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**Chief Executive**  
South Derbyshire District Council,  
Civic Offices, Civic Way,  
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Our Ref  
Your Ref

Date: 28<sup>th</sup> February 2022

Dear Councillor,

### **Planning Committee**

A Meeting of the **Planning Committee** will be held at **Council Chamber**, Civic offices, Civic Way, Swadlincote on **Tuesday, 08 March 2022 at 18:00**. You are requested to attend.

Yours faithfully,

Chief Executive

To:- **Labour Group**

Councillor Tilley (Chair), Councillor Shepherd (Vice-Chair) and  
Councillors Gee, Pearson and Southerd.

**Conservative Group**

Councillors Bridgen, Brown, Lemmon, Muller and Watson.

**Independent Group**

Councillors Dawson and MacPherson.

**Non-Grouped**

Councillor Wheelton



## **AGENDA**

### **Open to Public and Press**

- 1** Apologies and to note any substitutes appointed for the Meeting
- 2** To note any declarations of interest arising from any items on the Agenda
- 3** To receive any questions by Members of the Council pursuant to Council procedure Rule No. 11.
- 4** REPORT OF THE STRATEGIC DIRECTOR (SERVICE DELIVERY) **3 - 42**

### **Exclusion of the Public and Press:**

- 5** The Chairman may therefore move:-  
That in accordance with Section 100 (A)(4) of the Local Government Act 1972 (as amended) the press and public be excluded from the remainder of the Meeting as it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that there would be disclosed exempt information as defined in the paragraph of Part I of the Schedule 12A of the Act indicated in the header to each report on the Agenda.
- 6** To receive any Exempt questions by Members of the Council pursuant to Council procedure Rule No. 11.  
Details

# **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).

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## 1. Planning Applications

This section also includes reports on applications for: approvals of reserved matters, listed building consent, work to trees in tree preservation orders and conservation areas, conservation area consent, hedgerows work, advertisement consent, notices for permitted development under the General Permitted Development Order 2015 (as amended) responses to County Matters and strategic submissions to the Secretary of State.

Reference	Item	Place	Ward	Page
<a href="#">DMPA/2021/1263</a>	<a href="#">1.1</a>	Hartshorne	Woodville	6
<a href="#">DMPA/2021/1072</a>	<a href="#">1.2</a>	Swadlincote	Newhall and Stanton	16
<a href="#">DMOT/2021/1826</a>	<a href="#">1.3</a>	Newhall	Newhall and Stanton	25

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/2021/1263](#)

**Valid date:** 10/09/2021

**Applicant:** Paramjit Rai

**Agent:** ASP Consulting (Melbourne) Ltd

**Proposal:** The erection of a four bedroomed dwelling. Previously approved dwelling (DMPA/2020/0478) relates at Spring View, Springhill, Hartshorne, Swadlincote, DE11 7AH

**Ward:** Woodville

### **Reason for committee determination**

A request has been made to bring the application to the Planning Committee for decision by the Ward Member, due to concerns raised regarding the unusual circumstances at the site and local concerns about the potential impacts on residential amenity.

### **Site Description**

The site straddles the settlement confines for Hartshorne, with the dwelling and much of its parking and turning area just falling within the confines - the balance of the garden west of the watercourse within the countryside.

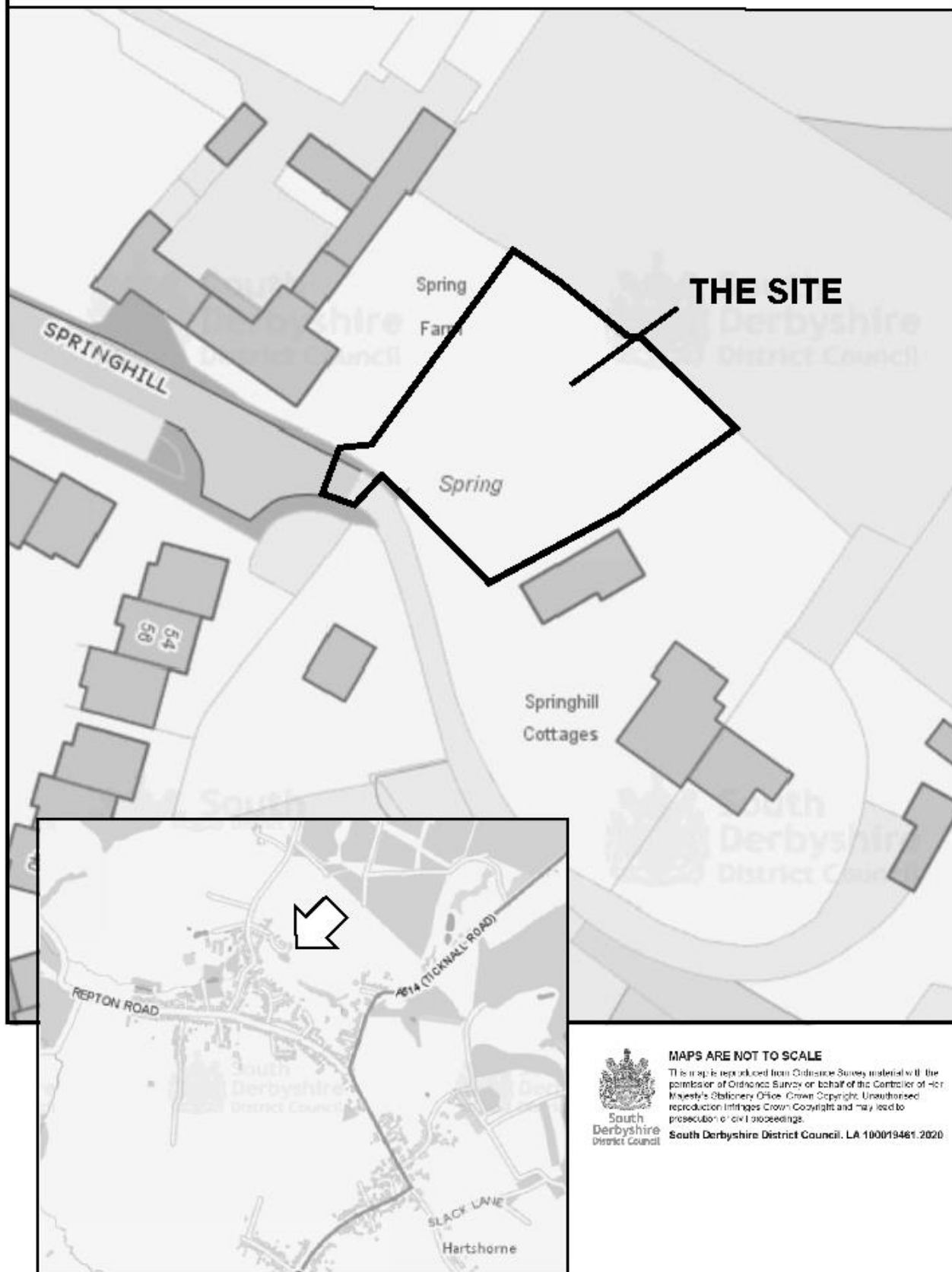
The dwelling approved as part of the previous approval DMPA/2020/0478 has already been partially constructed, but has been held in abeyance whilst this application has been assessed.

The existing farm complex to the north west includes a listed farmhouse and attached barn which have a somewhat mixed context. Whilst it is certainly not a remote or isolated rural farm, it does enjoy a split relationship with both undeveloped agricultural and paddock land to the immediate east and more widely to the north and west. It has a derelict appearance and shows obvious signs of needing significant restoration and repair.

Historic mapping shows that land north east of the farm complex was an orchard, but the site is to the south of this - too small to have been an agricultural enclosure and separated from surrounding land by the orchard to the north. It may have been a small kitchen garden or paddock. Housing at Springhill Cottages can be seen across the site to the south east. These modern dwellings replace a row of four modest cottages, likely farm workers cottages, which previously stood here and appearing on the 1880 and 1970s OS mapping. The Conservation Officer in his assessment of the 2020 application (DMPA/2020/0478) was of the view that the east and south east of the farm complex has less significance (unlike the paddock to the west/north west of the complex) as part of the agricultural context within which the complex sits and is experienced. To the extent to which the proposed dwelling would impact upon the context of the listed building, it is in a direction which already features nearby 20th century housing.

Thus, the approved 1.5 storey dwelling with rooms in the roof was considered to have little difference in terms of impact when compared with a traditional bungalow, and the Conservation Officer was comfortable that a dwelling of the scale and position proposed and previously approved would not be inherently harmful to the special significance of the adjacent listed buildings via their setting.

A watercourse runs through the site of the approved dwelling. This appears to run from a spring towards the private access off the turning head of Springhill, passing under it into a culvert. There has been evidence of flooding events associated with this watercourse in the past, especially so in recent years.



The dwellinghouse to the south east of the site (1 Springhill Cottages) has a long rear garden and the land is set at a slightly higher level than the application site, and the land rises to this neighbouring property. The side elevation of 1 Springhill Cottages is situated some 21m (approximately) from the front corner of the new dwelling and there is approximately 26m from the proposed extension to the site boundary with no. 1.

### **The proposal**

The proposal is to provide an extension on the north side of the approved dwelling and to make some amendments to the approved (under DMPA/2020/0478) window positions/styles. The proposed extension has been amended during the course of the application to reduce its size with the projection towards number 1 Springhill Cottages reduced, not because of the potential impact on this property, but primarily because the original proposed extension was considered to have an awkward and unacceptable visual impact resulting in a visually confusing dwelling which would have been inappropriate in its overall impact on the originally approved dwelling from 2020.

The amendment has kept the same line as the eastern projection of the dwelling. The proposal has provided an additional bedroom and a larger ground floor living area, showing a kitchen within that part. There is a gable provided which matches the size and height of the front end gable.

### **Applicant's supporting information**

The application is supported by a Preliminary Ecological Assessment, a bat survey and a Flood Risk Assessment.

### **Relevant planning history**

9/2013/0996: The erection of a single storey dwelling and new vehicular access - Approved.

9/2013/0998 and 9/2013/1003: Planning and listed building consent for the conversion of the farmhouse and outbuildings to provide three dwellings including demolition of associated walls and outbuildings - Approved.

DMPA/2020/0810 and DMPA/2020/0480: Planning and listed building consent for the refurbishment of the farmhouse and the conversion of outbuildings into 2 no. dwellings including demolition and rebuilding of associated walls and change of use of agricultural land to residential garden - Withdrawn.

DMPA/2020/0478. The erection of a new 2 storey dwelling and new access. Approved.

DMOT/2020/1458. Discharge of archaeology condition.

DMOT/2021/1095. Discharge of some conditions on the recent above approval. Some of these have been informally discharged and some are still being assessed and ongoing.

### **Responses to consultations and publicity**

The County Highway Authority has no objection to the proposal.

The Environment Agency has no objection to the proposal as it is located within flood zone 1.

Derbyshire Wildlife Trust have assessed the submitted details and confirm that the proposal is not materially different to the previous proposal where they suggested imposition of appropriate conditions. The bat box proposals look acceptable, but insufficient information has been provided regarding the native hedgerow planting.

The Environmental Health Officer has no objection to the proposal and no comments to make.

The Landscape Architect has no objection to the proposal, subject to the receipt of a planting plan showing native species hedgerows, fruit trees to be planted in the garden and re-positioning of any



bat/bird boxes on the dwelling.

