

REPORT OF THE HEAD OF COMMUNITY AND PLANNING SERVICES

SECTION 1: Planning Applications

SECTION 2: Planning Appeals

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

1. PLANNING APPLICATIONS

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

Reference	Item	Place	Ward	Page
9/2012/0804	1.1	Coton in the Elms	Seales	1
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When moving that a site visit be held, Members will be expected to consider and propose one or more of the following reasons:

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

Item 1.1

Reg. No. 9/2012/0804/FH

Applicant:
MR & MRS CHRISTIAN &
JOANNE CRISPIN
14 CHURCH STREET
COTON IN THE ELMS
SWADLINCOTE
DE12 8EZ

Agent:
MR & MRS CHRISTIAN &
JOANNE CRISPIN
14 CHURCH STREET
COTON IN THE ELMS
SWADLINCOTE
DE12 8EZ

Proposal: THE CREATION OF A VEHICULAR ACCESS (AMENDED APPLICATION TO 9/2012/0322) AT 14 CHURCH STREET COTON IN THE ELMS SWADLINCOTE

Ward: SEALES

Valid Date: 30/10/2012

Members will recall deferring a decision on this case to allow for a site visit and for a further update on negotiations with Housing and Legal Services (a verbal update will be given at the meeting). The report is otherwise unchanged.

Reason for committee determination

Councillor Hall (ward member) requests that the committee determine the application as local concern has been expressed about a particular issue.

Site Description

The application property is a semi-detached ex-authority owned house on Church Street that sits approximately 8m from the public road to its frontage. There is an approximate 0.45m increase in land levels from said road to the front elevation of the house.

Proposal

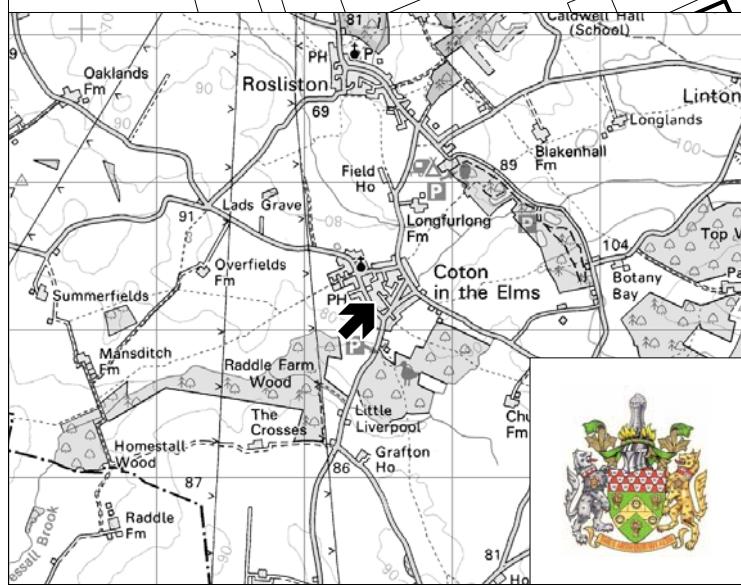
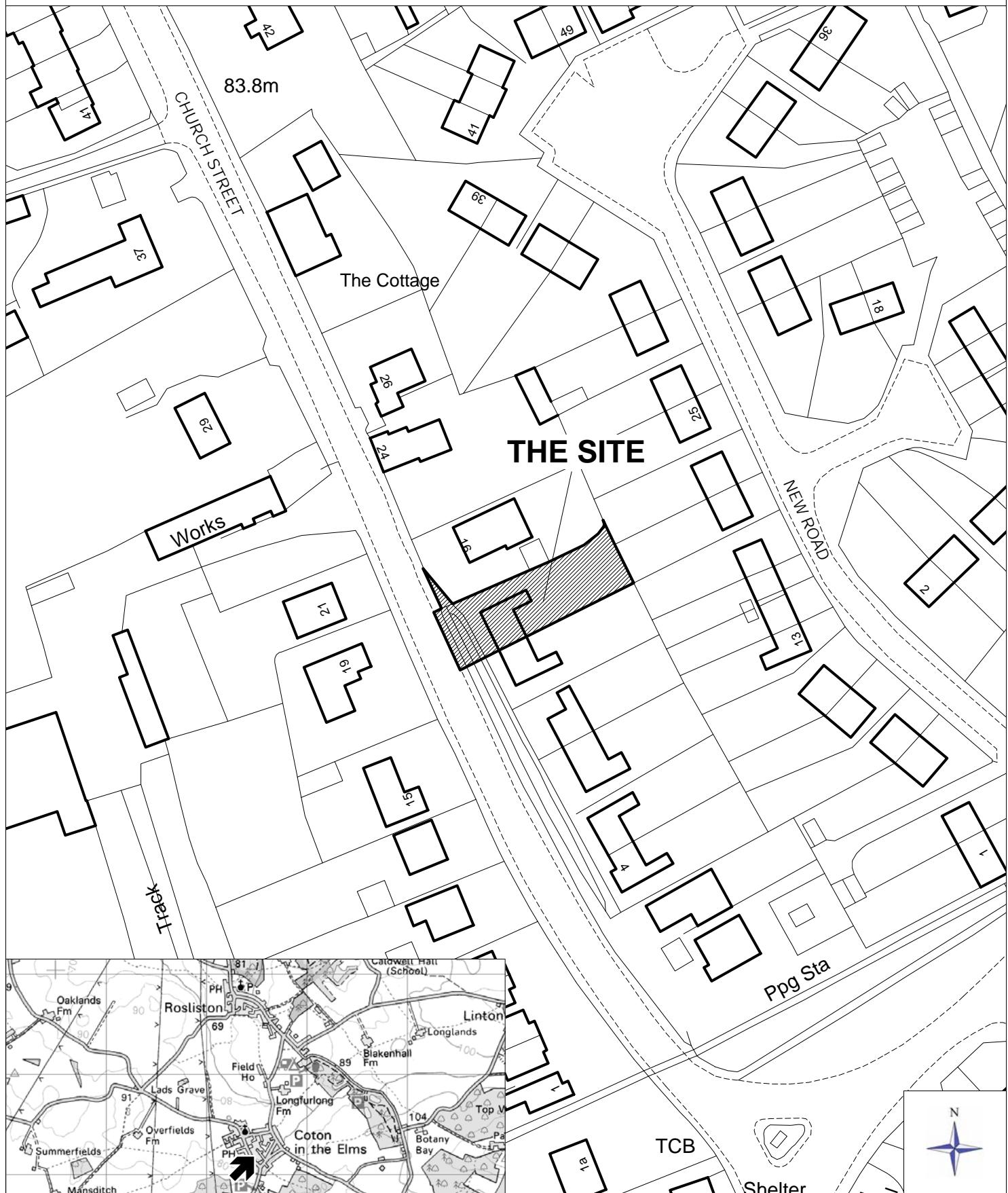
The application seeks to gain permission for a proposed vehicular access in the forward most northern corner of the plot resulting in the creation in an off-street parking space at the front of the property.

Applicants' supporting information

An occupier of No.16 Church Street has agreed to allow the required visibility splay to facilitate the creation of the vehicular access.

Planning History

9/2012/0804 - 14 Church Street, Coton in the Elms, Swadlincote DE12 8EZ



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South Derbyshire District Council. LA 100019461. 2010

Responses to Consultations

The County Highway Authority has no objection subject to conditions.

The Parish Council has concerns regarding the potential affect that the proposal may have on the stability of neighbouring land as well as the visibility in relation to the bus stop and requests that the committee makes a site visit prior to determining the application.

Responses to Publicity

An occupier of the attached neighbouring property objects to the proposal on the following grounds:

- The proposal would adversely affect access to their property by way of there being insufficient space for their right of access needs as well as for the application property's intended use for parking vehicles.
- The proposal would adversely affect visibility in relation to the bus stop in close proximity.

Development Plan Policies

Transport Policy 6 of the Local Plan.

National Guidance

None.

Planning Considerations

The main issue central to the determination of this application is the impact on highway safety.

Planning Assessment

A similar application for a vehicular access was previously refused under planning reference 9/2012/0322 as it would introduce vehicular movement at a location where visibility is substandard, contrary to the best interests of highway safety. This amended application now includes a visibility splay to the frontage of No.16 Church Street which results in the application being considered acceptable by the Highway Authority.

Similarly, the Highway Authority has not raised any concern about the potential affect that the proposal may have on the bus stop alluded to by the neighbour.

The potential affect that the proposal may have on the stability of neighbouring land is a civil issue and is therefore not a planning consideration. Similarly, the potential affect that the proposal may have on access to neighbouring land is a civil issue and is therefore not a planning consideration (N.B. a planning permission cannot override any independent private property rights).

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

Recommendation

GRANT permission subject to the following conditions:

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

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

2. Before any other operations are commenced a new vehicular access shall be created to Church Street in accordance with the application drawings, laid out, constructed and provided with 2.4m x 43m visibility splays in each direction, the area in advance of the sightlines being maintained throughout the life of the development clear of any object greater than 1m in height (0.6m in the case of vegetation) relative to the adjoining nearside carriageway channel level.

Reason: In the interests of highway safety.

Informatives:

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

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

Pursuant to Section 163 of the Highways Act 1980, where the site curtilage slopes down towards the public highway, measures should be taken to ensure that surface water run-off from within the site is not permitted to discharge across the footway margin.

This usually takes the form of a dished channel or gully laid across the access immediately behind the back edge of the highway, discharging to a drain or soakaway within the site.

22/01/2013

Item **1.2**

Reg. No. **9/2012/0857/U**

Applicant:
MISS JULIE-ANN HALLFIELD
DOVESITE
THE COMMON
MELBOURNE
DE73 8DH

Agent:
MISS JULIE-ANN HALLFIELD
DOVESITE
THE COMMON
MELBOURNE
DE73 8DH

Proposal: **RETROSPECTIVE APPLICATION FOR CHANGE OF USE
FROM B1 AND B8 TO B2 AT UNIT 7 DOVESITE
BUSINESS PARK THE COMMON MELBOURNE DERBY**

Ward: **MELBOURNE**

Valid Date: **11/10/2012**

Reason for committee determination

The application is reported to Committee at the request of Councillor Harrison because local concern has been expressed about a particular issue and the committee should consider unusual site circumstances.

Site Description

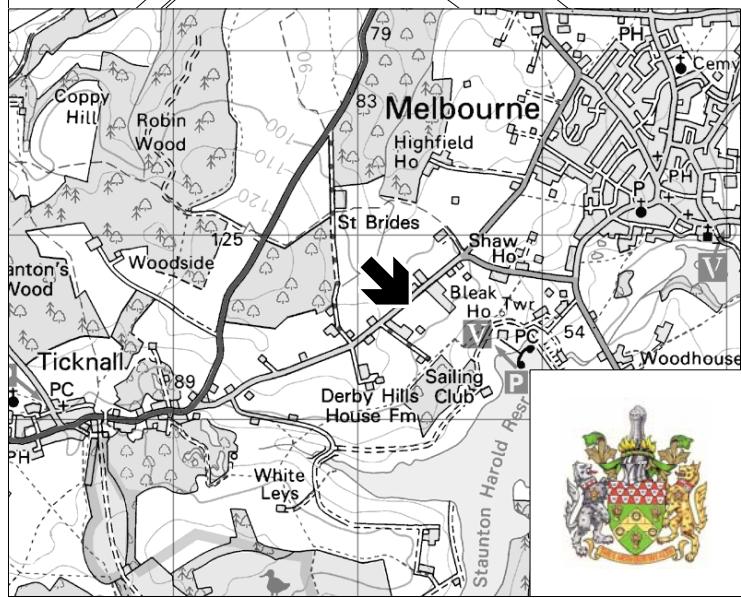
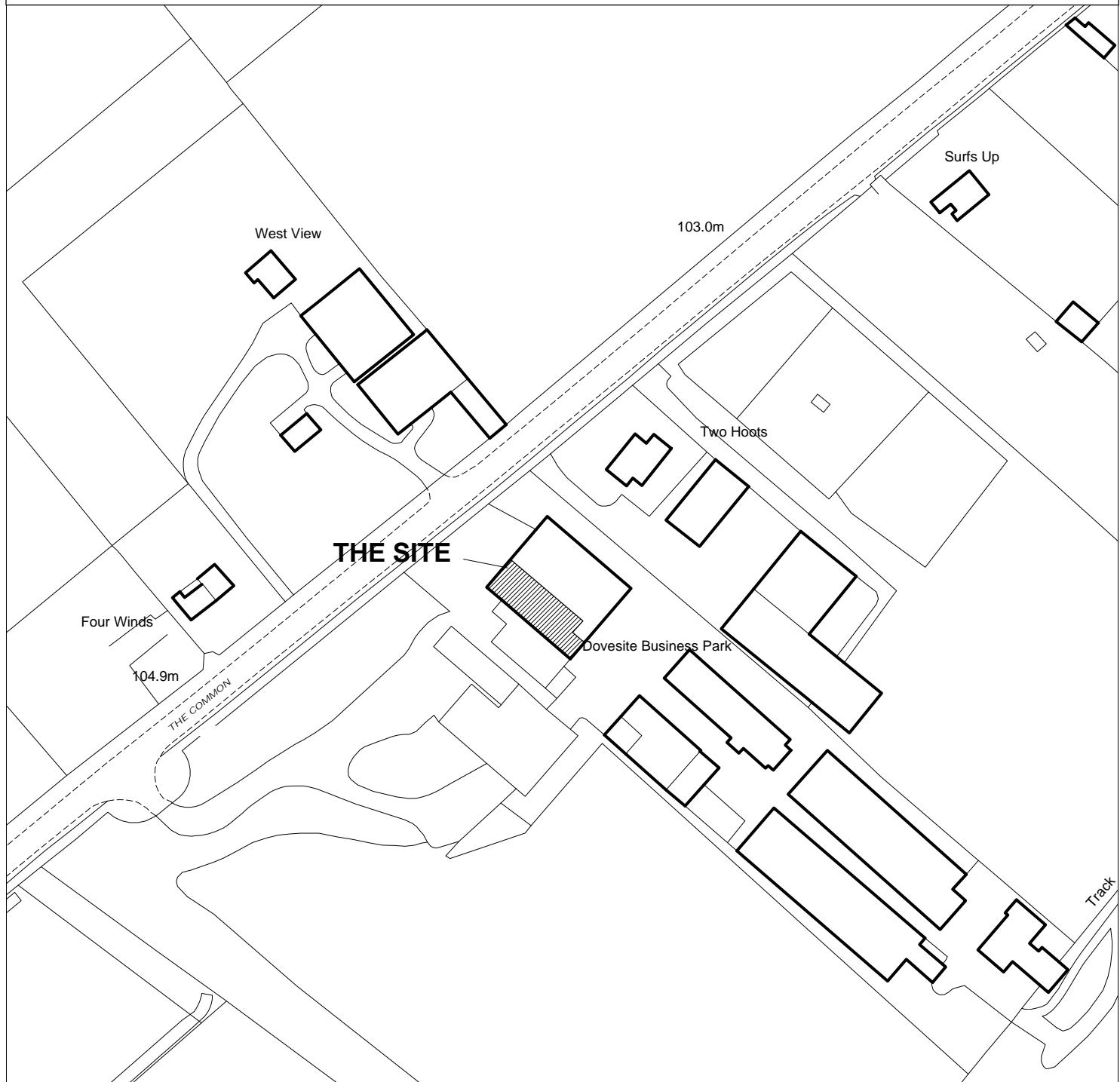
Dovesite is a former mushroom growing enterprise. The land and buildings associated with that agricultural activity have, over the last 15 years or so, been used for business and general storage purposes. The site is well screened from the road by landscaping, implemented at the time the current use commenced. The subject building is a blockwork structure with a corrugated sheet roof. It is situated at the front of the site, with vehicular access to the workshop gained from a driveway, separated from the road by the boundary hedge. There are two residential properties opposite (Four Winds and West View) and one next door to the site (Two Hoots).

Proposal

The application is submitted in retrospect under the provisions of Section 73A of the Town and County Planning Act and seeks permission to enable the vehicle repair use to continue in this particular building.

Planning History

Permission was granted to use the site for B1 & B8 purposes in 1994. A subsequent appeal against the imposition of conditions resulted in the majority being upheld, not least in respect of hours of operation and prohibition of B2 usage.



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South Derbyshire District Council. LA 100019461. 2010

More recently planning permission 9/2007/0840 was granted for the erection of a general purpose industrial building. This was also constrained by condition to B1/B8 use.

Responses to Consultations

The Parish Council has no objection.

Melbourne Civic Society comments that the site is very well screened and this sort of use takes place in the built up area of Melbourne without any complaints and therefore raises no objection.

The Highway Authority has no objection.

The Environmental Health Manager recommends conditions to control the use, in particular to enable the impacts of the use to be assessed over two years, this being considered an appropriate period in which to enable the business to realise its potential so that its full impact can be assessed.

Responses to Publicity

Four objections have been received as follows:

- a) This is not the first time that B2 industry has occupied the site in breach of condition. The subject use has been in place for 12 months.
- b) During the summer there has been a considerable increase in traffic associated with the use.
- c) Disturbance from this unit has been caused by a compressor, revving of engines, power tools, hammering and banging, shouting and metal grinding.
- d) If the use is permitted it would make it difficult for the Council to refuse similar applications, thus rendering the original controls over the overall use of the site ineffective.
- e) The site has an untidy appearance.
- f) A quiet and peaceful environment is expected in this rural location.
- g) The Secretary of State's appeal decision in 1996 held that the existing conditions were necessary to protect residents' amenities, without which permission should be refused.
- h) The unit is away from the applicant's house but close to neighbours.
- i) In recent years SDDC has spent a great deal of time and money resolving problems caused by unsuitable uses at Dovesite. Conditions have never been enforced properly.
- j) The use would be incompatible with the area's tourism role.

