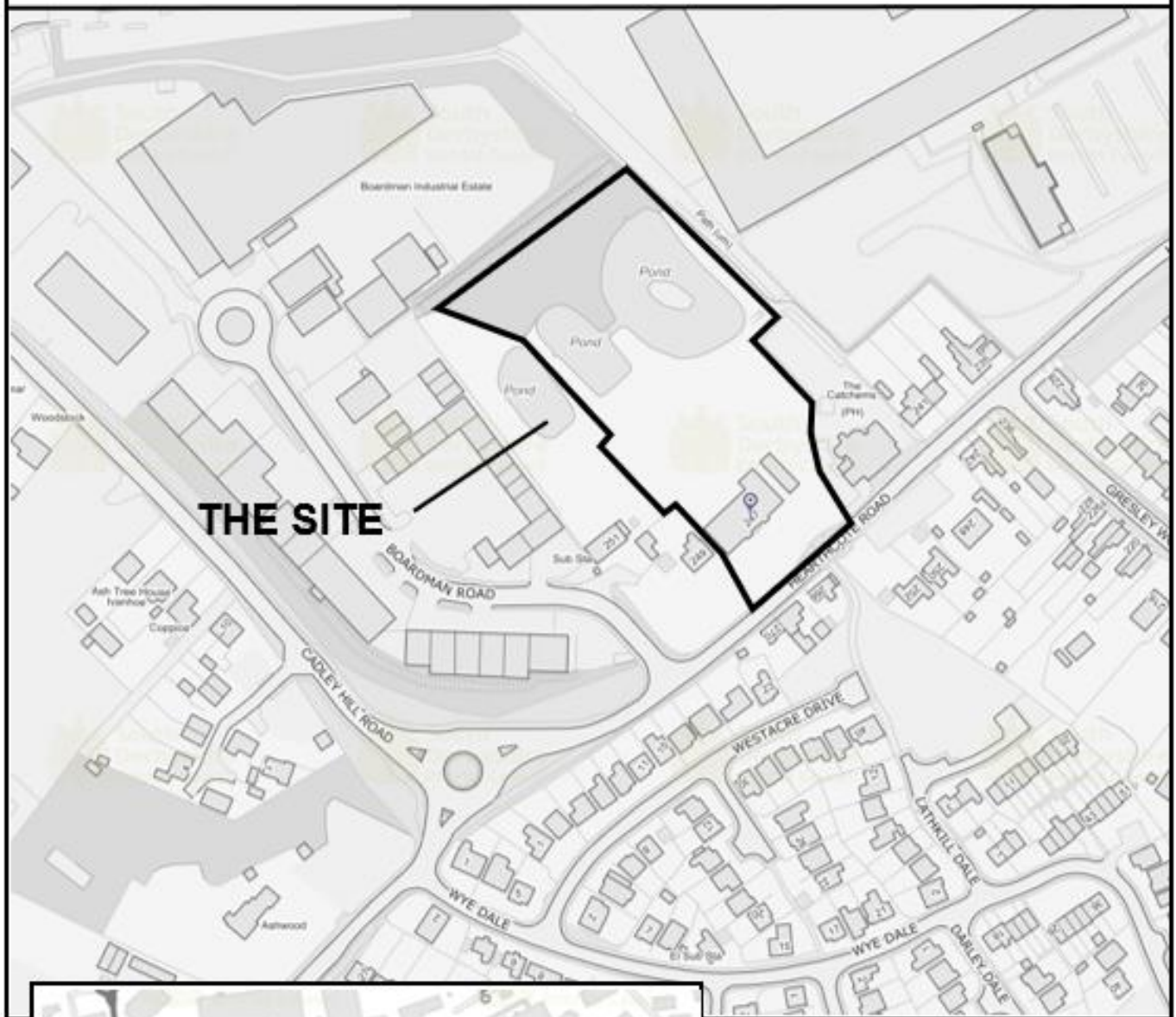
Planning application DMPA/2022/0302 was refused in November 2023 for the following reason:

The proposed boundary wall, gates and pillars in association with the proposed additional vehicle access to the property would erode the predominantly landscaped character of the area and would form a stark transition from the extensive natural vegetation immediately to the west. The application is therefore contrary to policies SD1 and BNE1 of the South Derbyshire Local Plan part 1 and Policy H27 of the South Derbyshire Local Plan part 2.

