

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

## **SECTION 1: Planning Applications**

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

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## **1. PLANNING APPLICATIONS**

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

<b>Reference</b>	<b>Item</b>	<b>Place</b>	<b>Ward</b>	<b>Page</b>
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When moving that a site visit be held, Members will be expected to consider and propose one or more of the following reasons:

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

**Item** 1.1

**Reg. No.** 9/2012/0326/NO

**Applicant:**

Mr Douglas Anderson  
The Gap Group  
Carrick House  
Carrick Street  
Glasgow

**Agent:**

Mr David Aitcheson  
Bell Building Projects Ltd  
19 Robert Drive  
Helen Street  
Glasgow

**Proposal:** The erection of a steel framed storage building at Gap Plant & Tool Hire Hilton Business Park The Mease Hilton Derby

**Ward:** HILTON

**Valid Date:** 26/04/2012

**Reason for committee determination**

Councillor Mrs Patten (ward member) has asked that the application be reported to Committee on the basis that local concern has been expressed about a particular issue.

**Site Description**

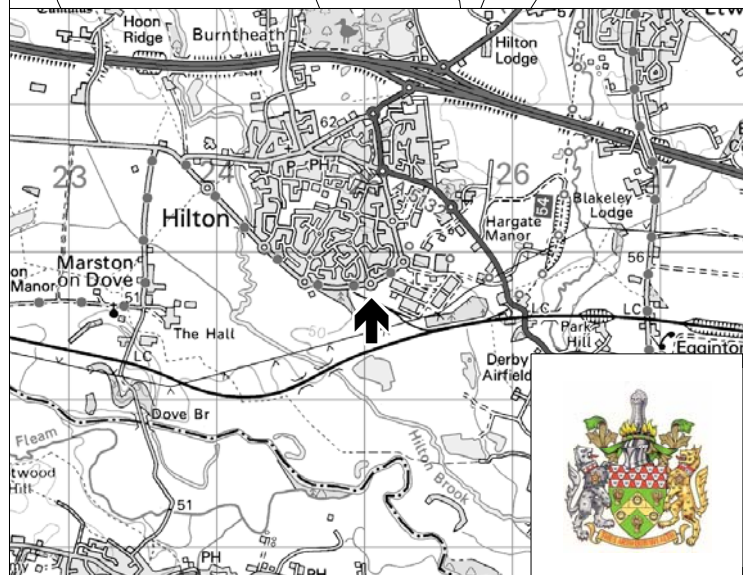
The site occupies a part of the land allocated for employment use on the Hilton Business Park. The site lies immediately to the south of The Mease at its junction with Nene Way where there is a roundabout with a short stub access into the application site. However all access into the site would be via the main site gatehouse and then using internal roads to get to the site. Security fencing encloses the site and where the disused access stub exists, there is a pair of gates at the same height as the fence. The site is level and comprises a mix of concrete and grass. On the other side of The Mease are houses served off Nene Way. Either side of the accesses off the roundabout are landscaped areas that provide a degree of screening of the industrial site from the residential areas.

**Proposal**

The application is as a result of a complaint of unauthorised development on the site. This application is made under Section 73 of the Act and seeks permission to retain a building and yard area for use by the applicants.

The applicants state that the building is 20m x 15m with a height of 6m (5.5m at the eaves) made up of two bays of the structure are open sided. The proposed use of the site is for storage and distribution for non-mechanical plant for the clients GAP Plant Hire Ltd. The business has indicated that it would operate on 0730 and 1800 on

**9/2012/0326 - Gap Plant & Tool Hire, Hilton Business Park, The Mease, Hilton, Derby (DE65 5JD)**



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**South Derbyshire District Council. LA 100019461. 2010**

Monday to Saturday with no working on Sundays or Bank Holidays. Lighting would be sited such that it does not shine towards the houses on the other side of The Mease.

## **Planning History**

The site was originally a military depot and since planning permission was granted in 1993, the site has formed a part of the allocation for Employment Land in the District. However, land in question has never had a reserved matters submission on it. Accordingly, the established use of the site is B8 – Storage and Distribution.

## **Responses to Consultations**

The County Highway Authority has no objection as the development is using the existing authorised site access via the Security gatehouse off The Mease.

The Environment Agency has no objection subject to the imposition of its recommended conditions.

Severn Trent Water has no objection.

## **Responses to Publicity**

One response received querying whether the direct access off The Mease is to be used.

## **Development Plan Policies**

The relevant policies are:

Regional Plan: Policies 1, 3 & 20.

Local Plan: Employment Policies 1 & 2.

## **National Guidance**

National Planning Policy Framework (NPPF) - paras. 18, 19 and 28.

## **Planning Considerations**

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

- The principle of development
- Impact on nearby residential properties.

## **Planning Assessment**

The site lies within an established employment site and the development as shown would not prejudice the long-term redevelopment of the land and its surroundings for employment purposes as supported by the policies set out in the Local Plan. The NPPF also seeks to ensure that employment opportunities are maximised to the benefit of the rural economy.

Given the proximity of the site to dwellings on the other side of The Mease, a requirement for lighting not to spill onto The Mease and securing the hours of operation

to those specified in the application should ensure that the amenities of residents are secured.

In the light of this planning permission is recommended subject to the imposition of reasonable conditions.

## **Recommendation**

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

1. The lighting of the site as illustrated on the submitted drawings shall ensure that the intensity, angling and shielding are such that light from the site does not spill onto The Mease or into the windows of dwellings on the north side of The Mease.

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

2. The site shall be operated only during the hours specified in the planning application as 0730 - 1800 on Monday to Saturdays nor at any time on Sundays, Bank or Public Holidays.

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

3. The development permitted by this planning permission shall be carried out in accordance with the approved Flood Risk Assessment (FRA) Revision 2.0 dated March 2012, ref: SEA45-FRA, undertaken by Betts Associates and the following mitigation measures detailed within the FRA:

1. Section 4.2.1. Limiting the surface water run-off generated by the critical storm so that it will not exceed the run-off from the undeveloped site and not increase the risk of flooding off-site, by directing surface water run-off into the ground as existing.

2. Section 3.10.3. Identification and provision of safe route(s) into and out of the site to an appropriate safe haven.

3. Section 3.9.2. Finished floor levels are set 100mm above the existing concrete slab.

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

Reason: To prevent flooding by ensuring the satisfactory storage of or disposal of surface water from the site and ensure safe access and egress from and to the site to reduce the risk of flooding to the proposed development and future occupants.

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

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

**Item**            **1.2**

**Reg. No.**        **9/2012/0390/FX**

**Applicant:**

Mr Adam Devey-Smith  
The Oneoff  
Derby Road  
Melbourne  
Derbyshire  
DE73 8FF

**Agent:**

Mr Joe White  
BHB Architects  
24 Bird Street  
Lichfield  
Staffordshire  
WS13 6PT

**Proposal:**        **The conversion and extension of an existing building to form 8 residential units at 55 Derby Road Melbourne Derby**

**Ward:**            **MELBOURNE**

**Valid Date:**      **08/05/2012**

**Reason for committee determination**

The application is reported to Committee at the request of Councillor Hewlett because local concern has been expressed about a particular issue, the issues of the case are very finely balanced, and the Committee should consider unusual site circumstances.

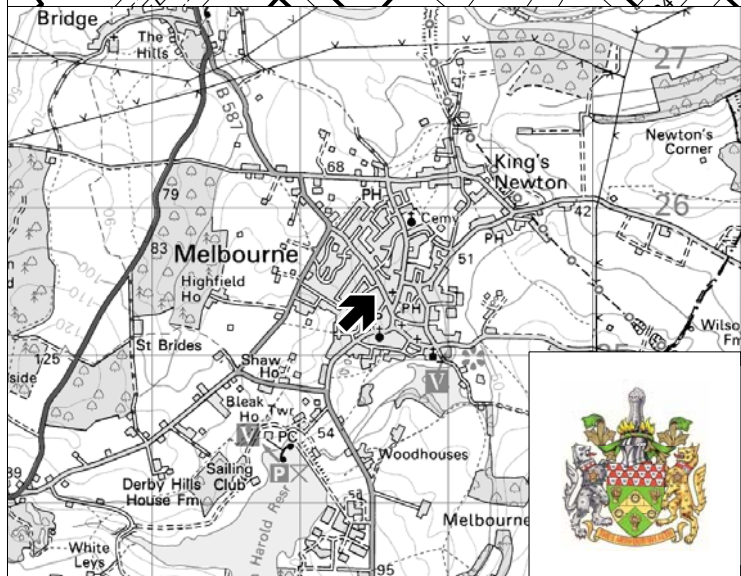
**Site Description**

The application contains a substantial two-storey building with an attached outbuilding to the rear. Although currently vacant it has a lawful use as offices. There is an area of hardstanding available for the parking and manoeuvring of four cars, restricted to this amount by planning condition. The Alma Inn and its beer garden are adjacent to part of the north-west boundary and there are dwellinghouses abutting the remainder of the north-west and the south-west boundaries. A public footway runs along the southern boundary, joining Derby Road with Dunnicliffe Lane. The site is in the Melbourne Conservation Area.

**Proposal**

The application seeks to convert the existing building and to extend to the rear to form 8 apartments. The parking and manoeuvring area for 4 vehicles would be retained in the layout. The extension would be some 9.5 metres from the rear bedroom windows of the bungalow at No 27 Dunnicliffe Lane. The window design in the elevation of the extension facing No 27 features a baffle design, such that occupants would not be able to look out over that property. The part of the extension nearest to No 1 South Street would be single storey, the remainder being two-storey.

9/2012/0390 - 55 Derby Road, Melbourne, Derby DE73 8FE



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**South Derbyshire District Council. LA 100019461. 2010**

## **Applicants' supporting information**

In addition to a Design and Access Statement the applicant has also provided a Highway Statement, which compares the preceding office use to the proposed residential scheme. An established traffic model (TRICS database) has been used. In particular the analysis projects the potential traffic impacts of the office use, had it been developed and extended in accordance with its planning permission (see Site History below). The Statement estimates, by proportion, that the offices would have generated 167% more traffic movements than the proposed residential scheme.

