

REPORT OF THE HEAD OF PLANNING SERVICES

SECTION 1: Planning Applications

SECTION 2: Appeals

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

1. PLANNING APPLICATIONS

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

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

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

Item **1.1**

Reg. No. **9/2008/0197/SA**

Applicant:

Mrs A Sammon
7 Dulverton Avenue
Stenson Fields
Derbyshire
DE24 3AT

Agent:

M J Harrison
7 Hall Park
Barrow On Trent
Derby
Derbyshire
DE73 1HD

Proposal: **The formation of animal sanctuary at land off Chapel Lane Barrow-on-Trent Derby**

Ward: **Aston**

Valid Date: **02/04/2008**

Reason for committee determination

This application was deferred at the last Committee for a site visit.

The application is brought to committee at the request of Councillor Watson because local concern has been expressed about a particular issue and unusual site circumstances should be considered by the committee.

Site Description

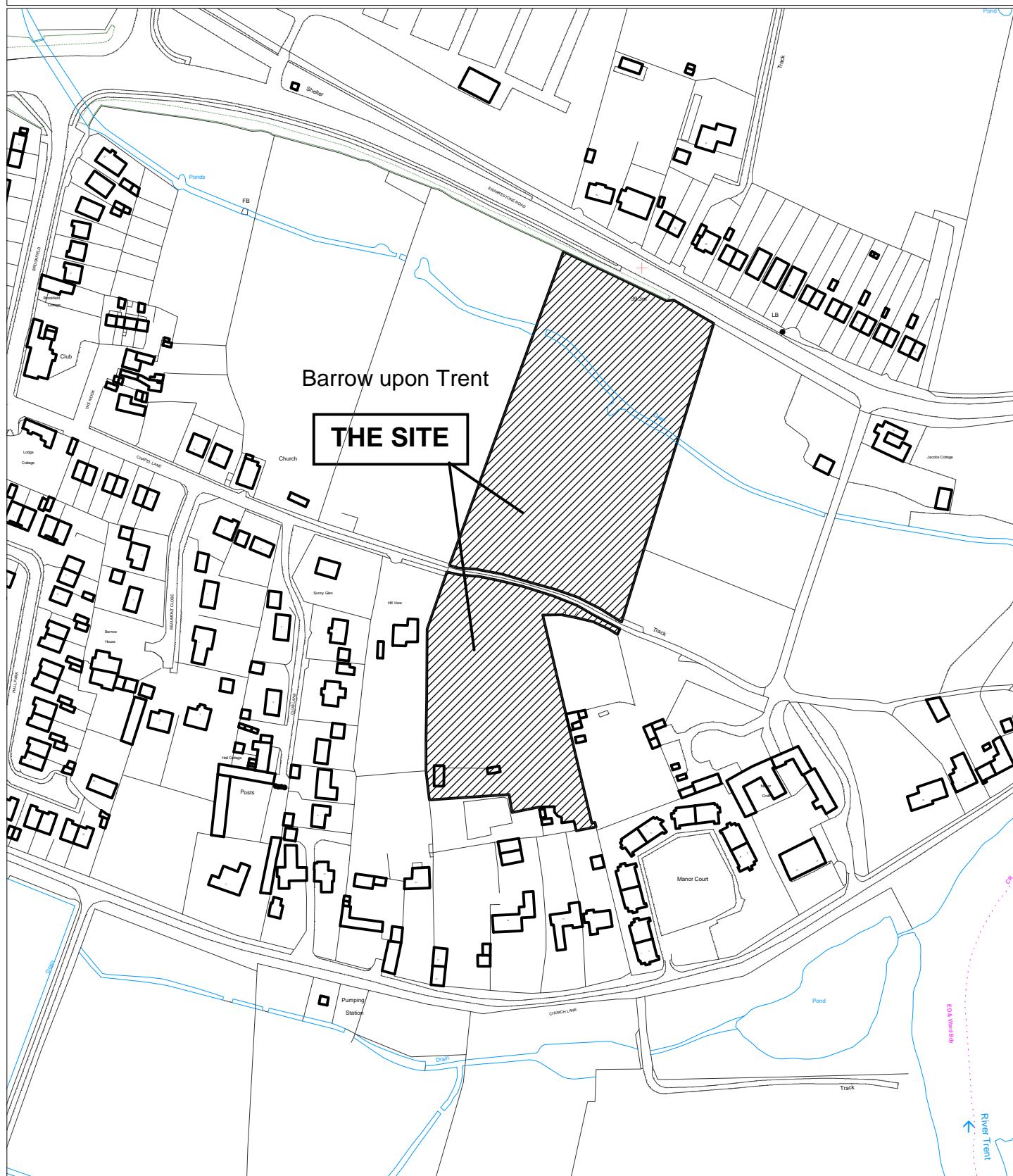
The site comprises two paddocks situated either side of Chapel Lane. A stream bisects the northern paddock. Vehicular access is gained via Chapel Lane, which is unmade adjacent to the site. The use has commenced and there are several buildings and structures on the land south of the lane.

The south and western boundaries of the site abut domestic gardens.

The site is adjacent to but not within the conservation area.

Proposal

The proposal seeks to regularise the current unauthorised use of the land and to construct a number of buildings and enclosures for animals and birds. Landscaping is proposed adjacent to the residential boundaries. The northern part of the site would be provided with surfaced paths to enable access to the paddock and proposed duck pond, along with a bridge over the stream.



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Applicants' supporting information

- a) The Parish Council response could be biased [comment: no specific allegation is made].
- b) The Homeward Bound Animal Rescue Centre has been in operation for 6 years, recently moving onto land at Barrow.
- c) The centre would only be open to visitors from Easter through to the end of September. Any visits would be by prior arrangement.
- d) Minimal parking for 6 vehicles would be provided to take into account the proposed levels of visitors.
- e) There are no plans for any shop or tearooms and no intention to introduce these.
- f) Open days would be held twice a year in summer months. Visitors would be asked to park in the village hall/playing field car park.
- g) A Christmas Carol Service may also be held, with similar parking arrangements.
- h) Community groups currently visit the site, including teenagers and people with learning difficulties who are able to experience looking after animals, and maintenance tasks, under the auspices of Derby City Council.
- i) The applicants are keen to work with young people who are on home tuition, in conjunction with the Local Education Authority to enable them to learn new skills.
- j) New planting would be undertaken.
- k) If permission were to be granted the applicants would be able to implement a vast improvement to the site.
- l) Letters of support from a disabled person who has benefited from working at the site, a home tutor and DART (trainers for the land-based sector) are included with the application.

Responses to Consultations

The Parish Council makes the following comments:

- a) The amount of land available is inadequate for horse grazing. The site is also subject to flooding and is muddy.
- b) There are issues concerning smell for neighbouring properties.
- c) The Parish Council questions whether the existing use and buildings are authorised.
- d) If permission is granted it should be a condition that Chapel Lane be resurfaced up to the site.

The Environmental Protection Manager has concerns about the close proximity of the site to several noise/odour sensitive properties and recommends conditions to control odour and noise.

The Highway Authority considers that it would be difficult to demonstrate harm to highway safety interests there is concern about the implications for opening the site to visitors.

The Environment Agency has no objection in principle.

Responses to Publicity

Letters from four households and a petition of 8 signatories have been received, objecting as follows:

- a) The use commenced about two years ago and has included several unsightly buildings. Debris manure, dirt and litter have been a problem during this time.
- b) Problems of noise from animals, bonfires, odours, flies and vermin have been experienced, which would be exacerbated by the development.
- c) During the winter the site is constantly muddy and the proposed stocking of the site would worsen this.
- d) The buildings would be detrimental to the rural character of the area.
- e) The application affects a right of way (used in times of flood) that would be subject to increased wear and tear and consequent maintenance expense for the other users.
- f) The risk of flood is higher than stated in the FRA. Both fields are subject to flooding.
- g) The proposed footbridge and pond in the north field could affect flood flows.
- h) The site is of insufficient size to accommodate the number of animals envisaged, especially in times of flood. Animals have been observed ankle deep in mud. There is concern that the use would be too intensive to meet animal welfare needs.
- i) The privacy of neighbours would be adversely affected, in particular from visitors to the site.
- j) It is questioned whether the applicants have the resources to implement the proposal.
- k) The site may be unsuitable for access by disabled people.
- l) Chapel Lane is inadequate to serve the proposal and the unmade section serving the site was never intended for use by vehicles.
- m) Increased traffic would cause a reduction of safety in Chapel Lane.
- n) Some of the animals may be dangerous to visitors and the level of health and safety training available to staff inadequate.
- o) The buildings proposed would reduce the amount of available grazing land for the animals.
- p) Continuing unauthorised building work calls into question the likelihood of the applicant complying with planning requirements.
- q) Landscaped areas could be a fire hazard.
- r) No provision is made for access to the site by emergency vehicles.
- s) There is no provision for adequate disposal of waste.
- t) The proposed toilet facilities may not be sufficiently hygienic.
- u) The site was previously used for grazing and not animal husbandry as stated in the application.

Development Plan Policies

The relevant policies are:

Local Plan: Environment Policy 1 and Transport Policy 6.

Planning Considerations

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

- The principle.
- Visual impact.
- Residential amenity.
- Highway safety.

- Flood risk.
- Pollution.

Planning Assessment

In principle the countryside is an appropriate place for an animal sanctuary.

Notwithstanding the current state of the site, the proposed buildings on the site would be low rise and, subject to conditions relating to materials and landscaping the impact on the countryside would not be demonstrably harmful. The hard surfaced trails and stock proof fencing would not have undue visual impact subject to detail control over their materials and design.

The presence of large numbers of animals in close proximity to residential properties could have a severely harmful impact on the amenities of the occupants, in particular due to noise and smells. In order to make the use acceptable, strict conditional control precluding dogs and cockerels at the site and measures to adequately control the disposal of animal waste would be essential but clearly the issues are finely balanced and would rely on the on-going enforcement of the conditions.

On the advice of the Highway Authority there would be no demonstrable harm to highway safety.

The Environment Agency is satisfied that the measures proposed in the flood risk assessment would be adequate to safeguard this interest.

Pollution control would be safeguarded by conditions relating to the disposal of foul sewage and animal waste.

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. Within two months of the date of this permission a schedule and methodology for the removal of all unauthorised structures from the site shall be submitted to and approved in writing by the Local Planning Authority. The buildings and structures shall be removed from the site in accordance with the approved schedule and methodology.

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

2. Within two months of the date of this permission there shall be 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.

3. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first available planting and seeding seasons following the date of this permission; 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.

4. Within 2 months of the date of this permission precise details of a scheme for the collection and disposal of all animal and bird faeces from the land and buildings shall be submitted to and approved in writing by the Local Planning Authority, along with a schedule for its implementation. The scheme shall be implemented in strict accordance with the approved scheme and schedule.

Reason: In the interests of residential amenity and pollution control.

5. Notwithstanding any details submitted or the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended), no fencing shall be erected 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 in accordance with a timetable which shall first have been agreed in writing with the Local Planning Authority.

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

6. Notwithstanding the particulars of the application, details of the proposed footbridge and duck pond including sections shall be submitted for approval in writing by the Local Planning Authority prior to their implementation. The bridge and pond shall be constructed solely in accordance with the approved details.

Reason: The submitted details are inadequate to assess their full impact.

7. There shall be no dogs or cockerels kept on the application site.

Reason: To reduce the risk of noise disturbance to neighbours.

8. No buildings shall be erected until precise details, specifications and, where necessary, samples of the facing materials to be used in the construction of the external walls and roof of the buildings have been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented using the approved materials only.

Reason: To safeguard the appearance of the buildings and the locality generally.

9. No animals shall be allowed into the areas shown hatched on the attached plan 9/2008/0197.

Reason: In the interests of residential amenity.

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

Reason: In the interests of pollution control.

11. The development shall be implemented in accordance with the submitted Flood Risk Assessment.
Reason: To ensure that flood risk issues are adequately addressed.
12. Notwithstanding the originally submitted details, this permission shall relate to the amended drawing nos. B2140.1C, B2140.2C, B2140.3B and B2140.4C.
Reason: For the avoidance of doubt, the original submission being considered unacceptable.

