

REPORT OF THE HEAD OF COMMUNITY AND PLANNING SERVICES

SECTION 1: Planning Applications SECTION 2: Planning Appeals

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

1. PLANNING APPLICATIONS

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

Reference	Item	Place	Ward	Page
9/2007/0655	1.1	Stenson	Stenson	1
9/2012/0154	1.2	Swadlincote	Swadlincote, Newhall, Church Gresley	19
9/2012/0314	1.3	Repton	Repton	34
9/2012/0508	1.4	Church Gresley	Church Gresley	43
9/2012/0469	1.5	Church Gresley	Church Gresley	46
9/2012/0510	1.6	Mickleover	Etwall	55

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

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

Item 1.1

Reg. No. 9/2007/0655/OM

Applicant:

Redrow Homes Midlands Ltd
Kinsall Green
Wilnecote
Tamworth

Agent:

Robert Barber
Pegasus Planning Group
3 Pioneer Court
Chivers Way
Histon

Proposal: **Outline application (all matters reserved except for means of access) for the erection of 145 dwellings on Land off Stenson Road Stenson Derby**

Ward: **STENSON**

Valid Date: **04/06/2007**

Reason for committee determination

The proposal is referred to Committee because it is a major application with more than 2 objections.

Site Description

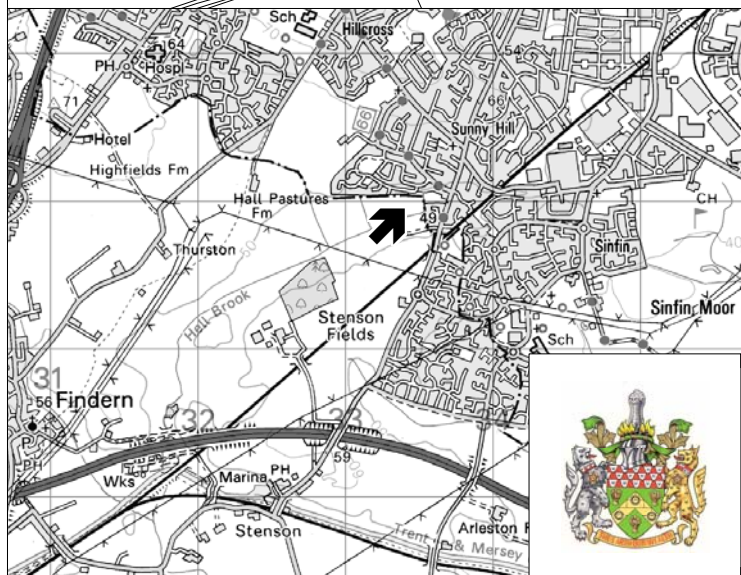
The site is located to the west of Stenson Road and south of Grovebury Drive on the south western urban fringe of Derby. The site adjoins existing residential development to the north and east. There is a railway line and Stenson Road to the south east and open farmland to the west. It is made up of two fields, separated by a hedge and associated trees. A wet ditch lies alongside the central hedgerow and there is a seasonally wet depression in the land to the eastern part of the site. Around the perimeter there are further hedgerows and various trees.

As Stenson Road passes over the railway line it is single lane width, controlled by traffic lights on shuttle working. Stenson Road is the main north-south route linking Stenson Fields to the A5111 ring road and Derby City centre.

Following the Council's Strategic Flood Risk Assessment more than half the site is identified as flood Risk Zone 3b (functional flood plain, high probability of flooding).

Proposal

The application is in outline and proposes about 145 dwellings. Vehicular access would be gained through the existing development to the east, Primula Way. The access



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South Derbyshire District Council. LA 100019461. 2010

involves crossing land in Derby City Council's administrative area and an appropriate application has been made to the City Council.

The application was submitted in 2007, at which time the conjoined inquiry into major housing sites was underway. It was then held in abeyance pending preparation of the Core Strategies that were to address the housing needs of the Derby Strategic Housing Market Area in parallel with the East Midlands Regional Plan. In addition changes to the Environment Agency's identified flood risk zones required further technical assessment of the changes. The application was updated in March 2011 and is accompanied by Indicative Masterplan, Design and Access Statement, Flood Risk Assessment, Noise Assessment, Archaeological Assessment, Transport Assessment, Landscape and Visual Impact Assessment, Planning Statement and Ecology Report.

The applications also includes a scheme for flood alleviation that would not only reduce the risk of flood to the application site but also to existing property in the locality.

Applicants' supporting information

The applicant's assessment of the proposal is:

- The site is available for development and in comparison to both brownfield and other Greenfield sites, it can be developed without the need for major infrastructure improvements. The access requirements have already been established.
- The site is immediately available for development and thus deliverable.
- Subject to satisfactory completion of the Section 106 Agreement and discharge of conditions, it is anticipated that development could be commenced with 12 months of permission being granted.
- The lack of a five year housing land supply and the close relationship of the site to the existing built up area and its services and facilities make it very suitable for development. In particular it would achieve high quality housing with a good mix; it would contribute to the deficit in housing requirements, including affordable housing; it would use land effectively and efficiently; and the proposed development is in line with planning for housing objectives, reflecting the need and demand for housing in, and the spatial vision for, the area and does not undermine wider policy objectives.
- The flood alleviation measures would remove the site from Flood Zone 3a. Importantly the measures would also remove about 60 houses adjoining the site from this zone.
- The submitted Transport Assessment shows that the site is suitable for development infrastructure and transport terms, with good alternatives to the use of the private car for transport and good accessibility to facilities.
- The ecology surveys show the site to be of negligible ecological value (having reviewed this aspect again last year).

The applicant's planning statement concludes:

- The development would accord with development plan and national planning policy.
- The proposal would provide a mix of market and affordable homes. It forms a logical extension to the Derby urban area and is well located to local facilities. In

addition the site benefits from good pedestrian and cycling links, is located within easy walking distance of an existing bus route and provides substantive open space.

- The site is available, suitable and achievable and thus deliverable in the context of the failure of the Council to demonstrate a five year supply of housing land.
- There are no significant ecological constraints and the proposed flood mitigation measures would remove the site and existing dwellings from high risk of flooding.

Planning History

The site is part of larger area of land previously promoted through the abandoned Local Plan.

Responses to Consultations

Derby City Council comments/objects as follows:

- a. The proposed flood alleviation scheme appears to remove large volumes of flood storage, which could increase risk of flood to properties upstream and downstream.
- b. A large trunk sewer passes through the site, draining a large area of Derby. The application does not show how exceedance flows from this sewer would be managed.
- c. The site lies within Flood Zone 3b. Development should be directed away from such areas.
- d. The development is not necessary to meet the strategic housing land requirements of the Regional Plan.
- e. Access and egress would be along Stenson Road. There is particular concern about the capacity of the junctions with Blagreaves Lane and Goodmoor Road. There is concern that the development would limit or prevent development of other sites that rely on access to the same roads and junctions.
- f. There is objection that the development would prevent brownfield regeneration sites within the City, in particular a site for about 600 houses. Development of this site would likely generate some trips on Stenson Road and the subject application could adversely affect the capacity of the road network to accommodate more sustainable brownfield sites in Derby. Priority should be given to allocating remaining road capacity to the brownfield site within Derby.
- g. There is concern that Derby residents have not been adequately consulted.
- h. There is a need for Section 106 contributions to Derby City (these will be detailed in the Planning Assessment below).
- i. The highway impacts have been assessed using the Derby Area Transport Model(DATM) 2016 traffic flows, which include the impact of committed developments, such as the 500 home permission at Stenson Fields. In order to manage the Blagreaves Road and Goodsmoor Road junctions, a signalised scheme must be implemented before either this proposal or the committed Stenson Fields development comes forward.
- j. To mitigate the impact of increased traffic along Stenson Road residents of the proposed housing would need better access to public transport. In particular the No 3 bus service along Stenson Road has been reduced to 4

- times an hour Monday to Saturday and there is no evening service. This service needs to be supported as an alternative to the private car.
- k. Links to existing cycleways should be secured.
 - l. The flood alleviation scheme should include maintenance of the existing balancing feature and the associated watercourse, which is in a very poor condition.
 - m. The statement makes no reference to the hydraulic modelling of onsite drainage and the watercourse that runs through the site, which drains the Primula Way area. It is vital that this be modelled to ensure that this watercourse does not flood the proposed development and that there is no adverse effect on the drainage of Primula Way and Angelica Way which discharge into this watercourse. (Comment: The applicant has agreed to these last two points).

The Environment Agency has concerns about development in Flood Zone 3 but, in view of the proposed flood alleviation scheme, does not raise formal objection. However in the light of the development being deemed by the local planning authority to be sequentially (flood risk) preferable, the high level of robustness of the Exception Test must be reached should the development be allowed to go ahead. The Agency is reasonably satisfied that the information provided by the applicant shows that the principle of flood alleviation has been established. However there remains a need for further detailed design, which must fully demonstrate that there is no flood risk to the development or to third parties, both upstream and downstream. Conditions are recommended accordingly. Because there would be impact on available floodplain Derby City Council should be consulted.

Severn Trent Water Ltd has no objection subject to further consideration of details of foul and surface water disposal.

The County Council Highway Authority anticipates that the majority of traffic would use roads into the city and that mitigation measures are being sought to minimise the impact on affected highways. However should this not be the case there are concerns that traffic would use less suitable roads to the south, to the potential detriment of highway safety. Any such mitigation measures would need to be the subject of a Section 106 Agreement, which should also include a residential Travel Plan.

Derbyshire Wildlife Trust makes the following recommendations:

- a) The development design should incorporate a full Sustainable Urban Drainage Scheme to include swales, attenuation ponds and areas of reedbed. This is to provide suitable habitat for Reed Bunting, a UK BAP Priority Species, which previous surveys have identified as breeding within the site. The provision of a wetland habitat would also provide suitable additional amphibian habitat.
- b) All existing hedgerows to be retained and reinforced by additional planting of native trees and shrubs of UK or more local provenance.
- c) The boundary ditch on the east side should be retained to continue to provide habitat for Common Toad and Smooth Newt.

The Development Control Archaeologist comments that the site has low potential and recommends conditions to evaluate the site concurrent with development.

Sport England recommends appropriate contributions based on up to date assessment of need.

The Contaminated Land Officer recommends a condition to deal with the event that contaminants are identified during development.

Derbyshire PCT seeks £74321.20 to deal with the increased demand on Primary Care facilities in the local area.

The County Education Authority comments that the site is within the normal area of Findern County Primary School and John Port School. The development would likely generate 29 primary age and 22 secondary age pupils. This is calculated on the basis of a minimum of 20 primary spaces and 15 secondary places per 100 dwellings. Based on current data and having analysed pupil projections for the next 5 years, there is no justification for a Section 106 Education contribution at the present time and it is anticipated that these schools would be able to accommodate this number of pupils.

Whilst not anticipating undue noise East Midlands Airport asks for the developer to be advised that the site lies under flight paths.

Responses to Publicity

A petition of 225 signatories objects because:

- a) There would be increased traffic congestion.
- b) Increased strain on local amenities, such as schools and medical facilities.
- c) Building work would last for two years.
- d) The proposal is contrary to planning policy and is not needed.
- e) There would be loss of habitat and countryside.

14 letters of objection have been received as follows:

- a) The development would encroach into the countryside to the detriment of its character and, ultimately, the outlying villages.
- b) Development, if needed, should take place on brownfield land.
- c) The local road network is already congested and would be unable to cope with the additional traffic. The traffic study does not adequately address existing problems.
- d) Traffic would lead to loss of amenity for residents near junctions on the road network.
- e) Existing flooding problems would be exacerbated.
- f) The drainage system would be overloaded. It is unlikely that the flood alleviation measures would work as the area is at the lowest point of the drainage system.
- g) There would be increased noise and pollution and danger to children and road users in Primula Way.
- h) Difficulties in turning out of Primula Way would be worsened.
- i) Emergency services may have difficulty in reaching the site.
- j) Local services (such as libraries and schools) would be overstretched.
- k) The access road would destroy a play area.
- l) Existing hedgerows should be preserved to maintain habitat and privacy.
- m) Pedestrian access to Ryedale Gardens/Grovebury Drive would lead to increased disturbance and increased anti-social behaviour/crime. Access to Ryedale

Gardens would need the agreement of private householders. (Comment: The Design and Access Statement has been amended to clarify that pedestrian/cycle access would not pass through Ryeland Gardens).

- n) There is no need for the development.
- o) There would be loss of privacy to existing residents.
- p) The impacts of the development would be most felt by Derby residents.
- q) There would be disturbance during building works.

Development Plan Policies

The relevant policies are:

East Midlands Regional Plan

Policy 1 sets out Regional Core Objectives, including the need to address housing need and choice, to reduce social exclusion, protect the environmental quality of settlements, to improve the health and mental, physical and spiritual well being of the region's residents, to improve economic prosperity, employment opportunities and regional competitiveness, to improve accessibility to jobs, homes and services, to protect and enhance the environment, to increase the level of the Region's biodiversity, to reduce the causes and impact of climate change and to minimise adverse environmental impacts of new development and promote optimum social and economic benefits.

Policy 2 sets out criteria that seek to promote better design.

Policy 3 seeks to concentrate new development primarily in and adjoining the Region's principal urban areas (in this case Derby).

Policy 12 requires development in the Three Cities Sub-Area to support the continued growth of Derby, including the provision of a mix of housing types

Policy 14 seeks the adoption of affordable housing targets in line with up to date Housing Market Assessments for the area.

Policy 29 sets out criteria for enhancing the Region's biodiversity, including the retention and enhancement of habitats in new development.

Policy 35 deals with the need to manage flood risk. In particular it seeks to ensure that development should not be at unacceptable risk of flood or cause flooding elsewhere.

Policy 39 seeks energy reduction and efficiency through site layout, location and building design.

Policies 43 & 44 set out regional and sub-area transport objectives, in particular to support sustainable development in the region's Principal Urban Areas, and by reducing the need to travel and promoting modal shift away from the private car.

Policy Three Cities SRS 3 sets a housing target of 320 dwellings per annum within or on the edge of Derby, including sustainable urban extensions as necessary.

South Derbyshire Local Plan

Saved Environment Policy 1 requires development away from settlements to be essential to a rural based activity or unavoidable in the countryside and the character of the countryside, its landscape quality, wildlife and historic features to be safeguarded and protected. Development should be designed and located so as to minimise its impact on the countryside.

Saved Environment Policy 9 seeks to protect trees and to require new planting.

Saved Housing Policy 11 sets out criteria for new housing development, to provide a reasonable environment for the public at large, reasonable amenities for existing and new dwellings, safe functional and convenient layouts, private amenity space and space for landscaping, adequate public open space and for the development of suitable adjoining land.

Saved Transport Policy 6 steers major development towards the principal road network, with adequate access and parking, and seeks contributions towards necessary highway improvements.

Saved Transport Policy 7 provides for pedestrian and disabled access.

Saved Recreation and Tourism Policy 4 requires the provision of outdoor playing space in new housing development.

National Guidance

National Planning Policy Framework (NPPF)

Paragraphs 11-14 make a presumption in favour of sustainable development; in particular where an adopted plan is out of date this will be a material consideration of substantial weight.

Paragraph 17 sets out 12 core land use principles that planning should:

- 1) be genuinely plan-led, to make decisions predictable and efficient;
- 2) not simply be about scrutiny, but instead be a creative exercise in finding ways to enhance and improve the places in which people live their lives;
- 3) proactively drive and support sustainable economic development to deliver the homes, business and industrial units, infrastructure and thriving local places that the country needs.
- 4) always seek to secure high quality design and a good standard of amenity;
- 5) promote the vitality of main urban areas, protecting the Green Belts around them, recognising the intrinsic character and beauty of the countryside and supporting communities within it;
- 6) support the transition to a low carbon future in a changing climate;
- 7) contribute to conserving and enhancing the natural environment and reducing pollution;
- 8) encourage the effective use of land by reusing land that has been previously developed;
- 9) promote mixed use developments, and encourage multiple benefits from the use of land in urban and rural areas;
- 10) conserve heritage assets in a manner appropriate to their significance;

- 11) actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling, and focus significant development in locations which are or can be made sustainable; and
- 12) take account of and support local strategies to improve health, social and cultural wellbeing for all, and deliver sufficient community and cultural facilities and services to meet local needs.

Chapter 4 promotes sustainable transport, in particular seeking opportunities for sustainable transport modes and minimisation of the need to travel.

Chapter 6 seeks to significantly boost the supply of housing to deliver a wide choice of high quality homes. A minimum five-year supply of housing land is required with an additional buffer to ensure choice and competition in the market for land. Housing applications should be considered in the context of the presumption in favour of sustainable development.

Chapter 7 requires good design. It is proper to seek to promote or reinforce local distinctiveness, whilst not seeking to impose architectural styles or particular tastes.

Chapter 8 promotes healthy communities, including access of housing to schools, open spaces and other community facilities.

Chapter 10 sets out strategic goals to meet the challenge of climate change, flooding and coastal change. In particular the sequential, risk based approach to the location of development to avoid flood risk to people and property and manage any residual risk is advocated, and exception tests in areas at risk of flood.

Chapter 11 sets out principles for conserving and enhancing the natural environment.

Paragraphs 203-206 set out criteria for planning conditions and obligations. In the case of the former they should be necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. Planning obligations should only be sought where they meet all of the following tests:

- Necessary to make the development acceptable in planning terms;
- Directly related to the development; and
- Fairly and reasonably related in scale and kind to the development.

Planning Considerations

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

- The principle and sustainability.
- Impact on the character of the area
- Design quality
- Transport and highway safety.
- Residential amenity.
- Flood Risk.
- Section 106 contributions.

Planning Assessment

The principle and sustainability

The site adjoins the Derby Principal Urban Area (PUA) and is thus generally supported in spatial policy terms by the East Midlands Regional Plan (Policies 1, 3, 12 and SRS3) and is locationally consistent with the broad aims of the NPPF. In addition the development is expected to deliver a positive impact on the flood risk of existing residential areas (see further assessment below).

The Council is unable to demonstrate a five-year supply of housing land in the PUA. Despite extant permissions for over 2,000 houses as a result of the Secretary of State's decision at the conjoined inquiry in February 2009, the delay in delivery of these sites due to the recession has led to a significant increase in the residual requirement. This has resulted in the number of dwellings, which can be considered 'deliverable' in the next five years on these sites not meeting the requirements of the Regional Plan.

It is important to ensure that decisions on planning applications, particularly residential, do not prejudice wider strategic and infrastructure planning which can only properly be co-ordinated through the emerging aligned local plans for South Derbyshire and the City of Derby. However, in this case, it is considered that the scale and location of the proposed development would be unlikely to be unacceptably prejudicial to the local plan process.

Future applications will, however, need similar careful consideration so that the Council can be satisfied that they will not, either alone, or in combination with other proposals, have a significant impact on the local plan process.