The Highway Statement reaches the following conclusions:

- The proposal would bring about a 71% reduction in traffic compared to the extended offices. This would also reduce the general probability of accidents on the highway.
- The analysis shows that there would be a reduction of 9 trips in the morning peak hours and 7 trips during the evening peak hours.
- There would be no detriment to the highway network.
- Reduced numbers of on-street parking compared to the extended offices would be a highway gain.
- Existing facilities are adequate for the generated increase in cyclists and public transport users.

## **Planning History**

9/2002/0959 - Convert outbuilding to dwelling – granted.

9/2004/0925 - Change of use to offices and flat with two storey extension to rear – granted

9/2005/0732 – Retain use as office accommodation of the first floor - granted

9/2010/0692 – Amended details to 9/2004/0925 - granted

9/2011/0859 – 9 residential units – withdrawn.

## **Responses to Consultations**

Melbourne Parish Council objects for the following reasons:

- a) 30 people attended the parish council meeting.
- b) The highway plan is out of date and shows the parking situation in a far better light than it actually is. 4 parking spaces are inadequate – at least 12 are needed.
- c) Access to Dunnicliffe Lane must not be allowed because it will become a car park used by residents of the new properties.
- d) The access onto Derby Road is dangerous with no visibility to the right. This would cause vehicles to be in the road before drivers can see towards the town centre.

Melbourne Civic Society considers that the scheme has advantages over the withdrawn proposal and that the physical works now proposed would enhance the character of the conservation area. Against that the absence of off-street parking for residents' cars remains a concern because it would exacerbate an existing problem on Derby Road. The arguments for and against, in the Society's view, are finely balanced.

Severn Trent Water Ltd has no objection in principle.

The Environmental Protection Manager is concerned that the development would bring new residents into close proximity with the smoking area used by customers of the Alma Inn. Noise and passive smoke emitted from this area would likely give rise to adverse amenities for the occupants of the new dwellings. Accordingly the raising of the boundary wall is recommended along with detail design measures to protect the interiors of the new dwellings from noise and smoke.

The Highway Authority has no objection in principle making reference to the following:

- a) The planning permission to extend the offices remains extant and would produce a total gross floor area of 329.5 sq m. Therefore both existing and approved floor areas need to be taken into account when assessing the potential traffic generation and parking demand.
- b) Based on the figures submitted in the Highway Statement and on the Highway Authority's calculations using floor area, the proposed development would potentially result in a reduction in the number of vehicle movements generated by the site but the demands for parking space would be similar, such that it is unlikely that an objection could be sustained. In addition, taking into account the applicant's claims that the site created demand for 25 spaces when it was fully operational, the proposed development would result in a significant reduction in demand for parking space in these circumstances.
- c) Although the applicant has stated that the four on-site parking spaces would be allocated, to prevent increased use of the substandard access, there are concerns that the method to achieve this has not been specified.

The Crime Prevention Design Adviser comments that there are minor issues with the entrance door to the original building (which presently exists), and a need to secure the emergency egress route. Otherwise incorporation of Secure by Design standards is recommended.

The Education Authority seeks a contribution to the local primary schools of £22,798.02.

Derbyshire County PCT considers that a contribution of £2535.75, based on the standard multiplier of £220.50 per person, to be appropriate.

## **Responses to Publicity**

A petition, signed by 29 residents in Dunnicliffe Lane objects because there is inadequate parking and the development would exacerbate existing congestion in the surrounding streets.

Letters have also been received from 12 local households/premises, objecting as follows:

- a) The previous grant of permission was based on a statement by the applicant relating to staffing levels. Conditions were imposed accordingly, restricting occupation to the applicant company. Therefore comparison with the earlier grant of permission for offices is erroneous and inappropriate.
- b) The proposed off-street parking provision is inadequate and does not take into account the already compromised parking and congestion in Derby Road, which has resulted in damage to property when buses mount the pavement.

- c) The parking problem would be exacerbated by the number of units proposed. There should be fewer units.
- d) There would be increased parking in nearby streets and strain on the road network.
- e) The turning head in Dunniclffe Lane would be used as a car park, creating an obstruction to emergency vehicles and other traffic.
- f) Business and residential uses are not comparable in traffic terms.
- g) There would be loss of privacy and development should conform to overbearing and privacy guidelines.
- h) The rear access would attract anti-social behaviour.
- i) The development would not be in keeping with the area.

## **Development Plan Policies**

The relevant policies are:

East Midlands Regional Plan Policies 2, 3 & 27

South Derbyshire Local Plan Saved Housing Policies 5 & 11, Transport Policies 6 & 7, Environment Policy 12.

## **National Guidance**

National Planning Policy Framework (NPPF) Paragraphs 11-14, 203-206, Chapters 6, 7 & 12.

## **Planning Considerations**

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

- The principle
- Relevance of existing permission and conditions.
- Highway safety and transport.
- Residential amenity.
- Impact on the conservation area.
- Contributions

## **Planning Assessment**

### The principle

East Midlands Regional Plan Policy 3 has a strategic objective of concentrating new development primarily in and adjoining the region's principal urban areas, whilst acknowledging that development in rural areas should also be provided for. Saved Housing Policy 5 of the Local Plan states that housing in villages will be restricted to within the village confine, provided that it is of scale and character in keeping with the settlement. Chapter 6 of the NPPF seeks to significantly boost the supply of housing to deliver a wide choice of high quality homes, with housing applications to be considered in the context of the presumption in favour of sustainable development (paragraphs 11-14). Therefore the site is in a location where, in principle, residential development is acceptable.

### Relevance of existing permission and conditions

The existence of an extant planning permission relating to the site of a proposed development is a particularly important material consideration. The principle that the existence of an extant permission is not lightly set aside is well demonstrated in the court case *Tesco Stores Ltd v SOS & Hounslow L.B.* 30/8/9, where the court felt that the SOS had erred in rejecting his inspector's recommendation that the extant permission was an important part of the case.

Planning permission 9/2004/0925 was implemented by conversion of the existing building to offices. Therefore the permitted extension (and the amended scheme 9/2010/0692) can be still constructed and occupied, albeit subject to Condition 11 which limits occupation to the applicant company.

The applicant made a statement about the amount of traffic that would be generated when the 2004 application was made (5 of 9 staff not using a car to travel to work). The case coincided with a time when government policy in PPG13 was weighted in favour of B1 (office) uses which were, as far as possible, highly accessible by public transport, walking, and cycling. The applicant was a local firm, with an existing workforce, seeking to move into more suitable premises and there was no basis to challenge the projected traffic movements and travel arrangements of staff at that time. Condition 11 ensured that the applicant company occupied the premises. However the condition could not control the subsequent expansion of the company, which was employing greater levels of staff prior to recent vacation of the site for larger premises nearby. Therefore, although the circumstances of the building's usage have changed since the grant of permission, the applicant's argument about present traffic generation capability and parking demands appears robust enough to withstand challenge.

### Highway safety and transport

Local Plan Saved Transport Policy 6 seeks adequate access (including public transport where appropriate) and parking. Saved Transport Policy 7 provides for pedestrian and disabled access.

The site is well placed to benefit from easy pedestrian access to local facilities and services, and the village has a bus service.

The main highway safety issue relates to the provision of off-street parking, because the site access is substandard in terms of visibility. Four parking spaces were accepted in granting 9/2004/0925 because there was evidence of historic usage of the site as a dwelling and hairdresser's shop. Nevertheless the Highway Authority would not wish to see the use of the access intensified beyond that. Its concerns about allocated parking spaces would be met by appropriate condition.

In terms of overall highway safety, the evidence supplied by the applicant's consultant (and accepted by the Highway Authority) is that despite the limited amount of off-street parking to be provided, there would be no demonstrable harm to highway safety interests.

## Residential amenity

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

The scheme has been designed so as to comply with supplementary planning guidance. The new part the building would be too close to No 27 Dunncliffe Lane for it to have windows facing that property. The applicant has overcome this with bespoke fenestration incorporating baffles, to enable light in whilst preventing direct views out to the rear.

The Environmental Protection Manager has concerns about noise and smoke from the outdoor area at the Alma Inn, in respect of impact on the occupiers of the new units. The applicant has responded by agreeing to raise the boundary wall to cut down noise, by incorporating noise reducing glazing, and ventilation systems designed to avoid bringing smoke indoors.

Objectors have raised concerns about inconvenience caused by increased demand for on-street parking. The office use generated demand for parking mainly during the day, whereas demand from residents tends to peak after normal working hours. However this coincides with the time when the numbers of spaces in public car park tend to become more abundant. On balance it would be difficult to quantify any adverse effects on existing residents' amenities.

Public open space would be provided off site through a Section 106 contribution.

## Impact on the conservation area

The scheme is well designed and respects the grain of the historic settlement. As such the character of the conservation area would be preserved by the development in accordance with Regional Plan Policy 27 and Local Plan Saved Environment Policy 12, both of which are consistent with Chapter 12 of the NPPF. Furthermore the proposal would be in accord with Chapter 7 of the NPPF, which requires good design and seeks to promote or reinforce local distinctiveness.

## Contributions

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

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

The following contributions meet the tests:

- Open Space: £714 x 15 rooms = £10,710

- Education: £22,798.02 to cover 2 primary school places.
- Healthcare: £2,535.75 based on occupancy rate of £220.50 per person in accordance with PCT advice.