The proposal

The proposal is for the formation of an ingress only vehicular and pedestrian access with dropped kerb and footpath crossover to serve 247 Hearthcote Road. Vehicles would enter the western access and exit via the eastern access. The application seeks to overcome the previous reason for refusal in planning ref. DMPA/2022/0302 with incorporation of landscaping in front of the boundary wall that is adjacent to the proposed access and forms the frontage of the site.

DMPA/2022/0302 – 247 Hearthcote Road, Swadlincote, DE11 9DU



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South Derbyshire District Council. LA 100019461.2020

Applicant's supporting information

Site Location Plan, PL003A (final version received 14 Feb 2024)

Site Plan, PL002B (final version received 21 Feb 2024)

Proposed Block Plan, PL004A (final version received 14 Feb 2024)

Gate Wall Details, PL001A (final version received 14 Feb 2024)

The plans were resubmitted as part of the application process, although there were no material changes made to the Site Location, Proposed Block or Gate Wall Details plans. Minor clarifications were added to the Site Plan including labelling of the proposed planting and the addition of a tree and hedgerow to the west of the site.

Relevant planning history

DMPA/2022 The felling of 9 trees covered by South Derbyshire District Council Tree Preservation Order no.213 and the formation of a vehicular and pedestrian access – Refused August 2023. Appealed and outcome pending.

DMOT/2021/0754 Approval of details required by condition 1 attached to ref. DMPA/2020/0915 (two-storey side and single storey rear extension along with attached garage) – Approved Sep 2022

DMPA/2020/0915 Two-storey side and single storey rear extension along with attached garage. Refused, Dec 2020. Appeal Ref. APP/F1040/D/21/3266987 – Decision overturned, Feb 2021

Responses to consultations and publicity

County Highways Authority

It is noted that the applicant has proposed to install traffic plates to ensure enforcement of the 'in' only proposed access to the property. It is confirmed that this proposal is acceptable as it would satisfactorily prevent vehicles from leaving by the proposed access. Taking this into account the highway authority has no objections to the application subject to the following conditions being imposed should approval be granted. (26/01/2024)

Tree Officer

I recently inspected the site and noted that the brick wall 1275mm in height and gateways 2100mm in height have been constructed an estimated 1.5m from the rear of the footway leaving a strip of land that has been laid to grass. The protected trees to the rear of the wall are fully visible from the highway.

I note that the visibility splay includes up to 1.0m of the grass verge on the west side of the site to clearing the grass verge on the east of the site. Provided the new planting does not intrude into the visibility splay and that there are no services under the verge, compact low growing shrubs (no more than 1.0m in height) that can withstand drought conditions and salt spray could be planted in front of the wall. Suggested species include: lavender, santolina, berberis thunbergia, pyracantha species. To provide a higher visual screen (over 2.0m in height) to the property taller growing shrubs or small growing trees could also be planted behind the wall. Suggested species: viburnum spp, cotoneaster, hawthorn, laurel, rowan, Swedish whitebeam. (29/01/2024)

Neighbour Reponses

Four letters of objection which raised the same concerns. The objections raised have been summarised below:

- a) It is unclear whether the Highways Authority has been consulted in relation to this specific application.
- b) The site plan (Site Plan PL002) fails to meet Government planning legislation. It fails to show the site boundary in red which means that it is not possible to determine the extent of development in relation to site boundaries and topographical features. The omission of the site boundary on this plan creates a false impression that the applicant has some sort of legal interest and control of neighbouring property No 249 forming part of their development site.
- c) The site plan is not a topographical survey map and fails to show written dimensions from the western entrance splay to the straight-line boundary of 249 Hearthcote Road to ensure that the

proposal does not encroach onto neighbouring property No. 249 which the applicant holds no legal interest or control. Written dimensions are a requirement of the guidelines.

- d) The site plan fails to show physical boundary markers to the west of the development scheme and to the front of property in the legal interest of 249 Hearthcote Road i.e. TREE (No 4), hedging adjacent to the rear of the pavement (No G11) and fencing to the rear of the pavement and perpendicular to the straight-line boundary between No. 247 and 249 Hearthcote Road. These markers are important to the detail of this plan as they identify where the straight-line boundary between No 247 and No 249 Hearthcote lies.
- e) The Location Plan PL003 does not show the substantial development that has taken place since 2020 and is therefore misleading and not up to date.
- f) Inaccuracies between the width of access on the site plan and the block plan. Proposed Block plan PL004 fails to show the Traffic Flow Plates, No Exit Sign and Entrance Only annotations, ensuring that this plan meets the conditions of the County Council Highways Authority recommendations when the applicant has applied for the 'Formation of an ingress only vehicular access. The consequence of this is that if a planning consent is granted that includes Block Plan PL004 the consent may be misinterpreted by the applicant as providing an access for both ingress and egress.