Informatives:

To note the attached requirements of the Environment Agency. You are advised to discuss the proposed bridge and pond with the Agency prior to submitting details pursuant to condition.

Item **1.2**

Reg. No. **9/2008/0843/FM**

Applicant:

Mr Mrs N Leighton
Weston On Trent
Derby
DE72 2DQ

Agent:

Mr Paul Knifton
Matthew Montague Architects
70 Friar Gate
Derby
DE1 1FP

Proposal: **The demolition of existing bungalow and construction
of new replacement dwelling with seperate garden
room at 3 Main Street Ambaston Derby**

Ward: **Aston**

Valid Date: **13/08/2008**

Reason for committee determination

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

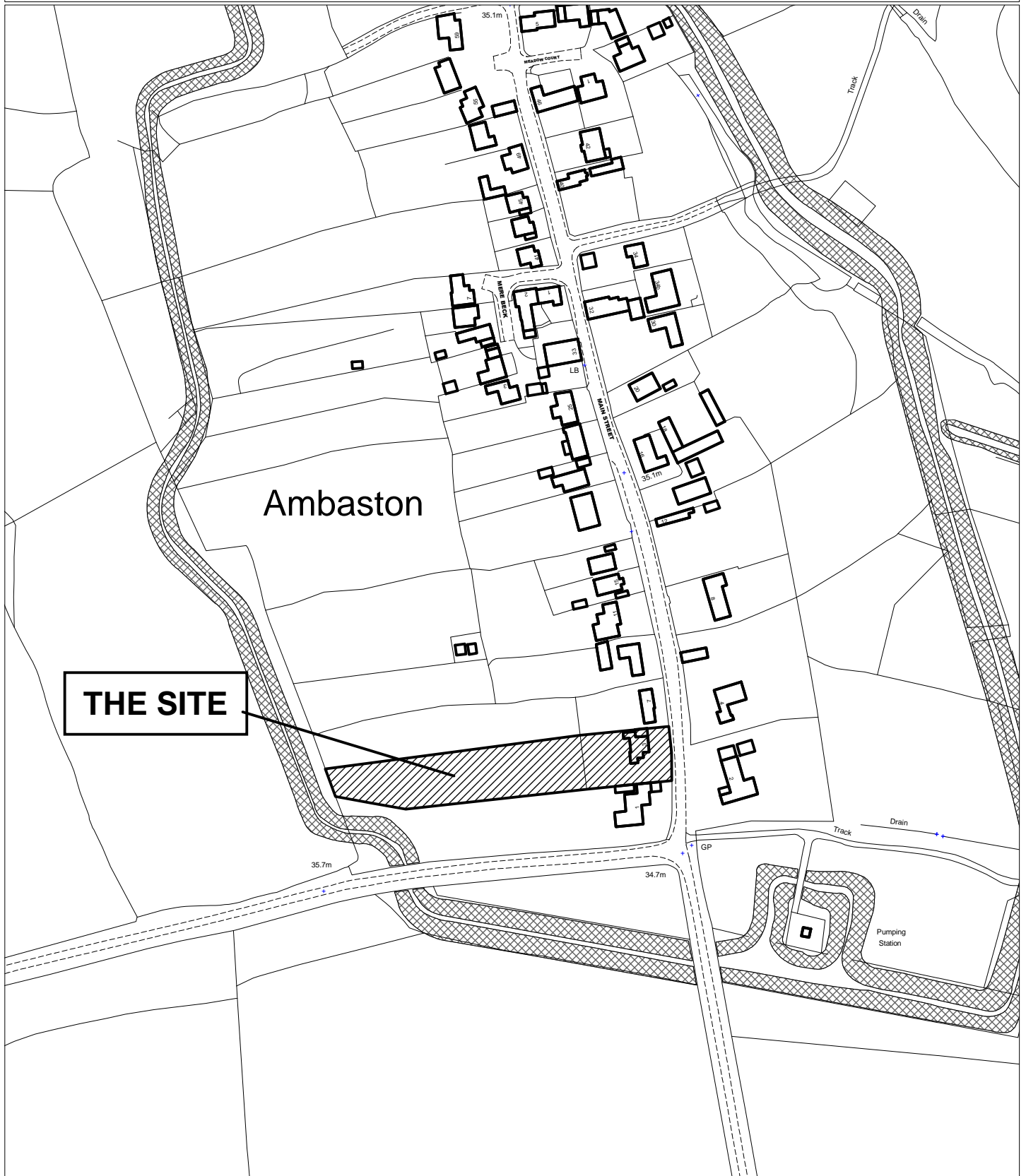
Site Description

Ambaston comprises a single street. Historically an agricultural settlement with a few farmsteads and traditional cottages, most of its development took place in the latter half of the twentieth century. As such the settlement contains a minority of old buildings. There are bungalows and dwellings dating from the 1960s, displaying architecture and materials typical of their time. In the latter part of the last century into the new millennium, farmyards at Avenue Farm and Meadow Farm were redeveloped, taking their design references from traditional farm outbuildings that they replaced. A single infill plot at No 51 also took a similar approach. Most recently a bungalow at River Reach was replaced with a contemporary two-storey house, albeit using red brick and plain clay tiles, as well as more modern materials. Overall the street displays a variety of architectural styles and tones of materials.

The application site lies at the southern end of the street and contains a modest 1960s bungalow set in a large plot, with tree and shrub planting to the frontage. The property is flanked by another bungalow and a traditional cottage, which is set close to the street frontage. Opposite the site there are more bungalows.

Proposal

The application proposes an unequivocally modern dwelling, comprising three distinct elements under overhanging mono-pitch roofs. The highest (central) element would



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measure some 5.5 m to the eaves and 8.8 m to the top of the roof. The lowest would be 2 m to the eaves rising to 4.6 m from ground level. Floor levels would be set 150 mm above those of the existing bungalow, which sits on land raised 1 m above the prevailing ground level. The lowest part of the building, containing the garage, would be located next to the bungalow at No 1 Main Street, The element closest to the two-storey cottage at No 7 would measure 5.2 m to the eaves and 7.5 m to the top of the roof.

The front elevation would contain a full height glazed screen, with minimal fenestration either side. The private rear elevation would contain substantial areas of glass overlooking the gardens. Whilst the garage would be set towards the front of the site, the main part of the building would be set back some 17 m from the road, compared with about 11 m in the case of the existing bungalow. The roof would be covered with reconstituted slate (proposed by the applicant in view of local objection to the original suggestion of metal sheeting) and the walls would be rendered.

A small building is proposed in the rear garden that would serve as a private office for the applicant.

Applicants' supporting information

The applicant's design and access statement makes the following main points:

- a) The existing bungalow needs upgrading to bring it up to present day Buildings Regulations standards.
- b) The site does not lie in a conservation area and the street displays a mixture of house types, juxtapositions and materials, giving a piecemeal character.
- c) The existing bungalow has a floor level higher than adjacent properties and increased flood protection would be afforded by increasing this by 150 mm. Other flood risk betterments are proposed inside the building.
- d) The building has been designed to slope down at the sides to harmonise with the scale of the properties either side.
- e) Neighbours' amenity has been taken into account.
- f) The colour of the facing materials would be chosen to harmonise with the surroundings.
- g) It is intended to retain existing trees and shrubs and tree protection measures would be employed during construction.
- h) In terms of sustainability the dwelling would be designed to be 10% more energy efficient than the 2006 Building Regulations Standards.

Responses to Consultations

The Parish Council objects as follows:

- a) The development would be totally out of keeping with the area, in conflict with paragraph 3.57 of the housing policy document (Local Plan Housing Policy 6).
- b) The apex of the building would be much higher than surrounding buildings creating a dominant and disharmonious effect.
- c) The use of polystyrene bricks could lead to the risk of toxic fumes were they to be exposed to extreme heat.

The Highway Authority and the Environment Agency have no objection.

The Council's Design Excellence Consultant comments as follows:

"The settlement has grown organically and its character is in part derived from the range of architectural styles evident along the street. There is not a discernable, unifying character and in turn no clear justification for the Council to expect the development to conform to a particular form or style.

Based on the eclectic mix of building forms and styles evident along the street, it cannot be considered in my opinion that the proposed development would be inappropriate or would not contribute to the architectural mix and character of the settlement - nor would it negatively impact upon the way the area functions.

It is important to note that the sustainability of the proposed development is enhanced by built in flood protection, which is achieved by raising the building's foundations. In accordance with national planning policy, local authorities are instructed not to, '.... stifle innovation, originality or initiative through unsubstantiated requirements to conform to certain development forms or styles.'"

Responses to Publicity

25 letters have been received from 18 households, raising the following objections:

- a) The building would be substantially higher and larger than the one it would replace.
- b) It would be substantially higher than adjacent properties (2.4 metres higher than the adjacent two-storey property, equivalent to an extra storey).
- c) The raised floor levels exacerbate the impact of the scale of the building.
- d) The building would display an industrial character or that of a car showroom.
- e) The proposed materials would be alien to those prevailing at present.
- f) The development would be out of scale and character with its surroundings and this is not an appropriate design for Ambaston, thereby contrary to the local plan.
- g) Whilst the dates of existing buildings can be identified this does not justify the proposed design.
- h) There would be increased flood risk to third parties, because of the increased footprint.
- i) A site visit should be undertaken in order to appreciate the impact of the development.
- j) The building would spoil the approach to the village from Thulston, particularly when trees have lost their leaves.
- k) The existing bungalow has 2 bedrooms, not 2/3.
- l) The existing bungalow is beautiful.
- m) The bungalow could easily be brought up to standard.
- n) The photographs submitted with Design and Access Statement do not show the site's context in its entirety, in particular with regard to impact on No 4.
- o) The buildings would overbear on neighbours and result in loss of light. It would be visible from a number of properties.
- p) No 51 is a good example of recent development.
- q) Trees would not effectively screen the development.
- r) There is a local vernacular of brick and tile and traditional shapes.
- s) A precedent would be set for other development of inappropriate nature, resulting in irretrievable loss of character to the settlement, which was once part of the Elvaston Estate and recorded in the Domesday Book.

- t) The Flood Risk Assessment does not accurately represent the increase in ground coverage and thus interference with flood capacity.
- u) Other development in the village has been subject to strict control over design and materials.

Development Plan Policies

The relevant policies are:

RSS8 Policy 3

Saved Local Plan Green Belt Policy 3, Housing Policies 6 & 11, Transport Policy 6

Planning Considerations

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

- The principle.
- Scale and Character.
- Residential amenity.
- Flood risk.

Planning Assessment

Under the provisions of the development plan, a replacement dwelling here would be acceptable as a matter of principle, subject to matters of scale and character.

The settlement displays a variety of house types and materials. Whilst there is only one other rendered property there are various shades and colours of brick, some stone and a variety of roof tiles. As such there is no prevailing historic vernacular, such as may be found, for example, in the district's conservation areas. Rather, as the applicant contends, Ambaston has a piecemeal and somewhat suburban appearance reflected in the style and period of the majority of its housing stock. PPS1 provides up to date design advice. Whilst it seeks to promote local distinctiveness, the guidance makes it clear that local planning authorities should not attempt to impose architectural styles or particular tastes and they should not stifle innovation, originality or initiative through unsubstantiated requirements to conform to certain development forms or styles. The Council's Design Excellence Consultant finds no rational or informed objection to the design approach.

As the development meets the tests set out in supplementary planning guidance, there would be no demonstrable harm to the amenities of neighbours.

The dwelling would occupy a larger area of the site than as existing. However because flood defences surround the village, the site is not part of operational flood plain. In the event that the defences are overtopped, the level of water would equalise with the greater body outside the flood bank and there would be no increased risk to other property. As such the Environment Agency has confirmed that it has no objection.

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

Recommendation

GRANT permission subject to the following conditions:

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

Reason: To conform with Section 91(1) of the Town and Country Planning Act, 1990 (as amended by section 51 of the Planning and Compulsory Purchase Act 2004).
2. Notwithstanding the originally submitted details, this permission shall relate to the amended drawing no. 633-01 Rev D received 8 September 2008, showing in particular the use of Redland Cambrian Slate (Ref: Slate Grey 30) roof tiles.

