



Dr J Ives
Chief Executive
South Derbyshire District Council,
Civic Offices, Civic Way,
Swadlincote, Derbyshire DE11 0AH.

www.southderbyshire.gov.uk
@SDDC on Twitter
@southderbyshiredc on Facebook

Please ask for Democratic Services
Phone (01283) 595722/ 595889
Democratic.services@southderbyshire.gov.uk

Our Ref
Your Ref

Date: 11 September 2023

Dear Councillor,

Planning Committee

A Meeting of the **Planning Committee** will be held at **Council Chamber**, Civic offices, Civic Way, Swadlincote on **Tuesday, 19 September 2023 at 18:00**. You are requested to attend.

Yours faithfully,

Chief Executive

To:- **Labour Group**

Councillor G Jones (Chair), Councillor D Shepherd (Vice-Chair) and
Councillors J Carroll, M Gee, I Hudson, A Jones, L Mulgrew and K Storey.

Conservative Group

Councillors K Haines, A Kirke and D Muller.

Liberal Democrats

Councillor J Davies.

Non-Grouped

Councillor A Wheelton.



AGENDA

Open to Public and Press

- 1** Apologies and to note any substitutes appointed for the Meeting.
- 2** To note any declarations of interest arising from any items on the Agenda
- 3** To receive any questions by Members of the Council pursuant to Council procedure Rule No. 11.
- 4** REPORT OF THE STRATEGIC DIRECTOR (SERVICE DELIVERY) **3 - 110**
- 5** PROPOSED TREE PRESERVATION ORDER 552 - 1-3 HOLDEN **111 -**
HOUSE, CANAL BANK, SHARDLOW **113**
- 6** TREE PRESERVATION ORDER 553 - 7 CHAPEL STREET, TICKNALL, **114 -**
DERBY **116**

Exclusion of the Public and Press:

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

Report of the Strategic Director (Service Delivery)

Section 1: Planning Applications

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

1. Planning Applications

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

Reference	Item	Place	Ward	Page
DMPA/2022/1594	1.1	Foston	Hilton	6
DMPA/2022/1321	1.2	Willington	Willington and Findern	42
DMPA/2023/0177	1.3	Woodville	Woodville	52
DMPA/2022/1554	1.4	Boulton Moor	Aston	69
DMPA/2023/0436	1.5	Stenson Fields	Stenson	79
DMPA/2023/0415	1.6	Stenson Fields	Stenson	91
DMPA/2023/0546	1.7	Stenson Fields	Stenson	101

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

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

Glossary of terms

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

LP1	Local Plan Part 1
LP2	Local Plan Part 2
NP	Neighbourhood Plan
SPD	Supplementary Planning Document
SPG	Supplementary Planning Guidance
PPG	Planning Practice Guidance
NPPF	National Planning Policy Framework
NDG	National Design Guide
SHMA	Strategic Housing Market Assessment
SHELAA	Strategic Housing and Employment Land Availability Assessment
s106	Section 106 (Agreement)
CIL	Community Infrastructure Levy
EIA	Environmental Impact Assessment
AA	Appropriate Assessment (under the Habitat Regulations)
CPO	Compulsory Purchase Order
CACS	Conservation Area Character Statement
HER	Historic Environment Record
LCA	Landscape Character Area
LCT	Landscape Character Type
LNR	Local Nature Reserve
LWS	Local Wildlife Site (pLWS = Potential LWS)
SAC	Special Area of Conservation
SSSI	Site of Special Scientific Interest
TPO	Tree Preservation Order
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/2022/1594](#)

Valid date: 19/12/22

Applicant: Ministry of Justice (MoJ) **Agent:** Cushman and Wakefield

Proposal: The construction of 2 x 2 storey houseblocks (with additional rooftop plant), additional car parking, substation and generator at HMP Foston Hall, Uttoxeter Road, Foston, Derby, DE65 5DN

Ward: Foston

Reason for committee determination

This item is presented to the Committee given it is a major application, has received more than four objections and has been called in by a Councillor (Cllr Lemmon)

Site Description

The site redline comprises the grounds of HMP Foston Hall and Young Offenders Institute (YOI), located just south of the A50 Bypass and approximately 1km from the village of Foston. The site is approximately 7.8 hectares. The site includes the main prison within the main secure fence and land outside this fence which is mainly used for parking and access. The prison has a current capacity of 285 inmates.

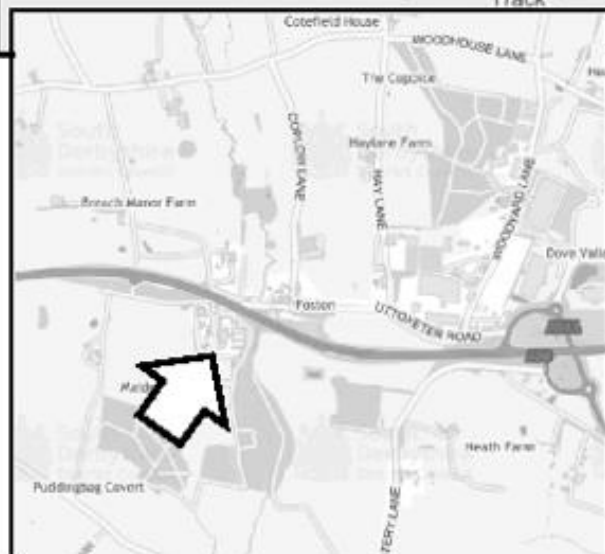
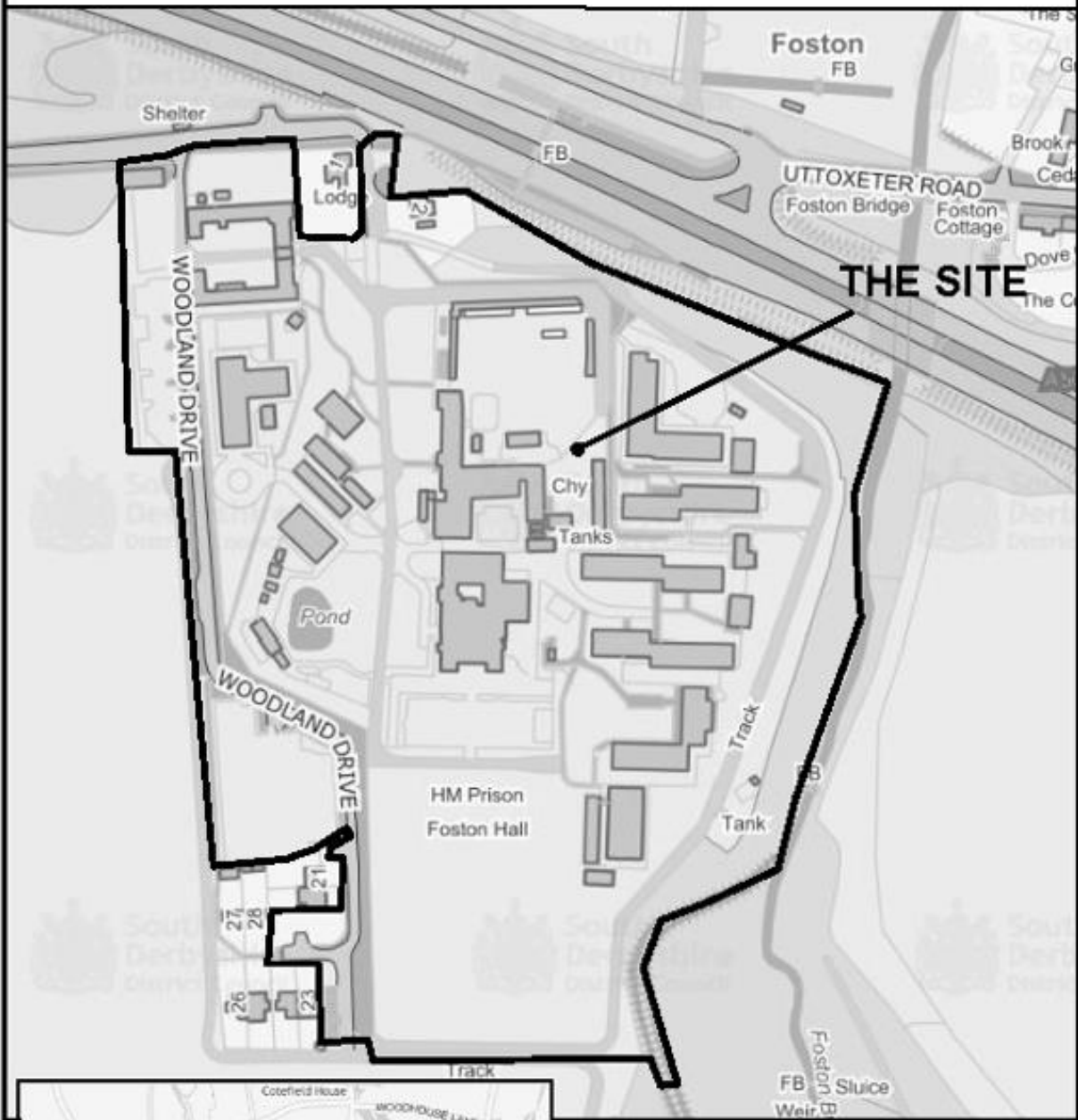
The site is bound to the north by A50 – Foston Hilton Hatton Bypass which is part of the strategic road network under the stewardship of HighWays England; to the east by Foston Brook and woodland which straddles the boundary; to the south by open countryside and to the west by again open countryside which is made up of the same field network in agricultural use.

The site is served by Uttoxeter Road, which stems from the southern carriageway of the A50 to the west of the site. Uttoxeter Road turns into Woodland Drive which is a private road serving the prison. The main access to the prison is in the north west of the site, which was originally the old stables to Foston Hall. Parking is currently along Woodland Drive to the west of the prison running from the entrance all the way south until the residences described below it provides 161 spaces. These parking spaces are included in the redline. Wider access is provided by bus stop immediately north of the site along the A50.

Immediately to the south west of the site before the countryside, there is a pocket of 8 residential dwellings arranged around a cul-de-sac, with access to garages contained within the redline. The dwellings are served by Woodland Drive. The dwellings are understood to have been for use by prison staff, however have since been sold off and are in private market ownership. The rear gardens of 3 dwellings are hard up against the existing parking.

Buildings on site are arranged around Foston Hall, which is a grade II listed building. The Stables used as the access is also grade II listed. Open space remains to the south of Foston Hall which is used for farming and recreation by prisoners. Wider buildings are more modern in appearance with a range of materials being present. Heights range from 1 to 3 storeys on site.

The majority of the application site is within Flood Zone 1. A small section of the proposed south car park (to the east) is in Flood Zone 2. The site is located outside of any settlement boundary.



MAPS ARE NOT TO SCALE

This map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the Controller of Her Majesty's Stationery Office. Crown Copyright and the right in the reproduction in this Crown Copyright and may lead to prosecution in the proceedings.

South Derbyshire District Council, LA 100019451.2020

The Proposal

The proposal is for the construction of x2 houseblocks providing 25 bedspaces each (50 in total), with associated plant buildings provided on the existing staff car park. There would also be the provision of further parking immediately south of the perimeter fence accessed from Woodland Drive and adjacent to the prison entrance. Existing parking to the west of the prison would also be remodelled. A total of 18 new spaces would be created.

The development description is as follows:

The construction of 2 x 2 storey houseblocks (with additional roof top plant) and additional car parking, with new substation and generator

In summary:

Building	Number of buildings proposed	Building Parameters	
		GEA (sqm)	Storeys
Accommodation Block	2	2250.58m2 (each open house block = 1125.29m2)	2 + plant
LV Switch Room	2	18sqm (9sqm each)	1
RMU	1		1
Generator	1	33.8sqm	1
Car Parking	New Car park to north adjacent entrance of listed Stables Reconfigured existing car park Replacement of existing staff car park to south of HMP Foston Hall Total of 18 New Spaces		

Proposed Houseblocks

The open houseblocks would provide capacity for 25 people and would be positioned outside the secure boundary of the prison where the existing staff parking is adjacent the neighbouring gardens.

The buildings would be two-storey, with a flat roof and have enclosed roof top plant. Each building would measure approx. 8.3m in height with the additional set back louver screening the plant room measuring 3.7m. Each houseblock is arranged in a H shape with the entrance within the indent. Both blocks would be arranged north south although slightly off set and with their entrances opposite. PV panelling would be provided on top of both the 2nd storey and plant roof.

The building is designed to be aligned to the latest MoJ Technical Standards. There are proposed to be 3 materials on the facade:

- Render finish to the lower half of the facade
- Metal louvred cladding to the roof top plant room, and other metal finishes; and,
- Timber vertical cladding to the upper half of the facade and the external stair enclosure

As part of the accommodation offer, x2 units will be wheelchair accessible on the ground floor. In addition both blocks will have a Family Suite. This facility allows children to attend an overnight stay with their mothers in a safe and secure environment.

Furthermore, each houseblock contains its own kitchen, dining, washing, education and staff facilities (the latter two having managed access) alongside their own mechanical and electrical plant rooms, and are designed to be individually self-sufficient. The roof plant room would contain equipment requiring

fresh air, with additional plant rooms on the floors below. The new houseblocks would be designed and built to high sustainable standards to achieve at least BREEAM 'Excellent' certification.

Parking

A total 18 new parking bays are proposed, of which 1 is to be wheelchair accessible and 4 will be provided with electric car charging points (20% of new parking provision).

To replace the parking lost to the houseblocks this allocation is split between a new car park adjacent to the stables and a new car park at the southern-most perimeter of the site along the boundary.

New lighting and CCTV will be installed, to ensure the security and safety of the car park expansions

Its is also indicatively shown that there would be a degree of PV coverage to the extent of 100sqm of the parking bays to provided to source renewable energy to support the prison.

Applicant's supporting information

The application has been supported by a range of documents set out and summarised below:

- Site Location Plan 597685_6142-MAC-000-ZZ-D-A-1501
- Open houseblock - Ground Floor 888888_0000-MAC-H01-00-D-A-1501 Official Sensitive
- Open houseblock - First Floor 888888_0000-MAC-H01-01-D-A-1502 Official Sensitive
- Open houseblock - Second Floor 888888_0000-MAC-H01-02-D-A-1503 Official Sensitive
- Open houseblock - Roof 888888_0000-MAC-H01-R0-D-A-1504 Official Sensitive
- Open houseblock - Sections 888888_0000-MAC-H01-ZZ-D-A-1506 Official Sensitive
- Open houseblock - Elevations 888888_0000-MAC-H01-ZZ-D-A-1505
- Demolition Plan 597685_6142-MAC-000-ZZ-D-A-1502
- Proposed Site Plan 597685_6142-MAC-000-ZZ-D-A-1503
- Existing Open Site Plan 597685_6142-MAC-000-ZZ-D-A-1504
- Proposed Open Site Plan 597685_6142-MAC-000-ZZ-D-A-1505
- Proposed Open Site Sections 597685_6142-MAC-000-ZZ-D-A-1506
- Existing North Car Park Plan 597685_6142-MAC-201-ZZ-D-A-1507
- Proposed North Car Park Plan 597685_6142-MAC-201-ZZ-D-A-1508
- Existing & Proposed South Car Park Plan 597685_6142-MAC-201-ZZ-D-A-1509
- Existing Site Plan 597685_6142-MAC-000-ZZ-D-A-1510
- Open Houseblock Rendered Elevations 597685_6142-MAC-000-ZZ-D-A-1511

- Planning Statement 597685_6142-CUS-000-XX-T-T-0003
- Design and Access Statement 597685_6142-MAC-000-XX-T-Z-1501
- LVIA 597685_6142-CEN-000-XX-T-L-0002
- Transport Assessment 597685_6142-HYD-000-XX-T-H-0001
- Outline Travel Plan 597685_6142-HYD-000-XX-T-H-0002
- Energy and Sustainability Statement 597685_6142-MAC-000-XX-T-X-0007
- Phase 1 Ecology Assessment 597685_6142-RSK-000-XX-T-X-0004
- Ecology and BNG Report 597685_6142-RSK-000-XX-T-X-0001
- Ecology - Biodiversity Baseline Calculation 597685_6142-RSK-000-XX-T-X-0002
- Ecology - Biodiversity Options Calculation 597685_6142-RSK-000-XX-T-X-0003
- Ecology - Biodiversity Current Plan Calculation 597685_6142-RSK-000-XX-T-X-0005
- Ecology - HMP Foston Hall Great Crested Newt eDNA & HIS report 597685_6142-RSK-000-XX-T-X-0006
- Arboricultural Survey 597685_6142-HYD-000-XX-T-O-0001
- Arboricultural Impact Assessment 597685_6142-HYD-000-XX-T-O-0002
- Flood Risk Assessment 597685_6142-HYD-000-XX-T-W-0001
- Drainage Statement 597685_6142-MAC-000-XX-T-W-0001
- Geo-Environmental Report (phase 1) 597685_6142-HYD-000-XX-T-G

- Utilities Statement 597685_6142-MAC-000-XX-T-Z-5004
- Official Sensitive Heritage Assessment 597685_6142-THA-000-XX-T-O-0001
- Archaeological Assessment 597685_6142-THA-000-XX-T-O-0002
- Noise Impact Assessment 597685_6142-RSK-000-XX-T-U-2501

Relevant planning history

9/2014/1021 The erection of five, single storey buildings and the creation of a static equipment and exercise area. Approved 05/03/2015

9/2009/0244 The repair and stabilisation of historic archway. Approved 08/05/2009

9/2009/0043 The installation of modular sectional building. Approved 31/03/2009

9/2008/0315 The erection of a timber framed building for use as environmental waste recycling and sorting building. Approved 20/05/2008

9/2007/0607 Alterations to part of the stable block to provide video court facilities, erection of 5.2m security fence and re-use of 2 Foston Close to provide relocated staff facilities together with the erection of a conservatory. Approved 12/09/2007

9/2007/0606 Alterations to part of the stable block to provide video court facilities, erection of a 5.2m security fence and re-use of 2 Foston Close to provide relocated staff facilities together with the erection of a conservatory. Approved 12/09/2007

9/2006/0764 The replacement of a section of 2.0 metre high security fencing with a section of 5.2m high security fencing together and installation of a new section of 5.2 metre high security fencing. Approved 18/08/2006

9/2005/0071 The erection of a 16 place juvenile unit and car park. Granted 20/04/2005

9/2004/0637 Provision of a 20 place juvenile unit. Crown Development refused 19/07/2004

9/2004/0170 Proposed works to the ground floor internal panelled doors. Crown Development withdrawn 05/07/2004

9/2002/0498 The provision of additional accommodation and the extension of the perimeter fencing. Crown Development 11/09/2003

9/2001/1040 The erection of a two storey extension incorporating an office. Appeal withdrawn 20/02/2002.

9/1999/0450 The erection of a proposed workshop. Crown Development 13/10/1999

Responses to consultations and publicity

The application was publicised via two round of consultation running from 11th January 2023 until 10th February 2023 and then again on the 4th July 2023 until 18th July 2023 during which letters were sent to neighbours and a site notice and press notice publicised the application.

On this basis, the application is considered to have been publicised in accordance with national and local legislation on consultation.

The reason for the re-consultation was consideration of the further information submitted in response to objections.

The following responses were made by statutory consultees in response to consultation provided in verbatim:

Coal Authority – No comments

National Highways – No objection / no material impact on strategic network

NHS – No objection / do not seek any S106 monies

EHO – No objection subject to conditions

Noise –

As per the noise impact assessment reference 597685_6142-RSK-000-XX—T-U-2501, the plant to be installed must be that identified in the report and future replacement plant must meet the same acoustic

specification. Furthermore, a design of installation and proposed enclosure shall be submitted to the LPA and agreed before installation.

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

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.

My original comments still stand, however, to address residents' concerns, as suggested by Cushman & Wakefield in their Parish Response Letter dated 14th June, I would like to add the following –

No development shall take place until a scheme to control noise emanating from the site during the construction period has been submitted to and approved in writing by the Local Planning Authority. The approved measures shall be implemented throughout the construction period.

Reason: In the interests of protecting the amenity of the area and adjoining occupiers, recognising that initial preparatory works could cause unacceptable impacts.

Contaminated land –

1. Undertake a phase 2 site investigation in accordance with the recommendations of the phase 1 study reference 597685_6142-HDY-000-XX-T-G-0001.

2. 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.

3. No [dwellings/buildings] hereby approved shall be occupied until:

a) The approved remediation works required by 2 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.

c) Upon completion of the remediation works required by 2 and 3a 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 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.

Air Quality –

No development shall take place until a scheme of dust mitigation measures and the control of noise emanating from the site during the construction period has been submitted to and approved in writing by the Local Planning Authority. The approved measures shall be implemented throughout the construction period.

Reason: In the interests of protecting the amenity of the area and adjoining occupiers, recognising that initial preparatory works could cause unacceptable impacts.

DCC Archaeology – No objection subject to conditions

No development shall take place until a written scheme of investigation (WSI) for archaeological work has been submitted to and approved by the local planning authority in writing. For land that is included within the WSI, no development shall take place other than in accordance with the agreed WSI, which shall include the statement of significance and research objectives; and:

- The programme and methodology of site investigation and recording and the nomination of a competent person(s) or organisation to undertake the agreed works
- The programme for post-investigation assessment and subsequent analysis, publication & dissemination and deposition of resulting material. This part of the condition shall not be discharged until these elements have been fulfilled in accordance with the programme set out in the WSI

DCC Highways – No objection subject to conditions

It is noted that the car parking that is to be lost as a result of the proposed buildings is to be replaced together with additional parking to accommodate the increase in staff. This is considered acceptable. Taking the above into account the highway authority has no objections to the application subject to the following conditions being imposed should approval be granted.

There is no problem with the capacity of the road, particularly given the likely minimal increase in traffic. With regards to parking, as the proposal is providing additional spaces I don't feel we can request parking restrictions be provided as part of the application. In addition, the submitted Travel Plan has set targets for the reduction in car trips which will in turn reduce parking demand. If the targets are not met there is scope within the Travel Plan for further measures to be introduced to ensure the targets are met.

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

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

Whilst the highway authority still has no objections to the application it is requested that an additional condition, as stated below, be imposed should approval be granted.

Recommended Conditions / Reasons

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

- Parking of vehicles of site operatives and visitors (including measures taken to ensure satisfactory access and movement for existing occupiers of neighbouring properties during construction);
- Advisory routes for construction traffic;
- 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 Demolition/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 demolition and construction phase of the development.

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

I have reviewed the Preliminary Ecological Appraisal (October 2022) and the Great Crested Newt survey report (September 2022) and the Biodiversity Net Gain Assessment (November 2022) all prepared by RSK ADAS Ltd. The assessments are considered to provide sufficient information in relation to potential impacts at the site and have identified suitable mitigation and biodiversity enhancements. Provided the development is implemented in accordance with the mitigation and biodiversity enhancement and habitat is retained as detailed in the reports, the development should be able to provide a net gain for biodiversity in line with Local Plan policies and the NPPF. The Biodiversity Metric calculation predicts a 5.45% gain for habitat and a 13.84% gain for hedgerow.

It is advisable to attach conditions to ensure that impacts on species are avoided and / or mitigated as well as a condition to secure biodiversity enhancement in line with the PEA and the Biodiversity Net Gain assessment. Suggested text is set out below:

Breeding birds

No stripping, demolition works or 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.

Comments: The applicant is reminded that, under the Wildlife and Countryside Act 1981, as amended (section 1), it is an offence to remove, damage or destroy the nest of any wild bird while that nest is in use or being built. Planning consent for a development does not provide a defence against prosecution under this act.

(Trees and scrub are likely to contain nesting birds between 1st March and 31st August inclusive. Trees and scrub are present on the application site and are to be assumed to contain nesting birds between the above dates, unless a recent survey has been undertaken by a competent ecologist to assess the nesting bird activity on site during this period and has shown it is certain that nesting birds are not present).

Mitigation Measures

The development shall be carried out in strict accordance with the mitigation strategy/measures detailed in section 6 of the Preliminary Ecological Appraisal prepared by RSK ADAS (October 2022), with any amendments agreed in writing”.

Lighting

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 08/18 - Bats and Artificial Lighting in the UK (BCT and ILP, 2018). Such approved measures will be implemented in full.

Landscape and Biodiversity Enhancement and Management Plan (LBEMP)

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 enhance and sympathetically manage the biodiversity value of onsite habitats, in accordance with the proposals set out in section 6.3 of the Preliminary Ecological Appraisal (October 2022) and the Biodiversity Net Gain Assessment (November 2022) prepared by RSK ADAS Ltd. 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) Additional tree planting to be included as part of the proposed landscaping to screen residential properties to the southeast of the site to include fruit and nut bearing species of native varieties to provide foraging opportunities for invertebrates and other species.
- b) Proposed landscaping around the new open households to be sown with a species-rich lawn mix such as 'Flowering Lawn Mixture EL1' from Emorsgate.
- c) The hedgerow within survey area 2 should be enhanced using native species to increase foraging opportunities for invertebrates, bats and birds, and provide additional suitable nesting habitat for birds.
- d) Landscaping plans should include the installation of insect towers to improve habitat availability for invertebrates.
- e) The proposed development should include the provision of bat and bird boxes installed into retained trees and buildings. These should comprise six bird boxes, including three House Sparrow terraces and three general purpose nest boxes such as the Schwegler 1B nest box; and six bat boxes, including three Schwegler 2F bat boxes and three Eco Kent bat boxes.
- f) Monitoring reports should be provided annually to the LPA for the first five years and then after 10, 15 and 20 years.
- g) 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.

I have reviewed the Preliminary Ecological Appraisal (October 2022) and the Great Crested Newt survey report (September 2022) and the Biodiversity Net Gain Assessment (November 2022) all prepared by RSK ADAS Ltd. The assessments are considered to provide sufficient information in relation to potential impacts at the site and have identified suitable mitigation and biodiversity enhancements. Provided the development is implemented in accordance with the mitigation and biodiversity enhancement and habitat is retained as detailed in the reports, the development should be able to provide a net gain for biodiversity in line with Local Plan policies and the NPPF. The Biodiversity Metric calculation predicts a 5.45% gain for habitat and a 13.84% gain for hedgerow.

There are no nature conservation designations within or immediately adjacent to the site and the habitats present are of site value only.

Habitats – impacts on habitats within the site are very limited and no habitats of high nature conservation value including woodland, trees, wetland, or grassland are likely to be affected.

Bats – several buildings are suitable for bats but are not expected to be directly affected by the proposals. Clearly if the proposals change further consideration may need to be given to potential impacts.

Great crested newt – there are no records for great crested newt within 5km of the site. However, there is a pond on site within 30 to 40m of the development site. The PEA recommended further assessment for great crested newt, and this has been completed. The pond was found to have poor suitability for great crested newt and the eDNA results were negative (though these results were caveated due to possible degradation of samples).

Birds – condition required to ensure breeding birds are not affected.

Reptiles – precautionary measures are identified in the PEA.

No other protected species are considered likely to be affected.

I have reviewed the Arboricultural Impact Assessment and note that no trees need to be felled in relation to the proposals. There is some pruning work recommended and provided this is undertaken in accordance with the conditions previously recommended in our letter 24th February 2023 there should be no impacts on wildlife.

Conservation Officer – No objection / comments

I confirm that I visited the site as part of the pre application process in June 2022.

Overall, the application has responded to the constraints and suggestions I put to them on site. Primarily, I wanted to keep the new buildings away from the direct frontage of the Listed Building (where the temp units are currently located). My assessment is that the proposal results in less than substantial harm to the setting of the Listed Assets (low-medium).

There was much debate on site that the width of the Listed Building's direct view was the protected setting, which I explained was not the case. However, I can justify public benefit outweighing impact, especially given the existing site arrangement, and that the application is outside the existing fence.

No objection to the car parking – I don't think it will alleviate all their requirements, but it is certainly required, and certainly public benefit.

The architecture of the proposed blocks is simple, functional, and likely responding to a national design brief, so I have no intention of starting to request design changes. Overall, it is an improvement on some of the existing buildings within the grounds of the Listed Building.

Materials

The houseblock is designed to be constructed from a structural frame with infill insulated panels, and finished with a suitable cladding. The proposal at HMP Foston Hall splits the facade in two. The lower half is finished with a light grey render and the upper half clad in vertical timber. The timber is proposed to be painted to align with the existing colour used within the establishment; S5040-Y70R, as seen on the photos of the previous page. This cladding is continued over the fire escape enclosure, bringing the finish down to ground level. To compliment the two colours, the window reveals and roof plantroom louvred cladding are proposed to be a dark grey; such as RAL 7021. Any brise soleil required will be coloured to match.

There are proposed to be 3 materials on the facade:

- Render finish to the lower half of the facade
- Metal louvred cladding to the roof top plant room, and other metal finishes
- Timber vertical cladding to the upper half of the facade and the external stair enclosure

The Contractors Architects will review and present options for the materiality, colour and finish of this cladding over the next RIBA design stages.

The concept appears to be acceptable – it clearly reads as a contemporary block, not especially inspiring, but acceptable use of render, timber cladding (is it timber, or look-alike timber?) and metal. I would prefer to see a little more detailing and interest, perhaps with metal work and fenestration, but accept this is about functionality.

My concern with the materials is the colour and finish, which appears very stark by contrast – both with each other, and the surroundings/setting. The existing red/brown ral colour may work within the fence as these buildings relate to one another. However, I think that the distance and physical break of the fence allows the proposed buildings to read differently, and perhaps some softer tones more in keeping with the position being located adjacent to open countryside could work more effectively? Particularly as it is intended that there will be soft landscaping (I went into the gardens on my visit and the residents take care of the old wall garden – this is a really positive approach for so many reasons, and I think the softer natural tones could create a different appearance/setting.) Toning the colour selection down may also reduce the visual connection between the Listed Building and the proposed build.

Local Lead Flood Authority (LLFA) – Comments

We are unable to provide an informed comment until the applicant has provided further information and clarification.

Can the developer please clarify the discharge rate? The discharge rate is described as 1l/s in three areas within the FRA, however, in the drainage statement the discharge rate is proposed to be 2l/s.

Can the developer please clarify the method and location of the surface water outfall?

Where will the storage be located? What type of storage will be used?

Landscape Architect – No objection

Where new development takes place, it should be well related to the existing landscape infrastructure that integrates the proposal with the wider landscape.

NPPF advises that all development should be seeking Biodiversity Net Gain.

With the increase in the development of the site, we have the following comments.

A. Provide a Landscape Planting Plan to include a Plant Schedule.

B. The above Landscape Plan is to include native species tree and hedgerow planting, particularly boundary trees.

C. Provide a Landscape and Ecology Maintenance Plan for 5 years.

We require enhancement of the biodiversity, that will mitigate for the increased development of the site. With the use of native species, with consideration to improving local biodiversity including hedgehogs, birds, bats, and bees etc.

Foston and Scropton Parish Council – Objection

The original objection is significant and in depth. It has been reviewed by Officers and in summary objects on the following grounds:

- a) Impact on the 8 residential properties (No's 21 -28 Woodland Drive)
- b) Wider community impact –
 - Location is unsustainable
 - Crime
 - Access and transport network is not sufficient
 - Poor behaviour of Prison management, personnel and released inmate
- c) Business Case is not sound
 - Existing deficiencies of prison
 - No consideration of adjacent public residences
 - Insufficient staffing levels on Prison and therefore proposed facility
- d) Multiple issues and concerns regarding errors, inaccuracies and conclusions across submitted information in support of application.
- e) Multiple issues regarding operation of existing prison as reported by Official Reports/Statistics including 2021 & 2019 reports by HM Chief Inspector of Prisons

A further substantial objection was received from the Parish Council, again Officers have reviewed the objection and in summary the additional material grounds of objection are as follows:

Positioning –

- there are other areas more suitable in the prison for the position of these blocks

Boundaries & Covenants –

- issues around the application use of what is a secure boundary – inferring the car park is secure
- errors in understanding of extent of ownership boundaries and existing easement for adjacent dwellings is not shown on application site

Safeguarding –

- Concern is raised around the safeguarding of prisoners, access to amenities and visiting facilities
- Concern is raised around the safety of families and children living adjacent to the prison blocks

Parking and Traffic -

- Existing issues with parking along Utttoxeter Road and wider traffic network in area
- Provision of cars for prisoners
- Positioning of new parking to south of prison will mean more trips past Woodland Drive residents

Bus Service

- Bus service is poor and subject to cancellation etc. which isn't sufficient to provide accessibility to site for prisoners

Noise

- Noise arising from plant and prisoner use of block
- Noise assessment methodology was flawed

Design

- Proposal is not in keeping with rural area and is too tall
- Proposed design is a copy of other similar developments in the MoJ estate
- Positioning of ancillary generator will impact traffic movements on Woodland Drive

Consultation

- Consultation with the PC by the Applicant/Agent has been minimal and to suggest otherwise as per the application is wrong
- Consultation by the Applicant/Agent has focussed on Councillors not local people who have to experience the impacts of the development

The application has received 87 public objections. This includes a number of responses from community/resident groups, an appointed Rights to Light consultant and a petition outlined in further details below.