Development Plan Policies

The relevant policies are:

East Midlands Regional Plan Policy 3.

South Derbyshire Local Plan Saved Employment Policy 4 and Transport Policy 6.

National Guidance

National Planning Policy Framework Paras 11-14 (presumption in favour of sustainable development, Chapter 1 (Building a strong competitive economy) Chapter 3 (Supporting a prosperous rural economy) Paras 186 & 187 (Positive decision-taking) Paras 196 & 197 (determining applications).

Planning Considerations

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

- The principle
- Impact on residential amenity

Planning Assessment

The principle

East Midlands Regional Plan Policy 3 says little about development of this scale and nature but does encourage the re-use of existing buildings in sustainable locations. Whilst the site is outside the built-up area it is previously used land served by public transport and is within walking distance of Melbourne. Therefore, on balance the site is sustainable in terms of location. Local Plan Saved Employment Policy 4 is more specific in encouraging the re-use of rural buildings requiring, in particular, such development to be acceptable on environmental and traffic grounds. These policies are consistent with Chapters 1 & 3 of the National Planning Policy Framework, which support sustainable economic development.

Impact on residential amenity

Given the general policy acceptability of re-using the building for business, the main issue is the impact on neighbours' living conditions. It is clear from previous decisions that this is an issue of considerable importance. From the representations received neighbours have experienced disturbance from the use, particularly during the summer.

Previous planning interventions at the site have focussed on the general principles of B1/B8 versus B2 uses, and various issues relating to breaches of condition. However it is now a legal requirement for the local planning authority to demonstrate that it has worked positively and proactively with applicants, based on seeking solutions to problems arising in dealing with a planning application (The Town and Country Planning (Development Management Procedure) (England) (Amendment No.2) Order 2012). To this end officers have inspected the site and have interviewed the operators of the business. This has led to the identification of appropriate conditions that would enable the NPPF's economic development objectives to be met whilst still providing reasonable protection for neighbours.

Although the proposed use is one that falls within Use Class B2 the recommended conditions are specific to it and would not prejudice the local planning authority's ability to deal with other applications that fall outside the existing permitted use classes for the site as a whole. This would ensure that neighbours have the opportunity to be able to comment on individual proposals. This approach is fully supported by Environmental Health.

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

Recommendation

GRANT permission subject to the following conditions:

1. This permission shall be for a limited period only, expiring on 22 January 2015 on or before which date the use shall be discontinued and the site reinstated to the satisfaction of the Local Planning Authority unless, prior to that date, an application has been made and permission has been granted for an extended period.

Reason: To enable the impact of the use on the amenities of neighbours to be assessed. The site is not suitable for general operation within Use Class B2 and the local planning authority therefore considers it reasonable to control the use in this manner.

2. Noise at the north western and north eastern boundaries of the site shall not exceed 60 db(A) Leq 1min.

Reason: To protect the amenities of neighbours. The site is not suitable for general operation within Use Class B2 and the local planning authority therefore considers it reasonable to control the use in this manner.

3. There shall be no work carried on, and no use of compressors or any other fixed plant outside the building.

Reason: To protect the amenities of neighbours. The site is not suitable for general operation within Use Class B2 and the local planning authority therefore considers it reasonable to control the use in this manner.

4. The use of the premises shall be for motor vehicle repairs only. In particular there shall be no paint spraying undertaken at the site.

Reason: To protect the amenities of neighbours. The site is not suitable for general operation within Use Class B2 and the local planning authority therefore considers it reasonable to control the use in this manner.

5. No machinery shall be operated and no process shall be carried out outside the following times nor at any time on Sundays: 8am to 5.30 pm Monday to Friday; 9am to 2pm on Saturday.

Reason: To protect the amenities of neighbours. The site is not suitable for general operation within Use Class B2 and the local planning authority therefore considers it reasonable to control the use in this manner.

Informatives:

The proposal would re-use an existing building in an established group of similar small business units, within reasonable proximity of Melbourne. Whilst the use does not fall within Use Classes B1 or B8 the conditions attached to this permission ensure that the amenities of the occupiers of nearby dwellings are adequately protected. There would be no adverse traffic or highway safety implications. Subject to the conditions, the development is therefore in accord with the following development plan and national policies:

East Midlands Regional Plan Policy 3;
South Derbyshire Local Plan Saved Employment Policy 4 and Transport Policy 6;
National Planning Policy Framework Paras 11-14 (Presumption in favour of sustainable development, Chapter 1 (Building a strong competitive economy) Chapter 3 (Supporting a prosperous rural economy) Paras 196 & 197 (determining applications). As such the local planning authority has implemented the requirements of paragraphs 186 and 187 of the NPPF.

In order to comply with condition 2, it is likely that doors and windows would need to be kept closed at all times, other than for the purposes of access and egress.

Item 1.3

Reg. No. 9/2012/0861/SMD

Applicant:
MR J BOWEN
WALTON HOMES LTD
CHARTER HOUSE
SANDFORD STREET
LICHFIELD
WS13 6QA

Agent:
RPS PLANNING & DEVELOPMENT
HIGHFIELD HOUSE
5 RIDGEWAY
QUINTON BUSINESS PARK
BIRMINGHAM
B32 1AF

Proposal: **SUBSTITUTION OF HOUSE TYPES FOR 13 PLOTS
(AMENDED SCHEME TO APPLICATION 9/2007/0394) ON
LAND AT AND ADJOINING 1 FREDERICK STREET
WOODVILLE SWADLINCOTE**

Ward: SWADLINCOTE /WOODVILLE

Valid Date: 24/10/2012

Reason for committee determination

This is a major application with more than two objections.

Site Description

This L shaped site with a 53m frontage is on the west side of Frederick Street at the point where it takes a right angle turn into Court Street. The site is undulating overgrown scrubland with a 2m high boundary wall and archway on the frontage. The site is bounded on its south side by the rear boundaries of properties on Bernard Street and on its west side by forest planting to Swadlincote Woodlands.

Proposal

Planning permission is sought for 13 dwellings as a part amendment to the layout and house types approved at appeal in 2007. Five dwellings on the remainder of the site would be built as the existing approval. All conditions in relation to the outline and reserved matters permissions have been discharged and the appeal permission has begun. The appeal granted permission for 6 three bedroom semi-detached dwellings and 12 flats (8 two-bed and 4 one bed) and this application proposes 8 two bedroom maisonette dwellings on the Frederick Street frontage and 5 three bedroom semi-detached and terraced dwellings to the rear. The proposal involves a reduction of five dwellings compared with the approved scheme.

9/2012/0861 - Land at and adjoining 1 Frederick Street, Woodville DE11 8BX



The dwellings on the frontage appear as semi-detached dwellings with set back lower sections that provide the separate access to the first floor maisonette. Two storey dwellings are proposed with the pair on higher ground to the north staggered back from the road frontage. To the rear of the site two 2-storey curved semi-detached properties linked to a 2 bedroom property of a different house type and a pair of semi-detached dwellings are proposed.

The access to the site is adjacent to the northern boundary of the site adjacent to 61 Court Street with a central turning head, which is identical to the access approved at outline stage. A blocked paved area to the rear of the frontage plots is proposed and 2 spaces per dwelling and 1 space per maisonette plus 4 visitor spaces are proposed, a total of 22 spaces.

Applicants' supporting information

The Design and Access Statement states that the current market would not suit the 12 three storey apartments approved and as such a more viable scheme is proposed. The proposal involves a reduction of five dwellings. Eaves heights vary from 4.85m – 5.1m and ridge heights would be between 7.2m – 8.7m. The houses and maisonettes have been carefully designed to emulate the scale and various elevational features from the adjacent Victorian housing in Frederick Street, and importantly the maisonettes read as semi-detached houses, not maisonettes. The site has good access to public transport and is close to local schools. Car parking is understood to meet current Highway standards.

The Coal Mining Risk Assessment has identified the spoil heaps on site made up of building materials and the conclusions of the report are that there is a potential for the presence of underground coal mining at shallow depth beneath the site and an intrusive site investigation is recommended.

Planning History

9/2007/0394 - The erection of eight semi-detached houses, three detached houses and twelve flats (reserved matters), refused 31/7/07

Refusal reason

"The development would not be in keeping with the character and appearance of the area and would have a detrimental impact on the forest setting at the rear of the site".

Allowed at appeal 22/4/08

9/2006/0202 - Outline application (all matters to be reserved except for means of access) for the demolition of the existing dwelling and the erection of a residential development, Granted 27/6/06.

Responses to Consultations

An amended plan has been received that ties in the footway and moves the car parking for plots 12/13 to the rear as visibility could not be achieved. The Highways Authority has confirmed that the amended plan is acceptable and the same highway conditions as per the original consent should be placed on any approval.

Derbyshire Constabulary's Crime Prevention Design Advisor states that defensible space is incorporated and low railings or planting should be used to define the space. There is inadequate surveillance of parking spaces of some plots. Paths between plots 8-9 and to the side of plots 12 - 13 should be securely gated. Private rear gardens that back onto to open space or footpath should be 2m in height and doors should be flush with the building line.

Severn Trent Water has no objections.

The Coal Authority has no objection subject to a condition relating to site investigations.

The Council's Contaminated Land Officer has considered the previous information submitted as part of the outline and reserved matters permissions and considers that further level risk assessment, ground gas monitoring and remediation work is required and recommends a condition.

The Education Authority states that the proposed development falls within the normal areas of Woodville Infant School and Woodville CE Junior School; and for secondary provision within the normal area of Granville Sports College. Current numbers on roll and future projections for the next 5 years show that there is sufficient capacity at the relevant normal area primary and secondary schools to accommodate the additional pupils arising from the proposed development. Therefore the County Council does not require a financial contribution towards the provision of primary or secondary places in relation to this proposed development.

Derbyshire PCT has yet to confirm their Section 106 requirements and this shall be reported verbally at committee.

Responses to Publicity

Four letters of objection have been received and the concerns are summarised below:

- a) The same conditions should apply as the previous permission in that all deliveries and contractors vehicles must be parked on site and not on adjacent streets.
- b) The proposed entrance adjacent to an extremely sharp corner is dangerous.
- c) There would be an increase in traffic on the surrounding narrow streets.
- d) Parking is not sufficient and this will increase on street parking in the area, which is already a problem.
- e) The sloping nature of the site will make it difficult and costly to develop.
- f) Is the tenure of properties known?

Development Plan Policies

The relevant policies are:

East Midlands Regional Pan: Policies 2, 3, 12, 48, SRS 3

Local Plan: Housing Policy 4 and Housing Policy 11 (Supplementary planning Guidance 'Housing Layout and Design' (SPG)), Environment Policy 10 and Transport Policy 6

National Guidance

National Planning Policy Framework (NPPF) paragraphs 17, 32, 49, 56, 57, 58

Planning Considerations

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

- Principle of development
- Character of the area
- Highways Issues
- Crime prevention
- Section 106

Planning Assessment

Principle of development

The principle of residential development on this site was established in the outline permission and in the subsequent reserved matters approval allowed at appeal. In respect of Housing Policy 4 the proposed site is substantially surrounded by development and is considered to be a suitable scale and character. It is in an urban area, where Regional Plan Policies 3 & 12 favour new development. The number of dwellings allowed at appeal was 18 and this proposal involves a reduction by 5 dwellings.

Character of the area

The reserved matters application was refused on the impact on the character and appearance of the area and on the forest setting to the rear. The appeal scheme involved different house types than now proposed, however, the proposed frontage dwellings are considered to pick up features of the existing semi-detached properties opposite such as arched lintels over the doorways and stone lintels over windows. The previously approved scheme had six two storey semi-detached properties on the frontage with large bay windows and small windows above with the door to the rear. This proposal relates better with the street and is considered more in keeping with the streetscene.

The Inspector considered that the frontage dwellings reflected the style and appearance of properties opposite and would make a positive contribution to the area. On this basis, this proposal is an improvement on the appeal scheme.

The space between the windows of the proposed dwellings and the existing properties exceeds that of the appeal proposal and as such improves the impact on the amenity of neighbouring properties. In order to keep the enclosure in the street and retain the character the standard of 21 metres has been relaxed as per the Council's SPG. The proposal therefore accords with Housing Policy 11 as it would provide reasonable amenities for both new and existing properties, private amenity space and space for landscaping.

Highways Issues

The amended plan has been submitted which moves the car parking directly off Frederick Street to the rear, as visibility could not otherwise be achieved and the footways have been linked. On the advice of the Highway Authority the parking scheme

is considered to be adequate. Overall, the proposal is considered to provide adequate provision for access, parking and manoeuvring in accordance with Transport Policy 6 and Regional Plan Policy 48.

Conditions in terms of the access and construction compound have been discharged in relation to the outline permission and these details shall be reiterated should permission be granted. An additional informative should help to ensure that neighbours are not too inconvenienced during construction.

Crime prevention

In terms of the crime prevention issues raised, due to the distance between the rear of the frontage maisonette dwellings and the car parking area, surveillance is considered to be sufficient. Parking for plots 12/13 has been moved to the rear. Lockable gates shall be secured as part of the crime prevention condition. The doors on the maisonettes are recessed to make them appear individual dwellings which is more in keeping with the streetscene.

Section 106

Contributions for the provision of open space, outdoor facilities and built facilities and healthcare can be secured in line with the Council's Guidance through a unilateral undertaking and a draft undertaking has been submitted. The remainder of the site, not part of the current application, is still subject to the provisions of the original agreement.

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

Recommendation

- A. That subject to the receipt of a signed unilateral undertaking for the provision of £22,134 for recreation/open space, and £6,663 for healthcare;
- B. Authority be delegated to the Head of Planning and Community Services to **GRANT** permission subject to the following conditions:
 1. The development permitted shall be begun before the expiration of three years from the date of this permission.
Reason: To conform with Section 91(1) of the Town and Country Planning Act, 1990 (as amended by section 51 of the Planning and Compulsory Purchase Act 2004).
 2. Notwithstanding the originally submitted details, this permission shall relate to the amended drawing no. 01 Rev B, 03, 04 Rev A, 05 Rev A and 06.
Reason: For the avoidance of doubt, the original submission being considered unacceptable.
 3. No part of the development shall be carried out until precise details, specifications and, where necessary, samples of the facing materials to be used in the construction of the external walls and roof of the building(s) have been submitted to and approved in writing by the Local Planning Authority. The work shall be carried out in accordance with the approved details.

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

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

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

5. A) The development shall not be commenced until a scheme to identify and control any contamination of land, or pollution of controlled waters has been submitted to, and approved in writing by, the local planning authority (LPA); and until the measures approved in that scheme have been implemented. The scheme shall include all of the measures (phases I to III) detailed in Box 1 of section 3.1 the South Derbyshire District Council document 'Guidance on submitting planning applications for land that may be contaminated', unless the LPA dispenses with any such requirement specifically and in writing.

B) Prior to occupation of the development (or parts thereof) an independent verification report shall be submitted, which meets the requirements given in Box 2 of section 3.1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.

C) In the event that it is proposed to import soil onto site in connection with the development, this shall be done to comply with the specifications given in Box 3 of section 3.1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.

D) No development shall take place until monitoring at the site for the presence of ground/landfill gas and a subsequent risk assessment has been completed in accordance with a scheme to be agreed with the LPA, which meets the requirements given in Box 4, section 3.1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.

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

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

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

7. Notwithstanding any details submitted or the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended), no development shall take place until there has been submitted to and approved in writing by the Local Planning Authority plans indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment

shall be completed in accordance with the approved details before the development is occupied or in accordance with a timetable which shall first have been agreed in writing with the Local Planning Authority.

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

8. Prior to the first occupation of the development hereby permitted, measures to minimise the risk of crime to meet the specific security needs of the application site and the development shall be implemented in accordance with a scheme previously submitted to and approved in writing by the Local Planning Authority.

Reason: In pursuance of the Council's duty under section 17 of the Crime and Disorder Act 1998 to consider crime and disorder implications in exercising its planning functions; to promote the well-being of the area pursuant to the Council's powers under Section 2 of the Local Government Act 2000 and to reflect government guidance set out in PPS1.

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

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

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

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

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

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

12. Before any other operations on site are commenced (excluding demolition/ site clearance), space shall be provided within the site curtilage for storage of plant and materials/ site accommodation/ loading and unloading of goods vehicles/ parking and manoeuvring of site operatives and visitors vehicles, laid out and constructed in accordance with detailed designs first submitted to and approved in writing by the Local Planning Authority, and maintained throughout the contract period in accordance with the approved designs free from any impediment to its designated use.

Reason: In the interests of highway safety.

13. The construction of dwellings on the site shall not commence until a new estate street junction has been formed to Frederick Street located, designed, laid out,

constructed and provided with visibility splays extending from a point (4.5) metres from the carriageway edge, measured along the centreline of the access, to the extremities of the site frontage abutting the highway in each direction in accordance with a scheme that has first been submitted to and approved in writing by the Local Planning Authority. The area in advance of the sightlines shall unless otherwise agreed in writing by the Local Planning Authority be level, form part of the new street, constructed as footway and not form part of any plot or other sub-division of the site.

Reason: In the interests of highway safety.

14. The development shall not be occupied until the proposed new estate streets between each respective plot and the existing public highway have been laid out in accordance with drawings to be approved to conform to the County Council's Roads in Housing design guide, constructed to base level, drained and lit in accordance with the County Council's specification for new housing development roads.