Relevant policy, guidance and/or legislation

The relevant Local Plan policies are:

- 2016 Local Plan Part 1 (LP1): S2 (Presumption in Favour of Sustainable Development), SD1 (Amenity and Environmental Quality), BNE1 (Design Excellence), INF2 (Sustainable Transport)
- 2017 Local Plan Part 2 (LP2): BNE7 (Trees, Woodland and Hedgerows)

The relevant National Guidance is:

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

The relevant Local Guidance is:

- South Derbyshire Design Guide SPD (Design SPD)

Planning considerations

The determining issues are as follows:

- Principle;
- Amenity and Landscaping.

Planning assessment

Principle

Policy INF2 sets the local policy framework for sustainable transport and states that planning permission will be granted for development where appropriate provision is made for safe and convenient access to and within the development for users of the private car and other modes of transport.

The proposed development has been assessed by the County Highway Authority who has raised no objection. The applicant has proposed to install traffic plates to ensure that the one-way system in and out of the property would be adhered to and this has been reviewed by the County Highways Engineer who advises it would satisfactorily prevent vehicles from leaving by the western access. Conditions are recommended to ensure that the traffic plates are installed prior to first use, and that gates open into the site (and not onto the highway). These conditions would be reasonable and necessary to ensure the safety of the public highway. Overall, it is considered that the proposal would have no undue detriment on the safety of the local highways network and would comply with the requirements of policy

INF2.

Amenity and Landscaping

Policy BNE1 sets out principles for design excellence, which is supported by the detail within the South Derbyshire Design Guide SPD. Policy BNE7 states that where new planting is proposed, principal consideration should be given to planting tree species which are in keeping with the urban and rural area.

The previous refusal (ref. DMPA/2022/0302) of the access is material in consideration of this case. The reason for refusal stated that the *'proposed boundary wall, gates and pillars in association with the proposed additional vehicle access to the property would erode the predominantly landscaped character of the area and would form a stark transition from the extensive natural vegetation immediately to the west'*. In effort to overcome the previous concerns, the current plans show that landscaping would be incorporated in front of the boundary wall. This would provide some continuity between the landscaped frontage of the property to the west and enhancement of the frontage of the site. The Tree Officer has been consulted and recommended species that would be appropriate for the roadside environment, and the recommendations of the Tree Officer were incorporated into the latest version. The gates and pillars would integrate with the existing access to the property, located further to the east; and the proposed planting in front of the boundary wall is considered to overcome the previous reason for refusal. Details of the proposed shrub planting (e.g. size of litre pots) could be secured by condition. With this condition in place, it is considered that the proposal would meet the requirements of policies BNE1 and BNE7.

It is noted that the Tree Officer also suggested species for planting to the rear of the boundary wall, however additional planting here is not considered to be necessary, given the scale of the access proposal.

Any Other Matters

Representations have been received which raise several issues. These are responded to as follows:

- a) The Highway Authority has been consulted in relation to the planning application.
- b) The red line boundary is shown on the Site Location Plan (PL003) and it is not necessary to show this on the site plan (PL002). Land ownership is not a material planning consideration.
- c) Whilst guidance encourages written dimensions, it would not be necessary to require them in this case as it is possible to accurately measure from the Site Plan PL002.
- d) The site plan PL002 was updated following neighbour comments to incorporate the tree (T4) and hedgerow (G11) to the west of the access. These features do not affect the safety of the access, which is ingress only.
- e) Officers have visited the site and are aware of the other development within the site. This is not material in consideration of the proposed access and landscaping on the front boundary.
- f) The planning drawings would be viewed together and not independently. It is clear from the development description and site plan (PL002) that the new access would be ingress only. Detailed measurements would be taken from the detailed block plan (PL002).

Conclusion and Planning Balance

The boundary wall and gates are in a prominent position on the site frontage. Visibility is also substandard if exiting the site from the western access. It is considered that the formation of an ingress only vehicular and pedestrian access with dropped kerb and footpath crossover to serve 247 Heathcote Road with a condition to secure this would successfully address the visibility concern. The County Council as Highway Authority are content with this, and as such the development is considered to accord with Policy INF2 of the Local Plan. Although the front boundary wall and gates are in a prominent position, the landscaping detail with planting proposed in front of the boundary wall is considered to successfully mitigate the built form in this location and as such it is considered that the previous reasons for refusal of the scheme is addressed with this amended application. The application is recommended for approval subject to conditions.

