

# **REPORT OF THE DIRECTOR OF COMMUNITY AND PLANNING SERVICES**

**SECTION 1: Planning Applications**

**SECTION 2: Planning Appeals**

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

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## **1. PLANNING APPLICATIONS**

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

<b>Reference</b>	<b>Item</b>	<b>Place</b>	<b>Ward</b>	<b>Page</b>
9/2014/0886	1.1	Newhall	Newhall	1
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9/2014/1095	1.4	Overseal	Seales	74
9/2015/0029	1.5	Overseal	Seales	90
9/2015/0083	1.6	Weston on Trent	Aston	106
9/2015/0119	1.7	Melbourne	Melbourne	109
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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 Director of Community and Planning Services' report or offered in explanation at the Committee meeting require further clarification by a demonstration of condition of site.
2. Further issues of principle, other than those specified in the report of the Director of Community and Planning Services, arise from a Member's personal knowledge of circumstances on the ground that lead to the need for clarification that may be achieved by a site visit.
3. Implications that may be demonstrated on site arise for consistency of decision making in other similar cases.

**Item**                    **1.1**

**Reg. No.**              **9/2014/0886/OS**

**Applicant:**  
**Mr Stuart Ashton**  
**AMP Technology Centre Harworth Estates**  
**Brunel Way**  
**Waverley**  
**S60 5WG**

**Agent:**  
**Mr Steve Lewis-Roberts**  
**Pegasus Planning Group**  
**4 The Courtyard**  
**Church Street**  
**Lockington**  
**Derbyshire**  
**DE74 2SL**

**Proposal:**            **OUTLINE APPLICATION (ALL MATTERS EXCEPT FOR ACCESS TO BE RESERVED) FOR THE RESIDENTIAL DEVELOPMENT FOR UP TO 60 DWELLINGS TOGETHER WITH ASSOCIATED HIGHWAY WORKS, PUBLIC OPEN SPACE, LANDSCAPING, ASSOCIATED DRAINAGE INFRASTRUCTURE AND CREATION OF PEDESTRIAN AND CYCLE WAYS ON LAND AT SK2720 7907 (SITE A) PARK ROAD CADLEY PARK SWADLINCOTE**

**Ward:**                **NEWHALL & STANTON**

**Valid Date:**        **01/10/2014**

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

This application is brought before the Committee as it is a major application, contrary to the Development Plan, where more than two objections have been received. Members will recall this case (as one of three related cases around the Tetron Point development) being deferred at the last Committee at the request of the Planning Services Manager to allow further research into possible contributions to other parts of the urban highway network to mitigate the impact of these developments.

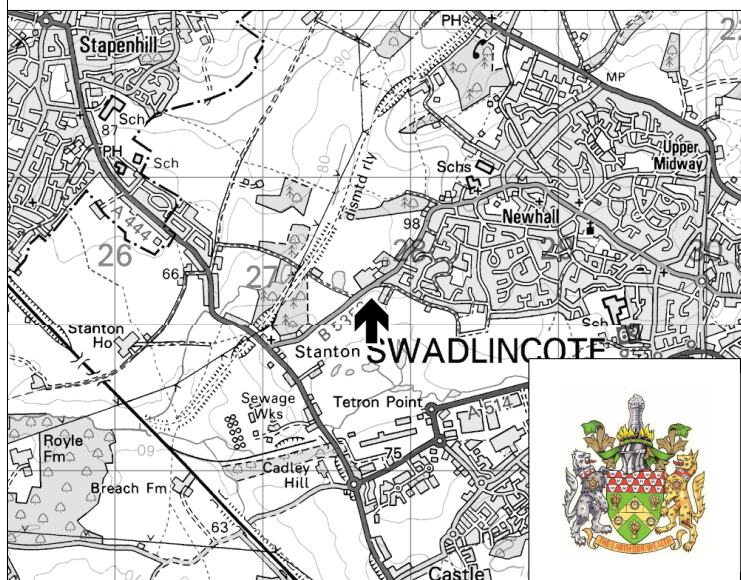
#### **Site Description**

This 2.35 hectare site is located to the south of Woodview Road, Newhall, bounded by Copperas Road to the east and Park Road to the West. Build Base is opposite the site on Park Road. The proposed golf course under construction is to the south and south east. The site is currently agricultural grazing land and from the highest point of the site in the north-eastern corner adjacent to existing properties the land levels reduce by 9 metres to the southern edge of the site over a distance of 210m. There are 1-2m high hedgerows along the boundaries with Park Road to the west and Woodview Road to the north.

#### **Proposal**

Outline planning permission is sought including access for residential development of up to 60 dwellings. The application is part of an overall masterplan which includes two other parcels of land adjacent to the golf course to the south and south west (application refs 9/2014/0887 &

## THE SITE



**South Derbyshire District Council. LA 100019461. 2014**

0888). Since appearing on the agenda in April and further to discussions with the developers, the indicative masterplan now shows access off Park Road via a roundabout approximately 10m from the rifle range access opposite the site. A 20m landscaping buffer is proposed along Park Road, with a 5m wide buffer adjacent to existing properties on Woodview Road and Copperas Road and a 5-11m wide buffer on the southern boundary.

The access would link to central feature square, enclosed by landmark buildings and two internal roads to serve the northern and southern parts of the development. Buffer planting would define the access and retain some existing woodland planting. Dwellings are proposed adjacent to the boundaries with existing properties. A triangular LEAP is proposed in the south western part of the site with a 20m wide buffer to proposed dwellings. A proposed footpath link is shown to the south west which would link with the existing footpath running along the western boundary on Copperas Road. A potential cycle route is indicated along the Park Road frontage and a new pedestrian refuge is shown 20m from the site boundary on this road.

### **Applicants' supporting information**

The Planning Statement states that the application should be considered in the context of the site wide masterplan that provides the framework for the wider development proposals at Cadley Park. Policy H2 of the South Derbyshire Pre-Submission Local Plan allocates three housing parcels on land at Cadley Park for residential development of around 600 dwellings. It describes the site and the proposals and summarises the relevant national and local planning policy. The document states that the scale of the development proposals and their location is entirely consistent with Draft Policy H2 as the application makes provision for up to 570 new homes, in three development parcels. The Masterplan which accompanies all three planning applications demonstrates that the sites have been considered holistically with other development and open space enhancement opportunities. A mix of house types will be provided across the three development sites, which complement each other. New pedestrian and cycle links are proposed within the site which will connect to existing networks. The proposals incorporate more than 22.31 hectares of new public open space and National Forest Planting, across the Cadley Park development area, and a LEAP is located within the application site. This green infrastructure significantly exceeds the National Forest requirements. Summaries of the conclusions of all supporting documents is included. It concludes that the development accords with the South Derbyshire Local Plan where it is consistent with the NPPF. The proposal constitutes sustainable development and delivers a wide range of economic, social and environmental benefits. The proposal also complies with the site specific requirements in emerging Local Plan Core Strategy Part 1 - Policy H2 and will help meet the Council's current housing land supply shortfall.

Design and Access Statement describes the proposal within the context of the masterplan, the history of the site and assesses the site in terms of landscape context, visual impact, character of surrounding areas. The character assessment areas identified were Swadlincote town centre, the A444 corridor, Newhall and the new housing at Castle Gresley. An assessment of services has been undertaken and routes of movement and assessment of the planning policy context. The public consultation exercise is summarised and the evaluation of the design and layout is outlined in a series of diagrams with descriptions. The street hierarchy, pedestrian and cycle routes and open space are discussed together with the scale of buildings and keynote buildings. Landscaping buffers are proposed adjacent to existing dwellings, the road frontage and the golf course to the south. The scheme is assessed against the Building for Life criteria and the majority of criteria scored green with oranges where the information is not available due to the application being outline.

Consultation Statement outlines the methods used to consult the public on the proposal. A website was set up which included the indicative masterplan, information leaflet and comments form. The public exhibition was held on 7th July 2014 from 4:00pm until 8:00pm at The Old Post Centre, High Street, Newhall. 3,000 leaflets were delivered to homes and businesses in

Swadlincote in the week commencing 23<sup>rd</sup> June 2014 to advertise this event, together with posters in the vicinity and an article in the Burton Mail. 151 responses were received from local residents and they related to lack of capacity of local facilities such as schools and doctor's surgeries, traffic implications, loss of green space, lack of adequate landscaping buffers adjacent to existing properties and subsidence and drainage concerns.

Tree Survey Arboricultural Assessment surveyed a total of one individual tree, five groups of trees and one hedgerow. The Oak tree is categorised as B moderate quality / value and the groups as C low quality / value due to their lack of maturity. To facilitate the new access into this parcel of development, a section of hedgerow would require removal. The hedgerow is categorised as of low arboricultural value (category C). A group of trees in the south eastern corner would require removal together with a hedgerow and trees on the boundary with the retained field on Copperas Road. The Oak tree would be retained as would the existing hedgerow on part of the north eastern boundary.

Flood Risk Assessment and Drainage Strategy states the site is within Flood Zone 1 with an annual probability of flooding from fluvial sources being less than 1 in 1000 years (ie < 0.1%). There is a public combined sewer, 900mm in diameter, flowing in a westerly direction across the southern area of the site. Surface water runoff will be managed in a sustainable manner to ensure that flood risk is not increased downstream of the site. The golf course already includes a number of surface water drainage features including ditches/swales, ponds and a lake, all of which ultimately discharge to Darklands Brook. It is proposed that the existing surface water features within the golf course are utilised for surface water attenuation from the proposed development, rather than provide a separate system within the site boundary.

Site Investigation Study and Coal Mining Risk Assessment concludes that based on the desk study research undertaken the site does not pose a significant risk to the environment and it is considered suitable for both its current and the proposed development uses. There are, however, a number of low and moderate potential pollution linkages and geotechnical risks that require further investigation and consideration prior to the redevelopment of the site. A detailed physical site investigation, comprising soil/water sampling, chemical testing and gas monitoring, so as to identify and mitigate contamination that may exist is required. This shall include assessment of the shallow mine situation beneath the site.

A Phase 1 Habitat Survey and Ecological Assessment has been undertaken for the overall development proposals.

Landscape and Visual Assessment sets the site in context with the surrounding landscape. Nationally the site is defined; as National Character Area 71: Leicestershire and South Derbyshire Coalfield<sup>5</sup>, regionally as Settled Coalfield Farmlands RLCT and locally as Coalfield Village Farmlands Landscape Character Type (LCT). Viewpoints are assessed and the report concludes that the scale and form of proposed development is likely to result in only limited harm at a localised level and potential landscape and visual effects are not likely to be significant. Furthermore the extensive proposals for green infrastructure and landscaping will deliver a number of enhancements in terms of the physical landscape and landscape character. As such the proposed development is acceptable in landscape and visual terms.

Archaeological Desk Based Assessment states that Abandonment Plans obtained from the Coal Authority demonstrated that the site was excavated during opencast mining in the late 20th Century. No archaeological remains will survive in this region.

Noise Report concludes that mitigation measures such as orientation of dwellings and thermal double glazing would ensure noise levels are within acceptable levels. This should be detailed at reserved matters stage.

Transport Assessment states that development would be within walking distance of many employment destinations and local facilities in Newhall. The town centre would be within walking distance via the new footpaths that would be provided through the masterplan area. The National Cycle Network route 63 provides an excellent route to the north to Burton upon Trent and the gap in that route as it passes through Swadlincote would be plugged by the cycle infrastructure proposed by the development. A crossing would be provided on Park Road where the existing part of route 63 ends to link it to the proposed part that runs through the masterplan area. Additional cycle routes would be provided through the masterplan area to provide mostly off road journeys to the town centre and the many nearby employment destinations. The development would create a demand for an additional 4 pedestrian journeys and 1 cycle journeys during an average peak hour. The existing infrastructure, enhanced by the proposed provisions would adequately accommodate the increase in demand created by the proposed development. Bus service number 4 runs past the site on Park Road and provides two buses an hour in each direction, connecting the town centre to destinations beyond Swadlincote, notably Burton upon Trent. The proposed development would generate a demand for three additional bus journeys during an average peak hour. The development is therefore in a sustainable location that is accessible by all modes of transport. The proposed development would be accessed from the B5353 Park Road via a simple T-junction and the junction design would be to standard with visibility splays that accord with the results of a speed survey. A capacity analysis of the access junction shows that it would operate with plenty of spare capacity and could therefore safely and adequately accommodate the development traffic. Beyond the access junction, traffic increases would not be material.

Air Quality Assessment states that a construction phase assessment has been undertaken to determine the risk and significance of dust effects from earthworks, construction and trackout from the proposed development. The report concludes that dust and road traffic emissions can be adequately controlled through mitigation measures and at operation impacts would not be significant.

Geophysical Survey Report concludes that the underlying geology across the area provided a reasonable magnetic contrast for the detection of infilled features. No evidence for significant archaeological features was present. The majority of anomalies detected could be attributed to a modern or recent origin.

Bat Activity Survey Report confirmed that bats forage in specific locations on site associated with hedgerows and woodland edge habitats and also that no evidence was found of roosting bats. Recommendations to minimise the potential disturbance of bats and ensure landscape connectivity would be to retain and or incorporate hedgerows into the proposed scheme. Additionally, a sensitive lighting strategy should be implemented to reduce potential impacts on bat foraging behaviour.

## **Planning History**

None

## **Responses to Consultations**

The Highway Authority considers that available evidence suggests the development would not have a significant adverse effect on capacity or safety of the road network. Therefore subject to conditions there is no objection in principle to the amended scheme showing the proposed roundabout. The site contains part of a proposed greenway and improvements and enhancement to sustainable transport routes would be welcomed. However it is acknowledged that consideration will need to be given to the balancing of contributions in the context of need arising from development and viability assessment. It has no objection to the latest amendment showing an access with a roundabout subject to some detailed consideration regarding the

possible incorporation of the access to the Rifle club and clarification of the pedestrian refuge design.

Severn Trent Water has no objection subject to a drainage scheme condition and an informative in relation to the public sewer that crosses the site.

The Council's Contaminated Land Officer confirms the site has been subject and influenced by significant historic industrial uses, predominately associated with Cadley Hill Colliery and the subsequent landfilling operations. These historic features have the potential to present risks to site workers, end users and ecological receptors and thus a phased contamination condition is recommended.

The Council's Environmental Health Officer has no objection provided a dust control condition is attached to any permission together with an informative.

Natural England has no objection as the site is unlikely to affect any statutory protected sites or landscapes.

The Environment Agency has no objection subject to a sustainable drainage scheme and contamination condition.

The Coal Authority states that their records indicate that the site is in the likely zone of influence from 6 seams at 33m to 251m depth, last worked in 1962 and is in an area of likely historic unrecorded underground coal mine workings at shallow depth. The site is also within the boundary of a site from which coal has been removed by surface mining methods. The Authority has no objection provided a condition requiring intrusive site investigation works be undertaken prior to development in order to establish the exact situation regarding coal mining legacy issues on the site. In the event that the site investigations confirm the need for remedial works to ensure the safety and stability of the proposed development, this should also be conditioned to ensure that any remedial works identified by the site investigation are undertaken prior to commencement of the development.

The County Archaeologist has reviewed the geophysics results that show a small number of possible archaeological features, all linear in character. In order to characterise and understand the significance of these features some further work is necessary. Therefore an archaeological works conditions should be placed on any permission. This work will comprise a small number of trial trenches (with provision for further mitigation should significant remains be identified).

Derbyshire County Council's Developer Contributions Officer states that the following contributions are required across all three sites:-

- £16,307.70 (£28.61 per dwelling x 570 dwellings) towards additional waste management capacity (£1596.60 for Site A);
- Access to high speed broadband services for future residents (in conjunction with service providers);
- £1,128,511.99 towards the provision of 99 primary school places as follows:
  - £136,788.12 towards the provision of 12 primary school places at Stanton Primary School for Application 9/2014/0886
  - £250,788.22 towards the provision of 22 primary school places at Stanton Primary School for Application 9/2014/0887
  - £364,768.32 towards the provision of 32 infant school places at Newhall Infant and Nursery School for Application 9/2014/0888



- £376,167.33 towards the provision of 33 junior school places at Newhall Community Junior School for Application 9/2014/0888
- £429,404.25 towards the provision of 25 secondary school places as follows:
- £154,585.53 towards the provision of 9 secondary school places at The William Allitt School for Application 9/2014/0886
- £274,818.72 towards the provision of 16 secondary school places at The William Allitt School for Application 9/2014/0887; and
- New homes designed to Lifetime Homes standards.
- Newhall (Bretby) HWRC is over capacity, having exceeded its environmental permit, and the site is unable to expand further. The proposed development of 570 dwellings will result in additional user demand and exacerbate this problem. The County Council requests a financial contribution towards the provision of a new HWRC to accommodate additional demand from new development.

The County Flood Risk Team has reviewed the Derbyshire County Council (DCC) surface water model outputs which indicate that the proposed site is likely to be subject surface water flooding during the critical storm duration in the 1 in 100 year return period event in its current land use. There is a small area of surface water inundation shown on the northern boundary of the proposed site and a larger area covering approximately 10% of the proposed site in the south. It is recommended that Sustainable Drainage Systems (SUDS) be incorporated within the design of a drainage strategy for any proposed development.

The County Rights of Way Section has no objection to the application as there are no recorded public rights of way crossing or abutting the site.

The Police Crime Prevention Design Advisor has general comments that should be considered prior to a reserved matters application being submitted which relate to natural surveillance of open space, parking areas and security of routes and private garden areas.

Peak and Northern Footpaths state that considerable thought has been given to walking and cycling routes throughout the whole site and this is welcomed. All new footpath links should be dedicated as public rights of way by means of formal legal agreements, with the widths, surfaces and path furniture agreed with the highway authority. All new cycle links should also be formally legally dedicated, and must be sufficiently wide to allow for segregation of walkers and cyclists. There should be sufficient links from the housing sites to the new and old public rights of way to enable residents to reach and use these paths safely and conveniently.

The Council's Tree Officer considers the Arboricultural Assessment to be acceptable and recommends a condition in relation to new tree planting.

## **Responses to Publicity**

Seven letters of objection have been received and they are summarised as follows:

- a) The Swadlincote Rifle and Pistol Club are based on a site opposite and are concerned that any new residents may complain about noise and put an end to their club which has 560 members.
- b) There is concern with regard the access onto Park Road as it is near a hidden dip in the road, the speed limit is regularly ignored and the large amount of vehicles associated with the dwellings is likely to cause accidents.

- c) There are concerns relating to no provision for schooling in the area, where local schools are already at capacity.
- d) There have been recent road accidents where the access is proposed and planning permission has been denied due to the dangerous nature of the road.
- e) The sewerage system is at capacity as in heavy rain Park Road properties have been flooded with raw sewerage.
- f) Lack of capacity at local doctors surgeries which will be exacerbated with these houses.
- g) Lack of privacy and security of their rear private garden.
- h) There is concern regarding where would the services come from and whether existing residents' services would be affected.
- i) Loss of wildlife as adders and Kingfishers have been spotted in the field.
- j) There are mine shafts in the area and natural springs that have been redirected and have started to fill up the old mining tunnels which should make building unsafe.
- k) Requires guarantees that there would be no subsidence to their property as a result of building work.
- l) The golf course construction work has produced smells and dust and prevented use of their garden.
- m) There is a lack of facilities for children.
- n) The existing access to Woodview Road is dangerous with minimal visibility in both directions, how can a new access onto Park Road be acceptable?
- o) Planning applications on Woodview Road have been refused on traffic safety grounds and they were not in keeping with the look of the area and green belt issues.
- p) The land is on top of previous mine workings and is a flood zone.
- q) The location of the park so close to existing residents would cause noise and nuisance.
- r) A tree screen was promised, however, trees too close to properties may cause damage and loss of light.
- s) New residents on Woodview Road would be directly overlooked, would lose their privacy and view of the fields and golf course.

One letter of support has been received which supports the redevelopment of the former colliery and the provision of green space within the development, but is unsure whether the site is considered brownfield or greenfield.

## **Development Plan Policies**

The relevant policies are:

Local Plan Saved Housing Policies 4 and 11, Environment Policies 7, 9, 10, 11 & 14 Transport Policies 6, 7 & 8, Recreation and Tourism Policy 4 and Community Facilities Policy 1

Emerging Local Plan

Policy S2 : Presumption in Favour of Sustainable Development

Policy S4 : Housing Need

Policy S6: Sustainable Access

Policy H1 : Settlement Hierarchy

Policy H2 : Land North of William Nadin Way, Swadlincote

Policy SD1: Amenity and Environmental Quality

Policy SD2: Flood Risk

Policy SD3 : Delivering Sustainable Water Supply, Drainage and Sewerage

Policy SD4 : Contaminated Land and Mining Legacy issues

Policy BNE1: Design Excellence

Policy BNE3: Biodiversity

Policy BNE4: Landscape Character and Local Distinctiveness

Policy INF1: Infrastructure and Developer Contributions

Policy INF8: The National Forest

Policy INF9: Open Space, Sport and Recreation

## National Guidance

National Planning Policy Framework (NPPF), in particular:

Paras 6-10 (Achieving sustainable development)  
Paras 11-14 (The presumption in favour of sustainable development)  
Para 17 (Core principles)  
Chapter 1 (Economy)  
Chapter 4 (Promoting sustainable transport)  
Chapter 6 (Housing)  
Chapter 7 (Requiring good design)  
Chapter 10 (Meeting the challenge of climate change, flooding etc.)  
Chapter 11 (Conserving and enhancing the natural environment)  
Chapter 12 (Heritage)  
Paras 186 & 187 (Decision-taking)  
Para 193 (Local planning authorities should only request supporting information that is relevant, necessary and material to the application in question.)  
Para 196 & 197 (Determining applications)  
Paras 203-206 (Planning conditions and obligations)  
Annex 1 (Implementation)

National Planning Practice Guidance (NPPG) 2a, 3, 8, 10, 23b, 26, 33, 37, 42, 45

## Local Guidance

Housing Design and Layout, Trees on Development Sites, Developer Contributions, Better Design for South Derbyshire.

## Planning Considerations

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

- Principle of Development
- Residential Amenity
- Design and Building for Life
- Highways and Transport
- Viability and S106
- Affordable Housing
- Other Matters

## Planning Assessment

### Principle of Development

The proposal for 60 dwellings on this site is part of a framework for the wider development proposals at Cadley Park. Policy H2 of the South Derbyshire Pre-Submission Local Plan allocates three housing parcels on land at Cadley Park for residential development of around 600 dwellings. The adopted Local Plan allocates the site as open land in Swadlincote under Environment Policy 7. This policy states that '*open land which makes a valuable contribution to the character and environmental quality of Swadlincote will be safeguarded from development*'. This parcel of land in the north western corner of the masterplan area is relatively small in comparison with the land retained for the golf course. To the north it adjoins the existing urban area of Newhall and open land would be retained to the south and east towards Swadlincote centre.

At the national level, Paragraph 47 of the NPPF seeks to boost significantly the supply of housing providing a considerable emphasis on bringing forward high levels of housing provision

as soon as possible. Paragraph 49 states that '*housing applications should be considered in the context of the presumption in favour of sustainable development*'. The site is within the main urban area of Swadlincote and is thus a highly sustainable location for further residential development.

The site is within walking distance of local services, facilities and employment, therefore the site would be considered to be a sustainable location for development whereby there would not be a reliance on the car. Pedestrian and cycle routes would be improved as part of the masterplan area. The development is close to a principal road network and the access would be directly off Park Road.

The site specific policy in the Pre-Submission Local Plan H2 policy states that:-

*A Residential development on Land north of William Nadin Way, Swadlincote for around 600 dwellings.*

*B The Council will require the below listed site specifics and accordance with other Local Plan policies:*

- 1. Consider the site holistically with other development and open space enhancement opportunities;*
- 2. A mix of dwelling types shall be provided across the three parcels of land which complement each other;*
- 3. The provision of recreational and community facilities;*
- 4. The presence of Coal Mining Legacy and resulting potential for unstable land will require the submission of a Coal Mining Risk Assessment in support of planning applications;*
- 5. An appropriate buffer in agreement with the Council to be placed around the Breach Ley Farm Meadow County Wildlife Site;*
- 6. An appropriate easement along the watercourses on the site free of built development*
- 7. Provide high quality cycle and pedestrian links both within the development and connecting to existing and proposed networks, including NCN63 Burton to Leicester route.*

Although this application falls to be considered on its own merits regard has been paid to the other two sites shown on the overall masterplan, as there are new pedestrian and cycle routes proposed between them. The open space provision both includes an area within the site together with links to the golf course and the larger site to the east (Site C) which proposes an urban park, improvements to existing sports pitches and retention of a local wildlife site. The mix of dwellings would be agreed at reserved matters stage, however, the affordable housing element would be part of the Section 106 agreement.

Policy E7 of the local plan does not represent a constraint to development as the site's contribution to the character and environmental quality of Swadlincote is limited. The NPPF has a strong presumption in favour of sustainable development and an emphasis of bringing forward high levels of housing quickly. This site qualifies as a sustainable location which could rapidly contribute to the 5 year supply.

In principle, therefore, the development represents sustainable development.

### Residential Amenity

In terms of residential amenity, the impact on the existing properties on Woodview Road and Copperas Road requires assessment. The indicative layout shows dwellings adjacent to the boundary with existing properties with a 5m landscaping buffer. A minimum of 21 metres is required between existing and proposed properties in line with the Council's space standards. The layout indicates sufficient separation distances can be achieved together with an

appropriate landscaping buffer to reduce the impact on the amenity of existing properties. Detailed assessment of impacts in terms of heights, designs and finished floor levels would be carried out at reserved matters stage. As such the development is capable of providing for reasonable amenities in terms of light, air and privacy for both existing and new dwellings; safe, functional and convenient layouts; private amenity space, and space for landscaping in accordance with Local Plan Saved Housing Policy 11.

### Design and Building for Life

As this is an outline application it is not possible to apply a definitive Building for Life score in accordance with 'Better Design for South Derbyshire'. However, because of its proximity to the town's facilities it is clear that the site scores well in terms of connections, facilities and services, public transport and meeting local housing requirements. The Design and Access Statement (DAS) indicates that a development of locally distinctive character could be achieved, with well-defined streets and spaces.

The applicant controls open land adjacent to the site and the proposed development would provide substantial open space and recreation opportunities which could contribute to the health and well-being of communities. The DAS indicates that a safe and accessible environment could be created, along with legible pedestrian routes, all in accordance with the healthy community's aspirations of Chapter 8 of the NPPF and the requirements of Local Plan Saved Transport Policy 7 and Recreation and Tourism Policy 4. Further analysis of the open space provision for this particular site is set out below.

At this outline stage the scheme scores well on certain criteria and this is due to the feature square with public realm trees, legible layout, connections to multiple adjacent paths and layout with the key streets, spaces and connections being overlooked by frontages. The scheme shows potential for achieving a score of 14.

For the foregoing reasons the proposal is capable of delivering a well-designed development in accordance with 'Better Design for South Derbyshire' and Chapter 7 of the NPPF.

### Highways and Transport

The Highway Authority has affirmed that it does not consider there is an evidence base to suggest that the conclusion that the development would not have a significant adverse effect on capacity or safety of the local road network is incorrect. It considers that there is no data that would support a reason for refusal of planning permission on the basis that the development would result in severe harm on the highway network, with reference to Paragraph 32 of the National Planning Policy Framework. Adequate parking and internal road layouts would be secured through the reserved matters applications. As such the development would be in conformity with Local Plan Saved Transport Policy 6.

This site is one of three for which separate applications have been submitted by the same applicant. The sites are not directly connected, or have contiguous boundaries, but adjacent land, forming a golf course, is within the same applicant's control and therefore potentially provides opportunities for sustainable transport links between the sites and beyond. Links are shown indicatively on the submitted Masterplan, along with a cycle path on Park Road. Further discussions would be required regarding mechanisms for securing provision of these links. It would appear, in principle, that this infrastructure could be achieved either by a combination of conditions or S106 obligation, requiring schemes to be submitted for the design and implementation, including phasing, of the sustainable transport links, together with proposals for subsequent management and maintenance.

## Viability and Section 106

The starting point for negotiation is 30% affordable housing split between rent 68.1% and shared ownership 31.9%. The breakdown of dwellings required would be for rent and shared ownership would be higher numbers of 2-3 bed properties. Affordable housing ideally should be 'pepper-potted' across the whole site where possible. This shall be secured through the Section 106 agreement.

The proposed development falls within, and directly relates to, the normal areas of Stanton Primary School and The William Allitt School. Application 9/2014/0886 for 60 dwellings would generate the need to provide for an additional 12 primary and 9 secondary pupils. Current number on roll and projections show that the normal area primary and secondary schools would not have sufficient capacity to accommodate the additional pupils arising from the proposed developments. The financial contributions would secure the adaptation / creation of a classroom at Stanton Primary school and adaptation of a classroom The William Allitt School, as follows:

- £136,788.12 towards the provision of 12 primary school places at Stanton Primary School.
- £154,585.53 towards the provision of 9 secondary school places at The William Allitt School.

The calculation of the amount of open space provision on site has been made based on the Council's guidelines and 3,810m<sup>2</sup> would normally be required for 60 dwellings. The indicative layout shows 1,075 m<sup>2</sup> which includes a LEAP of 400m<sup>2</sup>. Based on normal requirements, and in isolation from the other two applications/sites, contributions including land cost would amount to £36,900 for recreation Open Space, £33,000 for recreation Outdoor Facilities and £18,300 for Recreation Built Facilities; a total of £88,200.

The County Council has made non-specific request for contributions to greenways and rights of way. In the absence of specific, justified and/or costed proposals any such provision, as indicated on the masterplan, would need to be accommodated within the site or other land in the applicant's control. Otherwise such requests would not meet the relevant tests the CIL Regulations or of para 204 of the NPPF.

NHS England has not made any request for S106 contributions for services in relation to this application.

There is ongoing discussion to establish the residual value of the development and thus the amount available for planning contributions. A verbal update will be provided to members at Committee.

## Other issues

Mining legacy issues have been addressed in the submitted Coal Mining Risk Assessment and conditions requiring site investigation would secure any necessary remediation in accordance with paragraph 121 of the NPPF.

Ecological interests would be adequately safeguarded by condition, as recommended by Derbyshire Wildlife Trust and habitat enhancement secured, in accordance with paragraph 118 of the NPPF and Local Plan Saved Environment Policy 1.

The site is within Flood Zone 1 with an annual probability of flooding from fluvial sources being less than 1 in 1000 years (i.e. < 0.1%). The application provides sufficient evidence to demonstrate that the site is capable of being adequately drained and this would be secured

through the recommended conditions of the Environment Agency in accordance with NPPF Chapter 10.

Heritage interests would be safeguarded in accordance with Local Plan Saved Environment Policy 14 and NPPF Chapter 12, by way of condition as recommended by the Development Control Archaeologist.

### Conclusion

This application is one of the three sites that make up the strategic development in the locality in relation to Policy H2 of the Emerging Local Plan, which cumulatively could accommodate around 570 homes. Given the scale of the development it is likely that it could contribute to the early delivery of homes, helping the Council meet its requirement of a five year supply of deliverable housing. By reference to the NPPF's (Para 7) three sustainability dimensions (economic, social, environmental,):

- The provision of new housing would support economic growth, ensuring an attractive place to live for South Derbyshire's economically active population as well as helping to supporting the vitality and viability of Swadlincote. The development would also potentially provide a financial contribution to capacity at local primary schools. This is supported by the site's accessibility to Swadlincote and the surrounding areas, served by public transport. The sites proximity to the existing retail centres of Swadlincote and Newhall all help to further reduce people's need to travel by car. Measures secured by condition and Section 106 Agreement would ensure that local road infrastructure has the capacity to accommodate the scheme.
- The proposed scheme would have a significant positive impact on local communities by providing new homes (market and up to 30% affordable) for approximately 1,311 residents. In terms of healthy communities the illustrative masterplan includes extensive green infrastructure and open space in the form of an urban park and attractive routes along Darklands Brook. Pedestrian/cycle links would help to support active lifestyles and encourage alternatives to the car for accessing local facilities and employment opportunities. Developer contributions would also be made towards education.
- The application explains how a range of environmental factors have been taken into account to ensure sustainable development (including landscape, ecology, air and noise pollution, archaeology, and water). Mitigation has been included within the scheme to ensure the conservation and enhancement of key features. The scheme also helps to mitigate future climate change through reducing CO2 emissions by building new homes in a highly accessible location and reducing the need to travel by car. In terms of resilience to climate change impacts, the scheme has been designed to take this into account, namely through provision of a sustainable drainage strategy and extensive network of green infrastructure.

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**

- A.** That delegated authority be granted to the Planning Services Manager to negotiate the details of the provisions of the Section 106 agreement referred to in the planning assessment of the report (subject to viability testing by the District Valuer);

**Subject to A., GRANT** permission subject to the following conditions:

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

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

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

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

3. No development shall take place until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, has been submitted to and approved in writing by the local planning authority. The drainage strategy should demonstrate the surface water run-off generated up to and including the 100 year plus 30% (for climate change) critical rain storm will not exceed the run-off from the undeveloped site following the corresponding rainfall event. The scheme shall subsequently be implemented in accordance with the approved details before the development is completed.

The scheme shall include:

- Surface water drainage system/s to be designed in accordance with either the National SUDs Standards, or CIRIA C697 and C687, whichever are in force when the detailed design of the surface water drainage system is undertaken.
- Limiting the surface water run-off generated by all rainfall events up to the 100 year plus 30% (for climate change) critical rain storm so that it will not exceed the run-off from the undeveloped site and not increase the risk of flooding off-site.
- Provision of surface water run-off attenuation storage to accommodate the difference between the allowable discharge rate/s and all rainfall events up to the 100 year plus 30% (for climate change) critical rain storm.
- Detailed design (plans, cross, long sections and calculations) in support of any surface water drainage scheme, including details on any attenuation system, and the outfall arrangements.
- Details of how the on-site surface water drainage systems shall be maintained and managed after completion and for the lifetime of the development, to ensure long term operation to design parameters.

Reason: To prevent the increased risk of flooding, both on and off site.

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) If required by the conceptual site model 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 including any works of demolition until a construction management plan or construction method statement has been submitted to and been approved in writing by the Local Planning Authority. The approved plan/statement shall be adhered to throughout the construction period. The statement shall provide for:
- parking of vehicles of site operatives and visitors
  - routes for construction traffic
  - hours of operation
  - pedestrian and cyclist protection
  - proposed temporary traffic restrictions
  - arrangements for turning vehicles

Reason: In the interests of highway safety.

7. No other development shall be commenced until a temporary access for construction purposes has been provided in accordance with a detailed design first submitted to and approved in writing by the Local Planning Authority. The access shall be retained in accordance with the approved scheme throughout the construction period, or such other period of time as may be agreed in writing by the Local Planning Authority, free from any impediment to its designated use.

Reason: It must be ensured that before any construction work commences that a safe construction access is formed in the interests of highway safety. As such, approval at a later date would be unenforceable.

8. Throughout the period of development vehicle wheel cleaning facilities shall be provided and retained within the site. All construction vehicles shall have their wheels cleaned before leaving the site in order to prevent the deposition of mud and other extraneous material on the public highway.

Reason: In the interests of highway safety.

9. The reserved matters application shall include design of the internal layout of the site in accordance with the guidance contained in the ""Manual for Streets"" document issued by the Departments for Transport and Communities and Local Government.

Reason: In the interests of highway safety.

10. Prior to the first occupation of any dwelling on the site a new roundabout shall be constructed and footway/cycleway and pedestrian refuge implemented on Park Road generally in accordance with Drawing No. ADC1041/006 E but more specifically in accordance with detailed designs first submitted to and approved in writing by the Local Planning Authority. For the avoidance of doubt the developer will be required to enter into a 1980 Highways Act S278 Agreement with the Highway Authority in order to comply with the requirements of this condition.

Reason: In the interests of highway safety.

11. Prior to the occupation of each dwelling, the proposed new estate streets between that dwelling and the existing public highway shall be laid out in accordance with the scheme approved in accordance with Condition 9 above, or as subsequently revised and approved in writing by the Local Planning Authority, constructed to base level, drained and lighted in accordance with the County Council's specification for new housing development roads.

Reason: In the interests of highway safety.

12. No dwelling shall be occupied until space has been provided within the site for the parking and manoeuvring of residents and visitors vehicles associated with that dwelling, laid out in accordance with the scheme approved in accordance with Condition 9 above, or as subsequently revised and approved in writing by the Local Planning Authority. The facilities shall be retained throughout the life of the development free from any impediment to their designated use.

Reason: In the interests of highway safety.

13. The scheme to be submitted to and approved in writing by the Local Planning Authority pursuant to Condition 9 above shall provide for bin stores within private land at the highway end of private accesses, to prevent refuse bins and collection vehicles standing on the new estate street for longer than necessary causing an obstruction or inconvenience for other road users. The facilities shall be provided prior to the first occupation of the dwellings to which they relate and shall be retained free of any impediment to their designated use thereafter.

Reason: In the interests of highway safety.

14. Private driveways/parking spaces to the proposed access road, the subject of Condition 12 above, shall not be taken into use until pedestrian intervisibility splays, details of which shall be included in the reserved matters application(s), have been provided on either side of the accesses at the back of the footway/margin, the splay area being retained throughout the life of the development clear of any object greater than 0.6m in height relative to footway level.

Reason: In the interests of highway safety.

15. Unless as may otherwise be approved pursuant to the reserved matters, prior to the first use of the development hereby permitted, parking facilities shall be provided so as to accommodate, in the case of dwellings of four or more bedrooms 3 cars, in the case of dwellings of two or three bedrooms 2 cars, and in any other case 1.5 cars within the curtilage of each dwelling, or in any alternative location acceptable to the Local Planning Authority or as may otherwise be agreed in writing by the Local Planning Authority in accordance with its published standards. Thereafter 3 parking spaces (in the case of dwellings with four or more bedrooms) or 2 parking spaces (in the case of dwellings of two or three bedrooms) or 1.5 parking spaces (in any other case), each space measuring a minimum of 2.4m x 4.8m, shall be retained for that purpose within the curtilage of each dwelling unless as may otherwise be approved in writing by the Local Planning Authority.

Reason: To ensure that adequate parking/garaging provision is available.

16. Unless as otherwise agreed in writing with the Local Planning Authority the proposed access driveways/parking spaces to the public highway shall be no steeper than 1 in 14 for the first 5.0m from the nearside highway boundary and 1 in 10 thereafter.

Reason: In the interests of highway safety.

17. Unless the local planning authority has previously agreed to an alternative timetable no development shall commence until a scheme for the disposal of highway surface water has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details and retained accordingly thereafter.

Reason: Approval of a scheme at a later stage would not be sufficient to regulate surface water runoff from the site from the commencement of the development therefore putting highway safety in jeopardy.

18. No dwellings shall be occupied until details of the proposed arrangements for future management and maintenance of the proposed streets within the development have been submitted to and approved by the Local Planning Authority. The streets shall thereafter be maintained in accordance with the approved management and maintenance details until such time as an agreement has been entered into under Section 38 of the Highways Act 1980 or a private management and maintenance company has been established.

Reason: In the interests of highway safety.

19. The landscaping details required pursuant to Condition 2 above shall accord with the Landscape Strategy set out in section 5 of the Design and Access Statement.

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

20. 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.

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

Reason: A later period for compliance would see the construction period all or partly missed thus defeating the object. The condition is necessary to protect the amenities of nearby residents from the start.

22. No site clearance works or development shall take place until there has been submitted to the Local Planning Authority for its written approval a scheme showing the type, height and position of protective fencing to be erected around each tree or hedgerow to be retained. The scheme shall comply with BS 5837:2012. No site clearance works or development shall be commenced in the vicinity of the protected tree or hedgerow until such a scheme is approved in writing by the Local Planning Authority and thereafter the development hereby permitted shall only be carried out in accordance with the approved scheme. The area surrounding each tree or hedgerow within the protective fencing shall remain undisturbed during the course of the works, and in particular in these areas:

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

Reason: A later period for compliance would risk damage to trees and hedgerows in the initial stages of construction which could jeopardise the appearance of the area and biodiversity.

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

Reason: Control is necessary to encompass the earliest construction phases in the interests of pollution control.

24. The development shall be implemented in accordance with the recommendations of the submitted Coal Mining Risk Assessment, in particular with regard to intrusive site investigation works (which shall be undertaken prior to the commencement of any other development) and any resultant remedial works identified by the site investigation shall be undertaken prior to development of the affected part(s) of the site.

Reason: To ensure the stability and safety of the development, having regard to the Coal Mining Risk Assessment undertaken.

25. A. No development shall take place, until a Written Scheme of Investigation for archaeological work has been submitted to and approved by the Local Planning Authority in writing, and until any pre-start element of the approved scheme has been completed to the written satisfaction of the Local Planning Authority. The scheme shall include an assessment of significance and research questions; and

- 1. The programme and methodology of site investigation and recording.
- 2. The programme for post investigation assessment.
- 3. Provision to be made for analysis of the site investigation and recording.

4. Provision to be made for publication and dissemination of the analysis and records of the site investigation.
5. Provision to be made for archive deposition of the analysis and records of the site investigation.
6. Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.

B. No development shall take place other than in accordance with the archaeological Written Scheme of Investigation approved under 'A' above.

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

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

26. Notwithstanding any details submitted or the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended), no dwelling shall be occupied until there has been submitted to and approved in writing by the Local Planning Authority plans indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed in accordance with the approved details before the development is occupied or in accordance with a timetable which shall first have been agreed in writing with the Local Planning Authority.

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

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

Reason: In the interests of the appearance of the area and to enhance legibility of the street layout. A later compliance point in time could see some of the works constructed too late for control.

28. 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 levels.

Reason: To protect the amenities of adjoining properties and the locality generally. A later compliance point in time would be too late to achieve control of levels which are set out from initial site preparation.

29. Before development begins a landscape and ecological management plan (LEMP) for all retained and created habitats shall be submitted to, and be approved in writing by, the local planning authority as part of any reserved matters application. The content of the LEMP shall include the following.
  - a) Description and evaluation of features to be managed / created.
  - b) Ecological trends and constraints on site that might influence management.

- c) Aims and objectives of management.
- d) Appropriate management options for achieving aims and objectives.
- e) Prescriptions for management actions.
- f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period).
- g) Details of the body or organization responsible for implementation of the plan.
- h) Ongoing monitoring and remedial measures.

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

The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme.

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

Reason: To ensure that ecological interests are protected and enhanced from the start in accordance with paragraph 118 of the National Planning Policy Framework.

#### Informatives:

a) The Highway Authority recommends that the first 5m of the proposed access driveways should not be surfaced with a loose material (i.e. unbound chippings or gravel etc.). In the event that loose material is transferred to the highway and is regarded as a hazard or nuisance to highway users the Authority reserves the right to take any necessary action against the landowner.

b) Pursuant to Section 163 of the Highways Act 1980, where the site curtilage slopes down towards the public highway/new estate 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 gully laid across the access immediately behind the back edge of the highway, discharging to a drain or soakaway within the site.

c) 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 Environmental Services Department at County Hall, Matlock.

d) Car parking provision should be made on the basis of 1.5no., 2no. or 3no. parking spaces per 1, 2/3 or 4/4+ bedroom dwelling respectively. Each parking bay should measure 2.4m x 4.8m (larger in the case of spaces for use by disabled drivers) with adequate space behind each space for manoeuvring.

e) Under the provisions of the New Roads and Street Works Act 1991 and the Traffic Management Act 2004, all works that involve breaking up, resurfacing and/or reducing the width of the carriageway require a notice to be submitted to Derbyshire County Council for Highway, Developer and Street Works. Works that involve road closures and/or are for duration of more than 11 days require a three months notice. Developer's Works will generally require a three months notice. Developers and Utilities (for associated services) should prepare programmes for all works that are required for the development by all parties such that these can be approved through the coordination, noticing and licensing processes. This will require utilities and developers to work to agreed programmes and booked slots for each part of the works. Developers considering all scales of development are advised to enter into dialogue with Derbyshire County Council's Highway Noticing Section at the earliest stage possible and this includes prior to final planning consents.

f) Pursuant to Section 278 of the Highways Act 1980, no works may commence within the limits of the public highway without the formal written Agreement of the County Council as Highway Authority. Advice regarding the technical, legal, administrative and financial processes involved in Section 278 Agreements may be obtained from the Department of Economy

Transport and Environment at County Hall, Matlock DE4 3AG. The applicant is advised to allow at least 12 weeks in any programme of works to obtain a Section 278 Agreement.

The applicant is advised to seriously consider the installation of a sprinkler system to reduce the risk of danger from fire to future occupants and property.

Where development is proposed over areas of coal and past coal workings at shallow depth, The Coal Authority is of the opinion that applicants should consider wherever possible removing the remnant shallow coal. This will enable the land to be stabilised and treated by a more sustainable method; rather than by attempting to grout fill any voids and consequently unnecessarily sterilising the nation's asset.

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

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

For further assistance in complying with planning conditions and other legal requirements applicants should consult ""Developing Land within Derbyshire - Guidance on submitting applications for land that may be contaminated"". This document has been produced by local authorities in Derbyshire to assist developers, and is available from [http://www.south-derbys.gov.uk/business/pollution/contaminated\\_land/default.asp](http://www.south-derbys.gov.uk/business/pollution/contaminated_land/default.asp)

Reports in electronic formats are preferred, ideally on a CD. For the individual report phases, the administration of this application may be expedited if a digital copy of these reports is also submitted to the pollution control officer (contaminated land) in the environmental health department: [pollution.control@south-derbys.gov.uk](mailto:pollution.control@south-derbys.gov.uk).

The application has been screened in accordance with the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 and the Authority is satisfied that the development will not give rise to significant environmental effects.

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 application site may contain nesting birds. It is an offence under the Wildlife and Countryside Act 1981 to intentionally kill, injure or take any wild British breeding bird or its eggs or damage its nest whilst in use or being built. The nesting season normally encompasses the months March to July inclusive. If you are in doubt as to requirements of the law in this regard you should contact English Nature, Peak District and Derbyshire Team, Manor Barn, Over Haddon, Bakewell, Derbyshire, DE4 1JE.

Severn Trent Water advises that there is a public sewer located within the application site. Public sewers have statutory protection by virtue of the Water Industry Act 1991 as amended by the Water Act 2003 and you may not build close to, directly over or divert a public sewer without consent. You are advised to contact Severn Trent Water to discuss your proposals. Severn Trent Water will seek to assist you in obtaining a solution which protects both the public sewer and the proposed development.

The water body adjacent to the proposed development is not meeting "Good" Water Framework Directive (WFD) status. The development should not lead to any further deterioration in the WFD status of this water body.

All precaution must be taken to avoid discharges and spills to ground both during and after construction. There should be no polluting emissions to air, land or water resulting from actions by the developer or by its sub-contractors. Pollution prevention guidance is available on our website:

<https://www.gov.uk/government/collections/pollution-prevention-guidance-pp>.

During the period of construction, oil and fuel storage will be subject to the Control of Pollution (Oil Storage) (England) Regulations 2001. The Regulations apply to the storage of oil or fuel of any kind in any kind of container which is being used and stored above ground, including drums and mobile bowsters, situated outside a building and with a storage capacity which exceeds 200 litres. A person with custody or control of any oil or fuel breaching the Regulations will be guilty of a criminal offence. The penalties are a maximum fine of £5000 in Magistrates' Court or an unlimited fine in Crown Court. Further details of the Regulations are available from the Environment Agency.

Surface water run-off should be controlled as near to its source as possible through a sustainable drainage approach to surface water management (SuDS). SuDS are an approach to managing surface water run-off which seeks to mimic natural drainage systems and retain water on or near the site as opposed to traditional drainage approaches which involve piping water off site as quickly as possible. SuDS involve a range of techniques including soakaways, infiltration trenches, permeable pavements, grassed swales, green roofs, ponds and wetlands. SuDS offer significant advantages over conventional piped drainage systems in reducing flood risk by attenuating the rate and quantity of surface water run-off from a site, promoting groundwater recharge absorbing diffuse pollutants and improving water quality. Ponds, reed beds and seasonally flooded grasslands can be particularly attractive features within public open spaces. We encourage the use of above ground SuDS as these provide greater water quality benefits.

The variety of SuDS techniques available means that virtually any development should be able



to include a scheme based around these principles and provide multiple benefits, reducing costs and maintenance needs.

It is recommended that the installation of fittings that will minimise water usage such as low, or dual, flush WC's, spray taps and economical shower-heads in the bathroom are installed. Power showers are not recommended as they can consume more water than an average bath. Water efficient versions of appliances such as washing machines and dishwashers are also recommended. For outdoors consider installing a water butt, or even a rainwater harvesting system, to provide a natural supply of water for gardens. Simple treatment systems exist that allow rainwater to be used to supply WC's within the home. Following the above recommendations will significantly reduce water consumption and associated costs when compared to traditional installations. Rainwater harvesting utilises a free supply of fresh water and reduces the cost to the environment and the householder.

Further to Condition 21 you are advised to consider the document 'Guidance on the assessment of dust from demolition and construction' from the Institute of Air Quality Management for advice on how such an assessment should be performed.

Further to Condition 25 advice on the production of the WSI can be obtained from the County Council's Development Control Archaeologist Steve.Baker@derbyshire.gov.uk Tel 01629 539773

In dealing with this application, the Local Planning Authority has worked with the applicant in a positive and proactive manner through seeking to resolve planning objections and issues and suggesting amendments to improve the quality of the proposal. As such it is considered that the Local Planning Authority has implemented the requirement set out in paragraphs 186 and 187 of the National Planning Policy Framework.

The site is located on carboniferous coal measures strata which are designated a 'Secondary (A) Aquifer' by the Environment Agency. Tributaries of Stanton Brook are located 110 metres to the south east and 130 metres to the north west of the site.

The information submitted identifies that the site has not been subject to any previous significant development and consequently we have no requirement for any further investigation into the presence of contamination.

It should be noted that in accordance with Government Policy detailed in the National Planning Policy Framework (paragraph 120), 'where a site is affected by contamination or land stability issues, responsibility for securing a safe development rests with the developer and/or landowner'. Therefore, should any significant contamination, not assessed by virtue of this report/project, subsequently become apparent responsibility remains with these parties.

Given the industrial activities (mining and land filling) which have historically taken place in the surrounding area we recommend Condition 5 to ensure that any unsuspected contamination encountered during development is dealt with appropriately (i.e. such that any risk to 'controlled waters' receptors are addressed).

The reserved matters application should be based on the indicative layout in respect of the design concepts, linkages, buffers and public open space as they have been negotiated with a view to achieving a sufficient Building for Life Score.

**Item**                    **1.2**

**Reg. No.**            **9/2014/0887/OS**

**Applicant:**  
**Mr Stuart Ashton**  
**AMP Technology Centre Harworth Estates**  
**Brunel Way**  
**Waverley**  
**S60 5WG**

**Agent:**  
**Mr Steve Lewis-Roberts**  
**Pegasus Planning Group**  
**4 The Courtyard**  
**Church Street**  
**Lockington**  
**Derbyshire**  
**DE74 2SL**

**Proposal:**            **OUTLINE APPLICATION (ALL MATTERS EXCEPT FOR ACCESS TO BE RESERVED) FOR UP TO 110 DWELLINGS, TOGETHER WITH ASSOCIATED HIGHWAY WORKS, PUBLIC OPEN SPACE, LANDSCAPING, ASSOCIATED DRAINAGE INFRASTRUCTURE AND CREATION OF PEDESTRIAN AND CYCLE WAYS ON LAND AT SK2719 2370 (SITE B) WOODLAND ROAD STANTON SWADLINCOTE**

**Ward:**                **NEWHALL & STANTON**

**Valid Date:**        **01/10/2014**

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

This major application is brought before the Committee as it is a major application, contrary to the Development Plan, where more than two objections have been received. Members will recall this case (as one of three related cases around the Tetron Point development) being deferred at the last Committee at the request of the Planning Services Manager to allow further research into possible contributions to other parts of the urban highway network to mitigate the impact of these developments.

#### **Site Description**

This 3.34 hectare site is rectangular in shape and has frontages onto both Park Road and Woodland Road. The land is in agricultural use and Hall Fields Farm and associated agricultural buildings are located on the south eastern part of the site. To the south and north of the site residential areas form linear or ribbon development along the A444 and Park Road. The Gate Public House bounds the site to the south east and the golf course development is to the east.

#### **Proposal**

Outline planning permission is sought including access for residential development of up to 110 dwellings. The application is part of an overall masterplan which includes two other parcels of land adjacent to the golf course to the north east and east (application refs 9/2014/0886 & 0888). The indicative masterplan shows access off Burton Road (A444) approximately 105m from the south eastern boundary with the Gate Inn, utilising the existing farm access. Existing



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hedging would be retained on the A444 with properties set 8-10m from the road frontage. A 5m wide landscaping buffer is proposed to the rear of existing properties on Burton Road and along the Park Road frontage, with a 10m wide buffer adjacent to the golf course to the east. Proposed dwellings would be 8-10m from the Park Road frontage and approximately 25m from the existing dwellings opposite.

The access would be tree lined and would link to a central feature square, enclosed by landmark buildings and with a small estate road to the south east and larger estate road to the north west to serve the largest part of the development. Dwellings are proposed adjacent to the boundaries with existing properties. A rectangular LEAP (equipped play area) is proposed in the north western part of the site which would be 20m from the boundary with the cattery on Burton Road. Since the last committee, this has been upgraded at the request of officers. A cycle link through this part of the site from the A444 around the edge of the golf course and along Park Road to link with the Sustrans route further up Park Road near Site A is proposed. Dwellings would face the internal access roads and feature squares and landmark buildings are proposed to improve legibility.

### **Applicants' supporting information**

The Planning Statement states that the application should be considered in the context of the site wide masterplan that provides the framework for the wider development proposals at Cadley Park. Policy H2 of the South Derbyshire Pre-Submission Local Plan allocates three housing parcels on land at Cadley Park for residential development of around 600 dwellings. It describes the site and the proposals and summarises the relevant national and local planning policy. The document states that the scale of the development proposals and their location is entirely consistent with Draft Policy H2 as the application makes provision for up to 570 new homes, in three development parcels. The Masterplan which accompanies all three planning applications demonstrates that the sites have been considered holistically with other development and open space enhancement opportunities. A mix of house types will be provided across the three development sites, which complement each other. New pedestrian and cycle links are proposed within the site which will connect to existing networks. The proposals incorporate more than 22.31 hectares of new public open space and National Forest Planting, across the Cadley Park development area, and a LEAP is located within the application site. This green infrastructure significantly exceeds the National Forest requirements. Summaries of the conclusions of all supporting documents are included. It concludes that the development accords with the South Derbyshire Local Plan where it is consistent with the NPPF. The proposal constitutes sustainable development and delivers a wide range of economic, social and environmental benefits. The proposal also complies with the site specific requirements in emerging Local Plan Core Strategy Part 1 - Policy H2 and will help meet the Council's current housing land supply shortfall.

Design and Access Statement describes the proposal within the context of the masterplan, the history of the site and assesses the site in terms of landscape context, visual impact, and character of surrounding areas. The character assessment areas identified were Swadlincote town centre, the A444 corridor, Newhall and the new housing at Castle Gresley. An assessment of services has been undertaken and routes of movement and assessment of the planning policy context. The public consultation exercise is summarised and the evaluation of the design and layout is outlined in a series of diagrams with descriptions. The street hierarchy, pedestrian and cycle routes and open space are discussed together with the scale of buildings and keynote buildings. Landscaping buffers are proposed adjacent to existing dwellings, the road frontages and the golf course to the east. The scheme is assessed against the Building for Life criteria and the majority of criteria scored green with oranges where the information is not available due to the application being outline.

Consultation Statement outlines the methods used to consult the public on the proposal. A website was set up which included the indicative masterplan, information leaflet and comments

form. The public exhibition was held on 7th July 2014 from 4:00pm until 8:00pm at The Old Post Centre, High Street, Newhall. 3,000 leaflets were delivered to homes and businesses in Swadlincote in the week commencing 23<sup>rd</sup> June 2014 to advertise this event, together with posters in the vicinity and an article in the Burton Mail. 151 responses were received from local residents and they related to lack of capacity of local facilities such as schools and doctor's surgeries, traffic implications, loss of green space, lack of adequate landscaping buffers adjacent to existing properties and subsidence and drainage concerns.

The Arboricultural Report states the positions of the trees on site were generally restricted to the field boundaries with the exception of the eastern portion where many self-set groups had formed within the outgrown boundaries. A total of eleven individual trees, thirteen groups of trees and one hedgerow were surveyed as part of the arboricultural assessment. To facilitate the proposals, several groups of trees and hedgerows will require removal, all of which were considered to be category C, of low arboricultural and landscape value. The removal of these trees would not remove or drastically reduce the overall amenity value which they currently provide. Suitable mitigation could be secured within the proposals for their replacement.

The Flood Risk Assessment states the site is located entirely within Flood Zone 1. The annual probability of flooding from fluvial sources is, therefore, less than 1 in 1000 years (i.e. < 0.1%). Surface water runoff will be managed in a sustainable manner to ensure that flood risk is not increased downstream of the site. The wider site drainage system within the golf course to the east of the site will be utilised under the proposals. Attenuation will be provided in existing surface water features such as the existing pond and watercourse to the east of the site, within the golf course area.

Site Investigation Study and Coal Mining Risk Assessment concludes that the risk of significant contamination, pollution or other environmental issues affecting the site, or the site affecting the surrounding area, is considered to be low to moderate.

From examination of geological and hydrogeological data, the risks to groundwater and surface water are considered to be low to moderate. The report gives recommendations for what should be included in the detailed physical site investigation.

