

REPORT OF THE HEAD OF PLANNING SERVICES

SECTION 1: Planning Applications

SECTION 2: Appeals

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

1. PLANNING APPLICATIONS

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

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

1. The issues of fact raised by the Head of 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 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. **9/2008/1179/MAF**

Applicant:

Nottingham Community Housing Assoc. &
Peveril Homes
C/O Agent

Agent:

Signet Planning Limited
The Hamlet
Hornbeam Park
Harrogate

Proposal: **The residential development of 39 units with associated open space and highway works at Land North of Highfield Road Swadlincote**

Ward: **Swadlincote**

Valid Date: **09/12/2008**

Reason for committee determination

Councillor Lane has requested that this application be brought before the Committee as matters of local concern have been expressed about a particular issue and unusual site circumstances should be considered by the committee. The application is also a major application that has attracted more than two objections.

Introduction

This application relates to part of a previous application site (9/2006/1430) which committee resolved to approve subject to a S106 agreement on 29 July 2008 for the development for non-food retail, leisure (including multiplex cinema), food and drink uses including retention/extension of existing building, housing, means of access and car parking at Wraggs Pipes, Hepworth's, Coppice Side, Swadlincote.

This application is solely for the residential development of 39 units with associated open space and highway works with access proposed off Highfield Road, Swadlincote. The application is essentially similar in form to the previous scheme with an increase of 3 units; a redesign of the properties and the scheme is now for 100% affordable housing. The application has been submitted on behalf of Nottingham Community Housing Association and Peveril Securities Limited.

Site Description

The site was part of a pottery and pipe works formerly occupied by Wraggs and more latterly by Hepworth's Building Products but now vacated and derelict. It comprises some 0.79 hectares of land to the southern side of the town centre. The application site

slopes from Weston Street (being the highest point) down to Coppice Side in an easterly direction, dropping down 4m in height overall.

To the north of the site there remain a number of historic buildings grouped around a Grade II Listed chimney and adjoining workshop which were part of the former pipe works.

To the southern and western boundaries are existing residential properties being mainly two storeys in height and ranging from detached, semi-detached to terraced properties with no off street parking on Weston Street.

Proposal

The scheme proposed is to construct 39 affordable units and associated highway works, a pedestrian and cycle route and provide areas of open space. A retaining wall is also included as part of the application together with a turning head for Weston Street and parking and a landscaping scheme – details of which are to be submitted separately. The mix of housing would be 10 x 3 bedroomed houses, 15 x 2 bedroomed houses, 5 x 4 bedroomed houses, 6 x 1 bedroomed apartments and 3 x 2 bedroomed apartments. The apartments would be sited in a block at the entrance into the site being primarily of a two-storey design on either wing with a prominent three-storey feature in the centre. A block of 3 x 4 bedroomed dwellings being 2 ½ storeys in height are located to the east of the apartment block reducing to properties being two storeys throughout the remaining development. With the exception of one detached dwelling the properties are mainly semi-detached and terraced in style depicting the existing character and form of the surrounding area.

A shared footpath/cycleway that will form part of the SUSTrans route is proposed in a north south direction along the western site boundary to connect with the town to the south.

Applicant's Supporting Information

In support of the application are the following related papers:

- Design and access statement (by specialist consultants)
- A statement by Nottingham Community Housing Association
- A statement by a consultant in civil and transportation planning
- A planning statement (by a specialist consultant)
- A Building For Life Assessment

Planning History

As mentioned previously under reference number 9/2006/1430 (of which this application forms a part) a resolution to grant planning permission on the site was made in July 2008. The application at the time included the development of non-food retail, leisure (including multiplex cinema), food and drink uses including retention/extension of existing building, housing, means of access and car parking.

Responses to Consultations

The County Council's Urban Design Consultant has commented that the applicant's Building for Life Assessment is inadequate and has expressed concern that the house types proposed are generic and offer little in terms of neither contributing positively towards the existing characteristic of the area nor offering a positive contribution in terms of diversifying the character of the area. He states that the areas of public open space lacks any clear practical role or function and is concerned that this in turn will become neglected.

The County Highways Authority raised no objections to the development proposed but commented that the northern kerb line of Weston Street required extending to provide manoeuvring space, parking numbers required increasing, and bollards should be installed between Highfield Road and Weston Street. A further comment noted was the requirement to bring the existing footpath adjacent to No 2 Highfield Road to an adoptable standard.

The County Education Authority initially requested £152,611 for education provision (£67,656 for primary pupils and £84,955 for secondary pupils) but on reflection reduced the requirement during the application process to £67,656 for primary pupils only.

The Council's Strategic Housing Officer advises that the scheme being 100% affordable must be of a high quality layout to promote social inclusion and that a tenure split of 15% intermediate housing and 85% rented is acceptable with intermediate housing being spread across the site.

Severn Trent Water has raised no objections subject to standard conditions being applied.

The Environmental Protection Manager recommends a phased approach be used and draws attention to the fact that the development proposed is in areas of unknown filled ground within 250m of associated historic mining activities. There is also a strong likelihood of made up ground being present at the site. A scheme to identify and control contamination of land or pollution of controlled waters is required to be submitted to and approved by the Local Planning Authority.

Environment Agency raises no objections but recommends a condition with regards to trapped gullies.

The Crime Prevention and Design Advisor has raised concerns regarding parking areas becoming informal play areas and leading to areas of anti-social behaviour. Further comments are that the open space area identified is confusing in that it is not clear what is public open space and what is private. Concern is raised over the new footpath/cycleway to be provided and the need to make this a secure and inviting link to the town centre.

Responses to Publicity

Nine letters of objection were received stating the following:

- a) The increase in traffic on Highfield Road, Weston Street, Hastings Road and Coppice Side would cause a greater danger to road users and an increase in noise and disturbance.
- b) These roads are already full up and not wide enough; access is already poor for existing residents, service and emergency vehicles. Driveways are frequently blocked and car parking at a premium. The scheme would exacerbate all these problems. Further parking restrictions in the area would be difficult to enforce.
- c) The development proposed is not in keeping with the local area.
- d) Not sufficient car parking which in turn would lead to on street parking.
- e) The neighbours were informed that the commercial and residential elements of the application could not be carried out separately on different applications.
- f) Concerns regarding the practical and social impact that an increase from 25% affordable housing to 100% can have.
- g) Commercial development appears to have been shelved.
- h) Highfield Road is a cul de sac and should not be changed to a through road.
- i) Loss of privacy through overshadowing and overlooking of proposed units especially the three-storey block of flats proposed.
- j) Suggest that access to the development should come from Coppice Side, Rink Drive or the proposed retail development.

National Guidance

PPS 1 and PPS 3

Development Plan Policies

RSS 8: Policies 2, 3 and 4

Retained Local Plan: Housing Policies 4, 9 and 11 Transport Policies 6, 7 and 8

Planning Considerations

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

- Whether the use as a residential site is appropriate in planning policy terms
- Is the design and layout of the housing development acceptable?
- Are the access, highway capacity and safety and links to the town centre acceptable?
- What effects if any are there on amenity of occupants of nearby dwellings?

Planning Assessment

Principle of the housing development

Planning committee has already established the principle of housing development on the application site in July 2008 with the resolution to grant planning permission in this location for residential accommodation. The Saved Policies of the South Derbyshire Local Plan have not changed with respect to Housing Policy 4, which allows for windfall sites such as this within the urban area.

Design and layout of the housing development

Saved Housing Policy 11 of the adopted Local Plan (and the Councils Supplementary Planning Guidance: Housing Layout and Design) seek to ensure that the design of residential developments is a reasonable environment, ensures reasonable amenity, has private amenity space and landscaping and adequate public open space. More recent government guidance promotes sustainable layout and design, which is locally distinctive.

The agent has been contacted throughout the development process with regards to the design and layout of the dwellings.