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

## Recommendation

Subject to the applicant providing a Unilateral Undertaking under Section 106 of the Town and Country Planning Act to provide contributions in the terms set out in the report **GRANT** permission subject to the following conditions:

1. The development permitted shall be begun before the expiration of three years from the date of this permission.  
Reason: To conform with Section 91(1) of the Town and Country Planning Act, 1990 (as amended by section 51 of the Planning and Compulsory Purchase Act 2004).
2. Notwithstanding the originally submitted details, this permission shall relate to the submitted drawing nos. 2797-10A, 11B, 12B & 17A and the amended drawing no. 2797-14B.  
Reason: For the avoidance of doubt.
3. No part of the development shall be carried out until precise details, specifications and, where necessary, samples of the facing materials to be used in the construction of the external walls and roof of the building, external hard surfaces and boundary treatments have been submitted to and approved in writing by the Local Planning Authority. The work shall be carried out in accordance with the approved details.  
Reason: To safeguard the appearance of the existing building and the locality generally.
4. Large scale drawings to a minimum Scale of 1:10 of eaves and verges and external joinery, including horizontal and vertical sections, precise construction method of opening and cill and lintel details shall be submitted to and approved in writing by the Local Planning Authority before being incorporated in the building. The eaves and verges and external joinery shall be constructed in accordance with the approved drawings.  
Reason: The details submitted are inadequate to determine whether the appearance of the building would be acceptable.
5. Large scale drawings to a minimum Scale of 1:10 of the screens to the first floor projecting bay windows in the west elevation of the extension, which shall show in particular how outward views are to be precluded, shall be submitted to and approved in writing by the Local Planning Authority before being incorporated in the development. The projecting bays shall be constructed in accordance with the approved drawings and retained in place for the lifetime of the development.  
Reason: To protect the privacy of the occupants of the neighbouring dwelling.

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

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

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

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

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

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

9. Gutters shall be cast metal (with cast metal fall pipes) and shall be fixed direct to the brickwork on metal brackets, except as may be agreed in writing with the Local Planning Authority. No fascia boards shall be used.

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

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

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

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

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

12. Before the development is first occupied the north-west boundary wall shall be raised in height in accordance with details and specifications which shall have previously been submitted to and approved in writing by the Local Planning Authority.

To protect occupiers of the new dwellings from noise emanating from the adjoining public house premises.

13. Prior to their installation specifications of the windows, to achieve a performance of Rw 33dBA or better, and a ventilation system capable of precluding ingress of smoke to the dwellings shall be submitted to and approved in writing by the Local

Planning Authority. The windows and ventilation systems shall be constructed in accordance with the approved specifications prior to the first occupation of the development and shall be retained as such for the lifetime of the development.

Reason: To protect the amenities of the occupiers of the new dwellings from noise and smoke associated with the adjacent public house.

14. Prior to the commencement of development details of a scheme shall be submitted to and approved in writing by the Local Planning Authority for the allocation of the four car parking spaces within the site. The scheme shall demonstrate how the system will be managed so as to avoid attempts to gain access by the drivers of any other vehicles. The scheme shall be implemented in accordance with the approved details on first occupation of the development and the approved measures for managing the scheme shall be retained in place for the lifetime of the development.

Reason: In the interests of highway safety.

15. Prior to the first occupation of the development, the car parking and manoeuvring space shall be laid out in accordance with the application drawing and maintained thereafter free of any obstruction to its designated use.

Reason: In the interests of highway safety.

16. No gates shall be erected within 5m. of the highway boundary and any gates elsewhere shall open inwards only.

Reason: In the interests of highway safety.

17. Prior to being incorporated in the development, details of the gate in the southeast boundary wall shall be submitted to and approved in writing by the Local Planning Authority. In particular the submitted details shall show measures for preventing the gate from being opened from outside the site. The gate shall be installed in accordance with approved details before the development is first occupied and shall be retained as such thereafter.

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

18. 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 the National Planning Policy Framework.

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

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

20. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

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

Informative:

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

**Item**            **1.3**

**Reg. No.**        **9/2012/0469/FM**

**Applicant:**

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

**Agent:**

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

**Proposal:**        **The erection of a dwelling on land to the rear of 80  
Common Road Church Gresley Swadlincote**

**Ward:**            **CHURCH GRESLEY**

**Valid Date:**      **30/05/2012**

**Reason for committee determination**

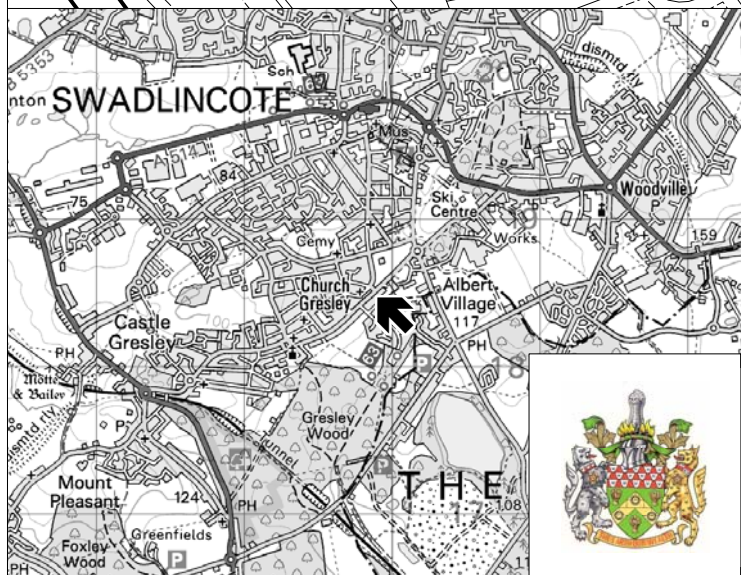
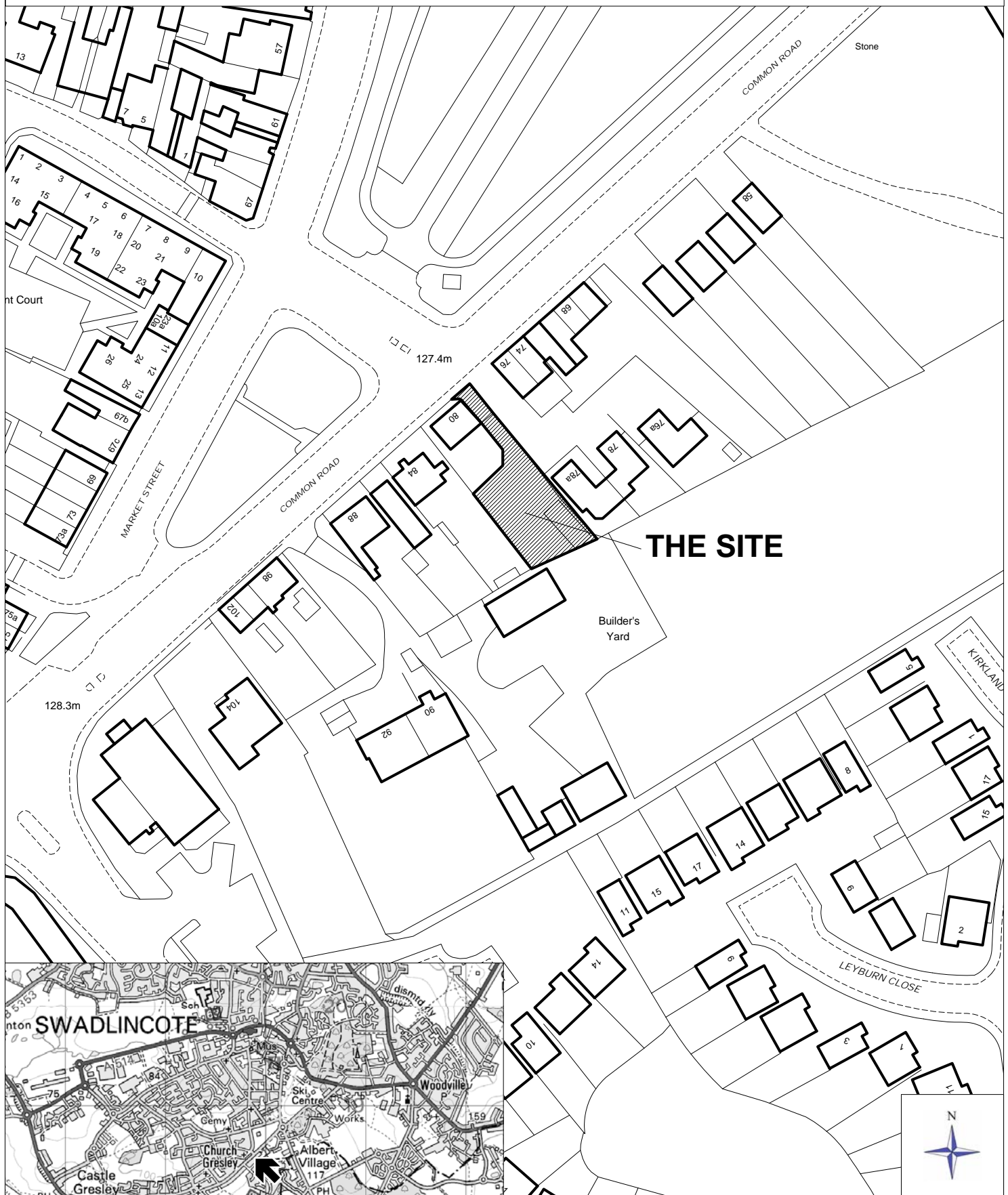
*Members will recall that this application was deferred for a site visit at the last Committee meeting. There are no updates to report on the application.*

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

**Site Description**

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

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



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**South Derbyshire District Council. LA 100019461. 2010**

## **Proposal**

Planning permission is sought for the erection of a detached, two storey, three bedroom dwelling and detached single garage towards the rear of the site, together with alterations to the existing vehicular access, which would serve both the proposed development and No.80. The dwelling would measure 7.8m wide x 9.9m deep x 8.2m high to the ridge. The detached garage would be 3.4m wide x 7m deep x 5.2m high to the ridge and positioned between the new dwelling and No.78a. The site plan shows a further parking space to the front of the garage and an area of private amenity space to the rear of the dwelling.

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

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

## **Applicants' supporting information**

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

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

## **Planning History**

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

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

## **Responses to Consultations**

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

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

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

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

### **Responses to Publicity**

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

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

### **Development Plan Policies**

The relevant policies are:

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

### **National Guidance**

The National Planning Policy Framework (NPPF) paragraph 53.