Phase 1 Habitat Survey and Ecological Assessment specifies the site as semi-improved grassland. Surveys have been undertaken in relation to breeding birds, winter birds, badgers, bats and reptiles.

Landscape and Visual Assessment sets the site in context with the surrounding landscape. Nationally the site is defined; as National Character Area 71: Leicestershire and South Derbyshire Coalfield<sup>5</sup>, regionally as Settled Coalfield Farmlands RLCT and locally as Coalfield Village Farmlands Landscape Character Type (LCT). Viewpoints are assessed and the report concludes that the scale and form of proposed development is likely to result in only limited harm at a localised level and potential landscape and visual effects are not likely to be significant. Furthermore the extensive proposals for green infrastructure and landscaping will deliver a number of enhancements in terms of the physical landscape and landscape character. As such the proposed development is acceptable in landscape and visual terms.

Archaeological Desk Based Assessment states that Abandonment Plans obtained from the Coal Authority demonstrated that the site was excavated during opencast mining in the late 20th Century. No archaeological remains will survive in this region.

Noise Report concludes that mitigation measures such as orientation of dwellings and thermal double glazing would ensure noise levels are within acceptable levels. This should be detailed at reserved matters stage.

Transport Assessment states that development would be within walking distance of many employment destinations and local facilities in Newhall. The town centre would be within walking distance via the new footpaths that would be provided through the masterplan area. The National Cycle Network route 63 provides an excellent route to the north to Burton upon Trent and the gap in that route as it passes through Swadlincote would be plugged by the cycle infrastructure proposed by the development. The development would create a demand for an additional 7 pedestrian journeys and 2 cycle journeys during an average peak hour. The existing infrastructure, enhanced by the proposed provisions, would adequately accommodate the increase in demand created by the proposed development.

Two bus services are within easy walking distance, with stops on Woodland Road and Park Road and existing bus services would adequately cater for the proposed development without alteration. The proposed development would be accessed from the A444 Woodland Road at the same location as the existing Hallfields Road access. The junction would be a ghost island T-junction, designed to standard. To the south of the proposed site access, development traffic will route through the A444 Burton Road/Cadley Hill Road roundabout. The assessment concludes that the local highway network is able to accommodate the proposed development without adverse impact and without the need for improvements. Nevertheless, a Travel Plan accompanies the planning application, and its measures are aimed at reducing single occupancy car travel, which will provide a benefit to the local highway network and mitigate the small increases in traffic arising from the development proposal.

Air Quality Assessment states that a construction phase assessment has been undertaken to determine the risk and significance of dust effects from earthworks, construction and trackout from the proposed development. The report concludes that dust and road traffic emissions can be adequately controlled through mitigation measures and at operation impacts would not be significant.

Geophysical Survey Report concludes that the underlying geology across the area provided a reasonable magnetic contrast for the detection of infilled features. The majority of anomalies detected could be attributed to a modern or recent origin. The only potential features of archaeological significance were the discoveries of possible ridge and furrow ploughing and a single possible ditch.

Bat Activity Survey Report confirmed that bats forage in specific locations on site associated with hedgerows and woodland edge habitats and also that no evidence was found of roosting bats. Recommendations to minimise the potential disturbance of bats and ensure landscape connectivity would be to retain and or incorporate hedgerows into the proposed scheme. Additionally, a sensitive lighting strategy should be implemented to reduce potential impacts on bat foraging behaviour.

## **Planning History**

None

## **Responses to Consultations**

Natural England has no objection as the proposal is unlikely to affect any statutorily protected sites or landscapes.

The County Archaeologist states that the geophysics results for site have indicated the potential for a small number of possible archaeological features and thus recommends a condition requiring a written scheme of investigation for archaeological work.

The County Rights of Way advise that Swadlincote Footpath No 46 crosses the site and includes advice to the applicant in terms of the footpath remaining open and available for public use.

The Coal Authority has no objection subject to a site investigation condition which would identify mine entries and shallow mine workings.

The County Council Flood Risk Team promotes Sustainable Urban Drainage Systems (SuDS) to be incorporated within the design of a drainage strategy for any proposed development.

The Police Crime Prevention Design Advisor has general comments that should be considered prior to a reserved matters application being submitted which relate to natural surveillance of open space, parking areas and security of routes and private garden areas.

The County Highways Authority have reviewed the Travel Plan and made comments in terms of Rights of Way and public transport linkages and make recommendations for further surveys and monitoring.

Derbyshire County Council's Developer Contributions Officer states that the following contributions are required:-

- £16,307.70 (£28.61 per dwelling x 570 dwellings) towards additional waste management capacity (£3147.1 for Site B);
- Access to high speed broadband services for future residents (in conjunction with service providers);
  - £250,788.22 towards the provision of 22 primary school places at Stanton Primary School for Application 9/2014/0887
  - £274,818.72 towards the provision of 16 secondary school places at The William Allitt School for Application 9/2014/0887; and
- New homes designed to Lifetime Homes standards.

The Environmental Health Officer has no objection subject to controls on noise and dust by condition.

Derbyshire Wildlife Trust considers the ecological assessment to be of a sufficient standard and the proposal would result in the loss of semi-improved neutral grassland of low nature conservation value and loss of some breeding habitat for birds. The proposal should incorporate hedgerows and some scrub land to provide habitat and a Landscape and Ecology Management Plan should be submitted a reserved matters stage.

The Peak and Northern Footpath Association state that *the proposed cycle links should be provided to a width of at least 3 metres and dedicated as public rights of way (or adopted). The route of Footpath 46 through the site must run through a wide landscaped strip segregated from vehicular traffic.*

*The Environment Agency has no objection subject to conditions relating to a Surface Water Drainage system and contaminated land.*

*Severn Trent Water has no objection subject to a drainage condition and an informative regarding a public sewer within the application site.*

*The Council's Contaminated Land Officer recommends a phased contamination condition.*

*The National Forest Company* states that the open space typology plan submitted shows how 10ha of National Forest planting will be incorporated in Site C to address the National Forest Planting requirement for the three applications. Conditions are requested that require the reserved matters submissions to be in accordance with the Landscape Strategy Plans within the Design and Access Statements. These show suitable amounts of tree planting for the open space to be considered as National Forest planting. In particular the design of the Urban Park in Site C will need to be designed around a woodland concept. They consider that significant amounts of feature tree planting should be incorporated within the built form to replicate the strong emphasis on tree planting within the adjoining residential development.

The Council's Tree Officer has assessed the Arboricultural Assessment and considered it acceptable and recommends a condition regarding new tree planting.

### **Responses to Publicity**

Four letters of objection have been received and they are summarised as follows:-

- a) The site has very poor access.
- b) The site has drainage problems in winter.
- c) The tenants of Hallfield Farm have been there for 14 years and oppose the scheme as they need the land for grazing.
- d) The site is honeycombed with mineshafts and Harworth Estates and UK Coal are aware of this.
- e) The owners of the cattery adjacent to the north western boundary are concerned regarding the impact on their business due to construction noise and noise from future occupiers and if approved would require assurances that there would be buffer planting and dwellings kept as far from the premises as possible
- f) The bungalow to the rear of 10 Park Road made an agreement with the County Council for a visibility splay that requires protection.

### **Development Plan Policies**

The relevant policies are:

Local Plan: The relevant policies are:

Local Plan Saved Housing Policies 4 and 11, Environment Policies 7, 9, 10, 11 & 14 Transport Policies 6, 7 & 8, Recreation and Tourism Policy 4 and Community Facilities Policy 1

Emerging Local Plan

Policy S2 : Presumption in Favour of Sustainable Development

Policy S4 : Housing Need

Policy S6: Sustainable Access

Policy H1 : Settlement Hierarchy

Policy H2 : Land North of William Nadin Way, Swadlincote

Policy SD1: Amenity and Environmental Quality

Policy SD2: Flood Risk

Policy SD3 : Delivering Sustainable Water Supply, Drainage and Sewerage

Policy SD4 : Contaminated Land and Mining Legacy issues

Policy BNE1: Design Excellence

Policy BNE3: Biodiversity

Policy BNE4: Landscape Character and Local Distinctiveness

Policy INF1: Infrastructure and Developer Contributions

Policy INF8: The National Forest

Policy INF9: Open Space, Sport and Recreation



## National Guidance

National Planning Policy Framework (NPPF), in particular:

Paras 6-10 (Achieving sustainable development)  
Paras 11-14 (The presumption in favour of sustainable development)  
Para 17 (Core principles)  
Chapter 1 (Economy)  
Chapter 4 (Promoting sustainable transport)  
Chapter 6 (Housing)  
Chapter 7 (Requiring good design)  
Chapter 10 (Meeting the challenge of climate change, flooding etc.)  
Chapter 11 (Conserving and enhancing the natural environment)  
Chapter 12 (Heritage)  
Paras 186 & 187 (Decision-taking)  
Para 193 (Local planning authorities should only request supporting information that is relevant, necessary and material to the application in question.)  
Para 196 & 197 (Determining applications)  
Paras 203-206 (Planning conditions and obligations)  
Annex 1 (Implementation)

National Planning Practice Guidance (NPPG) 2a, 3, 8, 10, 23b, 26, 33, 37, 42, 45

## Local Guidance

Housing Design and Layout, Trees on Development Sites, Developer Contributions, Better Design for South Derbyshire.

## Planning Considerations

- The main issues central to the determination of this application are:
- Principle of Development
- Residential Amenity
- Design and Building for Life
- Highways and Transport
- Viability and S106
- Other Matters

## Planning Assessment

### Principle of Development

The proposal for 110 dwellings on this site is part of a framework for the wider development proposals at Cadley Park. Policy H2 of the South Derbyshire Pre-Submission Local Plan allocates three housing parcels on land at Cadley Park for residential development of around 600 dwellings. The adopted Local Plan allocates the site as open land in Swadlincote under Environment Policy 7. This policy states that '*open land which makes a valuable contribution to the character and environmental quality of Swadlincote will be safeguarded from development*'. This parcel of land in the western corner of the masterplan area is relatively small in comparison with the land retained for the golf course. To the west it adjoins the existing ribbon development of dwellings along the A444 and to the north on Park Road with the golf course land adjoining the site to the east.

At the national level, Paragraph 47 of the NPPF seeks to boost significantly the supply of housing providing a considerable emphasis on bringing forward high levels of housing provision as soon as possible. Paragraph 49 states that '*housing applications should be considered in the*

*context of the presumption in favour of sustainable development'*. The site is within the main urban area of Swadlincote and is thus a highly sustainable location for further residential development.

The site is within walking distance of local services, facilities and employment, therefore the site would be considered to be a sustainable location for development whereby there would not be a reliance on the car. Pedestrian and cycle routes would be improved as part of the masterplan area. The development is close to a principal road network and the access would be directly off Burton Road (A444) utilising the existing farm access.

The site specific policy in the Pre-Submission Local Plan H2 policy states that:-

*A Residential development on Land north of William Nadin Way, Swadlincote for around 600 dwellings.*

*B The Council will require the below listed site specifics and accordance with other Local Plan policies:*

- 1. Consider the site holistically with other development and open space enhancement opportunities;*
- 2. A mix of dwelling types shall be provided across the three parcels of land which complement each other;*
- 3. The provision of recreational and community facilities;*
- 4. The presence of Coal Mining Legacy and resulting potential for unstable land will require the submission of a Coal Mining Risk Assessment in support of planning applications;*
- 5. An appropriate buffer in agreement with the Council to be placed around the Breach Ley Farm Meadow County Wildlife Site;*
- 6. An appropriate easement along the watercourses on the site free of built development*
- 7. Provide high quality cycle and pedestrian links both within the development and connecting to existing and proposed networks, including NCN63 Burton to Leicester route.*

Although this application falls to be considered on its own merits regard has been paid to the other two sites shown on the overall masterplan, as there are new pedestrian and cycle routes proposed between them. The open space provision both includes an area within the site together with links to the golf course and the larger site to the east (Site C) which proposes an urban park, improvements to existing sports pitches and retention of a local wildlife site. The mix of dwellings would be agreed at reserved matters stage, however, the affordable housing element would be part of the Section 106 agreement.

Policy E7 of the local plan does not represent a constraint to development as the site's contribution to the character and environmental quality of Swadlincote is limited. The NPPF has a strong presumption in favour of sustainable development and an emphasis of bringing forward high levels of housing quickly. This site qualifies as a sustainable location which could rapidly contribute to the 5 year supply.

In principle, therefore, the development represents sustainable development.

### Residential Amenity

The nearest existing residential properties are in the north western corner of the site on Burton Road and to the north over Park Road. The proposal is capable of meeting or exceeding the minimum separation distances set out in supplementary planning guidance. Dwellings would be set 10m back from the road frontages behind 5m wide buffer planting on Park Road and existing hedging on Burton Road. In relation to the cattery on the north western boundary an

estate road would separate proposed dwellings from the boundary where the cats are housed. The nearest dwelling to the residential part of the cattery would likely be some 35m.

As such the development is capable of providing for reasonable amenities in terms of light, air and privacy for both existing and new dwellings; safe, functional and convenient layouts; private amenity space, and space for landscaping in accordance with Local Plan Saved Housing Policy 11 and NPPF paragraph 17.

### Design and Building for Life

As this is an outline application it is not possible to apply a definitive Building for Life score in accordance with 'Better Design for South Derbyshire'. However, because of its proximity to the town's facilities it is clear that the site scores well in terms of connections, facilities and services, public transport and meeting local housing requirements. The Design and Access Statement (DAS) indicates that a development of locally distinctive character could be achieved, with well-defined streets and spaces.

The applicant controls open land adjacent to the site and the proposed development would provide substantial open space and recreation opportunities which could contribute to the health and well-being of communities. The DAS indicates that a safe and accessible environment could be created, along with legible pedestrian routes, all in accordance with the healthy communities aspirations of Chapter 8 of the NPPF and the requirements of Local Plan Saved Transport Policy 7 and Recreation and Tourism Policy 4. Further analysis of the open space provision for this particular site is set out below.

An avenue of street trees is proposed at the site entrance which leads to a large feature square of landmark buildings and smaller squares and a large central area of open space help to address legibility of the site. The importance of the view from the north east on Park Road is acknowledged by an angled landmark building. Linkages between the site and the surrounding area have been addressed through the provision of two new cycle routes which would link to Site A and the wider area. Bus stops have been indicated to identify how the site can be accessed by other means of transport.

At outline stage the scheme scores well on certain criteria and this is due to the series of feature squares and public realm trees, legible layout, connections to multiple adjacent paths and roads and a layout with the key streets, spaces and connections being overlooked by frontages. The scheme shows potential for achieving a score of 14.

For the foregoing reasons the proposal is capable of delivering a well-designed development in accordance with 'Better Design for South Derbyshire' and Chapter 7 of the NPPF.

### Highways and Transport

The Highway Authority has affirmed that it does not consider there is an evidence base to suggest that the development would have a significant adverse effect on capacity or safety of the local road network. It considers that there is no data that would support a reason for refusal of planning permission on the basis that the development would result in severe harm on the highway network, with reference to Paragraph 32 of the National Planning Policy Framework. Adequate parking and internal road layouts would be secured through the reserved matters application(s). As such the development would be in conformity with Local Plan Saved Transport Policy 6.

This site is one of three for which separate applications have been submitted by the same applicant. The sites are not directly connected, or have contiguous boundaries, but adjacent land, forming a golf course, is within the same applicant's control and therefore potentially provides opportunities for sustainable transport links between the sites and beyond. Links are

shown indicatively on the submitted Masterplan, along with a cycle path on Park Road. Further discussions would be required regarding mechanisms for securing provision of these links. It would appear, in principle, that this infrastructure could be achieved either by a combination of conditions or S106 obligation, requiring schemes to be submitted for the design and implementation, including phasing, of the sustainable transport links, together with proposals for subsequent management and maintenance.

### Viability and S106

For this application the County Council requests a financial contribution of £250,778.22 towards the provision of 22 primary school places to be delivered via the adaptation of a classroom, or if taken together with Application 9/2014/0886, via the creation of a new classroom (classroom Project A at Stanton Primary School); and a financial contribution of £274,818.72 towards the provision of 16 secondary school places via the adaptation of a classroom (classroom Project A at The William Allitt School).

The starting point for negotiation is 30% affordable housing split between rent 68.1% and shared ownership 31.9%. The breakdown of dwellings required would be for rent and shared ownership would be higher numbers of 2-3 bed properties. Affordable housing ideally should be 'pepper-potted' across the whole site where possible.

The calculation of the amount of open space provision on site has been made based on the Council's guidelines and 6,985m<sup>2</sup> would normally be required for 110 dwellings. The indicative layout shows 2,025 m<sup>2</sup> which includes a LEAP of 400m<sup>2</sup>. Therefore there is a deficient of 4960m<sup>2</sup>. However, over all three sites 36,195m<sup>2</sup> would be required and the proposed provision would be 138,800m<sup>2</sup> which amounts to a 73% over provision. Based on normal requirements, and in isolation from the other sites, contributions including land cost would amount to £67,650 for Recreation Open Space, £60,500 for Recreation Outdoor Facilities and £33,550 for Recreation Built Facilities. A LEAP (equipped play area) is proposed to include an enhanced provision in the form of extra equipment than is usually required.

The County Council has made non-specific request for contributions to greenways and rights of way. In the absence of specific and/or costed proposals any such provisions, as indicated on the masterplan, would need to be accommodated within the site or other land in the applicant's control. Otherwise such requests would not meet the relevant tests set out in the CIL Regulations.

There is ongoing discussion to establish the residual value of the development and thus the amount available for planning contributions. A verbal update will be provided to members at Committee.

### Other Issues

Mining legacy issues have been addressed in the submitted Coal Mining Risk Assessment and conditions requiring site investigation would secure any necessary remediation in accordance with paragraph 121 of the NPPF.

Ecological interests would be adequately safeguarded by condition, as recommended by Derbyshire Wildlife Trust and habitat enhancement secured, in accordance with paragraph 118 of the NPPF and Local Plan Saved Environment Policy 1.

The site is within Flood Zone 1 with an annual probability of flooding from fluvial sources being less than 1 in 1000 years (i.e. < 0.1%). The application provides sufficient evidence to demonstrate that the site is capable of being adequately drained and this would be secured through the recommended conditions the Environment Agency in accordance with NPPF Chapter 10.

Heritage interests would be safeguarded in accordance with Local Plan Saved Environment Policy 14 and NPPF Chapter 12, by way of condition as recommended by the Development Control Archaeologist.

### Conclusion

This application is one of the three sites that make up the strategic development in the locality in relation to Policy H2 of the Emerging Local Plan, which cumulatively could accommodate around 570 homes. Given the scale of the development it is likely that it could contribute to the early delivery of homes, helping the Council meet its requirement of a five year supply of deliverable housing. By reference to the NPPF's (Para 7) three sustainability dimensions (economic, social, environmental,):

- The provision of new housing would support economic growth, ensuring an attractive place to live for South Derbyshire's economically active population as well as helping to supporting the vitality and viability of Swadlincote. The development would also potentially provide a financial contribution to capacity at local primary schools. This is supported by the site's accessibility to Swadlincote and the surrounding areas, served by public transport. The site's proximity to the existing retail centres of Swadlincote and Newhall all help to further reduce people's need to travel by car. Measures secured by condition and Section 106 Agreement would ensure that local road infrastructure has the capacity to accommodate the scheme.
- The proposed scheme would have a significant positive impact on local communities by providing new homes (market and up to 30% affordable) for approximately 1,311 residents. In terms of healthy communities the illustrative masterplan includes extensive green infrastructure and open space in the form of an urban park and attractive routes along Darklands Brook. Pedestrian/cycle links would help to support active lifestyles and encourage alternatives to the car for accessing local facilities and employment opportunities. Developer contributions would also potentially be made towards education.
- The application explains how a range of environmental factors have been taken into account to ensure sustainable development (including landscape, ecology, air and noise pollution, archaeology, and water). Mitigation has been included within the scheme to ensure the conservation and enhancement of key features. The scheme also helps to mitigate future climate change through reducing CO<sup>2</sup> emissions by building new homes in a highly accessible location and reducing the need to travel by car. In terms of resilience to climate change impacts, the scheme has been designed to take this into account, namely through provision of a sustainable drainage strategy and extensive network of green infrastructure.

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**

- A.** That delegated authority be granted to the Planning Services Manager to negotiate the details of the provisions of the Section 106 agreement referred to in the planning assessment of the report (subject to viability testing by the District Valuer);

**Subject to A., GRANT** permission subject to the following conditions:

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

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

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

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

3. No development shall take place until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, has been submitted to and approved in writing by the local planning authority. The drainage strategy should demonstrate the surface water run-off generated up to and including the 100 critical storm will not exceed the run-off from the undeveloped site following the corresponding rainfall event. The scheme shall subsequently be implemented in accordance with the approved details before the development is completed.

The scheme shall include:

- Surface water drainage system/s to be designed in accordance with either the National SUDs Standards, or CIRIA C697 and C687, whichever are in force when the detailed design of the surface water drainage system is undertaken.
- Limiting the surface water run-off generated by all rainfall events up to the 100 year plus 30% (for climate change) critical rain storm so that it will not exceed the run-off from the undeveloped site and not increase the risk of flooding off-site.
- Provision of surface water run-off attenuation storage to accommodate the difference between the allowable discharge rate/s and all rainfall events up to the 100 year plus 30% (for climate change) critical rain storm.
- Detailed design (plans, cross, long sections and calculations) in support of any surface water drainage scheme, including details on any attenuation system, and the outfall arrangements.
- Details of how the on-site surface water drainage systems shall be maintained and managed after completion and for the lifetime of the development, to ensure long term operation to design parameters.

Reason: To prevent the increased risk of flooding, both on and off site.

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) If required by the conceptual site model 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 including any works of demolition until a construction management plan or construction method statement has been submitted to and been approved in writing by the Local Planning Authority. The approved plan/statement shall be adhered to throughout the construction period. The statement shall provide for:

- parking of vehicles of site operatives and visitors
- routes for construction traffic
- hours of operation
- pedestrian and cyclist protection
- proposed temporary traffic restrictions
- arrangements for turning vehicles

Reason: In the interests of highway safety.

7. No other development shall be commenced until a temporary access for construction purposes has been provided in accordance with a detailed design first submitted to and approved in writing by the Local Planning Authority. The access shall be retained in accordance with the approved scheme throughout the construction period, or such other period of time as may be agreed in writing by the Local Planning Authority, free from any impediment to its designated use.

Reason: It must be ensured that before any construction work commences that a safe construction access is formed in the interests of highway safety. As such, approval at a later date would be unenforceable.

8. Throughout the period of development vehicle wheel cleaning facilities shall be provided and retained within the site. All construction vehicles shall have their wheels cleaned before leaving the site in order to prevent the deposition of mud and other extraneous material on the public highway.

Reason: In the interests of highway safety.

9. The reserved matters application shall include design of the internal layout of the site in accordance with the guidance contained in the ""Manual for Streets"" document issued by the Departments for Transport and Communities and Local Government.

Reason: In the interests of highway safety.

10. Prior to the first occupation of any dwelling on the site a new street junction and associated works shall be implemented on Woodlands Road generally in accordance with Drawing No. ADC1041/002E but more specifically in accordance with detailed designs first submitted to and approved in writing by the Local Planning Authority. For the avoidance of doubt the developer will be required to enter into a 1980 Highways Act S278 Agreement with the Highway Authority in order to comply with the requirements of this condition.

Reason: In the interests of highway safety.

11. Prior to the occupation of each dwelling, the proposed new estate streets between that dwelling and the existing public highway shall be laid out in accordance with the scheme approved in accordance with Condition 9 above, or as subsequently revised and approved in writing by the Local Planning Authority, constructed to base level, drained and lighted in accordance with the County Council's specification for new housing development roads.

Reason: In the interests of highway safety.

12. No dwelling shall be occupied until space has been provided within the site for the parking and manoeuvring of residents and visitors vehicles associated with that dwelling, laid out in accordance with the scheme approved in accordance with Condition 9 above, or as subsequently revised and approved in writing by the Local Planning Authority. The facilities shall be retained throughout the life of the development free from any impediment to their designated use.

Reason: In the interests of highway safety.

13. The scheme to be submitted to and approved in writing by the Local Planning Authority pursuant to Condition 9 above shall provide for bin stores within private land at the highway end of private accesses, to prevent refuse bins and collection vehicles standing on the new estate street for longer than necessary causing an obstruction or inconvenience for other road users. The facilities shall be provided prior to the first occupation of the dwellings to which they relate and shall be retained free of any impediment to their designated use thereafter.

Reason: In the interests of highway safety.

14. Private driveways/parking spaces to the proposed access road, the subject of Condition 12 above, shall not be taken into use until pedestrian intervisibility splays, details of which shall be included in the reserved matters application(s), have been provided on either side of the accesses at the back of the footway/margin, the splay area being retained throughout the life of the development clear of any object greater than 0.6m in height relative to footway level.

Reason: In the interests of highway safety.



15. Unless as may otherwise be approved pursuant to the reserved matters, prior to the first use of the development hereby permitted, parking facilities shall be provided so as to accommodate, in the case of dwellings of four or more bedrooms three cars, in any other case two cars within the curtilage of each dwelling, or in any alternative location acceptable to the Local Planning Authority or as may otherwise be agreed in writing by the Local Planning Authority in accordance with its published standards. Thereafter three parking spaces (in the case of dwellings with four or more bedrooms) or two parking spaces (in any other case), each space measuring a minimum of 2.4m x 4.8m, shall be retained for that purpose within the curtilage of each dwelling unless as may otherwise be approved in writing by the Local Planning Authority.

Reason: To ensure that adequate parking/garaging provision is available.

16. Unless as otherwise agreed in writing with the Local Planning Authority the proposed access driveways/parking spaces to the public highway shall be no steeper than 1 in 14 for the first 5.0m from the nearside highway boundary and 1 in 10 thereafter.

Reason: In the interests of highway safety.

17. Unless the local planning authority has previously agreed to an alternative timetable no development shall commence until a scheme for the disposal of highway surface water has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details and retained accordingly thereafter.

Reason: Approval of a scheme at a later stage would not be sufficient to regulate surface water runoff from the site from the commencement of the development therefore putting highway safety in jeopardy.

18. No development shall be commenced until details of the proposed arrangements for future management and maintenance of the proposed streets within the development have been submitted to and approved by the Local Planning Authority. The streets shall thereafter be maintained in accordance with the approved management and maintenance details until such time as an agreement has been entered into under Section 38 of the Highways Act 1980 or a private management and maintenance company has been established.

Reason: In the interests of highway safety.

19. The landscaping details required pursuant to Condition 2 above shall accord with the Landscape Strategy set out in section 5 of the Design and Access Statement.

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

20. 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.

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

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

Reason: A later period for compliance would see the construction period all or partly missed thus defeating the object. The condition is necessary to protect the amenities of nearby residents from the start.

22. No site clearance works or development shall take place until there has been submitted to the Local Planning Authority for its written approval a scheme showing the type, height and position of protective fencing to be erected around each tree or hedgerow to be retained. The scheme shall comply with BS 5837:2012. No site clearance works or development shall be commenced in the vicinity of the protected tree or hedgerow until such a scheme is approved in writing by the Local Planning Authority and thereafter the development hereby permitted shall only be carried out in accordance with the approved scheme. The area surrounding each tree or hedgerow within the protective fencing shall remain undisturbed during the course of the works, and in particular in these areas:
- (i) There shall be no changes in ground levels;
  - (ii) No material or plant shall be stored;
  - (iii) No buildings or temporary buildings shall be erected or stationed;
  - (iv) No materials or waste shall be burnt within 20 metres of any retained tree or hedgerow; and
  - (v) No drain runs or other trenches shall be dug or otherwise created;
- without the prior written consent of the Local Planning Authority.

Reason: To ensure the protection of these features In the interests of the appearance of the area and biodiversity.

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

Reason: Control is necessary to encompass the earliest construction phases In the interests of pollution control.

24. The development shall be implemented in accordance with the recommendations of the submitted Coal Mining Risk Assessment, in particular with regard to intrusive site investigation works (which shall be undertaken prior to the commencement of any other development) and any resultant remedial works identified by the site investigation shall be undertaken prior to development of the affected part(s) of the site.

Reason: To ensure the stability and safety of the development, having regard to the Coal Mining Risk Assessment undertaken.

25. A. No development shall take place, until a Written Scheme of Investigation for archaeological work has been submitted to and approved by the Local Planning Authority in writing, and until any pre-start element of the approved scheme has been completed to the written satisfaction of the Local Planning Authority. The scheme shall include an assessment of significance and research questions; and
- 1. The programme and methodology of site investigation and recording.
  - 2. The programme for post investigation assessment.
  - 3. Provision to be made for analysis of the site investigation and recording.
  - 4. Provision to be made for publication and dissemination of the analysis and records of the site investigation.

5. Provision to be made for archive deposition of the analysis and records of the site investigation.
6. Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.

B. No development shall take place other than in accordance with the archaeological Written Scheme of Investigation approved under 'A' above.

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

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

26. Notwithstanding any details submitted or the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended), no development shall take place until there has been submitted to and approved in writing by the Local Planning Authority plans indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed in accordance with the approved details before the development is occupied or in accordance with a timetable which shall first have been agreed in writing with the Local Planning Authority.

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

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

Reason: In the interests of the appearance of the area and to enhance legibility of the street layout.

28. 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 levels.

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

29. Before development begins a landscape and ecological management plan (LEMP) for all retained and created habitats shall be submitted to, and be approved in writing by, the local planning authority as part of any reserved matters application. The content of the LEMP shall include the following.
  - a) Description and evaluation of features to be managed / created.
  - b) Ecological trends and constraints on site that might influence management.
  - c) Aims and objectives of management.
  - d) Appropriate management options for achieving aims and objectives.
  - e) Prescriptions for management actions.
  - f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period).

g) Details of the body or organization responsible for implementation of the plan.

h) Ongoing monitoring and remedial measures.

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

The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme.

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

Reason: To ensure that ecological interests are protected and enhanced in accordance with paragraph 118 of the National Planning Policy Framework.

30. The Approved Travel Plan shall be implemented in accordance with the timescales specified therein, to include those parts identified as being implemented prior to occupation and following occupation, unless alternative timescales are agreed in writing with the Local Planning Authority. The Approved Travel Plan shall be monitored and reviewed in accordance with the agreed Travel Plan targets. (Notwithstanding the submitted document it should be noted that [Paragraph 3.24] residents should be directed to <https://derbyshire.liftshare.com/> and [Paragraph 5.8] responsibility for production of the Travel Packs rests with the Travel Plan co-ordinator.)

Reason: To promote sustainable transport.

Informatives:

The Highway Authority recommends that

a) the first 5m of the proposed access driveways should not be surfaced with a loose material (i.e. unbound chippings or gravel etc.). In the event that loose material is transferred to the highway and is regarded as a hazard or nuisance to highway users the Authority reserves the right to take any necessary action against the landowner.

b) Pursuant to Section 163 of the Highways Act 1980, where the site curtilage slopes down towards the public highway/new estate 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 gully laid across the access immediately behind the back edge of the highway, discharging to a drain or soakaway within the site.

c) 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 Environmental Services Department at County Hall, Matlock.

d) Car parking provision should be made on the basis of 1.5no., 2no. or 3no. parking spaces per 1, 2/3 or 4/4+ bedroom dwelling respectively. Each parking bay should measure 2.4m x 4.8m (larger in the case of spaces for use by disabled drivers) with adequate space behind each space for manoeuvring.

e) Under the provisions of the New Roads and Street Works Act 1991 and the Traffic Management Act 2004, all works that involve breaking up, resurfacing and/or reducing the width of the carriageway require a notice to be submitted to Derbyshire County Council for Highway, Developer and Street Works. Works that involve road closures and/or are for duration of more than 11 days require a three months notice. Developer's Works will generally require a three months notice. Developers and Utilities (for associated services) should prepare programmes for all works that are required for the development by all parties such that these can be approved through the coordination, noticing and licensing processes. This will require utilities and developers to work to agreed programmes and booked slots for each part of the works. Developers considering all scales of development are advised to enter into dialogue with

Derbyshire County Council's Highway Noticing Section at the earliest stage possible and this includes prior to final planning consents.

f) Pursuant to Section 278 of the Highways Act 1980, no works may commence within the limits of the public highway without the formal written Agreement of the County Council as Highway Authority. Advice regarding the technical, legal, administrative and financial processes involved in Section 278 Agreements may be obtained from the Department of Economy Transport and Environment at County Hall, Matlock DE4 3AG. The applicant is advised to allow at least 12 weeks in any programme of works to obtain a Section 278 Agreement.

g) The application site is affected by a Public Right of Way (Footpath No. 46 on the Derbyshire Definitive Map). The route must remain unobstructed on the legal alignment at all times and the safety of the public using it must not be prejudiced either during or after development works take place. Further advice can be obtained by calling 01629 533190 and asking for the Rights of Way Duty Officer.

- o Please note that the granting of planning permission is not consent to divert or obstruct a public right of way.

- o If it is necessary to temporarily obstruct a right of way to undertake development works then a temporary closure is obtainable from the County Council. Please contact 01629 533190 for further information and an application form.

- o If a right of way is required to be permanently diverted then the Council that determines the planning application (The Planning Authority) has the necessary powers to make a diversion order.

- o Any development insofar as it will permanently affect a public right of way must not commence until a diversion order (obtainable from the planning authority) has been confirmed. A temporary closure of the public right of way to facilitate public safety during the works may then be granted by the County Council.

- o To avoid delays, where there is reasonable expectation that planning permission will be forthcoming, the proposals for any permanent stopping up or diversion of a public right of way can be considered concurrently with the application for the proposed development rather than await the granting of permission.

The applicant is advised to seriously consider the installation of a sprinkler system to reduce the risk of danger from fire to future occupants and property.

Where development is proposed over areas of coal and past coal workings at shallow depth, The Coal Authority is of the opinion that applicants should consider wherever possible removing the remnant shallow coal. This will enable the land to be stabilised and treated by a more sustainable method; rather than by attempting to grout fill any voids and consequently unnecessarily sterilising the nation's asset.

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

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

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

authorities in Derbyshire to assist developers, and is available from [http://www.south-derbys.gov.uk/business/pollution/contaminated\\_land/default.asp](http://www.south-derbys.gov.uk/business/pollution/contaminated_land/default.asp)

Reports in electronic formats are preferred, ideally on a CD. For the individual report phases, the administration of this application may be expedited if a digital copy of these reports is also submitted to the pollution control officer (contaminated land) in the environmental health department: [pollution.control@south-derbys.gov.uk](mailto:pollution.control@south-derbys.gov.uk).

The application has been screened in accordance with the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 and the Authority is satisfied that the development will not give rise to significant environmental effects.

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 application site may contain nesting birds. It is an offence under the Wildlife and Countryside Act 1981 to intentionally kill, injure or take any wild British breeding bird or its eggs or damage its nest whilst in use or being built. The nesting season normally encompasses the months March to July inclusive. If you are in doubt as to requirements of the law in this regard you should contact English Nature, Peak District and Derbyshire Team, Manor Barn, Over Haddon, Bakewell, Derbyshire, DE4 1JE.

Severn Trent Water advises that there is a public sewer located within the application site. Public sewers have statutory protection by virtue of the Water Industry Act 1991 as amended by the Water Act 2003 and you may not build close to, directly over or divert a public sewer without consent. You are advised to contact Severn Trent Water to discuss your proposals. Severn Trent Water will seek to assist you in obtaining a solution which protects both the public sewer and the proposed development.

The water body adjacent to the proposed development is not meeting "Good" Water Framework Directive (WFD) status. The development should not lead to any further deterioration in the WFD status of this water body.

All precaution must be taken to avoid discharges and spills to ground both during and after

construction. There should be no polluting emissions to air, land or water resulting from actions by the developer or by its sub-contractors. Pollution prevention guidance is available on our website:

<https://www.gov.uk/government/collections/pollution-prevention-guidance-pp>.

During the period of construction, oil and fuel storage will be subject to the Control of Pollution (Oil Storage) (England) Regulations 2001. The Regulations apply to the storage of oil or fuel of any kind in any kind of container which is being used and stored above ground, including drums and mobile bowsters, situated outside a building and with a storage capacity which exceeds 200 litres. A person with custody or control of any oil or fuel breaching the Regulations will be guilty of a criminal offence. The penalties are a maximum fine of £5000 in Magistrates' Court or an unlimited fine in Crown Court. Further details of the Regulations are available from the Environment Agency.

Surface water run-off should be controlled as near to its source as possible through a sustainable drainage approach to surface water management (SuDS). SuDS are an approach to managing surface water run-off which seeks to mimic natural drainage systems and retain water on or near the site as opposed to traditional drainage approaches which involve piping water off site as quickly as possible. SuDS involve a range of techniques including soakaways, infiltration trenches, permeable pavements, grassed swales, green roofs, ponds and wetlands. SuDS offer significant advantages over conventional piped drainage systems in reducing flood risk by attenuating the rate and quantity of surface water run-off from a site, promoting groundwater recharge absorbing diffuse pollutants and improving water quality. Ponds, reed beds and seasonally flooded grasslands can be particularly attractive features within public open spaces. We encourage the use of above ground SuDS as these provide greater water quality benefits.

The variety of SuDS techniques available means that virtually any development should be able to include a scheme based around these principles and provide multiple benefits, reducing costs and maintenance needs.

It is recommended that the installation of fittings that will minimise water usage such as low, or dual, flush WC's, spray taps and economical shower-heads in the bathroom are installed. Power showers are not recommended as they can consume more water than an average bath. Water efficient versions of appliances such as washing machines and dishwashers are also recommended. For outdoors consider installing a water butt, or even a rainwater harvesting system, to provide a natural supply of water for gardens. Simple treatment systems exist that allow rainwater to be used to supply WC's within the home. Following the above recommendations will significantly reduce water consumption and associated costs when compared to traditional installations. Rainwater harvesting utilises a free supply of fresh water and reduces the cost to the environment and the householder.

Further to Condition 21 you are advised to consider the document 'Guidance on the assessment of dust from demolition and construction' from the Institute of Air Quality Management for advice on how such an assessment should be performed.

Further to Condition 25 advice on the production of the WSI can be obtained from the County Council's Development Control Archaeologist [Steve.Baker@derbyshire.gov.uk](mailto:Steve.Baker@derbyshire.gov.uk) Tel 01629 539773

In dealing with this application, the Local Planning Authority has worked with the applicant in a positive and proactive manner through seeking to resolve planning objections and issues and suggesting amendments to improve the quality of the proposal. As such it is considered that the Local Planning Authority has implemented the requirement set out in paragraphs 186 and 187 of the National Planning Policy Framework.

The site is located on Triassic Sherwood Sandstone and Carboniferous Coal Measures strata which are designated as 'Principal' and 'Secondary (A) Aquifers' respectively by the Environment Agency. A tributary of Stanton Brook is located 75 metres to the south east of the site.

The information submitted identifies that the site has been used by a farm. No site walkover has been undertaken to determine the presence of any potential contamination, for example associated with slurry or septic tanks and / or bulk fuel or chemical storage. Furthermore areas of localised tipping have been identified. Consequently there is potential for contamination to have occurred which may currently be impacting 'controlled waters' receptors of the groundwater in the underlying Principal and Secondary Aquifers and the tributary of Stanton Brook. Furthermore there is potential for re-mobilisation of any contaminants during site development.

Government Policy, as detailed in the National Planning Policy Framework (paragraph 120), states that 'where a site is affected by contamination or land stability issues, responsibility for securing a safe development rests with the developer and/or landowner'. Therefore we recommend that the following planning conditions be attached to any planning permission granted to require the applicant to investigate the presence of contamination. The work undertaken to fulfil these (or any similar planning conditions that may be used) should focus on the potential impact on 'controlled waters' receptors.

The reserved matters application should be based on the indicative layout in respect of the design concepts, linkages, buffers and public open space as they have been negotiated with a view to achieving a sufficient Building for Life Score.



**Item**                    **1.3**

**Reg. No.**              **9/2014/0888/OM**

**Applicant:**  
**Mr Stuart Ashton**  
**AMP Technology Centre Harworth Estates**  
**Brunel Way**  
**Waverley**  
**S60 5WG**

**Agent:**  
**Mr Steve Lewis-Roberts**  
**Pegasus Planning Group**  
**4 The Courtyard**  
**Church Street**  
**Lockington**  
**Derbyshire**  
**DE74 2SL**

**Proposal:**            **OUTLINE APPLICATION (ALL MATTERS EXCEPT FOR ACCESS TO BE RESERVED) FOR UP TO 400 DWELLINGS, TOGETHER WITH ASSOCIATED HIGHWAYS WORKS, PUBLIC OPEN SPACE TO INCLUDE CHILDREN'S PLAY SPACE, SPORTS PITCHES AND ERECTION OF CHANGING FACILITIES, NEW URBAN PARK, LANDSCAPING, ASSOCIATED DRAINAGE INFRASTRUCTURE (INCLUDING SUDS), AND CREATION OF PEDESTRIAN AND CYCLE WAYS ON LAND AT SK2819 1873 (SITE C) WILLIAM NADIN WAY SWADLINCOTE**

**Ward:**                **NEWHALL & STANTON**

**Valid Date:**        **01/10/2014**

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

This is a major development contrary to the development plan where more than two letters of objection have been received. Also, the Council has an ownership interest in the site and the application is therefore Regulation 4 development.

#### **Site Description**

This 27 hectares site is located on the northern side of William Nadin Way and includes the Council owned sports pitches off Oversetts Road in the north western corner and the Local Wildlife Site in the north eastern part. The site is rectangular in shape and adjoined by Oversetts Playing Fields to the north west, existing residential development to the north, by the housing development which will be built by Morris Homes to the east, and by the golf course currently being developed to the west. Opposite the site, across William Nadin Way are large industrial and warehouse buildings. Swadlincote town centre is located approximately 400 metres to the east.

#### **Proposal**

Outline planning permission is sought including access for residential development of up to 400 dwellings. The application is part of an overall masterplan which includes two other parcels of land adjacent to the golf course to the north west and south west. The indicative masterplan

[illegible]

**South Derbyshire District Council. LA 100019461. 2014**

shows access off William Nadin Way approximately 15m from the eastern boundary. The proposed residential site area is approximately 13 hectares. A wide area of open space is proposed adjacent to William Nadin Way with dwellings approximately 32-46 metres from the road frontage. Proposed cycleways and pedestrian routes would run through this area adjacent to Darklands Brook. A 5 m wide landscaping buffer is proposed adjacent to existing properties to the north on Meadow View Road and Meadow Road.

A new roundabout is proposed at the access point on William Nadin Way which would link to a circular estate road punctuated by 7 feature squares, enclosed by landmark buildings. Smaller estates would link to the feature squares and lead to cull-de-sacs. A smaller area of housing is proposed in the northern part of the site adjacent to the existing sports pitches and County wildlife site. In this section dwellings are proposed adjacent to the boundaries with existing properties. A LEAP is proposed in the centre of the site which has an area of informal public open space to the south and links to new segregated pedestrian and cycle links. An urban park is proposed adjacent to the golf course to the west which indicates a circular cycle route. Swales would run parallel with cycle/pedestrian routes and link to existing water bodies. A large pond in the northern part of the site would have a natural play space adjacent and existing trees would be retained. The two areas of housing would be separated by the existing hedgerow.

### **Applicants' supporting information**

The Planning Statement states that the application should be considered in the context of the site wide masterplan that provides the framework for the wider development proposals at Cadley Park. Policy H2 of the South Derbyshire Pre-Submission Local Plan allocates three housing parcels on land at Cadley Park for residential development of around 600 dwellings. It describes the site and the proposals and summarises the relevant national and local planning policy. The document states that the scale of the development proposals and their location is entirely consistent with Draft Policy H2 as the application makes provision for up to 570 new homes, in three development parcels. The Masterplan which accompanies all three planning applications demonstrates that the sites have been considered holistically with other development and open space enhancement opportunities. A mix of house types will be provided across the three development sites, which complement each other. New pedestrian and cycle links are proposed within the site which will connect to existing networks. The proposals incorporate more than 22.31 hectares of new public open space and National Forest Planting, across the Cadley Park development area, and a LEAP is located within the application site. This green infrastructure significantly exceeds the National Forest requirements. Summaries of the conclusions of all supporting documents is included. It concludes that the development accords with the South Derbyshire Local Plan where it is consistent with the NPPF. The proposal constitutes sustainable development and delivers a wide range of economic, social and environmental benefits. The proposal also complies with the site specific requirements in emerging Local Plan Core Strategy Part 1 - Policy H2 and will help meet the Council's current housing land supply shortfall.

The Design and Access Statement describes the proposal within the context of the masterplan, the history of the site and assesses the site in terms of landscape context, visual impact, and character of surrounding areas. The character assessment areas identified were Swadlincote town centre, the A444 corridor, Newhall and the new housing at Castle Gresley. An assessment of services has been undertaken and routes of movement and assessment of the planning policy context. The public consultation exercise is summarised and the evaluation of the design and layout is outlined in a series of diagrams with descriptions. The street hierarchy, pedestrian and cycle routes and open space are discussed together with the scale of buildings and keynote buildings. Landscaping buffers are proposed adjacent to existing dwellings, the road frontages and the golf course to the east. The scheme is assessed against the Building for Life criteria and the majority of criteria scored green with oranges where the information is not available due to the application being outline.

The Consultation Statement outlines the methods used to consult the public on the proposal. A website was set up which included the indicative masterplan, information leaflet and comments form. The public exhibition was held on 7th July 2014 from 4:00pm until 8:00pm at The Old Post Centre, High Street, Newhall. 3,000 leaflets were delivered to homes and businesses in Swadlincote in the week commencing 23<sup>rd</sup> June 2014 to advertise this event, together with posters in the vicinity and an article in the Burton Mail. 151 responses were received from local residents and they related to lack of capacity of local facilities such as schools and doctor's surgeries, traffic implications, loss of green space, lack of adequate landscaping buffers adjacent to existing properties and subsidence and drainage concerns.

Tree Survey Arboricultural Assessment includes assessment of 7 individual trees, seventeen groups of trees and four hedgerows. Five trees and one group were considered to be of moderate quality (B) and the remainder of the trees were categorised as low quality (C). The proposal would involve removal of groups of trees: adjacent to the hedgerow that divides the two parts of the site, where the access is proposed on William Nadin Way and in the north eastern corner but not within the Wildlife Site. Individual trees adjacent to the largest pond would be retained together with a group and the large groups adjacent to Darklands Brook on the southern boundary and south eastern boundary would be retained.

The Flood Risk Assessment and Drainage Strategy states the site is primarily within Flood Zone 1. The annual probability of flooding from fluvial sources is, therefore, less than 1 in 1000 years (ie < 0.1%). The southern and eastern areas of the site are located within Flood Zone 2 and 3, associated with the Darklands Brook. A culvert of the brook is proposed directly above the roadway. The residential development has been restricted to Flood Zone 1. The risk of flooding from fluvial sources, groundwater and overland flow is considered to be low. SUDS features are proposed to provide water management at source and conveyance routes together with water quality and biodiversity benefits. Two addendums to the FRA have been submitted to address the Environment Agency's concerns. The first addendum included relocating the access road so it would cross a straight section of watercourse, details of the culvert and raising finished floor levels above the 1 in 100 year plus 20% climate change flood event level. Hydraulic modelling of the pre- and post-development scenarios has been carried and concluded that there is no adverse impact on flood risk as a result of the proposed culvert and watercourse diversion.

The Site Investigation Study and Coal Mining Risk Assessment concludes the site does not pose a significant risk to the environment and is considered suitable for its proposed use, however, there are a number of low to moderate potential pollution linkages that require further investigation and consideration prior to development. Due to the previous use of the site there are sources of potential ground instability from abandoned shallow mine workings, abandoned coal mine entry and combustion of colliery spoil materials. These are typical of land in former coalfield areas and can be successfully mitigated. Further site investigation comprising of soil/water sampling, chemical testing and gas monitoring would inform any mitigation.

The Assessment of relevant impacts from Nadins Closed Landfill concludes a low risk to residential development.

Phase 1 Habitat Survey and Ecological Assessment summarises the findings of all the reports detailed below. It states that the habitats within the development site were not of a high ecology quality and ponds are designated UK BAP Priority Habitat and as a result should be retained.

Bat Activity Survey Report revealed bats foraging in specific locations associated with hedgerows and woodland edge habitats, whilst smaller numbers of were recorded foraging and commuting high above the eastern portion of the site. The surveys also confirmed the absence of roosting bats on the site itself. Recommendations are to retain existing hedgerow, provision of a lighting strategy and the use of bat bricks.

The Breeding Bird Report states a total of 53 species were recorded on the wider site. Bird species diversity was considered to be moderately high due to the wetland, scrubland, hedgerows and grassland areas contained within the William Nadin Way area (east), of the site. Recommendations are that the hedgerows and woodlands are managed together with the Wildlife site and nest boxes are erected within the development.

The Great Crested Newt report concluded that a small population of GCN were recorded as present in the wider site, GCN were not recorded as present in the proposed development area. The proposed development area had limited opportunities for amphibian species.

The reptile survey did not find any reptiles within in the site but they were found in the wider area and as such the report recommends be mitigation secured by condition.

The Water Vole survey states that there were no suitable habitat types that would support water vole found in the proposed development site.

The Landscape and Visual Assessment sets the site in context with the surrounding landscape. Nationally the site is defined; as National Character Area 71: Leicestershire and South Derbyshire Coalfield<sup>5</sup>, regionally as Settled Coalfield Farmlands RLCT and locally as Coalfield Village Farmlands Landscape Character Type (LCT). Viewpoints are assessed and the report concludes that the scale and form of proposed development is likely to result in only limited harm at a localised level and potential landscape and visual effects are not likely to be significant. Furthermore the extensive proposals for green infrastructure and landscaping will deliver a number of enhancements in terms of the physical landscape and landscape character. As such the proposed development is acceptable in landscape and visual terms.

The Archaeological Desk Based Assessment has established that there are no designated heritage assets within the study site. Development within the site will have no direct or indirect impacts on any designated assets within 1km of the study site.

The Noise Report concludes that mitigation measures such as orientation of dwellings and thermal double glazing would ensure noise levels are within acceptable levels. Acoustic ventilation may be required in rooms within close proximity to William Nadin Way and any night-time noise from Brunel Healthcare can be mitigated through double glazing and ventilation. This should be detailed at reserved matters stage. An addendum report included assessment in relation to the existing sports pitches on site and recommended mitigation of nearest properties having 1.8m high fencing.

The Transport Assessment and Travel Plan conclude the development would create a demand for an additional 27 pedestrian journeys and 6 cycle journeys during an average peak hour. The existing infrastructure, enhanced by the proposed provisions would adequately accommodate the increase in demand created by the proposed development. The gap in the National Cycle Network route 63 would be plugged by the cycle infrastructure proposed. The development would generate a demand for an additional 20 bus trips in an average peak hour. There are five or six buses an hour in each direction along William Nadin Way and a further two buses an hour in each direction on Meadow Lane. Hence, the existing services would have to accommodate less than two additional passengers per bus which would not justify a change to the existing services. The proposed residential development will be accessed from a new 40m diameter roundabout on William Nadin Way which would adequately accommodate the development traffic. It would also act to calm traffic on the long straight William Nadin Way, which has a 50mph speed limit. Assessments of the impact on the capacity of existing roundabouts in the vicinity concluded that the increase could be accommodated, however, the Clock Island roundabout is already over-capacity. Overall, the site is located in a sustainable location which is accessible by a choice means of transport. A Travel Plan accompanies the planning application, and its measures are aimed at reducing single occupancy car travel, which will

provide a benefit to the local highway network and mitigate the increases in traffic arising from the development proposal.

The Air Quality Assessment states the risk of dust soiling effects is considered to be high for earthworks and construction, and low for trackout. The risk of human health effects is classed as low for earthworks, construction and trackout. Site specific mitigation measures will therefore need to be implemented at the site. The air quality assessment indicates that the proposed development generated traffic will have a negligible impact at all five existing sensitive receptor locations in 2019.

Geophysical Survey Report concludes that the underlying geology across the area provided a reasonable magnetic contrast for the detection of infilled features. The majority of anomalies detected could be attributed to a modern or recent origin.

## **Planning History**

None

## **Responses to Consultations**

The County Highways Authority has no objections to the application and accepts the findings of the Transport Assessment. However in view of the associated traffic generation, mitigation of the impact on the highway network is required. This is likely to provide a signalised pedestrian crossing on William Nadin Way, mitigation at the Sainsbury's and Clock Island in the form of S106 contributions. Conditions in respect of submission of a construction management plan, temporary access, wheel washing, the access, parking and manoeuvring areas, bin stores, pedestrian visibility splays, restriction of garage use, maintenance of streets, travel plan and informatives.

Severn Trent Water has no objection subject to a drainage scheme condition and an informative in relation to the public sewer that crosses the site.

*The Council's Contaminated Land Officer recommends a phased contamination condition.*

The Council's Environmental Health Officer recommends conditions to control noise, dust, glazing, ventilation, a noise barrier between the dwellings and the sports pitches and an informative regarding any future layout taking into account the potential for noise from the nearby industrial units.

Natural England does not consider the proposal to pose a significant risk to features of the natural environment and thus has no comments to make.

The Environment Agency confirms that the FRA and watercourse crossing proposal are acceptable. Conditions are recommended in relation to the Nadins Landfill Site, contamination, the FRA and surface water drainage.

The Coal Authority has no objection subject to a site investigation condition which would identify mine entries and shallow mine workings.

The County Archaeologist states that the geophysics results for site have indicated there is no potential archaeology and therefore no archaeological condition is necessary.

Derbyshire County Council's Developer Contributions Officer states that the following contributions are required:-

- £16,307.70 (£28.61 per dwelling x 570 dwellings) towards additional waste management capacity (£1596.60 for Site A);
- Access to high speed broadband services for future residents (in conjunction with service providers);
- £1,128,511.99 towards the provision of 99 primary school places as follows:
  - £136,788.12 towards the provision of 12 primary school places at Stanton Primary School for Application 9/2014/0886
  - £250,788.22 towards the provision of 22 primary school places at Stanton Primary School for Application 9/2014/0887
  - £364,768.32 towards the provision of 32 infant school places at Newhall Infant and Nursery School for Application 9/2014/0888
  - £376,167.33 towards the provision of 33 junior school places at Newhall Community Junior School for Application 9/2014/0888
- £429,404.25 towards the provision of 25 secondary school places as follows:
  - £154,585.53 towards the provision of 9 secondary school places at The William Allitt School for Application 9/2014/0886
  - £274,818.72 towards the provision of 16 secondary school places at The William Allitt School for Application 9/2014/0887; and
- New homes designed to Lifetime Homes standards.

NHS England considers the proposal would trigger the need to provide Section 106 contributions of £551 per dwelling based on 2.3 person occupancy. This would be invested in enhancing capacity / infrastructure with existing local practices.

The County Council Flood Risk Team promotes Sustainable Urban Drainage Systems (SuDS) to be incorporated within the design of a drainage strategy for any proposed development.

The County Rights of Way Section has confirmed that Footpath No's 46, 45, 47 and 106 cross the site. Diversions orders under Section 257 of the Town and Country Planning Act 1990 are required if the legal alignment of the paths are to be changed.

The Police Crime Prevention Design Advisor has general comments that should be considered prior to a reserved matters application being submitted which relate to natural surveillance of open space, parking areas and security of routes and private garden areas.

Peak and Northern Footpaths welcomes the proposed walking and cycling routes and considers the footpath links should be dedicated public rights of way with formal legal agreements.

*The National Forest Company* states that the open space typology plan submitted shows how 10ha of National Forest planting will be incorporated in Site C to address the National Forest Planting requirement for the three applications. Conditions are requested that require the reserved matters submissions to be in accordance with the Landscape Strategy Plans within the Design and Access Statements. These show suitable amounts of tree planting for the open space to be considered as National Forest planting. In particular the design of the Urban Park in Site C will need to be designed around a woodland concept. They consider that significant amounts of feature tree planting should be incorporated within the built form to replicate the strong emphasis on tree planting within the adjoining residential development.

The Council's Tree Officer has assessed the Arboricultural Assessment and considers it acceptable. However, considers it expedient to protect by TPO 6 individual trees in the northern part of the site to the north west of the largest pond due to proximity to the road shown on the indicative layout and potential future liveability issues.

Derbyshire Wildlife Trust has no objection the proposed mitigation measures outlined in the submitted reports and recommends a condition to secure an ecology and landscape management plan.

## **Responses to Publicity**

Eleven letters of objection have been received and they are summarised as follows:-

- a. Concern is raised regarding the capacity of local schools.
- b. Would the A444 be improved as part of the proposal?
- c. Loss of outlook of property
- d. Loss of green space within Swadlincote
- e. How can you build on a wildlife site that has survived mining?
- f. William Nadin Way is dangerous to pedestrian due to the speed of vehicles.
- g. The capacity of the watercourse may not take the increase in surface water run-off.
- h. The golf course should be left as open space with cycle routes.
- i. Is the land suitable for building in terms of subsidence and the effect on the water table.
- j. The noise from the factories would deter future buyers.
- k. Housing association homes for local people are required.
- l. The new residents would not work in Swadlincote but in Derby or Burton.
- m. There is no need for housing between the football pitches and wildlife site.
- n. There are not enough local services in the area.
- o. Lack of capacity for doctors surgeries.
- p. Loss of privacy of rear windows.
- q. 400 dwellings is over-development which would put a strain on the local infrastructure particularly the access onto William Nadin Way.
- r. The development would join Newhall with Swadlincote.
- s. Overshadowing of property on Meadow Lane.
- t. What is proposed to preserve wildlife in this area.
- u. What would happen to the pipes which prevent the build-up of gases from the old mine works.
- v. The William Nadin Way speed limit should be reduced.