Amended plans were received on 12 February 2009, which have had regard to the comments provided by the local authority, and the amended plans now show the development with locally distinctive characteristics. As originally submitted neither Plots 1 or 2 addressed the existing pattern of development or the proposed new development. The amended plan now shows them as forming part of the proposed new street, which is considered as a vast improvement. The three-storey apartment block has been reduced to a primarily two-storey apartment block on the east and west wing with a prominent three-storey element making a feature landmark building for residents and visitors as they enter the new proposed development.

The amended plans should help address the concerns from neighbours with regards to the development being out of keeping with existing properties and overdominant. Further improvements to the scheme are the forming of an access way through the proposed apartment block to the rear parking area for the apartments. This now makes the building bridge the parking areas and ensures that vast areas of parking are no longer visible in the street scene and entrance into the new proposed development.

The footpath/cycle link has been extended to 3m in width again as with the previous scheme following comments from the local planning authority.

The housing layout is a mixture of terraced and semi-detached houses with the exception of one single detached property and an apartment block of 9 units. All of the house designs are of an understated and simple style incorporating features that are locally distinctive. The layout shows a relatively tight close-knit frontage on to the cul-de-sac extension with parking away from the immediate street frontage.

Amenity of occupants of nearby dwellings

The main impacts in terms of residential amenity would come from the proximity of the housing development to those houses in the vicinity (mainly on Highfield Road, Weston Street and Ravenwood). The amended plans received on 12 February 2009 demonstrate that distances between windows in the proposed dwellings from existing would be sufficient to meet the usual standards set out in the Council's SPG. Given its location, the previously agreed retail/leisure element would have no direct impact on any residential properties. The general impacts regarding potential noise intrusion have been dealt with in the previous application and conditions regarding environmental impacts have been suggested and agreed by planning committee previously.

Access, highway capacity and safety and links to the town centre

During the previous planning application the County Highway Authority were involved in extensive discussions with the applicants' highway engineer consultants and came to a view on the development which resulted in the recommendation of several conditions. The scheme was deemed to be acceptable and no objections have been raised in this instance subject to a few minor amendments to the scheme as submitted. Further car parking has been provided at the request of the Highway Authority and the need for bollards can be conditioned if approval is granted.

Following the previous application there was a general agreement about the importance of a pedestrian and cycle route connecting the site to the town centre. The current application incorporates a route to the proposed link for the retail and leisure development, which in turn would connect to the town centre. Open space is also shown either side of this proposed footpath/cycle route, which the developer is willing to provide as part of the scheme.

Conclusion

The proposed development for residential dwellings in this location is similar to the previous application for which committee resolved to grant planning permission for in July 2008. The scheme has been resubmitted following the change in the economic market leading to a redesign and demand for a 100% affordable housing site in Swadlincote. The principle of residential development in this location has already been established together with the highway implications that could result. No objections have been raised from the County Highway Authority or any other consultee and the issues raised by the public have all been dealt with in the previous application. Essentially the only change to the application is that the scheme is now 100% affordable and the design and layout of the properties have been amended slightly to increase from 36 dwellings to 39 dwellings. An area of public open space is now being provided and further parking is proposed on Weston Street to relieve existing problems in this area. The applicant has been in negotiation with the Council at all stages during the process and has taken on board and amended the design of the proposals in accordance with the Council's suggestions. The scheme as submitted and shown by the amended plans on 12 February 2009 is now considered acceptable.

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

That subject to the receipt of a signed unilateral undertaking for the provision of £30,798.96 for Public Open Space, £21,489 for Healthcare and £67,656 for Education provision **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. Prior to the commencement of development, apart from the formation of the required retaining wall and associated works, the development shall not begin until a scheme for the provision of the affordable housing hereby permitted has been submitted to and approved in writing by the local planning authority. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in Annex B of PPS3 or any future guidance that replaces it. The scheme shall include:
- A) the tenure of the affordable housing provision to be made which shall consist of not less than 100% of housing units;
 - B) the arrangements for the transfer of the affordable housing to an affordable housing provider or the management of the affordable housing (if no RSL involved);
 - C) the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing; and
 - D) the occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.

The development shall thereafter be implemented and managed in accordance with the approved scheme in perpetuity, unless the Local Planning Authority agree to amend the approved scheme in writing.

Reason: To ensure the provision of 100% affordable housing as stated in PPS 3.

3. Notwithstanding the originally submitted details, this permission shall relate to the amended drawing nos
6490/20A, 6490/01N, 6490/03E, 6490/19E, 6490/21, 6490/14E, 6490/08E, 6490/09E, 6490/12E, 6490/11E, 6490/10E, 6490/16E, 6490/15E, 6490/06E, 6490/07E, 6490/17 F, 6490/18F, 6490/05E, 6490/13E, 6490/02E, 6490/04E

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

4. 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.

5. 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.

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 protecting and pollution control.

7. Before any other operations are commenced, a temporary access shall be formed into the site for construction purposes, and space shall be provided within the site curtilage for site accommodation, storage of plant and materials, parking and manoeuvring for site operatives and visitor's 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.

Reason: In the interests of highway safety.

8. 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.

Reason: In the interests of highway safety.

9. The premises, the subject of the application, shall not be occupied until the proposed new estate streets between each respective plot and the existing public highway have been laid out in accordance with the revised application drawings to conform to the County Council's current design guidelines, constructed to base level, drained and lit and provided with footways in accordance with the County Council's Specification for new housing development roads.

Reason: In the interests of highway safety.

10. The development shall not prejudice the line, level, structural stability or safe pedestrian use of Public Right of Way Footpath No. 31 in the Parish of Swadlincote on the Derbyshire Definitive Map.

Reason: In the interests of highway safety and retain the public right of way.

11. Prior to the first occupation of any dwelling on the site, the section of Public Footpath 31 lying between the site and No. 2 Highfield Road shall be constructed in accordance with a scheme first submitted to and approved in writing by the Local Planning Authority. The scheme shall provide for the construction of the footpath and street lighting in accordance with the County Council's Specification for new housing development roads.

Reason: In the interests of highway safety and retain the public right of way.

12. The turning head and associated infrastructure at the end of Weston Street shall be constructed in accordance with a programme of works first submitted to and approved in writing by the Local Planning Authority. The works shall be implemented in accordance with the County Council's Specification for new housing development roads prior to the first occupation of any new dwelling hereby permitted.

Reason: In the interests of highway safety.

13. A sample of both the roof tile and the brick shall be submitted for approval in writing by the Local Planning Authority before work commences.

Reason: To ensure the building/extension is in keeping with its surrounding in the interest of the character and visual amenity of the area.

14. Prior to the commencement of the development hereby permitted, a scheme highlighting details of the likely resultant noise levels from activities during the construction phase at the nearest noise sensitive premises shall be submitted to the local planning Authority. The investigation shall address the noise impact that the activities will have on nearby residential properties. This assessment and mitigation measures shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of the development. Once approved, all identified noise control measures shall be implemented and thereafter retained.

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

15. All footways, footpaths and cycleways shall be fully constructed and be available for free public use prior to the first occupation of the development hereby permitted.

Reason: To ensure proper pedestrian/cycle connection of the scheme to the adjoining areas.

16. 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.

17. No development shall take place 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.

18. All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed with the Local Planning Authority.

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

19. 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 appearance of the area.

20. The open space shown on drawing 6490/01 G shall be laid out in accordance with the approved landscaping scheme and made available for public use prior to the first occupation of the housing site hereby permitted. Thereafter the space shall be available for open public access in perpetuity.

Reason: In the interests of the amenity of the area and in the interests of the adequate provision of landscaping on the site.

21. Prior to the development hereby approved commencing, 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.

22. Prior to the first occupation to which it relates, private driveways shall be laid out and constructed and surfaced with a solid bound material at a gradient no steeper than 1 in 15 and shall incorporate measures to prevent the flow of surface water onto the highway.

Reason: In the interests of highway safety.

23. Details of bin stores for the proposed apartment block shall be submitted to and approved in writing by the Local Planning Authority. All stores shall be erected prior to the occupation of the part of the development to which it relates.