Impact on the character of the area

The site is not a designated landscape and whilst it contains hedges and trees these are not of great landscape value. The Design and Access Statement indicates that the key landscape features would be retained and enhanced and identifies the opportunity to undertake additional tree planting to provide a more landscape dominant edge to the rural/urban interface. This would be secured by condition in accordance with Local Plan Saved Environment Policy 9. Furthermore this an urban fringe setting, the overall character of which is affected by the urbanising influence of existing residential development, transport corridors and views of pylons and Willington Power Station cooling towers. As such the overall effects of the proposal on landscape character would not be harmful.

The northern part the site falls within the 'Wet Pasture Meadows' character type as identified by Derbyshire County Council's Landscape Character Assessment. The proposal would result in the loss of approximately 0.5% of this Landscape Character Type, which would not be significant in strategic terms.

The development would be clearly visible from the residential properties around the site, giving rise to a significant change to the views of the occupants. However such views are essentially private. Therefore this does not amount to a public interest issue of such weight as to outweigh the benefits of the development.

Design quality

Whilst the application is in outline, the submitted Design and Access Statement provides sufficient evidence to demonstrate that a Building For Life Score of 14 or more can be achieved ('good' standard). As such the scheme is capable of meeting the aspirations of the Council's guidance ('Better Design for South Derbyshire') and is thus in accord with Regional Plan Policy 2, Local Plan Saved Housing Policy 11 and Chapter 7 of the NPPF. A condition requiring conformity with the submitted Master plan would ensure that the reserved matters follow the principles set out in the Design and Access Statement.

Transport and highway safety

The proposed access arrangements would not give rise to any demonstrable harm to highway safety interests. Detailed parking provision would be addressed through the reserved matters process. Therefore the main transport issue relates to increased traffic using the Stenson Road corridor and associated roads. The City Council has expressed particular concern about the capacity of the junctions with Blagreaves Lane and Goodmoor Road and concern that the development would limit or prevent development of other sites that rely on access to the same roads and junctions. However in the absence of firm evidence to substantiate such concerns the application remains to be considered on its own merits.

The Blagreaves Road and Goodmoor Road junctions cannot support either this development, or the committed Stenson Fields scheme, without improvement. Therefore a condition requiring off-site highway works to implement a signalised scheme for those junctions would be necessary. Section 106 contributions towards other transport elements, such as bus services and other relevant improvements to the Stenson Road transport corridor are also justifiable in the terms of paragraphs 203 – 206 of the NPPF. Subject to the recommended conditions and contributions the development would be compliant with Regional Plan Policies 43 & 44, Local Plan Saved Transport Policies 6 & 7 and NPPF Chapter 4.

Residential amenity

Although the outlook presently enjoyed by the occupiers of property adjacent to or close to the site boundaries will be changed, this relates primarily to private views and is of little weight as a material consideration. The site is capable of accommodating residential development, whilst meeting the criteria for protecting neighbours set out in Local Plan Saved Housing Policy 11 and its associated supplementary planning guidance. The provision of a footway/cycle link through to Grovebury Avenue could result in some impact on residents, although the precise design and alignment of any such link would be capable of detailed assessment at reserved matters stage.

Flood Risk

Much of the site lies within an area identified by the Level 1 Strategic Flood Risk Assessment as Flood Risk Zone 3b (functional floodplain) wherein development is typically unacceptable. In line with the NPPF therefore, a 'sequential test' has been undertaken to search for alternative sites outside the flood zone in the South Derbyshire part of the Derby Principal Urban Area. No such sites which are "suitable, developable and deliverable" are available. In addition, an 'exceptions' test has been undertaken and it is considered that there are clear sustainable development benefits in the delivery of housing, including affordable housing and the opportunity to reduce the risk of

inundation to some existing properties. The proposal therefore passes the exceptions test. It is essential however, that the applicant is able to demonstrate that the scheme can be designed such as to be demonstrably safe without increasing flood risk elsewhere. In this regard, the applicant has provided specialist evidence that identifies the cause of existing flood conditions. At present, during the 1 in 100 year flood event, flows are seen to come out of bank on Hell Brook at two critical locations adjacent to the site, which result in an overland flow mechanism developing. A potential alleviation scheme has been assessed that provides a second channel alongside a section of Hell Brook. This scheme has been assessed in the hydraulic model, which shows that flood levels would be reduced at the locations adjacent to the site where out of bank flows occur, without detrimental effects elsewhere in the catchment.

While the site is presently at risk of flood the evidence submitted by the applicant demonstrates that if the flood alleviation scheme were to be implemented then a re-assessment of the flood risk would bring the site into Zone 1 (low risk). Therefore so long as the flood alleviation and site drainage arrangements are tied to the proposed housing development, by way of Section 106 Agreement and conditions, there would be no demonstrable harm to flood risk interests despite the present designation which, in normal circumstances, would weigh against the development as a matter of policy (Regional Plan Policy 35 and NPPF Chapter 10). Nevertheless it is clear that development can proceed without prejudice to the relevant policies subject to timely implementation of the scheme.

The local planning authority would be unable to demonstrate harm in the light of the proposed flood alleviation scheme. Therefore this is a case, on its specific merits, most notably that about 60 houses would benefit from a reduction in flood risk, that would warrant a departure from the normal stance of resisting development shown on the maps to be at high risk of flood. The use of opportunities offered by new development to reduce the causes and impacts of flooding is acknowledged in Paragraph 100 of the NPPF.

Section 106 contributions

The following matters have been agreed with the applicant in compliance with Paragraphs 203-205 of the NPPF:

- Affordable Housing – To be provided in the range of 30% - 40%. Any provision less than 40% to be subject to assessment by the Valuation Office Agency.
- On site open space (including play equipment, amenity areas and parkland) - Maintenance contribution to be paid on completion and prior to adoption by the District Council, on the basis of £7.50 per sq m. Alternatively maintenance to be undertaken in perpetuity by a management company.
- Outdoor Sports Facilities. £220 per person payable to Derby City Council for provision of improvements to facilities reasonably capable of serving the development site.
- Built Facilities. £110 per person for the maintenance and enhancement of the Community Centre to be provided with the committed development for 500 houses at Stenson Fields. If the contribution cannot be allocated to that development within a 5 year period (for example because the development has not proceeded) then the contribution to be re-allocated to Derby City Council to

- be spent within a further 5 years on the provision or improvement of community built facilities reasonably capable of serving the application site.
- Healthcare. £74,321 based on 145 dwellings at £512.56 per dwelling.
 - Transport improvements to Stenson Road Corridor. £1481 per dwelling and £582 per apartment.
 - Employment and Training (for local labour force during construction).
 - Provision of off site flood alleviation works, in particular:
 - Provide further detailed design for the flood alleviation scheme. The design must demonstrate comprehensively that there is no flood risk to the proposed development nor to third parties both upstream and downstream of the development. In particular reference to the hydraulic model submitted, an unrealistic pivot in calculated water surface profiles between HB6(a4) and HB6b(a4) and HB8 requires further investigation. It must be clearly demonstrated that model data files match model results files.
 - Ensure that a comprehensive maintenance and management regime is established for the flood alleviation scheme and any associated control structures. Should a private management company assume responsibility, there should be a contingency plan for adoption and maintenance via a public body in the case of failure of the management company.
 - Ensure the flood alleviation channel shall not compromise access to the existing Hell Brook channel for maintenance and emergency access needs. There shall be a workable easement of at least 8m from the existing channel.
 - Ensure a scheme for the protection of the existing drainage channel to the northern edge of the development site.
 - Ensure the protection of the exiting balancing feature as shown on Drawing No CAM.070-083.
 - The scheme to be fully implemented and subsequently maintained, in accordance with the timing/phasing arrangements embodied within the scheme, or within any other period as may subsequently be agreed.
 - Maintenance of the balancing feature on drawing no CAM.070-083 and the associated watercourse.
 - Hydraulic modelling of on site drainage and the watercourse that runs through the site and which drains the Primula Way area, to ensure that this watercourse does not flood the proposed development, and that there is no adverse effect on the drainage of Primula Way and Angelica Court which discharge to the watercourse.

Conclusion

The site is in a location still supported in general terms by the Regional Plan. Due, in the main, to the economic downturn the Council is unable to demonstrate a five-year supply of housing land in the PUA, thus not meeting the requirements of the Regional Plan for delivering new houses. The site is well related to the urban area and would not have undue impact on the countryside. Adverse transport issues could be mitigated by conditions and appropriate contributions. There are no other infrastructure provisions that would be harmfully overloaded, subject to proportionate planning obligations. The applicant has demonstrated that the current flood risk could be reduced and improvements made for existing residents in this regard.

Whilst it is highly desirable for all new development to follow an up to date development plan, to ensure that planning decisions do not prejudice wider strategic and infrastructure planning, in this case it is considered that the scale and location of the proposed development would be unlikely to be unacceptably prejudicial to the local plan process.

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

Recommendation

Subject to the applicant entering in to an agreement under Section 106 of the Town and Country Planning Act in the terms set out in the report, **GRANT** permission subject to the following conditions:

1. (a) Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.
(b) The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the reserved matters to be approved.

Reason: To conform with Section 92(2) of the Town and Country Planning Act 1990.

2. Approval of the details of the layout, scale, appearance and the landscaping shall be obtained from the Local Planning Authority in writing before any development is commenced.

Reason: The application is expressed to be in outline only and the Local Planning Authority has to ensure that the details are satisfactory.

3. The reserved matters submitted in accordance with condition 2 and details submitted in accordance with any other condition of this planning permission shall accord with the principles outlined in the indicative master plan for application development CAM.0750-08B.

Reason: The application is expressed to be in outline only and the Local Planning Authority has to ensure that the details are satisfactory.

4. No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved, unless otherwise agreed in writing by the Local Planning Authority. These details shall include trees to be retained showing their species, spread and maturity; proposed finished levels or contours; means of enclosure; car parking layouts; other vehicle and pedestrian access and circulation areas; hard surfacing materials; minor artefacts and structures (e.g. furniture, play equipment, refuse or other storage units, signs, lighting etc.); proposed and existing functional services above and below ground (e.g. drainage power, communications cables, pipelines etc. indicating lines, manholes, supports etc.); and proposals for restoration.

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

5. Soft landscape works shall include planting plans; written specifications; schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate; and implementation programme.

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

6. All hard and soft landscape works shall be carried out in accordance with the approved details and finished not later than the first planting season following completion of the development.

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

7. A landscape management plan, including implementation strategy, long term design objectives, management responsibilities and maintenance schedules for all landscape areas, other than privately owned domestic gardens, shall be submitted to and approved in writing by the Local Planning Authority as part of the reserved matters submission in accordance with conditions 2 and 5. The landscape management plan shall be implemented as approved.

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

8. No site clearance works or development shall take place until there has been submitted to the Local Planning Authority for their written approval a scheme showing the type, height and position of protective fencing to be erected around each tree or hedgerow to be retained in that phase. The scheme shall comply with BS 5837:2005.

No site clearance works or development shall be commenced in the vicinity of the protected tree or hedgerow until such a scheme is approved in writing by the Local Planning Authority and thereafter the development hereby permitted shall only be carried out in accordance with the approved scheme. The area surrounding each tree or hedgerow within the protective fencing shall remain undisturbed during the course of the works, and in particular in these areas:

- (i) There shall be no changes in ground levels;
- (ii) No material or plant shall be stored;
- (iii) No buildings or temporary buildings shall be erected or stationed;
- (iv) No materials or waste shall be burnt within 20 metres of any retained tree or hedgerow; and
- (v) No drain runs or other trenches shall be dug or otherwise created; without the prior written consent of the Local Planning Authority.

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

9. No development shall take place until there has been submitted to and approved in writing by the Local Planning Authority a plan indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed in accordance with a timetable agreed in writing with the Local Planning Authority. Development shall be carried out in accordance with the approved details.

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

10. Development shall not be commenced until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details before the development is completed. The scheme shall demonstrate:

- The utilisation of holding sustainable drainage techniques;
- The limitation of surface water run-off to equivalent greenfield rates;
- The ability to accommodate surface water run-off on site up to the critical 1 in 100 year event plus an appropriate allowance for climate change, based upon the submission of drainage calculations; and
- Responsibility for the future maintenance of the drainage features.

Reason: To prevent the increased risk of flooding, to improve and protect water quality, to preserve and enhance biodiversity and to ensure the future maintenance of the sustainable drainage structures.

11. No work shall take place on the site until details of a scheme for the disposal of foul water have been submitted to and agreed in writing by the Local Planning Authority. The scheme shall be carried out in conformity with the details which have been agreed before the development is first brought into use.

Reason: In the interests of pollution control.

12. Unless as may otherwise be agreed in writing with the local planning authority the boundary ditch on the east side (annotated P1 in the baseline ecology report) shall be retained in accordance with details that shall have previously been submitted to and approved in writing by the local planning authority.

Reason: To preserve habitat for Common Toad and Smooth Newt.

13. 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 and provision to be made for post-excavation analysis and reporting;
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; and
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 Part A.

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

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

14. If during development any contamination or evidence of likely contamination is identified that has not previously been identified or considered, then the applicant shall submit a written scheme to identify and control that contamination. This shall include a phased risk assessment carried out in accordance with the procedural guidance of the Environmental Protection Act 1990 Part IIA, and appropriate remediation proposals, and shall be submitted to the LPA without delay. The approved remediation scheme shall be implemented in accord with the approved methodology.

Reason: To protect the health of the public and the environment from hazards arising from previous contamination of the site which might be brought to light by development of it.

15. Prior to the development hereby approved commencing, or in accordance with any alternative timescale agreed with the local planning authority, details of the finished floor levels of the buildings hereby approved and of the ground levels of the site relative to adjoining land levels, shall be submitted to, and approved in writing by, the Local Planning Authority. Thereafter, the development shall be constructed in accordance with the agreed level(s).

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

16. No development shall take place until details of the materials proposed to be used on the surfaces of the roads, footpaths, car parking areas and courtyards along with samples of the materials to be used on the external surfaces of the buildings have been submitted to and approved in writing by the local planning authority. The development shall be carried out using the approved materials unless otherwise agreed in writing with the local planning authority.

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

17. Before the commencement of development space shall be provided within the site for site accommodation, storage of plant and materials, parking and manoeuvring for employee and visitor vehicles, loading and unloading and manoeuvring of lorries, in accordance with a scheme first submitted to and approved in writing by the local planning authority. The faculties shall be retained in accordance with the approved scheme throughout the construction period.

Reason: In the interests of highway safety.

18. The development shall incorporate noise mitigation measures, based on the conclusions of the submitted Environmental Noise Assessment, in accordance with details and specifications which shall have previously been submitted to and approved in writing by the local planning authority.

Reason: To protect the occupiers of the development from undue noise.

19. Any tree or shrub which within a period of five years from the completion of the development fails to become established, dies, is removed or becomes seriously damaged or diseased shall be replaced in the next planting season by a tree or shrub of a species, size and maturity to be approved in writing by the Local Planning Authority.

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

20. No development shall take place until a scheme has been submitted to and approved in writing by the Local Planning Authority that specifies the provision to

be made for dust mitigation measures and the control of noise emanating from the site during the period of construction of the development. The approved measures shall be implemented throughout the construction period.

Reason: To protect the amenities of nearby residents.

21. During the period of construction, no construction work shall take place outside the following times: 0730 - 1900 hours Monday to Friday and 0730 - 1330 hours on Saturdays and at any time on Sundays, Bank and Public Holidays.

Reason: To protect the amenities of nearby residents.

22. No dwelling within the application area shall be occupied unless or until the junction improvements shown on Drg Nos 10034 HL 106 & HL 108 Rev B for indicative purposes only, have been constructed in accordance with details to be submitted to and approved by the Local Planning Authority.

Reason: To ensure the free and safe movement of traffic on the highway.

23. Prior to the first occupation of the development hereby permitted, measures to minimise the risk of crime to meet the specific security needs of the application site and the development shall be implemented in accordance with a scheme previously submitted to and approved in writing by the Local Planning Authority.

Reason: In pursuance of the Council's duty under section 17 of the Crime and Disorder Act 1998 to consider crime and disorder implications in exercising its planning functions; to promote the well-being of the area pursuant to the Council's powers under Section 2 of the Local Government Act 2000 and to reflect government guidance set out in PPS1.

Informatives:

To note the attached comments of East Midlands Airport.

The Environment Agency advises:

1. The Environment Agency does not consider oversized pipes or box culverts as sustainable drainage. Should infiltration not be feasible at the site, alternative above ground sustainable drainage should be used.
2. Surface water run-off should be controlled as near to its source as possible through a sustainable drainage approach to surface water management. Sustainable Drainage Systems (SuDS) are an approach to managing surface water run-off which seeks to mimic natural drainage systems and retain water on-site as opposed to traditional drainage approaches which involve piping water off-site as quickly as possible.
3. SuDS involve a range of techniques including methods appropriate to impermeable sites that hold water in storage areas e.g. ponds, basin, green roofs etc rather than just the use of infiltration techniques. Support for the SuDS approach is set out in Paragraph 103 of the National Planning Policy Framework.
4. Under the terms of the Water Resources Act 1991, and the Land Drainage Byelaws, the prior written consent of the Environment Agency is required for any proposed works or structures, in, on, over or within 8 metres of the top of the bank of the Hell Brook, designated a 'main river'.

Further to Condition 13 the Development Control Archaeologist for South Derbyshire should be contacted in the first instance for a written brief from which the Written Scheme of Investigation may be developed.

Condition No 22 requires works to be undertaken in the public highway, which is land subject to the provisions of the Highways Act 1980 (as amended) and over which you have no control. In order for these works to proceed, you are required to enter into an agreement under S278 of the Act. Please contact Robert Waite Tel 01332 255926 for details. Please note that under the provisions of S278 Highways Act 1980 (as amended) commuted sums may be payable.