### **Other Guidance**

Supplementary Planning Guidance: Housing Design and Layout

## **Planning Considerations**

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

- the principle of the development and compliance with policy
- the impact on the amenities of the neighbouring residents
- the design and layout of the development
- the impact on the surrounding highway network

## **Planning Assessment**

### The principle of the development and compliance with policy

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

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

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

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

### Impact on the amenities of neighbouring residents

The residential properties most likely to be affected by the proposal are No.78a, which is adjacent to the proposed dwelling and garage, No.76 to the north east, the applicant's property (No.80) and No.84. The existing trees and other vegetation on the boundary of No.84 provide effective screening between the properties at ground level. However, in

all probability, the new dwelling would be visible from the first floor bedroom window of No. 84. A re-design of the new dwelling, which locates a bathroom window and roof lights serving a bedroom on the front elevation, ensures that there would be no principal windows at first floor level facing No.84, therefore there would be no opportunity for overlooking or loss of privacy.

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

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

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

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

### Design and Layout

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

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

### Impact on the surrounding highway network

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

Furthermore, it should be noted that, in 2002, the applicant applied for and was granted a Certificate of Lawful Use of the site as a haulage yard. The amount, type and noise

generated by vehicular movements associated with that use would far exceed that which would be generated by one additional dwelling, as in this case. The applicant now parks his haulage vehicles elsewhere, which can only be considered as an improvement in terms of neighbours' amenities and traffic generation, including parking. The County Highway Authority does not envisage any highway safety issues as a result of the development.

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

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

## **Recommendation**

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

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

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

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

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

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

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

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

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

5. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

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

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

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

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

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

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

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

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

Reason: In the interests of highway safety.

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

Reason: In the interests of highway safety.

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

Reason: To safeguard the amenities of the neighbouring residents.

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

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

#### Informatives:

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

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

be obtained from The Coal Authority's website at  
<http://coal.decc.gov.uk/en/coal/cms/services/permits/permits.aspx>

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

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

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

**Item**            **1.4**

**Reg. No.**        **9/2012/0492/FM**

**Applicant:**

Mr K.L.R Towler  
1 Ingleby Lane  
Ticknall  
Derby

**Agent:**

Mr Doug Rutter  
Sycamore Villa  
36 Main Street  
Linton  
Swadlincote

**Proposal:**        **THE ERECTION OF A DETACHED DWELLING AT 1  
INGLEBY LANE TICKNALL DERBY**

**Ward:**            **REPTON**

**Valid Date:**      **08/06/2012**

**Reason for committee determination**

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

**Site Description**

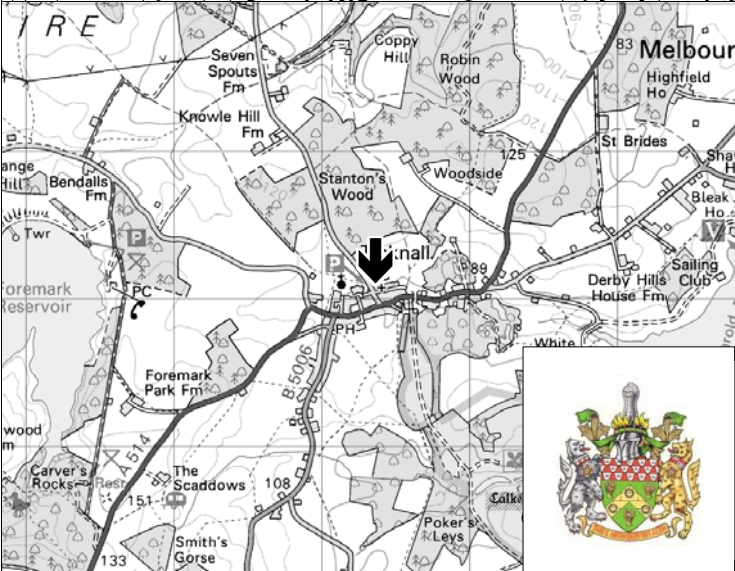
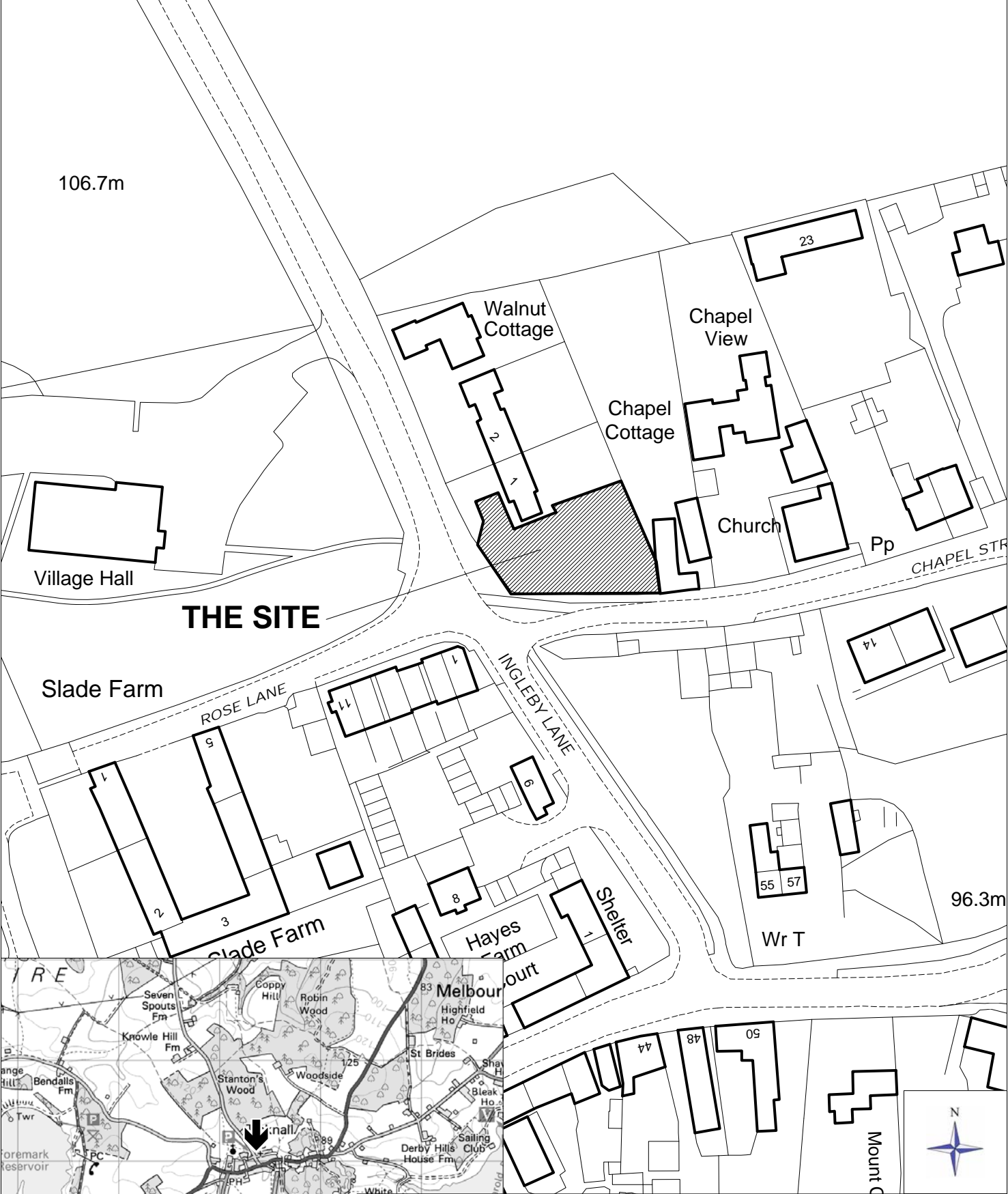
The application site lies within Ticknall Village confines and within the Conservation Area. The site is situated on the corner of Ingleby Lane and Chapel Street and forms the side garden of No. 1 Ingleby Lane, a Council owned property with an application currently being considered under the Right to Buy Scheme.

The site is surrounded by residential properties on three sides, the nearest being Chapel Cottage which abuts the eastern boundary, the rear of which is set approximately 1m lower than the application site. Ticknall Village Hall and car park is located to the east.

The site has an existing vehicular access via a field gate into the garden but there is no formal on site provision for parking for 1 Ingleby Lane.

There are a number of trees on site consisting of spruce, leylandi, willow and eucalyptus with a prominent mature holly tree on the corner.

A foul sewer runs north/south across the site and the submitted details indicate that this is to be the subject of a diversion or Building over Agreement with Severn Trent.



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South Derbyshire District Council. LA 100019461. 2010

## **Proposal**

The application proposes the erection of a two-storey, four-bedroom dwelling with an attached double garage. A new, shared access would be provided from Ingleby Lane providing two parking spaces for the existing dwelling and a garage and parking for the proposed dwelling. The existing holly tree would be retained along with the majority of the hawthorn and holly hedge that fronts 1 Ingleby Lane.

## **Applicants' supporting information**

A Design and Access Statement has been submitted with the application which advises that the design and siting of the proposed dwelling is such that adjoining houses will suffer no detrimental impact and the village will gain a valuable unit to its housing stock.

The hawthorn hedge on the Ingleby Lane boundary will be reinforced and the post and wire fence on the Chapel Street boundary will be replaced with a new natural stone wall to match the traditional stone walls within the locality. The mature holly tree on the corner of Ingleby Lane/Chapel Street will be retained and protected during construction.

## **Planning History**

There is no relevant planning history.

## **Responses to Consultations**

The Conservation Officer has commented that there is nothing about the site that gives it any locally distinctive character and has no objection to development of the site as proposed.

The Highway Authority is satisfied that appropriate visibility splays and parking can be achieved and has no objection subject to conditions.

The Development Control Archaeologist has advised that there is a high potential for below-ground archaeology and recommends a condition for a scheme of archaeological work.

Severn Trent Water has no objection.

Ticknall Parish Council objects for the following reasons:

- The design is not in keeping with the surroundings.
- The house will be overbearing.
- It is overdevelopment and too large for the plot.
- The entrance will be unsafe.
- The house will dominate the streetscene looking up the hill from Main Street currently screened by foliage.

