

Report of the Strategic Director (Service Delivery)

[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 2015 (as amended) responses to County Matters and strategic submissions to the Secretary of State.

Reference	Item	Place	Ward	Page
DMPA/2020/0985	1.1	Etwall	Etwall	17
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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 report of the Strategic Director (Service Delivery) 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 Strategic Director (Service Delivery), 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.

Glossary of terms

The following reports will often abbreviate commonly used terms. For ease of reference, the most common are listed below:

LP1	Local Plan Part 1
LP2	Local Plan Part 2
NP	Neighbourhood Plan
SPD	Supplementary Planning Document
SPG	Supplementary Planning Guidance
PPG	Planning Practice Guidance
NPPF	National Planning Policy Framework
NDG	National Design Guide
SHMA	Strategic Housing Market Assessment
SHELAA	Strategic Housing and Employment Land Availability Assessment
s106	Section 106 (Agreement)
CIL	Community Infrastructure Levy
EIA	Environmental Impact Assessment
AA	Appropriate Assessment (under the Habitat Regulations)
CPO	Compulsory Purchase Order
CACS	Conservation Area Character Statement
HER	Historic Environment Record
LCA	Landscape Character Area
LCT	Landscape Character Type
LNR	Local Nature Reserve
LWS	Local Wildlife Site (pLWS = Potential LWS)
SAC	Special Area of Conservation
SSSI	Site of Special Scientific Interest
TPO	Tree Preservation Order
PRoW	Public Right of Way
POS	Public Open Space
LAP	Local Area for Play
LEAP	Local Equipped Area for Play
NEAP	Neighbourhood Equipped Area for Play
SuDS	Sustainable Drainage System
LRN	Local Road Network (County Council controlled roads)
SRN	Strategic Road Network (Trunk roads and motorways)
DAS	Design and Access Statement
ES	Environmental Statement (under the EIA Regulations)
FRA	Flood Risk Assessment
GCN	Great Crested Newt(s)
LVIA	Landscape and Visual Impact Assessment
TA	Transport Assessment
CCG	(NHS) Clinical Commissioning Group
CHA	County Highway Authority
DCC	Derbyshire County Council
DWT	Derbyshire Wildlife Trust
EA	Environment Agency
EHO	Environmental Health Officer
LEP	(D2N2) Local Enterprise Partnership
LLFA	Lead Local Flood Authority
NFC	National Forest Company
STW	Severn Trent Water Ltd

Item No. 1.1

Ref. No. [DMPA/2020/0985](#)

Valid date: 14/09/2020

Applicant: Providence Land Limited **Agent:** Howard Sharp and Partners LLP

Proposal: The removal of condition no. 9 (relating to skylark habitat compensation) of permission ref. 9/2017/1191 (relating to outline permission (all matters reserved for future approval) for residential development of up to 50 dwellings with open space, drainage and associated works) on Land at SK2730 1591, East of Egginton Road and North of Jacksons Lane, Etwall, Derby

Ward: Etwall

Reason for committee determination

This item is presented to the Committee at the discretion of the Head of Planning and Strategic Housing due to the application being for a major development where more than 4 letters of objection have been received.

Site Description

The site comprises three arable fields in an L shaped configuration around the south and east of Jacksons Lane. The site is mostly flat with a gently declining gradient from north to south (northern field) and from north-east to south-west (southern fields). Mature hedgerows provide the majority of boundary treatments to the perimeter of the fields adjacent to the surrounding highways and between each field, with some examples of scattered, self-seeded trees. Some trees are protected by way of Tree Preservation Orders (TPOs). Jacksons Lane runs adjacent to the southern and western boundaries of the site connecting to Egginton Road. There is a mature tree belt (TPO) to the south of Jacksons Lane with further arable land and the A50 running east to west beyond a landscape bund in part. There are allotments and existing dwellings immediately to the north-west on Common End, Grove Park, Hollies Court and Springfield Road; along with the Bloor Homes development to the north, accessed from Willington Road. The site is within the settlement confines for Etwall which has a range of local services and facilities including schools (both secondary and primary), a leisure centre, a library, pharmacy, restaurant and post office. The site is not subject to any other statutory or non-statutory designations.

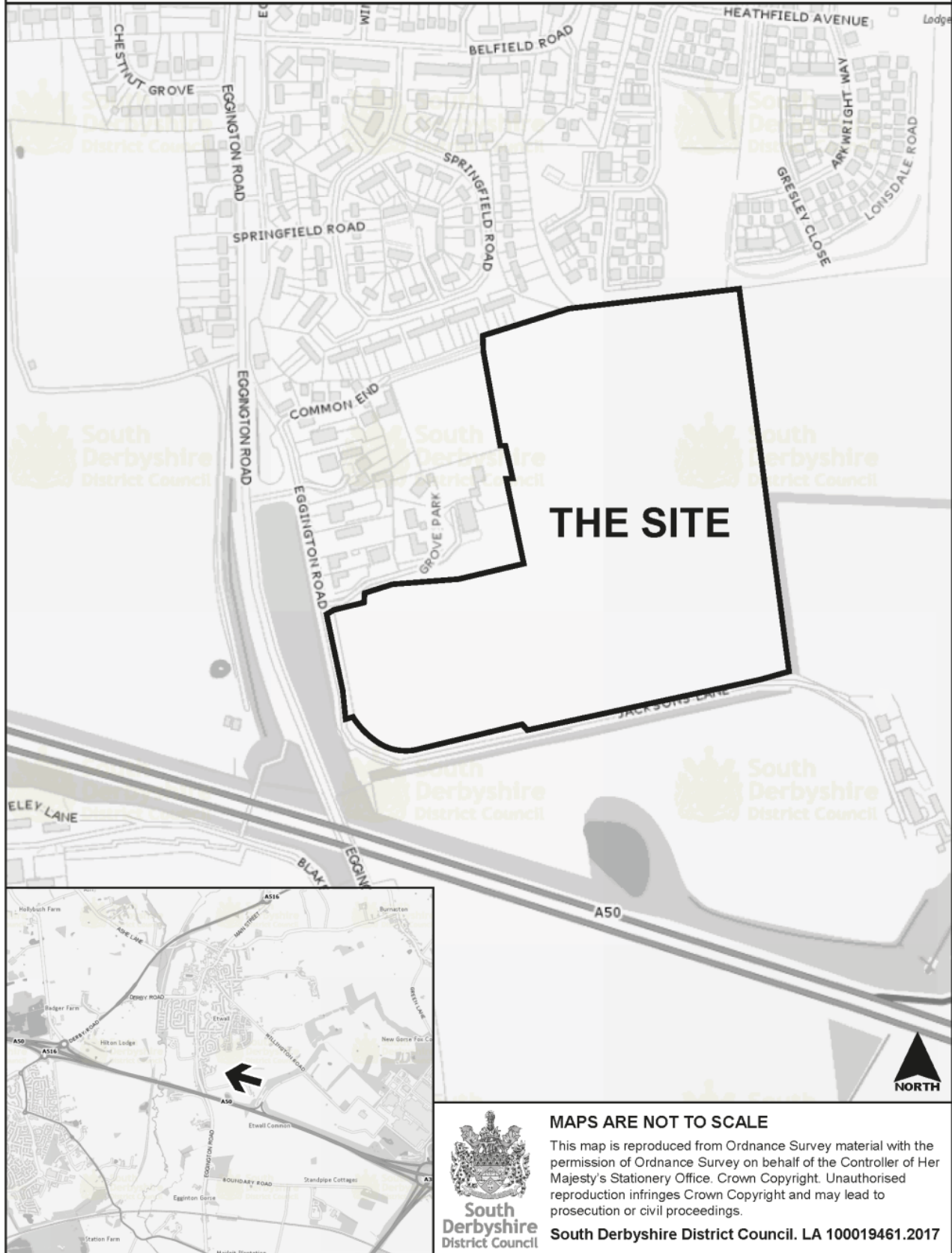
The proposal

The proposal was originally to remove condition 9 which relates to skylark habitat compensation attached to outline planning approval 9/2017/1191 (all matters reserved for future approval) for residential development for up to 50 dwellings with open space, drainage and associated works at this site. Following consultee feedback during the course of the application, the proposals were amended by the applicants to instead to seek that condition 9 of 9/2017/1191 is instead varied to retain the skylark mitigation as sought within the condition as written however with a reduced monitoring period of 10 years as opposed to 25 years.