The individual public objections can be summarised as follows:

- a) The area is oversaturated by Prisons and Open facilities impact on the character and services of the local area
- b) Not efficient use of public money given wider issues in economy/society
- c) Money would be better spent on improving local infrastructure for law abiding locals
- d) HMP Foston Prison underperforms and has multiple safety issues already
- e) Existing prisoners are released at times when there are no buses or without local knowledge which causes issues in Foston Village
- f) The adjacent dwellings are referred to as prison officers dwellings – they are private dwellings occupied by families with children
- g) No local consultation has been undertaken by HMP Foston Hall with the adjacent properties
- h) New car park to south of prison would increase traffic on Woodland Drive serving the adjacent dwellings
- i) Increased traffic on Woodland Drive would impact access to the garages which are associated with the residences
- j) Increased traffic would impact on the children using the space to play
- k) Increased traffic would impact countryside character of the area and give rise to undue noise
- l) There is no safe passing space along Woodland Drive to cater for the additional traffic
- m) Existing on street parking along Utttoxeter Road from Prison Staff is unsafe and would be exacerbated by the proposal

- n) Existing on street parking along Woodland Drive from Prison Staff is unsafe would be exacerbated by the proposal
- o) The private nature of the road means nothing can be done to manage or enforce against this unsafe parking
- p) On street parking could impact the ability of emergency vehicles access residential properties
- q) Proposed houseblocks will overshadow and overlook the gardens impacting amenity to the adjacent residencies
- r) The proposed open prison would create anti social behaviour and could lead to unsafe behaviour impacting amenity and mental health
- s) The proposed development is 3 storeys which is out of character for the area
- t) Raising the groundlevels could impact adjacent properties from surface water run off
- u) The proposed development would increase the existing anti social behaviour around the prison is not adequately policed or managed by the prison
- v) Proposal results in prisoners being outside of the main prison and in close proximity to residences
- w) The proposal puts the families at unnecessary risk
- x) The proposed development does not have sufficient security or control measures in place
- y) Ongoing issues with HMP Foston Prison mean that any extension would also likely give rise to issues
- z) Existing HMP Foston Prison has staffing issues
- aa) Proposed development would have undue impact on emergency services in area having to manage the facility
- bb) There are no facilities or amenities within the geographical location to support the facility/prisoners
- cc) Construction of proposed development would have undue impact on the amenity and wellbeing of the neighbouring residences
- dd) Proposed development would equate to an extension of 20% increase in prisoners with a less than 1% increase in staff to manage them
- ee) Roof plant would create noise which would impact amenity
- ff) The proposed development would unduly impact and undermine the community of the persons living in the 8 dwellings
- gg) Proposed development would give neighbours and persons who enjoy the countryside in this area a feeling of being unsafe given the units will be open
- hh) Increased traffic and lighting from proposed security measures would unduly impact wildlife
- ii) The bus stop along the A50 is not suitable and does not have sufficient capacity for additional users
- jj) Other bus users will be on the bus, specifically as it serves secondary schools – will their safety be impacted
- kk) Prefer to see this public money used to resolve other more pressing infrastructure issues, as a 25-30% increase in the prison capacity in the UK as set out by Mr Raab, does not seem a priority to the residents of Derbyshire or the wider UK
- ll) Additional parking to the south of the Prison would be on agricultural land
- mm) Nearby open prisons have given rise to a number of issues – the concept doesn't work
- nn) Undue impact on the safety of Sudbury, Foston and Hilton and other surrounding villages
- oo) Contraband could be smuggled into the houseblock
- pp) In the event of any issues who would be the person/body responsible
- qq) The facility appears to be managed by a single member of staff for all 50 persons
- rr) One fence is not sufficient to separate the houseblocks from the adjacent properties
- ss) The transport links are not suitably reliable to enable prisoners to travel to access education, jobs and see family
- tt) The prisoners already cause a nuisance upon release, leaving litter on my land and clothing, accosting people for money, cigarettes and lifts
- uu) The existing drainage is catered for by soakaways and there isn't sufficient capacity for the surface drainage of the proposed development
- vv) The notification is insufficient to give full information or time for detail consideration to all aspects of the proposal.

- ww) Wider footpaths and cycleways are used by local residents and are not well lit leading to a feeling of unsafe which would be exacerbated by the provision of an open block
- xx) The increased use of the bus on the A50 would be unsafe for users of the A50 given the current layby arrangement
- yy) The extent of consultation and publication was insufficient and did not send letters to enough nearby neighbours opposite/north of the A50
- zz) The long-term residents of Foston are being boiled like frogs with the continuous antisocial behaviour, poor management of HMP Foston Prison and lack of support for prisoners needing to travel
- aaa) The most recent report slated the Prison Service for their poor staffing levels, the mental health of the prisoners was affected by this. The prison houses some of the most violent women (including trans) in the country and is already doing it very badly, as by the published reports.
- bbb) No clarification around the nightly curfew or how the prison rules will extend to the houseblocks
- ccc) There needs to be double yellow lines on Uttoxeter Road and within the village of Foston to make prison staff park accordingly
- ddd) Woodland Drive is not suitably maintained by the Ministry of Justice
- eee) What is the nature of the crimes the prisoners in these houseblocks will have committed – there are children living in the adjacent properties as well as in Foston and users of the nearby bus service
- fff) The attitude of the applicant is abhorrent! To acknowledge and dismiss all the misleading “Typographical errors” and other errors is not demonstrating the transparency I expect from a Government body! In my opinion these were poor attention to detail and intentional, to mislead persons when reading it.
- ggg) This application details travel plans that prioritise walking and cycling and reducing car use. Foston Hall Prison is in a very rural area but having the major A50 dual carriageway passing very close by, very easy access for escapees. All other amenities, except what the prison can provide, are more that 3 miles away.

It should be noted that some matters raised related to the private ownership and maintenance of Woodland Drive, the payments made by residents to the upkeep and how this would now be unfair given additional use, and the impact on the value of properties in the area if permission was granted. These are considered private matters and are considered to fall outside the scope of what can be material to the application, as seen in various case law.

With regards to the petition, at the time of writing it is understood the online petition has 335 signatures. There are a range of reasons outlined why persons have signed, but all in objection to the proposals. A link is provided - [Petition · HMP Foston Hall proposals · Change.org](#)

With regards to the community/resident group a response was received on 19/01/2023 on behalf of all residents on Woodland Drive which outlined the following points in objection:

Overall little consideration has been given to the adjacent private homes which makes this site different to other sites.

Road Concerns

- Woodland Road is not suitable for the amount of trips that would be generated by the provision of parking
- The Cul de Sac is currently used by families and children to play which would be undermined by the newly generated traffic
- How will the increased traffic relate to the fees charged by the MoJ to the residents for the upkeep of the road

Parking Facilities

- Prison staff irrespective of parking provision will park inconsiderately as close to the prison as possible.
- No attempt at managing such unsafe parking is made by the Prison and given the proposed new parking is further away from the entrance of the Prison the problem will get worse
- Should an emergency occur there would not be access

Financial Impact

- There will be an impact to the value of our homes and also our insurance premiums

Noise

- There will be considerable noise generated from additional traffic as well as prisoners and visitors to the new blocks which will undermine the amenity of our dwellings

Consultation

- There has been no contact with local residents by the MoJ

Security

Will the current CCTV configuration be adapted to include the additional car parking area as well as monitoring on the residential area to highlight any issues? Will we as residents have contact information to raise concerns/report any issues, as currently we have limited contacts via the main prison switchboard only.

1. Where is the impact statement for the local infrastructure, access, and residents.

2. This is not part of the definition of an open prison environment- this is more akin to Halfway Houses. With Sudbury Open Prison being within close vicinity, we are aware of how an open prison is structured and works- and how many prisoners abscond- with many that do not return.

In summary all these factors are going to have a negative effect on our:

- Mental Health and Wellbeing
- Physical Health and Wellbeing
- Financial Health and Wellbeing
- Safety
- Privacy
- Liberty

With regards to the appointed Consultant – Rights of Light Objection, this response sought the submission of a daylight and sunlight assessment following the BRE methodology and that this assessment should show either that the proposed or an amended design meets the BRE guide for assessing acceptable impacts on daylight and sunlight amenity.

There has been one comment in support which states:

- a) Sounds good. The more we're able to provide in rehabilitation, the better. This barely effects only a handful of residents so should pass through with ease.

Relevant policy, guidance and/or legislation

The relevant Development Plan policies are:

(2016) Local Plan Part 1 - S1 (Sustainable Growth Strategy); S2 (Presumption in Favour of Sustainable Development); S3 (Environmental Performance); S4 (Housing Strategy); S6 (Sustainable Access); H1 (Settlement Hierarchy); H20 (Housing Balance); H21 (Affordable Housing); SD1 (Amenity and Environmental Quality); SD2 (Flood Risk); SD3 (Sustainable Water Supply, Drainage and Sewerage Infrastructure); SD4 (Contaminated Land and Mining Legacy Issues); SD5 (Minerals Safeguarding); BNE1 (Design Excellence); BNE2 (Heritage Assets); BNE3 (Biodiversity); BNE4 (Landscape Character and Local Distinctiveness); INF1 (Infrastructure and Developer Contributions); INF2 (Sustainable Transport); INF7 (Green Infrastructure)

(2017) Local Plan Part 2 – SDT1 (Settlement Boundaries and Development); BNE7 (Trees, Woodland and Hedgerows)

The relevant local guidance is:

South Derbyshire Design Guide SPD

The relevant national policy and guidance is:

National Planning Policy Framework (NPPF) (as updated)
Planning Practice Guidance (NPPG)

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
- Scale, Appearance and Visual Impact
- Heritage Assets
- Residential Amenity, including Fear of Crime
- Highway safety/Transport
- Trees and Biodiversity
- Flood Risk and Drainage
- Sustainability / Renewable Energy; and,
- Conclusion and Planning Balance

Planning assessment

Terminology

Officers are aware that many of the objections outlined that the proposed facility was referred to houseblocks and occupiers as residents in the supporting information, which is disingenuous to the nature of the proposal.

For the avoidance of doubt, it is understood the proposed development will be an 'extension of the prison' (as set out by the agent) albeit providing a greater degree of flexibility to the occupiers. Indeed, the application does not seek residential use and the existing prison is set out as 'Use Class C2a Secure Residential' in the application form. The term open prison facility and block will be used.

The occupiers will still be prisoners in so far as they are still within the custody of the HMP Foston Hall but will not be 'prisoned' within the facility given the greater degree of flexibility afforded to them. The term prisoners will be used.

Principle of development

The site is located outside of settlement boundaries as outlined by policy H1 and SDT1 in the Local Plan. The purpose of these policies is to focus development within the settlement area boundaries as these areas have greater levels of infrastructure and accessibility to better support this development. That is not to say development outside the boundaries is not acceptable, the proposed development subject to its operation is assessed against policies E7 and BNE5.

Policy E7 states that development proposals which diversify and expand the range of sustainable employment activities on land outside of settlement boundaries will be supported by the Council provided they support the social and economic needs of the rural communities in the District. The Council will support proposals for the re-use, conversion and replacement of existing buildings and 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
- v) visual intrusion and the impact on the character of the locality is minimised.

Policy BNE5 states that outside of settlement boundaries (as defined in policy SDT1) within the Rural Areas of the district planning permission will be granted where the development is:

- 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.

Given the wording of BNE 5 if deemed to meet E7 this would leave only consideration of the last criteria set out in BNE 5.

There is no specific policy in the local plan regarding the development of the prison or such facilities. It is acknowledged that there is a policy promoting community facilities but the HMP Foston Hall is not considered such a facility.

The application sets out that the prison population is currently forecast to increase over the next 10 years. In response the Ministry of Justice (MoJ) is seeking to deliver over 20000 additional prison spaces. As part of this programme a need has been identified to provide 500 new prison places for women, across a mix of open and closed facilities. It is understood that HMP Foston Hall has been selected as it is a womens prison nearby large conurbations and centrally located in the UK making it more accessible. These criteria are outlined by the application as important given that the open facility allows the prisoners at HMP Foston Hall to remain situated where they may have ties and result in less disruption, as part of their rehabilitation towards the end of their sentences.

On the basis of the above permission is sought to expand HMP Foston Hall with an open facility outside of its secure perimeter. The positioning of the open facility on existing car parking gives rise for the need for additional/replacement parking.

The benefits of prisoners being close to family and/or other ties and the concept of rehabilitation as a positive one is not disputed by Officers. However, primarily the operation of the facility is considered to result in these benefits not just the physical facility itself.

The majority of the site is already in use as ancillary uses to the prison, which is considered to limit the loss of countryside or agricultural land, and minimise the impact on views given the backdrop of the prison from distance viewpoints. It is acknowledged that the facility and parking for prison staff will help create and sustain employment at the prison. The local highway network for the purposes of E7 are considered the public highway and on this basis, no objection has been raised by DCC Highways. By virtue of HMP Foston Hall siting outside the settlement boundary any expansion is likely to automatically bring about some conflict with the Local Plan in spatial terms, but it is logical that there is likely operational benefits to expanding existing prisons, as well as the further benefits of established prisoner ties.

The proposal is located outside of the settlement boundaries within the District. It is accepted there is a sound business case for the proposal given the national programme set out above and also the proposal is considered commensurate to the use of the prison. Officers consider that on the basis of DCC Highways raising no objection to the local highway network there is no conflict with this criteria of E7 and visual intrusion and impact on character is minimised given the context set out above.

However, considering the nature of the proposal it does not neatly operate to be easily assessed against singular policies. E7 is fundamentally to assess employment activities, whereas this proposal by virtue of it being an extension of the prison is considered Secure Residential Use Class 2a.

Considering BNE5, criteria 3 sets out that permission will be granted where the development is: unavoidable outside of the settlement boundaries. Whilst obviously the proposal could not be built or built adjacent to another prison, it is accepted that there are two prisons - HMP Foston Prison and Drake Hall which already operates an open facility – serving the conurbations of the Midlands. It is also accepted there is a need for women's prison spaces, there are efficiencies in expanding existing prisons and, the argument of maintaining families ties and visitors instead of moving prisoners for rehabilitation is a persuasive one. Further to this BNE5 considers landscape character and quality, biodiversity, best and most versatile agricultural land, and heritage assets as further points. As above,

the visual intrusion and impact on character is minimised given the context set out above, for the majority development remains on brownfield land and the extent of field lost is hard up against existing perimeter fence and not in agricultural use. There is a BNG gain and no objection from DWT and impact on heritage assets is considered below.

On the basis of the above, the principle of the development is accepted on this location.

This is notwithstanding the operation of the facility, impact on amenity and accessibility of the location all of which are important considerations and discussed below.

Scale, Appearance and Visual Impact

Chapter 12 of the NPPF sets out the overarching principles for achieving well designed places. Paragraph 126 of the NPPF sets out that the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve.

The most applicable policies and guidance to consider with regards to the design, character, and appearance related considerations are Policy S2 (Presumption in Favour of Sustainable Development), Policy E7 (Rural Development), Policy BNE1 (Design Excellence), Policy BNE4 (Landscape Character and Local Distinctiveness), Policy BNE5 (Development in Rural Areas), and Policy BNE7 (Trees, Woodland and Hedgerows) of the South Derbyshire District Local Plan, the South Derbyshire Design Guide SPD.

The application was supported by a Design and Access Statement which sets out that the proposed blocks will be two storeys with an additional storey of rooftop plant. The blocks are arranged in a H shape with circulation around a single core from ground to roof and one external staircore for emergencies. Both blocks would measure as follows:

- Height: c.13m, measured together with additional louver screening to the plantrooms;
- Width: c.20m
- Length: c.32.6m

There are proposed to be 3 materials on the facade: render finish to the lower half of the façade; timber vertical cladding to the upper half of the facade and the external stair enclosure; and, metal louvred cladding to the roof top plant room, and other metal finishes. Overall, the proposal will read as contemporary blocks. Due to its location, scale and height both blocks would be visible prominent additions in the immediate and wider context to the west. It would also bring development closer to the existing properties on Woodland Road. Impact to the resident's amenity is considered below. The supporting Landscape and Visual Impact Assessment (LVIA) outlines that there would be effects of minor significance on Woodfield Drive and Uttoxeter Road, on the basis that the views would be within the context of the existing prison complex. This is accepted on the basis that the area is not considered sensitive given the lack of any designation and the existing prison complex. There is a soft boundary to the south between the proposed blocks and the adjacent dwellings which helps diffuse views and coupled with the separation distance of 13m for a secondary window it is not considered that outlook is unduly impacted.

In terms of wider landscape considerations, the LVIA outlines there would also be effects of minor significance on landscape character from the east and south, which includes public footpaths SD20/20/1 and SD22/10/1. However due to surrounding landscaping the proposal would only be visible during winter when the filtering effect of vegetation is reduced. Although the proposed development may be more visible during this time, so too will the existing prison complex which undermines these views and is considered to limit the impact.

No objection is raised by the SDDC Landscape Officer, and the proposed development would not result in any effects on landscape designations.

It is considered that both blocks have been designed within the framework of a national building programme with operational and security standards which will limit design options. On this basis, the functional design and architecture is understood and interventions could undermine the proposal in this

regard. The additional rooftop plant has since been justified by the architect in terms of functional, necessary and meets operational/national design brief which is accepted. Furthermore, this is also considered to give rise to sustainability benefits.

As a baseline, the proposal is considered to be better than some of the existing prison development inside the fence line. The conservation officer's comments regarding tonal colours are noted, however the proposal reflects that of Foston Hall and Officers accept this approach in so far as the backdrop of the proposal is the prison from wider views, within which the most prominent building is Foston Hall. Notwithstanding this, page 20 of the DAS outlines that "will review and present options for the materiality, colour and finish of this cladding over the next RIBA design stages." On this basis, a condition would allow further exploration of possible tonal options of the cladding.

The areas of parking and structures proposed to provide PV panelling are considered to be small scale and suitably located which overall leads to little impact in terms of design and visual impacts.

Overall, the proposal is not considered to give rise to unacceptable harm to the immediate neighbouring setting, or the wider locality, given the separation distances, boundary treatments and context within which the building is read. The design has been justified and conditions will be attached to secure high quality materials and details as well as exploring tonal colouring of the cladding. Internally the standard of accommodation is considered to be inline with modern standards. On this basis, the proposed development is considered to be acceptable and in accordance with the relevant local and national level planning policies with regards to associated scale, appearance and visual impact.

Heritage Assets

Within HMP Foston Hall there are two assets: Foston Hall – the main building and the Stables located to the north west of the prison complex, both of which are Grade II listed. Given their use as part of the operational prison, both have been amended.

The proposal was subject to pre application advice which outlined preference for the proposed development to be away from the direct frontage of Foston Hall; as a result this did limit the options where the facility could go on the prison grounds. The application has been consulted upon and the Conservation Officer, who concluded the proposal results in less than substantial harm to the setting of the Listed Assets (low-medium). The Officer notes mitigation in that this development has been sited away from the assets outside the fence and public benefits of addressing the parking on site by increasing numbers.

The NPPF in paragraph 199 states that when considering the impact of a proposal on the significance of designated heritage asset, great weight should be given to the asset's conservation. The NPPF in paragraph 202 advises that any harm to heritage assets should be weighed against the public benefits of a proposal.

In line with paragraph 202 of the NPPF, a balancing exercise should be undertaken between less than substantial harm to the significance of the designated heritage asset on the one hand, and the public benefits of the proposal, on the other.

Overall, it is considered that the identified harm would be 'less than substantial' and subsequently at the lower - medium end of the scale. Notwithstanding this, having regard to section 66 and 72 of the Planning (Listed Building and Conservation Areas) Act 1990 the test set out in paragraph 202 of the NPPF is engaged. It is acknowledged that the test is a weighted one in which any benefits must substantially outweigh the harm.

It is considered that there are a range of public benefits arising from this development –

- Response to national need for women's prison spaces
- High quality accessible accommodation
- Social and economic benefits from the principle of rehabilitation
- Additional parking spaces
- Biodiversity net gain

- BREEAM Excellent development

Taking all the above into consideration, on balance, significant weight can be afforded to the public benefits of the proposed development, which would outweigh the harm to the significance of the listed assets of Foston Hall and the Stables.

For the reasons set out above, the proposed development having due regard to the relevant Sections of the Planning (Listed Building and Conservation Areas) Act 1990 is considered to be on balance in accordance with the Local Plan and NPPF paragraphs 199 and 202 in regard to heritage impacts.

The application has been consulted on with the Derbyshire County Council (DCC) Archaeologist given. The DCC Archaeologist has confirmed no objection subject to a written statement of investigation to guide archaeological field work and subsequent mitigation.

On this basis, it is considered there would be no unacceptable impact on archaeology and the application is inline with BNE10 and NPPF paragraph 205.

Residential Amenity, including the Fear of Crime

Policy BNE 1 states all new development to be well designed, to embrace the principles of sustainable development, to encourage healthy lifestyles and enhance people's quality of life by adhering to design principles relating to community safety, street design, movement and legibility, diversity and community cohesion, ease of use, local character and pride, visual attractiveness, neighbouring uses and amenity, healthy lifestyles and resource use. Specifically, given the nature of the proposed development and public objections made:

the principles of sustainable development, encourage healthy lifestyles and enhance people's quality of life by adhering to the Design Principles below.

i) Design Principles

a) Community safety: New development should be designed to ensure that people feel comfortable and safe by minimising opportunities for crime and anti-social behaviour, providing good natural surveillance and appropriate demarcations between public and private areas;

h) Neighbouring uses and amenity: New development should not have an undue adverse affect on the privacy and amenity of existing nearby occupiers. Similarly, the occupiers of new development should not be unduly affected by neighbouring land uses;

Further to this guidance is given in the SDDC Design SPD on protection of amenity and separation distances. It states:

In order to protect the occupiers of neighbouring dwellings from overlooking and to protect privacy, the 'primary' windows of the neighbouring dwellings should not fall within the minimum distance (as set out in the table overleaf) within the sector of view of the 'primary' windows of the proposed extension.

The distance guidelines are found on page 100 of the SPD. In terms of the definitions of rooms etc. the SPD states:

Blank elevation: An elevation with either no windows or with windows to rooms other than to a lounge, dining room, kitchen, bedroom/study or conservatory.

The proposed development arranges the facility in two blocks vertical blocks north/south slightly off set from each other. The floorplans of the proposed development provides no windows to bedrooms only to circulation spaces and corridors. To the south would be the gardens and residences of Woodland Drive. Specifically, the side elevation and rear garden of no.21 is south of one of the blocks, and the rear gardens of nos.27 & 28 Woodland Drive. There is an established soft boundary at this point understood to be within the ownership of the residents given the arrangement of fence lines. The side elevation of 21 Woodland Drive has a window which has been established as serving a non-habitable room.

In terms of distances, there is a separation distance of 12.69m between the houseblocks and the non-habitable window of 21 Woodland Drive. It is considered that given the context of the uses of the windows serving a non-habitable space and circulation space, this distance 12.69m is acceptable.

There is a separation distance of 38.06m between the houseblocks and the rear nos.27 & 28 Woodland Drive which is considered to meet the distances set out in the SPD, and therefore acceptable.

In terms of impact on daylight and sunlight, the application is supported by a Daylight and Sunlight assessment inline with BRE Guidance, in response to the request made by objections. The report has been reviewed. The methodology is accepted and results show no unacceptable impacts on daylight and sunlight. On this basis, the proposed development is acceptable in this regard and inline with BNE1 and the Design SPD

Officers are aware that there have been objections made highlighting covenants to allow access to the site by the adjacent residents of Woodland Drive to access and maintain the boundary. On this point, it is considered that the presence of a restrictive covenant is not a consideration material to the determination of a planning application.

With regards to safety and crime, Policy BNE1 specifically outlines:

a) Community safety: New development should be designed to ensure that people feel comfortable and safe by minimising opportunities for crime and anti-social behaviour, providing good natural surveillance and appropriate demarcations between public and private areas;

Objections have been made outlining the reported previous operational failings of HMP Foston Prison and further to this the behaviour of released prisoners deemed to be anti-social. It is considered that fear of crime is a material consideration and these objections and reports have been reviewed in full. However, it is not considered reasonable to base the perceived failings or indeed the conclusions of the HM Chief Inspector in their report on HMP Foston Hall as ground for the refusal of this facility. This application needs to be assessed on its own merits.

Operation of Houseblocks

The units are sought to provide accommodation to support the rehabilitation of prisoners back into society. The prisoners will be on a Release on Temporary Licence (ROTL). This is where the residents can leave the premises to attend a work placement; children; or additional education. Their remaining time will be spent in and around the houseblocks.

The units are an extension of the prison in so far as the houseblocks will be managed by the prison staff with staff present on site. In terms of staffing documents show one additional employee, and when asked for minimum staffing levels this was pushed back on by the agent.

In terms of restrictions, the residents will only have allowance to access some areas of the houseblocks with staff and to leave the open site unattended for limited reasons; otherwise, they will be escorted by a suitable person from the establishment; such as to attend doctors appointments or specialist appointments either locally or within the secure establishment.

It is envisaged that a minibus would drive prisoners to jobs/training if they did not have access to a private car. The minibus times would be cognisant of work/training times. However, details of the precise timetable for the minibus is not available at this stage as it is not yet in operation.

Prisoners would not be able to receive visitors with the only exception being for child visits within the family unit which would only take place following a risk assessment undertaken by the prison staff. It is more likely, inmates would leave to visit family.

Security of Houseblocks

The proposed houseblocks are an extension of the HMP Foston Hall but providing a different degree of security intrinsic to the notion of rehabilitation.

The open site is to be bounded by a mixture of new domestic fencing (6ft timber fence) and established hedgerows/trees. The vehicle and pedestrian access points will be gated to deter any persons straying onto the grounds.

The external areas to the open site will be suitably lit on proximity detectors, with CCTV, to ensure a safe approach, and to deter any unwanted persons from trespassing. The houseblocks will have

external lighting and CCTV, all of which is fed back to central control within the secure establishment. This allows for live coverage as well as the ability to review past footage for any concerns raised.

Access to the buildings will be via a controlled access point on the front door only, all other doors are for emergency escape, or lead into plant rooms. Residents will have the ability to activate this door throughout the day, to provide freedom to use the external areas, but limited use during night time with a general curfew of 9:30; access will only be provided to those attending or coming back from their work placement.

Overall, the proposed facility will be operated and managed as part of the Prison on this basis it is considered unreasonable for Officers to dictate how the facility should be managed. However, the proposed operation of the facility is a factor in realising the benefits of rehabilitation and minimising conflict with BNE1 in terms of antisocial behaviour. Consequently, it is considered reasonable to attach a condition seeking details of the operation of the open blocks in so far as:

- Provision and access to minibus for prisoners to ensure suitable accessibility
- Curfew time of 9:30 at which the facility will be closed and how this will be enforced
- Access arrangements for prisoners in terms of external areas
- CCTV details, locations and management
- Point of contact in the event of any issues arising
- In the event of prisoners having access to vehicles how and where this will be

In conclusion BNE1 states that new development should minimise opportunities for crime and anti-social behaviour. Whilst understanding the objections and concerns around the operation of the existing prison, this is not grounds for refusal for this application. It is considered that given the safety and operational measures set out above which will be conditioned as well as details of the minibus services to ensure prisoners can access employment, education or family, the proposal has minimised opportunities for crime and anti-social behaviour in line with policy and the blocks will be able to provide rehabilitation to prisoners.

On this basis, it is considered that there is not sufficient grounds for refusal on the basis of conflict with policy BNE1 or the Design SPD.

Highway safety, accessibility and transport

The site is located off the A50 westbound carriageway, to Uttoxeter Road which has been truncated at this point to allow the A50. As set out in the site description at the end of Uttoxeter Road is Woodland Drive which serves the prison and the 8 dwellings. It is a private road with record showing the extent to the public highway following Uttoxeter Road to the north west of the site where it meets Woodland Drive.

Uttoxeter Road is unregulated (no double yellows) and is subject to significant on street parking very likely to be almost all associated with the prison. In addition, there is a footbridge to the north of the prison which provides access over the A50 to Foston. Public objections outline that local roads in Foston are also subject to on street parking due to prison staff.

There is a bus stop layby immediately north of the prison serving the westbound carriageway. The bus stop is served once an hour and runs towards Burton. The bus stop facility/shelter is in a state of disrepair which could dissuade users but the layby still allows buses to stop.

The access to the site from Uttoxeter Road remains unchanged. The application is supported by a Transportation Statement and Travel Plan. In support of the increase of staff numbers caused by the two new houseblocks an increase in staff parking is required. In total 18 new parking bays are proposed, of which 1 is to be wheelchair accessible and 4 will be provided with electric car charging points (20% of new parking provision).

Given the A50 is part of the Strategic Road Network (SRN) Highways England were consulted but raise no objection to the proposal considering no significant impact on the network would arise. There is no

inference in the response to outline that buses stopping on the A50 is unsafe as outlined by public objections.

The application has been consulted on by Derbyshire County Highways, who raised no objection subject to conditions managing the construction traffic and provision of parking prior to the occupation of the open facility. With regards to the parking on Uttoxeter Road and regulation of this, Derbyshire County as Local Highways Authority are best place to consider and manage this, and despite being made aware of this issue during this application, on the basis that additional parking is proposed, does not consider that this arrangement would be exacerbated nor have outlined an intention to amend this. No issue was raised with the frequency of the public bus service or facility.

With regards to Woodland Drive as set out this is a private road under the ownership and management of Ministry of Justice. The fees paid and private access arrangements for the dwellings are outside of planning. In terms of the capacity, Derbyshire Highways when questioned said that there is no problem with the capacity of the road. Parking restrictions were raised by Officers, however again Derbyshire Highways responded that they did not consider parking restrictions to be appropriate as part of the application and that furthermore the submitted Travel Plan sets targets for the reduction in car trips which will in turn reduce parking demand. If the targets are not met there is scope within the Travel Plan for further measures to be introduced to ensure the targets are met.

With regards to the Travel Plan, it sets out measures to result in the reduction of single occupancy car trips by 8% across 5 years to 75% of the overall trips. Officers consider that this would be best controlled and monitored by a legal agreement. Consequently, a standard monitoring fee of £5,500 will be sought as well as providing an obligation as part of a legal agreement to be drafted. The obligation will outline that there will be annual reviews and in the event measures to reduce travel against the target then remedial actions will be needed to address this.

In terms of access for prisoners as set out earlier in this report, it is considered for the operation on the houseblocks to assist in their function, provide access to employment and education facilities for prisoners and to ensure that the site is sustainable to provide a minibus service. The details of which will be controlled by condition.

On the basis of the matters and points set out below, and in particular that Derbyshire Highways raise no objection, it is considered that it would be unreasonable and unsubstantiated to refuse the application on highway safety, accessibility and transport grounds.

Trees and Biodiversity

There are no TPO's covering the site. The proposed open facility or additional parking would not impact on the existing trees however, there may be the need for pruning around their edges and hedgerows. The supporting Arboricultural Impact Assessment outlines these as low to moderate value trees. These works are considered localised and will not give rise to unacceptable effects on local landscape character and amenity.

The Council's Tree Officer has been consulted and raised no objection, subject to measures within the approved Tree Protection Plan and Arboricultural Method Statement being implemented and maintained throughout completion of all construction related activity. A condition will be added accordingly.

The application was supported by Preliminary Ecological Appraisal (PEA) (October 2022) and the Great Crested Newt survey report (September 2022) and the Biodiversity Net Gain Assessment (November 2022) all prepared by RSK ADAS Ltd. It is considered there are no nature conservation designations within or immediately adjacent to the site and the habitats present are of site value only.

The assessments are considered to provide sufficient information in relation to potential impacts at the site and have identified suitable mitigation and biodiversity enhancements. Provided the development is implemented in accordance with the mitigation and biodiversity enhancement and habitat is retained as detailed in the reports, the development should be able to provide a net gain for biodiversity in line with Local Plan policies and the NPPF. The Biodiversity Metric calculation predicts a 5.45% gain for

habitat and a 13.84% gain for hedgerow. This will be delivered on site and controlled via the LBEMP condition.

Derbyshire Wildlife Trust has been consulted on the application and raise no objection subject to conditions relating to breeding birds, mitigation measures outlined in the PEA, lighting measures and a landscape and biodiversity enhancement and management plan (LBEMP). These will be attached.

On this basis, no objection is raised by DWT in terms of approach or gain and it is considered that the proposed development from an ecology perspective would be in accordance with LPP1 Policy BNE3, and paragraph 174 of the NPPF.

Flood Risk and Drainage

The application site is located for its majority within Flood Zone 1, meaning it is an area with a low probability of flooding. Planning Practice Guidance confirms that the aim is to steer new development to Flood Zone 1.

The most applicable policies to consider are S1, S2, SD2, SD3 and SD6 of the LP1. As the built development proposed has a roof area and introduces impermeable paving it would therefore generate appreciable rainwater run-off, so there is potential for substantial surface water and therefore potential for flooding of the site and/or other land.

Both a Flood Risk Assessment and Drainage Statement have been prepared and carried out by the applicant. The supporting FRA confirms that the development will not increase the risk of flooding on site or in the surrounding area.

The Local Lead Flood Authority comment on the application and the applicant has provided further information in response. The applicant has responded to the LLFA and further comment has been sought from the LLFA on this but at the time of writing no further response had been provided.

Local planning policy seeks to promote the drainage of surface water drainage inline with the drainage hierarchy as set out in paragraph 80 reference ID: 7- 080-20150323 of the planning practice guidance. The hierarchy seeks discharge as follows:

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

It is not considered that the lack of response from the LLFA is sufficient to delay determination of the application. It is clear from their objection and comments that they simply want to clarify the possible option of drainage on site and secure where suitable onsite drainage.

Overall, to address this matter it is considered that pre commencement conditions which will require clarity around the proposed ground conditions and surface run off rate, exploring options of drainage on site and likely finished floor levels would be acceptable and appropriate to address this matter.

This would therefore then allow a process against which would ensure a suitable drainage strategy prior to any development and this can be tested against the most suitable pathway for surface water inline with policy. Further conditions will be added to ensure drainage is managed during construction, any drainage solution is verified as built as approved prior to occupation and that the system is suitably managed by the developer and not at a cost to SDDC. It is considered that this would ensure that there is no increased flood risk to existing or proposed residents.

In summary, the proposed development subject to conditions is considered not at significant flood risk where a suitable drainage strategy can be implemented. The proposed development therefore accords with LPP1 Policies SD2 and SD3 and Section 14 of the NPPF.

Sustainability and Renewable Energy

Paragraph 152 of the NPPF requires the planning system to support the transition to a low carbon future in a changing climate, including the requirement to help shape places in ways that contribute to

radical reductions in greenhouse gas emissions. Paragraph 154 goes on to require new development to reduce greenhouse gas emissions, such as through its location, orientation and design. This is further iterated in paragraph 157 which sets out that in determining planning applications, new development should take account of landform, layout, building orientation, massing, and landscaping to minimise energy consumption.

Policy SD1 states the Council will support development that does not lead to adverse impacts on the environment or amenity of existing and future occupiers within or around proposed developments. Policy SD6 seeks to support renewable and other energy developments subject to not giving rise to unacceptable impacts. The Design SPD sets out guidance on the reduction of resource use in commercial developments and encouragement for energy strategies to be clean, green and through building design efficient – PV panelling and air source heat pumps are specifically outlined.