## **Responses to Publicity**

Three letters of objection from two properties have been received and are summarised as follows:

- a. The site description understates the size and quantity of trees and shrubs in the garden.
- b. The suitability of the location and building plot, close to the proximity of established and historic housing, will impact negatively on the overall character of Chapel Street and Ticknall village.
- c. There is a question as to the value of the village's housing stock of the new building, being a large property rather than an affordable house.
- d. The access will be in close proximity to the crossroads and the village hall pedestrian access which is a safety hazard.
- e. 1 Ingleby Lane and Chapel Cottage are distinct buildings of completely different eras and styles. The new building resembles neither and compromises the distinction between the two.
- f. The new building will be higher, accentuated by the change in ground level of approximately 1m higher than Chapel Cottage with overshadowing further accentuated by the 1.5m of the extra building height.
- g. Overlooking.
- h. The patio to the rear of Chapel Cottage is 1m lower and previous building work has identified that the limestone bedrock is 0.5 below the surface. The ground stability will be compromised by the excavation of foundations for the new building.
- i. Overshadowing of 3 first floor windows facing west from Chapel Cottage.
- j. The new building will remove the view of the south facing façade of Chapel Cottage within the context of Chapel Street.
- k. This will be a large family home with little garden.
- l. There is a lack of consistency in the architectural plans of the property, a mismatch of windows and the details of the house are not in keeping with architecture in the village or immediate housing.
- m. There are toads and bank voles in the area. Bats have been observed flying over the plot and in adjacent gardens in Chapel Street which will adversely impact the availability of foraging and commuting habitat.
- n. Ticknall is renowned for its rows and clusters of modest and informal cottages, loosely arranged on straggling roads. The proposal will have a negative effect on the architecture and character of the village and on tourism in the village, e.g. walkers and artists and the economy.

## **Development Plan Policies**

The relevant policies are:

Local Plan: Housing Policy 5 & 11, Environment Policy 9 & 12, Transport Policy 6.

East Midlands Regional Plan: 1, 2, 3 & 27

## **National Guidance**

NPPF paragraphs

49, 53, 55, 56, 131 & 137

## **Planning Considerations**

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

- Principle of development
- Design and Impact on Conservation Area

- Impact on residential amenity
- Access and parking

## **Planning Assessment**

### Principle

Housing Policy 5 allows for new housing development within the village confines providing the development is in keeping with the scale and character of the settlement.

NPPF paragraph 49 advises that housing applications should be considered with a presumption in favour of development and at paragraph 55 advises that in order to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. At paragraph 53 the guidance advises inappropriate development of residential gardens, particularly where development would cause harm to the local area, should be resisted.

The application site lies in a sustainable settlement within Ticknall village confines with good access to existing local facilities and public transport. The development of the site would assist in sustaining these existing local services. Whilst the development would lead to the loss of a green space, the majority of trees on site are garden trees not considered worthy of a tree preservation order. The proposal has been designed to be sympathetic to its context and would provide a transition in building styles between the mid 20<sup>th</sup> century local authority housing and the more traditional housing on Chapel Street. The prominent holly tree would be retained and the existing hedgerow reinforced to maintain an element of the existing vegetation and assist in assimilating the development into its surroundings.

The principal of development is therefore considered to be in accordance with policy and guidance subject to acceptable design and appearance.

### Design and Impact on Conservation Area

Environment Policy 12 seeks to protect the character and appearance of conservation areas from adverse effect. NPPF paragraph 131 advises account should be taken of the desirability of new development making a positive contribution to local character and distinctiveness and at paragraph 137 advises proposals that preserve elements of the setting of a conservation area that make a positive contribution to or better reveal the significance of the asset should be treated favourably. The guidance at paragraph 56 emphasises that good design is a key aspect of sustainable development and should contribute positively to making places better for people.

The application follows on from pre-application discussions with the Conservation Officer with a view to making the house suitable to its context and has been submitted as discussed. The ridge height strikes a balance between the ridge heights of the adjacent properties, the single storey element turns the corner to acknowledge the alignment of the pair of houses next door, and the front boundary wall is designed to follow the common Ticknall pattern. The overall form, two storeys and double fronted, is common in the village, as is the mixture of sash windows on formal parts of a building (especially fronts) with casements elsewhere. The scheme has been amended to subdivide the front sash windows with a single vertical glazing bar in the centre of each sash to be more in keeping with the surrounding area.

The design and form is characteristic of other properties within Ticknall village and the proposed development would not lead to any significant adverse impact on the character and appearance of the conservation area and is considered to be in accordance with the above policy and guidance.

#### Impact on residential amenity

Chapel House is situated to the east of the site with first floor bedroom windows overlooking the application site. The scheme has been amended to obscure glaze the side windows and roof of the proposed conservatory to the rear of the new dwelling to avoid loss of privacy to the proposed occupiers. The scheme complies with the Council's minimum distance requirements in relation to overlooking and overbearance with neighbouring dwellings. Sufficient private amenity space would be provided for the proposed dwellings and the proposal accords with the requirements of Housing Policy 11.

#### Access and parking

Satisfactory visibility splays would be provided to the new access from Ingleby Lane along with suitable parking provision for both the existing and proposed dwelling. The existing field gate access would be moved to Chapel Street to maintain access to the foul sewer on site for Severn Trent should this still be required. The Highway Authority has no objection and the proposal is in accordance with the requirements of Transport Policy 6.

#### Other Matters

A number of trees would be removed from the site to allow for the development however the trees are not of such significant merit and amenity value that they are considered worthy of a tree preservation order. The most prominent tree, the holly, is to be retained and is protected by its conservation area status and measures for its protection during construction could be conditioned. Circular 06/2005 advises that developers should not be required to undertake surveys for protected species unless there is a reasonable likelihood of the species being present and affected by the development. Although bats have been witnessed flying in the locality the trees on the site are not of the kind identified in Natural England's Standing Advice as being conducive to bat roosts.

#### Conclusion

The proposal is considered to be in accordance with the above policy and guidance and is therefore recommended for approval.

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

#### **Recommendation**

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

1. The development permitted shall be begun before the expiration of three years from the date of this permission.  
Reason: To conform with Section 91(1) of the Town and Country Planning Act, 1990 (as amended by section 51 of the Planning and Compulsory Purchase Act 2004).
2. The development hereby permitted shall be carried out in accordance with the submitted site plan 2143.4 which retains the existing mature holly tree to the front of the site unless otherwise agreed in writing with the Local Planning Authority.  
Reason: In the interests of the appearance of the area.
3. Notwithstanding the originally submitted details, this permission shall relate to the amended drawing nos. 2143.7A and 2143.8A received 26 July 2012.  
Reason: For the avoidance of doubt, the original submission being considered unacceptable.
4. No part of the development shall be carried out until precise details, specifications and, where necessary, samples of the facing materials to be used in the construction of the external walls and roof of the building and the hard landscaping have been submitted to and approved in writing by the Local Planning Authority. The works shall be carried out in accordance with the approved details and the hard landscaping carried out prior to occupation.  
Reason: In the interests of the appearance of the building and the locality generally.
5. Notwithstanding the particulars of the application, revised details of the front door and doorcase shall be submitted for approval in writing by the Local Planning Authority prior to their use in the building operations.  
Reason: The submitted details are considered unsatisfactory.
6. Large scale details to a minimum scale of 1:10 of all external joinery, including horizontal and vertical sections, configuration of opening lights and cill and lintel details shall be submitted to and approved in writing by the Local Planning Authority before building work starts. The items shall be constructed in accordance with the approved details.  
Reason: The details submitted are inadequate to determine whether the appearance of the building would be acceptable.
7. External joinery shall be in timber and painted to a colour and specification which shall have been previously agreed in writing by the Local Planning Authority. The joinery shall be painted in accordance with the agreed details within three months of the date of completion of the development unless otherwise agreed in writing by the Local Planning Authority.  
Reason: In the interests of the appearance of the building(s) and the character of the area.
8. All plumbing and service pipework, soil and vent pipes, electricity and gas meter cupboards and heating flues shall be located inside the building unless specifically agreed in writing by the Local Planning Authority. The type, number, position and finish of heating and ventilation flue outlets shall be agreed in writing with the Local Planning Authority before development is commenced.

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

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

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

10. Separate sample panels of pointed brickwork and stonework 1 metre square or such other area as may be agreed by the Local Planning Authority shall be prepared for inspection and approval in writing by the Local Planning Authority before the work is generally executed. The brickwork sample shall include a bonding pattern to be used at least on the south and west elevations. The sample of the stonework shall include a run of the proposed stone coping detail at least 600mm long, and details of the stone proposed for use on the brick terminations of the boundary wall.

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

11. A sample of the obscure glass (if any) to be used in the south elevation en suite bathroom window shall be agreed with the Local Planning Authority prior to installation.

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

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

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

13. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

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

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

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

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

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

16. A) No development shall take place until a Written Scheme of Investigation for archaeological monitoring has been submitted to and approved by the Local Planning Authority in writing. The scheme shall include an assessment of significance and research questions; and
1. The programme and methodology of site investigation and recording;
  2. The programme and provision to be made for post investigation analysis and reporting;
  3. Provision to be made for publication and dissemination of the analysis and records of the site investigation;
  4. Provision to be made for archive deposition of the analysis and records of the site investigation; and
  5. Nomination of a competent person or persons/organization to undertake the works set out within the Written Scheme of Investigation.
- B) No development shall take place other than in accordance with the archaeological Written Scheme of Investigation approved under Part A.
- C) Within a period of 12 weeks from completion of the development the archaeological site investigation and post investigation analysis and reporting has been completed in accordance with the programme set out in the Written Scheme of Investigation approved under Part A and the provision to be made for publication and dissemination of results and archive deposition has been secured.

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

17. Before any other operations are commenced a new vehicular access to Ingleby Lane shall be created in accordance with the submitted application drawings.

Reason: In the interests of highway safety.

18. Before any other operations are commenced (excluding the creation of the new access, the subject of Condition 17 above), the existing vehicular access to Ingleby Lane shall be permanently closed with a physical barrier and the existing vehicular crossover reinstated as footway (or verge) in a manner to be agreed in writing with the Local Planning Authority in consultation with the County Highway Authority.

Reason: In the interests of highway safety.

19. The premises, the subject of the application, shall not be occupied until space has been provided within the application site in accordance with the submitted application drawings for the parking of residents' vehicles, laid out, surfaced and maintained throughout the life of the development free from any impediment to its designated use.

