

REPORT OF THE DIRECTOR OF COMMUNITY AND PLANNING SERVICES

**SECTION 1: Planning Applications
SECTION 2: Planning Appeals**

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

1. PLANNING APPLICATIONS

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

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

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

16/07/2013

Item 1.1

Reg. No. 9/2013/0377/B

Applicant:
Ms Jacky Motts
45 Bells End Road
Walton On Trent
Swadlincote
DE12 8NF

Agent:
Peter Diffey & Associates Ltd
Cotesbach Villa
54 Woods Lane
Stapenhill
Burton On Trent
DE15 9DB

Proposal: THE VARIATION OF CONDITION 5 OF PLANNING PERMISSION 9/2012/0506/B TO EXTEND THE CONSENT FOR A FUTHER 5 YEARS AT LAND TO THE REAR OF 45-61 BELLS END ROAD WALTON ON TRENT SWADLINCOTE

Ward: SEALES

Valid Date: 21/05/2013

Reason for committee determination

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

Site Description

The application site is accessed through the rear garden of 45 Bells End Road and comprises a parcel of land located outside the village confines measuring approximately 75m in width (along the rear of Nos. 45-62 Bells End Road), projecting 50m into the countryside at the rear of No.61, reducing down to 0.5m to the rear of No.45, being triangular in shape. The land is mowed and fenced by hit and miss stock fencing to the boundary with the open countryside and a variety of 2m high boarded fencing and existing garages to the rear of residential properties. There are also two timber framed chicken pens on the land, which are attached to the rear of the existing garages.

Proposal

This application is for the variation of Condition 5 of planning permission 9/2012/0506 to extend the consent for a further period of five years. A more detailed explanation of the planning background of this site can be found under '*Planning History*' below.

Applicants' supporting information

9/2013/0377 - Land to the rear of 45-61 Bells End Road, Walton on Trent, Swadlincote DE12 8NF

THE SITE



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South Derbyshire District Council. LA 100019461. 2010

A letter has been submitted with the application which explains the background of the site which argues that, as the previously imposed conditions allow continuous monitoring and as the conditions themselves are strict, no special planning grounds exist for imposing a shorter temporary consent than that applied for.

Planning History

Conditional planning permission was granted in August 2011 following receipt of a retrospective application for the continued use of the land as a dog exercise area. Condition 5 of that consent stated that *'This permission shall be for a limited period only expiring on 02 August 2012 on or before which date the use shall be discontinued and the site reinstated to the satisfaction of the Local Planning Authority unless, prior to that date, an application has been made and permission has been granted for an extended period'*. The reason for the condition states: *'To allow the District Council to monitor the use due to its location in close proximity to neighbouring properties'*.

An appeal against Condition 3 of the 2011 permission, relating to the maximum number of dogs to be exercised at any one time was allowed (07/121/2011) and the condition substituted for that which would allow any number of dogs on the land provided they were in the presence of the applicant or her competent representative.

An application to vary Condition 5 was submitted in 2012 (9/2012/0506) to extend the time period to five years. The merits of that application were debated at the Planning Committee on 7th August 2012. Officer recommendation at that time was for a temporary two year period. However, Members considered that further monitoring of the site was required and a decision was made to extend the period for a further twelve months only.

Responses to Consultations

The Environmental Health Officer states that although he has received various complaints in relation to alleged noise nuisance and waste offences with regard to this site, despite thorough investigations no evidence was collected which would justify any objections to this application. To the best of his knowledge there are no on-going issues that have come to the attention of the Environmental Health Department.

Responses to Publicity

Three letters and a petition containing 34 signatures have been received, all of which object to the application on the following grounds:

- a) Attacks by applicant's dogs on other dogs taking place on the adjacent field – how long before it is a child who is attacked?
- b) Increasing number of dogs being exercised
- c) Noise nuisance
- d) Dog waste being thrown into the adjoining field
- e) Parking issues
- f) Other peoples' dogs are being exercised on the site without planning permission
- g) Dogs are left unsupervised
- h) The hours of 8am to 8pm when the applicant is allowed to exercise her dogs is hardly a time restriction

- i) Constant barking from dogs is spoiling residents' enjoyment of their gardens
- j) Unauthorised disposal of dog waste – not being carried out in accordance with the agreed details, which is a health hazard
- k) Applicant's vehicles are parking on Bells End Road and Harbin Road is causing nuisance to residents who are unable to park outside their properties, whilst her driveway remains empty of vehicles
- l) No intention to conform to planning conditions
- m) Pre-arranged visits from Council officials only show what the applicant wants them to see and noise monitoring equipment would give a false impression of the problems being experienced
- n) Loss of peace and tranquillity and open views of the countryside
- o) A comparison should be made between how many complaints were received when the land was farmed and how many have been made since the applicant has been using the land as a dog exercise area
- p) Nothing has improved since the applicant applied to vary the condition last year
- q) Threatening behaviour to neighbouring residents from visitors to the application site.
- r) Harassment and intimidation by the applicant towards the neighbours.

Development Plan Policies

The relevant policies are:

Local Plan: Environment Policy 1

National Guidance

The National Planning Policy Framework (NPPF), paragraphs 122 and 123

Planning Considerations

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

- Development plan policy and national guidance and advice
- Impact on neighbouring residents and their amenities
- Other relevant enforcement issues

Planning Assessment

The principle of the use of the land for dog training/exercising has already been established by the granting of planning permission in 2011. Condition 3, which restricted the number of dogs allowed on the land to four at any one time was contested at appeal and, subsequently, the condition was amended by the Planning Inspector to read: *Dogs shall not be allowed access to the land other than in the presence on the land of the appellant or her competent representative*. As a result of the revised condition there is now no restriction on the number of dogs that can be exercised on the land at any one time. At the time of the appeal the Inspector did not question the suitability of the development in this location, merely that the original condition to restrict the number of dogs was not effective in protecting the living conditions of the residents and that it may well have been counter-productive.

This application is a proposal to extend the time period for the use of the site for dog exercising for a further five years. Whilst the proposal does not strictly accord with part (i) of Local Plan Saved Environment Policy 1 in that it is not a rural-based activity and there is no justification to show that a countryside location is essential, the fact that the applicant lives at a property which shares a common boundary with the open countryside means that it constitutes unavoidable development in the countryside (part (ii) of the Policy). It follows therefore that the proposal is in compliance with that policy.

The main consideration in the determination of this application, however, is the impact the use has on the amenities of adjacent residents. There is no doubt that many of the neighbouring residents have been affected to some degree by the dog-related activities that occur on the land. Several complaints have been received since 2011 with regard to noise from barking dogs and other issues, although none of have been pursued, as it has proved difficult to ascertain whether a statutory noise nuisance has occurred, owing to the lack of written evidence. As previously explained in the Committee report that went before Members in 2012, issues of noise and dog waste problems are covered adequately under Environmental Health legislation, although there are national planning policies that also advise on noise-related issues. Paragraph 122 of the NPPF advises that:

'Local planning authorities should focus on whether the development itself is an acceptable use of the land, and the impact of the use, rather than the control of processes or emissions themselves where these are submit to approval under pollution control regimes. Where a planning decision has been made on a particular development, the planning issues should not be revisited through the permitting regimes operation by pollution control authorities'.

Paragraph 123 of the NPPF advises that: *Planning policies and decisions should aim to*

- *Avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development, and*
- *Mitigate and reduce to minimum other adverse impacts on health and quality of life arising from noise from new development, including through the use of conditions'.*

Clearly, the Local Planning Authority has already accepted that the use of this site as a dog exercise area is acceptable by the previous granting of two consents, both for temporary periods of one year and an appeal decision relating to a condition. The advice in Circular 11/95 on the use of planning conditions states that the granting of temporary permission will normally only be appropriate either where the applicant proposes temporary development or when a trial run is needed to in order to assess the effect of the development on the area, not the amenities of the area. In this instance, the applicant has specifically applied (again) for a temporary five-year permission and Members should now consider (a) whether the impact of the development on the amenities of the neighbours is sufficiently detrimental as to warrant a refusal or (b) approve the variation of condition for a five year period.

Members should be aware, however, that in order to refuse the application it should be demonstrated that circumstances have changed to such a degree since granting planning permission in 2011 and 2012 as to warrant a different outcome and that there is hard evidence to show this. In the absence of any such evidence that a statutory noise nuisance has occurred, (for example such as the serving of a Noise Abatement

Notice), and given the comments of the Environmental Health Officer above, it would be difficult to substantiate a refusal on grounds of adverse impact through noise, particularly as a Planning Inspector would expect the Council to provide such evidence at appeal. In light of this it is recommended that Members approve the variation of condition for a further five years, as applied for.

With regard to the other issues raised by the residents the majority of these are not material planning considerations, such as dogs attacking other dogs, parking on Bells End Road, loss of views, intimidation and harassment. The issue of disposal of dog waste was covered by condition on the 2012 consent, which required the submission of details for the disposal of all dog waste from the site. The details were duly submitted and the condition was discharged. It would be prudent to include a condition on the new planning permission to state that dog waste should be disposed of in accordance with those details previously approved. All other conditions should be transferred to the new permission.

In conclusion it is recommended that planning permission be granted for a further period of five years, after which time the Local Planning Authority will have a further opportunity to review the situation with regard to the impact of the development on the area.

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. This permission shall enure for the sole benefit of Ms Jacky Motts.
Reason: In light of Ms Jacky Mott's personal circumstances.
2. Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 (as amended) and Article 3 and Part 3 of the Town and Country Planning (General Permitted Development) Order 1995, this permission shall relate to the use of the land as a dog exercise area only as described in your application and for no other purpose.
Reason: In order that the Local Planning Authority may retain control over the future use of the premises and in the interests of the amenity of the area.
3. Dogs shall not be allowed access to the land other than in the presence on the land of the applicant or her competent representative.
Reason: In order maintain control of the dogs, in the interests of the amenities of the neighbouring residents.
4. The dogs shall be exercised only between the hours of 8am and 8pm daily.
Reason: To ensure that the use does not prejudice the enjoyment by neighbouring residents of their properties.
5. This permission shall be for a limited period only, expiring on 16th July 2018 on or before which date the use shall be discontinued and the site reinstated to the satisfaction of the Local Planning Authority unless, prior to that date, an

application has been made and permission has been granted for an extended period.

Reason: As applied for and in order to allow the District Council to continue to monitor the use on the surrounding area.

6. The development shall continue to be carried out in accordance with the scheme for the disposal of dog waste that was previously approved in writing by the Local Planning Authority unless prior written permission is given by the Local Planning Authority for any alternative scheme.

Reason: In the interests of pollution control and the amenities of neighbouring residents.

Informatives:

The applicant should be aware that regardless of planning consent the Environmental Health Department has a duty under the Environmental Protection Act 1990 to investigate noise complaints. Where noise disturbances amount to a statutory nuisance we are obliged to serve a noise abatement notice upon the perpetrator, non-compliance with which could result in prosecution.

In dealing with this application, the Local Planning Authority has worked with the applicant in a positive and proactive manner by quickly determining the application. As such it is considered that the Local Planning Authority has implemented the requirements set out in paragraphs 186 and 187 of the National Planning Policy Framework.