Reason: In the interests of highway safety.

15. No development shall take place until appropriately scaled construction details including sections where necessary of the entrance door porches, eaves, verges, cills and lintels and window frames have been submitted to and approved in writing by the Local Planning Authority. The development hereby permitted shall be carried out in accordance with those approved details.

Reason: In the interests of the character and appearance of the dwellings.

16. The doors and windows shall be set back 50mm from the external face of the brickwork.

Reason: In the interests of the character and appearance of the dwellings.

17. Notwithstanding the submitted details, gutters shall have a black finish and shall be fixed to the building in a manner that shall have previously been agreed in writing with the Local Planning Authority.

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

Informatives:

The proposed development lies within a coal mining area which may contain unrecorded mining related hazards. If any coal mining feature is encountered during development, this should be reported to The Coal Authority. Any intrusive activities which disturb or enter any coal seams, coal mine workings or coal mine entries (shafts and adits) requires the prior written permission of The Coal Authority. Property specific summary information on coal mining can be obtained from The Coal Authority's Property Search Service on 0845 762 6848 or at www.groundstability.com

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

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

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

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

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

Any security measures implemented in compliance with the approved scheme should seek to achieve the 'Secured By Design' accreditation awarded by Derbyshire Constabulary. Written confirmation of those measures should then be provided to the Local Planning Authority.

During construction you are requested to ensure that your or any other contractors' vehicles are parked legally and in a manner that shows consideration to the occupiers of adjacent and nearby properties. Thank you for your co-operation.

22/01/2013

Item 1.4

Reg. No. 9/2012/0889/SSA

Applicant:

MR MARTYN/ROBERT PASK/ORGILL
THE RADLEIGH GROUP/ ROLLS
ROYCE PLC RIVERSIDE COURT
PRIDE PARK
DE24 8JN

Agent:

MR ANDREW MACKLEY
VISTA ARCHITECTURE & URBAN
DESIGN LTD
FOUR WINDS
HIGH LANE
RIDGEWAY
SHEFFIELD
S12 3XF

Proposal: RESIDENTIAL DEVELOPMENT OF 41 DWELLINGS AND INDUSTRIAL UNITS COMPRISING OF B1 (C) USE WITH ASSOCIATED ACCESS HARD AND SOFT LANDSCAPING AT CLAYTON WORKS SCROPTON ROAD HATTON DERBY

Ward: HATTON

Valid Date: 25/10/2012

Reason for committee determination

This is a major application which has attracted more than two letters of objection.

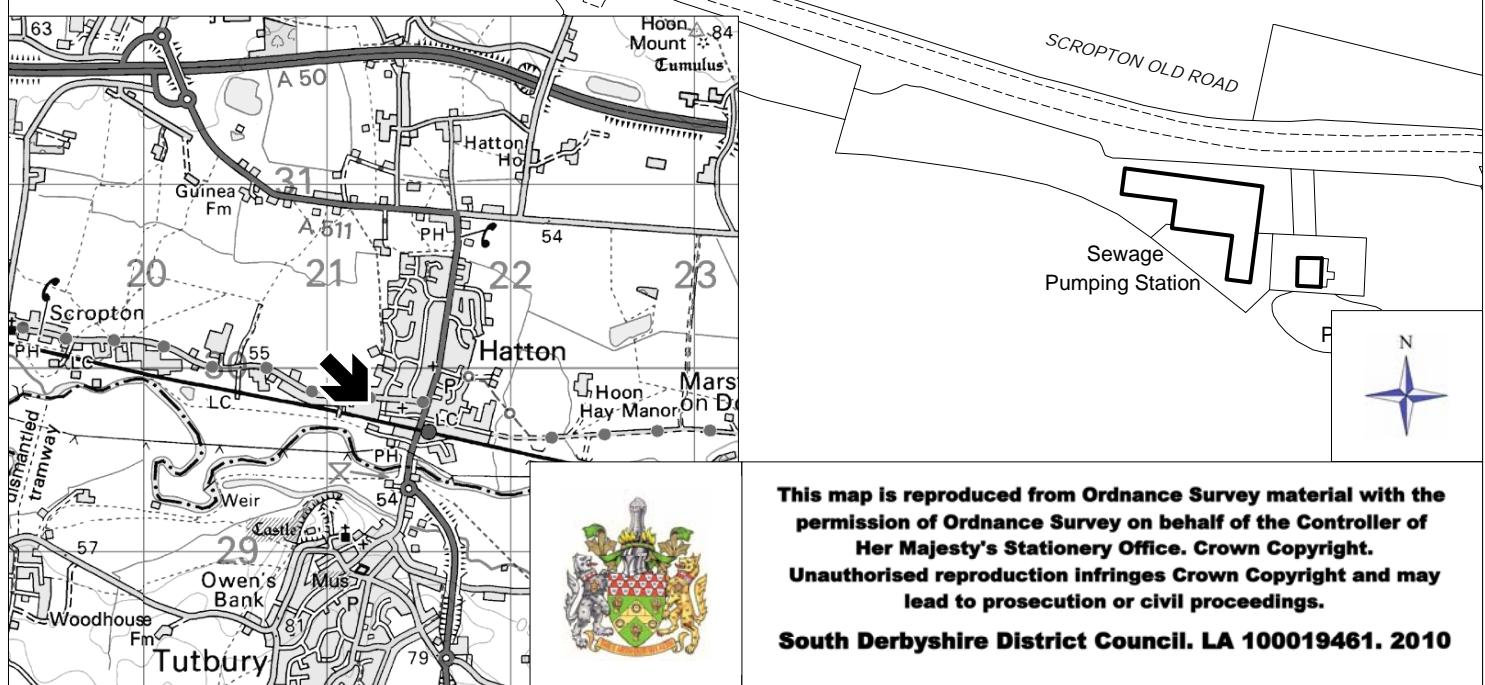
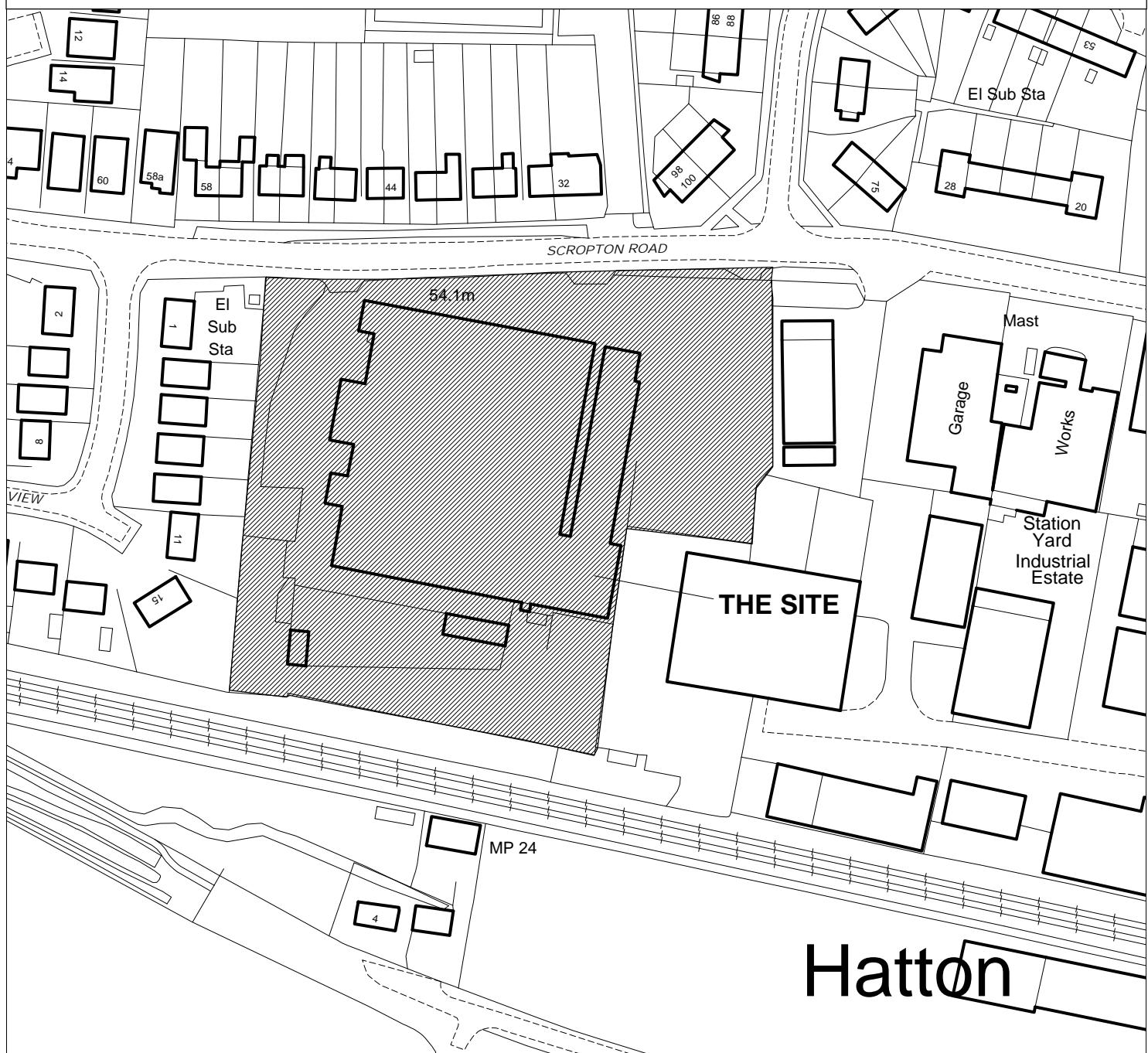
Site Description

The site comprises the buildings and associated land of the former Clayton Engineering Works on Scropton Road Hatton and is generally flat and sits at the same or similar height to the buildings that surround it. Palisade security fencing currently encloses most of the site. The west boundary to the bungalows on Castle View is also formed by a hedge/trees along with the usual domestic fences. There are houses on the other side of Scropton Road. The Stoke – Derby railway line lies immediately south of the application site.

Proposal

This is a mixed-use scheme comprising 41 dwellings, 3 of which are to be affordable dwellings (originally submitted as four), together with 550sqm of B1 light industrial units in the north east part of the site. The residential layout achieves a density of 46/ha. The residential part of the development is a mix of house types comprising 2 bedroom bungalows and 2, 3 and 4 bedroom houses.

9/2012/0889 - Land at Clayton Works, Scropton Road, Hatton DE65 5DS



Applicants' supporting information

A Planning Statement, a Design and Access Statement, a Contaminated Land report, a Flood Risk Assessment, a Transport Statement, a noise impact assessment and a Phase 1 Ecological Assessment support the application.

The Planning Statement identifies the relevant national and local planning policies and Government Guidance and addresses the main planning issues. The applicants consider the main issues to be the principle of the development that they consider is in line with Government advice and planning policy. This it is asserted is subject to an assessment of the scale and character of the development, the impact on living conditions, highways and traffic issues, flood risk, impact on the natural environment and biodiversity, noise and the loss of employment land.

In terms of character and appearance, the applicants contend that the site is well designed and reflects the local character of the housing development on Castle View and Scropton Road. The apartments are sited on the boundary of the employment land and have been designed to minimise noise intrusion that together with the employment units would also serve to reduce noise from existing noise sources on the industrial estate on the adjacent existing houses.

The applicants assert that given the mix of houses and the provision of B1 units, which by their nature are acceptable in residential areas, and consider the effect on living conditions acceptable. The scheme overall is considered to comply with national local policy and guidance and the provisions of Supplementary Planning Guidance (SPG) – Housing Layout and Design.

Highways issues are addressed in the transport statement and the applicants consider that access and parking arrangements raised in pre-application discussions have been addressed. Subsequent replies to queries raised by the Highway Authority in response to the application have been addressed and the scheme amended and it is contended that it is now acceptable.

The applicants contend that by raising floor levels in relation to surrounding ground levels, reducing discharges to sewers and by encouraging new residents to sign up to the Environment Agency early warning system for floods, that the risk of flooding of the properties on the new site is reduced and as such the proposal fully accords with the provisions of the NPPF Technical Guidance.

Whilst the site has limited ecological value in its present state, the local environment would be enhanced by the removal of contaminated material and result in the reuse of previously developed land. The site would be landscaped and the provision of bird boxes within the scheme could enhance the local area in terms of wildlife.

The submitted noise report is a result of extensive discussions with Environmental Health. The layout of the development reflects those discussions with the controlled aspect apartments and business units sited adjacent to the existing employment site. Noise fencing is also proposed along the eastern boundary at 2.0m high and the railway boundary at 2.5m high. These measures together with the proposed glazing and sound insulation should result in acceptable living conditions for the occupiers of the new housing.

The loss of employment land is acknowledged as it formed a reason for refusal for the previous scheme in 2007. The new scheme includes an element of B1 employment that follows pre application discussions with officers. The applicants state that whilst the site has had a previous employment use, the proximity of the site and its existing B2 use adjacent to residential housing presents unacceptable environmental problems both in terms of noise and highway issues for residents. Public consultation prior to the application being submitted, undertaken by the applicants revealed support for the redevelopment of the site. The recent permission for the Nestle development has more than compensated for this loss of employment land on Scropton Road.

The application is supported by the offer of a unilateral undertaking that makes provision for 3 affordable dwellings for rent and a contribution of £50,000 towards the enhancement of facilities on the sports ground on the opposite side of Scropton Road. This is notwithstanding the District Valuer's conclusion that zero affordable housing units could be funded by the development due to extensive on-site preparation costs arising from previous contamination and the need to raise floor levels at the site. The applicants contend that these contributions are fair and directly related to the development of the site.

The public consultation exercise attracted some 60 attendees and display boards illustrated the scheme now the subject of this application. The exercise confirmed local support for the redevelopment of the site and issues relating to the details of the development including its timing, whether there is a need for commercial units and the potential lack of car parking provision.

The Design and Access Statement sets out the various iterative schemes that informed the layout of the site, the discussions held with officers at the pre-application stage, the assessment of the character of the immediate locality and wider village that informed the design of the development and the selection of materials. The applicants have assessed the development against Building for Life criteria, prior to the new scheme, and scored the development at 18/20. The conclusion is that the development would represent a good mix of housing and employment use that makes use of previously developed land that would enhance the character of the local area.

The contaminated land study identifies significant levels of contamination that require mitigation prior to the redevelopment of the site that arise from the previous heavy industry that occupied the site up to 2006. The report contains a remediation strategy for the site that the consultants assert would address these issues.

Noise issues have been addressed in the Noise Assessment. The various recommendations have been incorporated into the layout of the development and are referred to above. A part of the assessment involves works to provide mitigation on buildings on the adjacent land that are a significant noise source. The applicants have a signed licence agreement, the existence of which is confirmed by the applicants' solicitor. This makes provision for the mitigation works on the adjacent land to be undertaken. This forms a major part of the noise mitigation strategy. Rail noise is addressed through the provision of the 2.5m high fences together with appropriate glazing and sound insulation.

The ecological report and flood risk issues have been summarised earlier in this report.

Planning History

The site operated as a factory until 2006. An application to redevelop the site for housing was refused in 2007 (9/2007/1255) on the basis that the development would result in the loss of employment land and there would be an unacceptable noise impact from adjacent sites on future residents of the new development.

Responses to Consultations

The Highway Authority has raised no objection to the development subject to the imposition of conditions to control the construction phase and subsequent occupation of the development in terms of parking and manoeuvring provision.

The Environment Agency has noted the contents of the FRA and requests that conditions be imposed to require the implementation of the provisions recommended therein. It has also considered the Contamination Report and accepts the remediation strategy set out in that document subject to the applicant company being made aware that it is responsible for the safe development of the site and a condition requiring the submission of a validation report to confirm that the mitigation has been successful prior to the occupation of any dwelling on the site.

The Environmental Health Manager (Contamination) confirms that the remediation management strategy is considered acceptable but it will be necessary for the applicants to submit a validation report as above.

The Environmental Health Manager (Pollution Control) notes the mitigation strategy for noise and is concerned that the off-site noise mitigation should be in place prior to the occupation of any dwelling and that all other noise mitigation measures on site are in place again prior to occupation of any of the dwellings. A report should be required to confirm that the mitigation measures are functioning as predicted and if not then the applicant should be required to put in further mitigation prior to the occupation of any dwelling.

Severn Trent Water has no objection to the proposals subject to the submission of surface and foul water drainage details if planning permission were granted.

The Development Control Archaeologist has no comments.

Natural England has no objection.

The Derbyshire Wildlife Trust having considered the submitted information, conclude that the site is not of any great wildlife interest but that the local area would benefit from the installation of bat and bird boxes on some of the new buildings. A condition is recommended to ensure that any nesting birds are not disturbed by the development in the west boundary hedge.

Derbyshire County Council has been consulted at pre-application and has commented to the current application with regard to developer contributions promoted County Council's Developer Contributions Protocol. It notes the viability information that this Council has provided.

In terms of high speed broadband the County Council would encourage the provision of ducting sufficient to allow for its installation to all buildings on the site.

The County Council has requested financial contributions towards the improvement of the waste recycling centre at Newhall and the library at Etwall amounting to £1,173.83 and £14,760 respectively. The County Council notes that the initial offer of £40,000 was increased to £50,000 prior to the submission of the application. Given that this Council, along with others in the County have jointly agreed the protocol, then some of the £50,000 should be directed towards the provision of County services in the administrative area. It formally requests that the contribution as set out above be met from the £50,000. No other contributions are required for schools as the predicated roles at the primary and secondary schools show that children from the site could be accommodated on the respective education sites.