Applicant's supporting information

The [Planning Statement](#) sets out that that the applicants consider that condition 9 of ref:9/2017/1191 as written is not justified and should therefore be approved for removal, as it does not meet all the required tests in the NPPF as it is not relevant to planning and to the development permitted and is not

DMPA/2020/0985 - Land at SK2730 1591, East of Eggington Road and North of Jacksons Lane, Etwell, Derby (DE65 6NP)



reasonable. The applicants consider that the findings of the breeding birds surveys as detailed in the FPCR letter conducted in April and July 2020, which uncovered 1 or 2 pairs of skylark were found to be on site, results in the condition not being relevant to planning or to the development permitted as it is written as if protecting different types of bird species not relevant to skylark and that the relevant NERC Act 2006 recommended action categories were for “survey or monitoring”, “habitat management” and “research” with none of the actions suggesting sites should be protected by development, thus not relevant to planning and development with permission. They also consider that due to the few recorded skylark on site through further survey work, shows that even in a worst case scenario the impact of the development upon skylarks will be negligible. The applicants consider that condition 9 is not reasonable as it seeks a monitoring period lasting an additional 15 years beyond that requested by the Derbyshire Wildlife Trust (the relevant consultee). They also consider that condition 3 is sufficient to meet the relevant policy requirements to cover condition 9 for skylarks as that condition is consistent with the NPPF’s encouragement of creating net gains in biodiversity, which in turn allows for habitat creation in line with the governments strategy document Biodiversity 2020: A Strategy for England’s wildlife and ecosystem services.

The supporting Ecology Letter considers that condition 9 should be removed following the results of six breeding bird survey visits between April and July 2020 (Appendix A of this letter). The survey reports state that only 1 or 2 pairs on site were found (probably pair in north west field and a second male holding territory in the south east field) which when compared with an assessment of geographical scales followed by an assessment on the effects of the proposed scheme, noting skylark are one of the most common farmland birds, shows that the condition is disproportionate for a scheme of this scale due to the low significance of the impact on skylark. The applicants also consider that direct compensation for loss of bird habitat as a result of development, regardless of significance or scale is not the Legislative intent of any piece of UK wildlife legislation and this is reflect within the legislation, DEFRA’s Biodiversity 2020 and Derbyshire’s own Biodiversity Action Plan. The applicants consider that the condition should therefore be removed in its entirety and be replaced with one that targets enhancing the development itself, by creating more opportunities for birds of similar conservation status that are declining in residential and urban environments.

An updated Ecology Letter was received following the receipt of Derbyshire Wildlife Trust (DWT) comments in regards to the original request to remove condition 9 of 9/2017/1191. Though FPCR Environment and Design Ltd maintain that in their professional opinion that the requirements of condition 9 are disproportionate for the activity recorded within the site, in this letter they confirm their clients, the applicants, wish to vary the condition to a shorter securement and monitoring period of 10 years, not the 25 years as stated within the condition following DWT comments, that this would be acceptable for the off-site mitigation sought for skylarks. They confirm that their clients would be accepting of this condition on the assumption that an acceptable solution to discharge the planning condition can be found.

Relevant planning history

9/2017/1191: Outline application (all matters reserved for future approval) for residential development for up to 50 dwellings with open space, drainage and associated works. Approved May 2019.

9/2015/0759: Erection of up to 98 dwellings with associated public open space and sustainable drainage. Withdrawn May 2016.

9/2007/0300: The siting of one 22.5 metre high monopole, 6 antennas, 2 600mm transmission dishes, 2 equipment cabins and associated development. Approved July 2007.

Responses to consultations and publicity

Derbyshire Wildlife Trust (DWT) objected to the removal of condition 9, but do not object to the reduction in time management commitments for skylark to be reduced from 25 years as described within the condition, to 10 years to mitigate impacts on a priority species as a result of the

development.

Six letters of objection have been received, raising the following comments:

- a) Original application the developers said that 'care will be taken to mitigate harm to protected species'. Skylark is on Red List of birds as their continual and severe decline means they are a high conservation priority. The loss of other arable fields (eg. large development on Willington Road, Etwell) in the area means that areas for habitats for these beautiful birds is declining rapidly. Condition 9 of the permission should still be included to make provision for a receptor site to avoid a detrimental impact on these birds;
- b) Approving the application would be a disregard of the impact of the development on biodiversity;
- c) Dismissal of the 2 pairs of skylarks as "insignificant" is shocking and due to rapid decline of their habitat adjustments need to be made to ensure they continue to breed on site;
- d) The number of houses built and areas conserved for nature should be considered in mitigation; and
- e) There is insignificant evidence provided on the ecological impact, specifically on the lapwing population, crested newts, bats and great crested newts and given their red status within the Wildlife Trust there should be more consideration for preservation of habitat.

Relevant policy, guidance and/or legislation

The relevant Development Plan policies are:

- Local Plan Part 1 (LP1) – S1 Sustainable Growth Strategy, S2 Presumption in Favour of Sustainable Development, S3 Environmental Performance, H1 Settlement Hierarchy, BNE3 Biodiversity, BNE4 Landscape Character and Local Distinctiveness
- Local Plan Part 2 (LP2) – SDT1 Settlement Boundaries and Development, BNE5 Development in Rural Areas, BNE7 Trees, Woodland and Hedgerows

The relevant Local Guidance is:

- Lowland Derbyshire Biodiversity Action Plan

The relevant national policy and guidance is:

- National Planning Policy Framework
- National Planning Policy Guidance

Planning considerations

This application seeks to remove a condition attached to a previous approval. The principle of development has therefore been established and hence the following assessment takes into account only the matters which are relevant to the conditions concerned. Taking this into account along with the documents submitted (and supplemented and/or amended where relevant) and the site and its environs; the main issue central to the determination of this application is:

- The impact of the development as a result of the removal or variation of this condition on biodiversity and nature conservation.

Planning assessment

The impact of the development as a result of the removal of this condition on biodiversity and nature conservation

The most applicable local policy to consider is BNE3 of the LP1 which seeks that sites that could have a direct or indirect effect on sites with potential or actual ecological or geological importance including:

priority habitats and species will need to be supported by appropriate surveys or assessments sufficient to allow the Authority to fully understand the likely impacts or the scheme and the mitigation proposed. Where mitigation measures, or exceptionally, compensation cannot sufficiently offset the significant harm resulting from the development and/or where the development can potentially be located on an alternative site that would cause less or no harm, planning permission will be refused. Para 55 of the NPPF states that “planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. Agreeing conditions early is beneficial to all parties involved in the process and can speed up decision making. Conditions that are required to be discharged before development commences should be avoided, unless there is a clear justification.”

The applicants seek the removal of condition 9 attached to planning approval ref: 9/2017/1191. Condition 9 reads as follows:

“No development, including the preparatory works, shall commence until a scheme (the offsetting scheme) for the offsetting of impacts to skylark and their habitat at the site has been submitted to and approved in writing by the Local Planning Authority. The offsetting scheme shall include:

- i) A methodology for the identification of receptor sites(s);
- ii) The identification of a receptor site(s);
- iii) Details of the offset requirement of the development (in accordance with the recognised offsetting metrics standard outlined in the Defra Metrics Guidance dated March 2012);
- iv) The provision of arrangement to secure the delivery of the offsetting measures (including a timetable for their delivery); and
- v) A management and monitoring plan (to include for the provision, funding and maintenance of the offsetting measures for no less than 25 years from the date of implementation of the scheme).

The offsetting scheme shall be implemented in accordance with the approved details.

Reason: to overcome a residual adverse impact on biodiversity that would arise from the development, noting that even initial preparatory works could about this adverse impact.”

As stated on the application form the applicants wish for condition 9 to be removed as “Direct compensation for the loss of skylark habitat as detailed in Condition 9 of planning application ref:9/2017/1191 (November 2017), is disproportionate for a scheme of this scale due to the low significance of the impact on skylark. In addition, direct compensation for the loss of bird habitat as a result of development, regardless of significance or scale, is not the Legislative intent of any piece of UK wildlife legislation and this is reflected within the legislation, DEFRA’s Biodiversity 2020 and Derbyshire’s own Biodiversity Action Plan. There will not be a significant effect at the local level on skylark, and impacts of the proposals will therefore be negligible even in the worst-case scenario where two pairs are permanently lost. The most likely scenario will be that the skylarks are displaced into the significant amounts of suitable habitat available locally, which includes large amounts of land nearby currently in agri-environmental schemes. The low significance of the impacts of the scheme on the local skylark population alone is enough to support the removal of condition 9 as being disproportionate, in line with BS 42020:2013 and CIEEM guidance ref on impact assessments. As set out in the ecological information submitted within this s73 application, the requirement for direct off-site replacement skylark habitat in this case, as imposed by Condition 9, is not required for the LPA to fulfil their legal duty under the Habitats Regulations or NERC Act 2006. The National Planning Policy Framework (NPPF) also states that planning conditions should only be imposed where they are ‘necessary’, ‘relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects’, and here based on the arguments above, we assert that this is an example of a condition that is not necessary nor reasonable.”

