

# **REPORT OF THE HEAD OF PLANNING SERVICES**

**SECTION 1: Planning Applications**

**SECTION 2: Appeals**

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

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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) and responses to County Matters.**

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9/2009/0700	1.1	Egginton	Etwall	1
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When moving that a site visit be held, Members will be expected to consider and propose one or more of the following reasons:

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

**Item**            1.1

**Reg. No.**        9/2009/0700/U

**Applicant:**  
Mrs Margaret Rook  
c/o Agent

**Agent:**  
Mr Matthew Green  
Green Planning Solutions LLP  
Unit D Lunesdale  
Upton Magna Business Park

**Proposal:**        **The change of use of land to extend existing residential gypsy site to provide utility/day room and additional hard stand ancillary use at Blue Posts Caravan Site Derby Road Egginton Derby**

**Ward:**            **Etwall**

**Valid Date:**     **02/11/2009**

*This item was deferred from the last meeting to enable the committee to visit the site. In the meantime the report has been updated and additional comments appear in **bold italics**.*

**Reason for committee determination**

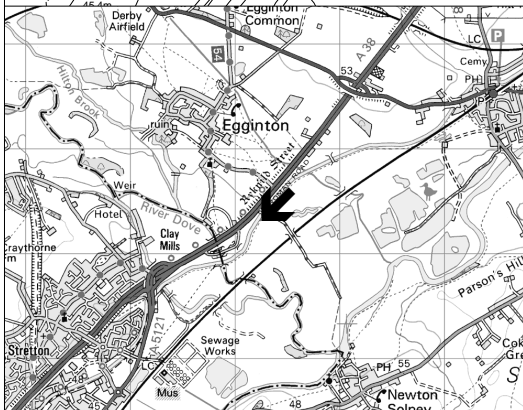
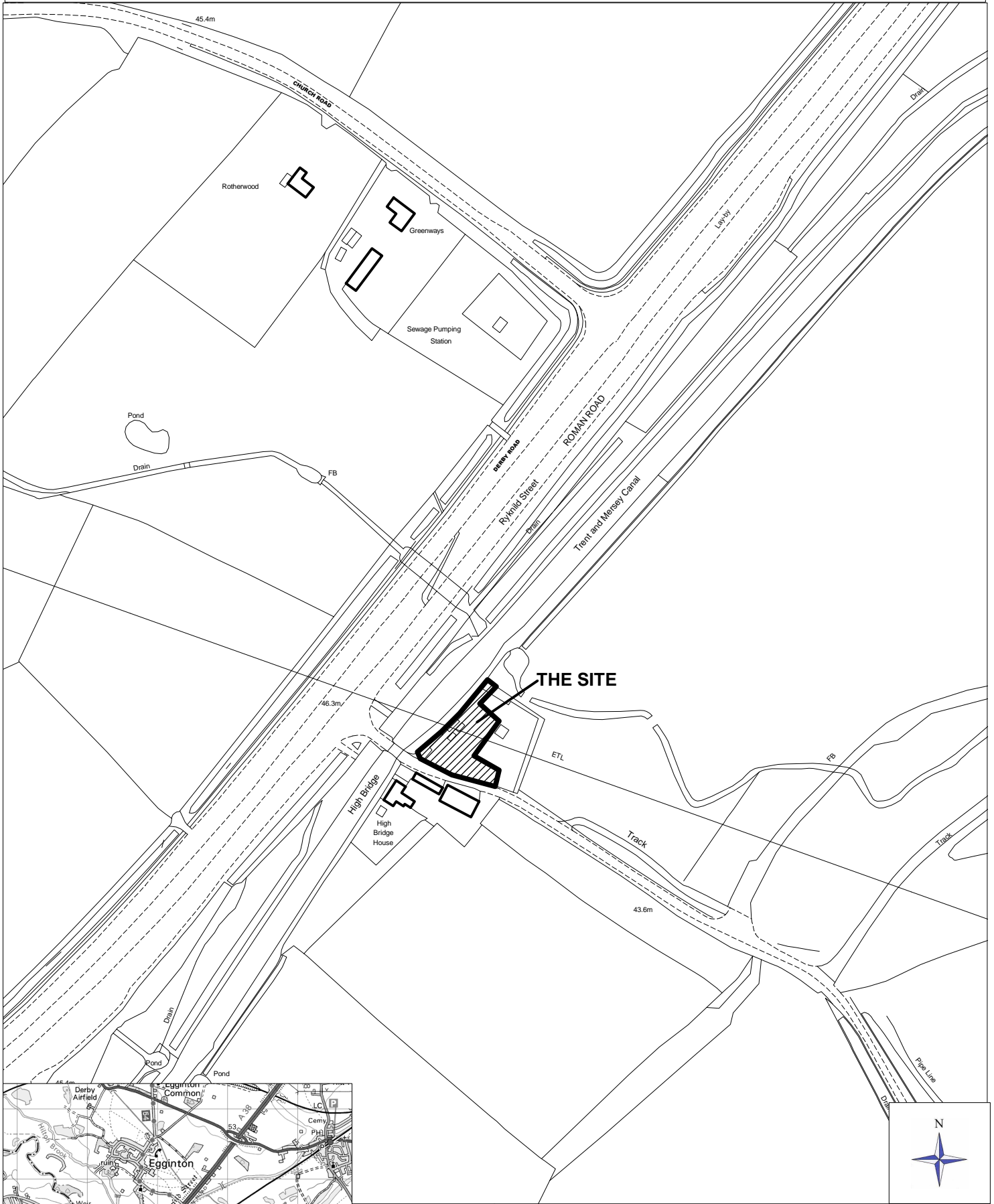
Councillor Lemmon has asked for this application to be brought to Committee as local concern has been expressed about a particular issue.

**Site Description**

The application site comprises a part of the land ownership of the gypsy family that occupy the authorised part of the site. The site lies below the level of the Trent and Mersey canal that is a Conservation Area for its whole length that passes through South Derbyshire. The bridge that passes over the canal is listed Grade II, as is High Bridge House that lies to the south of the application site. The site is separated from the canal by a wall and hedge and a wall that fronts onto High Bridge Lane and the site is also below the level of this road until the site entrance off High Bridge Lane to the authorised part of the site. There is currently no boundary between the authorised site and the rest of the applicant's land ownership.

**Proposal**

The application has been amended since submission to change the appearance of the proposed day room. It would be constructed in brick and tile with windows and doors of a traditional appearance. The other alteration is a change to the originally proposed fence boundary between what would become the authorised site, should planning



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permission be granted, and the remainder of the site in the applicant's ownership. The application also proposes an increase in the area of authorised hardstanding. ***The application site area has also been reduced as the attached location plan now shows.***

### **Applicants' supporting information**

The proposals have been drawn up in accordance with the principle set out in the Model Standards for Caravan Sites 2008; the proposals meet the needs of the applicants and their extended family and includes a small area of grass outside the day room for amenity purposes. The proposed building has been designed with the features typical of a canal side building of this scale. The supporting statement contains an offer to replace the wall on the north boundary to increase flood storage capacity to meet some of the objections raised by the Environment Agency at the previous public inquiry.

***In the light of the Environment Agency comments about the northeast boundary wall below, the applicants have been asked for further comments. It is confirmed that the applicants would be unwilling to see the wall removed but if the Environment Agency or other authority can identify how the wall could materially impede flood water flows, then the applicants would be willing to accept a condition requiring the wall to be replaced by a post and rail fence. However, the applicants state that any condition should be capable of meeting the six tests set out in Circular 11/95.***

### **Planning History**

The site is long established having gained planning permission for use as a gypsy site in 1989 at appeal. The use of the site was confirmed following an appeal in the early 2000s when the occupation of the site was limited to three caravans. Subsequent to that appeal decision, the site owners acquired additional land and expanded the site without the benefit of planning permission. A regularising application was submitted and refused and the subsequent appeal dismissed after a public inquiry. Enforcement action was then taken to restore the site to its original boundaries and the appeal (again at a public inquiry) against that action was dismissed very much for the same reasons that the previous appeal was dismissed. The provisions of the enforcement notice have been enforced without the need to resort to court action. However, there are some elements to the enforcement notice that remain to be completed. Action on these has been delayed pending the outcome of this application, as some of the elements would be affected if this permission were granted now or at appeal. These relate to the erection of a fence to separate the permitted site from the rest of the applicants land ownership, the removal of a septic tank and final works to remove the internal fittings within the unauthorised building together with the grassing of the remaining area of hardstanding that is within that extended ownership.

### **Responses to Consultations**

Egginton Parish Council strongly objects to this application on the basis that this is yet another attempt to increase the size of the site and its facilities and this should in no way be allowed. Specific grounds of objection are as follows:

- a) The site is at high risk from flooding not only from the River Dove but also the tributaries of that river that abut the site. There is no safe means of escape from the site in the event of a flood

- b) Impact on the Listed Buildings and Conservation area would be visually intrusive on both these heritage assets. Two inspectors have found the extension of the site to detract from the listed buildings and most recently the proposal was found to have an '*alien urban appearance that draws the eye away from the listed buildings to an extent that it seriously detracts from their setting*'. The Parish Council considers that adding a day room and an extension to the hardstanding would merely intensify this impact.

The Environment Agency has objected to the development on the basis that the site lies within Flood zone 3 and has a high risk of flooding where there is a risk to life and/or property within the site from fluvial inundation that would be unacceptable if development were to be allowed.

***In response to the notification of the recommendation to approve the development, the Environment Agency continues to recommend that the finished floor levels of the day room are set at a minimum level of 45.15AOD and that flood resistant construction measures be incorporated to the level of 46.10AOD. A dry access to the canal bank is also recommended. The Environment Agency would like to see the north east wall removed as suggested in the application and there would be no objection to a post and rail fence on that boundary.***

British Waterways has no objection to the principle of the development subject to the imposition of conditions. These relate to the position of the building but it is willing to accept building within 5 metres of the canal, landscaping, tree planting, lighting and the materials of construction. British Waterways requests that its requirements for the construction of the day room are drawn to the attention of the applicants.

The County Archaeologist notes the position of the site and has identified that there may be prehistoric and Romano-British archaeology that would be revealed during the excavation of foundations and service trenches. Accordingly a condition requiring a watching brief during excavations is recommended.

### **Responses to Publicity**

No representations have been received.

### **Development Plan Policies**

The relevant policies are:

RSS8: Policies 1, 2, 12 & 26

Saved Local Plan: Housing Policy 15.

### **National Guidance**

ODPM Circular 01/2006

PPS 3 & 7

### **Other Advice**

Derbyshire Gypsy and Traveller Accommodation Assessment 2008

Designing Gypsy and Traveller Site Good Practice Guide 2008

## Planning Considerations

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

- The Development Plan and other guidance/advice as a material consideration
- Listed Building and Conservation Area Issues
- Flooding Issues
- Other material considerations.

## Planning Assessment

### The Development Plan and Government Advice

Circular 01/2006 seeks to significantly increase the number of gypsy and traveller sites in appropriate locations advising that rural sites, which are not subject to special planning constraints, are acceptable in principle. The Circular advises that local authorities must allocate sufficient sites for gypsies and travellers, in terms of number of pitches required by the Regional Spatial Strategy, in site allocations Development Plan Documents.

Policy 16 of the East Midlands Regional Plan (EMRP) refers to Circular 01/2006, which requires pitch numbers to be allocated to each Local Authority in order to meet a serious shortfall in gypsy and traveller sites. Appendix 2 of the EMRP sets out the minimum additional pitch requirements for gypsies and travellers within the District between 2007-2012 identifying a requirement for 19 pitches. There currently remains an outstanding requirement of 7 pitches within the District. Following 2012, an ongoing increase of 3% per annum should be assumed unless a revised Gypsy and Traveller Accommodation Assessment had been completed. There remains an identified need for the provision of gypsy and traveller sites within South Derbyshire. The current proposal would not contribute towards meeting the District's needs to 2012 as identified in the EMRP as this is an existing site that was counted in the Derbyshire GTAA 2008.

Saved Housing Policy 15 of the Local Plan allows for the provision of gypsy caravan sites provided that they are located in an area frequented by gypsies; satisfactorily located in relation to other development; acceptable in environmental terms; reasonably accessible to community services and facilities; capable of assimilation into its surroundings; and that adequate provision is made for vehicular and pedestrian access.

'Designing Gypsy and Traveller Sites Good Practice Guide 2008' which recommends that as a guide an average family pitch must be capable of accommodating an amenity building, a larger trailer and touring caravan, parking space for two vehicles and a small garden area. The proposal conforms to this advice in respect of gypsy and traveller sites.

### Listed Building and Conservation Area Issues.

These issues were considered by previous inspectors to be paramount in rejecting both the planning and enforcement appeals for the whole of the applicants land ownership. The Parish Council rightly draws attention to the last appeal inspector's conclusion that: *"Because of the open nature of the adjoining countryside to the east when looking towards the listed buildings the appeal site is an important part of their setting. I found that its alien urban appearance draws the eye away from the listed buildings to the*

*extent that it seriously detracts from their setting. Therefore there is conflict with Local Plan Environment Policy 13 and the advice in PPG 15 referred to above.”*

However this proposed site is different to the proposals before those Inspectors. The building that was previously considered intrusive by the Inspectors has been restored to a more agricultural appearance through the works undertaken to comply with the enforcement notice.

The proposals involve a single storey day room (as envisaged by the last planning inspector) that would replace the inappropriately design existing amenity block albeit that the new structure would be larger than the existing building. The design of the building is more sympathetic than the existing amenity block has recently had some minor adjustments to that design to ensure that its setting is sympathetic to the canal conservation area and the nearby listed structures. ***The existing amenity block would be removed to be replaced by the proposed building that is much more sympathetic to its surroundings.***

The extension to the site is also considerably reduced from the previous proposals. Given that inappropriately designed buildings and land in the vicinity of the agricultural building would be returned to grass under the terms of the enforcement notice, then the issue is whether the expansion of the site proposed by the applicants that reflects a need to access the grassed area and the agricultural building, is justification in itself to refuse planning permission for the development. ***The view is that on its own the additional area of hardstanding does not justify refusing the application.***

It is considered that the increased site area would have an impact on the character and appearance of the Conservation Area and the listed structures. However, by imposing appropriate conditions to remove the existing amenity block, control the design and materials of construction of the day room and the surface finish of the area of hardstanding, on the advice of the Design and Conservation Officer, the scheme would be acceptable and actually offer an enhancement to the setting of the listed building and conservation area.

### Flooding Issues

The Environment Agency objection is noted. However, the Inspector at the enforcement appeal considered the flooding issues at this site in March last year. His conclusions were (inter alia):

*“15. There is no dispute between the parties that the site is subject to flooding; this is evident from the submitted photographs. It is within the flood plains of the River Dove and Egginton Brook. No Flood Risk Assessment (FRA) has been submitted for this development but one was prepared by the appellant in connection with a 2007 planning application for the extension of the caravan site. This indicates a 1 in 100 year flood depth of between 0.7 and 1.4m. The Environment Agency generally accepts this FRA apart from its failure to identify the site as falling within the functional flood plain of the River Dove, bringing it within flood zone 3b rather than 3a. This was not disputed by the appellant at the inquiry.*

*“16. As far as flood risk vulnerability is concerned in my view the appeal development falls within the less vulnerable category of table D2 to Annex D of PPS25. It comprises land and buildings used as part of a residential caravan site and as such occupiers and*



visitors are likely to be present on the premises and therefore there is a potential risk to people and property. Applying table D3, less vulnerable development should not be permitted in zone 3b.

*“17. However, there are specific circumstances relating to this site that should be taken into account. The Environment Agency representative accepted that the development involved the removal of other buildings and structures and although a small extension had been added there was, in totality, no decrease in flood storage or detrimental effect on flood levels. Possible contamination from the effects of flooding on the septic tank would be minimal bearing in mind the polluted nature of floodwater generally. Also, whilst a wall close to the water course on the north side of the site could impede the movement of flood water this could be resolved if the wall were replaced by post and rail fence, in effect resulting in a net gain in terms of displacement and flows. Appeal Decision APP/F1040/C/08/20823296*

*“18. There were concerns that acceptance of this development would set a precedent and thereby have a cumulative effect on flood risk. In my opinion these concerns are ill founded because the prospect of other similar developments coming along within the flood plain is remote. It seems to me that the flood risk implications arising from the appeal development are minimal in terms of the effect on the capacity of the flood plain to store water and on the flow of floodwater. Indeed, if planning conditions were imposed requiring the implementation of a scheme for warning occupiers of the caravan site of possible flooding and requiring changes to the northern boundary any concerns regarding safety and flooding could be resolved. Consequently I see no reason for rejecting this development on the basis of its effect on flood risk.”*

Having considered the flooding issues in that case with a larger area devoted to use as a gypsy site, the Inspector's conclusion was that there was no basis for rejecting the development on grounds of flood risk. To pursue an objection on these grounds now would be unreasonable and open the Council to the risk of costs being awarded.

***The Environment Agency's response to the recommendation to grant planning permission is noted. However, the raising of the floor levels as suggested would cause the building to sit at an incongruous height on the site adversely affecting the Conservation Area and the adjacent listed building. Moreover, this building is not a dwelling and therefore would not need to be elevated to the same level, as the risk to the users is not the same. A condition is recommended therefore to agree the finished floor level and this is considered sufficient to secure minimal impact on these heritage assets.***

***With regard to the removal of the wall, the applicants have offered to accept a condition to replace the wall should it be demonstrated by the relevant authority that such an action would improve flood flows as asserted by the planning inspector (see Para “17” above for the Inspector's wording). The Inspector did not have to consider how this would be achieved because the appeal was dismissed. It is not clear how a condition could be worded but it appears highly likely that such a condition would be beyond the powers of the Local Planning Authority given the wall was erected as permitted development and the Environment Agency would appear to have the power to have it removed under its own byelaws/legislation anyway.***

### Other Material Considerations

British Waterways has no objection to the principle of the development but originally requested a condition moving the building away from the side of the canal. This would have had the effect of siting the building in close proximity to the agricultural building and increasing the exposure of the site from the Canal Conservation Area. (British Waterways offers no right of support to adjacent property and it is for the applicants to ensure that their works do not adversely affect the canal infrastructure at this point. In other words, British Waterways has the power to ensure that works in the vicinity of the canal do not compromise its integrity; they have confirmed this). However, they have now agreed to the original siting subject to conditions.

The County Archaeologist's request for a watching brief on any excavations on the site through the imposition of a condition is recommended.