16/07/2013

Item 1.2

Reg. No. 9/2013/0421/NO

Applicant:
Atkin Brothers
The Grange
Twyford Road
Barrow On Trent
Derby
DE73 7HA

Agent:
Mr James Wilks
J S Wilks FRICS
6 Old Saddlers Yard
Uttoxeter
Staffordshire
ST14 7RT

Proposal: THE ERECTION OF AN AGRICULTURAL BUILDING FOR STORAGE OF GRAIN AT THE GRANGE TWYFORD ROAD BARROW ON TRENT DERBY

Ward: ASTON

Valid Date: 04/06/2013

Reason for committee determination

A district councillor is a member of the applicant family.

Site Description

The site is a working farm situated on the northern fringe of Barrow on Trent. The farm contains a substantial range of modern buildings set behind the traditional farmhouse and its outbuildings. The site lies within Flood Zone 3 as shown on the Environment Agency's maps.

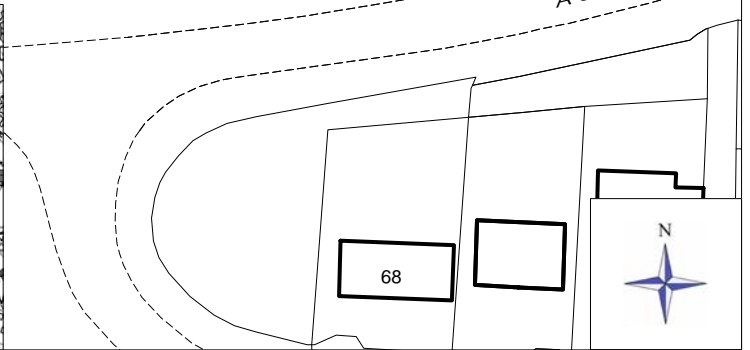
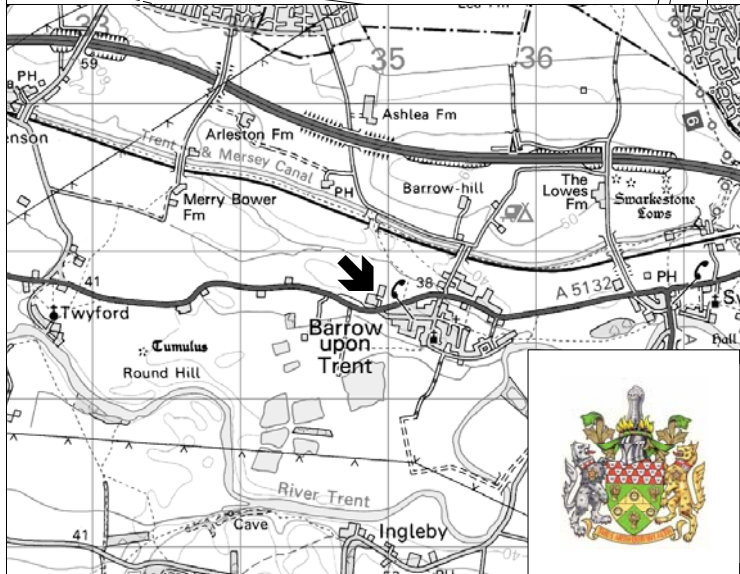
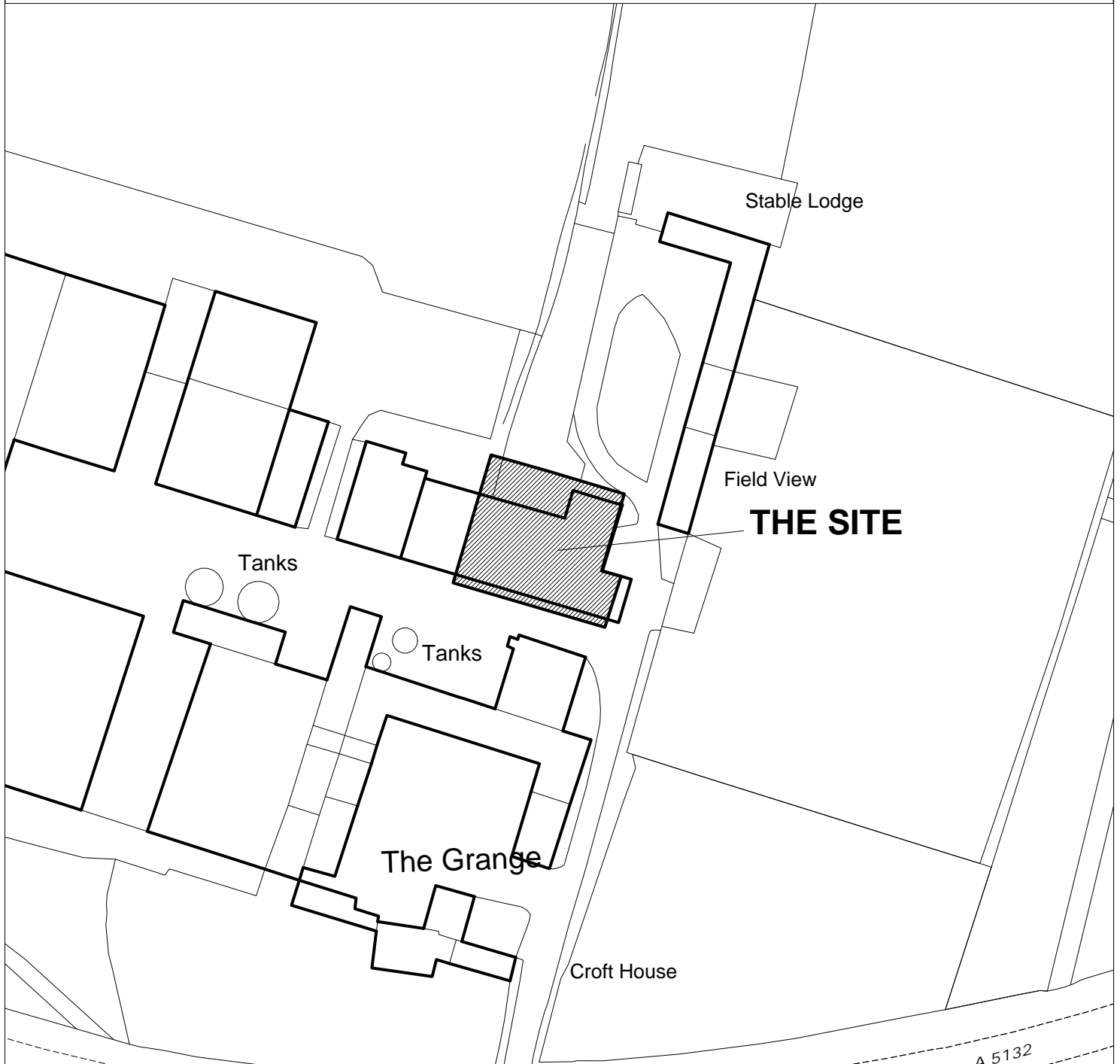
Proposal

The application proposes a modern steel framed building for grain storage. It would measure some 24m x 23m with a height of 9.5 m to the ridge.

Applicants' supporting information

The submitted Design and Access Statement makes emphasises that building is needed to provide adequate grain storage space, as grain presently has to be moved away from the farm and then moved again once sold. Therefore vehicle movements would be minimised.

Planning History



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South Derbyshire District Council. LA 100019461. 2010

The farm has been subject to incremental development over a long period of time.

Responses to Consultations

The Parish Council has no objection.

The Environment Agency has no objection in principle, on the basis that the proposal is a good distance away from the River Trent and the design provides for water to pass through the building.

Responses to Publicity

None received.

Development Plan Policies

The relevant policies are:

South Derbyshire Local Plan Saved Environment Policies 1 & 5.

National Guidance

National Planning Policy Framework Paras 11-14 (presumption in favour of sustainable development, Paras 186 & 187 (Positive decision-taking) Paras 196 & 197 (determining applications). Chapter 3 (Supporting a prosperous rural economy)

Planning Considerations

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

- The principle
- Impact on the character of the area

Planning Assessment

The application relates to an existing rural based activity and as such a location in the countryside is essential, this being the basic requirement of Local Plan Saved Environment Policy 1. Chapter 3 of the NPPF supports the development of agricultural businesses.

The building would be located within an established group of modern farm buildings. As such its impact on the character and appearance of the countryside would be minimal, and therefore in accord with Local Plan Saved Environment Policies 1 & 5. The setting of the listed building would be

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 Environment Agency recommends that the buildings should include openings in each wall with gaps extending from ground level to a height of 600mm above existing ground level, each being at least 1 m in length and total at least 20% of the length of each wall. This is to allow flood flows to pass through and drain out of the building in an extreme flood event.

In dealing with this application, the Local Planning Authority has worked with the applicant in a positive and proactive manner through pre-application discussions to resolve planning objections and issues and quickly determining the application. As such the Local Planning Authority has implemented the requirement set out in paragraphs 186 and 187 of the National Planning Policy Framework.

16/07/2013

Item 1.3

Reg. No. 9/2013/0422/NO

Applicant:
Atkin Brothers
The Grange
Twyford Road
Barrow On Trent
Derby
DE73 7HA

Agent:
Mr James Wilks
J S Wilks FRICS
6 Old Saddlers Yard
Uttoxeter
Staffordshire
ST14 7RT

Proposal: **THE ERECTION OF AN AGRICULTURAL BUILDING FOR
LOOSE HOUSING OF CATTLE AT THE GRANGE
TWYFORD ROAD BARROW ON TRENT DERBY**

Ward: **ASTON**

Valid Date: **04/06/2013**

Reason for committee determination

A district councillor is a member of the applicant family.

Site Description

The site is a working farm situated on the northern fringe of Barrow on Trent. The farm contains a substantial range of modern buildings set behind the traditional farmhouse and its outbuildings. The site lies within Flood Zone 3 as shown on the Environment Agency's maps.

Proposal

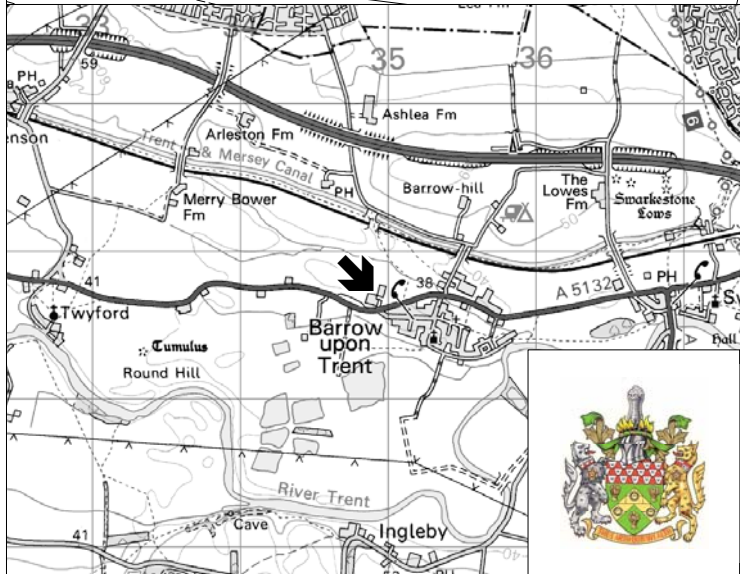
The application proposes a modern steel framed building for cattle housing. It would measure some 52m x 17 m with a height of 7.7m to the ridge.

Applicants' supporting information

The submitted Design and Access Statement makes emphasises that building is needed to provide adequate accommodation in response to modern animal husbandry requirements.