The Police Crime Prevention Design Officer has concerns that some of the layout proposals in terms of the height of fences and the lack of a defining boundary feature such as railings on the front of dwellings could encourage crime. He considers that the omission of the front boundary features is directly contrary to the advice in Buildings for Life and should not be lightly set aside. If rear fencing is acceptable to the Local Planning Authority then it should be a minimum of 2.0m high to reduce the risk of the fences being climbed. Currently these fences are specified at 1.8m high. There is also concern that the parking area adjacent to the proposed flats will not be used and this would result in cars being parked on footpaths; this again is contrary to the advice in Buildings for Life.

Network Rail has no objection in principle subject to its operational requirements being met in particular in relation to drainage, boundary fencing, soundproofing lighting and landscaping.

The Housing Strategy Manager states that all the affordable dwellings should be available for rent. The loss of an affordable dwelling is not acceptable to the Housing Strategy manager and its loss is opposed.

The comments of the Economic Development Manager will be reported at the meeting.

Responses to Publicity

One response has been received supporting the redevelopment of the site on the grounds that Hatton needs more housing.

Three objections/comments have been received objecting/raising concerns about the development. The main points of objection/comment are as follows:

- a. The occupiers of the existing houses would have their privacy affected and make it more difficult to access driveways.
- b. There would be a loss of light in the mornings.
- c. There is no provision for visitor parking as houses only have 2 spaces.
- d. There is concern that the road will be unable to cope with the traffic.
Traffic problems already exist in the vicinity of the junctions of Scropton Road with Station Road, Heathway and Field Avenue.
- e. There is concern about noise from the proposed industrial units and queries are raised in respect of their proposed use.
- f. Hatton has enough public open space already it does not need a £50,000 'gift' to provide more.

Development Plan Policies

The relevant policies are:

Regional Plan: Policies 1, 2, 3, 12, 25, 29 and 35.

Local Plan: Housing Policy 5, 11, Transport Policy 6

National Guidance

The NPPF at paragraphs 7, 17, 46, 48, 51, 70, in respect of housing development; paragraphs 214 & 215 in respect of the relevance of Local Plan policies.

The NPPF Technical Guidance in respect of Flood Risk

Other Guidance

Building for Life 12

'Housing Layout and Design' – SPG

'Industrial and Office Design and Layout' - SPG

Planning Considerations

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

- The Development Plan – conformity with policy in the light of the planning history.
- Affordable Housing Provision and Section 106 Contributions.
- Crime Prevention Design.
- Environmental and Biodiversity Issues
- Highway, Contamination and Flood considerations.

Planning Assessment

The Development Plan

The provisions of the Local Plan are considered to be in accord with the requirements of the NPPF and therefore they continue to carry weight in terms of their role in determining this planning application.

Development Plan policies do make provision for housing development in settlements such as Hatton subject to them being of a scale and character in keeping with the settlement and subject to their not imposing unacceptable living conditions on neighbours and having satisfactory access and parking. The scheme as amended meets these requirements and as such the development is in accord with the above-mentioned Regional and Local Planning policy subject to a consideration of the criteria in the policy documents.

The NPPF also contains advice that the loss of employment land should not be put forward as a reason for refusal if it can be demonstrated that the land is no longer required for that purpose. The site has been marketed for employment use and the applicants point out that the structures are unsuited to modern employment and the contamination remediation costs are such that redevelopment for employment use is precluded.

In response to the previous refusal, the applicants have researched whether an element of employment use could be accommodated within the site. Given the noise issues referred to in the previous refusal, it is necessary to shield the new houses from noise and so as a part of this application, several B1 units (light industrial use only) have been proposed on the east boundary of the site to act as a screen and provide some additional employment opportunities.

In the light of the advice in the NPPF and the proposed provision of the units on the east boundary, there are no grounds for maintaining a reason for refusal based on the loss of employment land and/or noise intrusion.

Affordable Housing Provision and Section 106 Issues

When originally submitted the application proposed four affordable dwellings as a part of the overall development. This was notwithstanding a viability assessment submitted by the applicants and checked by the District Valuer that stated the development could not deliver any affordable homes provision. This is due to the excessive site preparation cost associated with removal of contamination and the raising of ground levels necessary to meet the requirements of the Environment Agency. However, in pre-application negotiations, the applicants accepted that there was a need for affordable homes in the village and made the offer referred to above. This would have represented about 10% of the proposed dwellings. During the course of the application, the applicants has reduced their offer to the provision of three additional affordable units representing 7.3% of the total housing development due to higher than anticipated construction costs. Notwithstanding the disappointment of the Housing Strategy Manager, the District Valuer has confirmed that the development would not produce any surplus and therefore any provision of affordable housing on the site should be accepted as a bonus and not discouraged.

The other major contribution negotiated as a part of this development is £50,000 towards the improvement of community and open space provision within the village. The Council has identified a range of such improvements within the village to which this sum could usefully contribute.

In the context of competing interests, the viability of the scheme as a whole has to be assessed against this contribution along with the request from the County Council under its Developer Contributions Protocol for a contribution of £15,934 towards the upgrading of the Newhall Waste recycling facility and services provided at Etwall library. The County Council is requesting that this either be met in full or in part from the £50,000 for open space provision in Hatton. Section 106 contributions, including unilateral undertakings, have to be directly related to the development against which the contributions are sought. It is considered that whilst the improvement to the Newhall recycling centre is desirable, it would be difficult to argue that the works are directly related to the development of this site or indeed to accurately calculate a justifiable pro-rata sum. A similar argument could be mounted against the service improvements to Etwall Library.

The issue therefore, given the marginal viability of the development, is whether this Council should seek to negotiate the allocation of some of the £50,000 contribution towards these improvements. As there are projects in the village that would benefit from the contribution, in this instance it is considered that the whole of the £50,000 should be allocated to local schemes.

Building for Life Assessment

In the absence of a detailed landscaping scheme a full assessment of the Buildings for Life criteria is curtailed. However based on the undertakings given during the consideration of this application and the recommended condition requiring a detailed landscaping scheme to be submitted, a score the scheme would achieve a majority of the new criteria being marked 'Green' equivalent to a score of 14/20 under the previous scheme. This development is therefore likely to achieve the requisite standards Members have adopted for assessing new housing development.

As a result of the comments of the Police Crime Prevention Design team and the work of the Design Excellence officer, a scheme of hedgerow planting has been agreed with the developer to define the personal space for each plot, where necessary. Whilst the Police team would prefer something more substantial in the form of metal fencing, the use of walls and hedges is softer and more reflective of the existing frontages along Scropton Road thus is considered more appropriate.

Environmental and Biodiversity Issues

The other reason for refusal of the previously submitted residential development was noise impact arising from the industrial uses in the adjacent industrial estate. Noise from that source was such that the Environmental Health Officer was concerned that the living environment for new residents would be unacceptable. Much of the effort since the refusal of that application has been directed towards assessing the noise issues to generate a scheme to mitigate noise for new residents and to some extent for existing residents.

The submitted scheme has been assessed by the Environmental Health Manager and he is satisfied that the proposals are a significant improvement over the previous situation. It is necessary to ensure that both off-site and on-site works are in place and functioning as predicted before dwellings are occupied. The submitted scheme also takes account of noise from the railway and measures are in place to take account of this too. Conditions are recommended to secure the noise mitigation measures are in place. In order for the off-site works to take place, the consent of adjacent landowners is necessary. The applicants' solicitors have confirmed that all parties involved in the off-site works have agreed, and signed a licence to that effect, to allow these works. In order for the works to be secured prior to the occupation of any of the new dwellings, a condition requiring the provision of a unilateral undertaking (or other agreement under Section 106) would likely be required. Network Rail requirements would be drawn to the applicants' attention in an informative.

The site has little or no biodiversity interest as it stands. The Derbyshire Wildlife Trust recommends no working to the hedge on the west boundary during the bird-breeding season unless a qualified ecologist has confirmed no nesting birds are present. Once developed the site offers the potential to enhance the biodiversity of the area and the Derbyshire Wildlife Trust encourages the installation of bat and bird boxes as stated in the application documents. A condition and Informative is recommended

Highway, contamination and floodplain issues can be addressed through the imposition of planning conditions. The objectors concerns about noise and flooding are addressed by the imposition of these conditions.

Conclusion

It is considered that the development is in accord with the provisions of the Development Plan and meets the requirements of the NPPF and planning permission is recommended.

Recommendation

- A. Delegate authority to the Head of Community and Planning Services to complete negotiation of a signed unilateral undertaking or an Agreement under Section 106 in the terms set out above,
- B. Subject to A, **GRANT** permission subject to the following conditions:
 1. The development permitted shall be begun before the expiration of three years from the date of this permission.
Reason: To conform with Section 91(1) of the Town and Country Planning Act, 1990 (as amended by section 51 of the Planning and Compulsory Purchase Act 2004).
 2. Notwithstanding the originally submitted details, this permission shall relate to the following Drawings: to be confirmed
Reason: For the avoidance of doubt, the original submission being considered unacceptable.
 3. Before any other operations are commenced (excluding site clearance), space shall be provided within the site curtilage for storage of plant and materials, site accommodation, loading and unloading of goods' vehicles, materials, parking and manoeuvring of site operatives' and visitors' vehicles, laid out and constructed in accordance with detailed designs first submitted to and approved in writing by the Local Planning Authority, and maintained throughout the construction period in accordance with the approved designs free from any impediment to its designated use.
Reason: In the interests of highway safety.
 4. Throughout the period of construction, wheel washing facilities shall be provided within the site and used to prevent the deposition of mud and other extraneous material on the public highway.
Reason: In the interests of highway safety.
 5. Prior to any other works commencing, the new accesses into the industrial and residential developments shall be formed to Scropton Road (excluding condition 1 above). The industrial access shall be laid out in accordance with the application drawing(12101/100A), having a minimum width of 5.5m, be constructed as an industrial vehicular crossover incorporating the equivalent of 10m radii and visibility sightlines of 2.4m x 43m. The area in advance of the visibility sightlines shall be cleared, and thereafter maintained throughout the life of the development, free of any obstruction exceeding 600mm in height relative to the nearside carriageway edge. The residential access shall be laid out in accordance with application drawing (12101/100 A), having a minimum width of 4.8m, 6m radii with 2m wide footways and visibility sightlines of 2.4m x 43m the area forward of which shall be constructed as footway in accordance with Derbyshire County Council's specifications for adoptable highway.

Reason: In the interests of highway safety.

6. Within 28 days of the formation of the new accesses (or time scale as may be agreed with the Local Planning Authority in writing), the existing access shall be reinstated as footway in accordance with a scheme first submitted to and approved in writing by the local Planning Authority.

Reason: In the interests of highway safety.

7. Prior to the first occupation of any of plots 35 – 41, the accesses shall be created to Scropton Road. Each access shall have a minimum width of 2.75m and be provided with 2.4m x 43m visibility sightlines, the area forward of which shall be cleared and maintained thereafter clear of any obstruction exceeding 600mm in height relative to the nearside carriageway edge.

Reason: In the interests of highway safety.

8. The new dwellings shall not be occupied until the proposed new estate street, between each respective plot and the existing public highway, has been laid out in accordance with the approved application drawings (12101/100 rev A) to conform to the County Council's design guide, constructed to base level, drained and lit in accordance with the County Council's specification for new housing development roads.

Reason: In the interests of highway safety.

9. Before the commencement of any operations on site, a scheme for the disposal of highway surface water, via a positive gravity-fed system, discharging to an outfall on public sewer, highway drain or watercourse, shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details.

Reason: In the interests of highway safety and to prevent the deposition of surface water to the highway.

10. The entire frontages onto the new estate street of plots 15,16, 29 - 34 shall be maintained throughout the life of the development free of any obstruction exceeding 600mm in height relative to road level for a distance of 2m into the site from the highway boundary.

Reason: In order to avoid obstructing the visibility of a driver emerging onto the new street.

11. Prior to the industrial units being first taken into use, the access, parking, cycle parking, loading/unloading and manoeuvring space shall be laid out in accordance with the revised application drawing (12101/100 A) and maintained thereafter free of any impediment to its designated use.

Reason: In the interests of highway safety.

12. No part of the development permitted by this consent shall be occupied until a Travel Plan has been submitted to and approved in writing by the Local Planning Authority. The Travel Plan shall set out proposals (including a timetable) to promote travel by sustainable modes which are acceptable to the Local Planning Authority. The Travel Plan shall be implemented in accordance with the timetable set out in that plan unless otherwise agreed in writing by the Local Planning Authority. Reports demonstrating progress in promoting sustainable transport measures shall be submitted annually on each anniversary of the date of the

planning consent to the Local Planning Authority for approval for a period of five years from first occupation of the development permitted by this consent.

Reason: In order to minimise the need to travel by the private motor car to and from the site.

13. Prior to the occupation of any dwelling or apartment on the site, the works to acoustically screen the noise sources on the buildings currently occupied by Particle Technology Ltd shall be implemented in accordance with the Noise Assessment prepared by Noise Assess Ltd dated August 2012 and set out in paragraphs 6.7, 6.8 and Appendix 2 to the noise report. Following installation noise limits at the site boundary shall be tested against the predictions set out in the Noise and Vibration Assessment Report at paragraph 6.8(vi). In the event that noise predictions are achieved as predicted, details of that Noise Assessment shall be submitted to the Local Planning Authority. If the noise levels exceed the predictions in paragraph 6.8(vi) then a scheme of further mitigation shall be submitted to and approved in writing by the Local Planning Authority. The approved details of the additional mitigation works shall be implemented prior to the occupation of any dwelling on the site.

Reason: In order to ensure that the noise from the adjacent site is limited to a level where sleep is possible in the nighttime environment with the machinery in operation.

14. The hours at which deliveries shall occur at the B1 units shall be 0700 - 1800 on Monday to Friday, 0900 - 1700 on Saturdays. There shall be no deliveries on Sundays or on Bank or Public Holidays.

Reason: In the interests of the residential amenity of the occupiers of adjacent and new properties.

15. In accordance with paragraph 6.21 of the submitted Noise and Vibration Assessment walls shall be constructed in accordance with the submitted information unless the Local Planning Authority has given prior written permission to any variation.

Reason: In order to ensure that specified construction method is used in the interests of the occupiers of the dwellings unless the Local Planning Authority has agreed an equivalent noise resistant specification.

16. The glazing specification set out in paragraphs 6.22 and 6.23 of the development hereby permitted shall be installed in accordance with the submitted details.

Reason: In the interests of the amenity of the occupiers of the dwellings.

17. The acoustic fencing specified in paragraph 6.18 specifically and more generally illustrated on Drawing 12-46 01 D referred to in condition 2 above shall be implemented prior to the occupation of any of the dwellings to which the acoustic fencing is to be applied. Thereafter the approved fencing shall be retained in place for the life of the development.

Reason: In order to ensure that noise mitigation fencing is provided and retained in place in the interests of the residential amenity of the occupiers of those dwellings.

18. Notwithstanding the submitted details, fencing to the side boundaries of Plots 27 and 29 and the rear boundaries of plots 29 - 33 together with the fence running

from the bin store to the apartment block to the rear boundary of Plot 33 as illustrated on the attached plan shall be 2.0m high.

Reason: In the interests of minimising the risk of the fences being climbed in the interests of crime prevention.

19. Ventilation to the premises specified in paragraph 6.24 of the Noise and Vibration Assessment Report shall have ventilation as set out in that paragraph prior to the occupation of any of the dwellings specified therein.

Reason: In the interests of noise mitigation as identified in the Noise and Vibration Assessment Report.

20. Prior to the occupation of any dwelling that has living accommodation in the roof space over looking Scropton Road or the railway, that roof of that building shall be internally boarded with the soundbloc material or its equivalent as stated in paragraph 6.26 of the Noise and Vibration Assessment Report.

Reason: In the interests of providing noise mitigation in the properties specified in the interests of the amenity of the occupiers of those dwelling.

21. Before development is commenced, a surface water drainage scheme for the site shall be submitted to and approved in writing by the Local Planning Authority. The submitted scheme shall be based on sustainable drainage principles and contain an assessment of the hydrological and hydrogeological context of the development. The scheme shall subsequently be implemented in accordance with the approved details before the development is occupied. The submitted scheme shall include:

- a) Provision of a copy of the agreement correspondence confirming Severn Trent Water accept the principle of discharging the surface water generated by the development site to the public combined sewer in Scropton Road, on the basis that alternative discharge points of the site are unavailable and that the peak discharge rate will be attenuated to 30% less than the existing one year rate of discharge to the public combined sewer.
- b) Details of the means of limiting the surface water run-off generated by all rainfall events up to the 100 year plus 30% (for climate change) critical rain storm, so that run-off shall not exceed the run-off from the undeveloped site and not increase the risk of flooding off-site.
- c) Details of the surface water run-off attenuation storage system sufficient to accommodate the difference between the allowable discharge rate as calculated in b) above and all rainfall events up to the 100-year plus 30% (for climate change) critical rainstorm.
- d) Detailed design (plans, cross, long sections and calculations) in support of any surface water drainage scheme, including details on any attenuation system, and the outfall arrangements.
- e) Details of how the on site surface water drainage systems shall be maintained and managed after completion and for the lifetime of the development, to ensure long term operation to design parameters.
- f) A method statement to provide for the sewers downstream of the site connection to the public sewer to be jetted following connection to ensure

that the pipework is clear and free flowing following completion of the drainage works.

Reason: To prevent the increased risk of flooding, to improve and protect water quality.

