



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

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Our Ref  
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Date: 04 December 2023

Dear Councillor,

### **Planning Committee**

A Meeting of the **Planning Committee** will be held at **Council Chamber**, Civic offices, Civic Way, Swadlincote on **Tuesday, 12 December 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 - 85**

### **Exclusion of the Public and Press:**

- 5** 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.
- 6** 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**

## **Section 2: Appeals**

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

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## 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
<a href="#">DMPA/2023/0814</a>	1.1	Hartshorne	Hartshorne	6
<a href="#">DMPA/2023/1259</a>	1.2	Melbourne	Melbourne	19
<a href="#">DMPA/2023/1165</a>	1.3	Walton on Trent	Seales	40
<a href="#">DMPA/2023/1063</a>	1.4	Walton on Trent	Seales	51
<a href="#">DMOT/2023/1375</a>	1.5	Church Gresley	Church Gresley	59

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

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

## Glossary of terms

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

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

**Item No.** 1.1

**Ref. No.** [DMPA/2023/0814](#)

**Valid date:** 05/07/2023

**Applicant:** Mr L Evans

**Agent:** Mr T Beavin

**Proposal:** Provision of timber storage building, extension to existing timber and machinery store, installation of foul package treatment plant and laying out of parking spaces and revised yard access locations, together with new landscape screening for the existing woodyard and regularisation of historic log storage area at Buildings Farm, Ticknall Road, Hartshorne, Swadlincote, DE11 7AU.

**Ward:** Woodville Ward

### **Reason for committee determination**

This planning submission is being reported to Planning Committee due to comments of concern/objection received from members of the public.

### **Site Description**

The application site is addressed as Buildings Farm, Ticknall Road, Hartshorne, Swadlincote, DE11 7AU. The site is located to the west of and is accessed from the Ticknall Road (A514) which links Hartshorne to Ticknall.

The existing use of the site currently under considered and edged within the red line comprises of a woodyard and workshop, portacabin office, and open storage areas. The application site comprises of three defined areas within the control of the applicant. These are accessed from the restricted byway leading off the Ticknall Road (A514) highway opposite the junction with Coal Lane to the east. Site 1 is the proposed location for the new timber store. Site 2 comprises of the existing woodyard. Site 3 is an area adjacent to the Ticknall Road (A514) highway. The whole site application area comprises of 8,090 sqm/ 0.809 ha of land.

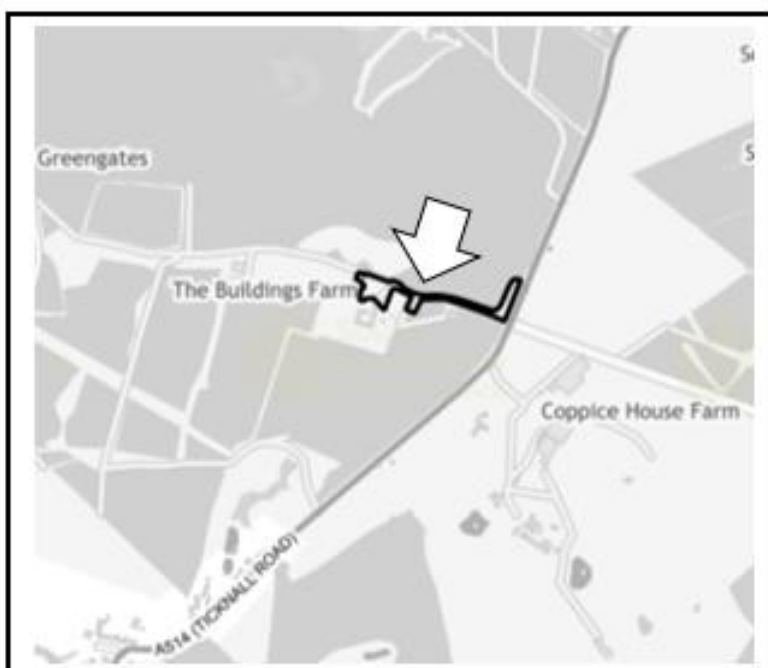
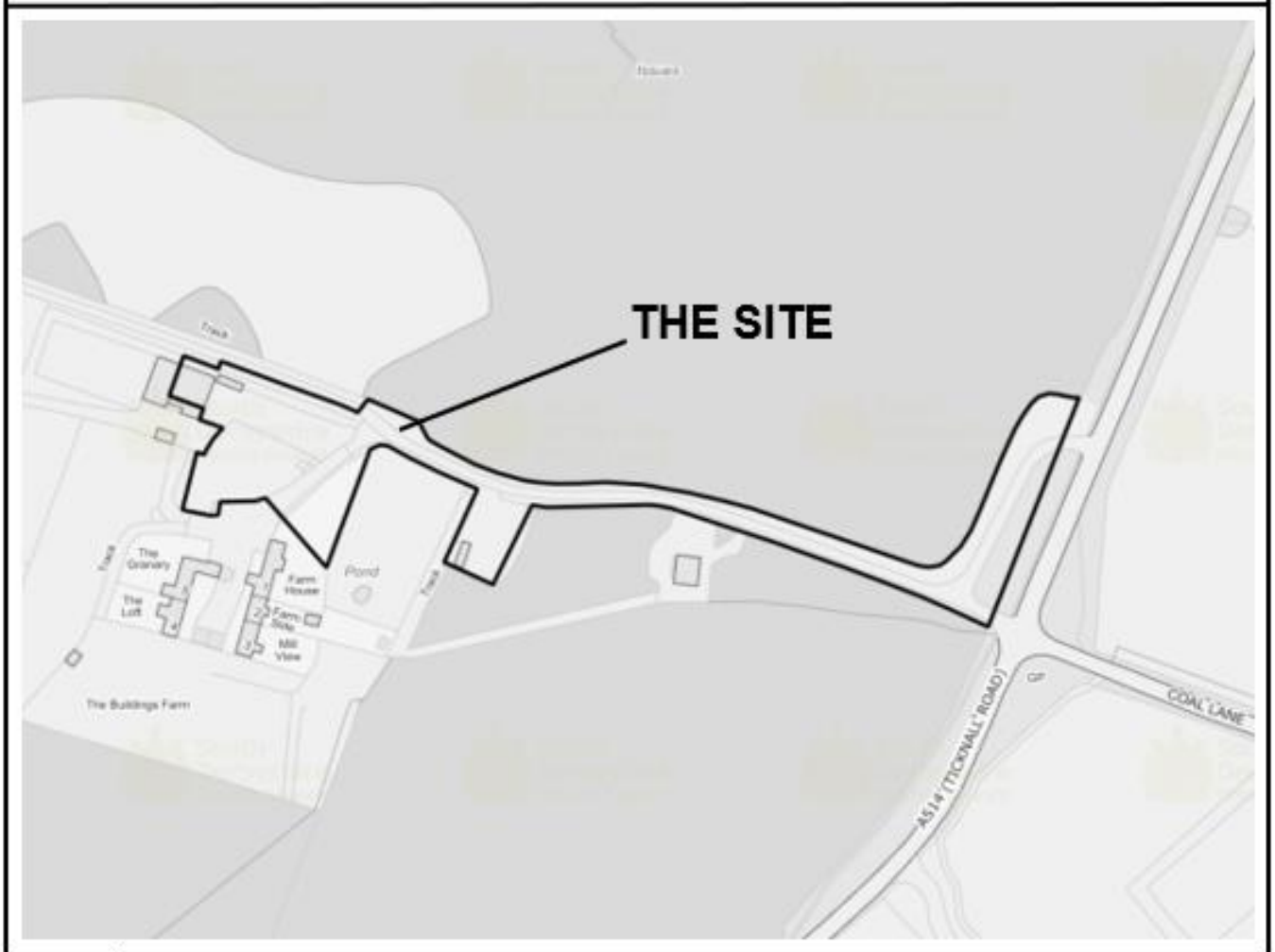
Residential properties under the addresses of No.1 to No.5, which comprise of Farm House, Farm Side, Mill View, The Loft and The Granary, are situated within relative proximity to the south of the site under consideration. No.1 Farm House has been edged within the blue line and falls under the ownerships of the applicant.

The application site hereby under consideration is located outside of a defined settlement boundary in the adopted local plan. Buildings Farm 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 situated within the National Forest.

### **The Proposal**

The applicant is seeking planning permission for the provision of timber storage building, extension to existing timber and machinery store, installation of foul package treatment plant and laying out of parking spaces and revised yard access locations, together with new landscape screening for the existing woodyard and regularisation of historic log storage area at Buildings Farm, Ticknall Road, Hartshorne, Swadlincote, DE11 7AU.

**DMPA/2023/0814 – Buildings Farm, Ticknall Road, Hartshorne, Swadlincote, DE11 7AU**



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South Derbyshire District Council, LA 100019461, 2020

The proposal is for Midland Firewood Supplies Ltd to improve their existing operations, which are carried out across the sites, by way of purpose-built accommodation. This will increase site safety for operatives and contain noise. A re-aligning of the access from the byway is proposed to better screen the operations for the residents of Buildings Farm.

From a practical perspective for the business, the proposal will significantly improve storage and the wood drying process, through the provision of the dedicated wood storage building on Site 1. Currently wood is stored under tarpaulins. The importance of being able to effectively store and dry timber prior to sale is therefore a key driver for the applicant to ensure the wood sold by the company meets the legal requirements. The proposed log storage building is to be constructed like an agricultural barn with Yorkshire boarding to allow a free flow of air over the timber stored within. The siting is well screened by surrounding trees and will also incorporate additional planting.

The area of Site 2 proposes an extension to the existing timber yard machinery store to facilitate the moving of all timber processing operations indoors. This includes the creation of a wood processing area, workshop, and timber storage space. The extension will also provide a replacement ancillary first floor office and staff welfare facilities. The scheme seeks the formal laying out of parking spaces and a revised yard access location. New landscape screening is also proposed for the existing woodyard at Site 2. It is also proposed to install a package treatment plant to provide for foul drainage.

Site 3 confirms the existing site visibility from the byway to the highway and the formalisation of the historic log storage in this location, along with new planting. Across the whole site, edged within the Red Line, the scheme proposes to plant over 100 new trees. In addition, new hedgerow planting will add to the environmental enhancements from the scheme.

The following details of the proposed materials and finishes have been outlined by the applicant:

- Walls: Concrete Plank Walling, Yorkshire Boarding.
- Roof: Profile Sheeting/ PV panels.

The scheme of development under consideration does not incorporate any increase/ decrease in car parking provision. A total of x10 spaces are proposed as is the case as existing.

The scheme of development under consideration does not incorporate any increase/ decrease in number of employees. A total of x6 full time employees are proposed as is the case as existing.

The following hours of opening are proposed:

- Monday to Friday: 08:00am to 17:00pm
- Saturday: 08:00am to 13:00pm
- Sunday/ Bank Holiday: N/A

### **Applicant's supporting information**

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

- Design and Access Statement - Ref: N/A - 23 June 2023
- Phase 1 Geo-Environmental Assessment - Ref: EAL.68.23 Version 1.0 - 05 July 2023
- Existing Site Survey Site 1 - Ref: 222-68-01 - 23 June 2023
- Survey of Existing Site 2 - Ref: 222-68-02a - 23 June 2023
- Proposed Site Plan Overview - Ref: 222-68-03a - 23 June 2023
- Proposed Site Plan Site 1 - Ref: 222-68-04b - 07 August 2023
- Proposed Log Storage Building Site 1 - Ref: 222-68-05a - 23 June 2023
- Proposed Site Plan Site 2 - Ref: 222-68-06a - 23 June 2023
- Existing Building - Site 2 - Ref: 222-68-07 - 23 June 2023
- Proposed Extensions and Alterations - Ref: 222-68-08 - 23 June 2023
- Proposed Side, Rear and First Floor Plan - Ref: 222-68-09 - 23 June 2023



- Proposed Retention of Log Storage Area - Ref: 222-68-10 - 23 June 2023
- Location Plan - Ref: 222-68-11a - 07 August 2023

### **Relevant planning history**

9/2000/1175 - The erection of an agricultural storage building at The Buildings Farm Ticknall Road Hartshorne Swadlincote - Prior Approval Granted: 15/01/2001.

9/2013/1016 - Certificate of lawfulness for use of land and buildings as an equestrian/livery business including conversion of existing barn for use as stables, creation of manege, and siting of container and lorry trailer unit. - Lawful Development Certificate Granted: 03/02/14.

9/2013/1024 - Retrospective application for change of use of land from farm yard and farm machinery store to wood yard and timber/machinery store. - Approved: 03/03/14.

9/2017/1262 - Change of use of land for tourism purposes and erection of a yurt and a tipi with associated sauna and compost toilet structures with parking and hardstanding. - Approved: 09/05/2018.

9/2017/1365 - Development of new log cabin to create a live/work unit along with creation of parking and turning area and decking. - Refused: 20/03/2018.

9/2018/0506 - The erection of a log cabin for use as a work unit only with creation of parking and turning area and decking and the erection of a portacabin. - Refused: 07/08/2018.

9/2018/1268 - The erection of a building for use as a work unit and retrospective application for the erection of a temporary portacabin. - Refused: 03/05/2019.

9/2019/0542 - Continued use of land for ancillary open storage in connection with the existing logging business and the continued siting of temporary portacabin. - Approved: 18/07/2019.

### **Responses to consultations and publicity**

#### Summary of consultation responses:

Woodville Ward -  
No comments received.

Hartshorne Parish -  
No comments received.

Hartshorne Residents Association -  
No comments received.

National Forest Company -  
Thank you for consulting the National Forest Company (NFC) on the above application. The NFC has no comment to make.  
(17 August 2023)

Derbyshire Wildlife Trust -  
Can confirm that although no specific ecology report has been provided, the application documents do include adequate information to assess likely impacts as well as details of proposed mitigation and enhancements.

Potential impacts on protected species are anticipated to be limited to nesting birds, depending on the timing of clearance works. The small loss of existing hedgerow to facilitate new access points into the yard would be offset by the proposed tree and hedgerow planting around the site boundaries and we recommend that this uses native species and includes a diverse range rather than single species.

The proposed site plans provide sufficient information about locations and specifications for bird/ bat boxes, the only additional information we would like to request is in relation to planting and maintenance for the proposed tree & hedge planting so that this can be secured as part of the planning consent. Tree and hedgerow planting should be carried out at a suitable time of year and following best practice guidelines for management/ maintenance to minimise risk of failures. Any trees/ hedging plants that do fail before the habitat has matured should be replaced.

If consent is granted we recommend that the following conditions are attached:

-Retained trees and hedgerows shall be protected during construction.

-No vegetation clearance during the period March to August (inclusive) unless preceded by a check for nesting birds by a suitably experienced ecologist no earlier than 24hrs in advance of planned works.

Any active nests shall be left in situ and undisturbed until the young have fledged.

-Biodiversity strategy including landscape planting and bird/bat boxes shall be implemented as per the layout plans (SG Design Studio drawings 222-68-06a dated 01/212/2022 and 222-68.04a dated 09/01/2023).

-Prior to commencement on site, supplementary information regarding tree and hedgerow planting shall be submitted to and approved in writing by the Council. Planting list to include at least 6 different native tree / hedge species. Any specimens that fail within the first five years shall be replaced.

(21 August 2023)

County Highways -

As the site is served by an existing access from the adopted public highway there are no highway objections to the planning application subject to logs being stored clear of the highway and do not obstruct any visibility splays as previously stated. It should also be noted that the application site is abutted by a Public Rights of Way Footpath Nos. 29, 30, 31 and 32 as shown on the Derbyshire Definitive Map. The routes must remain unobstructed on their legal alignment at all times and the safety of the public using them must not be prejudiced either during or after development works take place.

(04 September 2023)

County Public Rights of Way -

Can confirm that Hartshorne Restricted Byway No. 30 runs through the proposed development site, along the access, as shown on the attached plan. In addition, Hartshorne Public Footpath No. 31 runs adjacent to part of the proposed development and Hartshorne Public Footpaths No. 29 and No. 32 connect to the access / restricted byway 30. The Rights of Way Section has no objection to the proposals as it appears that the routes should be ultimately unaffected by the proposed works. However, I would request that a condition is placed on any consent, to the effect that not logs or machinery shall henceforth be stored along the restricted byway. This is in the interests of the safety of the public using the route. Advise for the attention of the applicant also provided.

(07 September 2023)

Peak and Northern Footpaths -

Do not have the technical expertise to comment properly on this application. The planning officer must be certain that the safety and amenity (noise and visual intrusion) of walkers using Hartshorne Restricted Byway 30 and Footpath 31 would not be affected by the development with the full widths of these rights of way being unobstructed at all times. Arrangements for vehicles entering and leaving the site from the main road and from the Restricted Byway must be safe for walkers.

(17 August 2023)

Environmental Health -

No concerns and do not propose any comments.

(15 September 2023)

Responses to publicity:

Following the formal consultation, which included neighbour notification letters, the publication of a press advert, and the displaying of a site notice, a total of x13 formal comment of representation have

been received. These comments incorporate x7 comments of objection and x6 comments of no objection/ support. A summary of the key points arisen is presented below:

Comments of Objection:

- a) Development not in-keeping.
- b) Impacts on the open countryside.
- c) Size and height of proposed built form.
- d) Implications on surrounding properties.
- e) Impacts on daylight and sunlight.
- f) Noise, air quality and climate change concerns.
- g) Highway safety implications.
- h) Impacts on footpaths and bridleways.
- i) Tree protection and mitigation.
- j) Ecological concerns.
- k) Business justification unclear.
- l) Unauthorised works.

Comments of Support:

- a) Support for local businesses.
- b) Great service to the community.
- c) Charity work of the applicant.
- d) No issues at all.
- e) Supplies the whole community around from shops to garages, pubs etc.
- f) Employees people locally.
- g) Requirements to keep firewood dry with the new legislation.
- h) Reassured that the proposed developments will be an improvement.
- i) Will reduce the noise and ad hoc storage and parking arrangements.

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), E2 (Other Industrial and Business Development), 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), and INF8 (National Forest).

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 the Development
- Design, Character, and Appearance
- Amenity
- Access and Highway Safety
- Public Rights of Way
- Ecology and Biodiversity
- Drainage
- Other Matters

### **Planning assessment**

#### Principle of the 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).

Planning approval was granted on 18 July 2019, under the reference of 9/2019/0542, for the proposed continued use of land for ancillary open storage in connection with the existing logging business and the continued siting of temporary portacabin at the site under the address of Buildings Farm Ticknall Road Hartshorne Swadlincote Derbyshire.

The applicant is now seeking planning permission for the provision of timber storage building, extension to existing timber and machinery store, installation of foul package treatment plant and laying out of parking spaces and revised yard access locations, together with new landscape screening for the existing woodyard and regularisation of historic log storage area at Buildings Farm, Ticknall Road, Hartshorne, Swadlincote, DE11 7AU.

The scheme seeks to improve the operations of Midland Firewood Supplies Ltd which are carried out across the sites, as well as to increase site safety for operatives and to contain noise. Provisions are also proposed to better screen the operations from the nearest neighbouring residents. The proposal will significantly improve storage and the wood drying process, through the provision of the dedicated wood storage building enabling timber to be kept dry but also allowing the free flow of air over the timber stored facilitated by the Yorkshire boarding as proposed. The importance of being able to effectively store and dry timber prior to sale is a key driver for the applicant to ensure the wood sold by the company meets the legal requirements. The scheme of development under consideration does not incorporate any increase in car parking provision or overall numbers of employees.

The development of the existing site of Buildings Farm as proposed is considered to be acceptable in principle, and in accordance with Policy E2 (Other Industrial and Business Development) and Policy BNE5 (Development in Rural Areas) of the South Derbyshire Local Plan. These policies seek to

support the expansion of existing businesses, and redevelopment of established industrial or business land or premises, provided such does not give rise to undue impacts on the landscape character of the area or residential amenity. Providing that material planning considerations are met, it is considered that the proposed scheme of development is acceptable in principle.

### 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 E7 (Rural 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.

The National Planning Policy Framework 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.

The Council acknowledges and has considered comments and concerns arisen from the consultation undertaken regarding potential design related implications. In terms of scale, bulk, massing, and proportions the proposed scheme of development comprises of an acceptable form of design for a rural use. The scale and design of the built form as proposed is considered to be consistent with that expected for the use of the site. The materials as proposed and referenced above are considered to be appropriate for a development of this nature. Screening is provided by surrounding landscaping and planting. Further to this an improved provision of landscaping and planting is incorporated into the development proposal to further mitigate any potential design implications associated with this development proposal. 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 a satisfactory scheme of landscaping and planting.

Overall, the proposal is considered to 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 site under consideration currently facilitates a woodyard and workshop, portacabin office and open storage areas which serve the established business of Midland Firewood Supplies Ltd. Residential properties are situated within relative proximity to the south of the site under consideration. No.1 Farm House has been edged within the blue line and falls under the ownerships of the applicant. The siting is well screened by surrounding trees and the proposed scheme of development also incorporates additional planting to further screen the proposed built form and enable such to assimilate into the landscape.

It is considered that the areas under consideration as part of this planning application are situated a reasonable distance away from the neighbouring residential properties. It is however accepted that due to the nature of the business some amenity related implications may occur, but that this will not result in a significant detrimental loss of amenity to neighbouring residents. The Environmental Health team

have commented that there are no objections and they do not propose any comments on environmental health related grounds.

Proposed hours of opening of Monday to Friday: 08:00am to 17:00pm, Saturday: 08:00am to 13:00pm, and Sunday/ Bank Holiday: N/A have been presented by the applicant. These hours of opening are considered to be reasonable and acceptable for this type of development. Should planning approval be recommended a planning condition shall be attached in this regard.

Overall, given the nature of the development proposal, the relationship with nearby 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 significant detriment with regards to loss of daylight, loss of sunlight, overbearing, overlooking or noise disturbance. The proposed scheme of development is therefore considered to be acceptable on amenity related grounds.