Reason: For the avoidance of doubt.
3. A sample panel of the render, including its finished colour, shall be prepared for inspection and approval in writing by the Local Planning Authority prior to the implementation of any other works of rendering. The works shall be carried out in accordance with the approved sample.

Reason: In the interests of the appearance of the building and the locality generally.
4. Large scale drawings to a minimum Scale of 1:10 of eaves and verges, rainwater goods, and external joinery, including horizontal and vertical sections, precise construction method of opening and cill and lintel details shall be submitted to and approved in writing by the Local Planning Authority before building work starts. The eaves and verges, rainwater goods, 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. No part of the development shall be carried out until precise details, specifications and, where necessary, samples of the materials to be used in the construction of the eaves and verges, rainwater goods, and external joinery have been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented using the approved materials only unless as may otherwise be agreed in writing with the Local Planning Authority.

Reason: To safeguard the appearance of the existing building and the locality generally.
6. 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.
7. 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.

8. 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.

9. The development shall be implemented in accordance with the submitted Flood Risk Assessment prepared by Nick Leighton, dated July 2008.

Reason: In the interests of flood protection.

10. Prior to the first use of the development hereby permitted, parking facilities shall be provided so as to accommodate three cars within the curtilage of the dwelling. Thereafter, (notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995), three parking spaces, measuring a minimum of 2.4m x 4.8m, shall be retained for that purpose within the curtilage of the site.

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

Item **1.3**

Reg. No. **9/2008/0848/U**

Applicant:

Mr & Mrs Sread
3, Brook End
Repton
Derbyshire
DE65 6FW

Agent:

B & E Design
27 Derwent Avenue
Borrowash
Derbyshire
DE72 3HZ

Proposal: **The change of use of land from agricultural use to
leisure use by the formation of a new fishing pond at
Robin Wood Lakes Stanton-by-bridge Derbyshire**

Ward: **Repton**

Valid Date: **27/08/2008**

Reason for committee determination

The application is brought to Committee at the request of Councillor Watson as local concern has been expressed about a particular issue and unusual site circumstances should be considered by the Committee.

Site Description

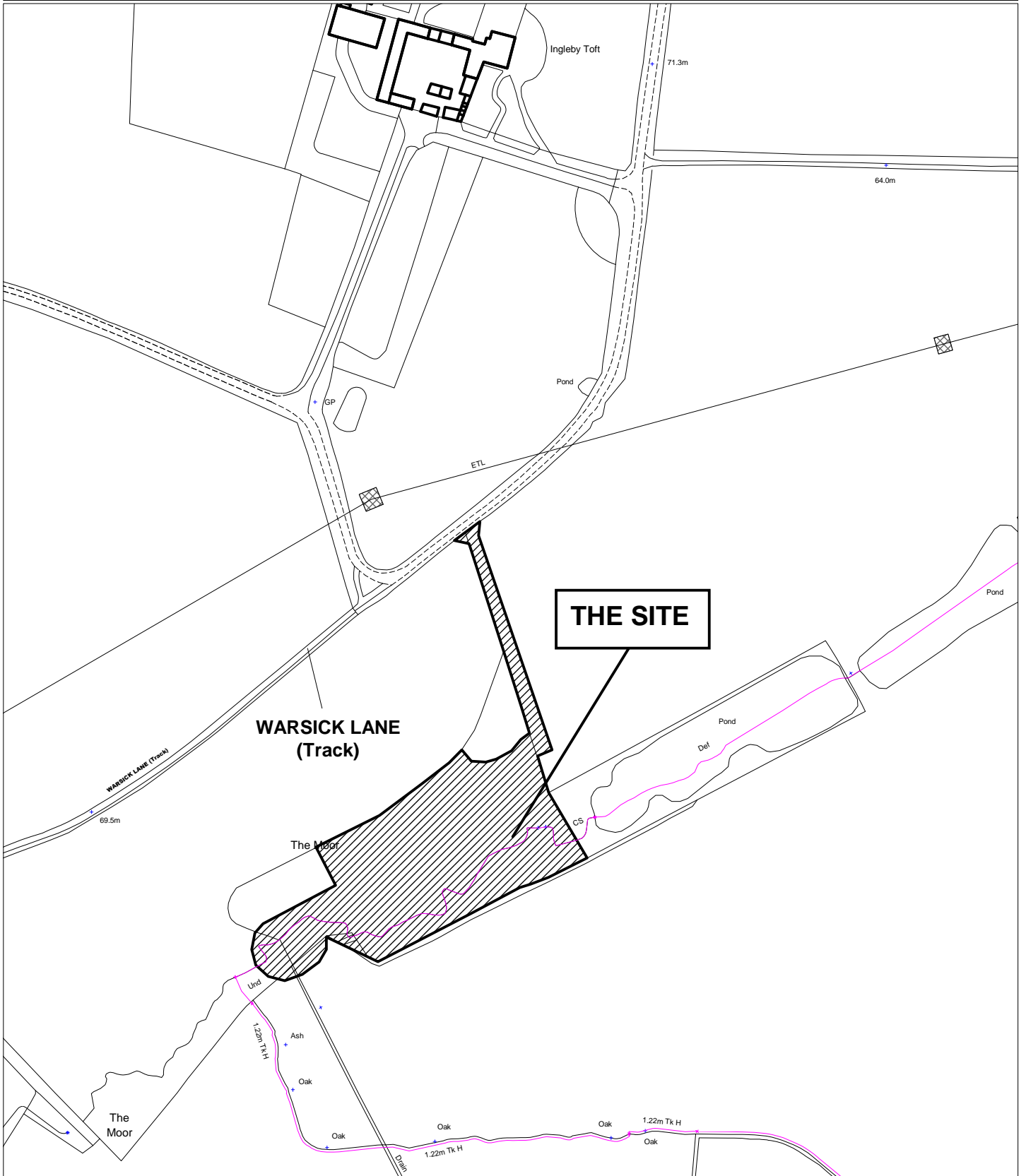
The site comprises a newly created pond and strip of land situated adjacent to a series of three existing fishing ponds located within a valley bottom. To the north and south of the site is arable land with woodland to the east and west. The land was previously an area of wet scrubland. The site is accessed by a track that extends northwards linking to the road to Ingleby Toft.

Proposal

The application is a retrospective submission for the creation and use of the fourth pond for fishing with ancillary carparking.

Applicants' supporting information

The agent states that the parking area would be would be hard paved and situated adjacent to the new pond behind existing dense woodland to minimise impact.



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Planning History

In February 2008 planning permission was granted until February 2010 to assess potential impact on highway conditions for the use of the three existing fishing ponds together with the retention of a storage container (9/2007/0986/F).

The current application has been submitted as a result of a complaint and at the request of the Senior Enforcement Officer. The enforcement complaint includes the unauthorised car parking adjacent to the existing ponds which is currently under investigation. This alleged breach should not prejudice the determination of the current application.

Responses to Consultations

The Highway Authority suggests that the limited period condition on the existing permission be imposed on the current application with the time limit to run concurrently both expiring on 28 February 2010 in order to continue to assess the impact of the proposal on highway safety and conditions.

Stanton by Bridge Parish Council support the proposal. Wildlife in the area is being enhanced and good use is being made of what was unproductive land. The provision of car parking is essential to avoid parking on the grass verges of the adopted approach road. In due course the tenant plans to plant hedges that will shield the view of the fishermen parking and lay the hedge to the south of the proposed pond at the request of the Landmark Trust to provide a clear view down the valley from the south of the property that they own at the head of the valley.

Responses to Publicity

None.

Development Plan Policies

The relevant policies are:

Local Plan: Environment Policy 1, Recreation and Tourism Policy 1.

Planning Considerations

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

- The principle of the use
- The impact on the countryside
- Impact on local amenity
- Access and parking provision

Planning Assessment

The site is located in the countryside where Environment Policy 1 of the Local Plan advises that new development will be permitted provided it is essential to a rural based activity, or unavoidable in the countryside and located to as to create as little impact as practicable. The new fishing pond continues the line of the existing ponds. The pond and proposed car park would be relatively obscured from view from the road to the

north and public footpath to the east of the site by the adjacent woodland and variation in surrounding land levels. As such the creation and use of the pond and parking area are not considered to have any significant adverse impact on the rural character of the surrounding landscape and are considered acceptable in principle subject to satisfying other more specific policy relating to its operation.

Recreation and Tourism Policy 1 states that recreation and tourist facilities will be permitted providing that there is no disturbance to local amenity by virtue of noise or traffic generation; that adequate provision is made for access and parking and that they are of appropriate scale and design and well integrated in their surroundings. The pond is situated some 300m away from the nearest dwelling. Fishing as an activity does not generate excessive noise. There is likely to be some increase in traffic generation along the lane but the Highway Authority recommends permission be granted for a limited period in order to monitor any potential impact on highway conditions. Access to the site would remain as existing. Additional car parking is proposed to that already provided for the existing fishing ponds and would be situated behind an area of woodland with minimal visual impact on the appearance of the surrounding area. Although there is no allocated provision for disabled fishermen to park their vehicles, the car park would extend along the majority of the northern side of the fishing pond providing adequate access. The fishing pond appears as a natural feature within the landscape and is not considered to have any adverse impact on the rural character of the area.

Recommendation

GRANT permission subject to the following conditions:

1. This permission shall be for a limited period only, expiring on 28th February 2010 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 enable assessment of the impact of the use on highway safety and conditions.

2. The car parking shall be brought into use within two months of the date of this permission. The car parking area shall be laid out in accordance with a scheme first submitted to and approved in writing by the Local Planning Authority. Each car parking space shall have minimum dimensions of 2.5m x 5.0m and be provided with at least 6m manoeuvring space behind. Once provided the spaces shall be maintained free of any obstruction to their designated use throughout the life of the development.

Reason: To ensure that adequate parking provision is available.

3. Once the car parking area has been provided cars shall not be parked around the lake and shall be parked in the designated parking area.

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

Item **1.4**

Reg. No. **9/2008/0911/FH**

Applicant:

Mr Mrs Bale
Church Broughton
Derby
DE65 5AR

Agent:

Mr Doug Rutter
Architectural/Graphic Services
Linton
Swadlincote
Derbyshire
DE12 6PZ

Proposal: **The erection of an extension at 11 Boggy Lane Church
Broughton Derby**

Ward: **North West**

Valid Date: **05/09/2008**

Reason for committee determination

The application is brought for Committee consideration as the applicant is related to a Member of the Council

Site Description

The site occupies an elevated position above the level of Boggy Lane by about 1.5 metres. To the south of the dwelling is a cottage with its main elevation fronting onto Boggy Lane and also has main habitable room windows in the rear. The part of that dwelling nearest to the proposed extensions is the side garage.

Proposal

The application is for two two-storey extensions to the dwelling, one to the side comprising a kitchen extension and covered area with a bedroom and study above; the other a family room with bedroom above. No windows are proposed in the side of either extension. The materials of construction are proposed to match the original dwelling.

Applicants' supporting information

The applicant states that the extensions would not affect the living conditions of the neighbouring dwellings. Whilst the full gable would be covered by the extension, he opines that this would not be material even given the Council's advice to applicants. The proposed extensions do not need to be subservient to the main dwelling. The roof tiles from the rear of the house would be reused on the front elevation to minimise the impact of the extension from the street scene.



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Planning History

None relevant.

Responses to Consultations

Church Broughton Parish Council's comments will be reported at the meeting if available.

Responses to Publicity

At the time the report was prepared, no comments/objections had been received from any neighbours. Any received will be reported at the meeting.

Development Plan Policies

The relevant policy is:
Local Plan: Housing Policy 13

Planning Considerations

The main issue central to the determination of this application is the impact of the extension on its surroundings and the amenity of the area.

Planning Assessment

The extensions, although higher than the adjacent dwelling are sufficiently far removed and at such an angle, that there would be no overlooking or any overbearance caused as a result of the new work. The rear extension is close to the boundary with the house the other side but the 'overlap' of the extension and the rear of that property would not cause any overbearance on habitable room windows in that property.

In terms of the street scene, the development would cause no material harm to its appearance.

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. All external materials used in the development to which this permission relates shall match those used in the existing building in colour, coursing and texture unless otherwise agreed in writing by the Local Planning Authority.