Hartshorne Parish Council has objected to the proposal on the basis of the potential overlooking to the adjacent neighbouring dwelling from the windows and Juliette balcony of the window facing the neighbours garden. There is no affordable housing in this proposal located in the rural area. The purpose of H26 is to allow for the provision of greater residential amenity space where that is deemed acceptable but cannot be relied upon to grant the initial planning permission. There are concerns about the increase from originally a two bedroom bungalow, changed to a three bed. What are the implications for future development in the adjacent field? The Parish Council did not receive notification of this proposal. This decision should be made by the Planning Committee.

Comments have been received from two nearby neighbours. These can be summarised as follows:-

- a) The proposal appears to be beyond the settlement boundary. Is it appropriate to extend a dwelling that is not yet built or occupied? The existing foundation pad has been pre-cast.
- b) The full height window opening and Juliette balcony gives direct views into the rear garden of the adjacent property, as do other windows. This is detrimental to the enjoyment of the dwelling and causing considerable stress and anxiety.
- c) The principle of development has not been established for a three or four bedroomed dwelling.
- d) Due to the concerns, the proposal should be assessed by the Planning Committee.
- e) There are concerns about the proximity of the building and the new extension to the adjacent paddock with grazing horses making it a danger.
- f) The boundary fence needs to be erected in the correct position to regain full use of the paddock.

### **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), S6 (Sustainable Access), H1 (Settlement Hierarchy), H20 (Housing Balance), SD1 (Amenity and Environmental Quality), SD2 (Flood Risk), SD3 (Sustainable Water Supply, Drainage and Sewerage Infrastructure), SD4 (Contaminated Land and Mining Legacy Issues), BNE1 (Design Excellence), BNE2 (Heritage Assets), BNE3 (Biodiversity), BNE4 (Landscape Character and Local Distinctiveness), INF2 (Sustainable Transport), INF8 (The National Forest);
- Local Plan Part 2 (LP2): SDT1 (Settlement Boundaries and Development), H26 (Residential Gardens within Rural Areas), H27 (Residential Extensions and Other Householder Development), BNE5 (Development in Rural Areas), BNE7 (Trees, Woodland and Hedgerows) and BNE10 (Heritage).

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); and
- Historic England Guidance on setting of heritage assets.

### **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:

- Principle of development;
- Heritage impacts;

- Ecological and protected species impacts;
- Flood risk and drainage;
- Highway safety;
- Design and amenity; and
- Environmental impacts.

## **Planning assessment**

### Principle of residential development

The site straddles the settlement boundary for Hartshorne, with the approved dwelling (DMPA/2020/0478) and much of its parking and turning area falling within the confines of the settlement of Hartshorne. The balance of the garden east of the watercourse is within the rural area. On this basis, the previous application was approved. This extension would also be situated within the settlement boundary. There would be no change to the aspects of the proposal within the rural area. There would be no direct impact on the paddock land to the north side of the site boundary as a result of the extension.

It is therefore concluded that the principle of residential development has been established and the dwelling already approved within the settlement boundary. This extension is considered to comply with policies S1, S2 and H1 of the South Derbyshire Local Plan Part 1 2016 and policy H26 of the South Derbyshire Local Plan Part 2 2017.

### Heritage impacts

The focus lies with the impact on the setting of the grade II listed Spring Farm, associated farm buildings and its former garden. Consideration of the impact on the heritage asset and what public benefits arise from the proposal is required.

The Conservation Officer had no objection to the previously approved scheme (DMPA/2020/0478) and recommended imposition of conditions to limit inappropriate extensions. There were concerns raised about the original proposal as not befitting the approved design, although even this would not have resulted in any notable adverse effect on the special architectural or historic significance of the farmhouse complex. It is considered that the amended scheme, being in proportion to the approved dwelling, achieves a good quality of design and would avoid any harmful impacts on the setting of the neighbouring listed agricultural complex. The proposal would 'preserve' the setting of the grade II listed agricultural complex and is considered to achieve a standard of 'good design' as advocated within the NPPF. It is considered appropriate to impose further permitted development restriction conditions on the new dwelling if approved.

As to archaeological impacts, the previous comments from the Development Control Archaeologist against the 2013 application were noted when the dwelling was approved. The medieval origins of the property and the proximity to a further farmstead and Hartshorne itself are all indicators of an elevated potential for interest of a local level. The previously requested condition is therefore considered to be reasonable and proportionate, in line with the provisions of policies BNE2 and BNE10 and the NPPF.

It is noted that the setting of the adjacent listed building is important, as is the desire under policy H26 to minimise domestication of the countryside, so a condition to remove permitted development rights also for outbuildings and hardstandings is justified.

### Ecological and protected species impacts

The Wildlife Trust raises no objection, subject to conditions to protect nesting habitat during construction and to secure a scheme of biodiversity mitigation and enhancement. The proposed development is considered unlikely to result in a significant ecological impact, although there will be some loss of biodiversity here. Through use of conditions so as to preserve what can be retained and to ensure new planting uses native species, prior to occupation, along with incorporation of physical

features for bats etc, it is considered the proposal can secure a net gain.

### Flood risk and drainage

A watercourse runs through the site for the approved dwelling. This appears to run from a spring towards the private access off the turning head of Springhill, passing under it into a culvert. There has been evidence of flooding events associated with this watercourse in the past, especially so in recent years. However, given levels slope toward the watercourse and to the south, the Flood Risk Assessment determines the risk to the proposed dwelling as low. Surface water run-off from hard surfaces created by the development is to be controlled by appropriate techniques, and foul water drained to the mains sewer. Severn Trent Water Limited previously raised no objection to the 2013 application, and on balance, whilst the localised flooding is noted, it is not considered this development would materially alter such occurrences. It is also not considered necessary to condition a foul water solution given the intention to connect to the mains under the Water Act provisions. It is therefore considered that the proposal would comply with policy SD3 of the South Derbyshire Local Plan Part 1 2016.

### Highway safety

The creation of a new access to Springhill was noted to be below expected standards in the 2020 approval. Whilst the Highway Authority raised concerns that visibility cannot be achieved in the same manner as the 2014 permission, they were aware that the land to the west was within the same ownership. A condition was imposed to secure visibility, as per the 2014 permission. This extension would not change or alter those arrangements. The impact on the highway network is comparable to that envisaged previously and conditions can ensure this, along with the provision of suitable parking and turning space prior to occupation. The Highway Authority has no objection to the extended dwelling proposal. It is therefore considered that the proposal would not result in a detrimental impact on highway safety and complies with policy INF2 of the South Derbyshire Local Plan Part 1 2016 and the NPPF.

### Design and amenity

The proposed dwelling was considered acceptable in 2020. This extension has gone through some iteration during the process of the application. Amendments have been secured to reduce the impact on the appearance of the original, approved dwelling. It is considered that the amendments have secured a proposal which is proportionate to the original building and provides an extension which retains the 'L' shape of the original, approved dwelling, instead of having the projection at the northern end. This is considered to appear more visually pleasing and represents a reasonable extension of the dwelling.

In terms of affecting the amenity of the adjacent dwelling, it would not bring the development any closer to number 1 Springhill Cottages than the gable end of the approved dwelling. Although there would be a new first floor bedroom window which looks towards this cottage, it is considered the distance of 26m (approximately) to the site boundary would not result in any significantly detrimental impact on the residential amenities of the occupants of 1 Springhill Cottages which would justify refusal. There is a Juliette balcony, but this would not result in any greater detrimental effects than a normal bedroom window and is therefore considered acceptable. The proposal would therefore be considered to comply with policies BNE1 and SD1 of the South Derbyshire Local Plan Part 1 2016.

### Environmental impacts

Although this was not included on the previous approval in 2020, it is suggested to impose a condition requiring the provision of an electric vehicle charging point to provide opportunity for future occupiers to charge their electric cars. This is a recent requirement for new dwellings within the District in accordance with the Climate Change Emergency.

### Other issues

Comments have been raised about the foundation pads for the development and whether an extension to these could be adequately constructed. This is a matter that would be dealt with through the Building Regulations to ensure that the extension would be constructed safely.

### Conclusions

The proposed extension to the dwelling is considered acceptable and it is recommended that planning permission be 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 documents and plans:

Application form received 10th August 2021;  
Bat survey received 10th September 2021;  
Preliminary Ecological Appraisal 10th September 2021;  
Proposed Elevations and Floor Plans drawing No.5200/602A received 15th November 2021;  
Location Plan drawing No. 5200/605B received 14th February 2022;  
Proposed Block Plan drawing No. 5200/604A received 14th February 2022;  
Site Layout Plan drawing No. 5200/603B received 14th February 2022; and  
Drainage Plan drawing No. 5200/403D received 15th February 2022.

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. No removal of trees, hedges or 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. Thereafter, no trees, hedges or 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 and/or priority species from undue disturbance and impacts.

3. The development shall be carried out in accordance with the principles and recommendation outlined within the Flood Risk Assessment dated July 2020 (ref. 20800-01-FRA-01 REV. A) approved as part of DMPA/2020/0478; prepared by Mewies Engineering Consultants Ltd, as clarified/updated by emails dated 14th and 20th October 2020, and DEFRA non-statutory technical standards for sustainable drainage systems (March 2015) (or any successor technical standards). The approved drainage system shall be implemented and fully operational prior to the first occupation of the dwelling.

Reason: To ensure that the principles of sustainable drainage are incorporated into the development, so to ensure flood risk is not increased on or off the site.

4. The development shall take place in accordance with the approved WSI submitted as part of application DMOT/2020/1458 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.

5. No other operations shall commence on site until a new vehicular and pedestrian access has been formed to Springhill and provided with a sightline of 20m to the west, measured to the nearside edge of the carriageway, as measured from a point located centrally and 2m back into the access; in accordance with the scheme submitted on drawing 5200/403 rev C received 9th July 2021 as part of application DMOT/2021/1095. The area within the sightlines shall thereafter be kept clear of any object greater than 1m in height (0.6m in the case of vegetation) above the nearside carriageway channel level.

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

6. Prior to the completion of the development, a scheme of biodiversity mitigation and enhancement shall be submitted to and approved in writing by the local planning authority. The scheme shall, as a minimum, include the incorporation of bat roost features on the building and the planting of native hedgerow within the site. The approved scheme shall be implemented so that physical measures are incorporated before the first occupation of the dwelling and thereafter retained and maintained in situ for the lifetime of the development.

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

7. Prior to the occupation of the dwelling, a scheme of hard and soft landscaping shall be submitted to and approved in writing by the local planning authority. Details of soft landscaping should evidence compliance with British Standard (BS) 3936: 'Part 1 - Specification for trees and shrubs', BS3969 - 'Recommendations for turf for general purposes' and BS4428 - 'Code of practice for general landscape operations (excluding hard surfaces)'. All hard landscaping shall be carried out in accordance with the approved details prior to occupation of the dwelling, whilst all planting, seeding or turfing comprised in the approved scheme shall be carried out in the first planting and seeding seasons following the first occupation of the dwelling or the completion of the development, whichever is the sooner; and any plants which within a period of five years (ten years in the case of trees) 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 and thereafter retained for at least the same period, unless the local planning authority gives written consent to any variation.

Reason: In the interest of the visual setting of the development and the surrounding area.