Item **1.2**

Reg. No. **9/2012/0154/BM**

Applicant:
Tetron Point LP And
UK Coal Mining Ltd

Agent:
Mr Stephen Matthews
JWPC Ltd
Banbury Road
1 The Quadrangle
Woodstock

Proposal: **THE VARIATION OF CONDITION 11 OF PREVIOUSLY
APPROVED PLANNING PERMISSION 9/2009/0527 FOR
REVISED LANDSCAPING LAYOUT AT TETRON POINT
WILLIAM NADIN WAY SWADLINCOTE**

Ward: **SWADLINCOTE, NEWHALL AND CHURCH GRESLEY**

Valid Date: **24/02/2012**

Reason for committee determination

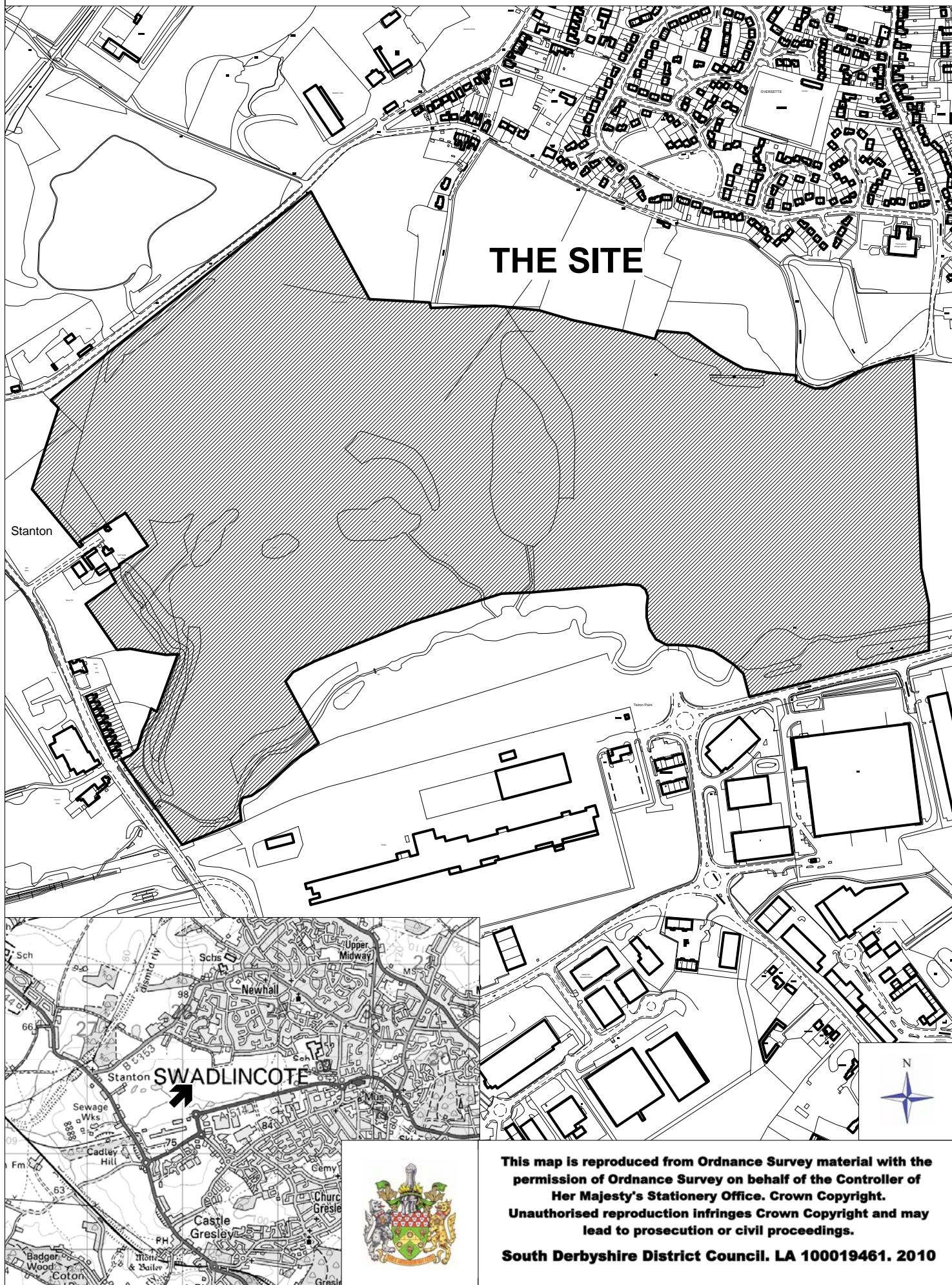
The application is brought before the Committee at the discretion of the Head of Community and Planning Services, as it is a major application of local interest.

Site Description

The application site measures 58.76 hectares and is located to the north of William Nadin Way, on the western edge of Swadlincote. The residential area of Newhall is to the north and industrial area of Church Gresley is to the south. The A444 Woodland Road runs along the western boundary and there are open spaces and school playing fields separating the site from the residential areas to the north and east.

The site was rough grassland with a network of ponds and ditches and slopes down from the north to the south but work has now commenced to construct the golf course as per the 9/2009/0527 permission. There are areas of immature trees around the site and the Darklands Brook crosses the southern part of the site. To the south are large metal clad industrial buildings that were part of the original outline permission. A section of land immediately to the north west of the roundabout and opposite Bison's is currently undeveloped but has permission for the Council's new depot.

The site is currently accessed off William Nadin Way via a roundabout on the junction with Cadley Hill Road. The site forms the north-western part of the wider former Nadins opencast coal mine. Opencast coal working commenced in February 1992 and finally ceased in May 1999.



Proposal

A Section 73 permission is sought for the variation of condition 11 of planning permission 9/2009/0527 for a revised landscaping layout for the golf course.

Condition 11 reads:

“Notwithstanding the submitted details, the landscaping of the golf course shall be implemented in accordance with the drawing TPGC L013 Rev D”.

The re-design was required in 2009 due to changes in the redevelopment proposals of the wider site by UK Coal resulting in the eastern section and the ponds to the north west of the roundabout no longer being included in the golf course. Further revisions to the landscaping are sought as part of this permission with the main change being the enlargement of the central lake as a consequence of the natural rebounding of groundwater at the site. This has had an impact on the space available for the golf course and the alignment of fairways in the vicinity of the lake.

The proposal involves provision of an 18-hole golf course, driving range with teaching zones and a golf academy. A championship golf course is proposed which would provide golf for both low handicap players whilst providing a playable course for complete novices. The golf course would be to the north and west of the complex of associated buildings with the driving range and teaching areas to the east that were approved in (9/2009/0355). Existing lakes on the site would be retained and restoration of two dry lakes is proposed together with the construction of bridges over the watercourses. Existing trees would be retained and extensive tree planting is proposed between the fairways and on the boundaries of the site. This revised proposal would include an increase of 88 specimen trees within the new plantations. The areas would be a combination of greens, bunkers, fairways, existing and proposed marsh vegetation, proposed wildflower areas and reed beds, reseeded grassland and proposed hedge planting.

The proposal indicates the diversion of Footpaths 44, 46 and 98, (however, separate diversion applications would be required). A 3 metre wide greenway is proposed along the northern and western boundaries for use by walkers, horse-riders and cyclists. A new footpath was proposed from north to south across the site linking Newhall with Church Gresley through the complex of associated buildings in the 2009 application. This was not originally submitted as part of the application as an alternative footpath along the eastern boundary was proposed. However, the route through the site as per the 2009 permission has now been included in this scheme. This footpath would be 60 metres west of the end of Woodview Road to the north of the site and would be bounded by 7 metre high safety fencing to the east adjacent to the driving range and 1.5 metre high chestnut palisade fencing to the west adjacent to the golf course. The route of this footpath is similar to the informal footpath currently in use.

Applicants' supporting information

Statement in Support of Planning Application incorporating Design and Access

Statement – This document includes: site description of area context, site history, the proposed development, planning policy and evaluation of revised landscaping layout. The Design and Access Statement covers: amount of development, layout, scale, landscaping, appearance, sustainability and site access. Conclusions drawn are that the

revised landscape layout is considered minimal within the context of the overall scheme. The most significant change is the increase to the central lake.

Supplementary Landscape Design Statement – This document includes: introduction, the size of the main lake, configuration of greens, tees, and fairways, woodland and ground flora, cross site Rights of Way and leisure routes, ecological benefits, landscape and visual effects and conclusions.

The proposal is based on a later survey undertaken in 2011 that showed that the lake had enlarged significantly in size, as a result of a rise in the water table over recent years. The lake now covers an area of some 2.5 hectares, and is too wide over much of its length for golf players of average ability to play across. The enlargement in the size of the lake has had an impact on both the space available for the 18 golf holes on the site and on the alignment of the fairways in the vicinity of the lake. As with the consented scheme, the revised layout includes for a pedestrian bridge across the lake in order for players to reach the other side after teeing off from one of the tees.

However, although most of the greens and fairways have remained in the same positions, the following changes have occurred:

- Hole no. 1 plays to previous green 14;
- Hole no. 2 replaces previous hole no. 15;
- Hole no. 3 replaces previous fairway 14 and previous green 1;
- Hole no. 4 replaces previous part of fairway 2 and a new green is formed;
- Hole no. 12 is lengthened;
- Hole no. 13 is given new tees and replaces previous fairway & green 4;
- Hole no. 15 replaces previous hole no. 13.

It will be noted that in almost all of the above cases the hole numbers have changed but fairways and greens remain in similar positions as on the consented scheme. The overall result of the above changes is a workable layout that accommodates the enlarged lake whilst retaining greens, tees and fairways in similar positions as on the consented scheme, renumbering 7 of the holes to fit the new arrangement and allow for players to return to the clubhouse after playing either holes 9 or 18.

The existing blocks of young trees around the periphery of the site are to be retained, whilst the volume of proposed woodland planting is to be slightly increased over that shown on the consented scheme. Not only is the extent of young plantations increased in the revised scheme, but there are 88 more specimen trees proposed within the new plantations. Owing to the greater length of the main lake's shoreline, there would be a net gain to the amount of lakeside marginal plants and consequential habitat for wildfowl and water-based fauna.

Planning History

9/2009/0527 - The variation of condition 11 of planning permission 9/2006/0329 revised landscaping layout, granted 25/08/09

9/2009/0355 - Approval of reserved matters of application 9/2006/0329 for siting, design and external appearance of golf clubhouse, administration building and driving range, associated leisure building and hotel together with associated parking, access and landscaping, pending decision.

9/2006/0329 - Variation of conditions 2, 3, 6, 7, 10, 13, 14, 17 and 18 of 9/2000/0415/O, granted 12/05/09

9/2000/0415 - Outline application (and Environmental Impact Assessment), (all matters other than means of access to be reserved) for the use of land for Business (B1 Use Class), Industrial (B2 Use Class), Storage and Distribution (B8 Use Class) and Leisure Use (Hotel, Drive-Through restaurant, Golf Course (Including Ancillary Facilities), granted 31/01/02

Responses to Consultations

The Environment Agency has reviewed Drawing No. TPGC-L024 Revision A (Revised Landscape Proposals), and the FRA addendum dated 17 May 2012, Ref: 2009s0315-FRA update_(V1.0), and can confirm that they accept the flood risk findings of the FRA addendum. It was not initially clear however, how the two separate balancing ponds shown on the original 2009 FRA Appendix H, Drawing No. 2009-0315-001 had been incorporated into the above landscape proposals drawing. In respect of this point, they have received an email from the applicants' consultants confirming that the two balancing ponds have now become one extended swale located to the south of holes 4 to 6 of the golf range and teaching zone area. They have no objections to the proposed variation of Condition 11, for the revised landscaping layout as shown on TPGC-L024 Revision A.

The Coal Authority has no observations to make.

The Police Crime Prevention Design Advisor states that there are no changes to designing out crime and therefore there are no comments.

Natural England has no objection but considers that the best practice working methodologies for great crested newts and grass snakes in the previously submitted survey reports should be followed.

The County Highways Authority has no objections provided that the previous conditions relating to construction traffic, access, parking and maneuvering are included in any consent. Footpaths 44, 46 and 98 have been revised and as such consent for diversion or temporary closure is required prior to other works commencing. DCC Rights of Way Section did not find the alternative route along the eastern boundary to be acceptable. It was not considered a suitable replacement for FP44 which crosses the site from north to south further west. They wished the previously approved new footpath that linked Newhall to the complex of buildings to be reinstated and an amended plan provided indicating the route. They state that in order to move the existing public rights of way it will be necessary for the developer to obtain diversion orders from the District Council under section 257 of the Town & Country Planning Act 1990. These routes must not be obstructed until orders are confirmed. If any works in the vicinity of the footpaths could endanger the public on these routes it would be advisable for the developer to apply to the County Council for a temporary closure order.

The Peak and Northern Footpath Society notes that the County Council's Rights of Way Officer has agreed the revised routes of FP 44, 46 and 98. These routes must not be obstructed before legal diversion orders have been confirmed. The greenway for walkers, cyclists and horse-riders is welcomed.

The Environment Health Manager has no objections.

The County Archaeologist states there is no archaeological impact.

Sport England does not wish to comment on the application.

Derbyshire Wildlife Trust states that as the main change to the approved scheme relates to the enlargement of the central lake as a result of natural rebounding of groundwater it would not adversely impact upon the ecological benefits of the previously approved scheme. However, it would be preferable to increase the wildflower areas than woodland planting.

Responses to Publicity

Two letters of objection were received and their comments related to the public footpaths. They state that there is no mention of Public Rights of Way 46 and 44 and they would not want to see these routes disappear.

Development Plan Policies

The relevant policies are:

East Midlands Regional Plan: 3, 12, 35, 42, 48

Local Plan: Environment 7 & 10, Transport 6, Recreation & Tourism 2

National Guidance

National Planning Policy Framework (NPPF) para's. 69, 75, 109, 118

Planning Considerations

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

- Landscape character and quality
- Ecological Impacts
- Highways issues in relation to construction
- Contaminated Land

Planning Assessment

The main change to the previously approved plan granted in 2009 is the enlargement of the central lake as a consequence of the natural rebounding of groundwater at the site. The enlargement in the size of the lake has had an impact on both the space available for the 18 golf holes on the site and on the alignment of the fairways in the vicinity of the lake, however, most of the greens and fairways have remained in the same positions albeit with different hole numbers. This revised proposal would include an increase of 88 specimen trees within the new plantations.

Landscape Character and Quality

The landscaping scheme retains the quality previously approved and involves improvements such as the volume of proposed woodland planting is to be slightly

increased over that shown on the consented scheme. 88 more specimen trees are proposed within the new plantations. Owing to the greater length of the main lake's shoreline, there will be a net gain to the amount of lakeside marginal plants and consequential habitat for wildfowl and water-based fauna.

Ecological Impacts

As the Council's consultant, Derbyshire Wildlife Trust advises that the revised scheme would not adversely impact on the ecological benefits of the previously approved scheme.

Highways

On the advice of the County Highways Authority the revised scheme would be acceptable on highway safety grounds subject to relevant conditions being attached in terms of construction traffic, access, parking and manoeuvring. It should be noted that as the consented 2009 scheme is under construction, conditions in relation to this permission that relate to the construction of the scheme have been discharged and as such would not be included in this consent.

Footpaths

A footpath running from north to south through the golf course was not originally proposed when the application was submitted as a footpath running along the eastern boundary was proposed as a replacement. This was not found to be an acceptable alternative taking into account the loss of footpaths 98 and 46 that cross the site further to the west. Therefore a new footpath crossing the site from north to south in the same position as that approved in 2009 has been incorporated into the new landscape proposal. This new footpath would replace Footpaths 98 and 44, albeit in a different location. Footpaths 46 and 98 would be diverted around the boundary of the site by the 3m wide greenway. The reduction in crossing points across the course is proposed due to security concerns outlined by the Police Crime Prevention Officer and due to the reduction in the site area. Therefore, a balance has to be sought. However, the formal diversion of the footpaths would be the subject of separate diversion applications. There is an existing Sustrans route in South Swadlincote which presently culminates at the eastern end of William Nadin Way, which in accordance with the Council's Cycling Strategy would potentially provide a safe route parallel to the road. It should be noted that a direct link between Swadlincote town centre and the industrial area may as a result of this current application need to take a more indirect route.

Conclusion

In conclusion, this scheme involves an increase in the size of the central lake which is a consequence of rebounding of groundwater at the site. There would be a net gain to the amount of lakeside marginal plants and consequential habitat for wildfowl and water-based fauna due to the lake's increase in size. Fairways and greens have had to be revised accordingly. The proposal includes an increase of 88 specimen trees within the new plantations. The footpath proposals are now as the previously approved scheme in 2009. Thus, the proposal involves an improvement in terms of water habitat and the increase in tree planting.

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

Recommendation

GRANT permission subject to the following conditions:

1. Unless otherwise agreed in writing with the Local Planning Authority, approval of the details of the siting, design and external appearance of the buildings and the landscaping and means of enclosure of the site shall be obtained from the Local Planning Authority in writing prior to the commencement of the development of the specific site to which the details relate.

Reason: The application is expressed to be in outline only and the Local Planning Authority has to ensure that the details are satisfactory.

2. Unless otherwise agreed in writing by the Local Planning Authority, details for the disposal of surface and foul water including routes of sewers shall be submitted to and agreed in writing by the Local Planning Authority prior to the commencement of the development to which the drainage (foul and surface water) relates.

Reason: In the interests of flood protecting and pollution control.

3. Prior to being discharged into any watercourse, surface water sewer or soakaway system, all surface water drainage from parking areas and hardstandings shall be passed through an oil interceptor, designed and constructed to have a capacity and details compatible with the site being drained. Roof water shall not pass through the interceptor.

Reason: In the interests of pollution control.

4. Any tanks for the storage of oils, fuels or chemicals, hereby approved, shall be sited on impervious bases and surrounded by impervious walls. The volume of the bunded compound shall be at least equivalent to the capacity of the tank plus 10%. If there is multiple tankage the compound should be at least equivalent to the capacity of the largest tank, or the combined capacity of interconnected tanks plus 10%. All filling points, vents or gauges and site glasses must be located within the bund. The drainage system of the bund shall be sealed with no discharge to any watercourse, land or underground strata. Associated pipework shall be located above ground and be protected from accidental damage. All filling points and tank overflow pipe outlets shall be designed to discharge downwards into the bund.

Reason: In the interests of pollution control.

5. Notwithstanding the originally submitted details, with exception of uses B1, B2 and B8, this permission shall relate to the gross floor areas as set out in the "Summary Schedule of Floor Areas" shown on drawing number 99113 SK1 Revision H and these total floorspaces shall not be exceeded.

Reason: For the avoidance of doubt, the original submission being considered unacceptable.

6. Unless otherwise agreed in writing with the Local planning Authority, all development on the site hereby permitted shall be provided with vehicle parking,

manoeuvring and servicing provision prior to its first use in accordance with the Council's published standards and maintained thereafter for their designated use.

Reason: To ensure that all the activities associated with the development are contained within the curtilage of the site, so as to avoid parking and manoeuvring on the highway to the detriment of highway safety.

7. Notwithstanding the submitted details, prior to the commencement of building operations on adjoining areas, the boundary with the proposed landscape area and wildlife sites shall be fenced with steel mesh fencing to 2.3m high supported by steel scaffold poles staked at 3 metre centres. The fencing shall be retained in position until all building works on adjoining areas have been completed unless otherwise agreed in writing with the local planning authority.

Reason: To protect the trees/landscape areas from undue disturbance

8. There shall be no tipping or deposition of materials within the area fenced under condition 7 above without the prior written authorisation of the local planning authority.

Reason : To protect the trees/landscape areas from undue disturbance.

9. Unless otherwise agreed in writing by the Local Planning Authority, details of the finished floor levels of the buildings hereby approved and of the ground levels of the site relative to adjoining land levels, shall be submitted to, and approved in writing by, the Local Planning Authority prior to the commencement of the erection of the buildings to which they relate. Thereafter, the development shall be constructed in accordance with the agreed levels.

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

10. Notwithstanding the submitted details, the landscaping of the golf course shall be implemented in accordance with the drawing TPGC - L024 Rev B.

Reason: For the avoidance of doubt.