In the light of the above the application is recommended for permission subject to recommended conditions that are considered further below.

### Conditions

An important issue here is to limit the number of caravans on the site to three, as is the case at present. In addition to conditions requiring that the site be occupied by the gypsy or traveller community, no trade or business, limiting the caravans to those that can be towed on the public highway are also recommended. It will also be important to control the construction of the day room to ensure that its appearance complements the conservation area as well as meeting British Waterway's requirements for protecting the integrity of the canal. Conditions relating to the new sewage treatment system and any soakaway are also recommended.

### Enforcement Issues

If the Committee is minded to grant permission then the requirements of the extant enforcement notice have to be considered. One of the main outstanding requirements is the erection of a fence to delineate the permitted gypsy site from the remaining land in the ownership of the applicants. The line shown on the enforcement notice drawing would no longer be enforceable should this application be granted permission. Accordingly the erection of a fence, including gates to access the remaining land ownership is recommended.

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

### **Recommendation**

**GRANT** permission subject to the following conditions:

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

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

2. Notwithstanding the originally submitted details, this permission shall relate to the amended drawing no. 08\_021\_004 B.

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

3. No work shall take place on the site until details of the scheme for the disposal of foul water the position of which is illustrated on the approved drawings have been submitted to and agreed in writing by the Local Planning Authority. The scheme shall be carried out in conformity with the details that have been agreed prior to the first occupation of the day room hereby permitted.

Reason: The position of the foul water disposal system is only illustrated on the approved drawings and the Local Planning Authority wishes to ensure that it and any soakaway are designed to minimise potential pollution to the adjacent watercourse.

4. Prior to the development hereby approved commencing, details of the finished floor levels of the proposed day room hereby approved shall be submitted to, and approved in writing by, the Local Planning Authority. Thereafter, the development shall be constructed in accordance with the agreed level(s).

Reason: To minimise the impact of the development on the adjacent Trent and Mersey Canal Conservation Area and nearby listed structures

5. Details of the fence to be erected to define the boundary of the gypsy site hereby permitted shall be submitted to within one month of the date of this permission. The approved fence details shall then be used to construct the fence and it shall be erected on the boundary of the gypsy site as shown on the attached drawing 9/2009/0700/A within one month of the approval of the details. Once erected the fence shall thereafter be retained in place to define the area of the approved gypsy site known as Blue Post High Bridge Egginton.

Reason: The curtilage of the approved gypsy site at High Bridge has been the subject of two planning appeals in recent years. The result of each of these appeals was that the extent of the gypsy site should be limited to that originally permitted in 1989. The Local Planning Authority recognises that the original appeal site does not contain all the facilities now recognised as representing good practice under current Government advice. Accordingly planning permission has been granted for the dayroom and an additional area of hardstanding. In the light of this a new boundary to the permitted gypsy site is required and this condition seeks to define that boundary to reflect the requirements of the extant Enforcement Notice, which requires the erection of a boundary fence to so define the permitted gypsy caravan site.

6. Prior to the commencement of the building works to the day room hereby permitted the 'patio' area to the front of the existing amenity block, including all associated boundary walls, shall be removed from the land. Within one month of the first occupation of the day room the existing amenity block shall be demolished and permanently removed from the land.

Reason: In order to facilitate the construction of the new day room and remove the existing amenity block that the permitted day room will replace and in the interests of improving the character and appearance of the Trent and Mersey Canal Conservation Area and the setting of the grade II listed High Bridge and High Bridge House.

7. The caravans sited on this site shall be occupied solely by persons who conform to the definition of a gypsy or traveller found in ODPM Circular 01/2006.

Reason: The caravan site contributes to the gypsy and traveller accommodation in South Derbyshire and has been permitted as such. The Local Planning Authority wishes to maintain the supply of gypsy and traveller accommodation within the district that would be lost unless there is a condition limiting the occupation of the site.

8. No vehicle larger than 3.5 tonnes shall be kept at the site at any time save for those used in the construction of the facilities permitted by this application.

Reason: The site is accessed via a Grade II listed structure that has a limited carrying capacity. Whilst it is appreciated that construction traffic of a heavier weight may be necessary, the general traffic to and from the site is hereby limited in the interests of the future stability of the structure.

9. This permission authorises the siting of three caravans on the site that shall be capable of being towed on the public highway.

Reason: The site is served via an access to the A38 Trunk Road, the siting of additional caravans could lead to an increased risk to highway safety to the detriment of the occupiers of the site as confirmed by the Planning Inspectorate in its decision dated 6th March 2006 in respect of appeal APP/F1040/A/05/1181438.

10. Before development is commenced, details of the construction of the footings for the day room shall be submitted to and approved in writing by the Local Planning Authority in consultation with British Waterways. The day room foundations shall thereafter be constructed in accordance with the approved details prior to the construction of the rest of the dayroom.

Reason: In order to ensure that the construction of the day room does not prejudice the structural integrity of the adjacent Trent and Mersey Canal in the interests of the canal available for recreational purposes.

11. The land within the curtilage of the gypsy site hereby permitted shall not be used for the parking of motor vehicles other than private motor vehicles and shall not be used for the purposes of trade or business.

Reason: To protect the character and appearance of the Trent and Mersey Canal Conservation Area and the setting of the Grade II Listed Structures.

12. Prior to the first use of the day room hereby permitted the owners of the site shall register with the Environment Agency Flood Alert system and a letter confirming membership of the system shall be submitted to the Local Planning Authority prior to the first occupation of the day room.

Reason: The site lies within Flood Zone 3b and in order to minimise the risk to the occupants of the site, the site is required to be part to the Environment Agency's Flood Risk Alert System in order that the occupiers of the site receive adequate warning of the risk of flooding to the site.

13. No development shall take place, until the developer has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved by the Local Planning Authority in writing.

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

14. Details of the intensity, angling and shielding, and the area of spread of any lights in addition to those already on the site shall be submitted to and approved in writing by the Local Planning Authority. The additional lights shall be installed in accordance with these details and thereafter retained in conformity with them. The submitted scheme shall comply with the Institute of Lighting Engineers "Guidance notes for the Reduction of Light Pollution" (2000).

Reason: To preserve the character and appearance of the Trent and Mersey Canal Conservation Area.

15. Notwithstanding the submitted details no part of the day room building shall be carried out until samples of the facing materials to be used in the execution of the works have been submitted to and approved in writing by the Local Planning Authority. The agreed materials shall then be used in the development hereby approved.

Reason: In the interests of improving the character and appearance of the Trent and Mersey Canal Conservation Area and the setting of the grade II listed High Bridge and High Bridge House.

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

Reason: In the interests of improving the character and appearance of the Trent and Mersey Canal Conservation Area and the setting of the grade II listed High Bridge and High Bridge House.

17. Large scale drawings to a minimum Scale of 1:10 of eaves, verges, external joinery, including horizontal and vertical sections, precise construction method of opening and cill and lintel details shall be submitted to and approved in writing by the Local Planning Authority before building work starts. The external joinery and associated details shall be constructed in accordance with the approved drawings

Reason: In the interests of improving the character and appearance of the Trent and Mersey Canal Conservation Area and the setting of the grade II listed High Bridge and High Bridge House.

18. No part of the development shall be carried out until precise details, specifications and samples of the materials to be used in the hard landscaping works have been submitted to and approved in writing by the Local Planning Authority. The works shall be carried out prior to the occupation of any part of the development or in accordance with a programme agreed with the Local Planning Authority.

Reason: In the interests of improving the character and appearance of the Trent and Mersey Canal Conservation Area and the setting of the grade II listed High Bridge and High Bridge House.

19. External joinery shall be in timber and painted to a colour and specification which shall have been previously agreed in writing by the Local Planning Authority. The joinery shall be painted in accordance with the agreed details within three months of the date of completion of the development unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interests of improving the character and appearance of the Trent and Mersey Canal Conservation Area and the setting of the grade II listed High Bridge and High Bridge House.

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

Reason: In the interests of improving the character and appearance of the Trent and Mersey Canal Conservation Area and the setting of the grade II listed High Bridge and High Bridge House.

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

Reason: In the interests of improving the character and appearance of the Trent and Mersey Canal Conservation Area and the setting of the grade II listed High Bridge and High Bridge House.

22. A sample panel of pointed brickwork 2 metres square or such other area as may be agreed by the Local Planning Authority shall be prepared for inspection and approval in writing by the Local Planning Authority prior to the implementation of any other works of pointing. The works shall be carried out in accordance with the approved sample.

Reason: In the interests of improving the character and appearance of the Trent and Mersey Canal Conservation Area and the setting of the grade II listed High Bridge and High Bridge House.

24. The day room building hereby permitted shall only be used as a day room to serve the existing gypsy site and for no other purpose.

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

**Item**            1.2

**Reg. No.**        9/2009/0986/FM

**Applicant:**

Mr & Mrs SH & E Turner  
Burnaston Road  
Etwall  
Derby

**Agent:**

Mr James Boon  
Marchini Curran Associates  
1 Sampsons Yard  
Halifax Place  
Nottingham

**Proposal:**        **The Erection Of 4 Dwellings In The Grounds Of And The  
Provision Of A Detached Garage For Etwall Lawn 82  
Main Street Etwall Derby**

**Ward:**            **Etwall**

**Valid Date:**     **04/12/2009**

**Reason for committee determination**

The application is brought to Committee at the request of Councillor Mrs Brown on the basis that local concern has been expressed about a particular issue.

**Site Description**

The site lies outside the Etwall Conservation Area, with the exception of plot 4 but within the wider confines of Etwall Lawn, a Grade II listed building. The east boundary of the Conservation Area is defined by the ha-ha that forms a physical if not an apparent boundary to the Conservation Area. To the south and east of the application site are 1.8 – 2.0 metre high fences that are the rear boundaries to houses on Lawn Avenue and Park Way in Etwall. The fences on the Park Way boundary are the boundary of the Conservation Area. There are trees on these boundaries that will be the subject of a Tree Preservation Order by the date of this Committee. A tennis court enclosed by the usual fencing occupies a significant part of the site. Those areas outside the tennis court are grass with the exception of the areas formed by the trees and shrubs close to the site boundaries

**Proposal**

The application can be broken down into three elements, the erection of the 4 dwellings, the erection of a garage to serve Etwall Lawn and the formation of a new access to Etwall Lawn off the private drive to replace the gates that currently control access to the site from Burnaston Lane. The gates would be relocated as part of this proposal. Most of the shrubs on the site boundaries would be removed but the trees are shown



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retained. The trees to be felled within the site comprise mainly Lawson Cypress that appear to have been originally planted as internal hedges.

Since submission the application has been amended to site the garage slightly closer to Etwall Lawn and that would allow the retention of a holly tree that was previously to be removed. The amendments would allow for the potential restoration of a part of the ha-ha that has been 'hidden' beneath an earth mound but evidence for which exists either side of the mound.

### **Applicants' supporting information**

The application is supported by a Design and Access statement and an Arboricultural Impact Assessment, amended, which are available for inspection on the file. These can be summarised as follows:

- The dwellings have been located beyond the ha-ha and the rose garden to maximise the screening effect and distance from Etwall Lawn. It is contended that the proposal would not affect the setting of the Grade II listed building.
- The development site is screened from houses on Lawn Avenue and Park Way by boundary hedges and fences as well as mature trees.
- The setting of Etwall Lawn is very important – the lawns to the south of the ha-ha are important as they give a sense of scale to the property and this is backed by the mature trees that also provide a sense of enclosure to the site.
- The site is chosen to take advantage of screening within the site to minimise impact on Etwall Lawn.
- Trees provide a degree of screening of the site from the occupiers of houses on Lawn Avenue and Park Way.
- The submitted tree survey notes the required root protection zone for each of the trees in the vicinity of the application site; the dwellings have been sited to take account of the root protection zones.
- The 4 houses proposed would have either 3, 4 or 5 bedrooms would be accessed from the existing drive to Etwall Lawn from Burnaston Lane. The houses would be in the form of a courtyard with the ha-ha forming a part of that courtyard.
- Overlooking has been minimised by setting the houses as far from the boundaries of existing houses as possible but in excess of the distance required by the Housing Layout and Design SPG.
- The design of the dwellings picks up on historic gable widths with roof space utilised to form part of the living accommodation. This has the effect of reducing ridge and eaves heights on the proposed dwellings. In addition the houses would be at a lower level than Etwall Lawn.
- Materials are proposed that reflect the character of the Conservation Area but elements of the design of the dwellings are more contemporary with a more modern approach to the use of materials in terms of glazing and timber cladding. The buildings would be constructed to high environmental standards.
- Additional tree planting is proposed within the site to enhance existing screening particularly towards Etwall Lawn.

The applicants have also provided details of an existing ground survey and the proposed finished floor levels for the houses.

Following requests from officers, in addition to the amendments referred to above, the applicants have supplied descriptions of eaves, verge and window cill and openings that would form the basis of any subsequent details of the development. A bat appraisal has also been submitted for consideration following receipt of objections that the site may have bats roosting on it.

## **Planning History**

Permission for a dwelling on the site of the tennis court was granted in the early 1970s subject to an agricultural worker condition. A further application for a dwelling in 1979 was refused planning permission on the basis that the dwelling would adversely affect the setting of the listed building, a redundant 17<sup>th</sup> century cottage could provide separate living accommodation and the access was over-long resulting in excessive man-carry distances.

During the 1980's there were various applications for extensions and alterations to Etwall Lawn. There was an application in 1991 for the conversion of the 17<sup>th</sup> century cottage in the grounds of Etwall Lawn that was granted permission.

In the later 1990's various works in the grounds to Etwall Lawn were permitted including the erection of the access gates referred to above. The last application in the 1990's was for the erection of the Orangery that is now in place.

Over the whole of this period, there were submissions to undertake works to trees in the grounds of Etwall Lawn that lie within the Conservation Area.

## **Responses to Consultations**

Etwall Parish Council objects to the development for the following reasons:

- a) The proposed development abuts the village conservation area and is totally intrusive into it. The trees that mark the boundary of Etwall Lawn are an essential part of the site, separating it from the modern development area and it is perhaps a mistake that the entire curtilage is not within the conservation area. At all events, this intrusion should be stopped.
- b) Proposed 'modern designs' are completely out of character and not in keeping or sympathetic to the existing locality/environment which is in the heart of a conservation area and within the boundaries of a grade 2 listed building.
- c) The hideously tall chimneys that appear from the ends of the houses and not out of the roofs make them look like 4 separate crematoria.
- d) The proposed dwellings are very close to the boundary and so will have an impact on the outlook for the existing houses on Lawn Avenue and Park Way even if trees are retained.
- e) Does Etwall need any more 4 or more bedroom 'executive' houses? There are still existing 4 or more new houses that have still not been sold or rented out.
- f) The exit/entrance onto Burnaston Lane is inadequate for any increase in traffic using it and would need to be improved at cost to any developer.
- g) The new garage for Etwall Lawn should be dealt with as a separate application as it may be the start of an attempt to convert the outbuildings to new dwellings if planning permission were granted for the new garage.

The County Highway Authority has no objection to the development following receipt of clarification as to the location of the highway boundary that would enable a satisfactory visibility splay to be provided between the site access and Main Street and so a condition requiring the cutting back of the hedge between Main Street and the access drive to provide a 2.4x 43m visibility splay is recommended; other recommended conditions relate to the provision of a construction compound within the site and provision of parking spaces to serve the houses before any house is occupied. The County Highway Authority has advised that the footway scheme referred to below has been abandoned because sufficient land cannot be obtained to implement the scheme.

Severn Trent Water has no objection to the proposal subject to foul and surface water disposal details being submitted before development is commenced.

Natural England agree with the assessment that bats are unlikely to roost in any of the trees albeit that they may forage within the site and any disturbance would be to foraging areas rather than roost. It is recommended that the new planting should contain planting that would attract bats.

The Derbyshire Wildlife Trust having considered the information accompanying the application, state that none of the habitats affected by the proposal have the potential to support bats or barn owls. Although trees would be removed, they offer little opportunity for roosting bats or nesting opportunities for barn owls.

The comments of the Conservation team are included in the Planning Assessment below.

### **Responses to Publicity**

One letter has been received that has no objection in principle to the development provided that a footway is provided along the Burnaston Lane frontage to Main Street. A letter, from the County Highway, is enclosed with that representation stating that the footway is to be provided in the current financial year. 13 letters or e-mails have been received objecting to the development. One letter from a planning consultant on behalf of the occupiers of 13 properties (30 people) who are against the development has also been received. The objections can be summarised as follows:

- a) Impact on the Conservation Area is cited as a major objection on the basis that the site should be included in the conservation area, the boundary of the conservation area is indistinct; the Local Planning Authority should therefore review the Conservation Area boundary as it has a duty to do under the Listed Buildings and Conservation Areas Act 1990. The absence of such a review is remiss. Had such a review been undertaken it is likely that the application site would have been included within the Conservation Area. In a document published in 2005 by the Authority the site was indicated as being *'a part of an embryonic park or lawn to the east of Etwall Lawn apparently created by the removal of old field boundaries and now built over...'*
- b) In addition the Local Planning Authority should assess the proposals in the light of the requirement to 'preserve or enhance the character or appearance of the Conservation Area'. In the first instance the Council has a duty to publicise the application in such close proximity to the Conservation Area. The proposed contemporary dwellings would occupy a site that contributes to the open character of the Conservation Area and this area forms a part of the open setting

to Etwall Lawn the development would have a hard urbanising impact on this tranquil backwater. The spacing of the dwellings is contrary to the prevailing character of the area, something the design and access statement pays little attention to. The proposed materials of construction are alien to the locality albeit that some elements would be constructed in brick, the main materials are metal, wood and glass. The resulting development would be an unacceptable compromise that does nothing in respect of the local vernacular nor provide a sense of place, the dwellings could have been designed for any locality and it does nothing by way of adding to the architectural richness of the Conservation Area or the setting of the Listed Building.

- c) The trees along the east boundary would be at risk even if a Tree Preservation Order were placed on them. Once houses are occupied there would be pressure to have them removed due to the heavy shade, leaf and branch drop, notwithstanding that the applicant describe the trees as having high landscape value and encourages the placing of an order on these trees. If development were permitted this high landscape value would be compromised by the very presence of the dwellings that would reduce the impact of the trees to glimpses of the upper branches above the proposed dwellings from within the Conservation Area.
- d) Highway safety is a major issue, as the development would significantly increase the use of an access to Burnaston Lane that is not suited to extra traffic. The drive itself is not wide enough to allow two cars to pass and this could result in traffic reversing out on to Burnaston Lane. This increase in traffic using the access would be in the order of 80% where visibility towards Main Street is substandard. The same would be said of vehicles waiting to turn into the site where traffic turning into Burnaston Lane from Main Street would have views of the waiting traffic obscured by the roadside hedge. Users of the site would only be able to access the village centre by walking along Burnaston Lane where there is no footway. The Design and Access Statement fails to address these issues.
- e) Attention is drawn to the presence of Bats foraging in the trees during the summer months. The Local Planning Authority has a duty to consider biodiversity as part of determining a planning application and as no Biodiversity report has been submitted the Local Planning Authority is invited to 'deregister' the application.