8. Prior to the construction of a boundary wall, fence or gate, details of the position, appearance and materials of such boundary treatments shall be submitted to and approved in writing by the local planning authority. Any gates shall be set back at least 5.5m into the site and open inwards only. The boundary treatments shall be completed in accordance with the approved details before the dwelling is first occupied or in accordance with a timetable which shall first have been submitted to and approved in writing by the local planning authority. 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, no further boundary treatments shall thereafter be erected without the permission of the local planning authority pursuant to an application made in that regard.

Reason: In the interests of the character and appearance of the area, in particular to maintain the setting of the heritage assets and rural context as secured under the plans hereby approved, and in the interests of highway safety.



9. Prior to their incorporation in to the dwelling hereby approved, details of the external appearance of eaves, verges, cills and headers shall be submitted to and approved in writing by the local planning authority. The details shall include drawings to a minimum scale of 1:20. All verges shall be finished in a mortar finish. There shall be no use of dry verge (cloaking tile) systems. The eaves, verges, cills and headers shall be constructed in accordance with the approved drawings 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, there shall be no later installation of a dry verge system.

Reason: In the visual interest of the building and local distinctiveness.

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

Reason: In the visual interest of the building and local distinctiveness.

11. All plumbing and service pipework, soil and vent pipes, electricity and gas meter cupboards and heating flues shall be located inside the buildings unless alternative details are first submitted to and approved in writing by the local planning authority; whilst prior to their installation, details of the type, number, position and finish of heating and ventilation flue outlets shall be submitted to and approved in writing by the local planning authority. All approved details shall be incorporated into the development.

Reason: In the visual interest of the building, the significance of the heritage assets and the surrounding area.

12. 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, and no buildings or hard surfaces (except as authorised by this permission or allowed by any condition attached thereto) shall be erected/installed on the site 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, in particular to maintain the setting of the heritage assets and rural context as secured under the plans hereby approved.

13. Prior to the first occupation of the dwelling, space shall be provided for the parking of no less than three vehicles associated with that dwelling in accordance with the approved plans, 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 parking and turning provision, in the interests of highway safety.

14. 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.

15. 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.

16. The facing materials to be used shall be as agreed as part of DMOT/2021/1095, the Ibstock Birtley Old English Blend bricks. Details of the roofing materials shall be submitted to the local planning authority and agreed in writing prior to their incorporation into the development. The development shall be completed in accordance with the approved details.

Reason: To maintain the visual and environmental quality of the site and surrounding area.

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](http://www.derbyshire.gov.uk), email [Highways.Hub@derbyshire.gov.uk](mailto:Highways.Hub@derbyshire.gov.uk) or telephone 01629 533190.
- b. The applicant/developer's attention is drawn to the comments of the Lead Local Flood Authority (Derbyshire County Council Flood Risk Team) dated 8 November 2020 available at <http://planning.southderbyshire.gov.uk> under the application reference number DMPA/2020/0478.
- c. The Highway Authority recommends that the first 5m of the proposed access/driveway should not be surfaced with a loose material (i.e. unbound chippings or gravel, etc.). In the event that loose material is transferred to the highway and is regarded as a hazard or nuisance to highway users, the Authority reserves the right to take any necessary action against the landowner.
- d. The application site is affected by a Public Right of Way (Footpath 38 in the parish of Hartshorne as shown on the Derbyshire Definitive Map). The route must remain unobstructed on its legal alignment at all times and the safety of the public using it must not be prejudiced either during or after development works take place. Please note that the granting of planning permission is not consent to divert or obstruct a public right of way. For further information, contact Derbyshire County Council (01629 533190) and ask for the Rights of Way officer.

**Item No.** 1.2  
**Ref. No.** [DMPA/2021/1072](#)  
**Valid date:** 20/07/2021  
**Applicant:** Malcolm Roseburgh **Agent:** Ares Landscape Architects  
**Proposal:** Park with cycling facilities on Land to the North of William Nadin Way, Swadlincote  
**Ward:** Newhall and Stanton

### Reason for committee determination

South Derbyshire District Council is the applicant and therefore the item cannot be delegated to Officers for decision.

### Site description

The application site is an undeveloped area of land situated to the west of housing developments that have been, and continue to be, built to the east and which are gradually being developed westward by Avant Homes to adjoin, and link in with, this application site. To the west of the site lies the existing family golf centre with the land which will eventually form a proposed country park lying further west. The application site extends from William Nadin Way to the south, northwards to meet Oversetts Road towards its southern end which at that point is unadopted. The site slopes up from William Nadin Way to Oversetts Road and there are ponds and a brook to the southern end of the site, with the brook running east-west. The site is mostly within Flood Zone 1 although the southern part of the site is within Flood Zone 3a, around Darklands Brook

### The proposal

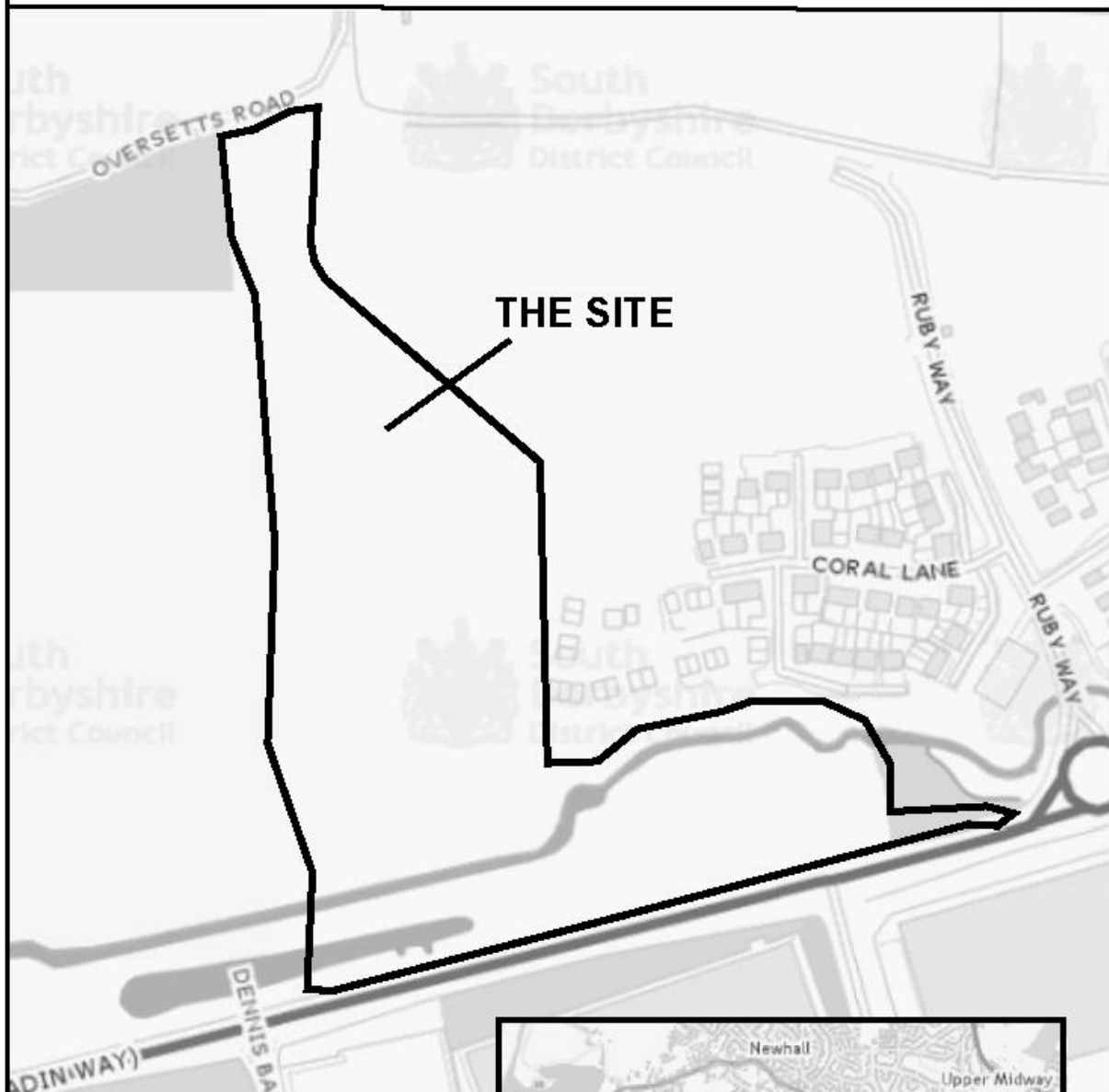
Amended plans have been received and the latest plans seek to provide the cycling infrastructure which the Council seeks to establish in this area of open space which will be centred around cycling activities and hence the paths with undulations, curves, a bridge over the brook, areas of hard surfacing, parking for an ice cream van/coffee truck, and ancillary equipment such as bins, benches etc. As the proposal forms part of the housing development to the east, there are numerous connection points into its road network and areas of open space.

The proposal would provide a family cycle route for exercise and circulation throughout the park; a “pump track” which will allow children and new to intermediate riders of bikes and scooters to progress their skills in a fun way; and a “learn to ride area” which would be an open area of space for learning the basics of bike control and handling and will allow coaching sessions to take place.

The layout of the paths is such that they would create a circular route within the site, link William Nadin Way with Oversetts Road, link to the route of the National Cycle Network 63 which will eventually link Burton to Leicester, and would run east-west immediately to the north of the site, as well as linking William Nadin Way to the land to the west which would itself provide access to the country park and existing employment areas.



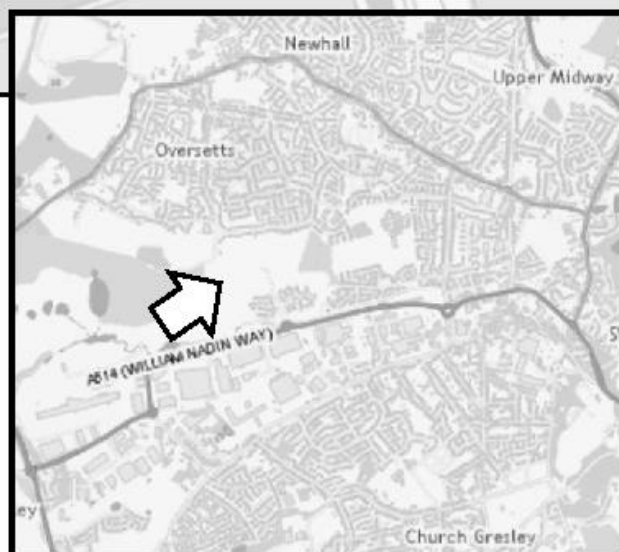
**DMPA/2021/1072 – Land to the North of William Nadin Way, Swadlincote**



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## **Applicant's supporting information**

Flood Risk Assessment (FRA) – The FRA sets out the flood zones across the site with the southern part adjacent to the brook in Flood Zone 3 and those parts further north in Flood Zone 1. It states that the land drains via land run-off discharging to Darklands Brook. Flood risk was only identified to the southern part of the site due to the proximity of the brook with no other significant flood risk identified. The report states that it demonstrates that the site can be suitably drained following the natural flow of the site, and that it demonstrates that the flood risk at the site is reasonable and acceptable.