11. Unless otherwise agreed in writing by the Local Planning Authority, no development shall take place on zones 4, 4a and 5 (as shown on UK Coal drawing 9729K submitted with application 9/2000/0415) until there has been submitted to and approved by the Local Planning Authority a scheme of landscaping, which shall include indications of all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection in the course of development.

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

12. Details of any scheme to illuminate the driving range shall be submitted to and agreed in writing by the Local Planning Authority prior to the first use of the driving range hereby permitted. No other lights other than those agreed in the scheme shall be installed or used on the site.

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

13. Notwithstanding the submitted details, all details of access shall be submitted for approval by the Local Planning Authority and designs where right-turn harbourages are required shall be in accordance with the Design Manual for Roads and Bridges, unless otherwise agreed in writing with the Local Planning Authority. The agreed details shall then be implemented in full prior to the first use of the access to which they relate.

Reason: For the avoidance of doubt, the original submission being considered unacceptable.

14. Unless otherwise agreed in writing with the Local planning Authority, in relation to each distinct development site, before any other operations are commenced, a temporary access shall be formed into the site for construction purposes, and a space shall be provided within the site curtilage for site accommodation, storage of plant and materials, parking and manoeuvring for site operatives and visitors vehicles, loading and unloading of goods vehicles, all in accordance with a scheme first submitted to and approved in writing by the Local Planning Authority. The temporary access for the golf course shall be in accordance with plan No. TPGC-L018 approved on the 26th July 2010.

Reason: In the interests of highway safety.

15. No works shall be undertaken to the west of Zones 4 and 4A or to the east of Zone 5 which may affect the stability of the A444 principal road or associated structures until detailed designs and calculations have been submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of highway safety.

16. The proposed development of the golf course shall be carried out in accordance with the mitigation measures detailed in the Great Crested Newt Survey dated July 2009, unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interests of protecting the established habitats of any great crested newts which inhabit the site.

17. Unless otherwise agreed in writing by the Local Planning Authority, prior to the commencement of any development of zone 4 and 4A (as shown on drawing 9729K) the Darklands Brook shall be rerouted in accordance with a scheme first submitted to and approved in writing by the Local Planning Authority. The revised course shall generally follow the line shown on drawing 9729K.

Reason: In the interests of preserving the ecological integrity of the brook prior to any disturbance that may be caused by the development of the adjoining land.

18. There shall be no discharge of surface water into the public foul/combined sewer.

Reason: To avoid unnecessarily taking up capacity in the public sewerage system specifically provided for the essential disposal of foul sewage.

19. Unless otherwise agreed in writing by the Local Planning Authority, before any development commences on each individual industrial unit, a scheme shall be agreed with the planning authority that specifies the provisions to be made for the control of noise emanating from the each unit and the associated curtilage. The provisions shall be implemented in full prior to the first use of the unit to which they relate and be retained as such thereafter.

Reason: To protect the nearby dwellings from being adversely affected by the noise from construction and subsequent operation of each unit.

20. The newt hibernacula shall be installed on the site in the positions shown on drawing TPGC L013 Rev D and in accordance with mitigation measures detailed in the Great Crested Newt Survey July 2009, unless otherwise agreed in writing with the Local Planning Authority.

Reason: In the interests of providing suitable conditions for the promotion of the occupation of the site for great crested newts.

21. Hedgerows, trees and shrubs planted in accordance with the approved landscaping scheme shall be maintained in accordance with the JB Landscapes Associates report 'Maintenance Operations for External Areas (5 years)' approved on the 26th July 2010.
- Reason: In the interests of the appearance of the area.
22. Before any operations commence involving the movement of materials in bulk to or from the site, facilities shall be provided that have previously been approved in writing by the Local Planning Authority, to prevent the deposition of mud or extraneous material on the access roads to the site. The approved scheme for the golf course is detailed on plan no. TPGC-L018.
- Reason: In the interests of highway safety.
23. A) The development shall not be commenced until a scheme to identify and control any contamination of land, or pollution of controlled waters has been submitted to, and approved in writing by, the local planning authority (LPA); and until the measures approved in that scheme have been implemented. The scheme shall include all of the measures (phases I to III) detailed in Box 1 of section 3.1 the South Derbyshire District Council document 'Guidance on submitting planning applications for land that may be contaminated', unless the LPA dispenses with any such requirement specifically and in writing. (This part has been discharged in relation to the golf course).
- B) Prior to occupation of the development (or parts thereof) an independent verification report shall be submitted, which meets the requirements given in Box 2 of section 3.1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.
- C) In the event that it is proposed to any additional material onto site in connection with the development, this shall be done to comply with the specifications given in Box 3 of section 3.1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.
- D) No development shall take place until monitoring at the site for the presence of ground/landfill gas and a subsequent risk assessment has been completed in accordance with a scheme to be agreed with the LPA, which meets the requirements given in Box 4, section 3,1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.
- E) All topsoil and subsoil shall be retained on site. No later than three months from the stripping and formation of storage mounds in each calendar year, the quantities shall be measured and recorded on a plan showing the area of stripped topsoil and subsoil, the location of each storage mound and the quantity and nature of the stored materials. The final placement of these materials on site shall be recorded and approved in order to validate the site as safe and suitable for use.
- F) If continuous mounds are used, dissimilar soils shall be separated by a third material which has been approved in writing by the Local Planning Authority. This will prevent mixing of differing materials and shall be recorded to enable condition 24E to be validated.
- G) Details of all material imported to the site shall be recorded and will be subject to inspection at reasonable times by the Local Planning Authority.

H) Any phasing works as detailed within the requirements of condition 35 will be communicated and agreed with the Local Planning Authority as soon as is practicable to allow the placement, materials and suitability for use to be validated as placed based on up to date information. In addition the provision of this information is critical to the investigation of any complaints from the surrounding areas.

Reason: To protect the health of the public and the environment from hazards arising from previous contamination of the site which might be brought to light by development of it.

24. If during development any contamination or evidence of likely contamination is identified that has not previously been identified or considered, then the applicant shall submit a written scheme to identify and control that contamination. This shall include a phased risk assessment carried out in accordance with the procedural guidance of the Environmental Protection Act 1990 Part IIA, and appropriate remediation proposals, and shall be submitted to the LPA without delay. The approved remediation scheme shall be implemented in accord with the approved methodology.

Reason: To protect the health of the public and the environment from hazards arising from previous contamination of the site which might be brought to light by development of it.

25. All construction traffic shall use the vehicle routing strategy as set out in the appendix to the submitted transport assessment in relation to the 9/2009/0527 permission.

Reason: In the interests of highway safety.

26. Defensive planting adjacent to the 1.5m high boundary fencing adjacent to the golf course, including adjacent to the proposed footpath (excluding the driving range) shall be planted in accordance with plan no. TPGC-L017 approved on the 26th July 2010, unless otherwise agreed in writing by the Local Planning Authority.

Reason: In pursuance of the Council's duty under section 17 of the Crime and Disorder Act 1998 to consider crime and disorder implications in exercising its planning functions; to promote the well-being of the area pursuant to the Council's powers under Section 2 of the Local Government Act 2000 and to reflect government guidance set out in the National Planning Policy Framework.

27. Within one month of the date of this permission a Habitat Management and Monitoring Plan (including the receptor sites indicated on drawing No. 083096/01 and buffer zone widths) shall be submitted and approved in writing by the Local Planning Authority and mitigation shall be carried out in accordance with the approved details.

Reason: In the interests of the preservation of the protected species and their habitats.

28. Notwithstanding the submitted details, prior to the commencement of any works in zone 5, full details of the proposed rail head, including a timetable for any works, shall be submitted to and approved in writing by the Local Planning Authority. The rail head and associated development shall then be implemented in accordance with the approved scheme and timetable only.

Reason: For the avoidance of doubt, no details having been submitted.

29. The 7m high security fencing in association with the driving range shall be in accordance with the approved details on plan no. TPGC-L019 colour coated in black, unless otherwise agreed in writing by the Local Planning Authority.
- Reason: In the interests of visual amenity of the surrounding area.
30. Before the rail link is first brought into use, a full assessment of the impact of the rail link, including any measures of mitigation and a timetable for their implementation, shall be undertaken, submitted to and approved in writing by the Local Planning Authority. This shall include:
- An ambient noise survey
 - Predicted noise levels
 - Number and type of trains
 - Proposed times of operation
 - Types of acoustic barriers and levels of reduction.
- Any necessary works shall then be implemented in accord with the agreed timetable.
- Reason: To protect the amenities of adjoining properties and the locality generally.
31. There shall be no screening or other processing plant on site without specific approval by the Local Planning Authority.
- Reason : To protect the amenity of nearby dwellings.
32. Infilling material and soils shall be levelled and graded in accordance with the approved restoration contour plan TPGC L024 Rev A and the cross section plan No's 083096/CS01, 083096/CS02, 083096/CS03, 083096/CS04, 083096/CS05, 083096/CS06, 083096/CS07, 083096/CS08, 083096/CS09, 083096/CS10 and 083096/CS11.
- Reason: For the avoidance of doubt and in order that the Local Planning Authority can retain control of the development in the interests of amenity.
33. At all times all vehicles, plant and machinery employed on site shall operate only during the permitted hours:- 0800 - 1800 Monday to Friday, Saturdays 0800 - 1300 and at no time on Sundays and Bank/Public Holidays, except in an emergency affecting public safety and shall be maintained, silenced and operated in accordance with the manufacturer's specification.
- Reason: In the interest of the amenity of the area.
34. The phasing and a timescale for progressive completion of the golf course development shall be carried out in accordance with the approved details on phasing plan 083096/02 and the construction programme timetable approved on the 12th October 2009 unless written approval is given to any subsequent variation. Provision shall be made for grass seeding and planting in accordance with the approved landscaping scheme to be implemented during the first planting season following completion of the each phase permitted under this condition.
- Reason: To ensure the satisfactory restoration of the site within a reasonable timescale in the interests of amenity.

35. The management of top and sub soil imported or stripped at the site shall meet with the management requirements of section N1 and N2 of Annex N, 'Recommendations for use and handling of topsoil' of BS3882 'Topsoil Specification'. In addition the following controls shall be applied on site:
- the earthworks Contractor shall appoint a qualified specialist to advise on working practices and to ensure suitable controls are applied;
 - no topsoil and subsoil shall be stripped unless they are in a suitable condition (dry and friable to prevent damage). Most notably this applies in the winter months (November to March inclusive);
 - if soil to be trafficked over has become saturated or has a moisture content that is equal to, or greater than that at which the soils become plastic, (tested in accordance with the 'worm test' as set out in BS 1377:1975 'British Standards Methods Test for Soils Civil Engineering Purposes' then works shall cease.

Reason : To ensure that topsoil and sub-soil is not moved when ground conditions would cause damage.

36. Stockpiles shall be managed in accordance with section N3, Annex N of the BS3882 'Topsoil Specification'. Further to this section the following controls shall be applied:
- Topsoil storage mounds shall not exceed 3 metres in height.
 - Subsoil mounds shall not exceed 5 metres in height.
 - All storage mounds to remain in situ for more than three months shall be grass seeded.
 - No topsoil or sub-soil mounds shall be traversed by heavy plant or machinery except where essential for purposes of mound construction or maintenance. They shall not subsequently be moved until required for restoration.

Reason: In order to ensure that top and subsoil is retained for final restoration of the site following tipping operations.

37. The number of vehicles bringing material for disposal at the site shall not exceed that set out in Table 6.1 of the Transport Assessment unless otherwise agreed in writing by the Local Planning Authority.

Reason: In order that the tipping operations are not excessive in the interests of the amenity of the area.

Informatives:

The provisions of the agreement under Section 106 of the Town and Country Planning Act 1990 remain in force in regard to this site subject of the outline permission under ref. 9/2000/0415 and 9/889/547.

The proposed development lies within an area which could be subject to current coal mining or hazards resulting from past coal mining. Such hazards may currently exist, be caused as a result of the proposed development, or occur at some time in the future. These hazards include: Collapse of shallow coal mine workings; Collapse of, or risk of entry into, mine entries (shafts and adits); Gas emissions from coal mines including methane and carbon dioxide; Spontaneous combustion or ignition of coal which may

lead to underground heatings and production of carbon monoxide; Transmission of gases into adjacent properties from underground sources through ground fractures; Coal mining subsidence; Water emissions from coal mine workings.

Applicants must take account of these hazards which could affect stability, health & safety, or cause adverse environmental impacts during the carrying out their proposals and must seek specialist advice where required. Additional hazards or stability issues may arise from development on or adjacent to restored opencast sites or quarries and former colliery spoil tips. Potential hazards or impacts may not necessarily be confined to the development site, and Applicants must take advice and introduce appropriate measures to address risks both within and beyond the development site. As an example the stabilisation of shallow coal workings by grouting may affect, block or divert underground pathways for water or gas. In coal mining areas there is the potential for existing property and new development to be affected by mine gases, and this must be considered by each developer. Gas prevention measures must be adopted during construction where there is such a risk. The investigation of sites through drilling alone has the potential to displace underground gases or in certain situations may create carbon monoxide where air flush drilling is adopted. Any intrusive activities which intersect, disturb or enter any coal seams, coal mine workings or coal mine entries (shafts and adits) require the prior written permission of the Coal Authority. Such activities could include site investigation boreholes, digging of foundations, piling activities, other ground works and any subsequent treatment of coal mine workings and coal mine entries for ground stability purposes. Failure to obtain Coal Authority permission for such activities is trespass, with the potential for court action. In the interests of public safety the Coal Authority is concerned that risks specific to the nature of coal and coal mine workings are identified and mitigated.

The above advice applies to the site of your proposal and the surrounding vicinity. You must obtain property specific summary information on any past, current and proposed surface and underground coal mining activity, and other ground stability information in order to make an assessment of the risks. This can be obtained from The Coal Authority's Property Search Service on 0845 762 6848 or at www.groundstability.com. Further comments from the Coal Authority are as follows:-

It is also considered that, as part of developing detailed proposals for the site, the applicant should, to the satisfaction of the Local Planning Authority and subject to 2 below, propose any mitigation measures necessary to ensure the stability and safety of the proposed development.

1. It should also be noted that there are currently issues in relation to rising minewater within the vicinity of the site. As a result, this may give rise to a risk of minewater emissions within the site and to the water course within the southern part of the site. The Coal Authority is currently considering options for the development of a minewater treatment scheme to address these issues.

2. Drilling into coal seams and abandoned mine workings has serious health and safety implications. The applicant should be reminded that any intrusive activities or investigation works which intersect, disturb or enter any coal seams, coal mine workings or coal mine entries (shafts and adits) require the prior written permission of the Coal Authority. In the interests of public safety the Coal Authority is concerned that risks specific to the nature of coal and coal mine workings are identified and mitigated. Further information can be obtained from the Services section of the Coal Authority web site at:- www.coal.gov.uk/services/permissions/index.cfm

The Contaminated Land Officer advises the following:- 1) Confirmation of any imported material onto site in the form of waste transfer notes, details of the methodology used in the importation of the soil and the results to determine that the soils are suitable for use will be required. We will also require the methodology used to derive the GACs to which samples of the imported materials will be assessed against to determine their suitability. 2) The importation of materials or works over the landfill must not impede the design and current management system that already exists at the landfill. It is recommended that the Environment Agency is consulted prior to any works being carried out. 3) Should any materials require off site disposal Waste Acceptance Criteria (WAC) testing must be carried out and the waste sent to the appropriate disposal site. 4) We will require details of any amendments to the gas regime, due to the imported material to site. 5) As there is a potential that the buildings are to be founded on a different strata details of an amended sulphate class may be required.

The Environment Agency Advises that:-

If the operator wishes more specific advice in terms of the infill material they will need to contact the Environment Management Team at the Fradley office on 01543405041 or look at available guidance on the website <http://www.environment-agency.gov.uk/subjects/waste>

In England, it is a legal requirement to have a site waste management plan (SWMP) for all new construction projects worth more than £300,000. The level of detail that your SWMP should contain depends on the estimated build cost, excluding VAT. You must still comply with the duty of care for waste. Because you will need to record all waste movements in one document, having a SWMP will help you to ensure you comply with the duty of care. Further information can be found at <http://www.netregs-swmp.co.uk> Under the terms of the Land Drainage Act 1991, the prior written consent of the Environment Agency is required for any proposed works or structures, which may impede the flow of water within any watercourse.

Item **1.3**

Reg. No. **9/2012/0314/FH**

Applicant:

MR & MRS PETER PLANT
THE WALLED GARDEN
WELL LANE
REPTON
DERBY

Agent:

MR D GRAHAM CAMPBELL
CAMPBELL AND PARTNERS LTD
THE YARD HOUSE
REPTON ROAD
BRETBY
DERBYSHIRE

Proposal: **THE ERECTION OF AN EXTENSION AND
ALTERATIONS AT 8 WELL LANE REPTON DERBY**

Ward: **REPTON**

Valid Date: **29/05/2012**

Reason for committee determination

This application is brought before committee at the request of Councillor Stanton (ward member) as local concern has been expressed about a particular issue.

Site Description

The application site is one of a pair of semi-detached Victorian houses immediately fronting Well Lane, a narrow non-classified road, within the Repton Conservation Area. The adopted highway of Well Lane extends approximately 200 metres from the junction of Main Street and High Street, the main thoroughfare through the village and the lane then becomes a single track unadopted highway.

Proposal

The proposal is for the erection of a single storey side extension and window and door alterations, with the front elevation of the existing property to match the frontage of the adjoining property (No. 10). The existing brickwork of No. 8 would be painted to match the adjoining property and the new extension is to be left as facing brickwork for contrast. The application also includes the allocation of 2 off road dedicated parking spaces on Well Lane, in front of No. 9, a property which is under the applicant's ownership.

Applicants' supporting information

The applicant has submitted a Design and Access Statement, which covers the following:

The site plan illustrates the layout of a residential development. A dashed line delineates the project boundary, which includes a central area labeled 'TCB' and a building footprint labeled '10'. To the left of the boundary is a 'Car Park' and a building labeled '16'. Below the boundary, a building footprint labeled '6' is identified as 'THE SITE' with a leader line. Other buildings shown include footprints 89, 108, 106, 112, 110, 95, 1, 2, and 3. A dimension of '46.6m' is indicated on the right side of the plan. The plan also shows a 'Road' on the left and 'Links' at the bottom left.