The application is supported by an Energy and Sustainability Statement. This sets down a number of options in terms of technologies, that could be incorporated. Based on the submitted information the proposal would utilise a number of technologies with the overall aim to ensure that the development would be Net Zero Carbon; this would be achieved through the specifications of high fabric energy efficiency, heat pumps, energy efficient lighting, appliances and equipment and on-site renewable energy generation.

Based on the submitted Design and Access Statement, the proposed open facility would require approximately 200m² of PVs. 100m² can be accommodated on flat roofs of the building, with the remaining 100m² indicatively shown extending over the proposed new parking. Furthermore, the building is performing to a high standard in order to achieve the ambitious sustainability and energy targets. The target is BREEAM Excellent with a score shown of minimum 85%, further gains can be sought to ensure 92.86% score against the BREEAM. There will be a reduction of 78% in carbon usage against Part L of the Building Regulations which is very welcomed.

It is noted that objections set out that many of the conclusions of the BREEAM are wrong or unsubstantiated. BREEAM certification is a national programme undertaken by accredited assessors which are regulated. The process for this certification involves registering the project with a BREEAM certification body and a pre-assessment to determine the project's suitability for the BREEAM standard and a subsequent post-assessment to ensure the credits are secured leading to an overall standard. On this basis, it is considered to be an acceptable and justified position.

To realise the energy and sustainability gains, a condition could be recommended requiring full details of the renewable energy measures be submitted and requiring compliance with the energy statement.

Section 106 obligations

As set out above, a travel plan was submitted with the application. The travel plan sets out measures to reduce car trips. The Travel Plan will be controlled and monitored via a legal agreement under S106.

The heads of terms for this obligation is that there is target for a minimum reduction of 8% in car trips and the travel plan will be monitored via annual reports with remedial action if the target is not being addressed.

Conclusion and Planning Balance

Section 38(6) of the Planning and Compulsory Purchase Act 2004 and S70(2) of the Town and Country Planning Act 1990 require that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.

In terms of the Local Plan, this comprises SDDC Local Plan Part 1 (LP1) and SDDC Local Plan Part 2 (LP2). Which is considered to be up to date in terms of the relevant policies set out above. On this basis, Paragraph 11 of the NPPF is not 'triggered'.

The proposal for an open facility to house prisoners who have served within the adjacent prison and remain on license given their crime has understandably given rise to much local concern.

The need for additional women prison spaces is accepted, as is the fact that there are only two women's prisons serving the Midlands within which there are large conurbations. The application outlines that the open facility will play a role in the rehabilitation of offenders, enabling them to undertake employment, education and/or meet with family. The facility is obviously designed to meet modern standards of accommodation and spaces such as the family room to enable children's visits is considered to support rehabilitation. All which would deliver economic and social benefits.

Officers have questioned how the space will operate and reviewed details of ROTL. The location is not considered readily accessible and satisfactory arrangements for prisoners to access employment or education to realise the economic and social benefits need further detail; but the principle of a mini-bus and travel plan measures are accepted, and such will be conditioned to improve access and reduce car travel arising from the proposed development suitably addressing this point.

In terms of wider highways and transport matters, no objection nor further measures have been sought by Derbyshire County Council Highways other than conditions relating to provision of parking and management of construction traffic. Given the private nature of Woodland Drive its access and maintenance are private matters. Subsequently, despite the obvious and understandable concerns of residents, it is considered that there are no transport grounds for refusal here.

Details around the operation of the facility have quite rightly been questioned by objections and indeed by Officers in their efforts to understand how the operation might fulfil and address some of the significant concerns raised. Information has been provided but further information would have been helpful in terms of management, minimum staffing levels, processes, and checks for prisoners to secure ROTL, contact details in the event of issues etc. given that it is considered fear of crime is a material planning consideration linked to amenity which managed by Local Plan policies.

It is considered that some of this information can be reasonably requested by condition via an operational management plan, which would also include indicative provision for the necessary travel arrangements to support prisoners in their pursuit of employment, education and seeing family. Only with this condition can Officers be confident that the economic and social benefits of rehabilitation will be realised from the facility which go some way to positively balancing this application for approval.

With regards to the safety of the public from the proposed prisoners on ROTL, it is considered that this process is an established practice by the Ministry of Justice in their management and rehabilitation of the prison population. On review of the ROTL process and criteria applied to possible candidates, it is hoped it will go some way to addressing public concerns. It would be unreasonable for Officers to dictate to the Ministry of Justice what is safe and unsafe in terms of assessing prisoners risk levels. It is also considered that having the facility within the secure perimeter or with similar levels of security to the Prison defeats the open nature and may undermines the effectiveness of rehabilitation so a balance needs to be struck. Consequently, whilst again the local concerns are fully understood by Officers, on review of the matters of fear of crime and public safety, it is considered that subject to an operational management plan, there is no reason for refusal on this matter.

It is not considered reasonable to base the perceived failings or indeed the conclusions of the HM Chief Inspector in their report on HMP Foston Hall as ground for the refusal of this facility. This application needs to be assessed on its own merits.

It is accepted that the design of the facility is functional and has to meet operational and safety standards. Its height has been accepted as necessary on the basis of the required plant and requirement to secure access to this. Indeed, the plant does give rise to sustainability benefits. The facility can be viewed from the adjacent countryside, however, the backdrop and context is considered to minimise the visual intrusion. The mass has been assessed for its relationship and impact on the amenity of the neighbouring properties and has been found acceptable.

With specific regard to the historic environment, this proposed development has been considered with due regard for Section 66 and 72 of the Act and found to be acceptable, given the public benefits identified in accordance with the NPPF.

Drainage can be suitably managed by condition and there are clear benefits in terms of biodiversity net gain and the energy standards to which the facility will be built.

In summary, the principle of the location is considered acceptable subject to conditions. The buildings are functional and reflect the national brief. Scope to amend is constrained by operational requirements, and the design and materials subject to condition have been found to be acceptable. Whilst the concerns of the objections are fully understood, Officers have considered the amenity, safety and access impacts on the adjacent properties and have found no grounds on balance for refusal and Officers are limited in dictating to the MoJ operational measures. Wider matters have been found to be acceptable and it is considered that the proposal subject to conditions will give rise to public benefits as outlined which are given weight in favour of the application.

It is therefore recommended that the application is approved subject to conditions and the legal agreement securing the Travel Plan measures.

Equality Implications

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

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

2. The development hereby permitted shall be carried out in accordance with plans/drawings:
 - Site Location Plan 597685_6142-MAC-000-ZZ-D-A-1501
 - Open houseblock - Ground Floor 888888_0000-MAC-H01-00-D-A-1501 Official Sensitive
 - Open houseblock - First Floor 888888_0000-MAC-H01-01-D-A-1502 Official Sensitive
 - Open houseblock - Second Floor 888888_0000-MAC-H01-02-D-A-1503 Official Sensitive
 - Open houseblock - Roof 888888_0000-MAC-H01-R0-D-A-1504 Official Sensitive
 - Open houseblock - Sections 888888_0000-MAC-H01-ZZ-D-A-1506 Official Sensitive
 - Open houseblock - Elevations 888888_0000-MAC-H01-ZZ-D-A-1505
 - Demolition Plan 597685_6142-MAC-000-ZZ-D-A-1502
 - Proposed Site Plan 597685_6142-MAC-000-ZZ-D-A-1503
 - Existing Open Site Plan 597685_6142-MAC-000-ZZ-D-A-1504
 - Proposed Open Site Plan 597685_6142-MAC-000-ZZ-D-A-1505
 - Proposed Open Site Sections 597685_6142-MAC-000-ZZ-D-A-1506
 - Existing North Car Park Plan 597685_6142-MAC-201-ZZ-D-A-1507

- Proposed North Car Park Plan 597685_6142-MAC-201-ZZ-D-A-1508
- Existing & Proposed South Car Park Plan 597685_6142-MAC-201-ZZ-D-A-1509
- Existing Site Plan 597685_6142-MAC-000-ZZ-D-A-1510
- Open Houseblock Rendered Elevations 597685_6142-MAC-000-ZZ-D-A-1511

- Planning Statement 597685_6142-CUS-000-XX-T-T-0003
- Design and Access Statement 597685_6142-MAC-000-XX-T-Z-1501
- LVIA 597685_6142-CEN-000-XX-T-L-0002
- Transport Assessment 597685_6142-HYD-000-XX-T-H-0001
- Outline Travel Plan 597685_6142-HYD-000-XX-T-H-0002
- Energy and Sustainability Statement 597685_6142-MAC-000-XX-T-X-0007
- Phase 1 Ecology Assessment 597685_6142-RSK-000-XX-T-X-0004
- Ecology and BNG Report 597685_6142-RSK-000-XX-T-X-0001
- Ecology - Biodiversity Baseline Calculation 597685_6142-RSK-000-XX-T-X-0002
- Ecology - Biodiversity Options Calculation 597685_6142-RSK-000-XX-T-X-0003
- Ecology - Biodiversity Current Plan Calculation 597685_6142-RSK-000-XX-T-X-0005
- Ecology - HMP Foston Hall Great Crested Newt eDNA & HIS report 597685_6142-RSK-000-XX-T-X-0006
- Arboricultural Survey 597685_6142-HYD-000-XX-T-O-0001
- Arboricultural Impact Assessment 597685_6142-HYD-000-XX-T-O-0002
- Flood Risk Assessment 597685_6142-HYD-000-XX-T-W-0001
- Drainage Statement 597685_6142-MAC-000-XX-T-W-0001
- Geo-Environmental Report (phase 1) 597685_6142-HYD-000-XX-T-G
- Utilities Statement 597685_6142-MAC-000-XX-T-Z-5004
- Official Sensitive Heritage Assessment 597685_6142-THA-000-XX-T-O-0001
- Archaeological Assessment 597685_6142-THA-000-XX-T-O-0002
- Noise Impact Assessment 597685_6142-RSK-000-XX-T-U-2501

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 a high-quality development.

3. As per the noise impact assessment reference 597685_6142-RSK-000-XX—T-U-2501, the plant to be installed must be that identified in the report and future replacement plant must meet the same acoustic specification. Furthermore, a design of installation and proposed enclosure shall be submitted to the LPA and agreed before installation.

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

4. Prior to commencement of the development, the applicant shall submit for approval to the LPA details indicating how additional surface water run-off from the site will be avoided during the construction phase. The applicant may be required to provide collection, balancing and/or settlement systems for these flows. The approved system shall be operating to the satisfaction of the LPA, before the commencement of any works, which would lead to increased surface water run-off from site during the construction phase.

Reason: To ensure surface water is managed appropriately during the construction phase of the development, so as not to increase the flood risk to adjacent land/properties or occupied properties within the development.

5. No development shall take place until a detailed design and associated management and maintenance plan of the surface water drainage for the site, in accordance with the principles outlined within:
And DEFRA's Non-statutory technical standards for sustainable drainage systems (March 2015) have been submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure that the proposed development does not increase flood risk and that the principles of sustainable drainage are incorporated into this proposal, and sufficient detail of the construction, operation and maintenance/management of the sustainable drainage systems are provided to the Local Planning Authority, in advance of full planning consent being granted.

6. No development shall take place until a detailed assessment has been provided to and approved in writing by the Local Planning Authority, to demonstrate that the proposed destination for surface water accords with the drainage hierarchy as set out in paragraph 80 reference ID: 7-080-20150323 of the planning practice guidance.
The assessment should demonstrate with appropriate evidence that surface water runoff is discharged as high up as reasonably practicable in the following hierarchy:
I. into the ground (infiltration);
II. to a surface water body;
III. to a surface water sewer, highway drain, or another drainage system;
IV. to a combined sewer.

Reason: 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.

7. Prior to the first occupation of any phase of the development, a verification report for that phase carried out by a qualified drainage engineer must be submitted to and approved by the Local Planning Authority. This must demonstrate that the drainage system has been constructed as per the agreed scheme (or detail any minor variations), provide the details of any management company and state the national grid reference of any key drainage elements (surface water attenuation devices/areas, flow restriction devices and outfalls).

Reason: To ensure that the drainage system is constructed to the national Nonstatutory technical standards for sustainable drainage and CIRIA standards C753.

8. Prior to the occupation of the proposed development an Operational Management Plan shall be submitted in writing to and for the approval by the Local Planning Authority. The Plan shall detail the following:
- Provision and access to minibus for prisoners to ensure suitable accessibility
 - Curfew time of 9:30 at which the facility will be closed and how this will be enforced
 - Access arrangements for prisoners in terms of external areas
 - CCTV details, locations and management
 - Point of contact in the event of any issues arising
 - In the event of prisoners having access to vehicles how and where this will be

The operation of the blocks shall be in accordance with the approved plan.

Reason: To ensure that the proposed development is accessible and in the interests of compliance with BNE1 and minimising antisocial behaviour

9. 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.

10. No development shall take place until a scheme to control noise emanating from the site during the construction period has been submitted to and approved in writing by the Local Planning Authority. The approved measures shall be implemented throughout the construction period.

Reason: In the interests of protecting the amenity of the area and adjoining occupiers, recognising that initial preparatory works could cause unacceptable impacts.

11. 1. Undertake a phase 2 site investigation in accordance with the recommendations of the phase 1 study reference 597685_6142-HDY-000-XX-T-G-0001.

2. 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.

3. No buildings hereby approved shall be occupied until:

a) The approved remediation works required by 2 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.

c) Upon completion of the remediation works required by 2 and 3a 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 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.

12. No development shall take place until a scheme of dust mitigation measures and the control of noise emanating from the site during the construction period has been submitted to and approved in writing by the Local Planning Authority. The approved measures shall be implemented throughout the construction period.

Reason: In the interests of protecting the amenity of the area and adjoining occupiers, recognising that initial preparatory works could cause unacceptable impacts.

13. No development shall take place until a written scheme of investigation (WSI) for archaeological work has been submitted to and approved by the local planning authority in writing. For land that is included within the WSI, no development shall take place other than in accordance with the agreed WSI, which shall include the statement of significance and research objectives; and:
- The programme and methodology of site investigation and recording and the nomination of a competent person(s) or organisation to undertake the agreed works
 - The programme for post-investigation assessment and subsequent analysis, publication & dissemination and deposition of resulting material. This part of the condition shall not be discharged until these elements have been fulfilled in accordance with the programme set out in the WSI

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

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

15. Prior to commencement of the development hereby permitted details of a Demolition/Construction Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The approved plan shall be adhered to throughout the demolition/construction period. The plan shall include but not be restricted to:
- Parking of vehicles of site operatives and visitors (including measures taken to ensure satisfactory access and movement for existing occupiers of neighbouring properties during construction);
 - Advisory routes for construction traffic;
 - 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 Demolition/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 demolition and construction phase of the development.

16. No stripping, demolition works or 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: Under the Wildlife and Countryside Act 1981, as amended (section 1), it is an offence to remove, damage or destroy the nest of any wild bird while that nest is in use or being built. Planning consent for a development does not provide a defence against prosecution under this act.

17. The development shall be carried out in strict accordance with the mitigation strategy/measures detailed in section 6 of the Preliminary Ecological Appraisal prepared by RSK ADAS October 2022), with any amendments agreed in writing”.

18. 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 08/18 - Bats and Artificial Lighting in the UK (BCT and ILP, 2018). Such approved measures will be implemented in full.
19. 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 enhance and sympathetically manage the biodiversity value of onsite habitats, in accordance with the proposals set out in section 6.3 of the Preliminary Ecological Appraisal (October 2022) and the Biodiversity Net Gain Assessment (November 2022) prepared by RSK ADAS Ltd. 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) Additional tree planting to be included as part of the proposed landscaping to screen residential properties to the southeast of the site to include fruit and nut bearing species of native varieties to provide foraging opportunities for invertebrates and other species.
 - b) Proposed landscaping around the new open households to be sown with a species-rich lawn mix such as 'Flowering Lawn Mixture EL1' from Emorsgate.
 - c) The hedgerow within survey area 2 should be enhanced using native species to increase foraging opportunities for invertebrates, bats and birds, and provide additional suitable nesting habitat for birds.
 - d) Landscaping plans should include the installation of insect towers to improve habitat availability for invertebrates.
 - e) The proposed development should include the provision of bat and bird boxes installed into retained trees and buildings. These should comprise six bird boxes, including three House Sparrow terraces and three general purpose nest boxes such as the Schwegler 1B nest box; and six bat boxes, including three Schwegler 2F bat boxes and three Eco Kent bat boxes.
 - f) Monitoring reports should be provided annually to the LPA for the first five years and then after 10, 15 and 20 years.
 - g) 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.

20. Prior to the commencement of each phase of development including preparatory works, the details of any fencing (including temporary) including the specification of suitable mammal gaps within that phase shall be submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of safeguarding against harm to protected species during the period of construction and throughout the life of the development.

21. Prior to their incorporation into the buildings hereby approved, details and samples of the external materials for that block shall be submitted to and approved in writing by the Local Planning Authority. The buildings shall thereafter be constructed in accordance with the approved materials for that phase.

Reason: In the visual interest of the buildings and character and appearance of the area

22. The Arboricultural Method Statement (AMS) (14725/P02) as set out in the Arboricultural Impact Assessment prepared by Tyler Grange shall be implemented prior to any works commencing on site for each phase and thereafter retained throughout the construction period.

Reason: To protect existing trees and hedgerow through the construction period of the development.

Informatives:

Highways

Planning permission does not give you approval to work on the public highway. To carry 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 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.

Planning permission does not give you approval to work on the public highway. Pursuant to Section 278 of the Highways Act 1980 and the provisions of the Traffic Management Act 2004, no works may commence within the limits of the public highway without the formal written agreement of the County Council as Highway Authority. It is strongly recommended that you make contact with the County Council at the earliest opportunity to allow time for the process to be completed, which may take up to 16 weeks. Advice regarding the technical, legal, administrative and financial processes involved in Section 278 Agreements may be obtained by contacting the County Council via email – ete.devcontrol@derbyshire.gov.uk. The applicant is advised to allow approximately 12 weeks in any programme of works to obtain a Section 278 Agreement.

If an adoption Agreement is not in place when the development is commenced, the Highway Authority is obliged to serve notice on the developer, under the provisions of the Advance Payments Code part of the Highways Act 1980 (section 219 / 220), to financially secure the cost of bringing up the estate streets up to adoptable standards at some future date. This takes the form of a cash deposit equal to the calculated construction costs and may be held indefinitely. The developer normally discharges his obligations under this Act by producing a layout suitable for adoption and entering into an Agreement under Section 38 of the Highways Act 1980.

If the roads within the proposed development are to be offered for adoption by the Highway Authority, the Developer will be required to enter into an agreement under Section 38 of the Highways Act 1980. Detailed plans will need to be submitted and approved, the Agreement signed and all sureties and fees paid prior to the commencement of development. The Highway Authority reserve the right to charge commuted sums in respect of ongoing maintenance where the item in question is above and beyond what is required for the safe and satisfactory functioning of the highway. For further information please contact the County Council's Implementation team – email ete.devcontrol@derbyshire.gov.uk

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.

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.

The layout of swales within the proposed highway limits do not comply with the Highway Authority's Design Guide and the design indicated on the application drawings has not been used elsewhere in the County. The applicant should be aware that their provision will attract a commuted sum for future maintenance purposes and could compromise the future adoption of the new estate streets.

Drainage

A. The County Council does not adopt any SuDS schemes at present (although may consider ones which are served by highway drainage only). As such, it should be confirmed prior to commencement of works who will be responsible for SuDS maintenance/management once the development is completed.

B. Any works in or nearby an ordinary watercourse may require consent under the Land Drainage Act (1991) from the County Council. For further advice, or to make an application please contact Flood.Team@derbyshire.gov.uk.

C. No part of the proposed development shall be constructed within 5-8m of an ordinary watercourse and a minimum 3 m for a culverted watercourse (increases with size of culvert). It should be noted that DCC have an anti-culverting policy.

D. The applicant should be mindful to obtain all the relevant information pertaining to proposed discharge in land that is not within their control, which is fundamental to allow the drainage of the proposed development site.

E. The applicant should demonstrate, to the satisfaction of the Local Planning Authority, the appropriate level of treatment stages from the resultant surface water discharge, in line with Table 4.3 of the CIRIA SuDS Manual C753.

F. The County Council would prefer the applicant to utilise existing landform to manage surface water in mini/sub-catchments. The applicant is advised to contact the County Council's Flood Risk Management team should any guidance on the drainage strategy for the proposed development be required.

G. The applicant should provide a flood evacuation plan which outlines:

- The flood warning procedure
- A safe point of extraction
- How users can safely evacuate the site upon receipt of a flood warning
- The areas of responsibility for those participating in the plan
- The procedures for implementing the plan
- How users will be made aware of flood risk
- How users will be made aware of flood resilience
- Who will be responsible for the update of the flood evacuation plan

H. Flood resilience should be duly considered in the design of the new building(s) or renovation. Guidance may be found in BRE Digest 532 Parts 1 and 2, 2012 and BRE Good Building Guide 84.

I. Surface water drainage plans should include the following:

- Rainwater pipes, gullies and drainage channels including cover levels.
- Inspection chambers, manholes and silt traps including cover and invert levels.
- Pipe sizes, pipe materials, gradients, flow directions and pipe numbers.
- Soakaways, including size and material.
- Typical inspection chamber / soakaway / silt trap and SW attenuation details.
- Site ground levels and finished floor levels.

J. On Site Surface Water Management;

The site is required to accommodate rainfall volumes up to the 1% probability annual rainfall event (plus climate change) whilst ensuring no flooding to buildings or adjacent land.

The applicant will need to provide details and calculations including any below ground storage, overflow paths (flood routes), surface detention and infiltration areas, etc, to demonstrate how the 30 year + 35% climate change and 100 year + 40% Climate Change rainfall volumes will be controlled and accommodated. In addition, an appropriate allowance should be made for urban creep throughout the lifetime of the development as per 'BS 8582:2013 Code of Practice for Surface Water Management for Developed Sites' (to be agreed with the LLFA).

Production of a plan showing above ground flood pathways (where relevant) for events in excess of the 1% probability annual rainfall event, to ensure exceedance routes can be safely managed.

A plan detailing the impermeable area attributed to each drainage asset (pipes, swales, etc), attenuation basins/balancing ponds are to be treated as an impermeable area.

Peak Flow Control

For greenfield developments, the peak run-off rate from the development to any highway drain, sewer or surface water body for the 1 in 1 year rainfall event and the 1 in 100 year rainfall event, should never exceed the peak greenfield run-off rate for the same event.

For developments which were previously developed, the peak run-off rate from the development to any drain, sewer or surface water body for the 100% probability annual rainfall event and the 1% probability annual rainfall event must be as close as reasonably practicable to the greenfield run-off rate from the development for the same rainfall event, but should never exceed the rate of discharge from the development, prior to redevelopment for that event.

Volume Control

For greenfield developments, the runoff volume from the development to any highway drain, sewer or surface water body in the 6 hour 1% probability annual rainfall event must not exceed the greenfield runoff volume for the same event.

For developments which have been previously developed, the runoff volume from the development to any highway drain, sewer or surface water body in the 6 hour 1% probability annual rainfall event must be constrained to a value as close as is reasonably practicable to the greenfield runoff volume for the same event, but must not exceed the runoff volume for the development site prior to redevelopment for that event.

Note:- If the greenfield run-off for a site is calculated at less than 2 l/s, then a minimum of 2 l/s could be used (subject to approval from the LLFA).

Details of how the on-site surface water drainage systems shall be maintained and managed after completion and for the lifetime of the development to ensure the features remain functional.

Where cellular storage is proposed and is within areas where it may be susceptible to damage by excavation by other utility contractors, warning signage should be provided to inform of its presence. Cellular storage and infiltration systems should not be positioned within the highway.

Guidance on flood pathways can be found in BS EN 752.

The Greenfield runoff rate which is to be used for assessing the requirements for limiting discharge flow rates and attenuation storage for a site should be calculated for the whole development area (paved and pervious surfaces - houses, gardens, roads, and other open space) that is within the area served by the drainage network, whatever the size of the site and type of drainage system. Significant green areas such as recreation parks, general public open space, etc., which are not served by the drainage system and do not play a part in the runoff management for the site, and which can be assumed to have a runoff response which is similar to that prior to the development taking place, may be excluded from the greenfield analysis.

K. If infiltration systems are to be used for surface water disposal, the following information must be provided:

- Ground percolation tests to BRE 365.
- Ground water levels records. Minimum 1m clearance from maximum seasonal groundwater level to base of infiltration compound. This should include assessment of relevant groundwater borehole records, maps and on-site monitoring in wells.
- Soil / rock descriptions in accordance with BS EN ISO 14688-1:2002 or BS EN ISO 14689-1:2003.
- Volume design calculations to 1% probability annual rainfall event + 40% climate change standard. An appropriate factor of safety should be applied to the design in accordance with CIRIA C753 – Table 25.2.
- Location plans indicating position (soakaways serving more than one property must be located in an accessible position for maintenance). Soakaways should not be used within 5m of buildings or the highway or any other structure.
- Drawing details including sizes and material.
- Details of a sedimentation chamber (silt trap) upstream of the inlet should be included.
- Soakaway detailed design guidance is given in CIRIA Report 753, CIRIA Report 156 and BRE Digest 365.

L. All Micro Drainage calculations and results must be submitted in .MDX format, to the LPA. (Other methods of drainage calculations are acceptable.)

M. The applicant should submit a comprehensive management plan detailing how surface water shall be managed on site during the construction phase of the development ensuring there is no increase in flood risk off site or to occupied buildings within the development

Item No. 1.2

Ref. No. [DMPA/2022/1321](#)

Valid date: 28/11/2022

Applicant: McDonald's Restaurants Ltd **Agent:** Planware Ltd

Proposal: **Erection of a freestanding restaurant with drive-thru facility, car parking, landscaping and associated works, including Customer Order Displays (COD) and Play Frame (E11-003). Land at Junction of A38 and A5132, The Castle Way, Willington , Eggington, DE65 6GY**

Ward: Willington and Findern

Reason for committee determination

This item is presented to the Committee at the discretion of the Head of Planning and Strategic Housing due to the level of public interest in the application and at the request of Councillor Ford.

Site Description

The application site has a lawful use for the storing and hiring skips. The site is enclosed by a fence, with trees and low-level planting on highways land. More mature trees are located to the south of the site. Access to the site is from The Castle Way. The site is located approximately ½ mile west of the edge of Willington village and is outside any settlement boundary. Immediately north of the application site is a BP filling station with a very small spar forecourt shop. The filling station provides access to both the A38 and The Castle Way. A small diner is located north of the filling station, sharing the access. It has its own car park further north.

A number of residential properties are located on the northern side of The Castle Way, and the spur of the old road of the same name. Willington is located to the east of the site, it being identified as a local service village within Policy RTL1 of the LP2, providing a number of facilities and key services.

The proposal

The application is for a roadside McDonald's restaurant and associated works to the site. The proposal, which is for both the sale of food and drink for consumption on and off the premises, is a mixed use of Class E and Sui Generis within the Use Classes Order. The works would include a McDonald's restaurant with drive-thru, car parking, landscaping and associated works, including customer order displays (COD) and a play frame, and associated works to the site. The restaurant would employ 120 full and part time staff.

Applicant's supporting information

Planning Statement

Prepared in support of the application the statement seeks to demonstrate accordance with economic, social and environmental objectives of local and national policy. It notes the economic investment in the district and the number of jobs created, the provision of services and the redevelopment of a key brownfield site.

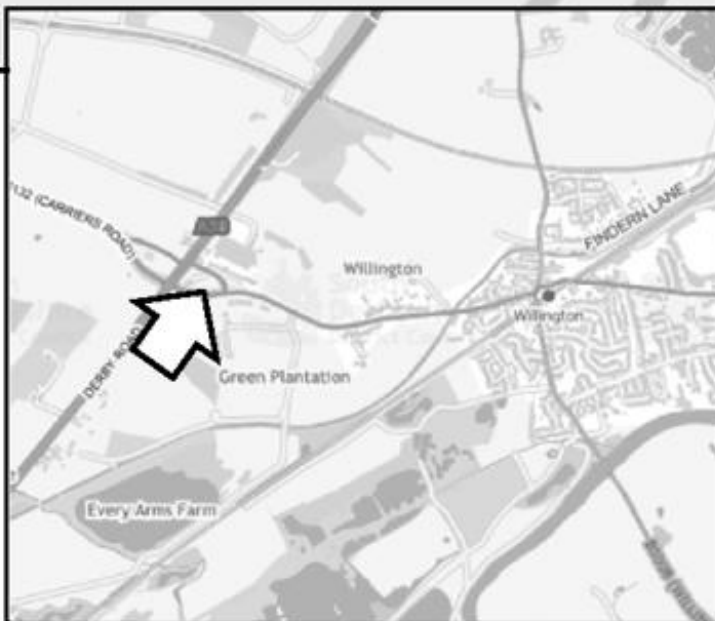
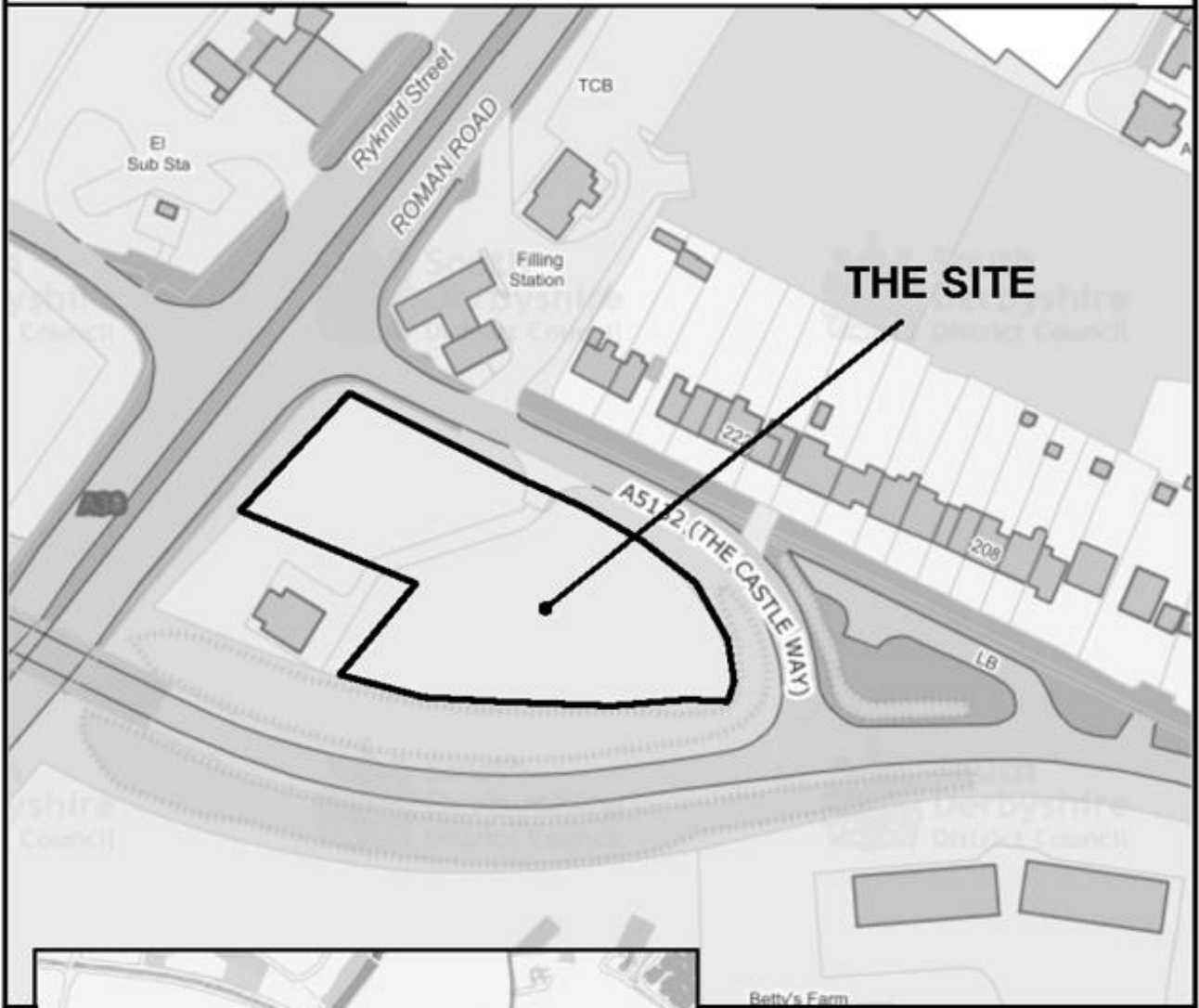
Odour Control Assessment

This report provides an odour risk assessment using industry best practise and identifies the recommended equipment and techniques to minimise impact.

Travel Plan

The document details measures it will undertake to make staff aware of the alternative means of transport that are available in order to travel to and from their place of work and in particular, reduce

**DMPA/2022/1321 – Land at Junction of A38 and A5132, The Castle Way,
Willington DE66 6GY**



MAPS ARE NOT TO SCALE

This map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the Controller of Her Majesty's Stationery Office. Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings.

South Derbyshire District Council, LA 100019461.2020

the number of journeys to work that are made by car. That surveys demonstrate that typically a low number of staff drive to work and that a Travel Plan Co-ordinator will be appointed for the restaurant and that the Travel Plan will be in place for a minimum of 5 years with appropriate targets proposed to reduce single occupancy car trips to work by staff.

Construction Environmental Management Plan

This document details how the construction of the site will be managed with details of access, traffic management and routing, health and safety, delivery and work times, construction site layout, storage and waste disposal.

Environmental Noise Assessment

Prepared in support of the application the assessment provides details of 24 hour on-site survey work that has been undertaken. This recorded high levels of existing traffic noise from the A38 which the document states will provide a high degree of masking of the proposed operational noise. It assesses the proposed noise generated and the mitigation requirements for the proposal.