The following are additional objections submitted by the residents:

- f) Etwall Lawn is a historic gem in the care of its current owner who should not be allowed to vandalise the site by putting up 4 houses. It would be a modern eyesore on the site of the Old Lawns.
- g) The scale, height and massing of the proposed development would have an adverse impact on surrounding properties. The proposals are not in keeping with the South Derbyshire character as defined in SPG - Housing Layout and Design
- h) There have been numerous 'back garden' developments that have altered the character of the village; in fact the village is becoming unrecognisable. The village must be approaching saturation point in terms of new housing development. However, a need for affordable housing (up to 18 units) in Etwall has been established and Etwall Lawn would be an ideal location to meet this need – to date no such developments have occurred.
- i) The underlying geology of the site and the presence of the trees mean that large amounts of water are taken from the soil. This has caused neighbours to replace

- lawns annually because the lawns will not establish. There is insufficient natural drainage that may lead to an increased risk of flooding.
- j) A footpath should be provided in the same way as required for the development further along Burnaston Lane. This is an unlit lane and lights on it or the access drive could cause detriment to the occupiers of nearby houses; there is currently no footpath on either side of Burnaston Lane.
  - k) The applicant seems to be applying double standards; he should not see the new houses but others should and cause them inconvenience.
  - l) There would be overshadowing, overlooking and loss of privacy to dwellings that have previously enjoyed none of these three elements. There would be overlooking of adjacent dwellings because the houses are so close to the boundary, it would be better to remove the buildings towards Etwall Lawn. This would be exacerbated should any of the boundary trees be removed or pruned. Far from avoiding overlooking, the proposal would result in a mass of windows, walls and tiled roofs directly affecting the houses on Lawn Avenue. These would look directly into the rear patio doors of all the houses on Lawn Avenue. The houses have previously enjoyed a closed site but with the development the rear gardens would be vulnerable to potential wrongdoers.
  - m) Trees and shrubs would be lost as a result of the development. Those retained would compromise the living conditions for future occupiers, giving the occupiers of the new houses a feeling of being cramped
  - n) In addition to the bats, birds, hedgehogs and squirrels have been observed on the site this is their haven in the middle of the village.
  - o) There is insufficient room for refuse vehicles; the County Highway Authority should require safe visibility for traffic using the access. Burnaston Lane is poorly lit at night.
  - p) A previous application for a bungalow was refused which should set a precedent for determining this much more intrusive development.
  - q) The sewers and power supply in Etwall are inadequate.
  - r) Inadequate parking provision is being made. If permitted the construction traffic should not be allowed to park on Lawn Avenue.
  - s) At least one Scots pine tree should be removed as it leans over the neighbour's boundary.
  - t) Noise and traffic fumes would add to the adverse impact of the development.
  - u) The new development could result in a loss in value to other properties whilst the owner would benefit financially.

### **Development Plan Policies**

The relevant policies are:

EMRP: Policies 1, 2, 3, 12 and 27.

Saved Local Plan: Housing Policies 5 and 11, Environment Policies 12 and 13.

### **National Guidance**

PPS1, PPS3, PPS9, PPG13, PPG15 and PPG16.

### **Planning Considerations**

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

- The Development Plan

- Impact on Listed Buildings
- Impact on the Conservation Area
- Traffic and Access Implications
- Planning History
- Nature Conservation and Ecology Issues
- Housing Layout and Design
- Trees and landscaping

## **Planning Assessment**

### The Development Plan

In terms of housing policies, the Development Plan (and national guidance and advice) is supportive of the proposal to reuse a brownfield site within the defined confines of the settlement. However, significant material considerations in this case relate to the proximity of the site to the Etwall Conservation Area and its location within the grounds of Etwall Lawn, a Grade II listed building. There is no impact on the setting of the timber-framed cottage that fronts onto Main Street it being too far away from the proposed development.

### Impact on Listed Buildings and Conservation Area

The Design and Conservation Officer has carefully considered the proposals for any impact on the setting of the listed building and the Conservation Area. The development would be seen at an oblique angle and with partial existing screening. The important open area to the south of the listed building that lies within the Conservation Area would remain open beyond the ha-ha.

This is seen by some of the objectors as the owner benefiting from open views whilst others would suffer a loss of view. There is a difference. No one has the right to a view over the land of others. The applicant in early meetings with Officers discussed the possibility of developing the land south of the ha-ha but was strongly discouraged from pursuing it because of the adverse impact on the setting of the listed building.

However, it is true that the scheme as submitted changes but respects the setting of the listed building albeit that some residents would suffer a loss of outlook.

The objectors have drawn attention to the lack of any review of Conservation Area boundaries and the likelihood of the application site being included within the Conservation Area had such a review been undertaken. Conservation Areas in South Derbyshire have been subject to appraisal over recent years and officers are editing the drafts to report them to Committee prior to publication. Etwall has been subject to one of these appraisals. No alteration to the Conservation Area boundary is proposed but it may be that after public consultation, suggested boundary changes do emerge. However, inclusion within the Conservation Area boundary would not in itself prevent development. In any event the Local Planning Authority has a duty to consider the impact on the Conservation Area even though the application site lies outside its boundary.

It is asserted that the Conservation Area boundary at Etwall Lawn is arbitrary and lacking any physical definition. This is not the case; the ha-ha that follows the east

boundary of the principle garden area of Etwall Lawn defines the boundary. The east boundary of the ha-ha has a substantial yew hedge along its length that encloses the rose garden behind it. It is considered that the boundary to the Conservation Area is logical. The application should be determined in the light of the established Conservation Area boundary.

In terms of the detailed design of the houses, notwithstanding the proximity of listed buildings and the Conservation Area, the Design and Conservation Officer considers that a modern approach using a mix of traditional materials and more modern materials together with a high design standard would provide a more imaginative and contemporary backdrop to Etwall Lawn when viewed from within the Conservation Area on Main Street. The development is considered to complement the setting of the Listed Building and have a beneficial impact on the character and appearance of the Etwall Conservation Area. Subject to the recommended conditions, the proposal is considered acceptable from the Listed Building and Conservation Area point of view.

### Highway Safety Issues

The County Highway Authority (CHA) has required a condition requiring the removal of part of the hedgerow within highway limits on Burnaston Lane to provide a visibility splay towards Main Street. Subject to the recommended conditions, the proposal is considered acceptable from a highway safety point of view. It is unfortunate that the proposed footpath link from the access to Main Street is not now scheduled for this year by the CHA, as it would have provided a more suitable pedestrian link to the village centre. It would be unreasonable to impose a condition requiring this to be provided as part of this development as there is no prospect of the condition being implemented without the co-operation of a third party; it therefore fails the tests that have to be applied when considering a 'Grampian' style condition and furthermore, the CHA does not require it.

### Planning History

In terms of planning history, there is nothing directly relevant in the recent past. There were two applications in the 1970's for houses; one was permitted subject to an agricultural occupancy condition. The other was refused for amongst other reasons, its impact on the setting of the listed building. The design of the refused dwelling did leave something to be desired being a fairly standard bungalow that would have added nothing to the setting of the listed building. However, that did not form part of the reasons for refusal. The issues in this case are set out above and the justification for the recommendation is considered sound in the light of the duty placed on the Council in respect of the Conservation Area and the setting of the listed building for the reasons set out earlier.

### Nature Conservation Issues

In response to the assertion that bats are present in the locality, the applicants were asked to carry out an initial assessment of the likelihood of bats roosting within the site (the presence of bats or other protected species can lead to development being refused). However, English Nature and the Derbyshire Wildlife Trust have both commented that the submissions made are reasonable and that the habitat could be improved with appropriate planting schemes in the development site. A suitable condition is recommended.

## Housing Layout and Design

Objections have been raised to the loss of outlook; privacy and overlooking that would arise from the erection of the dwellings. The finished floor levels proposed would be similar to those of the dwellings on Lawn Avenue but about 1.5 – 2.0 metres higher than the floor levels of houses on Park Way. The closest element in the development to houses on Park Way is single storey. The distances between the dwellings exceed those laid down in the adopted Supplementary Planning Guidance. Although large areas of glazing are proposed, the minimum separation standards are met that together with the mitigation provided by the now protected trees, are in accord with the requirements of Supplementary Planning Guidance.

## Trees and Landscaping

The trees within the application site are an important feature and as such a Tree Preservation Order has been placed on them on the recommendation of the Council's Arboricultural Consultant. Whilst the trees would not completely screen the new houses they would help to mitigate views from the dwellings that bound the site on two sides.

Additional landscaping would further mitigate the impact of the development.

## Conclusion

Having examined all the above considerations it is concluded that this modern development would enhance the character and appearance of the Conservation Area for the reasons set out above without prejudice to the setting of Etwall Lawn; accordingly the following recommendation is considered appropriate.

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

## **Recommendation**

**GRANT** permission subject to the following conditions:

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

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

2. Notwithstanding the originally submitted details, this permission shall relate to the following drawing Nos: 13432OGL REV O (Topographical Survey); 09023(08) 01Rev A, 02 Rev B, 03 Rev A, 04 Rev B (including finished floor levels), 05 Rev B, 06 Rev B, 07 Rev A, 08 Rev A, 09 Rev A, 10, 11 Rev A. The development shall also be undertaken in accordance with the amended Tree Report received on 2 February 2010

Reason: For the avoidance of doubt.



3. Notwithstanding the submitted details no part of the development shall be carried out until samples of the facing materials to be used in the execution of the works have been submitted to and approved in writing by the Local Planning Authority. The agreed materials shall then be used in the development hereby approved.

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

4. Large scale drawings to a minimum scale of 1:10 of eaves, verges, dormer window construction and external joinery, including horizontal and vertical sections, precise construction method of opening and cill and lintel details shall be submitted to and approved in writing by the Local Planning Authority before building work starts the submitted details shall be generally in accordance with the descriptions contained in the additional Appendix 7.2 to the Design and Access Statement received on 2 February 2010. The details shall be constructed in accordance with the approved drawings.

Reason: The details submitted are inadequate to determine whether the appearance of the building would be acceptable.

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

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

6. Notwithstanding any details submitted, 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 fences to be erected. The boundary fences 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.

7. No part of the development shall be carried out until precise details including paving patterns, specifications and samples of the materials to be used in the hard landscaping works have been submitted to and approved in writing by the Local Planning Authority. The works shall be carried out in accordance with the approved details prior to the occupation of any part of the development or in accordance with a programme agreed with the Local Planning Authority.

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

8. Notwithstanding the submitted details no development shall take place until there has been submitted to and approved by the Local Planning Authority a scheme of landscaping, which shall include indications of all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection in the course of development. The submitted scheme shall include details of plants that are likely to increase foraging opportunities for bats that may roost in the vicinity of the site. The works shall be carried out in accordance with the approved details prior to the occupation of any part of the development or in accordance with a programme agreed with the Local Planning Authority.

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

9. 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.

10. Prior to the commencement of building operations on adjoining areas, the boundary with the area of protected trees shall be fenced with steel mesh fencing to 2.3m high supported by steel scaffold poles staked at 3 metre centres in the areas indicated on Drawing M34.09 Etwall Figure:01 Revision B received on 2 February 2010. The fencing shall be retained in position until all building works on adjoining areas have been completed within the plot where the fencing has been erected.

Reason: To protect the trees from undue disturbance

11. All boundary walls shall have a traditional style of shaped clay or stone coping the details including a sample of which shall have been previously agreed in writing by the Local Planning Authority

Reason: In the interests of the character of the area that abuts a designated Conservation Area.

12. Unless otherwise agreed in writing with the local planning authority, external joinery shall be in timber and painted to a colour and specification which shall have been previously agreed in writing by the Local Planning Authority. External joinery shall be in timber and painted to a colour and specification which shall have been previously agreed in writing by the Local Planning Authority. The joinery shall be painted in accordance with the agreed details within three months of the date of completion of the development unless otherwise agreed in writing by the Local Planning Authority.

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

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

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

14. Gutters and downpipes shall have a black finish, unless otherwise agreed in writing with the local planning authority.

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

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

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

16. A sample panel of pointed brickwork 1 metre square or such other area as may be agreed by the Local Planning Authority shall be prepared for inspection and approval in writing by the Local Planning Authority before the work is generally executed.

Reason: In the interests of the appearance of the buildings and the locality generally.

17. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008, the dwelling hereby permitted shall not be altered, enlarged or extended, no satellite dishes shall be affixed to the dwelling 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.

18. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995, there shall be no external alterations, including the insertion of new windows, to the buildings other than as approved under this permission.

Reason: In the interests of preserving the setting of the building and the character of the area.

19. Before any other operations are commenced, the vegetation obstructing visibility to the west of the site access shall be cut back as illustrated on drawing no. 09023 (sk) 03 rev A, to the satisfaction of the local planning authority, and the area in front of the visibility sight line illustrated on the plan shall thereafter be maintained clear of any obstruction to visibility, save for the retained tree.

Reason: In the interests of highway safety.

20. Before any other operations are commenced (excluding demolition/ site clearance), space shall be provided within the site curtilage for 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 to be submitted in advance to the Local Planning Authority for written approval and maintained throughout the contract period in accordance with the approved designs free from any impediment to its designated use.

Reason: In order to ensure that building operations and construction staff parking is available clear of the highway in the interests of highway safety.

21. The premises, the subject of the application, shall not be occupied until space has been provided within the application site in accordance with the application drawings for the parking and manoeuvring of residents vehicles, laid out,

surfaced and maintained throughout the life of the development free from any impediment to its designated use.

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

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

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

**Item**            1.3

**Reg. No.**        9/2009/1017/MRF

**Applicant:**  
Mr Andrew Hine  
George LB  
Clifton Square  
Clifton Street  
Alderley Edge

**Agent:**  
Mr Phil Clay  
FJ Architects Ltd  
Southgate House  
Southgate  
Wakefield

**Proposal:**        **The Demolition Of The Existing Food Retail Unit And  
The Construction Of A Retirement Apartment Complex  
Comprising 60 Apartments, A Warden's Apartment And  
Communal Facilities Together With Associated Car  
Parking/Communal Gardens At Kwik Save Alexandra  
Road Swadlincote**

**Ward:**            **Swadlincote**

**Valid Date:**     **14/12/2009**

**Reason for committee determination**

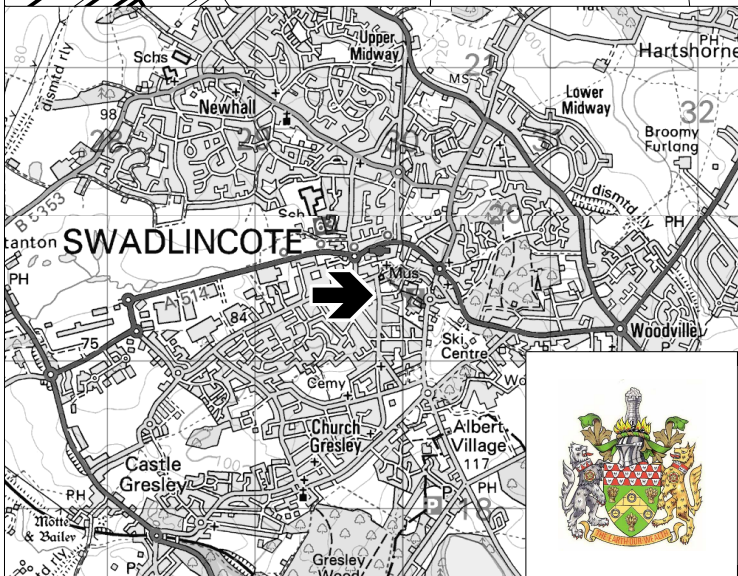
The application is brought before the Committee as this is a major application that has attracted more than two letters of objection.

**Site Description**

This 0.57 hectare site is located to the south west of Swadlincote town centre on Alexandra Road. There is an existing single storey flat roof former Kwik Save building in the northern part of the site with an access road adjacent to the row of shops on the northern boundary of the site. The car park covers the remainder of the site and there is shrub land adjacent to parts of the western boundary. There is a single storey office building adjacent to the southern boundary, residential properties to the west and north west and a row of shops to the north. Sharpes Museum is to the north east and there is a public long-stay car park opposite. The Swadlincote Conservation Area boundary adjoins the site to the north, east and south (although the site is not within it).

There are twenty four trees on the site, the majority of which are adjacent to the northern and south western boundaries. There are two mature False Acacia trees on the site frontage. The land levels of the site reduce to the north with the southern boundary being four metres higher than that of the northern boundary.

9/2009/1017 - Kwik Save, Alexandra Road, Swadlincote DE11 9AZ



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## **Proposal**

Planning permission is sought for the replacement of the Kwik Save building with a retirement apartment complex of 61 apartments. This comprises of 52 one bedroom apartments and 9 two bedroom apartments including a two bedroom apartment for a warden. The building would be predominately two storey with rooms in the roofspace of the central section on Alexandra Road. The complex would be a 'U' shape with an enclosed garden area to the west. The access road would be adjacent to the northern boundary and the car park to the west, where 20 spaces are proposed with four disabled spaces.

The building would have 35 degree gable roof pitch which would step down in sections as the land levels reduce to the north. The building would be hard up to the footpath and the frontage onto Alexandra Road would appear as a residential terrace to reflect the character of properties to the south on Alexandra Road. A gable end would be visible from the south and the mass of the roof is reduced by a lower section which links to a further section of what appear to be a row of terrace properties adjacent to the southern boundary. The elevations are further broken up and appear individual sections by the use of variable vertical cladding features that frame the windows.

The north eastern corner of the building would have a chamfered edge with a large section of curtain walling framed by timber cladding. The roof would overhang this section, supported by steel supports. This corner section would provide communal space for the residents. The ground floor frontage onto Alexandra Road would comprise staff facilities, a warden's office and communal space. The main entrance would be on Alexandra Road and residents have access points either directly from their apartments along the southern boundary or communal access points to the garden and car park to the west. The proposed building heights on the Alexandra Road frontage are an eaves height of 6m and a ridge height of 9 m.