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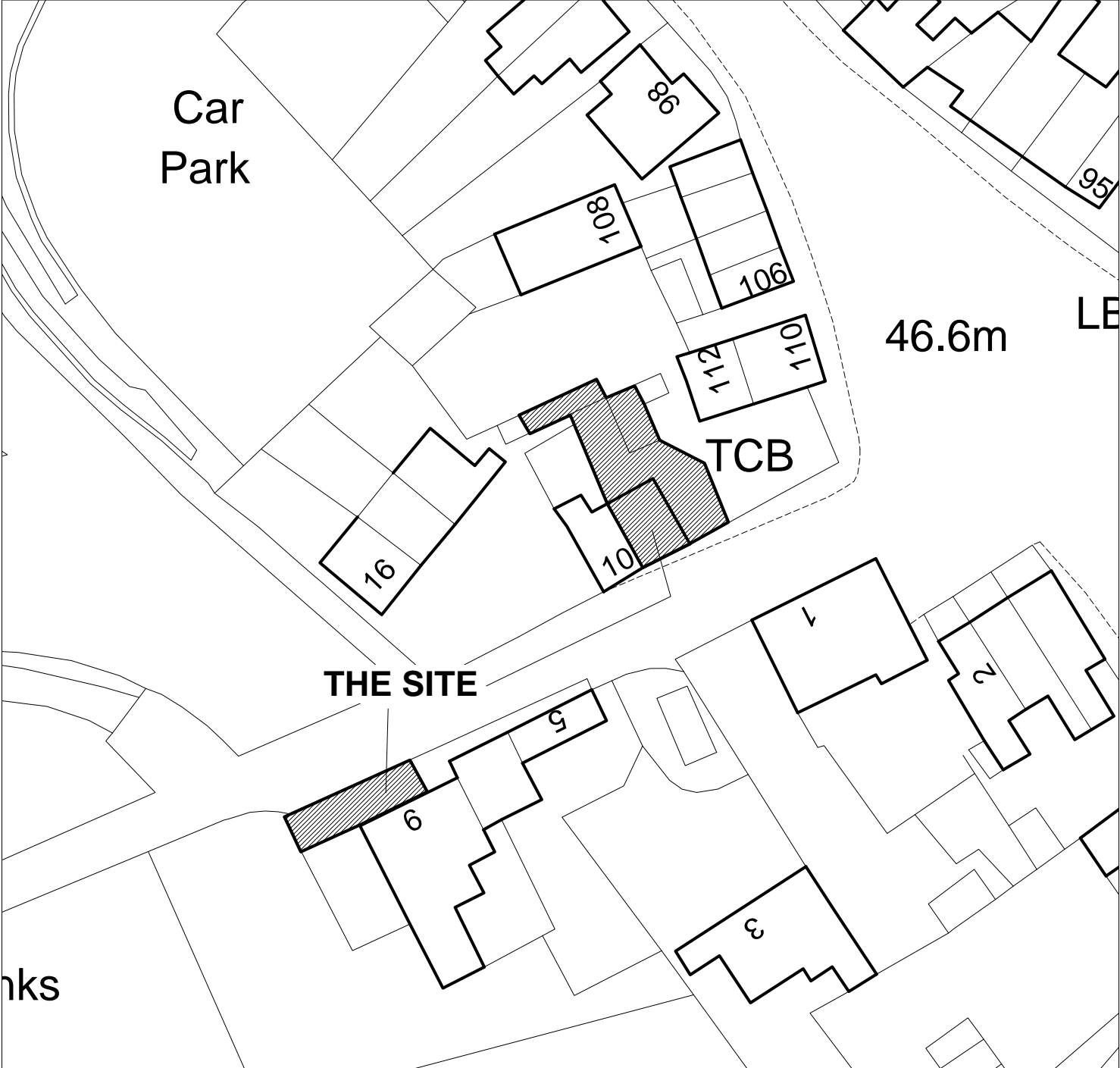
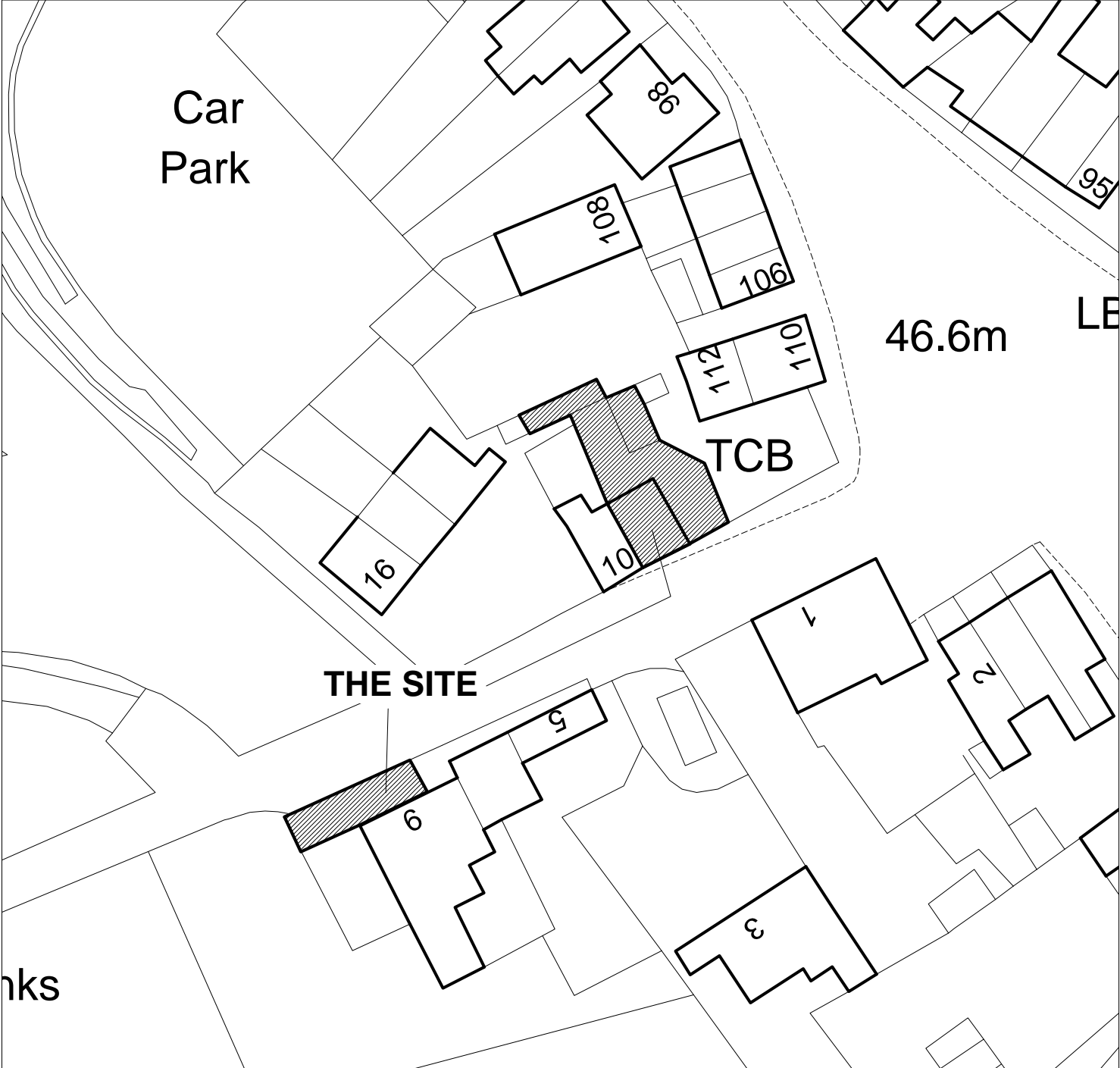
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The site plan illustrates the layout of a residential development. Key features include:

- Building Footprints:** Various building footprints are shown, some labeled with numbers (e.g., 1, 2, 3, 5, 6, 10, 16, 89, 108, 110, 112, 95). A central building footprint is shaded with diagonal lines and labeled "TCB".
- Parking Areas:** A "Car Park" is located in the upper left corner. A "Bicycle Parking" area is indicated in the lower left corner.
- Site Boundaries:** A dashed line outlines the site boundary, with a dimension of "46.6m" indicated along one side.
- Other Labels:** The text "THE SITE" is placed near the center, and "LB" is visible in the upper right corner.

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- The property is a substantially intact brick and tile semi-detached Victorian house, with projecting decorative brickwork around window and door openings, immediately fronting the picturesque Well Lane in the Repton Conservation Area. Relatively recent alterations to the timber windows and front door are somewhat insensitive.
- A single storey flat-roofed garage is located immediately to the east of the property and is built on the site of one of a line of cottages, which were demolished some time in the past (a sketch of these properties entitled 'Well Lane Cottages' has been submitted with the application).
- The rear yard of the property is surrounded by an L-shape of single storey outbuildings, one of which is the WC facility for the application property.
- A right of way to the rear of 8 and 10 Well Lane and to the front of 112 High Street exists via a path that runs along to the east side of the garage from Well Lane.
- The property and its associated garage have become derelict and the applicants, who are long time residents of Well Lane, are anxious to improve the quality of the site by sensitive new building and restoration. The applicants therefore seek permission to demolish the existing garage and build a single storey extension with a pitched tiled roof in its place. The roof space would accommodate a bathroom to serve the 2 existing bedrooms at first floor level.
- An earlier scheme proposed a 2-storey extension on the site of the garage and pre-application discussions with the Planning Department and the resident at 112 High Street resulted in the agreement that this would be overbearing.
- The front and rear walls of the proposed extension are set back from the adjacent walls of No. 8 to provide a firm 'break' in the elevations. The existing property would be painted to form a coherent composition with the already painted attached neighbour. The proposed extension would be built in red/brown facing bricks to create a sense of incremental development of Well Lane, which is considered appropriate in the context of the conservation area.
- The gable wall to the extension is slightly asymmetrical, being 2.8 metres high at eaves level to Well Lane, and 3.3 metres at eaves height to the rear. This is to accommodate 2 new doors to the existing first floor bedrooms which would sit just beneath the underside of the pitched rafters. These details are shown in the submitted section drawing.
- The segment of land between the gable wall of the extension and the right of way path is dedicated to planting.
- New doors and windows to the extension would be painted timber with traditional flush casements and the side elevation window to the new bathroom would be obscure glazed. A black conservation rooflight would be fitted flush with the roof tiles on the rear roofslope of the extension to serve the landing. The unsympathetic windows and doors of the existing property would be replaced to match the ones at the attached neighbour (No. 10).
- In the context of the Repton Conservation Area, it is considered that the proposal reflects the incremental nature of Well Lane, is appropriate in scale and materials - being subservient to the historic composition of No's 8 and 10 - and is an improvement on the existing flat roofed garage. Sensitive hard and soft landscaping to the side and rear yards would also improve the current environment.
- It is considered that the reduction in height from the original 2-storey extension to a single storey extension (albeit asymmetric) would alleviate the concerns of overbearing on the neighbour at 112 High Street, particularly as the eaves height

to the front elevation is no higher than the existing garage. The side bathroom window would be obscure glazed to avoid overlooking of the garden area of 112 High Street.

Planning History

There is no planning history for the application site.

Responses to Consultations

The County Highways Authority has advised that whilst the demolition of the existing garage and the loss of its associated parking space is not generally encouraged, in view of the proximity of the garage to the highway (a vehicle would need to be parked in the road whilst a driver opened the garage door) and the substandard visibility available to an emerging driver, it is not considered that the loss of the on-site parking, in this instance, would be detrimental to highway safety.

The applicant refers to the provision of 2 off-street parking spaces on the frontage of No. 9 Well Lane and it is assumed that this would form a private arrangement between the occupants of the 2 dwellings rather than a formal part of the planning application.

The Conservation and Heritage Officer advised that the window and door detailing to the front of the existing property should not match the adjoining property, which has also been unsympathetically renovated. A request that the front windows be restored to traditional 2 over 2 sashes and the front door to a timber 4 panelled door, with the possibility of grant aid being available for this and for the removal of the paint to the brickwork at No. 10, was received well by the applicants.

Amended plans were received on 25 June showing the window and door changes requested to the front elevation of No. 8 as well as the same changes to the frontage of No. 10. The applicant has still decided to paint the frontage brickwork of No. 8 to match No. 10. The Conservation Officer has recommended approval of the amended scheme subject to the usual conservation conditions.

Repton Parish Council objects to the planning application on the grounds that the car parking provided is a distance away from the property, in an already congested area, which could create access problems for emergency vehicles and that the design is for a 1.5 height building and not a single storey which would be more in keeping with the area.

Responses to Publicity

5 letters of objection, 4 letters of support and 2 letters of comments have been received over the notification period. 2 further neighbour notifications were sent following the receipt of amended plans.

Objections received:

- The foremost concern is the permanent removal of dedicated parking from the property, in an area which is already severely congested.
- The parking spaces suggested for the application, in the paddock adjacent to No. 9 Well Lane flats, were planning conditions for these dwellings and provide the

minimum parking for the flats. Further spaces cannot be accommodated without expanding the paddock.

- The 'flat' parking, approximately 40 metres from the application property, is too distance and it is unrealistic to believe or expect that these spaces would be used. The tenants at No. 10 were offered these spaces, but chose to park close to their property in the lane.
- The original proposal for a 2 storey abode has been only slightly modified in favour of a single storey extension with a roof space bathroom. This is disingenuous and can only be interpreted as a two storey extension, bringing about the same concerns regarding protection of amenity and unacceptable overbearance.
- The close proximity of the proposed bathroom window to the front door and garden of 112 High Street would be extremely distasteful and may breach the minimum distance guidelines and the 45 degree rule.
- Proposal of landscaping of the extension is not relevant and would be neither reliable nor permanent.
- The cottages shown in the sketch submitted with the application is a Well Lane street view dated 1881 – 4 of the cottages shown were demolished early in the last century having been deemed as overcrowding.
- Well Lane is popular for walking in the village and the bathroom window would spoil the approach into the lane.
- The proposed extension is erroneous with regard to the fence boundary to the rear of the proposed extension. The current fence arrangement is correct and is clearly discernable on the deeds for 112 High Street having been validated by a planning consultant and chartered surveyor.
- The planning application was submitted on 29 May, just before an extended bank holiday, and during a period when many residents have been away, leaving very little time from the date of the letters to make enquiries. No planning notices appear to have been posted in the vicinity at the time of the letters.
- The objector can see 8 Well Lane from her 6 cottage windows – if the application goes ahead, the extension would partially block the existing views.
- Main objection is to the possible increase in parking problems, which are already dreadful. The re-opening of The Bull's Head exacerbated the problem – people travel into the village to go to the pub and park anywhere they can get, certainly in Well Lane. Cars are parked over property entrances blocking occupiers in. The chip shop also causes problems with parking.
- A 3 bedroomed property could mean 3 more cars blocking the entrance to Well Lane. The area is very congested in the evenings and it would be impossible to get ambulances or fire engines through.
- The residents at 10 Well Lane already park 2 cars in the lane and there are a lot of older properties with no parking so parking is at a premium.
- This part of Repton gets extremely congested with cars belonging to residents of Well Lane and Main Street which was never built to sustain each household having multiple vehicle occupancy.
- The considerable extra burden imposed by evening and weekend trade at The Bull's Head makes living in this area intolerable, leading to many instances of vehicle damage and raised tempers.
- It should be noted that it is less than 1 time in 4 that the objectors get to park outside their property, having to leave vehicles with highly desirable and expensive work related tools, which are too heavy to be moved nightly, some distance away.

- Parking provision at No 9 Well Lane is already fully committed and in fact over committed based on the fact that the property houses 5 flats requiring 8 spaces (ie at least 1.5 cars per dwelling). It is beyond reason to expect parking to be used that far from the front door and the provision is highly likely to be ignored in favour of parking in front of the property.
- The Repton Village design statements building guidelines state that '*New developments should not exacerbate on street parking difficulties*'. The proposed development would do just that by incorporating the existing double garage facility into living accommodation and leaving parking arrangements to be moved to the street.
- Parking already exceeds the recommendations set out in the Parking Standards in the South Derbyshire Local Plan Annex.
- It should be noted that Well Lane is only 6 yards (5.49 metres) wide from pavement to pavement, the average car is 2 yards (1.83 metres) excluding wing mirrors (4x4 vehicles being considerably wider) and there is no parking restriction on either side of Well Lane meaning that access for residents at the top of the lane, which includes a thriving agricultural business needing 24 hour access, is impossible at times, let alone the need for emergency vehicle access.
- If occupiers of 8 Well Lane park outside the property rather than the designated spaces, it would restrict access to the objector's property which is located in the narrowest part of the land.

Letters of support:

- This is a very sympathetic plan which is in keeping with the surrounding buildings in Well Lane.
- The proposal would greatly improve this particular area of Well Lane, especially as it is in a conservation area.
- 8 Well Lane has been in a poor state of repair for many years and the garage does not sit well amongst the charming old cottages.
- The reduced height extension would enhance the appearance of No. 8 and would hopefully not exclude too much light from the neighbouring cottage.
- The submitted plans stand to improve both the street and the aspect of the house itself.

Other comments:

- Are actions going to be put in place to enforce parking restrictions?
- May we suggest that double yellow lines be considered?
- Parking in Well Lane has recently become a problem however it is gathered that any tenants of the applicants would be asked to park in their designated parking area so as to not add to the problem.
- We do not have an issue with the proposed extension and do not find parking a problem on the street. Nowadays most houses have 2 cars and it is a case of adapting accordingly.

Additional comments received as result of reconsultation on amended plans:

- Of the 5 flats at 9 Well Lane, 1 is unoccupied and 3 have single occupancy so any apparent under utilisation cannot be relied upon.
- It is dubious whether there would be sufficient car parking if the flats were fully occupied based on the SDDC standards – this does not allow for access, turning, visitor parking or space for disabled access which the ground floor flat is likely to attract.

- 9 Well Lane parking area is used to store wheelie bins for the flats.
- Retaining parking and access at No. 8 would prevent parking outside the property and help spread parked cars along the lane making it less crowded.
- The proposed extension creates a 3 bedroom dwelling, increasing the number of potential occupants and therefore vehicles.
- The Council's supplementary planning guidance (SPG) states for a 3 bed property 2 car parking spaces are the standard. One space is currently provided and this will be lost.
- If accommodation is arranged over 2 floors, it must be 2 storey.
- The external height of the extension's apex is above the eaves height of No. 8 and is greater than the roof height of 2 storeys.
- The height of the proposed extension would create an enclosed, penned in effect on 112 High Street, taking away the open aspect a single storey would allow, and would be of serious detriment to its residential amenity.
- 112 High Street has no back garden and a small concrete shared side yard, therefore the only exclusive amenity area (which has a 8-9m depth) is to the front which will be in shade for a longer period than is currently the case.
- The existing blank gable wall of No. 8 is just under the policy requirements to a primary lounge window (45° rule mentioned in the Council's SPG), being a distance of 11 metres compared with the requirement of 12 metres. The existing situation does not meet the policy requirement.
- Whilst the standard applies to 2 storey buildings, the SPG states that single storey extensions will be decided on their own merits. In this case, the extension at 6.3 metres represents a one and a half storey building (two storeys 8m, one storey 4m) adjacent to the main elevation amenity space of 112 High Street and abutting its only exterior amenity space.
- The extension would be 6 metres from the main lounge window of 112 High Street, compared with the 12 metre requirement. The existing deficient separation distance would be reduced further.
- The applicant's DAS states the property is derelict, this is not entirely true. It was sold approximately 6 months ago and the previous owner visited daily. The garage roof was replaced 3 months before it was sold.
- The proposed extension is out of scale in terms of its appearance compared to existing cottages in the vicinity.
- If the Council is prepared to allow the demolition of the garage and some extension to No 8, it is suggested that an alternative design for a single storey extension be considered. The existing garage measures 2.6m wide x 6m in length and in view of this it is proposed that the new building should measure no more than 3m x 6m, be 3m to the eaves and 5m to the ridge with a lean-to roof at right angles to the road. The extension would be stepped off the boundary and be parallel with the gable wall of No. 8 and the right of way rather than the currently proposed irregularly shaped building which attempts to "square off" the existing house. This would be a simpler visual solution and one which would not over-power the neighbouring property or cause any over-shadowing.
- The revised lean-to building would be 7m from the primary lounge window of No. 112 at a height of just under 3m to the eaves with the roof sloping away from the boundary. The current proposal is over 6m in height at 7m from the lounge window.
- The revised design would produce a significant benefit to the residential amenities of 112 High Street as well as providing additional floorspace for No. 8 Well Lane.