The submission is accompanied by a Planning Statement by Howard Sharp and Partners and a Letter ref:9551/DJC from FPCR dated 1st September 2020. The accompanying Planning Statement (PS) considers that the development will not have any significant effects upon skylarks, and nonetheless the off-site mitigation proposed through the condition is not the appropriate form of mitigation for skylarks. It is further stated in the PS that the reason condition 9 was attached to the permission was uncertain and that this did not follow on from the consultee advice provided by DWT on two occasions during the course of the application, which seemed to instead seek surveys for more information on breeding

birds to include a range of species that included skylark and also asked for mitigation for ground nesting birds, even though evidence was apparently lacking at the time to ascertain whether such species existed on the site. The PS refers to the Letter by FPCR which itself includes breeding bird survey visit results which they consider concludes there are only 1 to 2 pairs of skylarks on site during the April to July 2020 survey period, where they state there are 1.6million territories nationally with open habitat available locally. The PS also considers that even with the lack of necessity and relevance of the substance of condition the requirement for management and monitoring plan covering 25 years is not justified when DWT recommend 10 years, as such they consider the condition also does not follow consultee advice. The applicants therefore consider the condition is not relevant to the development permitted as the evidence shows there would be a negligible impact on skylarks even in a worst-case scenario and that it is also not reasonable as the monitoring period is 15 years in excess of consultee advice. Within the PS the applicants also consider that Condition 3 of 9/2017/1191 provides sufficient detail consistent with the NPPF for encouraging net gains to biodiversity from development and will allow for habitat creation in line with the governments "Biodiversity 2020: A Strategy for England's wildlife and ecosystem services" and it can provide a mitigation strategy that is evidence based and justifiable for all relevant species including and relevant breeding birds.

In the original Letter by FPCR it is stated that they consider that the condition is disproportionate for a scheme of this scale due to the low significance of the impact on skylark and that direct compensation for the loss of bird habitat as a result of development, regardless of significance of scale is not the Legislative intent of any piece of UK wildlife legislation and this is reflected within DEFRA's Biodiversity 2020 and Derbyshire's own Biodiversity Action Plan. FPCR consider the condition should be removed in its entirety and be replaced with one that targets enhancing the development itself, by creating more opportunities for birds of similar conservation status that are declining in residential and urban environments. Within the letter in Part 1 is reference to survey work (contained in the appendices) which was undertaken due to their S41 and red listed species for local-level importance, which concluded there are 1-2 pairs which they consider is not a significant number and the magnitude of the effect is low for a species that is this common and widespread locally. The applicants consider that there will not be a significant effect at local level on skylark and impacts of the proposals will therefore be negligible even in the worst-case scenario where two pairs are permanently lost and that the most likely scenario is that skylark are displaced into the significant amounts of suitable habitat available locally, which includes large amounts of land nearby in argi-environmental schemes. Therefore, given this information they considered that due to the low significance of the scheme on local skylark population alone is enough to support the removal of condition 9 as being disproportionate in line with BS 42020:2013 and CIEEM guidance ref on impact assessments. In Part 2 of the letter it is considered that the requirement for direct off-site replacement skylark habitat in this case, as imposed by Condition 9, is not required for the LPA to fulfil their legal duty under the Habitats Regulations or NERC Act 2006 and thus the condition does not meet the tests for the use of planning conditions as it is not necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects and this can be removed. They considered that condition 3 instead could be varied as per the recommendation in their letter to encompass relevant parts of condition 9.

Derbyshire Wildlife Trust (DWT) were consulted on the application and objected to the removal of condition 9 in its entirety. They considered that the condition requires the provision of compensation measures for skylark, a Species of Principal Importance (priority species) due to impacts upon this ground nesting species as a result of land take by the development. The provision of compensation for skylark as a priority species, secured by a planning condition was one of the measures that made the overall development acceptable on ecological grounds in line with the objective the policy BNE3 of the South Derbyshire Local Plan and thus the removal of the condition is not supported. DWT stated that paragraph A (iv) of BNE3 is reproduced below and is relevant irrespective of the significance of the population displaced from the site 'Supporting and contributing to the targets sets out in the Lowland Derbyshire and/or National Forest Biodiversity Action Plan (BAP) for priority habitats and species'. The impacts on skylark cannot be addressed within the development site and would therefore require the securing of measures off-site, ideally on adjacent land through the creation of skylark plots. This requirement is very specific and as such requires a separate condition. The proposal will result in an impact on a priority species (Species of Principal Importance) and irrespective of numbers and significance is covered by the NERC Act, the Lowland Derbyshire Biodiversity Action Plan and policy

BNE3. Taking this into account DWT however consider the period of time for the management and monitoring plan currently written as 25 years to be too long a commitment and that a 10 year period would instead be sufficient and more proportionate.

Following the receipt of the DWT consultation feedback, the applicants in the second Letter from FPCR whilst still considering that condition 9 should be removed or condition 3 amended to capture the necessary details, have confirmed that they accept the variation of condition 9 in particular part v) to read instead as follows assuming an acceptable solution to discharge the planning condition can be found; 'a management and monitoring plan (to include for the provision, funding and maintenance of the offsetting measures for no less than 10 years from the date of implementation of the scheme)'. To this end it is considered that the retention and variation of the condition accordingly is acceptable, meets the tests for use of planning conditions and will be in compliance with the aforementioned policies and guidance.

Conclusion

Taking into consideration the above points it is considered acceptable that condition 9 be retained but varied to this extent only and thus it is recommended that the application is approved subject to conditions and a Deed of Variation be entered into to reflect a new permission. At this time as no other discharge of condition applications have been received in respect of the site all other conditions attached to 9/2017/1191 will be re-attached should the application be approved.

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, noting that conditions or obligations have been attached where meeting the tests for their imposition. Where relevant, regard has been had to the public sector equality duty, as required by section 149 of the Equality Act 2010 and to local finance considerations (as far as it is material), as required by section 70(2) of the Town and Country Planning Act 1990 (as amended), as well as climate change, human rights and other international legislation.

Recommendation

- A. Grant delegated authority to the Head of Planning and Strategic Housing to conclude negotiations on and complete an agreement under section 106 of the Town and Country Planning Act 1990 so to secure the planning obligations as previously sought in and attached to 9/2017/1191 along with the associated provisions for long term management of any public facilities provided; and
- B. Subject to A. **Approve** the application subject to the following conditions:
 - 1. This permission is granted in outline in under the provision of Article 5(1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015, and before any development is commenced the further approval of the Local Planning Authority is required in respect of the following reserved matters:
 - (a) access;
 - (b) appearance;
 - (c) landscaping;
 - (d) layout; and
 - (e) scale

Reason: The application is expressed to be in outline only and the Local Planning Authority has to ensure that the details are satisfactory, and so to conform with Section 92(2) of the Town and Country Planning Act 1990 (as amended by section 51 of the Planning Compulsory Purchase Act 2004).

2. (a) Application for approval of the remaining reserved matters listed at condition 1 shall be made to the Local Planning Authority before the expiration of three years from the date of permission ref: 9/2017/1191; and
(b) The development hereby permitted shall be begun before the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.

Reason: To conform with Section 92(2) of the Town and Country Planning Act 1990 (as amended by Section 51 of the Planning and Compulsory Purchase Act 2004).

3. The reserved matters listed at condition 1 shall broadly be in accordance with the illustrative masterplan (ref. 0166_SK_02F) and the design principles of sections 5 and 7 of the Design and Access Statement (ref. PRO0270 version R4). Notwithstanding these parameters, each application for reserved matters approval shall incorporate or be supported by, in so far as relevant to that/those matter(s), the following specific detail/requirements:
- (a) a Locally Equipped Area for Play (LEAP) and connectivity to public open space north of the site;
 - (b) retained hedgerows and trees shall, as far as practicable, not act as enclosures to proposed dwellinghouses and be incorporated into public spaces/green infrastructure;
 - (c) where applicable, details of measures to support hard landscaping within any root protection areas of retained trees or hedgerows;
 - (d) evidence to demonstrate that the sustainable drainage system detention basin has been designed to provide sufficient capacity to drain the site in accordance with conditions 18 & 19 of this permission;
 - (e) the internal layout of the site shall be in accordance with the guidance contained in the 6C's Design Guide (or any subsequent revision/replacement of that guidance) and Manual for Streets issued by the Department for Transport and Environment and Local Government (or any subsequent revision/replacement of that guidance);
 - (f) a swept path analysis to demonstrate that service and emergency vehicles can successfully enter and manoeuvre within the site;
 - (g) if applicable, the provision of bin collection points at the adoptable highway end of private shared driveways and courtyards, sufficient in size to accommodate two bins per dwelling to which they serve;
 - (h) each dwelling shall be provided with space for the parking of two vehicles for each 1, 2 or 3 bedroom dwelling or three vehicles for each 4+ bedroom dwelling, with any garages to be counted as a parking space of internal dimensions no less than 3m x 6m;
 - (i) an ecological design strategy (EDS) addressing mitigation, compensation and enhancement which shall include the following:
 - details of retained habitats and suitable protection measures;
 - details of newly created habitats including ponds and swales;
 - identification of green corridors; and
 - locations and specifications for a range of bat and bird boxes; and
 - (j) the layout of the site shall accord with the character area densities set out in policy H23B of the Local Plan Part 2.