## **Applicants' supporting information**

### Design and Access Statement

This document includes the background to the scheme, existing context, policy, concept, layout, amount, scale, appearance, materials, landscaping and accessibility. The site was acquired by the applicant 3 years ago and in that time the site has been marketed for retail use for 2 years with no interest. Alternative uses were then explored and due to the demand for sheltered accommodation in the Swadlincote area this proposal was progressed. The proposal is a result of lengthy discussions with the Local Authority and the concept section outlines the approach taken to reduce the overall mass of the building and break the building up into sections. The layout with the building close to the footpath edge responds to the character of Alexandra Road and the scale is consistent with neighbouring properties and the land level differences. The amount of accommodation is based on market research for retirement complexes for private operators as no end user has come forward at present with a definite interest. Overall the appearance of the building is a residential scale. Materials proposed are red brick, slate roof with sections of timber cladding and render. Pedestrian links to the town centre are good and it is anticipated that a high number of residents would walk or travel by bus.

### Arboricultural Report

This report assesses the 24 trees on site. The two mature False Acacia trees on the site frontage are classed as category B – retention desirable. However, the loss of these specimens can be compensated by a proposed landscaping scheme which incorporates 15 new trees. Three trees on the south and south west boundary require removal due to arboricultural reasons.

#### Additional information on the type of residents and their likely parking needs

The accommodation proposed is described as Category II Sheltered Housing which is defined as “*grouped flatlets to meet the needs of the less active elderly people*”. The age of residents would be restricted to 60 years of age or over, except that where that resident over the age of 60 has a partner of 55 years of age or over, this partner may also occupy an apartment. This can be restricted by a planning condition. However, surveys have found that the average age of entry to such developments was 75 years and 6 months. Obviously, as time passes the average age of residents will increase. A study in relation to car ownership in this type of development shows that in the lower age group of 55-60 car ownership is 80% but this steadily declines as the ages of residents increase. Given the age profile of residents, very few would be in the youngest age group and the majority would be over the age of 75 and would have a relatively low car ownership level. This survey also found that 18% of residents gave up car ownership in the same year they entered sheltered housing. The rate of giving up car ownership was also above average in years immediately before and after entering this form of housing. Another factor is that 75% of residents were female. There is a tendency for women to have a lower car ownership and to give up car ownership at an earlier age.

Planning Policy Guidance 13: ‘Transport’ and Planning and Policy Statement 3 ‘Housing’ both advocate reducing reliance on the private car through maximum car parking standards.

PPG13 Paragraph 6 advises local authorities that they should:-

*“use parking policies, alongside other planning and transport measures, to promote sustainable transport choices and reduce reliance on the car for work and other journeys;”*

PPG 13 Paragraph 17 states that local authorities:-

*“should revise their parking standards to allow for significantly lower levels of off-street parking provision, particularly for developments in locations, such as town centres, where services are readily accessible by walking, cycling or public transport”.*

The survey includes information on car ownership from 78 similar developments opened from 2000 to 2004. It found that the maximum provision where there is high levels of accessibility to shops, services and public transport would be 0.19 spaces per 1 bedroom apartment and 0.34 spaces for two bedroom apartments. Spaces are not allocated but used on a first come first serve basis. Normal practice is to provide 3-4 spaces for use by essential maintenance staff and emergency medical visitors. The house manager would need a space and visitor spaces would be based on 0.1 spaces per apartment. These developments in general, however, do not provide visitor parking. Each development has “Strategies” to encourage other modes of transport which is distributed to residents and is similar to policies advocated in travel plans.



The proposed complex would have one member of staff who would be on site 24 hours a day living in the warden's apartment. Residents would be owner occupiers who are capable of looking after themselves with no additional assistance from nurses / carers. The facilities within the complex include:

- Residents lounge with simple kitchen for tea making for residents to socialise,
- Warden's office
- Guest suite for visiting family for those residents whose apartments are fully occupied.
- Self service laundry room
- Charging station for mobility scooters
- Emergency call points

### **Planning History**

All relating to the former supermarket and therefore not directly relevant.

### **Responses to Consultations**

The Land Contamination Officer recommends a phased contamination condition be attached to any permission due to the potential for unknown filled ground associated with past quarrying.

The Highway Authority requires one parking space per three apartments and additional parking would be required for staff. An amended plan has been produced to accommodate these additional spaces. The access to the apartment complex for refuse collection, servicing, and removals vehicles is considered acceptable. Conditions relating to provision of a site compound, prevention of mud on the highway, the access and closure of the southern access to the existing car park and the laying out of the car park.

The Police Crime Prevention Design Advisor states that the land has a well defined boundary which can be fully secured. The building block fronts the road adding surveillance and activity. It is a good safe simple layout with inner courtyards and rear parking. However, there is a concern regarding the lack of defensible space to the front especially with low level windows which some shown on the elevation drawings at lower leg level. These can be easily kicked and be subject to constant damage and nuisance. This could also have concerns for the personal privacy of pedestrians. Sections of blank brick wall also face the road and could be subject to graffiti. This is a well used route for youngsters accessing the nearby Leisure Centre where nuisance and congregation by youths is a constant problem. At least a 1m setback is required to avoid all of these issues and to provide necessary protection to the building and privacy for all. This space should be defined with low walls/railings as is the local context of existing residential properties fronting main roads in Swadlincote. With low level planting the defensible space could add quality, green up and improve the built environment in this Industrial street scene whilst providing safety, privacy and security.

Severn Trent Water has no objection subject to a drainage condition.

### **Responses to Publicity**

Three letters of objection have been received from businesses on West Street and Alexandra Road and a residential property on West Street. Objections are summarised as follows:

- a) 45 West Street is 8 ft lower than the proposed complex and the proposed building extends significantly past the boundaries of the existing Kwik Save store.
- b) Loss of privacy as proposed windows on the northern elevation would overlook their bedrooms and living room.
- c) The proposed building would overshadow their property due to the land level difference and would appear 3 storey from their property.
- d) There are time restrictions on the current service road and it is proposed as the main access which would cause noise and pollution at unreasonable hours.
- e) Due to the close proximity of their property to the boundary the same consideration in terms of separation distance and scale should be afforded to their property.
- f) The rear boundary wall of their property has been damaged in the past by service vehicles.
- g) The site has in the past been a hotspot for unsociable youth activity and as such a gate and CCTV should be considered.
- h) Proposed tree planting on the north western boundary may cause damage to the boundary wall.
- i) There is a safety concern for drivers turning right exiting the site due to the steep gradient and it is directly opposite the car park where ambulances enter the road.
- j) The scale of the proposal is considered excessive.
- k) The site has a 1m higher land level than properties on West Street.
- l) There is land between 51 West Street and the Kwik Save site of unknown ownership.
- m) 51 West Street have maintained a hedge on the boundary for 30 years and want it to be retained.
- n) Their property would be overlooked by the car park and require a 2 m wall to be built on the boundary.
- o) Hours of construction and deliveries should be controlled to minimise noise nuisance to residents.
- p) The application site was previously a Clay pit and in 1994 Kwik Save applied for an extension where it was concluded that the land was unstable. In 1995 a section of the access road collapsed.
- q) The building would be closer to the road frontage and higher (three storeys) than any building in the immediate location.
- r) The building is out of character with this open section of Alexandra Road.
- s) The building control line should be adhered to and the landscaping on the frontage retained.
- t) The building would restrict the view of the shop units and the loss of a retail site would downgrade the shops to a backwater location.
- u) The car parking provision of 16 spaces for 62 apartments is not sufficient and may result in congestion and on street parking.
- v) There is a safety concern for pedestrians crossing Alexandra Road.

### **Development Plan Policies**

The relevant policies are:

East Midlands Regional Plan : 2, 3, 12, 48

Local Plan: Housing Policies 4 and 11, Community Facilities Policy 1, Transport Policy 6.

## **National Guidance**

PPS1, PPS3, PPS15.

## **Planning Considerations**

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

- The principle of development
- Design, scale and mass
- Highways Issues
- Trees and landscaping
- Residential amenity

## **Planning Assessment**

### The principle of development

The proposed site is classed as an edge of centre site in terms of retail development. The Council's Retail and Leisure Study Sept 2005 concluded that Swadlincote has a good provision of food stores. The site has been marketed for retail use for 2 years with no interest.

Residential development in this sustainable location (being well within the Swadlincote urban area) within close proximity to the town centre which is substantially surrounded by development is considered acceptable in principle.

### Design, Scale and Mass

The proposed scheme for apartments is a result of extensive and lengthy pre-application discussions between the Architects and the Council's Planners, Design and Conservation Officer and Design Excellence Officer over two years.

The building is close to the Alexandra Road frontage at the request of officers as this is considered a characteristic of streetscene of Alexandra Road to the south with terraced properties tight up the footpath. Key design principles were to break up the building into individual elements accentuated by the stepping down of ridge heights as the land levels decrease to the north and the different set backs from the footway. Further features to provide more emphasis of this theme were requested during the application process. Thus, amended plans indicate only vertical timber cladding and grouping of the windows to ensure that the building appears as individual terraced properties rather than a large mass of building. The majority of the building is two storey, however, the roof space within the centre section fronting Alexandra Road would also be utilised.

The southern elevation of the building originally showed two gable ends, however, it was considered that this mass would appear dominant and out of keeping with the scale of existing buildings in the street. Amended plans indicate one gable then a lower link section to reduce the mass and scale and improve the appearance consistent with other single gables in the street. This elevation would now read as a gable which is linked to

another terrace of properties running parallel with the southern boundary and reading as a separate street at right angles to Alexandra Road.

The north eastern corner of the building is particularly important due to its proximity to Sharpes Pottery and its need to address the street and links to the town centre from West Street. A chamfered edge with a large section of curtain walling framed by timber cladding is proposed with an overhanging hipped roof, supported by steel supports. This large glazed area provides an active frontage in the streetscene with a communal area for residents on the ground floor and a living area above. The building would be two storey in this area with a ridge height only 3.4m higher than the adjacent shop units. The main entrance to the building would be emphasised by sections of render and double height glazing which projects beyond the main wall of the building. This would create activity in the street and encourage residents and visitors to walk to and from the town centre.

Overall, the design is considered to be in keeping with the character of Alexandra Road and the adjacent Conservation Area. High quality materials would be secured by condition.

### Highways Issues

The County Highways Authority requested more detail as to the provision of facilities for residents, levels of care, staff numbers in order to determine the parking provision. The applicant has confirmed that an end service provider has not been secured at this time, however, details of similar schemes in the country have been provided to inform the decision. The apartments would be for elderly residents (aged 60 plus) who wish to remain independent. The large majority of residents would not therefore have a private car and due to the close proximity to the town centre would either walk or travel by bus to and from the site. A condition restricting the age of residents would be attached to any permission.

The survey found that the maximum car parking provision where there is high levels of accessibility to shops, services and public transport would be 0.19 spaces per 1 bedroom apartment and 0.34 spaces for two bedroom apartments. The Highway Authority has confirmed that 1 space per 3 apartments is required which equates to 20.3 spaces. 20 spaces have been provided a therefore a further two spaces are required for staff parking and an amended plan now shows the requisite 22 spaces.

### Trees and Landscaping

A detailed survey of the trees on site has been undertaken and the majority are to be retained. The Council's Arboricultural Consultant considers the Arboricultural Report to be acceptable. However, due to the request of officers to locate the building close to the footpath, two mature trees would be lost on the site frontage. This is regrettable but the survey indicates that an additional 15 trees would be planted as part of the site's landscaping scheme. The compromise between the ensuring the building respected the character of Alexandra Road and the loss of the trees had to be made and the former is considered to outweigh the latter. A landscaping scheme would be secured by condition.

### Residential Amenity

There are residential properties adjacent to the north western and western boundaries of the street. No's 45 and 51 West Street are adjacent to the north western boundary and a new development of terraced properties accessed off Stanhope Road are adjacent to the south western boundary.

No. 45 West Street is a detached property set back from the West Street frontage to the rear of 37-41 West Street. This property has an approximately 2m lower land level than the site and its rear boundary has a 2m high block work wall. There are two patio doors and a window serving the lounge on the ground floor rear elevation of the property with two bedroom windows at first floor level. The eastern elevation has a secondary lounge window and a bedroom window above.

A detailed assessment of the relationship of the scheme with this property has been undertaken. As the Council's space standards could not be met, amendments were requested which resulted in moving the two nearest ground floor and first floor bedroom windows on the nearest part of the building around the corner to the western elevation to prevent any overlooking. The new window position would not afford a view into any of the rear windows of this property due to the 45° angle taken from the centre of the window not cutting the property. The adjacent window on the ground and first floor of the nearest apartment serving kitchen areas is also slightly below the space standards and as such a condition requiring these windows to be obscure glazed is considered necessary to protect the privacy of No 45 West Street. In relation to overshadowing, the sectional drawing provided indicates that a two-storey element at the rear would be some 14m from the nearest main habitable room window on No 45. The SPG guidance would suggest a minimum distance nearer 14.4m. However, this must be considered with other factors. The rear of the property is already overshadowed to some extent by the 2m block wall, which is at the land level of the application site, and existing trees within the garden area. This in combination with such a marginal shortfall would not amount to such a significant detriment to amenity that would justify moving the building further away.

The new residential properties with access from Stanhope Road are set at angle with the western boundary of the site. The land level of these properties decrease slightly to the north west. Two bedroom windows are proposed on the ground and first floor of the nearest western elevation. Window to window distances are 21m and above, which is in accordance with Council guidance.

#### Other issues raised by objections / Consultations

Damage to boundary walls, land ownership and boundary disputes are not material planning matters, however, the grant of planning permission does not override these legal issues. The landscaping scheme secured by condition shall ensure suitable species are proposed which do not cause stability issues for boundary walls. Boundary treatments will be controlled by condition. A condition requiring the scheme of crime preventions measures to be submitted would be attached to any permission. Hours of construction and deliveries would be controlled by condition to minimise noise nuisance to residents. A contaminated land condition would ensure that the land is suitable for the proposed use and building regulations ensure the building is safe. The loss of view of the shop units due to the position of the building and loss of adjacent retail use having an impact on the adjacent businesses are not planning matters which weigh significantly when assessed against the main issues.

The Police Crime Prevention Design Advisor comments in relation to provision of defensible space on Alexandra Road is noted, however, a compromise to achieve a building that reflects the character of the existing streetscene of Alexandra Road and does not have an adverse impact on the adjacent Conservation Area had to be made. Potential vandalism of the windows and walls at ground floor level would be dealt with by the management of the complex and suitable measures could be undertaken to address this issue if it arises.

### Conclusion

The principle of residential development is considered acceptable in this sustainable location surrounded by existing residential properties. The design, scale and mass is considered to sufficiently reflect the character of Alexandra Road and would therefore offer an enhancement to the adjoining Conservation Area. Highways issues have been addressed and conditions are recommended. The residential amenity of neighbouring properties would not be significantly affected due to amendments made. The majority of existing trees shall be retained and a suitable landscaping scheme secured by a condition. The proposal therefore accords with the above mentioned policies.

### **Recommendation**

Subject to the expiration of the amended plan consultation period to delegate the Head of Planning Services powers to deal with any representations received, to **GRANT** permission subject to the following conditions:

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

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

2. No part of the development shall be carried out until precise details, specifications and, where necessary, samples of the facing materials to be used in the construction of the external walls and roof of the building have been submitted to and approved in writing by the Local Planning Authority. The work shall be carried out in accordance with the approved details.

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

3. No development shall take place until construction details of the chamfered roof section have been submitted and approved in writing by the Local Planning Authority and the development shall be built in accordance with these agreed details.

Reason: To ensure the visual amenity of this element of the scheme.

4. The kitchen windows on the ground and first floor in the northern wall of the building annotated on plan No. A (10) -05 Rev B shall be permanently glazed in obscure glass.

Reason: To avoid overlooking of adjoining property in the interest of protecting privacy.

5. A) The development shall not be commenced until a scheme to identify and control any contamination of land, or pollution of controlled waters has been

submitted to, and approved in writing by, the local planning authority (LPA); and until the measures approved in that scheme have been implemented. The scheme shall include all of the measures (phases I to III) detailed in Box 1 of section 3.1 the South Derbyshire District Council document 'Guidance on submitting planning applications for land that may be contaminated', unless the LPA dispenses with any such requirement specifically and in writing.

B) Prior to occupation of the development (or parts thereof) an independent verification report shall be submitted, which meets the requirements given in Box 2 of section 3.1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.

C) In the event that it is proposed to import soil onto site in connection with the development, this shall be done to comply with the specifications given in Box 3 of section 3.1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.

D) No development shall take place until monitoring at the site for the presence of ground/landfill gas and a subsequent risk assessment has been completed in accordance with a scheme to be agreed with the LPA, which meets the requirements given in Box 4, section 3,1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.

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

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 shall take place until details of a scheme for the disposal of surface and foul water have been submitted to and agreed in writing by the Local Planning Authority. The scheme shall be carried out in conformity with the details which have been agreed before the development is first brought into use.

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

8. Notwithstanding the originally submitted details, this permission shall relate to the amended drawing no's A (00)-01 A, A (00)-02 A, A (10) -00 C, A (10)-01 B, A (10)-02 B, A (10)-03 B, A (10)-04 B, A (10)-05 B, A (10)-06 B, A (10)-07 B, A (10)-09 and A (10)-10.

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

9. 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.

10. Large scale drawings to a minimum Scale of 1:10 of eaves and verges and external joinery, including horizontal and vertical sections, precise construction method of opening and cill and lintel details shall be submitted to and approved in writing by the Local Planning Authority before building work starts. The eaves and verges and external joinery shall be constructed in accordance with the approved drawings.

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

11. Prior to commencement of development further details of the gutters and downpipes shall be submitted and agreed in writing by the Local Planning Authority and constructed in accordance with the approved drawings.

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

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

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

13. 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.

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

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

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



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

16. Hours of construction shall be restricted to 0800 to 1700 Monday to Friday and 0800 to 1230 on Saturdays. No work shall be carried out on Sundays or Bank Holidays.

Reason : To preserve the amenities of adjacent residential properties.

17. Before any other operations are commenced (excluding demolition/ site clearance), space shall be provided within the site curtilage for storage of plant and materials, site accommodation, loading and unloading of goods vehicles, parking and manoeuvring of site operatives and visitors vehicles, all laid out and constructed in accordance with detailed designs first submitted to and approved in writing by the Local Planning Authority, and maintained throughout the construction period in accordance with the approved designs free from any impediment to its designated use.