### Access and Highway Safety

A technical assessment of the development proposal and a consideration of the potential associated access and highway related implications has been undertaken by the County Highways team at Derbyshire County Council. A formal consultation response has been provided with the County Highways team formally advising that as the site is served by an existing access from the adopted public highway there are no highway objections to the planning application subject to logs being stored clear of the highway and not obstructing any visibility splays as previously stated. The County Highways team have also noted that the application site is abutted by a Public Rights of Way. 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.

Should the Council be minded to recommend planning approval a relevant planning condition shall be incorporated to ensure that logs being stored are clear of the highway and do not obstruct any visibility. Further to this the attention of the applicant shall be drawn to the presence of the Public Rights of Way.

It is 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 would be unreasonable to suggest that the scheme of development would be unacceptable on highway related grounds. Subject to the incorporation of relevant planning conditions, the proposed scheme of development is considered to be acceptable on access and highways related grounds.

### Public Rights of Way

With regards to Public Rights of Way, Hartshorne Restricted Byway No. 30 runs through the proposed development site and along the access. In addition, Hartshorne Public Footpath No. 31 runs adjacent to part of the proposed development and Hartshorne Public Footpaths No. 29 and No. 32 connect to the access/ restricted byway 30. The Rights of Way team at Derbyshire County Council do not object to the proposals as it appears that the routes should be ultimately unaffected by the proposed works.

Should the Local Planning Authority be minded to recommend planning approval a condition shall be incorporated to the effect that no logs or machinery shall henceforth be stored along the restricted byway. This is in the interests of the safety of the public using the route.

Section 130 of the Highways Act places duties on the Highways Authority to protect the rights of the public to the use and enjoyment of any highway for which they are the highway authority, including any

roadside waste which forms part of it, and sub-section 3 of that section imposes a duty on them to prevent obstruction of any highway for which they are the authority. Section 137ZA empowers them to require the removal of any obstruction and Section 137 provides that obstructing a highway is an offence.

### 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), Policy BNE5 (Development in Rural Areas), 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.

A technical assessment of the development proposal and a consideration of the potential associated ecology and biodiversity related implications has been undertaken by the Derbyshire Wildlife Trust at Derbyshire County Council. A formal consultation response has been provided with the Derbyshire Wildlife Trust formally advising that although no specific ecology report has been provided, the application documents do include adequate information to assess likely impacts as well as details of proposed mitigation and enhancements.

Potential impacts on protected species are anticipated to be limited to nesting birds, depending on the timing of clearance works. The small loss of existing hedgerow to facilitate new access points into the yard would be offset by the proposed tree and hedgerow planting around the site boundaries and we recommend that this uses native species and includes a diverse range rather than single species.

The Derbyshire Wildlife Trust have advised that the proposed site plans provide sufficient information about locations and specifications for bird/ bat boxes, the only additional information we would like to request is in relation to planting and maintenance for the proposed tree and hedge planting. Tree and hedgerow planting should be carried out at a suitable time of year and following best practice guidelines for management/ maintenance to minimise risk of failures. Any trees/ hedging plants that do fail before the habitat has matured should be replaced.

The Derbyshire Wildlife Trust have formally advised that if consent is granted the following planning conditions being imposed:

- Retained trees and hedgerows shall be protected during construction.
- No vegetation clearance during the period March to August (inclusive) unless preceded by a check for nesting birds by a suitably experienced ecologist no earlier than 24hrs in advance of planned works. Any active nests shall be left in situ and undisturbed until the young have fledged.
- Biodiversity strategy including landscape planting and bird/bat boxes shall be implemented as per the layout plans (SG Design Studio drawings 222-68-06a dated 01/212/2022 and 222-68.04a dated 09/01/2023).
- Prior to commencement on site, supplementary information regarding tree and hedgerow planting shall be submitted to and approved in writing by the Council. Planting list to include at least 6 different native tree / hedge species. Any specimens that fail within the first five years shall be replaced.

These proposed recommended relevant planning conditions have been reviewed and considered by the applicant/ agent. It has been formally advised that this is accepted, and should the Local Planning Authority be minded to recommend planning approval such shall be incorporated.

The whole site application area comprises of 8,090 sqm/ 0.809 ha of land. Policy INF8 (The National Forest) of the South Derbyshire District Local Plan sets out dedicated tree planting and landscaping requirements. In the instance of this planning application the site area is below the threshold requiring a set percentage of National Forest planting. The policy sets out that Industrial, Commercial and Leisure Development under 1 ha requires normal landscaping appropriate to the sites setting rather than a set

percentage of the development area to be woodland planting and landscaping. The National Forest Company have formally advised that there are no comments to make in regard to this planning application.

The Local Planning Authority have reviewed and considered the landscaping provision incorporated into the proposed scheme of development. It is considered that this is appropriate to the sites setting. Should planning approval be recommended planning conditions shall be incorporate to ensure the delivery and retention of the landscaping scheme. Subject to the above-mentioned planning conditions, the scheme of development is considered to be acceptable on ecology and biodiversity grounds.

### Drainage

The National Planning Policy Framework seeks to ensure that new development is not at risk from flooding, or does not increase flood risk elsewhere. The application site is situated within Flood Zone 1 and as such there are no flooding concerns in principle. Following consultation, the Environmental Health team have not provided any comment or advise with regards to drainage or flood risk related implications. It is considered that the proposals would accord with the relevant local and national level planning policy in this regard.

### Other Matters

No other matters to be considered.

### Planning Balance

The principle of the proposed scheme of development is firstly considered to be acceptable. An acceptable form of design is presented and further to this the proposal is considered to not have a significant adverse impact on the residential amenity of the nearest neighbouring properties. In addition to this the scheme of development as proposed is considered to be acceptable on access and highways safety grounds and has achieved the support of the County Highways team at Derbyshire County Council. 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 provision of timber storage building, extension to existing timber and machinery store, installation of foul package treatment plant and laying out of parking spaces and revised yard access locations, together with new landscape screening for the existing woodyard and regularisation of historic log storage area at Buildings Farm, Ticknall Road, Hartshorne, Swadlincote, DE11 7AU 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:
  - Design and Access Statement - Ref: N/A - 23 June 2023
  - Phase 1 Geo-Environmental Assessment - Ref: EAL.68.23 Version 1.0 - 05 July 2023
  - Existing Site Survey Site 1 - Ref: 222-68-01 - 23 June 2023
  - Survey of Existing Site 2 - Ref: 222-68-02a - 23 June 2023
  - Proposed Site Plan Overview - Ref: 222-68-03a - 23 June 2023
  - Proposed Site Plan Site 1 - Ref: 222-68-04b - 07 August 2023
  - Proposed Log Storage Building Site 1 - Ref: 222-68-05a - 23 June 2023
  - Proposed Site Plan Site 2 - Ref: 222-68-06a - 23 June 2023
  - Existing Building - Site 2 - Ref: 222-68-07 - 23 June 2023
  - Proposed Extensions and Alterations - Ref: 222-68-08 - 23 June 2023
  - Proposed Side, Rear and First Floor Plan - Ref: 222-68-09 - 23 June 2023
  - Proposed Retention of Log Storage Area - Ref: 222-68-10 - 23 June 2023
  - Location Plan - Ref: 222-68-11a - 07 August 2023

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

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

3. 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.

4. The use hereby permitted shall not be open outside of the times of Monday to Friday: 08:00am to 17:00pm, and Saturday: 08:00am to 13:00pm.

Reason: To protect the amenities of neighbouring properties and the locality.

5. No logs or machinery shall be stored along the restricted byway. The visibility splays outlined within the approved documentation shall not be obstructed at any time.

Reason: In the interests of access and the safety of the public using the route, and as recommended by the County Highways team and the Rights of Way team at Derbyshire County Council.

6. Retained trees and hedgerows shall be protected during construction.

Reason: In the interests of ecology and biodiversity, to protect the amenity and visual interest of the locality, and as recommended by the Derbyshire Wildlife Trust at Derbyshire County Council.

7. No vegetation clearance during the period March to August (inclusive) unless preceded by a check for nesting birds by a suitably experienced ecologist no earlier than 24hrs in advance of planned works. Any active nests shall be left in situ and undisturbed until the young have fledged.

Reason: In the interests of ecology and biodiversity, to protect the amenity and visual interest of the locality, and as recommended by the Derbyshire Wildlife Trust at Derbyshire County Council.

8. Biodiversity strategy including landscape planting and bird/bat boxes shall be implemented as per the layout plans (SG Design Studio drawings 222-68-06a and 222-68.04b).

Reason: In the interests of ecology and biodiversity, to protect the amenity and visual interest of the locality, and as recommended by the Derbyshire Wildlife Trust at Derbyshire County Council.

9. Prior to the commencement of the development hereby permitted, a detailed full and comprehensive scheme of landscaping, planting, and turfing/ seeding shall be submitted to and approved in writing by the Local Planning Authority. Planting list to include at least 6 different native tree/ hedge species.

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.

10. The approved full and comprehensive scheme of landscaping, planting, and turfing/ seeding 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.

### **Informatives**

1. 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.
2. In the interests of existing Public Rights of Ways, and as recommended by the Rights of Way team at Derbyshire County Council:
  - The routes must remain open, unobstructed and on their legal alignments.
  - There should be no disturbance to the path surfaces without prior authorisation from the Rights of Way Section.
  - Consideration should be given to the safety of members of the public using the paths during the works. A temporary closure of paths will be permitted on application to DCC where the path(s) remain unaffected on completion of the development.
  - There should be no encroachment of the paths, and no fencing should be installed without consulting the Rights of Way Section.
3. The application site is abutted by a Public Rights of Way Footpath Nos. 29, 30, 31 and 32 as shown on the Derbyshire Definitive Map. The routes must remain unobstructed on their legal alignment at all times and the safety of the public using them must not be prejudiced either during or after development works take place. Further information can be obtained from the Rights of Way Duty Officer in the Economy, Transport and Environment Department at County Hall, Matlock or by emailing [ETE.PROW@derbyshire.gov.uk](mailto:ETE.PROW@derbyshire.gov.uk).

**Item No.** 1.2

**Ref. No.** [DMPA/2023/1259](#)

**Valid date:** 04/10/2023

**Applicant:** Care of Ian Earl **Agent:** Phillip Tuckwell

**Proposal:** **The demolition existing building and the erection of five new dwellings with associated amenity space and car parking at Melbourne Community Centre, Church Street, Melbourne, Derby, DE73 8EJ**

**Ward:** Melbourne

### **Reason for committee determination**

This item is presented to the Committee as the case has been called in by Councillor Carroll. The application comprises a resubmission (amended plans) of applications DMPA/2023/0673 and 2023/0676 that were refused by the August 2023 Committee.

### **Site Description**

The application site is located on the northern side of Church Street within the historic core of Melbourne and within the Conservation Area. Broadly, the site is bordered by Church Street to the south, Castle Street to the east and a number of properties to the north and west including 'The Spirit Vaults' (no. 53 Church Street), no. 6-9 Chantry Close, and no. 21 Castle Street. The Grade II listed 'Pump House' (no. 65 Church Street) is located on the south-eastern corner of the site, and there are numerous listed buildings surrounding the site including the Grade I listed Church of St Michael and St Mary and the Grade II\* listed Melbourne Hall.

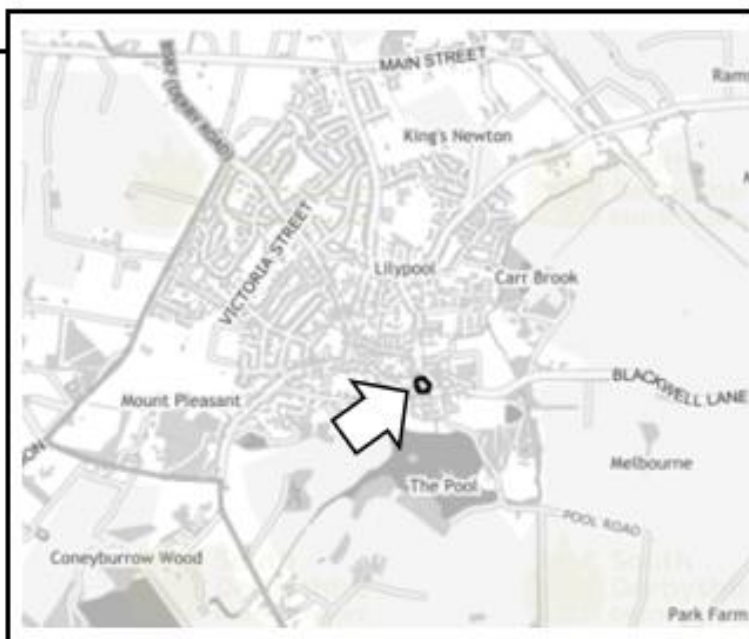
The application site currently incorporates a single storey 1960s timber building, associated parking and a disused bowling green. The site was previously used by the Melbourne Senior Citizen's group. Vehicular access is from Church Street. There is a mature copper beech tree towards the southern boundary, a mature silver birch tree towards the northern boundary, a group of mixed species trees on the western boundary, and low hedgerow on the southern boundary. A low stone wall serves as the boundary to the site on Castle Street which continues around the northern and western borders at an increased height.

Historically, the site incorporated a large property known as 'the Lodge' which adjoined the Pump House and a row of 4no. cottages fronting Castle Street. The Lodge was occupied during the Second World War by the Royal Engineers, and was destroyed during a bombing in 1940. A memorial plaque is present on a brick wall within the site, close to the copper beech tree.

### **The proposal**

The application seeks to demolish the existing building within the site and replace with 5no. dwellings, associated amenity space and car parking, with a new access from Church Street. There would be 1no. detached dwelling (plot 5) that would front Church Street and a row of 4no. terrace dwellings (plots 1-4) to the rear of this, orientated in a north-west to south-east direction facing towards Castle Street. Private amenity space would be situated to the rear of the plots (i.e. to the north of plot 5 and to the west of plots 1-4), with additional landscaping, areas of parking and turning space, and a bin store within the east of the site. The existing boundary treatments would be retained, except the hedgerow on the southern border and tree group on the western border, which would be removed to facilitate the development. The copper beech tree would be retained and the memorial plaque would be moved forward and positioned with a bench and 2no. holly trees on the southern boundary. The copper beech tree would be retained whilst the silver birch tree would be removed. A landscaping scheme has been put forward as part of the application.

**DMPA/2023/1259 – Melbourne Community Centre, Church Street, Melbourne, Derby, DE73 8EJ**



South Derbyshire District Council

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The main differences between the previously refused and current plans comprise retention of the copper beech tree; realignment of plots 1-4 forward to Castle Street; repositioning of plot 5 further to the east and thus away from the public house; and associated changes in layout including provision of a repositioning of the proposed access on Church Street, incorporation of a parking court within the south-western corner of the site, and changes to the proposed arrangement of private amenity space and landscaping scheme; retention of the footpaths map facing Castle Street. The Executive Summary (TUK Rural) provides explanation from the applicant's agent as to how the scheme has changed in response to the reasons for refusal, as well as some additional information that has been submitted to support the application.

## **Applicant's supporting information**

### Application Drawings

The application includes the following technical planning drawings:

- Existing Site Plan 2209-MHSCC-A-E01, Rev C;
- Proposed Site and Location Plans 2209-MHSCC-A-P01, Rev D;
- Plots 1-4 Floor Plans 2209-MHSCC-A-P02, Rev C;
- Plots 1-4 Elevations 2209-MHSCC-A-P02a, Rev;
- Plot 5 Floor Plans 2209-MHSCC-A-P03, Rev C;
- Plot 5 Elevations 2209-MHSCC-A-P03a, Rev C;
- Plot 5 Street Scene 2209-MHSCC-A-P04, Rev C

### Executive Summary (TUK Rural) (received 4 October 2023)

Explanatory statement of the changes to the scheme from the previously refused plans (Ref. DMPA/2023/0676 and 2023/0673).

### Materials and Design Statement, Revision B (TUK Rural) (received 4 October 2023)

Statement to substantiate the selection of materials and details of design for the proposed development.

### Community Facilities Analysis (Pegasus, P22-0486) (received 4 October 2023)

Report on the impact of the proposed development on community facilities.

### Heritage Statement (TUK Rural) (received 4 October 2023)

Statement that provides information on the historical context of the application site, including identification of heritage assets within the vicinity, and impact of the proposed development.

### Arboricultural Impact Assessment TWC 399 R-002A (Tree and Woodland Company) (received 4 October 2023)

Report of the Tree Survey of the site, categorisation of trees and arboricultural impact assessment.

### Planning Statement (TUK Rural) (received 4 October 2023)

Applicant's assessment of the proposed scheme against the development plan policies. This assessment was based on the plans submitted under DMPA/2023/0676.

### Additional Information regarding Community Facilities in Melbourne (TUK Rural) (received 4 October 2023)

Report with specific information related to the capacity of alternative venues in Melbourne to accommodate community activities.

### Preliminary Ecological Appraisal (Fauna Forest Ecology) (received 23 May 2023, updated 21 July

2023)

Technical Report presenting the outcome of ecology surveys of the application site. Updated in January and July 2023 with the findings of the bat surveys.

Letter dated from Fauna Forest Ecology (MELSSSC2023, 6 October 2023)

Supplementary information to clarify assessment of bat potential.

Noise Impact Assessment (Noise Air, P6680 R2-V1) (received 4 October 2023)

Assessment of odour impact on the proposed development. This assessment was based on the plans submitted under DMPA/2023/0676.

Odour Assessment (Noise Air, P6680 R1-V1) (received 4 October 2023)

Assessment of noise impact on the proposed development.

Desk Based Archaeological Assessment (University of Leicester Archaeological Services, 2023-095)

(received 4 October 2023)

An assessment of archaeological potential of the site and impact of the proposal on archaeological resources.

### **Relevant planning history**

DMPA/2022/0144 The demolition of the existing community centre building and the redevelopment of the site for housing development of three dwellings and associated garages – withdrawn September 2022

DMPA/2023/0065 and DMPA/2023/0228 Demolition of existing building and development of six new dwellings with associated amenity space and car parking – withdrawn February 2023 on the request of Officers as it was considered that insufficient detail had been provided in relation to the community facilities analysis and other matters.

DMPA/2023/0673 and DMPA/2023/0676 Demolition of existing building and development of five new dwellings with associated amenity space and car parking – refused by Planning Committee August 2023, with reasons for refusal:

- The proposed scheme represents poor design due to the lack of a strong street frontage and set back nature of the proposed row of terraced dwellings contrary to policy BNE1 of the South Derbyshire Local Plan Part 1.
- The loss of the copper beech tree would be harmful to the character and appearance of the area including the Melbourne Conservation Area and is therefore contrary to policies BNE1 and BNE2 of the South Derbyshire Local Plan Part 1, and policies BNE7 and BNE10 of the South Derbyshire Local Plan Part 2.
- The proposed development due to its poor design and appearance would be detrimental to the character and appearance of the Conservation Area contrary to policies BNE2 of the South Derbyshire Local Plan Part 1 and BNE10 of the Local Plan Part 2.

### **Responses to consultations and publicity**

A summary from both planning cases DMPA/2023/00673 and DMPA/2023/0676 is presented below.

#### Melbourne Parish Council

In principle the application is supported however, councillors feel the design and appearance is not in keeping with the conservation area (13/11/2023).

#### County Highways Authority

*Initial Response* - It would appear that the proposal does not use this existing access to the site but

proposes a new access further to the west of the existing access. Taking this into account it must be demonstrated that appropriate visibility splays of 2.4 x 43m are provided on both sides of the access. In addition, the width of the proposed access must be shown to ensure safe access for vehicles (20/10/2023).

*Subsequent Response* - A response to this application was issued by the highway authority that requested additional information in respect of the proposed site layout. This information has now been submitted and following review is considered to be acceptable. Taking this into account the highway authority has no objections to the application subject to conditions being imposed (24/10/2023).

#### County Archaeologist

Looking at contemporary ground levels and the topography of the site, it seems the potential for the preservation of archaeological remains is clear. I agree with the submitted Desk Based Assessment; if not entirely in its emphasis. 'The PDA lies within the historic medieval core of the town and is close to the remains of the castle and the parish church and a disused former churchyard. The early maps of the PDA show buildings along the street frontages the PDA (sic), which may have had medieval origins'. I also agree with the submitted DBA that additional archaeological investigation is warranted. This should entail further archaeological evaluation works.

It is my view that the potential for archaeological deposits and features to exist on the site is attested. It is also my view that the extent and quality of preservation, and as a consequence archaeological significance, should be further evaluated. If, however, you should you be minded to approve this application, 'as is', then these further archaeological works and any mitigation (should it be required), could be conditioned into planning consent, under Para 194 and Para 205 of NPPF (17/10/2023).

#### SDDC Conservation Officer

The application site is located within the Melbourne Conservation Area. The application site is located adjacent to a Grade II Listed Building 65, CHURCH STREET, Melbourne - 1281103 | Historic England. The application site is located within the historic core of Melbourne and is in close proximity to a large number of heritage assets.

No objection to the application to demolish the existing building on the proposed development site. The existing arrangement of the site is a negative aspect of the character and appearance of the Conservation Area, as it reads as a gap site as the tight knit pattern of housing experienced on Church Street when approached from the Market Place. The building has reached/passed its best and provides no heritage merit for conservation purposes.

The history of the site is well documented, and the application makes reference to the previous use of the land, and the loss of the buildings on the site. An existing memorial acknowledges the events leading to the clearance of the site after WWII. The applicant has included within the proposal an area to provide a new accessible location for the memorial within the site.

The condition of the site is one that now requires attention.

- I make no objection to the application for demolition.
- I make no objection to the principle of redevelopment of the site.
- I make no objection to the principle of change of use to housing on the site.
- I make no objection to the application to construct up to five dwellings on the site.
- I assess the proposal as resulting in no additional harm to the setting of heritage assets, including the Listed Building adjacent to the site, and Listed Buildings within visual distance of the development site.
- I assess the proposal as resulting in less than substantial harm (low) to the character and appearance of the Conservation Area.