22. The development hereby permitted shall only be carried out in accordance with the approved Flood Risk Assessment (FRA) Revision B, dated December 2012, Ref: 12101/FRA and the following mitigation measures detailed within the FRA shall be fully implemented prior to the occupation of the dwelling or in accordance with the timing / phasing arrangements embodied within the scheme, or within any other period as may subsequently be agreed, in writing, by the Local Planning Authority:

- a) Limiting the discharge rate and storing the surface water run-off generated by all rainfall events up to the 100 year plus 30% for residential 20% for commercial (for climate change) critical rain storm so that it will not exceed the run-off from the pre-developed site and not increase the risk of flooding off-site as detailed in Sections 3.6.3.3, 3.6.3.4, 3.7.1 and 4.1.
- b) Finished floor levels are set no lower than 54.63m above Ordnance Datum (AOD) for properties fronting Scropton Road, 55.23m AOD for the remainder of the buildings. Section 3.6.2.1 and 3.6.2.2, and 4.1.

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

23. No occupation of any part of the permitted development shall take place until a verification report demonstrating completion of works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved, in writing, by the local planning authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include any plan (a "long-term monitoring and maintenance plan") for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan. The long-term monitoring and maintenance plan shall be implemented as approved.

Reason: To ensure that the remedial works required at the site are completed to a satisfactory standard.

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

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

25. Before the development is commenced details for the provision of safe route(s) into and out of the site to an appropriate safe haven as discussed in Sections 3.6.4.2 and 4.1 of the FRA in the event of flooding shall be submitted to and approved in writing by the Local Planning Authority. The safe routes shall be installed prior to the occupation of a dwelling on the site.
- Reason: To ensure safe access and egress from and to the site.
26. All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed with the Local Planning Authority. (Detailed plan awaited due 11 01 13 - 1400). Any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.
- Reason: In the interests of the appearance of the area.
27. In implementing the hard and soft landscaping required by condition 27 above, a 25mm upstand shall be used on all shared level surfaces.
- Reason: The use of 50mm upstand is not acceptable and the County Highway Authority has accepted an upstand of this height on other development sites.
28. No part of the development shall be carried out until precise details, specifications and, where necessary, samples of the facing materials to be used in the construction of the external walls and roof of the employment building have been submitted to and approved in writing by the Local Planning Authority. The work shall be carried out in accordance with the approved details. The housing development shall be undertaken in accordance with the revised materials schedule received under cover of your e-mail dated 4 January 2013. The exception is the colour of the front doors of the development where terraced houses and the apartment block shall have doors painted the same colour.
- Reason: To safeguard the appearance of the existing building and the locality generally.
29. Before development is commenced detailed plans to a minimum scale of 1:10 shall be submitted to and approved in writing by the Local Planning Authority detailing a typical section of the string courses and its relationship to a window opening together with a cill detail in relation to window openings.
- Reason: In the interests of the character and appearance of the area.
30. No work shall take place on the site until details of a scheme for the disposal of foul water have been submitted to and agreed in writing by the Local Planning Authority. The scheme shall be carried out in conformity with the details which have been agreed before the development is first brought into use.
- Reason: In the interests of pollution control.
31. There shall be no removal of hedgerows, trees or shrubs nor demolition of buildings that may be used by breeding birds shall take place between 1st March and 31st August inclusive, unless a survey has been undertaken by a competent ecologist to assess the nesting bird activity on site during this period, and details of measures to protect the nesting bird interest on the site have been submitted

to and approved in writing by the Local Planning Authority the approved scheme shall then implemented in accordance with the approved scheme.

Reason: In order to ensure that breeding birds are not disturbed during the nesting season.

Informatives:

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

Pursuant to Section 163 of the Highways Act 1980, where the site curtilage slopes down towards the public highway measures shall be taken to ensure that surface water run-off from within the site is not permitted to discharge onto the highway.

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

Pursuant to Sections 149 and 151 of the Highways Act 1980, the applicant must take all necessary steps to ensure that mud or other extraneous material is not carried out of the site and deposited on the public highway. Should such deposits occur, it is the applicant's responsibility to ensure that all reasonable steps (eg; street sweeping) are taken to maintain the roads in the vicinity of the site to a satisfactory level of cleanliness. Pursuant to Section 38 and the Advance Payments Code of the Highways Act 1980, the proposed new estate roads should be laid out and constructed to adoptable standards and financially secured. Advice regarding the technical, financial, legal and administrative processes involved in achieving adoption of new residential roads may be obtained from the Department of Environmental Services at County Hall, Matlock (tel: 01629 580000).

Highway surface water shall be disposed of via a positive, gravity fed system (ie; not pumped) discharging to an approved point of outfall (eg; existing public sewer, highway drain or watercourse) to be sanctioned by the Water Authority (or their agent), Highway Authority or Environment Agency respectively. The use of soakaways for highway purposes is generally not sanctioned.

Where development has been approved subject to the preparation and implementation of a Travel Plan, the applicant is obliged to submit the appropriate documentation to the Local Planning Authority well in advance of the development being taken into use.

Advice regarding the content of Travel Plans may be obtained from the Director of Environmental Services at County Hall, Matlock (tel: 01629 580000 and ask for the Transportation Section).

Where development is proposed, the developer is responsible for ensuring that development is safe and suitable for use for the purpose for which it is intended. The developer is thus responsible for determining whether land is suitable for a particular development or can be made so by remedial action. In particular, the developer should carry out an adequate investigation to inform a risk assessment to determine:

- whether the land in question is already affected by contamination through source - pathway - receptor pollutant linkages and how those linkages are represented in a conceptual model;

- whether the development proposed will create new linkages, e.g. new pathways by which existing contaminants might reach existing or proposed receptors and whether it will introduce new vulnerable receptors; and
- what action is needed to break those linkages and avoid new ones, deal with any unacceptable risks and enable safe development and future occupancy of the site and neighbouring land.

A potential developer will need to satisfy the local authority that unacceptable risk from contamination will be successfully addressed through remediation without undue environmental impact during and following the development. In doing so, a developer should be aware that actions or omissions on his part could lead to liability being incurred under Part IIA, e.g. where development fails to address an existing unacceptable risk or creates such a risk by introducing a new receptor or pathway or, when it is implemented, under the Environmental Liability Directive (2004/35/EC). Where an agreed remediation scheme includes future monitoring and maintenance schemes, arrangements will need to be made to ensure that any subsequent owner is fully aware of these requirements and assumes ongoing responsibilities that run with the land.

The Environment Agency advises that the applicant/ developer should refer to its 'Groundwater Protection: Policy and Practice' (GP3) document, available from the EA website at www.environment-agency.gov.uk. This sets out its position on a wide range of activities and developments, including:

- o Storage of pollutants and hazardous substances
- o Solid waste management
- o Discharge of liquid effluents into the ground (including site drainage)
- o Management of groundwater resources
- o Land contamination
- o Ground source heat pumps

All precaution must be taken to avoid discharges and spills to ground both during and after construction. For advice on pollution prevention measures, the applicant should refer to the EA guidance 'PPG1 - General guide to the prevention of pollution', available from the website.

During construction you are requested to ensure that your or any other contractors' vehicles are parked legally and in a manner that shows consideration to the occupiers of adjacent and nearby properties. Thank you for your co-operation.

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

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

You are requested to give serious consideration to the installation of ducting across the site to serve each dwelling for cabling for broadband internet capability.

22/01/2013

Item **1.5**

Reg. No. **9/2012/0906/NO**

Applicant:
MR L SMITH
MILEND CARAVAN SITE
DERBY ROAD
HILTON
DERBY
DE65 5BU

Agent:
Mr ALAN YARWOOD
ROGER YARWOOD,
PLANNING CONSULTANT
WHEATLEY BARN
WHEATLEY ROAD
TWO DALES
MATLOCK
DE4 2FF

Proposal: **THE ERECTION OF A TOILET BLOCK AT MILEND
CARAVAN SITE DERBY ROAD HILTON DERBY**

Ward: **HILTON**

Valid Date: **01/11/2012**

Reason for committee determination

Councillor Patten has requested that the application be brought to Committee, as the Committee should consider matters of local concern.

Site Description

The proposed toilet unit lies within the existing gypsy site and lies just to the south of the existing day room (which also has toilet facilities). Fences and a frontage laurel hedge behind a brick wall and access gates enclose the site. The east boundary also has a substantial hedge along it that separates the site from the neighbouring property the dwelling to which lies across an open paddock some distance from the site boundary.

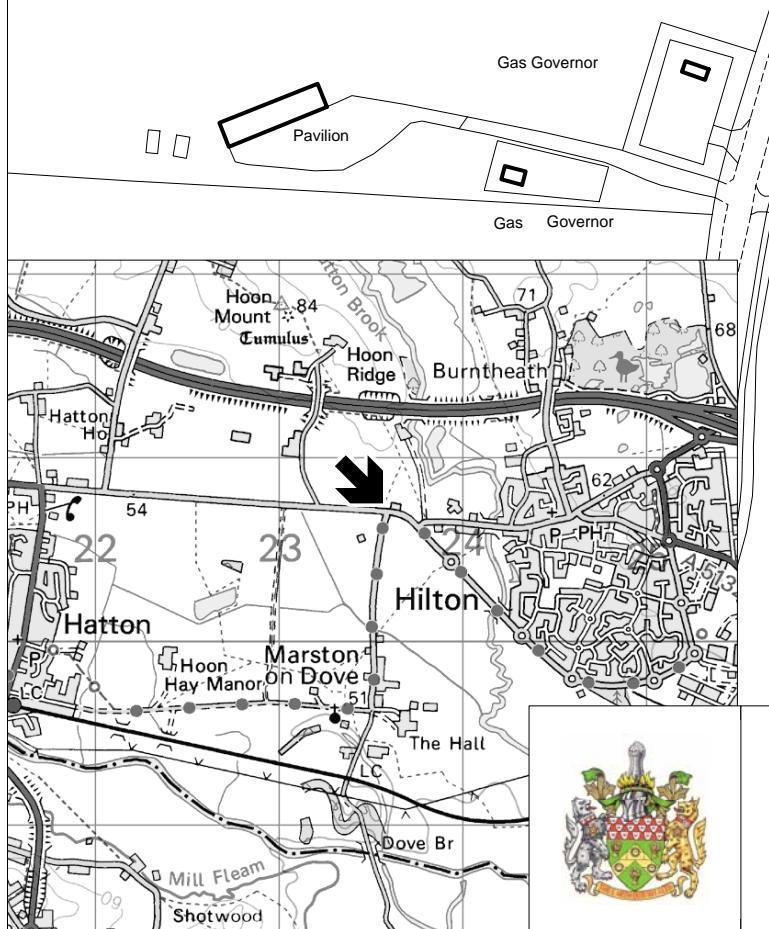
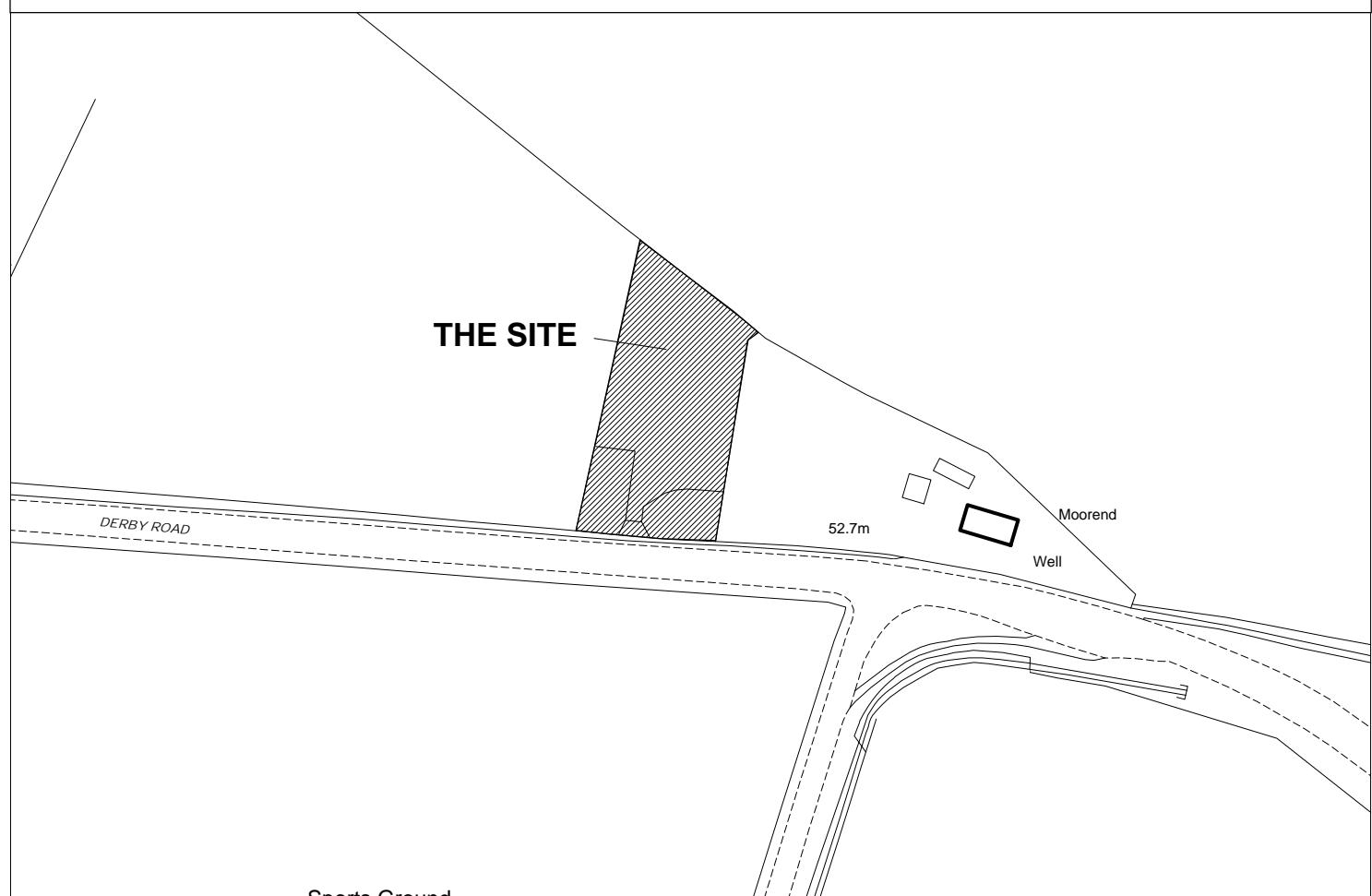
Proposal

The proposal is for an additional single brick built toilet linked to the existing on-site treatment plant.

The building would 2.4m x 2.4m and would contain a toilet and hand basin. It would be brick built with a pitched roof in materials that match the existing day room.

Applicants' supporting information

THE SITE



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South Derbyshire District Council. LA 100019461. 2010

The applicants consider that the proposal accords with national and local planning policy and that the proposal would not adversely impact on the character and appearance of the area.

Planning History

The site has a valid permanent planning permission granted (9/2009/0188) following the initial temporary planning permission granted 9/2004/1472) and renewed in response to application 9/2007/1405. The day room was permitted – 9/2010/0187 and the additional two pitches were granted permission earlier this year (9/2012/0171).

Responses to Consultations

Severn Trent Water has no objection.

The Environmental Health Manager has considered the objections received and considers that as there are no additional people being accommodated on the site and as there is a bio-disc treatment plant on the site, it is unlikely that that flood water would affect the operation of the bio-disc and as such has no objection.

Responses to Publicity

One letter has been received objecting to the development for the following reasons:

- a) The site has been enlarged to accommodate up to 5 caravans for 3-months of the year despite objection from the Parish Council.
- b) The site already has these facilities in the day room, why is there a need for this additional toilet facility
- c) This is an additional area in the green belt that would be lost as a result of an additional building outside the village boundary.
- d) It is acknowledged that the applicant does a good job of managing the site but there is the risk of the site being occupied by persons other than the applicant that could lead to an uncontrolled environment leading to disorder and Council administration problems.
- e) In a separate submission to Councillor Patten the same objector makes reference to the inability of the septic tank system to function in the winter months due to the waterlogged nature of the land.
- f) The commercialisation of the site should be restricted and there is a fear that the provision of an additional toilet could lead to additional caravans on the site.

Development Plan Policies

The relevant policies are:

Local Plan: Housing Policy 15.

Regional Plan: Policy 16 and Annex 2.

National Guidance

The NPPF – Planning Policy for Travellers – Paragraphs 20 – 26 that deal with determining planning applications for traveller sites. The NPPF at Paragraphs 4 & 17 Paragraph 4 refers to the Planning Policy for Traveller document and Paragraph 17 is the guiding principles for taking planning decisions. The NPPF at paras.186 & 187

require positive decision taking and at paras.196 & 197 requires positive action by local planning authorities to take action to resolve issues arose during the course of determining applications.

Planning Considerations

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

- The Development Plan
- Impact on the character and appearance of the locality
- Objector considerations

Planning Assessment

Housing Policy 15 in the Local Plan and the provisions of Policy 16 in the Regional Plan make provision for gypsy accommodation in locations such as this and the site contributes to the overall gypsy site provision in the District.

The single toilet unit would be used in conjunction with existing facilities in the day room and allow occupiers to undertake ablutions without going into the main day room building thus keeping the main building in a tidy condition. The impact on the wider countryside is minimal now that the frontage landscaping is well-established and new unit would be seen in the context of the existing building when the occupier is away travelling and in the context of the caravans and the day room when the applicant is on site.