One letter of support has been received, which is summarised below.

- aa) Newhall Junior Football Club welcomes the improvements to the footpath pitches and would like to own and operate their own club house adjacent to these pitches.

## **Development Plan Policies**

The relevant policies are:

Local Plan Saved:

Housing Policies 4 and 11, Environment Policies 7, 9,10, 11 & 14 Transport Policies 6, 7 & 8, Recreation and Tourism Policy 4 and Community Facilities Policy 1

Emerging Local Plan

Policy S2 : Presumption in Favour of Sustainable Development

Policy S4 : Housing Need

Policy S6: Sustainable Access

Policy H1 : Settlement Hierarchy

Policy H2 : Land North of William Nadin Way, Swadlincote



Policy SD1: Amenity and Environmental Quality  
Policy SD2: Flood Risk  
Policy SD3 : Delivering Sustainable Water Supply, Drainage and Sewerage  
Policy SD4 : Contaminated Land and Mining Legacy issues  
Policy BNE1: Design Excellence  
Policy BNE3: Biodiversity  
Policy BNE4: Landscape Character and Local Distinctiveness  
Policy INF1: Infrastructure and Developer Contributions  
Policy INF8: The National Forest  
Policy INF9: Open Space, Sport and Recreation

## **National Guidance**

National Planning Policy Framework (NPPF), in particular:

Paras 6-10 (Achieving sustainable development)  
Paras 11-14 (The presumption in favour of sustainable development)  
Para 17 (Core principles)  
Chapter 1 (Economy)  
Chapter 4 (Promoting sustainable transport)  
Chapter 6 (Housing)  
Chapter 7 (Requiring good design)  
Chapter 10 (Meeting the challenge of climate change, flooding etc.)  
Chapter 11 (Conserving and enhancing the natural environment)  
Chapter 12 (Heritage)  
Paras 186 & 187 (Decision-taking)  
Para 193 (Local planning authorities should only request supporting information that is relevant, necessary and material to the application in question.)  
Para 196 & 197 (Determining applications)  
Paras 203-206 (Planning conditions and obligations)  
Annex 1 (Implementation)

National Planning Practice Guidance (NPPG) 2a, 3, 8, 10, 23b, 26, 33, 37, 42, 45

## **Local Guidance**

Housing Design and Layout, Trees on Development Sites, Developer Contributions, Better Design for South Derbyshire.

## **Planning Considerations**

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

- Principle of Development
- Residential Amenity
- Design and Building for Life
- Highways and Transport
- Viability and S106
- Other Matters
- Conclusion

## **Planning Assessment**

### Principle of Development

The proposal for 400 dwellings on this site is part of a framework for the wider development proposals at Cadley Park. Policy H2 of the South Derbyshire Pre-Submission Local Plan

allocates three housing parcels on land at Cadley Park for residential development of around 600 dwellings. The adopted Local Plan allocates the site as open land in Swadlincote under Environment Policy 7. This policy states that *'open land which makes a valuable contribution to the character and environmental quality of Swadlincote will be safeguarded from development'*. This area of land to the east of the golf course includes an over-provision of open space and would manage/improve the existing sports pitches and wildlife site, together with improvements to the Darklands Brook environment.

At the national level, Paragraph 47 of the NPPF seeks to boost significantly the supply of housing providing a considerable emphasis on bringing forward high levels of housing provision as soon as possible. Paragraph 49 states that *'housing applications should be considered in the context of the presumption in favour of sustainable development'*. The site is within the main urban area of Swadlincote and is thus a highly sustainable location for further residential development.

The site is within walking distance of local services, facilities and employment, therefore the site would be considered to be a sustainable location for development whereby there would not be a reliance on the car. Pedestrian and cycle routes would be improved as part of the masterplan area. The development is close to a principal road network and the access would include a new roundabout on William Nadin Way.

The site specific policy in the Pre-Submission Local Plan H2 policy states that:-

*A Residential development on Land north of William Nadin Way, Swadlincote for around 600 dwellings.*

*B The Council will require the below listed site specifics and accordance with other Local Plan policies:*

- 1. Consider the site holistically with other development and open space enhancement opportunities;*
- 2. A mix of dwelling types shall be provided across the three parcels of land which complement each other;*
- 3. The provision of recreational and community facilities;*
- 4. The presence of Coal Mining Legacy and resulting potential for unstable land will require the submission of a Coal Mining Risk Assessment in support of planning applications;*
- 5. An appropriate buffer in agreement with the Council to be placed around the Breach Ley Farm Meadow County Wildlife Site;*
- 6. An appropriate easement along the watercourses on the site free of built development*
- 7. Provide high quality cycle and pedestrian links both within the development and connecting to existing and proposed networks, including NCN63 Burton to Leicester route.*

Although this application falls to be considered on its own merits regard has been paid to the other two sites shown on the overall masterplan, as there are new pedestrian and cycle routes proposed between them. The open space provision proposes an urban park, improvements to existing sports pitches and retention of a local wildlife site. The buffer proposed around the wildlife site is considered appropriate as open space is proposed adjacent to the west, hedgerows are retained to the south and proposed properties would be 20-25m from its boundary. The mix of dwellings would be agreed at reserved matters stage, however, the affordable housing element would be part of the Section 106 agreement. A coal mining risk assessment has been submitted and conditions requiring site investigation shall be placed on any permission.

Policy E7 of the local plan does not represent a constraint to development as the site's contribution to the character and environmental quality of Swadlincote is limited. The NPPF has

a strong presumption in favour of sustainable development and an emphasis of bringing forward high levels of housing quickly. This site qualifies as a sustainable location which could rapidly contribute to the 5 year supply.

In principle, therefore, the development represents sustainable development.

### Residential Amenity

The nearest existing residential properties are in the north of the site on Meadow View Road and Meadow Lane. A minimum distance of 21 metres between dwellings shall be achieved in this location. A 5m landscaping buffer is indicated between existing and proposed dwellings. Specific distances between windows shall be assessed at reserved matters stage. The proposed indicative layout is considered to accord with the Council's space standards. As such the development is capable of providing for reasonable amenities in terms of light, air and privacy for both existing and new dwellings; safe, functional and convenient layouts; private amenity space, and space for landscaping in accordance with Local Plan Saved Housing Policy 11 and NPPF paragraph 17.

### Design and Building for Life

As this is an outline application it is not possible to apply a definitive Building for Life score in accordance with 'Better Design for South Derbyshire'. However, because of its proximity to the town's facilities it is clear that the site scores well in terms of connections, facilities and services, public transport and meeting local housing requirements. The Design and Access Statement (DAS) indicates that a development of locally distinctive character could be achieved, with well-defined streets and spaces.

The applicant controls open land adjacent to the site and the proposed development would provide substantial open space and recreation opportunities which could contribute to the health and well-being of communities. The DAS indicates that a safe and accessible environment could be created, along with legible pedestrian routes, all in accordance with the healthy communities aspirations of Chapter 8 of the NPPF and the requirements of Local Plan Saved Transport Policy 7 and Recreation and Tourism Policy 4. Further analysis of the open space provision for this particular site is set out below.

The application is outline with all matters of design reserved for subsequent approval, however, concepts have been included in the indicative layout that enable some indication of its Building for Life score. The proposed site entrance is a roundabout which leads to a feature square of landmark buildings and a circular access road with a central LEAP surrounded by segregated footpaths. Feature squares with street trees and landmark buildings would aid the legibility of the site. The site would have two distinct sections divided by an existing hedgerow. To the north the majority of the site is taken up by the existing sports pitches and wildlife site and the development proposed responds positively to these two features through sufficient buffers. The existing pond would be a significant feature with adjacent trees retained and a natural area of play adjoining it.

The southern part of the site would have very good pedestrian and cycle routes through it that are segregated, attractive and adjacent to swales. A large area to the west is allocated as an urban park with a circular cycle route and links to the development and wider area.

Linkages between the site and the surrounding area have been addressed through the provision of two new cycle routes which would link to Site A and Site B via the golf course and the wider area. Bus stops on William Nadin Way have been indicated to identify how the site can be accessed by other means of transport.

Overall, the indicative layout scores well and this is due to the series of feature squares, connections to multiple adjacent paths and roads. Street trees along the main street (loop) would increase the score substantially and these shall be secured at reserved matters stage. The scheme shows potential for achieving a score of 14. For the foregoing reasons the proposal is capable of delivering a well-designed development in accordance with 'Better Design for South Derbyshire' and Chapter 7 of the NPPF.

### Highways and Transport

The Highway Authority has affirmed that it does not consider there is an evidence base to suggest that the conclusion that the development would not have a significant adverse effect on capacity or safety of the local road network is incorrect. It considers that there is no data that would support a reason for refusal of planning permission on the basis that the development would result in severe harm on the highway network, with reference to Paragraph 32 of the National Planning Policy Framework. Adequate parking and internal road layouts would be secured through the reserved matters application(s). As such the development would be in conformity with Local Plan Saved Transport Policy 6.

This site is one of three for which separate applications have been submitted by the same applicant. The sites are not directly connected, or have contiguous boundaries, but adjacent land, forming a golf course, is within the same applicant's control and therefore potentially provides opportunities for sustainable transport links between the sites and beyond. Links are shown indicatively on the submitted Masterplan, along with a cycle path on Park Road. Further discussions would be required regarding mechanisms for securing provision of these links. It would appear, in principle, that this infrastructure could be achieved either by a combination of conditions or S106 obligation, requiring schemes to be submitted for the design and implementation, including phasing, of the sustainable transport links, together with proposals for subsequent management and maintenance.

It is considered due to the associated traffic generation in relation to this site it is considered that mitigation would be required in the form of a signalised pedestrian crossing on William Nadin Way, mitigation at the "Sainsbury" roundabout and mitigation at The Clock roundabout. Further discussion in relation to the S106 regarding the level of contribution and the potential monitoring of impact on a defined area of highway network is required.

### Other Matters

Derbyshire Wildlife Trust has confirmed that the proposed mitigation is considered acceptable which would involve larger areas of open grassland and habitat creation for ground nesting birds within the golf course. This mitigation can be secured through a planning condition and in respect of proposed habitat within the golf course through the Section 106 agreement. The section 106 agreement would also secure habitat if it transpired that it could not be accommodated on site then an off-site contribution could be levied. Therefore appropriate mitigation measures shall be secured which would minimise impacts on biodiversity and provide net gains in biodiversity, in accordance with paragraph 109 of the NPPF.

The site is primarily within Flood Zone 1. The southern and eastern areas of the site are located within Flood Zone 2 and 3, associated with the Darklands Brook. A culvert of the brook is proposed directly above the roadway. The residential development has been restricted to Flood Zone 1. The risk of flooding from fluvial sources, groundwater and overland flow is considered to be low. SUDS features are proposed to provide water management at source and conveyance routes together with water quality and biodiversity benefits.

The relocation the access road to cross a straight section of watercourse, details of the culvert and raising finished floor levels above the 1 in 100 year plus 20% climate change flood event level are considered acceptable. Hydraulic modelling of the pre- and post-development

scenarios has been carried out and concluded that there is no adverse impact on flood risk as a result of the proposed culvert and watercourse diversion.

The ponds within the site are intended to be connected by swales and would provide attenuation for the 1 in 100 year +CC event and it is likely that they would all have inflows from the site, and would effectively work as a cascading feature. However, the discharge point would be Darklands Brook. This strategy is all subject to detailed design. The overall drainage strategy is considered appropriate by the Environment Agency. Improvements to the Brook shall be secured through the Section 106 agreement.

The potential for noise from nearby industrial premises has been considered by the Environmental Health Manager and appropriate conditions could be imposed to ensure that no significant adverse impacts on health and quality of life would arise from this issue. As a corollary there would be no need to put unreasonable restrictions on existing businesses as a result of the new land use, in accord with para 123 of the NPPF.

### Viability and S106

The proposed development falls within, and directly relates to, the normal areas of Newhall Infant and Nursery School, Newhall Community Junior School and The Pingle School. The proposed development of 400 dwellings would generate the need to provide for an additional 80 primary (34 infant and 46 junior), 60 secondary, and 24 post-16 pupils.

The County Council requests a financial contribution of £364,768.32 towards the provision of 32 primary school places via the creation of a classroom (classroom Project A at Newhall Infant and Nursery School) and a financial contribution of £376,167.33 towards the provision of 33 primary school places via the creation of a classroom (classroom Project A at Newhall Community Junior School). Current number on roll and projections show that The Pingle School would be able to accommodate all of the anticipated secondary and post-16 pupils.

NHS England has requested Section 106 contributions of £551 per dwelling based on 2.3 person occupancy. This would be invested in enhancing capacity / infrastructure with existing local practices. All requests for commuted sums must meet the tests set out in the 2010 Community Infrastructure Levy (CIL) Regulations and paragraph 204 of the National Planning Policy Framework (NPPF). This request does not meet the tests as no evidence of need has been supplied and also in light of the recent pooling legislation and as such cannot be included in S106 negotiations.

The starting point for negotiation is 30% affordable housing split between rent 68.1% and shared ownership 31.9%. The breakdown of dwellings required would be for rent and shared ownership would be higher numbers of 2-3 bed properties. Affordable housing should be 'pepper-potted' across the whole site. This shall be secured through the Section 106.

The calculation of the amount of open space provision on site has been made based on the Council's guidelines and 25,400 m<sup>2</sup> would normally be required for 400 dwellings. The indicative layout shows 138,800m<sup>2</sup> which includes 2 LEAPs of 400m<sup>2</sup>. However, over all three sites 36,195 m<sup>2</sup> would be required and the proposed provision would be 138,800m<sup>2</sup> which amounts to a 73% over provision.

Based on normal requirements, contributions including land cost would amount to £246,000 for recreation Open Space, £220,000 for recreation Outdoor Facilities and £122,000 for Recreation Built Facilities with a total of £588,000.

Improvements to Darklands Brook and mitigation for ground nesting birds shall be secured through the S106 as discussed above.

Highway requirements in the form of a signalised pedestrian crossing on William Nadin Way, mitigation at the “Sainsbury” roundabout and mitigation at The Clock roundabout would be included within a S106 agreement. A calculation based on additional traffic generated from development and its economic cost entitled the ‘value of delay’ has been provided by the County Council. This contribution figure is based on a direct relationship between the scheme and its highway impact and amounts to £234,664.52 for the plan period 2011–2028.

The County Council has made non-specific request for contributions to greenways and rights of way. In the absence of specific and/or costed proposals any such provisions, as indicated on the masterplan, would need to be accommodated within the site or other land in the applicant’s control. Otherwise such requests would not meet the relevant tests of para 204 of the NPPF.

Ongoing discussions have been undertaken since the last committee to establish the residual value of the development and thus the amount available for planning contributions.

The Council’s Open Space & Facilities Development Manager has provided costings for the redevelopment of the sports pitches at Oversetts Recreation Ground. It is anticipated that the football pitch improvements (drainage and levelling works associated with reconfiguring the pitches) and football changing rooms and car parking may amount to £570k. The provision of the Urban Park in terms of footpath infrastructure/enclosure and landscaping/earthworks may cost c£430k. The Section 106 agreement would secure that the developer undertake the above works and these figures have been included in the viability assessment for the scheme. The consequence of including this figure for works within the viability is that the amount of affordable housing would be reduced slightly (the final figure was being calculated by the District Valuer at the time of writing and will be reported at the committee. Nevertheless, if works are not delivered then the monies would revert back to affordable housing provision.

The S016 contributions secured for Public Open Space totalling £588,000 would be used to complete the Urban Park. The phasing of works would be detailed in the agreement to prioritise the completion of the football pitches and changing rooms first, followed by the park.

### Conclusion

This application is one of the three sites that make up the strategic development in the locality in relation to Policy H2 of the Emerging Local Plan, which cumulatively could accommodate around 570 homes. Given the scale of the development it is likely that it could contribute to the early delivery of homes, helping the Council meet its requirement of a five year supply of deliverable housing. By reference to the NPPF’s (Para 7) three sustainability dimensions (economic, social, environmental,):

- The provision of new housing would support economic growth, ensuring an attractive place to live for South Derbyshire’s economically active population as well as helping to supporting the vitality and viability of Swadlincote. The development would also potentially provide a financial contribution to capacity at local primary schools. This is supported by the site’s accessibility to Swadlincote and the surrounding areas, served by public transport. The sites proximity to the existing retail centres of Swadlincote and Newhall all help to further reduce people’s need to travel by car. Measures secured by condition and Section 106 Agreement would ensure that local road infrastructure has the capacity to accommodate the scheme.
- The proposed scheme would have a significant positive impact on local communities by providing new homes (market and up to 30% affordable) for approximately 1,311 residents. In terms of healthy communities the illustrative masterplan includes extensive green infrastructure and open space in the form of an urban park and attractive routes along Darklands Brook. Pedestrian/cycle links would help to support active lifestyles

and encourage alternatives to the car for accessing local facilities and employment opportunities. Developer contributions would also be made towards education.

- The Environmental Statement explains how a range of environmental factors have been taken into account to ensure sustainable development (including landscape, ecology, air and noise pollution, archaeology, and water). Mitigation has been included within the scheme to ensure the conservation and enhancement of key features. The scheme also helps to mitigate future climate change through reducing CO2 emissions by building new homes in a highly accessible location and reducing the need to travel by car. In terms of resilience to climate change impacts, the scheme has been designed to take this into account, namely through provision of a sustainable drainage strategy and extensive network of green infrastructure.

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**

- B.** That delegated authority be granted to the Planning Services Manager to negotiate the details of the provisions of the Section 106 agreement referred to in the planning assessment of the report (subject to viability testing by the District Valuer);

**Subject to A., GRANT** permission under Regulation 4 subject to the following conditions:

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

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

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

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

3. No development shall commence until a scheme for phasing of the development has been submitted to and agreed in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved scheme.

Reason: To ensure that the development proceeds in an orderly manner from the outset.

4. No development of any phase shall take place until a surface water drainage scheme for the relevant phase, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, has been submitted to and approved in writing by the local planning authority. The drainage strategy should demonstrate the surface water run-off generated up to and including the 100 year plus 30% (for climate change) critical rain storm will not exceed the run-off from the undeveloped site following the corresponding rainfall event. The scheme shall subsequently be implemented in accordance with the approved details before the relevant phase is completed.

The scheme shall include:

- Surface water drainage system/s to be designed in accordance with either the National SUDs Standards, or CIRIA C697 and C687, whichever are in force when the detailed design of the surface water drainage system is undertaken.
- Limiting the surface water run-off generated by all rainfall events up to the 100 year plus 30% (for climate change) critical rain storm so that it will not exceed the run-off from the undeveloped site and not increase the risk of flooding off-site.
- Provision of surface water run-off attenuation storage to accommodate the difference between the allowable discharge rate/s and all rainfall events up to the 100 year plus 30% (for climate change) critical rain storm.
- Detailed design (plans, cross, long sections and calculations) in support of any surface water drainage scheme, including details on any attenuation system, and the outfall arrangements.
- Details of how the on-site surface water drainage systems shall be maintained and managed after completion and for the lifetime of the development, to ensure long term operation to design parameters.

Reason: To prevent the increased risk of flooding, both on and off site. A later date would miss the initial construction phase.

5. A) No development of any phase shall be commenced until a scheme to identify and control any contamination of land, or pollution of controlled waters for the relevant phase 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 each relevant phase 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) If required by the conceptual site model no development of any phase shall take place until monitoring at the site for the presence of ground/landfill gas and a subsequent risk assessment has been completed for the relevant phase 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.

6. 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.

7. No development of any phase shall take place including any works of demolition until a construction management plan or construction method statement has been submitted to and been approved in writing by the Local Planning Authority. The approved plan/statement shall be adhered to throughout the construction period of the relevant phase. The statement shall provide for:
- parking of vehicles of site operatives and visitors
  - routes for construction traffic
  - hours of operation
  - pedestrian and cyclist protection
  - proposed temporary traffic restrictions
  - arrangements for turning vehicles

Reason: In the interests of highway safety. A later date for this would exclude early phases which themselves could have highway safety impacts.

8. No other development shall be commenced until a temporary access for construction purposes has been provided in accordance with a detailed design first submitted to and approved in writing by the Local Planning Authority. The access shall be retained in accordance with the approved scheme throughout the construction period, or such other period of time as may be agreed in writing by the Local Planning Authority, free from any impediment to its designated use.

Reason: It must be ensured that before any construction work commences that a safe construction access is formed in the interests of highway safety. As such, approval at a later date would be unenforceable.

9. Throughout the period of construction within any phase vehicle wheel cleaning facilities shall be provided and retained within the site. All construction vehicles shall have their wheels cleaned before leaving the site in order to prevent the deposition of mud and other extraneous material on the public highway.

Reason: In the interests of highway safety.

10. The reserved matters application(s) shall include design of the internal layout of the site in accordance with the guidance contained in the "Manual for Streets" document issued by the Departments for Transport and Communities and Local Government.

Reason: In the interests of highway safety.

11. Prior to the first occupation of any dwelling on the site a new street junction and associated works shall be implemented on William Nadin Way generally in accordance with Drawing No. ADC1041/003F but more specifically in accordance with detailed designs first submitted to and approved in writing by the Local Planning Authority. For the avoidance of doubt, the developer will be required to enter into a 1980 Highways Act S278 Agreement with the Highway Authority in order to comply with the requirements of this condition.

Reason: In the interests of highway safety.

12. Prior to the occupation of each dwelling, the proposed new estate streets between that dwelling and the existing public highway shall be laid out in accordance with the scheme approved in accordance with Condition 10 above, or as subsequently revised and approved in writing by the Local Planning Authority, constructed to base level, drained and lighted in accordance with the County Council's specification for new housing development roads.

Reason: In the interests of highway safety.

13. No dwelling shall be occupied until space has been provided within the site for the parking and manoeuvring of residents and visitors vehicles associated with that dwelling, laid out in accordance with the scheme approved in accordance with Condition 10 above, or as subsequently revised and approved in writing by the Local Planning Authority. The facilities shall be retained throughout the life of the development free from any impediment to their designated use.

Reason: In the interests of highway safety.

14. The scheme to be submitted to and approved in writing by the Local Planning Authority pursuant to Condition 10 above shall provide for bin stores within private land at the highway end of private accesses, to prevent refuse bins and collection vehicles standing on the new estate street for longer than necessary causing an obstruction or inconvenience for other road users. The facilities shall be provided prior to the first occupation of the dwellings to which they relate and shall be retained free of any impediment to their designated use thereafter.

Reason: In the interests of highway safety.

15. Private driveways/parking spaces to the proposed access road, the subject of Condition 13 above, shall not be taken into use until pedestrian intervisibility splays, details of which shall be included in the reserved matters application(s), have been provided on either side of the accesses at the back of the footway/margin, the splay area being retained throughout the life of the development clear of any object greater than 0.6m in height relative to footway level.

Reason: In the interests of highway safety.

16. Unless as may otherwise be approved pursuant to the reserved matters, prior to the first use of the development hereby permitted, parking facilities shall be provided so as to accommodate, in the case of dwellings of four or more bedrooms 3 cars, in the case of dwellings of two or three bedrooms 2 cars and any other case 1.5 cars within the curtilage of each dwelling, or in any alternative location acceptable to the Local Planning Authority or as may otherwise be agreed in writing by the Local Planning Authority in accordance with its published standards. Thereafter 3 parking spaces (in the case of dwellings with four or more bedrooms) or 2 parking spaces (in the case of dwellings with four or more bedrooms) or 1.5 parking spaces (in any other case), each space measuring a minimum of 2.4m x 4.8m, shall be retained for that purpose within the curtilage of each dwelling unless as may otherwise be approved in writing by the Local Planning Authority.

Reason: To ensure that adequate parking/garaging provision is available.

17. Unless as otherwise agreed in writing with the Local Planning Authority the proposed access driveways/parking spaces to the public highway shall be no steeper than 1 in 14 for the first 5.0m from the nearside highway boundary and 1 in 10 thereafter.

Reason: In the interests of highway safety.

18. Unless the local planning authority has previously agreed to an alternative timetable no development of any phase shall commence until a scheme for the disposal of highway surface water has been submitted to and approved in writing by the Local Planning Authority for the relevant phase. The scheme shall be implemented in accordance with the approved details and retained accordingly thereafter.

Reason: In the interests of highway safety.

19. No development of any phase shall be commenced until details of the proposed arrangements for future management and maintenance of the proposed streets within the development have been submitted to and approved by the Local Planning Authority. The streets in each relevant phase shall thereafter be maintained in accordance with the approved management and maintenance details until such time as an agreement has been entered into under Section 38 of the Highways Act 1980 or a private management and maintenance company has been established.

Reason: In the interests of highway safety to ensure that the scheme is properly planned from the outset.

20. The landscaping details required pursuant to Condition 2 above shall accord with the Landscape Strategy set out in section 5 of the Design and Access Statement.

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

21. 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 each relevant phase of development, whichever is the sooner; and any trees or plants which within a period of five years from the completion of 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.

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

Reason: To protect the amenities of nearby residents. This issue requires control before development because potential pollutants can be generated from the outset.

23. No site clearance works or development shall take place until there has been submitted to the Local Planning Authority for its written approval a scheme showing the type, height and position of protective fencing to be erected around each tree or hedgerow to be retained. The scheme shall comply with BS 5837:2012. No site clearance works or development shall be commenced in the vicinity of the protected tree or hedgerow until such a scheme is approved in writing by the Local Planning Authority and thereafter the development hereby permitted shall only be carried out in accordance with the approved scheme. The area surrounding each tree or hedgerow within the protective fencing shall remain undisturbed during the course of the works, and in particular in these areas:
- (i) There shall be no changes in ground levels;
  - (ii) No material or plant shall be stored;
  - (iii) No buildings or temporary buildings shall be erected or stationed;

- (iv) No materials or waste shall be burnt within 20 metres of any retained tree or hedgerow; and
- (v) No drain runs or other trenches shall be dug or otherwise created; without the prior written consent of the Local Planning Authority.

Reason: To ensure the protection of these features In the interests of the appearance of the area and biodiversity.

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

Reason: In the interests of pollution control from the outset.

25. The development shall be implemented in accordance with the recommendations of the submitted Coal Mining Risk Assessment, in particular with regard to intrusive site investigation works (which shall be undertaken prior to the commencement of any other development) and any resultant remedial works identified by the site investigation shall be undertaken prior to development of the affected part(s) of the site.

Reason: To ensure the stability and safety of the development, having regard to the Coal Mining Risk Assessment undertaken.

26. Notwithstanding any details submitted or the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended), no dwelling shall be occupied until there has been submitted to and approved in writing by the Local Planning Authority for the relevant phase plans indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed in accordance with the approved details before the development of the relevant phase is occupied or in accordance with a timetable which shall first have been agreed in writing with the Local Planning Authority.

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

27. No dwelling shall be occupied on any phase until details, and if necessary samples, of the materials proposed to be used on the surfaces of the roads, footpaths, car parking areas and courtyards for the relevant phase, along with samples of the materials to be used on the external surfaces of the buildings have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out using the approved materials unless otherwise agreed in writing with the Local Planning Authority.

Reason: In the interests of the appearance of the area and to enhance legibility of the street layout.

28. Prior to the development of any phase commencing, details of the finished floor levels of the buildings 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 relevant phase of development shall be constructed in accordance with the agreed levels.

Reason: To protect the amenities of adjoining properties and the locality generally. A later approval would be too late as construction will have commenced and levels could not then be altered.

29. No development of any phase shall take place (including demolition, ground works, vegetation clearance) until a construction environmental management plan (CEMP: Biodiversity) has been submitted to and approved in writing by the local planning authority. The CEMP:Biodiversity shall include the following:
- a) Risk assessment of potentially damaging construction activities.
  - b) Identification of "biodiversity protection zones".
  - c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction.
  - d) The location and timing of sensitive works to avoid harm to biodiversity features.
  - e) The times during construction when specialist ecologists need to be present on site to oversee works.
  - f) Responsible persons and lines of communication.
  - g) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person.
  - h) Use of protective fences, exclusion barriers and warning signs.
- The approved CEMP shall be adhered to and implemented throughout the construction period of the relevant phase strictly in accordance with the approved details, unless otherwise agreed in writing by the local planning authority.

Reason: To ensure that ecological interests are protected in accordance with paragraph 118 of the National Planning Policy Framework; in order to control impacts from the outset as an early incursions could otherwise not be rectified.

30. Before development of any phase begins a landscape and ecological management plan (LEMP) for all retained and created habitats shall be submitted to, and be approved in writing by, the local planning authority. The content of the LEMP shall include the following:
- a) Description and evaluation of features to be managed / created.
  - b) Ecological trends and constraints on site that might influence management.
  - c) Aims and objectives of management.
  - d) Appropriate management options for achieving aims and objectives.
  - e) Prescriptions for management actions.
  - f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period).
  - g) Details of the body or organization responsible for implementation of the plan.
  - h) Ongoing monitoring and remedial measures.
- The LEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery.
- The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme.
- The approved plan will be implemented in accordance with the approved details for each relevant phase.

Reason: To ensure that ecological interests are protected and enhanced in accordance with paragraph 118 of the National Planning Policy Framework. This needs to be made clear before commencing to ensure that all stages of development are considered.

31. The Approved Travel Plan shall be implemented in accordance with the timescales specified therein, to include those parts identified as being implemented prior to occupation and following occupation, unless alternative timescales are agreed in writing with the Local Planning Authority. The Approved Travel Plan shall be monitored and reviewed in accordance with the agreed Travel Plan targets. (Notwithstanding the submitted document it should be noted that [Paragraph 6.4] the first monitoring report

should be compiled once the first 100 dwellings are occupied and responses collated, or within six months of first residential occupation, whichever is the sooner.)

Reason: To promote sustainable transport alternatives.

32. A landscape management plan for each relevant phase, including phasing and implementation strategy, long term design objectives, management responsibilities and maintenance schedules for all landscape areas, shall be submitted to and approved by the Local Planning Authority before the development of any phase. The landscape management plan shall be implemented for the relevant phase as approved.

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

33. Notwithstanding the details submitted for the proposed development of the site, there shall be no housing or associated built infrastructure within the permitted boundary of Nadins Landfill Site.

Reason: To ensure that the development does not compromise the on-going management of Nadins Landfill Site - an authorised landfill regulated by the Environment Agency.

34. The development of this planning permission shall only be carried out in accordance with the approved Flood Risk Assessment (FRA) dated March 2015, Ref: 001-FRA (Parcel C) Rev A and the following mitigation measures detailed within the FRA:

- Provision of a vehicle access into the site, including watercourse diversion, new watercourse crossing structure, and the retention of the old watercourse downstream of the new crossing - Sections 3.1.7, 5.3, 7.1.9 to 7.1.11 and 7.1.13 and Appendices 2 and 5.
- No development within the 100 year (Flood Zone 3) or the 1000 year (Flood Zone 2) floodplain outlines established by this FRA - Sections 4.1.6 to 4.1.8 and 7.1.2 to 7.1.4 and Appendix 2.
- Finished floor levels are set no lower than 600mm above the 100 year plus 20% (for climate change) flood level applicable to each Phase of the development, to Ordnance Datum (AOD) - Sections 5.4.2, 5.4.3 and 7.1.12.

The mitigation measure/s shall be fully implemented prior to occupation of each development phase and subsequently in accordance with the timing / phasing arrangements embodied within the scheme, or within any other period as may subsequently be agreed, in writing, by the local planning authority.

Reason: To reduce the risk of flooding to the proposed development and future occupants.

35. No development of each Phase shall take place until the detailed design of a surface water drainage scheme for that Phase, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, has been submitted to and approved in writing by the local planning authority. The drainage scheme information should demonstrate the surface water run-off generated up to and including the 100 year plus 30% (for climate change) critical rain storm will not exceed the run-off from the undeveloped site following the corresponding rainfall event. The scheme shall subsequently be implemented in accordance with the approved details before the development is completed.

The scheme shall also include:

- Limiting the discharge rate and storing the surface water run-off generated by all rainfall events up to the 100 year plus 30% (for climate change) critical rain storm so that it will not exceed the run-off from the undeveloped site and not increase the risk of flooding off-site - As detailed within Section 5.2 of the approved Flood Risk Assessment (FRA) dated March 2015, Ref: 001-FRA (Parcel C) Rev A.
- Provision of surface water run-off attenuation storage to accommodate the difference between the allowable discharge rate/s and all rainfall events up to the 100 year plus 30% (for climate change) critical rain storm - As detailed within section 5.2 of the approved Flood Risk Assessment (FRA) dated March 2015, Ref: 001-FRA (Parcel C) Rev A.
- Detailed design (plans, cross, long sections and calculations) in support of any surface water drainage scheme, including details on any attenuation system, and the outfall arrangements.
- Details of how the on-site surface water drainage systems shall be maintained and managed after completion and for the lifetime of the development, to ensure long term operation to design parameters.

Reason: To prevent the increased risk of flooding, both on and off site from the outset.

36. Prior to the occupation of any of the phases of the development the glazing specification of each phase of residential units shall be submitted to and agreed by the local planning authority. The scheme shall subsequently be implemented in accordance with the approved details before the relevant phase is completed.

Reason: To mitigate any noise from nearby industrial premises.

37. Prior to the first occupation of any phase of the development the ventilation requirements for each phase of residential units will be required to be submitted to and agreed by the local planning authority. The scheme shall subsequently be implemented in accordance with the approved details before the relevant phase is completed.

Reason: To mitigate any noise from nearby industrial premises.

38. Prior to the first occupation of the relevant phase of the development a scheme for noise mitigation (noise barrier consisting of a 1.8m high close boarded fence) for dwellings adjacent to the sports pitches shall be submitted and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details prior to the occupation of any dwellings of the phase.

Reason: To protect the amenity of future occupiers of the dwellings.

Informatives:

a) The Highway Authority recommends that the first 5m of the proposed access driveways should not be surfaced with a loose material (i.e. unbound chippings or gravel etc.). In the event that loose material is transferred to the highway and is regarded as a hazard or nuisance to highway users the Authority reserves the right to take any necessary action against the landowner.

b) Pursuant to Section 163 of the Highways Act 1980, where the site curtilage slopes down towards the public highway/new estate 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.

c) 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 Environmental Services Department at County Hall, Matlock.

d) Car parking provision should be made on the basis of 1.5no., 2no. or 3no. parking spaces per 1, 2/3 or 4/4+ bedroom dwelling respectively. Each parking bay should measure 2.4m x 4.8m (larger in the case of spaces for use by disabled drivers) with adequate space behind each space for manoeuvring.

e) Under the provisions of the New Roads and Street Works Act 1991 and the Traffic Management Act 2004, all works that involve breaking up, resurfacing and/or reducing the width of the carriageway require a notice to be submitted to Derbyshire County Council for Highway, Developer and Street Works. Works that involve road closures and/or are for duration of more than 11 days require a three months notice. Developer's Works will generally require a three months notice. Developers and Utilities (for associated services) should prepare programmes for all works that are required for the development by all parties such that these can be approved through the coordination, noticing and licensing processes. This will require utilities and developers to work to agreed programmes and booked slots for each part of the works. Developers considering all scales of development are advised to enter into dialogue with Derbyshire County Council's Highway Noticing Section at the earliest stage possible and this includes prior to final planning consents.

f) Pursuant to Section 278 of the Highways Act 1980, no works may commence within the limits of the public highway without the formal written Agreement of the County Council as Highway Authority. Advice regarding the technical, legal, administrative and financial processes involved in Section 278 Agreements may be obtained from the Department of Economy Transport and Environment at County Hall, Matlock DE4 3AG. The applicant is advised to allow at least 12 weeks in any programme of works to obtain a Section 278 Agreement.

g) The application site is affected by Public Rights of Way (Footpaths No. 45, 46 and 106 on the Derbyshire Definitive Map). The routes must remain unobstructed on the legal alignment at all times and the safety of the public using them must not be prejudiced either during or after development works take place. Further advice can be obtained by calling 01629 533190 and asking for the Rights of Way Duty Officer.

o Please note that the granting of planning permission is not consent to divert or obstruct a public right of way.

o If it is necessary to temporarily obstruct a right of way to undertake development works then a temporary closure is obtainable from the County Council. Please contact 01629 533190 for further information and an application form.

o If a right of way is required to be permanently diverted then the Council that determines the planning application (The Planning Authority) has the necessary powers to make a diversion order.

o Any development insofar as it will permanently affect a public right of way must not commence until a diversion order (obtainable from the planning authority) has been confirmed. A temporary closure of the public right of way to facilitate public safety during the works may then be granted by the County Council.

o To avoid delays, where there is reasonable expectation that planning permission will be forthcoming, the proposals for any permanent stopping up or diversion of a public right of way can be considered concurrently with the application for the proposed development rather than await the granting of permission.

The applicant is advised to seriously consider the installation of a sprinkler system to reduce the risk of danger from fire to future occupants and property.

Where development is proposed over areas of coal and past coal workings at shallow depth,



The Coal Authority is of the opinion that applicants should consider wherever possible removing the remnant shallow coal. This will enable the land to be stabilised and treated by a more sustainable method; rather than by attempting to grout fill any voids and consequently unnecessarily sterilising the nation's asset.

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

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

For further assistance in complying with planning conditions and other legal requirements applicants should consult ""Developing Land within Derbyshire - Guidance on submitting applications for land that may be contaminated"". This document has been produced by local authorities in Derbyshire to assist developers, and is available from [http://www.south-derbys.gov.uk/business/pollution/contaminated\\_land/default.asp](http://www.south-derbys.gov.uk/business/pollution/contaminated_land/default.asp). Reports in electronic formats are preferred, ideally on a CD. For the individual report phases, the administration of this application may be expedited if a digital copy of these reports is also submitted to the pollution control officer (contaminated land) in the environmental health department: [pollution.control@south-derbys.gov.uk](mailto:pollution.control@south-derbys.gov.uk).

The application has been screened in accordance with the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 and the Authority is satisfied that the development will not give rise to significant environmental effects.

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 application site may contain nesting birds. It is an offence under the Wildlife and Countryside Act 1981 to intentionally kill, injure or take any wild British breeding bird or its eggs or damage its nest whilst in use or being built. The nesting season normally encompasses the months March to July inclusive. If you are in doubt as to requirements of the law in this regard you should contact English Nature, Peak District and Derbyshire Team, Manor Barn, Over Haddon, Bakewell, Derbyshire, DE4 1JE.

Severn Trent Water advises that there is a public sewer located within the application site. Public sewers have statutory protection by virtue of the Water Industry Act 1991 as amended by the Water Act 2003 and you may not build close to, directly over or divert a public sewer without consent. You are advised to contact Severn Trent Water to discuss your proposals. Severn Trent Water will seek to assist you in obtaining a solution which protects both the public sewer and the proposed development.

The water body adjacent to the proposed development is not meeting "Good" Water Framework Directive (WFD) status. The development should not lead to any further deterioration in the WFD status of this water body.

All precaution must be taken to avoid discharges and spills to ground both during and after construction. There should be no polluting emissions to air, land or water resulting from actions by the developer or by its sub-contractors. Pollution prevention guidance is available on our website:

<https://www.gov.uk/government/collections/pollution-prevention-guidance-pp>.

During the period of construction, oil and fuel storage will be subject to the Control of Pollution (Oil Storage) (England) Regulations 2001. The Regulations apply to the storage of oil or fuel of any kind in any kind of container which is being used and stored above ground, including drums and mobile bowsters, situated outside a building and with a storage capacity which exceeds 200 litres. A person with custody or control of any oil or fuel breaching the Regulations will be guilty of a criminal offence. The penalties are a maximum fine of £5000 in Magistrates' Court or an unlimited fine in Crown Court. Further details of the Regulations are available from the Environment Agency.

Surface water run-off should be controlled as near to its source as possible through a sustainable drainage approach to surface water management (SuDS). SuDS are an approach to managing surface water run-off which seeks to mimic natural drainage systems and retain water on or near the site as opposed to traditional drainage approaches which involve piping water off site as quickly as possible. SuDS involve a range of techniques including soakaways, infiltration trenches, permeable pavements, grassed swales, green roofs, ponds and wetlands. SuDS offer significant advantages over conventional piped drainage systems in reducing flood risk by attenuating the rate and quantity of surface water run-off from a site, promoting groundwater recharge absorbing diffuse pollutants and improving water quality. Ponds, reed beds and seasonally flooded grasslands can be particularly attractive features within public open spaces. We encourage the use of above ground SuDS as these provide greater water quality benefits.

The variety of SuDS techniques available means that virtually any development should be able to include a scheme based around these principles and provide multiple benefits, reducing costs and maintenance needs.

It is recommended that the installation of fittings that will minimise water usage such as low, or dual, flush WC's, spray taps and economical shower-heads in the bathroom are installed. Power showers are not recommended as they can consume more water than an average bath. Water

efficient versions of appliances such as washing machines and dishwashers are also recommended. For outdoors consider installing a water butt, or even a rainwater harvesting system, to provide a natural supply of water for gardens. Simple treatment systems exist that allow rainwater to be used to supply WC's within the home. Following the above recommendations will significantly reduce water consumption and associated costs when compared to traditional installations. Rainwater harvesting utilises a free supply of fresh water and reduces the cost to the environment and the householder.

Further to Condition 21 you are advised to consider the document 'Guidance on the assessment of dust from demolition and construction' from the Institute of Air Quality Management for advice on how such an assessment should be performed.

Further to Condition 25 advice on the production of the WSI can be obtained from the County Council's Development Control Archaeologist Steve.Baker@derbyshire.gov.uk Tel 01629 539773

In dealing with this application, the Local Planning Authority has worked with the applicant in a positive and proactive manner through seeking to resolve planning objections and issues and suggesting amendments to improve the quality of the proposal. As such it is considered that the Local Planning Authority has implemented the requirement set out in paragraphs 186 and 187 of the National Planning Policy Framework.

The reserved matters application should be based on the indicative layout in respect of the design concepts, linkages, buffers and public open space as they have been negotiated with a view to achieving a sufficient Building for Life Score.

The Environment Agency advises the proposed development falls within 250m of a landfill site that is known to be producing landfill gas.

Landfill gas consists of methane and carbon dioxide and is produced as the waste in the landfill site degrades. Methane can present a risk of fire and explosion. Carbon dioxide can present a risk of asphyxiation or suffocation. The trace constituents of landfill gas can be toxic and can give rise to long and short term health risks as well as odour nuisance.

You should be aware of the potential risk to the development from landfill gas and should to carry out a risk assessment to ensure that the potential risk is adequately addressed. The local authority's Environmental Health and Building Control departments would wish to ensure that any threats from landfill gas have been adequately addressed in the proposed development. This may include building construction techniques that minimise the possibility of landfill gas entering any enclosed structures on the site to be incorporated into the development.

The following publications provide further advice on the risks from landfill gas and ways of managing these:

1. Waste Management Paper No 27;
2. Environment Agency LFTGN03 'Guidance on the Management of Landfill Gas';
3. Building Research Establishment guidance - BR 414 'Protective Measures for Housing on Gas-contaminated Land' 2001;
4. Building Research Establishment guidance - BR 212 'Construction of new buildings on gas-contaminated land' 1991;
5. CIRIA Guidance - C665 'Assessing risks posed by hazardous ground gases to buildings' 2007.

The Environment Agency advises the applicant / developer should refer to our 'Groundwater Protection: Principles and Practice' (GP3) document, available from our website ([www.gov.uk/environment-agency](http://www.gov.uk/environment-agency)). This sets out our position on a wide range of activities and developments, including land contamination.

The Environment Agency advises the following:

1. That the Floods and Water Management Act (2010), consenting of works on Ordinary Watercourses is now undertaken by the Lead Local Flood Authority (LLFA).

Under the terms of the Land Drainage Act 1991, the prior written consent of Lead Local Flood Authority (Derbyshire County Council) is required for any proposed works affecting the flow of any ordinary watercourse or to any existing or proposed structure forming part of the ordinary watercourse drainage system. This includes alterations to existing and/or proposed headwall outfall, or crossing of a watercourse to provide vehicular or pedestrian access, e.g. culverts or bridges.

Please note any temporary crossing of the watercourse required to facilitate the construction of the new site vehicle access will also require the separate prior consent of the LLFA.

2. The proposed development will need to be able to satisfy the following statements:

- o Confirmation of the removal of any redundant culvert or bridge crossing/s for vehicle or pedestrian purposes within or on the boundaries of the site, subject to no increase in flood risk downstream.
- o No raising of ground levels, or storage of materials (including soil) within the 100 year (1%) flood plain (unless where supported by a scheme for flood plain compensation, for e.g. new vehicle crossing).
- o No new buildings (including sheds, cycle storage or garages), structures (including gates, walls and fences) or raised ground levels within 8 metres of the top of any bank of any river/watercourse, inside or along the boundary of the site, unless otherwise agreed in writing.
- o The permanent retention of a continuous unobstructed area is an essential requirement for the preservation of the water course corridor, wildlife habitat, flood flow conveyance and future watercourse maintenance or improvement.

#### Surface water drainage design

The proposed on site surface water drainage system should be designed to the Sewers for Adoption, 30 year standard or similar, which is acceptable in principal. However, we require additional details to confirm that surface water system will operate without flooding during the 30 year rainfall event, and not flood or leave the proposed site during the 100 year and 100 year plus 30% for residential, 20% for commercial (for climate change) rainfall events.

We will need to see the plan and calculations in support of the on-site surface water drainage system (i.e., microdrainage output for the 30 year, 100 year and 100 year plus 30% for residential, 20% for commercial (for climate change) rainfall events, including pipeline schedules, network information, summary results and where flood risk or flooding occurs the detailed output for the worst case duration for each return period affected), provided as part of any discharge of any Outline planning application conditions for each Phase. This is in order to demonstrate that no flooding occurs to the proposed development or surrounding area from the above rainfall events.

If the system surcharges we would need to see a detailed plan (location of any surcharging should be identified) and calculations for any surface flooding, including overland flood flow routes, expected depths, duration and confirmation that this would not cause flooding to nearby properties. Any excess surface water should be routed away from any proposed or existing properties.

In addition we would need to see any calculations (i.e, microdrainage output for the 30 year, 100 year and 100 year plus 30% for residential, 20% for commercial (for climate change) rainfall events) in support of any on site surface water attenuation system including sizing and any flow control e.g. hydrobrake, details and design.

## Mammal ledge

On drawing LE12413-015 Rev C the setting out level of the mammal ledge is not clear. We recommend the top surface of the ledge should be c500mm from the internal soffit of the box culvert to allow adequate headroom for mammal passage but still above the 1:100 CC and within the 617mm freeboard area.

## Foul drainage

Severn Trent Water Limited should be consulted by the Local Planning Authority and be requested to demonstrate that the sewerage and sewage disposal systems serving the development have sufficient capacity to accommodate the additional flows, generated as a result of the development, without causing pollution. If the sewer network requires upgrading this should be done prior to the development taking place or any properties being occupied.

The waterbody adjacent to the proposed development is not meeting ""Good"" WFD status. The development should not lead to any further deterioration in the WFD status of this waterbody.

## Pollution prevention

During the period of construction, oil and fuel storage will be subject to the Control of Pollution (Oil Storage) (England) Regulations 2001. The Regulations apply to the storage of oil or fuel of any kind in any kind of container which is being used and stored above ground, including drums and mobile bowsters, situated outside a building and with a storage capacity which exceeds 200 litres. A person with custody or control of any oil or fuel breaching the Regulations will be guilty of a criminal offence. The penalties are a maximum fine of £5000 in Magistrates' Court or an unlimited fine in Crown Court. Further details of the Regulations are available from the Environment Agency.

During construction the developer should ensure that on site activities do not cause pollution. There should be no polluting emissions to air, land or water resulting from actions by the developer or by its sub-contractors. Pollution prevention guidance is available on our website. <https://www.gov.uk/government/collections/pollution-prevention-guidance-ppg>.

## Water efficiency

The efficient use of water is something we actively promote in relation to new development. The Code for Sustainable Homes, since 2006, has set out levels of attainment for energy and water (amongst others). However, the Code is currently going through some changes, which have yet to be finalised.

The new proposals set out a new, higher, proposed level of 110litres/person/day (lpd), which the Environment Agency recommends. Whilst optional, this can be achieved through a fittings based approach. Example specifications are provided at [watercalculator.org](http://watercalculator.org). A fittings based approach resulting in lower household water use can reduce overall operational carbon emissions, particularly where hot water is used more efficiently.

The current level within the Building Regulations of 125 lpd would stay as a basic element.

## Waste

Any waste removed from the site must be removed by a registered waste carrier and taken to a site which has the appropriate permit or exemption in place to receive such waste.

A transfer note must be generated in such cases. If hazardous waste is removed or generated on site the developer must register as a hazardous waste producer and generate a consignment

note when the waste is removed to a site permitted to receive such waste.

If waste is used in the construction of this development (there is no suggestion in the application that this is the case) a U1 exemption must be registered. This is subject to waste types and quantities.

The reserved matters layout should have regard to the fact that the use of gardens and outdoor living spaces (such as balconies) at residential units to the south of the development site will be significantly adversely affected by the existing noise from Brunel Healthcare. The developer will be required to demonstrate that the design is adequate to ensure that exposure to the specific existing sources of rated industrial noise within the gardens and outdoor living spaces of all residential units does not exceed the existing background sound level between the hours of 07:00 - 23:00. For information 'the specific source of rated industrial noise' has the same meaning as 'specific sound level' as defined in BS4142:2014 plus any adjustment for the characteristic features of the sound as defined by 'rating level' in BS4142:2014; and 'background noise' has the same meaning as 'background noise' as defined in BS4142:2014.

**Item**                    **1.4**

**Reg. No.**            **9/2014/1095/FM**

**Applicant:**  
**Mr J Read**  
**Field House Sarlat Construction Hobb Hill**  
**Hazlewood**  
**DE56 4AL**

**Agent:**  
**Mr Ian McHugh**  
**IMcH Planning & Development**  
**Consultancy**  
**20**  
**Attewell Close**  
**Draycott**  
**Derby**  
**DE72 3QP**

**Proposal:**            **ERECTION OF FOUR DETACHED DWELLINGS ON LAND AT SEALWOOD LANE OVERSEAL SWADLINCOTE**

**Ward:**                **SEALES**

**Valid Date:**        **08/12/2014**

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

The application has been brought to Committee at the request of former Councillor Frost and Councillor Mrs Hall and because it would constitute development not in accord with the Development Plan and would affect the route of Public Footpath No.36.

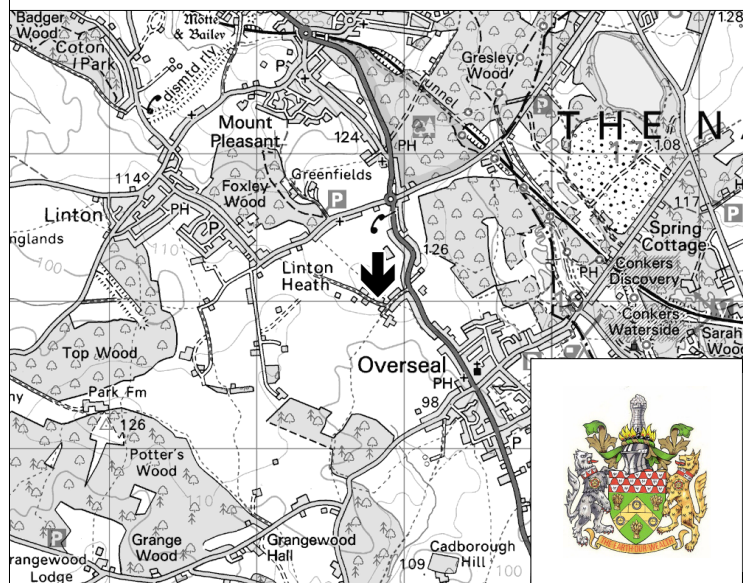
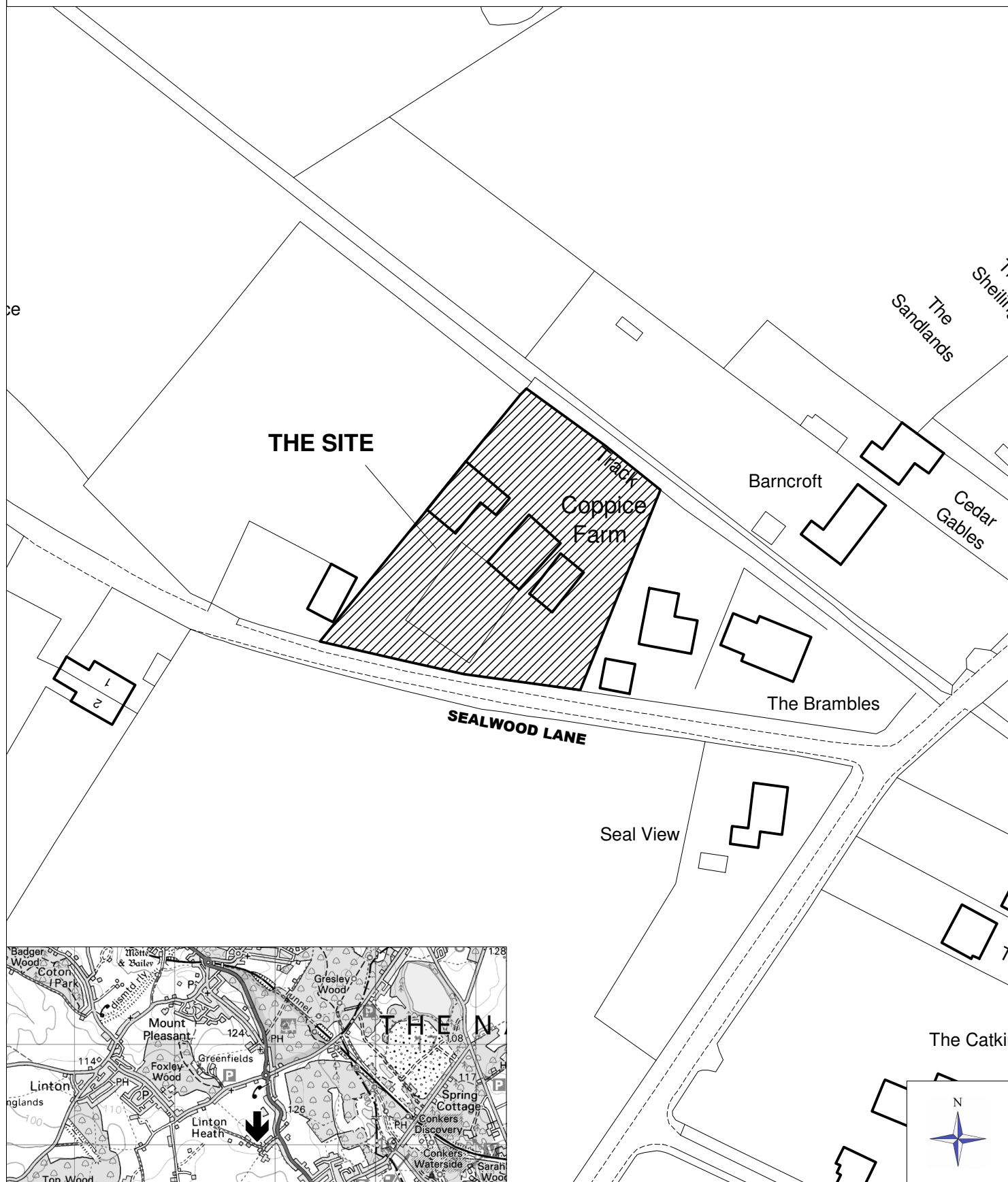
#### **Site Description**

The site measures some 0.2275ha and is situated on the northern side of Sealwood Lane, which is linked to Burton Road (A444) via Green Lane. The site lies outside the defined confine boundary of Overseal and is within the River Mease SAC. It is located to the west of the former Coppice Farm, which has recently been redeveloped by the erection of a replacement two-storey dwelling and a new single storey dwelling. The existing properties on Green Lane and Sealwood Lane comprise a mix of single and two-storey houses. Planning permission for two dwellings has been granted on land between The Oaks and The Martins on Green Lane, one of which is now complete and occupied. The Oaks has recently received planning permission for a replacement dwelling.

The application site originally formed part of the former Coppice Farm and fronts Sealwood Lane. It is enclosed by mature hedgerows on three sides. It contains two brick and tin-sheeted buildings, two timber sheds and a metal shipping container, all of which are neglected and in various states of disrepair. The site is overgrown with dense bramble vegetation and contains evidence of a former commercial use (picture framing business), being littered with broken glass, timber and other debris. There is also evidence of a concrete pad, which is also becoming buried under brambles and moss vegetation.

The site is open fronted and visible from Sealwood Lane and two adjoining public footpaths, No. 36 (the route of which passes along Sealwood Lane) and No. 6 (which passes along the northern boundary. There are extensive, open views across the surrounding countryside to the south.

9/2014/1095 - Land at Sealwood Lane, Overseal, Swadlincote DE12 6JR



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South Derbyshire District Council. LA 100019461. 2014



## **Proposal**

The application is for the demolition/removal of the existing buildings and structures and the redevelopment of the site by the erection of four detached, two-storey dwellings. Two of the dwellings would face, and take access directly off, Sealwood Lane; the remaining two would be set back within the site and accessed via a private drive also leading off Sealwood Lane. One of the existing buildings would be retained until completion of the development in order to provide a habitat for barn owls that live on the site. Three of the dwellings would have detached double garages with the fourth having an integral garage. The development would comprise three different house types, all having four bedrooms and en-suite facilities. Each dwelling would incorporate traditional features, such as segmental arched window heads and timber-framed entrance canopies.