The redevelopment of this site has been mooted for some time, and a previous application for the site was withdrawn, and a more recent application was refused at Planning Committee. This application seeks to address the reasons for refusal. The current application seeks permission for one dwelling to front Church Street, and a terrace behind, addressing Castle Street but with access from Church Street.

The amended proposal does not require the removal of an existing tree from the site, which was a concern raised by the Planning Committee. I maintain my previous comment, that whilst I can appreciate the visual merit of the tree, this is not an example of the grain of historic townscape, and redevelopment of this site should not be confined by one tree that is out of character with the surrounding historic townscape. My assessment is that by keeping the tree on the site, the positives of the previous layout and street frontage to Church Street are lost, and the version DMPA/2023/1259 results in a level of harm to the character and appearance of the Conservation Area. However, I add that this layout is to mitigate wider consultation feedback regarding the loss of the tree, and therefore I acknowledge the reasons for the applicant submitting this version for consideration.

I have considered alternative options, and I have worked alongside the agent to find a potential solution for this site. I also note that an internal meeting was held to discuss the proposal, and the design officer has been involved in the process. The new application seeks to address the wider public comments and the reasons for refusal.

This is not a reinstatement of the previous houses that were on the site pre WWII. It is new build within a Conservation Area. I maintain my previous assessment that the historic view and the existing view from Castle Square to Church Square has been altered substantially in the last 80 years. I remain of the view that the character and appearance of the Conservation Area will be further impacted by the amended scheme. However, I recognise that mine is one consultation response of many, and will be only a small part of the planning decision.

It is the fundamental requirement that the local planning authority must pay special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area, as per the Planning (Listed Buildings and Conservation Areas) Act 1990, Section 72.

I have assessed the application before me considering the impact of the proposal on the existing character and appearance of the site. It is my assessment that the proposal preserves the existing setting of the designated heritage assets and the appearance of the Conservation Area, and enhances the existing condition and built form/townscape of the character of the Conservation Area. The impact of the proposal to the Conservation Area and neighbouring designated heritage assets is less than substantial (low).

I find this to be a difficult proposal to comment upon, as this version has been submitted in response to concerns raised at Planning Committee of a previous (refused) scheme. The changes made are in response to the concerns and to try to alleviate the reasons for refusal. However, it is my professional view that the changes requested do not lead to a scheme that would result in a more positive result than the refused scheme.

My assessment of the proposed streetscene is that the previous (refused) iteration of the streetscene fronting Church Street was preferable to the scheme before me reference DMPA/2023/1259. The proposed scheme results in visible car parking spaces from Church Street, and a more open aspect to the development site, rather than the more contained streetscape previously submitted (refused). As such, I consider the layout to result in more significant harm than the previous iteration, (albeit remains less than substantial harm).

It is my assessment that the quality of Plot 5; its layout, setting and amenity space is lesser than the previous (refused) scheme.

Infill development is often limited and constrained by the requirement of car parking. It is my assessment that the car parking layout is one of the most negative aspects of this proposed scheme. It



is my assessment that the appearance of the car parking to this site will result in a level of harm to the character and appearance of the Conservation Area.

I understand the rationale for local, public, civic and council requests for the build line to be brought forward to Castle Street. My interpretation of the site as existing remains as per my pre application advice, which would be to position the building close to the existing footprint (01/11/2023).

#### SDDC Tree Officer

I note the plan submitted 23-OCT-2023 Proposed site and location plan drawing no. 2209 MHSCC A PO1 dated 11/06/2023 shows the beech T1 retained and the silver birch T2 removed. I have no objection to the removal of the mature silver birch T2 as it is a relatively short-lived tree that is overhanging a driveway. Construction of hard surfacing within the RPA of the beech T1 must be carried out using no-dig methods, with no change to the existing ground level and permeable block paving as the wearing surface.

It is advised that red maple tree (*Acer rubrum*) is not suitable for this site as this species is large growing and requires acidic soils to enable it to access manganese as a trace element. It is suggested that a smaller growing tree with a narrow habit such as *Acer campestre* Queen Elizabeth is used as a replacement. *Prunus avium* is a medium to large tree with a domed crown, it needs space to grow and would not be suited to this site. A more suitable replacement tree for this constrained site is *Prunus avium* Plena. The proposal to plant juniper, holly and field maple (*Acer campestre*) are suitable replacement trees to plant on this site (17/11/2023).

#### Derbyshire Wildlife Trust

The PEA suggests that an area of semi-improved grassland and scrub will be lost as well as several mature trees and hedgerow. It is not clear from the information provided whether there will be an overall net loss in biodiversity. The habitats present may be recognised by Defra and Natural England within the current Biodiversity Metric tools. If so then the loss of these habitats should be quantified so that mitigation proposals can address any loss in line with the NPPF and Local Plan policies. We therefore advise that a Biodiversity Net Gain Assessment using the Defra Metric Calculator Tool is undertaken to fully assess any habitat loss/alteration. The small sites metric may be used in this situation but advice from a qualified Ecologist is recommended.

The site includes a small building assessed as having only 'low' potential for use by roosting bats and with no evidence of use found during a building inspection or during a nocturnal survey completed in July 2023. However, during the nocturnal survey, a soprano pipistrelle roost was recorded within an offsite building and a commuting corridor used by bats was also identified along Castle Street and the eastern site boundary. This has implications when considering the lighting design of the development.

The development will also result in the loss of a mature birch tree as well as several groups of trees (as stated in the PEA report and Arboriculture report). We would advise that a ground level tree assessment (GLTA) is completed by a suitably qualified ecologist to ensure that any trees to be removed have been checked for any roosting opportunities for bats.

This survey can be undertaken any time of the year and no works of any kind should be undertaken to the trees until this assessment has been undertaken and a decision has been made by the LPA.

Conditions are recommended to secure: a sensitive lighting strategy for the site, avoidance of vegetation clearance during the bird breeding season, and biodiversity enhancement plan, and construction environmental management plan (10/11/2023).

#### SDDC Environmental Health

In regard to this, I have some additional queries about the submitted noise report – I cannot see that the pubs beer garden noise has been considered as part of the assessment. Also section 5.3.4 refers to a barrier due to an exceedance of WHO guidance at certain plots but then it does not really depend on the barrier, provide a spec or where it should be located – conditions are likely to require a full spec of the barrier before works on the development commences (06/11/2023).

### Melbourne Civic Society

Detailed comments from the Civic Society were submitted in relation to the application and are summarised below. The comments assert that the design remains a strong reason for refusal as it was in August 2023, with the following specific comments:

- a) The conjoined houses should be on the historic building line along Castle Street, however the proposed design is mundane and will appear incongruous, over large and uncharacteristic of this part of the Conservation Area.
- b) Design of the terraces has an affinity with Castle Mills on the other side of Castle Street.
- c) The redundant parapet feature halfway along the roof of the proposed terrace serves only as an acknowledgement, or apology.
- d) The siting has simply been brought forward, with no significant design amendment to respond to its context.
- e) The house fronting Church Street is less contentious, but should forge an identity of its own rather than being a diluted version of its nearest neighbour
- f) There is no storage space in the layout for cycles, garden furniture and tools, or general storage.
- g) If ever a site was sensitive enough to warrant the extra steps of an agreed, site-specific design code and early community engagement at pre-application stage, it was this one.

Had the present scheme been the first iteration of a proposal for this site, we believe it would be a clear case for refusal on detailed design grounds. The fact that the proposals have 'sailed a difficult course' should not make the position any different now.

Despite the extreme sensitivity of the site, the standard of design in the present scheme remains inferior to some ordinary housing estates in the District that have no conservation area constraints at all. The volume, massing and detailed footprint have received no care and attention whatever, and are wholly without merit.

Overall, the Church Street development by the Catholic Church, and 'Castle Mews' off Blackwell Lane, both display a sensitive response to their context. Castle Mews has even been illustrated in the Design Guides of other counties as an example of good practice. The current proposal compares poorly to both of them. A proper study of the immediate surroundings of the application site would highlight the incongruities of the present scheme, had it been undertaken.

The response includes the Civic Society's own summary of the immediate surroundings and positive design suggestions and concludes: Much has been said previously about losing the open green space and view of the church, primarily by objectors harbouring a wish to keep the existing facility in place. The space as it stands is uncharacteristic, and we agree that redevelopment is appropriate in principle and for the best in the long term. But there is no imperative to fill it at any cost: pending a good scheme, the existing green space at least does not give positive offence. The poor design of the present scheme cancels the potential for enhancement offered by redevelopment of the space to start with, and fails to preserve or enhance in line with the test set by Section 69 of the Listed Buildings and Conservation Areas Act 1990. It deserves, and requires, much better (10/11/2023).

### Neighbour Responses

Fourteen objections were received from members of the local community. The key points of the responses are summarised as follows.

#### *Loss of Community Facility*

- a) Members of the local community have raised concerns related to the loss of the facility and highlight that users of the facility have been displaced. It is noted that demand would increase in

the context of an ageing population, and following the lifting of Covid-19 restrictions in February 2022.

#### *Alternative Options for the Site*

- b) A number of comments were made that put forward alternative options for development of the site. It was noted that a previously withdrawn scheme for development of the site would be preferential to the current plans.

#### *Design and Impact on Heritage Assets*

- c) The terrace row proportion, detailing and materials are poor quality design. The front elevation is neither in Melbourne vernacular style nor contemporary.
- d) The view towards the church which is referred to in the Conservation Area appraisal is completely obscured, maps showing housing onsite pre-WW2 are irrelevant as for the past 80 years it has been an open site in the heart of the village.
- e) The design of the dwelling on Church Street is pastiche, lacks imagination and detailing is not consistent with features within the streetscene. It is claimed that by replicating the design of the Pump House, the proposal would harm the special historic and architectural value of the listed building.
- f) The residential redevelopment of this site - to which no objection is raised in principle - should be designed by an architect with a proven track record of designing new buildings which are exemplars of twenty first century architecture, buildings that in a generation's time will be candidates for listing for their outstanding architectural merit.
- g) An appropriate development should make a positive contribution of its own by its overall design, and not merely borrow 'motifs' from surrounding buildings in an unconvincing attempt to give credibility to a wholly lacklustre and poor scheme. Such superficiality does not demonstrate real empathy with the surroundings.
- h) Concern that the parking court would harm the Conservation Area and obscure views from the public house towards the church. Parking for the scheme should be hidden from view from Church Street.

#### *Residential Amenity*

- i) Some concerns from the previous application have been overcome, however the dormer windows on the rear remain and overlook properties to the west.
- j) Replacement fence on the western boundary will not ensure privacy to the properties to the west.
- k) The proposal would cause unacceptable increase in overlooking, overbearing impact, loss daylight/outlook and an increase in noise and disturbance.

#### *Arboriculture and Biodiversity*

- l) Retention of the copper beech tree is supported in some of the comments from the local community. Residents queried how the proposed trees would be protected from being removed by future occupants of the development.
- m) It was noted that the current trees between the proposed houses and Chantry Close offer privacy and sanctuary for a variety of wildlife, including birds and bats.
- n) The proposed parking court would cause harm to the protected copper beech tree and future pressure to undertake works to the tree.
- o) The proposed management of the copper beech and landscaping areas within the site was queried.

### Other Matters

Various other points were raised including that the site is not suited for low cost or affordable housing; query whether the trees within the site would be protected; the impact of the provision of 10no. bins that would need to be presented to the kerbside on collection day; no provision for electric vehicle charging appears to have been made.

### **Relevant policy, guidance and/or legislation**

The relevant Development Plan policies are:

- Local Plan Parts 1 and 2: H1, INF6, BNE1, BNE2, BNE10, SD1, INF2, BNE7, BNE3
- Melbourne Neighbourhood Plan: DP1, DP3, DP2, HC1, OS3

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. Design and Impact on Heritage Assets;
3. Residential Amenity;
4. Highways;
5. Archaeology;
6. Arboriculture and Landscaping;
7. Biodiversity;
8. Other Matters.

### **Planning assessment**

#### Principle of the Development

There are two key aspects relevant to the principle of the development in this case:

1. The principle of residential development within the site; and
2. The loss of the Senior Citizen's Centre, a community facility.

Policy H1 sets out the Settlement Hierarchy for the District which is based on the range of services and facilities that are offered by each settlement and directs development to sustainable locations. Melbourne is a Key Service Village where residential development of all sizes is considered appropriate.

The Melbourne Neighbourhood Plan forms part of the development plan against which the application must be considered. Policy DP1 of the Neighbourhood Plan supports development within the defined settlement boundary where it is of appropriate scale, character and does not result in adverse environmental impacts. Policy DP3 of the Neighbourhood Plan states that *proposals for development of new dwellings within the defined settlement boundaries of Melbourne and Kings Newton will be supported if they have four bedrooms or fewer...*

The proposal for 4no. 3-bed terraces and 1no. 4-bed detached house, within the Key Service Village of

Melbourne would accord with Policy H1 of the Local Plan and Policy DP3 of the Neighbourhood Plan. The scale and character of the dwellings would be in keeping with the surroundings, and it is considered that matters of environmental impact would be appropriately managed (as discussed in the following sections), in accordance with Policy DP3 of the Neighbourhood Plan.

Policy INF6 of the Local Plan seeks to protect community facilities unless it can be demonstrated that there is no longer a need to retain the use or where a suitable alternative is made. Whilst defined as a community aspiration and not a planning policy, the Neighbourhood Plan includes Community Aspiration (CA8) which notes that the future of the Senior Citizen's Centre building is uncertain. It highlights that the community facility is important to maintain, and that development of the site for anything other than community uses would not be supported by the parish. There are also provisions in the NPPF, paragraph 99, that indicate that existing community facilities should not be built on unless an assessment has been undertaken which shows that the facility is surplus to requirements, or the loss would be replaced by equivalent or better provision.

A Community Facilities Analysis (ref. P22-0486) has been submitted as part of the planning application (DMPA/2023/0065), together with the Additional Information regarding Community Facilities in Melbourne (TUK Rural) (dated 12 April 2023). The latter report was provided in response to feedback from the Local Planning Authority on the previously withdrawn submissions (ref. DMPA/2023/0065 and DMPA/2023/0228).

Members of the local community have raised concerns related to the loss of the facility. The loss of the facility is not a point of objection raised by any of the statutory or non-statutory consultees however, including the Parish Council or Melbourne Civic Society.

The Community Centre building is understood to have been installed as a temporary building in the 1960s and is now in a state of disrepair. Section 3 of the Additional Information document sets out that the Senior Citizen's charity leased the building for a duration of five years from June 2016, that the site was closed in January 2022, and the charity is in the process of being 'wound up'. It notes that the site was provided for the exclusive use of the Senior Citizens Group, with a rent of £1.00 per annum, and that *'unfortunately the Estate can no longer afford to continue to honour this arrangement, as the site requires a significant investment into repair and maintenance, as does Melbourne Hall and the surrounding Parkland. The redevelopment of this site will generate funds for the enhancement and protection of the important heritage assets at Melbourne Hall Estate'*.

The Community Facilities Analysis identified a number of groups that used the site before it closed in 2022. The Additional Information section highlighted that there are 17 alternative facilities for users of the site and sets out information on the capacity of these alternatives. This includes the Melbourne Assembly Rooms, The Royal British Legion, Melbourne Methodist Church, and Melbourne Sporting Partnership venues, which are all in proximity to the application site and all are evidenced to have substantial availability. In specific reference to the bowling green, it is noted that there is an alternative green on Packhorse Lane, c. 1km from the application site with availability for memberships. Section 4 of the Additional Information report describes where previous users of the community centre are known to have relocated to. The majority of groups appear to have relocated to the aforementioned venues. In a few cases however, it is apparent that the group as relocated could not be identified (e.g. Weightwatchers, Probus, Gardening Club) in an alternative venue, although it seems unlikely that this is due to lack of capacity of the alternative venues.

Whilst the views of some of the members of the local community are noted, the level of information provided within the Community Facilities Analysis and Additional Information is considered sufficient to make an assessment of the scheme in the context of Policy INF6, and furthermore it is considered proportionate to the scale of the issues from the perspective of assessment under paragraph 99 of the NPPF (a material consideration, rather than policy).

From the submitted information, it appears that the Senior Citizen's group appears to have disbanded (or to be in the process of this) owing to the closure of the facility, and the sense of cohesion within this particular community group (the Senior Citizen's) is likely to have been dispersed. It is also clear that

there is enough capacity within the alternative venues within Melbourne to cater for the groups previously run from the facility, and/or in the case that the specific groups could not be identified, it is evident that there are similar groups operating within the vicinity that have availability for membership.

Taking the above into account, it is considered that there is 'suitable alternative' community facilities as most of the groups that previously undertook activities within the application site appear to have found alternative venues, and/or there is sufficient capacity within existing, alternative venues to accommodate the groups. Most of these alternative venues are in proximity to the application site and in Melbourne. These factors are considered to be the key considerations for this case in the context of policy INF6, and the proposal would therefore comply with this policy, and the NPPF as a material consideration. It is acknowledged that the development would be contrary to a strict interpretation of Community Aspiration CA8, but it is notable that the principle of the scheme has not been subject to objections from the Parish Council who are the neighbourhood plan making body for Melbourne.

Overall, it is considered that the proposal for redevelopment of the community centre site would be in accordance with Policy INF6, particularly when it is balanced in the context of the provision of 5no. new dwellings that would accord with Policy H1 and Neighbourhood Plan Policies DP1 and DP3.

#### Design and Impact on Designated Heritage Assets

There are many factors that have been considered in the application process, including the position of the dwellings, scale and massing, contemporary/traditional design, material choice, architectural detailing, alignment, architectural rhythm, vernacular styling, layout (parking, bin stores, subdivision of amenity land) and landscaping. The applicant has worked proactively with the Council's Conservation Officer to find a potential solution for the site, and the Council's Design Officer has also been involved in the process. It is acknowledged that the current plans are not the preferred scheme of Officers or the Council's Conservation Officer, and that they have been submitted in a view to overcoming the reasons for refusal in the cases DMPA/2023/0673 and DMPA/2023/0676. Many design-related concerns have been raised by the Civic Society and Members of the Local Community, particularly in relation to the terrace row.

The development plan framework for consideration of design and related impact on designated heritage assets is as follows. Policy BNE1, which sets out a number of design principles for development. For a scheme of this scale, the most relevant principles are that new development should create places with locally inspired character that responds to context and has regard to valued landscape, townscape, and heritage characteristics; is visually attractive, appropriate, respects important landscape, townscape and historic views and visits, contributing to achieving a sense of continuity and enclosure within the street scene and possessing a high standard of architectural and landscaping quality. The Design Guide SPD supplements this policy with specific guidance on detailing of design.

Additionally, the heritage Policies BNE2, BNE10 and Neighbourhood Plan policies DP2 and HC1, which make provisions to protect, conserve and enhance South Derbyshire's heritage assets, are fundamental. Furthermore, paragraph 197 of the NPPF states that in determining applications, local planning authorities should take account of:

- the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
- the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and
- the desirability of new development making a positive contribution to local character and distinctiveness.

Taking the different components of the design of the development in turn and the aforementioned policy context, the following observations are made. There is no requirement under the development plan policies to reinstate the former arrangement of the site prior to the WWII bombing (as has been suggested by the local community and Civic Society). The proposed development does however take

cues from this historical context, with a large, detached dwelling on the frontage of Church Street, and a row of terraces orientated towards Castle Street. This row of terraces (plots 1-4) has been brought forward to the Castle Street frontage and the copper beech tree would be retained, in attempt to overcome the reasons for refusal in DMPA/2023/0673. The memorial plaque would be accommodated within the development.

The Council's Conservation Officer has been involved in the planning process and raises no objections. It is stressed in the comments however, that compared to the previously submitted plans, it is considered that the current plans would not represent a betterment from design and impact on heritage assets with reference to the loss of the view from Castle Street, the frontage along Church Street and arrangement of car parking. In particular, it is asserted that in seeking to retain the copper beech tree, the positives of the previous layout and street frontage to Church Street are lost.

The previous reasons for refusal by the Planning Committee are however a material consideration in the assessment of the current application. The revisions to the scheme seek to address the reasons for refusal, as the Planning Committee attached greater weight to the provision of a strong street frontage on Castle Street and the retention of the copper beech tree. On balance, while having the negative impact of removing the views through to the Church, the current amended plans have the positive feature of creating a stronger street frontage on Church Street than the previously refused plans and would retain the copper beech tree.

The Conservation Officer's assessment of the current plans is that removal of the poor-quality timber building represents an enhancement, which should be balanced against the less than substantial harm (low end of the spectrum) that would be created by the development. Under paragraph 202 of the NPPF, as underpinned by Policies BNE2 and BNE10 of the Local Plan, where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal. In this case, as the harm would be at the lower end of the spectrum, it is considered that the harm would be balanced by the removal of the existing, dilapidated building and outweighed by the provision of smaller scale dwellings which meets the requirements of the Neighbourhood Plan.

The proposed development would comply with the requirements of Policies BNE1, BNE2 and BNE10 of the Local Plan, Neighbourhood Plan policies DP2 and HC1, and the NPPF. Conditions could be added to secure samples of the materials prior to incorporation in the proposed buildings, as well as hard and soft landscaping and other necessary detailing. Also, it is considered necessary and reasonable in this instance to restrict permitted development rights in order to maintain control in the interest of the character of the area.

#### Residential Amenity

Policy BNE1 h) requires that new development does not have an undue adverse effect on the privacy and amenity of existing nearby occupiers and that similarly, the occupiers of new development should not be unduly affected by neighbouring land uses. The Design Guide SPD recommends 15 to 21m distance between primary habitable room windows to avoid overlooking and to protect privacy. In order to protect outlook and avoid overshadowing of habitable rooms between 9 and 12m is recommended. The Design Guide states that the protection of private amenity spaces will be assessed on their own merits.