Reason: To ensure that adequate facilities are provided in the interests of visual amenity.

24. Prior to commencement of development a scheme for trapped gullies shall be submitted to and approved in writing by the local planning authority

Reason: To prevent pollution of the water environment

25. No machinery shall be operated and no processes shall be carried out outside the following times 08:00 - 19:30 Monday to Friday, Saturday 08:00 - 18:00 nor at any time on Sundays, Bank or Public Holidays

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

26. Prior to commencement of development details of bollards are required to be submitted and approved in writing by the Local Planning Authority to separate the proposed residential development from the existing highway at Weston Street.

Reason: in the interest of highway safety

Informatives:

That arrangements will need to be made to prevent the flow of surface water onto the highway.

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 to the above Informative, the responsibility and subsequent liability for safe development and secure occupancy of the site rests with the developer and/or landowner. This grant of planning permission does not give a warranty of ground support or stability, neither does it necessarily imply that the requirements of any other controlling authority would be satisfied.

This permission is the subject of a unilateral undertaking under Section 106 of the Town and Country Planning Act 1990.

That detailed plans of road levels, surface water drainage arrangements and the construction of the new street should be submitted to the County Surveyor, Derbyshire County Council, County Offices, Matlock, Derbyshire, DE4 3AG, prior to the commencement of the work.

Any security measures implemented in compliance with the approved scheme should seek to achieve the 'Secured By Design' accreditation awarded by Derbyshire Constabulary. Written confirmation of those measures should then be provided to the Local Planning Authority.

Where development is proposed, the developer is responsible for ensuring that development is safe and suitable for use for the purpose for which it is intended. The developer is thus responsible for determining whether land is suitable for a particular development or can be made so by remedial action. In particular, the developer should carry out an adequate investigation to inform a risk assessment to determine:

- whether the land in question is already affected by contamination through source - pathway - receptor pollutant linkages and how those linkages are represented in a conceptual model;
- whether the development proposed will create new linkages, e.g. new pathways by which existing contaminants might reach existing or proposed receptors and whether it will introduce new vulnerable receptors; and
- what action is needed to break those linkages and avoid new ones, deal with any unacceptable risks and enable safe development and future occupancy of the site and neighbouring land.

A potential developer will need to satisfy the local authority that unacceptable risk from contamination will be successfully addressed through remediation without undue environmental impact during and following the development. In doing so, a developer should be aware that actions or omissions on his part could lead to liability being incurred under Part IIA, e.g. where development fails to address an existing unacceptable risk or creates such a risk by introducing a new receptor or pathway or, when it is implemented, under the Environmental Liability Directive (2004/35/EC). Where an agreed remediation scheme includes future monitoring and maintenance schemes, arrangements will need to be made to ensure that any subsequent owner is fully aware of these requirements and assumes ongoing responsibilities that run with the land. 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 www.south-derbys.gov.uk/Environment/Pollution/LandPollution/contaminatedlandguide.htm

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.

The Water Industry Act requires that there shall be no building over any public sewer crossing the site without the express consent of the Regional Water Company. You are asked to contact Severn Trent Water with regard to ensuring adequate protection/room for maintenance of the sewer.

That the Environment Agency requires that there should be no discharge of any trade or sewage effluent to any watercourse.

The application site is affected by a Public Right of Way Footpath No. 31 in the Parish of Swadlincote on the Derbyshire Definitive Map. The route must remain unobstructed at all times and the safety of the public using it must not be prejudiced either during or after development works take place. Advice regarding the temporary (or permanent) diversion of such routes may be obtained from the Director of Environmental Services at County Hall, Matlock (tel: 01529 580000 and ask for the Footpaths Officer).

Pursuant to Sections 149 and 151 of the Highways Act 1980, the applicant must take all necessary steps to ensure that mud or other extraneous material is not carried out of the site and deposited on the public highway. Should such deposits occur, it is the applicant's responsibility to ensure that all reasonable steps (eg street sweeping) are taken to maintain the roads in the vicinity of the site to a satisfactory level of cleanliness. Highway surface water shall be disposed of via a positive, gravity fed system (ie; not pumped) discharging to an approved point of outfall (eg existing public sewer, highway drain or watercourse) to be sanctioned by the Water Authority (or their agent), Highway Authority or Environment Agency respectively. The use of soakaways for highway purposes is generally not sanctioned.

Pursuant to Section 38 and the Advance Payments Code of the Highways Act 1980, the proposed new estate roads should be laid out and constructed to adoptable standards and financially secured. Advice regarding the technical, financial, legal and administrative processes involved in achieving adoption of new residential roads may be obtained from the Department of Environmental Services at County Hall, Matlock (tel: 01629 580000 or via the County Councils website www.derbyshire.gov.uk). Pursuant to Section 163 of the Highways Act 1980, where the site curtilage slopes down towards the new street measures shall be taken to ensure that surface water run-off from within the site is not permitted to discharge across the footway margin. This usually takes the form of a dish channel or gulley laid across the access immediately behind the back edge of the highway, discharging to a drain or soakaway within the site. The grant of planning permission does not entitle developers to obstruct public rights of way affected by the proposal. Development, in so far as it affects the right of way, should not be started, and the right of way should be kept open for public use, until the

necessary order under Section 247 or 257 of the Town and Country Planning Act 1990 for the diversion or extinguishment of the right of way has been made and confirmed. Nor should it be assumed that because planning permission has been granted an order will invariably be made or confirmed.

Item **1.2**

Reg. No. **9/2009/0019/NO**

Applicant:

Mr Stephen Jones
Jones & Company
62 King Street
Belper

Agent:

Mr Andrew Bennett
bi Design Architecture Ltd
79 High Street
Repton

Proposal: **The change of use of apartment block (C3 use) to nursing home for the elderly and infirm (C2 use) including a side extension and a rear and side single storey extension to gether with minor alterations to the external layout at 1 Jason Hylton Court Wilmot Road Swadlincote**

Ward: **Swadlincote**

Valid Date: **19/01/2009**

Reason for committee determination

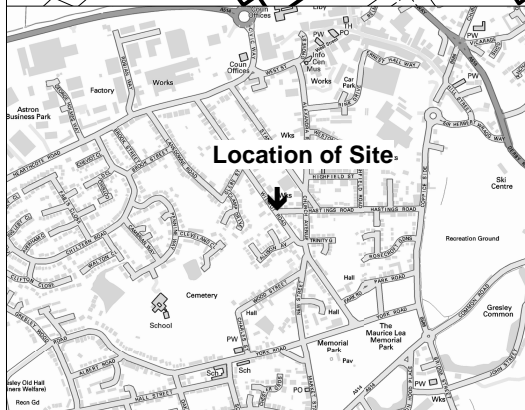
The application is brought before Committee at the request of Councillor Lane because local concern has been raised about a particular issue, which should be considered by the Committee.

Site Description

The site is located on the south western side of Wilmot Road, Swadlincote, opposite the junction with Hastings Road. Wilmot Road is a residential road, which slopes steeply to the south with a mix of terraced, semi-detached and detached properties of varying styles. 1 Jason Hylton Court is a recently constructed three storey apartment building set on the frontage of the site with gabled roofs and part render, part brick walls. Properties on Dalefield Drive abut the site to the south east and have a 1m lower land level than the application site. The vehicular access is adjacent to this boundary and the parking area is to the rear of the site.

Proposal

Planning permission is sought for a change of use of the apartment block (C3 use) to nursing home for the elderly and infirm (C2 use) including a stairway extension to the side and single storey side and rear extensions together with minor alterations to the internal layout. The stairway extension would be on the north western elevation and would measure 1.9m x 6m of a height of 8.2 metres. The side extension proposed on the south eastern elevation would measure 9.5m x 5.1m of a height of 3.5 m. The rear extension would measure 8.9 m x 7.4m of a height of 3.5m. These single storey extensions would have flat roofs with projecting roof lights that extend 400mm above the roof.