Reason: In the interests of highway safety.

20. Notwithstanding the submitted details, no part of the development shall be carried out until details of the hard landscaping to be used in the development hereby permitted have been submitted and approved in writing by the Local Planning Authority. The details shall include provision for a porous surface surrounding the holly tree to be retained to the front of the site. The works shall be carried out in accordance with the approved details prior to occupation of the development.

Reason: In the interests of the appearance of the area and the health and preservation of the tree.

21. Notwithstanding the submitted information, prior to commencement of development details of a scheme for the construction of foundations for the single storey south west section of the building which includes the kitchen, larder and garage shall be submitted to and approved in writing by the Local Planning Authority. The scheme should include measures to ensure minimal impact on the root protection area of the holly tree. The works shall be carried out in accordance with the approved scheme.

Reason: To safeguard the health of the tree.

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

Reason: To protect the tree from undue disturbance

23. There shall be no tipping or deposition of materials within the area fenced under Condition 22 above without the prior written authorisation of the local planning authority.

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

24. The east elevation window and roof of the conservatory shall be permanently glazed in obscure glass.

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

#### Informatives:

Pursuant to Section 184 of the Highways Act 1980 and Section 86(4) of the New Roads and Streetworks Act 1991, at least 12 weeks prior notification should be given to the Environmental Services Department of Derbyshire County Council before any works commence on the vehicular access within highway limits. Please contact Gail Mordley on 01629 538537 for further information.

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

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

**Item** 1.5

**Reg. No.** 9/2012/0505/NO

**Applicant:**

Aldi Stores Ltd  
Holly Lane  
Atherstone

**Agent:**

Mr Daniel Neville  
DSP Architects Limited  
305 Fort Dunlop  
Fort Parkway  
Birmingham

**Proposal:** The erection of proposed new class A1 food retail store with associated car-parking, servicing and landscaping incorporating sddc recycling area (in substitution of that previously approved under application 9/2009/0436) on land adjacent Huntspill Road / The Mease Hilton Derby

**Ward:** HILTON

**Valid Date:** 18/06/2012

**Reason for committee determination**

This is a major application to which more than 2 letters of objection have been received thus Committee determination is required.

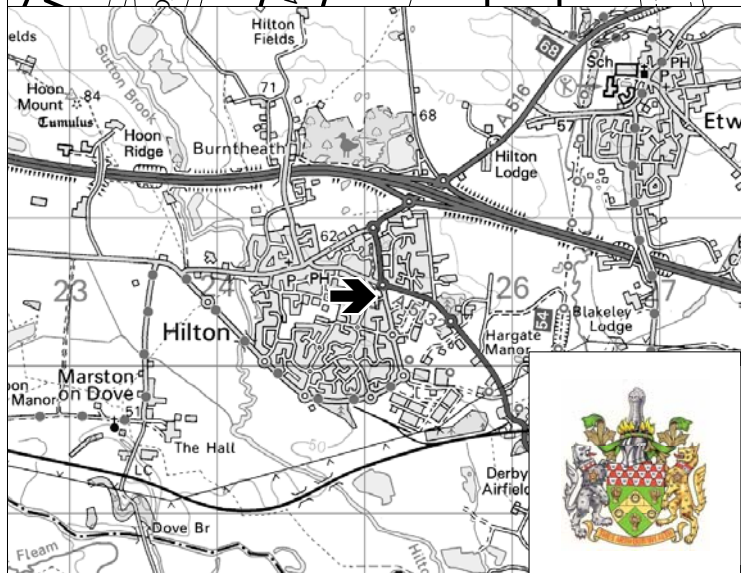
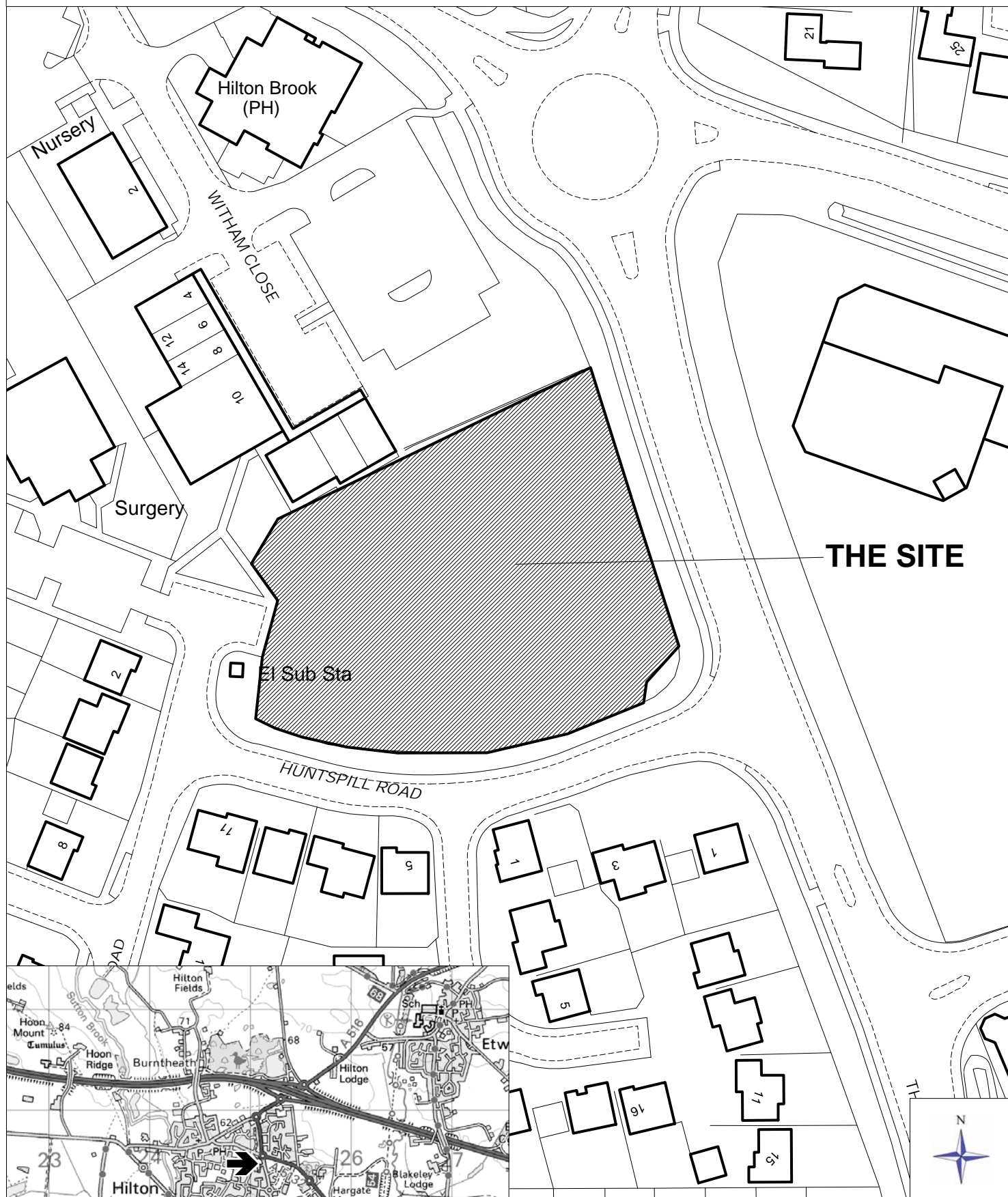
**Site Description**

The site comprises an area of open ground that is grassed and sits about 0.75m above Huntspill Road. Opposite the site are the houses on Huntspill Road. It is separated from The Mease by a landscaped bund that is now well established; on the opposite side of The Mease are the premises of Hilton Motors. To the northeast of the site are the existing shops and community facilities that are served off Witham Close. The Doctors Surgery is served off the turning head at the top of Welland Road. Houses lie to the south of the Surgery on Welland Road.

**Proposal**

The proposed store comprises some 1378sqm, internal floor space of which 990sqm of which would be retail space serving the public, this compares to 900sqm in the previously permitted scheme (i.e. an increase of about 10%). The main change is a small addition to the west end of the building that will be illustrated on the plans displayed at the meeting.

**9/2012/0505 - Land adjacent to Huntspill Road / The Mease, Hilton, Derby  
(DE65 5FG)**



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**South Derbyshire District Council. LA 100019461. 2010**

It is proposed that the building be constructed in white render and glazing under a flat roof. There is a 'wrap round' canopy over the main entrance on its south east corner and then this extends along the side of the building, fronting The Mease, and then around the north east corner that looks towards the pub car park.

The building would be located to the north end of the site and back on to the shops on Witham Close. The area between the storefront and Huntspill Road would be mainly car parking (including disabled and parent parking); landscaping is also proposed on the frontage to Huntspill Road. Deliveries would occur just prior to the opening of the store.

The applicants have included a recycling centre for cardboard and plastics but, in agreement with the Council's Waste team, is smaller than previously permitted.

It is proposed that the shop should operate between 0800 and 2100 hours Monday to Saturday and 1000 to 1700 on Sunday and Bank Holidays.

### **Applicants' supporting information**

The applicant seeks to demonstrate that the new development will bring the benefits of discount food shopping to the local area and shorten shopping journeys caused by the current under provision that is identified in the supporting information. It is contended that the development accords with development plan policies and the NPPF (the Framework) and even with the increase in floor space, is of an appropriate scale to add to the role and function of Witham Close Centre, improving viability in accordance with the aims of Shopping Policy 2.

The applicants assert that the new plans improve links through and visual presence of the existing local centre and that the site is accessible by a choice of transport including walking, cycling and public transport. It would improve the local and surrounding area by providing new pedestrian routes and crossing points to the shopping centre. The supporting documentation identifies a modest increase in associated traffic with the proposed development would have no significant impact on road safety or highway capacity and the capacity of the car park has been increased to reflect the floor space increase proposed in this application.

The development includes an on-site recycling centre albeit reduced from what was previously permitted. The proposed opening times are as described above. The proposals reflect the scheme previously permitted in terms of landscaping, parking and access. The provision of a pelican crossing on The Mease in the position required by the County Highway Authority is also carried forward from the permitted scheme.