Concerns were raised by members of the local community in relation to the impact of the scheme on residential amenity. The plans have been measured and the recommended distances of the Design Guide SPD are met in all cases. There would be a minimum of 28m between the closest point of plots 1-4 and the eastern elevations of Chantry Close (which are set higher than the proposed dwellings), and the northern elevation of plot 1 would not be in the sector of view for no. 21 Castle Street. Plot 4 would be c. 13.25m from the corner of the rear elevation of no. 65 Church Street, where there is a single ground floor window that is separated by the existing tall red brick garden wall. Plot 5 would face towards the road frontage and the blank elevation of no. 64 Church Street. Although the relevant distances would be met, it is noted that there are a number of side-facing, secondary windows proposed on the northern and southern elevations of plots 1-4. It would therefore be reasonable to

obscure glaze the side facing windows proposed. With such conditions in place, it is considered that the proposal would meet the requirements of policies BNE1 and the amenity of neighbouring dwellings would not be materially impacted in terms of privacy, outlook, overshadowing etc.

The proposal also raises some considerations regarding potential noise, disturbance and air quality impacts in the context of policy SD1 and BNE1. The scheme would be located adjacent to an existing public house (no. 53 Church Street, the 'Spirit Vaults'), with associated decking area for users and the presence of 2no. extractor fans on the eastern elevation.

Taking into account comments from the Environmental Health Officer (EHO) on the previous planning applications, the applicant has submitted noise and odour assessments as part of the current application. Additionally, the revised site layout increases the separation distance between the public house (its decking and extractor fans) and the new dwellings substantially, with c. 24.5m distance between the eastern boundary and plot 5. The Odour Assessment found that the public house and other establishments in the area surrounding the site do not impact the odour profile of the area to an extent that it would affect residential amenity. The Noise Assessment recommended inclusion of an active ventilation system to habitable rooms within the site to ensure that future residents enjoy acceptable internal noise levels, whilst maintaining appropriate ventilation. The EHO has been consulted as part of the planning process and raised no objections. It was requested that the specification of the proposed noise barrier be secured by planning condition, and for further assessment of the impact of the beer garden on the new dwellings. The request for additional details on the noise mitigation strategy would be reasonable, and necessary.

It is recommended that any forthcoming planning approval include suitably worded planning conditions to ensure that the development is carried out in line with the findings of the noise and odour assessments. Also that other conditions that were recommended on the earlier iterations of the scheme, related to management of the construction impact of the proposals (e.g. working hours and dust), also be applied should the Planning Committee be minded to approve. With such conditions in place, it is considered that the scheme would comply with policy BNE1.

### Highways

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

The proposed development would incorporate a new point of access from Church Street (whereas the previous scheme use the existing vehicular access). The County Highway Authority was consulted on the planning application. Initially, it was requested that appropriate visibility splays be provided. Following clarification from the applicant the Highway Authority confirmed that the access would be acceptable, subject to standard conditions.

The scheme would incorporate 2no. car parking spaces for each of the plots, which meets the requirements of the Design Guide SPD. Although the plans do not show provision for electric vehicle charging points, it is noted that this would be addressed through the Building Regulations process. Overall, it is considered that the scheme would be acceptable from the perspective of impact on the safety of the public highway and would comply with the requirements of policy INF2.

### Archaeology

Policy BNE10 requires any proposed development which impacts on archaeological remains to be accompanied by an archaeological evaluation.

An Archaeological Desk Based Assessment (DBA) was submitted as part of the planning application, which has been reviewed by the County Archaeologist. The County Archaeologist confirmed agreement with the findings of the DBA that archaeological field evaluation would be warranted, with a preference for this to be conducted prior to determination of the application, albeit it was accepted that such work could also be carried out prior to commencement. This point was reviewed by Officers, and it



was concluded that as any evaluation would ultimately result in a scheme of appropriate recording, this mitigation would not preclude development of the site. It would not be necessary or reasonable to require the investigations prior to determination therefore, and such evaluation could be undertaken as part of a pre-commencement planning condition. It is considered that the requirements of Policy BNE10 could be met in this way, and indeed the County Archaeologist recommended a suitably worded condition for this scenario.

#### Arboriculture and Landscaping

The site includes a mature copper beech tree towards the southern boundary, a mature silver birch tree towards the northern boundary, a group of mixed species trees (including several cypress species, and 2no. dead trees) on the western boundary, and low hedgerow on the southern boundary. The trees are protected by virtue of the Conservation Area; they are not subject to Tree Preservation Order (TPO). Following determination of application DMPA/2023/0673 the current plans seek to overcome one of the reasons for refusal through retention of the copper beech tree.

Policy BNE7 relates to the safeguarding of protected trees and requires that appropriate measures are secured to ensure adequate root protection buffers. The Council's Tree Officer has been consulted and no objections were raised. Minor alterations to the proposed tree species were proposed, and these changes have been incorporated through revision to the Proposed Site and Location Plans 2209-MHSCC-A-P01, Rev D. It is accepted that the copper beech tree offers substantial contribution to the streetscene currently, and retention of this would comprise a significant benefit compared to the previously refused scheme. Some members of the local community raised concern related to the impact of hard surfacing and pressure to prune the tree as a result of the development. The Tree Officer recommended a no dig solution for surfacing within the root protection area, which could be secured by planning condition. It is acknowledged that there could be additional pressure to prune the tree. Whilst the potential pressure for pruning is not ideal, it is noted that the site is tightly constrained and development of the site incorporating the copper beech (in order to overcome one of the previous reasons for refusal) is challenging. Any work to the tree would require consent due to the site location in the Conservation Area.

The landscaping incorporates 22no. new trees which would offset the loss of the tree group on the western boundary and the silver birch. It is accepted that there would be a temporary period whilst the trees are maturing that there would be lower value, for example through screening neighbouring properties. Some residents in Chantry Close raised concerns in this regard, however as the amenity distances would be met between the proposed new terraced row and the existing dwellings, the tree planting would not be relied upon to protect neighbouring privacy.

Insofar as the protection of the trees within the landscaping scheme generally, as was queried by some of the local community, it is recommended that a suitable condition be attached to any forthcoming permission that ensures replacement of any trees that fail within a period of ten years following planting. After this period, any trees should be sufficiently sized so as to be protected by virtue of the Conservation Area (and could therefore not simply be removed by future occupants of the development).

Finally, the local community queried how the management of the landscaping areas would be managed, and where the responsibility of this would fall. It is expected that the areas would be maintained by the future occupants of the development, as is typically the case for developments of this size.

The proposal is considered to comply with the provisions of policy BNE7.

#### Biodiversity

Policy BNE3 supports development which contributes to the protection, enhancement, management and restoration of biodiversity. Policy OS3 of the Neighbourhood Plan supports new development that seeks to protect and enhance biodiversity.

A Preliminary Ecological Appraisal was undertaken, which was updated with supplementary bat

information for the current application. The surveys found no evidence of roosting bats, although the site was recorded as utilised for foraging and commuting purposes. Some habitat onsite (notably, the hedgerow along the southern boundary) would be suitable for nesting birds, which would be lost as part of the proposal. Derbyshire Wildlife Trust was consulted and raised no objection to the proposal.

In the response on the previous planning application DMPA/2023/0673 Derbyshire Wildlife Trust advised that loss of some features within the site, including the hedgerow and the existing mature trees, would be offset by the proposed tree planting within the site. In the response to the current application, the Wildlife Trust highlighted that an area of semi-improved grassland and scrub will be lost as well, and recommended that a biodiversity net gain assessment using the small sites metric be carried out. This request would be reasonable and it is recommended that this be secured by planning condition. Other conditions were recommended also, including sensitive lighting, and Ground Level Tree Assessment, as well as avoidance of vegetation clearance during the bird nesting season. With such conditions in place it is considered that the proposal would meet the requirements of Policy BNE3 of the Local Plan and Policy OS3 of the Neighbourhood Plan.

#### Other Matters

The concern that 10no. bins would need to be presented on the kerbside on collection day, and that this would inhibit use of the pavement is noted. This is a common, temporary disturbance that would be difficult to avoid with any development of the site and is attributed limited weight in determination of the application.

Some of the comments from the neighbours referenced the Vertical Sky Component methodology for determining impact on residential amenity. This does not form part of the development plan policy or Design Guide SPD method of assessment for impact on residential amenity, although it is noted that any such determination would not preclude other legislation that exists on these matters (such as the right to light).

#### Planning Balance

The principle of the development is considered to be acceptable, as the scheme would provide 5no. dwellings within a Key Service Village in accordance with the settlement hierarchy (policy H1 and Neighbourhood Plan policies DP1 and DP3), and there appears to be sufficient capacity within alternative community facilities within the vicinity to accommodate the loss of the community centre, such that policy INF6 would be met.

Officers have assessed the level of harm to the designated heritage assets from the current plans as less than substantial, balanced by the removal of the existing, dilapidated building and outweighed by the provision of smaller scale dwellings in accordance with the Neighbourhood Plan. It is considered that all other material considerations namely the impact on residential amenity, the safety of public highways, archaeology, arboriculture, and biodiversity, can be appropriately managed through suitably worded planning conditions.

It is acknowledged that the current plans are not the preferred scheme of Officers or the Council's Conservation Officer, and that they have been submitted in effort to overcome the reasons for refusal in the cases DMPA/2023/0673 and 2023/0676. Officers previously recommended retention of the view towards the church and did not object to the loss of the copper beech tree in the previous applications, however the Planning Committee made a different assessment of this material consideration in August 2023 and attached greater weight to the provision of a strong street frontage on Castle Street and retention of the copper beech. These aspects are addressed through the current application.

It is also noted that the latest plans also offer improvements in relation to some of the other material considerations. For example, plot 5 would be distanced from the public house; plots 1 to 4 would be separated from the dwellings on Chantry Close, overall reducing any amenity impacts; and further evidence (noise, odour, archaeological and ecological) was submitted to substantiate the application. These matters were considered acceptable in assessment of the previous plans for the site, but the alterations would represent improvements nonetheless.

Planning for the development of a tightly constrained site in a sensitive area is immensely challenging. In seeking to overcome the previous reasons for refusal related to the provision of a strong frontage on Castle Street and retention of the copper beech, there have been trade-offs such as the view towards the church being obscured and some benefits as described above. The requirement for the decision-maker, in this case the Planning Committee, is to assess whether the plans submitted by the applicant would be acceptable in the context of the development plan policies and material considerations. On the whole it is considered that the proposal responds to the previous reasons for refusal and would be in accordance with the relevant policies of the development plan. 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 development hereby permitted shall be carried out in accordance with the following approved plans/details:

- Existing Site Plan 2209-MHSCC-A-E01, Rev C;
- Proposed Site and Location Plans 2209-MHSCC-A-P01, Rev D;
- Plots 1-4 Floor Plans 2209-MHSCC-A-P02, Rev C;
- Plots 1-4 Elevations 2209-MHSCC-A-P02a, Rev;
- Plot 5 Floor Plans 2209-MHSCC-A-P03, Rev C;
- Plot 5 Elevations 2209-MHSCC-A-P03a, Rev C;
- Plot 5 Street Scene 2209-MHSCC-A-P04, Rev C

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. No development shall start until a Highway Construction Management Statement /Plan has been submitted to and approved in writing by the Local Planning Authority. The statement / plan shall be adhered to throughout the demolition/construction period and shall include details relating but not limited to:

- Advisory routes for construction traffic;
- Any temporary access to the site;
- Locations for loading/unloading and storage of plant, waste and construction materials;

- Method of preventing mud and dust being carried onto the highway;
- Arrangements for turning vehicles;
- Arrangements to receive abnormal loads or unusually large vehicles;
- Highway Condition survey;
- Methods of communicating the Construction Management Plan to staff, visitors
- and neighbouring residents and businesses.

Reason: To ensure safe and suitable access for all users, in the interests of highway safety, recognising that initial preparatory works could bring about unacceptable impacts / inconvenience for existing highway users / nearby residents and in accordance with Policy INF2 of the Local Plan.

4. No development, including preparatory works, shall commence until protective fences have been erected around the mature trees to be retained within the site. Such fencing shall conform to best practice as set out in British Standard 5837:2012 (or equivalent document which may update or supersede that Standard) and ensure that no vehicles can access, and no storage of materials or equipment can take place within, the root and canopy protection areas. The fences shall be retained in situ during the course of ground and construction works, with the protected areas kept clear of any building materials, plant, debris and trenching, and with existing ground levels maintained; and there shall be no entry to those areas except for approved arboricultural or landscape works.

Reason: In the interests of safeguarding protected trees and in accordance with Policy BNE7 of the Local Plan.

5. a) No development shall take place until a Written Scheme of Investigation for archaeological work has been submitted to and approved by the local planning authority in writing, and until any pre-start element of the approved scheme has been completed to the written satisfaction of the local planning authority. The scheme shall include an assessment of significance and research questions; and
1. The programme and methodology of site investigation and recording
  2. The programme for post investigation assessment
  3. Provision to be made for analysis of the site investigation and recording
  4. Provision to be made for publication and dissemination of the analysis and records of the site investigation
  5. Provision to be made for archive deposition of the analysis and records of the site investigation
  6. Nomination of a competent person or persons/organization to undertake the works set out within the Written Scheme of Investigation"

b) No development shall take place other than in accordance with the archaeological Written Scheme of Investigation approved under condition (a).

Reason: Reason: In the interests of the cultural heritage of the District and in accordance with Policies BNE2 and BNE10 of the Local Plan.

6. (a) No development (including demolition or vegetation clearance) shall commence until a Ground Level Tree Assessment (GLTA) has been undertaken to identify potential roosting features within the trees to be felled. The survey shall be undertaken in accordance with the Bat Surveys for Professional Ecologist - Good Practice Guidelines (Collins, 2016).
- b) Following a, and if required, further emergence surveys should be undertaken in accordance with the aforementioned guidelines, and in the event that roosting bats are evidenced, a scheme of appropriate mitigation that meets Natural England's mitigation licensing requirements shall be

submitted to and agreed in writing with the Local Planning Authority. Such approved mitigation shall be implemented in full and retained as such for the lifetime of the development.

Reason: In order to safeguard protected and/or priority species from undue disturbance and impacts in accordance with Policy BNE3, noting that initial preparatory works could have unacceptable impacts.

7. No development shall take place until a written scheme providing full details of controls for noise mitigation on the proposed development has been agreed in writing with the Local Planning Authority.

Reason: To safeguard the amenities of nearby occupiers in accordance with Policy BNE1 of the Local Plan.

8. No development, including demolition, shall take place until a scheme of dust mitigation measures has been submitted to and approved in writing by the Local Planning Authority. The approved measures shall be implemented throughout the demolition period.

Reason: To safeguard the amenities of nearby occupiers in accordance with Policy BNE1 of the Local Plan.

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

Reason: To safeguard the amenities of nearby occupiers in accordance with Policy BNE1 of the Local Plan.

10. The Development hereby approved shall not be occupied until the access, parking and turning facilities have been provided as shown on the Proposed Site and Location Plans 2209-MHSCC-A-P01 Rev D.

Reason: To ensure safe and suitable access for all users, in the interests of highway safety, and in accordance with Policy INF2.

11. The development hereby approved shall not be occupied until visibility splays are provided from a point 0.6m above carriageway level at the centre of the access to the application site and 2.4m back from the near side edge of the adjoining carriageway, (measured perpendicularly), for a distance of 43m in each direction measured along the nearside edge of the adjoining carriageway and offset a distance of 0.6m from the edge of the carriageway. These splays shall thereafter be permanently kept free of all obstructions to visibility over 0.6m in height above carriageway level.

Reason: To ensure safe and suitable access for all users, in the interests of highway safety, and in accordance with Policy INF2.

12. The Development hereby approved shall not be occupied until pedestrian visibility splays of 2m x 2m measured perpendicularly back from the back of footway shall be provided on both sides of the access. These splays shall thereafter be permanently kept free of all obstructions to visibility over 0.6m in height above the adjoining ground level.

Reason: To ensure motorists have clear and unrestricted views of approaching pedestrians when pulling out onto the adopted highway, in the interest of highway safety and in accordance with Policy INF2.

13. The vehicular access hereby permitted shall not be brought into use until the existing vehicular access to the site has been permanently closed in accordance with details to be submitted to and agreed in writing beforehand by the Local Planning Authority.

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

14. The development shall not be occupied until the site investigation and post investigation reporting has been completed in accordance with the programme set out in the archaeological Written Scheme of Investigation approved under condition 5 and the provision to be made for publication and dissemination of results and archive deposition has been secured.

Reason: In the interests of the cultural heritage of the District and in accordance with Policies BNE2 and BNE10 of the Local Plan.

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

Reason: In accordance with policies BNE1, BNE2, BNE7, BNE10 of the Local Plan and for the avoidance of doubt and in the visual interest of the development.

16. Any external lighting within the site shall be low level, low wattage down lights (on PIR sensors), positioned away from trees, hedgerows or any bat/bird boxes. No uplighting shall be provided during construction or for the lifetime of the development. The external lighting scheme shall comply with the requirements of Guidance Note 08/18 - Bats and Artificial Lighting in the UK (BCT and ILP, 2018).

Reason: In order to protect biodiversity and habitat on or adjacent to the site in accordance with Policy BNE3 of the Local Plan.

17. 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:

18. Prior to construction above foundation level, a detailed biodiversity enhancement scheme shall be submitted to and approved in writing by the Local Planning Authority. The plan shall include as a minimum: 5no. integrated universal bird bricks; no. integrated bat bricks; and 130mm x 130mm hedgehog gaps within fencing. It should be underpinned by a quantitative assessment of the site's biodiversity value (both present and post development) utilising the DEFRA Metric Calculator Tool and should aim to deliver no net loss in habitat and to secure an appropriate biodiversity net gain. The development shall be implemented in accordance with the approved details.

Reason: In order to ensure a biodiversity enhancement in accordance with Policy BNE3 of the Local Plan.

19. Notwithstanding the submitted details, prior to incorporation within the development, samples and detailed specifications of all external facing and hard landscaping materials to be used shall be submitted to and agreed in writing by the Local Planning Authority. The works shall be undertaken in accordance with the agreed materials.

Reason: In accordance with policies BNE1, BNE2 and BNE10 of the Local Plan and for the avoidance of doubt and in the visual interest of the building.

20. The side facing, first floor windows on the northern elevation of plot 1 and southern elevation of plot 4 shall be top hung and obscurely glazed to Pilkington level 4 or 5 (or such equivalent glazing which shall first have been approved in writing by the local planning authority). The windows shall be retained as such for the lifetime of the development.

Reason: In order to protect the amenity of neighbouring properties and future occupants of the development in accordance with Policy BNE1 of the Local Plan and the Design Guide SPD.

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

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

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

Reason: To maintain control in the interests of the visual amenity of the site and the historic interests of the Melbourne Conservation Area in accordance with policies BNE1, BNE2 and BNE10 of the Local Plan and Melbourne Neighbourhood Plan.

Informatives:

- a. 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.
- b. 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.
- c. Planning permission does not give you approval to work on the public highway. To carry out works associated with this planning permission, separate approval must first be obtained from Derbyshire County Council as Highway Authority - this will take the form of a section 184 licence (Highways Act 1980). It is strongly recommended that you make contact with the County Council at the earliest opportunity to allow time for the process to be completed. Information and relevant application forms, regarding the undertaking of access works within highway limits, are available via the County Council's website [www.derbyshire.gov.uk](http://www.derbyshire.gov.uk), email [highways.hub@derbyshire.gov.uk](mailto:highways.hub@derbyshire.gov.uk) or telephone 01629 533190.

**Item No.** 1.3

**Ref. No.** [DMPA/2023/1165](#)

**Valid date:** 18/10/2023

**Applicant:** Fitzpatrick Cruise

**Agent:** JMI Planning Limited

**Proposal:** The variation of condition no. 2 (plans) and 10 (parking and manoeuvring) of permission DMPA/2020/1266 as varied by DMPA/2021/1605 (for the demolition of existing dwelling and outbuildings and the erection of 4no. dwellings and associated new access) at Silsden, Coton Road, Walton On Trent, Swadlincote, DE12 8NL

**Ward:** Walton on Trent

### **Reason for committee determination**

This item is presented to the Committee as it has been called in by Councillor Wheelton.

### **Site Description**

The application site is located in Walton-on-Trent to the south-west of Coton Road and within the Conservation Area. The application site is currently undergoing development for the erection of 4no. dwellings (planning ref. DMPA/2020/1266 as amended by DMPA/2021/1605). Land within the plot is raised compared to Coton Road and Main Street. There are a number of trees protected by virtue of their location within the Conservation Area within and on the periphery of the site. There are dwellings to the north and south of the plot and on the opposite side of Coton Road. The western boundary of the site borders land associated with The White Swan Inn. At the time of the Officer's site visit, the 4no. dwellings had been constructed and appeared to be in the process of fitting out. Construction equipment, compound etc. were present in the north-western part of the site associated with DMPA/2023/1063 (related application for a bungalow).

### **The proposal**

The current planning application seeks a variation to the previously approved plans. Planning permission DMPA/2021/1605 comprises the operative consent. The primary change sought to the plans comprises the relocation of plot 3's garage from its previously approved position to the rear of the site, adjacent to the western boundary with the White Swan Inn. The design of the garage would also be altered. Instead of the brick double garage the proposal is for a timber clad, covered car port (2no. parking spaces) with storage. As a result of this change, the parking and manoeuvring arrangements previously approved under condition 10 would be altered. During the site visit, Officers also noted that a retaining wall had been incorporated within the site that extends from the rear of plot 3 dwelling to the southern side of the proposed car port; and found differences between the trees anticipated to be removed (as per DMPA/2020/1266 and DMPA/2021/1605) and those retained onsite. The planning drawings and Tree Removal List have been updated accordingly.