Planning History

The farm has been subject to incremental development over a long period of time.



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Responses to Consultations

The Parish Council has no objections.

The Environment Agency has no objection in principle, on the basis that the proposal is a good distance away from the River Trent and the design provides for water to pass through the building.

Responses to Publicity

None received.

Development Plan Policies

The relevant policies are:

South Derbyshire Local Plan Saved Environment Policies 1 & 5.

National Guidance

National Planning Policy Framework Paras 11-14 (presumption in favour of sustainable development, Paras 186 & 187 (Positive decision-taking) Paras 196 & 197 (determining applications). Chapter 3 (Supporting a prosperous rural economy)

Planning Considerations

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

- The principle
- Impact on the character of the area

Planning Assessment

The application relates to an existing rural based activity and as such a location in the countryside is essential, this being the basic requirement of Local Plan Saved Environment Policy 1. Chapter 3 of the NPPF supports the development of agricultural businesses.

The building would be located within an established group of modern farm buildings. As such its impact on the character and appearance of the countryside would be minimal, and therefore in accord with Local Plan Saved Environment Policies 1 & 5. The setting of the listed building would be

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 Environment Agency recommends that the buildings should include openings in each wall with gaps extending from ground level to a height of 600mm above existing ground level, each being at least 1 m in length and total at least 20% of the length of each wall. This is to allow flood flows to pass through and drain out of the building in an extreme flood event.

In dealing with this application, the Local Planning Authority has worked with the applicant in a positive and proactive manner through pre-application discussions to resolve planning objections and issues and quickly determining the application. As such the Local Planning Authority has implemented the requirement set out in paragraphs 186 and 187 of the National Planning Policy Framework.

16/07/2013

Item 1.4

Reg. No. 9/2013/0458/B

Applicant:
SOUTH DERBYSHIRE
DISTRICT COUNCIL
CIVIC OFFICES
CIVIC WAY
SWADLINCOTE

Agent:
MR NICK COOPER
HSSP ARCHITECTS LTD
PERA INNOVATION PARK
NOTTINGHAM ROAD
MELTON MOWBRAY
LEICESTERSHIRE
LE13 0PB

Proposal: THE REMOVAL OF CONDITION 7 AND VARIATION OF
CONDITIONS 9, 10, 17, 20, 21 & 26 ATTACHED TO
PLANNING PERMISSION 9/2011/0910 AT MELBOURNE
RECREATION GROUND COCKSHUT LANE
MELBOURNE

Ward: MELBOURNE

Valid Date: 18/06/2013

Reason for committee determination

The Council is the applicant.

Site Description

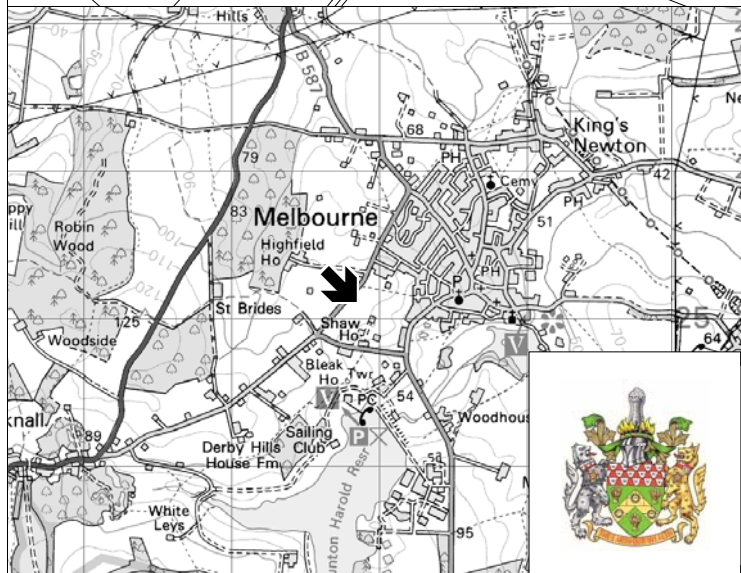
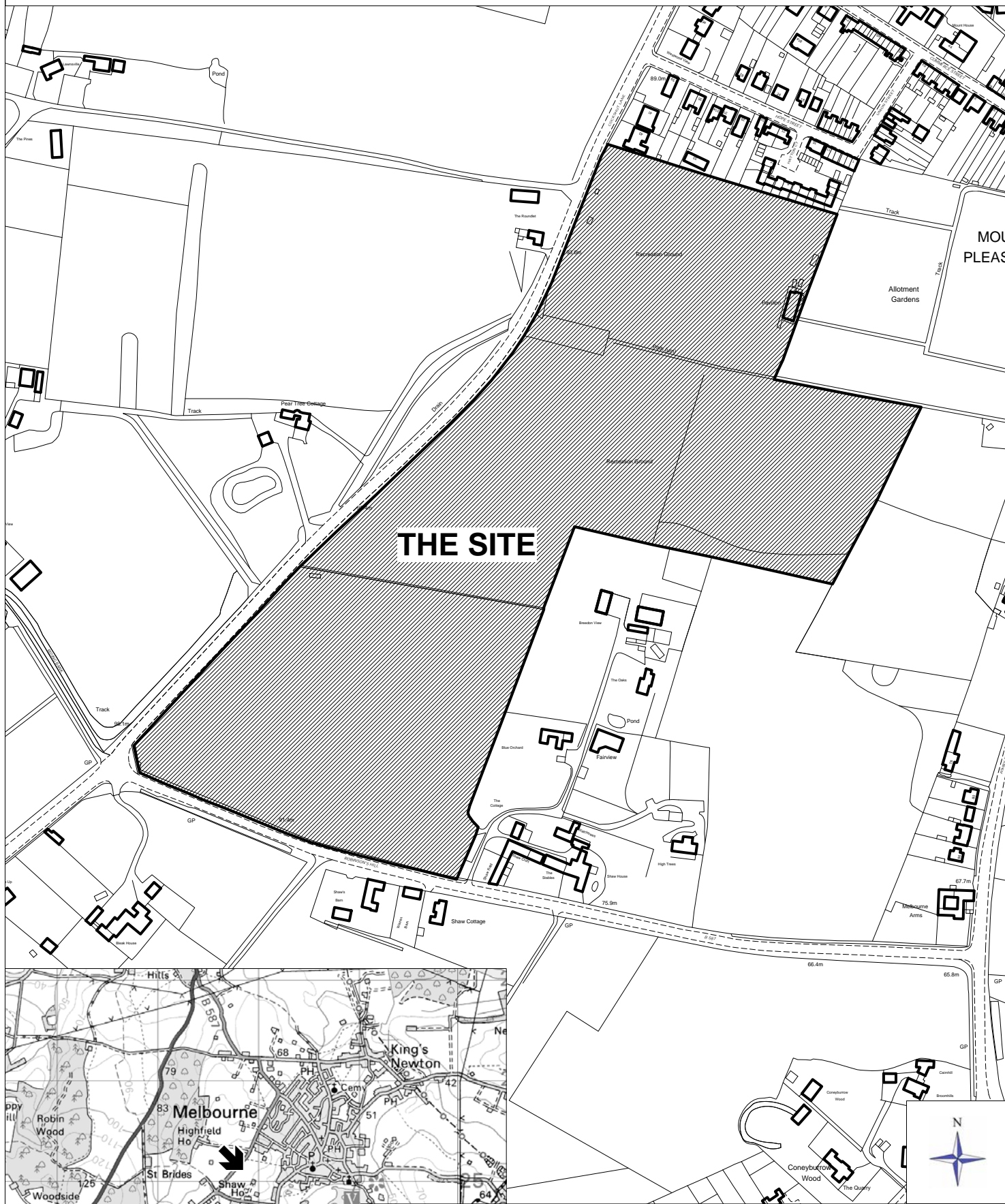
The application site covers an area of approximately 10.6 hectares, and is situated just outside the village confine of Melbourne to the south east of the settlement. It is the existing main sports and recreation ground for the locality. A public footpath runs from Cockshut Lane in the north west of the site, through the recreation ground to the residential area northeast of the application site.

Sloping land to the east of the site, and to the south of the public footpath, has been the subject of engineering works involving the importation of inert soils and subsoil to form a level surface (9/2010/0220). The operation is unfinished pending implementation of the comprehensive scheme permitted under ref no 9/2011/0910.

Proposal

Since planning permission was granted for comprehensive re-development of the playing fields, discussions between the members of the Melbourne Sporting Partnership have generated the need to seek some minor amendments. The application therefore seeks to vary or remove the following conditions:

9/2013/0458 - Melbourne Recreation Ground, Cockshut Lane, Melbourne, Derby (DE73 8DG)



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Condition 7 - *The development, the subject of the application, shall not be commenced until precise details of the intensity, direction, spread of luminance and shielding of light sources (so as to minimise the risk of drivers on the highway being dazzled) has been submitted to and approved in writing by the Local Planning Authority and thereafter maintained in accordance with the approved scheme – Remove, because Condition 16 requires all site lighting to be approved prior to installation.*

Condition 9 - *The ground levels of the area shown hatched and marked 'A' on the attached plan shall not be altered other than in strict accordance with Planning Permission Ref 2/2010/0220/SSA – Reduce extent of Area 'A' to coincide with boundaries of 9/2010/0220/SSA and increase Area 'B' to accommodate playing field requirements.*

Condition 10 - *Other than the areas shown hatched and marked 'A' 'B' and 'C' on the attached plan no raising or lowering of existing ground levels in excess of 300mm shall take place without the prior written approval of the Local Planning Authority. Exclude swales for proposed Sustainable Urban Drainage System (SUDS) scheme.*

Condition 17 - *No development shall take place until there has been submitted to and approved by the Local Planning Authority a scheme of landscaping, which shall include indications of all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection in the course of development . Vary to enable individual specimens to be submitted for approval at the appropriate phase of development.*

Condition 20 - *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 sports pavilion 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 – Vary to enable materials be submitted at the appropriate phase of development.*

Condition 21 - *Notwithstanding the originally submitted details, this permission shall relate to the amended drawing no 6409A 01A, 6490P 03A, and drawing numbers UKS7405/3, 6409P 02A, 6409P 01-2, 6409 P 01, 6409 V01 – Vary to enable minor re-siting of and amendments to the clubhouse to avoid public right of way and underground services.*

Condition 26 - *Unless as may otherwise be agreed in writing with the Local Planning Authority, the development shall be implemented in accordance with a phasing plan which shall have previously been submitted to and approved in writing by the Local Planning Authority and which identifies the timescale and order of the development – Vary to enable agreement of phasing priorities with the Melbourne Sports Partnership.*

Planning History

9/2011/0910 – new facilities for rugby, football, cricket, tennis and bowls, the erection of a new clubhouse floodlighting and creation of parking facilities - granted
9/2011/0179: the erection of a two lane all weather cricket net - granted
9/2011/0018: the erection of a two lane all weather cricket net - withdrawn
9/2010/0220: importing inert soil to restore an unusable sloping field and improve drainage - granted

9/2009/0538: the siting of 5 portacabins and floodlight for side of main pitch - granted
9/2004/0062: erection of a club sign - granted
9/2003/0320: The erection of a new cricket score box – granted

Responses to Consultations

Melbourne Parish Council has no objection.