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South Derbyshire District Council. LA 100019461. 2009

Applicants' supporting information

The apartment building is almost complete. The apartments have been on sale for sometime but no interest has been shown in the properties. With the poor state of the present housing market and the lack of any demand for apartments within the Swadlincote and Burton housing areas it is most unlikely that the development will be occupied. The use of the building has been re-assessed taking into account local need and demand within the housing market. Demand continues for accommodation for elderly and infirm persons in sheltered accommodation. The apartment building can be simply converted to meet this need without substantially affecting the appearance or character of the building.

Planning History

9/2006/0511 - The demolition of the existing garage and buildings and the erection of 14 new apartments, Approved 31/10/2006

Responses to Consultations

Severn Trent Water has no comments.

The County Highways Authority has no objections subject to conditions.

Environmental Health has recommended a condition in relation to gas protection measures.

Landscape Architect has yet to comment.

Responses to Publicity

One letter has been received that raises no objection to the change of use but expresses the following concerns: -

- The original building was piled driven, will this be the case for the extensions as it caused their house to shake?
- The use would include staff and visitors and less car parking spaces are provided than for the apartment scheme.
- Disturbance by staff and visitor vehicles – hours of working

Development Plan Policies

The relevant policies are:

Regional Spatial Strategy for the East Midlands 8: Policy 4

Derby and Derbyshire Joint Structure Plan: Housing Policy 3

Local Plan: Housing Policies 4 and 11

National Guidance

Planning Policy Statement 1: Delivering Sustainable Development

Planning Policy Statement 3: Housing

Planning Considerations

The main issues central to the determination of this application are

- the potential impact on the amenity of existing residential properties that abut the site,

- parking provision
- the potential impact on the adjacent protected trees

Planning Assessment

The principle of residential development on this site was established by the granting of the apartment scheme in October 2006 and an assessment of the building in relation to adjoining residential properties was also made at this time.

The windows on the south eastern elevation of the existing building that face properties on Dalefield Drive would serve toilets, landings and stairways which are not classed as habitable rooms and thus overlooking would not be an issue. The proposed single storey extensions would be communal lounge areas for the elderly residents and windows would be 15-20 metres from the rear elevations of the properties on Dalefield Drive, where the standard is 15 metres. The proposed extensions would not create an adverse overlooking impact due to the land level difference of these properties being approximately 1m lower than the application site and the boundary would be screened by a 1.8 m high retaining wall.

The rear of the existing building would be 50m from properties to the rear on Clamp Drive. There is a 1.8m high fence on the rear boundary with 6 m high trees over this boundary. The proposed single storey rear extension would be 42 m from the nearest property to the rear. As this is well in excess of the standard 21 metres therefore overlooking of properties to the rear is not considered to be an issue. The side elevation of Western House is 10m from the north western boundary of the site. The proposed stairway extension adjacent to this boundary would therefore not cause any significant overlooking or overshadowing concerns.

The proposed nursing home would have 36 residents whereas the approved apartment scheme was for 14 two bedroom apartments. Due to the level of care the proposed residents would require the use would not generate the level of car movements that an apartment scheme would. The number of vehicle movements from staff and visitors would be significantly less than that of apartment residents. Twelve car parking spaces are proposed and the County Highways Authority considers this to be adequate for this type of use. They recommend conditions in relation to the access footway, construction of the access and parking area and position of gates.

There is a row of Lime, Sycamore and Horse Chestnut trees over the north western boundary which are protected by a Tree Preservation Order No.39. The stairway extension would be 3m from the trunk of the protected Horse Chestnut tree. The Landscape Architect has been consulted and his response will be provided verbally at the Committee meeting.

The proposed extensions would not be highly visible in the streetscene of Wilmot Road due to their location to the rear of the existing building. The proposed design and scale of extensions is considered to be in keeping with the building and surrounding area.

The application includes internal layout alterations to the building in order to comply with the Disability Discrimination Act and national standards for care homes. A lift is proposed in the centre of the building and ramped access to the front and level access to the rear. The building would therefore be fully accessible by disabled people.

The type of construction is not a material consideration and construction hours were not controlled previously.

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. Notwithstanding the submitted details, 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 extensions have been submitted to and approved in writing by the Local Planning Authority.
Reason: To safeguard the appearance of the existing building and the locality generally.
3. Prior to the commencement of development the splayed vehicular crossover shall be constructed at the access to the site and the footway fronting the site reinstated as footway, all to Derbyshire County Council's specification and in accordance with a scheme first submitted to and approved in writing by the Local Planning Authority.
Reason: In the interests of highway safety.
4. Prior to the occupation of development the access into the site shall be laid out and constructed in accordance with drawing No.46A.
Reason: In the interests of highway safety.
5. Prior to the occupation of development the car parking and manoeuvring area shall be laid out in accordance with drawing No. 46A and be maintained thereafter and made available at all times for their designated purposes.
Reason: In the interests of highway safety.
6. Any gates shall be set back 5m from the highway boundary and shall open inwards only.
Reason: In the interests of highway safety.
7. 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 appearance of the area.

8. Prior to the commencement of any work on site a method statement shall be submitted to and agreed in writing for all works under the canopies of the protected trees. The construction of the stairway extension hereby approved shall be carried out in accordance with the agreed details.

Reason: To safeguard the health of the trees.

9. Prior to the commencement of development details of ground gas protection measures in the existing building and proposed extensions shall be submitted and approved in writing by the Local Planning Authority.

Reason: In order to safeguard human health.

Informatives:

Pursuant to Section 184 of the Highways Act 1980 and Section 86(4) of the New Roads and Streetworks Act 1991, at least 3 months prior notification should be given to the Director of Environmental Services at County Hall, Matlock (telephone 01629 580000 and ask for the District Highway Care Manager on extension 7595) before any works commence on the vehicular access within highway limits.

Item **1.3**

Reg. No. **9/2009/0026/NLI**

Applicant:

South Derbyshire District Council
Civic Offices
Civic Way
Swadlincote

Agent:

Wm Saunders Partnership LLP
Cafferata Way
Sheppard Lockton House
Newark on Trent

Proposal: **The erection of five nursery B1 units with ancillary accommodation at Forestry Centre Burton Road Rosliston Swadlincote**

Ward: **Linton**

Valid Date: **23/01/2009**

Reason for committee determination

This application is brought before this committee because the Council is the applicant.