Reason: For the avoidance of doubt and in order to secure an appropriate detailed design which accords with best design principles under the Council's Design Guide SPD and Secured by Design, in the interest of highway safety and drainage, and in the interest of biodiversity conservation and enhancement.

4. The development shall be carried out in accordance with the proposed mitigation measures for Great Crested Newt as outlined in section 4.2.4 of the Extended Phase 1 Habitat Survey report Rev 2 prepared by Prime Environment dated July 2017; and the reasonable avoidance measures for reptiles as outlined in section 4.2.5 of the same report.

Reason: In order to safeguard protected species from undue disturbance and impacts.

5. No removal of trees, hedges and shrubs shall take place between 1st March and 31st August inclusive unless a survey to assess the nesting bird activity on the site during this period and a scheme to protect the nesting birds has first been submitted to and approved in writing by the Local Planning Authority. No trees, hedges and shrubs shall be removed between 1st March and 31st August inclusive other than in accordance with the approved bird nesting protection scheme.

Reason: In order to safeguard protected species from undue disturbance and impacts.

6. No site preparation or construction works pursuant to this permission shall take place on the site other than between 0730 to 1900 hours Monday to Friday, and 0800 to 1330 hours on Saturdays. There shall be no construction works (except for works to address an emergency) on Sundays or Public Holidays.

Reason: In order to protect the amenities of adjoining residential occupiers.

7. There shall be no burning of materials on site during the construction phase of the development. For the avoidance of doubt this includes any preparatory works to clear vegetation on site.

Reason: In order to protect the amenities of adjoining residential occupiers.

8. No generators shall be used on the site during the construction phase without details having first been submitted to and approved in writing by the Local Planning Authority. Thereafter, only those approved generators shall be used.

Reason: In order to protect the amenities of adjoining residential occupiers.

9. No development, including preparatory works, shall commence until a scheme ('the offsetting scheme') for the offsetting of impacts to skylark and their habitat at the site has been submitted to and approved in writing by the Local Planning Authority. The offsetting scheme shall include:
- i) a methodology for the identification of receptor site(s);
 - ii) the identification of a receptor site(s);
 - iii) details of the offset requirements of the development (in accordance with the recognised offsetting metrics standard outlined in the Defra Metrics Guidance dated March 2012);
 - iv) the provision of arrangements to secure the delivery of the offsetting measures (including a timetable for their delivery); and
 - v) a management and monitoring plan (to include for the provision, funding and maintenance of the offsetting measures for no less than 10 years from the date of implementation of the scheme).
- The offsetting scheme shall be implemented in accordance with the approved details.

Reason: To overcome a residual adverse impact on biodiversity that would arise from the development, noting that even initial preparatory works could about this adverse impact.

10. No development, including preparatory works, shall commence until a scheme for the protection of trees and hedgerows has been submitted to and approved in writing by the Local Planning Authority. Such a scheme shall be based on best practice as set out in BS 5837:2012 (or equivalent standards which may replace them) and ensure that no vehicles can access, and no storage of materials or equipment can take place within, the root and canopy protection areas. The details submitted shall also include a study on the feasibility of translocation of the hedgerow fronting Egginton Road to the rear of the access visibility splays required under condition 16, along with a method statement to deliver these works there this option is found to be feasible. The approved scheme of protection shall be implemented prior to any works commencing on site and thereafter retained throughout the construction period, whilst any approved translocation works shall be carried out prior to creation of the access in accordance with condition 16.

Reason: In the interests of safeguarding existing habitat and the visual amenities of the area, recognising that initial preparatory works could bring about unacceptable impacts to protected and non-protected interests.

11. a) No development, including preparatory works, shall commence until a Written Scheme of Investigation for archaeological work (WSI) has been submitted to and approved in writing by the

Local Planning Authority. The scheme shall include an assessment of significance and research questions, and:

- i) the programme and methodology of site investigation and recording;
- ii) the programme and provision to be made for post investigation analysis and reporting;
- iii) provision to be made for publication and dissemination of the analysis and records of the site investigation;
- iv) provision to be made for archive deposition of the analysis and records of the site investigation; and nomination of a competent person or persons/organisation to undertake the works set out within the WSI.

b) The development shall take place in accordance with the approved WSI and shall not be occupied until the site investigation and post investigation reporting has been completed in accordance with the programme set out in the approved WSI and the provision to be made for publication and dissemination of results and archive deposition has been secured.

Reason: To enable potential archaeological remains and features to be adequately recorded, in the interests of the cultural heritage of the District, recognising that initial preparatory works could have unacceptable impacts.

12. No development shall commence until a dust mitigation strategy has been submitted to and approved in writing by the Local Planning Authority. The strategy shall take into account the latest national practice guidance and highlight details of the likely resultant dust levels from activities during the construction phase at the nearest residential premises, as well as those dwellings which may be occupied as part of the development, and set out measures to reduce the impact of dust on those residential premises. The approved strategy shall then be implemented throughout the course of the construction phase.

Reason: To protect the amenities of occupiers of adjoining and proposed residential properties, noting that initial ground works could give rise to unacceptable impacts.

13. No development, including preparatory works, shall commence until details of the finished floor levels of the buildings hereby approved, and of the proposed ground levels of the site relative to the finished floor levels and adjoining land levels, shall be submitted to and approved in writing by the Local Planning Authority. Such details shall be supplemented with locations, cross-sections and appearance of any retaining features required to facilitate the proposed levels. The development shall be constructed in accordance with the approved details.

Reason: To protect the amenities of adjoining properties and the locality generally, recognising that site levels across the site as a whole are crucial to establishing infrastructure routeing/positions.

14. No development shall take place until a Construction Management Plan (CMP) or Construction Method Statement (CMS) has been submitted to and been approved in writing by the Local Planning Authority. The CMP/CMS shall provide details of space for the storage of plant and materials, site accommodation, loading, unloading of goods' vehicles, parking of site operatives' and visitors' vehicles, routes for construction traffic, method of prevention of debris being carried onto highway and any proposed temporary traffic restrictions. The CMP/CMS shall be adhered to throughout the construction period.

Reason: To ensure safe and suitable access for all users, in the interests of highway safety, recognising that initial preparatory works could bring about unacceptable impacts.

15. No development or other operations, including preparatory works, shall commence until a temporary access onto (Old) Egginton Road has been provided for construction purposes. The access shall have a minimum width of 5.5m, be constructed to base course, provided with a 10m radius on the northern side and visibility sightlines of 2.4m x 43m in each direction, the area forward of which shall be maintained clear of any obstruction exceeding 600mm in height relative to road level. The temporary access shall be retained throughout the construction period unless incorporated into a permanent access as may be approved pursuant to the reserved matters.

Reason: To ensure safe and suitable access for all users, in the interests of highway safety, recognising that initial preparatory works could bring about unacceptable impacts.

16. Prior to any other works commencing on site, the revised layout of the junction of the old Egginton Road with the new section of Egginton Road shall be laid out and constructed generally in accordance with the drawings submitted in the Technical Note Rev A by Mayer Brown dated 22 August 2016, subject to detailed design. For the avoidance of doubt, to carry out these works the applicant will be required to enter into an Agreement under Section 278 of the Highways Act 1980.

Reason: To ensure safe and suitable access for all users, in the interests of highway safety, recognising that further construction works without suitable access provision could bring about unacceptable impacts.

17. No development, including preparatory works, shall commence until details of measures indicating how additional surface water run-off from the site will be avoided during the construction works have been submitted to and approved in writing by the Local Planning Authority. The applicant may be required to provide collection, balancing and/or settlement systems for these flows. The approved measures and systems shall be brought into operation before any works to create buildings or hard surfaces commence.

Reason: To ensure surface water is managed appropriately during the construction phase of the development, so as not to increase the flood risk to adjacent land/properties or occupied properties within the development itself; recognising that initial works to prepare the site could bring about unacceptable impacts.

18. Prior to any works to construct a building or hard surface, setting of finished floor/site levels or installation of services/utilities, a detailed assessment to demonstrate that the proposed destination for surface water accords with the hierarchy in paragraph 80 of the planning practice guidance (or any revision or new guidance that may replace it) shall be submitted to and approved in writing by the Local Planning Authority. The assessment shall demonstrate, with appropriate evidence, that surface water run-off is discharged as high up as reasonably practicable in the following hierarchy:
 - i) into the ground (infiltration);
 - ii) to a surface water body;
 - iii) to a surface water sewer, highway drain, or another surface water drainage system;
 - iv) to a combined sewer.