Recommendation

Approval subject to conditions.

1. The works hereby approved 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 following plans/drawings and details: Site Location Plan, PL003A (final version received 14 Feb 2024); Site Plan, PL002B (final version received 21 Feb 2024); Proposed Block Plan, PL004A (final version received 14 Feb 2024); Gate Wall Details, PL001A (final version received 14 Feb 2024), unless as otherwise required by condition attached to this permission or following approval of an application made pursuant to Section 96A of the Town and Country Planning Act 1990.

Reason: For the avoidance of doubt and to ensure any future use of the premises does not adversely affect the amenities of the locality in general and in accordance with Policy BNE1.

3. The access hereby approved shall not be brought into use until it has been fully constructed, including the installation of traffic flow plates which shall remain in good working order for the lifetime of the development, in accordance with the Site Plan PL002B.

Reason: In the interests of highway safety and in accordance with Policy INF2 of the Local Plan.

4. The access hereby approved shall not be brought into use until the proposed access gates have been set back 5 metres from the highway boundary (back of footway) and made to open inwards only.

Reason: In the interests of highway safety and in accordance with Policy INF2 of the Local Plan.

5. Prior to incorporation within the development, details of the landscaping proposed in front of the boundary wall shall be submitted to and approved in writing by the Local Planning Authority. The details shall show the proposed locations of each tree species, the size of each type of tree (standard, select standard, or heavy standard with girth dimensions), and the proposed locations and sizes of any ornamental shrubs (in litre pots). All planting, seeding or turfing comprised in the approved scheme shall be carried out in the first planting and seeding seasons following the date of this decision; and any plants which within a period of five years (ten years in the case of trees) from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species and thereafter retained for at least the same period, unless the Local Planning Authority gives written consent to any variation.

Informatives

- a) The construction of the access is subject to the applicant obtaining a section 184 license to undertake work in the public highway.
- b) Under provisions within Sections 149 and 151 of the Highways Act 1980, the developer must take all necessary action to ensure that mud or other extraneous material is not carried out of the site and deposited on the public highway. Should such deposits occur, it is the developer's responsibility to ensure that all reasonable steps (e.g. street sweeping) are taken to maintain the roads in the vicinity of the site to a satisfactory level of cleanliness.
- c) Where the site curtilage slopes down towards the public highway provisions within Section 163 of the Highways Act 1980 requires measures to be taken to ensure that surface water run-off from within the site is not permitted to discharge across the footway margin. This usually takes the form of a dished channel or gully laid across the access immediately behind the back edge of the highway, discharging to a drain or soakaway within the site.
- d) Planning permission does not give you approval to work on the public highway. To carry out works associated with this planning permission, separate approval must first be obtained from Derbyshire County Council as Highway Authority - this will take the form of a section 184 licence (Highways Act

1980). It is strongly recommended that you make contact with the County Council at the earliest opportunity to allow time for the process to be completed. Information and relevant application forms, regarding the undertaking of access works within highway limits, are available via the County Council's website www.derbyshire.gov.uk, email highways.hub@derbyshire.gov.uk or telephone 01629 533190.

2. Planning and Other Appeals

(References beginning with a DMPA, DMPN, DMOT or 9 are planning appeals and references beginning with an ENF or E are enforcement appeals)

| Reference | Place | Ward | Outcome | Decision level |
|--------------------------------|--------------|-------------|----------------|-----------------------|
| DMPA/2023/1195 | Elvaston | Aston | Dismissed | Delegated |



Appeal Decision

Site visit made on 26 March 2024

by **Zoe Raygen DipURP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 23rd April 2024

Appeal Ref: APP/F1040/W/23/3334336

21 Main Road, Elvaston, Derby, Derbyshire DE72 3EQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant [outline] planning permission.
 - The appeal is made by Mr Danny Jackson (Naylor Sale & Widdows LLP) against the decision of South Derbyshire District Council.
 - The application Ref is DMPA/2023/1195.
 - The development proposed is erection of two dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the application was determined, a revised National Planning Policy Framework (Framework) was published in December 2023. However, as any policies that are material to this decision have not fundamentally changed, I am satisfied that this has not prejudiced any party. I have had regard to the latest version of the Framework and new paragraph numbers in reaching my decision.