Reason: In the interests of highway safety.

18. Before any of the operations hereby approved are commenced facilities shall be provided as agreed in writing with the Local Planning Authority to prevent the deposition of extraneous material on the public highway and shall be maintained throughout the construction period.

Reason: In the interests of highway safety.

19. Before any other operations are commenced, the existing access to Alexandra Road shall be modified in accordance with the amended application drawing A (10)-00 C, laid out, constructed in accordance with a scheme first submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of highway safety.

20. Before any other operations are commenced (excluding creation of the revised access, the subject of the previous condition above), the existing southern vehicular access to Alexandra Road shall be permanently closed with a physical barrier and the existing vehicle crossover reinstated as kerbed footway in a manner to be agreed in writing with the Local Planning Authority in consultation with the County Highway Authority.

Reason: In the interests of highway safety.

21. Residential units shall not be occupied until space has been provided within the application site in accordance with the revised application drawing A(10)-00 C for the parking of residents and staff vehicles, laid out, surfaced and maintained throughout the life of the development free from any impediment to its designated use.

Reason: In the interests of highway safety.

22. The development hereby permitted shall only be occupied by persons where at least one member of the household is aged 60 years or over (the qualifying age) save that such restriction shall not apply to the continued occupation of any of the apartments by a surviving spouse, partner or member of the household under

the qualifying age after the death of the member of the household who was of the qualifying age.

Reason :To ensure the parking provision meets the requirements of the development.

23. The area set aside for service / refuse collection / removals vehicles shown on plan No. A (10)-10 shall be reserved for this purpose in perpetuity free from any impediment to its designated use.

Reason: In the interests of highway safety.

#### Informatives:

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

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

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

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

**Item**            **1.4**

**Reg. No.**        **9/2009/1026/FX**

**Applicant:**

Mr R G Beeston  
R G Beeston Developments  
152 Marlborough Way  
Ashby-de-la-Zouch  
Leicester

**Agent:**

Matt King  
Making Plans  
5 Twyford Road  
Willington

**Proposal:**        **The Change Of Use And Conversion Of The Public  
House Into Five Apartments And The Erection Of Three  
Dwellings At The Barley Mow Park Road Church  
Gresley Swadlincote**

**Ward:**            **Church Gresley**

**Valid Date:**     **14/12/2009**

**Reason for committee determination**

The application is brought before the Committee at the request of Cllr Southerd as local concern has been expressed about a particular issue and there are unusual site circumstances that should be considered by Committee.

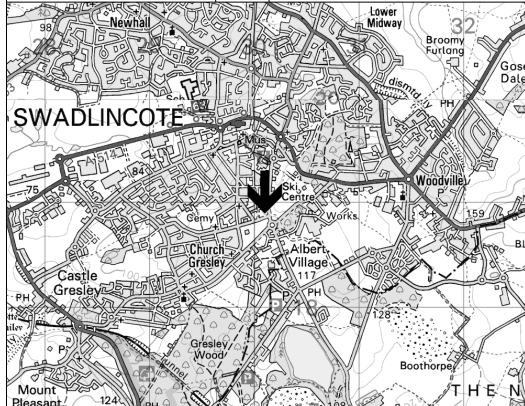
**Site Description**

This 808 square metre site is located on the corner of Coppice Side and Park Road in Church Gresley. There is a two storey vacant public house right on the corner with its main elevation facing south east. There is a single storey outbuilding adjacent to the northern boundary and an enclosed overgrown garden area to the west which has a 0.5m higher land level than the existing buildings to the east. A modern detached property is adjacent to the northern boundary and a pair of semi-detached dwellings to the west which have a higher land level than the site.

**Proposal**

Planning permission is sought for conversion of the existing public house and out building into four 2 bed apartments and one 1 bed apartment and the erection of three 3 bed town houses. The external changes to the public house involve removal of the existing porch and insertion of a new window in this area on the front elevation adjacent to Park Road. The three dwellings would be erected to the west of the public house on the overgrown enclosed garden area. Fourteen parking spaces are also shown.

9/2009/1026 - Barley Mow, Park Road, Church Gresley DE11 9QE



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## **Applicants' supporting information**

The Design and Access Statement detail the pre-application process undertaken, the proposed use, amount of development, the layout, scale, landscaping, appearance and access.

A letter from the applicant providing justification for loss of the public house has been received. It states that the site was purchased from Enterprise Inns as the public house had been empty for 12 months and numerous previous tenants were unable to make it a viable business. Prior to the site being purchased by the applicant a pub group were interested in this public house and several other pubs in the area, however, this offer was withdrawn due to the decline in the industry. The decline is evident with the Snooty Fox and Chesterfield public houses being demolished for houses and many other pubs boarded up.

## **Planning History**

9/1991/1020 – Erection of detached dwelling on land to the north of the Barley Mow, Granted 12/4/91

9/1989/0034 – Outline – One dwelling on land to the north of the Barley Mow, Granted 17/5/89

## **Responses to Consultations**

The County Highway Authority states that it considers it unlikely that the proposed development would generate more vehicle movements or create a greater demand for parking relative to those that would be potentially generated by the existing use. On this basis it raises no objections. An amended plan has been received to indicate 13 useable parking spaces which equates to 2 spaces per house and 1 for each apartment plus 2 visitor spaces; therefore no objection is raised subject to a condition requiring the parking areas to be laid out.

Severn Trent Water has no objection subject to a drainage condition

The Contaminated Land Officer recommends a phased condition.

Derbyshire County Education Authority does not have a requirement for education contributions.

## **Responses to Publicity**

One letter of objection has been received from a property on Park Road which states that as they were not consulted could the determination date be extended for them to comment further and consult Local Members. Their main objection is increased traffic on the unadopted Park Road and conditions should be attached that any damage to the road by construction traffic should be repaired in order for the road to be adopted in the future.

## **Development Plan Policies**

The relevant policies are:

EMRP: 2, 3, 12, 48

Saved Local Plan: Environment 10, Housing 4 and 11 and Transport 6

## **National Guidance**

PPS1, PPS3, PPS4

## **Planning Considerations**

The main issues to be considered are:-

- Principle of development
- Residential Amenity
- Design
- Highways Issues

## **Planning Assessment**

### The Principle of Development

The site is located within the urban area of Swadlincote and within an established residential area; therefore residential development in principle is acceptable. The Public House has been vacant for 12 months and due to its proximity to the town centre it's loss is not considered to be significant. Policy EC4 of PPS 4 states that Local Planning Authorities should encourage a diverse range of complementary evening and night time uses in town centres. However, this application relates to an isolated public house outside the town centre in a predominately residential area which does not relate to the aims of this policy. Policies seeking to retain public houses relate to locations in local centres and villages and not main urban areas. Therefore there is no local or national policy that would support a reason for refusal on these grounds.

### Residential Amenity

The nearest dwellings to the site are to the north east (No.143 Coppice Side) and to the west (3 Park Lane). No. 143 Coppice Side has its rear elevation facing west and taking a 45° angle from the middle of this property's first floor bedroom window it would meet the last dwelling's lounge and first floor bedroom window at a distance of 17.5m. The Council's standard for this relationship is 15 metres; therefore there would not be a significant overlooking impact in relation to this existing dwelling. The northern boundary is screened 1.8 m fence with a 3m conifer hedge behind and thus overlooking at ground floor level is not possible. Overshadowing would not be significant as the properties would be 11m away and main room windows on 143 Coppice Side are on the western elevation. There is also a 6m tree in the north western corner of the site which is over the boundary. The nearest property is 6.5m from this tree and therefore on the advice of the Council's consultant arboriculturist a condition requiring protection during construction of its root protection area is necessary.

No. 3 Park Lane has its gable end 3.5 m from the western boundary and it has one secondary window on the ground floor. This property has a two storey rear extension and there are no windows in the elevation facing the site. On this boundary there is a fence and some hedge planting with a 2.5m high wall running from the centre of the gable and connecting with an existing garage / outbuilding to the rear. A blank gable

wall is proposed at a slight angle with this wall at a distance of 1-1.5m. The proposed properties would be set 2.5m back from the semi-detached pair of 3 and 5 Park Road which is similar to the existing public house's set back from the road. Overshadowing of No. 3 Park Road would not be significant, as the property does not have any main room windows on the eastern elevation.

The relationship between the proposed apartments is constrained slightly due to the conversion of the proposed outbuilding adjacent to the northern boundary. This apartment would have its fully glazed main living area and kitchen window on the southern elevation facing the main public house building. Therefore, there would be kitchen window, bathroom and landing window opposite at ground floor level at a distance of 6.5 - 6.7m. To ensure this apartment has a reasonable level of amenity a condition requiring these ground floor windows on the southern elevation of the existing public house building to be obscure glazed is considered necessary. First floor windows are not a concern due to the angle. The relationship between kitchen window of this one bed apartment and the kitchen window of Flat No.2 is also a concern at a distance of 2.5m. An amendment to move the window of Flat No. 2 to the southern elevation adjacent to the entrance to this flat has been secured to provide for reasonable amenity.

Rear garden lengths range from 6.7 – 9 metres and are not significantly overlooked by existing properties, which is considered to provide reasonable amenity. However, due to their size and proximity to the rear No.143 Coppice Side it is considered that permitted development rights for extensions and curtilage buildings should be removed by condition.

### Design

In relation to the design of the three town houses, they are two and a half storey properties with an eaves height of 5.3m rising to a ridge of 9m. This ridge height is only 200mm higher than that of the public house and as land levels increase slightly to the west this is considered acceptable. However, the houses to the west would still be higher and a finished floor level condition for the proposed dwellings would ensure they fit into the streetscene of Park Road. Overall the design of the dwellings is considered to be in keeping with the streetscene and they would not appear intrusive or dominant. External materials would be controlled by condition.

### Highways Issues

On the advice of the Highway Authority, the scheme would not cause any undue harm to highway safety. In its response it does acknowledge that the visibility in the non-critical direction when leaving Park Road is limited due to the position of the existing public house on the corner. However, on balance the proposed use is unlikely to generate more vehicle movements than those which could potentially be generated by the existing use of the site.

### Other issues raised by the objections

Neighbouring properties within 4 metres of the site boundary were consulted in line with Council Policy and a non-statutory site notice placed on Coppice Side near the site. Damage to the unadopted Park Road is a legal matter and is not within the remit of planning. However, an informative indicating that any damage during construction may affect the future adoption of the road is recommended.



## Recommendation

That subject to the receipt of a signed unilateral undertaking for the provision of £6,324 for open space, £3,740 for outdoor facilities and £2,074 for built facilities (Total open space contribution £12,138), £9,918 for healthcare provision; **GRANT** permission subject to the following conditions:

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

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

2. No part of the development shall be carried out until precise details, specifications and, where necessary, samples of the facing materials to be used in the construction of the external walls and roof of the 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 appearance of the existing building and the locality generally.

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

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

4. Prior to the occupation of the first dwelling, the car parking space shall be laid out in accordance with the amended application drawing No. J1405/4 Rev B and maintained thereafter free of any impediment to its designated use.

Reason: In the interests of highway safety.

5. 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.

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

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

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

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

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

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

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

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. Notwithstanding the originally submitted details, this permission shall relate to the amended drawing nos. J1405/4 Rev B and J1405/5 Rev C, J1405/6 and J1405/7.

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

11. The ground and first floor windows in the north western wall of the existing public house building shall be permanently glazed in obscure glass.

Reason: To avoid overlooking of the adjoining apartment in the interest of protecting privacy.

12. 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.

13. Prior to the development hereby approved commencing, 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.

14. Gutters and downpipes shall have a black finish and be fixed direct to the brickwork on metal brackets. No fascia boards shall be used unless previously agreed in writing by the Local Planning Authority.

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

#### Informatives:

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

Applicants must take account of these hazards which could affect stability, health & safety, or cause adverse environmental impacts during the carrying out their proposals and must seek specialist advice where required. Additional hazards or stability issues may arise from development on or adjacent to restored opencast sites or quarries and former colliery spoil tips. Potential hazards or impacts may not necessarily be confined to the development site, and Applicants must take advice and introduce appropriate measures to address risks both within and beyond the development site. As an example the stabilisation of shallow coal workings by grouting may affect, block or divert underground pathways for water or gas. In coal mining areas there is the potential for existing property and new development to be affected by mine gases, and this must be considered by each developer. Gas prevention measures must be adopted during

construction where there is such a risk. The investigation of sites through drilling alone has the potential to displace underground gases or in certain situations may create carbon monoxide where air flush drilling is adopted. Any intrusive activities which intersect, disturb or enter any coal seams, coal mine workings or coal mine entries (shafts and adits) require the prior written permission of the Coal Authority. Such activities could include site investigation boreholes, digging of foundations, piling activities, other ground works and any subsequent treatment of coal mine workings and coal mine entries for ground stability purposes. Failure to obtain Coal Authority permission for such activities is trespass, with the potential for court action. In the interests of public safety the Coal Authority is concerned that risks specific to the nature of coal and coal mine workings are identified and mitigated.

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

It should be noted that any damage to Park Road during construction may affect its future adoption.

The grant of planning permission does not entitle developers to obstruct public rights of way (Public Footpath No. 26). Development, in so far as it affects the right of way, should not be started, and the right of way should be kept open for public use, until the necessary order under Section 247 or 257 of the Town and Country Planning Act 1990 for the diversion or extinguishment of the right of way has been made and confirmed. Nor should it be assumed that because planning permission has been granted an order will invariably be made or confirmed.

**Item**            1.5

**Reg. No.**        9/2009/1037/MSO

**Applicant:**

Mr Jonathan Green  
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Trafalgar House  
20A Market Street  
Lichfield

**Agent:**

Mr Christopher Timothy  
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**Proposal:**        **Outline application for Business (B1), General Industrial (B2) and Storage and Distribution Development (B8), including means of access at Land South of Cadley Hill Industrial Estate Burton Road Castle Gresley Swadlincote**

**Ward:**            **Linton**

**Valid Date:**      **14/12/2009**

**Reason for committee determination**

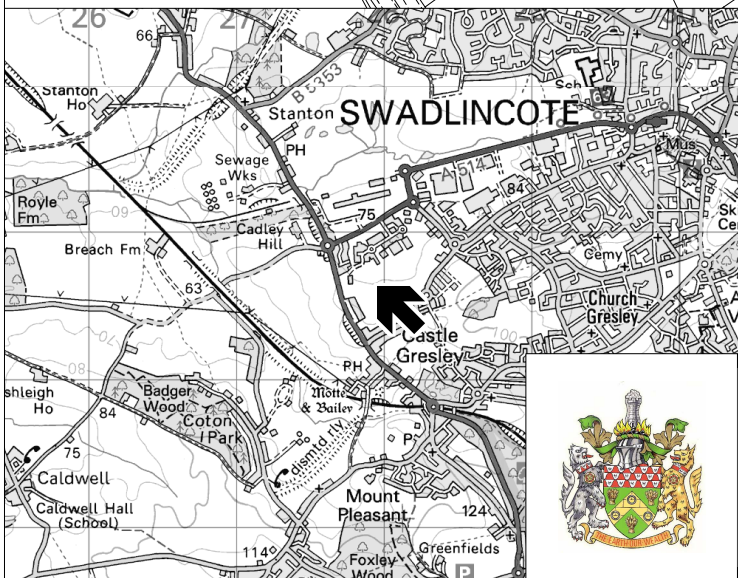
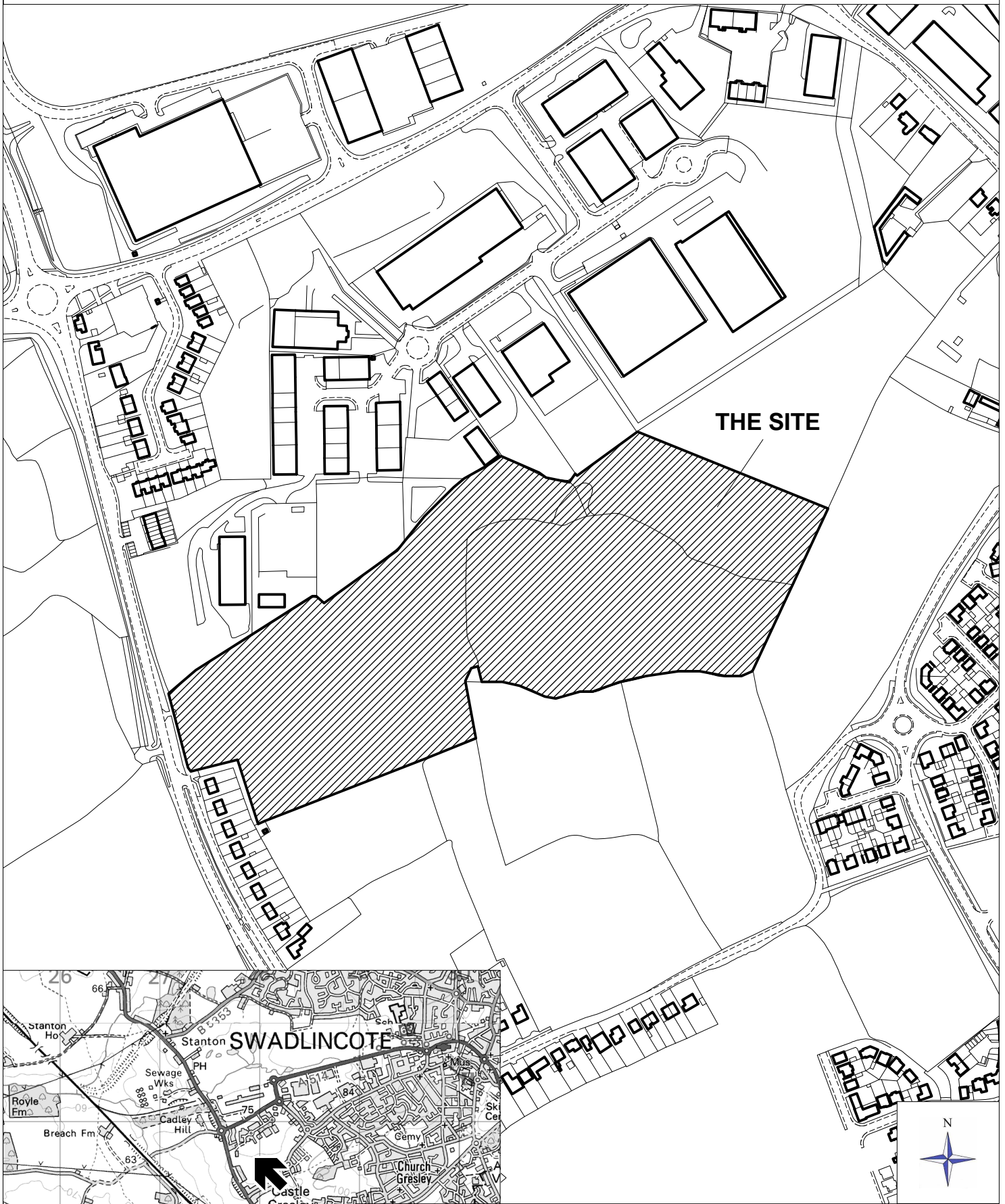
The application is brought before the Committee at the discretion of the Head of Planning Services, as it is a major application which has attracted more than two objections.