## **Applicants' supporting information**

The following documents have been submitted in support of the application:

- Planning Statement
- Internal and External Bat Survey
- Reptile Evaluation Report
- Reptile Survey
- River Mease Impact Assessment

These documents can be summarised as follows:

### Planning Statement

1. The development of four dwellings would benefit the local economy through the provision of employment opportunities for local builders and suppliers. Whilst some may not view this as being significant it is argued that the development of smaller sites provides opportunities for smaller businesses which are not available to them on larger developments that are generally controlled by volume house builders.
2. New housing would contribute towards the Council's housing needs in the District.
3. The proposal would remove an unkempt and untidy site and would not harm the character or appearance of the countryside.
4. The proposal is sustainable development in accordance with the objections of the NPPF.

### Bat Survey

This concludes by stating that none of the buildings have evidence of being used by bats; however there is evidence of them being used by two roosting barn owls as a permanent breeding site. As such no work should be carried out during the breeding season, which is from mid-March to mid-August. In addition, it is recommended that any clearance of site vegetation and demolition of buildings avoids the bird nesting season or that the site is thoroughly checked for breeding birds by a suitably qualified and experienced ecologist immediately prior to the commencement of any work on site. Temporary mitigation is recommended during the works.

### Reptile Evaluation Report

There is a low but present risk of herptiles (reptiles or amphibians) being present on the site, although not of a level to justify further surveys prior to determination of the application. There will need to be adequate site precautions consisting, primarily, of an ecological supervision of

the site strip focussing on areas with a higher likelihood to harbour herptiles. It is suggested that this could be adequately dealt with by condition.

### Reptile Survey

This has been undertaken at the request of Derbyshire Wildlife Trust following its advice that the presence or otherwise of reptiles (as protected species) and the extent that they may be affected by the proposed development needs to be demonstrated prior to the determination of the application so that any required mitigation can be secured as part of the permission.

The Survey concludes by stating that the site contains a number of habitats and features (basking points and refugia) suitable for reptiles and there are records at some distance of common lizard and slow worm. However, during the survey no reptiles were recorded. Therefore, it is assumed that it is likely that reptiles are absent from this site or are at a very low population density. The Survey contains a list of recommendations should any species come to light during the course of development.

### River Mease Impact Assessment

The Assessment recognises that the potential impacts of the development will depend on a range of factors, such as scale and nature of the proposal, the timing of works, the distance to the sensitive receptor and the impacts of intervening land use.

- The application site lies only just within the designated catchment-sensitive area and a minimum of 3km from the sensitive receptor, which is a considerable distance.
- There are considerable farming and other activities which are likely to affect the catchment in the intervening land between the development site and the sensitive receptor.
- The development is small-scale, low density on a site where there are existing buildings. The footprint of the proposed development would be of a similar scale to the buildings that would be demolished.

It can therefore be deduced that potential risks to the sensitive receptor are low and that suitable precautions undertaken during demolition, site clearance and construction phases can adequately mitigate the risk in addition to measures employed to mitigate any residual increase in risks, post-construction. The increase in sewer loading would be mitigated for via the Developer Contribution Scheme (DCS) which is the agreed method of the Local Planning Authority. Surface water runoff from the site would be channelled into a sustainable urban drainage scheme (SuDS) designed specifically for the development which would enable runoff to settle and have a level of attenuation prior to entering the stormwater system.

### **Planning History**

An application for residential development at Coppice Farm, which included the application site, was refused on 16<sup>th</sup> July 1953.

A second application for the erection of 26 dwellings at Coppice Farm was refused on 30<sup>th</sup> November 1959.

An application (9/2010/0324) was approved for the demolition of an existing property (Coppice Farmhouse) and its replacement with a detached, two-storey dwelling, detached double garage and the erection of a single storey dwelling, together with the creation of a new vehicular access to serve both properties was approved on 11<sup>th</sup> May 2010. Both dwellings have been constructed and are occupied.

## Responses to Consultations

The Peak and Northern Footpaths Society has no objections to the application provided that the full width of Sealwood Lane remains open and unobstructed at all times during and after the development. The applicants must be aware that it is an offence to drive a vehicle over a public footpath without lawful authority, so the new properties must have a vehicular right of access over the footpath.

The Environment Agency has no requirement for any investigation into the presence of contamination at the site. Any significant contamination not assessed that subsequently becomes apparent remains the responsibility of the developer and/or landowner. Precautions must be taken to avoid discharges and spills to ground both during and after construction.

Severn Trent Water has no objections to the proposal.

Derbyshire County Council Rights of Way Section confirms that the site abuts public footpaths 6 and 36; however there are no objections subject to the applicants being advised of their responsibilities with regard to the footpaths.

Natural England has no objections with regard to the River Mease SAC and SSSI subject to conditions in respect of the capacity at the local sewage treatment works and the submission of details relating to the proposed SuDS.

The Council's Environmental Protection Officer (contaminated land) considers that the development may be at risk from ground gas migration and accordingly recommends a ground gas condition.

The County Highway Authority has requested further justification with regard to the previous use of the site and the level of traffic generated as a result of that use. In response to this the applicant has confirmed that the buildings have been used in the past for agricultural storage and also as a picture framing business. Whilst numbers of traffic movements are not known, these uses would have involved agricultural and commercial vehicles visiting the site, in addition to employees' and customers' vehicles on a daily basis. Visibility onto the lane is acceptable and, owing to its relatively short length, the proposal is unlikely to result in any significant danger or inconvenience to users. Further comments from the Highway Authority in response to the additional information are that whilst the proposal isn't ideal from a highway viewpoint, owing to Sealwood Lane being of limited width and having no footways, it is considered that a highway objection could not be sustained when visibility from the proposed access points is acceptable given the likely low speeds and the visibility from Green Lane onto Burton Road is acceptable. The CHA recommends the inclusion of three conditions on any consent, relating to formation of the new access, provision of parking and the retention of parking spaces, including garages, for the parking of vehicles in association with the residential occupation of the properties without the grant of planning permission

Derbyshire Wildlife Trust (DWT) is satisfied with the survey work that has been undertaken with regard to bats. However, the survey identified that two of the buildings are used by breeding barn owl, which is a specially protected species under Schedule 1 of the Wildlife and Countryside Act 1981 (as amended) and local authorities have a duty to take such steps as they consider expedient to bring to the attention of the public the measures to conserve protected species. Building 1 is proposed for retention during construction works however building 2, which also supports barn owl, is to be removed/demolished. It is therefore important that alternative temporary provision is made for barn owl. Barn owl can nest throughout the year so DWT advises that a further survey is carried out immediately prior to the commencement of any work. With regard to the building proposed for retention during construction, DWT would prefer that the building be retained in perpetuity although this would be difficult to achieve if the building is retained and incorporated within the curtilage of one of the new dwellings. As an

alternative one of the dwellings should incorporate a permanent accessible nest space. DWT also advises the attachment of conditions relating to barn owl nesting boxes, pre-development re-survey, retention and maintenance of one or more of the buildings and no removal of hedgerows between 1<sup>st</sup> March and 31<sup>st</sup> August inclusive unless a check has been made of vegetation for active birds' nests. DWT also notes there is evidence of nesting House Sparrow, a Species of Principal Importance, was also found in the buildings. It therefore recommends a further condition requiring the erection of two House Sparrow terraces within the development to be provided in accordance with an agreed scheme.

With regard to the Reptile Evaluation Report, DWT considers that the presence or otherwise of reptiles and the extent that they may be affected by the proposed development needs to be demonstrated prior to the determination of the application so that any required mitigation can be secured as part of any permission. DWT has provided further comments on the recently submitted Reptile Survey and these confirm that no further survey work or mitigation is required in respect of reptiles. The Trust commends the thorough nature of the survey work and the subsequent report is very comprehensive and of a high standard.

### **Responses to Publicity**

Overseal Parish Council objects to the application on the grounds of inadequate access, insufficient parking within the site, removal of hedgerows, impact on wildlife and the fact that the site is within open countryside.

An email has been received from the local Volunteer Footpath Group and South Derbyshire Ramblers which raises the issue of the future management of the hedgerow along the eastern boundary of Public Footpath 6.

One email of support has been received which can be summarised as follows:

- a. The development would tidy up an ugly space and is to be commended;
- b. On-site mitigation for wildlife should be checked regularly;
- c. There should be minimum disruption to wildlife, including grass snakes and badgers;
- d. It is considered that the development is the most sensible housing proposal that she has commented on over the last two years and has no reservations in supporting it.

A petition containing 9 signatures has been received which objects on the following grounds:

- a. The size and density of the proposal and impact on the rural area;
- b. The development is not in keeping with surrounding development;
- c. Overseal needs more bungalows for the over 60s not large housing for families;
- d. Highway safety concerns of significant additional vehicles on the lanes;
- e. Barn owls are present in the derelict barns and their nesting site will be destroyed.

Six letters/emails have been received all of which object on the following grounds:

- a. Scale and massing would be out of keeping with the rural character of the area;
- b. Design of the dwellings is not appropriate to the rural edge of Overseal and therefore not in accordance with the NPPF and the Council's own design guidance;
- c. Visual intrusion resulting in significant impact on the area;
- d. Existing housing is predominantly single storey, with the only two-storey properties being old farmhouses and recent developments are all dormer properties;
- e. Housing fronting onto Green Lane and Sealwood Lane are all single plot depth, whereas the proposed development would impose a scale and density that does not reflect the context of the site.
- f. Inappropriate roof tiles being proposed;

- g. The 2007 Housing Needs Survey identified a need for single storey properties for the over 60s in the area and the proposed development of two-storey houses does not reflect the identified need, contrary to the advice in the NPPF;
- h. Increased use of a single track lane with no passing places resulting in increased potential for accidents, particularly small children walking to catch the school bus;
- i. No indication of a permanent breeding site for barn owls, even though the ecology statement recommends it;
- j. The application should be determined by the Planning Committee following a site visit;
- k. Concern over the proximity of the proposed garage to Plot 1 to the neighbouring boundary;
- l. Concern with regard to the temperament of the neighbour's horse which is likely to become stressed during and after construction work on the application site;
- m. Detrimental impact on wildlife, public footpaths and native ancient hedgerows;
- n. The site is in the middle of the National Forest;
- o. Green Lane and Sealwood Lane are already congested by traffic accessing various businesses in the vicinity;
- p. Development would lead to a 50% increase in number of properties on Sealwood Lane;
- q. Damage to boundary fencing;
- r. The documentation states that 16 parking spaces would be provided but only 8 cars are shown parked on the development, according to the submitted block plan;
- s. Access for emergency vehicles is restricted;
- t. Removal of hedges and vegetation will change the landscape completely;
- u. Overdevelopment of the site – a single bungalow would be more appropriate.

## **Development Plan Policies**

The relevant policies are:

Adopted Local Plan: Saved Housing Policies 5, 8, 11; Saved Environment Policies: 1, 10, 11; Saved Transport Policy 6.

Emerging Local Plan: S2, S6, H1, SD1, BNE1, BNE3, BNE4, INF2, INF8

Supplementary Planning Guidance: Housing Design and Layout

## **National Guidance**

National Planning Policy Framework (NPPF), particularly paragraphs 7, 8, 14, 17, 47, 49, 50, 56, 57, 109, 118, 119, 121, 159, 165, 186, 187, 203, 204

National Planning Practice Guidance (NPPG) ID 50-001-20140306 Rural Housing

## **Planning Considerations**

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

- The principle of the development
- The Council's five-year housing land supply and sustainability
- Design and Visual impact
- Highway matters
- Ecology
- River Mease SAC and S106 obligations
- Miscellaneous issues

## **Planning Assessment**

## Principle of the development

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that “if regard is to be had to the development plan for the purpose of any determination to be made under the planning acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise”.

Paragraph 14 of the NPPF states “*at the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking*”. The NPPF makes it clear that for decision-taking this means approving development proposals that accord with the development plan without delay and where the development plan is absent silent or relevant policies are out of date granting permission unless:

- “*any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole; or*
- *Specific policies in the NPPF indicate the development should be restricted*”.

Paragraph 215 of the NPPF states that due weight should be given to relevant policies in existing plans according to their degree of consistency with the framework.

The application is located on the northern side of Sealwood Lane, a single width track that leads to other residential properties and farms before petering out to become a footpath leading through to Linton Heath. The site, together with all the existing properties in the vicinity, is some considerable distance from the village confine boundary, as shown on Inset 22 of the adopted Local Plan. The adopted Local Plan contains numerous saved policies relating to new residential development and countryside development that are considered to be consistent with the NPPF although some recent appeal decisions have called into question the validity of some policies in certain circumstances. When assessing the current proposals against the adopted Local Plan it is clear that they would be contrary to Housing Policies 5 and 8. It is evident that the site is not within the village confine, but rather it lies within countryside outside any settlement boundary.

Saved Housing Policy 5 only supports new housing development in the countryside provided that they can be accommodated within villages and they are in keeping with the scale and character of the settlement.

Housing Policy 8 only supports new housing development in the countryside provided that it is necessary to serve a rural-based activity or unavoidable in the countryside.

Part A of Environment Policy 1 is similar to Housing Policy 8 except that it enables development which is unavoidable in the countryside whilst seeking to protect the intrinsic character and beauty of the countryside.

Notwithstanding the above policies, they should not be instrumental in reaching a decision on whether to approve or refuse consent as the housing policies could be considered to be out-dated when assessing development proposals on sites of this size when weighed against the need for housing in the district.

The Emerging Local Plan began its Examination in Public during November 2014 but was subsequently suspended pending further work being carried out with regard to the sustainability appraisal and the Housing Market Assessment (HMA). In the Plan, Policy H1 – Settlement Hierarchy – includes Overseal as a Key Service Village where development of a range of scales up to and including small strategic sites and affordable and cross subsidy exceptions sites of up to 25 dwellings will be promoted on appropriate sites and according to individual settlement circumstances. Clearly, this is what is proposed here. However, although some weight can be

afforded to the Emerging Plan now that it has progressed beyond its consultation stages and has reached the Examination stage, it would not be advisable to attribute it significant weight until such time as the Plan has been found to be 'sound' following completion of the Examination and a five year supply of housing land has been demonstrated.

Given that the proposals do not accord with Saved Housing Policies 5 and 8 of the adopted Local Plan, it is evident that the principle of the development cannot be satisfied using these policies as a gauge. Notwithstanding this, Members will be aware that the decision is not as clear cut as the above policy considerations appear to suggest. Taking the advice in the NPPF into account, paragraph 14 emphasises that the presumption in favour of sustainable development must apply unless there are adverse impacts that would significantly and demonstrably outweigh the benefits when assessed against the policies of the NPPF as a whole. In other words, there is a need to identify the significant and demonstrable harm that would ensue from the development proposals in order to outweigh the NPPF policies and the need for housing.

The buildings were originally used as part of the agricultural operations relating to Coppice Farm to the east. This is their authorised use as there is no evidence that planning permission was ever sought or gained for their use in association with any commercial activity. The definition of previously developed land, according to Annex 2 of the NPPF, is *"land which is or was occupied by a permanent structure, including the curtilage of the developed land and any associated fixed surface infrastructure. This excludes: land that is or has been occupied by agricultural or forestry buildings ....."* Applying this definition to the application site it is likely that the historic use of the site and buildings for storage and business use was unauthorised and therefore it is doubtful whether an argument that the site is a brownfield (previously developed) site could be sustained.

However, notwithstanding the previous use of the site and the buildings, it is evident in this case, that the site displays a partially built-up rather than open character. The site has been vacant for a considerable period of time with no reasonable expectation that it is likely to be used either in association with an agricultural use or for commercial purposes. The site does not make an identifiable positive contribution to the character of the countryside. In these particular circumstances the re-development of the site for housing would relate reasonably well to the existing housing in the immediate vicinity, both on Sealwood Lane and Green Lane, although it is acknowledged that the majority of the more recent developments here have been allowed under the infill policy (Housing Policy 6 of the adopted Local Plan) which allows for the infilling of a small gap for normally not more than two dwellings.

Clearly, therefore, the decision is not clear cut and the arguments, both for and against, are finely balanced. Added to this are other important material considerations that are fundamental to consideration of the application.

#### The Council's five-year housing land supply and sustainability

In terms of housing supply, paragraph 47 of the NPPF requires local planning authorities to use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in the NPPF, including identifying key sites which are critical to the delivery of the housing strategy over the plan period. In addition, there is a burden on the local authority to identify and update annually a supply of specific deliverable sites sufficient to provide five years' worth of housing against their housing requirements, with an additional buffer, to ensure choice and competition in the market for land. Paragraph 49 states that housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered to be up-to-date if the local planning authority cannot currently demonstrate a five year supply of housing.

As already stated above, paragraph 14 of the NPPF states that the presumption in favour of sustainable development must apply unless there are adverse impacts that would significantly and demonstrably outweigh the benefits. It has been made clear through numerous appeal decisions made since the inception of the NPPF that any negative considerations would need to be *substantial* in order to justify refusal of an application that makes a meaningful contribution to strategic housing need. The mere presence of less than optimal planning circumstances for any given development is not likely to outweigh the presumption.

The Council currently is unable to demonstrate that it has a five year housing land supply (the current figure is below four). Paragraph 49 of the NPPF is specific on this subject. It states: “Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five year supply of deliverable sites”. It follows, therefore, that, as the Council is unable to demonstrate a five year housing supply, Members should be approving the current proposal, provided that they consider the scheme to be sustainable.

The main part of Overseal is within walking distance of the application site and the village is well-served by a range of local services and facilities, including a church, shops, public house, takeaways etc. The village is also served by public transport and footpath links to the surrounding countryside and wider area. It is evident that the application site is sustainable and would meet the sustainability objectives of the NPPF with regard to rural housing and the importance of supporting sustainable rural communities.

Regard must be had to paragraph 14 of the NPPF in that (if the presumption in favour of sustainable development applies) the benefit of the housing proposals has to be balanced against the harm to the countryside. Moreover, to justify resisting the proposals under paragraph 14 the harm must outweigh the benefit, not just marginally but rather *‘significantly’* and *‘demonstrably’*.

#### Design and Visual impact

The site has little visual quality and makes a very limited contribution to the open and rural character of the countryside. It is acknowledged that the existing buildings on the site are of single storey height and that the proposed development would be of two storeys. Consequently, there is likely to be some visual impact on the surrounding area. However it should be borne in mind that the replacement dwelling to the east (Coppice Farm) is also of two storeys and of modern design. The height of the proposed dwellings would be comparable with the Coppice Farm dwelling, even allowing for a slight difference in ground levels. This could be mitigated against by careful consideration of the finished floor levels when compared to existing ground levels on the site. When viewed in this context, therefore, the proposed development would appear as a continuation of the Coppice Farm development. The design and scale of the proposed dwellings would also compare favourably with Coppice Farm and incorporate similar design features, such as arched window/door heads and timber entrance canopies. Overall, it is considered that the proposed development would not have a significant or harmful impact on the character or appearance of the area and consequently the objectives of the NPPF would not be compromised.

#### Highway matters

The County Highway Authority (CHA) has assessed the proposals against the level of traffic that could be generated from the site, both from its authorised use (agricultural) and its unauthorised use (commercial/storage). Whilst Sealwood Lane is of single width it is possible to pass other traffic with care as the verges and existing field entrances are sufficiently generous in places to allow vehicles to pass. The CHA recognises that the current situation on the lane is not ideal. However, the Authority is not convinced the proposal is of sufficient scale to warrant a



recommendation for refusal. It should be remembered that Sealwood Lane is not a through road and the level of traffic using the lane is quite low. The impact of the proposal on highway safety would not be sufficiently detrimental to warrant refusal.

Car parking within the site would be provided at a ratio of four spaces per dwelling, (two in the garage and two on the driveway), which more than meets the guidelines in the 6Cs Design Guide.

### Ecology

Derbyshire Wildlife Trust has expressed concern that the two existing buildings that provide roosting habitat for barn owl would be removed as part of the development, albeit one would be retained while the development was under construction. DWT has expressed a wish that at least one of the buildings be retained in perpetuity. Barn owl is a 'IUCN Red List' protected species which is given special protection under the Wildlife and Countryside Act 1981 (as amended). Section 25(1) of the Act imposes a duty on local authorities to take such steps as they consider expedient to bring to the attention of the public the provisions of Part 1 of the Act, which includes measures to conserve protected species.

It is recognised, however, that a balance needs to be achieved between the interests of development and conservation. Discussions have been ongoing during the course of the application between DWT, the applicant and the Local Planning Authority in order to secure an acceptable way forward that would safeguard the protected species whilst at the same time, allow for a favourable recommendation for the proposals. Originally, DWT requested that the building proposed for retention during construction works was retained in perpetuity. The applicant believes this would prove to be impracticable for a number of reasons:

1. The relationship of the building to the proposed development would create issues of maintenance and access and, other than providing a roosting structure, the building would have no viable use or function.
2. It is not clear who would be responsible for the upkeep of the building in the long term and what measures would be required to ensure the building did not fall into further disrepair.
3. The permanent presence of the building would reduce considerably the amount of amenity space allocated for Plot 3, which would mean that the scheme would likely not be viable in its current form.

The applicant has offered to provide a barn owl box close to the site but DWT considers this is neither sufficient nor in accordance with guidance provided in *Barn Owls and Rural Planning Applications* produced by the Barn Owl Trust and Natural England. The erection of a barn owl box in the area should only be viewed as temporary provision and while the applicant takes the view that the building would have no viable use or function, DWT argues that the use or function of the retained building would be to maintain a barn owl roost/nest site. If the applicant is unwilling to retain the existing building as a permanent barn owl roost/nest, one of the new dwellings should be designed to incorporate a permanent accessible nest space for barn owl. Further discussions with the applicant have resulted in an agreement to provide the latter facility and DWT now accepts that there is a way forward. This could be required by a suitably worded condition.

With regard to reptiles the most recent Reptile Survey has been assessed by DWT and they now confirm that no further survey work or mitigation is required.

DWT is also satisfied that, given the description of the buildings on the site and extent of the internal and external inspections, sufficient survey work has been undertaken to determine that roosting bats are unlikely to be present on the site and, as such, no impact on bats is anticipated as a result of the proposals.

## River Mease SAC and S106 obligations

As stated elsewhere in this report, the site is within the River Mease SAC and therefore the application has been screened in accordance with The Habitats Directive as required by EU Regulations. The screening has concluded that as there is not likely to be any significant impact on the River Mease SAC and, given the comments received from Natural England, there is no requirement to undertake an appropriate assessment for the development.

A development of the size proposed in this application would not meet the criteria for financial contributions towards recreation, health, education etc. However, the site's relationship to the River Mease SAC means that there will be a requirement for a contribution towards water quality management in accordance with the River Mease Developer Contributions Scheme. Based on the site details in terms of the number of dwellings and number of bedrooms created within the development, a contribution of £1,416 will be required. The applicant is aware of this and has agreed to pay the contribution as part of a Unilateral Undertaking obligation.

With regard to the provision of barn owl boxes, it is proposed that some of these would be located within an adjacent field that is not included in the red outline. Consequently, the Unilateral Undertaking would need to include an obligation to require the provision of the barn owl nesting/roosting boxes in accordance with a scheme to be agreed by the Local Planning Authority and DWT. One of the proposed dwellings would incorporate barn owl roosting facilities, details of which should be required by condition.

## Miscellaneous issues

The issues/objections raised by the neighbouring residents have largely been addressed as part of the planning assessment above. The main issues remaining are addressed as follows:

The use of inappropriate roof tiles – all external materials would be controlled by condition.

- Increased potential for accidents – the site has been used for agriculture and commercial purposes previously, both of which could have involved the use of heavy machinery or vans/lorries. The traffic and type of vehicles generated by a residential use is likely to be lighter and create less of an impact than both the previous uses.
- The temperament of a horse, or any other animal, is not a material planning consideration and therefore a reason for refusal on those grounds would be unreasonable.
- The majority of the existing hedgerows would be retained and enhanced and the routes of the public footpaths would not be affected. The applicant's attention would be drawn to the presence of the footpaths and reminded of his duty to keep the routes clear at all times.
- The site is within the National Forest; however that fact does not preclude that any development should take place, rather that the development should be assimilated into the landscape by suitable and appropriate planting.
- Emergency vehicles currently have access to the other properties further along Sealwood Lane to the west. The site is closer to Green Lane and Burton Road than those properties and therefore this would not be an issue.
- The site is quite extensive, measuring some 2,275 square metres (0.2275ha) and its re-development by the erection of 4 dwellings is not considered to constitute over-development.

## Overall Conclusion

The information within the supporting documents and responses from statutory consultees has not raised any particular concerns with regard to 'technical' issues, particularly since the ecology

issues have now been overcome. The County Highway Authority is satisfied that the development could be made acceptable in highway safety terms with imposition of conditions. Similarly, the wildlife within the site could be protected by mitigation and monitoring work. The scale, design and layout of the proposal are considered to be appropriate for the site and its location.

Therefore, the decision falls to be determined on more fundamental issues of principle. Whilst the development appears to be contrary to Saved Housing Policies 5 and 8 and Environment Policy 1, this is outweighed by the material considerations of the presumption in favour of sustainable development, which is the main objective (golden thread) running through the NPPF (and the Government's desire to 'significantly boost the supply of housing'). In this context involving a development that would be sustainable and given that the Council is unable to demonstrate a five year housing land supply, it is recommended that the application is approved, subject to the applicant entering into a legal agreement (Section 106 or Unilateral Undertaking) to cover the above obligations and subject to the conditions specified below.

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

- A. That the Committee delegates authority to the Planning Services Manager to conclude the signing of a Section 106 Agreement or Unilateral Undertaking in pursuit of the provisions and contributions as set out in the planning assessment above;
- B. Subject to A, **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. Before development involving the construction of any dwelling commences 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 dwellings have been submitted to and approved in writing by the Local Planning Authority. The work shall be carried out in accordance with the approved details.

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

- 3. Before development involving the construction of any dwelling commences a scheme of hard and soft landscaping, which shall include indications of all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection in the course of development, shall be submitted to and approved in writing by the Local Planning Authority.

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

- 4. All planting, seeding or turfing comprised in the approved details of landscaping submitted as part of Condition 3 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.

5. Notwithstanding any details submitted or the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended), before development involving the construction of any dwelling commences plans indicating the positions, design, materials and type of boundary treatment to be erected shall be submitted to and approved in writing by the Local Planning Authority. The boundary treatment shall be completed in accordance with the approved details before the development is occupied or in accordance with a timetable which shall first have been agreed in writing with the Local Planning Authority.

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

6. Before development involving the construction of any dwelling commences, details of the finished floor levels of the dwellings 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 levels.

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

7. Before development involving the construction of any dwelling commences details shall be submitted to and approved in writing by the Local Planning Authority to show the provision of nesting facilities for barn owls to be incorporated within one of the dwellings hereby approved. The works shall be carried out in accordance with the approved details and the facilities shall be provided before the dwelling is first occupied and shall be retained as such thereafter.

Reason: In the interests of the preservation of protected species.

8. A barn owl nesting/roosting box shall be provided on site in accordance with a scheme to be submitted and approved in writing by the Local Planning Authority prior to the commencement of any works on site, including demolition of any of the buildings. The box shall be erected at least 30 days prior to works commencing, shall not be subjected to disturbance during demolition and construction works and shall remain in place in perpetuity.

Reason: The submission of the details at an early stage would allow the Local Planning Authority to control and mitigate the impact of the development on the protected species i.e. barn owls.

9. Immediately prior to the commencement of any demolition on the site a further survey shall be carried out to ascertain whether there are any barn owls nesting within the buildings. If barn owls are found to nesting then no demolition works shall take place until such time as the nesting period has ended and the young have left the nest.

Reason: Barn owls nest all year round and an up-to-date survey would ascertain whether the demolition of the building is appropriate at that time, In the interests of the preservation of protected species.

10. Before development involving the construction of any dwelling commences details shall be submitted to and approved in writing by the Local Planning Authority to show the provision and location of two House Sparrow terraces within the development and the works shall be carried out in accordance with the approved details. The approved House Sparrow terraces shall be provided prior to first occupation of the development hereby approved.

Reason: In the interests of the preservation of a species of Principal Importance.

11. Before development involving the construction of any dwelling commences a suitable scheme for the prevention of ground gas ingress shall be submitted to and approved in writing by the Local Planning Authority. Alternatively, the site shall be monitored for the presence of ground gas and a subsequent risk assessment completed in accordance with a scheme to be agreed with the Local Planning Authority, 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'.  
Upon completion of either, verification of the correct installation of gas prevention measures (if any) shall be submitted to and approved in writing by the LPA prior to the occupation of the development hereby permitted.

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.

12. Before development involving the construction of any dwelling commences details of a scheme for the disposal of surface water shall be submitted to and agreed in writing by the Local Planning Authority. The submitted scheme shall include a detailed SuDS and soakaway plan to ensure the River Mease water quality conservation targets can be met. The approved scheme shall be carried out in conformity with the details which have been agreed before the development is first brought into use.

Reason: To ensure that the integrity of the River Mease Special Area of Conservation is not compromised.

13. Before development involving the construction of any dwelling commences the new vehicular and pedestrian accesses shall be formed to Sealwood Lane in accordance with the application drawing No. 14/CFO/12f and provided with visibility sightlines extending from a point 2 metres from the carriageway edge, measured along the centreline of the access to the extremities of the site frontage abutting the highway in each direction. The land in advance of the visibility sightlines shall be retained throughout the life of the development free of any object greater than 1m in height (0.6m in the case of vegetation) relative to adjoining nearside carriageway channel level.

Reason: In the interests of highway safety.

14. No dwelling shall be occupied until space has been laid out within the site in accordance with drawing No. 14/CFO/12f for cars to be parked.

Reason: In the interests of highway safety.

15. The car parking spaces to be provided within the site shall be kept available for the parking of motor vehicles at all times. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) the garage/car parking spaces hereby permitted shall be retained as such and shall not be used for any purpose other than the garaging of private motor vehicles associated with the residential occupation of the properties without the grant of a further specific planning permission from the Local Planning Authority in that regard.

Reason: In the interests of highway safety to ensure sufficient parking remains available to serve the development.

16. This permission shall relate to the submitted plans as amended by drawing No. 14/CFO/12f showing, in particular, a revised position for the garage on plot 1 and revised

dimensions in relation to the northwestern boundary of the site, unless as otherwise required by condition attached to this permission or allowed by way of an approval of a non-material minor amendment made on application under Section 96A of the Town and Country Planning Act 1990 (as amended).

Reason: For the avoidance of doubt.

17. The building indicated as being retained on drawing No. 14/CFO/12f shall not be demolished until such time as the development has been completed and the replacement barn owl nesting/roosting opportunities have been provided within the dwelling subject to the requirements of Condition No 7 above.

Reason: To ensure that replacement barn owl nesting/roosting facilities are available at the earliest opportunity, in the interests of the preservation of protected species.

#### Informatives:

This project has been screened to assess its impact on the River Mease SAC under the Conservation of Habitat and Species Regulations 2010. The assessment has concluded that the development would cause no significant impact and therefore an Appropriate Assessment is not required.

That the hedgerows on the application site may contain nesting birds. It is an offence under the Wildlife and Countryside Act 1981 to intentionally kill, injure or take any wild British breeding bird or its eggs or damage its nest whilst in use or being built. The nesting season normally encompasses the months March to July inclusive. If you are in doubt as to requirements of the law in this regard you should contact the Derbyshire Wildlife Trust, East Mill, Bridge Foot, Belper, Derbyshire DE56 1XH, telephone 01773 881188.

The routes of Public Footpaths 6 and 36 must remain open, unobstructed and on their legal alignment at all times. There should be no disturbance to the surface of the routes without prior authorisation from the Rights of Way Inspector for the area. Consideration should be given to members of the public using the routes at all times. A temporary closure of the routes may be granted to facilitate public safety subject to certain conditions. Further information may be obtained by contacting the Rights of Way Section at Derbyshire County Council, Shand House, Dale Road South, Matlock, Derbyshire DE4 3RY, telephone 01629 539781. If a structure is to be erected adjacent to the rights of way, it should be installed within the site boundary so that the widths of the rights of way are not encroached upon.

The applicant's attention is drawn to the advisory letter from the Environment Agency dated 29th December 2014 with regard to pollution prevention measures.

The applicant is advised to confirm that the local sewage treatment works (Overseal STW) can handle the additional foul water capacity likely to be generated by the proposed development.

Pursuant to Section 184 of the Highways Act 1980 and Section 86(4) of the New Roads and Streetworks Act 1991, at least 12 weeks prior notification should be given to the Environmental Services Department of Derbyshire County Council before any works commence on the vehicular access within highway limits; please contact 01629 533190 for further information. The applicant is advised to seriously consider the installation of a sprinkler system to reduce the risk of danger from fire to future occupants and property.

The proposed development lies within a coal mining area which may contain unrecorded coal mining related hazards. If any coal mining feature is encountered during development, this should be reported immediately to The Coal Authority on 0345 762 6848. It should also be noted that this site may lie in an area where a current licence exists for underground coal

mining. Further information is also available on The Coal Authority website at: [www.gov.uk/government/organisations/the-coal-authority](http://www.gov.uk/government/organisations/the-coal-authority). Property specific summary information on past, current and future coal mining activity can be obtained from: [www.groundstability.com](http://www.groundstability.com).

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

In dealing with this application, the Local Planning Authority has worked with the applicant in a positive and proactive manner through pre-application discussions, by seeking to resolve planning objections and issues to improve the quality of the proposal and by determining the application as quickly as possible following receipt of additional information. As such it is considered that the Local Planning Authority has implemented the requirements set out in paragraphs 186 and 187 of the National Planning Policy Framework.

For assistance in complying with planning conditions and other legal requirements applicants should consult ""Developing Land within Derbyshire - Guidance on submitting applications for land that may be contaminated"". This document has been produced by local authorities in Derbyshire to assist developers, and is available from [http://www.south-derbys.gov.uk/business/pollution/contaminated\\_land/default.asp](http://www.south-derbys.gov.uk/business/pollution/contaminated_land/default.asp)

Reports in electronic formats are preferred, ideally on a CD. For the individual report phases, the administration of this application may be expedited if a digital copy of these reports is also submitted to the pollution control officer (contaminated land) in the environmental health department: [pollution.control@south-derbys.gov.uk](mailto:pollution.control@south-derbys.gov.uk).

**Item**                    **1.5**

**Reg. No.**            **9/2015/0029/OS**

**Applicant:**  
**Mr Timothy Steele**  
**Harvest Barn Main Street**  
**Milton**  
**DE6 6EF**

**Agent:**  
**Mr Andrew Large**  
**Andrew Large Surveyors**  
**The Estate Office**  
**Staunton Harold Hall**  
**Melbourne Road**  
**Ashby de la Zouch**  
**Leicestershire**  
**LE65 1RT**

**Proposal:**            **THE ERECTION OF 10 DWELLINGS WITH A NEW ACCESS  
AND OPEN SPACE AREA ON LAND AT SK2915 9124 MOIRA  
ROAD OVERSEAL SWADLINCOTE**

**Ward:**                **SEALES**

**Valid Date:**        **20/01/2015**

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

The application is for major development, not in accord with the development plan, affecting a public right of way and has attracted more than two letters of objection.

#### **Site Description**

The application site is located to the north east of Poplars Farm on Moira Road, Overseal opposite the junction with Hallcroft Avenue. It measures some 0.57 hectares, with a site frontage of 80m, and is currently used as a paddock. The site is enclosed by mature hedgerows and trees. The route of public footpath No.26 crosses the site in a northeast/southwest direction, starting at Moira Road before connecting to Public Footpath No.24 to the south of farm buildings at Poplars Farm. The site lies outside, but adjoining, the Overseal confine boundary, as indicated on Inset 22 of the adopted Local Plan Proposals Map and is within the River Mease SAC.

#### **Proposal**

The application is for full planning permission for the erection of 10 dwellings, together with the formation of a new vehicular access off Moira Road and an area of open space to the northeast of the proposed development. The submitted block plan shows that the route of Public Footpath No.26 would be diverted to skirt around the development along the eastern and south eastern boundaries of the site. This would require a formal footpath diversion application which would be submitted following the grant of planning permission.

The proposal would provide five 4-bedroom dwellings, two 3-bedroom dwellings and three 2-bedroom dwellings and has been designed to mimic a traditional farmstead development with the appearance of a barn conversion scheme. Plots 1 and 10, both of which would be of two-storey design, would face Moira Road and be positioned either side of the access road. Plots 2,



Overseal Manor

Pond

Lodge

2.1m

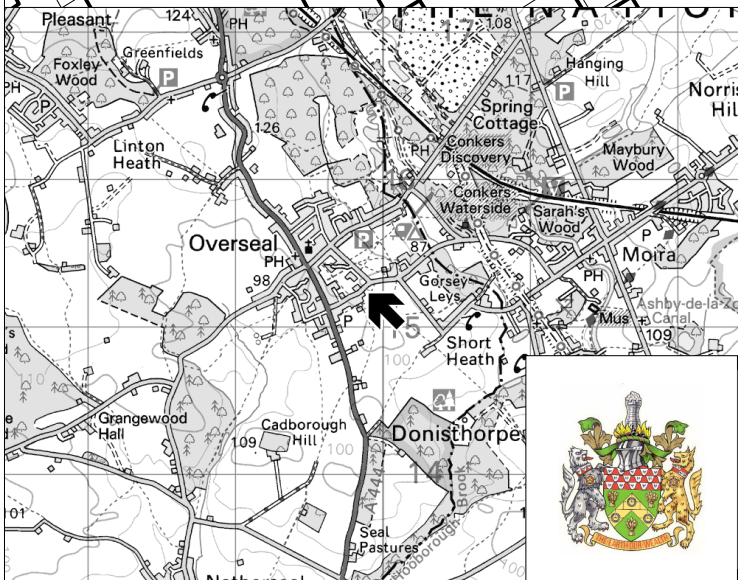
97.5m

Poplars Farm

THE SITE

Inset map labels: Pleasant, Greenfields, Foxley Wood, Linton Heath, Overseal, Spring Cottage, Conkers Discovery, Conkers Waterside, Sarah's Wood, Maybury Wood, Hanging Hill, Norris Hill, Moira, Ashby-de-la-Zouch Canal, Short, Gersey Leys, PH, P, 124, 126, 108, 117, 87, 98, 109.

North Arrow: N



**South Derbyshire District Council. LA 100019461. 2014**

3 and 4 would enclose the turning head, with plot 3 having two and a half storeys. Plots 3, 4, 5 and 6 would be linked by either garages or car ports. Plots 7 to 9 would comprise a terrace of two-bedroom dwellings and would face the area of open space. Plots 1, 2 and 3 would each have four car parking spaces, with the remaining plots each having two spaces, all provided either within garages, car ports or by external allocated spaces.

### **Applicants' supporting information**

The following documents and associated plans have been submitted in support of the proposal:

- Outline drainage strategy
- Building for Life Assessment
- Design and Access Statement
- Outline Management Plan for the open space
- Draft Heads of Terms

For ease of reference, the above documents are summarised below:

#### Outline drainage strategy

This involves the making of a new foul water connection to the existing sewer in Moira Road. The surface water drainage would be fully SuDS compliant and would meet the requirements of developments in the River Mease SAC. All surface water run-off would be managed at source to the required storm return period. This would be achieved by using a soakaway and areas of permeable paving. Catchpits and trapped gullies would also be incorporated to provide surface water treatment and a means of maintenance to the system.

#### Building for Life Assessment

The proposed development has been assessed against the 12 Building for Life criteria, including integration, the creation of a sense of place, street design and public/private spaces. The assessment scored the development 12 out of 12.

#### Design and Access Statement

This concludes by stating that the proposal is for a small-scale development on a site which is situated immediately adjacent to the development limits of the village. The proposal takes account of the distinctiveness of the village and the important views into the open countryside and the scheme which has been drawn up will be visually appealing for its inhabitants and neighbours.

Overseal has good public transport links, a primary school, public house, play area, doctors' surgery and shops. This development will help to ensure and support the continuing sustainability of the settlement.

#### Outline management plan for open space

It is the intention of the applicants to manage the open space themselves, with the introduction of grazing animals on the land (cattle, sheep or ponies) and/or cutting to achieve a sward height of between 2cm and 10cm in October/November. No new drainage would be installed or existing drainage modified unless the prior agreement of the Local Planning Authority had been obtained. Weeds would be controlled on a regular basis so that by year 5 their cover would be less than 5%. Ploughing, sub-surface cultivation and re-seeding would not be permitted. It is not the intention to allow field operations and stocking to damage the soil structure or cause heavy poaching.

*Members are advised that this area is not intended to be used as a conventional area of public open space for public use, play or exercise. It is intended to leave the area open and undeveloped so that the view from the Grade II Listed Overseal Manor is uninterrupted, thus not affecting its setting. Consequently, as there will be no public open space within the development itself, there will be a requirement for a financial contribution towards off-site recreation as part of the Section 106 Agreement.*

### Draft Heads of Terms

The applicants have offered contributions towards the following:

- i. Education
- ii. Civic Amenity
- iii. Library
- iv. Health
- v. Highway Provisions
- vi. Monitoring Costs
- vii. River Mease SAC (water quality management)

### **Planning History**

None

### **Responses to Consultations**

The County Highway Authority considers that traffic calming measures are not required in this location and that it is not something that the Highway Authority is looking to pursue. In view of this there are no highway objections to the proposal subject to conditions and advice on working within the highway, surface materials, mud on the highway and the public right of way.

Natural England has no objections to the proposal with regard to the River Mease SSSI and SAC, subject to confirmation that the local sewage treatment works are able to handle the added foul water capacity and that surface water is not directed to the mains sewer.

The Environment Agency does not wish to make any comments on the proposal.

Derbyshire County Rights of Way officer confirms that Public Footpath No.26 crosses the site and advises that a permanent diversion order will be required at the earliest opportunity. The RoW officer also advises that the route should remain open, unobstructed and on its legal alignment at all times and that no temporary closure of the footpath in order to aid works on the site will be granted without an application to divert the footpath being underway. Furthermore, the surface of the route should not be disturbed without prior authorisation and that consideration should be given to the members of the public using the route at all times. The width of the right of way should not be encroached upon by any structure or building.

The Strategic Housing Manager confirms that the proposed development does not trigger the need to provide affordable housing; however the site may be of interest to a Registered Provider (RP) who may wish to develop out the site.

Severn Trent Water has no objections to the proposal.

Derbyshire County Council has requested financial contributions as follows:

- £286.10 towards the provision of a new Household Waste Recycling Centre;
- £22,798.02 towards 2 primary school places at Overseal Primary School;
- £34,352.34 towards 2 secondary school places at The William Allitt School.

There is also a request for new homes to be designed to Lifetime Homes standards.

The Peak and Northern Footpaths Society has no objections to the application but requests that the applicant be made aware that the whole width of the definitive route of Footpath 26 must not be obstructed or its surface altered unless the relevant orders are in place. The Society's attitude to the diversion would depend on the width, gradient and nature of the surface and boundary treatments of the new route.

The Ramblers and the Overseal Volunteer Footpath Group have no objection to the proposed footpath diversion but see it as a positive step as the diverted route would give an open view to the south and southeast across the rural landscape, which is currently restricted by a hedgerow. It would also give privacy to the future residents of the development. Notwithstanding this, the author of the response, on a personal note, remains concerned about the impact of the development on local schools, which are at capacity.

Overseal Parish Council has no objection to the application and considers that the design of the proposed development is attractive. However, there are concerns regarding the speed of traffic on Moira Road, even with the 30 mph speed limit in place. Visibility towards the new access will be restricted until vehicles clear the bend near to the junction with Hallcroft Avenue and some form of traffic calming on Moira Road would assist. In addition to this, the proposal would increase the traffic on the A444 and the local primary school is full.

The Council's Environmental Protection Officer (contaminated land) has no major comments to make with regard to contaminated land as the site is a low risk green field site. As a precaution, however, he recommends that a standard condition relating to contamination identified during construction be included.

The Council's Environmental Protection Officer (noise) has no objections to the proposal.

National Forest Company recommends a financial contribution of £2,200 towards off-site planting as the small area of open space within the layout would not be suitable for tree planting.

The Coal Authority recommends applying Standing Advice as an informative.

NHS England confirms that there will not be a requirement for a Section 106 contribution towards healthcare provision.

## **Responses to Publicity**

The local County Councillor has requested that the developer provide broadband and sprinklers as part of the development and a contribution towards waste management and school place provision as local primary and secondary schools are at capacity. She has also commented on access and road safety issues which have been forwarded to the County Highway Authority.

Eight letters/emails of objection have been received which are summarised as follows:

- a. Increased danger to drivers and pedestrians on Moira Road, particularly during the summer;
- b. Approval of the proposed development will lead to more applications in the future;
- c. School and doctors' surgery are operating at capacity;
- d. Parking of vehicles along the road effectively makes Moira Road a single width road. There should be double yellow lines along this part of the Road;
- e. No footway along the southern part of Moira Road;
- f. Speed restrictions should be imposed;

- g. Increased use by the future residents of the development of an existing public footpath that runs along the side of Nos. 33 and 41 Moira Road will bring havoc to the enjoyment of the properties. The footpath should be moved;
- h. Encroachment into the Green Belt and National Forest;
- i. Poor state of the road.

Nineteen letters/emails of support have also been received, which are again summarised as follows:

- a. Proposed development is small-scale, well-thought out and the architect has produced an outstanding farmstead-style design that will blend in with the surrounding buildings and landscape and not adversely impact on the village community;
- b. The location of the area of open space will safeguard the views from Overseal Manor, thereby protecting its setting;
- c. The proposed diversion of the public footpath on a route as close to the original as possible will ensure that it retains access to the wider footpath network;
- d. The proposal will be close to and benefit local facilities such as shops, post office, pubs, churches, schools, the village hall and public transport;
- e. Sympathetic and complementary to existing buildings at Poplars Farm and the surrounding landscape and in keeping with traditional design;
- f. The applicants have integrity, having farmed their land in a responsible manner for many years and provided additional woodland to enhance the National Forest;
- g. The development would provide good quality housing for families of various sizes, which is much needed in the area;
- h. Traffic calming will help reduce speeds along Moira Road and through the village;
- i. The future residents of the development will provide security and reassurance to the existing residents at Poplars Farm;
- j. The application site relates well to the settlement and is within easy walking distance of key services;
- k. The submission of a detailed application instead of an outline proposal shows commitment to a high quality scheme;
- l. The use of natural building materials is welcomed;
- m. Good for the economy, providing construction jobs and custom for local business.
- n. The scale of the development is one that the village can sustain with no burden being placed on existing services and community resources.

## **Development Plan Policies**

The relevant policies are:

- Local Plan:
- Saved Housing Policies 5, 8, 11;
  - Saved Environment Policies 1, 9, 10, 13C;
  - Saved Transport Policy 6;
  - Saved Recreation and Tourism Policy 8;
  - Saved Community Facilities Policy 1B
- Emerging Local Plan:
- S2 Presumption in favour of sustainable development
  - S4 Housing Strategy
  - S6 Sustainable Access
  - H1 Settlement Hierarchy
  - H9 Housing Balance
  - SD1 Amenity and Environmental Quality
  - BNE1 Design Excellence
  - BNE2 Heritage Assets
  - BNE3 Biodiversity
  - BNE4 Landscape Character and Local Distinctiveness

INF1 Infrastructure and Developer Contributions  
INF2 Sustainable Transport  
INF6 Community Facilities  
INF8 The National Forest  
INF9 Open Space, Sport and Recreation

SDDC Supplementary Planning Guidance: Housing Design and Layout  
River Mease DCS

## National Guidance

National Planning Policy Framework (NPPF), paragraphs 7, 8, 14, 17, 49, 55, 56, 57, 58, 59, 60, 61, 75, 109, 118, 119, 132, 186, 187, 197, 203, 204, 205, 206

National Planning Practice Guidance (NPPG), ID: 50-001-29140306 Rural Housing, paragraph 001 ID25 (Community Infrastructure Levy (CIL) Guidance)

## Planning Considerations

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

- The principle of the development
- The five-year housing land supply and sustainability
- Design, layout and visual impact
- River Mease SAC/Ecology
- Highway Matters and Public Rights of Way
- S106 contributions/obligations and new legislation
- Miscellaneous issues

## Planning Assessment

### Principle of the development

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that “if regard is to be had to the development plan for the purpose of any determination to be made under the planning acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise”.

Paragraph 14 of the NPPF states that “*at the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking*”. The NPPF makes it clear that for decision-taking this means approving development proposals that accord with the development plan without delay and where the development plan is absent, silent or relevant policies are out of date, granting permission unless:

- “*any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole;*  
*or*
- *Specific policies in the NPPF indicate the development should be restricted”.*

Paragraph 215 states that due weight should be given to relevant policies in existing plans according to their degree of consistency with the framework.

The application site is located on the edge of Overseal, to the east of Poplars Farm and abutting the confine boundary as identified on Inset 22 of the adopted Local Plan Proposals Map.

Overseal has been categorised as a Key Service Village in Policy H1 of the emerging Local Plan, relating to Settlement Hierarchy. The site is well appointed in terms of accessibility to existing services and facilities in the village. It is enclosed on all sides by hedgerows and trees and features the route of a public right of way (Public Footpath 26) which currently runs diagonally through the site from northeast to southwest.

The weight to be attached to Local Plan policies is dependent on their level of consistency with the NPPF (para.215). The adopted Local Plan contains numerous saved policies relating to new residential development and countryside development that have been considered to be consistent with the NPPF, although some recent appeal decisions have questioned the validity of some policies in certain circumstances. When assessing this application against the adopted Local Plan it is clear that the proposals would be contrary to Saved Housing Policies 5 and 8. It is evident that the site is not within a village confine but rather that the site lies in countryside outside any settlement boundary.

Saved Housing Policy 5 only supports new housing development in villages provided that it is restricted to that which can be accommodated within the village confine and that any development will be required to be in keeping with the scale and character of the settlement.

Saved Housing Policy 8 only supports new housing development in the countryside provided this it is necessary to serve a rural-based activity or that it is necessary for it to be in a countryside location.

Part A of Saved Environment Policy 1 is similar to Housing Policy 8 except that it enables development that is unavoidable in the countryside, whilst seeking to protect its intrinsic character and beauty.

It is evident that the proposal does not meet any of the criteria in these three policies; however it is clear they should not be solely instrumental in reaching a decision on whether to approve or refuse consent as recent appeal decisions have found housing specific policies in areas outside settlements to be out-dated and therefore non-compliant with the NPPF when assessing development sites of this size and the need for housing in the district.

The Emerging Local Plan Part 1 was examined in Public at the end of November into December 2014 before being adjourned. The Inspector has written to both South Derbyshire and the Derby Housing Market Area authorities with further work that is required before the Examination can continue. In the plan, Policy H1 – Settlement Hierarchy – includes Overseal as a Key Service Village where development of a range of scales up to and including small strategic sites and affordable cross subsidy exceptions sites up to 25 dwellings will be promoted. The application site (which is a promoted site [No.0258] in the SHLAA with very little by way of constraints) clearly comes under this category. However, although some weight can be afforded to the Emerging Plan now that it has progressed beyond its consultation stages and has reached the Examination stage, it would not be advisable to attribute it significant weight until such time as the Plan has been found to be ‘sound’ following the Inspector’s report.

Given the proposals do not accord with Saved Housing Policies 5 and 8 and Environment Policy 1 of the adopted Local Plan, it is considered that the principle of the development has not been satisfied. Notwithstanding this, Members should be aware that the decision is not as clear cut as the above policy considerations appear to suggest. Attention must be given to the Council’s five-year housing supply situation, which is an important material consideration in the determination of this application.

#### Five-year housing land supply and sustainability

In terms of housing supply, paragraph 47 of the NPPF requires local planning authorities to use their evidence base to ensure that their Local Plan meets the full, objectively assess needs for

market and affordable housing in the housing market area, as far as is consistent with the policies set out in the NPPF, including identifying key sites which are critical to the delivery of the housing strategy over the plan period. In addition, there is a burden on the local authority to identify and update annually a supply of specific deliverable sites sufficient to provide five years' worth of housing against their housing requirements with an additional buffer to ensure choice and competition in the market for land. Paragraph 49 states that housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered to be up-to-date if the local planning authority cannot currently demonstrate a five year supply of housing.

In terms of paragraph 14 of the NPPF the presumption in favour of sustainable development must apply unless there are adverse impacts that would significantly and demonstrably outweigh the benefits when assessed against the policies in the NPPF taken as a whole. It has been made clear through numerous appeal decisions made since the inception of the NPPF that any negative considerations would need to be substantial in order to justify refusal of an application that makes a meaningful contribution to strategic housing need. The mere presence of less than optimal planning circumstances for any given development is not likely to outweigh the presumption.

The Council currently is unable to demonstrate that it has a five year housing land supply (the figure is currently below 4). Paragraph 49 of the NPPF is specific on this subject. It states: "Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five year supply of deliverable sites". It follows, therefore, that, as the Council is unable to demonstrate a five year housing supply Members should be approving the current proposal, provided that they consider the scheme to be sustainable development.

Overseal is categorised as a Key Service Village in the emerging Local Plan – one which is capable of taking developments of a range of scales up to 25 dwellings. Clearly, then, this proposal would meet those criteria in that it would be a sustainable development of 10 dwellings, close to a range of services and facilities. Members may be aware of the recent appeal decision (October 2014) for High Street, Linton where the Inspector concluded that Linton was a sustainable settlement, even though the available services were limited. In this case the range of local services available is much wider and more readily available. Consequently, it is considered that the site is sustainable and would, therefore, meet the sustainability objectives of the NPPF.

Picking up the Inspector's conclusions within the Linton appeal and, indeed, continuing the theme that runs through the majority of other recent appeals, it is clear that regard must be had to paragraph 14 of the NPPF in that (if the presumption in favour of sustainable development applies) the benefit of the housing proposals has to be balanced against the harm to the countryside. Moreover, to justify resisting the proposals under paragraph 14 the harm must outweigh the benefit, not just marginally but rather '*significantly*' and '*demonstrably*'.

#### Design, layout and visual impact

The submission of the proposed scheme follows detailed pre-application discussions between the applicant's architect and the Council's Design Officer. The development has been designed to reflect a farmyard conversion scheme with the dwelling on plot 3 being the dominant feature representing the traditional 'farmhouse'. The remaining dwellings would form a loose group around a central square and be connected by a series of open car ports and garages. Plots 1 and 10 would have elevations to face both Moira Road and the new estate road and would appear as entrance lodges when entering the site from Moira Road. Plots 7 to 9 have been designed to appear as one large detached dwelling with one central entrance door on the front elevation and two side entrance doors, on each end elevation. It is considered that the



traditional design of the layout and the individual dwellings would be in keeping with the character of the rural edge of Overseal, integrating successfully with the landscape, forming an appropriate transition between the existing built-up area and the open countryside. The backdrop of the existing hedgerows and trees, together with the diversion of the public footpath along a logical route would assist in assimilating the proposed development into its rural surroundings. The proposal takes account of existing mature trees and the design ensures that significant specimens would not be directly affected, in accordance with Saved Environment Policy 9.

#### River Mease SAC/Ecology

The location of the application site within the River Mease SAC requires the undertaking of a Habitats Regulations Assessment under the EU Habitats Directive. For Members' information the River Mease, which is also a Site of Special Scientific Interest (SSSI) was designated as a Special Area of Conservation (SAC) in May 2000 as a way of protecting endangered species, specifically White-clawed Crayfish, Spined Loach, Bullhead and Otter. New developments within the SAC need to be assessed under the Habitats Regulations to ensure they would not have an adverse impact on the integrity of the SAC. Under the River Mease Developer Contributions Scheme, those developments directing foul sewage to mains drainage are subject to a financial contribution towards ensuring the water quality of the River Mease is not adversely affected. In this case the total contribution required would be £2,837.00, based on the number of 2, 3 and 4 bedroom properties proposed for the site. Natural England has also requested that surface water should not be directed to the mains sewer. In this instance surface water drainage would be fully SuDS compliant with all run-off being managed at source to the required storm return period. This would be achieved by using a soakaway and areas of permeable paving. Catchpits and trapped gullies would also be incorporated into the system to provide surface water treatment and a means of maintenance to the system.

On this basis, and on the basis that both Natural England and the Environment Agency have not raised any objections, it is considered that the proposed development would have no likely significant adverse effect on the River Mease SAC and consequently there is no requirement to undertake an appropriate assessment under the Habitats Directive.

#### Highway Matters and Public Rights of Way

The applicants have offered to pay a contribution towards the installation of traffic calming measures along Moira Road within their Heads of Terms for the Section 106 Agreement to be negotiated as part of the proposal. However, the relevant officers of Derbyshire County Highway Authority do not consider that traffic calming is required in this location and that it is not something that the Highway Authority is looking to pursue. Speeding traffic appears to be the most significant concern of those neighbouring residents who have objected to the proposal. Notwithstanding this, until the CHA agrees that such measures can be agreed it is not something the District Council would wish to pursue as it has no jurisdiction over land that is in the ownership and control of the County Council.

The proposed diversion of the public footpath has not raised any particular concerns from the County Council or the relevant interested footpath bodies. Indeed, it appears that the proposed route along the hedgerow to the southeast of the development would be preferable as it would follow an existing boundary a short distance from the existing route and users of the footpath would not be expected to walk through the new development. It is expected that the applicants would formally apply to South Derbyshire District Council to divert the public footpath if planning permission is granted for the current scheme.