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

14/10/2008

Item **1.5**

Reg. No. **9/2008/0925/FH**

Applicant:

Mrs Cordelia Mellor-Whiting
42 Rosliston Road
Walton-on-Trent
Swadlincote
Derbyshire
DE12 8NH

Agent:

Mrs Cordelia Mellor-Whiting
42 Rosliston Road
Walton-on-Trent
Swadlincote
Derbyshire
DE12 8NH

Proposal: **The siting of a mobile home (amended scheme to previously approved application 9/2008/0043/FH) to the rear of 42 Rosliston Road Walton-on-Trent Swadlincote**

Ward: **Seales**

Valid Date: **08/09/2008**

Reason for committee determination

Councillor Timms (ward member) has requested that this application is brought to the Committee because local concerns have been expressed.

Site Description

The site consists of the rearmost third of a garden at the rear of a detached bungalow within the confines of the village. The site slopes gradually down towards the dwellings on Rosliston Road.

This area of garden has approximate dimensions of 18m (average) deep x 12m wide. It has been planted in the past with a variety of shrubs and trees and these have matured to form a densely planted area. To the south are 2 other visually distinct parts of garden, the furthest one comprising a lawned area immediately to the rear of the bungalow.

Beyond the site to the south are open fields, separated from the site by both a hawthorn hedge, marking the field boundary, and a line of conifers within the site. The field to the rear is uneven and sloping, rising up away from the site.

There is another line of conifers marking the site's eastern boundary with a neighbour's rear garden. A low fence against the planting on the site marks the west boundary which is the side boundary of a neighbour's garden.



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Proposal

This application seeks to site a mobile home for occupation by a dependent relative that presently lives in the bungalow at No 42. The mobile home would have dimensions 12m x 3.8 m and contain 2 bedrooms, a lounge, kitchen and bathroom and en-suite.

The mobile home would be sited centrally within the planted garden area and would not have vehicular access; it would be approached on foot only via a pathway to run in the centre of the remainder of the garden, to provide access from the existing bungalow.

The mobile home would have windows to all 4 sides, and be clad in metal with a metal shallow pitched roof.

Applicants' supporting information

The applicant has indicated that a supporting statement describing the personal and special circumstances behind this application will be submitted shortly. This will be reported verbally to Members at the Committee. However it is understood that the mobile home would be occupied by a dependent relative with health problems.

Planning History

Planning permission was granted under delegated powers (9/2008/0043) earlier this year for the construction of a one bedroom log cabin in this property's rear garden for a dependent relative. This granted permission for a building with dimensions sited elsewhere in the rear garden to the current application close to the western garden boundary.

That permission has not been implemented and the present application is intended to be an alternative to that scheme. If planning permission were granted for the present proposals a legal agreement would be required to prevent the erection of both buildings.

The consent for the log cabin was subject to restrictive conditions including allowing it to be occupied only for purposes ancillary to the residential uses of the existing bungalow, No 42.

Responses to Consultations

Parish Council response awaited and will be reported at the Committee.

County Highway Authority response awaited and will be reported at the Committee.

The Council's Private Sector Housing Manager reports that if planning consent is granted and the project proceeds, the applicant will be required to apply for a Caravan Site Licence from Environmental Health. The Licence will have standard conditions attached requiring the applicant to make proper provision for fire safety, drainage, water supply, hard standing and any other matters the council deems necessary or desirable in the interests of the occupant or others (e.g. neighbours). She confirms that the purpose of the caravan is to provide an economic solution to the applicant's problem of caring for her relative, who is an older person with mental health problems. Her current accommodation is limited in size and the caravan would provide additional space and some respite, allowing the relative a degree of independence, whilst still being cared for at home. The Council has assisted the applicant to consider other options such as

permanent removal of the relative to a care home or extending the existing property through a Disabled Facilities Grant, which would be costly to the local authority. As such she supports the application that will satisfy the needs of the family in the short to medium term (i.e. over the next 10 years).

Responses to Publicity

Three letters of objection have been received. The comments are summarised as follows:

- Overlooking as only a 1m boundary fence exists on the site boundary,
- This application should be subject to consideration against full planning policy and building regulations as it is for a permanent dwelling.
- The mobile home will need heating, lighting, fire protection, toilet, washing and security alert precautions to meet national standards as it is intended for a disabled occupant.
- Will cause a fire risk to neighbours, as it would be sited close to hedge boundaries.
- Represents back land infill development, which if approved would set a precedent.
- A Mobile home would be out of keeping with the existing dwellings nearby.
- Mobile home will not be accessible by ambulance and fire services so it is unsuited to use by a disabled person.
- Neighbours will lose privacy unless all the overlooking windows are made opaque.
- Mobile home will need services and how these are to be provided is unclear, and these must be provided only via applicants land.
- When the mobile home is no longer needed by the disabled family member, there are concerns about its future use, For example they may be pressure for it to be used for a business, and business uses in this area are contrary to policy and would be strongly opposed by neighbours.
- Mobile home will be visible from a public footpath,
- To bring the mobile home onto the site will involve the loss of a hawthorn/elderberry hedge, and this should not be removed.
- Moving a mobile home onto the site via the field to the rear is not possible as the existing field access gates are not wide enough for this purpose.
- All the other dwellings nearby have been enlarged by rear extensions or loft conversions, to meet family needs.
- There is no potential to bring a mobile home to the site from the field from the Coton Road direction due to large trees in field.
- Bringing a mobile home to the site will result in road closures.
- There are only 2 parking spaces on the site, which will be insufficient for the parking needs of people occupying the proposed mobile home as well as existing occupiers of No 42. As a result this will cause on road parking opposite a busy road junction,
- There is legislation which requires remote ancillary buildings, such as this, to be used only by householders or their staff.
- Siting a mobile home in the garden is contrary to the Deeds of the dwelling.

Development Plan Policies

The relevant policies are:

Local Plan Housing Policies 5, 11 and 12

Planning Considerations

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

- The principle of the development,
- Impact on residential amenity,
- The quality of the design and layout of the scheme,
- The impact on the character and appearance of the area.

Planning Assessment

Prevailing development plan policies generally support the provision of dwellings in the village confines of Walton on Trent, subject to protecting important gaps and landscape features, conservation areas and listed buildings. In this case there are no such outstanding matters to be taken into account.

Specific to this particular proposal is Policy H12 which supports the siting of caravans, mobile homes and boats for accommodation needs as these can help provide low cost housing. The policy specifically supports the siting of such units within settlements, making it clear that the planning considerations to be given to such proposals are their relationship to other development, environmental effects and provision for access, landscaping and screening. The application site is within a garden within the confines of a village, adjoining residential properties on 3 sides and an open field to the remaining side. It is therefore acceptable in principle.

The application seeks to site a mobile home for occupation by a relative in need of care who presently resides with the remainder of the family occupying the bungalow at No 42. The mobile home would only be accessed on foot via the existing dwelling on the site. No additional car parking is proposed due to the dependent nature of the intended occupant. There is a garage and 2 driveway parking spaces for off street parking in front of the existing bungalow.

The mobile home would be sited at the end of the rear garden, with the result that it would be approximately 45m from the neighbouring dwellings on Rosliston Road. The single storey nature of the mobile home and the existence of planting around the mobile home mean that it is considered that undue loss of privacy to neighbours should not arise. The distance between the window of the mobile home and the site boundaries and neighbours property's meets the Council's adopted standards. The siting proposed for the mobile home would result in an acceptable relationship with neighbours' properties.

As the mobile home would be set directly behind a dwelling, and accessible only on foot it would generally only be acceptable in planning terms, for a use that is ancillary to the use of the existing dwelling. Therefore it is suggested that a condition should be imposed restricting use accordingly.

It is proposed to restrict occupancy to a relative dependent on the occupiers of No 42 and require removal of the mobile home when such a need no longer exists, or within 10 years, whichever is the sooner. This type of condition would secure removal of the caravan before its appearance deteriorates to an unacceptable degree, and should allay some of the neighbours concerns about the occupation and future use of the mobile home.

The particular characteristics of the site are important considerations. The site chosen means that the mobile home would benefit from screening and landscaping by the existing dense planting on this part of the site. This should ameliorate the pale and angular appearance of the mobile home.

The presence of the existing dense landscaping on the site will also reduce any visual intrusion from neighbour's properties, the field to the rear and the public footpath beyond. In distant views the mobile home would be viewed in context of the surrounding domestic curtilages and against a backdrop of larger buildings, consisting of the dwellings on Rosliston Road.

This siting proposed for the mobile home differs from that approved for the log cabin earlier this year. That permitted a building to be built closer to the existing dwelling at No 42, and against the garden boundary, in closer proximity to the neighbours' garden side boundary. It is considered that the mobile home although larger, would be less visually conspicuous than the approved log cabin, for the reasons described above.

The mobile home would be brought to the site on a trailer and manoeuvred across the fields at the rear into the garden. The applicant has not yet ascertained whether this is feasible, or whether a crane would be involved, nor whether the landowner would allow permission to access the site from his fields. Nevertheless these are not reasons which are material to the planning consideration. If the rear access option were selected, it appears likely that a section of hawthorn field hedge across the rear garden boundary would have to be removed. However this could be replanted and its short-term loss would not have detrimental effect on the landscape.

Conditions can be imposed requiring any loss and damage to the present plants on the site and its boundaries, caused during installation of the mobile home, to be made good and these plants thereafter maintained as part of an approved landscaping scheme.

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 mobile home hereby approved shall be removed from the site when it is no longer required for the accommodation of a dependent relative of the occupiers of the property at 42 Rosliston Road, or a period expiring within 10 years of the date of this consent, whichever is the sooner, unless a new planning application has been made to vary this stipulation.

In order to secure removal of the mobile home when it is no longer required for the stated requirement

3. 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.

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

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

5. The colour of the mobile home hereby permitted shall be submitted for the approval of the Local Planning Authority prior to implementation of this consent, and the agreed details implemented and thereafter retained throughout the life of the development.

Reason: In order to protect the character 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 protecting and pollution control.

7. No development shall take place until the applicant has submitted to and had approved by the Local Planning Authority a unilateral undertaking under Section 106 of the Town and Country Planning Act 1990 to ensure that the permission granted under 9/2008/0043 is not implemented.

Reason: For the avoidance of doubt.

Informatives:

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.

A Caravan Site Licence is required from the Council's Environmental Health Department.

Item **2.1**

Reg. No. **9/2008/0676/F**

Applicant:

Mr Kevin Ellis
c/o Gainsborough Property
Mickleover
Derby
DE3 5SH

Agent:

Mr Kevin Ellis
Gainsborough Property
Mickleover Manor
Mickleover
Derby
DE3 5SH

Proposal: **The erection of a dwelling on Land at Red Lane Repton**

Ward: **Repton**

Valid Date: **25/06/2008**

This case was reported at the last Committee and deferred for a site visit. Since then, the applicant has alerted the Head of Planning Services that some of the background detail about the history of Burnaston House was incorrect. As such, the part of the report dealing with the issue has been rewritten. The remainder of the report is as previously published and the recommendation is unaffected.

This report also relates to application 9/2008/0840 which follows on this agenda.