The applicant considers that the development achieves an appropriate mix of old and new styles with modern detailing and asserts that this scheme will provide an attractive addition to Huntspill Road/The Mease and the surrounding Hilton area.

### **Planning History**

The application site and adjoining land comprising the pub, day nursery, doctors surgery, vets and the remaining shops and facilities was allocated in the original Master Plan for the redevelopment of Hilton Depot for community and commercial development. The application is the last remaining parcel allocated for this purpose.

The redevelopment of the Hilton Depot commenced in 1993 and has continued ever since. With the original housing allocations on the site are now completely built out.

Planning permission was granted on 22 September 2009 for a slightly smaller development but having reviewed the permission the applicants now seek permission for this larger store. An application to remove one of the previously imposed conditions was granted permission in 2010.

## **Responses to Consultations**

Hilton Parish Council has no objection.

The County Highway Authority has no objection subject to previously imposed conditions and the payment of £55,000 towards the cost of the installation of the signalised crossing on The Mease.

Environmental Health Enforcement Manager requires the imposition of conditions previously imposed.

The Crime Prevention Design Advisor has commented on the scheme and suggested various areas that could be improved from a crime prevention point of view from ensuring CCTV covers areas of known anti social behaviour to cutting off means of escape for criminals in the event of a theft from the store. The application has been amended to meet some of the Police concerns and it is confirmed that the scheme is now acceptable.

Severn Trent Water has no comments

## **Responses to Publicity**

6 responses have been received that comment on/object to the development for the following reasons:

- a) The access to the site should be from The Mease as Huntspill Road becomes very congested at peak times and when a car parks on it, the situation becomes worse. If this cannot be achieved then Huntspill Road should be widened, or create a traffic island at the junction of The Mease and Huntspill Road with a consequent opportunity to provide direct access to the site. The use of the access as proposed would be hazardous and increase the risk of an accident. The traffic survey may have been carried out on a non-school day and thus not necessarily reflect the actual experience of residents in the area. More houses have been built since the last permission was granted. Lorries would have to negotiate a slope up into the site of about 0.5m
- b) The proposed opening hours are excessive – they are an hour longer each day than was permitted in 2009.
- c) The changes are not clear and clarification of the amendments is sought.

## **Development Plan Policies**

The relevant policies are:

EMRP Policies: 1, 3 & 12

Local Plan: Housing Policy 1, Shopping Policy 3.

## **National Guidance**

The National Planning Policy Framework (NPPF) - Para 37.

## **Planning Considerations**

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

- The Principle
- Access Considerations
- Impact on neighbouring properties
- The design and materials of construction
- Section 106 requirements

## **Planning Assessment**

### The Principle

The policies referred to above relate to the redevelopment of the former Hilton Depot that was granted outline planning permission in 1993 in accordance with the provisions of Housing Policy 1 of the adopted Local Plan.

A subsequent Master Plan for the Depot identified the application site as land for community buildings and other related development such as the shops, surgery, pub and day nursery seen on the adjacent land. This is the last remaining land allocated in the Master Plan for such development.

Shopping Policy 3 allows for the development of local shopping facilities provided they do not adversely affect the amenity of neighbouring properties and have adequate access, car parking and servicing facilities.

Before considering these issues in relation to the amended scheme, it is important to consider the impact of the NPPF on Development Plan policies in determining this application. Housing Policy 1 has as its objective the creation of a balanced community based around the former depot and the village of Hilton. This is in line with the advice in the NPPF and as such it is considered that significant weight can be given to this policy.

The same weight is considered to apply to Shopping Policy 3 that contains criteria to protect local amenity and seeks to provide for a balanced local community by the provision of such facilities in appropriate locations. The NPPF states that shopping development in rural areas is to be encouraged where it meets a local need and the usual sequential tests for retail development should not be applied in rural locations. At para 37 it states that people can be encouraged to minimise journey lengths for employment, shopping, leisure, education and other activities by providing a balance between housing allocation and these activities.

In the light of the above, the development fits well in respect of the development plan policies and the Framework should not therefore be used to alter Development Plan policies due to their being out of date. This proposal is sustainable development and as

such is in line with the golden thread running through the Framework for development to be permitted as quickly as possible.

### Access Considerations

This was a major consideration when the access issues were first discussed in 2009. Following an initial consideration of the application, the Committee requested that an alternative layout for the site be considered that would facilitate access to the site from The Mease. Having considered the response from the applicants, the Committee accepted that the access to Huntspill Road should form the access to the shopping development.

The current application proposes the same access and the County Highway Authority accepts that combined with the increase in parking, the site and access are capable of accommodating the increase in retail floor space.

### Impact on Neighbours

Whilst the neighbours have concern about the proposed opening hours being longer than previously permitted, the Environmental Health Manager has stated that given the opening hours of other premises, most notably Tesco and the public house, there is no substantive objection to this shop being open until 9pm.

### The Design and Materials of Construction.

When the application was permitted, there was considerable discussion as to the design and appearance of the building, car parking, anti-social behaviour and other issues. These issues were addressed at the time, the current plans reflect the changes sought at that time and in the light of this the proposed design, as amended by this application and the other alterations, are considered acceptable.

### Section 106 – Unilateral Undertaking

Other than the provision of the pelican crossing, there are no other 106 requirements arising from this development. Significant funding for projects both within and outside the village have been derived from the development of the depot and the Hilton Common, including the provision of the land for community purposes of which this is the last area allocated. Accordingly subject to the receipt of the necessary undertaking the proposal is considered acceptable.

### Conclusion

The proposal accords with the provisions of the Framework and as such is in accord with the provisions of the Development Plan as described above. The design of the building and materials of construction reflect those previously permitted and the access, landscaping and rearranged car parking measures are considered acceptable. Thus planning permission is recommended subject to the receipt of an appropriate signed unilateral undertaking to fund the provision of a Pelican crossing within highway limits on The Mease and subject to the conditions below.

## Recommendation

Subject to the receipt of a signed unilateral undertaking to secure the funding of a pelican crossing on The Mease to a total cost not exceeding £55,000; **GRANT** permission subject to the following conditions:

1. The development permitted shall be begun before the expiration of three years from the date of this permission.  
Reason: To conform with Section 91(1) of the Town and Country Planning Act, 1990 (as amended by section 51 of the Planning and Compulsory Purchase Act 2004).
2. This permission shall relate to the amended drawing no Z12A03-P003 Rev A dated 18 July 2012 in terms of the layout of the site .  
Reason: For the avoidance of doubt.
3. Notwithstanding any details submitted or the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended), no development shall take place until there has been submitted to and approved in writing by the Local Planning Authority plans indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed in accordance with the approved details before the development is occupied or in accordance with a timetable which shall first have been agreed in writing with the Local Planning Authority.  
Reason: In the interests of the appearance of the area.
4. The development shall not be commenced until precise details of the intensity, angling and shielding, and the area of spread of the lights have been submitted to and approved in writing by the Local Planning Authority. The lights shall be installed in accordance with these details and thereafter retained in conformity with them. The submitted scheme shall comply with the Institute of Lighting Engineers "Guidance notes for the Reduction of Light Pollution" (2000).  
Reason: To preserve amenity and/or prevent danger to road users.
5. Notwithstanding the submitted details no development shall take place until there has been submitted to and approved by the Local Planning Authority a scheme of landscaping, which shall include a schedule of planting including species size and spacing, 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.
6. 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.

7. Prior to the first use of the development hereby permitted, the land in advance of the sight lines measuring 2.4m x 45m indicated blue on the attached plan shall be cleared and thereafter retained free of all obstructions to visibility over a height of 1 metre (600mm in the case of vegetation) above the adjoining carriageway level.

Reason: In the interests of highway safety.

8. Before any other operations are commenced, a temporary access shall be formed from Huntspill Road into the site for construction purposes, and space shall be provided within the site curtilage for site accommodation, storage of plant and materials, parking and manoeuvring for site operatives and visitor's vehicles, loading and unloading of goods vehicles, all in accordance with a scheme first submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of highway safety.

9. Before any operations commence involving the movement of materials in bulk to or from the site, facilities shall be provided that have previously been approved in writing by the Local Planning Authority, to prevent the deposition of mud or extraneous material on the access roads to the site.

Reason: In the interests of highway safety.

10. Before the commencement of building works to construct the shop, the new vehicular access shall be formed to Huntspill Road in accordance with a detailed scheme including road levels and drainage design that has first been submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of highway safety.

11. The premises shall not be taken into use until the parking and manoeuvring areas shown on the amended drawing T08A94-004 Rev H have been laid out, surfaced and provided with drainage these spaces shall be maintained throughout the life of the development free from any impediment to their designated use.

Reason: To ensure that adequate parking provision is maintained available throughout the life of the building.

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

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

13. During the development of the site hereby permitted, no building or other operations shall be undertaken and no deliveries of materials to or transportation of material from the site shall take place outside the following times nor at any time on Sundays, Bank or Public Holidays: 0800 - 1800 Monday to Friday, 0800 - 1300 on Saturdays.

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

14. Prior to the first use of the site hereby permitted, details of all plant and equipment to be installed on the building to include air handling, air conditioning and refrigeration units shall be submitted to and approved in writing by the local

planning authority and implemented in accordance with the approved scheme and thereafter maintained in accordance with the manufacturers specifications.

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

Informatives:

The vehicular access to Huntspill Road subject to the above condition must be carried out by way of an Agreement under Section 278 of the Highways Act. Works may not commence until detailed design drawings have been submitted to and approved by Derbyshire County Council and the necessary Agreement has been signed.

Pursuant to Section 163 of the Highways Act 1980, measure must be taken to ensure that surface water run-off from the car parking and manoeuvring areas is not allowed to discharge onto the highway.