**Site Description**

This 7.98 hectare site to the south of Cadley Hill Industrial estate is currently open arable fields and pasture. The site forms part of the Local Plan employment allocation set out in Employment Policy 2. The site rises towards Burton Road to the west. Open land would surround the site to the south, south east and north east and its western boundary is close to the rear boundaries of 126 – 136 Burton Road. The housing development of Castleton Park is further away to the south and south east.

The site slopes significantly from south to north. In the north eastern part of the site it slopes gradually from the south to the existing pond adjacent to the northern boundary with a difference in levels of 6.2 metres. The western part of the site adjacent to the A444 Burton Road is highest where the access is proposed and slopes down towards the centre of the site with a change in levels of 14.25 metres. The levels to the rear of the Burton Road properties and the central part of the site reduce by 13.66 metres.

**9/2009/1037 - Land South of Cadley Hill Ind. Est., Burton Road,  
Swadlincote (DE11 9EU)**



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## **Proposal**

Outline planning permission is sought for development of the site for employment use within use classes business (B1), general industrial (B2) and storage and distribution (B8). Approval of the access is sought at this stage with all other matters reserved. An indicative masterplan has been submitted which identifies the potential level of development. The proportion of uses for the purposes of the supporting assessments are B1 (b&c) 35%, B2 35% and B8 30%.

The access is proposed off Burton Road (A444), 45 metres north of the access for the Burton Road properties. The proposed access road would run along the northern boundary with three balancing ponds to the north of the road. It would curve around the north western boundary to provide access to the south eastern and north western sections of allocated land, one of which bounds Swadlincote Lane.

The indicative masterplan shows small 185 sqm – 1104 sqm units adjacent to the Burton Road dwellings with 5-10m wide buffers of landscaping. Potential eaves heights would be between 8-8.5m and ridge heights between 9-9.7m. There is a 4-5 m gap between the rear boundaries of the properties and the application site. A medium sized unit (6,500 sqm) is indicated to the east of these smaller units with a potential eaves height of 13m and ridge height of 16.5m. A large 18,500 sqm unit is proposed in the eastern part of the site with a potential eaves height of 15m and a ridge height of 18m. Servicing areas for the medium and large units are shown to the east and west of the units with car parking adjacent to the access road. 391 car parking spaces are shown within the indicative layout. A 4-13m wide buffer is indicated along the southern boundary with the open land.

## **Applicants' supporting information**

Planning Statement – This document covers the planning history, planning policy, context and employment generation. It also summarises transport appraisal, sustainability and ecological assessment. The planning history section states the pre-application discussions were held and the Council's screening and scoping opinion concludes that an Environmental Statement is not required. The proposed development would make a significant provision towards meeting the requirement for new employment land within Swadlincote and South Derbyshire as a whole. The proposed uses could potentially provide 850 jobs. An addendum to this statement was produced for this application which outlines the Environment Agency, County Highways Authority and Derbyshire Wildlife Trusts concerns raised in consultation which resulted in the withdrawal of the previous application and how these have been overcome.

Design and Access Statement – This brief document set out the land use, amount of development and density, layout, scale, appearance, landscaping and access. Much of the detail is not known at this outline stage and would be assessed at reserved matters stage, however, due to the nature of the uses proposed the buildings would have to achieve an internal haunch height of 6 metres for the smaller buildings and 10-12 metres for the larger buildings.

Ecological Impact Assessment - This report presents ecological information obtained during a desk-study, a walkover survey and surveys for great crested newts and bats undertaken between September 2008 and June 2009. No great crested newts were found on the site. None of the 10 trees identified for possible roosting were currently in

use by bats. Bats were recorded commuting or foraging along the hedgerows at all of the tree survey locations. The activity transects also found bats commuting and foraging along the other hedgerows throughout the site. The bats recorded during the surveys were predominantly common Pipistrelle, *Pipistrellus pipistrellus*. A Noctule bat, *Nyctalus noctula*, was also heard near Tree 6 during two separate dusk surveys. Derbyshire Wildlife Trust holds records from 2005 of an active badger sett within the eastern most field (TN7) with further records of badger setts in woodland 600 m south of the site. However, during the Phase 1 habitat survey undertaken in September 2008 this badger sett was not present. No evidence of badger activity was noted within the application site or within 50 m of the site boundaries. A length of 380 m of hedgerow (TN5) will be lost from the centre of the site. The mature and semi-mature trees will be preserved around the perimeter of the application site but the trees within the hedgerows in the interior of the site (TN5 and TN6) will be lost. These will be replaced by tree planting around the perimeter and within the interior of the application site as part of the landscaping scheme. Four new surface water balancing ponds are to be constructed along the northern edge of the site as part of the development. These will replace the pond habitat lost by the removal of Pond 1 and the two ephemeral waterbodies (Ponds 2 and 3) which will be lost during construction. The existing hedgerow will be replaced by the planting of approximately 600 m of new hedgerows and the improvement of existing hedgerows within the application site. In conclusion, the scheme will not have any significant impacts on the habitats within the application site or on any legally protected species using the site on the basis that appropriate mitigation measures as outlined will be fully implemented and managed appropriately.

Flood Risk Assessment – The site falls within Flood Zone 1 and is outside the 0.1% annual probability of a flood event occurrence limit. Flooding from rainfall and the associated run-off (pluvial) is the main issue on this site as the development of greenfield sites will lead to increased run-off. Estimates of run-off rates and calculations on the storage volumes have been made and drainage ditches and the use of Sustainable Urban Drainage Systems (SUDs) are recommended.

Drainage Assessment Report – The site generally falls from south to north, west to east and toward the centre where surface water run-off via boundary ditches currently collects in a small pond. Levels across the site range from 74.0m to 90.0m. There is a combined sewer that crosses the western part of the site connecting to a pumping station behind the residential properties. Different options for discharges of foul and surface water have been explored as Severn Trent has confirmed that the combined sewerage system in the vicinity of the site does not have sufficient spare capacity. Options include making a sewer requisition application to Severn Trent, provision of a on-site treatment plant or septic tank, provision of a private sewer or provision of a pumping station. Each option has implications associated in terms of permissions, cost and timescales and at this stage a decision on an option has not been made. In terms of surface water drainage sustainable drainage solutions (SUDS) have been considered.

Geo Environment Desk Study- The geology underlying the site is expected to comprise the Middle Coal Measures. The Middle Coal Measures are classified as a minor aquifer. The site and surroundings are in an area affected by coal mining activities. A Coal Authority Report was obtained and the information provided stated that the site: *is in the likely zone of influence from workings in 9 seams of coal at 50m to 330m depth, and last worked in 1967*. Information provided in the Envirocheck Report Mining and Ground Stability Report also indicates the potential for historical mining activity beneath the site. Information provide by South Derbyshire Building Control Services states that an area



covering the southwestern tip of the site and extending south and west from the site relates to *part of the old natural filtration sewerage works that were disused around 1920*. Historical maps indicate the presence of a Sewage Farm approximately 600m south-east of the site on maps from 1925 and 1938. The desk study has indicated a potential for the presence of contamination and ground borne gases both on and off the site which could adversely affect the proposed development and the wider environment. Potential geotechnical hazards, including localised subsidence and shallow coal mining hazards have been identified and it is recommended that an intrusive site investigation be undertaken to address the issues raised.

Transport Assessment and Travel Plan – This assessment includes:- policy review, analysis of the existing situation, analysis of the proposed development, sustainable access and traffic generation and impact. It is based on scoping report developed in consultation with Derbyshire County Council Highways Department. The section of the A444 which runs alongside the development site is 7m wide, with a speed limit of 40 mph. An Automated Traffic Count (ATC) was carried out on the A444 adjacent to the site in April 2008. The ATC data indicates that average weekday daytime (7am -7pm) traffic flows on Burton Road are 5852 northbound and 5559 southbound. Observations during peak times suggest that no capacity issues exist in the immediate vicinity of the site. Derbyshire County Council previously agreed that the principle of direct access off the A444 is acceptable subject to the provision of an adequate harbourage for right-turning traffic for reasons of safety on the principle road. The access will take the form of a priority junction with a right turning lane. Pedestrian and cycle access to the site will be located adjacent to the vehicular access together with a pedestrian access to the north to link with Cadley Hill Industrial Estate. Residential areas are within an acceptable walking (1km) distance of the site. Bus stops are in close proximity to the site on Burton Road and Cadley Hill Road which are served by three bus services.

The predicted traffic generation of the proposed development equates to 142 two way vehicle trips in the morning peak hour (08:00 – 09:00) and 144 trips in the evening peak hour (16:00 – 17:00). The predicted traffic generation of the remaining allocated land, which has been included in the modelling in order to ensure access to these part of the site, equates to 89 two way vehicle trips in the morning peak hour (08:00 – 09:00) and 81 trips in the evening peak hour (16:00 – 17:00).The results of modelling indicate that the site access has capacity to accommodate the development traffic and there will be a marginal impact on traffic travelling on Burton Road (A444).

A Technical Note which is an addendum to this report has been reproduced in light of the County Highways Authority concerns regarding the impact the proposed site access would have on the residential slip road and how this will cater for traffic using this access and the ability of the proposed access to accommodate traffic generated by the remainder of the allocated site. In relation to the impact on the existing residential access an amended access is proposed to slightly adjust the alignment of the residential road in order to re-introduce the splitter island between the residential service road and Burton Road. A right turn ghost island is proposed for vehicles turning right into the existing service road access with enough capacity for two vehicles. A capacity assessment which includes the remainder of the allocated site concludes that the proposed access would have sufficient capacity and no queues on the right turn into the site as requested by the Highways Authority.

The Travel Plan Framework outlines which methods employers could use to encourage staff to use sustainable forms of transport. These measures include:- travel information

website, travel information packs for staff, public transport ticketing incentives, private shuttle buses, car sharing, encouraging walking and cycling by provision of cycle parking and cycle purchase incentives, flexible working patterns reducing journeys in peak periods and appointment of travel plan co-ordinators for each occupier to monitor and carry out staff surveys.

## **Planning History**

9/2009/0603 - Outline application for Business (B1), General Industrial (B2) and Storage and Distribution Development (B8), including means of access: withdrawn 8<sup>th</sup> October 2009.

## **Responses to Consultations**

The Environment Agency has no objection to the application due to the submission of the Severn Trent Water letter dated 30 September 2009 in relation to the previous application (withdrawn), which stated that it would be possible to requisition a surface water sewer to provide a discharge point for this site. The proposed development will only be acceptable if the measures as detailed in the Flood Risk Assessment, Drainage Assessment Report and Drawing submitted with this application are implemented and secured by way of planning conditions on any planning permission.

A condition to ensure the mitigation measures within the Ecological Impact Assessment are followed is recommended. In relation to 'Controlled Waters' the Geo-environmental Desk Based Study indicates that the potential for contamination to be present is limited. Given the relatively low sensitivity site setting there is no requirement for any further investigation of the site. Additional comments made on the application details shall be added as an informative.

The County Highway Authority state that the scheme would not cause any undue harm to highway safety. Extensive negotiations have been undertaken with the agents to provide a suitable solution to their previous objection due to the access design and potential conflicts with the existing residential access to the south. It states the applicant appears to have addressed the concerns raised in previous correspondence regarding the capacity of the junction, with particular account being taken of potential future development of the land allocated and the adjacent residential service road. However, the kerbline shown on the proposed layout should be amended to provide a lead in radius of 400m, which would extend the works approximately 20m to the north and a 400m lead out radius, which would extend the works approximately 50m to the south. This can be achieved within highway limits and be secured through a condition. Conditions relating to the kerbline amendments, provision of a site compound, vehicle wheel washing, the new junction, road signage and laying out of the residential service road are recommended.

The East Midlands Development Agency has not responded on the application. However, its response on the previous application that was withdrawn was supportive of the application and recommended approval. It stated that the RES strategic priorities of 'Land and Development' and 'Environment Protection' are relevant. Appropriate design and environmental standards should be applied at reserved matters stage. This is particularly important given the site's gateway location and its proximity to an established residential street and proposed new housing development. Extensive areas

of landscaping and the balancing ponds should be developed further at the detailed stage.

The Highways Agency has not responded on the application, however, it did not object to the previously withdrawn proposal.

Natural England has made no comment on this application but previously commented they did not feel the proposal was likely to significantly affect the natural environment.

Derbyshire Wildlife Trust is concerned over the loss of the hedgerows within the centre of the site and considers that they have the potential to meet the criteria for “important” hedgerows under the Hedgerow Regulations. The hedgerows and associated hedgerow trees and ditch form a wildlife corridor across the site and a commuting and foraging area for bats. They consider that the hedgerows should be retained and incorporated within the development layout. Atkins have confirmed in two letters dated the 6<sup>th</sup> and 16<sup>th</sup> November 2009 that these hedgerows can be incorporated into the layout at Reserved Matters stage. It is therefore recommended that retention of two hedgerows be secured by condition. The production of a Habitat Management and Monitoring Plan should be attached as a condition to any permission. The Trust advises that the funding and appropriate management of the retained and created habitats in accordance with the Management Plan should be secured by a Section 106 agreement. The creation of four new balancing ponds is welcomed and it is recommended that these should be designed to be suitable for amphibians with appropriate surrounding habitat. The ponds should be created and allowed to establish well before the existing ponds on the site are lost. Adjacent habitats should include long grass, scrub, and trees together with the provision of refugia. It is advised that any vegetation clearance should be carried out to avoid the bird breeding season which extends from March to late August. This should be attached as a condition to any permission. All trees and hedgerows to be retained should be protected from damage during the construction phase by the erection of suitable protective fencing and this should be controlled by condition.

Severn Trent Water has no objection to the proposal subject to a drainage condition.

*The Police Crime Prevention Design Advisor advises that industrial estates are subject of thefts overnight and at weekends. 2.4 m high security fencing is necessary with 1.8m fencing on frontages where there is good natural surveillance. The pedestrian link to the north is unnecessary as it only links two industrial estates and not residential areas and would be a useful escape route or facilitator for crime. The link would only be useful if it were well lit and 3m in width with clear views directly into William Nadin Way. Shared routes for pedestrians such as the A444 are recommended. More detailed advice in relation to the use of CCTV, bollards, doors and windows and intruder alarms has been provided.*

The Derbyshire County Council's Archaeologist considers there to be a potential for buried archaeology within the site and as such recommends a condition requiring archaeological field evaluation to be carried out prior to commencement of development.

*The Council's Contaminated Land Officer recommends a phased contamination condition due to the potential risks from the presence of contamination and ground borne gases identified in the desk study.*

Castle Gresley Parish Council has made the following comments:

- *The warehouses proposed on Burton Road would be out of character with the residential properties. Should the application proceed then certain conditions*

*should be applied limiting the days and hours of work and noise levels. It enquires whether a barrier could be erected between the site and the existing houses to reduce noise levels. Existing housing should be given triple glazing and screened by shrubs and trees.*

- *There should be a restriction on the height of the proposed buildings.*
- *It enquires whether all the road safety requirements have been met and whether it is sensible to have another entrance.*
- *Generally it is considered that tall warehouses are not in keeping with the area.*
- *The Parish Council would like the District Council to include provision for Section 106 money to be paid.*

Cllr Bob Wheeler's (ward member) comments are summarised as follows:

It is understood that the zoning of the site would make objection to development futile. However, in relation to the 30% of the development will be for storage and distribution. For the sake of the impact on residents in Swadlincote Lane, Appleby Glade and along the A444 any storage and distribution should be only that necessitated by and ancillary to manufacturing /packaging / other commercial activity on the site. 24 hour operation should be avoided and this could be limited by condition. Visual and noise impacts on nearby housing is a concern. The height of the proposed buildings should be limited to minimise their intrusiveness on nearby residents. Any floodlighting needs a limitation on the hours during which it may be used and on the areas it covers. Screening of the buildings by trees and/or landscaping should be considered. In relation to highway safety the local concern is shared regarding the proposed access on to the A444 and its impact on safety. S106 monies should be devoted to local community recreational facilities.

## **Responses to Publicity**

Six letters of objection have been received directly and two letters have been forwarded by Castle Gresley Parish Council. A petition with 41 signatures from properties on Castleton Park and Swadlincote Lane has also been received opposing the transfer of green field land to industrial use.

Reasons for objection are summarised below:

- a) Burton Road is currently very busy and difficult to join from Burton Road properties.
- b) The A444 could not take any more traffic.
- c) Why is a new access onto to the A444 being considered when are there not plans to join the A444 with the A38 with a new bridge over the Trent?
- d) The site lacks major links to motorways which reduces the chance of it being sold or let.
- e) The proposed access is dangerous as it is close to a rising gradient where traffic regularly exceeds the 40 MPH speed limit.
- f) Swadlincote Lane will be used as a cut through.
- g) There is no need for new warehousing as many remain empty and why blot the landscape with any more.
- h) The Local Plan Inquiry identified there is an over-allocation of employment plan.
- i) The land currently floods due to run-off from housing developments and potential ground subsidence impacts.

- j) Associated traffic and noise would have an impact on the amenity of residents of Burton Road.
- k) It would create too much noise throughout the night and would increase HGVs in a quiet residential area.
- l) Hours of use should be restricted to mitigate disturbance to residents.
- m) It would remove the rural nature of the area.
- n) It would be an unsightly blot on resident's views
- o) Security and floodlights would be a great distraction for local residents.
- p) There would be a loss of wildlife especially Badgers.
- q) Loss of the fields.
- r) The land should be used as a local park / play area for the community.
- s) The turning point for HGVs means the loss of children's play space.
- t) Existing trees and hedges should be retained, as the area is important for local wildlife such as Badgers and Foxes.
- u) Have the ponds and hedges been surveyed for wildlife?
- v) Loss of habitat for birds.
- w) Bunds with native trees should be incorporated to mitigate impacts in this National Forest area.
- x) Triple glazing should be provided for local residents to reduce noise.
- y) Encouraging staff of the development to cycle to work would be dangerous.
- z) Planning office should land lock this site to discourage this and any future applications on this green field site.