## S106 contributions/obligations

Paragraphs 203 to 205 of the NPPF relate specifically to planning obligations and advise that these should only be sought where they meet all the following tests:

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

The most recent Government legislation on the matter places a restriction on the use of planning obligations for financial contributions to the size of the development and to no more than 5 contributions per development, provided that specific projects can be identified. The Government's current size limit stands at developments of 11 dwellings and above; OR developments in excess of 1000 square metres floor area. In this case the proposed development would create 1,102 square metres of floorspace, and consequently the requirement for financial contributions towards specific infrastructure projects is justified.

However, with regard to the requirement for an education contribution towards 2 primary school places, the County Council has confirmed that Overseal Primary School currently would have sufficient capacity to accommodate the additional two pupils arising from the proposed development and, as such, a contribution would not normally be requested. The requirement for a contribution of £22,798.02 arises from the fact that, according to the County Council, there are two other applications for residential development in Overseal (one approved and one pending) that would generate a further 14 pupils cumulatively. The application that has been approved is for the Council's own scheme for 12 dwellings at Lullington Road, which is likely to be built out. As that scheme is for 100% affordable housing there is no requirement for other contributions. The second "pending" application for Valley Road has now been refused, although an appeal against the refusal is expected. Notwithstanding the possibility of appeal it would be contrary to Government legislation to require a contribution towards school places that could possibly be generated by that proposal, as there is no guarantee that that particular proposal would come to fruition even if it is allowed on appeal. For the above reasons it is considered that the primary school contributions required as part of the current scheme would not accord with Government advice.

With regard to the recreation contributions, the Overseal playing fields are currently undergoing improvements and it is intended that the financial contributions would be put towards that specific overall project, to include:

- New play equipment
- Outdoor gym and improvements to the sports pitches
- Refurbishment of the changing rooms and, possibly, the village hall.

Confirmation has been sought to ensure that the contributions detailed below are in accordance with the legislation.

Therefore, based on a development comprising 10 dwellings or generating 32 persons, the specific requirements for the Section 106 Agreement are as follows:

- |                      |                             |                   |
|----------------------|-----------------------------|-------------------|
| • <u>Recreation</u>  | Open Space                  | £11,904.00        |
|                      | Outdoor Facilities          | £7,040.00         |
|                      | Built Facilities            | £3,929.60         |
|                      | Total                       | <u>£22,848.60</u> |
| • <u>Education</u>   | 2 x Secondary school places | £34,352.34        |
| • <u>River Mease</u> |                             | £2,837            |

The River Mease contribution forms a separate requirement under the EU Habitats Directive and consequently is independent of the most recent Government legislation. Owing to the location of the site within the River Mease Special Area of Conservation, there will be an additional financial contribution towards the River Mease Water Quality Management Plan (WQMP). The primary objective of the River Mease Developer Contribution Scheme (DCS) is to mitigate the negative effects of development. In doing so the DCS ensures that new development does not compromise the primary purpose of the WQMP which is to reduce levels of phosphate within the River Mease SAC to no more than 0.06mg per litre.

With regard to the remaining contributions towards off-site tree planting and Household Waste Recycling, the National Forest has identified two projects that would be suitable for consideration. The first is the Heart of the Forest Orientation and Interpretation Masterplan project which is a three-year scheme to enhance orientation and interpretation within the Heart of the Forest to improve access to, and awareness of, the existing trail network and woodlands in the that area. The second is the South Derbyshire Urban Tree Planting project which is a scheme running in partnership with the District Council. Alternatively, the National Forest Company has suggested the applicant undertakes additional tree planting on other land within his ownership in the vicinity of the application site, which would negate the need for a financial contribution. This is the preferred option as it is considered that the first two options are too general and not directly related to the development. This requirement could be met, as required by Saved Environment Policy 10, by an appropriate condition affecting other land in the applicant's control.

The Household Waste Recycling contribution has been discussed with the County Council and confirmation has been received that there is no particular project that has been identified on which to direct the contribution. The requirement therefore fails to accord with Government advice.

The area of open space to be included to the north east of the development is to be provided and subsequently managed solely by the applicants and therefore no maintenance contribution will be required in this regard. However, to ensure that the open space is provided in a timely manner it is proposed to condition its delivery and subsequent upkeep to be in accordance with the details already submitted, namely:

- Grazing the open space with cattle and/or sheep and/ponies; and/or cutting to achieve a sward height of between 2cm and 10cm in October/November;
- Not to install new drainage or modify existing drainage systems unless previously agreed with the Local Planning Authority;
- Supplementary feeding of animals confined to mineral blocks;
- Annual control of undesirable weed species so that by year 5 cover is less than 5% of the area;
- No ploughing, sub-surface cultivation and re-seeding to take place. Chain harrowing or rolling only permitted between 15<sup>th</sup> March and 15<sup>th</sup> July;
- To ensure that any field operations and stocking do not damage the soil structure or cause heavy poaching and particular care to be taken when the land is waterlogged.

The applicants have also offered to pay £20,000 towards speed calming on Moira Road. However, this is not a requirement of the County Highway Authority and therefore the District Council is unable to formally request it as part of the Section 106 Agreement. The applicants have confirmed that they are willing to pay this sum to the Parish Council; however this would be a private matter between the parties concerned.

### Miscellaneous issues

The application site is not in arable use and there is no evidence to suggest that it has recently been used for food production. As such it is unlikely that the development of the site would result in the loss of useful agricultural land.

The issue of precedent is not a reason to refuse the proposal as each application is assessed on its own merits.

The manager of the doctors' surgery has already confirmed that there is spare capacity at the surgery after being approached in regard to the Valley Road, Overseal scheme that was recently refused.

The issue of providing double yellow lines and lack of footway along Moira Road is a County Highway matter.

The issue of the use of the existing public footpath to the side of Nos. 33 and 41 Moira Road is a matter for the County Council.

There are no third party neighbours within close proximity of the site such as would be affected to any material degree by matters of light, privacy or overbearance, thus in accordance with Saved Housing Policy 11.

The site is not within the Green Belt. The fact that the site is within the National Forest is not a reason for refusal. Indeed the applicants have offered to undertake further tree planting on their land as part of improvements to the National Forest, which is welcomed by the National Forest Company.

### Overall Conclusion

The information within the supporting documents and responses from statutory consultees has not raised any particular concerns with regard to 'technical' issues. The County Highway Authority is satisfied that the development could be made acceptable in highway safety terms without speed calming measures and subject to conditions. There are no wildlife/ecology issues associated with the site other than its proximity to the River Mease, which would be protected by the requirement for a contribution towards water quality management. The detailed layout, design and impacts of the development have been given careful consideration both at pre-application and post-application stages.

The decision, therefore, falls to be determined on more fundamental issues of principle. Whilst the application proposals appear to be contrary to Housing Policies 5 and 8 and Environment Policy 1 of the adopted Local Plan, this is outweighed by the material considerations of the presumption in favour of sustainable development, which is the main objective (golden thread) running through the NPPF (and the Government's desire to '*significantly boost the supply of housing*'). In this context involving development that could be argued as being relatively sustainable, and given that the Council cannot currently demonstrate a five year housing land supply and only limited weight can be afforded to the emerging Local Plan, and bearing in mind the result of recent appeals, it is recommended that the application is approved, subject to the applicants entering into a Section 106 Agreement to cover the obligations outlined above and subject to conditions.

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

## Recommendation

- A. That the Committee delegates authority to the Planning Services Manager to conclude the Section 106 Agreement/Unilateral Undertaking in pursuit of the provisions and contributions as set out in the planning assessment above;
- B. Subject to A, **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. Before development involving the construction of any dwelling commences 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 building(s) have been submitted to and approved in writing by the Local Planning Authority. The work shall be carried out in accordance with the approved details.

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

3. Before development involving the construction of any dwelling commences a scheme of hard and soft landscaping for the site, 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, shall be submitted to and approved in writing by the Local Planning Authority.

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

4. 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.

5. Notwithstanding any details submitted or the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended), before development involving the construction of any dwelling commences a scheme indicating the positions, design, materials and type of boundary treatment to be erected shall be submitted to and approved in writing by the Local Planning Authority. The boundary treatment shall be completed in accordance with the approved details before the development is occupied or in accordance with a timetable which shall first have been agreed in writing with the Local Planning Authority.

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

6. Before development involving the construction of any dwelling commences, 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 levels.

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

7. The area of open space within the application site shall be provided prior to first occupation of any of the dwellings hereby approved and shall thereafter be managed in accordance with the submitted details received by the Local Planning Authority on 24th February 2015 unless otherwise agreed in writing with the Local Planning Authority.

Reason: In order to ensure the area of open space is provided and maintained, in the interests protecting the character and appearance of the area.

8. Before development involving the construction of any dwelling commences details of a scheme for the disposal of surface water shall be submitted to and agreed in writing by the Local Planning Authority. The scheme shall include a detailed SuDS/soakaway plan to show that no surface water will be directed to the mains sewer. 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 the integrity of the River Mease Special Area of Conservation and to ensure that it is possible to incorporate important flood avoidance features including construction levels before the development begins.

9. 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.

10. Before any other operations are commenced (excluding demolition/ site clearance), space shall be provided within the site curtilage for the storage of plant and materials, site accommodation, loading and unloading of goods vehicles, parking and manoeuvring of site operatives' and visitors' vehicles, laid out and constructed in accordance with detailed designs previously submitted to and approved writing by the the Local Planning Authority; and thereafter retained throughout the contract period in accordance with the approved designs free from any impediment to its designated use.

Reason: In the interests of highway safety, to ensure that safe access and parking is provided for construction vehicles.

11. 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.

12. Before development involving the construction of any dwelling commences, the new vehicular and pedestrian access shall be created to Moira Road in accordance with the

application drawing No. POP.LAY.003, laid out, constructed and provided with 2.4m x 43m visibility splays in each direction, the area in advance of the sightlines being maintained throughout the life of the development clear of any object greater than 1m in height (0.6m in the case of vegetation) relative to the adjoining nearside carriageway channel level.

Reason: In the interests of highway safety.

13. Prior to occupation of any of the dwellings hereby approved space shall be provided within the application site in accordance with the application drawings for the parking and manoeuvring of residents', service and delivery vehicles, laid out and surfaced. Once provided any such facility shall be maintained throughout the life of the development free from any impediment to its designated use.

Reason: In the interests of highway safety.

14. Before development involving the construction of any dwelling commences, details of a scheme for off-site tree planting shall be submitted to and approved in writing by the Local Planning Authority. The submitted scheme shall indicate the location, species, size and numbers of trees to be planted and a timetable for implementation of the agreed scheme. The scheme shall then be implemented in accordance with the approved details and timetable. If any of the trees die, are removed or become seriously damaged or diseased within 10 years of being planted they shall be replaced in the following planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

Reason: The site is within the National Forest and the Local Planning Authority wishes to ensure that the off-site tree planting details are appropriate to meet the requirements of the National Forest Strategy.

15. This permission shall relate to the submitted drawings as amended by layout drawing No POP.LAY.003 Revision C dated 18.03.15 showing amendments to the roof and chimney for plot 6; and POP.PRP.011 Revision C dated 18.03.15 showing the addition of a gable and chimney for plot 6.

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

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

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

#### Informatives:

The applicant is advised that the route of Overseal Public Footpath 26 must remain open, unobstructed and on its legal alignment at all times. There should be no disturbance to the surface of the route without prior authorisation from the Rights of Way Inspector for the area. Consideration should be given to members of the public using the route at all times. A

temporary closure of the route may be granted to facilitate public safety subject to certain conditions. Further information may be obtained by contacting the Rights of Way Section. If a structure is to be erected adjacent to the right of way, it should be installed within the site boundary so that the width of the right of way is not encroached upon.

The applicant is advised to seriously consider the installation of a sprinkler system to reduce the risk of danger from fire to future occupants and property.

This project has been screened to assess its impact on the River Mease SAC under the Conservation of Habitat and Species Regulations 2010. The assessment has concluded that the development would cause no significant impact and therefore an Appropriate Assessment is not required.

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

The applicants should ensure that there is sufficient capacity at the local sewage treatment works to handle the additional flows from the proposed development.

Pursuant to Section 184 of the Highways Act 1980 and Section 86(4) of the New Roads and Streetworks Act 1991, at least 12 weeks prior notification should be given to the Environmental Services Department of Derbyshire County Council before any works commence on the vehicular access within highway limits; please contact 01629 538537 for further information.

The Highway Authority recommends that the first 5m of the proposed access driveway should not be surfaced with a loose material (i.e. unbound chippings or gravel etc.). In the event that loose material is transferred to the highway and is regarded as a hazard or nuisance to highway users the Authority reserves the right to take any necessary action against the householder.

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.

The proposed development lies within a coal mining area which may contain unrecorded coal mining related hazards. If any coal mining feature is encountered during development, this should be reported immediately to The Coal Authority on 0345 762 6848. It should also be noted that this site may lie in an area where a current licence exists for underground coal mining. Further information is also available on The Coal Authority website at: [www.gov.uk/government/organisations/the-coal-authority](http://www.gov.uk/government/organisations/the-coal-authority). Property specific summary information on past, current and future coal mining activity can be obtained from: [www.groundstability.com](http://www.groundstability.com).

In dealing with this application, the Local Planning Authority has worked with the applicant in a positive and proactive manner through pre-application discussions, by seeking to resolve planning objections and issues to improve the quality of the proposal and by determining the application as quickly as possible following receipt of additional information. As such it is considered that the Local Planning Authority has implemented the requirements set out in paragraphs 186 and 187 of the National Planning Policy Framework.



**Item**                    **1.6**

**Reg. No.**            **9/2015/0083/FH**

**Applicant:**  
**Mr Michael Rogers**  
**49 MAIN STREET**  
**WESTON ON TRENT**  
**DERBY**  
**DE72 2BL**

**Agent:**  
**Mr Alex Masters**  
**Montague Architects Limited**  
**9 Vernon Street**  
**Derby**  
**Derbyshire**  
**DE1 1FR**

**Proposal:**            **ERECTION OF NEW BOUNDARY WALL, GATES AND  
 FENCING AT 49 MAIN STREET WESTON ON TRENT DERBY**

**Ward:**                **ASTON**

**Valid Date:**        **03/02/2015**

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

Councillor Peter Watson has requested that the Planning Committee determine this application as local concern has been expressed about a particular issue and unusual site circumstances should be considered.

#### **Site Description**

This residential plot occupies a prominent corner position within the village at the Main Street/Trent Lane junction. Land levels through the site are generally flat; Trent Lane however is slightly lower and falls away to the south. The site was previously bounded by a dwarf wall supplemented by hedgerow (as seen from Trent Lane) and hedgerow to the front. Both of these boundary treatments have since been removed.

#### **Proposal**

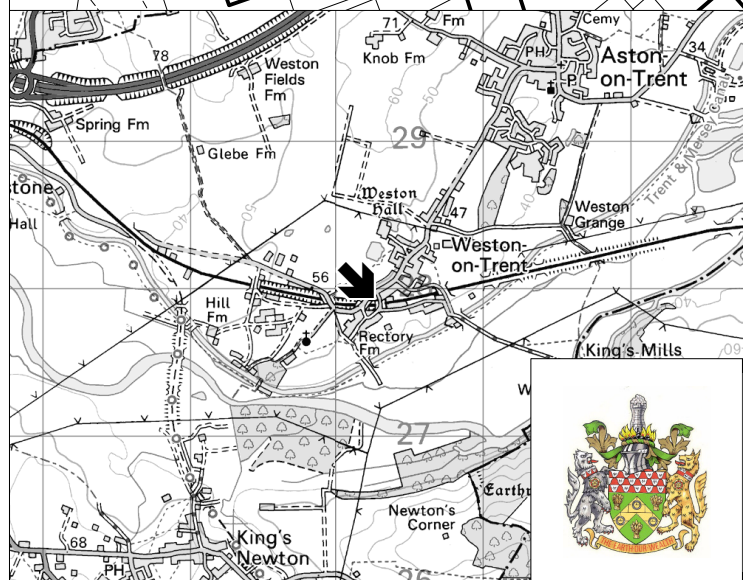
The proposal is to enclose the site (as seen from the public realm) with a mixture of wall, railings and fencing. Plans have been amended to show a 1.4m high screen to the front, whilst to the side (where the footpath level is lower) the screen would rise to 2m in height relative the footway.

#### **Applicants' supporting information**

Whilst not required, the applicants have submitted a design and access statement. They make reference within that statement of some pre application advice undertaken with the County Highways Authority and are working within the parameters of that advice.

#### **Responses to Consultations**

The Highway Authority has no objection and requests that no part of the wall or its foundations should be constructed on, over or under the highway boundary.



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South Derbyshire District Council. LA 100019461. 2014

## **Responses to Publicity**

Weston on Trent Parish Council strongly objects to the proposal on the following grounds:

- Description of work inaccurate stating work has already started;
- Trees and hedges and existing built screening along the boundaries here have been removed;
- Errors in Certification of Ownership given the land ownership is still in dispute;
- Plans show no allowance for the reinstatement of the Village seat;
- Proposed wall and fence are over 1m in height thus not compliant with planning guidelines;
- The fence and wall are not in keeping with the open rural character of the village. The proposal is a large defensive structure right up to the pavement edge. Views including those from the village hall would be of this ugly structure with no vegetative screening to soften it, as was the case;
- The proposal restricts space for people, including school children, queuing for the bus. This is a road safety hazard;

The Parish Council also considers it has conclusive proof as to its ownership of the seat, although ownership of the strip of land on which it once sat is unclear. They continue, given the ambiguity with ownership of the land on which the bench sits, the land is more likely common land and should be held in trust for the benefit of the village.

The occupiers of No 51 Main Street do not object to the proposal in principle, subject to no encroachment on to their land.

13 individual objections have been received, one commenting that the wall and fencing is out of character, but in the main concerned that the submitted plans do not show a position for the well-used and long standing roadside bench and ask for its immediate reinstatement.

## **Development Plan Policies**

There are no relevant development plan policies in the adopted Local Plan.

Emerging Local Plan - BNE1

## **National Guidance**

National Planning Policy Framework (NPPF), in particular paragraphs 14, 17, 58 and ID21b of the National Planning Practice Guidance

## **Planning Considerations**

The main issue central to the determination of this application is:

- The impact on the character and general open appearance of the locality.

## **Planning Assessment**

The proposed wall and gates as seen from Main Street would be no taller than 1.4m in height. As the screen wraps around towards Trent Lane it would become taller (up to 2m in height) due to the falling level of the footpath adjacent.

Whilst the proposal would be different to what was once a substantial vegetative boundary treatment, there is significant variety along the length of Main Street for this development not to be unacceptably out of character.

The wall/railings part would additionally be set back from the road behind an area of grassed verge and the pavement. Other boundaries are set against the highway edge along Main Street, albeit longer standing, more traditional forms. By virtue of the limited height of the wall at this location, views through this part of the site would not change significantly from the previous vegetated boundary, albeit that the proposed boundary would appear visually harder.

The fencing to the side (as seen from Trent Lane), in part replaces an existing line of fencing. This new fence however would be closer (by 1.1m) than an existing 1.8m high wooden fence but again the change would not be unduly out of character.

Local concern has been expressed about the removal of the seat. This is fundamentally an issue of land ownership and the applicant has declared he owns the land affected by the development.

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. This permission shall relate to the amended drawing (wall elevation option 4) received 20th April 2015).

Reason: For the avoidance of doubt.

3. Details and specifications and , if necessary, samples of both the facing brick and railings shall be submitted for approval in writing by the Local Planning Authority before being incorporated in the development.

Reason: To ensure the material used are in keeping with its surrounding in the interest of the character and visual amenity of the area.

4. Notwithstanding the particulars of the application, the close boarded fence shall be supported by concrete posts only (no gravel boards to be used), the boarding shall be vertical, and any horizontal bracing structures shall face inwards.

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

Informative:

In dealing with this application, the Local Planning Authority has worked with the applicant in a positive and proactive manner through seeking to resolve planning objections and issues and suggesting amendments to improve the quality of the proposal. As such it is considered that the Local Planning Authority has implemented the requirement set out in paragraphs 186 and 187 of the National Planning Policy Framework.

**Item**                    **1.7**

**Reg. No.**              **9/2015/0119/OS**

**Applicant:**  
**Alexander Bruce Estates Ltd**  
**C/O Agent**

**Agent:**  
**Tim Farley**  
**Copesticks**  
**39 Tudor Hill**  
**Sutton Coldfield**  
**Birmingham**  
**West Midlands**  
**B73 6BE**

**Proposal:**            **THE ERECTION OF 24 DWELLINGS WITH ASSOCIATED  
INFRASTRUCTURE AND LANDSCAPED OPEN SPACE ON  
LAND AT SK3925 1974 STATION ROAD MELBOURNE  
DERBY**

**Ward:**                **MELBOURNE**

**Valid Date:**        **18/02/2015**

**Reason for committee determination**

The application is brought before the Committee as the application is for a major development that has attracted more than two objections and is not in accordance with the development plan.

**Site Description**

The 1.2 hectare site is located on Station Road, Melbourne, immediately adjacent to the Hatton Gardens Development approved in 2014 (9/2014/0287) but not yet under construction. This joins onto the boundary of the Millbrook development by Davidson Homes known as Sweet Leys Way and Carr Brook Way. The site is a rectangular piece of land measuring between 80m in width and 146m in length. The land slopes to the south east and surrounding land rises again at the boundary with Carr Brook. The land is rough grassland and there is a 3m high mature hedgerow along the Station Road boundary with gated access towards the north eastern corner of the site.

The application site is located outside of the village confine/boundary to the south western fringe of Melbourne (Housing Policy 5).

**Proposal**

Outline planning permission is sought for residential development of 24 dwellings including 8 affordable units, with approval of access sought at this stage whilst all other matters including appearance, layout, scale and landscaping are reserved for future approval.

The application is accompanied by an indicative site layout plan which shows predominately detached dwellings with some semi-detached properties and terraces forming the affordable housing, a single property would front onto Station Road with the rest of the frontage forming a

The map shows a large hatched area labeled 'THE SITE' and '50.0m'. The site is bounded by 'STATION ROAD' to the north and 'SWEET LENS WAY' to the west. Surrounding the site are various numbered plots and buildings, including plots 157, 159, 160, 161, 163, 187, 220, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500. The map also shows a north arrow in the top right corner.



**South Derbyshire District Council. LA 100019461. 2014**

sweep of open space. Access is proposed from the neighbouring Hatton Gardens development. The main access off Station Road would be approximately 65m north east of the Sweet Leys Way junction. Two internal access points off the neighbouring development would loop around the development site ensuring fluidity between the sites and avoiding dead ends. Within the remainder of the site the indicative layout plan shows the dwellings fronting the main estate road with parking and garaging predominantly set back to the side or rear.

An area of open space is shown between the north eastern boundary and Station Road and would occupy a large section of the site.

## **Applicants' supporting information**

### Design and Access Statement

This document identifies the principal viewpoints and describes the site in context. The site is sloping and well bounded along its north, east, south and west perimeters by existing hedgerow and the south is bounded by Carr Brook. The design process is detailed with a series of plans starting with site constraints with the historic core and different styles of housing being assessed and a development that produces a density of 30 units per ha. The document identifies that the landscaping proposals would incorporate a sustainable drainage system to control surface water drainage across the site so as not to exceed greenfield rate. An artist's impression of the dwellings is also included.

### Supporting Statement

This document describes the site, the application proposal and discusses the relevant planning policy. It outlines other material considerations such as highway issues, flood risk, noise, biodiversity and sustainability.

### Technical Memorandum

This provides a brief assessment of noise issues, the original noise survey for the adjoining development site (9/2014/0287) has also been submitted after officer requests. The document states the main source of noise affecting the site is aircraft over-flights as the site lies close to the flight path for East Midlands Airport. The assessment found that with suitable design specifications such as roof insulation, appropriate roof tiles, thick insulated ceilings and suitably specified double glazing, internal noise levels suitable for the protection of residential amenity would be achieved and mirrors that of the approved 9/2014/0287 application.

### Ecological Appraisal

This report incorporates both fields adjacent to the Millbrook development and assesses the habitat and categorises trees and hedgerows in terms of high and low potential for protected species. No protected species were found on site and the report states that as the majority of the boundary features would be retained and enhanced any impact on commuting/foraging corridors would be minimal. Further survey work on the presence of reptiles has been completed and none were found.

### Flood Risk Assessment

The report identifies that the site lies generally within flood zone 1 but a small portion to the south east of the site adjacent to the Carr Brook is situated within flood zone 3A (inside the 1 in 100 year flood plain). It identifies the main risks of flooding to be from fluvial sources and development drainage. The report sets out appropriate mitigation measures including suitable Sustainable Urban Drainage proposals and recommends that the residential development be restricted to flood zone 1. The red line of the application site has been revised to remove any

part of the development including the estate roads from flood zone 3a. Therefore the development would lie entirely within flood zone 1 which is of low vulnerability to flooding and requires no exception test.

## Planning History

9/2014/0287 relates to the adjoining site but would form part of the development as the two applications would share the access arrangement approved under this application and the estate roads would be extended from the Hatton Gardens development into the proposed development site. The site can be considered as an extension of the 9/2014/0287 approved application.

## Responses to Consultations

The County Archaeologist states that there is no known archaeological interest within the site or close vicinity and no features visible on aerial photographs. The cluster of Romano-British and early medieval finds around Jawbone Lane is some distance away. The neighbouring site was subject to archaeological evaluation (trial trenching) in 2008 with no significant results. Undiscovered archaeology is likely to be very low because of the small size of the site and with the negative results of the neighbouring evaluation no recommendation for an archaeological assessment will be required.

The County Highways Authority states that as the application is in outline only with all matters reserved for future approval except the access to the site. The site intends to use an access which is approved under application 9/2014/0287 to which the Highways Authority did not raise any objections subject to conditions. Therefore there remain no highway objections subject to the same condition and comments as stated in the previous highway comments associated with application 9/2014/0287:

*Only the main site access onto Station Road has been considered rather than individual accesses within the site as the layout is, at this stage, indicative. On this basis they have no objections subject to conditions in respect of relocating a street lighting column; the creation of a temporary access for construction purposes; the provision of a site compound; the provision of wheel washing facilities; the laying out of the new access; the internal layout complying with guidance; the sustainable drainage details being secured; a swept path diagram being provided at reserved matters and the provision of the estate streets, parking, gates and bins stores.*

The Environment Agency has reviewed the application and considering that it is a development of less than 1 hectare in Flood Zone 1 (*Officer comment - although the site is 1.2 ha the area of land to be developed is smaller*) it does not fall within a high risk category and thus they do not wish to comment further and guidance can be obtained from their standing advice. Carr Brook along the south eastern boundary is within Flood Zone 3 but no development is proposed within this area of the site. The standing advice states that for developments (other than changes of use) of less than 1 ha in Flood Zone 1, the main flood risk issue to consider is usually the management of surface water run-off. Drainage from new development must not increase flood risk either on-site or elsewhere. Government policy strongly encourages a sustainable drainage system (SuDS) approach to achieve these objectives.

The County Council's Flood Risk Management Team cannot make specific comments due to the outline nature of the proposals but would recommend that a site specific ground investigation is undertaken for the site to ascertain water conditions on the proposed development site and strongly promote Sustainable Drainage Systems (SuDS) to be incorporated within a drainage strategy. They recommend ground infiltration to manage surface water in preference to discharging to a surface water body; this drainage rate should comply with the National SuDS Standards for greenfield runoff rate.



The Contaminated Land Officer has no specific comments or recommendations to make as records do not highlight any historical land use features or known potential sources of contamination.

The Environmental Health Manager accepts the findings of the Noise Assessment and recommends a condition requiring a scheme of sound attenuation as detailed in the report.

The Council's Strategic Housing Manager considers that the 30% affordable housing figure can be justified in this location.

East Midlands Airport has not responded at the time of writing but any comments received will be reported verbally at committee.

Severn Trent Water has yet to comment but any comments received will be reported verbally at committee.

Derbyshire County Council requests the following contributions:-

- £686.64 (£28.61 per dwelling x 24 dwellings) towards the provision of a new Household Waste Recycling Centre to provide additional waste management capacity;
- Access to high speed broadband services for future residents (in conjunction with service providers);
- £34,197.03 financial contribution towards the provision of 3 primary school pupils (2 infant and 1 junior) at Melbourne Infant School and Melbourne Junior School;
- £51,528.51 towards the provision of 3 Secondary School Places
- £18,627.90 towards the provision of 1 post 16 place
- New homes designed to Lifetime Homes standards.

In relation to education provision the calculation is based on 24 dwellings. The proposed development falls within, and directly relates to, the normal areas of Melbourne Infant School, Melbourne Junior School and Chellaston Academy (Derby City). It is anticipated that the proposed development would generate the need to provide for an extra 4 primary school pupils (2 infant, 2 junior). Secondary provision is delivered by Derby City.

Melbourne Infant School has a current net capacity of 210 pupils and currently has 206 pupils on roll. Latest projections indicate that the number of pupils on roll will increase to 217 (above capacity) during the next 5 years. Melbourne Junior School has future capacity for 265 pupils and currently has 260 pupils on roll. Latest projections indicate that the number of pupils on roll will increase to 264 during the next five years. The above analysis of current and future projections indicates that the normal area infant school would not have sufficient capacity to accommodate the 2 infant pupils arising from the proposed development. The normal area junior school would be able to accommodate 1 of the 2 junior pupils arising from the proposed development. Therefore, the County Council requests a financial contribution of £22,798.02 towards provision of 2 primary school places via the adaptation of a classroom (classroom Project A at Melbourne Infant School) and a financial contribution of £11,399.01 towards provision of 1 primary school place via the adaptation of a classroom (classroom Project A at Melbourne Junior School)

For secondary school provision the proposed development falls within, and directly relates to, the normal area of Chellaston Academy (Derby City Council Education Authority). Chellaston Academy is over capacity and would not be able to accommodate the additional pupils that would be generated by the proposed development. The County Council and Derby City Council are developing a strategy to provide additional capacity on a new site or sites that are yet to be confirmed. It is possible that existing normal areas and also the identified school may change as part of this process. It is not considered appropriate to agree Section 106 contributions targeted at a single school as this may ultimately not be where the investment is required. The County

Council therefore requests contributions of £51,528.51 towards the provision of 3 secondary school places and £18,627.90 towards the provision of 1 post-16 place, to be provided in accordance with the emerging Secondary Strategy.

Derbyshire Wildlife Trust is satisfied that there are unlikely to be any protected species issues arising with this application. The retention and enhancement of the existing boundary hedgerows within a landscape buffer and the provision of a development-free stand-off to the Carr Brook should be fully reflected in any reserved matters application and secured by a planning condition. Conditions are recommended in respect of submission of an Ecological Design Strategy, implementation of mitigation measure set out in the report and a restriction on hedgerow removal within the birds nesting season.

The NHS has confirmed that the area team will not require a Section 106 contribution for this development.

### **Responses to Publicity**

Melbourne Parish Council objects to the application as the proposal is contrary to the saved local plan and the draft local plan which makes adequate provision to meet all the housing needs allocated to the district. No major sites are allocated for Melbourne as any major development would have an adverse effect on the physical environment, the infrastructure, and the need to restrict the growth of traffic across Swarkestone Causeway. The application is accompanied by an indicative plan which relates the development to a layout on the adjoining site, however no approval to the access road or housing layout has been approved as the application was outline with all matters reserved except the access junction with Station Road. The application can therefore not be legally considered until the reserved matters have been agreed for the adjoining site; application is premature and must be refused. In July 2014 severe flooding occurred in both Station Road and within the Millbrook development, the foul drainage system was found to be wanting and could not cope with the surface water system. As a remedy has yet to be found it seems fool hardy to build another major development so close to the area. Melbourne already suffers from major traffic congestion and lack of parking provision, and development would bring additional traffic to the centre of Melbourne. Primary Schools are full and appeals are regularly heard for those in the area that have been unsuccessful in securing a place. If granted no development should commence until funding and a timetable for extending the school is in place. There would be further pressure on burial provision.

Melbourne Civic Society objects on the basis of policy and prematurity grounds which are sound planning reasons and they override any assumption in favour of sustainable development contained in paragraph 49 of the NPPF. Melbourne's special character as an historic settlement of great charm, character and high quality environment would be put at risk by such schemes. The local community has now embarked, with your Council's full agreement, on the preparation of a Neighbourhood Development Plan (NDP). The NDP will examine the suitability of this site and other undeveloped land in Melbourne, and the local community will decide how many new homes should be built in the plan period and where that development should be located. In the meantime this application should be refused on policy and prematurity grounds. The Society therefore wishes to put on record that the application's indicative layout is unsatisfactory, and in particular the absence of on-site parking within the curtilages of plots 14-18 inclusive – which are large detached houses. The indicative planning layout is defective in that the access roads and layout of the neighbouring site have not been agreed. The Civic Society's objections reflect the same objections raised by the Parish Council in relation to the prematurity of the application, indicative plan and flooding.

Kings Newton Residents Association opposes the development as Melbourne and Kings Newton has already had more than 180 new homes built since 2008. This is too much for the infrastructure and is not sustainable development. Infrastructure issues need to be resolved before any new housing can be accommodated. Schools are already full and having to turn

children away. Small amounts of funding received from previous developments do not solve the problem. Significant problems exist with the sewerage provision in Melbourne and Kings Newton. The GP Practice has confirmed that it is full and cannot take any more patients. There would be increased traffic over Swarkestone Bridge and Kings Newton Junction with the A514.

A letter of objection was received from the Melbourne and Kings Newton Residents Action Group. It states that the site is not in the emerging Local Plan Part One which must now be given some weight. The development is outside of the village confine and the five year housing supply figure is in excess of 4.9 and close to achievement. The development would be contrary to policy EV1. In the emerging plan Melbourne is defined as a key service village and development over 25 houses would not usually be granted permission. In reality it is an estate of 46 houses as it depends on access from adjoining development. Granting permission would prejudice the work of the Neighbourhood Development Plan, will have a ruinous effect on the special character of this charming historic settlement. There is a lack of school places and over stretched health facilities. There is evidence of flooding on the adjacent site at Millbrook. The indicative plan does not show on-site parking for plots 14-18. Maintenance of the awkwardly shaped open space has not been addressed. There will be increased parking and congestion problems. The land is not unused but until recently was used for grazing animals and before that vegetable production.

33 letters of objection received from local residents which can be summarised as:

- Melbourne has accommodated a lot of new housing
- School is not taking any more pupils
- Will erode the Conservation Status of Kings Newton as will lead to a connection between the two settlements
- Will cause more congestion and village is already overloaded with cars
- Massing is out of keeping with the character of Melbourne
- The sewer system was not designed for the current level of housing
- Increased traffic will become a safety hazard particularly to school children crossing the road to access the school at Station Road
- Increased flood risk
- Area will be ruined in what is supposed to be green belt land
- Developer is avoiding the need to prepare reports that are required for more than 50 dwellings by splitting the applications
- Both sites would represent a major development site in the wrong location
- Adverse effects on physical environment
- Growth of traffic using Swarkestone Causeway
- Is a premature application which would harm the development of the Neighbourhood Development Plan
- Draft Local Plan makes adequate provision to meet all the housing needs allocated to South Derbyshire
- Melbourne special character as an historic settlement of great charm, character and high quality environment would be put at risk
- Would create an urban conurbation like Chellaston
- Development is on prime agricultural land
- Would affect the wildlife habitat balance of the site
- The NPPF requires that the benefits to the community would need to be greater than any damage done to its long term heritage and any loss would require convincing justification
- Site is not included in the emerging local plan part one
- Local infrastructure cannot cope with further houses

## **Development Plan Policies**

The relevant Saved Local Plan Policies are:

Housing Policies H5, H8, H9 & H11, Environment Policy EV1 & 9, Transport Policy T6, and Recreation and Tourism Policy R4.

## Housing Design and Layout SPG

Emerging Local Plan Part One Policies include:

S1 - Sustainable Growth Strategy  
S2 - Presumption in Favour of Sustainable Development  
S4 - Housing Strategy  
H1 - Settlement Hierarchy  
SD1 - Amenity and Environmental Quality  
BNE1 - Design Excellence  
BNE3 - Biodiversity  
BNE4 - Landscape Character and Local Distinctiveness  
INF1 - Infrastructure and Developer Contributions  
INF2 - Sustainable Transport  
INF9 - Open Space, Sport and Recreation

## National Guidance

National Planning Policy Framework (NPPF) paragraphs 10, 11, 12, 13, 14, 17, 32, 34, 47, 49, 55, 56, 57, 60, 61, 72, 118, 120, 121 and 123

National Planning Practice Guidance (NPPG) ID:2a, ID:3, ID:8, ID:21a, ID:23b, ID:26, ID:30, ID:37 and ID:25

## Planning Considerations

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

- The principle of the development
- Residential amenity
- Highway safety
- Biodiversity
- Noise
- Affordable housing
- Section 106 contributions

## Planning Assessment

### The principle of the development

The site lies outside the village confines as defined within the Local Plan and thus the application is not in accord with the development plan. Local Plan Housing Policy 8 restricts housing developments outside settlements to that necessary for the operation of a rural based activity, where it can be demonstrated that a countryside location is necessary. The proposal does not accord with this policy. However, the NPPF indicates that Local Plans should meet the full objective need for market and affordable housing in the housing market area. It states that housing applications should be considered in the context of the presumption in favour of sustainable development and that relevant policies for the supply of housing should not be considered up-to-date if the Local Planning Authority cannot demonstrate a five-year supply of deliverable housing sites. Paragraph 49 of the NPPF states:

*"Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites".*

There are two arms to this paragraph: (1) that the application should be considered in the context of the presumption in favour of sustainable development, and (2) SDLP housing supply policies should not be considered to be up-to-date if a 5-year housing supply cannot be demonstrated. In regard to point (2), paragraph 47 of the NPPF seeks "to boost significantly the supply of housing". It is therefore clear there is considerable emphasis on bringing forward significant housing provision as soon as possible. This is achieved through a rolling supply of deliverable sites sufficient to provide five-years of housing against projected requirements (a "5-year supply"). Where local planning authorities have failed to deliver a 5-year supply, an additional buffer is required. There is currently a shortfall in the 5-year supply. Whilst preferred strategic allocations in the emerging Plan would provide increased supply, their overall deliverability has not yet been found sound by an inspector and so only limited weight can be afforded to the relevant emerging policies at this time. As such the relevant adopted SDLP policies pertaining to new housing delivery cannot be considered up-to-date and the proposal must be considered in the context of the presumption in favour of sustainable development.

The site lies adjacent to the built framework of Melbourne, which is classed as a Key Service Village in the emerging Plan's Settlement Hierarchy (Policy H1). Such settlements are envisaged to be capable of providing appropriate scale developments up to and including small strategic sites. However, this hierarchy presently carries limited weight and whilst the proposed development is of the scale envisaged for a Key Service Village, the site lies outside the village boundary, as defined by adopted Local Plan, Policy H5. The proposal therefore remains to be considered on first principles.

The connectivity of the settlement is considered to assist in demonstrating its sustainability. Melbourne is served by hourly bus services from Swadlincote and Derby. A multi-user Greenway runs close by connecting to Derby to the north and with regards to facilities, the village includes a Post Office, a convenience store and other shops, GP practice, a dentist, a primary school, a leisure centre, a library, playing pitches and public houses nearby. It is therefore accepted that the general location of this development is in a sustainable location in terms of its proximity to services, transport, amenities etc.

Since the Local Planning Authority is unable to demonstrate a 5-year supply, the presumption in favour of sustainable development, as set out in paragraph 14 of the NPPF, applies. This means:

*"...where the development plan is absent, silent or relevant policies are out of date, granting permission unless:*

*"any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole; or*

*"specific policies in this Framework indicate development should be restricted"*

However it is important to note that the NPPF provides a presumption in favour of sustainable development - not a presumption in favour of development. It must be made clear that this does not automatically mean that any and every application will be permitted; each scheme must still be tested against the prevailing policies and if harm is found, it remains the case that, on balance, applications can be refused. It is necessary, as a preliminary issue, to determine whether the proposed development is sustainable. Paragraph 6 of the NPPF states that "the policies in paragraphs 18 to 219, taken as a whole, constitute the Government's view of what sustainable development...means in practice...". Paragraphs 7 and 8 go further to split sustainable development into three roles: economic, social and environmental, whilst highlighting that these dimensions are mutually dependent (i.e. they should be sought jointly and simultaneously). It is thus reasonable to conclude that conflict with other parts of the

Framework, and indeed Development Plan policies, could lead to the proposal being defined as unsustainable.

The focus therefore is to first consider whether the proposal is sustainable, or can be made sustainable through planning obligations and conditions, before considering whether any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits arising. The assessment so far establishes an 'in principle' acceptance of sustainability. In order to reach a conclusion as to whether the presumption would prevail, consideration needs to be given as to whether there are significant and demonstrable adverse impacts arising.

The NPPF, para 17, identifies the recognition of the intrinsic character and beauty of the countryside as part of a core planning principle. There is concern that the site lies within the countryside and is surrounded on three sides by open land with no clear limits to development to the north. Nevertheless the development would be relatively small scale and located immediately adjacent to existing housing. Furthermore, the potential visual impact could be reduced through the retention of existing hedgerows and trees and the provision of substantial landscape screening along the north eastern boundary. Each application is assessed on its own merits and it cannot be determined at this stage if further adjacent sites will come forward for development.

The Council is currently unable to demonstrate a five year supply of housing land. In these circumstances, the NPPF indicates that planning permission should be granted unless adverse impacts would significantly outweigh the benefits, assessed against the policies in the NPPF. On balance, therefore, it is considered that the contribution the development could make toward addressing the five year housing land supply deficit would outweigh any impact upon the rural character of the area.

### Rural Character

The proposed development would represent development in the countryside and although Saved Housing Policy 8 can be afforded little weight due to the lack of up to date Local Plan and consistency with the NPPF, its criteria can be used as a foundation on which to assess the application. The proposal fails to comply with all the criteria outlined in Housing Policy 8, as it is not necessary to the operation of a rural based activity, and is not a replacement dwelling. However, the site is well related to existing dwellings due to its edge of village location. The development fails to comply with one of the set criteria for Saved Environment Policy 1 (necessity to a rural based activity). However, as referenced above, under the guidance of the NPPF the development can be deemed unavoidable in the context of that policy, due to the lack of a 5 year land supply. The design and access statement provides the analysis and direction for the development and has considered the local context and the wider environment and proposes to create a development which extends from an already approved scheme rather than create a detached development which would appear visually disjointed on this edge of village location. Preserving an element of space on the eastern boundary would help to retain the sense of spaciousness which exists along this stretch of Station Road. The Design and Access Statement states dwellings would not be greater than 2 storeys which will reflect the scale of nearby development, whilst preserving the visual amenity of the wider landscape setting in this locality which is considered to comply with Policy EV1. This would need to be re-assessed at a reserved matters scale when a definitive scale, layout and appearance are provided.

### Residential amenity

The application is in outline with all details reversed except for access, therefore only an indicative layout has been provided and no specific details in terms of the houses are known at this stage. The indicated proposed location is considered acceptable and at reserved matters stage the layout can be designed to ensure that it benefits from natural surveillance, such as dwellings directly overlooking it. An assessment of any potential overshadowing, overbearing,

overlooking and loss of privacy would be undertaken at reserved matters stage. Any reserved matters application would be assessed against the Council's adopted space about dwellings standards. In regards to anti-social behaviour this is likely to be controlled by the proximity of dwellings when the layout is finalised at reserved matters stage and it is noted that the Police Crime Prevention Design Advisor would be consulted as part any reserved matters application.

### Highway safety

The application proposes to merge with the adjoining approved development site and utilise a single junction for both developments. The County Highway Authority is satisfied with this proposal and considers the junction to be acceptable in terms of achieving the appropriate visibility and in terms of highway safety. The internal estate roads have not been assessed at this stage as they are only indicative and would be assessed at reserved matters stage. Concerns have been raised regarding the development tagging onto the approved scheme at the adjoining sites and that this cannot be agreed as the estate roads have not been agreed at a reserved matters stage. The application is an outline application with all matters reserved except access, the County Highways Authority only need to consider the proposed access arrangement which is a junction with Station Road and whether a route from this point to the development could be achieved, and as shown by the red outline of the application this is achievable. However the link roads/estate roads within the site in addition to parking would all be assessed at a reserved matters stage when layout is considered.

### Biodiversity

The habitat of the site at present comprise of a field of improved grassland bordered by hedgerows on the north-western and south-western boundaries that meet the definition of UK BAP priority habitat and the Carr Brook which forms the south-east boundary of the site. The submitted report is considered to be adequate in terms of assessing the impact on biodiversity and no protected species have been found on site. It is noted that no objection has been raised by Derbyshire Wildlife Trust who recommend the retention and enhancement of the existing boundary hedgerows within a landscape buffer; and the provision of a development-free stand-off to the Carr Brook should be fully reflected in any reserved matters application. Landscaping of the site is a reserved matter and the indicative site layout plan shows such a feature accommodated within the scheme. As such in terms of impact on wildlife and ecology this outline proposal is considered to be acceptable in principle, subject to appropriate conditions.

### Noise

The main source of noise affecting the site is aircraft over-flights as the site lies close to the flight path for East Midlands Airport. The assessment found that with suitable design specifications such as roof insulation, appropriate roof tiles, thick insulated ceilings and specified double glazing; internal noise levels suitable for the protection of residential amenity would be achieved. The Environmental Health Manager accepts the findings of the noise report and recommends a condition requiring a scheme of sound attenuation as detailed in the report. This approach is considered to be reasonable and would ensure that the future occupiers of the site are suitably protected from noise.

### Affordable Housing

In view of the scale of development the Strategic Housing Manager is satisfied that the appropriate mechanism for securing 30% affordable housing (8 dwellings in this case) is through the use of an appropriate planning condition.

## Section 106 contributions

Paragraphs 203 to 205 of the NPPF relate specifically to planning obligations and advise that these should only be sought where they meet all the following tests:

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

The most recent Government legislation on the matter places a restriction on the use of planning obligations for financial contributions to the size of the development and to no more than 5 contributions per development, provided that specific projects can be identified. The Government's current size limit stands at developments of 11 dwellings and above; OR developments in excess of 1000 square metres floor area. In this case the proposed development would exceed 11 dwellings, and consequently the requirement for financial contributions towards specific infrastructure projects is justified.

Public Open space within the development would be secured through a S106 Agreement in line with the Council's Adopted SPG.

Derbyshire County Council has requested the following contributions:

- £686.64 (£28.61 per dwelling x 24 dwellings) towards the provision of a new Household Waste Recycling Centre to provide additional waste management capacity;
- £34,197.03 financial contribution towards the provision of 3 primary school pupils (2 infant - £22,798.02 and 1 junior - £11,399.01) at Melbourne Infant School and Melbourne Junior School;
- £51,528.51 towards the provision of 3 Secondary School Places
- £18,627.90 towards the provision of 1 post 16 place

The Household Waste Recycling contribution has been discussed with the County Council and confirmation has been received that there is no particular project that has been identified on which to direct the contribution. The requirement therefore fails to accord with Government advice.

The request for access to high speed broadband services for future residents (in conjunction with service providers) and new homes designed to Lifetime Homes standards cannot be secured as there is no policy basis.

In terms of the provision of medical facilities, information on capacity has been requested directly from NHS Area Team for Derbyshire and Nottinghamshire. However they have not asked for any formal contributions as under the new CIL regulations a specific project for the contributions must be provided along with evidence. Nevertheless contributions have already been secured through the nearby Sweet Leys Way development and the grant of planning permission 9/2014/0417 for 66 dwellings at Kings Newton Lane to fund an expansion of the local GP surgery, previously identified as necessary by the Practice Manager.

## Miscellaneous issues including the loss of agricultural land

The application site is not in arable use and there is no evidence to suggest that it has recently been used for food production. As such it is unlikely that the development of the site would result in the loss of useful agricultural land.

The site is not within the Green Belt nor is the site within close proximity to impact upon the Melbourne Conservation Area or Kings Newton Conservation Area.



## Conclusion

The above assessment demonstrates that there are no adverse impacts that cannot be adequately addressed through a Section 106 Agreement and conditions such as would outweigh the benefits of the scheme. The impact on the rural character of the area can be mitigated to an extent through the retention of existing hedgerows and the provision of additional perimeter planting. On balance, therefore, it is considered that the contribution the development could make toward addressing the five year housing land supply deficit, along with the associated social and economic benefits, would outweigh any environmental impact upon the rural character of the area, such that the presumption in favour of sustainable development prevails.

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**

A. That the Committee delegates authority to the Planning Services Manager to conclude the Section 106 Agreement/Unilateral Undertaking in pursuit of the provisions and contributions as set out in the planning assessment above;

B. Subject to A, GRANT permission subject to the following conditions:

1. (a) Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.

(b) The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the reserved matters to be approved.

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

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

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

3. The development hereby permitted shall be carried out in accordance with plans/drawings; 3047-01 and 3047-02 received on 16th February 2015; unless as otherwise required by condition attached to this permission or allowed by way of an approval of reserved matters or a non-material minor amendment made on application under Section 96A of the Town and Country Planning Act 1990 (as amended).

Reason: For the avoidance of doubt.

4. No development involving the construction of a dwelling shall take place until details of a scheme for the disposal of foul and surface 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.

5. Prior to being incorporated in the development 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 dwellings shall be submitted to and approved in writing by the Local Planning Authority. The work shall be carried out in accordance with the approved details.

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

6. 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.

7. Notwithstanding any details submitted or the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended), no dwelling shall be occupied until there has been submitted to and approved in writing by the Local Planning Authority plans indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed in accordance with the approved details before the development is occupied or in accordance with a timetable which shall first have been agreed in writing with the Local Planning Authority.

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

8. An ecological design strategy (EDS) addressing ecological mitigation, compensation, enhancement and restoration shall be submitted as part of the reserved matters application  
The EDS shall include the following measures:
- a) Retention and protection of existing habitats, including the boundary hedgerows and the Carr Brook, during construction.
  - b) Provision for wildlife corridors, linear features and habitat connectivity.
  - c) Tree, hedgerow, shrub, rough grassland and wildflower planting and establishment.
  - d) Soil handling, movement and management.
  - e) Creation, restoration and enhancement of semi-natural habitats.
  - f) Creation of new wildlife features, e.g. bat, bird and insect boxes across the site on buildings and trees.

Reason: In the interests of ecology.

9. Any reserved matters application shall include the submission of a landscape and ecological management plan (LEMP) detailing long-term design objectives for nature conservation, management responsibilities and maintenance schedules for all landscape areas which are not in the ownership of individual properties to be approved in writing by the local planning authority. The LEMP should be carried out as approved.

Reason: In the interests of ecology.

10. The reptile mitigation measures detailed in the Ecological Appraisal dated January 2015 shall be implemented in full.

Reason: In the interests of ecology.

11. No other development shall be commenced until a temporary access for construction purposes has been provided in accordance with a detailed design first submitted to and approved in writing by the Local Planning Authority. The access shall be retained in accordance with the approved scheme throughout the construction period, or such other period of time as may be agreed in writing by the Local Planning Authority, free from any impediment to its designated use.

Reason: In the interests of highway safety, specifically to ensure that safe site access is available to construction traffic.

12. Before any other operations are commenced, excluding construction of the temporary access referred to in Condition 11 above, space shall be provided within the site for storage of plant and materials, site accommodation, loading, unloading and manoeuvring of goods vehicles, parking and manoeuvring of employees and visitors vehicles, laid out and constructed in accordance with detailed designs first submitted to and approved in writing by the Local Planning Authority. Once implemented the facilities shall be retained free from any impediment to their designated use throughout the construction period

Reason: In the interests of highway safety, specifically to ensure that construction traffic, workers' vehicles and plant can be safely accommodated off the public highway.

13. Prior to the occupation of any dwelling, the new access shall be laid out in accordance with the application drawing (2965-02 rev A of planning application 9/2014/0287), drained, lit and constructed in accordance with Derbyshire County Council's specification for new estate streets, having a 5.5m carriageway, 2 x 2m footways, 6m radii and visibility sightlines of 2.4m x 43m in each direction, the area forward of which shall be level, constructed as footway and not form any plot or other sub-division of the site.

Reason: In the interests of highway safety.

14. Throughout the period of development vehicle wheel cleaning facilities shall be provided and retained within the site. All construction vehicles shall have their wheels cleaned before leaving the site in order to prevent the deposition of mud and other extraneous material on the public highway.

Reason: In the interests of highway safety.

15. The internal layout of the site shall be in accordance with guidance contained in the 6C's Design Guide and Manual for Streets.

Reason: In the interests of highway safety.

16. No building shall be occupied until a sustainable drainage scheme, which shall include measures for management and maintenance, for the site has been completed in accordance with details first submitted to and approved in writing by the local Planning Authority. The sustainable drainage scheme shall be managed and maintained thereafter in accordance with the agreed management and maintenance plan.

Reason: In the interests of flood protection and highway safety.

17. A swept path diagram shall be submitted at Reserved Matters stage to demonstrate that emergency and service vehicles can adequately enter/ manoeuvre within the site and leave in a forward gear.

Reason: In the interests of highway safety.

18. Prior to occupation of each dwelling the proposed new estate street, between each respective plot and the existing public highway shall be laid out in accordance with the approved reserved matters application drawings to conform to the County Council's design guide, constructed to base level, drained and lit in accordance with the County Council's specification for new housing development roads.

Reason: In the interests of highway safety.

19. Prior to their occupation, space shall be provided for each dwelling for the parking of two vehicles per 2/3 bedroom dwellings and three vehicles per 4+ bedroom dwellings, laid out and maintained throughout the life of the development free of any impediment to their designated use.

Reason: In the interests of highway safety.

20. No gates or other barriers shall be erected within 5m. of the highway boundary and any gates elsewhere shall open inwards only.

Reason: In the interests of highway safety.

21. Bin stores shall be provided within private land at the entrance to shared private accesses, in accordance with a scheme to be submitted and approved in writing by the Local Planning Authority, to prevent refuse bins and collection vehicles standing on the new estate street for longer than necessary causing an obstruction or inconvenience for other road users. The facilities shall be provided prior to the first occupation of the dwellings to which they relate and shall be retained thereafter free from any impediment to their designated use.

Reason: In the interests of highway safety.

22. Prior to the occupation of any dwellings a scheme of sound attenuation shall be submitted and agreed in writing by the Local Planning Authority and the scheme shall be implemented in accordance with the agreed details.

Reason: To protect the amenity of future occupiers from aircraft noise.

23. No development shall begin until a scheme for the provision of affordable housing as part of the development 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 2 of the NPPF or any future guidance that replaces it. The scheme shall include:

- i. no less than 30% of housing shall be Affordable
- ii. the type, tenure and location of the Affordable Housing
- iii. no more than 80% of Market Housing units shall be occupied before completion and transfer of the Affordable Housing Units;
- iv. the arrangements for the transfer of the Affordable Housing Units to an Affordable Housing Provider;
- v. the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing to those households on the District Housing Waiting List; and
- vi. the occupancy criteria to be used for determining the identity of occupiers of the affordable housing by means of the District Choice Based Lettings allocation

scheme or in such other form as may be proposed by the Local Authority and agreed with the Affordable Housing Provider.

Reason: To ensure the provision of affordable housing within the planned design of the development, so as to ensure that the scheme is not in conflict with the reserved matters submission.

Informatives:

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

That the hedgerows on the application site may contain nesting birds. It is an offence under the Wildlife and Countryside Act 1981 to intentionally kill, injure or take any wild British breeding bird or its eggs or damage its nest whilst in use or being built. The nesting season normally encompasses the months March to July inclusive. If you are in doubt as to requirements of the law in this regard you should contact English Nature, Peak District and Derbyshire Team, Manor Barn, Over Haddon, Bakewell, Derbyshire, DE4 1JE.

In dealing with this application, the Local Planning Authority has worked with the applicant in a positive and proactive manner through suggesting amendments to improve the quality of the proposal and quickly determining the application. As such it is considered that the Local Planning Authority has implemented the requirement set out in paragraphs 186 and 187 of the National Planning Policy Framework.

Pursuant to Section 184 of the Highways Act 1980 and Section 86(4) of the New Roads and Streetworks Act 1991, at least 12 weeks prior notification should be given to the Environmental Services Department of Derbyshire County Council before any works commence on the vehicular access within highway limits; please contact 01629 538537 for further information.

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.

The applicant is advised to seriously consider the installation of a sprinkler system to reduce the risk of danger from fire to future occupants and property.

No materials arising from the demolition of any existing structures, the construction of new buildings nor any material from incidental and landscaping works shall be burnt on the site. The developer shall comply with the BRE Code of Practice to control dust from construction and demolition activities (ISBN No. 1860816126). The requirements of the Code shall apply to all work on the site, access roads and adjacent roads.

The Affordable Housing type and tenure mix required by Condition 23 should provide for 75% social rented and/or affordable rented and 25% intermediate housing.