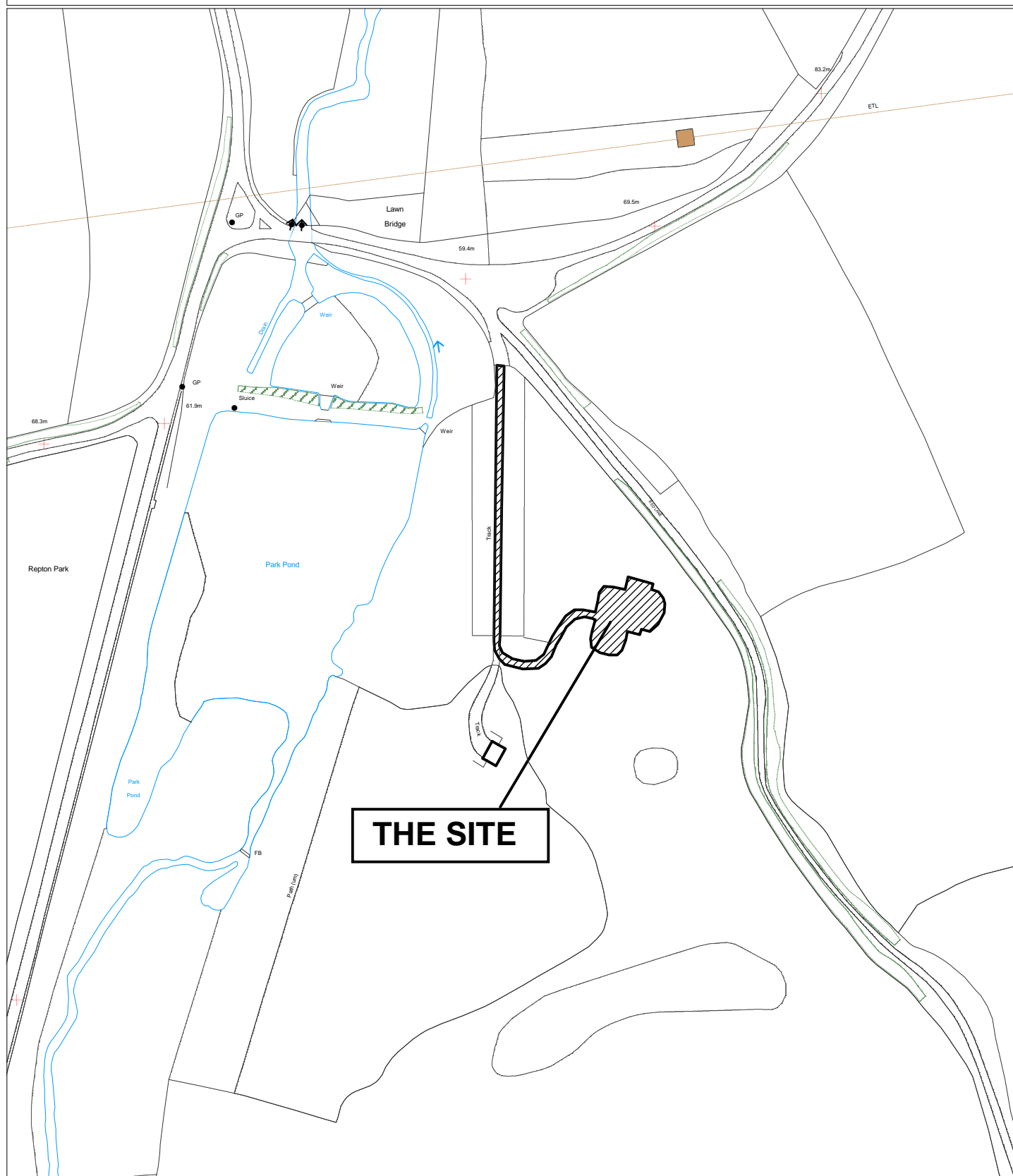
Reason for committee determination

The application is brought to Committee at the request of Councillor Heather Wheeler (ward member) so that the committee can debate issues which she feels are very finely balanced, and circumstances that are unusual. Councillor Wheeler considers that the application should be supported.

Site Description

The application site lies within the countryside and comprises an area of open land forming part of the historic Repton Park, an area of enclosed, undulating parkland consisting of artificial ponds, trees, woodlands and two listed buildings (Lawn Bridge and the remains of stables). The ownership of the park is split, with the application site and surrounding open land under separate ownership from the areas of woodland and water, which include the site of Repton Park House (demolished in the 1890s) and the park's main landscape features.

The site for the proposed dwelling lies in a natural hollow within an area of open grassland. The rear boundary of the site to the east is bordered by Red Lane, a narrow lane carved into the hillside with a steep bank up towards the application site bordered by trees and high hedges. The front of the site faces towards an existing lime tree



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avenue which dissects the area of open land as the land drops away to the west to the ponds beyond.

The site is accessed via the lime tree avenue from an existing gated entrance on Red Lane. The lime avenue leads towards the site of the former Repton Park House.

Proposal

The proposal is to incorporate the salvaged external stonework of the demolished Grade II listed Burnaston House into a new, single-family residence. The house was formerly located at the site of the Toyota development and the external stonework was carefully dismantled and logged in order to enable its re-erection.

The house would be sited within a natural hollow in Repton Park with the rear of the property facing towards Red Lane. Access to the house would be from Red Lane via the existing gated entrance along the lime tree avenue. The access would deviate from the avenue to the site of the proposed dwelling.

The proposal is to build the new house to the same dimensions as the old one but without the original rear wing and ancillary buildings. The proposal includes a single storey stone built extension to the rear in place of the original, brick built rear wing.

Part of the existing natural hollow would be excavated to provide underground car parking at basement level and form a plateau on which the house would sit.

Despite its demolition in 1990, English Heritage has confirmed that no request was made for delisting the house at the time of demolition. Burnaston House therefore remains listed because some remains are still extant. This being the case the applicant has subsequently submitted a listed building application which is also the subject of this report.

Applicant's supporting information

The applicant has submitted a Design and Access Statement (a full copy of which is available for inspection on the file) which makes the following assertions:

- a) Burnaston House was built as a classical 'Soanian' villa of true Sir John Soanes design of which only a handful still exist. The house is of significant cultural significance.
- b) The house was meticulously dismantled with all removed blocks coded and stored in numbered pallets for ease of reassembly and detailed drawings and schedules prepared.
- c) The current proposal intends to rebuild the main house in its entirety, but not rebuild the original ancillary buildings, which contribute nothing to the period design. Underground parking will avoid any additional structures on site and keep the footprint down to an absolute minimum (that of the footprint of the rebuilt Burnaston House) of 360m².
- d) The applicants are willing to enter into an agreement to ensure that Burnaston House remains as a single household residence only.
- e) The appeal Inspector acknowledged that Burnaston House was a building of significant interest and that the 'benefits from the re-erection of the building may

well justify a siting where new residential development would not normally be acceptable'.

- f) It is intended that the rebuilt Burnaston House will achieve a low carbon status aiming to achieve a level 4 or higher in the Code for Sustainable Homes standards.
- g) The proposed scheme is to include a greywater collection and re-cycling system and the applicant is considering the implementation of a combined heat and power plant, the installation of which would be supervised by the Carbon Trust. If implemented it is intended to allow for educational visits during the design and installation stage.
- h) By locating and concealing the building in a natural hollow between two rises with the rear elevation screened by trees and hedges along Red Lane the building is in a much less intrusive position on the site and the applicant is confident that they have overcome the Planning Inspector's previous concerns of the building's prominence.
- i) On the previous appeal the Inspector considered a greater level of detail was required to ensure both accurate re-erection and restoration of the house. To that end the applicant has commissioned Peter Eaton and Associates, Civil and Structural Engineers, to oversee the construction and ensure and confirm that the materials kept in storage are correctly used during construction.
- j) No trees on the boundary of the site are scheduled for removal.
- k) The site is perfectly placed to give access to the country's main transport network.
- l) Burnaston House is a rare example of an almost extinct style, and as such, its reconstruction is seen as highly desirable for historic and cultural reasons. Several previous attempts to rebuild Burnaston House have failed, and because of this, the possibility of its survival is diminishing.

An additional statement submitted by the applicant makes the following points:

- a) Once Burnaston House is re-constructed its planning permission will set a precedent, as nobody else will be able to re-create this property. It is truly a one off and it is an exceptional application and should also be considered under PPS7 as an exceptional property built in the countryside.
- b) The property is in close proximity to the now demolished original property built at Repton Park and the entrance gates and tree-lined driveway still in existence will be utilised for the new property.
- c) The entrance onto the driveway is abused with litter and parking and it is hoped this proposal will improve the situation.
- d) The property will not be visible from the highway and will be well screened within the site.

The applicant has submitted a letter from the Ancient Monuments Society from 1993 commenting on the previous application for the re-erection of the house at Etwall which they "applaud and welcome".

The applicant has submitted a further letter dated 11 August 2008 which states that they consider that should the application be successful it would generate an enormous amount of publicity for South Derbyshire not only because of the reconstruction of such an important building but also the fact that the building is still listed despite its demolition.

The applicant has confirmed that they have secured the services of conservation architect Adam Bench (RIBA) of Buxton to oversee the project and it is likely that William Anelay of York, the building and restoration contractors who were involved in the detailed logging of the stonework of the demolished house, would be contracted to re-construct Burnaston House. William Anelay has already in effect re-built the house dry, repaired all the stones as necessary and engraved and logged the stones.

Whilst the original staircase was re-used in the construction of Egginton Hall a piece of the original balustrade does exist and will be re-created together with a new stone staircase identical to the original Burnaston House. The original cornices are not in the applicant's possession but cornice moulds will be made where possible and used in the completed building.

Floor plans have been submitted showing that the principal rooms relate to the principal windows and the supervising architect will ensure that the house is generally in keeping with the period.

Planning History

Planning approval was sought in 1990 to rebuild Burnaston House on a site adjacent to Ashe Hall in Etwall. The Committee had resolved to grant planning permission subject to the signing of a Section 106 Agreement to limit occupation to a single family and to ensure the controlled re-erection of the building. However, following a lengthy planning process the application was not pursued and was withdrawn.

A second application was reported to Committee in 1993 further down the site and subsequently refused. The Local Planning Authority were not satisfied that the building had sufficient architectural or historic interest to warrant a significant intrusion into the countryside and considered that the proposal would be detrimental to the rural character of the area due to loss of hedgerow to provide the necessary sightlines.

The application was subsequently dismissed at appeal. The Planning Inspector acknowledged that Burnaston House was a building of "significant interest" and it would be "desirable to re-erect the building in the interests of architectural conservation". The Inspector commented that "the benefits from the re-erection of the building may well justify a siting where new residential development would not normally be acceptable." However, the Inspector considered the elevated position of the proposed site which lacked tree cover made it particularly prominent over a considerable area and concluded that the proposal would detract from the character and appearance of the rural area. He considered that the benefits or re-erection did not outweigh the harm identified. The Inspector further added that had the principle of re-erection been acceptable a greater level of detail would have been required to ensure both accurate re-erection and restoration of the house and appropriate treatment of the space around the building.

Responses to Consultations

English Heritage does not wish to comment in detail on the application but has the following observations:

- Sufficient elements of the designed landscape of the former house of Repton Park survive including the original approach to the earlier house and some tree planting. Evidence suggests that this is a potentially important landscape, which,

in the least, deserves further research and perhaps inclusion on English Heritage's Register of Parks and Gardens of Special Historic Interest.

- Whilst little information is provided about proposed landscaping within the application given the loss of the original Repton Park house, the proposed reuse of the approach and relatively discreet proposed location of the rebuild within the existing site such work could take place alongside the rebuild to inform appropriate future landscaping around the house and take the form of a condition of any consent given.
- The application is seriously deficient in terms of detail and it will be essential for the Local Planning Authority to assess if the stone façade of the house can be reconstructed accurately utilising the original fabric in its entirety so that the building is, as near can be, Burnaston House, rather than a copy of it. Only if the fabric re-used is the historic original could the building be considered 'outstanding in terms of architecture' thus responding to guidance in PPG7. The letter from Peter Eaton Associates is not sufficient evidence that the building is capable of reconstruction.
- Much more information is required regarding the building's historic features. If the reconstruction is to be more than the erection of a façade it will be important to ensure that the proposed plan form reflects the historic plan form and that principal rooms respond to principal windows etc. The survival and incorporation of historic features could be an argument in favour of rebuilding, ie. a heritage benefit in allowing an accurate reconstruction of Burnaston House as a whole, not just a façade. Much more information is required on these important points in order to assess if the proposals represent the exceptional circumstances required to allow this development.
- Burnaston House remains listed. No application to de-list the building can be considered whilst the current application is still live. An application for listed building consent is required. In the event that planning permission and listed building consent are granted, once the house has been re-erected, it will be re-assessed by English Heritage to establish whether it merits retention on the statutory list.
- English Heritage recommends that the application be determined in accordance with national and local policy guidance and on the basis of the Council's specialist conservation advice.

The Ancient Monument Society supports the rebuilding of the house and is in no doubt that its architectural quality will meet the 'exceptional' criterion for new building in the countryside. The Society is content that the new elevation, necessary for making good the part not salvaged, is appropriate. The Society understand that there are concerns about the effect on the historic landscape of place a rebuilt Burnaston House on the site chosen but do not have the necessary information to reach a conclusion on that issue. The Society believes that it is desirable to for the house to be rebuilt and it may be that there is no better site available. The Society believes that the benefits of rebuilding Burnaston House should be given great weight against the disbenefits to the existing historic landscape.