Melbourne Civic Society, whilst welcoming the principle of the development, raises the following concerns:

- a) The drainage proposals are not clear (Comment: Drainage details to submitted and approved by condition)
- b) Final levels site levels are not clear (Comment: The main area of change (Area A) is controlled through planning permission 9/2010/0220)
- c) The drainage swales would be located so as to hinder the use of the playing fields.
- d) Pitch A would be too close to the public footpath and allotments, which would experience stray balls. It should be moved towards Robinsons Hill.
- e) The plan does not show WW1 memorial Poplar trees planted by the Royal British Legion, the Civic Society and the Parish Council. The bowls green would likely suffer root damage and relocation should be considered.

Responses to Publicity

Two residents object as follows:

- a) The proposals are not clear.
- b) The landscaping could cause loss of light to residential property.

Development Plan Policies

The relevant policies are:

South Derbyshire Local Plan Saved Environment Policy 1(Development in the Countryside), Community Facilities Policy 1(New Community Facilities), Recreation and Tourism Policy 1 (Recreation and Tourist Facilities), Recreation and Tourism Policy 8 (Public Footpaths and Bridleways), Transport Policy 6 (New Development)

National Guidance

Paras 6-10 (Achieving sustainable development)
Paras 11-14 (The presumption in favour of sustainable development)
Para 17 (Core principles)
Chapter 7 (Requiring good design)
Chapter 8 (Promoting healthy communities)
Chapter 10 (Meeting the challenge of climate change, flooding etc.)
Paras 186 &187 (Decision-taking)
Para 196 & 197 (Determining applications)
Paras 203-206 (Planning conditions and obligations)
Annex1 (Implementation)

Planning Considerations

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

- The principle
- The extent to which the changes would have impact
- Publicity

Planning Assessment

The principle

The principle of this major re-development of the playing fields has already been established through the extant planning permission.

The extent to which the changes would have impact

The impacts of the proposals are set out below:

Condition 7 – This condition was recommended by the Highway Authority to prevent dazzle to highway users. However Condition 16 requires details of all lighting to be submitted and approved prior to installation, and this provides adequate control to ensure that any lighting is safe for road users. Condition 7 is therefore no longer necessary.

Condition 10 – This condition was imposed to clarify the scope of significant changes in land levels, in particular to ensure that the extensive levelling operation to the playing field permitted under 9/2010/0220 was not exceeded by the grant of 9/2011/0910. However Area A also included a narrow strip of land outside the area permitted under 9/2010/0220. The proposed amended Areas A and B will enable the level of the pitch to be carried through.

Condition 17 – The existing landscaping scheme is a model condition primarily used for development undertaken as a continuous operation. However because the development will be phased the applicant's suggestion of agreeing precise planting details at the relevant stage is reasonable.

Condition 20 – Again this is a model condition. As the clubhouse is likely to be implemented after commencement of playing field improvements it is more relevant to require materials to be agreed prior to being used in the building.

Condition 21 – The proposed amendment follows government advice for 'material minor amendments' and would enable the building to be re-sited to avoid underground services and public right of way. The minor amendments to the building design are without material effect.

Condition 26 – This condition was imposed at the request of Sport England. The applicant seeks to vary the condition to enable phasing to be undertaken as a product of agreement with all partners. However as Sport England retains influence through the funding regime for the playing fields the condition is no longer necessary for planning purposes as it duplicates Sport England's control.

Overall the changes would have minimal impact and are necessary to enable this community facility project to proceed in an orderly manner.

Publicity

Although the application is concerned only with minor amendments, the original application was for major development and the same statutory advertisement regime has to be followed for this application. The advertisement period will expire on 19 July 2013. Given the nature of the application and the lack of opportunity to re-visit the principle of the development, it is therefore recommended that any representations received by 19 July be subject to consideration by the Director of Community and Planning Services under delegated powers.

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

Recommendation

A. That authority be delegated to the Director of Community and Planning Services to deal with any representations received within the publicity period,

B. Subject to A, **GRANT** permission under Regulation 3 of The Town and Country Planning General Regulations 1992, 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. Throughout the period of development vehicle wheel cleaning facilities shall be provided and retained within the site. All construction vehicles shall have their wheels cleaned before leaving the site in order to prevent the deposition of mud and other extraneous material on the public highway.

Reason: In the interests of highway safety.

3. Notwithstanding the submitted drawings, before the first use of the facilities on the site, the subject of the application, the northern most access to Cockshut Lane shall be created with a minimum width of 6m, with 6m radii and be laid out, constructed and provided with 2.4m x 120m visibility splays in either direction, the area in advance of the sightlines being maintained clear of any object greater than 1m in height (0.6m in the case of vegetation) relative to adjoining nearside carriageway channel level.

Reason: In the interests of highway safety.

4. Before the first use of the facilities within the site, the subject of the application, the southern most access to Cockshut Lane shall be modified in accordance with the application drawings, laid out, constructed and provided with 2.4m x 120m visibility splays in either direction, the area in advance of the sightlines being maintained clear of any object greater than 1m in height (0.6m in case of vegetation) relative to adjoining nearside carriageway channel level.

Reason: In the interests of highway safety.

5. The facilities, the subject of the application, shall not be taken into use until space has been provided within the application site in accordance with the application drawings for the parking and manoeuvring of visitors/staff/service and delivery vehicles (including secure covered cycle parking), 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.

6. There shall be no gates or other barriers within 5m of the nearside highway boundary and any gates shall open inwards only.

Reason: In the interests of highway safety.

7. 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 hydro geological context of the development, has been submitted to and approved in writing by the Local Planning Authority. The scheme shall subsequently be implemented in accordance with the approved details before the development is completed. The scheme submitted shall demonstrate:

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

Reason: To prevent increased risk of flooding.

8. The ground levels of the area delineated by a broken blue line and marked 'A' on the submitted drawing No 6409P-23 shall not be altered other than in strict accordance with Planning Permission Ref 2/2010/0220/SSA, except for those areas delineated by a broken red line and annotated swales/detention ponds.

Reason: In the interests of the character of the area and to protect the amenities of the occupiers of adjoining dwellings.

9. Other than the areas shown hatched and marked 'A' 'B' and 'C' on the attached plan no raising or lowering of existing ground levels in excess of 300mm shall take place without the prior written approval of the Local Planning Authority, except for those areas delineated by a broken red line and annotated swales/detention ponds.

Reason: In the interests of the character of the area and to protect the amenities of the occupiers of adjoining dwellings.

10. 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 to the satisfaction of the LPA.

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.

11. Tennis courts shall not be used for any other sporting activity other than tennis without prior written approval from the Local Planning Authority.

Reason: To prevent uses on the tennis courts which could result in excessive noise.

12. Written records shall be kept of the formal users of the recreation ground. The records shall include which users are using which sporting facility and at what time throughout the day and the facility administrators shall make that information available at all reasonable times to the local planning authority.

Reason: Should noise problems arise, the problematic bookings can be identified.

13. No external sporting facilities shall be used from 9:30pm until 8.00 am the following day, unless as may otherwise be agreed in writing with the Local Planning Authority.

Reason: To ensure that the use does not prejudice the enjoyment by neighbouring occupiers of their properties.

14. Floodlighting to pitches and other recreation areas shall be turned off no later than 9:30pm and shall not be turned on again until the following afternoon.

Reason: To preserve amenity.

15. Prior to installation a scheme of lighting shall be submitted to and approved in writing by the by the Local Planning Authority. The scheme shall be compliant with ILE Guidance recommendations (Environmental Zone Category E2). Results of post completion testing shall be submitted to and approved in writing by the Local Planning Authority before the lighting is brought into use and shall demonstrate compliance with the scheme; and the approved scheme shall be maintained throughout the duration of the permitted use.

Reason: To preserve amenity and to prevent danger to road users.

16. No works to form the new car parking areas or the clubhouse 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.

17. 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.

18. Unless as may otherwise be agreed in writing with the Local Planning Authority a landscape management plan, which shall include long term design objectives, management responsibilities and maintenance schedules for all landscape areas, shall be submitted to and approved by the Local Planning Authority prior to the first use of the development or any phase of the development, whichever is the sooner. The landscape management plan shall be carried out as approved.

Reason: In the interests of the appearance of the area and to ensure that tree and shrub planting does not constrain the capacity and functionality of the playing fields.

19. Prior to being incorporated in the development precise details, specifications and, where necessary, samples of the facing materials to be used in the construction of the external walls and roof of the sports pavilion shall be submitted to and approved in writing by the Local Planning Authority. The work shall be carried out in accordance with the approved details.

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

20. Notwithstanding the originally submitted details, this permission shall relate to the submitted drawing nos 6409P 01-02 RevA, 6409P 20 B & 6409P-23.

Reason: For the avoidance of doubt.

21. 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.

22. The facilities, the subject of the application, shall not be taken into use until adequate space has been provided within the site for the manoeuvring of delivery vehicles all in accordance with a scheme first submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of highway safety.

23. Before development begins, details of where surface water runoff will outfall, if not totally dealt with on site by sustainable drainage principles, shall be submitted to and agreed in writing with the Local Planning Authority. No such run off shall outfall to the balancing pond that exists adjacent to Robinson Hill. The development shall be implemented in accordance with the approved details.

Reason: In the interests of flood protection.

24. Unless as may otherwise be agreed in writing with the Local Planning Authority, before any part or phase of the development is brought into use it shall be constructed and/or implemented in accordance with details and specifications that confirm the facilities are compliant, where relevant, with the technical guidance of Sport England, Rugby Football Union, Football Association, English Cricket Board, Bowls England and Lawn Tennis Association.

Reason: To ensure that the development is a sustainable sport and recreation facility.

25. Before work is carried out to any playing field or pitch, details and specifications to demonstrate that the quality of any such pitch is compliant with Sport England technical guidance contained in Natural Turf for Sport and the relevant specialist technical guidance of the Rugby Football Union, English Cricket Board and Football Association, shall be submitted to and approved in writing by the Local Planning Authority. The works to pitches and playing fields shall be implemented in accordance with the approved details and specifications.

Reason: To ensure that the development is a sustainable sport and recreation facility.

Informatives:

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

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

Pursuant to Section 149 and 151 of the Highways Act 1980, the applicant/developer must take all necessary action to ensure that mud or other extraneous material is not carried out of the site and deposited on the public highway. Should such deposits occur, it is the applicant's/developer's responsibility to ensure that all reasonable steps (e.g. street sweeping) are taken to maintain the roads in the vicinity of the site to a satisfactory level of cleanliness.

The application site is affected by a public Right of Way (Footpath No. 18 on the Derbyshire Definitive Map). The route must remain unobstructed on its legal alignment at all times and the safety of the public using it must not be prejudiced either during or after development works take place. Advice regarding the temporary (or permanent) diversion of such routes may be obtained from the Strategic Director, Environmental Services at County Hall, Matlock (tel 01629 580000 and ask for the Footpaths Officer). In reference to condition 8, the drainage scheme proposed should provide a sustainable drainage strategy to include SUDS elements with attenuation, storage and treatment capacities incorporated as detailed in the CIRIA SUDS Manual (C697).

Surface water run-off should be controlled as near to its source as possible through a sustainable drainage approach to surface water management (SUDS). This approach involves using a range of techniques including soakaways, infiltration trenches, permeable pavements, grassed swales, ponds and wetlands to reduce flood risk by attenuating the rate and quantity of surface water run-off from a site.