Whilst the concerns of the objector are noted and in the light of the lack of objection from Severn Trent Water and the Environmental Health Manager, it would be difficult to argue that the addition of one toilet to the site would materially add to effluent discharges from the site particularly when the site is to be occupied by no more caravans than have already been permitted. The site does not lie in any Green Belt.

The site owner is aware of the limitations on the site and it would be unrealistic to try and refuse this application on the basis that it might lead to further caravans being stationed on the site, that would require the determination of a separate planning application.

Notwithstanding that the application refers to an existing 'septic tank', investigations with Building Control reveal that the site is served by a bio disc system rather than the more traditional septic tank was put in at the time the day room was built. These systems discharge treated water to the local land drainage system rather than rely on soakaways.

The development is in accord with the Development Plan and there are no material planning considerations that dictate that the development could be refused planning permission.

Recommendation

GRANT permission subject to the following conditions:

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

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

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

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

22/01/2013

Item 1.6

Reg. No. 9/2012/0915/FH

Applicant:
MR PATRICK HAMMOND
2 MILTON GRANGE
MAIN STREET
MILTON
DERBY
DE65 6EF

Agent:
MR IAN HARDING
BUILDING DESIGN GROUP LTD
1ST FLOOR SUITE
BITTERSCOTE HOUSE
BONEHILL ROAD
TAMWORTH
STAFFORDSHIRE
B78 3HQ

Proposal: THE ERECTION OF AN EXTENSION, WALL AND GATES
AND A GLAZED VERANDAH AT 2 MILTON GRANGE
MAIN STREET MILTON DERBY

Ward: REPTON

Valid Date: 27/11/2012

Reason for committee determination

The application is brought before Committee at the request of Councillor Smith as local concern has been expressed about a particular issue and there are special personal circumstances of the applicant and unusual site circumstances which committee members should consider.

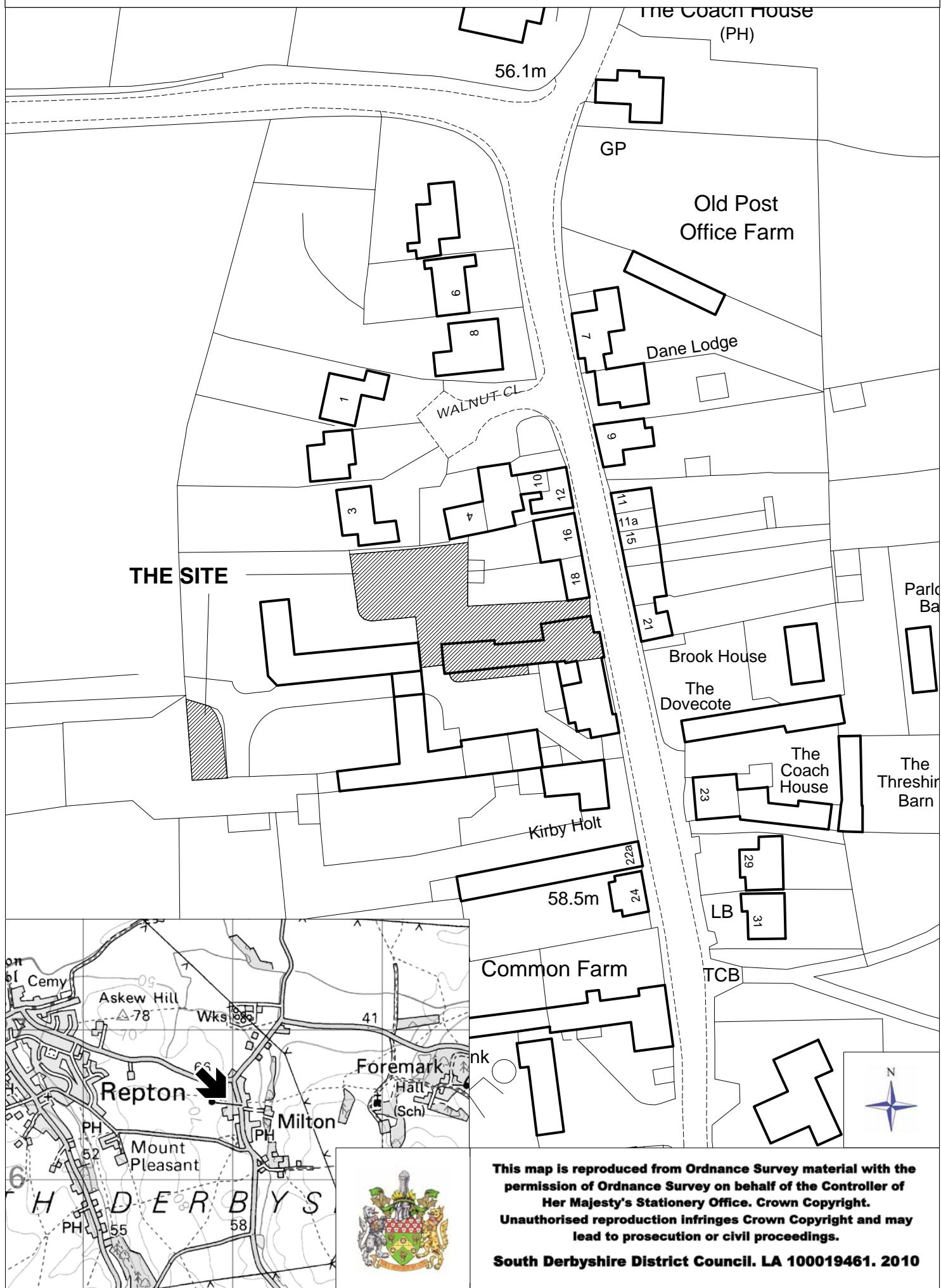
Site Description

The application site is located in the northern part of the village of Milton and is within the Milton Conservation Area.

The application property is within a former farm complex converted to residential use in the early 1990s. The property comprises the northern wing of the Grade II listed farmhouse, which sits tight against the road frontage of Main Street, and the attached former outbuilding range to the rear, to which the proposed extension would be attached.

There is a public footpath running through the middle of the residential complex that links Main Street to the style that accesses the open fields to the west of the village.

Proposal



The proposal is for the erection of a single storey brick and tile extension to the north side of the property with an attached glazed veranda to its west side. The application also seeks the replacement of the existing gates and steel posts located to the north side of the property with new ledged and braced timber gates and a brick wall to connect to the existing garden boundary wall.

There is also a proposal to replace the existing timber fencing around a small rear garden area, located at the extremity of the internal access road in the south west corner of the complex, with a new brick wall to match the existing boundary walls.

Applicants' supporting information

The submitted Design and Access Statement covers the following:

The new extension will be off the kitchen to the rear of the property on an existing patio area. The veranda will cover and external dining area. The appearance of the extension is intended to match the general appearance of the main house, with a single pitch roof of matching roof tiles. Windows, brick, tile and rainwater goods are to match the existing as closely as possible. The gates and walls are to follow existing detail, bullnose blue brick on edge on existing wall between the application site and the neighbouring property. The windows follow the pattern and scale of the type of window on the three existing gables.

There are to be no landscaping works to be undertaken.

Access to the site will remain as existing, however as the property is Grade II listed and the main entrance to the property is a level access, no measures will be made to alter the external ground level to provide level access. A step will be constructed to the finished floor level of the extension.

Planning History

Planning permission and listed building consent for the conversion of the buildings to four residential units was granted in 1990. An alternative scheme however was refused permission and listed building consent in 2002, so implementation of the earlier scheme continued.

Responses to Consultations

There were no responses to consultation.

Responses to Publicity

6 letters of objection have been received covering the following:

- a. 1990 conveyance documents obligates the owners of Kirby Holt to build a garden boundary wall to a height of 2 metres, the applicants wish to erect a 2.1 metre wall, which would be against the Church Commissioners (previous owners of land) wishes. The proposed wall will be 10cm higher and therefore visible over the objector's own wall.
- b. Concerns raised over need for brick wall around the rear yard. The understanding is that this is a service yard for the houses and not an area for

- commercial purposes. A shed has been erected in the rear yard and may be being used for storage purposes. Objection is raised to any possibility of commercial activity adjacent to the neighbour which may not have the correct planning permission. Objector is unaware of any application for change of use of this area.
- c. Concerned that building of wall around rear yard is to allow storage of commercial materials and that veranda is to allow division of No 2 into 2 separate dwellings.
 - d. Main Street is already very congested and it is becoming increasingly difficult and dangerous to turn off the Brook Farm barn conversions because of cars and vans parked opposite Milton Grange obscuring vision of cars coming from Repton.
 - e. Original planning permission for Milton Grange stipulated restricting vehicular access to 3 properties only (No's 1, 3 and 4). It has been noted that the intended access for No 2 off Main Street has been blocked off and there is already considerable vehicular traffic from non-resident employees at No. 2 via the central Milton Grange access in contravention of the intentions of the original application. The commercial activity at No 2 already gives rise to more traffic than a normal residence would.
 - f. Concerned that re-opening the original access while leaving the Milton Grange side access open will give rise to a circular flow of vehicles not only on completion, but also during construction, on the active footpath through Milton Grange.
 - g. The entrance/exit to the Milton Grange complex has very limited visibility for both vehicular and pedestrian traffic.
 - h. Construction traffic will block or render the public footpath access dangerous.
 - i. Access to the central Milton Grange area from No 2 should be reclosed, as originally intended. It is noted that land within Milton Grange is owned solely by No's 1, 3 and 4 and that a large number of private and commercial vehicles assemble on site on a daily basis who should not be there in the first place.
 - j. The 2.1 metre wall is not in keeping with the character of the original farm nor its subsequent redevelopment, in contravention of the 'dominance' and 'design and appearance' provisions and should be restricted to match the surrounding structures.
 - k. Land Registry documents grants the right for the occupants of No 4 Milton Grange to keep their LPG tank within the area where the proposed wall is to be erected, and the right of access at all times to inspect and maintain said LPG tank. Enclosure by brick wall will make impossible any installation or removal of an LPG tank or excavation for gas pipes beneath brick wall footings. The communal gas tank area has been padlocked in contravention to the objector's right to 24 hour access.
 - l. The proposed wall is immediately adjacent to a public footpath therefore question 19 on the 1005 application form and question 18 of 0915 form are inaccurate.
 - m. The extended driveway to the proposed walled area is owned jointly by plots 3 and 4 and the applicant will require access over a driveway not owned by them.
 - n. Clause 8 of the restrictive covenant (copy supplied with objection) prohibits any parking of any vehicle, domestic or commercial vehicles on any of the driveway and therefore the contractor's vehicles would be allowed to drop off loads only.

- o. The height of the nearest wall (rear boundary of No. 4) is only 1.75m high causing asymmetry and creating a 'blind alley' surrounded on 3 sides by brick walls. The height of the existing fence panels is only 1.8m therefore a wall of 2.1 will result in the loss of light to the objector's garden, driveway and the public footpath.
- p. No mention is made that the existing walls of the courtyard are made of reclaimed bricks.
- q. Planning permission for Milton Grange as 6 dwellings was rejected owing to issues over safety, poor visibility and short narrow access. Permission was granted for 4 dwellings but stipulating just 3 dwellings to have access via the main entrance with access for No 2 being further north up Main Street. Subsequent to residents moving in, it is understood that they opened up the rigid fence within the courtyard to make access to their property via the courtyard and closing off the intended access via their Main Street access.
- r. The Design and Access Statement states that access to the site shall remain as existing but the objectors do not believe that the existing access referred to is allowed under the original planning consent.
- s. The increase in construction traffic will create additional safety and access issues in relation to the public footpath and the main entrance to the complex therefore access for contractors vehicles should be via the reopened Main street entrance for No. 2.
- t. The access gate to the gas tank area has been moved to help unauthorised business access and has been padlocked. This has resulted in the Calor gas truck blocking access to No. 3 and the public footpath. The entrance to this area should be restored to the original position.
- u. The gas tank area has a single gated access measuring 0.24m wide and this should be preserved. There is also a 200mm gap between the tarmac and the fence and this should be maintained.
- v. At present Emergency Services and other authorities can access the 2 2000 litre petroleum tanks if there is an incident and a brick wall would restrict access therefore introducing a safety risk. Foundations of a wall could also damage the existing gas pipes.
- w. The land around the gas tanks receives a share of the water flow from the public footpath which acts as a natural soak away. The wall would act as a barrier to the soak-away thus diverting water onto the driveway and introducing a flood risk to properties.
- x. Deliveries to and from the gas tank area are being made on a daily basis by a commercial van that blocks the public footpath.
- y. A chainsaw is being used in the gas tank area to cut and store wood causing a nuisance to neighbours and a potential fire risk with regard to the gas tanks.
- z. Building a brick wall around the gas tank area is to increase security of the business paraphernalia thereby turning it into a business storage compound.
- aa. No objections are raised to the property improvements to No. 2 other than the access issues.
- bb. Considerable on-street parking obscures view of oncoming traffic when objector's wish to leave their property which is located opposite the application site. There is a high number of vehicles parked along the main road that are related to the business being undertaken at No 2.
- cc. Concern is raised over the risk posed to pedestrians accessing the public right of way. The majority of the families in both Milton Grange and Brook Farm have young children, for whom safety is paramount.

Development Plan Policies

The relevant policies are:

Local Plan: Saved Environment Policies 12 and 13 and Saved Housing Policy 13 of the Adopted Local Plan (Supplementary Planning Guidance, 'Extending Your Home' (SPG)).

National Guidance

National Planning Policy Framework: Chapter 7 Requiring good design and Chapter 12 Conserving and enhancing the historic environment.

Planning Considerations

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

- The impact of the proposal on the character and appearance of the conservation area and the character and setting of the Grade II listed building; and
- The impact of the proposal on the amenities of the neighbouring properties.

Planning Assessment

Impact on the character and appearance of the conservation area and the character and setting of the Grade II listed building

The proposals were subject to pre-application advice from the Conservation Officer, during which the form of the proposed brick lean-to was agreed but not the veranda. No objection is raised from a conservation point of view to the brick and tile extension, subject to the omission of the fine glazing bars from full height windows on the north side of the extension, as these would give an inappropriately domestic appearance to the addition; the thicker bars that sub-divide the three sections are acceptable.

The proposed veranda is a more unusual feature which would not normally be an acceptable addition to a listed farm building. However, several features make it more acceptable than a conservatory: the proposed veranda is less domestic in character, it involves no changes to the existing wall or floor finishes and it will not be domestically furnished as an indoor space. Moreover, its impact on the special historic and architectural character of the farm group is small as the location of the extension is on a rear elevation and hidden within a private garden. The veranda is shown in a position that it would not be readily visible from public vantage points within the conservation area.

The proposed brick wall around the rear yard area is to be detailed as per the existing brick boundary walls within the complex and the Conservation Officer has raised no objection to it being 2.1 metres in height.

The proposals therefore conform to the above-mentioned Environment Policies in that they would not adversely affect the character and appearance of the conservation area or the character and setting of the listed building and the listed farm complex as a whole.

Impact on the amenities of the neighbouring properties

The proposed extension to the existing property is of single storey height, the site has adequate screening on all its garden boundaries and land levels between the site and the adjacent properties are relatively level. The size and form of the extension is sympathetic to and in scale with the host property and has been judged not to adversely affect the amenities of the neighbouring properties when assessed against guidance set out in the SPG. The proposal therefore conforms to Saved Housing Policy 13 of the Adopted Local Plan in that it is in keeping with the local surroundings, appropriately integrated within the current built environment and without undue detriment to adjacent public and private spaces.

Neighbours have raised objection to the height of the proposed wall and that it would not be in keeping with the character of the area as other boundary walls are not as high. Whilst the objection is noted, this aspect has been carefully considered by the Conservation Officer who notes that boundary walls are a feature of the site and whilst it may be visible, that is not sufficient to warrant refusal of planning permission or listed building consent.

Other issues raised by objectors

Extra traffic – the development proposed in this application could in no way be argued to be likely to generate a material change to traffic generation at the site and therefore grounds for refusing planning permission. There would be additional traffic during the construction period, but this by its very nature is temporary and is a consequence of virtually all planning permissions and so does not provide grounds for refusing planning permission.

Commercial use of site – The 1990 planning permission does contain a condition that precludes a business use at the dwelling. This planning application does not include a proposal to change or remove that condition. This is therefore a separate enforcement issue and, in response to the allegations in the objections, an enforcement file has been opened to establish the facts relating to the use of the dwelling for commercial purposes. This issue cannot affect the decision made on the current application.

Land ownership/restrictive covenant issues are a civil matter. The use of the premises for a business may be in breach of a covenant, but it is for the holder of that covenant to enforce its provisions. The applicant has confirmed that he is the sole owner of land to which the application relates.