Site Description

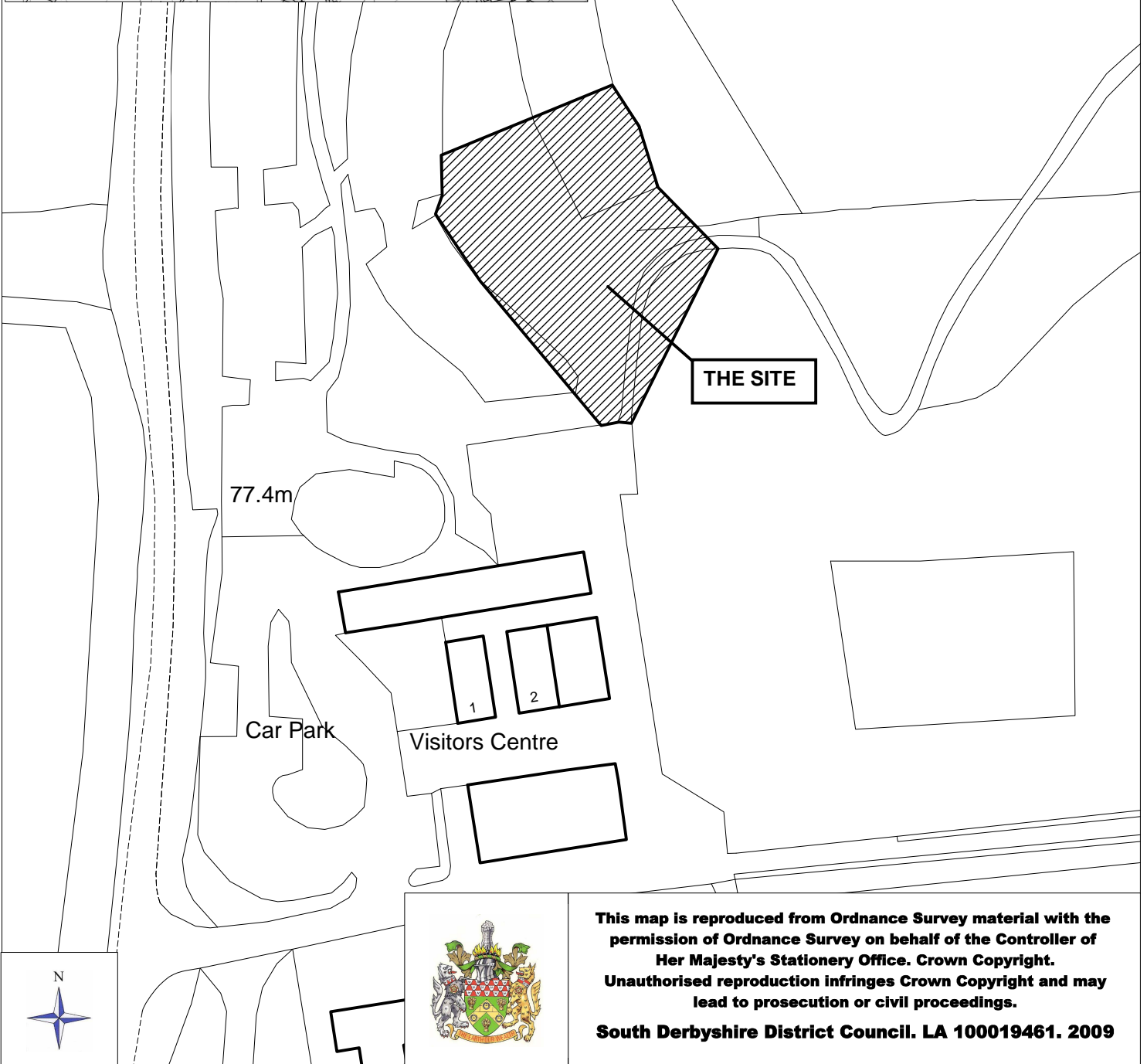
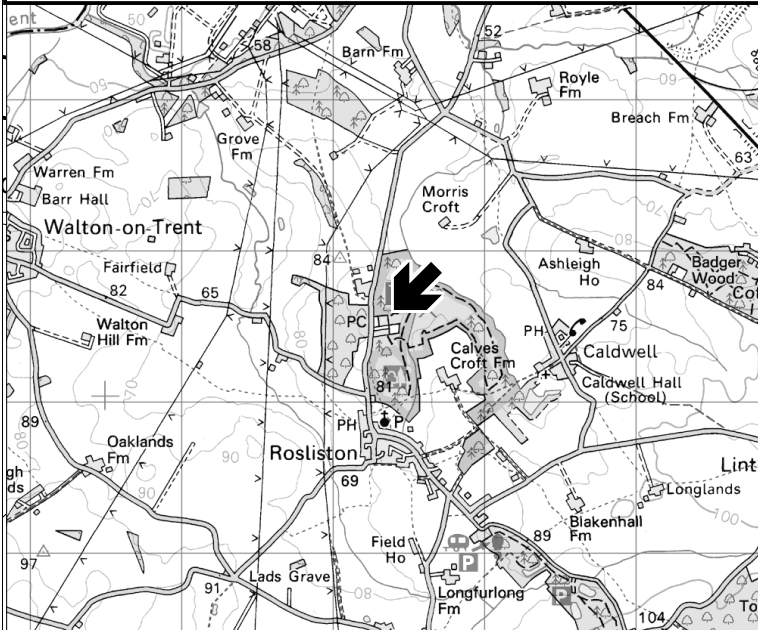
The application site lies well within the boundaries of the Forestry Centre. A belt of trees along the road frontage and an internal roadway separate the application site from the nearest public highway that lies around 65m away.

The site is part of the National Forest Centre at Rosliston located approximately 30m from the existing visitors centre on the edge of the car parking area in front of the existing wood store that is currently used for bio fuel heating for the visitors centre and log cabins on the site. The application site is currently a rough parking area.

Proposal

The proposal is to erect five nursery B1 (Business) units with ancillary accommodation for use as light industrial small units for start up businesses employing people in activities that are related to the National Forest. The overall size of the proposed building would be 26m in length x 13m in depth x 5m in height (maximum to ridge). Shared toilet facilities together with a shower and disabled toilet would be provided for use by the occupiers of the units. The units would be timber clad throughout. Roof lights are shown and a traditional timber and sedum roof are proposed using larch and cedar shingles. The business units would be located behind the existing visitor centre adjacent to the existing wood store in an area currently used for car parking and current open space. Footpaths alterations and car parking provision is shown as part of the application together with boundary treatments and cycle and refuse storage areas. The

9/2009/0026 - Rosliston Forestry Centre



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only works to trees shown would be pollarding of an existing ash tree which would be carried out irrespective of gaining permission due to its exposed location.

Applicants' supporting information

In support of the application are the following related reports:

- Design and access statement (by a specialist consultant)
- Planning Statement (by a specialised consultant)
- Ecological Appraisal (by a specialised consultant)
- Tree Assessment Report (by a specialist consultant)

Planning History

There have been numerous planning applications at the Forestry Centre as a whole but none relate specifically to this part of the site.

Responses to Consultations

The County Highway Authority has commented that the proposal will result in the total loss of five car parking spaces, which it would not object to based on the size of the site and of parking being available elsewhere on the site. It therefore requests conditions in relation to replacement car parking spaces being made available on the site.

The Environmental Protection Manager has commented that the development is located within 170km of an unknown filled ground area and therefore recommends standard conditions be applied with regards to potential contamination.

The Council's Arboriculturalist Consultant comments that he has no objections to the pollarding of the ash tree as stated in the consultants report and recommends regular re-coppicing every 5 years.

Responses to Publicity

There has been no response to the site notice posted in relation to this application.

National Guidance

Planning Policy Statement 7

Development Plan Policies

The relevant policies are:

RSS8: Policies 6 and 24

Saved Policies from the Local Plan: Employment Policies 4, 5 and 8.

Planning Considerations

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

- Development plan policy and national guidance and advice
- The impact of the proposal on both the countryside and neighbours.

Planning Assessment

Environment Policy 1 of the Adopted Local Plan seeks to ensure that new development in the countryside is not permitted unless it is essential to a rural based activity. However, more recently (and effectively updating advice) PPS1 encourages economic activity in rural areas and PPS7 and the RSS look for new employment to be located in or next to rural settlements. Further, Employment Policy 5 of the Adopted Local Plan allows small units of industrial development to be located within or on the edge of existing settlements.

Rosliston Forestry Centre is designed to be a visitor centre in the National Forest with a diverse function which was envisaged from its inception more than 10 years ago and has flourished from this ethos. The original planning permission granted in 1993 included the provision of six craft workshops on the site. These were originally built and all but one has now reverted to other uses and house the current visitors centre, meeting room and educational facilities. The proposal to provide five units for employment opportunities directly related to the works underway at the Forestry Centre and related to operations in the National Forest is acceptable in planning policy terms. The design of the proposed units would be in keeping with the existing Visitors centre and would provide partial screening of the wood yard area, which will enhance the area visually. The buildings proposed would be sited below the existing visitors centre and would encourage visitors to observe local crafts taking place and provide an insight into the workings of the National Forest. Tree planting and landscaping proposals are continually taking place at the centre and these existing schemes will reduce any visual impact that the units may have. This is supported by the various reports submitted with the application. In particular the planning statement states that: *'The design of the proposed buildings utilises the latest sustainable construction techniques. It will provide an example of and assist in the promotion of low carbon, energy efficient sustainable technology within the National Forest. It will provide the public with a working example of sustainable building techniques.'*

As set out in the description above, the site is well screened from the public highway, there would be no effect on occupants of neighbouring properties as the site lies within the countryside and there are few residential properties in the locality. The centre is located in a position that is within 500 metres of the confines of the village and as such is easily accessible from there on foot and can utilise the limited local bus service. Taking all into account, the provision of new employment in this area would have little impact on current car parking provision and would diversify the rural economy encouraging vitality and viability for the centre. Indeed in this context it's location adjoining the existing centre would be preferred to a site closer to the settlement.