This approach can also offer other benefits in terms of promoting groundwater recharge, water quality improvement and amenity enhancements. Approved Document Part H of

the Building Regulations 2000 sets out a hierarchy for surface water disposal which encourages a SUDS approach. Further information on SUDS can be found in PPS25, in the CIRIA C522 document Sustainable Urban Drainage Systems-design manual for England and Wales and the Interim Code of Practice for Sustainable Drainage Systems. The Interim Code of Practice provides advice on design, adoption and maintenance issues and a full overview of other technical guidance on SUDS. The Interim Code of Practice is available on both the Environment Agency's web site at: www.environment-agency.gov.uk and CIRIA's web site at www.ciria.org.uk

Further to Conditions 9 & 10 changes of ground levels in excess of 300mm may result in the need for a further grant of planning permission.

In reference to condition 24 details of the balancing pond that exists adjacent to Robinsons Hill are available from SDDC Engineer - Chis Payne (tel: 01283 595756).

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

For further assistance in complying with planning conditions and other legal requirements applicants should consult "Developing Land within Derbyshire - Guidance on submitting applications for land that may be contaminated". This document has been produced by local authorities in Derbyshire to assist developers, and is available from http://www.south-derbys.gov.uk/business/pollution/contaminated_land/default.asp Reports in electronic formats are preferred, ideally on a CD. For the individual report phases, the administration of this application may be expedited if a digital copy of these reports is also submitted to the pollution control officer (contaminated land) in the environmental health department: pollution.control@south-derbys.gov.uk. In dealing with this application, the Local Planning Authority has worked with the applicant in a positive and proactive manner through pre-application discussions. As such the Local Planning Authority has implemented the requirement set out in paragraphs 186 and 187 of the National Planning Policy Framework."

16/07/2013

Item 2.1

Reg. No. 9/2013/0341/OS

Applicant:
Mr & Mrs J Williamson
2 Springfield Road
Repton
Derbyshire
DE65 6GN

Agent:
MR Mark Pringle
Making Plans Architecture
Ivy Lodge
5 Twyford Road
Willington
Derbyshire
DE65 6DE

Proposal: **OUTLINE APPLICATION (ALL MATTERS RESERVED)**
FOR THE REPLACEMENT OF EXISTING DWELLING
AND GARAGE WITH TWO DWELLINGS EACH WITH
GARAGE AT ASKEW LODGE MILTON ROAD REPTON
DERBY

Ward: **REPTON**

Valid Date: **04/06/2013**

Reason for committee determination

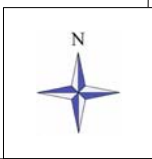
This item is reported to the Committee at the request of a Councillor Stanton on the grounds that local concern has been expressed about a particular issue.

Site Description

The site lies to the north of Milton Road some 125 metres beyond the village confines, as measured along Milton Road itself, although the primary school opposite is within the village boundary. The highway has a pedestrian footway on the northern side which connects to the village. The existing dwelling is of bespoke 1970s design, having originally been built as an ancillary leisure complex to Askew House, immediately to the east of the site. It is mostly single storey with metal cladding and render to its faces, and gives the impression of a community hall or office building. In addition to Askew House, High Meadows lies to the north-east.

The land slopes up towards the north by around 10 metres and is heavily wooded with a mix of deciduous and coniferous trees, the majority of native species. It is surrounded by hedgerow. Further land owned by the applicant, fronting onto Milton Road, is put to grass; and the grounds to Askew House and High Meadows are equally well vegetated with trees. Surrounding this cluster of development is open farmland to the north, east and west; with the latter creating a visible separation to the more densely built up edge of Repton. Public footpath 29 crosses this land from west to east, immediately abutting the north edge of the site.

9/2013/0341 - Askew Lodge, Milton Road, Repton, Derby DE65 6FZ



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Proposal

The proposal is in outline with all matters reserved. The principle of development is to demolish the existing dwelling and erect one dwelling on its footprint whilst providing a further dwelling in the northern third of the site.

Applicants' supporting information

A Design and Access Statement (DAS) has been submitted in support of the application, a copy of which is on the Council's website. For ease, the salient points of the DAS are as follows:

- The existing access benefits from sufficient width, depth and visibility at its interface with Milton Road;
- The existing building has little architectural or historical merit;
- The dwellings would each provide for a minimum of 4 bedrooms, with reception area, lounge, kitchen, dining room, study, en-suites and bathroom also. Double garages would also serve each property;
- Materials are intended to be brick and plain clay tiles, with corbelling to the eaves;
- Eaves would be approximately 5 metres whilst the ridge height would be around 7.5 metres;
- Landscaping is already established with mature trees and shrubs around the site, and few would be lost to facilitate the development;
- The highway network and connectivity to Burton on Trent and Derby is outlined, as is the nearest regular bus service which stops nearby on Springfield Road and Milton Road;
- The strategic aims for South Derbyshire include providing 12,000 homes between 2006 and 2026, which are decent, suitable and affordable, and use land efficiently by prioritising brownfield land and achieving optimal densities;
- All the land is within the curtilage of Askew Lodge;
- The village has good amenities, including a school opposite.

Planning History

- | | |
|------------|--|
| 9/1174/523 | Erection of building for staff accommodation and squash courts (Approved 27 February 1975) |
| 9/775/494 | Erection of 3 detached houses and garages (Refused 27 January 1975 and appeal dismissed 5 January 1977) |
| 9/577/347 | Erection of a bungalow (Refused 8 December 1977) |
| 9/579/449 | Erection of a bungalow (Refused 2 October 1979) |
| 9/780/739 | Use of domestic recreation buildings as a dwelling (Refused 17 October 1980 and appeal dismissed 5 January 1982) |
| 9/1186/658 | Conversion of swimming pool buildings to dwelling (Approved 19 March 1987) |
| 9/887/379 | Outline application for detached house (Refused 14 October 1987 and appeal dismissed 1 July 1988) |
| 9/998/500 | Outline application for erection of one dwelling (Refused 6 November 1998) |

Responses to Consultations

The County Highway Authority raises no objection but requests conditions relating to provision of suitable visibility splays and suitable turning and parking space within the site for each dwelling.

The Environmental Health Officer (Contamination) notes that part of the application site has historically been subject to potentially contaminative use, namely linked to the manufacturing of machinery, engines and general industrial activity. This may have resulted in this site becoming affected by contamination and giving rise to pollutants and substances which could lead to it being contaminated. It is therefore considered that the proposed replacement of existing dwellings and garages may create pollutant linkages, which give rise to risks to the environment and site users. In view of these issues conditions are recommended to identify and remediate any potential land contamination on the site, specifically identified asbestos.

Severn Trent Water raises no objection subject to a condition being attached to require the submission of surface and foul water drainage details.

The Parish Council raises objection on the grounds that it is outside the village development boundary and 2 dwellings are proposed in place of a single dwelling.

Responses to Publicity

Two representations have been made. The first correspondence highlights errors in the applicant's statement and raises a concern with the proposal. The salient points are:

- a) The applicant fails to mention the site also borders High Meadows on its eastern edge;
- b) There are no bus stops on Milton Road or Springfield Road, with residents having to walk to Repton Cross to reach the Burton to Derby service;
- c) The new dwelling could cause privacy issues if it is built with windows facing east

The other correspondent has no objection to the erection of only 2 dwellings based on the likely size of house as laid on in the application. They would have concern and object if the grant of permission led to a subsequent application for more than the two dwellings proposed.

Development Plan Policies

The relevant policies are:

Local Plan: Housing Policies 8 and 11 (H8 and H11), Environment Policies 1, 9 and 13 (EV1, EV9 and EV13), and Transport Policy 6 (T6)

National Guidance

National Planning Policy Framework (NPPF): Paragraphs 14, 17, 32, 39, 49, 53, 55, 58, 61, 103, 118, 120, 122, 186, 187 and 215.

Planning Considerations

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

- The principle of development
- Overall design and access principles, including highway safety

- Technical considerations, such as drainage and contamination issues

Planning Assessment

The application is made in outline with all matters reserved. Hence the layout plan provided is to be taken as indicative of the development which could occur (upon approval of those reserved matters) should permission be granted. The appropriate manner in which to consider principle is to assess whether two dwellings are acceptable on the site.

Principle of development

Saved policies EV1 and H8 strictly limit development in the countryside – particularly residential development. The nature of the proposal, in that it seeks to replace an existing dwelling whilst adding another dwelling to the total, crosses various policy strands. To aid with assessment it is considered prudent to first address the principle of replacing the existing dwelling. Saved policy H8 makes specific allowance for replacement dwellings outside of settlement provided that the form and bulk of the dwelling does not substantially exceed the original, the design and materials are in keeping with the surrounding character, and that it is substantially on the same footprint as the existing. The replacement dwelling's footprint is indicated to be upon the existing, and indicative heights are described, but given the outline nature of the proposal it is not possible to accurately ascertain compliance with the policy requirements. Nonetheless it is considered these matters can be appropriately addressed at reserved matters stage, as there are no specific constraints which would suggest compliance with policy is not possible. As a result the proposal is acceptable in so far as the principle of replacing the existing dwelling.

Consideration now focusses on the additional dwelling. As noted the site lies outside of the village confines where residential development is strictly controlled. Policy H8 is particularly relevant. This allows for the replacement of existing dwellings and dwellings to serve an agricultural or other rural worker who needs to live close to their place of work. Neither of these allowances applies and the proposal is thus contrary to the Development Plan.

Attention is given to the status of Local Plan policies. Paragraph 49 of the NPPF highlights that relevant housing policies should not be considered up-to-date if a five-year supply of deliverable housing sites cannot be demonstrated – as is presently the case in South Derbyshire. The presumption in favour of sustainable development would therefore normally apply. However paragraph 14 makes particular note that planning should not be granted where *"specific policies [of the NPPF]...indicate development should be restricted"*. Paragraph 55 does just that, recognising that isolated homes in the countryside should be avoided unless there are special circumstances. This site does not directly abut or adjoin development forming a substantial built up edge to Repton. The school to the south is across a highway and is in majority open land. The nearest edge of Repton is some 125 metres to the west, across open farmland. It is therefore considered the site is isolated, and this is a conclusion reached by Inspectors on the previous refusals for additional dwellings at Askew Lodge, as listed above.

It is necessary to establish whether there are special circumstances which would allow compliance with paragraph 55. The NPPF suggests more or less the same options as allowed under H8 and conversions of existing buildings. Again the proposal does not

accord. Therefore regard is had to any other material considerations which need to either individually or collectively constitute special circumstances.

The fact that the site forms part of the existing residential curtilage affords minimal weight to the proposal. The NPPF and former revisions to PPS3 make it clear that gardens are not brownfield sites. The fundamental principles as outlined above apply. Consideration is also given to the existing vegetation on and around the site which offers considerable screening. Although a public footpath immediately abuts the northern boundary, it is accepted that this would assist in reducing the visual harm to a degree; but it is not considered sufficient to outweigh the conclusion that an additional dwelling is unsuitable in principle.