Landscape Design and Access Statement (LDAS) – The LDAS sets out how the proposed development has evolved including as well as how the site sits within the wider area including the wider pedestrian and cycle route network. The LDAS explains the different features that the proposed development would contain and provides a comprehensive range of artist's impressions of how it would look from various vantage points.

Arboricultural Impact Assessment (AIA) – The purpose of the AIA is to:

- Identify the potential impact of the proposed development upon the existing trees and hedgerows.
- Provide a Tree Retention Plan that identifies the trees and hedgerows to be removed as well as those retained and incorporated into the proposed development including Root Protection Areas (RPA) for the retained trees.
- Identify mitigation proposals to offset any tree or hedgerow loss as part of the development proposals.
- Identify all areas where specific working methods will be required to ensure protection to trees as part of an Arboricultural Method Statement.

The AIA found no high value trees (Category A - Trees of high quality with an estimated remaining life expectancy of at least 40 years) and that all trees were located towards the southern end of the site between the brook and William Nadin Way. The AIA states that the proposed development will ensure the retention and incorporation of the vast majority of trees across the site alongside new tree planting as part of the wider landscape strategy. However, the proposed development will require the removal of several trees within groups G1, G4, G6 and G13, all Category C (Trees of low quality with an estimated remaining life expectancy of at least 10 years, or young trees with a stem diameter below 150mm) to construct the paths and bridge at the southern end of the site. All of the trees that require removal within these groups were considered to be of a low retention value and the removal of these trees should be considered acceptable as new tree planting of higher quality trees more suited to the new development will make a lasting contribution to the visual amenity value and canopy coverage of the site.

The AIA states that the proposed works will not impact significantly upon the long-term health of retained trees and that no works are to be undertaken within the RPAs of retained trees, and as such, all proposed works can be completed without impacting significantly upon the trees subject to the adoption of appropriate working practices.

Coal Mining Risk Assessment (CMRA) – The CMRA is a Phase 1 report which provides an interpretation of published geological, geotechnical and coal mining information. The Coal Authority 'Coal Mining Report', indicates that the site is in an area that could be affected by underground mining. The report states that the site is located within an extensive licensed opencast mining area and is known to have been worked by opencast methods up until 1997. The report states that whilst the site lies within an area of probable (unrecorded) shallow mine workings, likely to have been worked initially by unrecorded methods, the coal is known to have been worked by opencast methods to depths in excess of 30m therefore the 3 no. shallowest coal seams identified as being present below the site are no longer expected to be present. The report states that the location of the opencast highwall is currently unknown, however, based on a review of the aerial imagery from 1999 showing the reinstatement of the opencast area, the highwall could pass within the northern quarter of this site. The reports states that the presence of shallow workings and/or unrecorded mine entries cannot be

discounted within the site boundary to the north of the fault. Notwithstanding the above, the report states that based on the proposed use, they are satisfied that no further investigations or ground treatment are necessary. The report does, however, recommend that a geo-grid textile at the base of the cycle track should be provided to take account of the migration of any unrecorded mine entries and to span the high wall.

Preliminary Ecological Appraisal (PEA) – The PEA was based on an ecological desk study and a Phase 1 Habitat Survey, which is a walkover survey. The PEA sets out records of nearby nature conservation sites, including the pond located in the south-western corner of the site; protected species; and invasive species. The PEA also looks at habitat types across the site identified during the field survey, as well as fauna. The PEA refers to the desk study which identifies records of great crested newts therefore this part of the site has the potential to support great crested newts and potentially, suitable breeding habitat for great crested newt.

### **Relevant planning history**

The provision of an urban park in this area is already established in principle and its provision is a requirement of the planning permission reference 9/2014/0888 and associated S106 Agreement for Site C, William Nadin Way, Swadlincote which was an outline application (all matters except for access to be reserved) for up to 400 dwellings, together with associated highways works, public open space to include children's play space, sports pitches and erection of changing facilities, new urban park, landscaping, associated drainage infrastructure (including SuDs), and creation of pedestrian and cycle ways.

### **Responses to consultations and publicity**

Police Force Designing Out Crime Officer – no objection in principle. Concerns regarding unauthorised use of the facility by motorised off-road vehicles are not sufficient to warrant access prevention measures. The site is well overlooked and planting should be low growing. Would prefer one access from the new housing site as they are close to residents. Seating at the entrances can cause nuisance if near residents, or if isolated.

The Environment Agency – No objection subject to a redesign of the bridge to be clear spanning bank top to bank top. They request informatives relating to addressing any contamination at the site, and referring the applicant to document “The Environment Agency’s approach to groundwater protection”

Environmental Health Officer – no objection.

The Coal Authority – no objection subject to an informative relating to reporting any unexpectedly encountered coal mining features during development being reported to The Coal Authority.

Lead Local Flood Authority Officer – no objection.

The National Forest Company – object for the following reasons:

- Insufficient and unclear provision of woodland planting failing to accord with National Forest Planting requirements,
- The submitted plans are inconsistent with each other,
- Insufficient specimen tree planting,
- Greater use of native rather than ornamental species required, and
- Links to the cycle routes within the Country Park should be set out more clearly

County Highways Authority Officer – no objection.

Derbyshire Wildlife Trust Officer – objects - The Preliminary Ecological Appraisal accompanying the application identified the presence of a number of ponds on and adjacent to the site with at least one of

the ponds identified as providing suitable habitat for great crested newt. Correctly, the report recommends the undertaking of a survey to determine presence/absence of great crested newt. It is essential that the results of further survey work and any required mitigation are provided prior to the determination of the application. On this basis it is considered that the application as submitted is not accompanied by sufficient information to demonstrate the presence or otherwise of protected species and the extent that they may be affected by the proposed development. In the absence of sufficient information on European Protected Species, the Local Planning Authority is unable to discharge its duty in respect of the requirements of The Regulations 2019 in reaching an informed planning decision.

One objection received from the public raising the following comments:

- The Council are proposing and presumably nominating your own planning permission for an urban park off Nadins Way. Will it take as long as the golf range took to develop from Cadley drift mine, and is this a guilt trip due to the concretion of the Swadlincote area?

It should be noted that a further public re-consultation will be undertaken on amended plans and any further comments received on those amended plans will be provided as an update to the Planning Committee meeting.

### **Relevant policy, guidance and/or legislation**

The relevant Development Plan policies are:

Local Plan Part 1 - S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), S3 (Environmental Performance), S6 (Sustainable Access), SD1 (Amenity and Environmental Quality), SD2 (Flood Risk), SD3 (Sustainable Water Supply, Drainage and Sewerage Infrastructure), SD4 (Contaminated Land and Mining Legacy Issues), BNE1 (Design Excellence), BNE3 (Biodiversity), BNE4 (Landscape Character and Local Distinctiveness), INF2 (Sustainable Transport), INF6 (Community Facilities), INF7 (Green Infrastructure), INF8 (National Forest), INF9 (Open Space, Sport and Recreation), H2 (Land North of William Nadin Way).

Local Plan Part 2 – BNE7 (Trees, Woodland and Hedgerows).

The relevant local guidance is:

South Derbyshire Design Guide Supplementary Planning Document  
Trees and Development  
Cycling Strategy

The relevant national policy and guidance is:

National Planning Policy Framework (NPPF)  
Planning Practice Guidance (NPPG)

### **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 the development;
- Impact of the development on highway safety and sustainable transport;
- Impact of the development on Impact of the development on flood risk and drainage;
- Impact of the development on biodiversity; and
- Other matters.

## **Planning assessment**

### **The principle of the development**

The development of the site as an urban park has already been accepted in principle through forming part of the requirements of the local plan allocation, Policy H2, and being a requirement to be provided by planning permission and associated S106 Agreement for the adjacent residential developments already built and under construction. The proposed development will provide a key part of the wider planning of the area and provides the necessary open space to serve the adjacent housing development. It will also link to part of the key proposed cycling routes in terms of the National Cycle Network Route 63 Burton to Leicester as well as linking William Nadin Way to Oversetts Road, connecting residential areas with local employment opportunities. With this in mind, the principle of the development is considered acceptable.

### **Impact of the development on highway safety and sustainable transport**

The most applicable policies to consider are S1, S2, S6, BNE1 and INF2 of the LP1 and the Design SPD. The open space will be adjacent to the housing that it has always been envisaged to form part of. It will directly link to the adjacent housing once that is built out and will provide much needed amenity space for the occupiers of those properties. The proposed development will also provide safe, off-road cycling facilities that will allow residents of both the associated housing and the wider community to have recreation as well as safe links to employment opportunities and more established residential communities to the north, reducing the need to travel by private car. It is noted that the County Highways Authority Officer raises no objection to the proposal on highway safety grounds and this conclusion is considered to be a reasonable one to reach. As such, it is considered the proposed development will cause no demonstrable harm to highway safety.

### **Impact of the development on flood risk and drainage**

The most applicable policies and guidance to consider are S1, S2, S3, SD2 and SD3 of the LP1. The proposed development is mainly made up of landscaping, punctuated by a series of hard surfaced cycle paths. In terms of flood risk, only the southern portion of the site associated with the brook lies within Flood Zone 3a. In terms of the Sequential Test, the development needs to be provided in this location hence there are no sequentially preferable sites in those terms. The proposed development is of a less vulnerable flood risk classification and in terms of the Exception Test, there are clear demonstrable public benefits arising from this development that clearly outweigh the flood risk. It is noted that neither the Environment Agency nor the Lead Local Flood Authority raise an objection to the proposal on these grounds. Whilst acknowledging that other parts of William Nadin Way have experienced recent flooding, it is considered that the proposed development will not cause increased flood risk. The proposed development includes a series of swales across the site to accommodate surface water flows from the hard surfaces and altered landforms to reduce direct run-off. On this basis, the proposed development is considered to be acceptable in terms of flood risk and drainage.

### **Impact of the development on biodiversity**

The most applicable policies to consider are S1, S2, S3, BNE3 and BNE4 of the LP1. Between them, these policies seek to ensure that planning proposals that could have a direct or indirect effect on sites with potential or actual ecological or geological importance including: internationally important sites; nationally important sites (such as SSSIs); Sites of County Importance (such as Local Nature Reserves, Local Wildlife Sites and Local Geological Sites); Ancient woodlands, veteran trees and hedgerows and priority habitats and species will need to be supported by appropriate surveys and assessments sufficient to allow the Authority to fully understand the likely impacts of 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.



The Preliminary Ecological Appraisal accompanying the application correctly identified the presence of a number of ponds on and adjacent to the site, with at least one of the ponds identified as providing suitable habitat for great crested newt (GCN). The report recommended further survey work be undertaken to determine the presence/absence of GCN. Those survey works have not been undertaken due to the timing relative to the time of the year. Derbyshire Wildlife Trust have advised that it is essential that the results of further survey work and any required mitigation are provided prior to the determination of the application and in the absence of sufficient information on European Protected Species, the Local Planning Authority is unable to discharge its duty in respect of the requirements of The Regulations 2019 in reaching an informed planning decision.

At the time of writing the report, other alternative approaches to addressing the lack of appropriate survey work were being considered. One option is requiring the applicant to secure a District Level Licence (DLL) and this approach would secure an appropriate financial contribution payable to Natural England to enhance ecology elsewhere to off-set any adverse impact on the protected species. Another alternative option is to provide appropriate mitigation based on an assumption that the ponds are supporting GCN, rather than their presence being confirmed by survey work. If this precautionary approach is taken then this can be addressed by way of the imposition of a suitably worded planning condition.