- The applicant has the potential to consider utilising the roof space of No. 8 rather than the extension.
- It is clear that the provision of a pitched roof rather than a flat roof would be an improvement to this part of the conservation area but it should not be at the expense of the residential amenities of 112 High Street.

Development Plan Policies

The relevant policies are:

Local Plan: Saved Environment Policy 12 and Saved Housing Policy 13.

Supplementary Planning Guidance 'Extending your Home'.

National Guidance

National Planning Policy Framework: Section 7 Requiring good design and Section 12 Conserving and enhancing the historic environment.

Planning Considerations

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

- The impact of the proposal on the character and appearance of the conservation area;
- The impact of the proposal on the amenities of the neighbouring properties;
- Parking

Planning Assessment

Impact of proposal on the character and appearance of the conservation area

The amended scheme has been sympathetically detailed in conjunction with comments from the Conservation and Heritage Officer and is in scale with the host property. The renovations to the frontage of No. 8 (and it's neighbour at No. 10 which do not form part of the current application) would restore the cottages to their former traditional character.

The amended scheme, together with the renovation works that are proposed to the neighbouring property, would enhance the character of both the cottages and thereby preserve the character and appearance of the conservation area and is therefore in compliance with the above policy requirements.

Impact of the proposal on the amenities of the neighbouring properties

The originally submitted plans were amended following comments received through the consultation process to show the removal of the obscure glazed window to the gable end of the proposed extension. A further rooflight to the rear roof slope to light the bathroom area in lieu of the side window is considered acceptable by the Conservation Officer.

The proposed extension, although asymmetrical in form with the eaves height being 2.8 metres to the front and in line with the ground floor window lintel height of the existing property and slightly higher at 3.3 metres to the rear, is considered to be a single storey

addition to a 2 storey cottage. The form and detailing of the proposed extension reflects the character, form and proportions of the host dwelling.

Single storey extensions are decided on their own merit and the removal of the side bathroom window would preserve the privacy of the garden area of the adjacent property (112 High Street). There are no ground level changes between the application site and the neighbour at 112 and being a single storey extension, it has been judged to not overshadow the main ground floor lounge window of the neighbour. As such the proposal conforms to the Council's supplementary planning guidance 'Extending your Home' and therefore the Local Plan policy. The amended scheme has therefore been judged not to adversely affect the amenities of the neighbouring properties.

Parking

On the advice of the County Highways Authority the loss of on site parking is not considered to be detrimental to highway safety (given its current shortcomings) and the Highway Authority is satisfied with the allocation of the 2 off road parking spaces on land that is owned by the applicant further up the lane. It is therefore unlikely that a case for resisting the development on this ground would be sustainable.

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

Recommendation

GRANT permission subject to the following conditions:

1. The development permitted shall be begun before the expiration of three years from the date of this permission.
Reason: To conform with Section 91(1) of the Town and Country Planning Act, 1990 (as amended by section 51 of the Planning and Compulsory Purchase Act 2004).
2. No part of the development shall be carried out until precise details, specifications and, where necessary, samples of the facing materials to be used in the construction of the external walls and roof of the proposed extension have been submitted to and approved in writing by the Local Planning Authority. The work shall be carried out in accordance with the approved details.
Reason: To safeguard the appearance of the existing building and the locality generally.
3. Large scale drawings to a minimum Scale of 1:10 of eaves, verges and external joinery, including horizontal and vertical sections, precise construction method of opening and cill and lintel details shall be submitted to and approved in writing by the Local Planning Authority before building work starts. The external joinery shall be constructed in accordance with the approved drawings.
Reason: The details submitted are inadequate to determine whether the appearance of the building would be acceptable.
4. External joinery shall be in timber and painted to a colour and specification which shall have been previously agreed in writing by the Local Planning Authority. The

joinery shall be painted in accordance with the agreed details within three months of the date of completion of the development unless otherwise agreed in writing by the Local Planning Authority.

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

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

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

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

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

7. The precise type and size of the proposed rooflights shall be submitted to and approved in writing by the Local Planning Authority. The approved rooflights shall be fitted such that their outer faces are flush with the plane of the roof, unless otherwise agreed in writing with the Local Planning Authority.

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

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

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

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

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

17/07/2012

Item **1.4**

Reg. No. **9/2012/0508/FH**

Applicant:

MS MONICA DOLMAN & MR ANDREW
DOWELL
9 PARK ROAD
CHURCH GRESLEY
SWADLINCOTE

Agent:

MR ANDREW DOWELL
THE LODGE
CLIFTON ROAD
NETHERSEAL
SWADLINCOTE

Proposal: **THE ERECTION OF A SINGLE STOREY EXTENSION TO
THE REAR OF 9 & 11 PARK ROAD CHURCH GRESLEY
SWADLINCOTE**

Ward: **CHURCH GRESLEY**

Valid Date: **14/06/2012**

Reason for committee determination

The application is brought to Committee as one of the applicants is related to a Council employee.

Site Description

Nos. 9 and 11 Park Road, Church Gresley are a pair of semi-detached, two-storey dwellings within a row of similar properties. There is an informal parking area to the front of the properties beyond which is an area of public open space (Gresley Common). No.9 is inhabited whereas No.11 currently lies empty.

Proposal

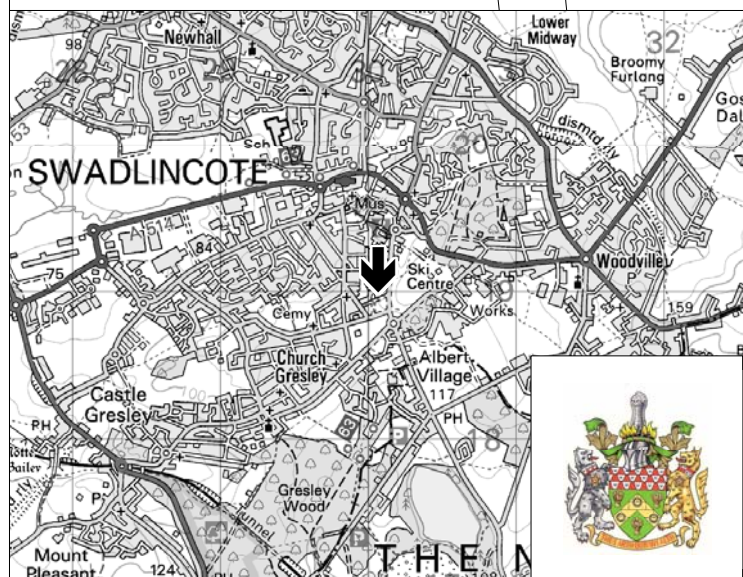
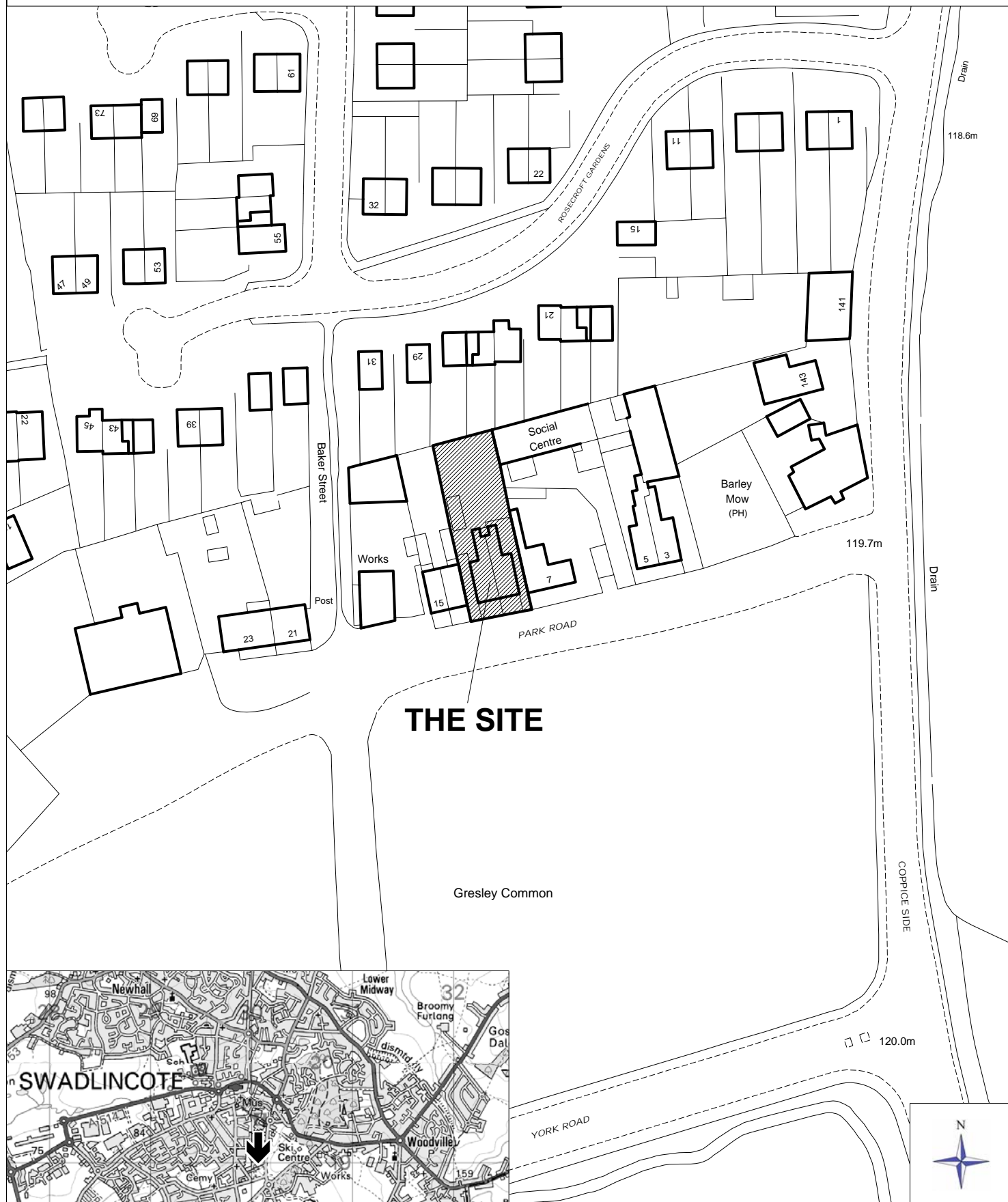
This is a joint application for the erection of single storey rear extensions to both properties, replacing outside toilets and coal stores. The extension to No.9 would have a rendered finish and be used as an additional store, whilst the extension to No.11 would be of facing brick to match the existing and used as a dining room.

Applicants' supporting information

None submitted

Planning History

**9/2012/0508 - Rear of 9 and 11 Park Road, Church Gresley,
Swadlincote DE11 9QE**



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South Derbyshire District Council. LA 100019461. 2010

No known history

Responses to Consultations

None

Responses to Publicity

None

Development Plan Policies

The relevant policies are:

Local Plan: Saved Housing Policy 13

National Guidance

National Planning Policy Framework

Supplementary Planning Guidance

Housing Design and Layout

Planning Considerations

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

- Design and impact of the proposed extensions on the existing dwellings and the area.
- Impact of the proposals on the neighbouring residents.

Planning Assessment

Design and impact of the extensions on the existing dwellings and the area

Local Plan Saved Housing Policy H13 requires extensions to dwellings to be in scale and character with the existing property and the general character of the area. In this instance, the extensions are of single storey design, with the gabled roof end facing down towards the rear garden. The roof pitch would match that of the existing gabled roof pitch. The extensions would replace the existing outdoor toilets and coal stores, which is an improvement on the existing situation, although they would be 1.1m deeper and 0.3m higher, but no wider. The extensions would not be visible from the front of the dwellings and therefore the street scene would not be compromised. The proportions of the existing dwellings would not be affected.

Impact on neighbouring residents

Local Plan Saved Housing Policy H13 also requires that residential extensions should not be detrimental to the amenities of adjoining properties. The dwellings at Nos. 7 and 13 have no windows overlooking either of the application sites and therefore the amenities currently enjoyed by those occupiers would remain unaffected.

In terms of the NPPF, the proposals are in line with the design guidance within the Framework, which seeks to promote good design as a key to sustainable development.

It is concluded therefore that the proposed extensions are in accordance with local and national policies and a recommendation is made accordingly.

Recommendation

GRANT permission subject to the following conditions:

1. The development permitted shall be begun before the expiration of three years from the date of this permission.
Reason: To conform with Section 91(1) of the Town and Country Planning Act, 1990 (as amended by section 51 of the Planning and Compulsory Purchase Act 2004).
2. Other than the proposed render for the extension to No.9 Park Road, all external materials used in the development to which this permission relates shall match those used in the existing dwellings in colour, coursing and texture unless otherwise agreed in writing by the Local Planning Authority.
Reason: To safeguard the appearance of the existing dwellings and the locality generally.

Informatives:

The proposed development lies within an area that has been defined by The Coal Authority as containing potential hazards arising from coal mining. These hazards can include: mine entries (shafts and adits); shallow coal workings; geological fissures; mine gas and previous surface mining sites. Although such hazards are often not readily visible, they can often be present and problems can occur as a result of development taking place, or can occur at some time in the future.

It is recommended that information outlining how the former mining activities affect the proposed development, along with any mitigation measures required, be submitted alongside any subsequent application for Building Regulations approval.

Any intrusive activities which disturb or enter any coal seams, coal mine workings or coal mine entries (shafts and adits) requires the prior written permission of The Coal Authority. Such activities could include site investigation boreholes, digging of foundations, piling activities, other ground works and any subsequent treatment of coal mine workings and coal mine entries for ground stability purposes. Failure to obtain Coal Authority permission for such activities is trespass, with the potential for court action. Property specific summary information on coal mining can be obtained from The Coal Authority's Property Search Service on 0845 762 6848 or at www.groundstability.com

Item 1.5

Reg. No. 9/2012/0469/FM

Applicant:

Mr M. H. Maxwell
80 Common Road
Church Gresley
Swadlincote

Agent:

Mr Suntokh Raju
R3Design Developments Ltd
9 Hallam Close
The Glasshouse
Littlethorpe

Proposal: **THE ERECTION OF A DWELLING ON LAND TO THE
REAR OF 80 COMMON ROAD CHURCH GRESLEY
SWADLINCOTE**

Ward: **CHURCH GRESLEY**

Valid Date: **30/05/2012**

Reason for committee determination

The application is brought to Committee at the request of Councillor Southerd (ward member) as he considers that the issues are finely balanced and should be debated.

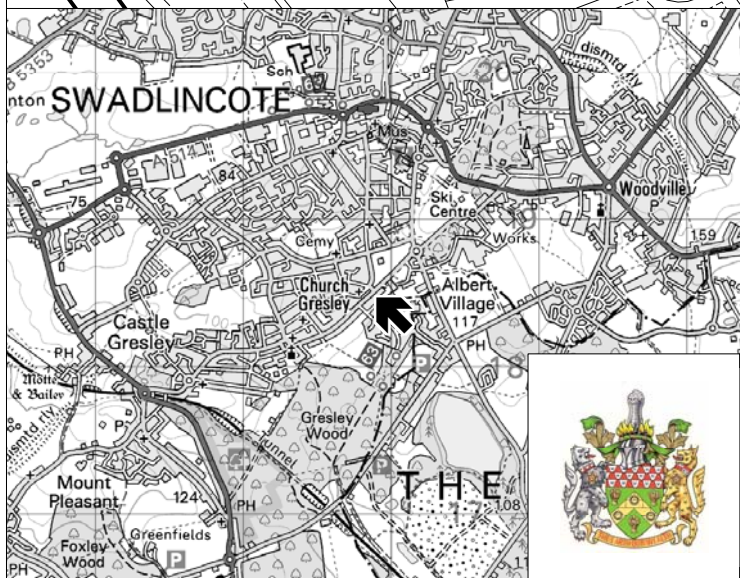
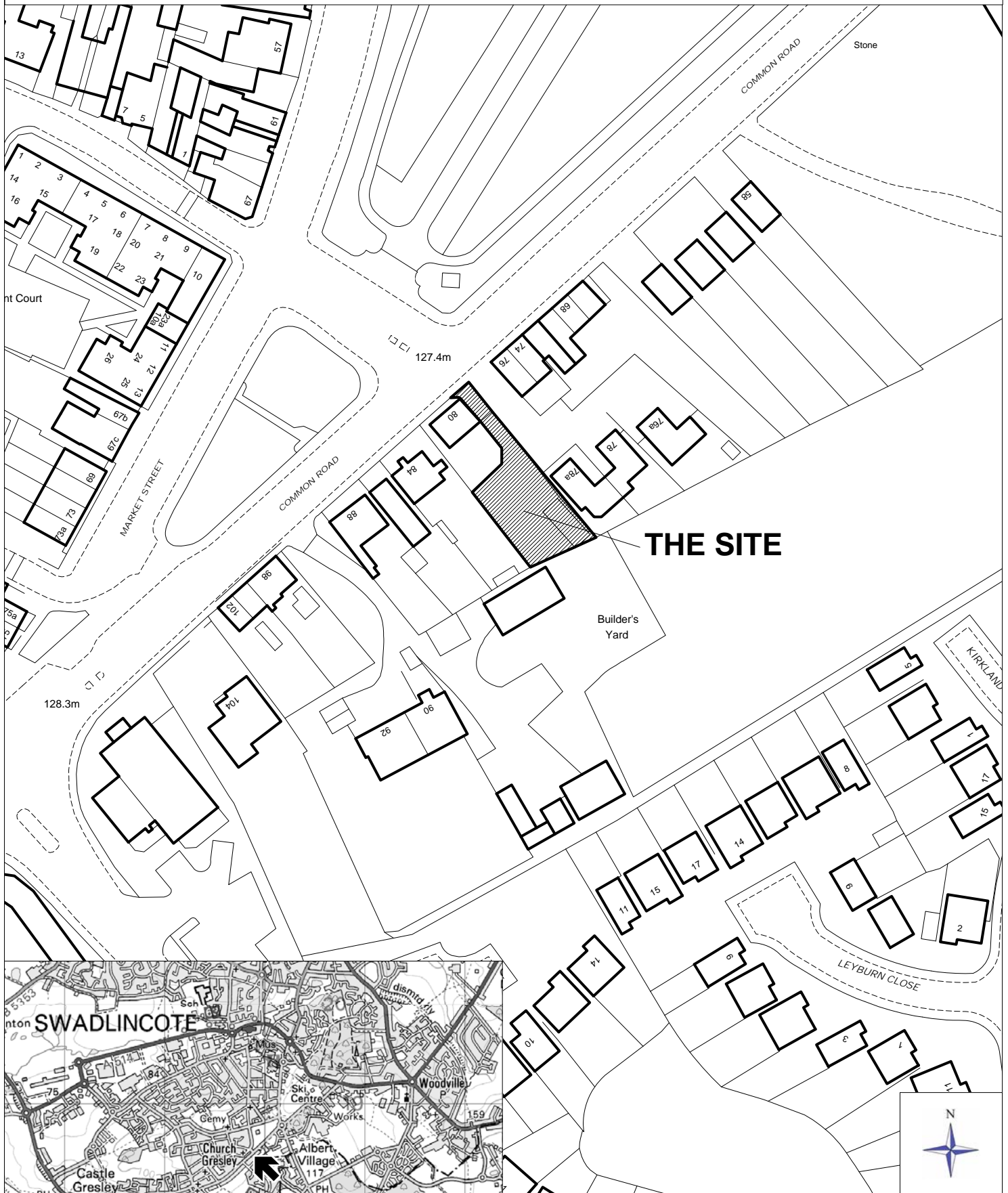
Site Description

No.80 Common Road is a detached, two-storey dwelling on the south eastern side of Common Road, opposite the junction with Market Street. The rear of the property is currently accessed via an existing gated driveway. The rear garden of the property (the subject of this application) has an average depth of 31m and at the time of the site visit contained a detached brick outbuilding, together with a variety of motor vehicles, tyres and a large dog kennel. To the north west of the garden is a detached residential property (No.84) and to the south is a builder's yard and an associated workshop building. To the north east is a relatively recent development of three dwellings (No.78a being the closest), together with a terrace of traditional dwellings that face onto Common Road. The site is screened along the south west boundary by mature trees and fencing. Herras fencing delineates the southern boundary with the builder's yard and a 1.8m high close-boarded fence forms the boundary with 78a. The area is predominantly residential, although there are community facilities nearby and the Maurice Lee Memorial Park is on the opposite side of the road.