The assessment shall also provide (i) an evidenced and full understanding of any springs within the site and any associated mitigation requirements which might be required, and (ii) a reasonable assessment of the ordinary watercourses within the curtilage of the applicant's land ownership, identified to be the point of surface water discharge. Any mitigation required shall be accommodated in the surface water drainage scheme required under condition 19.

Reason: To ensure that surface water from the development can be directed towards the most appropriate waterbody in terms of flood risk and practicality, noting that certain works may compromise the ability to subsequently achieve this objective.

19. Prior to any works to construct a building or hard surface, setting of finished floor/site levels or installation of services/utilities, a detailed design of, and associated management and maintenance plan for, surface water drainage of the site, in accordance with the principles outlined within the Flood Risk Assessment & Drainage Strategy (dated 13 June 2017 prepared by SYSTRA Ltd) and Defra non-statutory technical standards for sustainable drainage systems, shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall demonstrate that, as a minimum, suitable capacity is proposed to attenuate peak flows from the site, making allowance for climate change and urban creep. Where necessary, the scheme shall also include measures to capture overland surface water flows between gardens. The surface water drainage infrastructure shall be installed in conformity with the approved details prior to the first occupation/use of each respective building/road/hard surface served by the surface water drainage system or in accordance with a phasing plan first submitted to and approved in writing

by the Local Planning Authority. Those elements of the surface water drainage system not adopted by a statutory undertaker shall thereafter be maintained and managed in accordance with the approved management and maintenance plan.

Reason: To ensure that the principles of sustainable drainage can be incorporated into the development, noting that initial preparatory and/or construction works may compromise the ability to mitigate harmful impacts.

20. Upon completion of the surface water drainage system, including any attenuation ponds and swales, and prior to their adoption by a statutory undertaker or management company; a survey and report from an independent surveyor shall be submitted to and approved in writing by the Local Planning Authority. The survey and report shall demonstrate that the surface water drainage system has been constructed in accordance with the details approved pursuant to condition 19. Where necessary, details of corrective works to be carried out along with a timetable for their completion, shall be included for approval in writing by the Local Planning Authority. Any corrective works required shall be carried out in accordance with the approved timetable and subsequently re-surveyed by an independent surveyor, with their findings submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure the effective operation of the surface water drainage scheme following construction of the development.

21. Prior to the construction of a dwelling a Landscape and Ecological Management Plan (LEMP) shall be submitted to and approved in writing by the Local Planning Authority.
The content of the LEMP shall include the following:
- (a) a description and evaluation of features to be created and managed, which shall include the incorporation of bat roost and bird box features;
 - (b) ecological trends and constraints on site that might influence management;
 - (c) aims and objectives of management;
 - (d) appropriate management options for achieving aims and objectives;
 - (e) prescriptions for management actions;
 - (f) preparation of a work schedule (including an annual work plan capable of being rolled forward over a ten-year period);
 - (g) details of the body or organisation responsible for implementation of the plan, along with funding mechanism(s) for that body or organisation; and
 - (h) ongoing monitoring and remedial measures, including where monitoring shows that conservation aims and objectives of the LEMP are not being met.
- Where biodiversity enhancement measures are incorporated into dwellings or private gardens to those dwellings, the submitted LEMP shall also include a method of communicating the purpose of such biodiversity enhancement measures to occupiers of those dwelling(s). The approved scheme shall be implemented so that any physical measures are incorporated before the first occupation of each respective dwelling, or use of the garden or open space concerned, and thereafter retained and maintained.

Reason: In order to safeguard and enhance habitat on or adjacent to the site in order to secure an overall biodiversity gain.

22. Prior to the first occupation of each dwelling hereby permitted, the new street(s) between each respective plot/unit and the existing public highway shall be laid out in accordance with the approved plan(s), constructed to base level, drained and lit in accordance with the County Council's specification for new housing development roads. Until final surfacing is completed, the footway base course shall be provided in a manner to avoid any upstands to gullies, covers, kerbs or other such obstructions within or abutting the footway. The carriageways and footways in front of each dwelling shall be completed with the final surface course within twelve months from the occupation of each dwelling, or in accordance with an alternative timescale/programme first submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure safe and suitable access for all users, in the interests of highway safety.

23. Each dwelling shall be constructed and fitted out so that the estimated consumption of wholesome water by persons occupying the dwelling will not exceed 110 litres per person per day, consistent with the Optional Standard as set out in G2 of Part G of the Building Regulations (2015). The developer must inform the building control body that this optional requirement applies.

Reason: To ensure that future water resource needs, wastewater treatment and drainage infrastructure are managed effectively, so to satisfy the requirements of policy SD3 of the Local Plan Part 1.

Informatives:

- a. This permission is the subject of a unilateral undertaking or agreement under Section 106 of the Town and Country Planning Act 1990. This agreement also requires the agreement of a Design Code for the site if it is disposed of to multiple developers. All formal submissions to discharge obligations of the undertaking or agreement, or queries relating to such matters, must be made in writing to s106@southderbyshire.gov.uk with the application reference included in correspondence.
- b. You are advised, as part of the application for approval of reserved matters, to provide details of the following (so to avoid the need for additional conditions at a later stage):
 - facing materials, eaves and verge details, and cill and lintel details;
 - rooflight, porch and bay canopy details;
 - surfacing materials and patterns;
 - boundary treatments (including materials thereof); and
 - if applicable, details of a management and maintenance strategy for any highways not adopted under an agreement pursuant to section 38 of the Highways Act 1980, nor conveyed to individual property owners.You should also ensure that the reserved matters ensure that (1) all exposed housing elevations are well treated to allow a view between interiors and external space; and (2) where housing is set in blocks of more than two properties rear garden access should originate within the view of associated houses either by using gated undercroft alleyways, through plot access where practical, or by breaking up housing blocks into two or less.
- c. Pursuant to Section 278 of the Highways Act 1980 and the provisions of the Traffic Management Act 2004, no works may commence within the limits of the public highway without the formal written Agreement of the County Council as Highway Authority. It must be ensured that public transport services in the vicinity of the site are not adversely affected by the development works. Advice regarding the technical, legal, administrative and financial processes involved in Section 278 Agreements may be obtained by contacting the County Council via email - es.devconprocess@derbyshire.gov.uk. The applicant is advised to allow approximately 12 weeks in any programme of works to obtain a Section 278 Agreement.
- d. Pursuant to Sections 149 and 151 of the Highways Act 1980, the applicant must take all necessary steps to ensure that mud or other extraneous material is not carried out of the site and deposited on the public highway. Should such deposits occur, it is the applicant's responsibility to ensure that all reasonable steps (eg; street sweeping) are taken to maintain the roads in the vicinity of the site to a satisfactory level of cleanliness.
- e. Severn Trent Water advise that although our statutory sewer records do not show any public sewers within the area you have specified, there may be sewers that have been recently adopted under The Transfer Of Sewer Regulations 2011. Public sewers have statutory protection and may not be built close to, directly over or be diverted without consent and you are advised to contact Severn Trent Water to discuss your proposals. Severn Trent will seek to assist you obtaining a solution which protects both the public sewer and the building. For the use or re-use of sewer connections, either direct or indirect to the public sewerage system, the developer/owner will be required to make a formal application to Severn Trent Water Ltd under Section 106 of the Water Industry Act 1991. Copies of current guidance notes and the application form may be obtained from www.stwater.co.uk or by contacting the New Connections Team on 0800 707 6600.
- f. The applicant is advised to consider the document 'Guidance on the assessment of dust from demolition and construction' from the Institute of Air Quality Management (IAQM) for advice on how dust assessments should be performed. The assessment of the impacts of construction on local air quality should be undertaken following a risk based approach, as outlined in the IAQM document 'Guidance on the Assessment of the Impacts of Construction on Air Quality and the Determination of their Significance'.

- g. The watercourses, attenuation pond(s) and/or swale(s) hereby permitted or which would be incorporated into public areas on the site should be designed to accord with health and safety guidance as set out in the CIRIA SuDS Manual 2015 (C753) or guidance that may update or replace it, and to meet the requirements of the Construction (Design and Management) Regulations (CDM) 2015 through assessing all foreseeable risks during design, construction and maintenance of the pond, minimising them through an 'avoid, reduce and mitigate residual risks' approach.

Item No. 1.2

Ref. No. [DMPA/2020/1152](#)

Valid date: 23/10/2020

Applicant: Mick Rees

Agent: Making Plans Architecture

Proposal: Retrospective full planning application for (previously approved scheme ref no; DMPA/2020/0122) including amendments to the appearance to provide horizontal cladding; removal of ground floor side door; and amendment to ground floor side window at 72 Main Street, Weston On Trent, Derby, DE72 2BL

Ward: Aston

Reason for committee determination

This item is presented to the Committee at the request of Councillor Watson as local concern has been expressed about a particular issue.