An update on this issue will be provided at the meeting of Planning Committee but there are mechanisms available to ensure that the great crested newts will be appropriately addressed.

### **Other matters**

In terms of other matters not addressed above, whilst the impact on existing trees and hedgerows are considered acceptable, the comments of the National Forest Company in respect of new tree and other planting, as well as those of the Police Force Designing Out Crime Officer, are noted. The aspirational and landscape illustrative masterplans accompanying the application provide a sound basis to secure the necessary planting required for developments in this location and as required by the outline planning permission. At this stage, the appropriate tree and other planting are not shown on the detailed landscaping plans. At the time of writing the report, discussions are ongoing to try and address those concerns. An update on this issue will be provided at the meeting of Planning Committee but ultimately, a condition could be imposed to secure compliant tree and other planting within the development, if necessary.

As part of the open space for the adjacent residential development, the open space is required to be provided and, notwithstanding the comments of the Police Force Designing Out Crime Officer, the layout of the cycle paths within it and the connection points to the adjacent housing site are considered to be appropriate and will not unduly adversely affect amenity of the occupiers of neighbouring properties. It is also considered that any anti-social behaviour would be no different to any other area of open space and as such in terms of crime and disorder, as well as residential amenity, the proposal is acceptable.

### **Conclusion**

Subject to the great crested newt issue and the National Forest Company landscaping requirements being resolved, which are anticipated to be addressed in advance of the meeting at which an update will be provided, then the proposed development is generally considered to be acceptable.

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 can be attached to certain types of application where meeting the relevant tests for their imposition. Where necessary, 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).

## Recommendation

Further updates will be provided at the meeting in regard to the impact of the development on great crested newts to deal with the concerns of Derbyshire Wildlife Trust, and tree planting to deal with the concerns of the National Forest Company. Furthermore, any public comments received following the re-consultation will also be reported at the meeting. Subject to these matters being adequately addressed:

**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 plans:

Location Plan – CPS-ALA-00-XX-DR-L-0008 – Rev. P02

Aspirational Masterplan – CPS-ALA-00-XX-DR-L-0006 – Rev. P03

Site Sections – CPS-ALA-00-XX-DR-L-0010 – Rev. P03

Landscape Illustrative Masterplan – CPS-ALA-00-XX-DR-L-0001 – Rev. P05

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. No operations shall commence on site between the southern site boundary on the northern side of William Nadin Way and any point 20m north of Darklands Brook in connection with the development hereby approved (including demolition works, tree works, fires, soil moving, temporary access construction and/or widening or any operations involving the use of motorised vehicles or construction machinery) until a detailed Arboricultural Method Statement (AMS) in accordance with “BS5837:2012 Trees in relation to design, demolition and construction – Recommendations” has been submitted to and approved in writing by the local planning authority and the protective fencing is erected as required by the AMS. The AMS shall include full details of the following:

- a) Timing and phasing of arboricultural works in relation to the approved development.
- b) Details of a tree protection scheme in accordance with BS5837:2012: which provides for the retention and protection of trees, shrubs and hedges growing on or adjacent to the site which are shown to be retained on the approved plans.
- c) Details of any construction works required within the root protection areas as defined by BS5837:2012 or otherwise protected in the approved Tree Protection Scheme
- d) Details of the arrangements for the implementation, supervision and monitoring of works required to comply with the arboricultural method statement

Reason: In order to ensure that trees and hedgerows retained within the development are adequately protected in the interests of visual amenity.

4. Prior to the construction of any cycle track, details of a geo-grid textile to be incorporated at the base of the cycle track shall be submitted to and approved in writing by the local planning authority and the development shall be implemented in accordance with the approved details.

Reason: To ensure that the development is adequately protected from previous mine working activities in the interests of public safety.

5 Notwithstanding the submitted plans, prior to their installation, details of the pedestrian/cycle bridge crossing Darklands Brook, as well as incidental refuse bins, benches, cycle racks, information boards and waymarked signage, including their precise locations and materials, shall be submitted to and approved in writing by the local planning authority and the development shall be implemented in accordance with the approved details.

Reason: In order to ensure that the integrity of the brook is maintained and in the interests of visual amenity.

#### Informatives

a. The Coal Authority advise that if any coal mining features are unexpectedly encountered during development, this should be reported immediately to the Coal Authority on 0345 762 6848. Further information is available on the Coal Authority website at: [www.gov.uk/government/organisations/the-coal-authority](http://www.gov.uk/government/organisations/the-coal-authority).

b. The Environment Agency recommend that developers should:

- Follow the risk management framework provided in government guidance LCRM, on gov.uk, when dealing with land affected by contamination.
- Refer to their Guiding principles for land contamination for the type of information that they require in order to assess risks to controlled waters from the site. The local authority can advise on risk to other receptors, such as human health.
- Consider using the National Quality Mark Scheme for Land Contamination Management which involves the use of competent persons to ensure that land contamination risks are appropriately managed.
- Refer to the contaminated land pages on GOV.UK for more information.

The Environment Agency refers the applicant/enquirer to their groundwater position statements in 'The Environment Agency's approach to groundwater protection', available from gov.uk. This publication sets out their position for a wide range of activities and developments, including:

- Waste management
- Discharge of liquid effluents
- Land contamination
- Ground source heat pumps
- Drainage.



**Item No.** 1.3

**Ref. No.** DMOT/2021/1826

**Valid date:** 10/12/2021

**Applicant:** Dave Barratt

**Agent:** Fairview Arborists Ltd

**Proposal:** The felling of a sycamore tree covered by South Derbyshire District Council Tree Preservation Order no. 130 at 61 Bretby Hollow, Newhall, Swadlincote, DE11 0UE

**Ward:** Newhall and Stanton

#### **Reason for committee determination**

This item is presented at Committee at the discretion of the Head of Planning and Strategic Housing.

#### **Site Description**

The host property is detached and has a rear garden (where the tree is located) backing onto the longer established houses/gardens on Thorn Tree Lane.

#### **The proposal**

The proposal is to fell the existing sycamore tree.

#### **Applicant's supporting information**

Tree report - states the tree dominates the lower section of the rear garden. The application refers to another tree in the past which was removed and has left the sycamore tree's growth unbalanced on one side. The report continues that the tree has a number of cavities in some of the large limbs which have signs of decay and could potentially fail and that the tree takes a lot of light from the house and garden. The applicant has offered to plant a new tree of more suitable species, this tree seen to have outgrown its space.

#### **Relevant planning history**

The TPO was made in 1996 around the time this estate was built; the reason given was to protect the trees being as they provided relief to the otherwise built up nature of the surrounding area. The order appears to show there were four protected sycamores in this garden originally; this however is the last remaining one of the four.

DMOT/2020/0987: Felling of a Sycamore tree. Refused November 2020 and dismissed at appeal (March 2021)

9/2018/0743: Pruning of sycamore. Approved September 2018.

9/2017/0845: Felling of sycamore tree. Refused September 2017 and dismissed at appeal (April 2018).

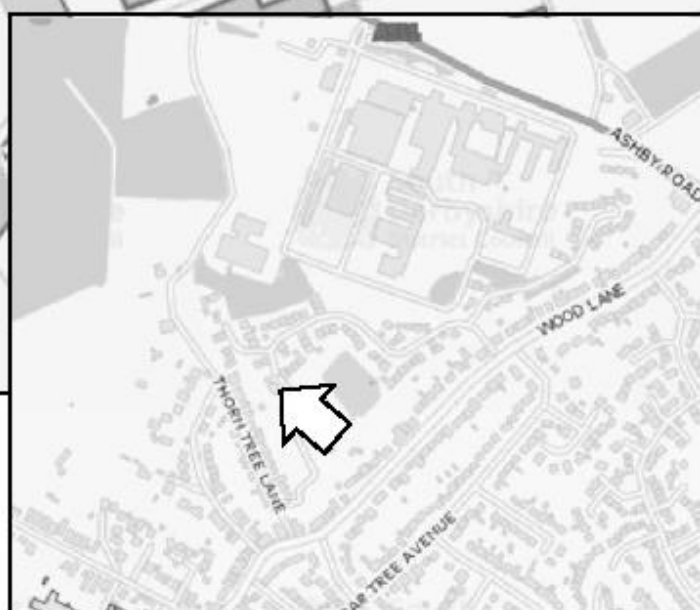
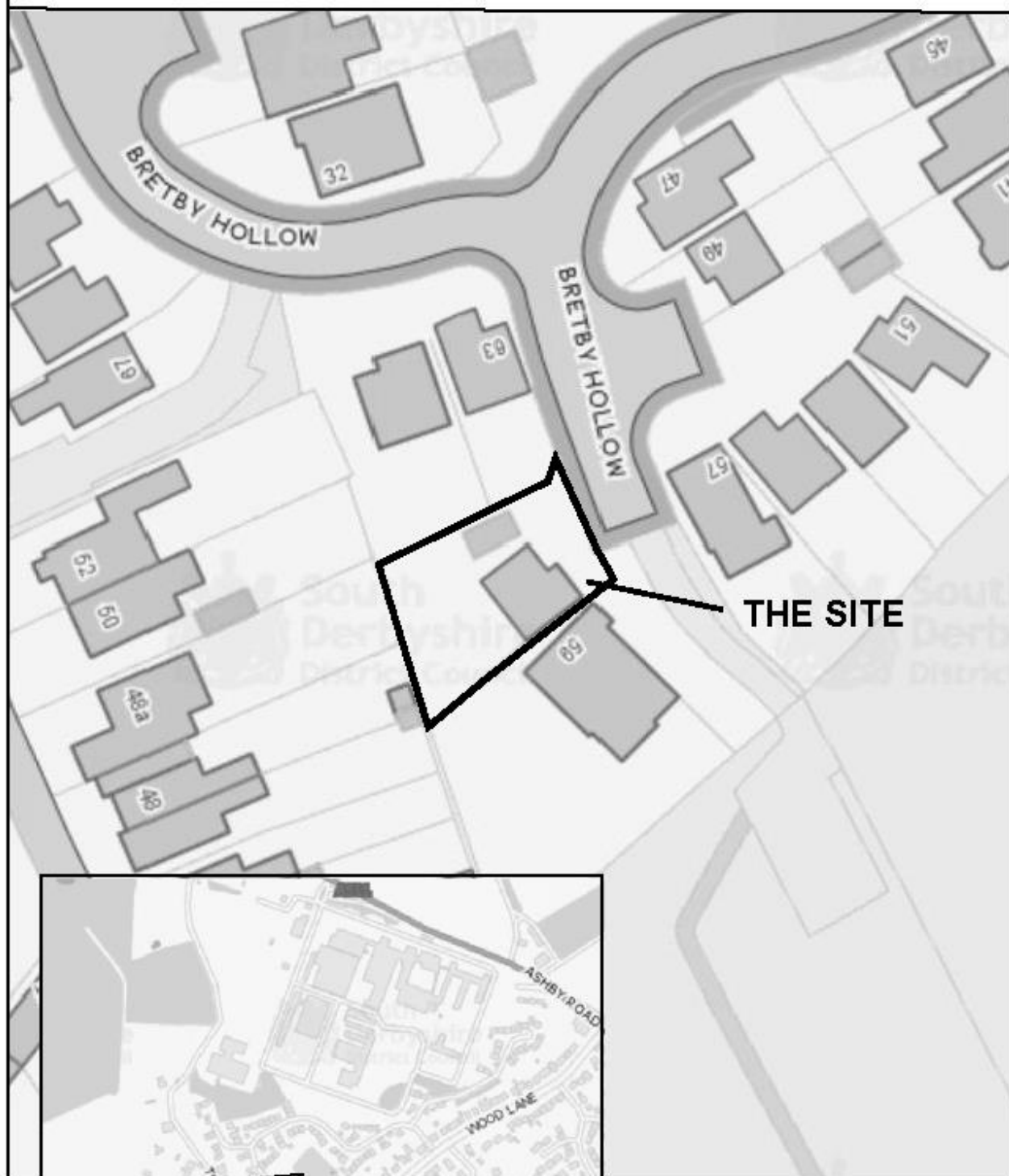
9/2012/0697: Pruning of sycamore to re-balance crown. Approved October 2012.