Arboricultural Assessment

This report provides details of the assessment of the trees on site (nine individual trees, one area of trees and four hedges). The arboricultural related implications of the proposal are three-fold; the need to fell one low quality/poor longevity individual tree and additionally, three landscape features require minor surgery; the alignment of the drive through and parking nominally intrudes within the Root Protection Areas of 3 hedges to be retained. This has only minor influence on the Root Protection Areas and as such it is considered appropriate to undertake linear root pruning, thus obviating the need for specialist "no dig" construction techniques; and all other trees and landscape features can be retained if works are carried out in accordance with the assessment.

Preliminary Ecological Appraisal

The report provides an ecological summary of the site and implications of the proposals including the need for further surveys and mitigation, enhancement measures, an and assessment of impacts.

Drainage Management Plan

This report provides details of the site and proposed drainage management system. It provides management and maintenance responsibilities.

Flood Risk Assessment

The assessment states that the site is located within Flood Zone 1 and sets out the flood risks to the site. It sets out specific flood risk reducing features incorporated into the design and the drainage infrastructure for the proposal due to constraints of permeability and size of site surface water will be directed to a attenuation tank and enter the sewer system which are will have restricted rates of discharge.

Transport Assessment

This document assesses the likely traffic and trip generations likely as a result of the proposals. It acknowledges the limitations of the site for walking, cycling and public transport. It sets out parking figures (54 spaces) 6 cycle spaces and 2 motorcycle spaces. The proposals would involve the slight modification of the existing priority access junction and concludes that visibility will be sufficient. It sets out data on peak times and junction modelling works and concludes that there would be no material traffic impacts as a result of the development.

Desk Study, Site Investigation and Risk Assessment Report

The report has been prepared to support the application and provides an assessment of the historical uses of the site, implications for potential contamination, the type and nature of testing working which have taken place at the site and their results which found no evidence of significant soil, groundwater or landfill gas contamination. Recommendations are given for remediation of the site

Relevant planning history

DMOT/2021/0672 – Approval of details required by Conditions 3 and 8 attached to ref. 9/2019/0583 on land at SK2828 2357, The Castle Way, Willington, Derby, DE65 6BW – Pending consideration

APP/F1040/W/19/3239004 – The erection of a light industrial and storage/distribution unit (Use Classes B1(C) and B8 on Land at SK282 2357, The Castle Way, Willington, Derby – Allowed 23rd March 2020

9/2019/0583 – The erection of a light industrial and storage/distribution unit (Use Classes B1(C) and B8 on Land at SK282 2357, The Castle Way, Willington, Derby – Refused 7th August 2019. Approved at appeal ref: APP/F1040/W/19/3239004 – 23rd March 2020.

9/2018/1153 - Retrospective application for the erection of 2.4m high v-mex style fence around the perimeter of the site together with 2.4-metre-high access gates these will be green in colour at Land at SK2828 2357, The Castle Way, Willington, Derby, Derbyshire – Approved December 24th 2018

9/2016/0479 – Change of use of vacant land to an area of hard standing for skip storage (Use Class B) on Land at SK2828 2357, The Castle Way, Willington, Derby, Derbyshire – Approved 30th November 2016

9/2015/0670 - Change of use to residential gypsy caravan site for 3 pitches along with erection of amenity buildings and acoustic fencing and creation of bunds and hardstanding on Land at SK2828 2357, The Castle Way, Willington, Derby, Derbyshire – Refused 11th November 2015

9/2013/0093 - The change of use of land to use as residential caravan site for 4 gypsy families, each with two caravans including no more than one static mobile home, together with laying of hardstanding, landscaped bunds and the erection of two amenity buildings on Land at SK2828 2357, The Castle Way, Willington, Derby, Derbyshire – Refused 8th May 2013

Responses to consultations and publicity

Environmental Health – No objections subject to conditions.

National Highways - National Highways raise no objection to the proposed development in terms of traffic generation, surface water drainage, signage, glint and glare and boundary treatments.

LLFA – The LLFA raise no objection to the proposed development subject to conditions in relation to the management of surface water drainage of the site.

Planning Policy – The Planning Policy Officer has provided a comprehensive response on the planning application. The response highlights that only a partial sequential test has been submitted as part of the application, looking at Willington, but excluding other potential locations, and that the proposal is therefore in conflict with Policy R1 of the Local Plan Part 1. The response also highlights that the proposed development would be in conflict with Policy E7 in that a business case is required to be submitted in support of an application for employment development in a rural area but is absent. The response also raises issues with transport related sustainability impacts in terms of location and modal choice (Policy S6 and Policy INF2).

DCC Highways – The Highway Authority initially issued a response that requested additional information in respect of car parking and sustainable travel. Additional information was since submitted by the applicant to address these issues. On the basis of the additional information received the Highway Authority have confirmed that they have no objection to the application subject to a series of conditions.

Derbyshire Wildlife Trust – The response from Derbyshire Wildlife Trust highlights that there are no significant habitats of value that will be affected by the proposals given the existing nature of the site. However, the response sets out a number of recommendations in relation to protect species and biodiversity enhancement that should be considered as part of the development proposals.

Eggington Parish Council – The Parish Council have raised concerns in relation to the impact of the proposed development on highway safety. This include the existing levels if safety of access onto and off the A38, the junction with the petrol station opposite and the T-junction on to the A5132 Carriers Road, which may be exacerbated as a result of the proposed development.

Willington Parish Council – The Parish Council have formally objected to the planning application. The objection cites concerns with regard to Environmental Impact, Noise, Odour, Litter and Pollution. This includes reference to potential noise disturbances from additional plant equipment, as well noise from anti-social behaviour from people using the site to socialise with friends at night time, the restaurant proposed being 24-hour. The response also raises concerns in relation to highway safety.

Hilton Parish Council – The Parish Council have formally objected to the development due to the potential highway safety impacts.

Public Responses: The application has received a considerable amount of publicity. A total of 279 letters of objection and a total of 231 letters of support were received. A summary of the public responses and the key points that were raised are as follows:

Objections

- Increase in traffic and highway safety impacts;
- Noise, odour and air pollution impacts;
- Potential increase in litter arising from proposed development;
- An existing McDonalds restaurant is already in close proximity;
- Impact on the character of Willington;
- Impacts on the environment from increase in pollution;
- Lack of pedestrian access;
- Not an appropriate location for the proposed development;
- Potential increase in anti-social behaviour;
- Impacts on local businesses;
- Impact on health and wellbeing of local people.

Support

- Job creation in the area;
- Increase in convenient food options in the area;
- Reduction in car journeys into local towns to access McDonald's;
- Addition to the local area;
- Positive use of site;
- Improve appearance of site.

Relevant policy, guidance and/or legislation

The relevant Development Plan Policies are:

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

(2017) Local Plan Part 2 (LP2): BNE5 (Development in Rural Areas), RTL1 (Retail Hierarchy)

The relevant National Guidance is:

National Planning Policy Framework (NPPF)

Planning Practice Guidance (PPG)

The relevant Local Guidance is:

South Derbyshire Design Guide SPD

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 (Sequential Test);
- Principle of development (Development in the Rural Area);
- Highway Impact; and
- Impact on neighbouring residential amenity.

Planning assessment

Principle of Development (Sequential Test)

The application proposals seek permission for the erection of a freestanding restaurant with drive-thru facility, which is proposed to be operated by national fast food retailer McDonalds. The proposed development would be considered to fall within Use Class E of the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2022, and for the purposes of determining this application constitutes a main town centre use as defined within the National Planning Policy Framework. The glossary to the NPPF specifically identifies drive-through restaurants as a main town centre use.

Policy RTL1 of the Local Plan Part 2 states that *'applications for new main town centre uses outside of the following centres will be subject to the sequential test'*. Indeed, that reflects the NPPF that states (paragraph 87) *'local planning authorities should apply a sequential test to planning application for main town centres which are neither in an existing centre nor in accordance with an up-to-date plan. Main town centre uses should be located in town centres, then in edge of centre location; and only if suitable sites are not available (or expected to become available within a reasonable period) should out of centre sites be considered.'*

Planning Practice Guidance states: *"it is for the applicant to demonstrate compliance with the sequential test (and failure to undertake a sequential test could in itself constitute a reason for refusing permission)."* (ref: 011 ID Reference ID: 2b-011-20190722).

The applicant states that a sequential test has been undertaken in relation to Willington but that no alternative sites have been found. The applicant has not, however, considered any of the other local centres in the vicinity of the site. Indeed, it would be reasonable, as a minimum, to consider all those within ten minutes' drive of the site. This includes Findern, Repton, Newton Solney, Hilton, Etwall, Hatton, Highfields Farm and the proposed local centre to the West of Mickleover.

In addition, despite undertaking a sequential test in regard to the local centre of Willington, the applicant considers that the proposal does not need to be subject to sequential testing as the particular locational requirements of a roadside drive thru restaurant mean that a town or local centre site would be unsuitable.

The applicant refers to appeal decision APP/C3105/W/16/3151655, which states (paragraph 2):

"Given that the purpose of this development is to provide roadside facilities for motorists on the A43, which by definition is unlikely to be within a town centre, I consider the sequential test to be of little relevance to this appeal and this was confirmed by the Council at the hearing. Furthermore, the Council's statement notes that disputing whether or not there are alternative sites available will not be beneficial to either party. The Council also confirmed at the hearing that the question of alternative sites does not arise in this case, as there are none under consideration."

In Paragraph 3 the Inspector goes on to state:

"As such, although the reasons for refusal state that there has been insufficient robust assessment of alternative locations along the A43, I have concluded that neither a consideration of alternative sites

nor the sequential test are determinative factors and have given them no further consideration in my reasoning.”

Notwithstanding the above, planning applications should be considered on their own merits. The Inspector’s conclusion does not rule out the application of the sequential test in all circumstances when considering development of this kind. Notably, footnote 44 of the NPPF states that *‘The primary function of roadside services should be to support the safety and welfare of the road user’*. No case has been made to suggest that this is the primary function of the proposal. The Transport Assessment submitted with the application indicates that 30% of trips generated on a Friday and 11% of trips generated on a Saturday would be additional trips made solely for the purpose of visiting the facility. Of the remaining trips an unspecified proportion would be accounted for by traffic diverted from existing routes to visit the facility, adding to the overall distances travelled. The Transport Assessment suggests that such trips would be diverted from the A38 northbound carriageway, but it seems reasonable to assume that a proportion would be taken from local routes, such as the B5008, which passes through the centre of Willington. The volume of induced travel demonstrates that the proposal would serve a wider purpose than that of a roadside facility and would be a destination in its own right for many patrons, confirming that it should not be exempted from the requirement to undertake a full sequential test.

The NPPF para 88 states that *“where a sequentially preferable site cannot be found preference should be given to accessible sites which are well connected to the town centre”*.

The applicant has not demonstrated the unavailability of sequentially preferable sites but had this been done the application site still could not be said to be accessible, nor well connected to a town centre. It is a 1200m walk from the junction of the B5008 and A5132 at the centre of Willington, is not on a cycle route and is not served by public transport, the nearest bus stop and railway station being situated more than 1200m away. There is a housing allocation under construction to the north of the site at Land West of Mickleover allocated under Policy H19 of the Local Plan Part 1. This includes an explicit requirement for a new district centre including a range of shops and facilities. A McDonalds restaurant as part of that district centre would be consistent with policy and emphasises the shortcomings of the applicant’s sequential assessment.

In addition to the above, the Planning Practice Guidance (011 Reference ID: 2b-011-20190722) requires the scope for flexibility in the format and/or scale of the proposals. Indeed, it states that: *‘it is not necessary to demonstrate that a potential town centre or edge of centre site can accommodate precisely the scale and form of development being proposed, but rather to consider what contribution more central sites are able to make individually to accommodate the proposals’*

Indeed, this is also reflected in the supporting text to Policy RTL1 that states (para 5.11) *“applicants should assess opportunities that are of an appropriate scale to accommodate the development proposed. They will be expected to demonstrate flexibility in terms of the format and scale of their proposals when assessing such opportunities.”*

In light of the above, the applicants have not provided any evidence that alternative proposals (in format and scale) have been explored within town centre or local centre locations. The contribution that more central sites could make to accommodate the proposals has not, therefore, been fully assessed.

On the basis of the above, the proposed development is considered to be in conflict with Policy RTL1 of the Local Plan Part 2.

Principle of Development (Development in the Rural Area)

The site is located along the A38 at the Willington Services to the west of the Key Service Village of Willington. The site is located outside any defined settlement boundaries and, therefore, for the purpose of planning is located in the rural area of the District. However, it is noted that this is not a typical rural area given the sites location on a key part of the local highway network. The site is also

within an area that is somewhat suburban in character due to the range of uses/development within its vicinity.

Notwithstanding the above, in rural areas, the provision of new development is limited to that which is considered to be acceptable inter alia by Policy BNE5, which allows for development that accords with other policies in the Development Plan. Of most relevance to the proposals, this includes Policy E7 that states:

“The Council will support proposals for the re-use, conversion and replacement of existing 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 design and of a scale commensurate to the proposed use;*
- v) Visual intrusion and the impact on the character of the locality is minimised.”*

Taking into consideration the above, a sound business case has not been put forward in support of the development of a drive-thru restaurant in this location. Whilst the Planning Statement submitted as part of the application sets out facts and figures pertaining to the economic sustainability of the company both nationally and locally, this is not considered to reasonably demonstrate a business case that would sufficiently justify development in the rural area.

In the absence of a sound business case, it is not possible to determine whether the proposed development is economically viable or sustainable. In addition, it is not possible to fully determine the scale of the business requirements, and therefore, whether the proposed development would be of a design and scale commensurate to the proposed use. On that basis, the proposals would not accord with limb i). or limb iv). of Policy E7.

An assessment of the proposals in respect of limb ii), and limb iii), of Policy E7 is considered in detail in the following sections.

Highways

Policy INF2 of the Local Plan Part 1 states that planning permission will be granted for development where appropriate provision is made for safe and convenient access to and within the development. In addition, Policy S6 of the Local Plan Part 1 sets out the Council’s aim to minimise the need to travel, make the most efficient use of transport infrastructure and services and encourage a modal shift away from the private car.

The proposed development is to be served by the existing site access that is taken from Castle Way. The existing arrangement is considered to be acceptable and the required visibility splays can be readily achieved. The scheme proposals also include the provision of access improvements to ensure safe and satisfactory use by customers and vehicles. Pedestrian access to the site will be provided by a new footway on Castle Way to the east of the site, along with the provision of an uncontrolled pedestrian crossing to the existing footway on the northern side of Castle Way utilising dropped kerbs and tactile paving. The Highway Authority have reviewed the access arrangements and considered them to be acceptable.

As noted in relation to consideration of the sequential test, above, the site is situated in an out-of-town location and, therefore, there are limited opportunities for customers and staff members to access the site via foot, cycle or public transport. The applicant has, therefore, prepared a Travel Plan that includes a number of measures that seek to reduce the need for staff to travel by private car to the site. This includes the provision of secure cycle parking, implementation of a car sharing initiative, appointment of a travel plan co-ordinator and the appraisal of staff against the Travel Plan.

A number of public responses have been received on the application raising concerns with regards to the impact of the proposed development on the surrounding highway network. Notably, the potential queuing on the highway that may result from people accessing the drive thru element of the scheme.

The Transport Assessment that was submitted as part of the application indicates that the proposed drive thru lane has a capacity for 20 vehicles before reaching the main McDonalds car park. The assessment highlights that at two existing McDonalds restaurants in comparable settings which showed queues were on average 6 car lengths with the maximum queue measured as being 10 car lengths. On that basis, the proposed lane length of 20 vehicles is considered to be acceptable and will not affect the operation of the car park or the local highway network.

The number of parking spaces provided by the scheme has been amended through the course of the consultation on the application. This now better reflects the maximum anticipated demand generated by the proposed development. The reduction in parking spaces at the sites also enable a more satisfactory servicing arrangement.

The Transport Assessment that was submitted as part of the planning application confirms that the proposed development traffic can be satisfactorily accommodated on the local road network. This has been reviewed by the Highway Authority who agree with these conclusions.

In light of the above, the Highway Authority do not raise any objection in relation to the proposed development. The application has also been reviewed by National Highways who also raised no objection.

The proposed development is, therefore, considered to be acceptable in highways terms and in accordance with Policy INF2 and Policy S2 of the Local Plan Part 1.

Amenity

Policy SD1 of the Local Plan Part 1 states that the Council will support development that does not lead to adverse impact on the environment or amenity of existing and future occupiers within or around proposed developments.

The application site is located directly opposite the existing residential dwellings that are located on Castle Way. The proposed development, therefore, has the potential to impact on the amenity of nearby residents in terms of lighting, noise and odour, which must be taken into consideration in determining the application.

The Environmental Health Officer reviewed the scheme proposals and requested further information in relation to the impact of vehicle lights upon neighbouring amenity and measures to control the omission of odour. An odour assessment has been submitted and Environmental Health have confirmed that on this basis the proposal would not result in any detriment to the occupants of these neighbouring properties. A revised proposed site has been submitted (11275 AEW 8862 0004F) with the inclusion of screening for the headlights and it is understood that this information is acceptable.

The applicants submitted an Environmental Noise Assessment, which sets out a number of mitigation measures to minimise noise emissions from the site. These are considered to be acceptable and ensure that the development will not lead to unacceptable level of noise. The Environmental Health Officer raises no concerns with the Noise Assessment. However, recommends that a condition should be included to limit delivery times to only take place between the hours of 7am and 11pm, should the application be approved.

Overall, it is accepted that the proposed development will not lead to an unacceptable impact on neighbouring residents in terms of noise disturbance or odour.

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

Recommendation

Refuse for the following reasons:

- 1) The applicant has failed to apply a sequential test to the planning application proposals to ascertain whether there are more suitable centrally located sites within a town centre, local centre, or on the edge of a town or local centre. In failing to undertake an adequate sequential test the potential to site the proposed development in a more sustainable and central location has not been fully assessed. The proposed development is, therefore, in conflict with Policy RTL1 of the Local Plan Part 2 and paragraph 87 of the NPPF.

- 2) The applicant has failed to provide a sound business case in order to justify the proposed development within the rural area. In failing to provide a sound business case the long-term viability of the restaurant has not be appropriately demonstrated, nor is it possible to determine that the scheme proposals are commensurate to the proposed use. The proposed development is, therefore, in conflict with Policy E7 of the Local Plan Part 1 and Policy BNE5 of the Local Plan Part 2.

Item No. 1.3

Ref. No. [DMPA/2023/0177](#)

Valid date: 07/02/2023

Applicant: First Fence Holding Ltd. **Agent:** T Beavin

Proposal: Proposed extension to existing workshop and provision of additional office space, together with a change of use of existing land and turning head resulting from the development of the Kiln Way Link Road for the creation 45no. car parking spaces, including 24no. electric vehicle charging points, erection of 10 no. cycle spaces, staff seating area and landscaping for First Fence Ltd. (3 parking spaces to be allocated for Sharpe's Brothers and Co Ltd)

Ward: Woodville Ward

Reason for committee determination

This planning submission is being reported to Planning Committee due to comments of concern/ objection received from Cllr Taylor, and the number of comments of concern/ objection received from neighbours and members of the public.

Site Description

The application site is addressed as First Fence Ltd, Kiln Way, Woodville, Swadlincote, DE11 8EA.

The existing use of the First Fence Ltd. premises is considered to comprise of both B2 Industrial and B8 Storage uses. The site under consideration incorporates an existing yard space and land located immediately adjacent to the built form of First Fence Ltd. This is to the north-west of the site and east of the connecting roundabout from Kiln Way. This roundabout and the Link Road have recently been constructed. The site area for this application comprises of 9,905 square metres of land.

The application site is located within Woodville within the Swadlincote settlement boundary. Swadlincote is defined as an 'Urban Area' in the Local Plan Settlement Hierarchy. The application is within Woodville Parish. The site is surrounded to the north, west and south by the remodelled Swadlincote Road, roundabout, and Kiln Way, with Kiln Way being a Regeneration Route. To the east are neighbouring industrial premises. Surrounding development to the south is predominantly industrial units occupied by a range of businesses. Neighbouring residential ribbon development is focussed along Swadlincote Road, in predominantly modest terraced two storey style, however there are also several commercial premises along Swadlincote Road. To the west, on the opposite side of Kiln Way and south of Swadlincote Road, there is Gresley Common comprising of an expanse of woodland and established trees.

The site comprises of open landscaping and a turning head created from Woodhouse Street which was stopped up at this location during the highway works to create the Regeneration Route which remodelled the surrounding roads. The open landscaping was undertaken as part of the landscaping to the junction. There are established trees onsite planted as part of the landscaping. Given the sites orientation and existing access to the turning head, this element of the site would be accessed south from Swadlincote Road.

The site hereby under consideration is not situated within a Conservation Area, does not fall within proximity of Heritage Assets, and does not fall within the River Mease Catchment. The site under consideration does not comprise of any Tree Preservation Orders but is however situated within the National Forest. The site lies wholly within Flood Zone 1 which has the lowest probability of flooding.

DMPA/2023/0177 - First Fence Ltd, Kiln Way, Woodville, Swadlincote, DE11 8EA



MAPS ARE NOT TO SCALE

This map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the Controller of Her Majesty's Stationery Office. Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings.

South Derbyshire District Council. LA 100019461.2020

The site is noted as being within an area subject to Low Risk of Surface Water flooding. The site is within a Coal Authority 'High Risk Coalfield Area'.

A site visit has been undertaken on Thursday 25 May 2023.

The Proposal

The applicant is seeking planning permission for the proposed extension to the existing workshop and the provision of additional office space, together with a change of use of existing land and turning head resulting from the development of the Kiln Way Link Road for the creation of 45no. car parking spaces, including 24no. electric vehicle charging points, erection of 10no. cycle spaces, staff seating area and landscaping for First Fence Ltd. (3 parking spaces to be allocated for Sharpe's Brothers and Co Ltd). This description of development had been amended. The initial scheme of development incorporated the creation of 47no. car parking spaces. The site under consideration is addressed as First Fence Ltd, Kiln Way, Woodville, Swadlincote, DE11 8EA.

It has been outlined by the applicant that the company's success and continued growth also requires a further extension to the existing workshop and a need for more dedicated office space, to enable production to meet with the company's growing orders. The application will see an extension to the south-east facing side of the existing building at ground level with new office space above. This will provide for approximately 1,040 square metres of floorspace split between the two levels. External materials and finishes have been proposed to match that of the existing building. The elevations can be seen on the supporting proposed plans.

The applicant has stated that the provision of more dedicated parking is much needed by First Fence, with employees' cars currently parked wherever they can find space. A small section of the site was lost to make way for the Regeneration Route road, but even before this construction, staff have been double parking on site and park on nearby roads as the site currently has insufficient parking. The proposal is to change the use of the turning head to vehicular and cycle parking, whilst retaining the landscaping in support of First Fence Ltd. Such parking is identified as being needed to support the business and does not include HGV parking.

The perimeter adjacent to the roundabout will be landscaped with the introduction of approximately 157 metres of hedging, as well as relocated and new tree planting, which will both help screen the premises and add to the ecology and biodiversity of the site. The proposal will also result in a gain in the permeable area of the site, which will help reduce the potential of flooding in the area.

Amendments

Following receipt of initial comments of concern/ objection, the Local Planning Authority and the applicant have worked proactively with regards to amending the landscaping and parking provision presented to the north-west of the site. For clarity the updated scheme, *Proposed Site Plan - Ref: 222-48-02c*, now proposes x45 car parking spaces, x17 new trees in addition to retaining all the original trees and the x10 trees as indicated to be relocated (these were more recently planted as part of the link road works). The site is also proposing approximately 157 metres of new native hedgerow, which is particularly beneficial in terms of environmental and wildlife habitat gain. A photograph has been added to this plan to depict the proposed knee rail fencing, which is proposed inside the hedgerow to delineate the site boundary, this will also secure the site, especially while the hedging establishes.

As detailed on the updated *Comparison of Solid Surfaces Plan - Ref: 222-48-12a* there is now a further reduction in impermeable area, with this now being approximately 448 square metres less than the existing situation on the site. The total number of parking spaces for First Fence Ltd. is down two from 44 to 42 with the three spaces for Sharpes still included. The applicant considers that these alterations further improve the acceptability of the scheme with only a loss of two parking spaces.

Applicant's supporting information

The applicant has submitted documentation setting out the proposals for approval.

Application Form - Ref: N/A - Received by the LPA: 07 Feb 2023

Design & Access Statement - Ref: N/A - Received by the LPA: 07 Feb 2023

Location Plan - Ref: LP-222-48-11 - Received by the LPA: 07 Feb 2023

Plans

Proposed Ground Floor Plan - Ref: 222-48-04a - Received by the LPA: 07 Feb 2023

Proposed First Floor Plan - Ref: 222-48-05a - Received by the LPA: 07 Feb 2023

Proposed Section - Ref: 222-48-10a - Received by the LPA: 07 Feb 2023

Proposed North East Elevation - Ref: 222-48-06a - Received by the LPA: 07 Feb 2023

Proposed South East Elevation - Ref: 222-48-07a - Received by the LPA: 07 Feb 2023

Proposed South West Elevation - Ref: 222-48-08a - Received by the LPA: 07 Feb 2023

Proposed North West Elevation - Ref: 222-48-09a - Received by the LPA: 07 Feb 2023

Cycle Shelter Specification Sheet - Ref: BXMW/AP - Received by the LPA: 07 Feb 2023

EV Charging Details - Ref: N/A - Received by the LPA: 07 Feb 2023

Transport Statement - Ref: ADC3029-RP-A Version 2 - Received by the LPA: 07 Feb 2023

Noise Assessment - Ref: P4458/R1/WJK - Received by the LPA: 07 Feb 2023

Coal Mining Risk Assessment - Ref: EAL.245.22 Version 1.0 - Received by the LPA: 07 Feb 2023

Amended Plans

Proposed Site Plan - Ref: 222-48-02c - Received by the LPA: 04 May 2023

Comparison of Solid Surfaces Plan - Ref: 222-48-12a - Received by the LPA: 04 May 2023

Relevant planning history

The planning history available for the site is as follows:

APP/F1040/W/23/3317999 - The Appeal against the decision of the Council to Refuse planning permission under the reference of DMPA/2022/0360 has now been submitted which also includes the application for the awards of Costs against the Council. - Decision Pending.

DMPA/2022/0360 - Proposed change of use to existing land and turning head resulting from the development of the Kiln Way Link Road for the creation 47no. car parking spaces, inc. 24no. electric vehicle charging points, erection of 10no. cycle spaces, staff seating area and landscaping - Refused: 09-Sept-2022 - Appeal Pending.

9/2017/1401 - Continued use of the site in connection with b2 (industrial) and b8 (storage) use along with retention of perimeter palisade fencing and re-painting of it, retaining wall, hardstanding and installation of dropped kerb to Swadlincote Road - Approved: 06-June-2018.

9/2017/1222 - Construction of a single carriageway road with verges, cycleways and footways along with three new roundabouts and associated infrastructure and the partial demolition of woodhouse business centre (woodville regeneration route phase 2) affecting Derby Road, Swadlincote Road, Woodhouse Street and Kiln Way and across land at the former Dyson site occupation lane Woodville Swadlincote Derbyshire - Approved: 11-Apr-2018.

9/2016/0147 - Use of site in connection with b2/b8 use retention of perimeter palisade fencing installation of dropped kerb, retention of hardstanding and retention of retaining wall - Refused: 07-Sept-2017.

9/2016/0784 - Display of 4 no internally illuminated fascia signs - Approved 19-Oct-2016.

The relevant Derbyshire County Council planning permissions are as follows:

CD9/0520/8 - Section 73 Application for the variation of conditions 3 (Form of Development), 4 (Highways) and 24 (Construction Hours) of planning permission CD9/0519/20 for construction of an all purpose single carriageway complete with verges, cycleways and footpaths (including three roundabout junctions), connecting between the existing roundabout spur at Occupation Lane, Woodville and the A514 Derby Road, Swadlincote. Approved 30/07/20.

CD9/0519/20 - Construction of an all-purpose single carriageway complete with verges, cycleways and footways (including three new roundabout junctions), connecting between the existing roundabout spur at Occupation Lane, Woodville, and the A514 Derby Road, Swadlincote. Approved 23/09/19.

A Landscape Masterplan was subsequently submitted in respect of Condition 14 of planning permission ref. CD9/0520/8 which showed the retention of woodland and hedgerow as required by National Forest. Condition 15 of planning permission CD9/0520/8 requires the retention of planting as agreed for five years and this conflicts with the proposals currently under consideration as part of this application.

Responses to consultations and publicity

Summary of consultation responses ...

Woodville Ward & Parish, Cllr Taylor -

- My concerns regarding this application relate to the impact on amenity, in particular the unacceptable effect of an industrial site extension into the public realm. Additionally, as verbally indicated to you I oppose its impact on the natural movement of pedestrians. The recently built regeneration route accommodates the crossing of it via Woodhouse St. Additionally I have a live objection on the diversion of the walking route on the former Woodhouse St. Please be advised that on the basis of the above I request that the current application is determined by Planning Committee. (03 July 2023 and 10 July 2023).
- I believed that there was missing information regarding the applications intent. The application indicates a boundary treatment of a hedge adjacent to the highway; however, a thin orange line behind the hedge is not explained via the drawing. I suspect this to be a fence and am disappointed that it is not apparent from the plan. Regarding this application may I request that any decision is brought to Planning Committee. This is due to the potential impact on the immediate and wider community. A similar application was refused by Committee following a site visit. Of course, should the intention be to refuse by delegated powers I would waive my request for Committee determination. (08 March 2023).

Natural England -

- The lack of comment from Natural England does not imply that there are no impacts on the natural environment, but only that the proposals are not likely to result in significant impacts on statutory designated nature conservation sites or landscapes. It is for the local planning authority to determine whether or not the proposals are consistent with national and local policies on the natural environment. Other bodies and individuals may be able to provide information and advice on the environmental value of sites and the impacts of development proposals to assist the decision making process. We advise local planning authorities to obtain specialist ecological or other environmental advice when determining the environmental impacts of development. We recommend that local planning authorities use Natural England's Site of Special Scientific Interest Impact Risk Zones (available on Magic and as a downloadable dataset) prior to consultation with Natural England. (10 July 2023).

The Coal Authority -

- No objections subject to recommended planning conditions with regards to a scheme of site investigation, gas monitoring, past coal mining activity, remediation works, and mitigation measures. (17 March 2023 and 19 June 2023).

County Highways Authority -

- No objections subject to recommended planning conditions:

1. No works shall commence on site until such time as a Stopping Up Order to remove all highway rights subsisting on the section of Woodhouse Street enclosed within the red outline of the application site has been granted and all highway rights have been successfully removed. For the avoidance of doubt, this must take place prior to commencement to comply with statutory requirements.
 2. Prior to being taken into use, the parking and manoeuvring space within the site shall be laid out in accordance with the approved drawing 222-48-02 rev A and maintained throughout the lifetime of the development free from any impediment to its designated use.
 3. The use of the proposed parking and manoeuvring space within the application site shall be restricted to use by all vehicles with the exception of articulated vehicles due to insufficient space within the site for large vehicles to turn.
 4. The existing access to Swadlincote Road should be restricted to cars only and all HGVs should use Kiln Way accesses.
 5. Any gates shall be set back at least 5m into the site from the highway boundary and open inwards only.
- (07 March 2023 and 20 June 2023).

Derbyshire Wildlife Trust -

- Following further discussion regarding the above application and taking into account previous comments from DWT as well as the amended landscaping plans I am now satisfied that the biodiversity issues can be addressed through the implementation of the landscaping and management proposals at the site. I therefore advise the Council to attach the following conditions: - Construction Environmental Management Plan (CEMP: Biodiversity), Landscape and Ecological Management Plan (LEMP), and Lighting. (30 August 2023).
- I have checked our previous response and reviewed the current application. I agree that the latest proposals do provide a much better outcome from a landscape perspective. I think that we are increasingly trying to quantify the losses and gains as much as possible, but in light of our earlier position and the improvements that have been offered, I would be happy to support a condition for the details of landscaping and ecological enhancements and subsequent management to be submitted to the Council for approval. Let me know if you need full details for the planning condition. (25 August 2023).
- With reference to the above application, I am responding as the Biodiversity Planning Officer responsible for work relating to the Service Level Agreement, which the South Derbyshire District Council and the Trust have signed. The following comments are aimed at providing accurate and up to date information on the nature conservation issues associated with the proposed development. Comments - The amended plans and the additional retention of existing trees as well as the proposed native hedgerow planting are welcomed and will certainly have reduced the impact of the development. However, as per our initial comments, I am still concerned that the application is not accompanied by a Preliminary Ecological Appraisal and the impacts and proposed enhancements have not been quantified using a Biodiversity Metric. The metric provides clarity around the impacts and any habitat creation and enhancement and will calculate the extent of any loss or gain. It is a relatively easy tool to use once the baseline information has been collected for the PEA. (01 August 2023).

Environmental Health -

- No objections, subject to recommended planning conditions (31 August 2023).
- Request the following is provided so that we can consider the impacts of the application:- 1. A plan/plans showing existing and proposed site layout, clearly highlighting the proposed development. 2. Any current conditions relating to protecting amenity (including for example hours of use, boundary noise limits, restrictions on outdoor working, keeping doors closed etc). (15 March 2023).

Public Rights of Way -

- No comments received.

Responses to publicity ...

Following the formal consultation, which included neighbour notification letters of 24 February 2023 and a site notice displayed on 03 March 2023, a total of x18 formal comments of representation have been received in response to such. These comments provide a stance of objection with a summary of the key points of concern arisen being as follow:

- a) Design implication on the main gateway into the town.
- b) Increased noise levels from the factory.
- c) Loss of privacy.
- d) Parking provision not required, and the need is unclear.
- e) Impacts of additional vehicles on the highways network.
- f) Loss of pedestrian rights of way.
- g) Reduction in biodiversity.
- h) Loss of embankments and trees.

These comments of representation have been considered in the assessment of this planning submission.

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 development plan for the purposes of this application comprises the South Derbyshire Local Plan Part 1 (LP1) adopted in June 2016 and the South Derbyshire Local Plan Part 2 (LP2) adopted in November 2017. Material considerations include, albeit not limited to, the National Planning Policy Framework (NPPF) and Planning Practice Guidance (PPG), together with the South Derbyshire Design Guide Supplementary Planning Document (SPD).