### **Development Plan Policies**

The relevant policies are:

East Midlands Regional Plan Policies: 2, 12, 20, 35, 45 and 48

Local Plan: Employment Policies 2 and 8, Environment Policies 9 and 10, Transport Policies 6, 7 and 8

Supplementary Planning Guidance – Industrial and Office Design and Layout Sept 2004

### **National Guidance**

PPS 1, PPS 4, PPS 9, PPS 25 and PPG 13

### **Planning Considerations**

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

- Principle of Development
- Highways Issues
- Access to the adjacent allocated land
- Impact on residential amenity
- Flood Risk from surface water run-off
- Ecological Issues

### **Planning Assessment**

#### Principle of Development

South Derbyshire Local Plan, Employment Policy 2, allocates land measuring 14 ha for B1, B2 and B8 development to the south of the existing Cadley Hill Industrial Estate. That allocation includes the application site. Therefore, the principle of industrial development on this site has been established since 1998. Requirements of this policy are that developers are expected to undertake or contribute towards additional infrastructure or traffic management issues and provide for the retention and protection of features of natural history or heritage interest.

The recently published (Dec 2009) PPS 4 states in Policy EC10 that “*Local planning authorities should adopt a positive and constructive approach towards planning applications for economic development. Planning applications that secure sustainable economic growth should be treated favourably*”.

It goes on to state that “*all planning applications for economic development should be assessed against the following impact considerations:*

- a) *whether the proposal has been planned over the lifetime of the development to limit carbon dioxide emissions, and minimise vulnerability and provide resilience to, climate change.*
- b) *the accessibility of the proposal by a choice of means of transport including walking, cycling, public transport and the car, the effect on local traffic levels and congestion (especially to the trunk road network) after public transport and traffic management measures have been secured.*
- c) *whether the proposal secures a high quality and inclusive design which takes the opportunities available for improving the character and quality of the area and the way it functions.*
- d) *the impact on economic and physical regeneration in the area including the impact on deprived areas and social inclusion objectives*
- e) *the impact on local employment*

Within the East Midlands Regional Plan, Swadlincote is included within the Three Cities Sub-Regional Centres where the distribution of “appropriate development of a lesser scale should be located”. Policy 20 states that allocations should be in sustainable locations and be responsive to market needs. This site has been allocated for employment use since the adoption of the Local Plan in 1998. The site adjoins an existing industrial estate to the north and is within the urban area of Swadlincote.

Issues such as scale, layout, appearance and landscaping would be dealt with at reserved matters stage and guidance within the Council’s SPG, referred to above, in relation to the impact on the character of the area, landscape screening, location of service yards and control of open storage, materials and fencing can be conditioned.

The Derby HMA Employment Land Review (2008) indicated that, excluding existing unimplemented planning consents and Local Plan employment land allocations, there was a shortfall of some 80 ha of land for employment development in South Derbyshire over the period to 2006 - 2026. The Review indicated that part of this requirement would need to be identified in the Swadlincote Urban Area. The South Derbyshire Economic Development Strategy (SDDC, 2008) identifies, as an economic weakness for the district, the fact that there is little employment land available in the Swadlincote urban area.

In the context of the emerging South Derbyshire Local Development Framework Core Strategy it should be noted that, without prejudice to the final content of that document,

the potential of land to the south of the application site to accommodate housing and / or employment development is being assessed. As part of this, means of access by motorised vehicle cycle and on foot must be considered.

The access has been designed to include potential capacity for the remainder of the allocated land. However, it is not reasonable to request that the access should include capacity to serve the unallocated land to the south as part of this application. Nevertheless, even if permission is granted for the current access configuration, should additional adjoining land become available, further investigation into increasing the capacity of the junction could be pursued.

### Highways Issues

On the advice of the Highway Authority, the scheme would not cause any undue harm to highway safety. Extensive negotiations have been undertaken between the Transport Consultants and County Highways since the previous application was withdrawn. The access now has provision of an adequate harbourage for right-turning traffic for reasons of safety on the principle road. The access would take the form of a priority junction with a right turning lane for both the development and the existing residential access. The results of the applicant's consultant's modelling indicate that the site access has capacity to accommodate the development traffic and that of the remaining allocated land and there would be a marginal impact on traffic travelling on Burton Road (A444). The Highways Authority concurs with this.

### Flood Risk from surface water run-off

In October 2009 the previous outline application (9/2009/0603) was withdrawn, with one of the reasons being that the Environment Agency objected to the application due to the absence of an existing or formally agreed surface water outfall. Since this application was withdrawn the agents have been in negotiations with Severn Trent Water to secure the removal of this objection by identifying an option for the drainage of surface water from the site. Severn Trent Water confirmed in their letter of the 30<sup>th</sup> September 2009 that a requisition of an outfall sewer is possible and that there are two surface water sewers to the north and east of the site that could provide a discharge point for flows from the site.

The Environment Agency are now satisfied that it would be possible to requisition a surface water sewer to provide a discharge point for the site and have removed their objection to this application. The EA recommend conditions that ensure that the measures detailed in the Flood Risk Assessment, Drainage Assessment Report and submitted drawing are implemented. These conditions should be attached to any permission.

### Impact of Residential Amenity

As the application is in outline only with all matters except for access to be agreed at this stage, a detailed assessment of the impact on residential properties is not possible. However, the indicative masterplan provides an insight into the possible future layout of the site. This proposes the smaller units B1 and B2 uses in the part of the site adjacent to the residential properties and this is welcomed as the scale of the buildings are required to be in character with the area and should not dominate properties or have an adverse impact on their amenity. An informative advising that B1 uses should be

adjacent to residential properties would make this clear for those preparing the detailed layout. Existing land level information indicates a significant difference in levels within the site from the south to the north. Finished floor levels should be provided at reserved matters stage and should inform the heights and scale of buildings adjacent to Burton Road, as these areas have higher land levels. Lower land levels than the residential properties would be beneficial in reducing impacts. Landscape buffers between the industrial uses and the residential properties are essential and these are indicated on the masterplan. B8 uses are indicated in the eastern part of the site away from the residential properties. The lighting of the car parks and security lighting can be conditioned to ensure it is sensitive to adjacent residential properties and the illustrative layout suggests how it is possible to achieve this by screening car parks and service yards by the buildings themselves. A noise assessment would also be required. Hours of use should be informed by the Noise Assessment and controlled by condition.

### Ecological Issues

The Ecological Impact Assessment identified a loss of trees, hedgerows and water bodies' habitat. No protected species were found on the site. Mitigation of these impacts is proposed such as replacement hedgerows, three ponds and perimeter tree planting. Derbyshire Wildlife Trust has concerns with regard the loss of two hedgerows. The agents have confirmed that it is possible that these hedgerows could be incorporated with the detailed layout for the site when it is brought forward at the reserved matters stage. This should be secured through a condition on any outline planning permission granted.

The funding and appropriate management of the retained and created habitats in accordance with the Management Plan can also be secured by a suitable condition. Securing the management of created habitats is essential for this specific development and should be secured through a S106 Agreement (via an appropriate condition). However, the creation of recreational facilities for the community is not sufficiently related to the development and thus this cannot be secured through a S106 Agreement. The site is private farmland and thus would not result in the loss of recreational land. It has also been through the local plan process and been allocated for the use proposed.

The site is within the National Forest and as such 20% woodland planting is required. The agents have indicated that this could be accommodated within the adjacent land of 2.24 Ha also in the applicant's ownership. 20% of the site area would equate to 1.6 Ha. A condition requiring a S106 Agreement to be entered into regarding this requirement should be attached to any permission.

### Other issues raised by objectors

The Local Plan Review Inspectors Report in 2004 mentioned a possibility of a new link road to join the A444 with the A38. However, this was brought forward by East Staffordshire Borough Council and this link has still not been realised. The Local Plan Revised Deposit Draft in 2003-2004 is no longer relevant as it was withdrawn. However, the Inspector concluded that the site should be re-allocated to meet the shortfall of employment land. The land is private land which has been allocated for employment use since 1998. There are thus no grounds for it being used for community recreation and it would not result in the loss of children's play space.



Bunds with native trees could be incorporated into the reserved matters application to mitigate impacts and 20% woodland planting would be secured by condition. A noise report can be required by condition to prevent a noise nuisance for nearby residential properties.

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.

### Conclusion

The principle of industrial development on this site has been established since adoption of the Local Plan in 1998. The proposed access is considered acceptable in terms of its impact on traffic flows and the adjacent residential access. The Environment Agency has confirmed that they are satisfied that surface water run-off from the site can be adequately accommodated. The illustrative masterplan indicates that an acceptable layout that is sensitive to adjacent residential properties can be accommodated and this would be assessed in detail at reserved matters stage and any impacts mitigated through conditions relating to noise and landscaping. Important hedgerows can be retained and the proposed mitigation by the creation of habitats is considered appropriate and their future management would be secured. The proposal is therefore in accordance with the development plan.

### **Recommendation**

**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 permitted by this planning permission shall only be carried out in accordance with the approved Flood Risk Assessment (FRA) Revision A, dated October 2008, issued March 2009, Reference 5064268, undertaken by Atkins and the following mitigation measures detailed within the FRA:

Section 5.3.3 Limiting the surface water run-off generated by all events up to the 100 year plus 20% (for climate change) critical rain storm so that it will not exceed the run-off from the undeveloped site (4.38l/s/ha) and not increase the risk of flooding off-site.

Section 4.2.2 Provision of at least 6166m<sup>3</sup> of surface water attenuation storage on the site in accordance with CIRIA guidance the SUDs Manual, management Train to accommodate the difference between the allowable discharge rate and the 100 year plus 20% (for climate change) standard.

Section 4.6 Improvement, protection and maintenance of existing ditch systems along field boundaries, which are to be accommodated into the proposed surface water management plan.

Section 5.3.3 Identification and provision of safe route(s) into and out of the buildings to dry areas in times of intense flooding.

Section 5.7.1 A maintenance programme should be established for all on-site drainage systems to ensure long term operation.

Reason : To prevent flooding by ensuring the satisfactory storage of/disposal of surface water from the site and to reduce the impact of flooding on the proposed development and future occupants.

4. Development shall not begin 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, in consultation with the Environment Agency. The scheme shall subsequently be implemented in accordance with the approved details before the development is completed.

Reason : To prevent the increased risk of flooding, to improve and protect water quality, improve habitat and amenity, and to ensure future maintenance of the surface water drainage system.

5. The development permitted by this planning permission shall only be carried out in accordance with the approved Atkins Ecological Impact Assessment and the mitigation measures detailed within Section 7.

Reason : To ensure the protection of wildlife and supporting habitat and secure opportunities for the enhancements of the nature conservation value of the site in line with national planning policy.

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

Reason: In the interests of pollution control.

7. No development shall take place, until the developer has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved by the Local Planning Authority in writing.

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

8. The hedgerows identified as T5 and T6 within the Ecological Impact Assessment shall be retained and protected during the construction of the development by measures to be agreed in writing with the Local Planning Authority before development commences.

Reason : In the interest of visual amenity and wildlife preservation.

9. No development shall take place until a schedule of Habitat Management and Monitoring for a minimum period of 5 years has been submitted to and approved in writing by the Local Planning Authority. The schedule shall include details of the arrangements for its implementation. Development shall be carried out in accordance with the approved schedule.

Reason: In the interests of the appearance of the area and its biodiversity.

10. Any vegetation clearance shall be carried out to avoid the bird breeding season which extends from March to late August.

Reason : To protect habitats in accordance with Planning Policy Statement 9.

11. A) The development shall not be commenced until a scheme to identify and control any contamination of land, or pollution of controlled waters has been submitted to, and approved in writing by, the local planning authority (LPA); and until the measures approved in that scheme have been implemented. The scheme shall include all of the measures (phases I to III) detailed in Box 1 of section 3.1 the South Derbyshire District Council document 'Guidance on submitting planning applications for land that may be contaminated', unless the LPA dispenses with any such requirement specifically and in writing.

B) Prior to occupation of the development (or parts thereof) an independent verification report shall be submitted, which meets the requirements given in Box 2 of section 3.1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.

C) In the event that it is proposed to import soil onto site in connection with the development, this shall be done to comply with the specifications given in Box 3 of section 3.1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.

D) No development shall take place until monitoring at the site for the presence of ground/landfill gas and a subsequent risk assessment has been completed in accordance with a scheme to be agreed with the LPA, which meets the requirements given in Box 4, section 3,1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.

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

12. 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.

13. 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.

14. No part of the development shall be carried out until precise details, specifications and, where necessary, samples of the facing materials to be used in the construction of the external walls and roof of the buildings 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.

15. There shall be no goods or materials stored in the open within any areas unless otherwise agreed in writing by the Local Planning Authority.

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

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

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

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

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

18. 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.

19. Before any other operations are commenced (excluding demolition/ site clearance), space shall be provided within the site curtilage for storage of plant and materials, site accommodation, loading and unloading of goods vehicles, parking and manoeuvring of site operatives and visitors vehicles, all laid out and constructed in accordance with detailed designs first submitted to and approved in writing by the Local Planning Authority, and maintained throughout the construction period in accordance with the approved designs free from any impediment to its designated use.

Reason: In the interests of highway safety.

20. Prior to the commencement of the development a Noise Impact Assessment shall be submitted to and approved in writing by the Local Planning Authority which shall include details of any noise mitigation measures required. The development shall only be implemented in accordance approved mitigation measures and maintained as such for the life of the development.
- Reason : In the interests of the amenity of the occupiers of the adjoining dwellings having regard to the noise implications from the buildings and activities.
21. The development permitted by this planning permission shall not be initiated by the undertaking of a material operation as defined in Sections 56(4)(a)-(d) of the Town and Country Planning Act 1990 in relation to the development, until a planning obligation pursuant to S106 of the said Act relating to the land has been made and lodged with the local planning authority and the local planning authority has notified in writing the persons submitting the same that it is to the local planning authority's approval. That said planning obligation will provide for the provision of woodland planting as a contribution to the National Forest amounting to 20% of the of the development area on land within the applicant's control either on or adjacent to the application site.
- Reason : To ensure the satisfactory provision of National Forest Planting in accordance with The National Forest - A Guide for Developers and Planners 3rd Edition 2005.
22. Prior to commencement of development a lighting scheme shall be submitted and approved in writing by the Local Planning Authority and the scheme shall be implemented in accordance with the approved details.
- Reason: To protect the amenities of adjoining properties and the locality generally.
23. The layout to be submitted under condition 2 above shall make provision for a connection to the cycleway and pedestrian link to the north implemented prior to the first occupation hereby permitted and retained as such thereafter.
- Reason : To ensure the site is accessible by a choice means of transport.
24. Any landscaping scheme shall include a landscaped buffer adjacent to the boundaries of properties on Burton Road and the open land to the south.
- Reason: To protect the amenities of adjoining properties and the locality generally.
25. 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.
26. Notwithstanding the amended application drawing, prior to any works commencing a revised plan amending the lead in and lead out radii of the new junction to 400m, extending the works approximately 20m in the northerly direction and 50m to the south shall be submitted and approved in writing by the

Local Planning Authority and the access shall be implemented in accordance with the approved details.

Reason: In the interests of highway safety.

27. Prior to commencement of development the new junction shall be formed to Burton Road (A444), laid out in accordance with the revised application drawing approved in relation to condition 26, providing a right-turn harbourage for the new junction and the adjacent residential service road, having a minimum width road of 7.3m, junction radii of 10m and visibility sightlines of 2.4m x 120m in each direction, the area forward of which shall be cleared and maintained in perpetuity clear of any obstruction exceeding 1m in height (600mm in the case of vegetation) relative to the nearside carriageway edge.

Reason: In the interests of highway safety.

28. Prior to any other works commencing a scheme for the signing of the new junction and road layout and relocation of existing signage shall be submitted to and approved in writing by the Local Planning Authority and implemented before the junction is taken into use.

Reason: In the interests of highway safety.

29. Prior to the new junction being taken into use, the residential service road to the south of the new junction shall be laid out and constructed in accordance with the amended application drawing required by condition 26.

Reason: In the interests of highway safety.

30. Prior to any other works commencing, an interim travel plan shall be developed and implemented for the construction period of the development. The travel plan coordinator shall be appointed prior to the first occupancy of units and shall carry out an initial travel to work survey within 3 months of the first occupation or when 30% occupancy has been achieved and be used to compile a full travel plan within 12 months of the first occupancy. The full travel plan shall be reviewed annually for the first five years of occupancy, the results of the reviews to be communicated to the local Planning Authority and the Sustainable Travel Officer at Derbyshire County Council. The full travel plan shall operate in perpetuity.

Reason: In the interests of sustainable travel to and from the site.

#### Informatives:

The Environment Agency advice that the surface water drainage scheme shall:

- 1) Limit the surface water run-off generated by all events up to the 100 year plus 20% (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.
- 2) Provide written confirmation of any allowable discharge rate into the public sewerage system.
- 3) Provide at least 6166m<sup>3</sup> of surface water run-off attenuation storage on the site to a 100 year plus 20% (for climate change) standard, including open water balancing features.
- 4) Provide structural information as part of any detailed design of surface water balancing features located within elevated land located adjacent to the northern site boundary.

- 5) Provide a sustainable drainage strategy to include SUDS elements with attenuation, storage and treatment capacities incorporated as detailed in the CIRIA SUD Manual (C697)
- 6) Include protection of existing ditch courses within a minimum 4m wide watercourse corridor/easement (2m wide either side of the watercourse channel).
- 7) Provide an implementation programme for the timing of the provision of the scheme including any part which has been agreed in writing with Severn Trent Water. The scheme shall be implemented in accordance with the agreed implementation programme unless otherwise agreed in writing with the local planning authority, in consultation with the Environment Agency.
- 8) Details of how the on site surface water drainage systems shall be maintained and managed after completion for the lifetime of the development, to ensure long term operation to design parameters.

The Environment Agency have the following additional comments on the FRA, DAR and Drawings submitted in support of this application:

- 1) As shown on Drawing Nos 5064268/001 and 5064268/002, insufficient space has been provided along the boundary of plots 2 and 3, to accommodate the existing ditch, which both section 4.6 of the FRA and section 5.4.1 of the DAR confirm will need to be incorporated into the development. This existing ditch should be retained within a minimum 4m wide watercourse corridor/easement.
- 2) Section 2.1 of the FRA states that ground levels are elevated between 4m and 1m higher than the adjacent industrial estate which lies on the northern boundary of the site. However proposals include location ponds 1 to 3 along this boundary. The structural stability of these ponds will need to be ensured, otherwise there is an increase risk of flooding to the adjacent properties and land, should failure of any of the ponds occur.