Proposal

Planning permission is sought for the erection of a detached, two storey, three bedroom dwelling and detached single garage towards the rear of the site, together with alterations to the existing vehicular access, which would serve both the proposed

**9/2012/0469 - Land to the rear of 80 Common Road, Church Gresley,
Swadlincote DE11 9NW**



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South Derbyshire District Council. LA 100019461. 2010

development and No.80. The dwelling would measure 7.8m wide x 9.9m deep x 8.2m high to the ridge. The detached garage would be 3.4m wide x 7m deep x 5.2m high to the ridge and positioned between the new dwelling and No.78a. The site plan shows a further parking space to the front of the garage and an area of private amenity space to the rear of the dwelling.

A further parking and turning area to serve No.80 is proposed between the new dwelling and the rear of No.80. A 1.8m high retaining wall would be constructed along the northern edge of the parking/turning area, which would delineate an area of private amenity space for No.80.

The existing vehicular access would be altered by the removal of the gates together with an 8m length of fencing. The driveway would be extended to serve the proposed dwelling and the parking/turning area. Existing sight lines and visibility splays would be retained.

Applicants' supporting information

The applicant's Design and Access Statement (available to view on the file and on the Council's website) incorporates the salient points as follows:

- The proposal will benefit an under-used piece of land within the built-up residential area of Church Gresley.
- Local services are available, well within walking distance.
- The proposal will benefit the local economy by providing jobs for the local building industry.
- The design of the proposed dwelling reflects the style and detailing of adjacent properties whilst giving consideration to the residents of neighbouring properties in terms of overlooking and loss of privacy.
- The proposal will enhance and improve the site.
- The proposal complies with advice in the NPPF, the East Midlands Regional Plan and the Local Plan.
- The proposal represents a sustainable form of development.

Planning History

9/2002/0075 – Certificate of Lawful Use of the site as a Haulage Yard - Granted

9/2012/0347 – Erection of one detached dwelling and detached garage – withdrawn

Responses to Consultations

The Coal Authority considers that the content and conclusions of the Coal Mining Risk Assessment Report are acceptable and therefore has no objection to the proposed development.

Severn Trent Water has no objection subject to the usual conditions.

The Environmental Health manager considers that there is a strong likelihood of made ground and other contaminants being identified in the area and requests conditions in respect of contaminated land.

The County Highway Authority has no objection on the basis that adequate visibility at the site access exists and on-site parking and turning space is available. Conditions are requested in respect of the visibility splays being kept free of any obstruction greater than 1 metre in height (0.6m in the case of vegetation); and the provision and surfacing of the parking and manoeuvring space prior to first occupation of the dwelling, together with its maintenance free from any impediment throughout the life of the development.

Responses to Publicity

One letter has been received from the occupier of the adjacent residential property, which raises the following concerns:

- (a) The boundary hedge referred to on the submitted plan as being retained is not within the application site and therefore the applicant has no right to stipulate that it will be retained for screening purposes.
- (b) Misinformation on the application form with regard to existing trees, hedges and fences.
- (c) There is a difference in ground levels between Nos. 80 and 84 and a retaining wall will be required to maintain that difference.
- (d) The existing screening is very patchy, caused by vehicles being parked close to the boundary, restricting sunlight and restricting growth.
- (e) The proposed dwelling is very close to the common boundary, which could cause damage to the existing hedge during construction work.
- (f) Conditions are requested pertaining to (1) the construction of a retaining wall of a height level with the ground level of No.84, with wooden panel fencing placed along the top of the wall to a height of at least 6 feet, to provide screening between the two properties; (2) protection of existing hedge and trees along the boundary during construction work; (3) consideration is given to the future mature height of the existing trees to minimise the risk of the future need for excessive pruning or felling requests, which could give rise to possible neighbour disputes.

Development Plan Policies

The relevant policies are:

Local Plan Saved Housing Policies 4 and 11 and Transport Policy 6.

National Guidance

The National Planning Policy Framework (NPPF) paragraph 53.

Other Guidance

Supplementary Planning Guidance: Housing Design and Layout

Planning Considerations

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

- the principle of the development and compliance with policy
- the impact on the amenities of the neighbouring residents

- the design and layout of the development
- the impact on the surrounding highway network

Planning Assessment

The principle of the development and compliance with policy

This is a backland site forming part of the rear garden of No.80 Common Road. The Local Plan does not contain advice on developments on garden land specifically. However, the Government has previously highlighted the issue in a letter to Chief Planning Officers dated 19th January 2010 advising that local authorities are best placed to develop policies and take decisions on the most suitable locations for housing and they can, if appropriate, resist development on existing gardens and that the Planning Inspectorate is likely to support such decisions where they are supported by having local policies in place.

More recently, the NPPF (paragraph 53) advises local planning authorities to consider the case for setting out policies to resist inappropriate development of residential gardens, for example where development would cause harm to the local area.

In the absence of a specific Local Plan policy to advise on such developments, the principle of the proposal has been assessed against Local Plan Saved Policy H4 and the 7 criteria listed within it. The proposal meets all the criteria and therefore it is concluded that the principle of the development is acceptable as it is in compliance with Policy H4.

By way of information to Members, applications for similar developments adjacent to the application site have previously been permitted, with three dwellings being constructed to the rear of Nos. 72-76 and 68-70 Common Road (Nos. 76a, 78 and 78a), which were granted in 2005 and 2007 respectively. Whilst it is acknowledged that the principle of backland development was not such an issue when those consents were granted, the main consideration when determining the acceptability, or otherwise, of such a proposal remains to be whether or not there would be any harm to the character and appearance of the local area. In this case, the site is set back and currently not visible from the road. Admittedly, when the gates and part of the boundary fencing have been removed and the site is opened up and developed, the dwelling would be partially visible from the street, but not to the point where it would be detrimental to the street scene, as the site is enclosed by existing development and would not be prominent.

Impact on the amenities of neighbouring residents

The residential properties most likely to be affected by the proposal are No.78a, which is adjacent to the proposed dwelling and garage, No.76 to the north east, the applicant's property (No.80) and No.84. The existing trees and other vegetation on the boundary of No.84 provide effective screening between the properties at ground level. However, in all probability, the new dwelling would be visible from the first floor bedroom window of No. 84. A re-design of the new dwelling, which locates a bathroom window and roof lights serving a bedroom on the front elevation, ensures that there would be no principal windows at first floor level facing No.84, therefore there would be no opportunity for overlooking or loss of privacy.

The comments made by the neighbour with regard to boundary treatments, screen planting and root protection can be addressed through appropriate conditions. Overlooking from a first floor landing window facing the rear garden of No.84 could also be addressed by a condition requiring it to be fitted with obscure glass.

With regard to No.78a, there are no principal windows on the side elevations of either No.78a or the proposed dwelling and therefore no loss of amenity would occur. No overshadowing would occur as a result of the proposal.

With regard to No.76 there would be a distance of 17m between the properties with no principle first floor windows being affected. An existing 1.8m high boundary fence would inhibit overlooking at ground floor level.

Similarly, the proposed 1.8m high retaining wall along the northern side of the parking/turning area would preclude overlooking between the new dwelling and No.80 at ground floor level. Furthermore, the finished floor level of the new dwelling would be approximately 1.65m below the level of No.80.

Design and Layout

The re-design of the new dwelling reflects the architecture of the adjacent housing (Nos.78a and 78), with a gabled frontage and entrance canopy, stone cills and brick window arches. The proposed use of red brick and interlocking tiles would also assist in achieving a design that would blend in with the surrounding area. There are no objections to the amended design, which is an improvement on the previously withdrawn scheme.

Two parking spaces would be provided for the new dwelling, one in the garage and one to the front of the garage, which is adequate for a three-bedroom property. A small lawned area to the front of the house is proposed, with a larger area of private amenity space to the rear. It is proposed to replace the existing herras fencing with a 2m high close-boarded fence with gravel boards, which would offer some mitigation against possible noise from the builder's yard to the rear.

Impact on the surrounding highway network

There are no proposed alterations to the existing vehicular access, other than those already specified above. The Highway Authority has not objected to the proposal on either road safety or parking issues. The provision of an additional parking space to serve No.80 and turning area for both dwellings would ensure that there is adequate parking and turning to serve both properties, bearing in mind that there is no minimum requirement for parking standards since PPG13 was superseded by the NPPF, and that there are no restrictions relating to parking on Common Road.

Furthermore, it should be noted that, in 2002, the applicant applied for and was granted a Certificate of Lawful Use of the site as a haulage yard. The amount, type and noise generated by vehicular movements associated with that use would far exceed that which would be generated by one additional dwelling, as in this case. The applicant now parks his haulage vehicles elsewhere, which can only be considered as an improvement in terms of neighbours' amenities and traffic generation, including parking. The County Highway Authority does not envisage any highway safety issues as a result of the development.

In conclusion, therefore, it is considered that the principle of development is acceptable, it would not compromise the amenities of neighbouring residents or highway safety in terms of vehicular access and parking arrangements, and the design and layout is in keeping with the character of the area. For these reasons the proposal is in compliance with Local Plan Saved Policies H4, H11 and T6, the National Planning Policy Framework and the Housing Design and Layout supplementary planning guidance.

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

Recommendation

GRANT permission subject to the following conditions:

1. The development permitted shall be begun before the expiration of three years from the date of this permission.
2. No part of the development shall be carried out until precise details, specifications and samples of all facing materials to be used in the construction of the external walls and roof of the building have been submitted to and approved in writing by the Local Planning Authority. The work shall be carried out in accordance with the approved details.

Reason: To safeguard the appearance of the development and the surrounding area.

3. Notwithstanding any details submitted or the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended), no development shall take place until there has been submitted to and approved in writing by the Local Planning Authority plans and sections indicating the positions, design, materials and type of all boundary treatments to be erected. The submitted details shall include a brick retaining wall along the length of the south west boundary of the site to a height of the ground level of the adjacent dwelling at No.84 Common Road, and topped with 1.8m high close boarded fencing. The boundary treatment shall be completed in accordance with the approved details before the development is occupied or in accordance with a timetable which shall first have been agreed in writing with the Local Planning Authority.

Reason: In the interests of the amenities of the neighbouring residents and appearance of the area.

4. No development shall take place until there has been submitted to and approved by the Local Planning Authority a scheme of hard and soft landscaping, which shall include indications of all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection in the course of development.

Reason: In the interests of the amenities of the neighbouring residents and the appearance of the area.

5. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is

the sooner; and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

Reason: In the interests of the amenities of the neighbouring residents and the appearance of the area.

6. No development shall take place until details of a scheme for the disposal of surface and foul water have been submitted to and agreed in writing by the Local Planning Authority. The scheme shall be carried out in conformity with the details which have been agreed before the development is first brought into use.

Reason: In the interests of flood protection and pollution control.

7. A) The development shall not be commenced until a scheme to identify and control any contamination of land, or pollution of controlled waters has been submitted to, and approved in writing by, the local planning authority (LPA); and until the measures approved in that scheme have been implemented. The scheme shall include all of the measures (phases I to III) detailed in Box 1 of section 3.1 the South Derbyshire District Council document 'Guidance on submitting planning applications for land that may be contaminated', unless the LPA dispenses with any such requirement specifically and in writing.
- B) Prior to occupation of the development (or parts thereof) an independent verification report shall be submitted, which meets the requirements given in Box 2 of section 3.1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.
- C) In the event that it is proposed to import soil onto site in connection with the development, this shall be done to comply with the specifications given in Box 3 of section 3.1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.
- D) No development shall take place until monitoring at the site for the presence of ground/landfill gas and a subsequent risk assessment has been completed in accordance with a scheme to be agreed with the LPA, which meets the requirements given in Box 4, section 3,1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.

Reason: To protect the health of the public and the environment from hazards arising from previous contamination of the site which might be brought to light by development of it.

8. If during development any contamination or evidence of likely contamination is identified that has not previously been identified or considered, then the applicant shall submit a written scheme to identify and control that contamination. This shall include a phased risk assessment carried out in accordance with the procedural guidance of the Environmental Protection Act 1990 Part IIA, and appropriate remediation proposals, and shall be submitted to the LPA without delay. The approved remediation scheme shall be implemented in accord with the approved methodology.

Reason: To protect the health of the public and the environment from hazards arising from previous contamination of the site which might be brought to light by development of it.

9. The existing visibility splays at the site access on to Common Road shall remain clear of any object greater than 1 metre in height (0.6m in the case of vegetation) relative to the adjoining nearside carriageway channel level, throughout the life of the development.

In the interests of highway safety.

10. The dwelling, the subject of this permission, shall not be occupied until space has been provided within the application site in accordance with the approved drawing No. 12.61.02B for the parking and manoeuvring of residents' vehicles, laid out, surfaced and maintained throughout the life of the development free from any impediment to its designated use.

In the interests of highway safety.

11. The first floor landing window on the south west elevation of the new dwelling shall be permanently glazed with obscure glass.

To safeguard the amenities of the neighbouring residents.

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

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

Informatives:

The applicant is advised that further, more detailed considerations of ground conditions and/or foundation design will be required as part of any subsequent Building Regulations application.

Under the Coal Industry Act 1994 any intrusive activities, including initial site investigation boreholes, and/or any subsequent treatment of coal mine workings/coal mine entries for ground stability purposes require the prior written permission of The Coal Authority, since such activities can have serious public health and safety implications. Failure to obtain permission will result in trespass, with the potential for court action. Application forms for Coal Authority permission and further guidance can be obtained from The Coal Authority's website at

<http://coal.decc.gov.uk/en/coal/cms/services/permits/permits.aspx>

The phased risk assessment should be carried out in accordance with the procedural guidance of the Environmental Protection Act 1990 Part IIA. The contents of all reports relating to each phase of the risk assessment process should comply with best practice as described in the relevant Environment Agency guidance referenced in footnotes 1-4, to the relevant conditions attached to this permission.

For further assistance in complying with planning conditions and other legal requirements applicants should consult "Developing Land within Derbyshire - Guidance on submitting applications for land that may be contaminated". This document has been

produced by local authorities in Derbyshire to assist developers, and is available from http://www.south-derbys.gov.uk/business/pollution/contaminated_land/default.asp
Reports in electronic formats are preferred, ideally on a CD. For the individual report phases, the administration of this application may be expedited if a digital copy of these reports is also submitted to the pollution control officer (contaminated land) in the environmental health department: pollution.control@south-derbys.gov.uk.

Item **1.6**

Reg. No. **9/2012/0510/TP**

Applicant:

South Derbyshire District Council
Civic Offices
Civic Way
Swadlincote

Agent:

Mr Martin P Buckley
Tree Officer
South Derbyshire District Council
Civic Way
Civic Offices
Swadlincote

Proposal: **WORKS TO TREES COVERED BY SOUTH DERBYSHIRE
DISTRICT COUNCIL TREE PRESERVATION ORDER
NUMBER 132 AT PLAYGROUND WREN WAY
MICKLEOVER DERBY**

Ward: **ETWALL**

Valid Date: **13/06/2012**

Reason for committee determination

The Council is the applicant; the trees are within a Tree Preservation Order (TPO) on Council owned land.

Site Description

The trees are located on a small piece of public open space and adjacent to a formal children's play area. They are highly visible, seen from Wren Way and a number of surrounding residential streets. The site and immediate land is flat.

Proposal

Tree 1 - Minor outer crown lift;

Tree 2 - Lift outer crown to provide statutory clearance (3m) over footpath and play area

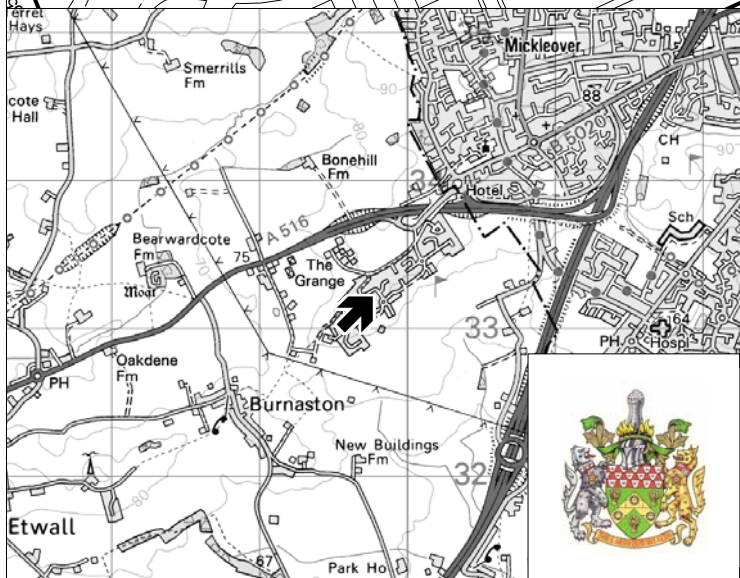
Tree 5 - Cut back from adjacent property

Tree 6 - Lift outer crown to allow clearance for mowing.