The relevant Development Plan policies are:

South Derbyshire Local Plan Part 1 - LP1: S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), S3 (Environmental Performance), S5 (Employment Land Need), S6 (Sustainable Access), H1 (Settlement Hierarchy), E2 (Other Industrial and Business Development), E6 (Woodville Regeneration Area), E7 (Rural Development), SD1 (Amenity and Environmental Quality), BNE1 (Design Excellence), BNE3 (Biodiversity), BNE4 (Landscape Character and Local Distinctiveness), INF1 (Infrastructure and Developer Contributions), INF2 (Sustainable Transport), INF4 (Transport Infrastructure Improvement Schemes), INF7 (Green Infrastructure), and INF8 (National Forest).

South Derbyshire Local Plan Part 2 - LP2: SDT1 (Settlement Boundaries and Development), BNE7 (Trees, Woodland and Hedgerows), and BNE9 (Advertisements and Visual Pollution).

The relevant local guidance is:

South Derbyshire Design Guide SPD
Trees & Development SPD

The relevant national guidance is:

National Planning Policy Framework (NPPF)
Planning Practice Guidance (PPG)
National Design Guide (NDG)

Planning Considerations

Considering the application made, the documents submitted (amended where relevant) and the site and its environs; the main issues central to the determination of this application are:

- Principle of Development
- Design, Landscape, Character, and Visual Impacts
- Amenity
- Access and Highways
- Ecology and Biodiversity
- Other Matters

Planning Assessment

Principle of Development

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 development plan for the purposes of this application comprises the South Derbyshire Local Plan Part 1 (LP1) adopted in June 2016 and the South Derbyshire Local Plan Part 2 (LP2) adopted in November 2017. Material considerations include, albeit not limited to, the National Planning Policy Framework (NPPF) and Planning Practice Guidance (PPG), together with the South Derbyshire Design Guide Supplementary Planning Document (SPD).

The National Planning Policy Framework (NPPF) seeks to support the growth and expansion of local businesses and places significant weight on the need to support economic growth. The site under consideration is situated within the Woodville Regeneration Area which is allocated in the South Derbyshire District Local Plan Part 1 for employment led development. The Woodville Regeneration Area is the single highest priority for regeneration for South Derbyshire District Council, supported by the link road. Policy E6 (Woodville Regeneration Area) of the Local Plan seeks that redevelopment of this area should incorporate 12 hectares of employment development defined by use classes B1, B2 and B8.

Policy S1 (Sustainable Growth Strategy) of the Local Plan seeks to promote sustainable growth to meet its objectively assessed commercial needs in the plan period 2011- 2028. Point i) of this policy presumes in favour of the re-use of previously developed land.

Policy E2 (Other Industrial and Business Development) of the Local Plan presumes in favour of the expansion of existing businesses in Part A, part ii) of this policy where there would be no undue impacts on the local landscape or natural environment.

The turning head element of the site is brownfield land which has arisen from the delivery of the Woodville – Swadlincote Regeneration Route. The turning head is currently in use as informal parking. The development proposal hereby under consideration incorporates a range of parking to support the business operations and supports a modal shift away from petrol cars. A comprehensive scheme of retaining and enhancing landscaping and planting has been proposed which has been further amended following a review of initial comments. The amended scheme under consideration is referenced as Proposed Site Plan - Ref: 222-48-02c.

On this basis, the proposal is considered to reflect the aspirations of the Woodville Regeneration Area and will support the ongoing operations of an existing employment use in B1/ B2 use in line with Policy E6 (Woodville Regeneration Area). The site is brownfield land and therefore is considered in line with Policy S1 (Sustainable Growth Strategy). The development proposal is also supported when considered against Policy E2 (Other Industrial and Business Development).

The principle of the proposed scheme of development which relates to an established existing local business is considered to be acceptable, with the proposal supporting local economic development. Providing that material planning considerations are met the proposed scheme of development should be able to be supported.

Design, Landscape, Character, and Visual Impacts

The most applicable policies and guidance to consider with regards to the design, character, and appearance related considerations are Policy S2 (Presumption in Favour of Sustainable Development), Policy BNE1 (Design Excellence), Policy BNE4 (Landscape Character and Local Distinctiveness), Policy INF8 (The National Forest), Policy BNE5 (Development in Rural Areas), and Policy BNE7 (Trees, Woodland and Hedgerows) of the South Derbyshire District Local Plan, the South Derbyshire Design Guide SPD, and the National Planning Policy Framework (NPPF).

The National Planning Policy Framework (NPPF) attaches great importance to design of the built environment and sets out that high quality and inclusive design should be applied to all development, including individual buildings, private spaces, and wider area development schemes. It also states that development should respond to local character and history and reflect the identity of local surroundings.

Paragraph 174 of Chapter 15 (Conserving and Enhancing the Natural Environment) of the National Planning Policy Framework (NPPF) seeks that planning policies and decisions should contribute to and enhance the natural and local environment. Point a) of this paragraph is specifically concerned with protecting and enhancing valued landscapes.

Point e) of Policy BNE1 (Design Excellence) of the Local Plan seeks that new development should create places with a locally inspired character that responds to its context and has regard to valued landscape characteristics. Policy BNE4 (Landscape Character and Local Distinctiveness) expects developers to retain key valued landscape components unless it can be demonstrated that the loss of features would not give rise to an unacceptable impact on landscape character. The policy presumes against development that would have an unacceptable impact on landscape character, including historic character, visual amenity and sensitivity. Policy BNE7 (Trees, Woodland and Hedgerows) is relevant where this policy seeks to appropriately mitigate, compensate for or off-set for the loss of trees, woodland or hedgerows. Policy INF8 (The National Forest) seeks to support the creation of a national forest across the area and favours tree planting alongside delivery of other natural landscapes, akin to the area.

The applicant is seeking planning permission for the proposed; two-storey extension to the south-east facing side of the existing building with a workshop expansion at ground floor and new office space above; delivery of additional car parking, including EV charging, and cycle stores on an existing turning head; and incorporation of a comprehensive scheme of retaining and enhancing landscaping and planting at the site under the address of First Fence Ltd, Kiln Way, Woodville, Swadlincote, DE11 8EA. The Local Planning Authority acknowledges and has considered comments and concerns arisen from the consultation undertaken regarding potential design related implications.

The design, character and appearance implications associated with the proposed built form have been carefully considered as part of the assessment of this planning submission, together with consultation responses received in this regard. In terms of scale, bulk, massing, and proportions the proposed scheme of development comprises of an acceptable form of design. The scale and design of the two-storey extension to the south-east facing side of the existing building is considered to be consistent with that expected for an extension of a premises of this nature. The materials as proposed are considered to be appropriate. Should planning approval be recommended planning conditions shall be incorporate to ensure an acceptable level of design is retained and implemented at the build out stage.

With regards to National Forest planting requirements, the site under consideration comprises of under 1 hectare. Policy INF8 (The National Forest) of the Local Plan requires normal landscaping appropriate to the sites setting in this instance. In the instance of this planning application the site area is below the threshold requiring a set percentage of National Forest planting, and therefore formal comments from the National Forest Company are not sought.

In terms of the proposed scheme of additional car parking and landscaping and planting, these elements of the development proposal have also been given careful consideration in conjunction with the comments and concerns arisen from the consultation undertaken. The prominent location of this element of the development with such functioning as a 'gateway' has also been carefully considered. A

comprehensive scheme of retaining and enhancing landscaping and planting is proposed and has been further improved throughout the course of this planning application. In terms of layout and visual amenity, the hedgerow would flank the highway and an increased provision of tree planting is proposed. This is considered to assist in helping create a green corridor along the south of Swadlincote Road linking up with the woodland further west. In effect, landscaping of a more substantial and green nature would be delivered and moved closer to the link road. Consequently, the users of Swadlincote Road will appreciate this from further along the highway, improving visual amenity, and enhancing the role of this junction as the 'gateway' noted in consultations. Should planning approval be recommended planning conditions shall be incorporate to ensure that an acceptable level of design is retained and implemented at the build out stage, and to ensure the delivery and retention of the landscaping and planting scheme in the interests of the visual amenities of the locality.

Overall, the proposed scheme of development is considered to be acceptable with regards to the design, character, and appearance consideration. The scheme would not result in unacceptable harm to the street-scene, neighbouring setting, or the wider locality, and is considered to be acceptable and in accordance with the relevant local and national level planning policies with regards to associated design, character, and appearance implications.

Amenity

The most applicable policies and guidance to consider are Policy SD1 (Amenity and Environmental Quality) and Policy BNE1 (Design Excellence) of the South Derbyshire District Local Plan, and the South Derbyshire Design Guide SPD which between them seek that new development does not lead to adverse impacts on the environment or amenity of existing occupiers within or around proposed developments.

The proposed scheme of development has been carefully considered with regards to potential impacts on amenity. The Local Planning Authority acknowledges and has considered comments and concerns arisen from the consultation undertaken regarding potential amenity related implications.

The nearest neighbouring residential amenity to the application site hereby under consideration is located on the south side of Swadlincote Road. The nearest residential properties border the site of First Fencing Ltd. to the north/ north-east. The furthest rear element of the rear gardens which serve these properties are situated within relative proximity to the proposed two-storey extension to the south-east facing side of the existing building. Given the nature of the overall development proposal, the site context, and the associated distances between such, it is considered that the development proposal would not result in a harmful impact on the amenity of neighbouring properties.

Specialist input from the Environmental Health team at South Derbyshire District Council has been requested and received. The Environmental Health team have recommended that there are no objections on environmental health related grounds subject to the incorporation of relevant recommended planning conditions. Conditions have been recommended regarding protecting the amenity of the locality, especially for people living and/ or working nearby which shall be incorporated should planning approval be recommended.

Overall, given the distances of the development proposal from nearby residential properties, and the overall scale of that proposed, it is considered that significant unacceptable implications will not arise. The siting of the development proposal and the relationship with the nearest neighbouring properties ensures the proposed scheme of development is considered to not present any major issues with regards to loss of daylight, loss of sunlight, overbearing, or overlooking. The proposed scheme of development, subject to the above-mentioned planning conditions, is therefore considered to be acceptable on amenity related grounds.

Access and Highways

The County Highways team at Derbyshire County Council have been formally consulted with regards to this development proposal. A formal consultation response has since been provided with the County

Highways team outlining no objections on highway related grounds. This is subject to the incorporation of a relevant recommended planning condition should planning approval be recommended. The Local Planning Authority acknowledges and has considered other comments and concerns arisen from the consultation undertaken including with regards to potential access and highways related implications.

A technical assessment of the development proposal and a consideration of the potential associated implications has been undertaken by the County Highways team at Derbyshire County Council. The applicant proposes to change the use of part of Woodhouse Street and incorporate it and adjacent land into their curtilage to provide additional on-site parking for the premises. The applicant has stated with the submitted Transport Statement that this part of Woodhouse Street has recently been stopped up as part of the Woodville – Swadlincote Regeneration Route works.

However, the National Casework Team has confirmed that, according to their records, this case is ongoing and is still at draft stage and therefore the stopping up has not been approved. The change of use will therefore need to complete the formal Stopping Up of part of Woodhouse Street under Section 247 of the Town & County Planning Act 1990 which will need to take place before any other works commence.

It is noted that there is insufficient space within the application site for articulated vehicles to turn and, as such, the proposed use of the land, the subject of the application, should be restricted to not include articulated vehicles. In addition, the premises benefits from two purpose built industrial accesses from Kiln Way and the Highway Authority would prefer to see the existing access onto Swadlincote Road permanently closed to HGV vehicles. This shall be secured via an appropriately worded planning condition should planning approval be granted.

Having reviewed the submitted Transport Statement it is considered that the additional traffic likely to be generated by the proposed development will have a minimal impact on the operation of the local road network. In addition, the proposed parking arrangements are considered acceptable and the provision of the electric vehicle charging spaces and cycle parking is welcomed.

In summary the County Highways team at Derbyshire County Council have formally advised of a stance of no objections to the application subject to relevant recommended planning conditions being imposed.

It is hereby worth noting that paragraph 111 of the National Planning Policy Framework states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

Following the receipt of the professional County Highways advice it is not considered that the scheme of development would be unacceptable on highway related grounds. Subject to the incorporation of the relevant recommended planning condition, the proposed scheme of development is considered to be acceptable on access and highways related grounds.

Ecology and Biodiversity

The most applicable policies and guidance to consider with regards to the ecological and biodiversity consideration are Policy S2 (Presumption in Favour of Sustainable Development), Policy E7 (Rural Development), BNE3 (Biodiversity), Policy INF8 (The National Forest), and Policy BNE7 (Trees, Woodland and Hedgerows) of the South Derbyshire Local Plan, the Natural Environment and Rural Communities Act, and the National Planning Policy Framework.

Policy BNE3 (Biodiversity) of the Local Plan supports development which contributes towards protecting or improving local biodiversity or geodiversity and delivering net gains in biodiversity wherever possible.

The application site is considered to have a relatively low ecological value. Established trees and proposed hedgerow and planting does however form part of the proposed scheme of development hereby under consideration. A comprehensive scheme of retaining and enhancing landscaping and planting is proposed which has been further amended following a review of initial comments. Should the Local Planning Authority be recommending planning approval planning conditions shall be incorporated to ensure the implementation of this scheme, and to ensure the replacement of any dead, removed, damaged or diseased species in the next planting season. In addition to this bird boxes will also be provided as part of any approved scheme of development.

Technical consultation has been undertaken with the Derbyshire Wildlife Trust with regards to this planning submission. A formal consultation response has since been provided advising that biodiversity issues can be addressed through the implementation of the landscaping and management proposals at the site. It has therefore been advised that recommended planning conditions are incorporated. Conditions have been detailed with regards to a Construction Environmental Management Plan (CEMP: Biodiversity), a Landscape and Ecological Management Plan (LEMP), and Lighting. Subject to the incorporation of these relevant recommended planning conditions, the proposed scheme of development is considered to be acceptable on ecology and biodiversity grounds.

Overall, it is considered that subject to the incorporation of relevant recommended planning conditions, the scheme of development can be considered to be in accordance with Policy BNE3 (Biodiversity) of the Local Plan and can therefore be supported in this regard.

Other Matters

The impermeable area of the site will be reduced which will improve the infiltration drainage on site. Details of the landscaping and materials will be conditioned so this can be controlled. The site lies wholly within Flood Zone 1 which has the lowest probability of flooding. The site is noted as being within an area subject to Low Risk of Surface Water flooding. It is not envisaged that unacceptable drainage or flood risk related implications will arise. It is considered that the proposals would accord with the relevant local and national level planning policy in this regard. As such there are no flooding/drainage related concerns in principle.

The application form shows that Derbyshire County Council is an interested party in the site. Derbyshire County Council like any other landowner has the ability to manage their estate accordingly. There is no planning reason in principle for the site to remain as is, beyond that of the conditions attached to the link road consent which have been addressed. It is intended by the applicant that the hedgerow planting and additional tree planting will improve the function of the site as a 'gateway'.

Planning Balance

In support of the established local business of First Fence Ltd. the scheme of development proposes a two-storey extension to the south-east facing side of the existing building with a workshop expansion at ground floor and new office space above. The scheme also incorporates the delivery of additional car parking, including EV charging, and cycle stores on an existing turning head. Further to this a comprehensive scheme of retaining and enhancing landscaping and planting is also proposed which has been further amended following a review of initial comments.

The principle of the proposed scheme of development which relates to an established existing local business is firstly considered to be acceptable. The site is situated within a designation for regeneration to support employment use. The proposal is considered to be in line with the regeneration objectives by supporting local business and the Woodville – Swadlincote Regeneration Route and represents sustainable use of brownfield land. In line with the NPPF this is afforded significant weight.

An acceptable form of design is presented and further to this subject to relevant planning conditions the proposal is considered to not have a significant adverse impact on the residential amenity of the nearest neighbouring properties. Furthermore, the scheme of development, as amended, is acceptable

with the Derbyshire Wildlife Trust and the County Highways team at Derbyshire County Council subject to relevant planning conditions.

These positive points in favour of the scheme need to be considered in the context of the points raised in opposition to the scheme including the impact on amenity, in particular the effect of an industrial site extension into the public realm, the impact on the natural movement of pedestrians, concerns regarding the adequacy of the boundary treatments in terms of maintaining an open landscaped vista at this prominent site, increased noise levels from the factory, loss of privacy, a view that parking provision not required, and the need is unclear, impacts of additional vehicles on the highways network, loss of biodiversity and trees.

Having regard to this planning balance it is considered that the points raised in opposition to the scheme can be addressed via appropriate conditions as recommended.

Having regard to this, it is considered that the development proposal is acceptable when considered against the aims and objectives of the South Derbyshire District Local Plan, Supplementary Planning Documentation, and the National Planning Policy Framework. There are no material considerations that would warrant refusal of planning permission in this instance.

Conclusion

The proposed scheme of development, as amended, at the site under the address of First Fence Ltd, Kiln Way, Woodville, Swadlincote, DE11 8EA is considered to be acceptable, and is considered to be in accordance with the relevant local and national level planning policy. 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 full accordance with the following approved details:
 - Application Form - Ref: N/A - Received by the LPA: 07 Feb 2023
 - Location Plan - Ref: LP-222-48-11 - Received by the LPA: 07 Feb 2023
 - Proposed Ground Floor Plan - Ref: 222-48-04a - Received by the LPA: 07 Feb 2023
 - Proposed First Floor Plan - Ref: 222-48-05a - Received by the LPA: 07 Feb 2023
 - Proposed Section - Ref: 222-48-10a - Received by the LPA: 07 Feb 2023
 - Proposed North East Elevation - Ref: 222-48-06a - Received by the LPA: 07 Feb 2023
 - Proposed South East Elevation - Ref: 222-48-07a - Received by the LPA: 07 Feb 2023
 - Proposed South West Elevation - Ref: 222-48-08a - Received by the LPA: 07 Feb 2023
 - Proposed North West Elevation - Ref: 222-48-09a - Received by the LPA: 07 Feb 2023
 - Cycle Shelter Specification Sheet - Ref: BXMW/AP - Received by the LPA: 07 Feb 2023
 - EV Charging Details - Ref: N/A - Received by the LPA: 07 Feb 2023
 - Transport Statement - Ref: ADC3029-RP-A Version 2 - Received by the LPA: 07 Feb 2023
 - Noise Assessment - Ref: P4458/R1/WJK - Received by the LPA: 07 Feb 2023

- Coal Mining Risk Assessment - Ref: EAL.245.22 Version 1.0 - Received by the LPA: 07 Feb 2023
 - Proposed Site Plan - Ref: 222-48-02c - Received by the LPA: 04 May 2023
 - Comparison of Solid Surfaces Plan - Ref: 222-48-12a - Received by the LPA: 04 May 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. Prior to the commencement (including demolition, ground works, vegetation clearance and movement of plant, machinery and materials) of the development hereby approved, 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 the interests of protecting and enhancing ecology and biodiversity.
4. Prior to the commencement of the development hereby approved, a landscape and ecological management plan (LEMP) shall be submitted to and be approved in writing by the Local Planning Authority. The LEMP should combine both the ecology and landscape disciplines and include the following: a) Description and extent/location of habitats including grassland, trees, and hedgerows to be created and / or planted. b) Details of planting composition and methods of establishment. c) Aims and objectives of management. d) Appropriate management options for achieving aims and objectives. e) Prescriptions for management actions. f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period). g) Details of the body or organization responsible for implementation of the plan. h) Ongoing monitoring visits, targets and remedial measures when conservation aims and objectives of the LEMP are not being met. i) Locations of 5 bird boxes (include specifications/ installation guidance/ numbers). The LEMP 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 the interests of protecting and enhancing ecology and biodiversity.
5. Prior to the commencement of the development hereby approved, a Stopping Up Order to remove all highway rights subsisting on the section of Woodhouse Street enclosed within the red outline of the application site shall be granted and all highway rights be successfully removed. For the avoidance of doubt, this must take place prior to commencement to comply with statutory requirements.
Reason: In the interests of highway safety.
6. Prior to the commencement of the development hereby approved, a) a scheme of intrusive site investigations, and gas monitoring has been carried out on site to establish the risks posed to the development by past coal mining activity, and; b) any remediation works and/ or mitigation measures to address land instability arising from coal mining legacy, as may be necessary, have been implemented on site in full in order to ensure that the site is made safe and stable for the development proposed. The intrusive site investigations and remedial works shall be carried out in accordance with authoritative UK guidance.
Reason: The undertaking of intrusive site investigations, prior to the commencement of development, is considered to be necessary to ensure that adequate information pertaining to ground conditions and coal mining legacy is available to enable appropriate remedial and mitigatory measures to be identified and carried out before building works commence on site. This is in order

to ensure the safety and stability of the development, in accordance with paragraphs 183 and 184 of the National Planning Policy Framework.

7. Prior to the commencement of the development hereby approved, a Phase I contaminated land assessment (desk-study) shall be undertaken and shall be submitted to 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. 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 and approved in writing by the Local Planning Authority.
Reason: To protect future occupiers of the development, buildings, structures/ services, ecosystems and controlled waters, including deep and shallow ground water.
8. Prior to 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 future occupiers of the development, buildings, structures/ services, ecosystems and controlled waters, including deep and shallow ground water.
9. Prior to the first use of the extension hereby approved, a signed statement or declaration prepared by a suitably competent person confirming that the site is, or has been made, safe and stable for the approved development shall be submitted to the Local Planning Authority for approval in writing. This document shall confirm the methods and findings of the intrusive site investigations and the completion of any remedial works and/ or mitigation necessary to address the risks posed by past coal mining activity.
Reason: The undertaking of intrusive site investigations, prior to the commencement of development, is considered to be necessary to ensure that adequate information pertaining to ground conditions and coal mining legacy is available to enable appropriate remedial and mitigatory measures to be identified and carried out before building works commence on site. This is in order to ensure the safety and stability of the development, in accordance with paragraphs 183 and 184 of the National Planning Policy Framework.
10. Prior to the first use of the extension hereby approved, a) The approved remediation works required by 2 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 1b to 2 above and satisfy 3a above. c) Upon completion of the remediation works required by 2 and 3a 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.

11. All external materials used in the development shall match those detailed within the approved plans and documentation. Any alternative details shall be first submitted to and approved in writing by the Local Planning Authority, whereafter the approved alternative details shall be incorporated into the development.

Reason: In the visual interest of the built form and the surrounding area.

12. All planting, seeding and turfing, shown on the approved Proposed Site Plan - Ref: 222-48-02c - Received by the LPA: 04 May 2023, shall be carried out in the first planting and seeding season following the commencement of the development hereby approved, and any trees or plants which die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species unless the Local Planning Authority gives written consent to any variation.

Reason: To ensure that the approved planting schedule is implemented in a speedy and diligent way and that initial plant losses are overcome in the interests of the visual amenities of the locality.

13. Prior to the installation of external lighting fixtures, a detailed lighting strategy shall be submitted to and approved in writing by the Local Planning Authority 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 the interests of protecting and enhancing ecology and biodiversity.

14. Prior to being taken into use, the parking and manoeuvring space within the site shall be laid out in accordance with the approved drawing 222-48-02 rev A and maintained throughout the lifetime of the development free from any impediment to its designated use.

Reason: In the interests of highway safety.

15. The use of the proposed parking and manoeuvring space within the application site shall be restricted to use by all vehicles with the exception of articulated vehicles due to insufficient space within the site for large vehicles to turn.

Reason: In the interests of highway safety.

16. The existing access to Swadlincote Road shall be restricted to exclude HGVs. All HGVs should use Kiln Way accesses.

Reason: In the interests of highway safety.

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

Reason: In the interests of highway safety.

18. 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 neighbouring amenity.

19. All clearance, conversion and demolition work in association with the approved scheme shall be carried out outside of the bird nesting season which runs from March to September inclusive. If it is necessary for work to commence in the nesting season then a pre commencement inspection of the vegetation for active bird nests should be carried out. If vegetation cannot be clearly seen to be clear of bird's nests then an experienced ecologist should be called in to carry out the check. Only if there are no active nests present should work be allowed to commence.

Reason: In the interests of protecting nesting birds.

20. During the period of construction there must 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.

Informatives

- a. Planning permission does not give you approval to work on the public highway. The proposal requires the permanent removal ("stopping up") of highway to enable the development to take place. As such, you must complete the legal processes required before commencing works. Contact the National Transport Casework Team, Tyneside House, Skinnerburn Road, Newcastle Business Park, Newcastle upon Tyne NE4 7AR.
- 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. Pursuant to Section 127 of the Highways Act 1980, no works may commence within the limits of the public highway to reinstate the footway and redundant vehicular access without the formal written Agreement of the County Council as Highway Authority. Advice regarding the technical, legal, administrative and financial processes involved in Section 127 Agreements may be obtained by contacting the County Council via email highways.hub@derbyshire.gov.uk. The applicant is advised to allow approximately 12 weeks in any programme of works to obtain a Section 127 Agreement.

Item No. 1.4
Ref. No. [DMPA/2022/1554](#)
Valid date: 05/12/2022
Applicant: Persimmon Homes North Midland **Agent:** N/A
Proposal: Construction of landscaped earth bund and acoustic fence
Ward: Aston Ward

Reason for committee determination

This planning submission is being reported to Planning Committee due to the call-in request received from Cllr Corbin.

Site Description

The application site is addressed as Land adjacent to A6(T) Derby Spur Road, Boulton Moor, Derby. The site is located to the south-east of Derby, along the edge of the A6(T) Derby Spur Road, between the road and the existing residential development at Boulton Moor. The eastern edge of the site runs parallel to the existing road, from a line of mature hedgerow at the southern edge spanning approximately 260m to the north. The site is relatively flat in nature, with the A6(T) road sitting in an elevated position on the landscape. There is very little existing vegetation along the edge of the road.

Land to the north-west of the site is characterised by existing suburban development. The surrounding land further to the north, east and south is designated within the Derby Green Belt. The topography of the land is generally flat. The A6(T) Derby Spur Road is a prominent feature in the landscape.

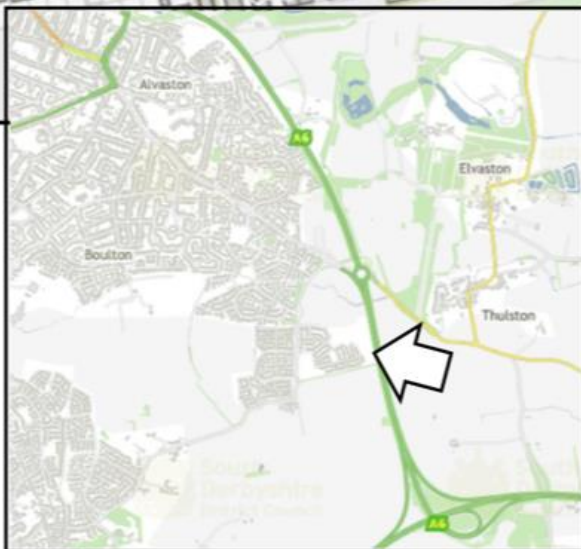
The application site under consideration is not situated within a Conservation Area, does not fall within proximity of Listed Buildings, and does not fall within the River Mease Catchment. The site under consideration does not comprise of any Tree Preservation Orders. The site lies wholly within Flood Zone 1, which has the lowest probability of flooding. The site is not situated within the Green Belt or the National Forest.

The Proposal

The applicant is seeking planning permission for the proposed construction of a landscaped earth bund and acoustic fence at the site under the address of Land adjacent to A6(T) Derby Spur Road, Boulton Moor.

Following the granting of Outline approval for residential development at Boulton Moor, the applicant is now seeking the approval of an amended noise bund and fence adjacent to the A6 Derby Spur Road. This is to supersede the southern section of the bund approved under 9/2011/0783/SSA. This application relates to the construction of a landscaped earth bund and acoustic fence that runs along the east of the Persimmon Homes residential development to reduce any noise impacts the A6(T) Derby Spur Road may have on dwellings. Landscaping within the development is proposed to facilitate separation for the residential development from the A6 Derby Spur Road. It is proposed to create a visual green screen, as well as separating the residential urban extension from the open countryside. The bund at its highest will be approximately 2.5 meters from existing ground level, the fence will be between 2.0 and 2.5 meters tall to respond to the varying height of the bund due to the existing ground levels. The whole bund will follow a 1:3 gradient, with a one-meter-wide platform on top, to allow for the construction of the acoustic fence.

DMPA/2022/1554 – Land adj to A6(T) Derby Spur Road, Boulton Moor, Derby



MAPS ARE NOT TO SCALE

This map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the Controller of Her Majesty's Stationery Office. Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings.

South Derbyshire District Council. LA 100019461.2020

Applicant's supporting information

The applicant has submitted documentation setting out the proposals for approval.

- Application Form
- Covering Letter
- Noise Bund Location Plan
- Bund Visual - Rev A
- Planting Plan
- Noise Bund Cross Sections
- Noise Bund Longitudinal Section
- Noise Bund Setting Out
- Planning Statement
- Arboricultural Method Statement Jan 2020
- Written Scheme of Investigation Jan 2018
- Letter from Oxford Archaeology dated 19.06.18
- L-9479-DJC Noise Statement Oct 2022

Relevant planning history

9/2005/0611 - Outline application (all matters to be reserved except for means of access) for the construction of up to 1058 dwellings together with a primary school, retail provision (comprising A1-A5 uses) public open space (including children's play areas and sports pitches) supporting infrastructure and associated landscape works at Land At Shardlow Road, Thulston, Derby - Appeal Allowed: 26-Jan-2009.

9/2008/0415 - The construction of landscaped earth bund, pedestrian cycle bridge and extension of the Thulston brook at Land Adjacent to A6(T) Derby Spur Road, Boulton Moor, Derby - Granted: 03-Jul-2008.

9/2011/0783 - Extension of the time limit for implementation of extant planning permission ref. 9/2008/0415 for the construction of a landscaped earth bund, pedestrian cycle bridge and extension of the Thulston brook on Land Adjacent to A6(Y) Derby Spur Road, Boulton Moor, Derby - Granted: 19-Dec-2011.

Responses to consultations and publicity

Summary of consultation responses:

Aston-on-Trent Ward, Cllr Corbin -

- Erected without planning permission;
- Breaches the Council's aims around climate emergency;
- Fence is an eyesore, also been graffitied to make the eyesore worse;
- Noise reduction effect and calculations will be different;
- Should revert to the original noise bund and decline this fence;
- Action to remove this and revert to the far greener, far more visually appealing bund;
- Company ignores rules including building, reserving, and selling houses that should not be up;
- Boulton Moor triangle, footbridge, and Community Centre not progressed.

(11 July 2023)

National Highways -

No objections to this application subject to the following condition: Condition - No part of the development shall commence until details of the noise bund / barrier adjacent to the A6 boundary, namely CD 622 certification, has been submitted to and approved in writing by the Local Planning Authority in consultation with National Highways. The approved noise bund / barrier shall be

constructed in accordance with the approved plans and maintained in perpetuity. Reason - To ensure that the A6 trunk road continues to serve its purpose as part of a national system of routes for through traffic in accordance with Section 10 (2) of the Highways Act 1980, in the interest of road safety.
(22 December 2022)

Derbyshire Wildlife Trust -

Reviewed the Arboricultural Method Statement prepared by FPCR and the accompanying Planting Plan. The proposed methods and the tree and shrub species to be used in the creation of the hedgerow, scrub and woodland are all considered acceptable.
(06 March 2023)

County Archaeology -

The archaeological work for this phase of Boulton Moor is complete and reported, and there is no need to place any further requirement in relation to the bund works adjacent the A6.
(24 January 2023)

Lead Local Flood Authority -

Completed a review of the referenced application and supporting information. Because this is a minor application and due to the nature and scale the LLFA have no formal comment.
(17 February 2023)

Environmental Health -

No objection to the proposals, however I would advise that the permission includes a requirement for the applicant to maintain the proposed fence so that it's performance meets the design criteria specified by their acoustician in a letter dated 7th October 2022 reference L-9479-DJC.
(12 December 2022)

Conservation Officer -

There are no observations to make on the above application. Should the Development Team require advice on matters that affect the historic environment then please re-consult Conservation identifying areas that require advice.
(10 March 2023)

Airport Safeguarding -

Thank you for consulting with the aerodrome safeguarding authority for East Midlands Airport on this proposed development; we have no objections.
(01 February 2023)

Responses to publicity:

Following the formal consultation, which included a Site Notice displayed on 09 December 2022 and a Press Advert displayed on 23 December 2022, a total of x1 comment of representation from a member of the public has been received in response to such. This comment provides a stance of objection with a summary of the key points of concern arisen being as follows:

- a) The boundary fencing has recently been erected and has become covered with graffiti;
- b) Poor visual impact on the southern approach to the city;
- c) Impose any remedies prior to signing off on the development;
- d) Green natural planting along the roadside boundary encouraged.

These comments of representation have been considered in the assessment of this planning submission.

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 development plan for the purposes of this application comprises the South Derbyshire Local Plan Part 1 (LP1) adopted in June 2016 and the South Derbyshire Local Plan Part 2 (LP2) adopted in November 2017. Material considerations include, albeit not limited to, the National Planning Policy Framework (NPPF) and Planning Practice Guidance (PPG), together with the South Derbyshire Design Guide Supplementary Planning Document (SPD).

The relevant Development Plan policies are:

South Derbyshire Local Plan Part 1 - LP1: S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), S3 (Environmental Performance), S6 (Sustainable Access), H1 (Settlement Hierarchy), H13 (Boulton Moor - South East of Derby), E7 (Rural Development), SD1 (Amenity and Environmental Quality), SD2 (Flood Risk), BNE1 (Design Excellence), BNE3 (Biodiversity), BNE4 (Landscape Character and Local Distinctiveness), and INF1 (Infrastructure and Developer Contributions).

South Derbyshire Local Plan Part 2 - LP2: SDT1 (Settlement Boundaries and Development), BNE5 (Development in Rural Areas), and BNE7 (Trees, Woodland and Hedgerows).