The Development Control Archaeologist advises that Repton Park is a wholly inappropriate location for the reconstruction of Burnaston House and that consideration be given to alternative locations. Repton Park is a significant example of a landscape park, representing a palimpsest of landscape development from the medieval period to the present. The significance of the Park resides in the interrelation of landscape

features and the surviving elements of built heritage such as the footings and part of the undercroft of the Harpur Crewe house and the part of the gatehouse which survives as a single storey Grade II listed ruin to form a cohesive historic landscape. The proposed rebuilding would have a detrimental impact on the setting and interpretation of the listed gatehouse and the interpretation of the cohesive historic landscape of Repton Park. It is also likely that the proposed re-building will impact upon buried archaeological deposits and should the Authority be minded to grant consent an archaeological evaluation of the site should be carried out prior to any development.

The Georgian Group support the proposal to reconstruct Burnaston House but are concerned about the lack of information relating to the impact of the reconstruction in the proposed location. The group recommend withdrawal of the application and resubmission with the relevant information in order for the LPA to assess the likely impact of the proposals on the landscape at Repton Park.

The Council for British Archaeology (CBA) recommends refusal of the application. The CBA expresses concern that in essence the proposed building will not be Burnaston House. The carefully numbered stone will be re-used but the plan of the historic structure is apparently not known, the staircase has been used elsewhere and the rebuilding does not extend to the original roof structure, windows and doors. The associated stables will not be rebuilt and the changes to the building include the incorporation of an underground car park (implying extensive excavation). The group also has concerns about the proposed siting which will dominate the historic landscape that has its origins possibly as a small deer park in the 17th century with relict signs of formal gardens, the park and lakes and a magnificent avenue of lime trees marking the original driveway. The proposal has no direct link with the planned historic landscape and will introduce an alien structure.

The Environment Agency has no objection.

Repton Parish Council and Repton Village History Group object as follows:

- a) The site is outside the village envelope.
- b) The site is a greenfield site.
- c) There will be an unspecified number of trees felled to gain access.
- d) The proposal has no historic attachment to Repton.

Repton Village History Group add:

- e) The application suggests that the re-erected Burnaston House would be a replacement for the former house on Repton Park but the proposed house is a reasonable distance from the original and is on land not connected with the original house and grounds.

The Highway Authority has commented that whilst Red Lane is not suitable to serve any further development, in view of the location of the access with Robins Cross Lane and the lightly trafficked nature of Red Lane, it is not considered that a highway safety issue could be demonstrated.

Responses to Publicity

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

- Burnaston House is of little architectural merit.

- It seems unlikely that any significant, original interior features have survived and the re-erection could be more pastiche.
- Repton Park has a more local, overriding historical importance and the surroundings ought to be preserved as such.
- The application site is on the land of Park Farm and not on land that has ever been part of Repton Park.
- The local Repton history particularly that of the former mansion house at Repton Park, its architectural merit and its estate is what is relevant to Repton.
- The application places the wrong building in the wrong place. The architectural style is totally different to the previous house and is not even within the bounds of what has been recognised through the 20th Century as the park.
- The proposal will seriously detract from unique quality of the historic Repton Park tree-lined entrance drive and gateway by taking a diversion from it.
- Why develop on a prominent sloping Greenfield site, requiring considerable excavation with an alien property of dubious architectural quality and suitability when the actual neglected brownfield site (of the former mansion house) has been crying out to be reinstated?

Two letters of support have been received and are summarised as follows:

- The restoration of a house to the sequestered and delightful small park at Repton would not only be highly appropriate but would embellish the romantic broken countryside and enhance the security of the area, which has had its problems with vandalism.
- The former Burnaston House matches the vanished house at Repton Park in period and in its associations.
- Whilst the house does not quite lie on the same orientation as the house lost in 1893, its relationship to the landscape will be sufficiently close to allow the park to be read as a piece of planned landscape once again.
- The site would be an ideal spot to rebuild Burnaston House, as it is a beautiful area with natural surroundings.
- The proposed siting would not affect any neighbouring properties.
- The house would only be used as a family home and would not create a great amount of traffic.
- It would be nice to have a piece of history rebuilt within Repton village.
- There is a problem with youths congregating at the bottom of Red Lane and subsequent discarded litter. A private driveway would deter this.

Development Plan Policies

The relevant policies are:

RSS8: Policy 2 & 3

Local Plan: Housing Policy 8 & Environment Policy 1

Planning Considerations

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

- The principle of development.
- The historic and architectural merits of Burnaston House.
- The historic and architectural merits of the parkland.
- The impact of the erection of the house on its location.

Planning Assessment

Environment Policy 1 of the Local Plan seeks to protect the countryside from new development that would have an adverse impact on the landscape quality and historic features that contribute to the character of the countryside. Housing Policy 8 contains similar requirements and seeks to ensure that dwellings are only allowed in such locations provided they are necessary to a rural based activity.

PPS7 'Sustainable Development in Rural Areas' advises that isolated new houses in the countryside require special justification for planning permission to be granted. This justification may occasionally be provided by the exceptional quality and innovative nature of the design of a house. The value of such a building will be found in its reflection of the highest standards in contemporary architecture, the significant enhancement of its immediate setting and its sensitivity to the defining characteristics of the local area.

It is the view of the Council's Heritage Officer that the historic and architectural merit of Burnaston House is very dubious. The house remains listed by default only. Permission to demolish the house was granted by the DoE in August 1989, with no requirement for any salvage, but the formal process to de-list the house was not put in place. It is unclear whether this process should have been initiated centrally or locally. However it is extremely unlikely that the house will remain a listed building once the current applications are determined.

In line with English Heritage's recommendation that a decision should be based on policy and the Council's own specialist advice, the Council's Heritage Officer has conducted some new research to properly inform that advice.

The original plans of the house do not survive in their entirety, the only survival being the original first floor plan, or a prototype of it, which is undated but has a watermark of 1811. In 1833, Stephen Glover noted that "Burnaston House, the seat of Ashton Nicholas Every Moseley, is a modern stone mansion, erected by the present owner on a commanding situation." The design of the house has been variously attributed to Samuel Brown or Francis Goodwin, both active in Derby, but there is no evidence to confirm either of these attributions.

The house as it stood at the time of listing was not a "pure" and harmonious design of a single date, as has been claimed. The side wings, which were the most distinctive part of the building, were later additions of unknown date and were not part of the original design concept. Externally these side wings gave added interest and 'movement' to a plain house, but internally the extra space did nothing to improve the plan form, producing some oddly proportioned rooms.

Whilst the applicant has submitted further details showing the proposed floor plans with principal rooms facing principal windows, and has indicated that the stone staircase and cornicing will be re-created, the case for continued listing is weak now that the original house remains only as three facades. If the rebuilding were to be permitted, the internal plan form including the staircase would be totally different to the original. Therefore the proposed interior would be contrary to English Heritage's advice. The plan of the house as proposed bears little resemblance to the original which in turn would have an impact on the exterior. For instance, the fireplaces are located differently and there are no chimneys shown. Two sash windows in the front elevation are shown as doors in the

proposed plan, which would inevitably affect the regularity of the glazing pattern that is a significant feature of the design.

In this context the historic and architectural merits of Burnaston House are not considered so significant as to warrant special justification for the erection of a new house in the countryside.

Repton Park has considerable natural beauty and historic interest on account of the artificial ponds, trees and woodlands and two listed buildings. The park is a heritage asset and is part of a particularly attractive part of South Derbyshire which tracks the brook from Hartshorne via the lower end of Bretby Park to Repton. English Heritage has acknowledged that the park merits further research and perhaps inclusion on their Register of Parks and Gardens of Special Historic Interest. This research is currently in progress.

Repton Park forms part of an area of land formerly designated as an Area of Local Landscape Value under the Local Plan within which previous planning policy advised that development will not be permitted unless it is necessary in such a location and that the development is well related to the main features of the landscape. Whilst the related Environment Policy 3 expired in September 2007 under the Secretary of State's Direction, this former designation is still considered to be of some historic relevance to the site's importance.

The designed landscape at Repton Park evolved around the demolished house at its centre, which stood in a grassy clearing among woodland, approached by a tree-lined avenue. The proposed site for Burnaston House is situated away from the site of the original house off to one side of the tree-lined avenue that forms the historic approach road. The site represents the best site available to the applicant and is not a focal point of the historic landscape. There is plenty of space to erect a new house on or near the site of the old one, which would be the logical place for it, but this does not seem to be an option for the applicant.

The house itself would be situated within a natural hollow that would require further excavation works in order to provide the underground car parking and provide a plateau for the proposed house. Burnaston House was a house to be viewed in the round with the end elevations being more decorative than the front, with larger, tripartite windows and tapered architraves showing an Egyptian influence, giving the end elevations an architectural impact almost as great as the front elevation. The design ethos of Burnaston House was, therefore, suited to an expanse of more level ground than is currently proposed. In its original setting the parkland wrapped generously around the front and both ends of the house.

Whilst the proposed site for the re-erection of Burnaston House is situated within an enclosed parkland with only partial views of the house from the access point on Red Lane and as such addresses the previous concerns of the Planning Inspector with regard to the prominence of the house in a rural area, the house in the location proposed would have an adverse impact on the character of the surrounding landscape which is considered to be of significant historic importance.

It is acknowledged that Burnaston House has some residual merit. The interesting recent history of the house, involving its dereliction, rescue as a nursing home, demolition prior to completion of the conversion, salvage of the stone and abortive

proposed rebuilding in Japan, makes the rebuilding desirable on that account alone, if for no other reason. However, its merits are not such as to warrant rebuilding in such a location which is considered to be so damaging to an existing historic parkland. Rebuilding in Etwall was refused on account of the effect on the location, and there are similar concerns here. At Repton Park, the setting is not publicly prominent; it is equally sensitive because of the history and importance of the designed landscape.

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

Recommendation

REFUSE permission for the following reasons:

1. Housing Policy 8 and Environment Policy 1 of the South Derbyshire Local Plan seek to protect the countryside from harmful development and restrict new development to that which is necessary in such a location for the operation of a rural based activity. The proposed development clearly is not justified in this regard. Consideration has been given as to whether there is special justification for an exception to the above policies because of the architectural or historic importance of Burnaston House in line with PPS7: Sustainable Development in Rural Areas which advises that justification for an isolated new house in the countryside may occasionally be provided by exceptional and ground breaking design quality. Although the now demolished Burnaston House remains a Grade II listed building on the Statutory List of Buildings of Architectural and Historic Interest, the Local Planning Authority is not satisfied that the building is of sufficient architectural or historic merit to warrant an exception to the above policy. The erection of a new dwelling would therefore be contrary to the above policies and result in an unwarranted intrusion into the countryside.
2. Environment Policy 1 seeks to protect the countryside from development outside settlements that would adversely affect the landscape quality and historic features that contribute to the character of the countryside. Repton Park is a significant example of an historic landscape park due to the interrelation of landscape features and the surviving elements of built heritage. The siting of the re-built Burnaston House in the location proposed would appear as an alien feature out of character with and to the detriment of the historic pattern of the surrounding rural landscape contrary to Environment Policy 1 of the South Derbyshire Local Plan.

14/10/2008

Item **2.2**

Reg. No. **9/2008/0840/L**

Applicant:

Mr Kevin Ellis
c/o Gainsborough Property

Agent:

Gainsborough Property Ltd
The Gatekeepers Cottage
Mickleover
Derby
DE3 0SH

Proposal: **The proposed rebuilding of the former Burnaston
House at Land at Red Lane Repton**

Ward: **Repton**

Valid Date: **21/08/2008**

The issues for this item are considered in the Committee Report for 9/2008/0676.

Recommendation

REFUSE listed Building Consent for the following reasons:

1. The reduction of the building to three dismantled facades only, followed by loss of the staircase to another house since the building was dismantled, means that re-erection of the house to a level of authenticity worthy of continued listed status is no longer possible.
2. No attempt has been made to recreate the original house behind the facades, where the proposed layout is entirely different from the original, including absence of the original service wing. The status of the demolished house, which remains listed by default, is insufficient to outweigh the harm to the proposed location.