### **Applicant's supporting information**

#### Planning Drawings

Site Location Plan J3620-101

Existing and Proposed Block Plans J3620-102, Rev C

Proposed Site Plan J3620-103, Rev C

Proposed Detached Car Port Plans and Elevations, J3620-105

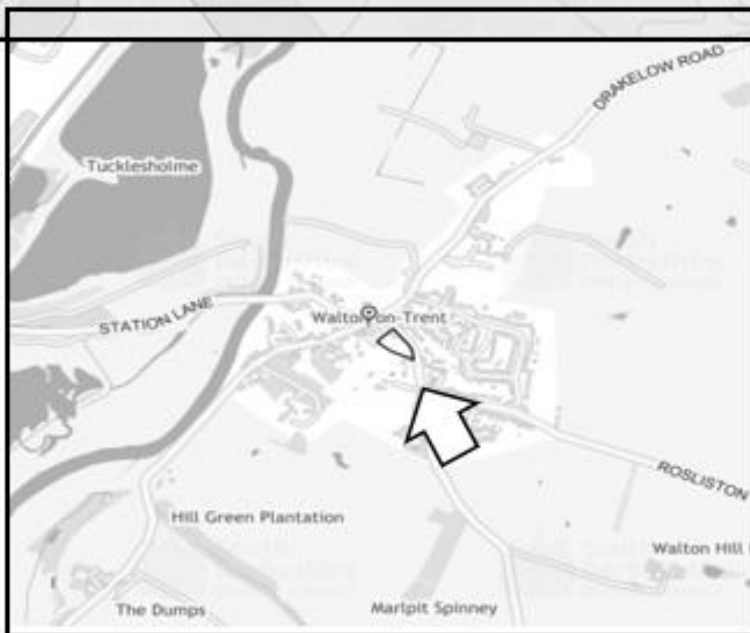
Proposed Terrain Section J3620-06, Rev A

#### Tree Removal List (Updated Version received 24 November 2023)

A schedule of trees that have been removed from the site in order to facilitate the proposed



**DMPA/2023/1165 Silsden, Coton Road, Swadlincote, DE12 8NL**



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development. The schedule relates to the Tree Constraints Plan by Braemar Arboriculture Limited 21 March 2019, which has also been included in the current application documentation for ease of reference.

### **Relevant planning history**

DMPA/2020/1266 Demolition of existing dwelling and outbuildings and the erection of 4no. dwellings and associated new access – approved 19/01/2021

DMPA/2021/1605 The variation of condition no. 2 (plans) and 10 (parking and manoeuvring) of permission ref. DMPA/2020/1266 (relating to demolition of existing dwelling and outbuildings and the erection of 4no. dwellings and associated new access) – this application, which comprises the operative consent, included alterations to plots 1 and 2 and was approved on 05/12/2021

DMOT/2021/1425 Approval of details required by conditions 3 (construction details), 5 (finished floor levels), 6 (drainage) and 15 (tree protection measures) attached to application ref. DMPA/2020/1266 – approved 16/08/2022

DMOT/2022/1213 The approval of detail reserved by condition nos. 16 (materials) and 18 (construction details) of permission ref. DMPA/2020/1266 – approved 22/04/2023

DMOT/2023/0805 The approval of details reserved by conditions 17 (boundary treatments) and 19 (hard and soft landscaping) relating to planning permission ref. DMPA/2020/1266 – approved 16/08/2023

DMPA/2023/1063 Erection of a 2 bed bungalow – *pending consideration*

### **Responses to consultations and publicity**

#### Walton on Trent Parish Council

Walton on Trent Parish Council object on the grounds that the amendments will create additional water run-off on to the main road, an issue that the current development has yet to resolve. The amendments will also create further issues on the main road due to the limited access from the site. (10/10/2023)

#### County Highways Authority

Having reviewed the submitted information there are no highway safety to the planning application. However, it should be noted that the conditions relating to the provision of the access still apply. (24/09/2023)

#### Conservation Officer

The case was reviewed together with the Council's Conservation Officer in an internal meeting held 13/09/2023. It was considered that the proposal would not alter the level of the harm caused by the proposed development compared to the previously approved scheme. The garage would be set further back from the road. It was recommended that advice be taken from the Council's Design Officer.

#### Design Officer

The case was reviewed together with the Council's Design Officer in an internal meeting held on 20/09/2023. The Design Officer commented that the garage would be set further back from the road than the previously approved plans and would be acceptable.

#### Tree Officer

I refer to our recent site visit, the above application and the Tree Survey undertaken by Braemar Arboriculture Ltd March 2019 (included in DMPA/2019/0051 attached for your information). The base for the new car port and store and the retaining wall have already been constructed on site. The concrete base has been constructed as a shallow concrete raft to reduce the impact on the adjacent poplar T21 (U).

It was noted that the grassed area had 2 trees remaining a wild cherry T13 (C) and rowan T20 (B) the 2 trees have been significantly crown reduced and the 4 poplar trees T21 (U), T22 (C), T23 (C) & T24 (C), horse chestnut T25 (C), holly T26 (B) and sycamore T27 (B) on the boundary also remain. The group of 25 young cherry trees G1 have been removed together with the SM apple T5 (U), M willow T12 (U), SM horse chestnut T15, SM wild cherry T16 (C), 2 SM silver birch T17 & T18(B), SM ash T19(C).

The poplar T21 adjacent to the car port and store was found to have an open cavity in the main stem from ground level to 1.5m. The tree has a safe life expectancy of less 10 years (U classification) is unsuitable to be retained close to the new development. I would advise the poplar T21 is removed in the interests of safety.

The removal of the 6 semi mature trees apple T5, horse chestnut T15, wild cherry T16, 2 silver birch T17 & T18, ash T19, the mature willow T12 and the group of 25 young wild cherry trees was carried out to provide a level garden space for the approved development of plot 3 and plot 4, and the space for the car port for plot 3, this work required the construction of the new brick retaining wall.

The trees in the rear gardens of the development are screened from Coton Road by the new houses. The remaining trees on the rear boundary can be partly viewed from Coton Road and the rear car park of the Swan. The removal of the 6 semi mature trees apple T5, horse chestnut T15, wild cherry T16, 2 silver birch T17 & T18, ash T19, the mature willow T12 and the group of 25 young wild cherry trees has had a minor to negligible detrimental impact on the visual amenity of the Conservation Area.

There is sufficient space on the site to plant 3 new medium growing trees as field maple as standard 2.5-3.0m 8/10cm girth trees to the rear of plots 3 & 4 this will mitigate the loss of the above trees and maintain a screen between the new build properties plots 3 & 4 and the car park of The Swan public house (14/11/2023).

#### Other

No responses were received from members of the local community.

#### **Relevant policy, guidance and/or legislation**

The relevant Development Plan policies are:

- Local Plan Parts 1 and 2: BNE1, BNE2, BNE10, BNE7, INF2

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:

- Principle of the Development;
- Design and Impact on the Character of the Area, including Heritage Assets;
- Trees;
- Highway Safety, Parking and Manoeuvring;
- Other Matters

#### **Planning assessment**

##### Principle of the Development

An application can be made under Section 73 (s73) of the Town and Country Planning Act 1990 to vary or remove conditions. One of the uses of a s73 application is to seek a minor material amendment. Permission granted under s73 takes effect as a new, independent permission to carry out the same development as previously permitted subject to new or amended conditions. The new

permission sits alongside the original permission, which remains intact and unamended.

Where a developer makes a s73 application the Local Planning Authority is only able to consider the question of the conditions attached to the planning permission and not the principle. In this respect (a) if the LPA decides that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly, and (b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application.

In this case, the application seeks to vary conditions 2 and 10 of the original planning permission. Whilst the proposed changes would be material, it is not considered that the proposed amendments would result in a significantly different development than originally approved and the original description of development would remain unchanged. The s73 is therefore considered an appropriate planning route for the changes sought and the principle of the development as established by the extant planning permissions is unquestioned.

#### Design and Impact on the Character of the Area, including Heritage Assets

Policy BNE1 sets out principles for design excellence, which is supported by the detail within the South Derbyshire Design Guide SPD and requires that new development create places with locally inspired character that responds to its context. Local Plan policies BNE2 and BNE10 make provisions to protect, conserve and enhance South Derbyshire's heritage assets.

The site was visited by the planning Case Officer twice for the purpose of understanding the context. The proposed variation to the plans was reviewed together with the Council's Conservation Officer and Design Officer who raised no objections.

The proposed garage would be set further back and would not materially impact the impact of the overall scheme within the streetscene or public views. Although the car port would be bigger than the previously approved garage, most of the building would be obscured from view by the plot 3 dwelling. The use of timber cladding would help the building to assimilate with the surroundings, and roof tiles matching the remainder of the development would ensure synergy within design. The retaining wall that has been constructed to the rear of plot 3 would not be visible within the public realm; and utilises materials to match the main dwellings. It would be in keeping with the development overall. The proposed variation would comply with Policy BNE1 with respect to design, subject to conditions to control details of materials. With respect to policies BNE2 and BNE10, the Conservation Officer advised that there would be no change to the level of harm to the Conservation Area. The proposal would thus continue to be acceptable within the context of these policies.

#### Trees

Policy BNE7 relates to the safeguarding of protected trees. It states that the felling of protected trees, groups of trees or woodland etc. will be considered in accordance with relevant national guidance and regulations taking into account in particular their amenity, ecological, landscape and historic value. Where protected trees and/or hedgerows are subject to felling, a replacement of an appropriate number, species, size will normally be required. The Council's Tree Officer has been consulted and visited the site together with the planning Case Officer.

The removal of 10 trees and one group (G1, category C Cherry, 25no. trees) was considered acceptable under planning permission DMPA/2020/1266 subject to a condition for the provision of a detailed landscaping scheme. This requirement was incorporated in condition 19 (hard and soft landscaping). Change to the trees lost/retained was not recorded as a material consideration in determination of DMPA/2021/1605.

From the site visit Officers noted some disparity between the previously approved tree removal list under DMPA/2020/1266 and the situation onsite. The tree removal list was subsequently updated and submitted alongside the current application. The following seven trees have been removed in addition

to those allowed under DMPA/2020/1266 (details of category and description taken from the Braemar Arboriculture Limited 21 March 2019 submitted with the 2020 application):

- T6, Laburnum – Category C, 3.5m height, several dead branches, estimated remaining contribution of 10 years;
- T15, Horse Chestnut – Category C, 6.0m height, crown suppressed, estimated remaining contribution of 10+ years;
- T16, Cherry – Category C, 5.0m height, good condition with no visible issues, estimated remaining contribution 10+ years;
- T17, Silver Birch – Category B, 12.0m height, good condition with no visible issues, estimated remaining contribution of 20+ years;
- T18, Silver Birch – Category B, 8.0m height, good condition with no visible issues, estimated remaining contribution of 20+ years;
- T19, Ash – Category C, 6.0m height, crown suppressed, estimated remaining contribution of 10+ years;
- T20, Rowan – Category B, 5.0m height, good condition with no visible issues, estimated remaining contribution of 20+ years.

Additionally, it was noted that T21, Poplar – Category U, was in place during the Officer's site visit and the raft base for the car port had been constructed up to the trunk. The Council's Tree Officer recommended removal of T21, Poplar – Category U (i.e. poor condition) in the interest of safety. The tree was found to have an open cavity in the main stem from ground level to 1.5m and life expectancy of less 10 years.

From review of the additional tree losses therefore it would appear the main loss in addition to that previously accepted would be that of trees T17, T18 and T20 which all had remaining contribution of over 20 years. These trees were located at the rear of the site, close to the western boundary. It is feasible that the silver birch trees could have been visible within the streetscene due to their height. The Rowan on the other hand comprises a small tree that would not be easily visible, except from the White Swan car park, and the four other trees (T6, T15, T16 and T19) were estimated to have a contribution of c. 10 years in 2019.

Collectively, the additional loss of trees is material and Officers would agree with the comments from the Tree Officer that loss would comprise a minor to negligible detrimental impact on the visual amenity of the Conservation Area. The Tree Officer recommended replacement planting of 3no. medium field maples to mitigate this loss, which would be reasonable and necessary. As the landscaping scheme for the site has already been discharged (ref. DMPA/2023/0805), it is recommended that condition 19 be updated to reflect this and to request a require an updated landscaping plan be submitted to incorporate the additional planting. With such a condition in place it is considered that the scheme would comply with policy BNE7.

#### Parking and Manoeuvring

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

The proposed development would use the access that has been previously approved under DMPA/2020/1266, and no changes to the access are proposed. The amendment to the plans via conditions 2 and 10 would also ensure that 2no. parking spaces would continue to be provided for plot 3 within a garage and further parking within the driveway, such that there would be no change in the quantity of parking provided. The County Highways Authority has raised no objection to the proposal

and the turning space within the site is also therefore considered acceptable.

The County Highways Authority did however note that the planning conditions from the previous planning permissions DMPA/2020/1266 and DMPA/2021/1605 would remain necessary. In their comments on the concurrent application DMPA/2023/1063 (for a new bungalow) it was also emphasised that this included a pre-commencement condition for construction of the new access, which has not at the point of determination been fully constructed/completed. The matter of the access has been raised with planning enforcement and discussed with the applicant, who has explained that they are awaiting South Staffs Water to make site connections before the access can be completed. The mains connections work is planned for early January 2024. The County Highways Authority requested that the access be constructed in accordance with condition 4 of DMPA/2020/1266 before any further works are undertaken. Noting this it is recommended that condition 4 of DMPA/2020/1266 be carried forward to any forthcoming planning approval with a change to the wording to ensure that no further work is undertaken until the access is fully completed. With such a condition in place it is considered that the proposal would comply with Policy INF2.

#### Other Matters

It is noted that there is a concurrent application for a new bungalow within the site ref. DMPA/2023/1063. The bungalow application has been assessed separately from the changes to the operative consent and would be subject to separate conditions, should the Planning Committee be minded to approve.

The objection by Walton on Trent Parish Council is acknowledged. This relates to surface water runoff from the site, which is predominantly a matter of Planning Enforcement due to the access and associated surface water drainage not having yet been constructed. Nonetheless, the applicant has responded to the Parish comments and advised that the matter of surface water runoff is related to all of the gullies along Coton Road being blocked off and inoperable, with the exception of the gully to the site entrance. The site includes a sump that collects water and prevents it from being discharged onto the highway. The applicant also advised that the site entrance would be completed imminently following completion of the utilities works (as discussed above).

Planning permission DMPA/2020/1266 included 22no. conditions, which were carried forward under the operative consent DMPA/2021/1605. In addition to the conditions for which variation is sought as part of the planning application (ie. conditions 2 and 10), it is recommended that condition 19 be reworded to request revision of the soft landscaping details for the scheme, which were previously approved under DMOT/2023/0805. Conditions 3 (construction management) and 14 (vegetation clearance) would no longer be required as construction work has progressed to near completion. The details previously discharged under DMOT/2021/1425 and DMOT/2022/1213 would not be materially affected by the proposed variation, however the wording of relevant conditions should be updated to reflect the details previously approved.

#### Conclusion and planning balance

The principle of the proposed variation is considered acceptable. The main change comprises the relocation of the parking provision from adjacent to plot 3 to the rear of the site by the western boundary. The design is considered to comply with the requirements of Policies BNE1, BNE2 and BNE10 and would not change the level of harm to the Conservation Area compared to the previously approved plans. The changes, which comprise internal alterations only, would also be acceptable from the perspective of highway safety; although, there is concern that the access required by the previous planning permission has not yet been completed. Development of the site has resulted in the loss of an additional seven trees compared to those expected under planning permission DMPA/2020/1266. Three of these trees were expected to have a remaining contribution of more than 20 years. While this could be seen as a negative change to the scheme, on balance, it is considered that this loss could be offset by the planting of 3no. new medium sized trees, and can therefore be considered acceptable. The landscaping scheme for the site should be updated to reflect this. 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 no later than 18 August 2024.

Reason: To conform with Sections 73 & 91 of the Town and Country Planning Act 1990 (as amended by Section 51 of the Planning and Compulsory Purchase Act 2004).

2. The development hereby permitted shall be carried out in accordance with the original plans and documents of planning reference DMPA/2020/1266 (unless superseded by the plans approved under DMPA/2021/1605 and those received under the current application. The approved plans of this application are: Site Location Plan J3620-101; Existing and Proposed Block Plans J3620-102, Rev C; Proposed Site Plan J3620-103, Rev C; Proposed Detached Car Port Plans and Elevations, J3620-105; Proposed Terrain Section J3620-06, Rev A; and Tree Removal List (received 24 November 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. No further development, excluding fitting out, shall commence until the new vehicular access to Coton Road has been constructed. The access shall be laid out generally in accordance with the application drawing (1040-FC/03 Rev A in DMPA/2020/1266), have a minimum width of 4.25m, be constructed as a splayed vehicular crossover in accordance with Derbyshire County Council's standards, surfaced in a solid bound material for the at least the first 5m into the site from the highway boundary, provided with measures to prevent surface water escaping from within the site onto the public highway and provided with visibility sightlines of 2.4m x 42m in the southerly direction and 2.4m x 34m in to the north. The area forward of the sightlines shall be cleared and maintained throughout the lifetime of the development clear of any obstruction exceeding 1m in height (600mm in the case of vegetation) relative to the nearside carriageway edge.

Reason: To ensure safe and suitable access for all users, in the interests of highway safety, recognising that even initial preparatory works could bring about unacceptable impacts.

4. The finished floor levels of the buildings and site levels shall be carried out in accordance with the details shown under drawing number 02/03 approved under DMOT/2021/1425.

Reason: To protect the amenities of adjoining properties and the appearance of the area generally, recognising that site levels across the site as a whole are crucial to establishing infrastructure routing/positions.

5. The Drainage Design Report by RAB Consultants Ltd, RAB 2889, Version 1.0 dated 9 March 2022 and the Drainage Plan on drawing number 03/03 approved under DMOT/2021/1425.

Reason: To ensure that the development is provided with a satisfactory means of drainage as well as reduce the risk of creating or exacerbating a flooding problem and to minimise the risk of pollution.

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

Reason: To ensure safe and suitable access for all users, in the interests of highway safety.

7. The new access shall be used for construction purposes and the existing access temporarily closed to prevent any increase in the use of the substandard access.  
Reason: To ensure safe and suitable access for all users, in the interests of highway safety.
8. Upon completion of the development, the existing access shall be used to serve Plot 1 only. Access to Plots 2, 3 & 4 shall be via the new access, the subject of Condition 4 above.  
Reason: To ensure safe and suitable access for all users, in the interests of highway safety.
9. Prior to the first occupation of any dwelling hereby permitted, the car parking and manoeuvring space shall be laid out in accordance with the application drawing (1040-FC/03 rev A), as amended by Proposed Site Plan J3620-103, Rev C and maintained throughout the lifetime of the development free from any impediment to its designated use.  
Reason: To ensure adequate parking and turning provision, in the interests of highway safety.
10. Prior to the first occupation of any dwelling hereby permitted, the bin store for use on collection day shall be provided in accordance with the application drawing and maintained throughout the lifetime of the development free from any impediment to its designated use.  
Reason: To ensure safe and suitable conditions are maintained on the public highway, in the interests of highway safety, and to ensure appropriate waste/refuse facilities are provided for the occupiers of the development.
11. Except in an emergency, no demolition, site clearance, construction, site works or fitting out shall take place other than between 0800 and 1800 hours Monday to Friday and 0800 and 1300 hours on Saturdays. There shall be no such activities whatsoever on Sundays, public holidays and bank holidays.  
Reason: To safeguard the amenities of nearby occupiers.
12. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, or any statutory instrument amending, revoking and/or replacing that Order, the dwellings hereby permitted shall not be enlarged, extended or altered, and no buildings, gates, walls, fences or other means of enclosure (except as authorised by this permission or allowed by any condition attached thereto) shall be erected or constructed on the site without the prior grant of planning permission pursuant to an application made to the Local Planning Authority in that regard.  
Reason: To maintain control in the interest of the character and amenity of the area, having regard to the setting and size of the development, the proximity to existing features on or adjacent to the site, and the effect upon neighbouring properties and/or the street scene.
13. No further development, excluding fitting out, shall commence until tree protection fencing has been reinstated along the western site boundary, adjacent to the proposed car port, in accordance with the requirements of British Standard 5837:2012. There shall be no storage of materials or equipment within the root and canopy protection areas.  
Reason: In the interests of safeguarding existing habitat and the visual amenities of the area.
14. The facing materials shall be carried in accordance with the details approved under DMOT/2022/1213, Drawing nos. 1040-FC-DC-MS-01 Sheet 01 of 01, 1040-FC-DC-MS-03 Sheet 01 of 01, 1040-FC-DC-MS-04 Sheet 01 of 01 (Revised), and Materials Schedule (Revision A).  
Reason: To safeguard the appearance of the existing building and the locality generally.
15. The boundary treatments shall be completed in accordance with the details on drawing no. 02/03, Rev A (14 August 2023), as approved under DMOT/2023/0805, before the dwelling is first occupied or in accordance with a timetable which shall first have been submitted to and approved in writing by the Local Planning Authority.



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

16. Details of the eaves, verges, windows (including roof lights), cills, lintels and doors shall be carried out in accordance with the details approved under DMOT/2022/1213, Drawing no. 1040-FC-PL-DD-01 Sheet 01 of 01 Rev A.

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

17. Prior to the occupation of a dwelling the previously approved scheme of hard and soft landscaping (drawing no. 02/03, Rev A (14 August 2023), DMOT/2023/0805) shall be updated and submitted to and approved in writing by the Local Planning Authority. All hard landscaping shall be carried out in accordance with the approved details prior to occupation of each respective dwelling, whilst all planting, seeding or turfing comprised in the approved scheme shall be carried out in the first planting and seeding seasons following the first occupation of each respective dwelling or the completion of the development, whichever is the sooner; and any plants which within a period of five years (ten years in the case of trees) from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species and thereafter retained for at least the same period, unless the Local Planning Authority gives written consent to any variation.

Reason: In the interest of the visual setting of the development and the surrounding area.

18. The development shall be carried out in accordance with the bat enhancement measures detailed in the Bat Emergence Surveys report prepared by S. Christopher Smith dated 20th July 2021. Such measures shall be implemented as construction proceeds and completed prior to the first occupation of the development and retained as such thereafter.