The relevant local guidance is:

South Derbyshire Design Guide SPD
Trees & Development SPD

The relevant national guidance is:

National Planning Policy Framework (NPPF)
Planning Practice Guidance (PPG)
National Design Guide (NDG)

Planning Considerations

Considering the application made and the documentation submitted the main issues central to the determination of this application are:

- Principle of Development
- Design, Character, and Appearance
- Amenity
- Highway Safety
- Other Matters

Planning Assessment

Principle of Development

On 19th December 2011 planning permission was granted under the reference of 9/2011/0783 for the proposed extension of the time limit for implementation of extant planning permission referenced 9/2008/0415. This permission on 03rd July 2008 granted the construction of a landscaped earth bund, pedestrian cycle bridge and extension of the Thulston brook at the site under the address of Land Adjacent to A6(T) Derby Spur Road, Boulton Moor, Derby.

The principle of the proposed construction of the landscaped earth bund and acoustic fence at the site under the address of Land adjacent to A6(T) Derby Spur Road, Boulton Moor, Derby is firstly considered to be acceptable. Providing that material planning considerations are met the proposed scheme of development should be able to be supported.

Design, Character, and Appearance

The most applicable policies and guidance to consider with regards to the design, character, and appearance related considerations are Policy S2 (Presumption in Favour of Sustainable Development), Policy H13 (Boulton Moor - South East of Derby), Policy E7 (Rural Development), Policy BNE1 (Design Excellence), Policy BNE4 (Landscape Character and Local Distinctiveness), Policy BNE5 (Development in Rural Areas), and Policy BNE7 (Trees, Woodland and Hedgerows) of the South Derbyshire District Local Plan, the South Derbyshire Design Guide SPD, and the National Planning Policy Framework (NPPF).

The National Planning Policy Framework (NPPF) attaches great importance to design of the built environment and sets out that high quality and inclusive design should be applied to all development, including individual buildings, private spaces, and wider area development schemes. It also states that development should respond to local character and history and reflect the identity of local surroundings.

Paragraph 174 of Chapter 15 (Conserving and Enhancing the Natural Environment) of the National Planning Policy Framework (NPPF) seeks that planning policies and decisions should contribute to and enhance the natural and local environment. Point a) of this paragraph is specifically concerned with protecting and enhancing valued landscapes.

Point e) of Policy BNE1 (Design Excellence) of the Local Plan seeks that new development should create places with a locally inspired character that responds to its context and has regard to valued landscape characteristics. Policy BNE4 (Landscape Character and Local Distinctiveness) expects developers to retain key valued landscape components unless it can be demonstrated that the loss of features would not give rise to an unacceptable impact on landscape character. The policy presumes against development that would have an unacceptable impact on landscape character, including historic character, visual amenity, and sensitivity. Policy BNE7 (Trees, Woodland and Hedgerows) seeks to appropriately mitigate, compensate for or off-set for the loss of trees, woodland or hedgerows.

The potential design, character and appearance related implications of the proposed landscaped earth bund and acoustic fence development have been carefully considered in conjunction with the comments and concerns arisen from the consultation undertaken. The prominent location of this development proposal, along the edge of the A6(T) Derby Spur Road which is a major highway route into the city of Derby, has been given careful consideration. In order to be considered in line with adopted planning policy, a detailed full and comprehensive scheme of landscaping, planting, and turfing/ seeding on both the west side and the east side of the proposed fencing shall be secured via a relevant planning condition. This is in the visual interest of the surrounding locality on both the west and east side of the proposed fencing. Further to this should planning approval be recommended planning conditions shall be incorporate to ensure that an acceptable level of design is retained and implemented at the build out stage, and to ensure the delivery and retention of the overall scheme. Consequently, residents will appreciate the improved outlook and visual amenity, and enhancing the general appearance of the route into the city of Derby as well as form the new-build residential dwellings situated nearby.

Overall, subject to relevant planning conditions, the scheme would not result in unacceptable harm to the street-scene, neighbouring setting, or the wider locality, and is considered to be acceptable and in accordance with the relevant local and national level planning policies in this regard.

Amenity

The most applicable policies and guidance to consider with regards to the amenity consideration are Policy SD1 (Amenity and Environmental Quality) and Policy BNE1 (Design Excellence) of the South

Derbyshire District Local Plan, and the South Derbyshire Design Guide SPD which between them seek that new development does not lead to adverse impacts on the environment or amenity of existing occupiers within or around proposed developments.

The proposed scheme of development has been carefully considered with regards to potential impacts on amenity. The Local Planning Authority acknowledges and has considered comments and concerns arisen from the consultation undertaken regarding potential amenity related implications.

The nearest neighbouring residential properties to the application site are the new-build residential dwellings situated on Bramber Close and Portchester Drive. These dwellings are situated within proximity to the site of the proposed landscaped earth bund and acoustic fence with some dwellings fronting directly towards the site.

The scheme of development under consideration incorporates a noise bund and acoustic fence to mitigate the nearby new-build residential dwellings from the associated implications of the A6(T) Derby Spur Road highway. Specialist technical consultation input from the Environmental Health team at South Derbyshire District Council has been requested and received. The Environmental Health team have recommended that there is no objection to the proposals, however it would advise that any permission includes a requirement for the applicant to maintain the proposed fence so that its performance meets the design criteria specified by their acoustician in a letter dated 7th October 2022 reference L-9479-DJC. This is considered a reasonable request and should planning approval be recommended a condition in this regard shall be included in the interests of protecting the amenity of the locality. On this basis the development proposal is considered to improve the amenity for the new-build residential dwellings with the noise bund and acoustic fence facilitating the benefit of a noise reduction.

The proposed landscaped earth bund and acoustic fence development is considered to present a reasonable outlook. The outlook and visual amenity of such will be further mitigated by relevant planning conditions. Should planning approval be recommended a detailed full and comprehensive scheme of landscaping, planting, and turfing/ seeding on both the west side and the east side of the proposed fencing shall be secured via planning condition to further protect the amenity of the neighbouring residential properties, and in the visual interest of the wider surrounding locality. Given the nature of the overall development proposal, the site context, and the associated orientation and distances from residential amenity it is considered that significant unacceptable amenity related implications will not arise. The siting of the development proposal and the relationship with the nearest neighbouring properties ensures the proposed scheme of development is considered to not present any major issues with regards to outlook, loss of daylight/ sunlight, overbearing, or overlooking potential implications.

Overall, subject to relevant planning conditions the development proposal and the relationship with the nearest neighbouring properties ensures the proposed scheme of development is considered to not present any major issues with regards to outlook, loss of daylight/ sunlight, overbearing, or overlooking. The proposed scheme of development, subject to the above-mentioned planning conditions, is therefore considered to be acceptable on amenity related grounds.

Highway Safety

The proposed scheme is situated within the vicinity of the A6 which forms part of the Strategic Road Network. The National Highways team have been formally consulted with regards to this development proposal. A formal consultation response has since been provided following a technical consideration of the landscaped earth bund and acoustic fence at the site addressed as Land adjacent to A6(T) Derby Spur Road, Boulton Moor, Derby. The National Highways team have formally advised that there are no objections to this planning application subject to the incorporation of the following planning condition:

Condition - No part of the development shall commence until details of the noise bund / barrier adjacent to the A6 boundary, namely CD 622 certification, has been submitted to and approved

in writing by the Local Planning Authority in consultation with National Highways. The approved noise bund / barrier shall be constructed in accordance with the approved plans and maintained in perpetuity.

Reason - To ensure that the A6 trunk road continues to serve its purpose as part of a national system of routes for through traffic in accordance with Section 10 (2) of the Highways Act 1980, in the interest of road safety.

It is hereby worth noting that paragraph 111 of the National Planning Policy Framework (NPPF) states that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

Following the receipt and consideration of the professional advice from the National Highways team it would be unreasonable to suggest that the scheme of development would be unacceptable on highway related grounds. Subject to the incorporation of the relevant recommended planning condition, the proposed scheme of development is considered to be acceptable on highway safety related grounds.

Other Matters

No other matters to be considered.

Planning Balance

The principle of the proposed scheme of development is firstly considered to be acceptable due to the benefit provided to residents close the A6(T) Derby Spur Road. An acceptable form of design is presented however it is acknowledged that an appropriate landscaping and planting scheme will be key to ensuring the overall acceptability of the scheme. Delivery of such would be secured via the imposition of stringent relevant planning conditions. Furthermore, the proposal is considered to not present a significant adverse impact on the residential amenity of the nearest neighbouring properties and would in fact present a betterment in terms of mitigation against the noise pollution from the nearby A6 highway. Subject to the imposition of relevant planning conditions the proposal is considered to be acceptable in terms of the highways related consideration. Overall, subject to relevant planning conditions, the development proposal is considered to be acceptable when considered against the aims and objectives of the South Derbyshire District Local Plan, Supplementary Planning Documentation, and the National Planning Policy Framework. There are no material considerations that would warrant refusal of planning permission in this instance.

Conclusion

The proposed construction of a landscaped earth bund and acoustic fence at the site under the address of Land adjacent to A6(T) Derby Spur Road, Boulton Moor is considered to be acceptable and is considered to be in accordance with the relevant local and national level planning policy. 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 full accordance with the following details:
 - Application Form
 - Covering Letter
 - Noise Bund Location Plan
 - Bund Visual - Rev A
 - Planting Plan
 - Noise Bund Cross Sections
 - Noise Bund Longitudinal Section
 - Noise Bund Setting Out
 - Planning Statement
 - Arboricultural Method Statement Jan 2020
 - Written Scheme of Investigation Jan 2018
 - Letter from Oxford Archaeology dated 19.06.18
 - L-9479-DJC Noise Statement Oct 2022

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. Prior to further works being undertaken in relation to the noise bund/barrier hereby approved or within three months of this decision whichever is sooner, details of the noise bund/ barrier adjacent to the A6 boundary, to CD 622 certification, shall be first submitted to and approved in writing by the Local Planning Authority in consultation with National Highways. The bund/ barrier shall thereafter be fully implemented in accordance with the approved details.

Reason: To ensure that the A6 trunk road continues to serve its purpose as part of a national system of routes for through traffic in accordance with Section 10 (2) of the Highways Act 1980, in the interest of road safety.

4. Within three months of the date of this permission, a detailed full and comprehensive scheme of landscaping, planting, and turfing/ seeding on both the west side and the east side of the proposed fencing shall be first submitted to and approved in writing by the Local Planning Authority. Following this approval, the landscaping shall be planted in the first planting season following such approval and shall thereafter be retained as such.

Reason: To ensure that the approved scheme is implemented in a speedy and diligent way, to protect the amenity of the locality, and in the visual interest of the surrounding locality.

5. All materials used in the development shall match those detailed within the approved plans and documentation. Any alternative details shall be first submitted to and approved in writing by the Local Planning Authority, whereafter the approved alternative details shall be incorporated into the development.

Reason: In the visual interest of the built form and the surrounding area.

6. The approved noise bund/ barrier shall be constructed in accordance with the approved plans and maintained in perpetuity unless the Local Planning Authority gives written consent to any variation.

Reason: To ensure that the A6 trunk road continues to serve its purpose as part of a national system of routes for through traffic in accordance with Section 10 (2) of the Highways Act 1980, in the interest of road safety.

7. The approved full and comprehensive scheme of landscaping, planting, and turfing/ seeding on both the west side and the east side of the proposed fencing shall be implemented in full in the first planting and seeding season following the date of this planning approval. Any trees or plants which die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species unless the Local Planning Authority gives written consent to any variation.

Reason: To ensure that the approved scheme is implemented in a speedy and diligent way, to protect the amenity of the locality, and in the visual interest of the surrounding locality.

Item No. 1.5
Ref. No. DMPA/2023/0436
Valid date: 03/04/2023
Applicant: Mr D Sandhu **Agent:** Heatons Planning
Proposal: Continued use of the land for the parking, storage, display and sales of motor vehicles
Ward: Stenson Fields

Reason for committee determination

This item is presented to the Committee as it has been called in by Councillor Shepherd together with cases DMPA/2023/0415 and DMPA/2023/0546 which also relate to Stenson Industrial Estate.

Site Description

The application site is located to the west of Stenson Road and comprises a c. 560m² triangular area of land within, and immediately adjacent to the access point of, Stenson Industrial Estate. Aerial imagery shows that the land comprised an area of landscaping within the industrial estate that appears to have been retained from the former agricultural use of land, albeit encroached upon over time. A row of mature trees remains alongside the south-eastern boundary. At the time of the Officer's site visit the surface comprised a combination of bare ground, gravel, hardcore and some tarmac areas; and vehicles were observed to be parking immediately up to the trunks of the mature trees. The trees are not currently protected by Tree Preservation Order (TPO).

Stenson Industrial Estate, including the application site, is under the ownership of the applicant and comprises a longstanding use in the area that pre-existed residential development to the north and west. Planning permission for light industrial (class B1) and storage/distribution uses (class B8) was first granted at the site in 2001. As the planning history (below) shows, there have been a number of applications and changes at the site over time, including permissions for storage of vehicles, plant hire businesses and a car wash. The site is currently occupied by 2no. car workshop businesses within the main buildings onsite, and vehicle storage (some of which is unregularized and is subject to a separate application on this agenda) and a car wash on the surrounding land.

The Industrial Estate is surrounded by housing. The nearest dwelling, Stenson Fields Farmhouse is located immediately adjacent to the industrial estate, attached to one of the estate's buildings, and is outside the ownership of the applicant. There are further dwellings around the estate including within Earl's Drive to the north and west and to the south-east of the site on the opposite side of Stenson Road.

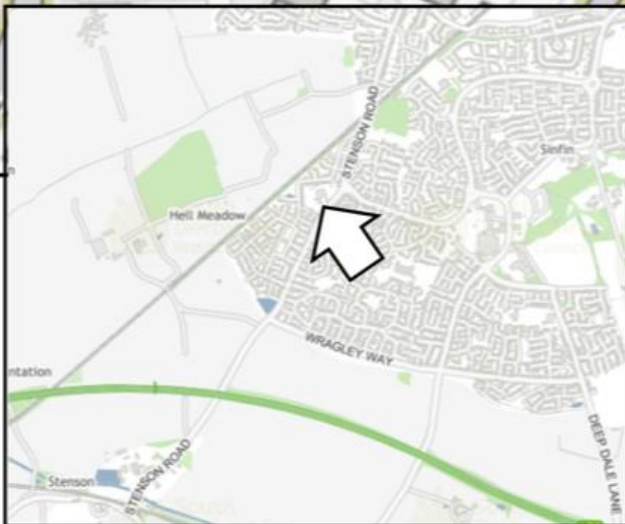
The following applications have been submitted concurrently for the Stenson Industrial Estate and are also brought for determination by the Planning Committee:

- DMPA/2023/0415 The retention of the existing vehicle storage area to the rear of the site, including an office building;
- DMPA/2023/0546 Change of use from a vehicles repair workshop (use class B2) to research and development and/or industrial processes (use class E).

The proposal

The proposal is to retain the land within the application site for the parking, storage, display and sales of motor vehicles. The application covering letter states that the land is partly used for overflow motor vehicle parking/storage by Derbyshire Vehicle Solutions and partly as motor vehicle storage/display /sales by the same operator under the name Stenson Farm Car Sales. The latter use is said to have commenced in 2019, albeit the applicant advises that the application site was used for ancillary vehicle

DMPA/2023/0436 - Land adjacent to Stenson Fields Industrial Units, Stenson Road, Stenson, Derby, DE23 1LG



MAPS ARE NOT TO SCALE

This map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the Controller of Her Majesty's Stationery Office. Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings.

South Derbyshire District Council. LA 100019461.2020

storage prior to this date. The applicant has worked proactively with the Council throughout the planning process and has amended the original site layout to incorporate a buffer zone for the mature trees; and to define customer and staff parking together with a turning area for car transporters within land under the applicant's ownership. There would be a single member of staff associated with the use.

Applicant's supporting information

Application Covering Letter (dated 30 March 2023)

This document sets out a description of the application site, planning history, details of the proposal and an assessment of this against the planning policy framework that has been prepared by the applicant's agent.

Planning Drawings

Location Plan and Block Plan (received 29 March 2023)

Site Layout: Delivery and Parking Plan (ref. Parking and Turning Layout, CV0503 001 received 7 July 2023)

Parking and Delivery Management Plan (7 July 2023)

This document was prepared in response to the request from Derbyshire County Highways and Officers. It sets out the parking and delivery management strategy for the application site and the 2no. applications submitted for determination concurrently on the wider industrial estate (DMPA/2023/0415 and DMPA/2023/0546). The document details the method of implementing the plan, the parking provision for staff, customers and visitors, deliveries and other matters.

Relevant planning history

There is a lengthy planning history for the Stenson Industrial Estate, which incorporates the application site. This includes:

- 9/2000/1177 The use as a store of the workshop and the dwelling as offices for a construction company – approved
- 9/2001/0891 The use of the land for B1 (light industry) and B8 (storage and distribution) purposes – approved
- 9/2005/1405 The removal of condition 3 of 9/2000/1177/U and 9/2001/0891/U to permit open storage – refused
- 9/2007/0234 The change of use of office accommodation and outbuildings to an operational office and depot – approved
- 9/2009/0444 Change of use from parking to hand car wash incorporating two portacabins, concrete hardstanding washing area with fabric canopy – approved
- 9/2010/0495 The retention of use of land for the storage of contractors vehicles, equipment, machinery and storage containers and material – refused, however overturned on appeal APP/F1040/A/10/2134225
- 9/2011/0118 Retrospective application for broadening of existing permitted uses to include class B1 and B8 vehicle repairs and body work, vehicle sales, valeting and rental – approved
- 9/2013/0813 The variation of condition 1 of planning permission 9/2010/0495 (granted at appeal) for extension of temporary permission until December 2014 – approved
- 9/2014/0718 Retrospective application for the change of use from offices to tattoo studio – approved
- 9/2017/0699 Retrospective application for erection of an extension/outbuilding – refused
- 9/2016/1050 Change of use to a vehicle maintenance depot – approved
- 9/2016/0257 Change of use of land for the operation of a plant hire business – approved
- 9/2018/1233 Change of use of portacabin from a hand car wash to a private taxi office - approved

Responses to consultations and publicity

- County Highways Authority

Initial Response – Having reviewed the submitted information it is considered that the proposal

would have no material impact on the operation of the local road network. However, there are concerns with regards to staff and customer car parking provision as well facilities for the manoeuvring and unloading/loading of car transporters and other delivery vehicles.

It is requested therefore that the applicant provide details of the number of staff employed at the site and indicate on the site plan the area allocated for staff and customer car parking. It should be noted that staff and customer parking spaces should be formally laid out and appropriately signed to ensure safe, satisfactory and sufficient parking arrangements are available for both staff and customers.

In addition, the car transporter loading/unloading area must be shown on the site layout and swept path assessments are requested to satisfactorily demonstrate that car transporters can enter, manoeuvre and leave the site safely and without conflict with customer vehicles and pedestrian routes.

It should be noted that the site access on Stenson Road should be kept clear of parked vehicles to ensure safe access and egress to and from the site and for pedestrians crossing the site access. The applicant is requested to provide details of the parking management strategy for the site to ensure parking in the access does not occur. If the application is approved a condition should be imposed that all site parking should be in accordance with the approved parking management strategy.

It is also considered that car transporters, or other delivery vehicles, should not park on Stenson Road before accessing the site or after leaving the site as this is detrimental to highway safety. The applicant is therefore requested to provide details as to the strategy for managing deliveries by car transporters and other vehicles to ensure that they can enter and leave the site without having to park on Stenson Road. If the application is approved a condition should be imposed that all deliveries should be in accordance with the approved delivery management strategy.

Prior to the construction of any parking areas, details of surface water drainage provision to those areas (so as to adequately mitigate any runoff of surface water on to the highway) shall be submitted to and approved in writing by the Local Planning Authority. The approved drainage details shall be fully implemented prior to first use and thereafter maintained in a fully functional state (24 May 2023).

Re-consultation on revised information - I have reviewed the submitted Parking/Delivery Management Plan and can confirm that it is acceptable. The highway authority therefore has no objections subject to the following conditions being imposed should approval be granted in the interests of highway safety:

- The site access on Stenson Road should be kept clear of parked vehicles to ensure safe access and egress to and from the site and for pedestrians crossing the site access.
- All delivery vehicles, including car transporters, should not park on Stenson Road before accessing the site or after leaving the site.
- Prior to the construction of any parking areas, details of surface water drainage provision to those areas (so as to adequately mitigate any runoff of surface water on to the highway) shall be submitted to and approved in writing by the Local Planning Authority. The approved drainage details shall be fully implemented prior to first use and thereafter maintained in a fully functional state (24 August 2023).

Further clarification – The applicant queried the request for a drainage condition and highlighted that there would be no alteration to the surface materials, such that there would be no change to the existing surface water situation and a condition would therefore be unreasonable and unnecessary. The Highway Authority reviewed this and recommended an informative be attached to any forthcoming permissions instead (24 August 2023).

Environmental Health

No objections to the above application but would suggest the following conditions:

- Permission is for storage only (Cars should not be repaired or dismantled)

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

- Replace aggregate surface with bonded, permeable surface with suitable surface water drainage within 6 months of approval.

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

- No vehicle movement at the premises other than between 8:30 hours and 17:30 hours Mondays to Saturday, and 10:00 hours and 14:00 hours on Sundays. There shall be no vehicle movements, public holidays and bank holidays.

Reason: To safeguard the amenities of nearby occupiers

- Advisory: when designing drainage, oil interceptors may be required (24 May 2023).

Tree Officer

Initial response – I have viewed Google maps and Street scene dated March 2023 and the 4 trees on the frontage of the site are likely to be mature oaks and the 2 trees on the north boundary are a mixture of mature ash and possibly oak. The Google aerial photo dated 20th September 2019 shows the 6 trees with a full canopy. The trees appear to be in good physiological condition. Structural faults could not be identified. The street view shows cars parked close to the base of the trees and are within the root protection area of all the trees.

I would advise that there should be no change of ground level around the base of the trees and that car parking should be restricted with a timber knee rail of suitable design set back at least 3.0m from the external fence line.

The trees on the site including those outside the proposed development contribute to the street scene in the area. The trees are not currently protected. Taking into consideration the amenity value of the trees and intensive use of the site I would suggest that the trees be protected by a SDDC Order (18 May 2023).

Subsequent response (following site visit) – I recently inspected the above site. I noted 4 mature oak trees T1, T2, T3, T4 on the frontage of the site and 2 mature sycamore trees T5 & T6 on the south-west boundary.

The 4 oak trees T1-T4 had the main stems lean east towards Stenson Road estimated stem diameter 60cm and height 17.0m. The BS 5837 root protection area (RPA) 163sq m with a nominal radius of 7.2m. The foliage in the crowns was in good condition and the crowns were asymmetric over the highway.

The 2 sycamore trees T5 & T6 had an estimated stem diameter of 50cm and height of 16.0m. RPA 113sq m and nominal radius of 6.0m. The foliage in the crown appeared in good condition.

The surfacing of the car park is loose stone and appeared to be porous. It was noted that cars were parked within a 1.0m to the stems of the trees within the RPA of the 6 trees. The stone surfacing and the presence of parked cars at this time did not appear to be having an immediate adverse impact on the health of the 6 trees.

The 6 trees have public amenity in the area and have a TEMPO score of 16 that would definitely merit protection of the trees with a TPO. I note that the Applicant is a tenant and that the trees are likely to be the landlord's responsibility (30 May 2023).

Neighbour Responses

13 objections were received from members of the local community in response to the application. The comments raised concerns related to:

- a) Works that have been undertaken to the mature trees, which many people believe to be subject to TPO;

- b) Inadequate drainage within the industrial estate generally and lack of soakaway within the site;
- c) Loss of greenspace and soakaway potential of the site;
- d) Increase in traffic and congestion and particular concerns related to the inadequacy of the existing access, parking of vehicles on the pavement and within the access, assertion that a second access is needed (with particular reference to access for emergency services);
- e) Air pollution;
- f) Overdevelopment of the site which was never envisioned to be a commercial industrial estate;
- g) Application has understated level of business carried out onsite;
- h) There are restrictive agricultural covenants that would prevent the use of land for uses other than agricultural purposes;
- i) Proposed hours of opening on Sundays and Bank Holidays;
- j) Loss of privacy to neighbouring uses;
- k) Proposal would be out of keeping with the character of the surrounding area and residential properties and is visible from the road;
- l) Impact on wildlife;
- m) Erection of signage related to the business;
- n) Impact on capacity of site septic tank;
- o) Some neighbours to the east of the car wash have not been directly notified of the application;
- p) Retrospective nature of the application and contest over when this use commenced

General concerns were also raised in relation to the operation of the industrial estate. This included matters such as noise, dust and disturbance from the industrial estate generally, smells from waste, the use of chemicals within the car wash, breaches of planning conditions, specific complaints related to a ditch within the east of the industrial estate (outside of the application site boundary), the storage of gas canisters, lack of privacy for gardens of properties on Earl's Drive, and behaviour of people operating or visiting the industrial estate.

Relevant policy, guidance and/or legislation

The relevant Development Plan policies are:

- Local Plan Parts 1 and 2: SD2 (Presumption in Favour of Sustainable Development), Policy E2 (Other Industrial and Business Development), INF2 (Sustainable Transport), BNE1 (Design Excellence), BNE7 (Trees, Woodland and Hedgerows)

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

The determining issues are as follows:

1. Principle of the development;
2. Highway Safety;
3. Amenity;
4. Trees;
5. Other Matters.

Planning assessment

Principle of the Development

Policy E2 relates to industrial and business development that is not covered by strategic employment land allocations (Policy E1). The policy states that development of land for uses defined by classes B1(b), B1(c), B2 and B8 of the Use Classes Order (i.e. offices, research and development, light industry, general industrial, distribution and storage) will be permitted subject to certain conditions. This

includes where the site lies on the edge of an urban area, such as Derby, the proposal is for the expansion of an existing business, or the proposal is for the redevelopment of established industrial or business land. It requires that all such proposals be in scale with existing built development, and that it does not give undue impacts on the local landscape, natural environment, or cultural heritage assets.

The site forms part of the Stenson Industrial Estate, which is located within the urban area of Stenson, on the edge of Derby. The industrial estate has been established since the early 2000s, when planning permission was granted for B1 (light industry) and B8 (storage and distribution) purposes (ref. 9/2001/0891), albeit this original consent largely precluded activities outside of the buildings onsite.

The current proposal is to regularise the change in use of land that appears from aerial imagery to have occurred over time. This area of the estate has not previously been covered by a planning permission specific to the current use, although it is noted that planning permissions have been granted for similar uses in the open areas within the wider estate.

The proposals are considered to comply with the provisions of part A of Policy E2. With respect to part B, it is noted that there would be no built development as part of the proposal and the site is not located within a Conservation Area or the setting of any listed buildings. Neighbours have commented that the proposal would represent overdevelopment and be out of keeping with the character of the surrounding residential area, although the industrial site context is also of relevance, and it is recognised that the site contributes to the street frontage. The proposal would retain the existing mature trees on the south-western boundary of the site, and Officers have sought an improvement on the current situation through provision of a 3m landscape buffer, which has been incorporated in the proposed site plan. It is acknowledged that, even with this buffer, there would still be a decrease in the size of the landscaping area that appears to have previously existed. However, as the trees on the boundary of the site would provide the primary contribution to the streetscene, it is not considered that there would be an undue impact. Overall, it is considered that the proposal would comply with Policy E2 and would be acceptable in principle.

Highway Safety

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.

Stenson Road is a classified two-way road subject to 40 mile per hour speed restriction with a footpath adjacent. The application site is accessed via the existing entrance to the industrial estate, which is comprised of tarmac. There is a roundabout in proximity to the entrance, c. 40m to the north that links Stenson Road to Grampian Way.

The local community raised several highways-related concerns about the proposal during the consultation period. It was cited in particular that there have been occurrences of vehicles parked within the entrance to the site, and lorries (transporters) parked between the entrance and the roundabout on Stenson Road; and one neighbour commented that a second access would be needed into the estate. The County Highways Authority was consulted on the planning application and these matters were highlighted specifically. The Highway Authority consider that the proposal would have no material impact on the local road network and no concerns were raised regarding the adequacy of the existing access, however further information was requested to provide assurance that the use could accommodate sufficient parking for employees, customers etc. and the manoeuvring and unloading of car transporters within the site. A Parking and Delivery Management Plan was also requested.

The applicant responded to this request and provided a layout for parking within the site together with the swept paths for lorries/car transporters. The proposed manoeuvring area would be outside of the application site, but within land under the applicant's ownership and control, and space for unloading would be provided within the site layout. The Parking and Delivery Management Plan confirms that there would be a single member of staff, and that single vehicle transporters are only used on average in the order of 1no. visit per week. The proposed site layout shows that there would be 2no. customer

parking spaces and an additional 2no. spaces reserved for overspill. The parking arrangement would be delineated by painted inset bricks. The remaining storage area within the site would remain non-delineated.

The County Highways Authority was reconsulted on the application following the submission of the additional details and they consider that the Parking/Delivery Management Plan would be acceptable and that there would be no highways objections. This is subject to conditions to ensure that the access point on Stenson Road remains clear of parked vehicles and that delivery vehicles do not park on Stenson Road. It is considered reasonable to attach the planning conditions recommended by the Highways Authority in light of the concerns raised by the local community on this matter, albeit it is noted that there are other users within the industrial estate and that the parking within the access and transporters along Stenson Road could be difficult to attribute to a single business from the perspective of planning enforcement. Nonetheless, it is recommended that conditions be attached to any forthcoming planning permission to ensure that the parking and delivery plan is adhered to. With such conditions in place, it is considered that the proposal would be acceptable with regard to the safety issues in relation to the public highway and would comply with the requirements of policy INF2 of the Local Plan.

Amenity

Policy BNE1 sets out principles for design excellence, which is supported by the detail within the South Derbyshire Design Guide SPD. Policy SD1 states that the Council will support development that does not lead to adverse impacts on the environment or amenity of existing and future occupiers within or around proposed developments.

The concerns of the local community are noted in respect to the noise, disturbance and air pollution that is alleged to arise from the industrial estate, and also the proposed hours for operation. Although, it is noted that some comments appear to relate to the general operation of the industrial estate, rather than to the application site and proposed use to be retained specifically. The Council's Environmental Health Officer (EHO) has been consulted as part of the planning process and raised no objections, subject to any planning permission incorporating conditions that limit vehicle movements within the site to daytime hours and with stricter controls at the weekends; and that the use exclude repair and dismantling works.

The context of the application site is noted in relation to the amenity concerns. The nearest receptors comprise dwellings on the opposite side of Stenson Road, and Stenson Fields Farmhouse which is separated from the application site by buildings. Also, the surrounding uses within the industrial estate. It is considered that the proposal on this small area of land would make nominal contribution when subject to the hours of operation and use as proposed by the EHO. The hours of operation proposed by the EHO would be broadly consistent with those in place across the industrial estate, although there is some variety in the permitted hours of operation throughout the site as follows:

- 9/2001/0891 (B1/B8 uses) 0800 to 1800 Mon to Fri; 0800 to 1300 Saturday;
- 9/2009/0444 (car wash facilities) 0900 to 1900 Mon to Fri; 0900 to 1700 Saturday;
- 9/2010/0495 (storage for contractors vehicles, equipment, machinery etc to the west of the buildings) (Granted on appeal) 0730 to 1800 Mon to Fri; 0800 to 1330 Saturday
- 9/2016/0257 (plant hire business) 0730 to 1800 Monday to Friday, 0800 to 1330 Saturday.

The proposal to restrict the hours of operation of the business in general is considered reasonable. Although, it is noted that the other businesses are restricted such that they would not be able to operate on a Sunday, as is suggested by the EHO for this case. There are some material differences between the existing businesses and this case that could warrant Sunday opening, in particular that the nature of the business would not be expected to give rise to material noise or disturbance. On balance, it is considered that the proposed timings would also be reasonable. Subject to the conditions for timing of operations and to restrict the specific uses, it is considered that the proposal would meet the requirements of policies BNE1 and SD1.

Trees and Landscaping

Policy BNE1 e) requires new development to have regard to valued landscape and townscape characteristics. The Design Guide SPD expands upon this policy and notes the importance of mature trees and that the Council strongly encourages these to be retained. Policy BNE7 provides the main framework for the consideration of trees, woodland and hedgerows.

There are 4no. mature trees (sycamore and oak) adjacent to the south-eastern boundary of the application site which are not subject to TPO or protected by virtue of location in a Conservation Area. There are a further 2no. mature trees along the road frontage that are outside of the application site. It was noted as part of the Officer's site visit that cars were parked immediately adjacent to the trunks of the trees within the site boundary, and members of the local community raised concerns related to this and the potential harm to the trees. The matter was discussed with the Council's Tree Officer. Potential solutions were sought that would safeguard the trees and it was agreed that the applicant should be requested to establish a buffer zone around the tree trunks in which the proposed use would be prohibited. The applicant (through their agent) agreed to this and provided a site layout plan with a buffer zone incorporated. Planning conditions could be attached to any forthcoming permission to ensure that this zone is maintained for the life of the development. With this buffer in place, direct harm to the trees would be minimised and the proposal would accord with the aforementioned policies. It is however recommended that a TPO be pursued for the tree group to ensure that their future management is within the Council's control.

Other Matters

Neighbours commented that the management of surface water runoff within the wider industrial estate is inadequate and noted that the loss of greenspace from this site would reduce the soakaway capacity of the site as a whole, and there is no specific soakaway provision. The Highway Authority highlighted that measures should be taken to ensure that surface water run-off from within the site is not permitted to discharge across the public highway, which is a requirement of section 163 of the Highways Act. The EHO raised no objections, although suggested that the existing aggregate surface be replaced with a bonded, permeable surface with suitable surface water drainage within 6 months of approval (in the interests of protecting the amenity of the area). On the other hand, the Tree Officer noted that any disturbance or change in ground level should be minimised as far as possible to avoid harm to the roots of the trees. Balancing these points and noting the value that the mature trees bring to the area in terms of amenity, it is considered that the need to minimise disturbance of the land to protect the trees outweighs the benefit that would be attained through replacement of the ground surfacing, particularly as the existing ground is permeable and a grass buffer strip is proposed adjacent to the highway. It would not be necessary or reasonable on these bases, particularly taking into account the small size of the land involved, to require drainage details to be submitted under a planning condition. The obligation with respect to section 163 of the Highways Act could however be highlighted under an informative.