Site Description

At the time of the assessment of the previous approved application DMPA/2020/0122 in April 2020, the original bungalow had been demolished and the main shell and footprint of the new dwelling had been constructed. The dwelling is set higher than road level on the main street, and is situated between two, two-storey dwellings. The one to the south west is a gable fronted red brick infill property, adjacent to Victorian dwellings, and the one to the north east is a semi-detached, part rendered property with a side gable.

To the front of the adjacent dwelling is Weston Methodist Church. A small single storey building sited along the pavement. The Church does screen some views of the site from Main Street. Main Street has a varied character of styles and ages of dwellings and community buildings with differing degrees of set back from the highway depending on age and style. It incorporates rendered and part timbered properties in a mock Tudor style. There are smaller newer bungalows from the 1960's which sit opposite the site.

The proposal

Planning permission has been granted for the erection of a replacement dwelling on this site though the as detailed within the planning history section below. This application seeks permission for changes to the approved plans as follows:-

- A change of the vertical cladding to horizontal cladding on the front elevation, and the side elevation;
- The removal of a ground floor side entrance door; and
- An amended high level ground floor side window.

Applicant's supporting information

No additional information supplied.



**South
Derbyshire
District Council**

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South Derbyshire District Council. LA 100019461.2017

Relevant planning history

9/2019/0666: The erection of an extension and widening of access (creation of a two-storey dwelling). Approved August 2019.

DMPA/2020/0122: Demolition of existing and erection of replacement dwelling (part retrospective, in lieu of the scheme approved under permission ref. 9/2019/0666). Approved April 2020.

Responses to consultations and publicity

Weston on Trent Parish Council object to this application as it is not in keeping with surrounding properties. The cladding on the front was supposed to be wood but is made of a grey coloured material which has been applied horizontally, not vertically as in the plan.

Two letters of objection has been received, the contents of which are summarised as follows:-

- a) this is the second retrospective application. There is a blatant disregard for the process.
- b) the proposed cladding is inappropriate and totally out of place within the street scene. It looks like 'Legoland'. The original proposals for wood should be upheld, or the whole building rendered.
- c) there are no bricks in the construction, just blocks. Is this acceptable from a building regulations point of view?
- d) construction vehicles have been parked around the village during construction and blocking driveways.

Relevant policy, guidance and/or legislation

The relevant Development Plan policies are:

- South Derbyshire Local Plan Part 1 2016 (LP1): Policy S1 Sustainable Growth Strategy; Policy S2 Presumption in Favour of Sustainable Development; Policy S3 Environmental Performance; Policy S6 Sustainable Access; Policy H1 Settlement Hierarchy; Policy SD1 Amenity and Environmental Quality; Policy SD3 Sustainable Water Supply, Drainage and Sewerage Infrastructure; Policy BNE1 Design Excellence; Policy INF2 Sustainable Transport
- South Derbyshire Local Plan Part 2 2017 (LP2): SDT1 Settlement Boundaries and Development.

The relevant local guidance is:

- South Derbyshire Design Guide Supplementary Planning Document (SPD)

The relevant national policy and guidance is:

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)

Planning considerations

Taking into account the application made, the documents submitted (and supplemented and/or amended where relevant) and the site and its environs; the main issues central to the determination of this application are:

- The principle of development;
- The effect of the proposal on the character and appearance of the street scene;
- Amenity impacts; and
- Highway safety;

Planning assessment

The principle of development

Weston On Trent is a Local Service Village and therefore development within the boundaries of the village is acceptable in principle. It is not within a conservation area and there are no listed buildings within the immediate surroundings. This site had a bungalow on it, and was approved as a two storey extension in 2019. This proposal involves the demolition of the previous bungalow and replacement with a new dwelling on the identical footprint of the previously approved dwelling.

This application is retrospective; the new dwelling being mostly constructed. However, this application has to be assessed on its merits irrespective of whether it is retrospective. Relatively minor changes are proposed to the elevations of the proposal; The external cladding to the front and side elevation has been installed with horizontal cladding instead of vertical cladding; A door has been removed on the north eastern side elevation; and A minor alteration to the design of the high level ground floor side window facing east.

The site is an infill site within the street and therefore, in principle, a new dwelling in the local service village has previously been considered acceptable, and complies with policies H1 and SDT1 of the Local Plan.

The effect of the proposal on the character and appearance of the street scene

The proposal would result in a two storey building. The effect on the character and appearance of the street scene were assessed as part of the planning application 9/2019/0666 and the subsequent amendment under application DMPA/2020/0122. The proposal is the same in terms of its appearance within the street scene apart from the changes to the cladding previously approved, from vertical cladding to a horizontal cladding. The materials of the cladding, a composite material of a Marley Cedral Lap, colour grey, were approved as part of the previous scheme and therefore this application does not change the approved materials. It is considered that the horizontal cladding actually looks better than the vertical cladding and would match that of the cladding on the set back section under the windows and on the rear elevation. The loss of the side door is not considered significant to the external appearance. The amendment to the side window has a neutral impact. The proposal is therefore considered to comply with policy BNE1 of the South Derbyshire Local Plan Part 1 2016.

Amenity impacts

Whilst there would be overlooking into the gardens of the two adjacent properties, particularly number 70 Main Street, the proposed development is not materially different to that which was approved in April 2020, which was not materially different to the 2019 approval. The effect on the neighbours were assessed as part of that proposal. On this basis, it would not be reasonable to refuse the proposal submitted as part of this application and the effects on nearby residents are considered to be acceptable. The proposal is therefore considered to comply with policies SD1 and BNE1 of the Local Plan.

Highway safety

The proposal was considered acceptable under planning applications 9/2019/0666 and DMPA/2020/0122, in terms of its impact on the highway network. There are 3 off street parking spaces provided which accords with the requirements of the Design Guide SPD and as such the proposal is considered acceptable in highway safety terms and complies with local and national policy.

Other issues

There is comment with regard to whether or not the construction would comply with Building Regulations due to the blockwork construction. This is not a planning matter. Permission has been granted for these materials and for the render finish. The development would need to ensure that it complies with the Building Regulations as a separate issue.

With regard to parking of constructors vehicles, there is not much room on the site to provide off site parking for these and there are land level changes within the site. During construction there may have been times when it was not possible to park constructors vehicles on the site. However, the Main Street is long and there is on street parking available nearby. Traffic levels through the village are not high on a daily basis. Vehicles should always, however, have been left in a considerate manner. Any obstruction of driveways would be a Police matter.

Conclusion

The proposal to revise the vertical cladding to horizontal, and the removal of the side door and amendment to the side window is acceptable, and it is recommended that planning permission is granted subject to the imposition of appropriate conditions.

None of the other matters raised through the publicity and consultation process amount to material considerations outweighing the assessment of the main issues set out above, noting that conditions or obligations have been attached where meeting the tests for their imposition. Where relevant, regard has been had to the public sector equality duty, as required by section 149 of the Equality Act 2010 and to local finance considerations (as far as it is material), as required by section 70(2) of the Town and Country Planning Act 1990 (as amended), as well as climate change, human rights and other international legislation.

Recommendation

Approve subject to the following conditions:

1. The development hereby permitted shall be carried out in accordance with the following drawings numbers: J2818-01 rev A; J2818-04 rev D; and J2818-02 rev A; unless as otherwise required by condition attached to this permission or following approval of an application made pursuant to Section 96A of the Town and Country Planning Act 1990.

Reason: For the avoidance of doubt and in the interests of achieving sustainable development.

2. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, or any statutory instrument amending, revoking and/or replacing that Order, the dwelling hereby permitted shall not be enlarged or extended without the prior grant of planning permission pursuant to an application made to the local planning authority in that regard.

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

3. During the period of construction, no ground, construction or fitting out works shall take place and no deliveries shall be taken at or dispatched from the site other than between 0730 and 1800 hours Monday to Friday and 0800 and 1300 hours on Saturdays. There shall be no construction works (except for works to address an emergency) or deliveries on Sundays or Bank Holidays.

Reason: To protect the residential amenity of adjacent occupiers.

4. Prior to the first occupation of the dwelling, space shall be provided for the parking of 3 cars; and notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, or any statutory instrument amending, revoking and/or replacing that Order, such space shall be maintained throughout the life of the development free of any impediment to its designated use.

Reason: To ensure adequate provision in the interests of highway safety.

5. All external materials used in the development to which this permission relates shall be as specified in the application, unless prior to their incorporation into the development hereby

approved, alternative details have been first submitted to and approved in writing by the local planning authority.

Reason: In the interests of the visual and environmental quality of the site and surrounding area.

6. The dwelling shall be constructed and fitted out so that the estimated consumption of wholesome water by persons occupying the dwelling will not exceed 110 litres per person per day, consistent with the Optional Standard as set out in G2 of Part G of the Building Regulations (2015). The developer must inform the building control body that this optional requirement applies.