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

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

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

20. Prior to the first occupation of a dwelling a recharge point for electric vehicles shall be provided at a ratio of 1 charging point per dwelling with dedicated on plot parking. Individual charging points shall be provided with an IP65 rated domestic socket 13amp socket directly wired to the consumer unit with 32 amp cable to an appropriate RCD, located where it can later be changed to a 32amp EVCP. Shared charging points shall be supplied by an independent 32 amp radial circuit and equipped with a type 2, mode 3, 7-pin socket conforming to IEC62196-2. To prepare for increased demand in future years suitable and appropriate cable provision shall be included in the scheme design in accordance with details first submitted to and approved in writing by the Local Planning Authority. Alternative provision to the above specification must be first submitted to and approved in writing by the Local Planning Authority. The electric vehicle charging point(s) shall be provided in accordance with the stated criteria and approved details prior to the first occupation or use of the respective premises and shall thereafter be maintained in working order and remain available for use throughout the life of the development.

Reason: In the interests of protecting and enhancing air quality through reducing and minimising emissions from vehicles.

Informatives:

- d. Pursuant to Section 184 of the Highways Act 1980 and Section 86(4) of the New Roads and Streetworks Act 1991 prior notification shall be given to the Department of Economy Transport & Environment at County Hall, Matlock regarding access works within the highway. Information, and relevant application forms, regarding the undertaking of access works within highway limits is available via the County Council's website <http://www.derbyshire.gov.uk> email [highways.hub@derbyshire.gov.uk](mailto:highways.hub@derbyshire.gov.uk) or telephone Call Derbyshire on 01629 533190.
- e. Where the site curtilage slopes down towards the public highway measures shall be taken to ensure that surface water run-off from within the site is not permitted to discharge across the highway. This usually takes the form of a dish channel or gulley laid across the access immediately behind the back edge of the highway, discharging to a drain or soakaway within the site.
- f. The Highway Authority recommends that the first 5m of the proposed access driveway should not be surfaced with a loose material (i.e. unbound chippings or gravel etc.). In the event that loose material is transferred to the highway and is regarded as a hazard or nuisance to highway users the Authority reserves the right to take any necessary action against the householder.
- g. Pursuant to Sections 149 and 151 of the Highways Act 1980, the applicant must take all necessary steps to ensure that mud or other extraneous material is not carried out of the site and deposited on the public highway. Should such deposits occur, it is the applicant's 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.
- h. Severn Trent Water advise that although our statutory sewer records do not show any public sewers within the area you have specified, there may be sewers that have been recently adopted under The Transfer Of Sewer Regulations 2011. Public sewers have statutory protection and may not be built close to, directly over or be diverted without consent and you are advised to contact Severn Trent Water to discuss your proposals. Severn Trent will seek to assist you obtaining a solution which protects both the public sewer and the building.

**Item No.** 1.4  
**Ref. No.** [DMPA/2023/1063](#)  
**Valid date:** 06/09/2023  
**Applicant:** Fitzpatrick Cruise **Agent:** Making Plans Architecture  
**Proposal:** Erection of a 2 bed bungalow at Silsden, Coton Road, Walton-On-Trent, Swadlincote, DE12 8NL  
**Ward:** Walton on Trent

### **Reason for committee determination**

This item is presented to the Committee as it has been called in by Councillor Wheelton.

### **Site Description**

The application site is located in Walton-on-Trent to the south-west of Coton Road and within the Conservation Area. The application site forms the south-western section of a plot that is currently undergoing development for the erection of 4no. dwellings (planning refs. DMPA/2020/1266 and DMPA/2021/1605). Land within the wider plot is raised compared to Coton Road and Main Street, however the application site is well-contained with only glimpsed views from the public realm due to the positioning of The White Swan Inn to the north-west, dwellings along Coton Road, and intervening landscaping. The land to the south of the application site forms part of the car parking and other land associated with The White Swan Inn.

### **The proposal**

The current planning application is for the erection of a 2-bed bungalow, which is shown in the context of the plans for the wider site for reference. The bungalow would use the access that has been previously approved under DMPA/2020/1266. It would have a modest rectangular footprint with 2no. bedrooms at the front and the main living spaces to the rear of the property. There would be an integral garage on the northern side and the dwelling would have a hipped roof form. The private amenity space would be modest and would be located to the rear and side of the building. The terrain to the east of the building would be landscaped so that it would slope downwards from higher land within the south-east of the wider plot.

### **Applicant's supporting information**

#### Planning Drawings

Site Location Plan J3620-01  
Existing and Proposed Block Plans J3620-02, Rev B  
Proposed Site Plan J3620-03, Rev C  
Proposed Plans and Elevations J3620-04, Rev B  
Proposed Terrain Section J3620-06

#### Heritage Statement (JMI Planning, September 2023)

An assessment of the impact of the proposed development on the Conservation Area, prepared by JMI planning on behalf of the applicant.

### **Relevant planning history**

DMPA/2020/1266 Demolition of existing dwelling and outbuildings and the erection of 4no. dwellings and associated new access – approved 19/01/2021

DMPA/2021/1605 The variation of condition no. 2 and 10 (relating to drawing numbers)of permission ref. DMPA/2020/1266 (relating to demolition of existing dwelling and outbuildings and the erection of

**DMPA/2023/1063 Silsden, Coton Road, Walton on Trent, Swadlincote, DE12 8NL**



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4no. dwellings and associated new access) – approved 05/12/2021

DMPA/2023/1165 The variation of condition no. 2 (plans) and 10 (parking and manoeuvring) of permission ref. DMPA/2020/1266 (for the demolition of existing dwelling and outbuildings and the erection of 4no. dwellings and associated new access – pending consideration

### **Responses to consultations and publicity**

#### Walton on Trent Parish Council

Walton on Trent Parish Council OBJECT on the grounds that the stewardship on the current site has been poor, creating traffic issues along Coton Road with the construction vehicles, and the failure to adhere to previous planning guidelines on the installation of gullies at the entrance to the site. The lack of gullies has created a constant drainage problem with the amount of water run off from the site. An additional property being constructed on the site will only increase the amount of already existing issues. (10/10/2023)

#### County Highways Authority

As the proposal utilises the access approved under planning ref: DMPA/2020/1266 and satisfactory parking and turning arrangements are proposed there are no highway objections to the planning application. However, it should be noted that Condition 4 of the approval DMPA/2020/1266 requires the vehicular access for the wider development to be constructed prior to commencement and it would appear that the approved development is well underway but the new vehicular access has not been constructed in accordance with Condition 4. It is therefore requested that the developer construct the access as required by Condition 4 before any further works are undertaken (15/09/2023)

#### Conservation Officer

The case was reviewed together with the Council's Conservation Officer in an internal meeting held 13/09/2023. It was considered that the proposal would not be easy to distinguish from other rooflines within the Conservation Area, such that there would be less than substantial harm (lower end of the spectrum).

#### Design Officer

The case was reviewed together with the Council's Design Officer in an internal meeting held on 20/09/2023. The Design Officer commented that the bungalow would not be visible from the public realm. A minor alteration was recommended to the front elevation in that the eaves of the entrance/porch should be dropped down to be consistent with the main roofline.

#### Tree Officer

I have reviewed the plans for the proposed 2 bed bungalow and the original Tree Survey undertaken by John Booth. The proposed bungalow foundations are on the edge of the RPA of the retained mature apple tree. I would advise that if there is no permanent fencing in place, a protective fence in accordance with BS 5398: 2012 is erected on the RPA boundary. There must be no change of ground level within the RPA and the ground within the RPA if used for access or erecting scaffolding must be protected with boards. (28/09/2023)

#### Environmental Health

No objections to the granting of this permission, however conditions related to construction working hours and to the prevention of burning during construction to be attached to any forthcoming planning permission (19/09/2023).

No responses were received from members of the local community.

### **Relevant policy, guidance and/or legislation**

The relevant Development Plan policies are:

- Local Plan Parts 1 and 2: H1, INF2, BNE1, BNE2, BNE10, BNE7

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:

- Principle of the Development;
- Access and Highway Safety;
- Design and Impact on the Character of the Surrounding Area;
- Residential Amenity;
- Trees; and
- Other Matters

### **Planning assessment**

#### Principle of the Development

The application site is located within the settlement boundary for Walton-on-Trent which is a rural village in the Local Plan. Policy H1 states that development of a limited nature will be allowed within the settlement boundary, and the proposal for 1no. bungalow would therefore accord with this requirement and be acceptable in principle.

#### Access and 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 proposed development would use the access that has been previously approved under DMPA/2020/1266. There would be sufficient parking for 2no. cars including within the garage and the area to the front of the bungalow. The County Highways Authority has raised no objection to the proposal. It was noted however that the previously approved access for DMPA/2020/1266 was subject to a pre-commencement condition for the wider site, and the Highway Authority advised that this does not appear to have been fully constructed. This matter has been raised with planning enforcement. It is recommended that a condition be attached to any forthcoming planning permission to ensure that no construction is commenced until the access is fully constructed as per the previously approved plans. With such condition in place it is considered that the proposal would comply with Policy INF2.

#### Design and Impact on the Character of the Surrounding Area (including Conservation Area)

Policy BNE1 sets out principles for design excellence, which is supported by the detail within the South Derbyshire Design Guide SPD and requires that new development create places with locally inspired character that responds to its context. Local Plan policies BNE2 and BNE10 make provisions to protect, conserve and enhance South Derbyshire's heritage assets.

The proposed development was reviewed together with the Council's Conservation Officer and Design Officer who raised no objections. The bungalow would be single storey and the site is visually contained from the public realm, with only glimpsed public views likely to be available from Main Street. The design of the bungalows, which takes cues from the surroundings with hipped roof design, would integrate satisfactorily and raise no material concerns. A minor amendment that was requested by the Council's Design Officer was taken on board and the plan ref. J3620-04 adjusted so that the eaves height of the porch would be level with that of the main roof. The proposal is considered to comply with Policy BNE1 with respect to design. It is recommended that details of materials be controlled by planning condition should the Planning Committee be minded to approve.

With respect to policies BNE2 and BNE10, the Conservation Officer classified the level of harm to the designated heritage asset as less than substantial (lower end of the spectrum). It is considered that this harm would be outweighed by the provision of a smaller dwelling that would contribute to the District's housing stock, and thus would be acceptable.

### Residential Amenity

Policy BNE1 h) requires that new development does not have an undue adverse effect on the privacy and amenity of existing nearby occupiers and that similarly, the occupiers of new development should not be unduly affected by neighbouring land uses. Additionally, the Design Guide SPD, pages 68-69 sets out standards for residential development that seek to protect the amenity of neighbouring properties in terms of privacy, overbearing impact, and loss of light.

The proposal is for 1no. single storey dwelling and it is noted that there would be limited private amenity space around the bungalow, as is typical for the dwelling type. The new dwelling would be c. 29m from the rear of the existing dwellings on Coton Road and therefore would exceed the recommended distances for protecting neighbouring amenity as set out in the Design Guide SPD. There would be 11.5m between the rear elevation of plots 1 and 2 of the wider site, and the side elevation of the new bungalow, which falls 0.5m short of the recommended distance between principle habitable spaces and blank elevations to avoid overbearing impact. In this respect however it is noted that the building would be small in scale, as a single storey dwelling which would limit the extent of any such impact. The Design Guide SPD states that new single storey dwellings will be considered in terms of their effect on existing dwellings, on their own merits, and it is considered acceptable in this instance. Nonetheless, it is recommended that a condition is attached to any forthcoming planning permission to remove permitted development rights related to extensions or alterations to the building, given the modest garden space and relationship with adjacent plots.

Overall the proposal would not result in material impact on neighbouring amenity. The proposal would be able to comply with Policy BNE1 in this respect.

### Trees

Policy BNE7 relates to the safeguarding of protected trees and requires that appropriate measures are secured to ensure adequate root protection buffers. As the site is located within The Council's Tree Officer has been consulted. No objections were raised, although it was recommended that the mature apple tree be protected by a protective fence in accordance with BS 5398: 2012 is erected on the RPA boundary; and that there be no change of the ground level within the RPA. On review of the previous planning permission DMPA/2020/1266 however, this tree was identified in the Tree Removal List 10 June 2021 and explicitly formed part of the approved details under condition 2. During the Officer's site visit it was clear that this tree had been removed in accordance with the previous planning permission. Also, a further category C Laburnum had been removed within this part of the site. As removal of the tree related to the siting of the construction compound for the wider site and comprises a variation to the original planning consent, this matter is considered in the concurrent planning application DMPA/2023/1165.

### Other Matters

It is noted that incorporation of the bungalow would necessitate a variation to the planning permission for the wider site. These changes do not form part of the current planning application and will be assessed separately under planning ref. DMPA/2023/1165. Whilst the proposal for the new bungalow may be assessed independently, it is recommended that an informative be attached to any forthcoming permission to highlight to the developer that construction of the bungalow would necessitate a change to the operative consent being secured.

The objection by Walton on Trent Parish Council related to development of the wider site is noted. The concerns raised are predominantly matters of Planning Enforcement and are not directly related to this

application. Nonetheless, the applicant has responded to the Parish comments and advised that the matter of surface water runoff is related to all of the gullies along Coton Road being blocked off and inoperable, with the exception of the gully to the site entrance. The wider site includes a sump that collects water and prevents it from being discharged onto the highway. The applicant also advised that the site entrance would be completed imminently following completion of the utilities works. The matter is with Planning Enforcement.

The Council's Environmental Health team was consulted as part of the planning process and raised no objections. The conditions related to construction working hours and to the prevention of burning during construction are reasonable and it would be recommended that these be attached to any forthcoming permission should Officers be minded to approve.

### Conclusion

The principle of the development is considered to be acceptable, as the scheme would provide 1no. dwellings within the settlement boundary of Walton on Trent in accordance with the settlement hierarchy (policy H1). Taking into account material considerations related to access, design in a heritage context, impact on trees and other matters, it is considered that the proposal would be acceptable subject to conditions to control the selection of materials etc. 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 development hereby permitted shall be carried out in accordance with the following approved plans/details: Site Location Plan J3620-01; Existing and Proposed Block Plans J3620-02, Rev B; Proposed Site Plan J3620-03, Rev C; Proposed Plans and Elevations J3620-04, Rev B; Proposed Terrain Section J3620-06, 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. No development, including preparatory works, shall commence until the access to the site previously approved under DMPA/2020/1266 has been fully constructed.

Reason: To ensure safe and suitable access for all users, in the interests of highway safety, recognising that even initial preparatory works could bring about unacceptable impacts.

4. No development, including preparatory works, shall commence until the finished floor levels of the building hereby approved, and of the proposed ground levels of the site relative to the finished floor levels and adjoining land levels, have been submitted to and approved in writing by the Local Planning Authority. Such details shall be supplemented with locations, cross-sections



and appearance of any retaining features required to facilitate the proposed levels. The development shall be constructed in accordance with the approved details.

Reason: To protect the amenities of adjoining properties and in the visual interest of the area.

5. 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.

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

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

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

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

8. Prior to the occupation of the dwelling a scheme of soft landscaping shall be submitted to and approved in writing by the Local Planning Authority. The scheme should evidence compliance with British Standard (BS) 3936: 'Part 1 - Specification for trees and shrubs', BS3969 - 'Recommendations for turf for general purposes' and BS4428 - 'Code of practice for general landscape operations (excluding hard surfaces)'. All planting, seeding or turving comprised in the approved scheme shall be carried out in the first planting and seeding seasons following the first occupation of the dwelling or the completion of the development, whichever is the sooner; and any plants which within a period of five years (ten years in the case of trees) from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species and thereafter retained for at least the same period, unless the Local Planning Authority gives written consent to any variation.

Reason: In the interest of the visual setting of the development and the surrounding area.

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

Reason: To maintain control in the interest of the amenity of the area having regard to the potential impact upon neighbouring properties.

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

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

Informatives:

- a. Construction of the bungalow would necessitate changes to planning permission DMPA/2021/1605. The developer is advised that this planning permission does not authorise changes to the wider site which are sought under planning reference DMPA/2023/1165, and Officers would recommend that variation to the plans is secured prior to commencement of any works under this planning permission (ref. DMPA/2023/1063).

**Item No.** 1.5  
**Ref. No.** [DMOT/2023/1375](#)  
**Valid date:** 30/10/2023  
**Applicant:** SDDC  
**Proposal:** The pruning of Lime and Cypress tree(s) covered by South Derbyshire District Council Tree Preservation Order no. 195 on George Street, Church Gresley, Swadlincote, DE11 9NZ  
**Ward:** Church Gresley

#### **Reason for committee determination**

The item is presented to the Committee as the Council is the applicant and owner of the trees.

#### **Site Description**

These mature lime and cypress trees are situated in the front gardens of Council managed properties. They sit forward of the residential dwellings, adjacent to the public highway and as such are highly prominent. These, along with similar trees on privately owned land, help create a tree lined 'avenue' character.

#### **The proposal**

The proposal is to crown lift the lower canopy of the 3 Lime Trees (identified as Trees 1,6 and 8) away from passing vehicular traffic, street lighting, and causing some damage to the hard surface on the driveways which are used for parking vehicles. With T 8 there is also pruning of branches away from the residential dwelling. With the cypress tree (identified as Tree 2), they are proposing crown lifting over the garden space and the footway due to its size and position on the boundary of the property and the public highway. Other works include crown cleaning, removing epicormic growth, where applicable, from their trunks. Further works (although these do not need express consent) including pruning the trees away from overhead telecoms wires.

#### **Applicant's supporting information**

The Council's Tree Officer has submitted a Tree Report setting out the proposals.

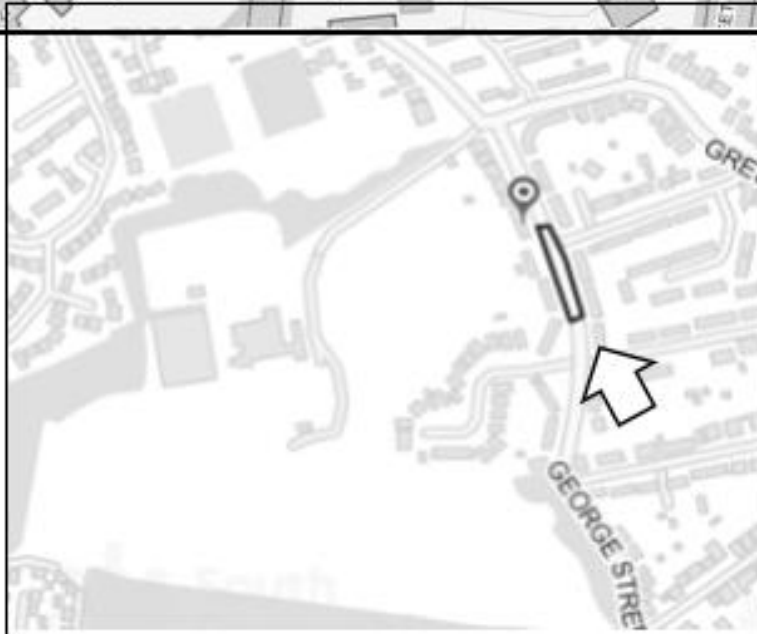
#### **Relevant planning history**

9/2018/0674 The felling and crown lifting of 4 Trees covered by South Derbyshire District Council TPO 195 - Approved 9.08.2018

#### **Responses to consultations and publicity**

Tree Officer - Recommends the works are granted as set out in the Tree Report.

Member of the public - Residents are fed up of unsightly and costly presence of the trees that are practically on top of the properties. This will be the first time in many many years the trees will be being pruned. For years people's homes and cars being damaged by these trees. A member of the public has been hurt by the low hanging branches we have been told that we can not maintain these trees ourselves, but they are not being maintained by the council consequently impacting residents day to day life.



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## Relevant policy, guidance and/or legislation

The relevant Development Plan policies are:

Local Plan Part 1 (LP1): S1 (Sustainable Growth Strategy), BNE3 (Biodiversity), BNE4 (Landscape Character and Local Distinctiveness)

Local Plan Part 2 (LP2): BNE7 (Trees, Woodland and Hedgerows)

The relevant national policy and guidance is:

National Planning Policy Framework (NPPF)

Planning Practice Guidance (PPG)

The relevant legislation is:

The Town and Country Planning (Tree Preservation) Regulations 2012

## Planning considerations

In taking account of the application 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:

- Whether the works are justified; and
- Whether the resultant biodiversity and amenity value remains acceptable.

## Planning assessment

### Whether the works are justified

The works proposed for:-

T1 Lime are for crown lift to 3m over footway and to 6m over the highway, cut back by 1m clearance from street-lamp and removing epicormic growth up to 3m. which is considered to be justified. The Lime tree is a mature specimen and is located to the front of the residential dwelling. The crown is interfering with overhead telecom wires and the street lighting and the works will elevate this interference.

T2 Cypress are for crown lift to 3m over the garden and 2.5 over the footway and prune back to the trunk of the tree, this is considered to be justified due to the size of the tree within the context of the front garden and that it is a young mature specimen and will grow back quite rapidly, the pruning will make it more manageable within the context it is situated in.

T6 Lime are for crown clean, crown lift to 3m over footway and 6m over highway and removing epicormic growth up to 3m. The lime tree is a mature specimen and is located to the front of the residential dwelling. The roots are causing damage to the hard surface and lifting block paving and part of the public highway and this is effecting the tenant parking area. The works are considered to help with the effect on the hard surface and the public highway.

T8 Lime are for crown clean, crown lift to 3m over footway and 6m over highway, removing epicormic growth up to 3m and cut back branches in crown to provide clearance of 3m from the residential dwelling. The roots are damaging the public highway and the branches are too close to the dwelling. The works will help elevate any damage and will provide peace of mind for the tenants of the property.

It is considered that the works to the 4 lime trees will have no detrimental impact on the physiological or structure of the trees. The works will have no detrimental impact on the amenity of the area.

### Other matters

With the concerns raised by member of the public that the trees have not been maintained in years and they are not allowed to carry out works – The proposal is for the pruning of the trees and to do maintenance work on the trees included in this application. This is acknowledging that works are required and will be carried out in the near future.

Whether the resultant biodiversity and amenity value remains acceptable

Providing the work is carried out to the appropriate standard (to be secured by condition), the long term amenity and wildlife value of the trees would not be unacceptably diminished, in accordance with policies BNE3, BNE4 & BNE7.