Main Issues

3. The appeal site is within the Green Belt. However, it is accepted by parties that the development would constitute limited infilling in a village and thereby would not be inappropriate development by virtue of paragraph 154e of the National Planning Policy Framework (the Framework). I see no reason to disagree. In that context the main issue is:
 - Whether the appeal site would be an acceptable location for development having regard to the effect of the proposal on the character and appearance of the area and having regard to the setting of Elvaston Castle a grade II* Registered Park and Garden, Village Hall and attached House and Clock House, grade II listed buildings and biodiversity.

Reasons

Character and appearance/heritage assets

4. Policy BNE5 of the Built and Natural Environment South Derbyshire Local Plan Part 2 states that development outside of settlement boundaries, as proposed here, within the Rural Areas will be granted where it accords with a number of criteria, two of which are directly applicable to the appeal proposal. These are that the development would be considered to be infill in keeping with the

character of the locality and would not unduly impact on landscape character and quality, biodiversity and heritage assets.

Significance of heritage assets

5. Elvaston Castle is a Grade II* Park and Garden covering about 80 hectares on the River Derwent floodplain and comprises formal gardens and pleasure grounds laid out in 1830-51.
6. The principal entrance was London Road Lodge at the southern end of the site from which a drive runs north to a large set of gates, known as the Golden Gate, north of which is the Castle. Other entrances are apparent through the gardens which consist of formal gardens to the south and south-east of the Castle, and less formal grounds with woodland and a lake to the north and north-east.
7. Its significance for the purposes of this appeal lies within its historic spatial relationship with Elvaston Castle and associated historic fabric as well as its expanses of formal and informal grounds with many mature trees giving a strong rural and parkland character.
8. The village hall and attached house is a grade II listed building originally constructed in 1852 as a school and attached school master's house. Constructed from red brick with yellow brick headers in Flemish bond with stone dressings and copings it retains much of its original construction and fenestration despite later additions. Its significance for the purposes of this appeal lies in its architecture and historical evidence of educational buildings in the local area. The maps supplied by the appellant show the appeal site as part of the school grounds. While this link has been diminished through the subdivision of the property and its change of use, it still gives space to the listed building allowing an appreciation of its significance and historical separation from the village.
9. The Clock House is a two storey building plus attics that was constructed around 1852 as purpose built flats for the old retainers of Elvaston Castle. It is formed from red brick with stone dressings and stone bands with a slate roof. Its significance for the purposes of this appeal is in its retained architecture and its historic association with Elvaston Castle and as an early example of purpose built flats for the poor. The building is set within a garden with a hedge boundary giving it a secluded setting located back from Main Road. Given its height, glimpses of the roof of the building can be seen from the appeal site and while its open form contributes to the character and appearance of the area, there is no historical connection to the Clock House that has been brought to my attention. From my observations therefore the appeal site does not contribute to the significance of the Clock House as identified above.
10. The appeal site lies along one of the secondary entrances, which is Elvaston Lane a Public Right of Way, leading to the Golden Gate just outside the Park and Garden. It forms part of No 21, which has been subdivided from the attached village hall to provide a private residence. It is formed from grassland, probably as part of the wider garden to No 21 being subdivided from the house by a driveway and garage and fencing. It is enclosed by a mixture of fencing, hedges and trees with a particularly thick hedge to the narrow Elvaston Lane.

11. Although there is housing development along Main Road, the appeal site is read as being part of Elvaston Lane to the rear of properties on Main Road. Here the area is less developed with built form along the lane restricted to the listed building to the north and the buildings associated with Avenue Farm to the south. While the entrance to the farm is wide the buildings are set well back so that the appearance to Elvaston Lane is open rather than built up. It is true that the approach opens out further west along Elvaston Lane, but nonetheless the lane has a strong rural spacious and verdant character which provides a bucolic entranceway to the Park and Garden as part of its setting, to which the appeal site in its current form contributes positively. I saw at my site visit that even though there are several access points to the Park and Garden, and the vehicular access is elsewhere, the lane was very well used by pedestrians.