9/2011/0659: Pruning of two sycamores. Approved October 2011.

#### **Responses to consultations and publicity**

One neighbour is in support of the application, stating:

- a) Have lived at their present address for almost 50 years and have watched this tree grow to its unacceptable height.
- b) The tree when in full leaf blocks light to their house in the early part of the day. During autumn, have lots of leaf fall and sycamore seeds which grow the following spring.
- c) Concerned that as more adverse weather conditions occur, storms could break off large branches and cause damage to property and people.



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South Derbyshire District Council, LA 100013481.2020

Tree Officer - There is no change to the applicants' reasons for felling the tree and the tree report is not different from the previously refused submitted Tree Report. The tree's health is in good condition, and it should not be removed until it is causing harm, in this case the tree is not causing harm to the applicant's home.

### **Relevant policy, guidance and/or legislation**

The relevant Development Policies are:-

Local Plan Part 1 (LP1): S1 (Sustainable Growth Strategy); BNE3 (Biodiversity), BNE4 (Landscape Character and Local Distinctiveness)

Local Plan Part 2 (LP2): BNE7 (Trees, Woodland and Hedgerows)

The relevant national policy and guidance is:-

National Planning Policy Framework (NPPF)

Planning Practice Guidance (PPG)

The relevant legislation is:

The Town and Country Planning (Tree Preservation) Regulations 2012

### **Planning considerations**

In taking account of the submitted documents and individual site circumstances, the main issue central to the determination of this application is whether the proposed works are appropriate, given the protected status of the tree.

### **Planning assessment**

The proposed works relate to the felling of the sycamore tree which is covered by TPO 130. The current condition of the tree is classed as healthy, and it is in good condition. The tree is set 6.5m away from the applicants property, which is a substantial distance to prevent any harm of the tree encroaching the applicants property.

The felling of this tree has been considered on a number of occasions before, most recently March 2021, where the Planning Inspectorate dismissed the request to fell as the tree appeared to have no major defects and no readily visible evidence of disease or decay.

Due to the height and maturity of the tree, it is visually prominent and therefore contributes positively to the character of the area. Because of the tree's stature, felling it would result in a noticeable loss of vegetation which would have an adverse effect on the character and appearance of the area.

Policy BNE4 of the Local Plan Part 1 and policy BNE7 of the Local Plan Part 2 seek to preserve trees of notable standing in the local landscape; their felling only agreed to when properly substantiated. To think differently would undermine the special status these trees deserve.

The tree may cause some overshadowing to the house but only at certain times of the day. Given the distance between the tree and the house, it is considered temporary overshadowing at certain times of the day would not be significant enough to cause a loss of light or gloomy lighting levels to the applicant's living conditions. The tree is not considered harmful to the applicant's living conditions.

The tree has not outgrown its location because there are parts of the rear garden which can be used which are not directly beneath the canopy. This suggests that the tree is not unduly large for its position. The tree will continue to grow. However, it is not causing harm to the applicants property and felling the tree on these grounds cannot be reasonably justified. If the tree canopy grows larger, causing harm to the property, a suitable suggestion would be to prune back the tree. It is considered that the proposal should be refused because it would not meet the aims and objectives of policies BNE3, BNE4 and BNE7.

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**

It is considered that the proposal should be **refused** because it would not meet the aims and objectives of policies BNE3, BNE4 and BNE7.

1. This sycamore tree is a prominent landscape feature in the area and makes a positive contribution to the visual amenity of the area. Policies BN3 and BNE4 of the Local Plan Part 1 and Policy BNE7 of the Local Plan Part 2 seek to preserve trees of notable standing in the local landscape unless the reasons for work can be properly substantiated and the National Planning Policy Framework (NPPF) seeks to protect and enhance valued landscapes. The removal of the tree would reduce that level of amenity in what is otherwise an urban context and, given the tree appears to be healthy, to allow its removal could undermine the principle of the TPO and put other similar healthy trees at risk. Despite the reasons given to justify the felling of the tree, its removal is therefore considered to be unacceptable and contrary to the aforementioned policies and guidance.

## 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
<a href="#">DMPA/2021/0342</a>	Melbourne	Melbourne	Dismissed	Delegated
<a href="#">DMPA/2020/0372</a>	Repton	Repton	Dismissed	Delegated



## Appeal Decision

Site visit made on 18 January 2022

**by G Bayliss BA (Hons) MA MA MRTPI IHBC**

an Inspector appointed by the Secretary of State

Decision date: 15 February 2022

**Appeal Ref: APP/F1040/W/21/3283155**

**Land to the rear of 230 Station Road, Melbourne, Derby DE73 8BQ**

- 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 Sahota against the decision of South Derbyshire District Council.
- The application Ref DMPA/2021/0342, dated 24 February 2021, was refused by notice dated 21 May 2021.
- The development proposed is described as 'the erection of 2no. dwellings with associated new access and landscaping on land to the rear of 230 Station Road, Melbourne, Derby, DE73 8BQ adjacent approved planning application DMPA/2020/0103'.

### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. I have taken the address of the proposal from the appellant's description of development as this accurately identifies the site.

### Main Issue

3. The main issue is whether the appeal site is an appropriate location for housing having regard to the settlement strategy and the effect on the countryside.

### Reasons

4. The appeal site is located to the south east of dwellings along Station Road which have long, linear rear plots extending down the bankside. Between the rear of the most easterly plots and Carr Brook, a development of three dwellings is underway and the appeal proposal would form a continuation of this development. It would extend the new development to run across all rear plots of this group of properties on Station Road.
5. Between the appeal site and the settlement boundary is a grassed field which extends from Station Road down to Carr Brook, and the line of the settlement boundary is marked by a mature hedgerow. Land on the far side of Carr Brook is open agricultural fields.
6. It is common ground between parties that the appeal site is outside of any defined settlement boundary and is therefore located in open countryside. Policy H1 of the South Derbyshire Local Plan Part 1, 2016 (LP1) sets out a 'Settlement Hierarchy' and identifies Melbourne as a Key Service Village where the development of sites adjacent to settlement boundaries may be considered appropriate as exception sites. However, the appeal site cannot be regarded as

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lying adjacent to the settlement boundary as the open field running down from Station Road is a significant open break, visually severing any connection between the appeal site and the settlement boundary. It has clearly defined boundaries, no intervening buildings and expansive and uninterrupted views across it. There is no policy support in this regard.

7. Policy BNE5 of the South Derbyshire Local Plan Part 2, 2017 (LP2) lists the exceptions allowed in rural areas, outside settlement boundaries. Key to this appeal is whether the site can be regarded as the infilling of a small gap within small groups of houses. Whilst the site aligns with the rear plots of houses on Station Road and would be a continuation of the new development alongside it, the site borders open countryside to the rear and adjoins the field which is between it and the settlement boundary. I have already concluded that the adjoining field represents a significant open break, and this cannot be regarded as a small gap. The appeal site cannot, therefore, be regarded as infill under the terms of the policy.
8. As there is no specific distance in Policy BNE5 to define what is a 'small gap', the appellant suggests that guidance on preferred walking distances to reach local amenities demonstrates that the distance to the appeal site is considered acceptable. However, little information has been submitted in support of this information directly relating to the site and its access to the main settlement and, in my view, Policy BNE5 clearly explains how to determine which sites would comply with it.
9. The appellant considers that the relationship with the adjacent site under construction is relevant to the appeal decision. Whilst the Council has accepted that the appeal scheme would be a natural extension to it, and has not objected to the design and layout, it does not follow that the scheme is in accordance with Policy BNE5, for the reasons stated above. Furthermore, the Council has explained that there were sufficient material considerations to outweigh the planning policy objections on the site with planning approval, but that the same material considerations do not apply in this case.
10. The proposal would deliver an additional two dwellings that would add to the District's housing stock and meet with the Government's aims to boost the supply of housing, but this would be a limited benefit given the small scale of the proposal and the Council's stated ability to demonstrate more than a five year supply of deliverable housing land, which is not disputed by the appellant. The Council's policies concerning the strategy for delivering housing, are also up to date. There would also be some economic and social benefits through the construction of the dwellings, and from subsequent activities of the future residents in the local area. However, these benefits would be limited.
11. The appellant refers to paragraph 118 (now paragraph 120(d) of the National Planning Policy Framework (the Framework)) in support of their case. However, the Council can demonstrate a deliverable supply of housing land and therefore land supply is not constrained in the Council area. Furthermore, there is little evidence suggesting that the land is under-utilised.
12. For the reasons given, the development would not be an appropriate location for housing having regard to the settlement strategy and the effect on the countryside. I consider that the harm identified significantly and demonstrably outweighs the benefits that the proposal would generate. As well as to the Framework, the proposal would be contrary to Policies H1 of LP1, and BNE5 of

LP2, and conflict with the Sustainable Growth Strategy set out under Policy S1 of LP1. These policies recognise the need for new development to be consistent with the principles of sustainable development.

**Other Matters**

13. I have had regard to other concerns raised by interested parties, including over-development of the site, size of dwellings and plots, traffic and highway safety and impact on neighbouring amenity. Ultimately, the Council does not oppose the proposal on grounds other than those set out in the main issue and, taking account of the evidence before me, I have not identified other matters of such significance as to result in further benefits or harms to be factored into the planning balance.

**Conclusion**

14. I therefore conclude that the proposal would be contrary to the development plan and material considerations do not lead me to decide otherwise. For these reasons, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

*G Bayliss*

INSPECTOR





## Appeal Decision

Site visit made on 7 September 2021

by **J Williamson BSc (Hons) MPlan MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 16 February 2022

**Appeal Ref: APP/F1040/W/21/3276565**

**Land adjacent to 42 Main Street, Repton, Derby DE65 6EZ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Kimran Khan against the decision of South Derbyshire District Council.
- The application Ref DMPA/2020/0372, dated 9 April 2020, was refused by notice dated 7 April 2021.
- The development proposed is the erection of a detached dwelling with detached garage, associated landscaping and retention of works to improve the existing access.

### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The address given in the header above differs a little to that provided on the planning application form, which refers to the site being number 42 Main Street. However, as noted in the description of proposed development provided on the application form, and as is clear from the submitted plans, the site is adjacent to No. 42. I have therefore corrected the site address, and my Decision is based on this.
3. The description of proposed development provided above also differs a little to that provided on the planning application form. I have removed references to a previous application and the site address, as neither of these things describe development. I have also been provided with evidence that the appellant agreed to the change of description suggested by the Council. I have made my Decision on this basis.
4. A revised National Planning Policy Framework (the Framework) was published in July 2021, after the appeal was submitted. Parties were given the opportunity to comment on any implications of the revisions for the appeal. I have taken account of the revised Framework in reaching my Decision.

### Main Issues

5. The main issues are:
  - whether the site location would be suitable for a dwelling, having regard to relevant local and national planning policies,
  - the effect of the proposal on the character and appearance of the area,

- the effect of the proposal on the living conditions of occupiers of existing neighbouring properties, in particular No. 42 Main Street with regard to noise and disturbance from cars, and
- whether the proposal would have an unacceptable impact on highway safety.

## Reasons

### *Suitability of location for housing*

6. Policy S1 of the South Derbyshire Local Plan: Part 1, 2016, (LPP1), outlines the sustainable growth strategy of the plan to meet the objectively assessed housing and commercial needs of the area during the development plan period.
7. Policy H1 of LPP1 outlines the area's settlement hierarchy, which is based on the range of services and facilities available within each settlement. The policy requires the distribution of new development to accord with the settlement hierarchy to achieve the sustainable growth strategy outlined in Policy S1 of LPP1.
8. Although a small section of the site (the access area) lies within the defined settlement boundary of the village of Repton, one of the 'Key Service Villages' in the settlement hierarchy, parties agree that the site is outside of, and adjacent to, the defined settlement boundary. The site is therefore designated as being in a 'Rural Area' for the purposes of the settlement hierarchy.
9. The only development acceptable in 'Rural Areas' is "*limited infilling*" (a matter I shall return to below) and conversion of existing buildings. The proposal is evidently not a conversion of an existing building. Additionally, Policy H1 allows for the development of sites adjacent to the settlement boundaries of 'Key Service Villages' for exceptions or cross subsidy sites. However, I have not been provided with any evidence that the site constitutes an exceptions or cross subsidy site.
10. Policy STD1 of the South Derbyshire Local Plan: Part 2, 2017, (LPP2), reiterates the settlement hierarchy outlined in Policy H1 of LPP1, adding that within 'Rural Areas' development will be limited to that outlined in Policy BNE5 of LPP2.
11. Policy BNE5 of LPP2 extends the types of development in 'Rural Areas' referred to in Policy H1 of LPP1 to include development that is otherwise essential to a rural based activity, or unavoidable outside settlement boundaries. I have not been provided with any evidence to suggest the proposal is essential to a rural based activity, or unavoidable outside settlement boundaries.
12. BNE5 also allows for "*infill development*", subject to it being in keeping with the character of the locality and representing "*the infilling of a small gap for not normally more than two dwellings, within small groups of housing*", and not having an undue impact on landscape character and quality, biodiversity, the best and most versatile agricultural land, or heritage assets.
13. Policy H1 of the Parish of Repton Neighbourhood Development Plan 2016-2028, (2020), (PRNDP), requires development to accord with the settlement boundaries of the villages of Repton and Milton, as outlined in the PRNDP. Outside of the settlement boundaries the only housing development that is



allowed is that solely or primarily for affordable housing. The proposal is not for affordable housing.

14. The parties acknowledge that there is no definition of the term "*infill*" development within local or national planning policies or guidance. The appellant has drawn my attention to several appeal decisions referenced by Council Officers when dealing with "*infill*" development at planning committee. However, as the appellant is aware, each proposal must be considered on its merits taking account of the specific characteristics of the site. I have formed my judgement on this basis.
15. As the proposal is for one dwelling it satisfies that aspect of Policy BNE5 which defines the number of dwellings allowed. I acknowledge that the site is adjacent to the residential plot of No. 42 Main Street. However, the nearest dwelling south of the site on the western side of Main Street is around 80 m away. There are no houses near the western boundary of the site; and the eastern boundary of the site is adjacent to Main Street, the road and footpaths of which separate the site from dwellings on the eastern side of Main Street.
16. Within this context the proposal would not constitute "*infilling of a small gap*" within a small group of houses. Having reached this conclusion, for the purposes of Policy BNE5 of LPP2 it is not necessary for me to consider whether the proposal is in keeping with the character of the locality nor whether it would have an undue impact on landscape character and quality, biodiversity, the best and most versatile agricultural land, or heritage assets. Nevertheless, for completeness and to assist in concluding on the suitability of the location for a dwelling, I am satisfied that the proposal would not have any undue impact on biodiversity, best agricultural land, or heritage assets. I shall return to the issue of character and appearance of the area below.
17. Regarding the effect of the proposal on landscape quality, as noted, except for the access, the site lies within designated countryside. However, the site comprises a piece of vegetated land located on the western side of Main Street at the end of the southern perimeter of the built development of Repton. There are trees and hedges along the eastern, southern, and western boundaries and a hedge between the northern boundary of the site and the plot of No. 42. It is therefore sited between this dwelling, to the north, the access driveway of an employment site to the south, a main road with dwellings to the east and open fields beyond the western boundary. The open fields cannot be seen from the road, and the proposed buildings would not be visible from the fields.
18. The access/entrance to the employment site consists of brick pillars, a brick wall to the side of one of the pillars with a commercial advertisement sited within it, and metal gates. There is a steel, sub-station enclosure located just outside the south-eastern corner of the site and close to the access into the employment site. Outbuildings located within the plot of No. 42 can be seen from the road, the largest of which is highly visible when travelling along the road in a south to north direction.
19. As noted, the nearest dwelling south of the access to the employment site is around 80 m away. The intervening land consists of a landscaped buffer, around 25 m deep, between Main Street and the eastern-most part of the car parking area associated with the employment site, which is screened by trees. On the eastern side of Main Street, the defined settlement boundary and the built-up boundary of the settlement of Repton both end at the southern

boundary of No. 63, which is sited opposite the access to the employment site. The land south of No. 63 and opposite the landscape buffer referred to consists of an open field with trees and hedges around its perimeter.

20. The appellant has drawn my attention to a previous appeal related to the area of land I have referred to as a landscape buffer, Ref APP/F1040/W/18/3207758. Within the Decision my Inspector colleague considered the two stretches of undeveloped land I have described to form a distinctive break in the built form as one travels south out of Repton, adding that development ceases at practically the same point on both sides of the road, ending with the entrance to the employment site on one side and No. 63 Main Street on the other. Bearing in mind the site circumstances I have described above, I share these views.
21. For the reasons outlined, I consider the development of the site for a dwelling would not harm the landscape quality or the character, appearance, or intrinsic beauty of the countryside. As such, the proposal would accord with Policy BNE4 and point 'v' of Policy BNE5 of LPP1, and Policy OS2 of the RPNDP, which seek to protect landscape character and quality, including views of and from the countryside.
22. Paragraph 80 of the Framework advises that planning policies and decisions should avoid the development of isolated homes in the countryside, unless one or more of the circumstances outlined in sub-sections a) to e) apply. In light of the Braintree judgement<sup>1</sup> on the concept of 'isolated' homes in the countryside, given the close proximity of the site to the built-up settlement of Repton, I consider the proposal would not result in an isolated home in the countryside vis-à-vis paragraph 80 of the Framework.
23. As noted, Repton is designated as a 'Key Service Village' within the settlement hierarchy, which is based on the range of services and facilities available within each settlement. Thus, within Repton there is a local convenience store and a few other shops, a post office, a few restaurants and public houses, a primary school, preparatory and public schools, a couple of churches, and some indoor and outdoor leisure facilities. There is also access to public transport, with bus stops located within a kilometre of the site. Buses are available to surrounding urban areas such as Derby and Burton, which provide a full range of services, facilities and employment opportunities. The site is located within walking and cycling distance of the village services and facilities, and it is physically a little closer to them than No. 63 Main Street on the opposite side of the road.
24. Hence, future occupiers of the proposed dwelling would have access to a range of services and facilities that would assist in meeting day-to-day needs. Although it is likely that future occupiers of the proposed dwelling would use private motor vehicles as their primary mode of transport, eg for larger shopping trips, to access employment opportunities and to access services and facilities not available within the village, the proposal does provide the opportunity for modes of transport other than the private motor vehicle. It is recognised within the Framework (paragraph 105) that opportunities to maximise sustainable transport solutions will vary from urban to rural areas, and this should be considered in decision-making.

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<sup>1</sup> Braintree DC v SSCLG, Greyread Ltd & Granville Developments Ltd [2018] EWCA Civ 610.



25. Considering all the above, as the site is outside the defined settlement boundary and does not represent "*infill development*" as outlined in Policy BNE5 of LPP2, nor does it constitute any of the other types of residential development that local development plan policies allow for, I conclude that the proposal would not accord with policies H1 of LPP1, BNE5 of LPP2 or H1 of the PRNDP. I note that reason for refusal one on the Council's Decision Notice refers to Policy H2 of the PRNDP. However, as this policy relates to development within settlement confines it is not applicable to the proposal.
26. As outlined in paragraphs 2 and 47 of the Framework, planning law requires applications for planning permission to be determined in accordance with the development plan unless material considerations indicate otherwise. The Framework is a significant material consideration.
27. Paragraphs 7 and 8 advise that the purpose of the planning system is to contribute to the achievement of sustainable development, and the achievement of sustainable development has three interdependent, overarching objectives: economic, social, and environmental.
28. Paragraph 60 advises that to support the Government's objective of boosting the supply of homes, it is important that a sufficient supply of land comes forward. Paragraph 69 advises that small and medium sized sites can make an important contribution to meeting the housing requirements on an area; as such, local planning authorities are advised to support the development of windfall sites. The proposal would provide one additional dwelling on a small, windfall site.
29. Paragraph 79 advises that to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. The provision of one additional dwelling would make an all-be-it minor contribution to enhancing the vitality of rural communities. I have concluded above that the proposal would not result in an isolated dwelling in the countryside.
30. As outlined above, given that Repton is a 'Key Service Village', future occupiers of the proposed dwelling would have access to a range of services and facilities, though not extensive, to assist in meeting day-to-day needs. The proposal would offer some opportunities for future occupiers to use modes of transport other than the private motor vehicle. Additionally, I have concluded above that the proposal would not harm the intrinsic beauty of the countryside.
31. Taking account of the factors outlined above, I consider the proposal would not threaten or undermine the sustainable growth strategy of the plan, outlined in Policy S1 of LPP1, to meet the objectively assessed housing needs of the area. Nor would the proposal undermine the broad aims and objectives of policies H1 of LPP1, BNE5 of LPP2 or H1 of the PRNDP, which, among other things, seek to distribute new housing development in accordance with the sustainable growth strategy in Policy S1 and protect the quality and character of the countryside landscape. Therefore, these other considerations lead me to decide against the development plan and conclude that the site location would be suitable for a dwelling, having regard to relevant local and national planning policies.