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

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

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

Reason: To ensure the works are carried out to an appropriate standard reflective of their protected status.

## 2. Planning and Other Appeals

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

<b>Reference</b>	<b>Place</b>	<b>Ward</b>	<b>Outcome</b>	<b>Decision level</b>
DMPA/2022/0407	Kings Newton	Melbourne	Dismissed	Committee
DMPA/2022/1202	Woodville	Woodville	Allowed	Committee
DMPA/2022/0360	Woodville	Woodville	Allowed & no Costs awarded	Committee



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## Appeal Decision

Site visit made on 20 October 2023

by **K Savage BA(Hons) MPlan MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 16 November 2023

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**Appeal Ref: APP/F1040/W/23/3315984**

**Land Off Trent Lane, Kings Newton, Melbourne, E 439024 N 326462**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr and Mrs Pallot against the decision of South Derbyshire District Council.
  - The application Ref DMPA/2022/0407, dated 6 June 2022, was refused by notice dated 19 October 2022.
  - The development proposed is the erection of two 3 bedroomed new build dwellings and creation of orchard.
- 

### Decision

1. The appeal is dismissed.

### Preliminary Matter

2. In the heading, I have used the fuller site address given on the appeal form.

### Main Issues

3. Having regard to the Council's reason for refusal and representations made by interested parties, I consider the main issues in this case are i) whether the proposal represents a suitable location for housing, having regard to the spatial strategy for the area and the effect on character and appearance, including the heritage significance of designated heritage assets; and ii) the effect on neighbouring living conditions, with regard to light and outlook.

### Reasons

#### *Location for Housing*

##### *Spatial Strategy*

4. Kings Newton is categorised as a Rural Village under the fourth tier of the settlement hierarchy of Policy H1 of the South Derbyshire Local Plan Part 1 (June 2016) (the LP1). However, the appeal site is located adjacent to, but outside of, the settlement boundary of Kings Newton as defined under the South Derbyshire Local Plan Part 2 (November 2017) (the LP2). Therefore, the proposal for two market dwellings would not gain support under Policy H1, which only supports housing within the settlement boundary where applicable, or adjacent to it as an exceptions or cross subsidy site as long as not greater than 15 dwellings.
5. Policy BNE5 of LP2 permits development outside of settlement boundaries subject to certain criteria, including where allowed for by other policies. However, with the exception of Policy H1 addressed above, the proposal is not

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



advanced as complying with any of the listed policies under criterion i). Neither would the proposal gain support under criteria ii) or iii) which relate to essential rural-based activities or development unavoidable outside settlement boundaries.

6. Therefore, the relevant criteria where development would be supported are iv) 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) where development will not unduly impact on landscape character and quality, biodiversity, best and most versatile agricultural land, and heritage assets. These criteria are also reflected in Policies DP1 and DP2 of the Melbourne Neighbourhood Development Plan (July 2022) (the MNDP).
7. Beyond the definition given in Policy BNE5 itself, there is no further defining criteria for 'infill' development within the development plan or national policy. As such, it is a matter of planning judgement having regard to the particular site circumstances. The site comprises open land bisected by an access track leading to an agricultural storage building and stables. Development to the south along Trent Lane is contiguous on both sides of the road as far as Main Street. To the north, there is a dwelling adjacent to the site, No 46, with two further dwellings beyond before the lane crosses over the former railway line. In my judgement, the development to the northern side is sufficiently close to the main built-up area of the village to be read as part of it when viewed on the ground. The gap formed by the appeal site is not significant in length, it is bordered by dwellings on both sides and falls within a small group of housing in Kings Newton. Therefore, in my judgement, the proposal would represent infill development of the type supported under Policy BNE5(iv).
8. The proposed dwellings would be located next to the built-up area of Kings Newton, which is itself contiguous with the larger settlement of Melbourne where future residents could avail of local services. The proposal would not therefore result in isolated development in the countryside, and whilst residents would still require a private car, the proximity of services in Melbourne would mean many journeys would be short and consistent with those of existing residents.
9. This aside, overall compliance with Policy BNE5, and by extension the wider settlement strategy of the development plan, is dependant on the proposal also according with the other aspects of criteria iv) and v), in particular relating to the character of the locality and the effects on heritage assets.

#### *Character and Appearance*

10. Trent Lane has an evident rural village character with stone walls, hedgerows and a mix of dwellings ranging from historic, stone built properties to modern detached and semi-detached homes. Development forms a generally linear pattern, albeit with some dwellings standing closer to the road or set further back into their sites. The different ages, styles, materials and sizes of the dwellings reflect a long, organic development of the lane. Towards the northern end, the appeal site represents the start of development becoming more sporadic, with gaps between dwellings and countryside views possible beyond the immediate street scene. In particular, the heavily treed valley of Ramsey Brook and the rolling landscape to the east forms a prominent vista from Trent Lane at the appeal site.

11. The site lies outside, but adjacent to the Kings Newton Conservation Area (the CA), which includes parts of the lane to the front of the site and dwellings immediately to the south and opposite. More recent development further south along Trent Lane is excluded from the CA, with the CA mainly encompassing areas along Main Street and open countryside to the north and west of Kings Newton Hall. The Council's Conservation Area Character Statement (2011) (the CACS) points to the rural character of the northern part of Trent Lane, with the farm complex at Elms Farm and other buildings on the western side of the lane standing above road level and 'standing picturesquely in the landscape setting of the lane.' From the evidence before me, the overall significance of the CA derives from the old-fashioned character, with an historic identity forged around agriculture and lacking influence of the industrial revolution in the 18<sup>th</sup> and 19<sup>th</sup> centuries.
12. In addition, the appeal site falls within the setting of two Grade II listed buildings. Elms Farmhouse is an early 19<sup>th</sup> century farmhouse standing opposite the site, overlooking it and the countryside beyond to the east. 32 Trent Lane, immediately adjacent to the south, is a cottage dating from the 17<sup>th</sup> century with later additions, including recent permissions to create a free standing garage subsequently converted to a separate dwelling. The CACS notes No 32 as a rare sign of an old settlement on this side of Trent Lane, though it is noted as being listed for its group value only.
13. The proposed dwellings would respect the linear pattern of development by facing the lane and continuing the street scene. The dwellings would appear as single storey from the front but would stand two storeys at the rear due to the steeply sloping topography of the site. The design of the dwellings, incorporating pitched roofs with clay tiles, stone and brick facades, timber joinery, stone cills, chimney stacks and front porches, would respect the rural aesthetic of the lane. The varied size and form of the streetscape means the proposed dwellings would not appear out-of-scale or disruptive of a uniform pattern of development.
14. However, in developing the existing open site, the proposal would erode the existing sense of transition from village to open countryside which begins to emerge at this point on Trent Lane. The clear views over the fields to the east, particularly from Elms Farmhouse, would be lost. Whilst the appellants' heritage statement points to the loss only being to oblique views from the farmhouse, they nevertheless form part of the broad vista that one would expect to take in from such an elevated position. The recent construction of the detached garage to No 32 has inserted further built form into this vista, but the appeal site maintains a direct link to the wider countryside which would be closed off by the development. This would have an adverse effect on the historic relationship between the farmhouse and its rural hinterland, resulting in harm to the setting of the listed building.
15. The effect on the setting of No 32 would be more indirect, given it would retain its existing views to the rear, and in view of the intervening development of the garage, now a separate dwelling. There would however be some minor adverse effect from the extension of the built form on this side of Trent Lane that would further diminish the historically isolated presence of this building along a largely rural lane.

16. The appellants' heritage statement accepts that the proposals would have an adverse effect on the settings of the listed buildings. Whilst I agree that the harm would be less than substantial, I find that in the case of Elms Farmhouse, there would be more than the neutral/slight adverse impact concluded by the appellants, due to the proximity of the dwellings and their direct intrusion into the historic vista from the listed farmhouse. I agree that the harm to the significance of No 32 would be at the lower end of less than substantial.
17. It is also proposed to extend the stone wall along the site frontage, replacing an existing established hedgerow. Interested parties have raised concern over the loss of the hedgerow, which I saw contributes to the emerging rural character to the north of the site. Although the Council's Conservation Officer considered the proposed wall could amount to a public benefit, there is no evidence to indicate this would have a heritage benefit in terms of reinstating a lost feature. Rather, it would result in the unnecessary loss of the hedgerow and its replacement with a more cultivated, domestic garden appearance with spaced field maple trees. This would result in a minor, but nonetheless harmful, erosion of the rural street scene which forms part of the CA that would not be mitigated by an extended stone wall. Together with the replacement of the existing open fields with built development, the proposal would fail to preserve or enhance the character and appearance of the CA or its setting.
18. In reaching a view, I also observed the site from the Cloud Trail, a walking path along the former railway line to the east of the site. From here, the dwellings would be glimpsed through the trees but beyond the more prominent agricultural building and the storage building under construction behind the appeal site, and very much secondary features in these views. Consequently, the dwellings would not harmfully disrupt the rural character experienced along the Cloud Trail.
19. In addition, I have taken into consideration that planning permission has been granted for two holiday lodges and an agricultural store on land to the rear of the site. However, these developments are notably on lower ground which would reduce their presence in views from Trent Lane. The lodges would be located where an existing line of trees provides screening of the stables, whilst the agricultural store, though likely to still be visible from Trent Lane, would be a form of development typical of a rural area and not out of character. I also have an appeal decision<sup>1</sup>, but no other details, for a case in Burnaston, as a result of which I can draw limited comparison with the current proposal, which I have considered on its own merits.
20. Therefore, these other considerations do not alter my conclusions above that the proposal would cause harm to the character and appearance, and setting of, the Kings Newton CA, and harm to the settings of listed buildings at Elms Farmhouse and 32 Trent Lane, resulting in less than substantial harm to the heritage significance of the designated assets in each case.
21. Paragraph 202 of the National Planning Policy Framework (the Framework) directs that this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use. The proposal would add two residential units to the district's housing stock but given the Council's stated ability to demonstrate a five year supply of deliverable housing sites, which is not challenged by the appellants, the delivery of housing through this

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<sup>1</sup> APP/F1040/W/19/3232095, allowed 10 October 2019

development is beneficial but not crucial, and in light of its small scale, attracts only limited weight in favour of the proposal. There would be economic benefits from the construction of the dwellings, and subsequently from residents working and spending money in the local area, but again at a scale which attracts limited weight.

22. The appellants further argue that the proposal would make effective use of an underutilised piece of land, but given the harm identified, the development of the site for housing would not represent a benefit in this case. Moreover, I have little evidence to demonstrate that the site could not be used for any other purpose, particularly agricultural or other uses suited to a rural environment. As such, this is a matter attracting very limited weight.
23. The proposed benefits arising from the reinstatement of an orchard and with it increased biodiversity are acknowledged, but these would be modest enhancements having regard to the small scale of the proposed orchard and would attract limited weight in favour.
24. The identified benefits, taken cumulatively, would not outweigh the less than substantial harm to the significance of the designated heritage assets, to which the Framework directs I must give great weight. Consequently, the Framework indicates that this provides a clear reason for refusing the proposal.
25. The proposal would therefore conflict with Policies BNE2 of LP1 and BNE10 of LP2, which reflect the Framework in seeking to protect, conserve and enhance heritage assets in a manner appropriate to their significance and weighing the public benefits of the proposal against identified harm. There would also be conflict with the protection of heritage assets under Policy HC1 of the MNDP.

*Conclusions on first main issue*

26. Given my findings in the above matters, the proposal would not fully accord with criteria iv) or v) of Policy BNE5. Therefore, the proposal would not be a form of development exceptionally supported in rural areas, and by extension would not represent a suitable location for development under the wider spatial strategy for the district articulated under Policies H1, S1 and S2 of the LP1 and Policy DP2 of the MNDP.

*Effect on neighbours' living conditions*

27. The Council did not make any substantive assessment of the impact on light received to the neighbouring dwelling at 34 Trent Lane, but the neighbouring residents raise concerns regarding the impact of the proposed southern dwelling on No 34 in terms of light. The appellants have had an opportunity to respond at final comments stage. A 'right to light' has been mentioned but I have little conclusive evidence before me regarding the existence or nature of any such legal right, which would have a separate means of redress in law. Planning decisions generally concern land use in the public interest, and I have considered the likely impact on light levels in that context.
28. The appellants point out that not all of the windows in the flank elevation benefit from planning permission but I do not have full particulars of the planning history of No 34 to verify this. However, the proposed southern dwelling would match the height and building lines of No 34 and therefore would stand squarely in front of the flank wall of No 34 at close distance. From my observations, this would lead to a demonstrable loss of outlook to this side,

as well as diminished light to these side facing windows, both of which would undermine the living conditions of neighbouring occupants.

29. This would conflict with Policy SD1 of LP1 which supports development that does not lead to adverse impacts on the environment or amenity of existing and future occupiers within or around proposed developments.

### **Other Matters**

30. The appellants refer to the appeal site being included in the Strategic Housing and Economic Land Availability Assessment (SHELAA) as a potential housing allocation as part of the ongoing local plan review process. However, the SHELAA is a high level, desk-based assessment of potential suitability for housing, which does not relate to specific development proposals. Moreover, the SHELAA states that the site has a number of suitability criteria that would need to be overcome or require mitigation, and the Council states that the site is not currently proposed to be allocated in an emerging development plan. As such, this is a matter of very limited weight in my considerations.
31. The Council did not refuse permission in respect of highway safety. I have no substantive evidence before me to reach a different view, but an absence of harm in this respect is a neutral factor in the overall planning balance.
32. Neighbouring residents have further raised the issue of disputes over land ownership. Whilst I have noted the concerns raised, these are matters falling beyond the scope of the planning system and as such do not bear directly on my decision making. Any dispute between parties is a separate matter in law.
33. I have noted other matters raised by interested parties, but I have not identified further material benefits or harms which should be factored into the planning balance. Therefore, it is not necessary to address these in further detail as they would not alter the outcome of the appeal.

### **Planning Balance and Conclusion**

34. There would be significant harm arising due to conflict with the spatial strategy for the area, as well as adverse effects on designated heritage assets and neighbours' living conditions. As a result, the proposal would conflict with the development plan, taken as a whole. I afford significant weight to this conflict.
35. I have had regard to the public benefits weighing in favour of the proposal in conducting the heritage balance of the Framework above, the result of which is that, as a material consideration, the Framework directs that permission should be refused. It follows that these benefits would also not be sufficient to outweigh the overall development plan conflict.
36. Consequently, there are no material considerations which would justify a decision being made other than in accordance with the development plan, taken as a whole. Therefore, for the reasons set out, I conclude that the appeal should be dismissed.

*K Savage*

INSPECTOR



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## Appeal Decision

Site visit made on 24 October 2023

by **Samuel Watson BA (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 16<sup>th</sup> November 2023

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**Appeal Ref: APP/F1040/W/23/3319968**

**61 Ashby Road, Woodville, Derbyshire, Swadlincote DE11 7BZ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Kabal (Rose View Care Group Ltd) against the decision of South Derbyshire District Council.
  - The application Ref DMPA/2022/1202, dated 29 August 2022, was refused by notice dated 22 March 2023.
  - The development proposed is to convert 4 bed dwelling to children's care home.
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### Decision

1. The appeal is allowed and planning permission is granted to convert 4 bed dwelling to children's care home at 61 Ashby Road, Derbyshire, Swadlincote DE11 7BZ in accordance with the terms of the application, Ref DMPA/2022/1202, dated 29 August 2022, subject to the following conditions:
  - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
  - 2) The development hereby permitted shall be carried out in accordance with the following approved plans numbered: A102 and, A103.
  - 3) Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 2015 (as amended) the premises shall be used solely for the purposes of a children's care home, as defined by Class C2 of that legislation, and for no other purpose.

### Main Issue

2. The main issue is the effect of the proposal on the living conditions of neighbouring occupiers.

### Reasons

3. The appeal site contains a detached two-storey dwelling that can provide five bedrooms. The site fronts on to Ashby Road and provides vehicular parking to the front, while at the rear there is a large garden. The proposal is for the conversion of the appeal site to a children's care home but would not include any physical changes to the property.
4. Given the scale of the existing dwelling, I find that it could accommodate a large family. Given that such a family could include adult children or children with additional needs, a notable level of noise could be generated as existing. Moreover, I find that the proposed conversion would not intensify the use of the site beyond that already possible. Therefore, although noise arising from

care related activities may be audible from nearby dwellings, such as when it is necessary to tell off a child, or otherwise control unacceptable behaviour, I do not find this to be atypical for a family home. Consequently, I find that the level, and character, of the noise generated on site by residents would not be dissimilar to a scenario that could occur at the existing dwelling, without planning permission.

5. It is likely that friends or family may visit residents at the care home. Although I note the concerns raised that this would generate further noise, I do not find it likely to be any different than that which would occur at a family home of this size. Likewise, I find that the rear garden would likely be used in a way similar to how it could currently be used as a family home. Therefore, any noise generated would be of a level and character similar to a large residential dwelling.
6. Although the front of the site may be used for additional parking over that already present, I find that the increase would not be significant given the scale of the proposal. I therefore find that any noise associated with the manoeuvring and parking of vehicles would not be significantly or unacceptably greater than existing.
7. In considering the above, I am mindful that the appeal site is within a residential area and immediately adjacent to Ashby Road, a main thoroughfare. I noted during my site visit that it was a busy road and that the vehicular traffic generated a notable level of noise. Although my visit can only provide a snapshot in time, given the nature of the road, I do not find this to be an anomalous occurrence. Against this noise, and that generated by other nearby dwellings, I find that the proposal would not result in an unacceptable impact on the living conditions of neighbouring occupiers.
8. Although the appellant has not provided a management plan, given my findings above such a plan would not be necessary to ensure the living conditions of neighbouring occupiers. Moreover, I note that other legislation would also put controls in place to ensure the proper management of the care home.
9. Given the scope of the proposal and that there would be no physical changes to the dwelling or plot, there would be no impact on the privacy of neighbouring occupiers when compared to the current dwelling.
10. Although I recognise that there is a difference between the use of a property as a C2 dwellinghouse and a C3 care home, given the scale of the proposal I find that the appreciable difference with regards to the living conditions of neighbouring occupiers would not be unacceptable.
11. The proposal would not result in any unacceptable impacts on the living conditions of neighbouring occupiers and would therefore comply with Policies E7, SD1 and BNE1 of the South Derbyshire Local Plan Part 1 which, amongst other matters, require that developments do not result in any undue or adverse impacts on neighbouring occupiers with regard to them feeling safe, comfortable and appropriate privacy and amenity.

#### **Other Matters**

12. Given the scale of the development and the associated number of staff likely to be on site at any given time, I find that the parking area to the front would be sufficient to meet the needs of the proposal without harming highway safety.

13. I note concerns from interested parties that the proposed care home could be extended, or the use otherwise intensified, in the future. While possible, such scenarios would require the grant of planning permission. The Council would therefore retain control as to the assessment of potential harms arising from future works.
14. The Planning Practice Guidance makes it clear that private interests such as the alleged impact of a development on the value of a neighbouring property is not a material consideration.

#### **Conditions**

15. I have had regard to the conditions suggested by the Council and the advice on planning conditions set out by the Framework and the Planning Practice Guidance. In the interests of clarity and enforceability, I have made some changes to the wording.
16. For certainty, I have set out the timescale for the commencement of development. A condition is also necessary, for certainty and enforceability, requiring that the development is carried out in accordance with the approved plans.
17. As alternative uses, including within the remit of a care home, have the scope to result in impacts that have not been considered above, a condition is necessary to restrict the use to that of a care home for children.
18. The front of the appeal site is already used for the parking of vehicles. Given the scale of the proposal, and the details before me, I find that there would not be a significant increase in vehicles parking at the site at any one given time. Therefore, such a condition would not be necessary to protect highway safety.

#### **Conclusion**

19. There are no material considerations that indicate that the appeal should be determined other than in accordance with the development plan. For the reasons given above, I therefore conclude that the appeal should be allowed.

*Samuel Watson*

INSPECTOR



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## Appeal Decision

Site visit made on 28 September 2023

by **Stephen Normington** BSc DipTP MRICS MRTPI FIQ FIHE

an Inspector appointed by the Secretary of State

Decision date: 24 October 2023

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**Appeal Ref: APP/F1040/W/23/3317999**

**Land adjacent to First Fence Ltd, Kiln Way/Woodhouse Street, Woodville, Swadlincote DE11 8EA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr V Kotecha, First Developments Holdings Ltd against the decision of South Derbyshire District Council.
  - The application Ref DMPA/2022/0360, dated 10 March 2022, was refused by notice dated 9 September 2022.
  - The development proposed is the change of use to existing land and turning head resulting from the development of the Kiln Way Link Road for the creation of 47no. car parking spaces, including 24no. electric vehicle charging points, erection of 10no. cycle spaces, staff seating area and landscaping.
- 

### Decision

1. The appeal is allowed and planning permission is granted for the change of use to existing land and turning head resulting from the development of the Kiln Way Link Road for the creation of 47no. car parking spaces, including 24no. electric vehicle charging points, erection of 10no. cycle spaces, staff seating area and landscaping on land adjacent to First Fence Ltd, Kiln Way/Woodhouse Street, Woodville, Swadlincote DE11 8EA in accordance with the terms of application Ref DMPA/2022/0360, dated 10 March 2022, subject to the attached schedule of conditions.

### Application for costs

2. An application for costs was made by Mr V Kotecha, First Developments Holdings Ltd against South Derbyshire District Council. This application is the subject of a separate Decision.

### Main Issue

3. The main issue is the effect of the proposed development on the character and appearance of the surrounding area.

### Reasons

4. The site occupies an area of approximately 2225m<sup>2</sup> of land located immediately to the east of a recently constructed roundabout junction between Swadlincote Road and Kiln Way. It lies within the National Forest. The surrounding area comprises predominantly industrial units and residential properties with an area

of woodland to the north-west. Immediately to the east is a large industrial unit that appears to be occupied by First Fence Ltd.