Impact

12. The proposal is for two houses set back from Elvaston Lane with a car parking area to the front. The houses would fill the space between the boundary of the properties fronting Main Road and No 21. They would have a large footprint, and although one and a half storey would be a similar height to existing buildings creating a large mass of built form that would harmfully erode the open nature of the lane and the rural approach to the historic Park and Garden. This would be reinforced by hardstanding to the front of the properties to accommodate car parking. Due to their size and mass, their presence would compete with the village hall and attached house and harmfully erode the separation that the building has enjoyed along Elvaston Lane since at least 1881.
13. To form the access there would be a requirement to remove about 10 metres of the hedge along Elvaston Lane. The remaining hedge on this boundary would be realigned into the site to allow adequate visibility. This is a well-established hedge, which contributes to local distinctiveness and its removal and re-siting would be harmful to the rural verdant character and appearance of the area, the approach to the Park and Garden and the open setting of the village hall and attached house harming their significance. I appreciate that consent is not required for the removal of the hedge, however there is nothing definitive before me to suggest that there is even an outside chance of this occurring if the appeal were to be dismissed.
14. At the time of my site visit the appeal site was relatively clear. I understand though that there have been some structures there in the past. From the limited evidence before me these seem to have been small scale outbuildings associated with a garden use. The garage in the adjacent garden of No 23 Main Road is not particularly large and clearly subservient to the main dwelling and not comparable to the houses proposed on this plot. It is read as part of No 23 and its size and scale does not weaken the rural appearance of Elvaston Lane.
15. The design cues for the houses are taken from the adjacent listed building. However, they would not be replicas of it and would incorporate other modern details. I am satisfied that the design would be appropriate in this location and would not harmfully compete with the listed building.

Biodiversity

16. The Council has refused the planning application due to a lack of a Preliminary Ecological Appraisal (PEA). The appellants have submitted one as part of his

appeal. As this was submitted at the start of the appeal process, the Council has been aware of the submission and has had opportunity to comment, although none has been received.

17. The PEA finds that there are no protected species that would be affected by the development. Ten metres of hedgerow would need to be removed to provide access, but this would be compensated for by the planting of new hedgerow along the western boundary and infilling of the hedge on the northern boundary. A biodiversity metric calculation tool is also submitted which states that there would be a 11.23% increase in habitat units and a 21.85% increase in hedgerow units.
18. Based on the evidence before me therefore, I conclude that there would be no adverse impact on biodiversity on the appeal site with no conflict with Policy BNE3 of the Settlement Development South Derbyshire Local Plan Part 1 2016 (The Local Plan Part 1) and BNE7 of the Built and Natural Environment South Derbyshire Local Plan Part 2 2017 (the Local Plan Part 2).
19. For the reasons above therefore, I conclude that while the development would be infill and would not be harmful to biodiversity, it would not be in keeping with the character of the locality and would unduly impact on landscape character and quality and heritage assets. Consequently, I conclude that the appeal site would not be an acceptable location for development having regard to the harmful effect of the proposal on the character and appearance of the area and the setting and significance of Elvaston Castle a grade II* Registered Park and Garden and Village Hall and attached House a grade II listed building. It would therefore be contrary to Policies S1, BNE1, BNE2 and BNE4 of the Local Plan Part 1 and policies BNE5 and BNE10 of the Local Plan Part 2 and the Framework. Together these require that development protects, conserves or enhances heritage assets and their settings and respects local character and distinctiveness

Other Matters

20. The appellant draws my attention to two planning applications that were previously determined on the appeal site as well as applications in the local area, where the Council raised no concerns regarding the impact on heritage assets¹ or considered the sites to be within the setting of the various listed buildings and the Park and Garden. However, those on the appeal site were for the change of use of an outbuilding and the erection of a stable block and therefore subject to different considerations than two large houses as proposed here. Those elsewhere would not have the same relationship to the heritage assets as development on the appeal site, both in terms of distance and the development involved. Furthermore, I have found that the appeal site does not contribute to the significance of the Clock House.

Planning and Heritage Balance and Conclusion

21. I have found that the proposal would be harmful to the significance of heritage assets. Given that the setting is just one part of the significance, then the harm is less than substantial but nevertheless of considerable importance and weight.

¹ 9/2016/0501 & 9/2007/1043/F and 9/2011/0331/FH, 9/2014/0953 & DMPA/2021/0237

22. The proposal would deliver two houses that would contribute the Government's aim of significantly boosting the supply of homes on a small site that could be built out quickly, also supported by the Framework. Furthermore there would be economic benefits from the construction of the houses and the future spend of prospective occupiers in the local community. The Biodiversity Net Gain would also be a small benefit.
23. However, together these benefits would not outweigh the harm to the heritage assets.
24. I have found that the proposal would be contrary to local policies relating to the spatial strategy, heritage assets and the character and appearance of the area drawing it into conflict with the development plan as a whole. The material considerations I outline above are not sufficient to outweigh that conflict.
25. For the reasons above the appeal should be dismissed.

Zoe Raygen

INSPECTOR