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

Recommendation

GRANT permission subject to the following conditions:

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

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

2. Notwithstanding the originally submitted details, this permission shall relate to the amended drawing no. 2727/01 Rev A, received 20/12/12.
Reason: For the avoidance of doubt, the original submission being considered unacceptable.
3. No part of the development shall be carried out until precise details, specifications and, where necessary, samples of the facing materials to be used in the construction of the external walls and roof of the building have been submitted to and approved in writing by the Local Planning Authority. The work shall be carried out in accordance with the approved details.
Reason: To safeguard the appearance of the existing building and the locality generally.
4. Notwithstanding the submitted details, large scale details to a minimum scale of 1:10 of eaves, verges, timber windows to elevation A, veranda roof and column, including horizontal and vertical sections, precise configuration of opening lights and sill and lintel details shall be submitted to and approved in writing by the Local Planning Authority prior to being incorporated in the development. The details shall show the omission of the slender horizontal glazing bars on the full height windows on elevation A. All items shall be constructed in accordance with the approved details.
Reason: The details submitted are inadequate to determine whether the appearance of the building would be acceptable.
5. External joinery, excluding the verandah but including the new gates, shall be in timber and painted to match the colour of the adjacent doors and windows unless otherwise agreed in writing with the Local Planning Authority. The verandah shall be colour coated to match the timber joinery used in the building unless otherwise agreed in writing with the Local Planning Authority. The items shall be painted/coated within three months of the date of completion of the development unless otherwise agreed in writing by the Local Planning Authority.
Reason: In the interests of the appearance of the building(s) and the character of the area.
6. Gutters shall be cast metal, with cast metal fall pipes.
Reason: In the interests of the appearance of the building(s), and the character of the area.
7. Pointing of the proposed buildings shall be carried out using a lime mortar no stronger than 1:1:6 (cement:lime:yellow sand). The finished joint shall be slightly recessed with a brushed finish.
Reason: In the interests of the appearance of the building(s).
8. A sample panel of pointed brickwork 1 metre square or such other area as may be agreed by the Local Planning Authority shall be prepared for inspection and approval in writing by the Local Planning Authority prior to the implementation of any other works of pointing. The works shall be carried out in accordance with the approved sample.
Reason: In the interests of the appearance of the building(s) and the locality generally.

Item 1.7

Reg. No. 9/2012/1005/L

Applicant:
MR PATRICK HAMMOND
2 MILTON GRANGE
MAIN STREET
MILTON
DERBY
DE65 6EF

Agent:
MR IAN HARDING
BUILDING DESIGN GROUP LTD
1ST FLOOR SUITE
BITTERSCOTE HOUSE
BONEHILL ROAD
TAMWORTH
STAFFORDSHIRE
B78 3HQ

Proposal: THE ERECTION OF AN EXTENSION, WALL AND GATES
AND A GLAZED VERANDAH AT 2 MILTON GRANGE
MAIN STREET MILTON DERBY

Ward: REPTON

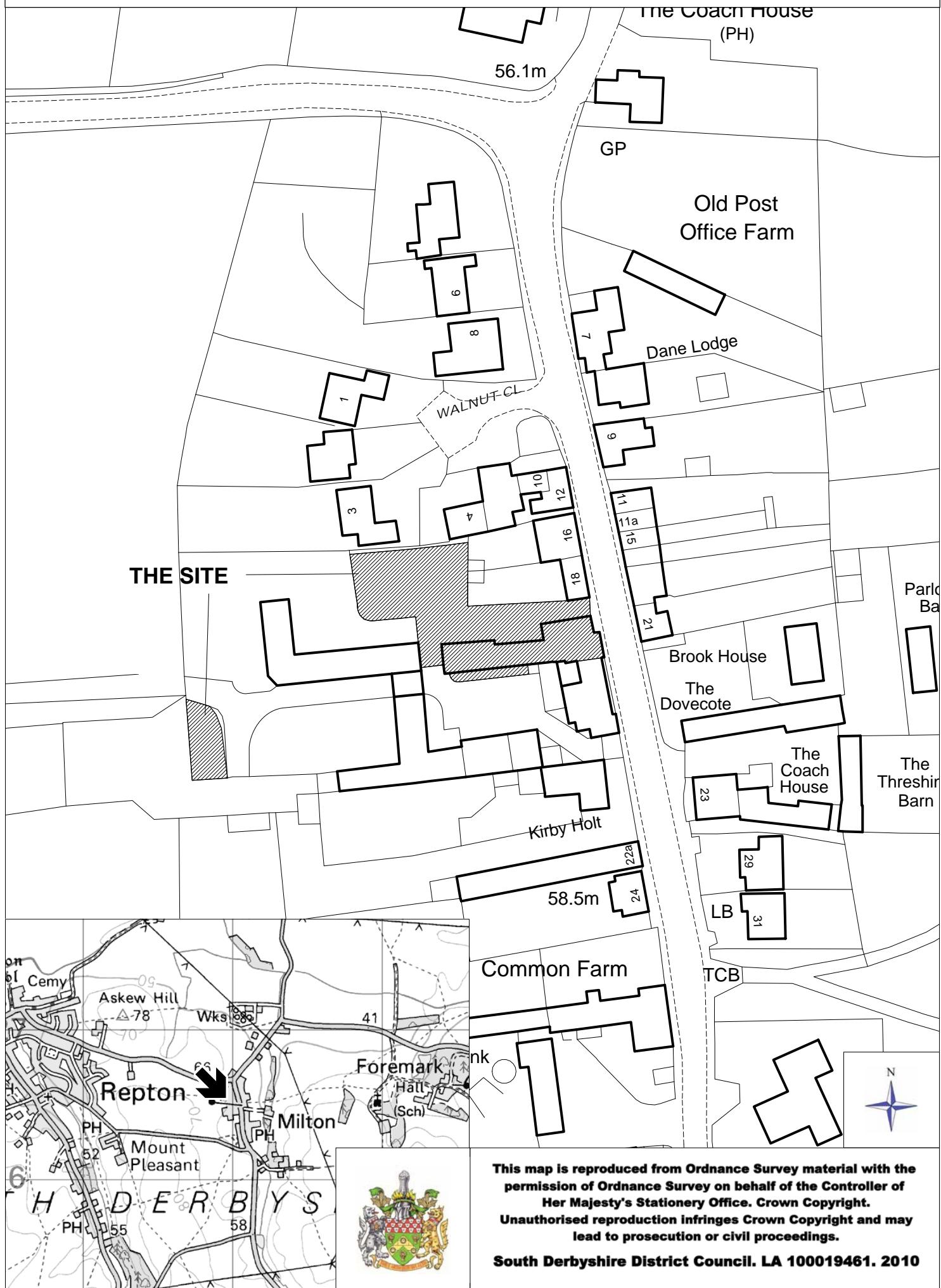
Valid Date: 27/11/2012

The report on this application is found at Item 1.6 (9/2012/0915) above.

Recommendation

GRANT listed building consent subject to the following conditions:

1. The works to which this consent relates shall be begun before the expiration of three years from the date of this consent.
Reason: To conform with Section 18(1) of the Planning and Listed Buildings and Conservation Area Act 1990.
2. Notwithstanding the originally submitted details, this permission shall relate to the amended drawing no. 2727/01 Rev A, received 20/12/12.
Reason: For the avoidance of doubt, the original submission being considered unacceptable.
3. No part of the development shall be carried out until precise details, specifications and, where necessary, samples of the facing materials to be used in the construction of the external walls and roof of the building(s) have been submitted to and approved in writing by the Local Planning Authority. The work shall be carried out in accordance with the approved details.
Reason: To safeguard the appearance of the existing building and the locality generally.



4. Notwithstanding the submitted details, large scale details to a minimum scale of 1:10 of eaves, verges, timber windows to elevation A, veranda roof and column, including horizontal and vertical sections, precise configuration of opening lights and sill and lintel details shall be submitted to and approved in writing by the Local Planning Authority prior to being incorporated in the development. The details shall show the omission of the slender horizontal glazing bars on the full height windows on elevation A. All items shall be constructed in accordance with the approved details.

Reason: The details submitted are inadequate to determine whether the appearance of the building would be acceptable.

5. External joinery, excluding the verandah but including the new gates, shall be in timber and painted to match the colour of the adjacent doors and windows unless otherwise agreed in writing with the Local Planning Authority. The verandah shall be colour coated to match the timber joinery used in the building unless otherwise agreed in writing with the Local Planning Authority. The items shall be painted/coated within three months of the date of completion of the development unless otherwise agreed in writing by the Local Planning Authority.

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

6. Gutters shall be cast metal, with cast metal fall pipes.

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

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

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

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

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

22/01/2013

Item **1.8**

Reg. No. **9/2012/0944/O**

Applicant:
MRS ROSE HOLDEN
27 MILTON ROAD
REPTON
DERBY
DE65 6FZ

Agent:
MARK BLOOD
MARK BLOOD BUILDING DESIGN
MANOR FARM HOUSE
LONDON ROAD
SHARDLOW
DERBYSHIRE
DE72 2GR

Proposal: **OUTLINE APPLICATION (ALL MATTERS RESERVED
EXCEPT FOR ACCESS AND SCALE) FOR THE
ERECTION OF A DETACHED BUNGALOW WITH
DETACHED GARAGE AT LAND TO THE REAR OF 27
MILTON ROAD REPTON DERBY**

Ward: **REPTON**

Valid Date: **23/11/2012**

Reason for committee determination

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

Site Description

The application site is located within Repton village confines and forms part of the garden situated to the rear of No. 27 Milton Road. The applicant's dwelling is a 1960/70s chalet style bungalow with the surrounding built form mixed in character, but the predominant character of properties adjacent to the site is of dwellings set back from the road in an elevated position with extensive rear gardens. The application garden is approximately 55m long and relatively flat with neighbouring gardens of a similar length. There are a few small ornamental trees within the site and a woodland copse to the east. To the rear of the site is a two-storey dwelling and bungalow, Nos. 22 & 24 Monsom Lane respectively situated at approximately 0.5m lower ground level than the application site.

Proposal

The application is in outline with access and scale for consideration and proposes the erection of a bungalow and detached garage in the rear garden of No. 27. The



submitted indicative plans show a three/four bedroom property measuring 5m to the ridge. A new vehicular access is proposed from Milton Road the driveway of which would extend along the eastern boundary of the site alongside No. 29 Milton Road and necessitate the demolition of the existing single storey garage, store and other small domestic outbuildings situated to the side and rear of No. 27.

Applicants' supporting information

A Design and Access Statement has been submitted with the application which includes the following detail:

- The existing area is mixed in terms of house types, sizes and age with no predominant or distinctive style.
- The indicative layout shows that the new bungalow would sit comfortably in its surroundings and would relate visually to the group of dwellings that adjoin the site to the north.
- The indicative layout and design demonstrates that there is no significant loss of privacy or adverse effect on outlook to the occupiers of existing dwellings adjoining the site.
- Adequate protection can be provided to the side elevation of No. 29 Milton Road by the erection of boundary walls/fencing.
- It should be noted that the applicants existing driveway and turning area is located in front of the neighbouring side elevation windows.

Planning History

9/2007/0065 – The erection of extensions, permitted 14.03.07 (un-implemented).

Responses to Consultations

The Highway Authority has no objection subject to conditions relating to access and parking provision as submitted.

The Contaminated Land Officer has no objection subject to a condition for the monitoring and control, as necessary, of ground gas migration and ingress.

Severn Trent Water has no objection subject to the submission of surface water and foul sewage disposal details.

Responses to Publicity

Five letters of objection have been received raising the following concerns:

- a) The proposed building will be intrusive and very close to our boundary.
- b) We do not want any interference to light or sun which will affect the full potential of our solar panels' ability.
- c) The site is not large and the noise, dirt or dust created will be very intrusive.
- d) The entrance onto Milton Road would be very dangerous as No. 27 is situated on a blind bend.
- e) The site is adjacent to a copse which attracts a lot of wildlife and rare birds. If building went ahead they would be scared off by the excessive noise.
- f) The building on gardens is leading to too much density of development on Milton Road.

- g) The bungalow would be surrounded by properties so loss of privacy is inevitable.
- h) Increase in disturbance alongside both No. 29 & No. 27 by the proposed narrow roadway in terms of both noise (cars and people) and from the headlights of vehicles made worse by the slope vehicles would climb on exiting the highway. This will have a detrimental effect on windows and bedrooms of No. 29 that face the proposed access driveway.
- i) If permission is granted can a solid brick wall or similar construction to run the length of the boundary at a height of 6ft or similar to mitigate both noise and light disturbance to No. 29.
- j) The permission should specify an appropriate solid roadway surface to mitigate noise disturbance to No. 29.
- k) Intrusion of privacy by means of overlooking and noise.
- l) New entrance and increased traffic onto an already dangerous and busy road.
- m) This infill is not consistent with the scale and character of the neighbourhood.

Development Plan Policies

The relevant policies are:

East Midlands Regional Plan: Policies 1, 2, 3 & 48

Local Plan: Housing Policies 5 & 11, Transport Policy 6

National Guidance

National Planning Policy Framework (NPPF) paragraphs 17, 49, 53, 55, 186 & 187.

Planning Considerations

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

- Principal of development
- Impact on character of the area
- Impact on residential amenity
- Highway issues

Planning Assessment

Principal of development

The site is situated within Repton village confines where new housing development is acceptable in principle in accordance with Housing Policy 5 of the Local Plan subject to being in scale and character with the settlement. The proposal residential development of the site would accord with the principles of NPPF paragraph 49 which advises that housing applications should be considered in the context of a presumption in favour of sustainable development and paragraph 55 which seeks to promote sustainable housing development in rural areas where it would enhance or maintain the vitality of rural communities.

Impact on character of the area

In June 2010 the Government amended the definition of 'previously-developed land' under Annex B of PPS3: 'Housing' to exclude private residential gardens in order to

allow Local Planning Authorities an element of control over 'garden grabbing'. The NPPF has now replaced PPS3 but at paragraph 53 advises that Local Planning Authorities should consider the case for setting out policies to resist inappropriate development of residential gardens, for example where development would cause harm to the local area. Whilst the proposal would involve the development of previously undeveloped land in the form of residential gardens, the acceptability of the development in this regard is as to whether there would be any harm to the character and appearance of the local area.

The site is enclosed by existing residential development on all sides and the openness and length of the both the application site and neighbouring gardens is not generally visible within the wider area. Whilst there is an area of open space and a public footpath to the east, the site is screened from public view by the extensive number of trees within the open space. Views of the site, other than from neighbouring properties, would therefore be limited to distant views along the proposed driveway from Milton Road. In view of the enclosed nature of the site and the proposed low ridge height of the dwelling, the development would not lead to any significant harm to the character and appearance of the area and is considered to be in accordance with the above policy and guidance. The detailed design would be approved at reserved matters stage.

Impact on Amenity

The indicative layout shows the bungalow situated adjacent to the boundary of Nos. 22 & 24 Monsom Lane, a two-storey dwelling and bungalow respectively, situated at approximately 0.5m lower ground level than the application site. There are no first floor windows overlooking the site and whilst the indicative layout indicates a lounge window that would fall just below the 21m distance to the neighbouring lounge window at No. 22 that faces the site, sufficient boundary treatment details could be agreed by condition to prevent any significant loss of privacy to both dwellings. The indicative plans show the bungalow in excess of 25m from the rear elevations of Nos. 25 & 29 Milton Road and again appropriate boundary treatments would ensure that sufficient privacy is maintained and assist in mitigating any adverse impacts from vehicle movements on the neighbouring property. The submitted indicative plans therefore show that the development of the site could meet the requirements of the Council's guidance in respect of impacts on neighbouring dwellings.

Highway Issues

A separate vehicular access is proposed from Monsom Lane with the existing driveway retained to serve the existing property. Sufficient access, manoeuvring space and parking provision would be provided for both dwellings. On the advice of the Highway Authority the proposal is therefore considered to be in accordance with Transport Policy 6.

Conclusion

The residential development of the site would not have any significant adverse impact on the character and appearance of the surrounding area and the approval of appropriate boundary treatment details would assist in the protection of neighbouring residential amenity. The proposal is in accordance with the above policy and guidance and is considered 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.

Recommendation

GRANT permission subject to the following conditions:

1. (a) Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.
(b) The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the reserved matters to be approved.
Reason: To conform with Section 92(2) of the Town and Country Planning Act 1990.
2. Approval of the details of the layout, appearance and the landscaping shall be obtained from the Local Planning Authority in writing before any development is commenced.
Reason: The application is expressed to be in outline only and the Local Planning Authority has to ensure that the details are satisfactory.
3. No part of the development shall be carried out until precise details, specifications and, where necessary, samples of the facing materials to be used in the construction of the external walls and roof of the building(s) have been submitted to and approved in writing by the Local Planning Authority. The work shall be carried out in accordance with the approved details.
Reason: To safeguard the appearance of the existing building and the locality generally.
4. No development shall take place until details of a scheme for the disposal of surface and foul water have been submitted to and agreed in writing by the Local Planning Authority. The scheme shall be carried out in conformity with the details which have been agreed before the development is first brought into use.
Reason: In the interests of flood protecting and pollution control.
5. Notwithstanding any details submitted or the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended), no development shall take place until there has been submitted to and approved in writing by the Local Planning Authority plans indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed in accordance with the approved details before the development is occupied or in accordance with a timetable which shall first have been agreed in writing with the Local Planning Authority.
Reason: In the interests of the appearance of the area.
6. No development shall take place until there has been submitted to and approved by the Local Planning Authority a scheme of landscaping, which shall include indications of all existing trees and hedgerows on the land, and details of any to

be retained, together with measures for their protection in the course of development.

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

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

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

8. Prior to the occupation of the new dwelling, the new access to Milton Road shall be laid out and constructed in accordance with application drawing no. 12037.02. The access shall have a minimum width of 3.1m and be constructed of a splayed vehicular crossover.

Reason: In the interests of highway safety.

9. The gradient of the access shall not exceed 1 in 20 for the first 5m into the site from the highway boundary.

Reason: In the interests of highway safety.

10. Any gates shall be set back at least 5m from the highway boundary and open inwards only.

Reason: In the interests of highway safety.

11. Prior to the occupation of the new dwelling, the entire site frontage of both the existing and the proposed dwellings shall be cleared, and maintained thereafter, clear of any obstruction exceeding 600mm in height relative to road level in order to maximise visibility for drivers emerging from within the site onto the classified highway.