Reason: To ensure that future water resource needs, wastewater treatment and drainage infrastructure are managed effectively, so to satisfy the requirements of policy SD3 of the Local Plan.

7. Prior to the first occupation of the dwelling hereby approved, provision shall be made within the development for a re-charge point for electric vehicles. The charging point shall be provided with an IP65 rated domestic 13amp socket, directly wired to the consumer unit with 32 amp cable to an appropriate RCD. This socket shall be located where it can later be changed to a 32amp EVCP. Alternative provision to this specification must be first submitted to and approved in writing by the local planning authority. The electric vehicle charging point shall be provided in accordance with the stated criteria prior to the first occupation or use of the dwelling and shall thereafter be maintained in working order and remain available for use throughout the life of the development.

Reason: In the interests of protecting and enhancing air quality through reducing and minimising emissions from vehicles.

Informatives:

- a. Pursuant to Section 184 of the Highways Act 1980 and Section 86(4) of the New Roads and Streetworks Act 1991 prior notification shall be given to the Department of Economy, Transport and Communities at County Hall, Matlock regarding access works within the highway. Information and relevant application forms, regarding the undertaking of access works within highway limits, are available via the County Council's website www.derbyshire.gov.uk, email Highways.Hub@derbyshire.gov.uk or telephone 01629 533190.

Item No. 1.3
Ref. No. [DMPA/2020/1262](#)
Valid date: 20/11/2020
Applicant: Mark Titterton
Proposal: The erection of a single storey side extension at 8 Derby Hills Farm Court, Melbourne, Derby, DE73 8EE
Ward: Melbourne

Reason for committee determination

This application is presented to the Committee as the applicant is related to a Council employee.

Site Description

Derby Hills House Farm is located in open countryside about 1km to the south west of the built up edge of Melbourne in a well wooded setting. The site is part of a converted traditional barn complex, isolated from general public view and accessible by a private drive. Parking space for two cars exists to the front.

The proposal

The proposal involves a single storey extension, situated in front of the existing single storey extension permitted under ref. no. 9/1999/0511. The main fenestration would face the applicant's private garden, while a small window would be evident on the flank facing the private drive. Materials would match the red brick and natural slate roof of the host.

Applicant's supporting information

None received.

Relevant planning history

9/1999/0511: Extension. Approved November 1999.

Responses to consultations and publicity

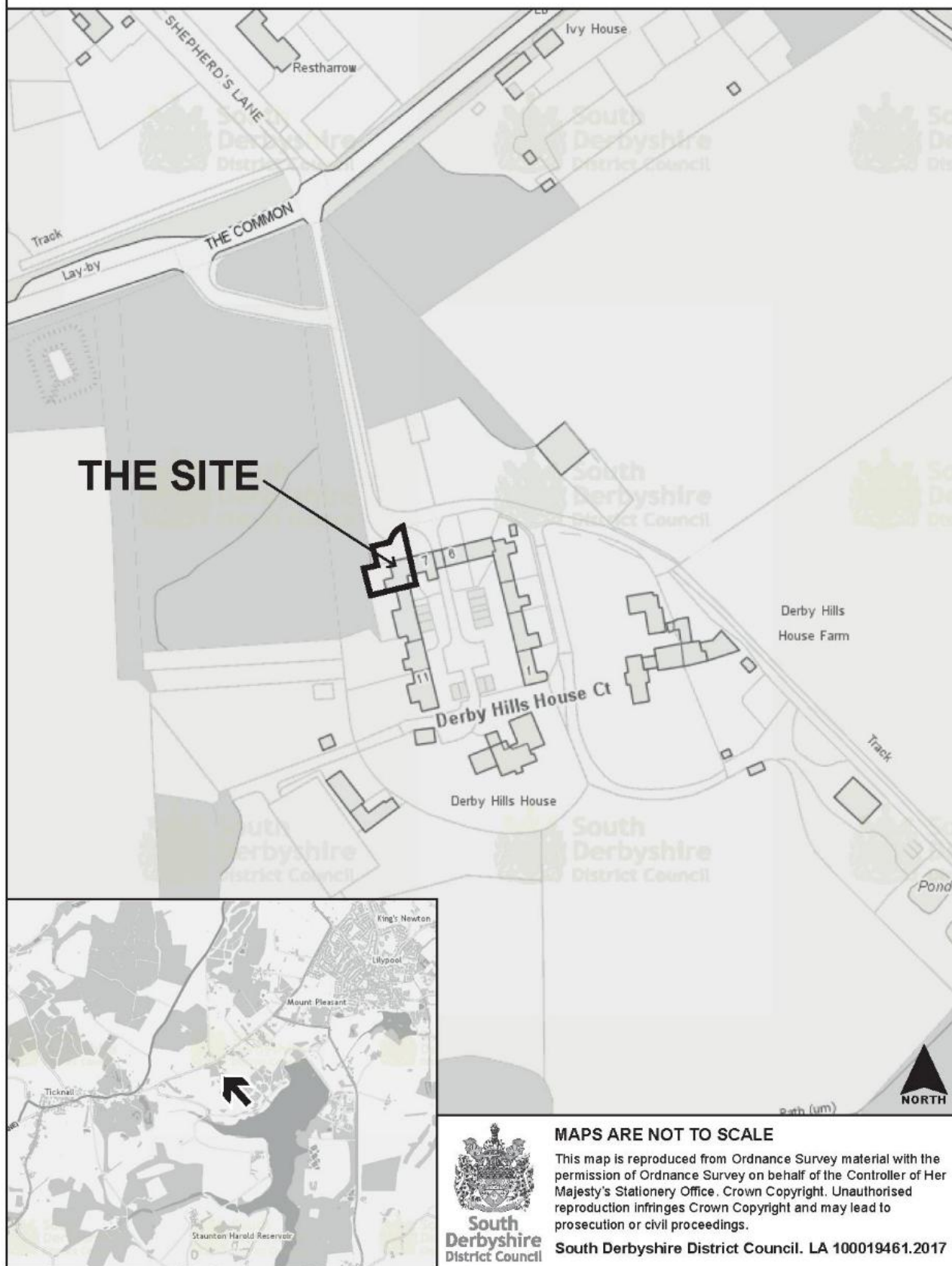
None received.

Relevant policy, guidance and/or legislation

The relevant Development Plan policies are:

- Local Plan Part 1 (LP1): SD1 (Amenity and Environmental Quality), BNE1 (Design Excellence), INF2 (Sustainable Transport)
- Local Plan Part 2 (LP2): H27 (Residential Extensions and Other Householder Development), BNE5 (Development in Rural Areas)

DMPA/2020/1262 - 8 Derby Hills Farm Court, Melbourne, Derby DE73 8EE



The relevant local guidance is:

- South Derbyshire Design Guide Supplementary Planning Document (SPD)

The relevant national policy and guidance is:

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)

Planning considerations

In taking account of the application documents submitted (and supplemented and/or amended where relevant) and the site and its environs; the main issues central to the determination of this application are:

- Design;
- Amenity; and
- Parking provision.

Planning assessment

Design

The proposal would be visible from the approach along the private drive but would otherwise be away from the public realm. The proposal would respect the scale, character and form of the host, as advocated by the SPG, such that it would present a subordinate appearance. It would visually supplant views of the existing extension and would appear little different from the approach along the driveway. Otherwise the extension would be visible from the applicant's private garden only. As such it would be in keeping with the existing building and would not harm the general character of the area, in accordance with Policies BNE1, BNE5 & H27.

Amenity

The proposal would not be apparent from inside adjoining dwellings and is wholly compliant with the separation guidelines set out in the adopted SPG and there would be no demonstrable loss of light or privacy to any nearby properties. The impacts on neighbours' living conditions would thus be acceptable and in accordance with Policies SD1 & H27.

Parking

Existing parking arrangements would be unaffected and no increased need would arise, so there is no offence to Policy INF2.

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, noting that conditions or obligations have been attached where meeting the tests for their imposition. Where relevant, regard has been had to the public sector equality duty, as required by section 149 of the Equality Act 2010 and to local finance considerations (as far as it is material), as required by section 70(2) of the Town and Country Planning Act 1990 (as amended), as well as climate change, human rights and other international legislation.

Recommendation

Approve subject to the following conditions:

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

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

2. The development hereby permitted shall be carried out in accordance with amended drawing No. 22076 - 2D received on 19 January 2021, unless as otherwise required by condition attached to this permission or following approval of an application made pursuant to Section 96A of the Town and Country Planning Act 1990.

Reason: For the avoidance of doubt and in the interests of achieving sustainable development.

3. All external materials used in the development shall match those used in the existing building in colour, coursing and texture unless, prior to their incorporation into the development hereby approved, alternative details are first submitted to and approved in writing by the Local Planning Authority pursuant to an application made in that regard, whereafter the approved alternative details shall be incorporated into the development.