*Character and appearance of the area*

32. As noted, the site is located to the west of Main Street adjacent to the settlement boundary of the village of Repton. As with many of the properties on the western side of Main Street immediately north of the site, the land slopes up from the road. The proposed dwelling would therefore be clearly visible from the road.
33. Residential development within the vicinity of the site is mainly sited on both sides of Main Street fronting the road. The properties immediately north of the site, and the plots within which they sit, are generally larger on the western side of main Street than those on the eastern side. Additionally, the dwellings on the western side are set back at different distances from, and oriented at slightly different angles to, the road.
34. The properties mainly comprise two-storey detached and semi-detached dwellings, of varying architectural styles and sizes. That said, most of the properties, even the more modern detached and semi-detached dwellings opposite the site include variations in form such as porches, canopies, gables, and/or varied roof ridge heights and roof pitches. Additionally, in most cases the size of the window and door openings are modest and proportionate to the size of the elevations within which they are sited. The existing dwellings are constructed of a limited mix of external materials, mainly red brick elevations, though some are rendered or have rendered sections, with tiled roofs.
35. I accept that the siting, orientation, and size of the proposed dwelling would be in keeping with the character and appearance of the surrounding area. However, in contrast with most existing properties within proximity of the site, the proposed dwelling would have a geometric, oblong block form, with uninterrupted elevations and roof slopes. Additionally, it would have a large mainly glazed opening in the centre of the front elevation extending virtually from the ground to eaves level. Furthermore, the window openings on the front and rear elevations would be relatively large, such that the overall extent of glazing on these 2 elevations would cover a disproportionate amount of the elevations. I accept that the rear elevation would be barely visible from public vantage points. However, the front elevation would be very visible from the road. The proposed use of grey timber cladding on the front and rear elevations and a yellow brick on the side elevations would also further emphasise the contrast of the proposed dwelling to properties within proximity of the site.
36. I therefore conclude that the design and external materials of the proposed dwelling would not be in keeping with other dwellings within proximity of the site, which would be harmful to the street scene. As such, the proposal would significantly harm the character and appearance of the area. Consequently, it does not accord with Policy BNE1 of LPP1, Policy H4 of the PRNDP, or design policies in the Framework. Collectively, and among other things, these policies require new development to be of high-quality design and to be sympathetic to and reflect local character.

*Living conditions – existing occupiers*

37. Vehicle access to the proposed dwelling would utilise an existing access off Main Street and a track which runs between the southern and northern side boundaries of Nos. 40 and 42 respectively, before diverting south along the



- rear garden boundary of No. 42. The existing track passing between Nos. 40 and 42 currently provides access to agricultural fields west of the properties and to a telecommunications site located within one of the fields.
38. As noted, the land comprising the site and No. 42 (and other properties along the western side of Main Street) rises from Main Street to the fields beyond. As such, the section of track that would be adjacent to the rear garden boundary of No. 42 would run along a contour above the rear garden, around the height of the first-floor level of the property.
39. Although I accept that agricultural and telecommunications vehicles can and do use the existing access and track, in the absence of any substantive evidence to demonstrate regular use, and from my observations on site, I consider it likely that the extent of use by such vehicles is very limited. Additionally, and although 24-hour access is required to the telecommunications site, vehicle access to the fields and telecommunications site are likely to occur primarily during the day.
40. As the proposed dwelling would have 4 bedrooms it is not unreasonable to assume that future occupants are likely to have 2 or 3 motor vehicles. The proposal would result in such domestic vehicular traffic regularly passing between Nos. 40 and 42. Moreover, such traffic would also pass the rear garden boundary of No. 42. Such vehicle movements would often occur at night when vehicles would have their lights on. At the time of my visit, the southern and northern side boundaries of Nos. 40 and 42 respectively had relatively high, dense vegetation along them. Whereas the rear western boundary of No. 42 comprised of a low-level post and rail fence with a low, thin hedge behind it.
41. I consider the introduction of domestic vehicular traffic associated with a dwelling of the size proposed, particularly when passing the rear boundary of No. 42, would result in unacceptable noise and disturbance to existing occupiers of No. 42, from vehicle engines, and vehicle lights at night. Occupiers of the existing dwelling would experience such noise and disturbance both from within the dwelling and outside in the rear garden.
42. The appellant suggests that the track could be covered with a material that would produce less noise when vehicles travel along it than the recently laid crushed stone. Additionally, the appellant considers that a boundary treatment could be erected to mitigate against noise and disturbance. However, I have no substantive evidence before me to demonstrate that the track could be covered in a material that would significantly reduce vehicle engine noise. Nor do I have any evidence to demonstrate that a boundary treatment could be erected that would suitably mitigate against the noise and disturbance I have identified.
43. I therefore conclude that the proposal would significantly harm the living conditions of occupiers of the existing neighbouring property No. 42 Main Street, due to noise and disturbance from domestic vehicles. Therefore, the proposal does not accord with policies SD1 and BNE1 of the LPP1 or sub-paragraph 130 (f) of the Framework. Collectively, and among other things, these policies require new development to not have an undue adverse impact on the living conditions of occupiers of existing neighbouring properties.

*Highway safety*

44. The access is positioned directly off the western side of Main Street, a classified road which is subject to a 30-mph speed limit. The road carries traffic from the south of the Village onto High Street and into and through Repton, and from Repton travelling south. The properties either side of Main Street are accessed off it. The proposal includes retention of works already carried out; crushed stone has been laid from the inner edge of the pavement along the extent of the track. The Council suggest that the gradient of the track is much steeper than the gradient recommended in the Local highway Authority's (LHA) current design guidance. The appellant has not challenged this assertion and I have no justified reason to do so either.
45. Immediately south of the access is the access to No. 42 and the front garden of the dwelling. Immediately north of the access is the front garden of No. 40. Both properties have dwarf stone walls along their respective front boundaries, and in both cases immediately behind the boundary walls the land rises quite steeply. The strip of land at the front of No. 40 is planted with small trees and hedges, and there were overgrown weeds behind the boundary wall at the time of my visit. There is a telegraph pole sited around 2-3 m north of the access, close to the southern end of the boundary wall of No. 40. The strip of land at the front of No. 42 is planted with plants and shrubs.
46. I acknowledge the appellant's reference to Manual for Streets (MfS) and the acceptance of the (x) distance being 2 m from the carriageway edge in lightly trafficked and slow speed situations. However, I have not been presented with any substantive evidence to demonstrate that Main Street is either lightly trafficked or that vehicles travel along the road at speeds below the speed limit. I therefore consider, in accordance with guidance in MfS, that within the context of the site the (x) distance should be 2.4 m and the (y) distance should be 43 m, in both directions.
47. The existing visibility splays in both directions fall well below the recommended 43 m, the northern splay being around 25 m maximum, and the southern splay being around 10 m maximum. Achieving the required visibility splays involves crossing of third-party land, ie the strips of land at the front of Nos 40 and 42 referred to above. The appellant contends that the landowner of No. 40 has agreed to the northern visibility splay crossing their land but notes that the owners of No. 42 have refused. The only way the recommended visibility splays can be provided is by ensuring the required areas of the land associated with Nos 40 and 42 are kept clear of obstructions. At present it appears that the owner of No. 42 does not wish to reach such an agreement and, notwithstanding any communication that may have taken place between the appellant and the owner of No. 40, I have not been presented with any evidence that a legally binding mechanism to secure provision of the visibility splay exists. Consequently, without such a mechanism, I cannot be certain that appropriate visibility splays would be provided and could be retained in either direction.
48. The appellant points out that there has not been a reported vehicular collision at the access junction for 22 years and that there is no severe braking (skid marks) on the road. I appreciate this is the case. However, I concluded above that I consider it likely that the current extent of use of the access is very limited. I therefore consider vehicular use of the access generated by a



dwelling of the size proposed would represent a significant increase in use of the access, which would increase the chances of collision.

49. I have acknowledged that the gradient of the access track is steeper than that recommended by the LHA. However, the appellant has indicated that he is happy for the gradient to be suitably altered and for an appropriate surface to be laid. I am satisfied that the gradient of a section of the track could be reduced to a suitable gradient and that an appropriate surface could be laid, matters which could have been secured by condition should I have been allowing the appeal.
50. Notwithstanding this, given the increased use of the access with its substandard visibility splays, and the lack of any mechanism that would secure suitable visibility splays, I consider the proposal would have an unacceptable impact on highway safety.
51. I note that the appellant has drawn my attention to several appeal decisions where Inspector colleagues have allowed appeals where the recommended visibility splays have not been provided. I accept that there are instances where it is not necessary to require visibility splays to the recommended standard. However, I do not think this is one of those instances. Furthermore, I have not been provided with full details of the cases the appellant refers to, nor have I been to the relevant sites. As such, I cannot be certain of the degree to which any of these cases are comparable to the case before me. Regardless, I must assess the case before me on its merits and the evidence provided.
52. Due to the lack of suitable visibility splays, within the circumstances of the site, I conclude that the access for the proposed use would not be safe when vehicle users egress the site, a situation which I consider would have an unacceptable impact on highway safety. For these reasons the proposal does not accord with Policy INF2 of the LPP1 or paragraphs 110 and 111 of the Framework, which collectively, and among other things, require new development to provide a safe access for all users and to refuse proposals if there would be an unacceptable impact on highway safety.

### **Other Considerations, Planning Balance and Conclusion**

53. I have outlined some other considerations above regarding the suitability of the location for the proposed dwelling, concluding that although the proposal technically does not accord with various development plan policies, it would not threaten or undermine the sustainable growth strategy of the plan or the broad aims and objectives of development plan policies to direct development to areas that provide suitable services and facilities. I have also concluded that the proposal would not harm the quality or character of the countryside landscape.
54. The appellant has suggested in their final comments that, contrary to the Council's view, the Council cannot demonstrate a 5-year housing land supply (5YHLS); therefore, the appellant believes paragraph 11 d) of the Framework is engaged. However, the appellant has not provided any details regarding the matter. Even if the Council does not have a 5YHLS, although the provision of one additional dwelling would be a minor social benefit, it would not make a significant contribution to addressing any shortfall, whatever the level. As such, I attach limited weight to the provision of one dwelling in the balance.

55. The appellant contends that the appeal site could be used for camping for at least 28 days per year, and that such a use would generate vehicle use of the access/track. I have not been provided with details that confirm the feasibility of the contended use and therefore cannot conclude whether it would be possible. Regardless, even if it is theoretically possible, given the sloping nature of the site and lack of any basic domestic facilities, I am not convinced that such a use is more than a theoretical suggestion. As such I attach little weight to the matter.
56. The appellant proposes to install a range of energy saving facilities as part of the proposal, such as a biomass system, ground source heating and solar panels. Although full details have not been presented to me, I accept that such facilities in principle would reduce the use of non-renewable energy. However, given the small-scale nature of the proposal, such benefits would be minor and therefore attract limited weight.
57. The proposal would also provide economic benefits during the construction phase. Again, given the scale of the proposal such benefits would be minor, and I therefore attach little weight to the matter.
58. The appellant has suggested that there are benefits with respect to the site not being in a flood risk area, not being within proximity of heritage assets, and having no detrimental impact on biodiversity. However, these are matters related to the requirements of other planning policies, rather than benefits. As such, I attach no weight to them.
59. Notwithstanding my conclusion regarding the suitability of the site location for a dwelling, I have concluded that the proposal would significantly harm the character and appearance of the area and the living conditions of existing occupiers of No. 42 Main Street, and would result in an unacceptable impact on highway safety. I consider that all other considerations outlined do not outweigh the harms I have identified. I therefore conclude that the appeal is dismissed.

*J Williamson*

INSPECTOR