The housing needs for South Derbyshire are noted. However this proposal would have very marginal effect on the projected housing needs and the wider benefits arising from this development will be limited (i.e. economic benefits would be limited and it will not provide an environmental benefit by materially decreasing the need for large housing allocations on open farmland elsewhere). There would be a considerable degree of harm brought about by allowing encroachment into the countryside. This harm has wider ramifications if accepted – potentially leading to harm on a much greater scale. Members may wish to consider how, in allowing this, they would resist applications elsewhere for isolated dwellings close to but not adjoining settlements. Hence whilst a policy harm per se, the effect of relaxing this policy on this occasion would likely have a considerable degree of harm in the long term. As such the harm arising here is considered to be much greater than the benefit of providing just a single dwelling from the much larger strategic need.

As a consequence there are no special circumstances which would allow for compliance with paragraph 55 of the NPPF, and as such the presumption in favour of development does not apply. Under paragraph 215 the Council may give due weight to relevant policies in the Local Plan according to their degree of consistency with the NPPF. The objectives of EV1 and H8 are all considered to directly follow the aims of paragraph 55. It is therefore considered full weight can be afforded to those policies and the proposal should be resisted.

Design and access principles

The Highway Authority has raised no objection to the proposal subject to conditions. Whilst access is a reserved matter, this indicates that the proposal is capable of safe and suitable access for all users concerned, in line with saved policy T6 and paragraph 32 of the NPPF. There is also sufficient space within the site to accommodate parking and manoeuvring space, and the incline of the land is not considered so great to limit the use of the dwellings by various ages and abilities.

The comments regarding privacy are noted, but as this proposal is in outline that is a material consideration for the reserved matters stage. Again the constraints of the site are not such that it would likely prevent acceptable living standards (i.e. privacy and overshadowing) for existing and proposed occupiers.

Indicative plans show a reduced footprint to the existing dwelling although it is noted that the existing dwelling is single storey only. Both dwellings are shown to have detached double garages. Whilst indicative heights are suggested, as scale is a reserved matter, it is unlikely that the dwellings cannot be designed to be of appropriate

scale, bulk and materiality. In terms of layout, the existing vegetation is to be largely retained, with some significant specimens contributing to the wider amenity – especially with a footpath to the rear of the site. The trees/hedgerow to be lost is minimal and is not considered to cause significant harm to amenity or biodiversity.

Technical considerations

The exact design of the site is yet to be decided, but foul and surface water drainage can be addressed through an appropriate condition. Indeed there is no flooding concern on this site. The contamination concerns are also noted, but again an appropriate scheme of investigation, remediation and validation is considered proportionate in overcoming these.

Conclusion

In light of the direct conflict with both local and national policy, and there being no special circumstances to justify an additional dwelling; the use of conditions would not overcome this matter of principle. None of the other matters raised through the publicity and consultation process amount to material considerations outweighing the assessment of the main issues set out above.

Recommendation

REFUSE permission for the following reason:

1. The principle of replacing the existing dwelling with a single dwelling is acceptable in accordance with saved policy H8 of the South Derbyshire Local Plan 1998 (SDLP). However whilst the Council does not have a 5 year supply of housing land, the additional dwelling proposed represents development of an isolated dwelling in the countryside. Paragraph 14 of the National Planning Policy Framework (NPPF) indicates that the presumption in favour of sustainable development should not apply where specific policies of the NPPF direct otherwise, and paragraph 55 restricts isolated residential development in the countryside except in special circumstances. There are not considered to be special circumstances arising from paragraph 55, and the site characteristics and benefits of the additional dwelling are not considered to outweigh the considerable harm subsequently brought about. The proposal is therefore contrary to saved policies EV1 and H8 of the SDLP and paragraphs 14 and 55 of the NPPF.

Informatives:

Notwithstanding this refusal, the Local Planning Authority has worked with the applicant in a positive and proactive manner through pre-application discussions, outlining conflicts and providing the opportunity to overcome reasons for refusal, and promptly determining the application. However despite such efforts, the planning objections and issues have not been satisfactorily addressed/the suggested amendments have not been supplied. As such it is considered that the Local Planning Authority has implemented the requirement set out in paragraphs 186 and 187 of the National Planning Policy Framework.

2. PLANNING AND OTHER APPEALS

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

Reference	Place	Ward	Result	Cttee/Delegated
9/2012/0469	Church Gresley	Church Gresley	Allowed	Committee
9/2012/0890	Linton	Linton	Allowed	Delegated
E/2012/00047	Aston	Aston	Dismissed	Delegated



Appeal Decision

Site visit made on 28 May 2013

by Victoria Lucas-Gosnold LLB MCD MRTPI

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

Decision date: 20 June 2013

Appeal Ref: APP/F1040/A/13/2191396

80 Common Road, Church Gresley, Swadlincote, DE11 9NW.

- 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 M. H. Maxwell against the decision of South Derbyshire District Council.
 - The application Ref 9/2012/0469, dated 30 May 2012, was refused by notice dated 7 August 2012.
 - The development proposed is a new dwelling.
-

Decision

1. The appeal is allowed and planning permission is granted for a new dwelling at 80 Common Road, Church Gresley, Swadlincote, DE11 9NW in accordance with the terms of the application, Ref 9/2012/0469, dated 30 May 2012, and the plans submitted with it, subject to the conditions set out in the Schedule attached to this decision.

Main Issues

2. The main issues are:
 - The effect of the development proposed on highway safety; and
 - The effect of the development proposed on the living conditions of the occupants of No. 80, with particular regard to levels of outdoor amenity space provision.

Reasons

Highway Safety

3. The proposed dwelling would be situated to the rear of No. 80 and would share the existing driveway. The submitted plans show that a parking space would be provided for the use of No. 80 situated at the rear of the garden area for that property. A separate parking space and garage would be provided for the proposed dwelling. Alongside the parking space for No. 80, turning space would be laid out to allow for vehicles to manoeuvre within the site so as to exit onto Common Road in forwards gear. In addition to the plans submitted with the application, the appellant has submitted a swept path analysis for illustrative purposes. This shows that there is sufficient space within the application site for a vehicle to utilise the turning space provided without encroaching upon the parking space for No. 80. Although this additional information was submitted with the appeal, it merely expands upon the information already shown on the application plans. I therefore consider that,

in taking this information into account, the interests of the Council and any third parties have not been prejudiced.

4. There is therefore little substantive evidence before me to suggest that the turning space would be inadequate, resulting in vehicles having to reverse onto Common Road or instead parking on Common Road itself to avoid difficult manoeuvres. I consider it unlikely that future occupants of the proposed dwelling would seek to utilise on-street parking when sufficient parking and turning space would be provided on site. I also note that the highway authority has raised no objection in this regard. There is also little information before me to suggest that the garage would be used for anything other than its intended purpose.
5. I am also advised that the appellant has a Certificate of Lawful Use (granted in 2002) to use the site as a haulage yard. Although the appellant may currently park his haulage vehicle elsewhere, he would be entitled to use the site to park his vehicle. I consider that the vehicle movements associated with that use would have more significant implications for highway safety than those which would result from one additional dwelling.
6. Accordingly, I conclude that the proposal would not be harmful to highway safety. There would be no conflict with Transport Policy T6 of the South Derbyshire Local Plan (Adopted 1998) which states, among other things, that all proposals for development should incorporate adequate provision for parking and manoeuvring.

Outdoor Amenity Space for No 80

7. The submitted plans show that a 1.8 metre high wall would be erected along the rear boundary of the garden area of No. 80. This would delineate the private amenity area for No. 80 from the adjacent parking/turning area. The wall would also prevent overlooking from the proposed dwelling to No. 80 and its rear garden area. The Council's concerns as to the size of the garden area serving No. 80 appear to relate to whether or not the proposed parking and turning area would serve its intended purpose. It is contended that if this were not the case, it may need to be relocated to within the rear garden area of No. 80. I have concluded that the proposed parking area would be sufficient to provide for the parking and manoeuvring of vehicles on the site. Therefore, it would not be necessary to reposition the parking area to within the garden of No. 80. The plans show that there would be sufficient levels of private outdoor space for the occupants of No. 80 to sit out, garden or hang out washing.
8. I therefore conclude that the proposal would not be harmful to the living conditions of the occupants of No. 80, with particular regard to levels of outdoor amenity space. There would be no conflict with Housing Policy 11 of the Local Plan which states, among other things, that proposals for new housing developments will be permitted, subject to them providing reasonable amenities in terms of privacy and private amenity space.

Other Matters

9. I note the concerns expressed by neighbouring occupants regarding boundary treatments and the effect of the proposal on their living conditions. Existing trees and vegetation do provide effective screening between No. 84 Common Road and the appeal site. Moreover, ensuring appropriate boundary treatments are in place, along with measures to protect the existing trees and

hedges are matters that could be dealt with via planning conditions were the appeal to succeed. I note the concerns regarding the information supplied with the application relating to existing trees and hedges on the site. However, I consider this is also a matter that could be dealt with via a condition in order to verify their location and those trees and hedges that would be retained as part of the proposal. Issues relating to the ownership of the hedge are a private matter between Nos. 84 and 80. Although this may have implications for implementation, were the appeal to succeed, in determining this appeal, I have had regard to the planning merits only.

10. The proposed dwelling would be visible from the first floor bedroom window on the rear elevation of No. 84. However, the submitted plans show that the proposed first floor windows on the facing elevation would comprise a bathroom window and rooflights serving a third bedroom. There would therefore be no principal windows proposed in the facing elevation. The proposed bathroom window is also shown on the plans as being obscurely glazed. The only window proposed in the side elevation facing No. 78a would be secondary and obscurely glazed, serving a first floor en suite. In any event, there are no principal windows in the facing elevation of No. 78a. There is little substantive evidence before me to suggest that the proposal would result in overshadowing or overlooking to No. 78a. Given the separation distances between No. 76 and the proposal and the existing boundary treatment in place, there would be no additional overlooking. I am therefore satisfied that the proposal would be acceptable in terms of its effect on the living conditions of adjacent occupiers.

Conclusion and Conditions

11. For the reasons given above, I conclude that the appeal should be allowed.
12. I have considered the conditions suggested by the Council in line with the advice in Circular 11/95 and for clarity. In addition to the standard time limit on commencement, a condition is necessary to ensure that the development is constructed in accordance with the submitted plans, for the avoidance of doubt and in the interests of proper planning.
13. To ensure there would be no harm to the character and appearance of the area as a result of the development, a condition has been imposed requiring the submission of samples materials to be used in the construction of external surfaces. For the same reasons, a condition is required to ensure that appropriate hard and soft landscaping schemes and suitable boundary treatments are implemented and retained. In the case of soft landscaping, I have imposed a condition requiring that this be retained for a period of five years after the completion of the development to ensure there will be no harm to the character and appearance of the area. In light of the presence of existing trees and hedgerows at the site, the condition needs to verify their locations. Where trees or hedgerows are to be retained, methods to ensure that suitable protection is put in place during construction of the development is required to avoid damaging them.
14. Suitable boundary treatments are also required to ensure the development would not be harmful to the privacy or outlook of adjoining occupiers. I have referred to a plan that shall be agreed in writing with the local planning authority, rather than specifying exact details at this stage, as this provides for greater flexibility in agreeing suitable boundary treatments. For the same

reasons, a condition is also required to ensure obscure glazing is fitted to the first floor bathroom window on the front elevation, the landing window on the side (south-west) elevation and en-suite window on the side (north-east) elevation of the development to ensure there would be no overlooking to neighbouring occupants.