With reference to the letter from Atkins Limited, dated 17 September 2009, we have the following comments with reference to the 3 proposed drainage schemes for this site:

- 1) Our preference would be for a gravity surface water system to drain this site.
- 2) Pumped systems are not sustainable and suitable arrangements would need to be made to ensure that the drainage system is maintained for the lifetime of the development to ensure that it works efficiently and effectively. The consequences of failure would have to be designed not to cause flood risk to the development or any other properties.
- 3) On site treatment plants will only be accepted where it is not feasible to connect to existing sewerage systems.

All archaeological work should be undertaken by a suitably qualified and experienced archaeological contractor. The Development Control Archaeologist should be contacted in the first instance for a written brief from which the WSI may be developed.

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).

It is advised that the layout submitted at reserved matters stage should show buildings with use classes of B1 a, b and c adjacent to the boundaries of residential properties on Burton Road.

Pursuant to Section 184 of the Highways Act 1980 and Section 86(4) of the New Roads and Streetworks Act 1991, at least three months prior notification shall be given to the Environmental Services Department at County Hall, Matlock (tel: 01629 580000, extension 38595) before any works commence on the vehicular access within highway limits.

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. 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 Strategic Director of Environmental Services at County Hall, Matlock (tel: 01629 580000). The applicant is advised to allow at least 12 weeks in any programme of works to obtain a Section 278 Agreement.

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

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



activities could include site investigation boreholes, digging of foundations, piling activities, other ground works and any subsequent treatment of coal mine workings and coal mine entries for ground stability purposes. Failure to obtain Coal Authority permission for such activities is trespass, with the potential for court action. In the interests of public safety the Coal Authority is concerned that risks specific to the nature of coal and coal mine workings are identified and mitigated.

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

**Item**            1.6

**Reg. No.**        9/2010/0029/NO

**Applicant:**

Mrs Linda Foster  
Snelsmoor Lane  
Chellaston  
Derby  
Derby

**Agent:**

Mr James Hutton  
24 Water Lane  
Wirksworth  
Matlock

**Proposal:**        **The Erection Of A Cattery Building At Springfield  
Snelsmoor Lane Chellaston Derby**

**Ward:**            **Aston**

**Valid Date:**     **13/01/2010**

**Reason for committee determination**

The site is in the green belt and the proposal does not fall within the range of 'appropriate development' as defined by PPG2.

**Site Description**

The application site is one of a short ribbon of houses, with large rear gardens, close to the built up edge of Chellaston. The site is in the green belt. The garden is well screened by mature planting.

**Proposal**

An L shaped building to provide 10 boarding pens is proposed. The long sides of the building would measure 10 m and the height would be 2.2 m. The building would be located at the bottom of the garden, about 40 m away from the adjoining dwelling.

**Applicants' supporting information**

None.

**Planning History**

None relevant.

**Responses to Consultations**

The Parish Council has no objection subject to the views of neighbours.



The Highway Authority and the Environmental Protection Manager raise no objection.

## **Responses to Publicity**

None.

## **Development Plan Policies**

The relevant policies are:

Local Plan: Green Belt Policies 1 & 3

## **National Guidance**

PPG2, PPS4, PPS7

## **Planning Considerations**

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

- The principle
- Impact on the openness of the green belt and the general character of the countryside
- Residential amenity
- Highway safety

## **Planning Assessment**

### The principle

The application site is the garden to the applicant's dwelling. In terms of appropriateness the proposal does not fit neatly into the limited range of development specified in PPG2. PPG2 states that very special circumstances are needed to outweigh the harm caused by inappropriate development.

The property is presently wholly residential. Whilst the development would result in a mixed use at the property the proposed business use would form a small element of the overall site. In sustainability terms the site is close to the edge of Derby and the facility would be within easy reach of the urban population. PPS4 Para 12 supports small-scale economic development where it provides the most sustainable option in villages, or other locations, that are remote from local service centres, recognising that a site may be an acceptable location for development even though it may not be readily accessible by public transport. The development would enable the applicant to run a small business from home.

The physical scale of the development is also a relevant factor in this case. Were this a building incidental to the enjoyment of the dwellinghouse it would be permitted development. In particular the height of the proposed pens, at 2.2 m is about half the permitted height for such buildings. The building would occupy a very small part of the garden. There is no encouragement for LPAs to remove permitted development rights for dwellings in the green belt. Thus in terms of built development the physical impact of the development falls well below the normal acceptable threshold for domestic

gardens. The building would be discounted from the upper limit for permitted development in terms of ground coverage. In the particular circumstances of this case, because of the small scale of the proposal and its lack of impact (see also the appraisal of other issues below), the objectives of the green belt would not be prejudiced by permitting this application.

Impact on the openness of the green belt and the general character of the countryside

Because of the low height of the building and the existence of mature vegetation around the site boundaries, there would be no discernible impact on the openness of the green belt. Traffic would be no more than would normally be expected at a residential property and thus the impact of visitors' cars on the openness of the green belt would not be significant.

#### Residential amenity

The buildings would be sited as far away as possible from the neighbouring dwellings. Anticipated traffic levels would not result in undue disturbance. On the advice of the Environmental Protection Manager there would be no demonstrable harm to the amenities of the occupiers of the adjoining residential properties.

#### Highway safety

The Highway Authority has no objection and highway safety interests would therefore not be prejudiced.

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).

Informatives:

The cattery will need a separate licence. Further details can be obtained from:

Licensing Section, South Derbyshire District Council, Civic Offices, Civic Way,  
Swadlincote, Derbyshire, DE11 0AH  
Telephone: (01283) 595724  
Fax: (01283) 595855  
e-mail: [licensing2@south-derbys.gov.uk](mailto:licensing2@south-derbys.gov.uk)

**Item**            1.7

**Reg. No.**        9/2010/0063/FH

**Applicant:**

Mr Glyn Walters  
Arleston Farm  
Arleston Lane  
Barrow On Trent  
Derby

**Agent:**

Mr Mike Lowes  
Renewable Solutions  
Bridgewater Complex  
Canal Street  
Liverpool

**Proposal:**        **The Installation Of Domestic Wind Turbine At Cart Barn  
Arleston Farm Arleston Lane Barrow On Trent Derby**

**Ward:**            **Aston**

**Valid Date:**     **27/01/2010**

**Reason for committee determination**

The application is brought to Committee at the request of Councillor Watson as local concern has been expressed about a particular issue.

**Site Description**

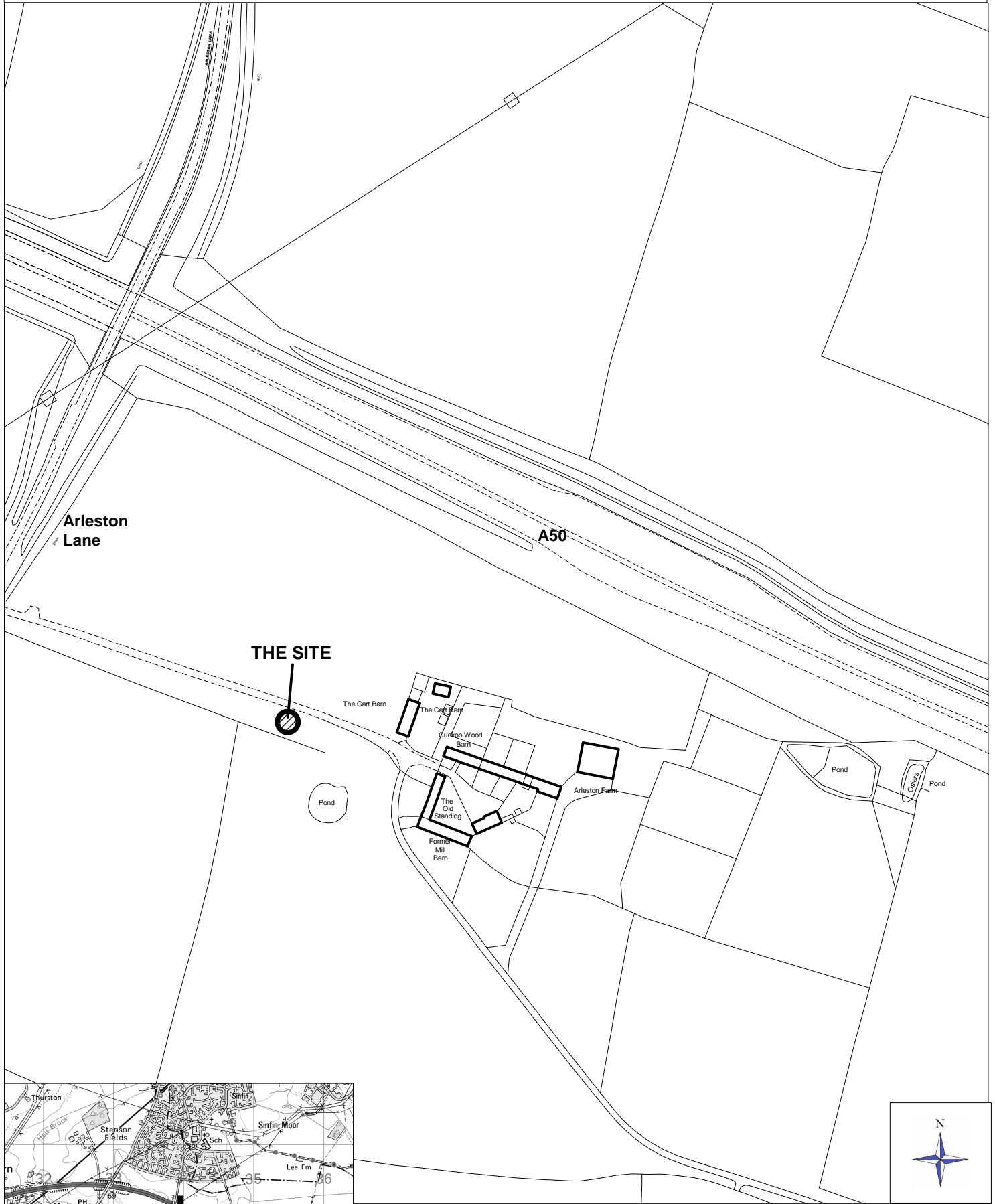
The site is located off Arleston Lane, Arleston. The property, known as the Cart Barn, is one of a group of former farm outbuildings that have been converted to residential accommodation. The site, in the main is flat, with open views to the north, south and west. An unclassified 'single track' highway provides access.

**Proposal**

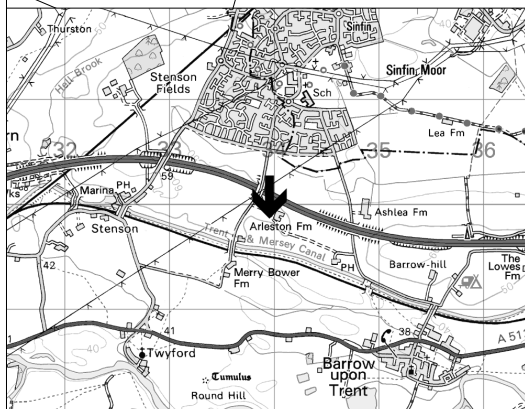
The proposal is for a domestic wind turbine for use of the applicant. This particular model is pole mounted and features 3 blades and a tail vane. The freestanding pole is 9 metres in height with the blades individually measuring 5.4 metres. It would be situated alongside the main 'access road' but at a distance of over 60 metres from the Cart Barn and over 80 metres from the adjacent group of dwellings.

**Applicants' supporting information**

The agent has submitted a promotional brochure, which provides a basic level of information on the turbine in regard to its design, materials, noise output and energy yield.



THE SITE



**This map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the Controller of Her Majesty's Stationery Office. Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings. South Derbyshire District Council. LA 100019461. 2010**

## **Planning History**

This former farm outbuilding was converted (and extended) as part of planning application 9/2001/0186.

An earlier application which sought permission for a wind turbine at the same property albeit in a different position was withdrawn (9/2009/0946).

## **Responses to Consultations**

East Midlands Airport has no objection.

Central Networks have requested the turbine is not sited with 21.6 metres of their pole-mounted transformer.

The Highway Authority has no objection in principle.

The Environmental Protection Manager (Environmental Health) has been involved in pre-application discussions. His recommendation was that the turbine be sited no less than 80 metres away from the nearest built form (in this case The Old Standing).

No objection has been received from Natural England.

## **Responses to Publicity**

Two neighbour objections have been received. The comments are summarised as follows:

- Noise concern in regard to 'tone' rather than 'volume' has not been considered/researched enough and the detrimental impact this tone imbalance will have on the health of the local population;
- Detrimental impact on immediate area/environment both visually and with regards site preparation - loss of trees and hedgerows; this having a knock on effect on the local wildlife;
- Misleading graphics and site analysis by agent;
- Danger to local bird/bat population;
- Visual distraction to road users and pedestrians.
- Intentions of applicant in regard to future development at his premises - works have started here already too;
- Interference with TV reception;
- Disproportionate size of the turbine and its possible 'output' in relation to the dwelling it is to serve.

## **Development Plan Policies**

EMRP Policy 40  
Local Plan Environment Policy 1

## **National Guidance**

PPS1, PPS7 and PPS22, PPG24



## **Planning Considerations**

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

- The principle
- Impact on residential amenity by virtue of noise pollution and visual intrusion.
- Visual impact on a rural setting

## **Planning Assessment**

PPS22 and the regional plan are generally supportive of renewable energy schemes subject to a number of criteria, including visual and other environmental impacts. This kind of wind turbine generally requires a rural location.

The development is a small-scale domestic wind turbine visible from Arleston Lane and the immediate surrounding fields. The site is not within any national or local designated landscape area. The local landscape already features electricity pylons and other miscellaneous equipment. In this context the turbine would have minimal impact on the landscape.

On the advice of the Environmental Protection Manager there would be no demonstrable harm to the living conditions of the occupiers of nearby dwellings. Noise and 'tone of noise' have been assessed and are deemed to be of an acceptable level in this location. The proposal therefore complies with the provisions of PPG24.

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).

Informatives:

The wind turbine should be maintained such that the noise levels specified in Manufacturer's details, submitted with the application, are not exceeded at any time. The turbine is to be positioned more than 10 metres from the highway boundary. The turbine is to be positioned no less than 21.6 metres from nearby Central Networks plant and equipment.

**2. PLANNING AND OTHER APPEALS**

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

<b>Reference</b>	<b>Place</b>	<b>Ward</b>	<b>Result</b>	<b>Cttee/delegated</b>
9/2009/0636	Foston	Hatton	Dismissed	Delegated



# Appeal Decision

Site visit made on 2 February 2010

**by Martin H Seddon, BSc DipTP  
MPhil MRTPI**

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

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

☎ 0117 372 6372  
email: [enquiries@pins.gsi.gov.uk](mailto:enquiries@pins.gsi.gov.uk)

**Decision date:  
12 February 2010**

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## Appeal Ref: APP/F1040/A/09/2115024

### Caballo Casa, Breach Lane, Foston, Derby, DE65 5PU

- 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 Stephen Wain against the decision of South Derbyshire District Council.
- The application Ref 9/2009/0636/U, dated 31 July 2009, was refused by notice dated 28 September 2009.
- The development proposed is a change of use to residential including erection of stables and garages.

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### Decision

1. I dismiss the appeal.

### Main issue

2. The main issue in this appeal is the effect of the proposal on the character and appearance of the countryside.

### Reasons

3. The site is an area of paddock containing a barn with stables, garaging and storage and a separate pigeon loft. It is located at the edge of the settlement between the modern dwelling of Caballo Casa and a further paddock area with a manege. To the east is the dwelling of Castle View with its outbuildings.
4. The site is within the open countryside. Policy 1 of the South Derbyshire Local Plan indicates that outside settlements new development will not be permitted unless:
  - (i) it is essential to a rural based activity; or
  - (ii) unavoidable in the countryside; and
  - (iii) the character of the countryside, the landscape quality, wildlife and historic features are safeguarded and protected.
5. The proposed uses for the two buildings would, in my opinion, not all be essential to a rural based activity. The proposed training and exercise room and domestic garage space for cars and motorcycles would not comply with the requirement of Policy 1(i). These particular uses would not be unavoidable in the countryside as they could be provided within a settlement.

6. The existing barn has a low ridge height. The pigeon loft is a separate functional building. These buildings are relatively unobtrusive when viewed from Church Broughton Lane as it approaches the crossroads with Breach Lane and also when seen next to the site.
7. The proposed buildings would be aligned parallel to Church Broughton Lane and would have a ridge height of around 6.05 m. This compares to a ridge height of approximately 5.3 m for the existing barn and 4 m for the pigeon loft. The combined footprint of the two new buildings would be less than that of the existing buildings. The side of the building alongside Church Broughton Lane would also have a low roof pitch. The buildings would be closer to Caballo Casa than the existing buildings. Nevertheless, I consider that the proposed buildings would be unduly prominent when seen from public views along Church Broughton Lane because of their height and massing.
8. There would also be a change in character of the building surroundings. The space between the buildings, access to Church Broughton Lane and access to the paddock would be block paved. Although much of this paving would be hidden from view from the highway, it would be seen from the public footpath that crosses the corner of the site.
9. The buildings have been designed to incorporate traditional detailing, including dormer windows that are present elsewhere in the village. The external materials would match those used in Caballo Casa. However, the overall effect of the proposal would be a significant detrimental change in the rural character of the site. Its appearance as an area of transition between the dwellings at the edge of the village and the paddocks and open fields beyond would be altered. The use of matching brick and tiles and extensive block paving would effectively result in built development that added visually to the adjoining residential uses. Additional landscaping, hedge and tree planting would fail to mitigate the resulting residential character and appearance of the development. The proposal would therefore conflict with Policy 1(iii) because the character of the countryside would not be safeguarded and protected. It would also conflict with national policy in Planning Policy Statement 7: *Sustainable Development in Rural Areas*, as it would not be sensitive to the character of the countryside.
10. I appreciate the appellant's desire to provide buildings that would improve the outlook from his property and provide additional facilities. However, these matters would not outweigh the harm to the countryside that I have identified.
11. For the reasons given above and having regard to all matters raised I conclude that the appeal should be dismissed.

*Martin H Seddon*

INSPECTOR