2. PLANNING AND OTHER APPEALS

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

Reference	Place	Ward	Result	Cttee/delegated
9/2008/0055	Newhall	Newhall	Dismissed	Committee
9/2007/1300	Mickleover	Etwall	Dismissed	Delegated
9/2007/0833	Woodville	Woodville	Dismissed	Delegated
9/2008/0131	Stenson Fields	Stenson	Dismissed	Delegated



Appeal Decision

Site visit made on 9 September 2008

by Edward A Simpson JP BA(Hons)
MRTPI

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

The Planning Inspectorate
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Decision date:
29 September 2008

Appeal Ref: APP/F1040/A/08/2072456

22 Pear Tree Avenue, Newhall, Swadlincote, DE11 0NA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Midas Touch against the decision of South Derbyshire District Council.
- The application Ref 9/2008/0055/F, dated 14/01/2008, was refused by notice dated 01/04/2008.
- The development proposed is construction of a two bedroom bungalow and associated parking.

Decision

1. The appeal is dismissed.

Main issue

2. The main issue in this case is whether the proposed bungalow would constitute over development appearing cramped and out of character with existing neighbouring development.

Reasons

3. The appeal site comprises the major part of the rear garden to No.22 Pear Tree Avenue; a corner property located on the southerly side of the junction of Pear Tree Avenue with Cedar Grove. The proposed bungalow would be accessed from Cedar Grove.
4. Dwellings in Cedar Grove are predominantly bungalows. The pleasant open character of this cul-de-sac derives from both the positioning of the bungalows behind generous front gardens and the spacing maintained between each one by the driveways which provide access to garages sited in their rear gardens. The dwellings are, for the most part, some 10m wide, do not abut their flank boundaries and are some 3 – 4m apart.
5. In contrast, the proposed bungalow would be sited against its south-easterly flank boundary and only some 750mm (as measured on site) from the flank wall of no.14 Cedar Grove; not 1m as claimed in the appellant's letter of 16th June 2008. Moreover, the dwelling would be only some 7m wide. I conclude that it would appear cramped and out of keeping both with its neighbours and the character of the area and, as such, the proposal represents poor design.

6. Unlike the other dwellings in Cedar Grove, the majority of the frontage of the appeal site would be open and devoted to car parking, with less than half remaining as front garden. This would also appear out of keeping with neighbouring properties where a generous extent of front garden, enclosed by low walls, adds to its pleasant residential character.
7. The appeal proposal would also result in a fundamental change in the appearance of this corner plot. It is a feature of the estate that corner bungalows are generally set back from the building line with a generous frontage to both their front and side roads. This is clearly the case with nos.14, 16, 22 and 24 and adds to the general attractiveness of the locality. Although a part of the appeal site is currently occupied by the garage to no.22, the appeal bungalow would be somewhat larger and occupy a substantial part of this prominent corner plot to the detriment of this more open character. Moreover, to allow the appeal proposal would set an undesirable precedent that would be difficult to resist at the other locations referred to.
8. PPS3¹, at para.45, draws attention to the need to use land efficiently, and as part of the curtilage to an existing dwelling the land is previously used land and its development would comply with local plan policy H4. However, para.48 emphasises that good design is fundamental to using land efficiently. Para.49 goes on to indicate that careful attention to design is particularly important where the chosen local strategy involves intensification of the existing urban fabric. It notes that more intensive development is not always appropriate.
9. This proposal would also result in no.22 Pear Tree Avenue having a greatly reduced area of private rear garden; a feature of particular value here due to its south-easterly aspect which benefits from sunshine for much of the day. While this would be a matter that a future purchaser would have to consider, and would not amount to a harm sufficient to justify a refusal in its own right, it less represents a further detrimental feature which weighs against the proposal.
10. The appellant draws particular attention to the fact that this proposal would comply with the council's minimum standards with regard to residential amenity and space about buildings. However, compliance with such standards does not guarantee acceptable development in all circumstances, and this is exemplified by the unacceptable visual impact this proposal would have on the character of the area.
11. I have considered all other matters raised but conclude that they do not outweigh the above considerations and that the appeal should fail.

Edward A Simpson

¹ Planning Policy Statement 3 - Housing



The Planning Inspectorate

Costs and Decisions Team
5/03 Kite Wing
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Mr S Hardy
7 Siskin Close
Mickleover
Derby
Derbyshire
DE3 0UL

Your Ref:

Our Ref: GOEM1040/147/11

Date: 23 SEP 2008

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990
SOUTH DERBYSHIRE DISTRICT (LAND AT PASTURES HOSPITAL,
MICKLEOVER) TREE PRESERVATION ORDER NO.132 (1996)
APPEAL AGAINST THE REFUSAL TO ALLOW WORK TO A TREE AT 7
SISKIN CLOSE, MICKLEOVER, DERBYSHIRE**

1. I am directed by the Secretary of State for Communities and Local Government to refer to your appeal, made under the above-mentioned Tree Preservation Order. You appealed against the decision of South Derbyshire District Council not to allow the crown lifting or felling of a holm oak tree within group G5 in the first schedule to the Order.
2. The Secretary of State has taken into account your representations and those of the Council. She has considered the reasons given in support of the appeal proposal and whether it is justified in the light of the tree's contribution to the amenity of the area.
3. An Inspecting Officer visited the site on 10 June 2008. A copy of his report is appended to this letter.
4. The Secretary of State notes that the refusal notice against which you appealed was in respect of an amended application for the crown lifting of the tree. However, you requested that the Secretary of State also consider your original application to fell the tree. The Council were aware of this and have made their representations in this light. The Secretary of State has therefore considered the proposals both to crown lift and to fell the tree when reaching her decision on the appeal.
5. The Secretary of State agrees with the Inspecting Officer that appeal tree is one of a visually important and prominent grouping and contributes to the visual amenity of the area. She accepts his view that felling or heavy pruning would degrade this visual amenity. She also agrees that no evidence of any specific risk of subsistence has been presented and that the foundations of the house should have been constructed to take account of the presence of nearby trees.
6. The Secretary of State also accepts the Inspecting Officer's view that the unbalanced crown of the tree is a common formation and does not indicate that

the tree is a safety hazard. She also agrees with him that although the tree does cast some shade over the garden, it is not excessive. Furthermore, she agrees that removal or crown lifting of the tree will not resolve the issue because of the shade cast by adjoining trees. She also agrees that crown lifting as proposed would have health issues for the tree.

7. For the reasons given above, the Secretary of State hereby dismisses your appeal and this letter constitutes her decision to that effect.

8. Separate notes are attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by application to the High Court and setting out the Planning Inspectorate's complaints procedure.

9. A copy of this letter has been sent to South Derbyshire District Council.

Yours faithfully

A handwritten signature in dark ink, appearing to read 'J Palmer', with a long horizontal flourish extending to the right.

J PALMER

Authorised by the Secretary of State to sign in that behalf

Eland House
Bressenden Place
London SW1E 5DU

File Reference: EMP1040/147/11

To: The Secretary of State for Communities
and Local Government

Madam,

I have been asked to advise on the appeal by Mr S Hardy made under Tree Preservation Order No. 132 of 1996 against the refusal of South Derbyshire District Council to permit the felling or pruning of one tree on land at 7 Siskin Close, Mickleover, Derbyshire, DE3 0UL and to carry out an inspection of the site on your behalf. On 10 June 2008 I made an unaccompanied site visit.

1. This report contains a description of the appeal tree and its surroundings and my appraisal (on the basis of my observations and the written representations of the parties) of the likely impact of the proposal. It is illustrated by various photographs, which are appended.

THE SITE AND SURROUNDINGS

2. The site forms part of the grounds of a former hospital, which lies to the southwest of the main centre of Mickleover. To the east is the A38 road and to the north the A516. To the east of the site is a golf course. Land use in the surrounding area is mainly to arable agriculture and land form is gently rolling.
3. Siskin Close is a residential *cul-de-sac*, developed in the late 1990s with houses at low density. The road has metalled footways to either side and front gardens are open plan. The cul-de-sac runs southwest-northeast then describes a curve returning to run northeast.
4. Number 7 Siskin Close is a detached house of brick under a pitched and pantiled roof. It has a forward bay extension and a detached garage. It stands on the eastern side of the road facing due southeast. There are gardens to the right hand side (viewed from the front) and to the rear.
5. The tree population within the immediate visual 'envelope' is fairly high, being characterised by mature trees, both coniferous and deciduous, which are remnants from plantings in the former hospital grounds.

DESCRIPTION OF THE TREE

6. The appeal tree is a holm oak (*Quercus ilex*). It is one of a group, the remaining trees being on a neighbouring property. The tree stands on a distinct mound to the right of the house. There is a set of wooden steps constructed in this mound within the curtilage of the house. The tree

stands within group G5 in the Tree Preservation Order - cited as a group of '5 evergreen oaks'. The following data were recorded using a rounded down forestry girth tape, a Suunto clinometer and by pacing. The tree is 14 metres in height. It is multi-trunked and its trunk circumference was measured at 79 centimetres, directly above the root 'flare'. The tree has formed a number of heavy branches from ground level which give rise to a full crown. The following crown radii were recorded: north - 8 metres; east - 3 metres; south - 7 metres; west - 7 metres. The base is approximately 8 metres from the nearest point on the house and is generally unremarkable. The crown is somewhat unbalanced, being slightly suppressed to the east due to the presence of the remaining members of Group G5. Leaf cover is full and extension growth and leaf size are appropriate for the age and species of the tree. Bark is true to type and firmly attached.

APPRAISAL

7. The appeal tree is one of a visually important and prominent grouping. It is the end tree and has formed a composite crown with its neighbours. It contributes to the visual amenity of the area. Felling or heavy pruning would significantly degrade the visual amenity provided both by the grouping and the appeal tree.
8. Whilst trees may threaten the structural stability of buildings constructed over shrinkable clay soils, I have been presented with no evidence that such a specific risk exists in this case. In addition, the requirements for foundation design extant at the time of construction of the house should have taken account of the presence of nearby trees. Oak is classified by a number of authorities as exerting a high demand on soil water. 'Oak' is not defined by such authorities. The genus is widely distributed, species within it having differing morphological and physiological characteristics. It is likely that water demand data refers generally to the more commonly encountered, British native species. Although no specific data on the species transpiration rate (rate of water loss from the leaves) is available, holm oak is native to maritime areas of the Mediterranean, where many plants have adapted to dry environmental conditions by limiting transpiration.
9. Whilst the crown of the tree is not evenly distributed, this is because of the close presence of neighbouring trees. Such unbalanced crown formation is common and does not constitute a tree health or safety hazard.
10. The tree stands to the south and east of the garden. Some shade will be cast into part of the garden during the early part of the day. At the time of my visit (1100 hours) this was not excessive. Later in the day, shade from the tree will be cast away from the garden. Felling the tree or lifting the crown will not resolve shading problems as shade will be cast by adjoining trees.
11. The degree of branch removal proposed as suggested a 'crown lifting' exercise is excessive and would result in the loss of a considerable part of the tree's crown. This would result in an appreciable loss of visual amenity and a reduction in the tree's vigour, as plant energy sources are manufactured in

the leaves. In addition, it would open large wounds which would be liable to colonisation by decay-causing pathogens.

12. If this appeal were upheld in relation to the proposed felling of the tree, it would be appropriate to make a condition for replanting. Appropriate species would include Scots pine (*Pinus sylvestris*), Bhutan pine (*Pinus wallichiana*) or Corsican pine (*Pinus nigra laricio*).

CONCLUSION

13. The appeal tree is one of a grouping with a high visual amenity value. Felling the tree or effecting pruning works to the degree proposed would severely degrade such amenity.
14. No evidence that the tree presents a threat to the built fabric of the house has been produced.
15. The question of shading has been addressed in the body of this report.
16. If this appeal were upheld, insofar as it relates to the felling of the tree, it would be appropriate to make a condition for replanting.

Brian G. Crane

M.Hort., MI Hort., Dip. Arb (RFS), FLS, F.Arbor.A., Dip. Hort.

Arboricultural Inspector

13 June 2008



Photograph 1

View of the appeal tree from within the garden of No 7 Siskin Close



Photograph 2

View of the appeal tree (arrowed red) from Siskin Close, looking due east.