Government advice, Regional and Local planning policy seek to ensure that new housing development is provided with an appropriate level of services in order to minimise the need to travel and maximise the sustainability of new housing areas. The land subject to this permission is allocated as part of a larger area for community and commercial activity to service the housing and employment areas of the Hilton Depot redevelopment. The applicants identified both a quantitative and qualitative need for the development that is well placed to meet the needs of the village and its immediate surroundings. The building adjoins and provides pedestrian access to the existing shopping area. Vehicular access and parking is acceptable to the Highway Authority. The design ensures that the commercial area will have a distinctive appearance. The development is therefore considered to be in accordance with the NPPF, East Midlands Regional Plan Policies 1, 3 & 12, and South Derbyshire Saved Local Plan Housing Policy 1 & Shopping Policy 3.

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

**Item** 1.6

**Reg. No.** 9/2012/0506/B

**Applicant:**

Miss J Motts  
45 Bells End Road  
Walton On Trent  
Swadlincote

**Agent:**

Mr P Diffey  
Peter Diffey And Associates Ltd  
54 Woods Lane  
Stapenhill  
Burton Upon Trent

**Proposal:** The variation of condition 5 of Planning Permission 9/2011/0375/U to renew the planning permission for a further 5 Years at land to the rear of 45 61 Bells End Road Walton on Trent Swadlincote

**Ward:** SEALES

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

**Reason for committee determination**

The application is brought to Committee at the discretion of the Head of Community and Planning Services.

**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 existing residential properties. There are also two timber framed chicken pens on the land, which are attached to the rear of the existing garaging.

**Proposal**

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 the permission states: *'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*

**9/2012/0506 - Land to the rear of 45 - 61 Bells End Road, Walton on Trent, Swadlincote DE12 8NF**



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**South Derbyshire District Council. LA 100019461. 2010**

*use due to its location in close proximity to neighbouring properties'. This application seeks consent to vary Condition 5 by extending the permission for a further five years.*

### **Applicants' supporting information**

The applicant's Design and Access Statement (DAS) is available to view on file and on the internet. However, for Members' information it appears that the contents are substantially the same as those in the previously submitted DAS.

A supporting letter from the agent states that the site has been monitored closely by the Council's enforcement officer who notes that no breaches of conditions have been identified. The use of the land for the exercise of the applicant's dogs appears reasonable and does not have an adverse effect on neighbours.

### **Planning History**

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 (07/12/2011) and the condition substituted for that which would allow any number provided they were in the presence of the applicant or her competent representative.

### **Responses to Consultations**

The County Highways Authority has no objections provided that no commercial use of the premises takes place.

The Environmental Health Officer expresses concern that there is significant potential for this application to give rise to noise disturbances, which could impact upon the amenity of neighbouring residents. Although several complaints relating to noise have been received, there is no evidence to prove that the activities to date have given rise to substantial noise problems. There is, however, a larger than normal number of dogs being exercised in a relatively quiet rural area, and the only control in place is the operator's management of the animals' behaviour. Some dogs are, for whatever reason, prone to excessive barking and this can be difficult to control. It is therefore recommended that a further temporary permission of two years be granted so that the Environmental Health department can be satisfied that the applicant has demonstrated her ability to manage the land use/activity without causing significant loss of amenity.

### **Responses to Publicity**

Fourteen emails of support have been received, which can be summarised as follows:

- (a) the applicant is very reasonable and helpful;
- (b) the garden, yard and exercise area are kept clean and hygienic and the land planted with shrubs and flowers;
- (c) the dogs are well trained, obedient and quiet and no more noisy than a single dog;
- (d) the applicant is an excellent dog trainer and a responsible person;
- (e) the applicant runs many successful obedience and agility classes and has high standards;
- (f) the applicant provides a much needed service to the RSPCA;
- (g) the applicant has control of the dogs at all times;

- (h) the applicant is a qualified dog trainer and a responsible dog owner;
- (i) no other person can command the respect of dogs as she can;
- (j) any barking is from neighbours' dogs, not the applicant's;
- (k) queries why the application has to start from 'scratch' when a simple check on compliance with conditions would suffice;
- (l) the applicant carries out a worthwhile service, giving dogs a second chance, and the hours of operation are controlled.

One letter of objection together with sixteen completed copies of a questionnaire relating to the proposal have been received. The points made in the objection letter are as follows:

- (a) original conditions on the planning permission have been flouted;
- (b) the land is used for purposes other than what it has permission for, such as bonfires, barbeques, rounders games;
- (c) the number of dogs on the land has exceeded that which she has permission for;
- (d) the hours during which the applicant can exercise dogs is not adhered to;
- (e) no concern for the effect on neighbouring residents;
- (f) no consultation with the neighbours before the fencing was erected;
- (g) open views to the countryside have been blocked and spoiled;
- (h) dogs escape onto adjacent farmland;
- (i) no one has spent sufficient time on the site to ascertain the impact of the use on the neighbours;
- (j) the agent's assertions in the Design and Access Statement are incorrect with regard to the openness of the site;
- (k) disposal of dog waste into the adjacent field;
- (l) aggrieved that no action has been taken over the misuse of the site;
- (m) the removal of the site notice before the publicity period has expired means that many people are not aware of the application.

The questionnaire seeks answers to a number of questions relating to ongoing activities at the site. Specifically, they cover issues relating to:

parking problems  
 use of the land for dog exercising in close proximity to residential properties  
 increase in the number of dogs  
 noise from barking dogs  
 dogs attacking other dogs when they escape  
 adverse impact on the enjoyment of gardens i.e. peace and quiet destroyed  
 bonfires being lit on the site  
 dog exercising  
 dog waste (increased smell and disposal into adjacent field)  
 complaints to the Council have been disregarded  
 views into the countryside spoilt by fencing  
 visitors bringing dogs to the site  
 should planning permission be granted for five years?

All 16 responses to the questionnaires are in the nature of complaints against the applicant and are of the opinion that planning permission should not be granted for an additional five years.

## **Development Plan Policies**

The relevant policies are:

Local Plan: Environment Policy 1

## **National Guidance**

The National Planning Policy Framework (NPPF) paragraph 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.

This proposal is to vary condition 5, which would extend the time period for the use of the site for dog exercising for a further five years. The proposal does not strictly accord with 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 other than the circumstance that the applicant lives at a property sharing a common boundary with open countryside. It was argued previously that the character of the countryside, landscape quality and wildlife is not affected as the use of the site for dog exercising does not affect the openness of the countryside, even with the stock proof fencing in place. It was considered therefore to be in general compliance with Local Plan Environment Policy 1 at that time and nothing as part of this application has changed that view.

The main consideration in the determination of this application, however, is the impact the use has on the amenities of the 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 with regard to noise from barking dogs, although none have been pursued, as it has proved difficult to ascertain whether a statutory noise nuisance has occurred, owing to the lack of written evidence. It should be noted that issues of noise, among other things, are covered adequately under Environmental Health legislation, although there are planning policies that also advise on noise-related issues. In this instance, owing to the nature of the objections to the application, and in the absence of a specific Local Plan policy on noise, it is considered that the issue should be addressed in terms of national planning

policy. Specifically, 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 a minimum other adverse impacts on health and quality of life arising from noise from new development, including through the use of conditions'.*

In the absence of evidence to demonstrate that a statutory noise nuisance has occurred it would be difficult to substantiate a refusal on grounds of adverse impact on the amenities of the neighbouring residents through noise. That being said, the application seeks to renew the current permission for a further five years, a period of which, in light of the present situation, is considered to be too long. Under the circumstances it is recommended that permission be granted for a further two years only, so that the Local Planning Authority, in consultation with the Council's Environmental Health Department, is able to continue to monitor the use and its impact on the neighbouring residents. All other conditions on the original consent, including condition 3 that was substituted at appeal, would be re-applied.

With regard to issues relating to the breaches of conditions raised by the objector, the Planning Enforcement Officer has visited the site to ascertain whether the original conditions are being breached. A Breach of Condition Notice was served on 24 January 2012 following the receipt of evidence that Condition 3 (relating to the supervision of the dogs at all times) was being breached. No further action has been taken in this regard. More recently, following allegations that the land is being used for activities other than the exercising of dogs (specifically barbeques and rounders games) a letter has been sent to the applicant pointing out that Condition 2 of the planning permission prohibits other uses of the land and that these activities should cease immediately. If the unauthorised uses continue, the Local Planning Authority will consider taking enforcement action following further investigations.

With regard to the remaining issues raised by the objector, there is no maximum number of dogs that can be exercised on the land, as a result of the appeal decision. There is no evidence to show that the dogs are being exercised on the land outside the permitted hours. The fencing that has been erected on the site is wholly within the applicant's ownership and does not exceed the height that is allowed under the permitted development tolerances. As such there is nothing that can be done about the residents' views on this subject and the loss of view. In any case, under the planning legislation, no one has a right to a view. The issue of escaping dogs into adjacent farmland is a private matter between the applicant and the owner of the farmland. The issue of dog waste is an environmental health matter. Following the removal of the first site notice a second notice was displayed in close proximity to the site. The Local Planning Authority has no control over the removal of site notices by the public before the statutory 21-day period has expired, or the resources to keep checking that they remain in situ. Notwithstanding the issue of the site notice, all neighbours who share a common boundary with the application site were notified personally and therefore it is considered that sufficient publicity has been undertaken in this instance.

In conclusion and notwithstanding the details on the application form, it is recommended that planning permission be granted to vary Condition 5 of planning permission 9/2011/0375 for a further period of two years only, after which time the Local Planning

Authority will have a further opportunity to review the situation with regard to the impact on adjacent residential properties.

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

## **Recommendation**

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

1. This permission shall enure for the sole benefit of Jacky Motts.  
Reason: In light of 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 exercising 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 land 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 to 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 7th August 2014 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: To allow the District Council to monitor the use, owing to its location in close proximity to neighbouring properties.

## **Informatives:**

The applicant should be aware that regardless of the 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.

The proposed development lies within a coal mining area which may contain unrecorded mining related hazards. If any coal mining feature is encountered during development, this should be reported to The Coal Authority.

Any intrusive activities which disturb or enter any coal seams, coal mine workings or coal mine entries (shafts and adits) requires the prior written permission of The Coal Authority.

Property specific summary information on coal mining can be obtained from The Coal Authority's Property Search Service on 0845 762 6848 or at [www.groundstability.com](http://www.groundstability.com)