5. The site comprises a relatively open area with some tree planting that formed part of the highway works landscaping scheme. It includes a disused section of former highway and turning head created from Woodhouse Street which was 'stopped up' as part of the roundabout construction works. This former highway is used for car parking and at the time of my site visit there was a high demand for parking spaces. The Appellant's evidence suggests that there is a significant degree of parking pressure in the locality with employees of local businesses having to use this part of the former highway for parking. I have no other contrary evidence to suggest that such car parking pressure may be overly inflated by the Appellant.
6. Although the site has a relatively open appearance, the recently planted trees do not yet make a significant contribution to the local landscape. Consequently, the industrial unit and the parked cars are quite dominant in views in the vicinity of the site.
7. The proposal would involve the formation of a new access road formed from the current junction of the disused part of Woodhouse Street with Swadlincote Road and the provision creation of 47 car parking spaces for use by First Fence Ltd and adjacent businesses. The parking spaces would be provided on both sides of the new access road with an area of proposed landscaping retained immediately to the east of the roundabout. The scheme proposes that 24 of the car parking spaces would be provided with Electric Vehicle Charging Points and would also include a dedicated secure cycle storage area for 10 cycles.
8. The Council indicates that the scheme would erode the current open landscaped area by approximately 362m<sup>2</sup> and result in the loss of two trees. The proposed landscaping scheme would include the retention of 11 established trees on the site and the provision of a further 15 trees. In addition, hedgerow planting is proposed in the proximity of the north-western boundary of the site with the roundabout highway boundary and along the north-western edge of the proposed parking bays. The Appellant indicates that there would be an increase in hedgerow planting from 42m to 157m on the site.
9. Although the appeal site has a relatively open appearance, in my view, it does not make a significant contribution to the localised urban character of its surroundings. I consider that the existing landscaping is fairly minimalistic and the site displays no notable features or characteristics to suggest that it plays any important gateway role. Consequently, the presence of the significant ad-hoc car parking and the relatively stark cladding of the industrial unit have the effect of drawing the eye and dominate the appearance of the site.
10. The proposal would provide an opportunity to efficiently regularise the parking areas with interspersed landscaping. A considerable part of the open aspect in the vicinity of the roundabout would be retained with a large portion of the proposed car parking areas being partially screened by hedgerow planting. The proposed hedgerow planting around the flank of the highway on the Kiln Way and Swadlincote Road flanks of the roundabout, supplemented by the additional tree planting, would have the effect of providing a more defined 'green' frame around the appeal site and the roundabout and screen the proposed railings.

11. Overall, I consider that the proposal provides an opportunity to increase the amount of landscaping on the site and regularise, and partially screen, the current ad-hoc parking. In the longer term, the maturity of proposed landscaping would make a more prominent visual contribution to the character of the local area. It would assist in providing a green corridor in the approach to the woodland area to the north-west and provide a degree of 'softening' to the industrial unit.
12. I have taken into account the concerns of the National Forest Company that the existing landscaping was intended to mitigate the visual impact of the new highway and that the appeal scheme would result in some of this being replaced by car parking. However, in my view, the proposed landscaping scheme would be of a high standard and increase the number of trees and hedgerows on the site which to some extent would reflect the aspirations of the National Forest. In this regard, I note that the Council's Landscape Architect raised no objections to the proposals and that Derbyshire Wildlife Trust welcomed the proposed tree and hedgerow planting.
13. My attention has been drawn to the fact that the Council declared a Climate Emergency in 2019 in which it committed to strive to achieve carbon neutrality across South Derbyshire before the Government target of 2050. The proposed introduction of the 24 electric charging points and the provision of secure cycle storage would present an opportunity to encourage more environmentally sustainable forms of travel with less dependency on fossil fuelled vehicles. I have attached moderate weight to these benefits in my determination of this appeal.
14. For the above reasons, I conclude that the proposal would not have a significant detrimental effect on the character and appearance of the surrounding area and would provide an opportunity to encourage more sustainable forms of transport in the longer term. As a result, there would be no conflict with Policies BNE1 or BNE4 of the South Derbyshire Local Plan Part 1 (2016). These policies, amongst other things, require new development to be sensitively and carefully designed to respect their context, embrace the principles of sustainable development and possess a high standard of landscaping quality with the incorporation of woodland planting.

*Other matters*

15. The Appellant has drawn my attention to a planning application that was submitted to the Council on 7 February 2023 (Ref: DMPA/2023/0177). The application sought permission for parking on the land that is subject to this appeal and, in addition, an extension to a workshop and offices. The Appellant indicates that the application was to be considered by the Council's Planning Committee on 19 September 2023. However, I have no information to indicate the outcome of the Council's decision on the application. Furthermore, I have no evidence to indicate how that proposal may impact on the appeal scheme before me. Consequently, I have attached no weight to the planning application and I have determined the appeal scheme on its own individual planning merits.
16. I have also taken into account the concerns of a number of local residents that the appeal site should remain open and be retained as a public amenity space. Whilst I recognise that the highway scheme that provided the roundabout showed this area to be retained with some tree planting and wildflower

seeding, for the reasons set out above, I consider that the appeal scheme would provide visual enhancement in the longer term. Whilst I understand the concerns of local residents, I have no evidence to suggest that the appeal site has been dedicated as a public amenity area.

### **Conditions**

17. I have considered the proposed planning conditions, including a number of pre-commencement conditions, that have been provided by the Council. I have considered these against the advice given in paragraph 56 of the National Planning Policy Framework and the guidance contained in the section on 'Use of Planning Conditions' in the Planning Practice Guidance. Where necessary I have amended them in the interests of clarity, precision, conciseness or enforceability.
18. In addition to the standard time limit, I have imposed a condition (No. 2) relating to the approved plans in the interests of certainty. In order to protect the character and appearance of the area, I have imposed conditions requiring the submission and implementation of details of landscaping, the provision of a Landscape and Ecological Management Plan and specification of external facing elements (Nos. 3, 4 and 5).
19. A condition is necessary to ensure that any works do not interfere with the bird nesting season (No. 6). In the interests of protecting the living conditions of nearby residents during the construction period, conditions are necessary that set out working hours and the submission and implementation of a Construction Environmental Management Plan (CEMP) (Nos. 7 and 11). However, I have deleted the working hours element from the CEMP as this duplicated the working hours already prescribed by condition No. 7.
20. In the interests of highway safety, conditions are necessary requiring a Stopping Up Order to be obtained to remove any remaining highway rights subsisting on the disuse section of Woodhouse Street, the retention of parking and manoeuvring space free from and impediment preventing their use as such, restrictions on the use of the site to light vehicles only and the setting back of the proposed gates at least 5m into the site from the highway boundary (Nos. 8, 9, 10 and 12). However, I have amended suggested condition No. 10 to provide for the submission of a scheme to demonstrate how HGV's would be prevented from accessing the site. Finally, a condition is necessary requiring investigation and remediation of any potential ground contamination in order to ensure the safe occupation of the development and to protect the environment (No. 13).

### **Conclusion**

21. For the above reasons, taking into account the development plan as a whole based on the evidence before me and all other matters raised, I conclude that the appeal should be allowed.

*Stephen Normington*

INSPECTOR

### CONDITIONS SCHEDULE

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
  - 222-30-01 – Survey of Existing
  - 222-30-03 – Location Plan
  - 222-30-12d – Proposed Parking
  - 222-30-13d – Comparison of Solid Surface Areas
  - IA-222-30-21 – Existing Non Permeable Area and Landscaping Plan
  - IA-222-30-22e – Non Permeable Area and Landscape Comparison Plan
  - BXMW/AP\_Apollo\_2018 – Apollo Cycle Shelter
  - EVQRO-V06-R5 Quantum EV Range - Overview Sheet – EV Charging Details
- 3) Notwithstanding the information submitted, prior to commencement of development a full schedule of all hard and soft landscape and planting works shall be submitted to and approved in writing by the Local Planning Authority, in consultation with the National Forest Company and Cadent Gas. The schedule shall include, but not limited to:
  - a) Details of all existing trees and hedgerows on the site and indicating whether they are to be retained;
  - b) Planting plans and sub grade details, written specifications (including cultivation and other operations associated with plant and grass establishment),
  - c) Schedules of plants/trees noting species, plant sizes, maturity, crown size; and,
  - d) A detailed implementation programme outlining the phasing of the planting;

The approved landscaping schedule shall be carried out in the first planting and seeding season following commencement of operation of the development or the completion of the development whichever is the sooner. If within a period of 5 years from the date of the planting, any tree or plant (including retained hedgerows and trees) is removed, uprooted or destroyed or dies, another tree or plant of the same species and size as that originally planted shall be planted at the same place, unless the Local Planning Authority gives its written consent to any variation.
- 4) Prior to the commencement of the development a Landscape and Ecological Management Plan (LEMP) shall be submitted to and approved in writing by the Local Planning Authority. The content of the LEMP shall cover a period of 40 years and include the following:
  - a) Description and evaluation of features to be managed;
  - b) Ecological trends and constraints on site that might influence management;

- c) Aims and objectives of management, including mitigation and enhancement for species identified on site;
- 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 twenty-year period);
- g) Details of the body or organisation responsible for implementation of the plan, along with funding mechanism(s) for that body or organisation;
- h) Ongoing monitoring and remedial measures, including where monitoring shows that conservation aims and objectives of the LEMP are not being met.

The approved plan shall be implemented in accordance with the approved details.

- 5) Prior to the erection of the following elements of the development hereby approved the colour, specification and external facing finishes shall be submitted to and approved in writing by the Local Planning Authority: fencing; gates, any CCTV equipment, cycle storage and EV chargers. These listed elements of the development shall be implemented in accordance with the approved details.
- 6) 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 shall be called in to carry out the check. Only if there are no active nests present shall work be allowed to commence.
- 7) No construction or related activity shall take place on the site outside the following hours: 0800 to 1800 Monday to Friday; 0800 to 1300 on Saturdays; and at no time on Sundays or Bank Holidays with the exception of work needed during an emergency.
- 8) 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 the commencement of the development to comply with statutory requirements.
- 9) Prior to the commencement of the use of the development, the parking and manoeuvring space within the site shall be laid out in accordance with application drawing No. 222-30-12 rev D and shall be maintained throughout the lifetime of the development free from any impediment to its designated use.
- 10) Prior to the commencement of the use of the proposed parking and manoeuvring space, a scheme shall be submitted to and approved in writing by the Local Planning Authority that provides details of measures to ensure that access to the site is restricted to light vehicles only and to

prevent access and turning manoeuvres by HGV's. The development shall be undertaken in accordance with the approved scheme and any measures identified therein shall be retained for the duration of the use of the development.

- 11) Prior to the commencement of the development a Construction Environmental Management Plan (CEMP) for the proposed development shall be submitted to and approved in writing by the Local Planning Authority. The CEMP shall provide details of how demolition and construction works are to be undertaken and include:
- a) The identification of stages of works;
  - b) The parking of vehicles of site operatives and visitors;
  - c) The erection and maintenance of security hoarding including external safety and information signage, interpretation boards, decorative displays and facilities for public viewing, where appropriate;
  - d) Details of all plant and machinery to be used during preparatory and construction stage, including an inventory of all Non-road Mobile Machinery (NRMM);
  - e) Details of community engagement arrangements and complaints procedure;
  - f) Details of any acoustic hoarding on the boundary of the site;
  - g) Details of mitigation measures on protected species identified on site;
  - h) Details for avoiding vegetation clearance during the bird nesting season;
  - i) A temporary drainage strategy and performance specification to control surface water runoff and Pollution Prevention Plan (in accordance with Environment Agency guidance);
  - j) Details of external lighting demonstrating no unacceptable impact on wildlife;
  - k) Details of noise, dust and air quality monitoring and compliance arrangements, including provision for monthly attendance at the Parish Council Meeting where necessary; and,
  - l) Details of measures to remove/prevent re-colonisation of non-native species.

The proposed development shall only be carried out in accordance with the approved CEMP.

- 12) Any gates shall be set back at least 5m into the site from the highway boundary and open inwards only.
- 13) If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until a remediation strategy has been submitted to the Local Planning Authority detailing how this unsuspected contamination shall be dealt with and obtained written approval from the Local Planning Authority. Thereafter, the remediation strategy shall be implemented as approved.

#### **D. Your costs application**

The Appellant seeks for a **full award** of costs against the Council.

The Council have acted unreasonably by preventing development which should clearly have been permitted, having had disregard to the scheme's accordance with the development plan, national policy and the material considerations as set out in the Committee Report.

The Officers of the Council recommended the scheme for approval having taken full account of the statutory consultees who raised no objections to the scheme. The proposal was weighed against the whole development plan and deemed to be fully in accordance with its policies, as confirmed by the professional advice of the Council's officers.

The reason for refusal reached by the committee is contradictory to the advice of the professional officers as set out in the committee report's conclusions, and comprises an unsubstantiated, vague, generalised and inaccurate assertion about the proposal's impact, which is unsupported by any objective analysis. This is not enough to justify a reasoned refusal against the evidence that was before the committee. No new cogent evidence or material considerations were raised to justify the refusal of the scheme.

This constitutes unreasonable behaviour that has directly resulted in the Appellant incurring the unnecessary expense of this Appeal.

The Appellant therefore respectfully asks the Inspector to make a full award of costs, to enable the Appellant to recover their Appeal costs.

The Appellant reserves the right to comment further when they have seen the Council's statement of case.

#### **Please sign below**

I understand that:

(a) use of this form is voluntary, and that the Planning Inspectorate may use the information I have given for official purposes in connection with the processing of my application for an award of costs;

(b) the costs decision resulting from processing my application will be published on the Planning Portal and will include relevant names but not addresses.

By signing this form I am agreeing to the above use of the information I have provided.

I have completed all sections of the form and confirm that details are correct to the best of my knowledge. (Please note: signature is not necessary for electronic submissions)



South Derbyshire District Council  
Civic Offices  
Civic Way  
Swadlincote  
Derbyshire  
DE11 0AH

Nicholas Patch  
The Planning Inspectorate  
Temple Quay House  
2 The Square  
Bristol  
BS1 6PN

Appeal Reference: APP/F1040/W/23/3317999  
Planning Application reference: DMPA/2022/0360

Nicholas Patch

**RE: Application for the award of Costs relating to Appeal Reference: APP/F1040/W/23/3317999 via s.322 and 322A of Town and County Planning Act 1990 (as amended)**

**Description of the development:** For a 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

**Address of the site:** Land adjacent to First Fence Ltd, Kiln Way / Woodhouse Street, Woodville, Swadlincote, Derbyshire, DE11 8EA

#### Preamble

The appellant of appeal reference APP/F1040/W/23/3317999 has sought the award of full costs against the South Derbyshire District Council (the Council).

This letter is in response to that request.

#### Claim

The appellant's claim is for a full award of costs. The appellant's claim is that the Council acted unreasonably and is set out below in full:

*The Council have acted unreasonably by preventing development which should clearly have been permitted, having had disregard to the scheme's accordance with the development plan, national policy and the material considerations as set out in the Committee Report.*

*The Officers of the Council recommended the scheme for approval having taken full account of the statutory consultees who raised no objections to the scheme. The proposal was weighed against the whole development plan and deemed to be fully in accordance with its policies, as confirmed by the professional advice of the Council's officers.*

*The reason for refusal reached by the committee is contradictory to the advice of the professional officers as set out in the committee report's conclusions, and comprises an unsubstantiated, vague, generalised and inaccurate assertion about the proposal's impact, which is unsupported by any objective analysis. This is not enough to justify a reasoned refusal against the evidence that was before the committee. No new cogent evidence or material considerations were raised to justify the refusal of the scheme.*

*This constitutes unreasonable behaviour that has directly resulted in the Appellant incurring the unnecessary expense of this Appeal.*

*The Appellant therefore respectfully asks the Inspector to make a full award of costs, to enable the Appellant to recover their Appeal costs.*

*The Appellant reserves the right to comment further when they have seen the Council's statement of case.*

#### **Council's Response**

The Council refers to guidance contained within the National Planning Policy Guidance on the matter of costs - Paragraph: 027 Reference ID: 16-027-20140306 onwards.

It is understood that a costs application to be successful it is based on

- (1) behaved unreasonably and
- (2) this has directly caused another party to incur unnecessary or wasted expense

The application proposed an area of parking located on a turning head (a stretch of Woodhouse Lane) which was created by the recent delivery of wider highway network amendments (Woodville Regeneration Link Road) pursuant to application CD9/0520/8. The site was subject to Condition 14 of application CD9/0520/8 which controlled the delivery of landscaping and planting along Woodhouse Lane (but only to the extent of hedgerow and widening of verge), and Condition 15 of the same permission which would maintain this planting for a period of 5 years. Condition 14 was discharged via application reference SD3472. Please note the application references refer to Derbyshire County Council applications.

The refused proposal fundamentally rearranges the landscaping and planting approved via the application and SD3472 which discharged condition 14; the proposal would introduce a greater amount of hardstanding compared to that approved but intensify the landscaping and planting on retained green spaces. This was outlined in the committee report.

Turning to the decision and subsequently this claim for costs, it is acknowledged that the application was refused contrary to the Officer recommendation. The reason for refusal was:

*The proposed development will introduce a built form of development into a visually prominent, open, naturally landscaped area, and would erode this visually significant landscaped gateway site. This would result in an undue adverse impact on the character, appearance and visual amenity of the area. As such, the proposal fails to accord with Local Plan Part 1 policies BNE1 and BNE4. This adverse impact is not considered to be outweighed by the increase in parking provision and additional planting proposed as part of this application.*

The above reason reflects the decision by members to place different weight on the material matters whilst having full regard to the benefits of the proposal.

On this basis, the Committee members exercised their own planning judgement. They concluded the proposed scheme was not acceptable and would cause detrimental harm to the character and appearance of the site and that permitted via application SD3472.

From their interpretation of planning policy, knowledge of the Woodville Link Road and the understanding of the proposal, the proposed scheme was concluded by members to be not in accordance with the Local Plan on balance, and they came to a reasonable planning judgment that there were sufficient planning reasons for disagreeing with the Officer recommendation that merited the refusal of permission.

The reason was therefore squarely within the scope of reasonable planning judgment and reasonable planning grounds were given for taking a different decision to the officer recommendation.

For the reasons above, the Council refutes the appellants claim of unreasonable behaviour by Committee members in taking the position they did to refuse. It is considered that the members have properly exercised their role with regards to development management in line with the Development Plan and material considerations.

Consequently, it is respectfully requested that the application for costs is dismissed.

Yours Faithfully,

Stuart Hammond



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## Costs Decision

Site visit made on 28 September 2023

by **Stephen Normington BSc DipTP MRICS MRTPI FIQ FIHE**

an Inspector appointed by the Secretary of State

Decision date: 24 October 2023

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### **Costs application in relation to Appeal Ref: APP/F1040/W/23/3117999 Land adjacent to First Fence Ltd, Kiln Way/Woodhouse Street, Woodville, Swadlincote DE11 8EA**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Mr V Kotecha, First Developments Holdings Ltd for a full award of costs against South Derbyshire District Council.
  - The appeal was against the decision of the Council to refuse planning permission for the change of use to existing land and turning head resulting from the development of the Kiln Way Link Road for the creation of 47no. car parking spaces, including 24no. electric vehicle charging points, erection of 10no. cycle spaces, staff seating area and landscaping.
- 

### **Decision**

1. The application for an award of full costs is refused.

### **Reasons**

2. The Planning Practice Guidance (PPG) advises that all parties are expected to behave reasonably to support an efficient and timely process. Where a party has behaved unreasonably and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs irrespective of the outcome of the appeal.
3. The basis of the Appellant's application for costs is that the Council have acted unreasonably by preventing development which should clearly have been permitted, having had disregard to the scheme's accordance with the development plan, national policy and the material considerations as set out in the Report to Planning Committee.
4. The officer of the Council recommended the scheme for approval having taken full account of the statutory consultees who raised no objections to the scheme. The Appellant considers that the proposal was weighed against the whole development plan and deemed to be fully in accordance with its policies, as confirmed by the professional advice of the Council's officers. Furthermore, the reason for refusal reached by the Planning Committee was contradictory to the advice of the professional officers as set out in the Committee Report's Conclusions, and comprises an unsubstantiated, vague, generalised and inaccurate assertion about the proposal's impact, which is unsupported by any objective analysis.

5. The Appellant considers that no new cogent evidence or material considerations were raised to justify the refusal of the scheme. Consequently, this constitutes unreasonable behaviour that has directly resulted in the Appellant incurring the unnecessary expense of this Appeal.
6. While the Council is not duty bound to follow the advice of its professional officers, if a different decision is reached the Council has to clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning.
7. To some extent, the consideration of the visual impact of the proposal is a subjective judgement. In this case, members of the Planning Committee were entitled to make their own assessment of the impact of the scheme on the character and appearance of the area. In exercising their planning judgement, members concluded that such impact would be of an extent that would cause conflict with relevant policies in the development plan.
8. I consider that the reason for the refusal of planning permission was relevant to the application and clearly states the policies of the South Derbyshire Local Plan Part 1 (2016) (the Local Plan) that the proposed development would be in conflict with. The evidence provided in this appeal demonstrates that members were aware of the benefits of increased parking and the additional planting but considered that these would not outweigh the adverse impact on the character and appearance and visual amenity of the area. Consequently, conflict with the provisions of Policies BNE1 and BNE4 of the Local Plan was identified.
9. Accordingly, I do not find that the Council failed to properly evaluate the application or failed to properly consider the merits of the scheme. The reasons for the refusal of planning permission were adequately stated by reference to the appropriate policies contained in the development plan that the proposal was in conflict with. I have found that the Council had reasonable concerns about the harm to the character and appearance of the local area which justified its decision. Just because I have found differently from the Council this does not mean to say that the Committee's concerns had no basis. As such, I do not find that the Council failed to properly consider the merits of the scheme and therefore the appeal could not have been avoided.
10. For these reasons, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and having regard to all other matters raised, an award of costs is not justified.

*Stephen Normington*

INSPECTOR