**Item**                    **2.1**

**Reg. No.**            **9/2014/1039/OS**

**Applicant:**  
**Barratt Homes North Midlands**  
**2 Horizon Place Mellors Way**  
**Nottingham Business Park**  
**NG6 6YP**

**Agent:**  
**Mr Mike Downes**  
**Antony Aspbury Associates**  
**20**  
**Park Lane Business Centre**  
**Park Lane**  
**Basford**  
**Nottingham**  
**NG6 0DW**

**Proposal:**            **OUTLINE APPLICATION (ALL MATTERS RESERVED**  
**EXCEPT FOR ACCESS) FOR THE RESIDENTIAL**  
**DEVELOPMENT OF UP TO 100 DWELLINGS INCLUDING**  
**OPEN SPACE, ACCESS AND ASSOCIATED SERVICE**  
**INFRASTRUCTURE ON LAND AT SK2624 5131 NEWTON**  
**ROAD NEWTON SOLNEY BURTON ON TRENT**

**Ward:**                **REPTON**

**Valid Date:**        **29/10/2014**

**Reason for committee determination**

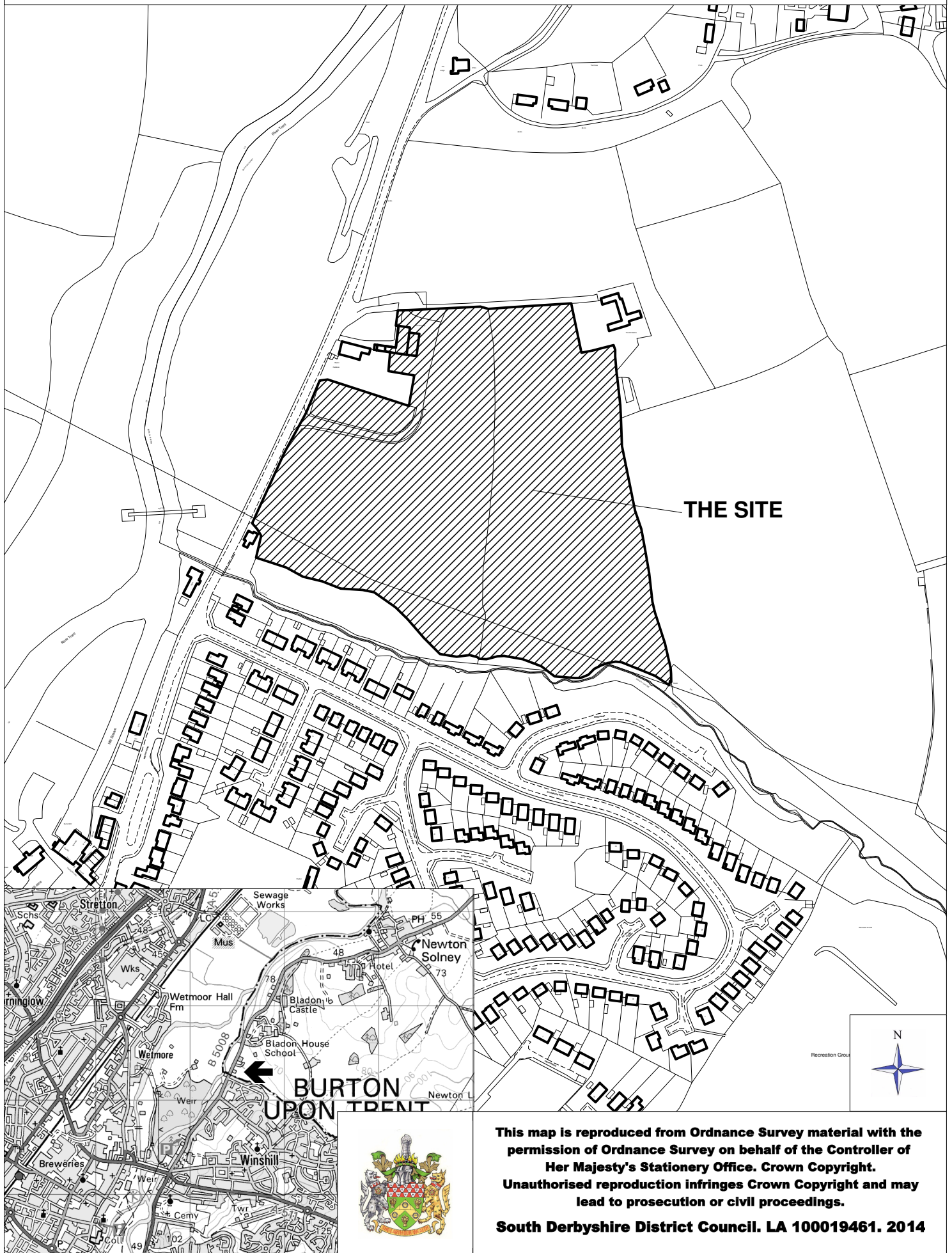
The item is presented to Committee at the discretion of the Planning Services Manager.

**Site Description**

The site extends to approximately 6.3 hectares of agricultural land located to the northern edge of Winhill, Burton upon Trent. The site lies east of Newton Road (B5008) wholly within South Derbyshire and the parish of Newton Solney, yet abuts the administrative boundary of East Staffordshire and Winhill parish along the southern edge where the Dale Brook runs. This brook corridor is well vegetated with a number of mature trees within, now largely subject to a Tree Preservation Order (TPO). This TPO extends across the site protecting the existing trees of visual or ecological merit sited along hedgerow corridors. These hedgerows form the eastern, northern and western boundaries to the site, with a further hedgerow bisecting the site in a north to south direction. The land falls quite rapidly from the north-east corner to the south-west, with the ground rising particularly steeply in the north-east corner.

Access is presently gained through a field access to Newton Road bounded by timber post and rail fencing with the track extending to a redundant pole barn and hardstanding to the northern edge of the site. Two existing dwellings sit immediately adjacent to the north-west corner of the site (Bladon Paddocks and The Old Dairy), a barn conversion sits beyond a small spinney to the north-east corner (The Stables), whilst a further single dwelling sits adjacent to the south-west corner, bordering Newton Road (Keeper's Cottage). A line of 1960s houses and bungalows,

**9/2014/1039 - Land at SK2624 5131 Newton Road, Newton Solney, Burton  
on Trent DE15 0TQ**



along Dalebrook and Brookside, sit just beyond the brook corridor to the southern edge with rear gardens up to this watercourse.

Newton Road is subject to a 40mph speed limit with carriageway width currently at or around 5.5 metres. A footway exists to the western side of the road, although restricted in usable width to around 1.2 to 1.5 metres at best with a further hedgerow beyond. This footway extends to the south into Winshill and continues along Newton Road to Newton Solney. There is no street lighting. A high pressure gas pipeline and overhead power cables cross the southern part of the site. Further land to the north and north-east is under the control of the applicants.

## **Proposal**

The application is in outline with all details reserved except for means of access which is proposed in the fashion of a new T-junction with footway along the majority of the eastern side of Newton Road. This footway would terminate adjacent to Keeper's Cottage with a dropped kerb pedestrian crossing to the western footway. A similar footway would extend out from the north of the access before providing a similar crossing at Bladon Paddocks. The western footway would be widened to 2 metres along its length down to the boundary with East Staffordshire except at a pinch point over the brook, with the existing hedgerow removed to facilitate these works. Provision for an additional footway link across the Dale Brook to a portion of open space off Brookside is also indicated although it is acknowledged this link requires the co-operation of a third party landowner.

The proposals comprise a residential development of up to 100 dwellings, likely to incorporate a mix of 2, 3, 4 and 5 bedroom house types including up to 30% affordable housing. Internal estate roads and shared driveways are indicated to provide for a largely outward facing development with existing trees and hedgerows also indicated to be retained as part of the open space, including a central green for formal play and the southern section of the site providing as an east to west wildlife corridor along the brook where enhancement is proposed.

## **Applicant's supporting information**

The Arboricultural Assessment notes trees are mostly confined to field boundaries as part of a well-established network of field hedgerows with those surveyed comprising native and naturalised broadleaf species alongside mature hedgerows comprising predominantly of blackthorn and common hawthorn. Overall four large groups of trees off-site were considered to be of highest arboricultural value and were strong features in the local landscape. The Illustrative masterplan indicates the vast majority of tree cover would be retained and incorporated into the design, with areas of the site retained to allow for additional planting and a wildlife corridor. The main impact would be from the positioning of the internal road layout necessitating the removal of small sections of two hedgerows and works incurring into the Root Protection Area (RPA) of a small number of individual specimens. Where not possible to modify the layout to avoid RPAs, "no-dig" methods of construction with specially engineered cellular confinement systems would be required. No tree losses would occur directly other than two specimens requiring remedial treatment in order to retain them for ecological benefit.

The Archaeological Desk-Based Assessment notes there are no designated or non-designated heritage assets within or adjacent to the site. A geophysical survey of the site identified a possible enclosure within the south-western part of the site with the remainder not containing any features of archaeological interest, although there is an unknown potential for evidence dating from the late Prehistoric/Roman and Medieval period and a low potential for remains of all other periods. The enclosure was considered to be likely of no more than local importance such that its significance can be adequately safeguarded through further archaeological investigation and recording. Such investigation was carried out in July 2014 but the potential enclosure was not found, whilst no finds elsewhere were recovered



although a filled quarry pit was found. Furrows have been dated by pottery to be 17<sup>th</sup> to 18<sup>th</sup> century such that it was possible to assign a tentative post-medieval date to the quarry.

The Design & Access Statement (DAS) assesses the spatial and physical context, highlighting any potential opportunities which could be harnessed including urban form, layout, scale and architectural detailing, as well as considering the social and economic context. This assessment considers that the site is largely free of technical constraints and benefits from a range of local services accessible by a range of transport options. The DAS also provides an assessment of the site in the context of adopted and emerging planning policy before considering the indicative layout, scale parameters and access arrangements, as well drawing on character and appearance of existing development, and landscaping opportunities, so that the proposal would be able to respond. Overall it is considered the proposed development would be locally responsive, creating a sustainable, high quality development.

An Ecological Survey confirms there are no statutory designated sites affected although two Local Wildlife Sites (LWS) lie immediately adjacent or close by. The site is mostly improved grassland with some semi-improved grassland to the brook corridor. Hedgerows form the dominant boundary type with those on the western edge to in the centre of the site of low value, whilst hedgerows of higher value were found on the northern and eastern boundaries. Many of the trees were of high ecological value, displaying features suitable for use by wildlife including bats, raptors and badger. The Dale Brook is unmodified to its eastern extent although moving west creation of banks at the end of gardens has caused modification. There are records of protected or otherwise species within 1km radius of the site, and the results of surveys accompanying the application are:

- Badger – evidence of activity was observed and further surveys concluded this was subservient to a main sett off-site and could be preserved in a landscaping buffer. It is considered a Natural England licence would likely be granted for any works affecting this species;
- Bats and nesting birds – a single building was observed to have low potential to support roosting bats and a nocturnal survey confirmed no roost was present. However evidence of nesting birds was found such that demolition should be undertaken outside the nesting season. A total of 6 trees were identified to have potential to support roosting bats, the majority of which would not be affected by the proposals. One tree was identified as having a barn owl roost, and it is recommended that this tree be ‘buffered’. The remaining hedgerows and trees act as foraging and commuting corridors for bats such that retention is important and where breaks are required to allow access roads, “hop-overs” would be needed – comprising the planting of semi-mature/standard trees to grow above the level of vehicle movement and street lighting, the latter of which should be low-level directional lighting.
- Great Crested Newt (GCN) – no suitable habitat for sheltering, hibernating or breeding was present but ditches and hedgerows could provide for foraging and corridors for movement. No GCNs were recorded in any of the off-site waterbodies such that it is considered they are unlikely to be present within the site.
- White Clawed Crayfish – the available habitat within Dale Brook was considered to be of no more than moderate suitability with a survey revealing no evidence of this or other crayfish species.
- Reptiles – no evidence of reptiles was found and suitable habitat was restricted to a narrow strip of rough grassland adjacent to Dale Brook.
- Water vole or otter – no evidence of water vole or otter was recorded.
- Little owl – evidence was recorded within two trees and anecdotal evidence suggests that these birds breed there each year. Whilst having no statutory or non-statutory protection it is understood numbers are declining. A further nocturnal survey to acquire their status as a nesting or roosting site was carried out with no evidence of nesting observed.

- Birds – a total of 20 species were noted during surveys including song thrush, dunnock and house sparrow, listed as Species of Principal Importance under the NERC Act 2006 and are red or amber listed species.

The development proposals have the potential to include biodiversity enhancements within the proposed areas of open space, drainage/swale systems and balancing pond. A wide wildlife corridor would be located to the south. All these areas could be planted to provide new suitable habitats for amphibians, reptiles, mammals and birds along with other species in the local area. The inclusion of habitat (log) piles and hibernacula would also benefit amphibians and other wildlife. Further enhancements could include the widening of hedgerows through native planting, gapping-up and creation of wide grassy margins. The surface water attenuation pond and swale within the site could be designed to retain water and planted to provide onsite breeding habitat for amphibians.

The Flood Risk Assessment (FRA) estimates that the impermeable area following completion of the development would be increased to approximately 32% of the total site. The proximity of the River Trent and Dale Brook are noted, along with the fact that the Trent backs up the brook during more extreme flood events. As such a combined scenario has been considered. It was found during the 1 in 100 year plus climate change unobstructed flood event that the water flooded the lower part of the site directly adjacent to the brook. Following sensitivity analysis water levels increased by no more than 0.20m and the developable part of the site was not flooded. It is considered the development would be located outside of the 1 in 1,000 year extreme flood envelope and would be a safe area during flood events. As such dry access and egress would be available at all times along the proposed access road and then north along Newton Road. It is recommended that finished floor levels are set above finished external ground level to combat any overland flows. As the development is residential it is also considered that dry access and egress from the development site would be essential during extreme flood events. The FRA recommends the SUDs approach which includes infiltration as the first tier, although further investigation is required to confirm that infiltration drainage would be a practical solution. The second tier is to discharge to a watercourse. The balancing pond would be used to accommodate the storage during 1 in 2 year, 30 year, 100 year and 100 year plus climate change storms (worst case scenario) and it is considered that by reducing the runoff to the current peak rate, that during higher return periods that there would be a significant reduction in runoff and as a result the development would provide significant betterment.

A Geo-Environmental Site Appraisal sets out the historical development of the site looking at anticipated geological, hydrogeological and hydrological constraints, identifying that the site is not at risk from former mining and quarrying activities or any contaminants of concern. A Phase II ground investigation is recommended to determine more accurately the effect of the identified hazards on the development.

A Minerals Desk Study has been submitted given part of the site is within a sand and gravel Mineral Consultation Area identified by Derbyshire County Council. The report analyses the geology of the site, identifies the relevant mineral planning policies and concludes that of the limited potential which exists the site is too close to residential properties for mineral extraction to be acceptable and in any event the site is too small for it to be practicable. Consequently the proposals would not cause any sterilisation of a mineral resource.

A Landscape & Visual Appraisal (LVA) accompanies the application. It notes that the site is not located in an area which is covered by statutory landscape designations although there is comprehensive coverage of landscape character at a regional and local level. At a local level the site is located in the Estate Farmlands Landscape Character Type but directly adjacent to urban areas. It is considered the visual envelope for the site is restricted by the landscape setting and is contained to the north, east and south by rising landform combined with vegetation and/or existing urban form. Longer distance views are available from the east but these are often substantially screened by vegetation and built form and are generally available from the urban environment of Burton. A number of constraints and opportunities are identified

and these have been used to develop the design of the proposed development and to form the masterplan and a comprehensive landscape strategy – the latter building mitigation into the design. There is no public access to the site and access to the wider countryside via public rights of way is also limited, the closest being approximately over half a kilometre away and with limited views. Overall the analysis is considered to demonstrate that the development would only be visible from a very localised area, and also seen in the context or from the context of the existing urban environment; with the scale and form likely to result in only limited harm at a localised level and potential landscape and visual effects would not likely be significant. Furthermore the proposed green infrastructure and landscaping would deliver a number of enhancements in terms of the physical landscape and landscape character, and as such the proposed development is considered to be acceptable in landscape and visual terms.

The Planning Statement outlines the proposal has evolved over some 18 months through pre-application discussions and the site being promoted for inclusion within Part 1 of the emerging Local Plan. In economic terms it is advanced the proposed development would deliver homes to support economic growth in an accessible location, in accordance with the emerging settlement hierarchy and where significant employment growth could be expected. It is noted housing development is itself a stimulus to economic growth. The development would also support existing shops and local facilities in Winshill and Burton with it noted the town centre is potentially accessible on foot and readily accessible by cycle or bus services operating along Newton Road. It is further advanced that the social benefits hold weight with affordable housing delivery in recent years restricted and this proposal could provide for a significant boost, and should the proposals overstretch the capacity of local social services then Section 106 obligations could address the direct impacts. The environmental impacts are acknowledged with it accepted that the character of the immediate area would change through the loss of the arable fields and vistas. However it is motioned that the NPPF no longer protects the countryside per se and its protection is instead directed at valued landscapes – interpreted as protected or designated sites – and the site has no specific environmental or landscape designation. Much weight is placed on the view that the emerging local plan is unlikely to resolve the short to medium term housing delivery issues given the large scale of allocations, with Drakelow for instance still to deliver a single dwelling, and it is advanced that the site could account for delays and under-delivery on such committed sites. Overall it is considered the environmental impacts are limited and can be substantially mitigated with biodiversity enhancements also secured. In the balance it is considered the positive factors outweigh those negative, particularly when the need for housing delivery is taken into account.

A Statement of Community Consultation outlines the results of the applicant's public exhibition held in July 2014 in Winshill. It also outlines that key stakeholders, including local and parish Councillors, were invited to attend as well as the geographical extent of the leaflet distribution area. It is estimated that the total number of residents that attended was in the order of 130 and for those who could not attend a dedicated website was made available. In total 48 comments forms were received. Whilst a small number suggested they welcomed the development, there were considerable numbers of respondents raising concern that (in order of priority) Newton Road would be unable to handle the additional traffic, there would be confusion regarding provision of services given cross authority/county nature of the scheme, local facilities (including GPs and schools) are at capacity, the masterplan seems to facilitate future/wider development, the area already has problems with flooding, and current speeds on Newton Road are too fast/road is unsafe. Further concerns related to pedestrian/cyclist connectivity, loss of green space, loss of wildlife habitat, that the site is not allocated for development, that layout and gradient would lead to overlooking, and the proximity to the gas pipeline. All of the above concerns are answered in turn throughout the Statement.

A Transport Assessment considers the site is accessible by a range of sustainable travel modes and is therefore suitable for residential development. Given the destinations within an acceptable walking distance of the site, and existing pedestrian infrastructure along with the proposed new footway and crossings, it is felt there are good opportunities for pedestrian travel.

Similarly given the areas contained within cycling distance and the existing cycle infrastructure, including off-road cycle routes, that there are good opportunities for cycle travel between the site and the local area. In addition it is considered there are opportunities for public transport travel, with one bus service per hour routing along Newton Road, providing access to Burton upon Trent and Derby. It is acknowledged that the proposed development would generate a number of pedestrian, cyclist and public transport trips; however it is concluded that the existing and proposed infrastructure has the capacity to accommodate additional trips and that no further mitigation measures would be necessary. Based on the results of appropriate capacity assessments it is concluded that the proposed development would have negligible impacts on the operation of the off-site highway network, and it is also concluded that traffic would not significantly increase the potential for accidents at the A511/A444 junction and thus no mitigation measures are necessary.

A Travel Plan accompanies the Transport Assessment. This document sets out ways to reduce the number of vehicle trips generated by the site, involving the development of agreed targets and outcomes linked to an appropriate package of measures aimed at encouraging the use of more sustainable travel modes, whilst also reducing both the need to travel, and single occupancy car use, for all trips to and from the development. The Travel Plan also sets out methods for continuous monitoring, review, and refinement over time, as travel survey data is collected to determine trends in travel patterns.

### **Planning History**

None relevant to this proposal.

### **Responses to Consultations**

The Environment Agency, following receipt of a reduced site area to overcome a trigger for a sequential test, considers the proposed development would be acceptable if planning conditions are included precluding development in identified flood zones, to ensure finished floor levels to be set at least 600mm above 1 in 100 year flood levels, and to secure a surface water drainage scheme for the site. The latter would need to be based on sustainable drainage principles and an assessment of the hydrological and hydro-geological context of the development, as well as include details of how the scheme shall be maintained and managed after completion.

The County Flood Risk Management Team advises that a review of the County surface water model indicates that the site is unlikely to be subject to surface water flooding during the critical storm duration in the 1 in 100 year return period event in its current land use, however surface water is modelled to collect adjacent to the southern boundary. When designing drainage systems the developer should consider rainfall events in excess of the 1 in 100 year return period to allow for extreme events. An analysis of the County surface water model for the 1 in 1000 year critical storm event indicates that the site may be susceptible to limited surface water flooding, again modelled to collect to the south of and on the southern boundary. Accordingly they strongly promote SuDS to be incorporated, applying the SuDS management train and ensuring that discharge from the developed site is as close to greenfield runoff rate as is reasonably practicable. They also advise that the land is checked for any hidden watercourses/drainage features and where the water table is at a shallow depth there may be susceptibility to groundwater flooding. Development site drainage should be considered carefully to avoid any increased risks associated with groundwater with infiltration not recommended as a means of surface water disposal in areas where geo-hazards or ground instability is deemed likely without appropriate analysis of the risks involved. Infiltration of surface water to the ground is also not advised in sensitive groundwater areas without an appropriate SuDS management train. Finally they comment that no activities or works, including the proposed development, should deteriorate the ecological status of any nearby watercourse with the implementation of a SuDS scheme with an appropriate number of treatment stages

appropriate in safeguarding against this. It is noted that the River Trent is assessed as of poor ecological status.

Natural England raises no objection commenting that the proposal is unlikely to affect any statutorily protected sites or landscapes. They advise that the Council should seek separate advice on the impacts on protected species, noting their standing advice. They also comment that the proposal may provide opportunities for biodiversity enhancement in accordance with paragraph 118 of the NPPF, such as the incorporation of roosting opportunities for bats or the installation of bird nest boxes; as well as opportunities to enhance the character and local distinctiveness of the surrounding natural and built environment.

Derbyshire Wildlife Trust raises no objection noting that surveys have been carried out to an acceptable standard by suitably experienced and qualified ecologists working to best practice standards. From consideration of survey results they advise that no adverse impacts on roosting bats and great crested newts are anticipated. The Trust is also satisfied that there are unlikely to be any adverse impacts on the local badger population. The tree used as a Barn Owl roost should be retained within a suitable buffer zone and the erection of a barn owl box on or near the site to enhance the local barn owl population should be secured as part of a scheme detailing mitigation and enhancement measures for Barn Owl. It is understood from anecdotal local information that Kingfisher is present on the Dale Brook, but the retention and enhancement of an undeveloped buffer should provide suitable mitigation for such impacts. They note that the Dale Brook Meadow LWS is located immediately adjacent to the southeast corner of the site, although they are satisfied the development would not directly impact upon this LWS and are of the view that the proposal provides opportunities to extend the habitat along the proposed wildlife corridor. It is noted that there would be some hedgerow removal to facilitate access and the western footway, and therefore sufficient new hedgerow should be provided to ensure the proposals would not result in a net loss of hedgerow priority habitat. These hedgerows are not considered to qualify as important under the biodiversity criteria of the Hedgerow Regulations. The importance for the retention of existing native hedgerows within undeveloped landscape buffers, not as boundaries to private gardens, is reinforced and should be fully reflected in any reserved matters layout. The retention of trees and alignment of roads to avoid RPAs is welcomed, as is the retention of some trees as monolith stumps to contribute to the biodiversity value of the site in respect of deadwood habitat. It is recommended these measures should be fully reflected in any reserved matters submission and accordingly it is also important that any reserved matters application should follow the general parameters of layout, scale and landscaping set out on the Illustrative Layout, secured by a condition. Finally the Trust fully supports the recommendation for the production and implementation of a Habitat Management Plan for all retained and created habitats outside the curtilage of private properties, and to detail the incorporation of biodiversity enhancement measures including the erection of a range of bat and bird boxes and use of the wildlife corridor to extend the habitat associated with the adjacent Dale Brook Meadow local wildlife site. It is also recommended that further details are provided in respect of the range bird species around the site in order that appropriate compensatory nesting opportunities can be secured, whilst a condition is requested to protect nesting birds during construction.

The Health and Safety Executive (HSE) following consideration of the density of development and a limited number of dwellings permissible in outer consultation zones from pipelines, does not advise on safety grounds against the granting of planning permission in this case.

National Grid raises no objection subject to an informative relating to the pipeline and the need for early engagement by the developer prior to submission of a Reserved Matters application.

The County Highway Authority first responded stating that the initially proposed right turn harbourage was unnecessary, but the layout has been revised to reflect this advice. They also note that speed readings submitted by the local residents' group and carried out by the County indicated higher vehicle speeds. Again the proposed sightlines have been increased to

overcome this concern. With regard to the provision of pedestrian facilities on Newton Road, the initial proposal of a continuous footway along the eastern side into East Staffordshire raised no objection, but it became apparent that this option could not be provided due to ownership and tree constraints south of the brook. The latest revision indicates a 2m footway on the eastern side of Newton Road fronting the site in both directions and tactile paved crossing points to facilitate movement to a widened footway on the western side, narrowing to 1.75m where the highway crosses the culvert. Their response is based on this latest proposal and whilst they do not consider the solution to be perfect, it is considered the applicant has demonstrated that a means of access to and from the site for both vehicular and pedestrian traffic can be achieved such that an objection on highway safety grounds could not be sustained. It is also noted that the conclusions of the Transport Assessment are considered to be acceptable although it should be understood that, as a generality, they do not “agree” its content or, inevitably, concur with every detail contained therein. However it is not regarded as reasonable or prudent to require amendments to detail which would not vary the conclusion – that the development would not have a significant adverse effect on capacity or safety of the local road network. Here they consider there is no data that would support a reason for refusal on the basis that the development would result in severe harm on the highway network. In view of these findings, there are no objections subject to conditions being included..

In respect of the Travel Plan it is encouraged that detailed design secures suitable cycle storage, high speed broadband connections, electric vehicle charging points at either all or a proportion of the residences, shared space design principles where appropriate, and the footpath link to Brookside and the footway along Newton Road prior to first residential occupation. It is urged that consideration also be given to an overall 10% reduction in single occupancy vehicles, that the details of the Travel Plan co-ordinator should be supplied at least one month prior to first residential occupation, and that a residential travel survey should be carried out on an annual basis for five years. Overall it is considered the Travel Plan provided is a working document and should not be seen as exhaustive, with it subject to change in the light of progression and completion of the development, results of actions undertaken, and responsive to results of future travel surveys. The County also requests a financial contribution towards monitoring of this Travel Plan.

Staffordshire County Council (SCC) Highway Authority raises no objection to the proposals following amended plans which remove concerns as to narrowing of the carriageway and provision of a bus gate within their jurisdiction, but seeks a contribution of £71,000 towards the Burton Integrated Transport Strategy (BITS) across the Winshill Ward.

The Development Control Archaeologist comments that the site has been subject to a geophysical survey and archaeological trial trenching, which has established that the site has little significance in terms of below-ground archaeology. It is therefore recommended that there is no need to condition any further archaeological work. The Development Control Archaeologist has also considered the importance of hedgerows on the site and along Newton Road and whilst those within the site (to the centre and the eastern boundary) appear to qualify as pre-enclosure hedgerows, the evidence is lacking to conclude that those affected by provision of the access and footway improvements are, on balance, important under the Hedgerow Regulations.

The County Planning Policy Officer raises concerns with the proposal, identifying conflict with saved Local Plan policies whilst emerging Local Plan policies can be afforded some weight. Broadly the scale of development proposed would be of a strategic scale and appropriate as an extension to the urban area of Burton under the emerging hierarchy (H1), as well as benefiting from relatively good connections to local services and facilities and providing for a shortfall in affordable housing needs. It is also confirmed that the site does not contain any workable sand or gravel resource and therefore there are no policy issues generated in respect of saved County policy MP17. It is considered, however, that the evidence base that underpinned the former regional plan may still be relevant and a material consideration in that it guided development to support the continued growth and regeneration of Derby, Leicester and

Nottingham to maintain and strengthen their economic, commercial and cultural roles. It is also considered that the layout of the site separates it from the main existing built up residential area of Winshill and the development would not therefore form a natural and contiguous extension to the built up area, appearing physically separated from it. As such the development could have the appearance of a large housing development in the countryside, separate from the main built up area which would impact more on the character of the countryside in this location. The County Planning Policy Officer goes on to state there is no overwhelming need for the proposed development to contribute to meeting the housing land supply needs of the District. Certainly if the Local Plan Inspector ratifies the projected 5-year supply, then the support for this application diminishes. Furthermore in the context of paragraph 55 of the NPPF it would be difficult to argue that the proposed development would have positive benefits for local services in the village of Newton Solney, which is some distance to the north-east. It is also noted that the local County Councillor cannot see any real merit in the application with concerns noted in respect of the volume of housing comparative to the population and needs for the Parish, the risks to highway safety particularly with high vehicle speeds at present, further development in the future, lack of services within easy reach and capacity issues at schools, and that the proposals conflict with a Neighbourhood Plan which states “the village should remain about the same size as it is now with no further houses or other building developments beyond the current village envelope. This will maintain the green space around the village and avoid coalescence with neighbouring villages...”.

The County Strategic Planning Officer seeks contributions towards waste and recycling facilities, education provision, access to high speed broadband services for future residents and that the dwellings are designed to Lifetime Homes standards; and that these should be secured by way of planning obligations contained in a Section 106 Agreement. In summary the commuted sums required are:

- £28.61 per dwelling towards additional waste management capacity;
- £257,642.55 towards 15 secondary school places (through delivery of classroom project A at John Port School); and
- £111,767.40 towards 6 post-16 places (through delivery of classroom project A at John Port School, Post-16).

The County recognises that the viability of development schemes will vary and that if the developer considers the contributions sought would impact on the viability of the proposal to the point where the scheme would not go ahead, a full financial appraisal should be provided for review. The County also comments that as the Local Education Authority, with a statutory obligation to provide school places, Derbyshire County Council should be the recipient of any monies for school place provision. If appropriate further discussion can then take place between Derbyshire County Council and Staffordshire County Council to negotiate the passing of any planning obligation monies as required.

SCC Waste and Minerals team notes the application site is situated in close proximity to a Minerals Consultation Area within Staffordshire, but as that area is already by constrained by existing residential development such that the proposal does not raise any mineral sterilisation issues of concern, there is no objection.

SCC School Organisation Team comments that whilst this development is outside of Staffordshire the proximity to Burton-upon-Trent means the development would impact on Staffordshire schools, and on this basis it is likely that the need for additional primary and secondary school places generated by the development would be provided at Staffordshire primary and secondary schools in the town. The closest schools are Abbot Beyne High School and Winshill Village Primary School and with the development providing up to 100 dwellings, an extra 21 pupils of primary school age, 15 secondary school pupils and 3 sixth form school pupils could arise. It has been identified that a new secondary school will be required to accommodate the level of growth already proposed, and this site would be required to contribute proportionally to the cost of providing the new school and acquisition of the land (relative to the size of the

site). This amounts to around £400,000. Winshill Village Primary is also projected to be full and so a request for £231,651 is made in order to mitigate the impact of the development.

East Staffordshire Borough Council (ESBC) advises they are not supportive of residential development outside of any designated development boundaries, or indeed strategic development that is not brought forward through the plan making process. However the policy context is appreciated, namely the presumption in favour of sustainable development in the context of a 5 year land supply deficit. ESBC raise initial concerns regarding the coalescence of the settlements of Burton upon Trent and Newton Solney and would seek assurance, should the development be permitted, that any further erosion of this strategic gap would be resisted. In addition ESBC also seek to ensure that infrastructure contributions are secured for projects/schemes within East Staffordshire where justified, and all requested contributions of SCC Highways and Education are therefore used within East Staffordshire. In addition ESBC seek contributions towards the provision or improvement of public open space if this is not to be adequately provided for on-site, whilst formal sports provision should be properly considered and contributions are focussed towards Sports Hubs within Burton. Additional comments support the inclusion of a pedestrian link to Brookside and advise that affordable housing provision be met in full on site. ESBC also comment they are fully aware of the concerns of Winshill Parish Council, local residents and Ward Members with regards to highway safety and whilst accepting that 5.5m is of sufficient width to allow 2 commercial vehicles to pass, it is accepted guidance that a road serving a large number of dwellings or carrying a high level of traffic should have a recommended width of 6m. Therefore concerns over the capacity of this highway are raised. Finally ESBC advises they do not support the removal of the protected Beech tree within its jurisdiction, and would seek its retention as part of any scheme. The tree appears to be a healthy specimen and has a significant amenity value on the entrance/exit of Burton.

The Strategic Housing Manager seeks that 30% of the total number of dwellings be provided as affordable housing, in a tenure split of which no less than 75% are for rent and no more than 25% are for shared ownership. Based on 100 dwellings and needs in the local area, this would result in 23 one to four-bed dwellings for rent, and 7 two and three-bed dwellings for shared-ownership purposes. It is advised that affordable housing shall be 'pepper-potted' across the whole site in clusters comprising of no more than 10 affordable homes, with a cluster including no more than 6 flats; and that a Section 106 Agreement is used to secure the overall requirements.

The Environmental Protection Officer advises there are no significant concerns with respect to contaminated land, although as the site is located within influencing distance of a significant former landfill site it is considered that the new development may be at risk from ground gas migration and ingress into the proposed dwellings. Given the potential for construction work to disturb the current ground conditions, thus creating a pollutant receptor; it is recommended that conditions to identify and control any contamination risks are recommended.

The Tree Officer comments that the site consists mainly of open pasture land intersected with managed hedgerows trees and groups of trees. Along the brook boundary, growing mutually either side of the brook, are mature trees high in amenity value, providing an excellent wildlife corridor and an effective screen to any development permitted. The tree assessment provided is considered to be both accurate and factual, with the recommendations of trees in the poorest retention category welcomed as providing an alternative arboricultural solution to felling. A TPO is recommended across the site in the interests of providing an appropriate detailed design solution and to maintain ecological benefits. Further comments are given in respect of potential impacts of the initial access designs (which saw a footway pass adjacent to a protected Beech tree in East Staffordshire). It was concluded that the tree is in fine condition and fully worthy of TPO status, and the proposed creation of a highway footway would severely compromise both structural stability and long-term tree health such that ground disturbance close the buttress roots should be avoided at all cost. Further comments are provided in respect of widening the



footway along the western side of the road, and that the works to install it would compromise the hedgerow as well as noting its existing proximity to the footway already causes some maintenance concerns.

Severn Trent Water raises no objection subject to a condition to secure appropriate drainage.

The Crime Prevention Design Adviser considers there are no reasons why residential development should not be acceptable from a community safety perspective, with the indicative layout suggested having the potential to provide a secure and outward looking scheme – particularly overlooking open space. Active elevational treatment on key plots, secure enclosed rear garden space with individual access and private car parking in view and within curtilage are also recommended. The proposed pedestrian link across the brook onto Brookside looks interesting given current levels, but they ask that this route has a level and open aspect with consideration given to overlooking from adjacent plots, as well as the definition between public and private space where private land abuts the route.

## **Responses to Publicity**

Newton Solney Parish Council objects raising the following concerns:

- i) access to site is on a section of a narrow arterial road and as it is proposed to create a standard width pavement at this point it would result in narrowing the main carriageway even further, with heavy lorries and buses using the route already finding there is insufficient room to comfortably pass other traffic and the proposals could make serious accidents inevitable;
- ii) the above problem would be made worse when new residents and service vehicles are taken into consideration;
- iii) this section of the road is subject to flooding during heavy rain which also indicates that the choice of access is unsuitable;
- iv) an extra 100 dwellings would increase the Parish population by approx. 40% and put extra pressure on the doctors, dentists and schools with it understood these are already running at capacity;
- v) the Parish Plan (written in 2008 and updated recently) considers there was no need for an increase in dwellings within the Parish apart from perhaps 8 properties on approved individual sites;
- vi) the site is outside the village envelope;
- vii) a sudden dramatic increase in size would spoil the character of the village and have an impact on the surrounding countryside;
- viii)  $\frac{1}{3}$  of the Parish population is over 65 years of age and does the proposal include National Housing for the Aged dwellings?
- ix) a major gas pipe runs across the site; and
- x) there are two extra large areas of land that are likely to result in further future applications and which would make the disadvantages detailed above far greater.

Winshill Parish Council objects on the following grounds:

- i) the proposal would be an unnatural urban extension into the countryside, contrary to local plan policy for development away from settlements, and to government policy protecting the countryside;
- ii) pedestrian links would rely on third party land, which means that Newton Road would have to be used, involving excessive walking distance to local services;
- iii) the proposed access and junction arrangements, including a narrowing of Newton Road, would be unsafe.
- iv) the proposal does not represent sustainable development with the only local service provision being over 1km away in Winshill resulting in an inevitable increase in vehicular traffic on local roads; and

- v) the proposal would add additional pressure to the existing limited local services and infrastructure.

Burton Civic Society objects on the following grounds:

- i) the site is not in the new Local Plan, which was the subject of public consultation and examined in public, and any decision should be delayed until the latter process is completed;
- ii) although the site is in the Parish of Newton Solney, it would be an addition to Winshill with residents using the facilities of that Parish and of Burton;
- iii) East Staffordshire residents accept large-scale extensions to the town on the south and west, but not to the North which would place further strain on infrastructure without making any contribution to costs in the form of Council Tax;
- iv) such development on the Northern edge would detract from the town's 'green frame' which is highly valued;
- v) this application would be the beginning of a creeping development with the existing applicant already owning the land to the North of the site, and the spine road could easily be extended if new land were to be released;
- vi) claims made in the DAS are dubious with walking distances to facilities up a 1 in 13 hill ruling out walking or cycling for the majority of residents, especially older ones;
- vii) car traffic would increase on Mill Hill Lane, which is already dangerous at school times;
- viii) the B5008 is not a route to be recommended for cycling into Burton, certainly not for school-age children with a blind bend opposite Newton Road Recreation Ground and the road not wide enough for overtaking, with the cycle paths on the A5211 referred to referred to in the DAS only beginning on Burton Bridge;
- ix) the argument that South Derbyshire residents should be allowed to live near their place of work in Burton is entirely specious: such workers are already free to move to Burton;
- x) the developers admit that local schools are already full;
- xi) the proposed narrowing of the road would be dangerous as the B5008 is a busy road, with a public bus service as well as school buses and a good many trade/light goods vehicles, and it also acts as a relief road when the A38 is blocked. At 5.5m it would be impossible for a bus and lorry to pass each other;
- xii) the site is good agricultural land;
- xiii) the developer refers to public consultation, but omits to mention that the majority of the residents object to the proposal.

Heather Wheeler MP has objected for the following reasons:

- i) the land is natural break between Newton Solney and the built up area, this being a fundamental ethos in planning guidance, and the development would be totally inappropriate;
- ii) the narrowing of the busy road would be unacceptable;
- iii) the land is not allocated in the emerging local plan and permission should thus not be granted; and
- iv) there have been two recent appeal decisions upholding refusal of permission in cases where sites were not allocated in emerging local plans.

Bladon Fields Action Group (BFAG), acting on behalf of residents in the vicinity of the site, objects on the following grounds:

1. the local plan cannot simply be dismissed as being out of date and irrelevant due to legal requirements to determine in accordance with it unless material consideration indicate otherwise;
2. the Inspector's view on saved policy EV1 in the High Street Linton case was one which limited weight to be afforded to it – not one which resulted in "no weight";

3. the proposed development is contrary to both the adopted and emerging local plans, and it is therefore necessary to consider whether other material considerations are sufficient to overcome that policy presumption;
4. the proposals are premature with the emerging plan gathering weight with the Inspector allowing an adjournment to provide further information indicative of legal soundness and overall compliance with the NPPF;
5. the direction of travel for housing supply, especially with large scale sites pending determination in Swadlincote, is that the Council will shortly have more than a 5 year supply;
6. it is important to note that an additional substantial stock of permissions exist beyond the 5 year period such that there are not land supply issues, instead delivery is distorted by wider economic conditions, and by approving more straightforward and cheap-to-develop greenfield sites house builders will continue to ignore the more difficult and expensive sites such as Drakelow which, as a major urban extension, offers much more in the way of community benefits than this proposal;
7. the site is detached physically from the urban area and the proposals provide little in the way of connection or permeability into existing development, and the only way into the development for pedestrians is via the footway on Newton Road meaning the housing would only be accessible in practice by use of private car;
8. the suggestion of a pedestrian bridge onto Brookside cannot hold weight as the applicant (nor the local authority) has control of this land with it instead owned by a company who have long been in administration;
9. BFAG's own traffic survey work covers a period 168 times longer than the applicants and takes in different hours of the day and different days of the week, and considers peak hour flows as well as off-peak, and thus the work has more legitimacy than that submitted;
10. the applicants have insufficient control over land to provide a suitable footway along the eastern side of Newton Road, and such a solution would adversely affect the longevity of a protected Beech tree;
11. the creation of a 'shuttle system' at the boundary with Winshill is not supported by the Transport Assessment, and such a proposal is a very different scheme to the one described, explained and justified in the Transport Assessment;
12. the applicant has been forced to concede that a satisfactory access solution, in terms of highway safety and sustainability, cannot be found without having to propose a solution that impacts detrimentally upon the wider highway network, with the current free flow of traffic along Newton Road (a Class II highway) in both directions impeded solely for the benefit of the 100 dwellings and occupants thereof;
13. the option of crossing Newton Road to use the footway on the western side, before crossing back again, is not a safe and suitable option, and the situation is made even worse by the failure to make provision at night time; there being no street lighting shown on the proposals (and there is no guarantee that any street lighting would stay on at all times given reduced night lighting);
14. narrowing of Newton Road to accommodate the access and footway(s) is detrimental to road safety;
15. the brook floods frequently and although rarely serious to prevent vehicular traffic, it is deep enough to prevent or deter pedestrians using the route;
16. no specific crossing point has been identified (for crossing back) on the proposals but the obvious desire line would suggest that would be at the earliest possible point in Staffordshire (outside 128 Newton Road).
17. the hedgerow would need to be removed and replanted well back onto the land to the west;
18. some of the agricultural land may be Grade 2 quality, and there is not an abundance of the best and most versatile agricultural land within the District;
19. the development on a shoulder of the rising ground would result in a prominent and intrusive development, and the site forms part of an important open break that separates the suburban form of Winshill with the low density cluster of development which nestles

- around Bladon House, in turn making it more difficult to resist further development of the remaining, and by then relatively short, open break to the north;
20. Bladon Paddocks is a substantial detached dwelling built on elevated land and having an aspect due south, and part of the visual appeal of the site and the experience gained when travelling northwards is the focal point conferred by this prominent and historic dwelling. Its setting would be completely undermined and no regard has been given to this dwelling and how it relates to the development;
  21. This local landscape is valued and there is a presumption against its development unless other material considerations overwhelm that matter; and
  22. the Council's LVIA consistently shows the visual impact to be "moderately adverse", at no point concluding the proposed development would have a neutral or positive impact.

[Note: comments 10 to 12 were made in respect of amended access arrangements no longer being pursued by the applicant];

89 objections have been received from 83 separate addresses, the majority identified to be directly adjoining or in the vicinity of the site. The following concerns are raised:

#### Principle of development

- a) the emerging Local Plan is well advanced and it would therefore be premature to permit this application, which is contrary to the Plan;
- b) the Council's housing land supply has been growing steadily and will be met imminently, and as such the development is not necessary;
- c) there is enough previously developed land in the country to build one million homes, and there is no need to develop in the countryside;
- d) there are better sites, including previously developed land, for housing development;
- e) the government wishes to see brownfield land developed in order to protect the countryside;
- f) the development is not sustainable in the terms of paragraph 7 of the NPPF;
- g) the development would not achieve the sustainable transport objectives of the NPPF;
- h) a precedent would be set for more development in South Derbyshire on the edge of the town, with consequent adverse effect on Burton on Trent, with it likely that further applications would be made on adjacent land;

#### Services and facilities

- i) the local schools are already full and a planned new school would not be available for at least five years, creating the need to travel to alternative provision;
- j) local doctors' surgeries and the hospital are overloaded;
- k) existing residents have difficulty in finding places at schools and medical/dental practices in the local area;
- l) access to secondary education at John Port School would require funded transport provision due to the travelling distance and there would also be increased traffic in Etwell as a result;
- m) developer contributions would not result in any practical solution to existing problems;

#### Highway capacity and safety

- n) the road network is inadequate and long delays occur already;
- o) congestion on Burton's arterial routes, including junctions and road bridges, would be exacerbated;
- p) the road already serves as a bypass for Derby to Burton traffic when there is an accident on the A38;
- q) it is logical for future development to take place on the west side of Burton on Trent, to ease traffic using the bridges;

- r) the bus service is not sufficiently frequent as to make a meaningful contribution to sustainable transport, the road is not suitable for cyclists, and it is likely that there would be more private car movements than envisaged by the applicant with consequent congestion and carbon emissions;
- s) the site is isolated from both Winshill and Newton Solney and it would not be easy for new residents to access services in either settlement by foot or cycle;
- t) the development would increase traffic through local residential streets as motorists seek to avoid congestion on the arterial routes;
- u) there would be danger to pedestrians walking to the nearby special needs school;
- v) there is no lighting on the road, which is also susceptible to icing in the winter;
- w) cyclists would be put at risk from increased traffic and the design of the site access;
- x) the access would be in excess of that needed for the scale of development proposed [note: this concern is in respect of the original access design];
- y) between Bladon House School and Dalebrook there would be 4 junctions, 2 pedestrian crossing points and 3 private accesses on the eastern side of the road, plus a field access on the western side;
- z) the road is narrow and vehicles are caused to cross the centre of the carriageway with traffic also observed to mount footways;
- aa) further narrowing of the road would increase the risk of accident;
- bb) traffic travels at high speed along the road and the site access would be dangerous for this reason;
- cc) visibility at the access would be inadequate;
- dd) the footway along Newton Road would be in floodplain and would not be useable at times;
- ee) traffic calming is needed;
- ff) the speed limit should be reduced;
- gg) emergency vehicles would be hampered by the development;
- hh) the applicant's speed survey is not representative;
- ii) increased traffic through Newton Solney would be hazardous;
- jj) other committed development schemes should be taken into account in order to assess traffic impacts;
- kk) the amended traffic calming proposal would cause tailbacks and increased risk of collision;
- ll) the amended access scheme would impair the free flow of traffic;
- mm) a similar road narrowing scheme in Repton was removed because of the hazard/accidents it caused;
- nn) the traffic calmed piece of road would be in shade from the large Beech tree, increasing risk of collision;
- oo) large vehicles would have to mount the footway;
- pp) the narrowed road would conflict with the nearby bus stop;
- qq) much of the proposed alteration to the highway would take place in East Staffordshire, which the developer or South Derbyshire District Council cannot rely upon;
- rr) the proposed pavement arrangement would add confusion to road users and introduce the requirement for two additional crossings for pedestrians;
- ss) the need to cross the road twice would be difficult and dangerous for children, disabled users or those with pushchairs – especially as there is no lighting;
- tt) inadequate visibility for pedestrians on the proposed northern crossing point;
- uu) danger of pedestrians stepping off the footway down a drop onto land to the west;
- vv) conflict between the proposed pedestrian crossing and existing driveways;
- ww) the southern crossing point is at a point where surface water collects deterring its use;
- xx) a potential pedestrian crossing over the brook would rely on third party land;

[Note: points (kk) to (qq) relate to a previous amendment to access arrangements, no longer being pursued by the applicant];

### Flood Risk & Drainage

- yy) the local area floods and the surface water runoff from the development would lead to increased flood risk;
- zz) raw sewage has been observed overflowing to the brook;
- aaa) a sandstone outcrop in the ground could limit the ability to provide an attenuation pond;
- bbb) the proposed amended changes to the road would exacerbate flooding;

### Ecology & Biodiversity

- ccc) the development would harm the habitat value of the site with consequent adverse impact on wildlife;
- ddd) protected species and habitats are not adequately identified in the Great Crested Newt Study;
- eee) the site hosts many birds and mammals which would be adversely affected;
- fff) the widening of the road would require removal of mature hedgerow;

### Landscape and visual impacts

- ggg) the brook provides a clear physical boundary delineating the edge of the built up area;
- hhh) the development would be an urban intrusion into the open countryside being a clear visual break between the settlements of Newton Solney and Winshill;
- iii) the area has a distinctly historical agricultural character (Melbourne Parklands) which would be harmed;
- jjj) the development would adversely impact on the landscape and important local views, for example towards Bladon Castle and across the Trent washlands, would lost;
- kkk) the access and road alterations would have an unacceptable urbanising effect which would be exacerbated by street lighting;
- lll) the loss of roadside hedgerow on both sides would be harmful to the character of the area;
- mmm) the [applicant's] LVA omits important receptors and does not adequately show impacts;
- nnn) the existing change in character between the urban area and open countryside distinguishes the two counties, and this character distinction would be lost;
- ooo) a protected tree of key landscape value would be harmed/removed;
- ppp) other trees and hedges would be damaged/destroyed;
- qqq) the development would be out of scale and character with local traditional South Derbyshire houses and also low-rise houses to the south;
- rrr) the development would appear visually disjointed from the urban area to the south;
- sss) even if the hedgerow were replaced it would be set back and out of line when meeting that remaining;
- ttt) significant groundworks would be necessary to provide the altered western footway to the road;

### Amenity

- uuu) the development would result in the loss of open space for existing urban residents;
- vvv) pedestrian linkage to Dalebrook Road could increase crime and disorder;
- www) there would be overlooking and loss of privacy to existing residents;
- xxx) removal of hedgerows would increase noise;
- yyy) resultant congestion from the amended narrowed road would increase pollution;
- zzz) the provision of safe highway lighting could cause light pollution to residents;
- aaaa) increased traffic would have an adverse impact on residential amenity;
- bbbb) there would noise pollution and heavy traffic during construction;

### Other matters

- cccc) open views from existing houses would be adversely affected;
- dddd) the development would not deliver new houses until 2019/20;
- eeee) valuable agricultural land would be lost;
- ffff) the development would be too close to a gas pipeline and overhead electricity cables, raising health and safety concerns;
- gggg) planting would adversely affect National Grid's pipeline;
- hhhh) what measures would be implemented to prevent access to the river whilst the hedgerow grows;
- iiii) the western hedgerow to the road forms a natural windbreak;
- jjjj) works to form a footway could cause structural damage to private property; and
- kkkk) although Council Tax would be paid to South Derbyshire District Council, the burden for services would fall to East Staffordshire Borough Council.

The Head Teacher of Newton Solney C of E Infant School has commented that there is capacity at the school.

### **Development Plan Policies**

The relevant policies are:

Saved Local Plan 1998: Housing Policies 5, 8, 9 and 11 (H5, H8, H9 and H11); Transport Policies 6 and 7 (T6 and T7), Environment Policies 1, 9, 11, 13 and 14 (EV1, EV9, EV11, EV13 and EV14), Employment Policy 9 (E9), Recreation & Tourism Policy 4 (RT4) and Community Facilities Policy 1 (C1).

### **Emerging Development Plan Policies**

The relevant policies are:

- Submission Local Plan 2014: S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), S4 (Housing Need), S6 (Sustainable Access), H1 (Settlement Hierarchy), H19 (Housing Balance), H20 (Affordable Housing), SD1 (Amenity and Environmental Quality), SD2 (Flood Risk), SD3 (Delivering Sustainable Water Supply, Drainage and Sewerage), SD4 (Contaminated Land and Mining Legacy Issues), SD5 (Minerals Safeguarding), BNE1 (Design Excellence), BNE2 (Heritage Assets), BNE3 (Biodiversity), BNE4 (Landscape Character and Local Distinctiveness), INF1 (Infrastructure and Developer Contributions), INF2 (Sustainable Transport), INF7 (Green Infrastructure) and INF9 (Open Space, Sport and Recreation).

### **National Guidance**

- National Planning Policy Framework (NPPF) including (but not exclusively) paragraphs 6-8, 11-12, 14, 17, 32, 34-35, 47, 49, 58, 61, 69, 70, 73-75, 103, 109, 112, 118, 120, 123, 129, 131, 132, 134, 139, 203, 204, 206, 215 and 216.
- National Planning Policy Guidance (NPPG).

### **Local Guidance and Evidence**

- Housing Design and Layout SPG.
- Section 106 Agreements – Guidance for Developers.
- The Strategic Housing Market Assessment 2013 (SHMA).
- Core Strategy Topic Paper – Settlement Hierarchy (July 2014).
- Landscape and Visual Impact Assessment (LVIA) carried out on behalf of the Council (Jan 2015).

- The Letter from the Minister of State for Housing and Planning to the Planning Inspectorate (March 2015).

## **Environmental Impact Assessment**

The proposal has been screened under Regulation 5 of the Environmental Impact Assessment (EIA) Regulations 2011 for up to 100 residential units. The proposal is considered to fall within paragraph 10b of Schedule 2 to those Regulations, being an infrastructure project. However having taken into account the criteria of Schedule 3 to the Regulations, the proposal is not considered to give rise to significant environmental effects in the context and purpose of EIA. Accordingly the application is not accompanied by an Environmental Statement.

## **Planning Considerations**

Legislation commands that applications must be determined in accordance with the Development Plan unless material considerations indicate otherwise. The saved policies of the SDLP presently form the Development Plan, although the NPPF is a significant material consideration. Various policies of the emerging Plan may also be afforded some weight given its progression through examination whilst correspondence from statutory and technical consultees, as well as third parties, are also material considerations carrying varying degrees of weight.

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

- Principle of development and weight afforded to policy;
- Local infrastructure capacity and affordable housing;
- Hazardous installations;
- Connectivity;
- Highway safety;
- Hedgerows and trees;
- Biodiversity and ecological impacts;
- Landscape and visual impacts;
- Heritage;
- Drainage and flood risk;
- Design, layout and amenity; and
- Facilitating further development.

## **Planning Assessment**

### Principle of development and weight afforded to policy

The applicant considers, in the context of this planning application, that the NPPF must take precedence over saved Local Plan with paragraphs 14 and 47 to 49 of NPPF determining the overriding policy direction. This is not strictly correct. The NPPF sets out at paragraph 215 that it is an assessment of policy consistency between the NPPF and Development Plan policies – not age. It is therefore necessary to first determine the policy landscape for this application.

The site lies outside the settlement confines for Newton Solney not catered for by way of specific allocation or saved policy H5, and beyond the scope and intentions of saved policy H8. It therefore conflicts in principle with H5, H8 as well as saved policy EV1. At the time of writing the emerging hierarchy can only be given modest weight given outstanding objections to the Local Plan following examination. H8 remains consistent with the latter parts of paragraph 55 of the NPPF (exceptions for rural worker dwellings) although its purpose is not strictly applicable here. EV1 however is not a housing policy – it instead has an indirect effect of restraining delivery. Notwithstanding this, the policy accepts that some development in the countryside is unavoidable and indeed it could be argued that this proposal could fall as ‘unavoidable’ given



the current shortage in the supply of housing. Nevertheless the policy goes on to consider safeguarding character and landscape quality, as well as ensuring all development in the countryside is designed so to limit its impact on the countryside, and these secondary parts of the policy provide a considerable degree of consistency with section 11 of the NPPF.

With this in mind, the decision rests on the sustainability balance when considering the above (and other) policies and the merits of the proposal, at all times bearing in mind the primacy the NPPF gives to the Development Plan. The desire to significantly boost the supply of housing must be given significant weight, particularly in light of shortfall of a 5-year housing supply at the time of writing. The emerging Local Plan recognises this and seeks to provide this significant boost in a strategic and sustainable manner.

It is acknowledged there would be economic benefits – both short and long term, with construction phase employment and subsequent occupation leading to increased revenue to businesses and services in the District and across into Burton; but these are not considered to feature heavily in favour of the proposal. The applicant also advances that the proposals would help ‘fill’ a gap created by delays in the delivery of the Drakelow Park urban extension – a site constrained by an obligation to provide the third crossing over the River Trent (“the Walton Bypass”) and highway improvements before occupation of more than 100 dwellings forming that development. It is advanced that delivery of that development is in question due to a funding shortfall to facilitate these works. Whatever the case, the Council cannot demonstrate a five year supply of housing and it would be true that granting permission on the site could potentially assist in boosting that supply.

Setting the above matter aside, the sustainability of the development is paramount with it important to strike the right balance between housing delivery and ensuring the social and economic needs of occupants can be readily met. Whilst a lack of a 5-year supply might engage paragraph 49 of the NPPF, an unsustainable development means the presumption in favour set out under paragraph 14 does not apply. With this point in mind attention is given to the impacts of the development and conflict with planning policy so far. For the presumption in favour of development to apply, sustainability must be viewed in the round, considering infrastructure, landscape, ecology, heritage, design and so forth. It is important to remember that sustainability and sustainable development is subjective – there is no minimum or consistent level beyond which a particular development can be said to be sustainable. It is a concept, and one that is determined differently from one site to another. The remaining parts of the report therefore give consideration to whether any other adverse impacts of granting permission would significantly and demonstrably outweigh the benefits of the proposals, after reaching a balance between the benefits and adverse impacts all the time noting that conditions or obligations may be used to mitigate or address an otherwise unsustainable impact.

#### Local infrastructure capacity and affordable housing

Objections as to the existing capacity of the highway network are noted. It is not disputed that congestion occurs in and around Burton, especially during peak hours and at the A511/A444 junction. However the key question is whether this proposal would ‘tip the balance’ such that existing issues would become wholly unacceptable. The Transport Assessment (TA) determines 68 to 51 vehicle movements would be created in each peak hour. From the site access drivers would have a north/south choice, with further choices south along Newton Lane before reaching the junction. The TA concludes that the proposed development does not significantly impact on the junction’s performance and hence no mitigation is proposed. SCC Highway Authority considers there is not sufficient evidence to demonstrate otherwise and raises no objection subject to a commuted sum. This is not felt to be an unreasonable conclusion given the nature of the B5008 providing a semi-strategic route between Burton and Derby and the existing traffic volumes upon it. The contribution sought to facilitate monitoring of the Travel Plan is not considered to be CIL compliant in light of a recent ruling which indicates only on the very large and complex sites might a monitoring sum be justified.