15. A condition is required to ensure that the disposal of surface and foul water is provided for to ensure the development would not be harmful in terms of pollution or increasing flood risk from surface water run-off.
16. Due to the previous use of the site in connection with the appellant's haulage business, there is the possibility that contaminated land may be present on the site. I have therefore imposed a condition requiring a site investigation and, in the event of contamination being shown to be present, measures for remediation to be agreed with the local planning authority. Although in framing the condition, the Council have requested specific reference to be made to their 'Guidance on submitting planning applications for land that may be contaminated', I have not been provided with a copy of that document. I have therefore required that details of the site investigation, and any subsequent measures necessary, should be agreed in writing with the local planning authority.
17. A condition relating to the retention of existing visibility splays is necessary in the interests of highway safety. For the same reasons, and those given in my reasoning above, a condition is necessary to ensure that provision for parking and manoeuvring of vehicles on site is laid out in accordance with the approved plans.
18. The Circular advises that restrictions on permitted development should only be imposed exceptionally. There is little substantive evidence before me to suggest that such a condition is necessary to protect the character and appearance of the area or to safeguard the living conditions of neighbouring occupants. In this case, the removal of permitted development rights would therefore not be necessary.

Victoria Lucas-Gosnold

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing Nos. 12.61; 12.61.01; 12.61.02 B; 12.61.03; 12.61.04.
- 3) No development shall take place until precise details, specifications and samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. The submitted details shall include:

- i) A plan showing the location of each existing tree and hedgerow on the site, showing which trees and hedgerows are to be retained, together with measures for the protection of any retained tree or hedgerow from damage before and during the course of development.
- ii) A plan indicating the positions, design, materials and type of boundary treatment to be retained or erected.

All soft landscaping works (planting, seeding or turfing), including boundary treatments, shall be carried out in accordance with the approved details in the first planting season following the first occupation of the dwelling or the completion of the development, whichever is the sooner. 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.

All hard landscaping works, including boundary treatments, shall be carried out in accordance with the approved details and completed before the dwelling is occupied.

- 5) Before the first occupation of the building hereby permitted the first floor bathroom window on the front elevation, the first floor landing window on the side (south-west) elevation and the first floor en-suite window on the side (north-east) elevation shall be fitted with obscured glass and shall be permanently retained in that condition.
- 6) No development shall take place until details of a scheme for the disposal of surface and foul water have been submitted to and approved in writing by the local planning authority. The dwelling shall not be occupied until the drainage works have been completed in accordance with the approved scheme.
- 7) No development shall take place until a site investigation of the nature and extent of contamination has been carried out in accordance with a methodology which has previously been submitted to and approved in writing by the local planning authority. The results of the site investigation shall be made available to the local planning authority before any development begins. If any contamination is found during the site investigation, a report specifying the measures to be taken to remediate the site to render it suitable for the development hereby permitted shall be submitted to and approved in writing by the local planning authority.

The site shall be remediated in accordance with the approved measures before development begins. If, during the course of development, any contamination is found which has not been identified in the site investigation, additional measures for the remediation of this source of contamination shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures.

- 8) The existing visibility splays at the site access onto Common Road shall be retained and remain clear of any structure or erection exceeding 1 metre in height (0.6 metres in the case of vegetation) relative to the

adjoining nearside carriageway channel level, throughout the life of the development.

- 9) The dwelling shall not be occupied until space has been laid out, drained and surfaced within the site in accordance with drawing No. 12.61.02B for two cars to be parked and for vehicles to turn so that they may enter and leave the site in forward gear. That area shall be retained thereafter and not be used for any purpose other than the parking/manoeuvring of vehicles.
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Appeal Decision

Site visit made on 9 April 2013

by Beverley Doward BSc BTP MRTPI

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

Decision date: 27 June 2013

Appeal Ref: APP/F1040/A/13/2189991

Manor Cottage, Hillside Road, Linton, Derbyshire, DE12 6RA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr & Mrs Starling against the decision of South Derbyshire District Council.
 - The application Ref 9/2012/0890, dated 23 October 2012, was refused by notice dated 18 December 2012.
 - The development proposed is 3 dwellings and associated garaging and gardens and improvements to site access.
-

Decision

1. The appeal is allowed and planning permission is granted for 3 dwellings and associated garaging and gardens and improvements to site access at Manor Cottage, Hillside Road, Linton, Derbyshire, DE12 6RA in accordance with the terms of the application, Ref 9/2012/0890, dated 23 October 2012, subject to the conditions set out in the schedule at the end of this decision.

Procedural Matter

2. The planning application was submitted in outline with all matters except for access and layout reserved. A revised layout plan was submitted prior to the determination of the application by the Council. Accordingly, I have determined the appeal on the basis of the revised layout plan.

Main Issue

3. The main issues in this case are whether the proposed development complies with planning policies regarding the location of new housing and its effect on the character and appearance of the area and the surrounding countryside.

Reasons

4. The appeal site comprises the southern part of the large garden of Manor Cottage towards the north-eastern edge of Linton, a sizeable village which contains shops, a school, churches, public houses, recreational and community facilities. It lies outside the village settlement boundary, and so in the countryside, as defined in the South Derbyshire Local Plan 1998 (Local Plan).
5. Of the Local Plan policies referred to by the Council, Housing Policies 5 and 8 and Environment Policy 1 are the most relevant to this appeal. Housing Policy 6 which relates to small rural settlements that do not have a village boundary is not relevant in this case.

6. Housing Policy 5 of the Local Plan restricts new housing development to that which can be accommodated within the confines of the defined village settlement boundary. In this respect therefore, the appeal proposal would be contrary to that policy. It would also be precluded by Housing Policy 8 and Environment Policy 1 of the Local Plan which presume against new development outside settlements.
7. However, the appeal site is adjoined by Manor Cottage and what would remain of its garden to the north and north-east and Manor Farmhouse and its outbuildings, part of which are in residential use, to the south and south-east. Furthermore to the south of Manor Farmhouse, adjoining the settlement boundary, is the house and garden to no 66 Hillside Road and immediately across the road, on the western side of Hillside Road, is a row of semi detached and detached houses. I appreciate that the Inspector's report into the now withdrawn Local Plan concluded that the main part of the village was on the southern side of Hillside Road thereby marking a logical line for the development boundary. However, in this specific case, the proposed houses would be surrounded by, and well related to, the existing houses and their gardens and other built development. Consequently, the appeal proposal would not increase the extent of built development into open countryside and the proposed houses would not appear as isolated development in the countryside.
8. The appeal site is in an elevated position above Hillside Road. However, it would be screened by the mature trees, which are protected by tree preservation orders¹ (TPOs), and extend along the western boundary of the site and the track serving The Manor, as well as the property at no 98 Hillside Road to the north. Consequently, the proposed houses would not be especially prominent from the approach into the village from the wider countryside in the direction of either Castle Gresley to the north or Coton Park to the north-west. Any views of the appeal proposal would be limited to the house closest to Hillside Road (Unit 1) and would, even during the winter months when there are no leaves on the trees, be softened by their presence. Furthermore, it would be seen in the context of the surrounding built development.
9. Therefore, the appeal proposal would not extend the existing settlement into the countryside and would not cause material harm to the natural rural approach to the village. Consequently, there would be no material harm to the character and appearance of the area or the surrounding countryside. In addition, the scale and appearance of the proposed houses would be subject to control at reserved matters stage. Therefore, subject to careful consideration at that stage, a satisfactory appearance could be achieved.
10. To conclude on the main issues therefore, there would be no conflict with the underlying aims of the Local Plan Housing Policies 5 and 8 and Environment Policy 1 which, taken collectively, seek to preserve the countryside and to protect the character of the countryside and villages. The appeal proposal would also comply with the core planning principles of the National Planning Policy Framework (the Framework) which state that planning should take account of the character of different areas and recognise the intrinsic character and beauty of the countryside and the advice contained in the Framework (paragraph 55) on promoting sustainable development in rural areas.

¹ South Derbyshire District Council Tree Preservation Orders Nos. 69 and 85

11. I have been referred to two recent appeal decisions² in the District where Inspectors considered the degree of consistency between the Local Plan policies relating to settlement boundaries and the Framework. I accept that their findings may have provided a degree of comfort to both parties in this appeal. However, in this case I have concluded that there is no conflict with either the Framework or the underlying aims of the relevant Local Plan policies.
12. In so far as the appeal proposal would result in the development of part of the garden area to Manor Cottage, I have had regard to the Framework which advises local planning authorities to consider the case for setting out policies to resist inappropriate development of residential gardens, for example where development would cause harm to the local area. In this case the Council has no such policy. Nevertheless, given my findings above, there would be no material harm to the local area.

Other matters

13. Given my conclusions on the main issues, which have been based on the particular circumstances of this case, I see no reason why this would set a harmful precedent for the development of other sites close to, but not within, villages defined within the Local Plan.
14. The Council states that it has a 5 year supply of housing land and that the appeal proposal should not be regarded as a 'windfall' site. However, there is nothing in the Framework which precludes further development even if a 5 year supply exists or on sites that might not be regarded as 'windfalls'.
15. The likely traffic generated by three additional houses would be small and I note that the highway authority has raised no objections in this respect. The existing driveway to Manor Cottage, which would also provide access to the proposed houses, would be modified to improve visibility onto Hillside Road. Therefore, the appeal proposal would not be likely to cause highway safety problems.
16. No protected trees would be affected by the proposed development. Some trees and conifer hedging will be removed from the site. However, their contribution to the wider locality, given the extent of tree cover elsewhere and particularly on the margins of the site, is limited. In any event, significant additional tree, shrub and hedge planting is proposed at the rear of the houses and could be secured under the subsequent consideration of landscaping matters. This would further increase the tree cover on the site and along with the existing wooded area, which lies to the south of the appeal site, ensure there is no loss of privacy or overlooking to the houses to the south. Furthermore, in so far as the proposed layout of the houses would satisfy the Council's standards in relation to the minimum distances between principal windows, any issues of overlooking would be avoided.
17. The appeal site is higher than the properties on the opposite side of Hillside Road. However, given the intervening distance across the road, the orientation of the site to the east and the existing mature trees within the bank along the western boundary of the site, the appeal proposal would cause no material harm to the living conditions of the occupiers of these houses with regard to outlook and loss of daylight and sunlight.

² APP/F1040/A/12/2173159 and APP/F1040/A/11/2161627

18. There is no firm evidence, including from the relevant utility companies, that the site cannot be adequately serviced and drained.
19. I have not been given any firm evidence to indicate that it would not be possible to construct the development without damaging adjacent buildings.

Conditions and Conclusion

20. The Council has suggested a number of conditions that it considers would be appropriate were I minded to allow the appeal. I have considered these in the light of Circular 11/95 and for clarity. I have also had regard to the comments made by the appellant.
21. The application was made in outline and it is, therefore, necessary to impose conditions relating to the submission of reserved matters. For the avoidance of doubt and in the interests of proper planning in so far as the application related to layout and access, I have referred to the permitted plan.
22. It is necessary to impose a condition to ensure that retained trees are protected during construction in order to ensure the character and appearance of the area is retained.
23. It is necessary to impose conditions to ensure that the details of the access, parking and manoeuvring arrangements are satisfactory. This is to ensure highway safety is maintained and the character of the area is not compromised. However, as there could be other ways of achieving satisfactory arrangements in these respects I consider that the Council's wording is overly specific and have amended it accordingly.
24. A condition requiring the submission, approval and implementation of a scheme for the prevention of ground gas migration and ingress to the site is necessary as a precautionary approach given that it is within influencing distance of three areas of unknown filled ground.
25. The conditions relating to materials, landscaping and boundary treatment suggested by the Council fall within the scope of the reserved matters and so it is not necessary to impose separate additional conditions in these respects.
26. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed.