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.
 - 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.

3. 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.

4. Prior to any other works commencing, the five replacement car parking spaces referred to in the application shall be provided within the site in accordance with a scheme first submitted to and approved in writing by the Local Planning Authority and maintained thereafter free from any impediment to their designated use.

Reason: in the interests of highway safety

5. 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 protecting and pollution control.

6. All service cables shall be located underground unless specifically agreed in writing by the Local Planning Authority.

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

7. Prior to commencement of development details of any lighting proposed shall be submitted to and approved in writing by the Local Planning Authority.

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

8. Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 (as amended) and Article 3 and Part 3 of the Town and Country Planning (General Permitted Development) Order 1995, this permission shall relate to the use of the premises as described in your application and for no other purpose.

Reason: In order that the Local Planning Authority may retain control over the future use of the premises and in the interests of the amenity of the area.

9. Prior to the first use of the proposed development hereby permitted, a scheme for the external decoration shall be submitted to and agreed in writing by the Local Planning Authority. The approved scheme shall be implemented in accord with the approved details prior to occupation of the building.

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

10. 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:

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. Any security measures implemented in compliance with the approved scheme should seek to achieve the 'Secured By Design' accreditation awarded by Derbyshire Constabulary. Written confirmation of those measures should then be provided to the Local Planning Authority.

2. PLANNING AND OTHER APPEALS

Reference	Place	Ward	Result	Cttee/delegated
9/2007/1208	Aston on Trent	Aston on Trent	Dismissed	delegated
9/2007/1353	Kings Newton	Melbourne	Dismissed	delegated
E/2008/00117	Melbourne	Melbourne	Dismissed	delegated



Appeal Decision

Site visit made on 16 December 2008

by **Ahsan U Ghafoor** BSc (Hons) MA
MRTPI

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

Decision date:
28 January 2009

Appeal Ref: APP/F1040/A/08/2080918

Fox Covert Farm, Derby Road, Aston-on-Trent, Derbyshire DE72 2AE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Surjit Rai against the decision of South Derbyshire District Council.
- The application Ref 9/2007/1208/M, dated 19 October 2007, was refused by notice dated 18 January 2008.
- The development proposed is demolition of farm shed and construction of 8 bed care facility.

Decision

1. I dismiss the appeal.

Procedural Matters

2. In addition to the plans submitted at appeal stage, drawing numbers 780/BA/007 and 780/BA/008 were considered by the Council, but a layout plan showing the site's intended uses was not part of the application plans. I have evaluated the appeal on this basis. The Parish Council refers to Aston-upon-Trent, but I have taken the address from the planning application form.

Main issues

3. The appeal raises two main issues and these are:
 - Firstly, whether the development would be inappropriate for the purposes of Planning Policy Guidance Note (PPG) 2: *Green Belts*, and if so, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development; and
 - Secondly, whether the proposal would be adequately accessible by alternative means of transport.

Reasons

4. The application site comprises of vacant and disused agricultural buildings and land covering some 4.67 hectares. There is a two-storey red brick farmhouse, original farm brick buildings and grey concrete block-work sheds, but at the time of my inspection these appeared to be in a dilapidated condition, and in his report to the Secretary of State, my colleague noted that some of these structures were showing signs of *advanced deterioration*¹. I also have no reason to disagree with

¹ Report to the First Secretary of State dated 29 March 2005 in relation to application by Derwent Valley Meeting Room Trust for proposed meeting room (appeal ref: APP/F1040/V/04/1150286)

Inspector Crookes' finding that the site is does not fall within the definition of previously-developed land.

5. The development plan includes the Regional Spatial Strategy for the East Midlands (RSS8) 2005 and policy 2 relates to locational priorities for development; policy 3 sets out sustainability criteria; policy 4 relates to promoting better design and policy 6 relates to regional priorities for rural areas. Saved Green Belt Policy 4 of the South Derbyshire Local Plan (1998), which states that permission will not be granted for development of an urban character in the Green Belt and Environment Policy 1, which refers to proposals outside settlements, are also relevant.

First main issue

6. Paragraph 3.1 of PPG2 states that there is a general presumption against inappropriate development within the Green Belt. In addition, paragraph 3.4 states that the construction of new buildings inside a Green Belt is inappropriate unless it is for agriculture, forestry, essential outdoor facilities, limited extensions to existing dwellings and infilling.
7. Whilst retaining some of the existing rural buildings for ancillary uses, the development involves the construction of a new property for residential purposes. I find that the whole scheme would not fall into any of PPG2's exempted categories. And so it would constitute inappropriate development in the Green Belt which is, by definition, harmful.
8. A previous planning application involving the complete demolition of the buildings and erection of a meeting hall was refused planning permission by the Secretary of State on grounds of its inappropriateness and lack of sustainability. I have taken into account the appellant's view that a C2 use of the site would be more suitable than D2. However, it would still be inappropriate development in the Green Belt. It is for the appellant to show why permission should be granted. Very special circumstances to justify such proposals will not exist unless the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
9. The Council is concerned about the development's effect on the openness of the Green Belt, but the appellant argues that the site is occupied by a wide range of farm buildings. I acknowledge that in its complete form the care home would have a reduced footprint. However, the existing rural buildings appear low in scale and blend in with the surrounding countryside. In spite of the differences in ground levels and the area's undulating topography, I find that the development would be visually intrusive due to the new building's bulk, volume and mass.
10. Moreover, it would appear as a large and in part two-storey residential building, in contrast with the existing single storey agricultural buildings to be demolished. Although I accept the design would incorporate some attractive elements, I consider it would be out of keeping with its settings, due to its overall bulk and height.
11. Whilst I note the proposed elevation and courtyard arrangements, I find that the new structure would reduce the openness of the Green Belt due to its design and built-form. In my view, the development would be seen as an encroachment of the countryside which is a serious planning objection. This harm is additional to

the harm from inappropriateness. I will now evaluate other considerations advanced by the appellant in favour of the proposal.

12. I note that along the site's boundary with the A50, trees and vegetation obscure the existing buildings and the appellant argues that the development would be screened from direct view. However, I saw that the site is visible from Derby Road and the surrounding public footpaths. In my view, landscaping alone would not overcome the development's negative effect on the openness of the Green Belt, and its atypical scale would visually harm the surrounding countryside, which must be protected from unwarranted development, for its own sake.
13. The Design and Access Statement (DAS) indicates that the specialist care home would provide high quality facilities to its users. Whilst I recognise the appellant's view that the development would address a shortfall of such facilities in the District, I consider that the submitted evidence does not demonstrate that there is a pressing need for these facilities in such a sensitive location.
14. I note that critical to the project would be the establishment of sustainable organic food production as an integral part of occupiers' therapy programs. Most of the land would be used for agriculture by establishing orchards and hedgerows. I do not dispute that a rural environment may well benefit users of the care home, but nothing I have read or observed persuades me that these reasons alone would be sufficient to override the strong presumption against inappropriate development in the Green Belt.
15. I have carefully taken into account other considerations advanced by the appellant including the potential to create jobs and the facility's benefits to the community. However, the harm by reason of inappropriateness and the additional impact of the new building would not be clearly outweighed by these other considerations.
16. For these reasons, I find that the proposed development would not satisfy the main thrust of Green Belt Policy 4 nor Environment Policy 1 and PPG2. On this main issue, I conclude that the proposal would constitute inappropriate development and I find no very special circumstances to justify the scheme.