The provision of 100 dwellings would place pressure on existing schools, healthcare, open space, sports and built facilities, and waste and recycling provision. With regard to the consultation responses above, the impact on primary school provision can be satisfactorily accommodated within existing and projected capacity, whilst secondary and post-16 school pressures could be addressed by way of contributions towards an identified project at John Port School. The request from SCC to allocate funds towards schools in their authority is not supported as it is Derbyshire County Council who is charged with the legal duty to facilitate education for children arising from the development. It is therefore appropriate to release the funds to the County, especially when there is an identified project to address increased pressure in this area from development in the short to medium term. These contributions are considered to be compliant with the CIL Regulations and paragraph 204 of the NPPF and can be secured by way of a Section 106 agreement.

The Area Team for NHS England has not responded to consultation and recent cases elsewhere points to a lack of evidence in substantiating where an existing and relevant capacity issue exists, and also the intended purpose of the sums (i.e. a particular project). In this light it is not possible to pursue a contribution. As for waste and recycling needs, existing facilities in the District are already over capacity. The County makes a request for £28.61 per dwelling and it is considered the request is compliant in terms of a direct need and it being reasonable and fair in scale in kind. Recent changes to the CIL Regulations however make it unlawful to secure contributions to a fund which is already oversubscribed in terms of pooled sums. Accordingly this contribution should also not be pursued.

A generous amount of open space would be provided on the site, with a LEAP to be secured centrally within a green. The southern corridor of open space would complement and provide potential enhancements to the existing brook corridor. No sports or built facilities would be provided yet the development would lead to additional pressure on existing facilities elsewhere. Given the location of the site and distance to the nearest sports and built facilities within the District, it is considered the pressure would fall on facilities within Burton, and the Open Space Manager agrees with this view. ESBC has advised of identified projects at the Newton Road changing rooms and the Canoe Club clubhouse which are presently unfunded and not set to receive contributions in excess of the pooling limitations. It is considered the request is CIL/NPPF compliant.

Attention is given to the proportion of affordable housing. Emerging policy sets a starting point of 30% with any reduction to be evidenced by way of viability work, whilst the NPPF advocates a need to provide a range of housing options. The SHMA also evidences such a need. The applicant is not claiming viability issues and outlines an intention to provide up to 30% of the dwellings for affordable purposes in line with housing needs. This would give rise to a range of dwellings for social/affordable rent and shared ownership purposes, helping to boost affordable housing delivery and contribute to current shortfalls in provision, and could be adequately secured by way of a planning obligation.

#### Hazardous installations

Saved policy E9 limits developments near major gas pipelines, ensuring that permission is only granted provided the Council are satisfied that there would not be a significant increase in the population at risk or that there is no reasonable alternative. The latter point is clearly not applicable here as it is clear from above discussion there are reasonable alternatives to developing this site for meeting housing needs over the plan period. However the proposal satisfies the HSE following consideration of the density of development and a limited number of dwellings in the permissible outer consultation zones from the pipeline. Accordingly the HSE does not advise against the granting of planning permission in this case.

#### Connectivity

Burton has a range of day-to-day and more infrequent facilities within a reasonable distance of the site. The connectivity of the site to these facilities is one particular concern which is raised by the above objections. The site lies beyond a physical boundary to the existing urban area – the Dale Brook. The only existing and feasible crossing in the vicinity is Newton Road as the indicative pedestrian bridge to Brookside can be afforded no weight given ownership constraints point to it not being deliverable. Whilst Newton Road provides a vehicular link to the site as well as carrying a regular bus service, there are shortcomings in respect of pedestrian access. A number of footway solutions have been proposed. The present proposal is for a new footway on the eastern side of the road across the entire site frontage, extending north to Bladon Paddocks and south to Keepers Cottage, along with dropped kerb crossings at each end. Pedestrians would then need to cross to a widened footway on the western side to travel further.

Given the location of facilities, it is more likely that the direction of pedestrians would be south over the brook and into Winshill where pedestrians would then need to cross back to the eastern side in order to reach nearby shops, community and recreational facilities. However street lighting would be required by the County Highway Authority, and whilst the proposals are silent on what improvements might be provided to facilitate a crossing point in East Staffordshire; it is assumed existing crossing points would be relied upon. With the NPPF seeking provision of both safe and suitable access, there is considerable concern that this less than convenient route for pedestrians (the ‘suitable’ part of the NPPF) would invest itself in a reliance on private vehicle instead – even with the proposed Travel Plan which actually seeks to encourage sustainable modes of transport such as walking. Ultimately there is only so far a poor situation can be improved, and the NPPF recognises this in advocating that developments which generate significant movement are located where the need to travel would be minimised and the use of sustainable transport modes can be maximised. The aforementioned physical constraints basically weaken the sustainability ‘credentials’ of the development by way of a lack of convenient pedestrian connection to the site conflicting in part with saved policy T7 and paragraph 32 of the NPPF. The dependency on private vehicle also reduces the degree of social interaction prospective occupants of the development could have with existing residents within Winshill, whilst the public benefits of the open space provision would be generally limited to occupiers of dwellings on the site, reducing any wider social gains.

#### Highway safety

A number of different access options have been proposed during the course of the application. The initial proposal to widen Newton Road around the access and provide a filter lane has been abandoned due to further evidence provided by BFAG and the County Highway Authority which pointed to greater visibility splays being necessary. With third party land preventing the achievement of these splays, local concern as to narrowing of the carriageway, along with further constraint of a protected tree and land ownership uncertainties in East Staffordshire preventing the provision of a continuous footway south from the access; a totally different solution was necessary. The interim solution looked at providing a bus gate at the bridge, causing southbound traffic to give way to traffic leaving Burton. Whilst likely overcoming the footway/protected tree conflict, this was also considered to be unacceptable on highway grounds.

The latest proposal, as outlined above, acknowledges that vehicles travel at or above the posted speed limit of 40mph along Newton Road. The revised access design accounts for splays to accommodate such speeds. However the access and proposed alterations are considered to satisfy guidance within Manual for Streets and the 6Cs Design Guide. The pedestrian crossing points are also considered to accord to guidance. Accordingly there is no objection from either Highway Authority on safety grounds, subject to conditions. The above matters regarding connectivity weigh against the proposal but from the view of the County Highway Authority they are not considered sufficient in terms of their interests to substantiate a refusal.

### Hedgerows and trees

A tree preservation order (TPO) has been placed on trees potentially affected by the development. These are confined to the boundaries of the site but provide amenity and/or ecological value. This protection is considered adequate to ensure any detailed layout works with these features. Attention is also given to the hedgerows affected. The central and eastern hedgerows are considered, on balance, to meet the criteria for importance under the Hedgerow Regulations due to their association as an integral part of a field system pre-dating the Inclosure Acts. The eastern hedgerow is also considered to be priority habitat for conservation as well as facilitate movement of protected species. These hedgerows are to be retained however, although the eastern hedgerow is indicatively shown to provide the rear garden boundary to gardens. The applicant has acknowledged this conflict and amended plans indicate it would be resolved under detailed design at reserved matters stage. A condition can make this point explicit. The central hedgerow would also be interrupted to provide east/west movement along the estate road and the POS slightly eroding its historical significance.

The hedgerows alongside Newton Road would suffer the greatest impacts with complete removal of the eastern hedgerow necessary south of the access to facilitate visibility splays and the construction of (and later free, unobstructed use of) the proposed footway. It is acknowledged that part has already been replanted/relocated further back either side of the existing access. On the western side the applicant initially advanced that the hedgerow could be retained alongside the proposed widening of the existing narrow footway. Analysis of the topographical survey and advice from the Tree Officer suggests this could not occur. The works to widen the footway alone, including any grading of land to the west to facilitate this change, would necessitate the complete removal of the hedgerow along the entire length of the widened footway. The close proximity of the hedgerow to the existing footway and falling levels to the west also indicates that translocation would be unsuccessful.

The County Archaeologist comments that the hedgerows are clearly associated with the road, and the road is associated with the likely pre-enclosure field system to the east, although the lack of map evidence to demonstrate that the course of the road has remained constant from pre-enclosure times is a weakness in this argument. Notwithstanding this Newton Road is clearly a long established route between Winshill and Newton Solney, both of which have pre-enclosure origins; and this route is marked by historical buildings suggesting a consistent course for many centuries. However it is not considered that a refusal could turn on the loss of important hedgerow, although the loss of hedgerow is a contributing factor in assessment of landscape and visual impacts below.

### Biodiversity and ecological impacts

The survey work undertaken and the response from the Wildlife Trust indicates that the impacts arising from the development would be acceptable subject to appropriate conditional control. The favourable conservation status of protected species would not be harmed such that the Council is considered to have discharged its duties under the Habitat Regulations. Long term enhancement can be secured by way of condition and landscaping detail at the reserved matters stage, and matters relating to hedgerows are discussed above.

### Landscape and visual impacts

The site carries no statutory or local landscape designations. The applicant considers that the absence of such a designation translates to a landscape which is not valued, and in turn the NPPF does not seek to protect it. The correct approach, when reading section 11 of the NPPF as a whole, is to first determine what value the landscape has (if any) before determining the correct response to planning proposals.

This site and its environs lie on the boundary between the Trent Valley Washlands National Character Area (NCA) and the Melbourne Parklands NCA. The landscape of the Melbourne Parklands NCA is predominantly rural in character with strong and often abrupt contrasts with the urban areas on its peripheries, comprising agricultural rolling farmland and ancient and plantation woodland. The Trent Valley Washlands landscape is a distinctly narrow, linear low-lying landscape which comprises flat river flood plain corridors of the River Trent's catchment. When considering the two NCA descriptions, it is evident that Newton Road forms a clear boundary between these two typologies, meaning the site is more influenced by the Melbourne Parklands NCA. The County Council's 'The Landscape Character of Derbyshire' document was revised in 2014, after the applicant's LVA was carried out. The site is at the western edge of the Melbourne Parklands Estate Farmlands Landscape Character Area (LCA). This is a broad, gently rolling undulating lowland landscape carrying an arable farming landscape with a diverse pattern of small to medium field sizes defined by low hedgerow with scattered hedgerow trees and by dense lines of trees along watercourses. The landscape is sparsely settled with a number of country houses set in landscape parks, and historic buildings are common throughout this landscape. The Staffordshire Planning for Landscape Change and Character Assessment (2000) defines the site as bordered by the Riparian Alluvial Lowlands LCA – a medium scale landscape comprising flat lowland river valleys and flood plain. This supports the view that Newton Road provides a strong distinction between the NCAs.

The site has a clear association with the administrative boundary between South Derbyshire and East Staffordshire, with the Dale Brook providing this dividing line. To the north the land is largely undeveloped with isolated dwellings carrying historical association as farmsteads before small clusters of housing around Bladon School, set within the wooded setting to the former manor house. This provides a strong change in character from open arable farmland and pasture to woodland on and around Bladon Hill and Castle. The intervening field between this woodland and the site provides a feeling of grounds to a country estate. To the south of the brook the land exhibits a complete contrast, with a very urban feel within this 1960s residential estate. This estate is reasonably dense in character and has for many decades marked the furthest encroachment of Burton towards this area of South Derbyshire – even during similar times of pressure on land for housing supply. Travelling north along Newton Road, there is an experience of a sudden and step change from urban to rural with no ribbon development or clusters of dwellings extending the urban character beyond the brook. Any dwellings are truly appreciated from their rural setting and isolation from the built up area. Similarly so when travelling south the existing brook crossing, framed by existing mature trees, Keepers Cottage and the protected beech in particular; provides a distinct 'gateway' into Burton from the South Derbyshire countryside. This provides Newton Road and its environs with a pleasing rural character along the site frontage and is evidently a component of a valued to the local community – even if it is not physically accessible, it is conceptually from both roads and public thoroughfares in the area and from private gardens to dwellings bordering or overlooking the site – some of which sit elevated as the ground rises to the south again, beyond the brook.

Whilst the site is made in outline with all matters except for access reserved, it is possible from consultation replies and identified constraints, such as flood risk, the pipeline standoff, the access position and design, etc. that considerable certainty can be given to the masterplan in what pattern of development would arise at the detailed design stage. The proposed development would therefore comprise 4 main parcels split by the access road and the existing central hedgerow. Open space would follow the latter up to the access road and provide for a centrally placed LEAP. The SuDS would have to be located adjacent to Newton Road and Keepers Cottage since this is the lowest part of the site which falls outside of flood zones 2 and 3. The access and associated footway would result in the total loss of hedgerow along the eastern side (save for maybe a section of recently replanted hedgerow) to the north of the access up towards Bladon Paddocks. The hedgerow on the western side would also have to be removed in its entirety for the complete length of the proposed footway widening. The necessary stand offs to the brook corridor, pipeline and Newton Road mean that the built form would be 'pushed' towards the highest ground on the site.

Two appraisals have been carried out to ascertain landscape and visual effects. The applicant's LVA is summarised above. The Council's own LVIA was commissioned to provide a comparison to establish whether the findings of the LVA could be relied upon. The Council's consultant considers the findings and conclusions of the applicant's LVA are not in accordance with recognised guidance with it noted in particular that in assessing and judging the significance of landscape and visual effects, susceptibility to change and magnitude of effect (scale of effect) should be considered. At no point in the LVA does it refer to these terms. Furthermore it is considered that whilst baseline information about landscape character and views are provided, there is no assessment as to the likely effects of the proposed development on receptors and no transparency in terms of how conclusions have been reached. The applicant responds to this criticism noting that in undertaking an LVA the process is informal and is more flexible than for an LVIA; and the guidance also notes that the scale of an assessment should be appropriate and proportional, and that professional judgement should be exercised to make decisions on the scope of an assessment. It is argued that this approach does not minimise the importance of judgements made, just that the assessment should be tailored to the particular circumstances in each case. These points are not disputed – the guidance allows for flexibility in approach. However on such a scheme where landscape and visual impacts are important in reaching an overall view on whether to allow development to proceed, it is the evidence which informs the conclusions of impacts which is crucial. The LVA is lacking in this respect and accordingly the degree of weight which can be afforded to its findings must be tapered given the existence of an LVIA.

The Council's LVIA assesses the potential effects on landscape character and concludes that these would be moderate adverse – an effect that is notable and one that is generally considered to be material in the decision making process. The development would have an enduring presence in the landscape and would alter the site's landscape character and setting from open agricultural land in a rural fringe landscape to residential development and the urbanised effect of the site access junction with Newton Road. The applicant contests this in that this does not acknowledge the limited influence that the scheme would have on the wider LCA, and as a result the LVIA does not recognise that the potential harm is limited. This seems a somewhat odd opinion. This would suggest that the degree of harm is dependent on the extent of a development within an LCA (i.e. in this circumstance the development would need to cover a considerable proportion of the Melbourne Parklands Estate Farmlands LCA, and only once a large coverage is achieved can harm be argued to be moderate or major adverse. This is not the point of assessing harm to landscape character – it is instead about establishing the value of the site and its environs and whether the proposed development would erode the described character exhibited to such an unacceptable degree to warrant refusal. The Council's LVIA can be relied upon.

The applicant notes that whilst there are some differences between the LVA and LVIA, the greater perceived harm in both is on receptors immediately adjoining the site and that the greatest impacts are at a localised level. It is advanced that change at the immediate urban fringe is inevitable where new development is proposed, yet that the impacts of the scheme in the wider landscape context are far less significant and in this case, limited by the contained extent of development, the 'bowl' in which the development area sits and the potential for significant landscape enhancement.

The Council's LVIA assesses the potential visual impacts on nearby receptors and concludes that residential receptors next to or near the site would experience major and/or moderate adverse impacts. A major adverse impact is considered as an effect which is very important in the decision making process. The applicant questions whether this assessment is based on the scenario at completion of development, or the scenario after 15 years; and also advances the potential for 'double counting' of receptors. In respect of the latter visual impact assessment is not predicated on the basis of each person being a receptor – instead that particular thoroughfares or properties (or clusters of properties) are treated as a single receptor. What is

important however is that where thoroughfares or clusters are treated as a single receptor, there would be variance in the degree of impact either along its length or depending on the particular property. A balanced view is necessary in these respects taking into account the regularity of use, the manner of use (e.g. commuting, residential occupancy or recreation) or the density of occupancy. In terms of whether the impacts are based on the 0-year or 15-year scenario it is evident from the LVIA that major adverse impacts are only registered in the 0-year scenario, with these reducing to moderate adverse at 15-years as the peripheral planting matures. Of interest however is that the applicant's LVA fails to make a clear distinction between the two scenarios and it is clear that assessment at a number of receptors is based on the 15-year scenario only – in some cases not accounting for the reality of the access and highway alterations necessary.

The green nature of Newton Road is a key consideration in visual impacts. Its value in contributing towards appreciation of views, etc. whilst moving in or out of Burton is set out above. Hedgerows are tight to the carriageway and/or footway and clear views over the eastern hedgerow into the site and to rolling and rising landscape beyond add to this rural setting. The similarly tight proximity of isolated properties along its eastern side also establishes a message of a historical origin of these hedgerows (with the exception of the relatively recent changes to facilitate the existing access). Moderate adverse impacts are felt both during construction and at completion, and for the long term 15-year scenario. The applicant's LVA fails to properly appreciate this point, stating that "views will comprise the new built form of the proposed development set beyond the retained hedgerow which will be enhanced with additional hedgerow trees... [and] there will also be a partial view to the highway improvements associated with the proposed access point". The reality is that the hedgerow would be removed – to both sides – and urban influences by way of the formally engineered junction and footways (either new or widened) would become prominent – and remain so even after new planting becomes established due to the widened nature of Newton Road facilitating less constrained views over this planting. In short whilst the removal of hedgerow could be compensated for by way of new planting further back from the existing highway edges, the magnitude and negative impacts of this change weigh heavily against permitting the principle of such a change and would persist for many years beyond completion.

The major adverse impacts primarily focus on dwellings bordering the site and whilst these would 'soften' with time, they would remain to a degree which makes them notable and very material in reaching a decision on this proposal. It must be acknowledged the proposal could facilitate a landscaped buffer between existing dwellings on Dalebrook and Brookside, filtering views and thus impacts with time; but Keepers Cottage, Bladon Paddocks and The Old Dairy would not be so fortunate. The setting of these properties has been alluded to above and their isolation from the contiguous urban form of Winshill is part of their attractiveness and significance in setting the step change in character when crossing the brook. The outlook from these properties would be negatively affected eroding their legibility as historical features in the rural landscape.

In addition to the above considerations, underpinned by the LVIA, it is considered that the proposed layout of the site segregates itself from the existing built up area to the south. This has been established as necessary given the brook, pipeline and SuDS constraints the site has. Aside from the influence this has on social interaction, the development would not form a natural and contiguous extension to Winshill and would appear as being physically isolated. It would also have a weakened relationship with Newton Road given the set back across the SuDS and POS – at odds with the otherwise tight arrangement of existing dwellings to the highway. This increases the prominence and resulting impact the development would have on the landscape and views across and from within it. The proposed development would therefore appear as being divorced from the existing urban area and be perceived as a disjointed incursion into the open countryside.

## Heritage

There are no listed buildings affected, either directly or in terms of setting. Survey and trenching work has established that the site has little significance in terms of below-ground archaeology. Bladon Paddocks however is an undesignated heritage asset of some value by way of its age and association with the landscape. Its principal elevation faces south over the site and has a conceptual association with the land – land which provides a break between the built up edge of Winhill and in turn elevates the ‘command’ this dwelling has over the land. However the significance of the asset is limited and hence the degree of harm, whilst notable, is not considered sufficient to outweigh the benefits of the proposal.

#### Drainage and flood risk

Severn Trent Water does not lodged an objection suggesting there is sufficient capacity to receive foul and surface water flows from the development. A conditional approach is considered appropriate. Surface water is to be drained via SuDS with the opportunity to drain to the Dale Brook at a limited discharge rate. In this vein the site can be suitably drained and the proposal is thus not considered to increase the risk of flooding elsewhere.

The site was revised to exclude land within flood zone 2 to the southern boundary so to address the need for a sequential test to be passed. The dwellings proposed would be sited wholly on ground falling into zone 1 and thus not considered to be at risk from fluvial flooding. There is a section of Newton Road which is modelled to flood during extreme flood events, around Keepers Cottage and the Dale Brook crossing. This aligns with representations suggesting this occurs a number of times each year. Whilst causing disruption to access to the site during flood events, it does not prevent safe egress from the site in the event of a flood (i.e. occupants could travel north along Newton Road instead) although it would represent an inconvenience to pedestrians wishing to walk to services and facilities in Burton. The Environment Agency and the County Flood Team raise no objection subject to conditions.

#### Design and amenity

Detail design matters would be reserved for consideration under a later application. Nevertheless the indicative masterplan largely achieves an outward facing development with surveillance out towards the southern, western and northern edges. The eastern boundary is discussed above but the masterplan now carries annotation to recognise this shortcoming and any reserved matters design can be shaped to incorporate a standoff. The street hierarchy accords with best practice and the LEAP is centrally located to ensure accessibility to all occupants. The southern wildlife corridor is also well connected to this LEAP and informal POS running into the built up area of the site. Street lighting around the LEAP and estate roads would need to be carefully at the detailed design stage, as would the choice of materials. Overall the design of the site provides no fundamental concerns as to achieving appropriate parking provision, protecting important views, and providing secure design and natural surveillance. Accordingly the indicative layout achieves a 9 out of 20 score under Building for Life, but is considered to hold potential to rise to 14 at the detailed design stage, subject to conditions to secure an acceptable standard.

The layout has also been carefully considered in drawing up the masterplan. Although the outlook for occupants of existing dwellings would be altered, there would be adequate separation to new dwellings and compliance with minimum distances specified in the SPG. The associated impacts of development on these existing occupiers is not considered to be excessive so to command conditions to limit the timing of works on site, with Environmental Health controls able to address any issues which might arise.

#### Facilitating further development



The site was first put forward within the Strategic Housing Land Availability Assessment (SHLAA) in 2012 as part of the larger site including the remaining land in the applicant's control, giving potential capacity for up to 156 dwellings. The "Preferred Growth Strategy for South Derbyshire" consultation (October 2012) consulted on the prospect of this site along with another larger parcel of land to the east towards Hawfield Lane, Winhill giving an estimated joint capacity of 1,450 dwellings. The general location was discounted in the Growth Strategy Document noting "these two site options would represent urban extensions to the built up area... [and] both sites would be particularly intrusive in the countryside and highway access to the latter site in particular would be likely to prove difficult. East Staffordshire Borough Council share concerns about the likely impact of development at these two locations".

It is therefore understandable that residents may remain concerned that this proposal might "open the door" for further development along the northern edge of Winhill around Hawfield Lane. However the assessment here is made on the basis of the proposal as presented particularly when landowners have not stepped forward under the SHLAA and technical matters, such as junction capacity or lack of sufficient facilities/services on site in lieu of a convenient pedestrian route to them, might preclude further development through this site at a later date.

### Summary

The assessment identifies that highway safety, infrastructure, ecological, drainage and amenity impacts would be acceptable, subject to conditions or obligations where necessary; and subject to amendment from that submitted a detailed design can provide for an outward facing development and appropriate layout. The provision of up to 100 dwellings towards housing needs must be afforded significant weight given the current shortfall under the 5-year housing supply, and the fact that up to 30% of these would meet affordable housing needs also adds further weight in favour. The provision of landscape enhancements along the wildlife corridor help to compensate for loss of biodiversity elsewhere on the site, whilst the economic benefits are noted and considered to contribute in favour to a degree.

The ability for the development to assimilate on a social dimension with existing housing, services and facilities in Burton is an area of concern. The NPPF encourages the striking of the right balance between housing delivery and ensuring the social and employment needs of occupants can be readily met in a sustainable manner. As identified above occupants of the development would not benefit from a convenient pedestrian access route to local services and facilities, and in addition existing residents would not have similarly convenient access to the proposed POS. This weighs against the development in terms of the social and environmental dimensions of sustainable development, conflicting in part with saved policy T7 and paragraph 32 of the NPPF.

However it is much more the landscape and visual impacts which cause major concern with the proposal. The very character of this site and environs draws strength from the 'hard' delineation between rural and urban along the Dale Brook. The existing gateway perception would be severely undermined, whilst the loss of existing hedgerows in close proximity to both sides of the highway and implementation of footways and street lighting would fundamentally alter the character of this road from a wholly rural perception to a considerably urban one. The overall appreciation and resulting value of the site, and existing isolated dwellings which look over it, would be adversely impacted with the strong affinity the site has with the rural area to the north, east and west materially eroded. Whilst mitigation would help to alleviate some of these concerns, it is not considered sufficient to redress this loss in value. In addition the very nature of the development, responding to infrastructure, flooding and drainage constraints; means that the development would appear (on the highest parts of the site) as a divorced and isolated pocket of development within the wider rural landscape.

The Minister of State for Housing and Planning has recently written to the Planning Inspectorate stating that harm to landscape character is an important consideration and recent dismissed appeal cases serve as a reminder of one of the twelve core principles at paragraph 17 of the NPPF. It is noted that whilst statutorily designated landscapes quite rightly enjoy the highest degree of protection, outside of these designated areas the impact of development on the landscape can be an important material consideration. It is also noted that the recent cases also reflect the wider emphasis within the NPPF on delivering sustainable outcomes, which means taking full account of the environmental as well as the economic and social dimensions of development proposals. Hence irrespective of whether the development is unavoidable or not; the secondary 'test' under saved policy EV1 is still of considerable relevance in this assessment whilst paragraph 109 of the NPPF also holds considerable weight.

The absence of a 5-year supply does not mean an automatic approval must follow. It also does not mean no regard should be had to the principle of protecting and enhancing valued landscapes. The absence of a 5-year supply merely affects the weight which may be afforded to the Development Plan, but the NPPF must still be considered in the round and in the eyes of sustainable development, as set out in paragraphs 6 to 8. Hence when considering the three dimensions of sustainable development and whether there is a mutual balance reached under the proposals, it is considered the environmental dimension suffers a significant adverse impact, whilst the social dimension also unsettles the overall balance. There is therefore reasonable doubt over the overall sustainability and in this light it is considered that the benefits of providing both market and affordable housing towards the 5-year supply, as well as any associated gains, are clearly and demonstrably outweighed by the adverse impacts of the proposal.

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**

**REFUSE** permission for the following reason(s):

1. The character of this site is defined by its strong affinity to the rural area to the north, east and west over that to the south. It exhibits many of the typical and pleasing features of the local and national landscape character area descriptions, with hedgerows, trees and woodland, rising landform away from watercourses and isolated properties looking out over this landscape all providing a strongly appreciated value to the existing residents and those passing the site along public routes. In addition Newton Road holds a wholly rural character reflecting the above landscape characteristics and with long standing and potentially important hedgerows to its edges tightly framing this transport corridor and limiting its current intrusion. Furthermore the very character of this site and environs draws strength from the 'hard' delineation between rural and urban along the Dale Brook, with the existing crossing on Newton Road providing a gateway from rural to urban and vice versa. The development would result in moderate adverse landscape and moderate and major adverse visual impacts, diminishing views across the site to rising landform beyond and marking a very material step beyond the existing urban confines - one which would lead to significant development on the northern side of the Dale Brook for the first time. The necessary total loss of existing hedgerows along Newton Road would also contribute to these negative impacts, with new and widened footways, with street lighting and with replacement hedgerows set back from the carriageway, fundamentally changing the rural nature of the road north of the brook. With built form also placed to the higher ground within the site in order to respect technical constraints, a divorced and isolated pocket of development would be introduced into the wider rural landscape. When considering the three dimensions of sustainable development and the mutual balance required, it is considered the proposal is unbalanced by way of the environmental dimension suffering disproportionately. In this

light it is considered that the benefits of providing both market and affordable housing towards the 5-year supply, as well as any ancillary gains, are clearly and demonstrably outweighed by the adverse impacts on the proposal. The proposal is therefore considered to be contrary to saved policy EV1 of the South Derbyshire Local Plan 1998 and policy BNE1 of the emerging Local Plan Part 1, and conflicts with paragraphs 6 to 8, 17 and 109 of the National Planning Policy Framework.

Informative:

Notwithstanding this refusal, the Local Planning Authority has worked with the applicant in a positive and proactive manner through pre-application discussions, seeking to resolve planning objections and issues and allowing for amendments to the proposal. However despite such efforts, the planning objections and issues have not been satisfactorily addressed. As such it is considered that the Local Planning Authority has implemented the requirement set out in paragraphs 186 and 187 of the National Planning Policy Framework.

**Item**                    **2.2**

**Reg. No.**            **9/2015/0071/U**

**Applicant:**  
**Lawton Lowndes Plant Hire Ltd**  
**Ashgrove Ashgrove Lane**  
**Egginton**  
**DE65 6GU**

**Agent:**  
**Mr Bryan Wolsey**  
**Bryan Wolsey (Planning) Ltd**  
**29 Chapel Street**  
**Ticknall**  
**Derby**  
**DE73 7JY**

**Proposal:**            **THE CONTINUED USE OF LAND FOR THE OPERATION OF A  
 PLANT HIRE BUSINESS AT BLAKEMERE FARM BAKEACRE  
 LANE FINDERN DERBY**

**Ward:**                **WILLINGTON & FINDERN**

**Valid Date:**        **30/01/2015**

*Members will recall this application was deferred from the April committee in order to undertake a site visit and allow the applicant to undertake a further search of alternative sites. The report largely remains as it appeared on the agenda for the April committee; however additional observations appear within the report in italics.*

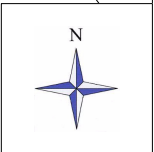
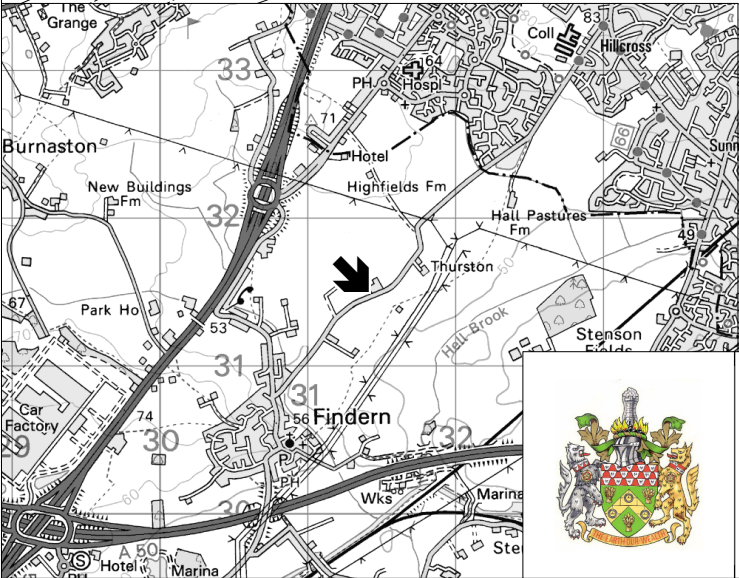
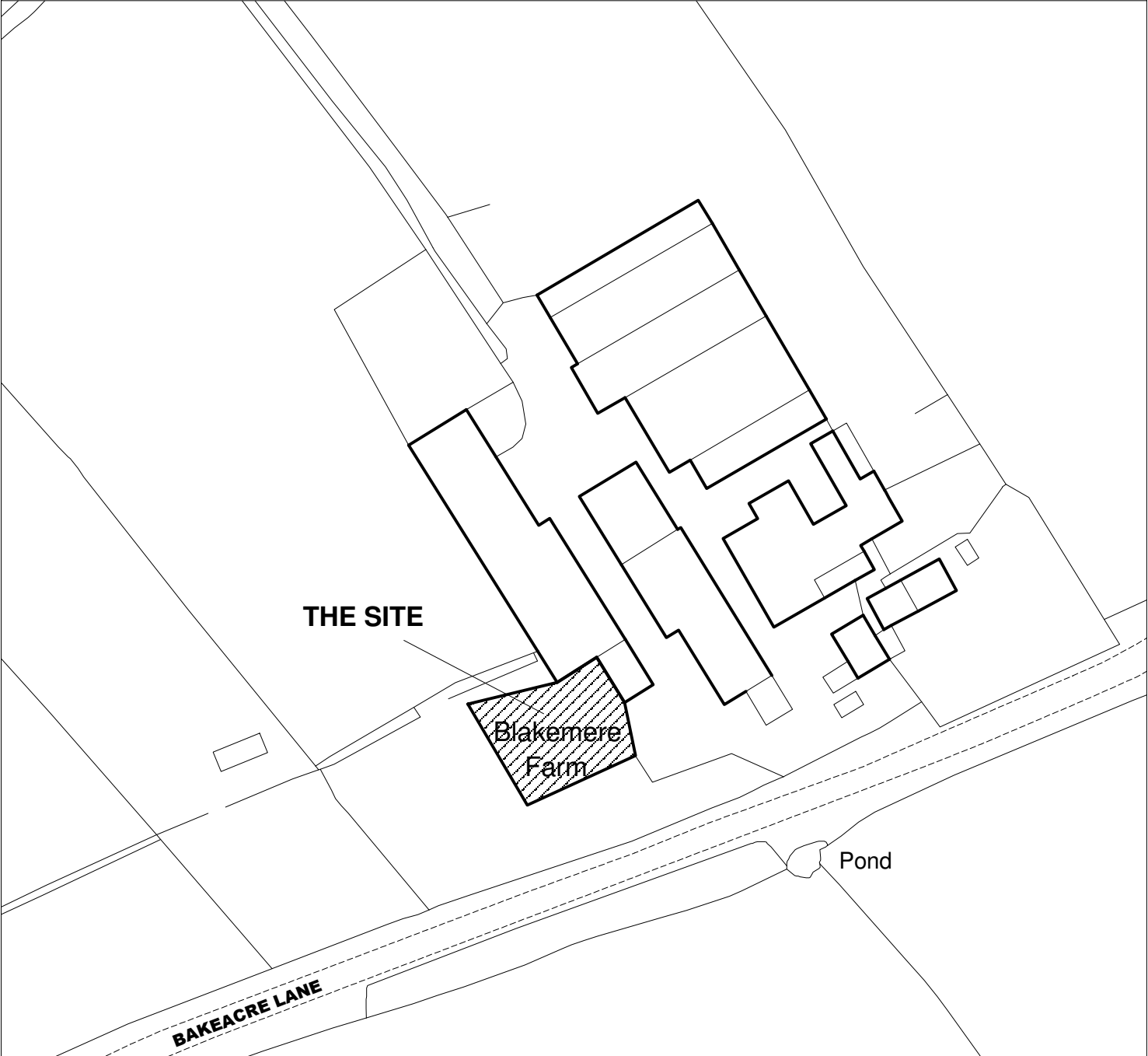
#### **Reason for committee determination**

The item is presented to committee at the request of Councillor Mrs Brown as it is considered the committee should debate the issues in this case which are very finely balanced.

#### **Site Description**

The site comprises an enclosed compound of some 500m<sup>2</sup> on land immediately adjacent to the farmyard of Blakemere Farm. The site sits outside of a defined settlement boundary, some 1km north-east of Findern and a further 1.2km from the southern edge of Derby. The farmyard comprises a number of agricultural buildings running back from the public highway and original farm house. A single vehicular access serving both the farm and the plant hire business connects to Bakeacre Lane, which links Findern to the southern edge of Derby. The frontage to the lane is defined by a hedgerow to either side of the access, albeit set back for a short distance to the north-east.

The enclosure is defined by an approximately 2m high metal fence with green mesh netting. Within the compound is a recently erected building some 10.5m by 5m and approximately 4.5m high at its maximum. This building is used to store wagons and/or plant and allow for their maintenance under cover. The balance of the compound is given over to the parking of further lorries, plant and some machinery. There is a small portakabin serving as an office/mess room in the north-eastern corner of the site.



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**South Derbyshire District Council. LA 100019461. 2014**

## **Proposal**

The application seeks to regularise the use of land for the storage and maintenance of plant hire vehicles and machinery. The site is used principally as a store for the various items of plant and equipment used in connection with the business, with one 7.5 tonne plant lorry, two grab lorries and one tipper lorry. The firm operating from the site has, and hires out, JCB mini and micro diggers and dumpers, and three larger JCBs.

The application only seeks to regularise the use of the land, with the applicant considering it not expedient to go to the expense of having plans for the building drawn up if the use is in question. It is advanced that should permission be granted, a subsequent application would be sought for the building.

## **Applicants' supporting information**

Aside from the requisite location plan, the application is accompanied by a supporting letter. This recognises the application arises as the result of enforcement investigations and outlines the above site description, proposal and intentions regarding the recently erected building. It then moves to make a case in support of granting retrospective permission. It is advanced that the firm employs one full time lorry driver, one digger driver (employed on a sub-contract basis) and one self-employed driver, all in addition to the two directors. It is stated there are no plans to increase the number of vehicles, plant or employees with the limited size of the compound placing a restriction on the scale of operations and most of the administration carried out from the clients' home in Egginton. It is claimed the use began on a much lesser scale, with just one micro-digger, in 2003 and activity has grown since although it has varied with the economic climate and seasons.

In policy terms the NPPF and the saved Local Plan are recognised although it is considered the latter, given its age, are not in accordance with the NPPF with the view this adopts a more favourable approach to small-scale commercial and industrial development in the countryside in the interests of rural diversification. It is also considered there is some support under Employment Policy 4 notwithstanding conflict with Environment Policy 1. It is also argued that, as a sui generis use, the development falls within a "policy vacuum".

In terms of visual impact it is advanced that as the business is small and physically constrained by the existing boundary fence, "creep" onto adjacent land is limited, existing hedgerow provides a natural screen, the site is seen in the context of and against the backdrop of agricultural buildings. Ultimately it is considered the development is not seen in isolation nor is it prominent. It is highlighted the proposal would provide employment for five people, and the nature of the use and high land take means that the applicant cannot compete with high rentals commanded on industrial estate locations. An argument for rural diversification is advanced with the close relationship of the site to the existing farm, and the fact that it lies within their ownership, having clear and obvious benefits in terms of security for the site and equipment. In addition the rental for the land would assist the occupiers at the farm. In respect of highway safety it is considered the access has adequate visibility with vehicles having a relatively high driving position better than a typical car, and as all movements would take place by vehicle there is no need to consider the requirements of pedestrians.

Overall it is advanced that although there is some conflict with existing planning policies, these are generally out of touch with, and make little consideration for, the specific needs of a plant hire facility. It is a small family-run business providing a service to small developers and individuals alike and is constrained by the physical limitations of the site. It is considered the use results in no demonstrable harm to interests of acknowledged importance.

## **Planning History**

9/2005/1448: The use for parking of one HGV vehicle – Approved February 2006 (personal permission)

## **Responses to Consultations**

The County Highway Authority comments that Bakeacre Lane is derestricted and given the nature of this section of the lane vehicles are likely to be travelling at around 50 to 60mph. The access therefore requires sightlines extending in 215 metres in either direction within controlled land. The visibility available at the access to the application site is below that recommended in national guidance and the applicant has failed to demonstrate that the required visibility can be achieved over controlled land. It is noted that the applicant suggests that, whilst substandard, farm vehicles would be using the access and that the use of plant hire vehicles would not impact on existing conditions; however there is no suggestion that the farm use will cease to off-set the use of the site for the plant hire business. The Highway Authority therefore considers that approval of the proposal would result in the introduction of additional vehicular movements over and above those generated by the authorised use at an access where visibility is substandard contrary to the best interests of highway safety, and on this basis recommends refusal.

The Environmental Health Officer (Pollution) raises no objection.

## **Responses to Publicity**

None received.

## **Development Plan Policies**

The relevant policies are:

- Saved Local Plan 1998: Environment Policies 1 and 9 (EV1 and EV9), and Employment Policies 4 and 5 (E4 and E5).

## **Emerging Development Plan Policies**

The relevant policies are:

- Submission Local Plan 2014: S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), SD1 (Amenity and Environmental Quality), BNE3 (Biodiversity), BNE4 (Landscape Character and Local Distinctiveness) and INF2 (Sustainable Transport).

## **National Guidance**

- National Planning Policy Framework (NPPF) including (but not exclusively) paragraphs 6, 7, 8, 14, 17, 19, 28, 32, 58, 109, 118, 203, 206, 215 and 216.
- National Planning Policy Guidance (NPPG).

## **Planning Considerations**

Applications must be determined in accordance with the Development Plan unless material considerations indicate otherwise. The saved Local Plan policies presently form the Development Plan, although the NPPF is a significant material consideration. Various policies of the emerging Plan can also be afforded some weight given its progression whilst consultation replies and representations are also material considerations carrying varying degrees of weight.

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

- The principle of development
- The visual and landscape impacts
- Highway safety

## **Planning Assessment**

### The principle of development

The site lies outside the settlement confines for Findern and beyond the southern edge of Derby. In such locations saved policy EV1 limits development to that which is essential to a rural based activity or is unavoidable in the countryside; and in both cases the development should safeguard and protect the character of the countryside, including landscape quality. The NPPF identifies the planning system should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes, with one of the three dimensions of sustainable development seeking this aim.

The proposal is contrary to saved policy E5 in that it is business development (also of an industrial nature) outside of a settlement boundary. In the absence of it being planned for by way of allocation, the test is whether it is rural diversification in respect of saved policy E4 and in turn essential or unavoidable in respect of EV1. Saved policy E4 allows for the re-use of existing buildings for commercial uses subject to ensuring certain impacts are acceptable. This proposal does not fall under such a category. The policy also allows for diversification of the rural economy provided it does not conflict with other policies of the plan. The fact that the site is adjacent to the farm and thus benefits from surveillance of occupiers is a very weak argument. Members will be aware that seldom does security needs justify what would otherwise be inappropriate development in the countryside, and this proposal is considered to be no different. Furthermore the proposal is not considered to be a diversification of the rural economy – it does not affect or alter the farming practices at Blakemere Farm. Instead it merely provides for a rental income arising from rental of land to a third party. Ultimately the proposal is not in the spirit or aims of 'essential' under saved policy EV1 and the degree of employment offered by the proposal is not considered to afford a great deal of weight in favour – in the same way that one or two dwellings would not contribute to significantly boosting the supply of housing.

Turning to the unavoidable test, the application is not supported by evidence of a meaningful search of alternative sites within more sustainable locations. Whilst rental of a site within a settlement or on an industrial estate may incur a greater cost, the difference between that presently being paid and that required elsewhere has not been demonstrated; and in any case the financial means of the applicant or business are not matters which weigh heavily in the balance. The applicant has not demonstrated the proposal is unavoidable.

*Since the last committee the applicant has been furnished with means of identifying and considering available sites within South Derbyshire, held on the Council's vacant commercial property database and published in the vacant commercial property bulletin. The applicant has also been directed to the equivalent source of information for sites in Derby. The type of use does not appear to have a locational requirement for its 'base'. Whilst it may market and operate in the sub-Derby area no evidence as to why storage of plant and machinery cannot take place elsewhere in the District, or even across into neighbouring authorities, has been provided. Accordingly there are a number of available sites within the District such as Gunby Farm (Netherseal), Royle Farm (Drakelow), Grangewood Farm (Netherseal), Hilton Industrial Estate (Sutton Lane), Kiln Way (Swadlincote), John Street (Swadlincote) and The Old Woodyard (Swadlincote). Further sites within Derby at Trafalgar Park, Victory Park and Derby Commercial Park are also available, and further opportunities may exist within property journals and national property websites. Across these sites there is a range of investment and leasehold opportunities.*



*The argument that the use is a 'cinderella' use which does not sit comfortably with surrounding storage or commercial uses is not agreed. Ultimately the use constitutes the storage of vehicles and construction machinery. The equipment presently held would not appear out of place on in an existing industrial or business park context, and the frequency of vehicle movements advanced by the applicant suggests outward effects would be absorbed within existing activities at the above locations. Accordingly it is considered there are reasonable alternatives for the applicant to relocate and it remains the opinion that the proposed development is not 'unavoidable' in this location.*

#### The visual and landscape impacts

Outside of identified settlements, this landscape has intrinsic value with wide open vistas across a relatively flat topography interrupted only by hedgerows, road and electricity infrastructure and isolated farmsteads. There is an absence of industrial and commercial intrusion. The visual and landscape assessment here is not about whether the development is not seen or seen against a backdrop of existing buildings – it is about the sustainability (or lack thereof) of piecemeal and non-strategic encroachment in the open countryside. The proposal introduces a visually prominent adjunct to the farmyard – even when excluding the building from consideration, encroaching out from the existing envelope and introducing enclosures, equipment and paraphernalia on a scale (and with branding) which clearly disassociates it from the agricultural activity occurring elsewhere at the farm. Whilst the applicant advances that most of the vehicles/plant rarely return to the site except for maintenance or when not in longer term use, this does not make the permanent characteristics of the use acceptable nor mitigate for when vehicles/plant have returned.

Regard is also had to the 2006 permission to ascertain whether this provides any support but the reason for the strictly limited permission (to just one HGV on a personal basis) recognised that the incidental storage of such a vehicle at a farm would be discernible to any member of the public. It cannot be said that is the case for this proposal.

The intrusion into the countryside, in light of the above discussion, is considered to be unwarranted and thus the harm arising is significant, weighing against the proposal.

#### Highway safety

The comments from the County Highway Authority are acknowledged. Officer observations and reconstruction concur with 50 to 60mph speeds being realised. To the north-east some 50 metre appears to be possible before hedgerow obstructs visibility. In a south-west direction, visibility appears to be better. Without an accurate survey and/or confirmation of land in the control of the applicant; it is not certain the 215 metres required in either direction can be achieved. Even if control were demonstrated, in order to achieve necessary standards to the north-east (at least) a considerable length of hedgerow would need to be removed and/or substantially cut back.

As noted above the applicant considers this route to be very lightly trafficked. Officer observations indicate otherwise and it is understood that the route provides as an alternative route in and out of Derby during peak hours for those wishing to avoid the A38 junction north of Findern and primary routes into/out of the city thereafter. The 2006 permission related to just a single HGV with such movements absorbed within the existing movements associated with the farm. The applicant also highlights that the site was part of the wider farmyard where agricultural machinery and vehicles could have been parked within the lawful use of the land. From there it is advanced they could have utilised the access to reach other land or do work for neighbouring farmers – with similar impacts on highway safety arising. The applicant also considers that the NPPF points to withholding permission on highway grounds only where the residual cumulative impacts are severe. These points are not agreed. It is not a case of what could have occurred,

but instead a case of what is proposed above and beyond the lawful use of the land – which would continue alongside the proposal; whilst the interpretation of paragraph 32 of the NPPF is erroneous with Inspectors ratifying that the quoted test only applies where improvements to the highway network cannot address all the residual impacts.

The proposal here is thus considered to represent a material intensification of the use of the access, without any existing use of it being offset. In the absence of evidence to demonstrate that suitable emerging and forward visibility can be achieved the proposal is considered to introduce unacceptable risks to users of the lane, to the detriment of highway safety.

## Conclusion

Whilst the proposal provides for employment, the degree of this offering is limited. The claimed existence of the business since 2003 is unsubstantiated and aerial photography from circa 2006 evidences no designated compound. If such a use has persisted for the claimed period it has been merely incidental to the farm and unlikely constituted a material change of use. Withholding permission would thus not lead to the displacement of a significant or well established business.

This point aside the simple principles of planning policy point towards the proposal being unsustainable both in the eyes of saved Local Plan policies and the NPPF. The visual intrusion which arises is harmful to the intrinsic qualities of an agricultural landscape, and is totally unwarranted. Coupled with the highway safety concerns arising from the intensification of the use of an access with substandard visibility, the following recommendation arises.

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**

**REFUSE** permission for the following reasons:

1. The proposal would provide for piecemeal non-strategic encroachment in the open countryside introducing a visually prominent adjunct to the farmyard, stepping out from the existing envelope and introducing enclosures, equipment and paraphernalia on a scale which clearly disassociates it from the agricultural activity of the farm. The limited nature of the business and employment benefits arising are not considered to outweigh the presumption to protect and enhance the character and quality of the countryside, and the applicant has failed to demonstrate that this proposal is essential to a rural activity or is unavoidable in this location. The proposal therefore does not represent a balanced approach to sustainable development and is contrary to saved Environment Policy 1 of the South Derbyshire Local Plan 1998 ("the SDLP") and paragraphs 17 and 109 of the National Planning Policy Framework ("the NPPF").
2. The existing access would continue to serve for vehicular movements associated with agricultural activities whilst also serving for additional movements associated with the proposal. As a result it is considered that a material intensification in the use of the access arises. Emerging and forward visibility is constrained, particularly to the north-east, by hedgerows adjoining Bakeacre Lane, which is derestricted and observations indicate vehicle speeds of some 50 to 60mph. In the absence of speed readings to demonstrate otherwise, visibility splays extending to 215m either side of the access are required but it is apparent these cannot be achieved without removal of hedgerow and potential use of third party land. The applicant has not provided an accurate survey of the access and highway arrangements, nor confirmed control of further land to enable splays to be achieved and thereafter maintained. With intensification in the use of this substandard access the proposal is considered to introduce unacceptable risks to users

of Bakeacre Lane to the detriment of highway safety. The proposal therefore fails to provide safe and suitable access for all users and is contrary to saved Transport Policy 6 of the SDLP and paragraph 32 of the NPPF.

Informatives:

Notwithstanding this refusal, the Local Planning Authority has worked with the applicant in a positive and proactive manner through pre-application discussions, offering the opportunity to resolve planning objections and issues and promptly determining the application. However despite such efforts, the planning objections and issues have not been satisfactorily addressed/the suggested information has not been supplied. As such it is considered that the Local Planning Authority has implemented the requirement set out in paragraphs 186 and 187 of the National Planning Policy Framework.

## **2. PLANNING AND OTHER APPEALS**

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

<b>Reference</b>	<b>Place</b>	<b>Ward</b>	<b>Result</b>	<b>Cttee/Delegated</b>
9/2013/0572 (A)	Barrow on Trent	Aston	Dismissed	Committee
9/2014/0225 (B)	Barrow on Trent	Aston	Dismissed	Delegated
9/2014/0313	Newton Solney	Repton	Dismissed	Delegated
9/2014/0627	Church Gresley	Church Gresley	Dismissed	Delegated
9/2014/0650	Sutton on the Hill	Hilton	Allowed	Delegated
9/2014/0828 (A)	Walton on Trent	Seales	Allowed	Delegated
9/2014/0829 (B)	Walton on Trent	Seales	Allowed	Delegated
9/2014/0946	Ticknall	Repton	Dismissed	Delegated
E/2014/00035	Stanton	Newhall & Stanton	Dismissed	Delegated

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## Appeal Decisions

Site visit made on 2 February 2015

**by Jonathan Hockley BA(Hons) DipTP MRTPI**

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

**Decision date: 23 March 2015**

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### **Appeal A: Ref: APP/F1040/A/14/2219836**

#### **The Hill Lodge, Deep Dale Lane, Barrow-on-Trent, Derby DE73 7NH**

- 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 Adrian Dawson against the decision of South Derbyshire District Council.
  - The application Ref 9/2013/0572, dated 23 July 2013, was refused by notice dated 1 May 2014.
  - The development proposed is conversion of an outbuilding to two holiday units.
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### **Appeal B: Ref: APP/F1040/A/14/2220388**

#### **The Hill Lodge, Deep Dale Lane, Barrow-on-Trent, Derby DE73 7NH**

- 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 Adrian Dawson against the decision of South Derbyshire District Council.
  - The application Ref 9/2014/0225, dated 28 February 2014, was refused by notice dated 1 May 2014.
  - The development proposed is new boundary treatment facing Deep Dale Lane comprising steel posts and timber sleeper walls. New garage.
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### **Decisions**

1. Appeal A is dismissed.
2. Appeal B is dismissed insofar as it relates to a new garage. The appeal is allowed, however, insofar as it relates to the remainder of the application and planning permission is granted for new boundary treatment facing Deep Dale Lane comprising steel posts and timber sleeper walls at The Hill Lodge, Deep Dale Lane, Barrow-on-Trent, Derby DE73 7NH in accordance with the terms of the application, Ref 9/2014/0225, dated 28 February 2014.

### **Preliminary Matters**

3. As set out above, there are two appeals in this case which lie on the same site. Although I have considered each proposal on its individual merits, to avoid duplication I have dealt with the two schemes together in this decision, except where otherwise indicated.
4. Appeal B includes two distinct elements, a proposed garage and a fence/ boundary treatment. This fence had been constructed at the time of my site visit.

### **Main Issue**

5. The main issues in these cases are as follows:

- Whether the development proposed in Appeal A is well integrated with its surroundings, and is essential to the operation of a rural based activity or unavoidable and the character of the countryside is protected.
- The effect of the proposed garage and the existing fence on the character and appearance of the countryside.

## **Reasons**

### *Appeal A – Character and integration with surroundings*

6. The majority of Barrow on Trent is located to the south side of the A5132. Access to the appeal site can be made from this direction via Sinfin Lane, which after passing various industrial and employment development on its east side crosses a railway and canal. The Hill Lodge is set to the north side of the canal, and is set in a reasonably large plot, of roughly square size. On the southern side of the appeal site runs Deep Dale Lane. The appeal site has various buildings constructed on it. The building proposed for the holiday lets is set on the east side of the site directly opposite the bridges on Sinfin Lane. Other development around the appeal site is sporadic in nature, with the location of the appeal site clearly set within open countryside.
7. I note that as the building is agreed to be over 4m tall it seems that it would not be likely to be found to be permitted development. The Council has also raised other relevant concerns over the use of the building and there may be other matters that need to be considered in terms of lawfulness. However, whether the building is lawful or not is an issue to be determined either through enforcement action by the Council or an application by the appellant under Section 191 of the Town and Country Planning Act 1990.
8. The appellant proposes to convert this existing structure to 2 holiday units. Recreation and Tourism Policy 1 of the South Derbyshire Local Plan, 1998 (the Local Plan), states that proposals for recreation and tourist facilities will be permitted providing that, amongst other issues, they are of an appropriate scale and design and well integrated with their surroundings, and that adequate provision is made for access, parking, screening and landscaping.
9. The building proposed for the use as holiday lets, although designed in a manner to match many of the existing buildings on site, is clearly visible to cars and pedestrians approaching the site from the south. Due to the nature of the design of the internal layout of the building, the structure is substantially wider than it is deep. The consequence of this is that this widest elevation of the building is prominent in views from the south, particularly in elevated views from the two humpback bridges over the railway line and the canal.
10. When combined with other buildings near the site frontage, the outbuilding gives the impression of a nearly completely built up frontage across the appeal site. The effect of this combines to have a detrimental effect on the character and appearance of the countryside in this location. Given the elevated nature of many of the views of the site, I do not consider that landscaping could mitigate to a satisfactory degree this harmful effect; although the fence that is considered in Appeal B is substantial, it does not adequately shield views of the building. The proposed use of the building would likely lead to more comings and goings to the appeal site by tourist's vehicles than would be the case to an outbuilding ancillary to the main dwelling, adding prominence to the building's location.
11. I do not consider therefore that the proposed holiday units are of an appropriate scale and neither are they well integrated with their surroundings, and as such

would not comply with Recreation and Tourism Policy 1 of the Local Plan. The National Planning Policy Framework (the Framework) states in paragraph 28 that local plans should support sustainable rural tourism that benefits businesses in rural areas, communities and visitors, and which respects the character of the countryside. In this respect I consider that the units do not respect the character of the countryside and are thus contrary to the Framework.

12. The proposed change of use would also not comply with Environment Policy 1 of the Local Plan, which states that new development will not be permitted in the countryside unless it is essential to a rural based activity, unavoidable, and the character of the countryside is safeguarded and protected. Whilst tourism uses may be permissible under the terms of this policy and the appellant provides evidence of a certain need for tourist development within the local area, the character of the countryside will not be safeguarded and protected by the proposal.
13. The appellant refers to Policy I10 of the South Derbyshire Pre-Submission Local Plan Part 1 (the Pre-Submission Plan) in support of their case. The copy of the policy I have seen is dated September 2013, and appears to have been superseded by Policy INF10 of the Pre-Submission Plan in March 2014. This plan has not been adopted which limits the weight I can give to it. Nevertheless, the policy states that tourism development will be permitted where it is within or adjoining the urban area or key service villages, or where located in the remainder of the District, where an appropriate level of accessibility on foot by cycle or public transport can be provided, and the development meets other specific criteria.
14. However, in this case, the proposal does not adjoin an urban area or key service village and I have no evidence that the site would be accessed by any means other than private car. Whilst many existing tourism units may well be located in places largely inaccessible to means other than private transport, the policy seeks to direct any new such development to more accessible locations. The proposal would not comply with this emerging policy.
15. The appellant refers to the recent development of some new build tourist accommodation in Findern, also within South Derbyshire. However, I have no further information on these units and the justification made for them. I cannot therefore place significant weight on them.
16. I therefore conclude that the development proposed in Appeal A is not well integrated with its surroundings, and neither is it essential to the operation of a rural based activity or unavoidable and the character of the countryside protected. The proposed change of use would cause unacceptable harm and conflict with policies Environment Policy 1 and Recreation and Tourism Policy 1 of the Local Plan. If the building were found to be unlawful and not available for conversion the construction of such a building would also cause additional unacceptable harm that would add weight to this conclusion.

#### *Appeal B - Character and appearance*

17. Appeal B seeks to construct a new garage to the rear of the site, on a former paddock area stated by the appellant to have been given permission in 2008 to be incorporated into the garden of the appeal site. Permitted development rights were removed from this land to ensure that any structures built were appropriate to the character and appearance of the locality. The rear of the site is bounded by a thick, high coniferous hedge which screens views from Moor Lane to the east effectively. To the south views are possible of the site, although some are restricted by the constructed unit, the use of which is the subject of Appeal A. The proposed garage would be a large structure, with 3 bays and would be

approximately 4m tall to the structure's 3 ridgelines, according to the appellant's figures.