Reason: In the visual interest of the building(s) and the surrounding area.

2. **Planning and other Appeals**

(References beginning with a DMPA, DMPN, DMOT or 9 are planning appeals and references beginning with an ENF or E are enforcement appeals)

Reference	Place	Ward	Outcome	Decision level
<u>9/2018/0968</u>	4 Church Street, Hartshorne	Woodville	Dismissed	Delegated



Appeal Decision

Site Visit made on 16 December 2020

by M Russell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 January 2021

Appeal Ref: APP/F1040/W/19/3232081

4 Church Street, Hartshorne, Swadlincote DE11 7ER

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr D Cooper – D Cooper Construction Ltd against the decision of South Derbyshire District Council.
 - The application Ref 9/2018/0968, dated 3 September 2018, was refused by notice dated 3 June 2019.
 - The development proposed was originally described as 'Outline application for the erection of four dwellings and alterations to access'.
 - This decision supersedes that issued on 9 October 2019. That decision on the appeal was quashed by order of the High Court.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The number of dwellings was reduced from the originally proposed four, to three during the planning application process. I have determined the appeal on this basis.
3. The proposal is in outline form with all matters reserved except for means of access. I have therefore considered the size and position of the dwellings and associated plots and garages shown on the revised plan (856-01 Revision B) as being indicative only for the purposes of my assessment.

Main Issue

4. The main issues are:
 - whether the appeal site would be a suitable location for the proposed development, having regard to the development plan and national policy; and
 - the effect of the proposal on the character and appearance of the area.

Reasons

5. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires decisions to be made in accordance with the development plan unless material considerations indicate otherwise.

6. Policy S1 (Sustainable Growth Strategy) of the South Derbyshire Local Plan Part 1 (2016) (LP1) promotes sustainable growth to meet its objectively assessed housing needs. It seeks to ensure that economic, social and environmental objectives are fully addressed including amongst other things that the District's landscape and rural character are protected, conserved and enhanced. This approach is consistent with the sustainability aims of the National Planning Policy Framework (the Framework) which states amongst other things that planning policies and decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside.

Suitability of Location

7. There is no dispute between the parties that the appeal site is located adjacent to, but outside, the settlement boundary for Hartshorne and is therefore in the countryside for the purposes of decision making. Policy SDT1 (Settlement Boundaries and Development) of the South Derbyshire Local Plan Part 2 (2017) (LP2) confirms amongst other things that outside settlement boundaries, development will be limited to that considered acceptable by Policy BNE5 (Development in Rural Areas) of the LP2.
8. Policy BNE5 i) states planning permission will be granted where development is allowed for by a specific list of Policies, one of which is Policy H1 of the LP1. Policy H1 sets out a 'Settlement Hierarchy' and identifies Hartshorne as a Local Service Village where sites adjacent to the settlement boundary may be considered appropriate as exceptions or cross subsidy sites.
9. The High Court decision in relation to the quashed appeal decision on the site confirmed that *'When reaching that decision, the Inspector misinterpreted Policy H1 of the South Derbyshire Local Plan Part 1. In Policy H1 4 (Rural villages) i. the reference to "exceptions or cross subsidy site" are to Affordable Housing Exception Site (or Rural Exception Site) and to Cross subsidy Exceptions Site as defined in the Glossary. In order to amount to "development of a limited nature" proposals that are adjacent to the settlement are therefore required to fall within one of these defined categories of site and to be no greater than 15 dwellings.'*
10. Having regard to this High Court decision and given that there is nothing before me to indicate that the dwellings would be for affordable housing or a cross subsidy exception site, the development would not comply with Policy H1 or Policy BNE5 i) in this regard.
11. The development is not essential to a rural based activity. The Council says it can demonstrate a 5-year housing land supply and without evidence to the contrary, housing development is therefore not unavoidable outside settlement boundaries. Therefore, the development would not meet Parts ii) and iii) of Policy BNE5.
12. Rural areas outside of the defined settlements sits at the lowest tier of the hierarchy in Policy H1 and the policy only allows for limited infill and conversions in such locations. Policy BNE5 iv) requires that infill development should be in keeping with the character of the locality and that it should represent the infilling of a small gap for not normally more than two dwellings, within small groups of housing.

13. I have carefully considered the appellant's submissions as to why they consider the development is infill development. Whilst Policy BNE5 iv) allows for some flexibility, it is specific that infill should not normally be for more than two dwellings. Indeed, limited infill more commonly relates to a small number of dwellings in a gap between buildings and in a layout that reflects the pattern of neighbouring development. In this instance, there would be a net increase of two dwellings and it would be physically possible to fit more than two dwellings on the site. Nevertheless, these factors alone do not demonstrate why a quantum of development above the normally accepted levels would be limited infill in accordance with the requirements of the development plan.
14. The site's position next to the settlement boundary means it is not isolated in terms of the definition within the Framework. There are also some services and facilities in Hartshorne including a primary school, a parish church, a Methodist chapel and three public houses. The evidence before me indicates that there is an hourly bus service to larger settlements. However, the nearest larger settlements are not conveniently located so as to encourage walking or cycling. Consequently, it is likely that there would be some reliance on the private motor vehicle to meet day to day needs. This further persuades me that the development proposed and its location outside the settlement boundary would not be sustainable.
15. Taking all the above factors into account, the appeal site would not be a suitable location for the development and would therefore conflict with Policies S1 (Sustainable Growth Strategy), S4 (Housing Strategy), H1 (Settlement Hierarchy) of the LP1, Policies SDT1 (Settlement Boundaries and Development) and BNE5 (Development in Rural Areas) of the LP2 and the Framework.

Character and Appearance

16. The appeal site and the properties that it shares boundaries with accommodate single dwellings, set well back from the road, within substantial plots with mature landscaping. The spaciousness and greenery that this gives to this part of Church Street provides a distinct low-density character which assists the transition between the closer-knit development within the settlement boundary and the more open landscape character of the countryside.
17. I am conscious that access is specifically applied for in this instance. Article 2 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 defines the reserved matters and confirms amongst other things that 'access' relates to 'the accessibility to and within the site, for vehicles, cycles pedestrians...'. Consequently, the single point of access and its angled relationship would be substantively fixed in the event that this appeal were to be allowed. In combination with the quantum of development proposed, this would be likely to result in buildings being positioned both in relatively close proximity to the road and towards the back of the site, thereby precluding an arrangement of buildings that would reflect the more spacious and dispersed pattern of development outside the settlement boundary.
18. I acknowledge that the previous Inspector that dealt with the now quashed appeal decision commented on the potential for achieving spacious frontages and noted the more dense development to the south west. I am mindful that they were assessing the development on the basis of an erroneous understanding that the development plan allowed an 'exception' for the development of sites adjacent to the settlement boundary for up to 15 market

dwellings. However, in the specific context of development in the countryside, I am not persuaded that a more comprehensive development of the site than presently exists would be justified by a comparison with the higher density development within the settlement boundary. Therefore, when all the above factors are considered as a whole, it has not been demonstrated that the development would be in keeping with the spacious low-density character of the locality. This also further persuades me that the development would not appear as limited infill in line with the requirements of the development plan.

19. To conclude, the development and would result in harm to the character and appearance of the area. It would conflict with those provisions which seek to protect the character of the locality and the intrinsic character and beauty of the countryside set out in Policies S1 (Sustainable Growth Strategy), H20 (Housing Balance) and BNE4 (Landscape Character and Local Distinctiveness) of the LP1 and Policies SDT1 (Settlement Boundaries and Development) and BNE5 (Development in Rural Areas) of the LP2 and the Framework.

Other Matters

20. There would be a planning benefit through the provision of three new homes. I also acknowledge that the Council did not identify any harm in respect of highway safety, flood risk and drainage, ecology or relationships with the living conditions of neighbouring occupiers although these are other expected planning requirements rather than matters which would override the considerations under the main issues.

Planning Balance and Conclusion

21. The Council suggests it can demonstrate a 5-year housing land supply and I have no substantive evidence before me to demonstrate this is not the case. The policies of the development plan should therefore be considered up-to-date. Paragraph 12 of the Framework confirms amongst other things that the development plan is the starting point for decision making and where a planning application conflicts with an up-to-date development plan permission should not usually be granted.
22. The development would make a modest but important contribution towards the Council's housing requirements. However, for the reasons set out, the proposal would conflict with the sustainable development aims of the development plan and the Framework and would result in significant harm to the character and appearance of the area. These are matters which attract significant weight and tip the balance firmly against the proposal.
23. No further material considerations have been advanced of sufficient weight to justify a decision other than in accordance with the development plan. Therefore, for the reasons set out, I conclude that this appeal should be dismissed.

M Russell

INSPECTOR