Neighbours also commented that the level of business carried out within the site is understated in the application. This point is noted. Information is provided in the Parking and Delivery Management Plan on the level of activity and the planning assessment is made on this basis. Any planning permission would tie the use to the parameters set out in the Parking and Delivery Management Plan and other information submitted by the applicant (including the proposed site plan), as well as imposing other controls such as the operational hours. If the use proved to be conducted outside of the assessment parameters, this could represent a material change that would be a matter for planning enforcement.

Members of the public also queried the retrospective nature of the application, which the planning system and legislation allows for. Several points of potential planning breaches were highlighted. Planning breaches would be managed by planning enforcement.

One neighbour raised concern related to loss of privacy. In this case it is not considered that there would be a material impact on privacy. The use would be separated from Stenson Fields Farmhouse by virtue of the existing buildings and where there could be views from the site towards the neighbouring property, this would be towards the front driveway and garden area of the property which would not form part of the private amenity space.

Neighbours also commented that the proposal would impact on wildlife. The application site comprises a small, previously undeveloped, parcel of land within the industrial estate. There would be limited opportunities for wildlife due to the isolated nature of the land.

It was noted that signage has been erected related to the business previously. It is recommended that an advisory note be attached to any forthcoming planning permission highlighting that advertisements and signage would likely require a separate application under the Advertisement Regulations.

It was highlighted that there are restrictive agricultural covenants that would prevent the use of land for uses other than agriculture. This matter is not a planning consideration although an informative could be incorporated to highlight this to the applicant.

It was asserted that some neighbours to the east of the car wash have not been directly notified of the application. The neighbours within 4m of the boundary of the application site were notified as per the Council's Statement of Community Involvement, which would not include properties on the boundaries of the industrial estate.

Also that works to the mature trees within the site have been undertaken previously. As the trees are not currently protected, this would not have represented a breach of planning control.

Conclusion

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 proposal to retain the use of the land for parking, storage, display and sales of motor vehicles is considered to comply with the provisions of Policy E2 related to industrial and business development and would therefore be acceptable in principle. The Highway Authority, Council's EHO and Tree Officer were consulted as part of the process and supported Officers with advice on the management of material issues related to the impact on trees, highway safety and other matters. Amendments have been sought to the application plans and the applicant agreed to provide a landscaping buffer along the frontage of the site, and specific demarcation of parking for customers, employees and visitors, as well as a turning area for car transporters. It is considered with conditions in place these matters could be appropriately secured and managed and overall, the proposal are considered to be in accordance with the development plan. 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 conditions.

1. The use shall be restricted to the parking, storage, display and sales of motor vehicles.

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

2. The development hereby permitted shall be carried out in accordance with the Location Plan and Block Plan (received 29 March 2023), Site Layout: Delivery and Parking Plan (ref. Parking and Turning Layout, CV0503 001 received 7 July 2023) and the Parking and Delivery Management Plan (7 July 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 sustainable development.

3. The parking and turning provision (including for transporters) in connection with the development shall be carried out in accordance with the Site Layout: Delivery and Parking Plan (ref. Parking and Turning Layout, CV0503 001 received 7 July 2023) and the 5no. parking bays shall be fully laid out as shown thereon within 6 months of the date of this permission, unless, before then, the local planning authority grants consent for any revision of those arrangements or any alternative timescale for their provision. The approved parking and turning provision shall be retained without any impediment to their use as such for the lifetime of the development, with only the area shaded pink on the approved plan used for the parking/display of vehicles unless otherwise first agreed in writing by the Local Planning Authority.

Reason: In accordance with policy INF2 of the Local Plan and in the interest of highway safety.

4. The site access on Stenson Road should be kept clear of parked vehicles to ensure safe access and egress to and from the site and for pedestrians crossing the site access.

Reason: In accordance with policy INF2 of the Local Plan and in the interest of highway safety.

5. Delivery vehicles, including car transporters, shall not park on Stenson Road before accessing the site or after leaving the site.

Reason: In accordance with policy INF2 of the Local Plan and in the interest of highway safety.

6. There shall be no vehicle movement at the premises other than between 8:30 hours and 17:30 hours Mondays to Saturday, and 10:00 hours and 14:00 hours on Sundays. There shall be no vehicle movements on public holidays and bank holidays.

Reason: In the interests of protecting the amenity of the area and adjoining occupiers and in accordance with Policy BNE1 of the Local Plan.

7. The landscaping buffer shall be carried out in accordance with the Site Layout: Delivery and Parking Plan (ref. Parking and Turning Layout, CV0503 001 received 7 July 2023) and fully laid out as shown thereon within 6 months of the date of this permission, unless, before then, the local planning authority grants consent for any revision of those arrangements or any alternative timescale for their provision. Once provided, the buffer shall be retained as such for the lifetime of the development.

Reason: In accordance with policy BNE7 of the Local Plan and in the interest of tree protection.

8. The landscaping buffer as shown on the Site Layout: Delivery and Parking Plan (ref. Parking and Turning Layout, CV0503 001 received 7 July 2023) shall be kept free from storage of any equipment, materials or other items. There shall be no digging or changes made to the ground levels in this zone, except as would be necessary for the installation of the knee rail fencing.

Reason: In accordance with policy BNE7 of the Local Plan and in the interest of tree protection.

9. The existing ground levels within the remainder of the application site and excluding the landscaping buffer shall be maintained, except as would be necessary for the installation of the parking arrangements, and no surfacing shall be installed unless in accordance with details first submitted to and agreed in writing by the Local Planning Authority.

Reason: In accordance with policy BNE7 of the Local Plan and in the interest of tree protection.

Informatives:

- a. This permission is restricted to the use as applied for and does not permit any vehicle repair work or dismantling that could give rise to noise and amenity impacts.
- b. 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 public highway.

- c. This planning permission does not permit the applicant to erect or display any advertisements or signage for which separate consent would be required.
- d. A neighbour has highlighted that there may be an agricultural covenant related to the application site that precludes use of the land for activities other than agricultural.

Item No. 1.6

Ref. No. [DMPA/2023/0415](#)

Valid date: 03/05/2023

Applicant: Mr D Sandu **Agent:** Heatons Planning

Proposal: The retention of the existing vehicle storage area to the rear of the site, including an office building

Ward: Stenson Fields

Reason for committee determination

This item is presented to the Committee as it has been called in by Councillor Shepherd together with cases DMPA/2023/0436 and DMPA/2023/0546 which also relate to Stenson Industrial Estate.

Site Description

The application site is located within the western part of Stenson Industrial Estate, to the west of the main buildings. The site is bordered by the close-boarded fences of the rear of dwellings on Earl's Drive to the west and north, fencing and the vegetation in the garden of Stenson Fields Farmhouse, and a steel mesh fence separating the land from other sections of the industrial estate to the east. Access is through the industrial estate and from Stenson Road. There is a telecommunications mast in the north-western corner of the site, and a rectangular office building in the northern section, close to the internal access point.

Stenson Industrial Estate, including the application site, is under the ownership of the applicant and comprises a longstanding use in the area that pre-existed residential development to the north and west. Planning permission for light industrial (class B1) and storage/distribution uses (class B8) was first granted at the site in 2001. As the planning history (below) shows, there have been a number of applications and changes at the site over time, including permissions for storage of vehicles, plant hire businesses and a car wash. The site is currently used for vehicle storage.

The following applications have been submitted concurrently for the Stenson Industrial Estate and are also brought for determination by the Planning Committee:

- DMPA/2023/0436 The retention of the existing vehicle storage area to the rear of the site, including an office building;
- DMPA/2023/0546 Change of use from a vehicles repair workshop (use class B2) to research and development and/or industrial processes (use class E).

The proposal

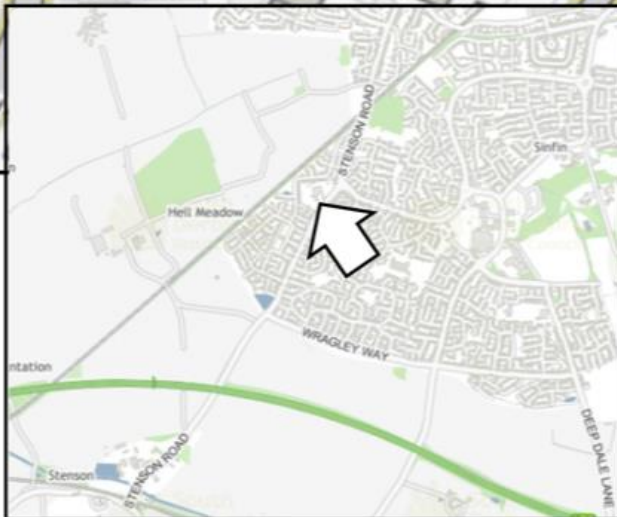
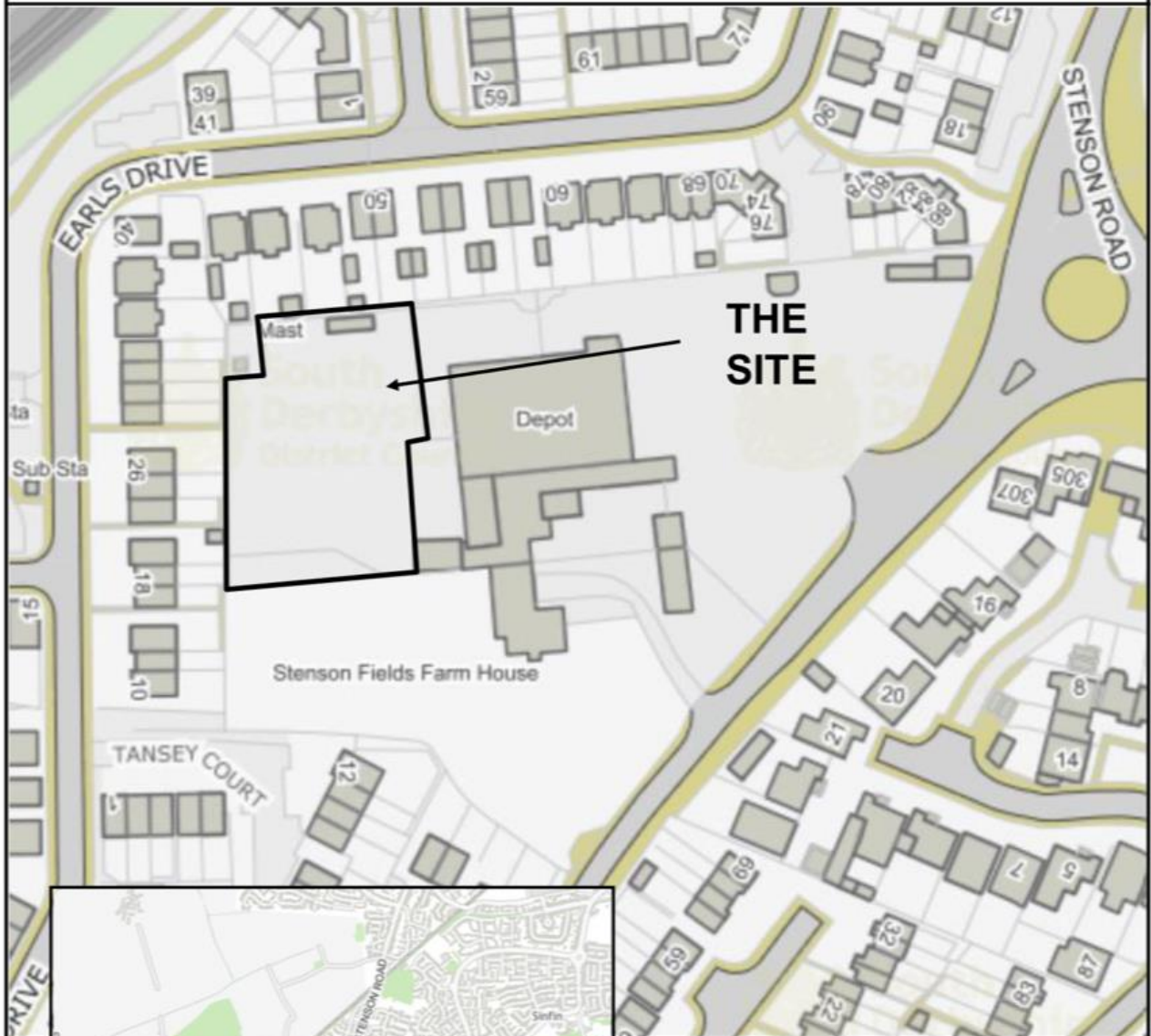
The proposal is for the retention of the existing vehicle storage area to the rear of the site, including an office building. The building is a small scale, rectangular flat-roofed cabin of the following approximate dimensions: L 9.8m, W 3.8m, H, 2.8m. There would be a single member of staff to support the use. The applicant has worked proactively with the Council throughout the planning process and has amended the original site layout to define customer and staff parking together with a turning area for car transporters within land under the applicant's ownership.

Applicant's supporting information

[Application Covering Letter \(dated 9th March 2023\)](#)

This document sets out a description of the application site, planning history, details of the proposal

**DMPA/2023/0415 - Land adjacent to Stenson Fields Industrial Units,
Stenson Road, Stenson, Derby, DE23 1LG**



MAPS ARE NOT TO SCALE

This map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the Controller of Her Majesty's Stationery Office. Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings.

South Derbyshire District Council. LA 100019461.2020

and an assessment of this against the planning policy framework that has been prepared by the applicant's agent.

Planning Drawings

Location Plan and Site Plan (received 29 March 2023)

Office Cabin Layout and Elevations (ref. 1879, 011 received 2 May 2023)

Site Layout: Delivery and Parking Plan – Rear Site (ref. Parking and Turning Layout, CV503 received 7 July 2023)

Parking and Delivery Management Plan (7 July 2023)

This document was prepared in response to the request from Derbyshire County Highways and Officers. It sets out the parking and delivery management strategy for the application site and the 2no. applications submitted for determination concurrently on the wider industrial estate (DMPA/2023/0436 and DMPA/2023/0546). The document details the method of implementing the plan, the parking provision for staff, customers and visitors, deliveries and other matters.

Relevant planning history

There is a lengthy planning history for the Stenson Industrial Estate, which incorporates the application site. This includes:

- 9/2000/1177 The use as a store of the workshop and the dwelling as offices for a construction company – approved.
- 9/2001/0891 The use of the land for B1 (light industry) and B8 (storage and distribution) purposes – approved.
- 9/2005/1405 The removal of condition 3 of 9/2000/1177/U and 9/2001/0891/U to permit open storage – refused.
- 9/2007/0234 The change of use of office accommodation and outbuildings to an operational office and depot – approved.
- 9/2009/0444 Change of use from parking to hand car wash incorporating two portacabins, concrete hardstanding washing area with fabric canopy – approved.
- 9/2010/0495 The retention of use of land for the storage of contractors vehicles, equipment, machinery and storage containers and material – refused, however overturned on appeal APP/F1040/A/10/2134225.
- 9/2011/0118 Retrospective application for broadening of existing permitted uses to include class B1 and B8 vehicle repairs and body work, vehicle sales, valeting and rental – approved.
- 9/2013/0813 The variation of condition 1 of planning permission 9/2010/0495 (granted at appeal) for extension of temporary permission until December 2014 – approved.
- 9/2014/0718 Retrospective application for the change of use from offices to tattoo studio – approved.
- 9/2017/0699 Retrospective application for erection of an extension/outbuilding – refused.
- 9/2016/1050 Change of use to a vehicle maintenance depot – approved.
- 9/2016/0257 Change of use of land for the operation of a plant hire business – approved.
- 9/2018/1233 Change of use of portacabin from a hand car wash to a private taxi office – approved.

Responses to consultations and publicity

Stenson Fields Parish Council

We feel that disruption will be caused by large car transporters delivering/collecting vehicles to this place. They regularly park on Stenson Road or on the Grampian Way/Stenson Road traffic island which causes inconvenience and increase risk to other road users (26 May 2023).

County Highways Authority

Initial Response – Having reviewed the submitted information it is considered that the proposal would have no material impact on the operation of the local road network. However, there are concerns with regards to staff and customer car parking provision as well facilities for the manoeuvring and unloading/loading of car transporters and other delivery vehicles.

It is requested therefore that the applicant provide details of the number of staff employed at the site and indicate on the site plan the area allocated for staff and customer car parking. It should be noted that staff and customer parking spaces should be formally laid out and appropriately signed to ensure safe, satisfactory and sufficient parking arrangements are available for both staff and customers.

In addition, the car transporter loading/unloading area must be shown on the site layout and swept path assessments are requested to satisfactorily demonstrate that car transporters can enter, manoeuvre and leave the site safely and without conflict with customer vehicles and pedestrian routes.

It should be noted that the site access on Stenson Road should be kept clear of parked vehicles to ensure safe access and egress to and from the site and for pedestrians crossing the site access. The applicant is requested to provide details of the parking management strategy for the site to ensure parking in the access does not occur. If the application is approved a condition should be imposed that all site parking should be in accordance with the approved parking management strategy.

It is also considered that car transporters, or other delivery vehicles, should not park on Stenson Road before accessing the site or after leaving the site as this is detrimental to highway safety. The applicant is therefore requested to provide details as to the strategy for managing deliveries by car transporters and other vehicles to ensure that they can enter and leave the site without having to park on Stenson Road. If the application is approved a condition should be imposed that all deliveries should be in accordance with the approved delivery management strategy.

Prior to the construction of any parking areas, details of surface water drainage provision to those areas (so as to adequately mitigate any runoff of surface water on to the highway) shall be submitted to and approved in writing by the Local Planning Authority. The approved drainage details shall be fully implemented prior to first use and thereafter maintained in a fully functional state (24 May 2023).

Re-consultation on revised information - I have reviewed the submitted Parking/Delivery Management Plan and can confirm that it is acceptable. The highway authority therefore has no objections subject to the following conditions being imposed should approval be granted in the interests of highway safety:

- The site access on Stenson Road should be kept clear of parked vehicles to ensure safe access and egress to and from the site and for pedestrians crossing the site access.
- All delivery vehicles, including car transporters, should not park on Stenson Road before accessing the site or after leaving the site.
- Prior to the construction of any parking areas, details of surface water drainage provision to those areas (so as to adequately mitigate any runoff of surface water on to the highway) shall be submitted to and approved in writing by the Local Planning Authority. The approved drainage details shall be fully implemented prior to first use and thereafter maintained in a fully functional state (24 August 2023).

Further clarification – The applicant queried the request for a drainage condition and highlighted that there would be no alteration to the surface materials, such that there would be no change to the existing surface water situation and a condition would therefore be unreasonable and unnecessary. The Highway Authority reviewed this and recommended an informative be attached to any forthcoming permissions instead (24 August 2023).

Environmental Health

I do not have any objections to the above but do suggest the below conditions –

- No activity at the premise is permitted other than between 9:00 hours and 18:00 hours Mondays to Fridays, and between 9:00 hours and 17:00 hours on Saturdays. No activity at the premise whatsoever on Sundays, public holidays, and bank holidays. Reason: To safeguard the amenities of nearby occupiers.
- Permission is for storage only (Cars should not be repaired or dismantled) Reason: In the interests of protecting the amenity of the area and adjoining occupiers.

Also, there is no toilet shown on the plans, can this be raised as a query with the applicant at this stage to ensure anyone on the site has access to facilities. (24 May 2023).

Neighbour Reponses

Six objections were received from members of the local community in response to the application. The comments raised concerns related to:

- a) The retrospective nature of the application, particularly with the building being in situ;
- b) The use of the site with assertion that vehicles are being sold, dismantled and repaired rather than stored;
- c) Intentions of the applicants to expand further unlawful uses and several instances of alleged breaches of planning control were cited;
- d) The proposal would only provide opportunity for 1 employee and therefore would have no employment benefit to the area;
- e) Congestion associated with the use of the access from Stenson Road;
- f) Insufficient access within the site;
- g) Insufficient parking provision for the proposal;
- h) The parking of vehicles on the pavement and within the access;
- i) Proposal for industrial uses would be out of keeping with the visual amenity and character of the surrounding area and residential properties;
- j) Loss of privacy to adjacent gardens, and impact on use and enjoyment of private amenity space;
- k) Damage to boundary fences from the use of the site;
- l) Air pollution when cars are being tested and repaired;
- m) Noise from users accessing the site at antisocial hours;
- n) Inadequate drainage within the industrial estate generally and a blocked soakaway within the site;
- o) Impact on wildlife;
- p) Criticism of the County Highways Authority.

General concerns were also raised in relation to the operation of the industrial estate. This included concerns with the use of this site by parties that are not customers, staff or employees who appear to be dumping waste at the rear and on other parts of the site; and individuals carrying out unknown or illegal activities.

Relevant policy, guidance and/or legislation

The relevant Development Plan policies are:

- Local Plan Parts 1 and 2: SD2 (Presumption in Favour of Sustainable Development), Policy E2 (Other Industrial and Business Development), INF2 (Sustainable Transport), BNE1 (Design Excellence)

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

The determining issues are as follows:

1. Principle of the development;
2. Highway Safety;
3. Amenity;
4. Other Matters.

Planning assessment

Principle of the Development

Policy E2 relates to industrial and business development that is not covered by strategic employment land allocations (Policy E1). The policy states that development of land for uses defined by classes B1(b), B1(c), B2 and B8 of the Use Classes Order (i.e. offices, research and development, light industry, general industrial, distribution and storage) will be permitted subject to certain conditions. This includes where the site lies on the edge of an urban area, such as Derby, the proposal is for the expansion of an existing business, or the proposal is for the redevelopment of established industrial or business land. It requires that all such proposals be in scale with existing built development, and that it does not give undue impacts on the local landscape, natural environment, or cultural heritage assets.

The site forms part of the Stenson Industrial Estate which is located within the urban area of Stenson, on the edge of Derby. The industrial estate has been established since the early 2000s, when planning permission was granted for B1 (light industry) and B8 (storage and distribution) purposes (ref. 9/2001/0891), albeit this original consent largely precluded activities outside of the buildings onsite. As well as the original permission for the industrial estate, this area has previously been covered by planning permissions for similar uses as follows:

- 9/2010/0495 The retention of use of land for the storage of contractors vehicles, equipment, machinery and storage containers and material – refused, however overturned on appeal APP/F1040/A/10/2134225.
- 9/2013/0813 The variation of condition 1 of planning permission 9/2010/0495 (granted at appeal) for extension of temporary permission until December 2014 – approved.
- 9/2016/0257 Change of use of land for the operation of a plant hire business – approved.

The current proposal would be similar to the previously accepted uses for the land and is considered to comply with the provisions of part A of Policy E2. With respect to part B, it is noted that the site is not located within a Conservation Area or the setting of any listed buildings. This part of the industrial estate is not visible from the streetscene, although it would be visible from the neighbouring dwellings, it is not considered that the proposal would result in a materially different character of land from the previously permitted uses for this area of the site. It is considered that there would be no undue impact on landscape character and that the proposal would comply with Policy E2 and would therefore be acceptable in principle.

Highway Safety

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 application site is accessed through the entry into the industrial estate on Stenson Road, which is a classified two-way road subject to 40 mile per hour speed restriction with a footpath adjacent. There is a roundabout in proximity to the entrance, c. 40m to the north that links Stenson Road to Grampian Way.

The Parish Council and local community raised several highways-related concerns about the proposal during the consultation period, and it was cited in particular that there have been occurrences of vehicles parked within the entrance to the site, and lorries (transporters) parked between the entrance and the roundabout on Stenson Road, which in turn lead to highways safety concerns and congestion. The County Highways Authority was consulted on the planning application and these matters were highlighted specifically. The Highway Authority consider that the proposal would have no material impact on the local road network, however they requested further information to provide assurance that the use could accommodate sufficient parking for employees, customers etc. and the manoeuvring and unloading of car transporters within the site. A Parking and Delivery Management Plan was also requested.

The applicant responded to this request and provided a layout for parking within the site together with the swept paths for lorries/car transporters. The proposed manoeuvring area would be outside of the application site, but within land under the applicant's ownership and control, and space for unloading would be provided within the site layout. The Parking and Delivery Management Plan confirms that there would be a single member of staff, and that single vehicle transporters are only used on average in the order of 2no. visit per week. The proposed site layout shows that there would be 1no. customer parking space and an additional 1no. space reserved for staff. The parking arrangement would be delineated. The remaining storage area within the site would remain non-delineated.

The County Highways Authority was reconsulted on the application following the submission of the additional details and confirmed that the Parking/Delivery Management Plan would be acceptable in their view, and that there would be no highways objections. This is subject to conditions to ensure that the access point on Stenson Road remains clear of parked vehicles and that delivery vehicles do not park on Stenson Road. It is considered reasonable to attach the planning conditions recommended by the Highways Authority in light of the concerns raised by the local community on this matter, albeit it is noted that there are other users within the industrial estate and that the parking within the access and transporters along Stenson Road could be difficult to attribute to a single business from the perspective of planning enforcement. Nonetheless, it is recommended that conditions be attached to any forthcoming planning permission to ensure that the parking and delivery plan is adhered to. With such conditions in place, it is considered that the proposal would be acceptable with regard to the safety of the public highway and would therefore comply with the requirements of policy INF2 of the Local Plan.

Amenity

Policy BNE1 sets out principles for design excellence, which is supported by the detail within the South

Derbyshire Design Guide SPD. Policy SD1 states that the Council will support development that does not lead to adverse impacts on the environment or amenity of existing and future occupiers within or around proposed developments.

The concerns of the local community are noted in respect to the noise, disturbance and air pollution that is said to arise, for example with users accessing the site at anti-social hours. It was also noted that there are emissions from cars being tested and repaired, although it is unclear whether this related specifically to the application site or the wider industrial estate. The Council's Environmental Health Officer (EHO) has been consulted as part of the planning process and raised no objections, subject to any planning permission incorporating conditions that limit activities within the site to daytime hours and with stricter controls at the weekends; and that the use exclude repair and dismantling works.

The context of the application site is noted in relation to the amenity concerns. The nearest receptors comprise dwellings on Earl's Drive and Stenson Fields Farmhouse, which back onto the site. In the context of the previously approved uses, it is considered that the proposal would make a limited contribution when subject to the hours of operation and use as proposed by the EHO. The hours of operation proposed by the EHO would be consistent with those in place across the industrial estate. Subject to the conditions for timing of operations and to restrict the specific uses (i.e. storage and limited sales; no maintenance or repair work), it is considered that the proposal would meet the requirements of policies BNE1 and SD1.

Other Matters

A neighbour commented that the proposal would only provide opportunity for one employee and therefore would have no employment benefit to the area. The proposal has been assessed against the relevant planning policy, E2, in which the level of job opportunities provided does not feature, and notwithstanding this even a small increase in jobs carries some, albeit limited, economic benefit.

Members of the public also queried the retrospective nature of the application, which the planning system and legislation allows for. Several points of potential planning breaches were highlighted, although some reflected a misunderstanding of the consultation responses and recommendations for conditions for the site. Planning breaches would be managed by planning enforcement.

Also, that the management of surface water runoff is inadequate and noted that the soakaway within the site appears to be blocked. The land comprises a porous surface (stones / aggregate) and this matter has not been raised as a concern by the EHO. The Highways Authority initially enquired about the drainage of the site, however it is sufficiently distanced from the public highway so that it would not be affected. It is not considered to be reasonable to include conditions for the installation of drainage infrastructure within the site for these reasons. It is however recommended that the concerns be brought to the attention of the applicant through use of an informative if planning permission is forthcoming.

It was highlighted that the use of the site has caused damage to the boundary fencing in place. This would be a civil matter for resolution outside of the planning process.

The neighbour concerns related to loss of privacy to the gardens of residential dwellings are also noted. It is acknowledged that there would be intermittent activities within the application site, for example as the vehicles are parked, and users of the site communicate with one another. Officers would note that this situation would be comparable to the level of privacy experienced in gardens of any housing estate, and whilst the provision of fencing and vegetation can protect direct views into private amenity space, there is no available mitigation for overhearing and a condition related to this matter is not considered to be reasonable or enforceable given the Industrial context.

The EHO also queried the provision of toilet welfare facilities within the site. This would not be a planning matter, although the applicant responded that there are such facilities available within the wider industrial estate, in areas operated by the same tenants.

The application site comprises part of the industrial estate where there would be limited opportunities for wildlife due to the isolated nature of the land and as such this would not comprise a material planning consideration for this case.

Conclusion

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 proposal to retain the use of the land for parking, storage, display and sales of motor vehicles is considered to comply with the provisions of Policy E2 related to industrial and business development, and such would be acceptable in principle. The Highway Authority and Council's EHO were consulted as part of the process and supported Officers with advice on the management of material issues related to the impact on highway safety and other matters. Amendments have been sought to the application plans and the applicant agreed to provide specific demarcation of parking for customers, employees and visitors, as well as a turning area for car transporters. It is considered with conditions in place these matters could be appropriately secured and managed and overall, the proposal is considered to be in accordance with the development plan. 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 with conditions

1. The use shall be restricted to the parking and storage of motor vehicles together with ancillary use of the cabin building for office work and limited motor sales.

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

2. The development hereby permitted shall be carried out in accordance with the Location Plan and Site Plan (received 29 March 2023), Office Cabin Layout and Elevations (ref. 1879, 011 received 2 May 2023), Site Layout: Delivery and Parking Plan – Rear Site (ref. Parking and Turning Layout, CV503 received 7 July 2023) and the Parking and Delivery Management Plan (7 July 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 sustainable development.

3. The parking and turning provision (including for transporters) in connection with the development shall be carried out in accordance with Site Layout: Delivery and Parking Plan – Rear Site (ref. Parking and Turning Layout, CV503 received 7 July 2023) and the 2no. parking bays shall be fully laid out as shown thereon within 6 months of the date of this permission, unless, before then, the local planning authority grants consent for any revision of those arrangements or any alternative timescale for their provision. The approved parking and turning provision shall be retained without any impediment to its use as such for the lifetime of the development, with only the area shaded pink on the approved plan used for the parking/storage of vehicles unless otherwise first agreed in writing by the Local Planning Authority.

Reason: In accordance with policy INF2 of the Local Plan and in the interest of highway safety.

4. The site access on Stenson Road should be kept clear of parked vehicles to ensure safe access and egress to and from the site and for pedestrians crossing the site access.

Reason: In accordance with policy INF2 of the Local Plan and in the interest of highway safety.

5. Delivery vehicles, including car transporters, shall not park on Stenson Road before accessing the site or after leaving the site.

Reason: In accordance with policy INF2 of the Local Plan and in the interest of highway safety.

6. There shall be no activity at the premise is permitted other than between 9:00 hours and 18:00 hours Mondays to Fridays, and between 9:00 hours and 17:00 hours on Saturdays. No activity at the premise whatsoever on Sundays, public holidays, and bank holidays.

Reason: In the interests of protecting the amenity of the area and adjoining occupiers and in accordance with Policy BNE1 of the Local Plan.

Informatives:

- e. This permission is restricted to the use as applied for and does not permit any vehicle repair work, dismantling or other activities that could give rise to noise and amenity impacts.
- f. This planning permission does not permit the applicant to erect any advertisements or signage for which separate consent would be required.
- g. The applicant's attention is drawn to the comments from the neighbours that the soakaway within the site is blocked and that some damage is said to have occurred to the boundary fences from storage of materials within the site. It is recommended that these issues be addressed and that the applicant liaise with the relevant parties regarding these civil matters.

Item No. 1.7

Ref. No. [DMPA/2023/0546](#)

Valid date: 26/04/2023

Applicant: Mr D Sandhu **Agent:** Heatons Planning

Proposal: Change of use from a vehicles repair workshop (use class B2) to research and development and/or industrial processes (use class E)

Ward: Stenson Fields

Reason for committee determination

This item is presented to the Committee as it has been called in by Councillor Shepherd together with related cases DMPA/2023/0415 and DMPA/2023/0436.

Site Description

The application site is located to the north of Stenson Fields Farmhouse and forms part of the Stenson Industrial Estate. It comprises an area of land c. 200 m² that incorporates a two-storey former red brick agricultural building within the eastern part of the site. This building adjoins the farmhouse to the south and the main steel buildings of the industrial estate to the north. To the west is the vehicle storage area that is subject to application DMPA/2023/0415 and to the east the land comprises the former farmyard and other buildings that are occupied by car sales and maintenance businesses. It is understood that the site is currently vacant. It was last used by TBT Tyres (class B2), although planning permission is not in place for this use. Before then, the buildings within the site were used for a tattoo parlour (planning permission ref. 9/2014/0718). Some canopy style extensions that were previously erected and refused planning permission (ref. 9/2017/0699) have been removed.

Stenson Industrial Estate, including the application site, is under the ownership of the applicant and comprises a longstanding use in the area that pre-existed residential development to the north and west. Planning permission for light industrial (class B1) and storage/distribution uses (class B8) was first granted at the site in 2001. As the planning history (below) shows, there have been a number of applications and changes at the industrial estate over time, including permissions for storage of vehicles, plant hire businesses and a car wash.