Beverley Doward

INSPECTOR

Attached – schedule of conditions

CONDITIONS

- 1) Details of the scale and appearance including finished floor levels and landscaping, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) Other than as specified in the conditions below the development hereby permitted shall be carried out in accordance with Drawing No. C1133/2 Revision D in so far as it relates to layout and access.
- 5) Prior to the commencement of development full details of the tree protection measures to be installed around the protected trees within the application site shall be submitted to and approved in writing by the local planning authority. The approved tree protection measures shall be installed prior to the commencement of any development and shall remain in place until such time as the development is complete and ready for occupation.
- 6) No occupation of the dwellings hereby approved shall take place until precise details of the vehicular access, including modifications to the existing access to Hillside Road, surfacing and parking arrangements have been submitted to and agreed in writing by the local planning authority and the details as agreed have been provided and made available for use. Once provided they should be retained as such thereafter.
- 7) No development shall take place until a scheme for the prevention of ground gas migration and ingress to the site has been submitted to and approved in writing by the local planning authority. No occupation of the dwellings hereby approved shall take place until the approved scheme has been implemented.



Appeal Decisions

Site visit made on 12 June 2013

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

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

Decision date: 2 July 2013

Appeal A Ref: APP/F1040/C/12/2180713

Appeal B Ref: APP/F1040/C/12/2180714

Land at 1 Aston Hall Drive, Aston on Trent, Derbyshire DE72 2DD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mrs Michelle Mansfield (Appeal A) and Mr Michael Adrian Mansfield (Appeal B) against an enforcement notice issued by South Derbyshire District Council.
 - The Council's reference is E/2012/00047.
 - The notice was issued on 9 July 2012.
 - The breach of planning control as alleged in the notice is the erection of four gateposts/pillars without planning permission.
 - The requirements of the notice are to: (1) remove the gateposts/pillars including removal of all footings and, (2) permanently remove all resultant material from the land.
 - The period for compliance with the requirements is 31 days.
 - The appeals are proceeding on the grounds set out in section 174(2) (b) and (c) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid in Appeal A and B within the specified period, the appeals on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Decision

1. Both Appeal A and B are dismissed and the enforcement notice is upheld.

Application for costs

2. An application for costs was made by the Council against the appellants. This application is the subject of a separate Decision.

Appeals A and B - grounds (b) and (c)

3. The appeals lodged under ground (b) are directed to the consideration of whether the matters alleged in the notice have occurred as a matter of fact. The date of the notice's issue is the relevant date for the purposes of these appeals. For the appeals to succeed under ground (c), the appellants should show that the alleged matter does not constitute a breach of planning control. In these appeals, the onus is squarely upon the appellants to make their own cases out on the balance of probabilities.
4. Number 1 Aston Hall Drive is located in a small block of terraced dwellings close to a grade II* listed building (Aston Hall Mansion) and All Saint's Church which is a grade I listed building. It is situated within the Aston on Trent Conservation Area.

5. The relevant planning history is set out in the statements submitted by the appeal parties ('the Parties')¹. The pertinent aspect of that history is as follows: planning permission was granted for *'the conversion of the main building [Aston Hall Mansion] into nine apartments together with the erection of two terraces, one of three dwellings and one of five dwellings on the site of the outbuildings at Aston Hall Hospital Aston on Trent...'*². The permission was subject to a number of conditions; no. 7 purported to remove permitted development ('PD') rights as set out in the GPDO³.
6. The appellants do not dispute that the pillars have not, as a matter of fact, been erected at the time the notice was issued. However the nub of the argument is that the pillars do not require planning permission. The assertion is that the development is PD by virtue of Article 3, Schedule 2, Part 2, Class A to the GPDO, which permits the erection of a gate, fence or other means of enclosure subject to conditions and limitations. In addition, the contention is that condition no. 7 imposed upon the 1996 permission does not remove PD rights. In support of this assertion, the appellants submitted a legal opinion.
7. The alleged development comprises the erection of four stone type pillars along the front boundary to no. 1 located adjacent to the roadway. Measurements were agreed between the Parties at my site visit. The pillars are approximately 1.7 metres tall and sit on the top of a 0.4m x 0.4m square base. Two of the columns appeared to form gateposts because of their positioning along the frontage to permit vehicular access. The Council contend that the pillars do not form a means of enclosure, but that line of argument overlooks their layout and design. Given the location of low level shrubbery and vegetation between some of the pillars, I take the view that the structures form a means of enclosure.
8. The information indicates that the pillars were physically erected on the site; the sections were probably built from foundation level upwards. They are placed on the top of the base stone; each section cemented together. The pillars possess a sufficient degree of permanence because of their size and physical attachment to the ground through their own weight. The appellants confirm that the work was carried out by a builder because of the nature and scale of the building operations⁴.
9. For the development to benefit from a deemed planning permission under Class A Part 2 of the GPDO, the appellants should show that the pillars meet with the physical criteria. Paragraph A.1 (a) states that development is not permitted by Class A if the height of any gate, fence, wall or means of enclosure erected or constructed adjacent to a highway used by vehicular traffic would, after the carrying out of the development, exceed 1m above ground level. There is no dispute between the Parties that Aston Hall Drive is a highway and a way over which residents and members of the public are entitled to pass and re-pass. Given the fact that the pillars are above 1m in overall height and are located adjacent to the highway, the development fails the terms of Class A. Therefore, the erection of the structures do not benefit from a deemed planning permission.
10. The appellants' alternative argument is that PD rights have not been removed by condition no. 7 imposed upon the 1996 permission⁵. Although I have found that the

¹ See section 2.0 to Michelle Mansfield and the Council's statement of case.

² The Council's reference is 9/0596/0085/F dated 26 June 1996, which I will refer to as 'the 1996 permission'.

³ See the Town and Country Planning (General Permitted Development) Order 1995 as amended ('the GPDO').

⁴ See paragraph 1.2 and 2.2 to the appellants' statement of case.

⁵ See exhibit MM8 to Michelle Mansfield's statement of case.

development does not benefit from PD rights as set out above, I will evaluate this argument for completeness.

11. Condition no. 7 states the following:

'Notwithstanding the provisions of Article 3 and Part 1 of the Schedule to the Town and Country Planning (General Permitted Development) Order 1995, none of the dwellings hereby permitted shall be altered enlarged or extended, no satellite dishes erected thereon, and no buildings, gates, walls, fences or other means of enclosure shall be erected on the application site, except as authorised under the submitted application or by any other condition attached to this permission, without the prior written consent of the local planning authority'.

The reason given for the condition states the following:

'To ensure that any such alterations, extensions or structures are in keeping with the character of the conservation area, to avoid harm to the setting of adjacent listed buildings and to ensure that unwarranted damage to trees is avoided'.

12. The 1996 permission clearly permitted the conversion of Aston Hall Mansion into nine apartments and the erection of two terraces. All of the conditions imposed upon the permission relate to that specific development. Condition no. 7 specifically refers to the GPDO; its purpose is to restrict its operation and the intention is clear given the reasons for imposing it. The terms of the condition are unequivocal; it specifically refers to the Order and seeks to control PD rights for *'...gates, walls, fences or other means of enclosure'*.

13. Additionally, article 3 (4) of the GPDO states the following: *'Nothing in this Order permits development contrary to any condition imposed by any planning permission granted or deemed to be granted under Part III of the Act otherwise than by this Order'*. The article refers to any condition imposed on any planning permission; condition no. 7 satisfies that criteria. Although the words of condition no. 7 do not strictly reflect Circular 11/95's model condition, prior written consent from the local planning authority would be required for the erection of four gateposts/pillars.

14. Even if the development carried out benefitted from PD rights set out in Class A Part 2 to the GPDO, prior written consent was required from the local planning authority; there is no dispute between the Parties that consent had not been applied for or granted.

Conclusion

15. As a matter of fact and degree and on the balance of probabilities, the erection of four gateposts/pillars as stated in the notice amounts to development for which planning permission is necessary. This is because the development does not benefit from a deemed permission by virtue of Class A, Part 2 to the GPDO and so express planning permission is required. Planning permission has not been obtained and so a breach of planning control has occurred.

16. For all of the above reasons, and having considered all other matters, I conclude that the appeals on ground (b) and (c) must, therefore, fail.

A U Ghafoor

INSPECTOR



Costs Decision

Site visit made on 12 June 2013

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

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

Decision date: 2 July 2013

**Costs application in relation to: Appeal A Ref: APP/F1040/C/12/2180713
Appeal B Ref: APP/F1040/C/12/2180714**

Land at 1 Aston Hall Drive, Aston on Trent, Derbyshire DE72 2DD

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250 (5).
 - The application is made by South Derbyshire District Council for a full award of costs against Mrs Michelle Mansfield (Appeal A) and Mr Michael Adrian Mansfield (Appeal B).
 - The appeal was against an enforcement notice alleging the erection of four gateposts/pillars without planning permission.
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Decision

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

Reasons

2. Circular 03/2009 advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. In planning appeals, and other proceedings to which this guidance applies, the parties involved normally meet their own expenses. Paragraph A24 states that an applicant for costs will need to demonstrate clearly how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense and decisions will be taken on the balance of probability. Expense should be identifiable or capable of being quantified in some tangible way. Expense may be unnecessary or wasted because the entire appeal could have been avoided or because time and effort was expended on one part of a case that subsequently turned out to have been abortive.
3. My decision explains the reasons as to why the appeals lodged under section 174 (2) (b) and (c) of the Town and Country Planning Act 1990 as amended failed. However, the Council complains about the appellants' lack of co-operation over the submission of a retrospective planning application or their legal opinion. Firstly, planning authorities have statutory responsibility for handling a wide range of planning applications and investigating alleged breaches of planning control. By issuing the enforcement notice, it is apparent that the Council considered it expedient to do so, because of the effect of the development as stated in the reasons for issuing the notice. Secondly, a legal opinion may be privileged information. The opinion was submitted during the appeal and the Council had ample opportunity address it. I do not consider that the appellants behaved unreasonably in not submitting the legal opinion to the Council prior to the taking of formal enforcement action.

4. Paragraph A23 to the Circular states that where a planning authority applies for an award of costs against an appellant, whether behaviour is regarded as unreasonable or not will take account of the evident experience and whether or not they are professionally represented. The right of appeal should be exercised in a reasonable manner. It should be used as a last resort, with the appellant being ready to proceed once the appeal is submitted. In this particular case, the appellants represented themselves given their own knowledge and expertise in development management. Upon receiving the enforcement notice, the appellants protected their interest in the land by making an appeal, which were clarified by email from the appellants on 8 August 2012. Given the substantial evidence submitted in support of their case, the appellants exercised their right of appeal in a reasonable manner.
5. Taking all of the above points together and having considered guidance contained in the Circular, I find that the appeal, and subsequent defence of all of the grounds of appeal, did not result in unreasonable behaviour thereby causing the Council to incur unnecessary or wasted expense. Consequently, on the circumstances of this case, I conclude that the appellants have not behaved unreasonably. A full award of costs is unjustified.

A U Ghafoor

INSPECTOR