Photograph 3

View of the appeal tree (arrowed red) from Siskin Close, looking due east.

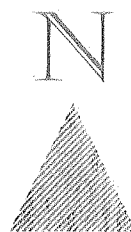


Photograph 4

View of the appeal tree from within the garden of No 7 Siskin Close. At the time the photograph was taken the sun would have been close to being at its highest point. Later in the day, shadow would have been cast from right to left in the picture, mainly by the structure of the house.



Appeal tree indicated in green,
Photograph viewpoints are shown
as numbered, red arrows





Appeal Decision

Hearing held on 23 July 2008

Site visit made on 23 July 2008

by

Jane V Stiles BSc(Hons)Arch DipArch RIBA DipLA MLI PhD MRTPI
an Inspector appointed by the Secretary of State
for Communities and Local Government

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Decision date:
18 September 2008

Appeal Ref: APP/F1040/A/07/2058294

Land adjacent to 2 Majolica Mews, Woodville, SWADLINCOTE, DE11 7EP

to report to her on that Appeal (Ref. GO

- The appeal is made by N.F.Willett and Sons Ltd against the decision of South Derbyshire District Council.
- The application Ref 9/2007/0833, dated 12 July 2007, was refused by notice dated 10 September 2007.
- The development proposed is the erection of a dwelling.

Decision

1. I dismiss the appeal.

Procedural matters

2. Following 3 separate applications for a dwelling on this site, 2 of which have been dismissed on appeal (APP/F1040/A/04/1137015 and APP/F1040/A/05/1193619), the Council considered it expedient to make a TPO on the group of 7 trees on the appeal site because it considered that development of the site could result in the subsequent loss of these trees. The South Derbyshire Council Tree Preservation Order No. 288 (the TPO) was made on 7 September 2007 and confirmed on 23 January 2008 while the planning application (dated 12 July 2007) the subject of this appeal was refused on 10 September 2007. The TPO is therefore material to my decision.
3. The plans which are before me in the current appeal do not show the retention of any of the trees the subject of the TPO, not only because they accompanied an application which pre-dated the making of the TPO, but also because the appellant does not consider any of the trees to be worthy of retention. There are no amended plans before me in this appeal.
4. On 1 October 2007, the appellant applied for TPO consent to carefully remove and replant 2 of the Eucalyptus trees from the centre of the site to the rear boundary. The plans submitted with that application show the location of the proposed dwelling the subject of the current appeal. That application was refused on 23 November 2007 and an appeal lodged against that refusal on 17 December 2007. I was appointed by the Secretary of State to conduct a joint Hearing, to determine the current appeal and to report to her on that Appeal (Ref. GO-EM 1040/147/10).

5. At the Hearing, the appellant stated that although, it is still their case that none of the trees on the appeal site is worthy of retention, the appellant would be willing to re-locate the 2 Eucalyptus trees the subject of Appeal Ref. GO-EM 1040/147/10 and to retain the remaining trees; or in the alternative to have a condition imposed which required the replacement of all 7 trees with new trees the species and location of which could be agreed with the LPA. I am satisfied that no parties or persons would be disadvantaged by these alternatives and so I shall consider them in this appeal.

Main issue

6. The main issue in this appeal is the effect of the proposed dwelling on the character and appearance of the host environment.

Reasons

7. The appeal site forms part of a parcel of land which was a former car sales compound. From the planning history, planning permission was originally granted in January 1998 for the erection of 11 houses with garages with access from High Street and Station Road. I understand from the appellant that the land was subsequently divided into 2 plots and developed by 2 different developers: one plot is accessed from the High Street, the other from Station Road. The appeal site forms an area of landscaped open space within a development of 5 dwellings known as Majolica Mews which are accessed from the High Street.
8. I have been provided with an extract of the plans submitted with the 1998 scheme which appear to differ to a certain extent from the Majolica Mews development as built. In particular, the access driveway was proposed to come off the High Street at a slight angle whereas it has been built as a right angled junction. On the south side of the access there were 2 areas of landscaping proposed: a broadly triangular area fronting the High Street with a turning head to its rear; and a planting strip running around the turning head and alongside the rear fences of the proposed Station Road dwellings. It is clear from those plans that the landscaping was an integral part of the 1998 layout which would have softened the areas of hard surfacing and fencing and which would have softened views of the rear and flank of No. 105 High Street from within the development.
9. I have had regard to 2 previous proposals for a new dwelling on the appeal site, both of which have been dismissed on appeal (APP/F1040/A/04/1137015 and APP/F1040/A/05/1193619); the first on highway grounds, the second on the loss of amenity area and impact on streetscape.
10. The appeal site comprises a near right-angled triangle of open space which has been planted with a variety of shrubs and young trees. It lies in a visually prominent position within a densely built up urban area, which itself lies within the National Forest. High Street is part of the A511 road between Burton-on-Trent and Ashby-de-la-Zouch and I saw when I visited the site that there are few trees and open spaces fronting High Street.
11. The triangle lies adjacent to the right angled junction of Majolica Mews with High Street such that the apex of the triangle fronts the High Street and the hypotenuse forms the common boundary with the splayed access and parking

area to No. 105 to the south-east. Majolica Mews forms an L-shaped arrangement of dwellings with 1-2 Majolica Mews fronting the High Street (to the north-west of the appeal site) and Nos. 3-5 Majolica Mews lying behind Nos.1-2 and at right angles to them.

12. The group of trees which are now protected by the TPO comprise a Sycamore at the front of the site with 2 Eucalyptus trees immediately behind it, a Birch near the rear boundary and a further 3 Eucalyptus trees in the middle of the site. From what I saw at my site visit, it seems to me that once the planting is established, the site has the potential to provide an attractive, low maintenance, landscaped setting for the adjacent residential development and visual relief for the densely developed surrounding area. In particular, the current landscaped area would soften the otherwise unrelieved area of hard surfacing to the side and rear of No. 2, to the side of No. 3 and to the front of Nos. 3-5; and it would soften the somewhat unattractive views of the rear and flank of No. 105 from within Majolica Mews.
13. The current proposal seeks to erect a detached dwelling near the centre of the site and to remove all of the trees which are now the subject of the recently confirmed TPO. The proposed T-shaped dwelling would be set at an angle towards the middle of the triangle such that its extremities would almost fill the width of the site. To the front, it would have a small triangular garden which the plans state would retain the existing landscaping. To the rear, it would have a garden of a not dissimilar size to the neighbouring properties at 1-2 Majolica Mews save for the fact that it would include a single car parking space accessed from the existing driveway.
14. The proposal would increase the density of the Majolica Mews development. Whilst this would not, by itself, be in conflict with national or local policy for higher density residential development, it would result in the loss of an open space which I have already concluded is not only an integral part of the Majolica Mews development but also an important visual element in the street scene. It is currently planted with species which have the potential to mature into an attractive, low maintenance planting scheme. Furthermore, the proposal would result in the loss of 7 trees which are now the subject of a TPO. Consequently, the proposal would be in conflict with Housing Policy 4 of the adopted South Derbyshire Local Plan. In my view, the loss of the open space is sufficient reason, by itself, to dismiss the appeal.
15. The appellant has shown a willingness to remove and reposition 2 of the Eucalyptus trees to the rear boundary of the site, leaving the Sycamore and 2 Eucalyptus trees to the front of the proposed dwelling, and the birch and a Eucalyptus towards the rear of the site and either side of the proposed parking space. In my view, the Eucalyptus trees would be unlikely to survive the re-planting exercise. But, given their status as TPO trees, they would be required to be replaced; and given the likely rate of growth of any replacement Eucalyptus trees, this would not be a reason to dismiss the appeal.
16. Nevertheless, I share the Council's concerns about the proximity of the proposed dwelling to the remaining trees. The Sycamore and the 2 forward most Eucalyptuses would be respectively about 4.5m, 1.5m and 1m from the front of the dwelling. As such, these trees, all of which have the potential to grow into substantial trees could cause unreasonable inconvenience to the

future occupants of the proposed dwelling that would inevitably lead to requests for consents to fell. Secondly, the location of the proposed car parking space would be about 1m from a Eucalyptus tree on one side and a Birch tree on the other side. Therefore, it could not be accommodated without having an impact upon the health and life of both trees. Although a 'no-dig' driveway, as suggested by the appellant, might overcome any potential problems with tree roots this would not overcome the difficulty of branches overhanging the car space. Indeed, I saw on site that the Eucalyptus already has branches which would overhang the proposed car parking space and prevent access to it. In my conclusion, the proposal would result in the unacceptable removal of all of the remaining 5 trees.

17. In the alternative, the appellant would be willing to replace the 7 TPO trees with trees of a species and in a location to be agreed with the LPA. However, in the light of the above and in the absence of a more detailed proposal it is hard to envisage how different species would overcome the potential problems that I have identified, whilst providing the same degree of amenity value as the current landscaped space. Accordingly, it seems to me that such a proposal should be the subject of a fresh application. I do not therefore, consider that these matters could be dealt with by the imposition of conditions.

Jane V Stiles

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

J. Steedman BA FRTP

Steedman Planning Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Nicky Toon MA

Planning Officer
South Derbyshire District Council
Landscape Architect, Botanist and
Arboriculturalist

Peter Wood BSc(Hons) DipLA MLI

DOCUMENTS

- 1 Decision letter Ref APP/F1040/A/04/1137015
- 2 Decision letter Ref APP/F1040/A/05/1193619
- 3 Photomontage of proposal



Appeal Decision

Site visit made on 10 September 2008

by **J R Colburn MA MRTPI**

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

The Planning Inspectorate
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Decision date:
29 September 2008

Appeal Ref: APP/F1040/A/08/2075400

The Stenson Fields P H, Pilgrims Way, Stenson Fields, Derby DE24 3JG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mitchells and Butlers against the decision of South Derbyshire District Council.
- The application (Ref 9/2008/0131/F), dated 5 February 2008, was refused by notice dated 8 April 2008.
- The development proposed is a new smoking shelter comprising timber posts and trellis infill panels with felted flat roof. New glazed lobby.

Decision

1. I dismiss the appeal.

Reasons

2. The appeal property is a large public house located within a modern housing development. To the rear of the site is a large car park and immediately to the south of the access road is a small parade of local shops. The smoking shelter, which has already been constructed, is situated at the north eastern corner of the building, linked to the side entrance of the public bar by the glazed lobby. Between the smoking shelter and the car park is a small external seating area.
3. Immediately to the north of the site are residential properties in Pilgrims way and Northfield, the rear gardens of which abut the site close to the smoking shelter, separated from it only by a narrow side path. The boundary comprises a brick built wall of about 2.0m in height. The position of the smoking shelter would encourage the concentration of customers adjacent to the boundary, directly adjoining these rear gardens, giving rise to significant noise and disturbance to occupiers of these houses. In view of the nature of the use, the activity around the shelter would continue late into the evening, and disturb the use and enjoyment of the gardens and rear facing rooms including bedrooms, particularly at 56 Pilgrims Way and 2 Northfield. The necessarily open sided nature of the structure would prevent any possibility of noise attenuation measures being introduced, to reduce the harmful impact on the living conditions of those residents.
4. The shelter has been constructed adjacent to the existing outside patio area. Whilst this may also give rise to disturbance to neighbours, the shelter would be most intensively or additionally used during wet or cold weather. This would have the effect of extending the duration and increasing the frequency of disturbance to neighbours. Even if the occupiers of adjacent houses were indoors, I consider that noise from the shelter would be likely to be clearly audible and disturbing.

5. I appreciate that some external facility to provide shelter for smokers is a desirable feature for a public house. However, I agree with the Council that at this site there are alternative locations, further away from noise sensitive boundaries, where a shelter could be linked to other bars, where it would be less likely to give rise to disturbance. I am therefore not convinced that the position selected for the shelter is the only or best solution. Although the entrance lobby would not in itself be harmful, it would be functionally and physically linked to the smoking shelter, a separate permission for this element of the scheme would not therefore be appropriate.
6. I conclude that the adverse impact on the living conditions of adjoining occupiers would be so severe that planning permission should not be granted for the proposal. The appeal should therefore be dismissed.

J R Colburn

INSPECTOR