Second main issue

17. I accept that the built-up area of Aston-on-Trent is within walking distance and the village has some local facilities such as a Post Office and shop. There is a cemetery opposite the site as well as other rural enterprises nearby and I saw pedestrian pavements, but that does not necessarily mean that the project would be sustainable in this mainly detached location.
18. The appellant argues that Derby Road has a regular bus service and my attention was drawn to other bus stops in the locality. The Council states that the bus service is limited to an hourly frequency and it does not operate on Sundays. However, the appellant concedes that public transport provision is limited. I acknowledge that services could be co-ordinated between local bus companies, but there is a lack of evidence to demonstrate that the site would be served by public transport on a regular and frequent basis.
19. The appellant states that staff would be employed on a rota basis and organised to provide 24-hour care for the occupants thus reducing the need to travel. However, on the available evidence, I am not satisfied that the development

would not generate substantial traffic movements because of the site's intensified use for specialist residential care and living. In my view, the enterprise would be dependent on private transportation for its day-to-day needs. Despite its potential benefits, I agree with the Council's view that the site does not have good accessibility by modes of transport other than the private car.

20. For these reasons, I conclude that the development would not be adequately accessible by alternative means of transport and the proposal's location would undermine sustainability objectives of RSS8's policies and PPG13: *Transport*.

Other matters and conclusions

21. I have taken into account the Council's concerns over the adequacy of the DAS. Whilst I note that the DAS made no reference to the local vernacular, as elaborated by the Council's Supplementary Planning Guidance, I find that the report addresses key components. In my view, the statement was proportionate to the scale and nature of the development and serves a useful planning purpose. However, this does not affect my conclusions on the main issues.
22. I note that the Council's Environmental Health Officer, the local Highway Authority and the Environment Agency have no objections subject to conditions. The Parish Council also supports the proposal, but I attach limited weight to these considerations because the development would be inappropriate in the Green Belt. In my view, the proposal conflicts with advice in Planning Policy Statement 7: *Sustainable Development in Rural Areas* and its location would be unsustainable in the long-term.
23. For the reasons given above and having considered all other matters raised, I conclude that the appeal should be dismissed.

Ahsan U Ghafoor

INSPECTOR



Appeal Decision

Hearing held on 25 November 2008

Site visit made on the same day

**by Ahsan U Ghafoor BSc (Hons) MA
MRTPI**

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

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**Decision date:
15 January 2009**

Appeal Ref: APP/F1040/A/08/2074250

Land adjoining King's Newton Storage Depot, Trent Lane, King's Newton, Melbourne, Derbyshire DE73 8BT

- 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 Macaravans Limited and P and H Sread against the decision of South Derbyshire District Council.
- The application Ref 9/2007/1353/U, dated 16 November 2007, was refused by notice dated 3 January 2008.
- The development proposed is extension of existing caravan storage facility.

Decision

1. I dismiss the appeal.

Main issues

2. The appeal raises three main issues and these are:
 - Firstly, the impact of the development on the character and appearance of the countryside;
 - Secondly, the effect of the proposal on highway safety; and
 - Thirdly, whether or not the scheme would result in the increase of flood risk elsewhere.

Reasons

3. The site is about 0.75 hectares and the existing storage depot is situated to its north. A public footpath adjoins the site along its western boundary.

Character and appearance

4. Saved Environment Policy 1 of the South Derbyshire Local Plan (LP) 1998, relates to new development outside settlements. In support of the appellant's contention that caravan storage would in principle be acceptable in the countryside, my attention was drawn to a scheme at Beehive Farm Rosliston and Inspector Radcliffe's decision¹.
5. However, full details of these developments are not before me for consideration. In any event, the proposal involves the creation of a new caravan storage facility for about 125 units and so it should be considered on its individual planning merits. The Design and Access Statement indicates that about 750 caravans can be stored within the existing compound. Despite existing

¹ Appeal ref: APP/G2435/A/07/2056583 allowed 21 May 2008 for B1 and B8 uses – buildings A, B, and C on plan plus yard storage to include up to 20 caravans plus retention of earth bund

boundary vegetation, I saw some of these caravans and other structures from the public footpath, which is also part of the national cycle route.

6. The appellant contends that during the summer months most of the caravans would be in use. I heard that improved landscaping would reduce the development's impact. However, the site is very visible from the adjoining public footpath, due to the area's topography and I consider that the caravans would also be visible from Trent Lane. In my view, landscaping along the footpath would not provide effective all-year round screening. The development would not successfully integrate into the wider countryside, due to the caravans' intrusive external appearance.
7. Moreover, I consider that the development would be so large as to represent a material increase in the existing facility's footprint. The use of the site would dramatically alter the open quality of this part of the countryside, due to the siting, location and regimented layout of the caravans and the development's scale. In addition, the proposal involves the use of rolled stone and erection of boundary fencing with some low-level lighting, all of which would result in additional harm to the countryside's scenic beauty.
8. The appellant argues that national planning policies provide a rationale for the proposal. However, I find that the development would be seen as an encroachment of the countryside because of its proximity to the existing storage depot and it would be incompatible with its surroundings, due to the site's use for the storage of caravans. In my view, the proposal would be visually obtrusive due to its location close to areas with public access. I take the view that the development would conflict with the main thrust of Planning Policy Statement (PPS) 7: *Sustainable Development in Rural Areas*, which seeks to safeguard the countryside's quality for its own sake.
9. I do not dispute the appellant's view that there is a genuine need for secure facilities. However, based on the evidence before me I am not satisfied that this is a strong enough reason to permit this intrusive development. Therefore, the proposal fails Environment Policy 1 because it would not safeguard or protect the countryside from visual harm. On this main issue, I conclude that the development would have a detrimental impact on the character and appearance of the countryside.

Highway safety

10. Saved LP Transport Policy 6 states that new development should be sited close to the principal road network, linked and served by the appropriate standard of highway. The site is located some distance away from Main Street's junction with Trent Lane, and there are no recorded accidents involving personal injury. However, Trent Lane terminates at the existing storage depot.
11. Although subject to a 30 mph speed limit, it is characterised by soft highway verges, narrow carriageway and footpath widths. On-street parking along the lane further reduces the road's width. The appellant argued that on average the traffic generated by the development would be similar to that of a large dwelling. However, I consider that comings and goings of towing vehicles would be materially different from movements associated with residential living.

12. The appellant contends that on average the existing use generates about 40 vehicle trips per day and the proposed development would increase vehicle movements by around 10. I note that existing residential properties generate significant vehicle movements, but these are likely to be non-commercial. Whilst most of the traffic associated with the new storage facility would be off-peak, some caravans would be used regularly for short breaks. In my view, the development would generate a higher number of movements of towing vehicles.
13. Contrary to the appellant's arguments, I find that Trent Lane would not be suitable to serve the new development due to its inadequate width and layout. Drivers would find it difficult to safely pass each other because of the lane's geometry. In my view, the development would increase the risk to cyclists and pedestrians who use Trent Lane to gain access to the public footpaths and cycle route. Whilst I accept that the existing depot already generates commercial traffic movements, this is not a reason to worsen the risk to highway users.
14. I acknowledge that visibility at the proposed accesses would be improved and that sufficient turning space would be provided. However, the development would conflict with LP Transport Policy 6 because it would not be linked and served by the appropriate standard of highway and it would interfere with the free and safe flow of traffic. On this main issue, I consider that the development would have a materially harmful effect on highway safety.