Tree 7 - Fell tree and replace with similar species. 40% of crown dying or dead.

Applicants' supporting information

9/2012/0510 - Playground, Wren Way, Mickleover, Derby DE3 0UF



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The applicant has submitted a tree report, part of a District wide 'tree survey'. All of the trees here have been given an individual reference number – these numbers relate to a detailed schedule of proposed work.

Planning History

The trees were protected prior to the redevelopment of this former Hospital site. The Order was confirmed in February 1997.

Responses to Consultations

None

Responses to Publicity

None

Development Plan Policies

Local Plan Environment Policy 9.

Planning Considerations

The main issue central to the determination of this application is whether the work proposed is warranted given the protective designation.

Planning Assessment

The trees are part of a larger Preservation Order found protecting trees on the 'Pastures Estate'. The group in question features a number of different species including Maple, Birch, Plane and Cherry.

The submitted works are deemed essential, part of a long-term management programme. The works are seen not to compromise the overall amenity value of this woodland and importantly will reduce the likelihood of failure in a public environment.

Recommendation

GRANT permission subject to the following conditions:

1. The work shall be carried out in accordance with BS3998:2010 - Tree Work.
Reason: To safeguard the health of the trees.

2. PLANNING AND OTHER APPEALS

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

Reference	Place	Ward	Result	Cttee/Delegated
9/2010/0877	Dalbury Lees	Hilton	Dismissed	Delegated
9/2011/0729	Swadlincote	Swadlincote	Allowed	Committee
9/2011/0880	Boundary	Woodville	Allowed	Delegated



Appeal Decision

Site visit made on 1 May 2012

by Alison Roland BSc DipTP MRTPI

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

Decision date: 20 June 2012

Appeal Ref: APP/F1040/A/11/2166157

Clover Fields, Olseston Lane, Nr Dalbury Lees, Derbys, DE6 5BN.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mark Goodall against the decision of South Derbyshire District Council.
 - The application Ref: 9/2010/0877/NO, dated 8 September 2010, was approved on 20 June 2011 and planning permission was granted subject to a condition.
 - The development permitted is retrospective application to reduce the size of agricultural building by 20% external alterations to residential building.
 - The unnumbered condition in dispute states that: *Within 3 months of the date of this planning permission, part of the east facing side of the building shall be clad in timber boarding to match that on the south facing elevation of the structure such that it extends to a point on the east elevation where the existing window would be covered in cladding. Thereafter the cladding on the south and east elevations shall be retained in place.*
 - The reason given for the condition is: *In the interests of the appearance of the agricultural building as the domestic style window opening on the prominent roadside building is out of keeping with the permitted agricultural use of the building in this rural location.*
-

Procedural Matter

1. The address of the appeal property is given as Clover Fields in the original planning application, but later appeal correspondence refers to Lodge Cottage, Clover Fields. The appellant confirmed the correct address is Clover Fields.

Decision

2. The appeal is dismissed.

Main Issue

3. The main issue in this appeal is the implications of the proposal to remove the condition for the character and appearance of the area.

Reasons

4. The window in question is in the side elevation of a substantial agricultural building and faces the roadside. It has an arched head and decorative multi paned design and is inset into brickwork. In its own right it is arguably not

unattractive. However, given its ornate design set in the wall of this otherwise relatively plain building of functional simplicity, it simply looks contrived and out of place.

5. The appellant refers to what he believes is an identical window in a nearby farm building. I cannot accept that the window pictured is identical in design as it is of a different shape and has a less decorative glazing pattern than the proposal before me. It is also set within a brickwork façade of what appears to be a traditional building, which is punctuated by a number of other openings and its context is thus somewhat different to the appeal site.
6. The appellant says the window is used to lift hay to the hay loft. This would appear to me to be a somewhat difficult operation given the small size of the available openings. Either way, I consider any advantage to the appellant in this respect would be outweighed by the harm I have identified. I also appreciate that local wildlife may access the building through the openings in the window, but there is no evidence to suggest this is their only means of access to the building or that any protected species would be affected. I therefore attach limited weight to that particular point. I also appreciate that there has been no local objection to the window, but that does not automatically render it acceptable on its planning merits.
7. Overall on the main issue, I conclude that the condition is well founded and that its removal would facilitate the retention of the window which looks out of place, to the detriment of the character and appearance building and wider area. This would bring it into conflict with saved Environment Policy 1 of the South Derbyshire Local Plan which seeks to ensure that the character of the countryside is safeguarded and protected. Although this policy pre-dates the publication of the National Planning Policy Framework, it is consistent with its aim to secure high quality design and pay due regard to the intrinsic character of the countryside. I therefore attach considerable weight to it.

ALISON ROLAND

INSPECTOR



Appeal Decision

Site visit made on 28 May 2012

by **C J Checkley BA(Hons) MRTPI**

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

Decision date: 4 July 2012

Appeal Ref: APP/F1040/A/12/2169165

Site on west side of Rinkway MOT & Servicing Building, Unit 11, Rink Drive, Swadlincote, Derbyshire, DE11 8JL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
 - The appeal is made by Telefonica O2 Ltd/Vodafone Ltd against the decision of South Derbyshire District Council.
 - The application Ref 9/2011/0729/NT, dated 26 August 2011, was refused by notice dated 11 October 2011.
 - The development proposed is provision of a 14.8m high streetworks telecommunications pole with Vodafone and O2 antennas located behind a shroud and 1 no. small scale equipment cabinet and minor ancillary works.
-

Decision

1. The appeal is allowed and approval is granted under the provisions of Part 24 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 (as amended), in respect of development by a telecommunications code system operator for the siting and appearance of a 14.8m high streetworks telecommunications pole with Vodafone and O2 antennas located behind a shroud and 1 no. small scale equipment cabinet and minor ancillary works on land on the west side of the Rinkway MOT & Servicing Building, Unit 11, Rink Drive, Swadlincote, Derbyshire, DE11 8JL, in accordance with the terms of the application Ref 9/2011/0729/NT, dated 26 August 2011, and the revised plans submitted with it, subject to the condition that the development hereby approved shall be carried out in accordance with the approved drawings nos. 100, 200, 300 Rev B , 400 Rev B and 500 Rev B.

Main Issue

2. The main issue is the effect of the proposed telecommunications development upon the appearance and character of the area.

Reasons

3. The proposal is for the erection of a 14.8m high telecommunications mast and associated equipment cabinet. The telecommunications mast would be a slimline "streetworks" column about 300mm wide, with a shroud at its top some 500mm wide housing antennas for both O2 and Vodafone in an example of mast-sharing. It is designed to have an appearance akin to a tall lighting column.
-

4. The mast would be sited to the immediate rear of a wide industrial building some 7.6m high. The immediate surroundings are predominantly industrial in character, with light industrial buildings accommodating such things as car servicing and MOT testing, printing services and electrical sales. A well-used public footpath (Rink Passage) that leads to the nearby town centre runs past the site, with extensive areas of surface car parking beyond. Some 60m away is a row of residential properties at Lindsay Court. Although the boundary of the Swadlincote Conservation Area lies some 8m to the west, I would not describe this as an area that is sensitive in visual terms, given the robust functional nature of the immediate surroundings.
5. There are a number of existing lighting columns in the vicinity and, in my opinion, the mast would look very much like another lighting column, albeit taller. From the road and car park to the west the mast would be seen against the backdrop of the large industrial building and a tall brick chimney in the background and in the context of the existing series of lighting columns.
6. The mast would also be reasonably separated from the rear of the residential properties at Lindsay Court and would be visible only in more tangential rearward views at a distance, against a backdrop of the town centre and more brick chimneys, in views that would include existing street columns. Some residents would see only the top mast section above the industrial building. No significantly harmful visual impact would result for these residential properties.
7. The mast would not be located within the Conservation Area and its design and robust nature of its setting means that it would not be unduly intrusive or prominent and would not materially harm the appearance or character of the Conservation Area.
8. The National Planning Policy Framework (Framework) asks authorities to support the expansion of electronic communications networks, aiming to keep the numbers of masts and sites to a minimum consistent with the efficient operation of the network. Existing masts, buildings and other structures should be used unless the need for a new site has been justified. New equipment should be sympathetically designed.
9. Saved Community Facilities Policy 4 of the South Derbyshire Local Plan 1998 (LP) sets out the criteria to be met by telecommunications developments and these are generally consistent with national guidance in the Framework. I find that all the relevant criteria and guidance would be satisfied. The appellants having investigated a number of sites, the Council does not dispute that there has been shown to be no satisfactory alternative means available for providing the network coverage required. The mast has been designed to blend in with other streetworks. The siting would not result in an unduly prominent visual intrusion and I am satisfied that the scheme, which includes the sharing of a mast, has been sited and designed so as to minimise its visual impact.
10. I conclude that the siting and appearance of the development would not harm the appearance or character of the surrounding area and there would be no conflict with the policies cited. Development shall be carried out in accordance with the approved plans, to avoid doubt and in the interests of proper planning.

C J Checkley



Appeal Decision

Site visit made on 26 June 2012

by Sarah Colebourne MA, MRTPI

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

Decision date: 5 July 2012

Appeal Ref: APP/F1040/A/12/2172605

421 Ashby Road, Boundary, Swadlincote, Derbyshire, DE11 7BA

- 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 Messrs S W and J W G Russell against the decision of South Derbyshire District Council.
 - The application Ref 9/2011/0880, dated 28 October 2011, was refused by notice dated 20 December 2011.
 - The development proposed is the erection of an extension to an outbuilding and the construction of a new link structure between the existing outbuilding and the house to form an annexe, together with the retention of an existing brick retaining wall and the formation of a new set of steps following the closure of existing steps in the retaining wall.
-

Decision

1. The appeal is allowed and planning permission is granted for an extension to an outbuilding and the construction of a new link structure between the existing outbuilding and the house to form an annexe, together with the retention of an existing brick retaining wall and the formation of a new set of steps following the closure of existing steps in the retaining wall at 421 Ashby Road, Boundary, Swadlincote, Derbyshire, DE11 7BA in accordance with the terms of the application, Ref 9/2011/0880, dated 28 October 2011, subject to the following conditions:-
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 2011.047-003B, 2011.047-004B.
 - 3) The materials to be used in the construction of the external surfaces of the extensions and steps hereby permitted shall match those used in the existing building and wall respectively.
 - 4) The buildings hereby permitted shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as 421 Ashby Road, Boundary, Swadlincote, Derbyshire, DE11 7BA.

Application for costs

2. An application for costs was made by Messrs S W and J W G Russell against South Derbyshire District Council. This application will be the subject of a separate decision.

Main Issue

3. The main issue is whether or not the proposed development accords with the development plan and whether or not there are any substantial material considerations which outweigh that.

Reasons

4. 421 Ashby Road is a detached dwelling accessed from a private drive which also serves several other properties off a main road in the countryside and outside the nearby settlement of Boundary.
5. The outbuilding which forms part of the proposed development was the subject of an enforcement appeal in 2011 (APP/F1040/C/10/2135176) against the issue of an enforcement notice (EN) by the Council alleging the unauthorised use of the outbuilding as a dwelling. That appeal decision upheld the requirements of the EN (with some corrections and variations) which included, amongst other things, the permanent cessation of the use of the building as a separate dwelling and the permanent removal of a brick wall between the dwelling and the outbuilding. The confirmed enforcement notice includes those requirements.
6. A previous application to convert the garage to a dwelling was refused in 2004 (9/2003/1414). Although the current proposal includes self-contained living accommodation, this would be ancillary to the main dwelling and the provision of the link extension would establish a physical connection. A condition requiring that the accommodation be used for ancillary purposes only by the occupiers of no 421 is necessary to control the ancillary use and the appellants have no objection to this. For these reasons, I would agree with the Council that the principle of the use of the outbuilding as an annexe is acceptable.
7. The development plan includes Housing Policy 13 in the South Derbyshire Local Plan (1998) which seeks to ensure that extensions are of a scale and character in keeping with the property and are not detrimental to the amenities of adjoining properties or the general character of the area. As good design remains an important objective of national policy in the government's recently introduced National Planning Policy Framework, I consider that although the Council's policy predates the Framework, it does not conflict with the provisions of the Framework and I therefore accord it significant weight in the determination of this appeal.
8. The proposed extension to the outbuilding and the proposed glazed link and conservatory would form comparatively small scale additions which would be subordinate to the main dwelling. Given the set back of the dwelling and the outbuilding from the road and the substantial screening around the front of the site, they would not be clearly seen from public viewpoints in the surrounding area and would fit in with the character and appearance of the dwelling and the area. The Council's suggestion of a condition for matching materials, should the appeal be allowed, is necessary to achieve a satisfactory appearance. Given the separation and distance from the nearest neighbouring dwelling on the opposite side of the private drive, the proposal would not give rise to any significant amenity issues. The Council has not disputed that the proposal is in accordance with that policy and on the basis of my site visit observations I would agree.

9. The proposal also includes the retention of an existing brick wall within the front part of the site which divides the higher land on which the outbuilding is sited from the lower land on which the house is sited. The EN required the wall to be demolished. The wall forms a retaining structure to accommodate the change of approximately one metre in land levels and part of it would be incorporated into the proposed conservatory.
10. The previous Inspector, in referring to the wall, considered that *'on the evidence and on the balance of probabilities, its erection facilitated and was integral to, and part and parcel of, the change of use alleged in the enforcement notice'* and that *'the requirement to remove the wall is not excessive but is necessary to restore the land to its condition before the breach of planning control took place. The appellant's suggestion of removing only the section of wall blocking access to the former steps would not achieve the purpose of the notice'*.
11. The Council has referred to S181(3) of the Town and Country Planning Act 1990 which provides that an EN remains extant on the land even if it has been fully complied with. It considers that the retention of the wall would conflict with this. However, S180(1) of the Act (as substituted by schedule 7, paragraph 26 of the Planning and Compensation Act 1991) provides that where, after the service of an enforcement notice, planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as inconsistent with that permission.
12. It seems to me that the proposed retention of the wall would serve two useful purposes: as a retaining structure and as part of the proposed conservatory which would be unrelated to the unauthorised use of the outbuilding. The proposed steps would allow access from one part of the site to the other. Whilst the Council's decision states that the removal of the wall is necessary to restore the character of the garage as an ancillary structure, this would seem to relate to the context of the EN and the previous appeal. The Council has not identified any specific harm which is caused by the wall in terms of character and appearance or the effect on neighbouring occupiers living conditions. Given its low height, compatible materials and its siting behind a high front boundary, I am satisfied that it is acceptable in these terms and causes no harm to the character of the outbuilding as an ancillary structure. Thus it accords with both LP policy H13 (albeit not wholly part of an extension) and the Framework's objective of good design.
13. I understand the Council's and local residents' concerns, given the previous history of the site, in seeking to prevent further unauthorised use of the outbuilding as a separate dwelling but the extant enforcement notice insofar as it is consistent with this permission and the condition relating to ancillary accommodation will provide sufficient means of control.
14. I conclude that, for the above reasons, the proposed development accords with national policy in the Framework and the Council's LP policy H13 and that the previous history of unauthorised development, the recent enforcement appeal decision and the extant enforcement notice do not form substantial material considerations which would outweigh that. The appeal should be allowed.

Sarah Colebourne

Inspector



Costs Decision

Site visit made on 26 June 2012

by Sarah Colebourne MA, MRTPI

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

Decision date: 6 July 2012

**Costs application in relation to Appeal Ref: APP/F1040/A/12/2172605
421 Ashby Road, Boundary, Swadlincote, Derbyshire, DE11 7BA**

- 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 Messrs S W and J W G Russell for a full award of costs against South Derbyshire District Council.
 - The appeal was against the refusal of planning permission for the erection of an extension to an outbuilding and the construction of a new link structure between the existing outbuilding and the house to form an annexe, together with the retention of an existing brick retaining wall and the formation of a new set of steps following the closure of existing steps in the retaining wall.
-

Decision

1. I allow the application for a full award of costs.

Reasons

2. Circular 03/2009 advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. Paragraph B21 in the Circular states that to carry significant weight, opposition from local residents should be founded on valid planning reasons which are supported by substantial evidence. However, I have no evidence that the Council placed significant weight on those objections and this matter did not lead to the need to appeal or incur unnecessary expense.
4. However, paragraph B15 in the Circular advises that planning authorities are at risk of an award against them if they prevent or delay development which should clearly be permitted having regard to the development plan, national policy statements and any other material considerations.
5. The Council failed to acknowledge that the EN and the subsequent appeal decision related to a different type of development and therefore carried little weight in the determination of the proposed development. It also failed to acknowledge that it has the power to grant planning permission for an alternative form of development that is acceptable in its own right notwithstanding the extant EN. My decision refers to S180(1) of the Town and Country Planning Act 1990 Act (as substituted by schedule 7, paragraph 26 of the Planning and Compensation Act 1991) which provides that where, after the service of an enforcement notice, planning permission is granted for any

development carried out before the grant of that permission, the notice shall cease to have effect so far as inconsistent with that permission.

6. Moreover, paragraph B16 in the Circular advises that authorities will be expected to produce evidence to show clearly why the development cannot be permitted. The planning authority's decision notice should be carefully framed and should set out in full the reasons for refusal. Reasons should be complete, precise, specific and relevant to the application. Paragraph B18 in the Circular says that vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis, are more likely to result in a costs award.
7. My decision acknowledges that the Council did not identify any specific harm which is caused by the wall in terms of character and appearance or the effect on neighbouring occupiers living conditions and accepted that the proposal was in accordance with its Local Plan policy H13. Although its decision notice states that the removal of the wall is necessary to restore the character of the garage as an ancillary structure, I considered that this related to the context of the EN and the previous appeal rather than the proposed development in its own right. Much of the decision notice is concerned with matters that are irrelevant to the proposed development and it fails to be precise and specific.
8. Furthermore, paragraph B25 in the Circular states that whenever appropriate, planning authorities will be expected to show that they have considered the possibility of imposing relevant planning conditions to allow development to proceed. They should consider any conditions proposed to them before refusing permission. A planning authority refusing planning permission on a planning ground capable of being dealt with by conditions risks an award of costs where it is concluded on appeal that suitable conditions would enable the proposed development to go ahead. Although the Council's committee report addressed the possibility of an occupation condition and stated that it would ensure that the ancillary use was controlled, the Council failed to recognise that it would enable the development to go ahead.
9. Finally, paragraph B29 in the Circular states that an award of costs may be made against an authority where it unreasonably refused to enter into pre-application negotiations when a more helpful approach would probably have resulted in the appeal being avoided. It seems to me that the Council persisted in its erroneous approach despite considerable pre-application discussions and unreasonably refused to negotiate with the Applicants. A more helpful approach could have avoided the need for the appeal.
10. For the reasons stated in paragraphs 4 to 9, I find that unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process, as described in Circular 03/2009, has been demonstrated.

Sarah Colebourne

Inspector