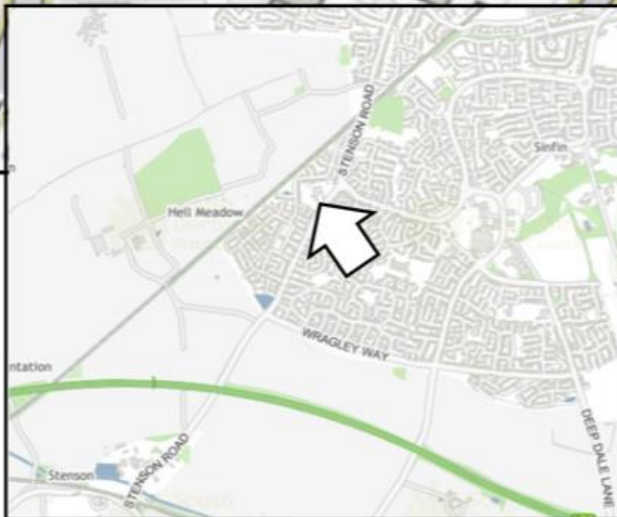
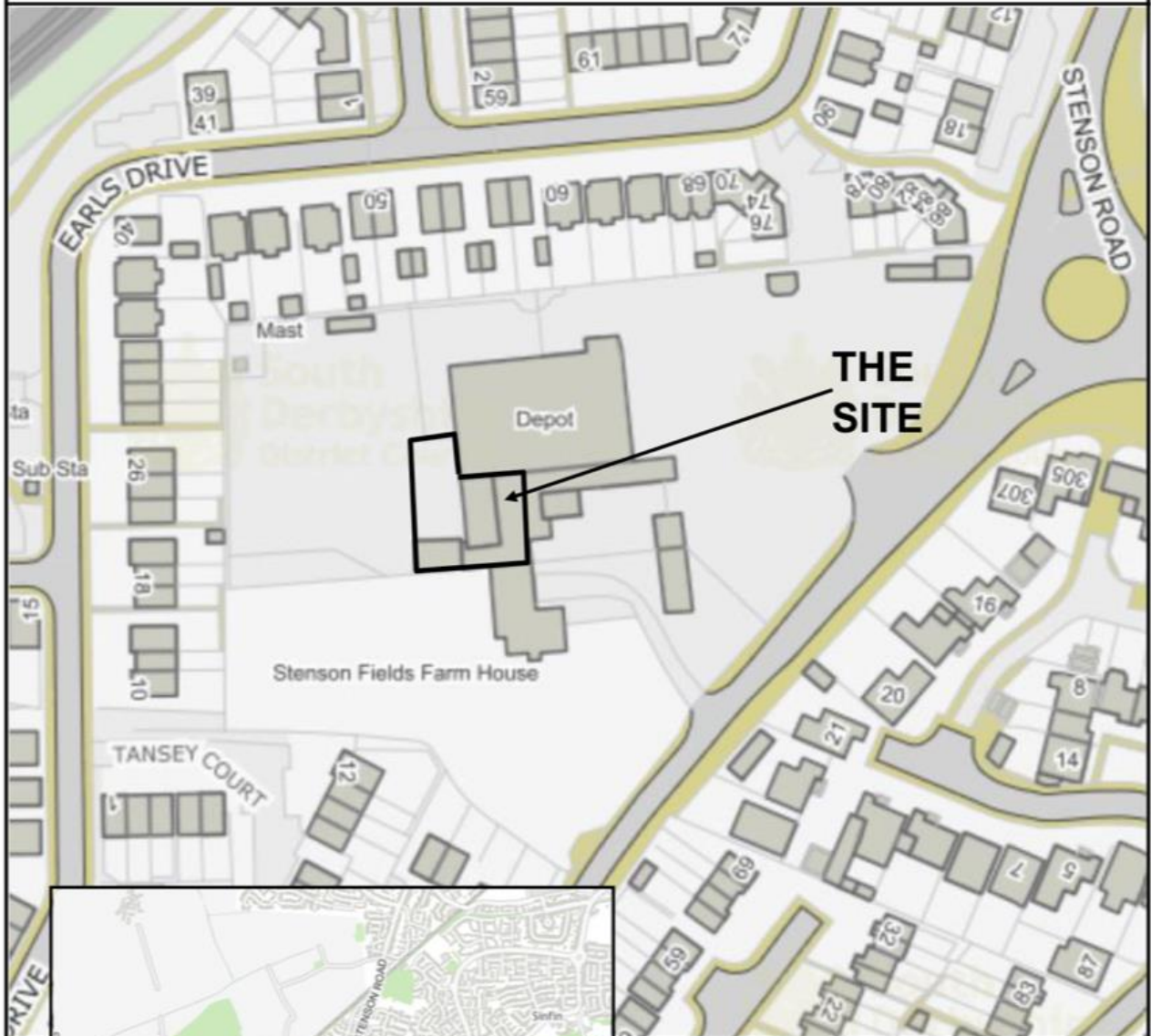
The following applications have been submitted concurrently for the Stenson Industrial Estate and are also brought for determination by the Planning Committee:

- DMPA/2023/0415 The retention of the existing vehicle storage area to the rear of the site, including an office building;
- DMPA/2023/0436 Continued use of the land for the parking, storage, display and sales of motor vehicles.

The proposal

The proposal is to use the existing unit for research and development uses and/or industrial processes which fall within Class E (g)ii and iii of the Use Class Order. These uses are defined as those 'which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, soot, ash, dust or grit'. The floorspace would include ancillary office, kitchen, staff and sanitary facilities. The existing outbuilding was originally intended to be used for storage purposes, but was subsequently removed from the plans to facilitate the parking provision and would therefore be dismantled. No external alterations are proposed to the building and there would be no outside working associated with the use. There would be up to 4no. members of staff. The applicant

**DMPA/2023/0546 - Land to the north Of Stensonfields Farm,
Stenson Industrial Estate, Stenson Road, Derby, DE23 1LG**



MAPS ARE NOT TO SCALE

This map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the Controller of Her Majesty's Stationery Office. Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings.

South Derbyshire District Council. LA 100019461.2020

has worked proactively with the Council throughout the planning process and has amended the original site layout to define the parking and manoeuvring arrangements.

Applicant's supporting information

Application Covering Letter (dated 26 April 2023)

This document sets out a description of the application site, planning history, details of the proposal and an assessment of this against the planning policy framework that has been prepared by the applicant's agent.

Planning Drawings

Location Plan (received 26 April 2023)

Proposed Layouts, Elevations, Block Plan and Location Plan (ref. 1879, 002 Rev A)

Existing and Proposed Site Layout (ref. 1879, 003 Rev B)

Site Layout: Delivery and Parking Plan – southern site (ref. Parking and Turning Layout, CV0503 003 received 7 July 2023)

Parking and Delivery Management Plan (7 July 2023)

This document was prepared in response to the request from Derbyshire County Highways and Officers. It sets out the parking and delivery management strategy for the application site and the 2no. applications submitted for determination concurrently on the wider industrial estate (DMPA/2023/0415 and DMPA/2023/0436). The document details the method of implementing the plan, the parking provision for staff, customers and visitors, deliveries and other matters.

Relevant planning history

There is a lengthy planning history for the Stenson Industrial Estate, which incorporates the application site. This includes:

- 9/2000/1177 The use as a store of the workshop and the dwelling as offices for a construction company – approved.
- 9/2001/0891 The use of the land for B1 (light industry) and B8 (storage and distribution) purposes – approved.
- 9/2005/1405 The removal of condition 3 of 9/2000/1177/U and 9/2001/0891/U to permit open storage – refused.
- 9/2007/0234 The change of use of office accommodation and outbuildings to an operational office and depot – approved.
- 9/2009/0444 Change of use from parking to hand car wash incorporating two portacabins, concrete hardstanding washing area with fabric canopy – approved.
- 9/2010/0495 The retention of use of land for the storage of contractors vehicles, equipment, machinery and storage containers and material – refused, however overturned on appeal APP/F1040/A/10/2134225.
- 9/2011/0118 Retrospective application for broadening of existing permitted uses to include class B1 and B8 vehicle repairs and body work, vehicle sales, valeting and rental – approved.
- 9/2013/0813 The variation of condition 1 of planning permission 9/2010/0495 (granted at appeal) for extension of temporary permission until December 2014 – approved.
- 9/2014/0718 Retrospective application for the change of use from offices to tattoo studio – approved.
- 9/2017/0699 Retrospective application for erection of an extension/outbuilding – refused.
- 9/2016/1050 Change of use to a vehicle maintenance depot – approved.
- 9/2016/0257 Change of use of land for the operation of a plant hire business – approved.
- 9/2018/1233 Change of use of portacabin from a hand car wash to a private taxi office – approved.

Responses to consultations and publicity

a) County Highways Authority

Initial Response – Having reviewed the submitted information it is considered that the proposal

would have no material impact on the operation of the local road network. However, there are concerns with regards to staff and customer car parking provision as well facilities for the manoeuvring and unloading/loading of car transporters and other delivery vehicles.

It is requested therefore that the applicant provide details of the number of staff employed at the site and indicate on the site plan the area allocated for staff and customer car parking. It should be noted that staff and customer parking spaces should be formally laid out and appropriately signed to ensure safe, satisfactory and sufficient parking arrangements are available for both staff and customers.

In addition, the car transporter loading/unloading area must be shown on the site layout and swept path assessments are requested to satisfactorily demonstrate that car transporters can enter, manoeuvre and leave the site safely and without conflict with customer vehicles and pedestrian routes.

It should be noted that the site access on Stenson Road should be kept clear of parked vehicles to ensure safe access and egress to and from the site and for pedestrians crossing the site access. The applicant is requested to provide details of the parking management strategy for the site to ensure parking in the access does not occur. If the application is approved a condition should be imposed that all site parking should be in accordance with the approved parking management strategy.

It is also considered that car transporters, or other delivery vehicles, should not park on Stenson Road before accessing the site or after leaving the site as this is detrimental to highway safety. The applicant is therefore requested to provide details as to the strategy for managing deliveries by car transporters and other vehicles to ensure that they can enter and leave the site without having to park on Stenson Road. If the application is approved a condition should be imposed that all deliveries should be in accordance with the approved delivery management strategy.

Prior to the construction of any parking areas, details of surface water drainage provision to those areas (so as to adequately mitigate any runoff of surface water on to the highway) shall be submitted to and approved in writing by the Local Planning Authority. The approved drainage details shall be fully implemented prior to first use and thereafter maintained in a fully functional state (24 May 2023).

Re-consultation on revised information - I have reviewed the submitted Parking/Delivery Management Plan and can confirm that it is acceptable. The highway authority therefore has no objections subject to the following conditions being imposed should approval be granted in the interests of highway safety:

- The site access on Stenson Road should be kept clear of parked vehicles to ensure safe access and egress to and from the site and for pedestrians crossing the site access.
- All delivery vehicles, including car transporters, should not park on Stenson Road before accessing the site or after leaving the site.
- Prior to the construction of any parking areas, details of surface water drainage provision to those areas (so as to adequately mitigate any runoff of surface water on to the highway) shall be submitted to and approved in writing by the Local Planning Authority. The approved drainage details shall be fully implemented prior to first use and thereafter maintained in a fully functional state (24 August 2023).

Further clarification – The applicant queried the request for a drainage condition and highlighted that there would be no alteration to the surface materials, such that there would be no change to the existing surface water situation and a condition would therefore be unreasonable and unnecessary. The Highway Authority reviewed this and recommended an informative be attached to any forthcoming permissions instead (24 August 2023).

No objections to the above application but would suggest the following conditions:

- Prior to the installation of plant or equipment, full specifications of the plant or equipment shall be submitted to and approved in writing by the Local Planning Authority. The specification shall include details of noise levels as predicted at the boundary of the site with any sensitive receptors and include mitigation measures to reduce noise levels at those receptors to acceptable levels. The located plant or equipment, along with any mitigation measures required, shall be implemented prior to first use of said plant or equipment and thereafter maintained in accordance with the agreed levels.

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

- No deliveries shall be made to or dispatched from the premises other than between 8:30 hours and 17:30 hours Mondays to Fridays, and between 9:30 hours and 12:30 hours on Saturdays. There shall be no deliveries on Sundays, public holidays and bank holidays.

Reason: To safeguard the amenities of nearby occupiers

- No activity at the premise is permitted other than between 8:00 hours and 18:00 hours Mondays to Fridays, and between 8:00 hours and 17:00 hours on Saturdays. No activity at the premise whatsoever on Sundays, public holidays, and bank holidays.

Reason: To safeguard the amenities of nearby occupiers.

- The open land within the curtilage of the site shall be for the purposes of parking only.

Reason: To safeguard the amenities of nearby occupiers. (23 May 2023).

Neighbour Reponses

Three objections were received from members of the local community in response to the application. The comments raised concerns related to:

- a) The land is contaminated and this could impact the future proposed uses of the site;
- b) Lack of certainty and ambiguity around the proposed use, and speculative nature of the application with no tenants yet in place;
- c) Impact from the proposal on adjacent properties including from chemical fumes;
- d) Inadequate drainage within the industrial estate generally and a blocked soakaway within the site;
- e) Insufficient capacity within the estate's septic tank to cater for additional discharges;
- f) Waste management and likelihood of waste being stored in the external areas;
- g) Noise from users of the site;
- h) The previous B2 use of the site being unlawful and this impacting the status of the current proposal;
- i) Inadequacy of the access from Station Road;
- j) The proposal would not be capable of being carried out without disturbance to adjoining users;
- k) Overdevelopment of the site and negative visual impact;
- l) The proposal would only provide opportunity for 4 employees and therefore would have no employment benefit to the area;
- m) The site is not currently vacant;
- n) Increase in traffic and congestion and particular concerns related to the inadequacy of the existing access, parking of vehicles on the pavement and within the access;
- o) Loss of privacy to neighbouring uses;
- p) Operational hours of working would still need to be restricted.
- q) General concerns were also raised in relation to the operation of the industrial estate and breaches in planning control related to other sites. It was also noted that a structure related to the previously refused 9/2017/0699 remains in place on the site. These matters can be investigated by planning enforcement if breaches of planning control remain outstanding following the determination of the three related planning applications.

Relevant policy, guidance and/or legislation

The relevant Development Plan policies are:

- Local Plan Parts 1 and 2: SD2 (Presumption in Favour of Sustainable Development), Policy E2 (Other Industrial and Business Development), INF2 (Sustainable Transport), BNE1 (Design Excellence)

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

The determining issues are as follows:

1. Principle of the development;
2. Highway Safety;
3. Amenity;
4. Other Matters.

Planning assessment

Principle of the Development

Policy E2 relates to industrial and business development that is not covered by strategic employment land allocations (Policy E1). The policy states that development of land for uses defined by classes B1(b), B1(c), B2 and B8 of the Use Classes Order (i.e. offices, research and development, light industry, general industrial, distribution and storage) will be permitted subject to certain conditions. This includes where the site lies on the edge of an urban area, such as Derby, the proposal is for the expansion of an existing business, or the proposal is for the redevelopment of established industrial or business land. It requires that all such proposals be in scale with existing built development, and that it does not give undue impacts on the local landscape, natural environment, or cultural heritage assets.

The site forms part of the Stenson Industrial Estate which is located within the urban area of Stenson, on the edge of Derby. The industrial estate has been established since the early 2000s, when planning permission was granted for B1 (light industry) and B8 (storage and distribution) purposes (ref. 9/2001/0891), albeit this original consent largely precluded activities outside of the buildings onsite.

The current proposal is to change the use of the buildings within the application site to Class E (g)ii and iii uses 'which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, soot, ash, dust or grit'.

The proposal is considered to comply with the provisions of part A of Policy E2. With respect to part B, it is noted that there would be no changes to the exterior of the building and no working outside. Neighbours have commented that the proposal would be out of keeping with the character of the surrounding residential area and overdevelopment of the site. There would however be no external alterations proposed to the building and no outside working associated with the use. The only changes to the hardstanding area would be to dismantle the existing shed that is in a poor state of repair and to set out the proposed parking provision. On this basis it is considered that that proposal would not have any undue impact on landscape character. Overall, it is considered that the proposal would comply with Policy E2 and would be acceptable in principle.

Highway Safety

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.

Stenson Road is a classified two-way road subject to 40 mile per hour speed restriction with a footpath adjacent. The application site is accessed via the existing entrance to the industrial estate, which is comprised of tarmac. There is a roundabout in proximity to the entrance, c. 40m to the north that links Stenson Road to Grampian Way.

The local community raised several highways-related concerns about the proposal during the consultation period, and it was cited in particular that the existing access is inadequate and there have been occurrences of vehicles parked within the entrance to the site. The County Highways Authority was consulted on the planning application and these matters were highlighted specifically. The Highway Authority highlighted that the proposal would have no material impact on the local road network, however requested further information to provide assurance that the use could accommodate sufficient parking for employees, customers etc. and the manoeuvring and unloading of delivery vehicles within the site. A Parking and Delivery Management Plan was also requested.

The applicant responded to this request and provided a layout for parking within the site together with the appropriate swept paths. The Parking and Delivery Management Plan confirms that there would be up to 4no. members of staff, 4no delineated parking spaces plus a reserve for staff/visitors, a bay for delivery vehicles (where the Long Wheel Base vehicle would be the largest vehicle delivering items i.e. no transporter visits would occur up to 4 times per day), and 2no. parking spaces for customers.

The County Highways Authority was reconsulted on the application following the submission of the additional details and they consider that the Parking/Delivery Management Plan would be acceptable and that there would be no highways objections. This is subject to conditions to ensure that the access point on Stenson Road remains clear of parked vehicles and that delivery vehicles do not park on Stenson Road. It is considered reasonable to attach the planning conditions recommended by the Highways Authority in light of the concerns raised by the local community on this matter, albeit it is noted that there are other users within the industrial estate and that the parking within the access and transporters along Stenson Road could be difficult to attribute to a single business from the perspective of planning enforcement. Nonetheless, it is recommended that conditions be attached to any forthcoming planning permission to ensure that the parking and delivery plan is adhered to. With such conditions in place, it is considered that the proposal would be acceptable with regard to the safety issues in relation to the public highway and would comply with the requirements of policy INF2 of the Local Plan.

Amenity

Policy BNE1 sets out principles for design excellence, which is supported by the detail within the South Derbyshire Design Guide SPD. Policy SD1 states that the Council will support development that does not lead to adverse impacts on the environment or amenity of existing and future occupiers within or around proposed developments.

The concerns of the local community are noted in respect to the noise, disturbance and air pollution that may occur from the proposed use; and asserted that the proposal would not be capable of being carried out without disturbance to adjoining users. The Council's Environmental Health Officer (EHO) has been consulted as part of the planning process and raised no objections, subject to any planning permission incorporating conditions that limit activities and the timing of deliveries within the site to daytime hours and with stricter controls at the weekends; and require the full specifications of plant or equipment to be agreed prior to installation; and restrict the use of the open space within the site boundary to parking. The conditions recommended by the EHO are considered both reasonable and necessary.

It is noted that by definition a Class E (g) use as is proposed would need to be carried out without detriment to the amenity of that area; and any non-compliance could be considered a material change in use that would warrant further planning applications. The proposals are considered to meet the requirements of policies BNE1 and SD1.

Other Matters

A neighbour commented that there is a lack of certainty and ambiguity within the application as the end user is unknown. It is standard practice to apply for a particular use type prior to having secured a

tenant. If any requirements of the tenant do not fit within the parameters of the planning permission, this could be addressed by submission of further planning applications. The recommendation from the EHO for the details of plant and equipment to be submitted prior to installation would enable an element of flexibility for the future occupants, whilst ensuring the local planning authority retains control over these aspects. Although no air quality impacts would be expected from the types of uses proposed, provision of these details prior to installation of equipment would also enable the authorities to consider any potential release of emissions or fumes, as was raised as a concern by one neighbour.

Also, that the proposal would only provide opportunity for four employees and therefore would have no employment benefit to the area. The proposal has been assessed against the relevant planning policy, E2, in which the level of job opportunities provided does not feature, and notwithstanding this even a small increase in jobs carries some, albeit limited, economic benefit.

It was highlighted that the management of surface water runoff is inadequate and noted that the soakaway within the site appears to be blocked. This matter has not been raised as a concern by the EHO. It was highlighted by the Highways Authority initially; however it is sufficiently distanced from the public highway so that it would not be affected. There would be no material changes to the exterior of the site, such that it would not be reasonable to request them as part of the change of use. It is however recommended that the concerns be brought to the attention of the applicant through use of an informative if planning permission is forthcoming.

It was asserted that the land within the site would be contaminated and that this could affect the proposed uses of the site (with specific reference to cross contamination). No such concerns were raised by the EHO. The use is proposed within the building on site, which would likely have sufficient barriers from the ground so that the risk of exposure to contaminants would be low. Management of contaminants, such as asbestos, is subject to specific legislative requirements outside of planning.

Concerns were raised about the management of waste and likelihood of waste being stored in the external areas. It would be unreasonable to expect zero waste to be stored within the site. Waste management would need to be undertaken in accordance with waste legislation for the relevant use types. Although there is no reason to expect disproportionate amounts of waste from the proposed use type, if this were to become a problem there are controls available for management of this as a potential statutory nuisance.

Concerns were raised related to loss of privacy to neighbouring properties. The buildings have previously been used lawfully for other purposes including as a tattoo parlour and the current proposal would not result in a material change from this previous situation. Additionally, the impact of a non residential use on privacy of neighbouring dwellings is likely to be limited, as the building would only be occupied during working hours.

Concerns were raised related to the accuracy of some of the details of the application, such as the previous B2 use of the site being unlawful and the site not currently being vacant. These matters do not alter the assessment of the principle of the development.

It was asserted that there is insufficient capacity within the estate's septic tank to cater for additional discharges. This matter could be highlighted as an informative to the applicant.

Conclusion

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 proposal for the change of use of the building to Class E (g) would comply with the provisions of Policy E2 related to industrial and business development, and would be acceptable in principle. The Highway Authority and Council's EHO were consulted as part of the process and supported Officers with advice on the management of material issues related to highway safety, amenity and other matters. Amendments have been sought to the application plans and the applicant agreed to specific demarcation of parking for deliveries, employees and visitors, as well as a turning

areas. It is considered with conditions in place these matters could be appropriately secured and managed and overall the proposal would be in accordance with the development plan. 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 with 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 use of the building shall be restricted to research and development and/or industrial processes Use Class E g (ii) and (iii) and the open land within the curtilage of the site shall be for the purposes of parking only.

Reason: In the interests of protecting the amenity of the area and adjoining occupiers and in accordance with Policy BNE1 of the Local Plan.

3. The development hereby permitted shall be carried out in accordance with the Location Plan (received 26 April 2023), Proposed Layouts, Elevations, Block Plan and Location Plan (ref. 1879, 002 Rev A), Existing and Proposed Site Layout (ref. 1879, 003 Rev B), Site Layout: Delivery and Parking Plan – southern site (ref. Parking and Turning Layout, CV0503 003 received 7 July 2023) and the Parking and Delivery Management Plan (7 July 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 sustainable development

4. The parking and turning provision in connection with the development shall be carried out in accordance with the Site Layout: Delivery and Parking Plan (ref. Parking and Turning Layout, CV0503 001 received 7 July 2023) and fully laid out prior to first occupation, unless, before then, the local planning authority grants consent for any revision of those arrangements or any alternative timescale for their provision. Once provided, the parking and turning provision shall be retained without any impediment to their use as such for the lifetime of the development.

Reason: In accordance with policy INF2 of the Local Plan and in the interest of highway safety.

5. The site access on Stenson Road should be kept clear of parked vehicles to ensure safe access and egress to and from the site and for pedestrians crossing the site access.

Reason: In accordance with policy INF2 of the Local Plan and in the interest of highway safety.

6. Prior to the installation of plant or equipment, full specifications of the plant or equipment shall be submitted to and approved in writing by the Local Planning Authority. The specification shall include details of noise levels as predicted at the boundary of the site with any sensitive receptors and include mitigation measures to reduce noise levels at those receptors to acceptable levels. The located plant or equipment, along with any mitigation measures required, shall be implemented prior to first use of said plant or equipment and thereafter maintained in accordance with the agreed levels.

Reason: In the interests of protecting the amenity of the area and adjoining occupiers and in accordance with Policy BNE1 of the Local Plan.

7. No deliveries shall be made to or dispatched from the premises other than between 8:30 hours and 17:30 hours Mondays to Fridays, and between 9:30 hours and 12:30 hours on Saturdays. There shall be no deliveries on Sundays, public holidays and bank holidays.

Reason: To safeguard the amenities of nearby occupiers and in accordance with Policy BNE1 of the Local Plan.

8. No activity at the premise shall be undertaken other than between 8:00 hours and 18:00 hours Mondays to Fridays, and between 8:00 hours and 17:00 hours on Saturdays. There shall be no activity at the premise whatsoever on Sundays, public holidays, and bank holidays.

Reason: To safeguard the amenities of nearby occupiers and in accordance with Policy BNE1 of the Local Plan.

Informatives:

- h. The applicant's attention is drawn to the comments from the neighbours that the soakaway within the site is blocked and that there is insufficient capacity within the site's septic tank to accommodate further effluents. It is recommended that the applicant liaise with the relevant parties regarding these civil matters.
- i. It was also noted by the local community that a structure related to the previously refused 9/2017/0699 remains in place on the site, which may need to be removed to avoid possible enforcement action.

REPORT TO:	PLANNING COMMITTEE	AGENDA ITEM: 5
DATE OF MEETING:	19 SEPTEMBER 2023	CATEGORY: DELEGATED
REPORT FROM:	STRATEGIC DIRECTOR (SERVICE DELIVERY)	OPEN
MEMBERS' CONTACT POINT:	JULIE MARSON (07977429109) julie.marson@southderbyshire.gov.uk	DOC:
SUBJECT:	PROPOSED TREE PRESERVATION ORDER 552 - 1-3 HOLDEN HOUSE, CANAL BANK, SHARDLOW	REF:
WARD(S) AFFECTED:	ASTON	TERMS OF REFERENCE:

1.0 Recommendations

1.1 That this tree preservation order should be confirmed.

2.0 Purpose of Report

2.1 To consider confirmation of this tree preservation order (TPO).

3.0 Detail

3.1 This tree preservation order was made on 28th March 2023 in respect of two yew trees situated on the land at 1-3 Holden House, Canal Bank, Shardlow. The two trees are prominent from London Road, Shardlow.

3.2 The TPO was made following contact to remove the two yew trees and an ash tree under DMOT/2022/1032.

3.3 One letter of objection has been received through consultation on the making of the TPO stating:

- We requested for the removal of the two yew trees and damaged ash tree. It is considered that the sticky yew berries fall heavily in September through to February/March. As well with the yew tree needles fall with all the autumn leaves results in slippery surface for ourselves and customers. The berries also stick to footwear and on the windscreens of cars of customers and can only be cleaned by professional valet. Customers could potentially not return in future due to the car park problems.
- The two yew trees have significantly damaged the Grade II Listed outbuilding and the adjacent storage garage concrete flooring. They are also compromising the stability of the supporting wall structures and both roofs, posing a significant danger to both buildings potentially collapsing at any point in the future. Access to the garage daily and is considered dangerous. The roots of the yew trees are making it dangerous when accessing the outbuildings.

- We would like to restore the Grade II listed outbuilding to its former glory, but due to root issues and with the location of two yew trees unable to consider this while in situ.
- Felling of Ash tree due to be unsafe due to top branches breaking, but still hanging onto main tree trunk.

3.4 In answer to the comments made SDDC Tree Officers have the following response:

- Officers have attended site and it is considered that the driveway is not a hard type and is predominately a gravel and pebble surface. The Berries falling are of a seasonal inconvenience and cannot be labelled a slip hazard on the loose surface.
- The nearby building to the yew tree is in disrepair and any branches touching the brickwork or roof could easily be pruned. Direct damage is improbable and indirect damage highly unlikely due to the alluvial gravel subsoils and to this date any damage is unsubstantiated.
- In relation to wanting to restore the Grade II Listed outbuilding to its former glory, this has not been a consideration with the tree applications submitted. This would need to be considered as a separate planning application, due to the tree application being submitted under a 211 Notification. This is for works to trees within a conservation area and the main issues central to the determination of this application is whether the proposed works are appropriate, given the conservation area, situation and whether public amenity offer is compromised, to the point where a Tree Preservation Order is required.
- Under this application the Tree Officer has completed a Tempo (Tree Evaluation Method for Preservation Orders), which assess whether trees are worthy of a TPO. Under this method the trees have a score of 18 which means that they merit protection by way of a TPO.
- In respect of the felling of the Ash tree (safety concern). There is no objection to its removal.

4.0 Planning Assessment

4.1 It is expedient in the interests of amenity to make the trees the subject of a tree preservation order in accordance with advice set out in the Government's Planning Practice Guidance.

5.0 Conclusions

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

6.0 Financial Implications

6.1 None.

7.0 Corporate Implications

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

8.0 Community Implications

8.1 Trees that are protected for their good visual amenity value enhance the environment and character of an area and therefore are of community benefit for existing and future

residents helping to achieve the vision for the Vibrant Communities theme of the Sustainable Community Strategy.

REPORT TO:	PLANNING COMMITTEE	AGENDA ITEM: 6
DATE OF MEETING:	19 SEPTEMBER 2023	CATEGORY: DELEGATED
REPORT FROM:	STRATEGIC DIRECTOR (SERVICE DELIVERY)	OPEN
MEMBERS' CONTACT POINT:	HOLLY BUDWORTH (01283) 595926 Holly.budworth@southderbyshire.gov.uk	DOC:
SUBJECT:	TREE PRESERVATION ORDER 553 - 7 CHAPEL STREET, TICKNALL, DERBY	REF:
WARD(S) AFFECTED:	REPTON	TERMS OF REFERENCE:

1.0 Recommendations

1.1 That this tree preservation order should be confirmed.

2.0 Purpose of Report

2.1 To consider confirmation of this Tree Preservation Order.

3.0 Detail

3.1 A five day notice was submitted on the 10th October 2022, proposing to fell seven trees. Six of the trees were positioned to the rear of the site and one of them being to the front (T1 – Spruce tree). The information provided by the applicant to justify a 5-day notice to this Authority was not considered sufficient and the applicant was therefore advised to engage a qualified tree surgeon or arboricultural consultant to provide robust written justification as well as supportive photographs. Sufficient technical evidence was not provided and the 5 day notice was dismissed.

3.2 A Section 211 notice was then later submitted to fell a total of 9 trees, under application ref DMOT/2023/0081:

- Spruce Tree, Front Garden (T1 on Applicant's Plan)
- Pine Tree, Rear Garden (T2 on Applicant's Plan)
- Spruce Tree, Rear Garden (T3 on Applicant's Plan)
- Scot's Pine, Rear Garden (T4 on Applicant's Plan)
- Damson Tree, Rear Garden (T5 on Applicant's Plan)
- Sycamore Trees, Rear Garden (T6, T7 and T8 on Applicant's Plan)
- Hawthorn Tree, front garden (T9 on Applicant's Plan)

3.3 Following a site visit and assessment made by SDDC's Biodiversity Officer, a TEMPO (Tree Evaluation Method For Preservation Order) was conducted, for T1 – Spruce Tree, to the front garden (as per Applicant's Plan) and T2/T3 – Pine Trees to the rear garden (as per Applicant's Plan).

- 3.4 Both T2/T3 (Pine Trees, Rear Garden - as per Applicants Plan) stand within the rear garden of No 7 Chapel Lane, are semi-mature in age and between 10-14 m in height. These trees can only be viewed with difficulty by the public realm. It was concluded that the trees fail on the amenity assessment due to their limited and localised visibility from the public realm.
- 3.5 T1 (Spruce Tree, Front Garden as per Applicants Plan) is situated to the front of the site. This tree is semi-mature in age, approximately 12-14m in height, in good condition and adjacent to Chapel Street within the Ticknall Village. The tree is also visible from the southern end of Ingleby Lane and partly visible from Main Street, Ticknall. The tree has sufficient space for incremental growth and is no closer to buildings than the pine tree adjacent (which is protected by a South Derbyshire Tree Preservation Order No 77). A TEMPO assessment was carried out, scoring the tree in question a score of 17 – meaning that the tree warrants protection by means of a TPO.
- 3.6 T1 (Spruce Tree, Front Garden as per Applicants Plan), was removed from the application for the felling of 9 trees.
- 3.7 A Tree Preservation Order (TPO) was made on the 2nd of February 2023 (TPO 549).
- 3.8 An error on the Tree Preservation Order (TPO 549) was identified (the species of the tree was incorrect on the order) therefore the order has lapsed.
- 3.9 A new Tree Preservation Order (TPO 553) was made on the 21st April 2023, in respect to T1 (Spruce tree to the front garden, as outlined on the Applicant's Plan)
- 3.10 Seven letters of objection have been received through consultation (in relation to both made TPOs), in summary, stating:
- The tree is neither a native species, nor one of the Scots Corsican Pine and therefore has no rarity, cultural or historic value;
 - The trees contribution to the character and appearance of the conservation area is limited as relatively few visitors to Ticknall stray along Chapel Street;
 - An imposing Scots pine/Corsican pine also grows in the front of the site. Consequently, removal of the subject tree would not leave the property denuded of the visual impact of a significant tree;
 - May potentially cause issues to the drain adjacent to the tree and the applicant later stated that this is the case;
 - It is a forest tree belonging to the Scandinavian forests and not in a village setting close to houses;
 - The tree has no visual appeal and is overly large for its setting and much of its growth is well above head height so is not seen in normal views of the street scene;
 - Concerns are raised with the root spread causing impacts on foundations.
- 3.11 In answer to the comments made officers have the following response:
- The tree to be removed, offers amenity value and is given a score (from the TEMPO assessment) of 17 – and therefore merits protection by way of a TPO.
 - This specimen is semi-mature in age, approximately 12-14m in height, in good condition and located adjacent to Chapel Street within Ticknall village. The tree is also clearly visible from the southern end of Ingleby Lane and partly visible from Main Street, again within Ticknall village. The tree has sufficient space for incremental growth and is no closer to buildings than the pine tree adjacent, which is protected by an SDDC TPO.

- ‘Amenity’ is not defined in law, but the Planning Practice Guidance (PPG) states TPOs “*should be used to protect selected trees and woodlands if their removal would have a significant negative impact on the local environment and its enjoyment by the public*” and before confirming authorities “*should be able to show that protection would bring a reasonable degree of public benefit in the present or future*”. This is public benefit is considered to exist, as outlined above, and removal of the tree would have a negative impact.
- Regard has been had to the PPG in making the TPO and in preparing this report.
- Whilst the tree in question may cause issues to foundations, etc, no robust justification (subsidence report and/or engineering report) has been submitted to demonstrate this. It is considered that more detailed survey and investigation work is required to determine whether the spruce is affecting the drain and wall, to what magnitude and whether there may be remedial works other than tree felling to ameliorate these issues.

4.0 Planning Assessment

- 4.1 It is expedient in the interests of amenity to make the tree the subject of a TPO in accordance with advice set out in the PPG and as per recommendations made by SDDC’s Biodiversity Officer.

5.0 Conclusions

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

6.0 Financial Implications

- 6.1 None.

7.0 Corporate Implications

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

8.0 Community Implications

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