Flood risk

15. Policy 36 of the East Midlands Regional Spatial Strategy (RSS) 2005 encourages a regional approach to managing flood risk. The appellant submitted a flood risk assessment (FRA), but the Council, supported by the Environment Agency (EA), is concerned about the absence of measures for compensatory flood water storage. The Council told me that it has no objections to the sequential test. The main source of flooding is from the nearby River Trent and the submitted evidence demonstrates that the site has been subject to flooding because part it is in Zone 2 and 3.
16. Paragraph 5 of PPS25: *Development and Flood Risk* outlines key planning objectives. It states that flood risk should be taken into account at all stages to avoid inappropriate development in areas at risk of flooding.
17. I was told that the EA was being unreasonable in requiring the submission of technical details on flood storage. However, Annex E to PPS25 sets out the criteria for the assessment of flood risk. The development would result in the permanent loss of floodplain. In these circumstances, the FRA should demonstrate what flood risk management measures would be necessary and most effective to reduce hazards to users and other people. I note that that existing drainage systems would be maintained, but I am not satisfied that the FRA adequately addresses provision for any residual risk, or designing for any potential increases on drainage systems.
18. The site slopes downwards to the eastern corner from around 37.26m AOD to about 36.65m AOD. The EA's hydraulic modelling for the area indicates that the predicted flood level for the 1 in 100 year period is estimated to be 36.82m rising to 37.03m considering the impact of climate change. At the Hearing, the appellant told me that ground levels would be raised and the FRA indicates that

ground levels could be raised by an average of 0.23m to a maximum of 0.67m, which would take the site above the 100 year event.

19. The appellant argued that land to the west of the appeal site under his ownership would be used for water storage on a level-for-level basis. However, any proposals to modify ground levels will have to demonstrate in the FRA that there is no increase in flood risk to the development itself, or to any other areas which are known to, or are likely to flood. These proposals must be accompanied by compensatory provision of flood storage either on site or within its vicinity. Moreover, calculation of the impact on floodplain storage volumes should be included in the FRA.
20. In my view, the submitted evidence does not illustrate how the overall development would mitigate any impacts and there are no details of civil engineering operations either on site or elsewhere to reduce the risk of flooding. It was contended a condition would overcome the need to prepare detailed drawings. However, I consider that the FRA fails to adequately demonstrate that the proposal would not increase the risk of flooding elsewhere even if an appropriate condition were to be imposed.
21. The appellant stated that as potential floodwaters build-up gradually there would be adequate warning via the EA's flood warning line. Whilst this would allow staff to be sent home and valuable items to be removed, I am not convinced that the layout of the site would allow the caravans to be relocated to the southern half of the site during relevant flood warning periods, due to the amount of units proposed and the site's shape.
22. I find that the proposal would conflict with RSS policy 36 and PPS25. The development would demonstrably inhibit the capacity of the floodplain to store water. On this main issue, I conclude that the development would significantly increase the risk of flooding elsewhere.

Other considerations and conclusions

23. I heard evidence from Melbourne Civic Society concerning the effect of the development on the character or appearance of the King's Newton Conservation Area. However, the Council confirmed that the site is not located within, or adjacent to, the Conservation Area, and I have no reason to dispute that the proposal would have no impact on it. Nonetheless, my main conclusions are unaltered.
24. For the reasons given above, and having considered all other matters raised, I conclude that the appeal should not succeed.

Ahsan U Ghafoor

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

J Steedman	Steedman Planning Limited, Tournament Way, Ashby-de-la-Zouch Leicestershire LE65 2UU
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P Sread	Appellant
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FOR THE LOCAL PLANNING AUTHORITY:

A E Burdett DipURP, MRTPI	South Derbyshire District Council
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Graham Fairs IEng, FIHIE, MIHT	Environmental Services Department, Derbyshire County Council, County Hall Matlock DE4 3AG
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Tim Andrews	Environment Agency, Scarrington Road West Bridgford Nottingham NG2 5FA
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Nick Wakefield	Environment Agency, Scarrington Road West Bridgford Nottingham NG2 5FA
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INTERESTED PERSONS:

Councillor John Harrison (Ward Councillor)	Hope Cottage 55 Penn Lane Melbourne DE73 8BX
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Brian Hardy	Kings Newton Resident Association 145 Main Street King's Newton Melbourne DE73 8BS
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Charles Robey	50 Trent Lane King's Newton DE73 8BT
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David Smith	Highfield Barn, Cockshut Lane, Melbourne DE73 8DG
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Ian Turner	Melbourne Civic Society, 12 Church Street, Melbourne DE73 8EJ
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DOCUMENTS

1. Hearing notification letter dated and notification list dated 25 May 2008 and 12 November 2008
2. Statement by Councillor John Harrison
3. Statement by Melbourne Civic Society
4. Extract copy of South Derbyshire Local Plan (1998) Transport Policy 6
5. Traffic survey result by David Hughes dated 25 July 2008



Appeal Decision

Site visit made on 6 February 2009

by **Paul V Morris** DipTP MRTPI

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

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Decision date:
17 February 2009

Appeal Ref: APP/F1040/C/08/2088683

9 Castle Mills, Castle Street, Melbourne DE73 8BF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Derek Hawkins against an enforcement notice issued by South Derbyshire District Council.
- The Council's reference is E/2008/00117.
- The notice was issued on 17 September 2008.
- The breach of planning control as alleged in the notice is, without planning permission, the replacement of three timber framed windows with uPVC windows on the front elevation of the ground floor flat, which is located within Melbourne Conservation Area.
- The requirements of the notice are to:
 - (1) permanently remove the three uPVC windows from the front elevation of the flat;
 - (2) replace the timber windows to be designed as a direct copy of those in the front elevation of the remaining flats in the block in respect of design, materials and dimensions.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on ground (c) as set out in section 174(2) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.

Decision

1. I dismiss the appeal and uphold the enforcement notice.

Reasons

2. An appeal on ground (c) claims that there has not been a breach of planning control.
3. The appellant has given a full account of his contacts with the Council concerning the replacement windows, and the various opinions that have been offered about the question of whether the matter constitutes development both in relation to his own property, and in relation to other properties in Castle Mills and nearby in the centre of Melbourne. Whilst I have noted this account, I can only determine the appeal on the basis of the facts and the legal position as they apply to this case.
4. The Council was correct in the information it gave to the appellant, by letter dated 14 July 2008, that there are no permitted development rights for the replacement windows. Whilst the Town and Country Planning (General Permitted Development) Order 1995 gives rights for works, as defined in Schedule 2 Part 1 of the Order, to be carried out to a dwellinghouse, Article 1

- of the Order says that a dwellinghouse does not include a building containing one or more flats, or a flat contained within such a building.
5. The Town and Country Planning Act 1990, Section 55, sets out the meaning of development, and Section 57 of the Act says that planning permission is required for development. However, Section 55(2)(a)(ii) provides that the carrying out of operations for the maintenance, improvement or other alteration of any building shall not be taken for the purposes of the Act to involve development of the land if the operations do not materially affect the external appearance of the building.
 6. The Council has drawn attention to the case of Burroughs Day v Bristol CC [1996] 19 E.G.126 and I acknowledge that this judgement gives guidance on the question of 'material effect' which applies to the external appearance, and not the exterior, of the building. The phrase was taken to imply that the change in appearance must be visible from a number of vantage points; visibility from the air or from a single building, for instance, would not be sufficient. The change in external appearance had to be judged for its materiality in relation to the building as a whole, and not by reference to a part of the building taken in isolation.
 7. In this case, the three windows subject of the enforcement notice are side-by-side on the front elevation of the building, at ground floor level beside the footway. They differ markedly in design and material from the significant number of matching timber windows on the rest of this elevation at both ground and first floor levels. The effect on the appearance of the building is noticeable from a variety of vantage points on Castle Street, which is a main street in the centre of Melbourne, and from the properties on the other side of the street. I find, therefore, as a matter of fact and degree, that the replacement of the windows has materially affected the external appearance of the building.
 8. The appellant has carried out works which materially affect the external appearance of the building. They do not fall within the exception set out in Section 55(2)(a)(ii) and the works therefore amount to development within the meaning of Section 55. Planning permission has not been granted as required by Section 57, and there has been a breach of planning control.
 9. The appeal on ground (c) therefore fails.

Paul V Morris

Inspector