18. As stated above, Environment Policy 1 of the Local Plan sets out criteria for development in the countryside, including the proviso that development should be unavoidable. The proposal would be for the garaging of vehicles, as it is stated that the existing garaging on the site has been converted and is now largely used for other purposes. Such a proposal does not seem to present a case for development to be unavoidable; however, I recognise that is a matter generally for the appellant to determine how such buildings are used so long as it is for a purpose ancillary to the enjoyment of the dwelling house.
19. Environment Policy 1, again as stated above, also states that if development is permitted in the countryside it should be designed and located so as to create as little impact as practicable on the countryside and that the character of the countryside is protected. To the rear of the site the land rises so that the proposed development would be more prominent in views from the south. Whilst the materials proposed for the construction of the garage would be appropriate to the locality, and I note that the structure would be significantly smaller than that previously dismissed on appeal for a garden store/garage, the scale and siting of the structure combined would be detrimental to the character and appearance of the surrounding area.
20. Whilst the proposal would fit within permitted development rights under normal circumstances, permitted development rights were removed on this site. These are only removed in exceptional circumstances and were removed to ensure that any structures were appropriate to the character and appearance of the area, and thus allow this area of the site, although in domestic use, to be appropriate to the open nature of the surrounding countryside.
21. Furthermore, the appeal site already has a number of structures and buildings located on it. Whilst I note that the percentage of ground covered by buildings would be significantly below 50%, the number of buildings on the site in an open countryside area and the proposed garage combined would create an urbanising effect. Due to the elevated views of the site that are provided from the bridges to the south I also do not consider that conditions to shield the proposed garage, for example by requiring further landscaping, would mitigate the harmful effect of the proposal on the surrounding area.
22. The appellant is of the view that Housing Policy 13 of the Local Plan is of equal weight to that of Environment Policy 1. This states that extensions to dwellings will be permitted providing that the proposal is of a scale and character in keeping with the property and is not detrimental to the general character of the area. The appellant considers that this policy has been used previously by the Council to consider proposals for outbuildings. However, the policy appears to be solely for the consideration of extensions. The proposed garage would not be an extension, and would be a standalone building, and I therefore give the policy little weight in this appeal. Even if it did apply, the proposal would be detrimental to the general character of the area as noted above.
23. The existing fence, or timber wall, is quite tall at around 2.3 to 3m high at various points. The fence is constructed with stained wooden sleepers with steel posts and provides a raised border behind it. Although of a substantial construction, on my site visit the fence did not appear out of place within the rural environment and the staining of the fence has allowed it to have a subdued effect on the surrounding area. Whilst clearly visible from views on the road to the south, the effect of the raised views from the canal and railway bridge means that the fence still appears



subservient to the site and is dwarfed by a significantly tall tree located to the corner of it.

24. I do not consider therefore that the existing fence has an adverse effect on the character and appearance of the area. However, I do consider that the scale and siting of the proposed garage would have an adverse effect on the character and appearance of the countryside. The proposed garage would be contrary to the Local Plan.

#### *Other matters*

25. In both cases the appellant refers to the nearby development of industrial units to the south of the railway line. I noted this development on my site visit. However, I also noted that, although not within the main area of Barrow on Trent, the units are considerably closer to this area of the village than the appeal site. They are also physically separated from the appeal site by the railway line and the canal. Furthermore, I do not have the full details on this case, or the specific justification for these employment units. As such I place little weight on their existence in relation to this appeal.
26. The appellant raises concerns over the handling of the planning applications. However, any such concerns should be properly made in the first instance through the Council's own complaints procedure.

#### **Conclusion**

27. I have concluded that Appeal A would not be well integrated with its surroundings, and neither would it protect the character of the countryside. Furthermore, I am of the view that the proposed garage in Appeal B would have a detrimental effect on the character and appearance of the surrounding area. However, I consider that no harm is caused by the existing fence/timber wall at the front of the site.
28. For the reasons given above, and having regard to all other matters raised, I conclude that Appeal A should be dismissed. In relation to Appeal B, those elements of the proposed development that I have found to be unacceptable are severable from the remainder of the proposal. Therefore, for the reasons given above, I conclude that the appeal should be dismissed insofar as it relates to the proposed garage and allowed insofar as it relates to the boundary treatment. As this fence is already in place and is already stained, no conditions are required on this element of the appeal that is allowed.

*Jon Hockley*

INSPECTOR

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# Appeal Decision

Site visit made on 16 March 2015

**by Nigel Harrison BA (Hons) MRTPI**

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

**Decision date: 31/03/2015**

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**Appeal Ref: APP/F1040/A/14/2222365**

**Land at Church Lane, Newton Solney, Burton-on-Trent, DE15 0SF**

- 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 Ian Hiatt against the decision of South Derbyshire District Council.
  - The application Ref: 9/2014/0303 dated 30 March 2014, was refused by notice dated 27 May 2014.
  - The development proposed is "new bungalow on vacant land with car parking and drive off Church Lane".
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## Decision

1. The appeal is dismissed.

## Main Issues

2. I consider there are two main issues in this case. Firstly, the effect of the proposal on the character and appearance of the conservation area and the setting of nearby listed buildings; and secondly, whether the proposal would amount to sustainable development having regard to the presumption in favour of sustainable development set out in Paragraph 14 of the National Planning Policy Framework.

## Reasons

3. The appeal site is located on the east side of Church Lane, with the 'Sunnyside' bungalows to the south and Beehive Cottage to the west. To the north of the site beyond a mature hedgerow is a school car park. The site is currently open to the highway, and is laid to rough grass. It lies to the rear of frontage development on Main Street, and is outside the defined confines of the village.

## Background

4. The appeal site has been the subject of two previous appeal decisions, both concerning outline applications for a bungalow. The first was dismissed in May 1985; the Inspector concluding that the proposal would erode the setting of the parish church and encroach into an important and sensitive part of the conservation area<sup>1</sup>. The second was dismissed in July 2006<sup>2</sup>. The Inspector on that occasion took a similar view, and concluded that even a modest dwelling

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<sup>1</sup> T/APP/F1040/A/64/023246/P5

<sup>2</sup> APP/F1040/QA/06/2011774

on the Church Lane frontage would harm the character and appearance of the conservation area and the setting of the listed buildings concerned.

### ***Policy Context***

5. The Council accepts that it cannot demonstrate a five year supply of deliverable housing at the present time as required by paragraph 47 of the *National Planning Policy Framework* (the Framework), and the Framework is clear that where there is a shortfall the relevant housing policies should not be considered to be up-to-date, and that due weight should be given to the relevant policies according to their degree of consistency with the Framework's policies.
6. In this context the Council refers to three relevant 'saved' policies of the *South Derbyshire Local Plan 1998* (LP). Firstly, Policy H5, which says new housing development in the villages will be restricted to that which can be accommodated within the village confines defined on the Proposals Map. Secondly, Policy H8, which restricts housing development in the countryside outside settlement boundaries. Whilst this is consistent with paragraph 55 of the Framework in allowing for exception housing in the countryside, its terms are not relevant to this proposal. Finally, Policy EV1, which says new development will not be permitted outside settlements unless (i) it is essential to a rural-based activity, (ii) is unavoidable in the countryside, and (iii) the character of the countryside, landscape quality, wildlife and historic features are safeguarded and protected.
7. The effect of these saved LP Policies, if applied rigidly, would be to prevent housing development beyond the defined village confines (settlement boundaries). Therefore, in the absence of a five-year supply of deliverable housing sites it seems likely that further development will be needed beyond the settlement boundaries to meet the current housing need within the District. Accordingly, I can attach very limited weight to these saved LP Policies, and the fact that the appeal site is outside the defined settlement boundary is not in itself a determining factor in my decision.
8. It is also necessary for me to consider Policies H1, S1 and S4 of the emerging *South Derbyshire Local Plan Part 1* (LPP1), which collectively show that the appeal site is not presently subject to an emerging allocation for housing. However, although LPP1 has been subject to consultation and formal examination, I understand that some of its policies are subject to objections and may be modified. I can therefore only afford its policies limited weight.
9. Suffice it to say that LPP1 Policy S4 explains that smaller non-strategic housing sites will be identified in Part 2 of the emerging Local Plan (LPP2), although I understand that as yet, no formal consultation on such sites has been published. I also note the appellant has promoted the appeal site for consideration as a potential housing site under the LPP2 process, and this will be considered in due course along with all other suggested sites.

### ***Effect on the character and appearance of the conservation area and the setting of listed buildings***

10. As the site is in a conservation area, Section 72(1) of the *Planning (Listed Buildings and Conservation Areas) Act 1990* Act requires that special attention to be paid to the desirability of preserving or enhancing the character or appearance of that area. Section 66 of the same Act requires special attention

to be paid to the desirability of preserving listed buildings and their settings. Paragraph 132 of the Framework says when considering the impact of a proposal on the significance of designated heritage assets, great weight should be given to the asset's conservation. The Framework also makes it clear that significance can be harmed or lost through alteration of a heritage asset or development within their setting.

11. The Conservation Area Character Statement (CACS) states that *'the land on both sides of Church Lane and between Church lane and Trent Lane, is currently in use as paddocks, and retains some 19<sup>th</sup> century estate type fencing and gates. It is a distinctive open area of the village with a quiet, undeveloped character, and is crossed by a footpath which provides a variety of views'*. I find no reason to disagree with the findings of the CACS, nor with the views of the 2006 appeal Inspector who considered that *'the open space between the development along the Main Street frontage and the Church is an important constituent of the character and appearance of the conservation area and the setting of the parish church'*. In my view this open aspect contributes much to the significance of this part of the conservation area. I also agree with that Inspector that the sense of separation is an important part of the setting of Beehive Cottage (grade II listed) and the parish church (grade II\* Listed)..
12. The character of the area as described in the two previous appeal decisions is still little changed. Although not then constructed, planning permission had been granted for the adjacent school car park at the time of the 2006 appeal decision and is mentioned by the Inspector in his reasoning. Although now constructed, it does not in itself amount to a developed frontage or justify the proposal in any way. Indeed (and as noted by the 2006 appeal Inspector), it seems to be that the new parking area on Church Lane makes it all the more important, for the sake of the character and appearance of the conservation area and the setting of listed buildings, that the remaining open spaces are maintained free of buildings in their present undeveloped state. I also share the Council's reservations regarding the design of the proposed bungalow. To my mind it would have a somewhat suburban appearance, and the detailing is poorly conceived, with window casements, doors, eaves, lintels and cills failing to draw upon existing examples within the Conservation Area.
13. In this context, I consider that even the relatively modest bungalow proposed would be somewhat incongruous, and would substantially erode the prevailing character of this part of the conservation area, and would detract from the setting of the listed buildings concerned.
14. Having regard to the advice in the Government's recent *Planning Practice Guidance*, I consider that the proposal would not reach the high hurdle of substantial harm (as defined in the Framework) to the significance of the designated heritage assets in this case. However, though less than substantial, there would nevertheless be real and serious harm which requires clear and convincing justification. Paragraph 134 of the Framework indicates that such harm should be weighed against the public benefits of the proposal. The appellant submits that the proposed dwelling and new indigenous hedge on the road boundary would significantly improve the appearance of the site, by providing a green frontage be more in keeping with the character of the area and the well-maintained gardens and hedges along Church Lane. I also accept that the proposal would provide a new dwelling on a site that currently appears to be unused. However, whilst I recognise these advantages of the scheme,

they are modest in scope, and are not of such substance as to outweigh the harm that I have identified to the significance of the heritage assets.

15. However, my conclusion with regard to the harmful environmental impacts of the proposal on the character and appearance of the Conservation Area and on the setting of listed buildings represents a significant and overriding objection which must be decisive.
16. I therefore conclude on this issue that the proposal would fail to preserve the character and appearance of this part of the Newton Solney Conservation Area, and would detract from the setting, and therefore the significance, of nearby listed buildings. It has not been shown that public benefits would outweigh this harm. As such, it would conflict with saved LP Policies EV1, EV12 and EV13, and the provisions of the Framework.

### ***Whether the Proposal would represent sustainable development***

17. Where the relevant development plan policies are out of date the presumption in favour of sustainable development applies. As set out in Paragraph 14 of the Framework this means that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole. The Framework is clear that local planning authorities should boost significantly the supply of housing and ensure that their Local Plan meets the full, objectively assessed, housing needs in their area. There is currently a significant shortfall in the supply of housing, and whilst the impact of this proposal for one dwelling on the overall housing supply is small, the delivery of housing is nonetheless a material consideration in favour of the proposal.
18. However, it is necessary to determine whether the proposed development is sustainable in the wider realm in the context of the Framework taken as a whole. Paragraph 7 of the Framework identifies a three-stranded definition of sustainable development based on economic, social and environmental factors. I accept that there would be very limited environmental benefits arising from the construction and subsequent occupation of the dwelling, and the provision of housing would represent a social benefit.
19. However, my conclusion with regard to the harmful environmental impacts of the proposal on the character and appearance of the Conservation Area and on the setting of listed buildings represents a significant and overriding objection which must be decisive. The adverse harm which I have identified would substantially and demonstrably outweigh any potential social and economic benefits of the appeal scheme. For this reason I conclude that the proposal does not amount to sustainable development, and the presumption in favour of such development does not therefore apply.

### ***Conclusion***

20. Therefore, and taking into account all other matters raised, including the letters from local residents both for and against the proposal, I conclude that this appeal should fail.

*Nigel Harrison*

INSPECTOR

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# Appeal Decision

Site visit made on 23 March 2015

**by I Radcliffe BSc(Hons) MCIEH DMS**

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

**Decision date: 09/04/2015**

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**Appeal Ref: APP/F1040/D/15/3002702**

**27 York Road, Church Gresley, Swadlincote, Derbyshire DE11 9QG**

- 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 Andrew Pigott against the decision of South Derbyshire District Council.
  - The application Ref 9/2014/0627, dated 30 June 2014, was refused by notice dated 7 January 2015.
  - The development proposed is extensions to the dwelling house.
- 

## Decision

1. The appeal is dismissed.

## Procedural matter

2. The Council's second reason for refusal identified No 25 as the property whose outlook would be affected by the proposed two side storey extension. However, having visited the site it is clear that No 23 is the dwelling that neighbours the eastern side of the appeal site, not No 25. Accordingly, I have dealt with the appeal on this basis.

## Main Issues

3. The main issues in this appeal are;
  - the effect of the proposed development on the health and life expectancy of the horse chestnut tree next to the eastern side of the house; and,
  - the effect of the proposed development on the living conditions of the occupiers of 23 York Road with regard to outlook.

## Reasons

4. The proposed development would consist of a two storey side extension and a single storey rear extension. The Council has no objection to the design of the extensions in terms of their effect on the character and appearance of the house. I agree with that assessment.

### *Horse chestnut tree*

5. The appeal property is a large detached house set back well from the road behind a deep grass verge. A tree preservation order protects the lime trees within the grass verge, a further lime to the front of No 27 and the horse chestnut tree to the side of the house. The tall mature stature of these trees and the grass verge creates a spacious, verdant and attractive street scene which complements the nearby war memorial and park entrance. The horse

chestnut tree is almost twice the height of the house and its canopy extends over the side of the dwelling. As a consequence, it is an impressive tree. It has good form and vigour and is of noteworthy public amenity value.

6. At present a lightweight timber framed conservatory is attached to the side of the house. The proposed development would replace it with a two storey side extension. Although it would occupy a similar footprint its construction would require far more significant foundations within the root protection area (rpa) of the tree than the existing conservatory. Strip foundations typically used for new brick built buildings would cut through the tree's roots. Furthermore, one of the two main boughs of the tree intrudes into the space where the first floor extension would be located. The removal of this bough would result in loss of approximately half of the tree and much of its amenity value. The proposed development therefore generates clear concerns regarding its effect on the health and longevity of the tree. The appellant pointed out that the house could be extended without the need for planning permission. Be that as it may, in my view any such extension would not be as substantial as the proposal now before me.
7. In the absence of a professional assessment carried out in accordance with BS5837:2012<sup>1</sup>, I therefore conclude that the proposed development would result in an unacceptable risk of harm to the horse chestnut tree. This would be contrary to Environment Policy 9 (EV9) of the South Derbyshire Local Plan and policy BNL4 of the emerging Local Plan. These policies seek to protect trees of value to the landscape.

#### *Living conditions*

8. The proposed side extension would extend the house close to its eastern side boundary with No 23. The neighbouring house at No 23 is set back within its plot so that its front elevation is located behind the rear elevation of the appeal property. The ground floor of No 23 towards the front of the dwelling is open plan and has three windows. As a consequence, although the proposed extension would encroach upon the outlook of the nearest ground floor window and technically would be contrary to the supplementary planning guidance 'Extending Your Home', overall it would not unduly enclose the outlook from within the house. In front of the house are two commercial buildings used in association with a vehicle business. The outlook within these buildings would not be harmed by the proposed development.
9. Taking all these matters into account, I therefore conclude that the proposal would result in acceptable living conditions for the occupiers of 23 York Road. The proposed development would therefore comply with the objectives of Housing Policy 13 (H13) of the Local Plan and the fourth core planning principle of the National Planning Policy Framework ('the Framework'). This policy and principle seek a good standard of residential amenity in relation to new development.

*Ian Radcliffe*

Inspector

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<sup>1</sup> BS5837: 2012 Trees in relation to design, demolition and construction - Recommendations

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## Appeal Decision

Site visit made on 29 December 2014

**by Chris Preston BA (Hons) BPI MRTPI**

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

**Decision date: 28 January 2015**

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**Appeal Ref: APP/F1040/A/14/2227202**

**Land to the south of Common Lane, Sutton-on-the-Hill, Ashbourne DE6 5JA**

- 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 & Mrs M Frost against the decision of South Derbyshire District Council.
  - The application Ref 9/2014/0550, dated 07 July 2014, was refused by notice dated 22 September 2014.
  - The development proposed is residential development for two new dwellings, including the removal of existing structures.
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### Decision

1. The appeal is allowed and planning permission is granted for two new dwellings, including the removal of existing structures at Land to the south of Common Lane, Sutton-on-the-Hill, Ashbourne DE6 5JA in accordance with the terms of the application, Ref 9/2014/0550, dated 07 July 2014, subject to the conditions in the schedule attached to my decision.

### Background and Main Issues

2. The Council's decision notice refers to the effect of the proposal on the character and appearance of the countryside. Within their subsequent statement, the Council have confirmed that the reason for refusal was not based on the design of the dwellings themselves, rather, it stems from the location of the proposed development, beyond the existing confines of the village, as defined by the South Derbyshire Local Plan (1998). I note this point and have taken that position into account in reaching my decision. In view of the above, the main issues in relation to the appeal are:
  - i) The effect of the proposed development on the character and appearance of the countryside; and
  - ii) Whether the proposal would represent sustainable development, taking account of the presumption in favour of sustainable development at paragraph 14 of the National Planning Policy Framework.

### Reasons

#### *Planning Policy Context*

3. The Council cannot demonstrate a five-year supply of deliverable housing land, as required by paragraph 47 of the National Planning Policy Framework (the



Framework). Consequently, under the terms of paragraph 49 of the Framework any relevant policies for the supply of housing should not be considered up to date. The Council's reason for refusal refers to three 'saved' policies from the South Derbyshire Local Plan (1998) (the Local Plan); Housing Policies 5 and 8, and Environment Policy 1. From the evidence before me, all three of these saved policies should be considered as policies relevant to the supply of housing. Housing Policies 5 and 8 directly relate to housing provision. Environment Policy 1 is a restrictive policy relating to all development in the countryside, defined as all land outside the urban area of Swadlincote and the villages listed within Housing Policy H5.

4. The explanatory text to policy H5 notes that a review of village frameworks (boundaries) was undertaken for the purpose of the Local Plan, having regard to the policy context established by the First Derbyshire Structure Plan 1980. Paragraph 3.53 notes that there was no need for further land to be allocated within or on the edge of villages at that time because the housing allocations in the Local Plan would meet the housing supply requirements of the Structure Plan up to 2001. Consequently, it is clear that the definition of village boundaries within the Local Plan is based on Structure Plan housing supply requirements that are considerably out of date. Those boundaries do not reflect the current housing need within the district.
5. The effect of Environment Policy 1, if implemented rigidly, would be to prevent housing development beyond the settlement framework identified in the Plan. In the absence of a five-year supply of housing land it seems likely that further development beyond the settlement framework identified in the Local Plan will be required in order to meet the current housing need within the district. Thus, the implications of Environment Policy 1 would be to prevent the area from meeting its housing needs. It is clear to me that a restrictive policy of this nature, as applied to all land beyond existing defined settlements, is a policy that is relevant to the supply of housing.
6. Accordingly, I can attach little weight to the saved policies of the Local Plan and the fact that the proposal falls outside of the defined settlement boundary is not, of itself, a determining factor in my decision.

#### *Character and Appearance of the Countryside*

7. Paragraph 17 of the Framework identifies that planning should recognise the intrinsic value and beauty of the countryside. Paragraph 55 also seeks to avoid new isolated homes in the countryside unless there are special circumstances. None of the listed circumstances apply to the proposal before me. However, to my mind, the proposed dwellings would not be isolated but would be closely related to the existing built form of the village. The site is not situated in an isolated rural location but on the edge of an existing settlement, bound by the gardens of Willow Tree Cottage to the east and Bank House to the south. There are other residential properties further to the east on Common Lane.
8. Therefore, in a physical sense, the proposal would integrate well with the existing built form. The dwellings, and their occupants, would be no more isolated than the adjacent dwellings within the village. Consequently, the provisions of paragraph 55 are not applicable to the proposal before me. The intentions of that paragraph are fundamentally different to those of Environment Policy E1 of the Local Plan. National policy does not seek to avoid any development within the countryside but aims to prevent isolated new

dwelling. For the reasons given, the proposal is not isolated and I find nothing in paragraph 55 to suggest that it should be refused.

9. The dwellings would be set at an angle to the road frontage, a feature that would be shared with a number of the existing, relatively modern, dwellings at the junction of Common Lane and Marlpit Lane. They would be of modern appearance and not out of keeping with the chalet style of dwellings within the vicinity, including Willow Tree Cottage which is prominently located at the road junction. The surrounding dwellings within the village are characterised by mature landscaping and well maintained gardens. The existing trees and hedgerow on the site frontage could be retained and supplemented with additional planting. Therefore, although the site sits higher than road level, the dwellings would not appear unusually prominent in the context of adjacent dwellings and the proposed density and layout would reflect the spacious and verdant character of the immediate area.
10. Furthermore, the existing site is not free from development and contains a substantial glass-house which would be removed as part of the proposal. Although of a temporary nature the building does form part of the existing setting of the village and thus, in terms of its character, the site is not open countryside; it is defined by existing building and the associated use. The dwellings would be of a more permanent nature but would not result in a substantial loss of openness at the site.
11. The Council's statement of case does not identify harm to any specific features of interest but relies primarily on the fact that the proposal is outside of the settlement boundary within the Local Plan. As set out above, those defined boundaries are out of date and not in compliance with the Framework. Clearly, any loss of countryside will bring about a change in the visual character of an area. The proposed development would be no exception and would result in the physical expansion of the village. However, for the reasons given, the proposal would be well related to the existing built form and would not result in a significant loss of openness within the wider countryside. No specific evidence has been presented that would lead me to conclude that the proposal would cause undue harm to the intrinsic character and beauty of the countryside. In view of the above, I am satisfied that the proposal would not have a significant effect on the character and appearance of the area.

#### *Whether the Proposal Would Represent Sustainable Development*

12. Where the relevant policies of the development plan are out of date the presumption in favour of sustainable development applies. As set out at paragraph 14 of the Framework this means that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework, taken as a whole.
13. The effect upon the character and appearance of the countryside is a material consideration that must be weighed in that balance. However, although the proposal would change the existing character of the area I have concluded that this would not be unduly harmful, taking account of the existing setting and context of the site.
14. The Framework is clear that local planning authorities should boost significantly the supply of housing by using their evidence base to ensure that their Local

Plan meets the full, objectively assessed needs within their area. There is currently a significant shortfall in the local supply of housing; the Council's *Assessment of 5-year Housing Supply* (2014-2019) suggests that the figure at that time was 2.98 years. The Council had only met its supply targets once in the preceding 8 years. No update has been provided to suggest that circumstances have changed materially since that time. Whilst the impact of the proposal on the overall housing supply would be small, the delivery of housing is, nonetheless, a material consideration in favour of the proposal, especially in the light of the significant shortfall that has been identified. Any future residents would also add to spending power within the rural economy, albeit to a modest degree, commensurate with the scale of development.

15. It is likely that those residents would need to travel to larger villages or towns for a full range of shops, services and employment opportunities. No information regarding public transport provision or the relative distance to facilities has been provided. Given the rural nature of the site it is likely that the majority of those visits would be by car, as is no doubt the case for existing residents of the village. The Government recognises, at paragraph 29 of the Framework, that opportunities for sustainable transport options will vary from urban to rural areas. In this context, the proposal would result in a modest increase in car journeys but no evidence has been presented to suggest that this would be significantly detrimental in environmental terms.
16. Paragraph 7 of the Framework identifies a three-stranded definition of sustainable development based on economic, social and environmental factors. The proposal would have small economic benefits resulting from construction and subsequent occupation and the provision of housing would represent a social benefit. There would be no significant environmental harm. Consequently, when viewed in the round, the proposal would represent a sustainable form of development. Furthermore, no adverse impacts have been identified that would significantly and demonstrably outweigh the benefits of the proposal and, in such circumstances, paragraph 14 of the Framework identifies that planning permission should be granted.

#### *Other Matters*

17. I have found that the proposal represents sustainable development, when assessed against the policies of the Framework, taken as a whole. Given that the development is acceptable in these terms, I can find no reason to conclude that my decision to grant planning permission would set an undesirable precedent for future development. Each proposal must be considered on its individual merits and any future developments will fall to be considered against the relevant material considerations applicable to it, including any up-to-date policies of the development plan and the contents of the Framework. Thus, the possibility that future applications for housing development may be made to the Council is not a matter that has a bearing on my decision.

#### *Conditions*

18. In addition to the statutory commencement condition I have attached a condition to ensure compliance with the approved plans for the avoidance of doubt and in the interests of proper planning. Conditions requiring details of external materials, landscaping, and boundary treatments are necessary in the interests of the character and appearance of the area. The existing access arrangements and visibility splays should be maintained in the interests of

highway safety and, for the same reason, conditions are necessary to prevent the erection of gates within 10m of the highway boundary and to ensure that the access and parking areas are laid out prior to construction.

**Conclusion**

19. For the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should be allowed.

*Chris Preston*

INSPECTOR

### **SCHEDULE OF CONDITIONS:**

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing numbers: FROST-02 (site plan), FROST-03 (location plan) 14.12.2012 KL MODEL 228 (Plan), 14.12.2012 KL MODEL 228 (elevations), 4.6.2014 KL ARTIC FRAME 263 (elevations), 4.8.2014 ARTIC FRAME 263 (First Floor), ARTIC FRAME 263 (Ground and First Floor) and GT\_001PL\_01 (Proposed Double Garage with Wood Cladding).
- 3) No development shall take place until details of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) No development shall commence until there has been submitted to and approved in writing by the Local Planning Authority a scheme of landscaping which shall include details of proposed planting and indications of all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection during the course of development.
- 5) All planting and seeding comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the occupation of any dwelling. Any plants which, within a period of 5 years, die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless written consent for any variation is given by the Local Planning Authority.
- 6) No development shall take place until there has been submitted to and approved in writing by the local planning authority a plan indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment in relation to each dwelling shall be completed before that dwelling is occupied. Development shall be carried out in accordance with the approved details.
- 7) The building shall not be occupied until the means of vehicular access, including parking and turning areas has been constructed in accordance with the approved plans.
- 8) The existing access to Common Lane shall remain unaltered and shall be provided with visibility splays of 2.4m x 90m in the western direction and 2m x 49m in the eastern direction. No obstruction shall be erected and/or planted within the visibility splays exceeding 1m in height relative to the adjoining near side carriageway channel level throughout the lifetime of the development.
- 9) Notwithstanding the provisions of Part 2, Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking or re-enacting that Order) no gates shall be erected within 10 metres of the nearside highway boundary. Any gates beyond that point shall open inwards only.

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## Appeal Decisions

Site visit made on 16 March 2015

**by S Ashworth BA (Hons) BPI MRTPI**

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

**Decision date: 22 April 2015**

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### **Appeal A : APP/F1040/W/14/3000748**

**Barr Hall, Drakelow Road, Walton-on-Trent, Swadlincote, Derbyshire  
DE12 8NB**

- 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 Peter Owen against the decision of South Derbyshire District Council.
  - The application Ref 9/2014/0828, dated 27 August 2014, was refused by notice dated 22 October 2014.
  - The development proposed is described as 'work on a redundant agricultural building within the grounds of a listed building; to restore and convert the existing two storey building and rebuild the north wing to provide two storeys. The east wing and framed building will be demolished and a new brick retaining wall is to be built on the line of the outer wall to the east. A brick wall will be built on the line of the existing retaining wall to the south to create a private garden area. On the north side a brick retaining wall will be built and the ground level will be reduced to form a parking area accessed from the existing driveway to the west.'
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### **Appeal B : APP/F1040/Y/14/3000753**

**Barr Hall, Drakelow Road, Walton-on -Trent, Swadlincote, Derbyshire  
DE12 8NB**

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
  - The appeal is made by Mr Peter Owen against the decision of South Derbyshire District Council.
  - The application Ref 9/2014/0829/L, dated 27 August 2014, was refused by notice dated 23 October 2014.
  - The works proposed are described as 'work on a redundant agricultural building within the grounds of a listed building; to restore and convert the existing two storey building and rebuild the north wing to provide two storeys. The east wing and framed building will be demolished and a new brick retaining wall is to be built on the line of the outer wall to the east. A brick wall will be built on the line of the existing retaining wall to the south to create a private garden area. On the north side a brick retaining wall will be built and the ground level will be reduced to form a parking area accessed from the existing driveway to the west.'
- 

## **Decisions**

1. **Appeal A:** The appeal is allowed and planning permission is granted for the conversion and restoration of redundant agricultural building including the demolition of the east wing and framed building, the erection of a new brick retaining wall, the formation of new parking area accessed from the existing

driveway and change of use to garden at Barr Hall, Drakelow Road, Walton-on-Trent, Swadlincote, Derbyshire DE12 8NB in accordance with the terms of the application Ref 9/2014/0828, dated 27 August 2014, and subject to conditions set out in the schedule attached to this decision.

2. **Appeal B** : The appeal is allowed and listed building consent is granted for the conversion and restoration of redundant agricultural building including the demolition of the east wing and framed building and the erection of a new brick retaining wall at Barr Hall, Drakelow Road, Walton-on-Trent, Swadlincote, Derbyshire DE12 8NB in accordance with the terms of the application Ref 9/2014/0829/L, dated 27 August 2014, and the plans accompanying it, and subject to conditions set out in the schedule attached to this decision.

### **Preliminary Matters**

3. The description of development as stated on the decision notices and appeal forms differs from that on the application forms which is reproduced in the banner heading above. As the altered description provides a concise summary of the proposed development I have used it in my formal decisions above.
4. There is some dispute between the parties about whether the building proposed to be converted should be considered part of the listed building (Barr Hall and Attached Farm Buildings). Section 1(5) of the Planning (Listed Buildings & Conservation Areas) Act 1990 defines the term 'listed building' and sets out that for the purposes of the Act, any object or structure within the curtilage of the building which, although not fixed to the building, forms part of the land and has done so since before 1 July 1948 shall be treated as part of the building.
5. The Council's evidence is that the building at issue dates from the mid-19<sup>th</sup> Century. At the time when Barr Hall and the attached farm buildings were added to the Statutory List (January 1967) it is clear from the evidence that the farm building proposed for conversion was within the curtilage of the farmhouse. Having regard to the terms of the Act, it must, therefore, be considered part of the listed building.

### **Main Issues**

6. On that basis, the first main issue to be considered in these appeals is the effect of the proposal on the special architectural and historic interest of the listed building and its setting, and linked to all that, whether the proposal would preserve or enhance the character or appearance of the Walton-on-Trent Conservation Area. The second main issue is whether the development would meet sustainable development objectives relating to housing in rural areas.

### **Reasons**

#### *The impact of the proposals on the designated heritage assets*

7. The appeal site includes a former agricultural building which originally formed part of Barr Hall farm. That farm no longer exists. The main range of brick-built barns associated with Barr Hall was sensitively converted to residential properties in a courtyard form following the granting of planning permission in 2000. These barns, and the farmhouse, date from the mid 18<sup>th</sup> century and are Grade II listed buildings. The building that forms the subject of the appeal, which comprises different elements and is in various states of repair, lies on

the eastern side of the complex of former farm buildings and is accessed by a private drive through the courtyard.

8. The proposal involves the removal of the most dilapidated parts of the building including the remains of the eastern wing and the dilapidated central section; the conversion and alteration of the western section, which is a brick built structure and the construction of a new wing to the north to form a single dwelling. New retaining walls and boundary treatment would surround the building and defined parking and garden areas would be provided within those boundaries.
9. The Barr Hall farm complex lies around 300m from the village of Walton-on-Trent and is surrounding by open fields. Although outside the built-up part of the settlement it is within the Walton-on-Trent Conservation Area.
10. The starting point for the consideration of the proposals is Sections 16(2) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 which require that special regard is had to the desirability of preserving the building, or its setting, or any features of special architectural or historic interest it possesses. In terms of the Conservation Area, Section 72 (1) of the Act requires that special attention is paid to the desirability of preserving or enhancing the character or appearance of the area.
11. The building reflects the historic development of the farm. It is also seen as part of the group in longer range views from the south. Consequently it is clearly part of what is an important group of farm buildings. Of particular significance is the west wing which is built in a similar red brick to the converted listed buildings, reflects their form and can be seen from within the courtyard of the converted buildings. As such the building is an important part of the significance of the designated heritage assets, in itself, and in what it contributes to the setting of the group.
12. However, the building is no longer required for agricultural purposes, and it seems to me that without any viable alternative use or investment the building will decay further and be lost. This would result in the loss of a heritage asset and harm to the coherence and significance of the group. The retention and re-use of the most significant surviving part of the building is therefore a considerable benefit of the proposal. I accept that the structures attached to the west wing are no more than remnants of previous structures, or are so dilapidated that they can no longer be readily repaired or converted. These structures presently have a negative visual impact on the setting of the converted listed buildings and wider Conservation Area. Their removal would enhance the character and appearance of the area and the setting of the listed buildings.
13. The proposed extension to the west wing would double its size but in itself the resulting building would be smaller than the range of buildings that previously and currently exists on the site. Moreover, the new wing has been designed as a long and low building that would reflect the character and form of the existing building and converted barns. Materials and joinery detailing would reflect those in the existing development. As such the proposal would result in significant benefit, in terms of the retention of the listed building, the setting of the group of listed buildings and the character and appearance of the Conservation Area in accordance with both s.66(1) and s.72 (1) of the Act. Consequently this is a very weighty material consideration.



14. Furthermore, for these reasons, the proposal would be consistent with the aims of Environment Policies 1, 12 and 13 of the South Derbyshire Local Plan 1998 (the Local Plan) which seek amongst other things to ensure that the character of a Conservation Area is preserved and enhanced and that the special architectural or historic of a listed building is preserved.
15. I have taken into consideration the view of the Council's consultant that the building did not originally contain two storeys and that some historic fabric would be lost as a result of the development. Nevertheless, for the reasons outlined above the proposal would have a positive impact on the heritage assets and would secure the retention of the listed building.

### *Sustainability*

16. The development plan for the area includes the saved policies of the Local Plan. Housing Policies 7 and 8 of the Local Plan seek to restrict new residential development outside established settlements in order to protect the character and appearance of the countryside. Conversions of buildings will be permitted where, amongst other things, the building is suitable for conversion without extensive alteration, rebuilding and or extension. New dwellings in countryside locations are permitted only where they meet certain specified criteria.
17. The development involves a substantial amount of alteration and re-building, such that only part of the original building, the west wing, would be retained. As such, in terms of the requirements of Policy 7, the proposed works are not simply a conversion but is tantamount to a new building. Although the proposed development would be well related to existing buildings it is not necessary to the operation of an established long-term rural based activity and thereby does not accord with all the criteria of Policy 8. As such the development would not be in accordance with either Policy 7 or 8.
18. However, the Local Plan predates the National Planning Policy Framework (the Framework) which was introduced in 2012. Accordingly, as set out in paragraph 215 of the Framework due weight can be given to relevant policies in the existing plan according to their degree of consistency with the Framework. Whilst the Framework sets out, as a core planning principle, the need to recognise the intrinsic character and beauty of the countryside, the 'golden thread' running through the Framework is the presumption in favour of sustainable development. Sustainability, the Framework advises, has three dimensions; economic, social and environmental and is therefore a wider definition than that suggested by Policies 7 and 8 of the Local Plan. As such the approach of the Framework carries more weight as a material consideration.
19. The contribution that the proposal would make to the protection and enhancement of the built and historic environment is discussed above and carries substantial weight. In terms of its economic contribution, the development would have a benefit during the construction period, and in the longer term in terms of support for local facilities. It would also provide an additional unit of housing in an area where there is an acknowledged shortfall in terms of the housing land supply. These benefits are relatively limited as a result of the small scale of the development but nevertheless attract some weight in favour of the proposal.

20. While the site lies in a countryside location, outside the boundary of the settlement, it is immediately adjacent to the dwellings in the Barr Hall farm complex. As such the site could not be considered to be physically isolated. In terms of its social connectivity with the settlement, I note that the site is around 300m from the edge of the village which has facilities including a primary school, church, public house, take-away and a mobile library service. Moreover the village appears reasonably well connected to the larger town of Burton with a two-hourly bus service during the day. As such the site is in a reasonably accessible location where residents would have a choice of non-car modes of transport to facilities including walking, cycling and public transport.

### **Conclusion and Conditions**

21. For the reasons outlined above I conclude that the special architectural and historic interest of the listed building and its setting would be preserved in accordance with the requirements of the Sections 16(2) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 which is a very weighty material consideration. In accordance with Section 72 (1) the proposal would enhance the character and appearance of the Walton-on-Trent Conservation Area. Furthermore, taking into account the Framework as a whole, the proposal would promote sustainable development by providing limited economic and social benefit and make a significant contribution to the historic environment. These matters outweigh the non-compliance of the scheme with Policies 7 and 8 of the Local Plan. I therefore conclude that, taking into account all other matters raised, planning permission should be granted and listed building consent allowed for the development subject to conditions.
22. The Council has suggested a number of conditions that relate to matters of detail. However, some of the requested details were provided with the applications and it is unnecessary to require their resubmission. As such I have used and adapted the Council's suggested conditions where reasonable and necessary in the light of the requirements of paragraph 206 of the Framework. The Council's suggested condition No 12 is onerous for the scale of development proposed and not therefore reasonable. For the same reason it is unnecessary for a sample panel of pointing to be provided. In other instances where necessary I have amended the Council's suggested wording to make a condition more precise.
23. I have imposed the standard time limit condition and specified the approved plans for the avoidance of doubt and in the interests of proper planning.
24. In order to preserve the setting of the listed building I have required that samples of the external walling and roofing materials and rooflights are submitted and agreed by the Local Planning Authority. For the same reason it is necessary to specify the pointing details and to require that any works to make good the existing fabric match the existing building. In order to preserve the character of the existing building and the setting of the listed building it is necessary to remove permitted development rights relating to future alterations and extensions to the building.
25. In order to protect the living conditions of adjoining residents it is necessary to require the provision of parking and manoeuvring facilities for residents vehicles although I consider it unnecessary, as the proposal relates to one dwelling, to require a facility for service delivery manoeuvring within the site. In order to enhance opportunities for bats and nesting bird habitats I have

imposed a condition requiring the submission and agreement of a habitat enhancement plan.

*S Ashworth*

INSPECTOR

### **Schedule of Conditions**

#### **Appeal A : APP/F1040/W/14/3000748**

1. The development hereby permitted shall begin not later than three years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: 1110/14, 1110/15 and 1110/16.
3. No development shall take place until samples of the materials to be used in the construction of the external walls and roofs of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
4. No development shall take place until details of the proposed roof lights, and their relationship to the surrounding roof plane, have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
5. All works of alteration and making good the existing fabric of the building shall be carried out in matching reclaimed brick and plain clay tiles including colour coursing and texture.
6. Pointing shall be carried out using a lime mortar no stronger than 1:1:6 (cement: lime: yellow sand). The finished joint shall be slightly recessed with a brushed finish.
7. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995, as amended, the dwelling shall not be altered, enlarged or extended, no satellite dishes shall be affixed to the dwelling and no gates, buildings, walls or other means of enclosure (except as authorised by this permission) shall be erected on the site without the prior grant of planning permission on an application made to the Local Planning Authority in that regard.
8. The dwelling shall not be occupied until space has been provided within the site as shown on the approved plan, for the parking of resident's vehicles. Such space shall be maintained free from any impediment to its designated use throughout the life of the development.
9. No works, shall commence on site until a bat and nesting bird enhancement strategy has been submitted to and approved in writing by the Local Planning Authority. The enhancement plan shall include suitable bat roosting

measures into the new building and new bird nesting opportunities. Such approved measures shall be implemented in full and retained thereafter.

**Appeal B : APP/F1040/Y/14/3000753**

1. The works hereby permitted shall begin not later than three years from the date of this decision.
2. No works shall take place until samples of the materials to be used in the construction of the external walls and roofs of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Works shall be carried out in accordance with the approved details.
3. No works shall take place until details of the proposed roof lights, and their relationship to the surrounding roof plane, have been submitted to and approved in writing by the local planning authority. Work shall be carried out in accordance with the approved details.
4. All works of alteration and making good the existing fabric of the building shall be carried out in matching reclaimed brick and plain clay tiles including colour coursing and texture.
5. Pointing shall be carried out using a lime mortar no stronger than 1:1:6 (cement: lime: yellow sand). The finished joint shall be slightly recessed with a brushed finish.

## Appeal Decision

Site visit made on 2 March 2015

**by Jonathan Hockley BA(Hons) DipTP MRTPI**

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

**Decision date: 25/03/2015**

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**Appeal Ref: APP/F1040/W/14/3001180**

**Land to the south of Woodbine Cottage, 60 Ashby Road, Ticknall, Derby DE73 7JJ**

- 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 & Mrs S Banks against the decision of South Derbyshire District Council.
  - The application Ref 9/2014/0946, dated 2 October 2014, was refused by notice dated 27 November 2014.
  - The development proposed is the erection of one dwelling.
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### Decision

1. The appeal is dismissed.

### Main Issue

2. The main issue in this case is whether the proposed development would preserve or enhance the character or appearance of the Ticknall Conservation Area.

### Reasons

3. Ticknall Conservation Area (TCA) is quite a large conservation area, covering the majority of the attractive village of Ticknall. The character and appearance of the Conservation Area is distinguished by its basic form of two long streets, with one running roughly east to west and one running from north to south, with the two meeting near the church. Towards the centre of the village, and the junction of these streets, development is fairly close knit, with terraced cottages and properties. Along the approaches into the village, development has a looser grain, with detached buildings and open spaces adding substantially to the character of the village.
4. The appeal site lies on the southern fringes of the village, on the road to Ashby de la Zouch. From the south the road meanders into the village, with development appearing mainly in the form of scattered detached properties interspersed with open fields and spaces. From the north, the road passes a dense area of development close to the junction with Main Street before more space appears in the street scene and development becomes sporadic. The appeal site lies just south of a bend in the road that Woodbine Cottage sits on, and appears to be in use as a garden to this property. Although the site is bordered with a hedge on its highway side, due to its location just after the

bend the site is highly visible in approaches from the north. The site is also prominent in views when approaching from the south due to its positioning near the crest of a hill. As such, I consider that the open space and the gap in the street scene that the site provides is a significant feature of the TCA.

5. Section 72(1) of the Planning (Listed Building and Conservation Areas Act) 1990 states that special attention must be paid to the desirability of preserving or enhancing the character or appearance of a Conservation Area. Paragraph 132 of the National Planning Policy Framework (the Framework) says that when considering the impact of a proposed development on the significance of a designated heritage asset (including Conservation Areas), great weight should be given to the asset's conservation. Significance can be harmed or lost through alteration of a heritage asset, and as they are irreplaceable, harm should require clear and convincing justification.
6. Environment Policies 8 and 12 of the South Derbyshire Local Plan, 1998 (the Local Plan) together state that open spaces which make a valuable contribution to the character of villages will be safeguarded from development, and that development which would have an adverse effect on the character or appearance of a Conservation Area will not be permitted. Whilst the text in Policy EV12 refers to a development having an 'adverse' effect and the policy does not correlate completely with the Framework, the accompanying text confirms that development should preserve or enhance the character of a Conservation Area. Whilst I note the age of the Local Plan, I consider these policies to be broadly consistent with the aims of the Framework and I afford them material weight.
7. The proposal seeks to construct a two storey two bedroom house, with a larger ground floor than upper floor. A detached double garage is also proposed. The house would be sited at the northern end of the plot, close to the boundary with Woodbine Cottage. The appellant notes that the appeal site is seen from both the north and the south with development set behind it and that it has a largely domestic appearance. However, I do not consider that this diminishes its significance to the street scene. The combination of the proposed house and the separate detached garage, whilst designed to fit the local vernacular, would largely remove this open space from the Conservation Area. The consequent consolidation of development would adversely alter the character of the area, neither preserving nor enhancing the Conservation Area.
8. I note the appellant's views that there has been considerable recent change in this part of the village since previous applications and appeals for the site were refused. However, the examples cited largely appear to be conversions or extensions, as opposed to new build detached properties and I do not consider that they have altered the character of the surrounding area significantly.
9. Having regard to the advice in the Government's planning practice guidance I consider that the scheme would not reach the high hurdle of substantial harm (as defined in the Framework) to the significance of the heritage asset. However, though less than substantial, there would, nevertheless, be real and serious harm which requires clear and convincing justification. Paragraph 134 of the Framework indicates that such harm is to be weighed against the public benefits of the proposal.
10. Both parties are in agreement that a five-year supply of deliverable housing land cannot be identified in the area. The provision of one house towards this

undersupply of housing would therefore contribute to the public benefits of the scheme. The appellant also notes that the proposal would improve the existing access to the site, widening the track and relocating the centre line of the access. However, it appeared from my site visit that only one or two dwellings are currently served from this access. It is not therefore an access with a high usage rate. There is also no evidence that the current access has proved to be a risk to highway safety. The combination of this minor benefit and the small asset that the contribution of a single house would make towards the undersupply of housing, would not, I consider, outweigh the less than substantial harm that the proposal would cause to the significance of the TCA.

11. I therefore conclude the proposed development would fail to preserve or enhance the character and appearance of the Ticknall Conservation Area. Although I have concluded that the proposed development would cause less than substantial harm to this heritage asset, I do not consider that the limited public benefits of the proposal would outweigh the harm caused. As such the proposal would conflict with the Framework and Saved Policies EV8 and EV12 of the Local Plan.
12. The appellant refers to Policies S2 and S4 of the South Derbyshire Submission Local Plan Part 1 (the emerging plan) in support of their case. This document has recently been altered. Policy S2 states that applications which accord with the policies in the Plan will be approved. Policy S4 describes a housing strategy for the Council area, with dwellings in villages such as Ticknall allocated as per Policy H1. Ticknall is designated as a 'Local Service Village' in which exception sites on the edge of the village will be allowed for up to 15 dwellings. This emerging plan has not been adopted which limits the weight I can give to it. However, I note that the proposal would conflict with Policy BNE2, which states that development will be expected to protect, conserve and enhance Conservation Areas. The proposal's conflict with this emerging Policy adds limited weight to my overall decision.

### *Other matters*

13. The appellant notes that Ticknall is a sustainable settlement with a range of services and a regular bus service and that the proposal would constitute sustainable development. Given the situation in the Council area with regards to the undersupply of housing they therefore consider that paragraph 14 of the Framework applies and consent should be granted. However, I consider that the contribution that the proposal would make towards addressing the undersupply of housing does not outweigh the harm caused to the character and appearance of the Conservation Area and it is thus not the sustainable development for which there is a presumption in favour. In reaching this conclusion I have borne in mind paragraphs 47-49 of the Framework, as well as paragraph 6 and its guidance in paragraph 17 that planning should conserve heritage assets in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of this and future generations.
14. A grade II listed structure, a Pillar Fountain, lies on the eastern boundary of the site. The fountain was part of a fresh water supply system for Ticknall installed by the Harpur-Crewe estate. The fountain would be retained within the proposed development. I have had special regard to the statutory duty of preserving the building or its setting or any features of special architectural or

historic interest which it possesses. In this respect, as the fountain would be preserved within its current hedgerow and roadside setting I am satisfied that the proposal would preserve those interests. However, this does outweigh my conclusions above on the effect of the proposal on the character of the TCA.

*Conclusion*

15. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

*Jon Hockley*

INSPECTOR



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# Appeal Decision

Site visit made on 16 March 2015

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

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

**Decision date: 9 April 2015**

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**Appeal Ref: APP/F1040/C/14/222298**

**Land south of 2 Woodland Road, Stanton, Swadlincote DE15 9TH**

- 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 Matthew L Hunt against an enforcement notice issued by South Derbyshire District Council.
- The Council's reference is E/2014/00035.
- The notice was issued on 1 July 2014.
- The breach of planning control as alleged in the notice is the erection of a timber building with concrete foundation pad and a timber enclosure within the designated Green Belt, without planning permission.
- The requirements of the notice are to: (1) Dismantle the timber building and enclosure, including the removal of the concrete foundation pad and any [sic] and or post foundations used in the construction of the enclosure, (2) Permanently remove all materials resulting from step (1) from the land (3) restore the land to a satisfactory condition by levelling the ground and reseeding it with grass.
- The period for compliance with the requirements is 60 days.
- The appeal is proceeding on the grounds set out in section 174(2) (c) of the Town and Country Planning Act 1990 as amended.

**Summary of Decision: The appeal is dismissed and the enforcement notice upheld subject to a correction and variation.**

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## Matters concerning the notice

1. The breach of planning control relates to the carrying out of operational development comprising the erection of a timber building, concrete foundation and timber enclosure. The location of the site in the designated Green Belt is irrelevant. For greater precision, the allegation should state the following: '*Without planning permission, the erection of a timber building with concrete foundation pad and a timber enclosure*'. The steps required to comply with the notice should flow directly from the allegation; there is a minor typographical error in paragraph (5) sub-section (1).
2. From the way and manner in which the appeal parties have presented their cases, the intent behind the issued notice has been properly understood. The appellant is clearly aware the notice relates to the concrete pad, timber building and the fence which forms a compound. The intended correction and variation does not undermine the basis of the notice, or make it any more onerous than first issued. Accordingly, I shall correct the notice using the powers available to me as set out in section 176 (1) of the Town and Country Planning Act 1990 as amended (*'the Act'*).

### Ground (c)

3. The onus is upon the appellant to show that, on the balance of probabilities, the matters alleged in the notice do not constitute a breach of planning control.
4. Section 55 (1) of the Act includes in the definition of the word '*development*' the carrying out of *building, engineering, mining or other operations in, on, over or under land* [my emphasis]. Section 57 (1) states that, subject to the provisions of the section, planning permission is required for the carrying out of any development of land. Section 55 (1A) states that for the purposes of the 1990 Act '*building operations*' includes (a) demolition of buildings (b) rebuilding (c) structural alterations of or additions to buildings and (d) other operations normally undertaken by a person carrying on business as a builder. Section 171A (1) (a) states that the carrying out of development without the required planning permission constitutes a breach of planning control.
5. Section 336 (1) includes in the definition of the word '*building*' any structure or erection, and any part of a building, as so defined. The timber building has a mono-pitched roof. An area of land immediately adjacent to the timber building is enclosed by a fence. I consider that the timber building can be regarded as being immobile by its own weight and, given its scale, results in physical attachment to the ground. Its substantial size is consistent with a building; it is permanently located within the site and it does not have a fleeting or ephemeral character, because of its design and appearance. Indeed, there is no evidence that shows that the timber building has been moved since it was constructed. On the particular circumstances of this case, the timber building can reasonably be described as a structure that falls within the definition of the word '*building*'.
6. The question as to whether or not the erection of the timber building constitutes development within the meaning of S55 (1) is an evaluative one, which requires an exercise of planning judgement. The erection of an entirely new building is not specifically mentioned as being within the term '*building operations*' as set out in S55 (1A) of the Act. However, the use of the word '*includes*' shows that the words that follow it are not exhaustive of its meaning. The erection of an entirely new building falls within the concluding clause of the definition of '*building operations*' as being work normally undertaken by a person carrying on business as a builder.
7. No. 2 comprises a dwelling and is used for commercial dog boarding kennels<sup>1</sup>. It also includes an area of agricultural land about 3.5 acres in size. This area is roughly situated between the residential property and the kennel building; the notice relates to a sectional timber structure erected on this land.
8. The timber structure sits on a 120mm thick concrete pad. The nature of the described construction work is likely to have involved some degree of pre-planning and undertaken by people who would normally carry on trade as a builder. This is because of the design and layout of the timber structures, concrete pad and fence around the compound area. When the size, permanence and degree of physical attachment of the structures are considered in combination with the type and nature of the work, I consider that the erection of the timber building concrete pad and compound involved a significant building operation and, for planning purposes, constitutes '*development*'.

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<sup>1</sup> Pursuant to planning permission ref: 9/2012/0052/NO dated 12 April 2012.

9. The appellant considers the development benefits from a deemed planning permission by virtue of permitted development rights (PD) set out in Schedule 2, Part 6 of the Town and Country Planning (General Permitted Development) Order 1995 as amended (*'the GPDO'*)<sup>2</sup>.
10. PD rights for the carrying out on agricultural land comprised in an agricultural unit of not less than 0.4 but less than 5 hectares in area are set out in Class B. Paragraph D.1 to Part 6, interpretation, states 'agricultural land' means land which is in use for agriculture and is so used for the purposes of a trade or business. Agricultural unit means agricultural land which is occupied as a unit for the purposes of agriculture. The land in question has been rented out, it is used for grazing purposes and there is an agricultural holding number. In this particular case, however, the evidence presented does not show that the land is part of an agricultural unit. The information does not show that the land met with the definition of 'agricultural land' as set out in paragraph D.1 at the time when work started on the erection of the timber building, enclosures and concrete pad.
11. Even if it is arguable that PD rights apply in this case, paragraph B sub-sections (a) to (g) do not permit the erection of a building. Paragraph B (a) permits the extension or alteration of an agricultural building. In contrast, Part 6, Class A sub-section (a) permits the carrying out on agricultural land comprised in an agricultural unit of 5 hectares or more in area of works for the erection, extension or alteration of a building. The appeal site is not 5 hectares or more and so these provisions do not apply in this case.
12. The provision of a hard surface is covered by Class B paragraph B (e). However, the problem is that the concrete pad is used as a floor slab and foundation to the timber building. As a matter of fact and degree, I consider that the concrete pad is integral to the timber structure because it is located over the top. Its design and layout suggests that it has structural qualities and performs as a foundation to the timber building. I find that the concrete pad cannot be considered in isolation from the whole structure. Therefore, the development does not involve the provision of a hard surface.
13. The appellant's alternative argument is the fence enclosures benefit from a deemed planning permission by virtue of Part 2 - minor operations. This sets out PD rights for the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure. Paragraph A.1 sets out limitations and the relevant part state the following. Where the height of any fence or means of enclosure erected or constructed adjacent to a highway used by vehicular traffic would, after the carrying out of the development, exceed 1m above ground level, or 2m in any other case. On three sides of the timber building wooden post/rail fence varies in overall height from 1.08m to 1.63m. The enclosure includes a pedestrian gate. However, the fence is physically attached to the timber building by bolts or other devices and they form one continuous structure. As a matter of fact and degree, the fence is part and parcel of the timber building and it is integral to the development as a whole.
14. On the balance of probabilities, I find the development alleged in the corrected notice does not benefit from a deemed planning permission. Express planning permission is required for the erection of a timber building with concrete foundation

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<sup>2</sup> Statutory Instrument 2015 no. 596, the Town and Country Planning (General Permitted Development) (England) Order 2015 comes into force on 15 April 2015. It consolidates the 1995 version and does not amend Class B Part 6.

pad and a timber enclosure. Planning permission has not been obtained and so the matters alleged in the corrected notice constitute a breach of planning control.

15. Therefore, ground (c) must fail.

### **Other matters and conclusion**

16. The appellant refers to matters which go to the planning merits of the development. There is no ground (a) appeal. These matters are not therefore pertinent to the consideration of this appeal.

17. For all of the above reasons and having considered all other matters, I conclude that the appeal should be dismissed subject to a minor correction and variation. The enforcement notice shall be upheld.

### **Formal Decision**

18. It is directed that the enforcement notice be corrected by the deletion of all of the text in paragraph (3), the matters which appear to constitute the breach of planning control, and the substitution therefor of the following text:

*'Without planning permission, the erection of a timber building, concrete foundation pad and timber enclosure'.*

19. It is directed that the enforcement notice be varied by the deletion of the all of the text in paragraph (5), what you are required to do, sub-paragraph (1), and the substitution therefor of the following text: *'(1) Dismantle the timber building and enclosure, including the removal of the concrete foundation pad and post foundations used in the construction of the enclosure'.*

20. Subject to the correction and variation, the appeal is dismissed and the enforcement notice is upheld.

*A U Ghafoor*

Inspector