Reason: In the interests of highway safety.

12. Prior to the occupation of the new dwelling, the car parking and manoeuvring space for both the existing and proposed dwellings shall be laid out in accordance with the application drawing (12037.01) and maintained thereafter free of any impediment to its existing use.

Reason: In the interests of highway safety.

13. No development shall take place until a suitable scheme for the prevention of ground gas ingress is submitted to the Local Planning Authority and approved in writing;

OR, Monitoring at the site for the presence of ground gas and a subsequent risk assessment has been completed in accordance with a scheme to be agreed with the Local Planning Authority, which meets the requirements given in Box 4, section 3.1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.

Upon completion verification of the correct installation of gas prevention measures (if any) shall be forwarded to the Local Planning Authority for approval.

Reason: In the interests of pollution control.

Informatics:

Pursuant to Section 184 of the Highways Act 1980 and Section 86(4) of the New Roads and Streetworks Act 1991, at least 3 months prior notification should be given to the Director of Environmental Services at County Hall, Matlock (telephone 01629 580000 Ext 38595) before any works commence on the vehicular access within highway limits. Pursuant to Section 163 of the Highways Act 1980, where the site curtilage slopes down towards the public highway, measures should be taken to ensure that surface water run-off from within the site is not permitted to discharge across the footway margin. This usually takes the form of a dished channel or gulley laid across the access immediately behind the back edge of the highway, discharging to a drain or soakaway within the site.

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

For assistance in complying with planning conditions and other legal requirements applicants should consult "Developing Land within Derbyshire - Guidance on submitting applications for land that may be contaminated". This document has been produced by local authorities in Derbyshire to assist developers, and is available from http://www.south-derbys.gov.uk/environment/pollution/contaminated_land/default.asp. The administration of this application may be expedited if completion or verification evidence is also submitted to the Environmental Protection Officer (Contaminated Land) in the Environmental Health Enforcement department: thomas.gunton@south-derbys.gov.uk.

Further guidance can be obtained from the following:

- CIRIA C665: Assessing the risks posed by hazardous ground gases into buildings
- CLR 11: Model Procedures for the Management of Contaminated Land.
- CLR guidance notes on Soil Guideline Values, DEFRA and EA.
- Investigation of Potentially Contaminated Land Sites - Code of Practice, BSI 10175 2001.
- Secondary Model Procedure for the Development of Appropriate Soil Sampling Strategies for Land Contamination, R & D Technical Report P5 - 066/TR 2001, Environment Agency.
- Guidance for the Safe Development of Housing on Land Affected by Contamination Environment Agency. ISBN 0113101775.

22/01/2013

Item **1.9**

Reg. No. **9/2012/0969/U**

Applicant:

**MR PHILIP HEATH
45 BLANCH CROFT
MELBOURNE
DERBY
DE73 8GG**

Agent:

**MR PHILIP HEATH
45 BLANCH CROFT
MELBOURNE
DERBY
DE73 8GG**

Proposal:

**THE PART CHANGE OF USE FROM DOMESTIC
OUTBUILDING TO A PART-TIME PRODUCE STALL AT
45 BLANCH CROFT MELBOURNE DERBY**

Ward: **MELBOURNE**

Valid Date: **19/11/2012**

Reason for committee determination

The application is reported to Committee because the applicant is an employee of the Council.

Site Description

The proposal relates to part of an outbuilding at the rear of 45 Blanch Croft. Access to the garage is gained from the public car park off High Street. The site is about 10 m away from the public re-cycling facility on the same side of the car park.

Proposal

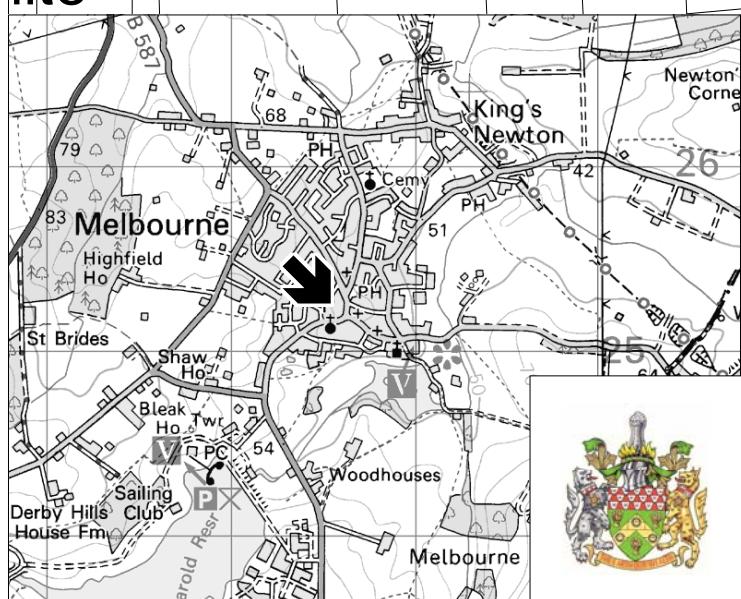
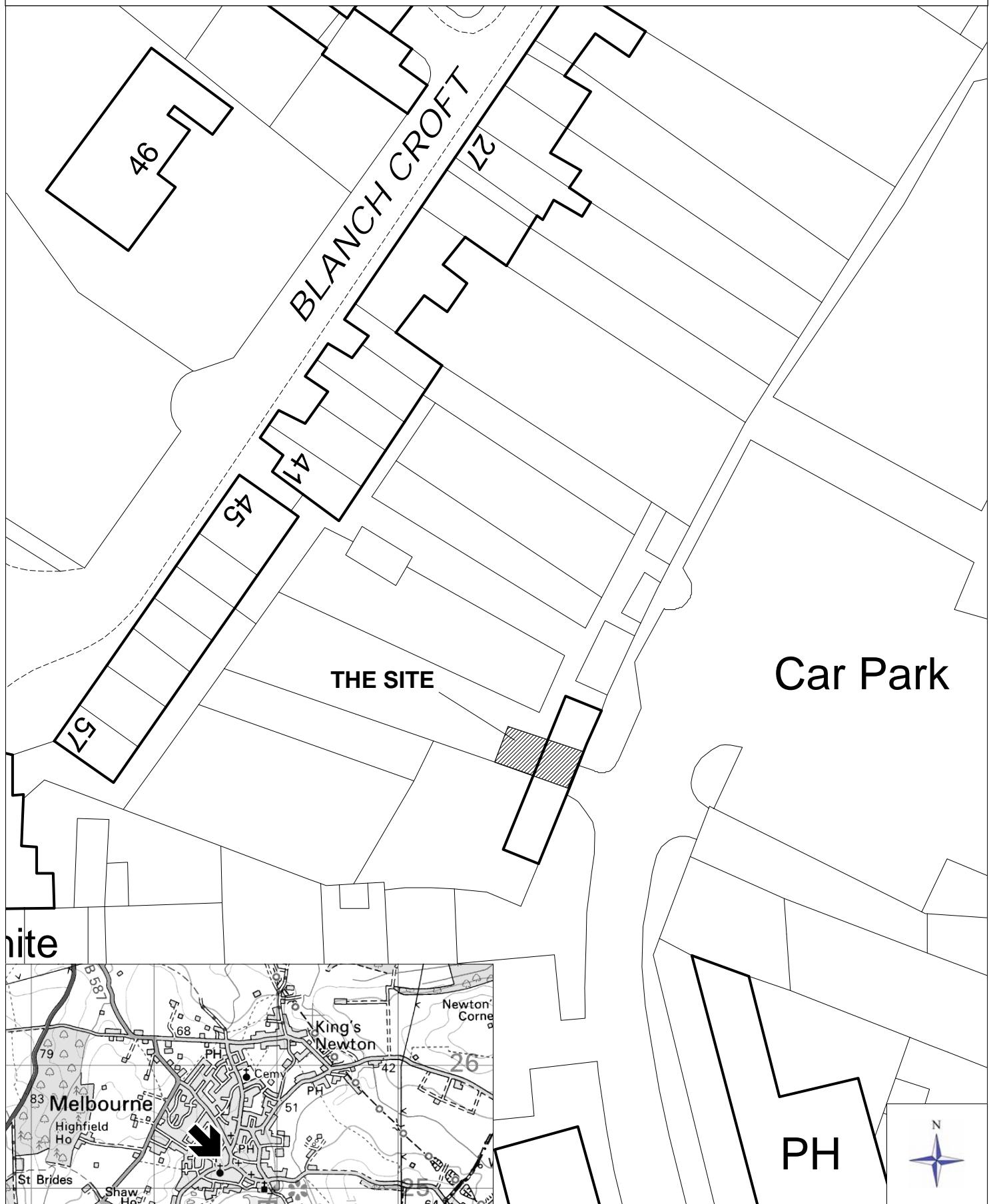
The proposal involves the sale of fruit, vegetables and other foodstuffs from a stall at the premises. An amended plan shows the stall area pushed back further into the outbuilding to avoid overspill of customers on to the car park.

Applicants' supporting information

The applicant makes the point that the proposal would be a valuable outlet for a local family market garden business, supplying local demand.

Such an enterprise is supported by local economic development and National Forest policies.

There is ample space for customers to stand clear of the roadway and as the site is adjacent to the public recycling facility it would not be at odds with existing pedestrian



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South Derbyshire District Council. LA 100019461. 2010

flows across the car park. Vehicle speeds in the car park are also low (10 mph speed limit).

Although the use operated from September 2011 till October 2012, the applicant considered that the frequency of use was so low, as a matter of fact and degree, that it did not amount to a material change of use in the applicant's opinion.

Planning History

Although the applicant has stated that the use has previously taken place on a low-key basis it did not come to the local planning authority's attention until October 2012. Since then the applicant has prevented any further use of the site for the purpose now proposed.

Responses to Consultations

The Parish Council and Melbourne Civic Society have no objection.

The Environmental Protection Manager has investigated the potentials for increased risk to pedestrians and car park users, litter, encroachment onto the access and unauthorised parking as follows:

- A survey of car park use indicates that volumes of traffic would be unlikely to result in a high risk of incident.
- Driver visibility at the point where pedestrians are likely to cross the access is good and the recycling facility already provides an encouragement for pedestrians to cross. On balance it is not considered that there would be significant increase in risk to pedestrians.
- Although the use does present an increased risk of litter and refuse, there are laws to control trade waste.
- In order to reduce the risk of encroachment into the car park a condition precluding the storage of goods and materials outside the building is recommended.
- Although the contractor responsible for enforcing parking controls would deal with illegal parking, it is recommended that the applicant be advised to provide appropriate signage for customers in this regard.

The Council's Property Services state that they are satisfied that the public would not need to congregate on the car park during trading hours and as such access rights would be granted to the applicant in the event that planning permission is granted.

Responses to Publicity

One objection has been received on the grounds that customers using the stall would present a hazard and danger. Furthermore there is a newly opened fruit and vegetable shop nearby, so it is not needed. A precedent would be set for business uses in other outbuildings.

Two letters support the application. In addition a petition of more than 550 signatories in favour of the proposal has been received on the grounds that the recent opening of

the stall was convenient, popular, reducing the need to travel and there was no green grocer in the village.

Development Plan Policies

The relevant policies are:

South Derbyshire Local Plan Saved Shopping Policy 1, Environment Policy 12 and Transport Policy 6.

National Guidance

National Planning Policy Framework (NPPF) Paras. 11-14 (presumption in favour of sustainable development, Chapter 2 (Ensuring the vitality of town centres), Chapter 12 (Conserving and enhancing the historic environment), Paras 186 & 187 (Positive decision-taking), Paras 196 & 197 (determining applications).

Planning Considerations

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

- The principle
- Impact on the character of the conservation area
- Public safety
- Residential amenity

Planning Assessment

The principle

The site lies in the town centre, and retail use is thus in accord with Local Plan Saved Shopping Policy 1 and Chapter 2 of the NPPF, which favour such business activity in towns as a matter of principle.

Impact on the character of the conservation area

The use is low-key and involves no alteration to the physical fabric of conservation area, the character of which is therefore preserved. As such the proposal is in accord with Policy 27 of the Regional Plan, Local Plan Saved Environment Policy 12 and Chapter 12 of the NPPF.

Public safety

The proposal relies on the public car park to enable access by customers. The Environmental Health Manager has investigated the relevant safety issues. He considers, in the circumstances of the case, that no significant increased risk to public safety would ensue. The public car park provides adequate access and parking for all town centre visitors in accordance with Local Plan Saved Transport Policy 6.

Residential amenity

This use would have no discernible impact on the occupiers of nearby dwellings. Although the applicant has indicated hours of usage would be a few hours per week only there are no reasonable planning grounds to require these hours to be adhered to.

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

Recommendation

GRANT permission subject to the following conditions:

1. The development permitted shall be begun before the expiration of three years from the date of this permission.
Reason: To conform with Section 91(1) of the Town and Country Planning Act, 1990 (as amended by section 51 of the Planning and Compulsory Purchase Act 2004).
2. There shall be no goods or materials stored within the area shown hatched on the attached plan.
Reason: To minimise the risk of customers standing in the access to the public car park in the interest of public safety.
3. Notwithstanding the originally submitted details, this permission shall relate to the amended drawing received 10 January 2013 showing enlarged internal floor area and external yard area to the rear.
Reason: For the avoidance of doubt and to compensate for the hatched area referred to in Condition 2 above.

2. PLANNING AND OTHER APPEALS

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

Reference	Place	Ward	Result	Cttee/Delegated
9/2012/0431	Melbourne	Melbourne	Allowed/Dismissed	Delegated
9/2012/0556	Hartshorne	Woodville	Dismissed	Delegated
9/2012/0373	Swadlincote	Swadlincote	Dismissed	Delegated
9/2010/1156	Newhall	Newhall/Stanton	Dismissed	Delegated
9/2012/0390	Melbourne	Melbourne	Dismissed	Committee



Appeal decision

Site visit made on 18 December 2012

by Mike Croft MA DipTP MRTPI

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

Decision date: 24 December 2012

Appeal ref APP/F1040/D/12/2185084

17 Chapel Street, Melbourne, Derby, DE73 8EH

- 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 Robert Kendrick against the decision of South Derbyshire District Council.
- The application (ref 9/2012/0431/FH), dated 17 May 2012, was refused by notice dated 1 August 2012.
- The development proposed is alterations to the front elevation.

Decision

1. I dismiss the appeal in relation to the canopy over the front door and ground floor window.
2. I allow the appeal and grant planning permission for the replacement of ground and first floor windows at 17 Chapel Street, Melbourne, Derby, DE73 8EH, in accordance with the terms of the application ref 9/2012/0431/FH, dated 17 May 2012.

Inspector's reasons

3. The development in question has already been carried out. The Council describes it in greater detail as "the retention of the replacement ground and first floor windows and the canopy over the front door and ground floor window".
4. The appeal site is in the Melbourne Conservation Area where an Article 4 Direction, dating from 1991, applies. The main issue is whether authorisation of the alterations would at least preserve the character and appearance of the Conservation Area.
5. The Council says that the Article 4 Direction was introduced to prevent any further erosion of Melbourne's special architectural and historic character by small-scale alterations which would not normally require planning permission. The Council describes the appeal property as a simple 19th century cottage in a row of five, which have consistency and unity through being of even height and proportion, with a regular pattern of door and window openings. The contribution of such cottages, it says, to the character of the Conservation Area lies in their simplicity. But the Council contends

that the unauthorised windows and canopy do not respect the architectural character, age or status of the cottages.

6. The appellant draws my attention to changes that have been made to nearby properties, although it is not clear to what extent these changes occurred before or after the Article 4 Direction has been operative. He emphasises his use of painted timber (in contrast to uPVC nearby) and his use of the original hinges and stays for the replacement windows.
7. The pattern of window openings has not been altered by the appellant, although the form of the windows within the openings is different from those nearby. But the window forms nearby also exhibit some variation themselves. So I am not satisfied that the additional variation of window form, within the same openings, fails to preserve the appearance of this terrace. That is so even with the shallow bow of the ground floor window in question. So far as the replacement windows are concerned, therefore, I perceive no conflict with Environment Policy 12 of the South Derbyshire Local Plan, adopted in 1998. This seeks to protect the character and appearance of conservation areas from the adverse effects of unsympathetic development, and it reflects other relevant policy guidance that has been drawn to my attention.
8. On the other hand, the canopy is an obtrusively different feature that does not replicate anything nearby. It reduces the simplicity of the terrace that the Council rightly considers important. I note the appellant's reference to the canopy concealing a gas pipe and electricity cables and providing insulation, but the canopy's obtrusiveness is important given the statutory designation that exists. In this case, I see conflict with Environment Policy 12.
9. I note the appellant's claim about the local search that was made in 2011 and the Council's response on that point. Those circumstances are not for me to comment on. What is important to me is that the property **is** within the Conservation Area and that the Article 4 Direction **does** apply.
10. I see no reason why the windows and the canopy should not be regarded as severable elements. On that basis, bearing in mind my remarks in paragraphs 7 and 8 above, my decision is split, allowing the windows but rejecting the canopy. That decision tallies with the views of the Melbourne Civic Society. The Council has indicated that it sees no need for any conditions to be imposed in the event of a permission, and I impose none on the permission that I grant for the windows.

Mike Croft

Inspector



Appeal Decision

Site visit made on 29 November 2012

by E A Simpson JP BA(Hons) MRTPI

an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 7 January 2013

Appeal Ref: APP/HGW/12/360

Hedgerow at Land at SK3321 7359 Coal Lane, Hartshorne, Swadlincote, Derbyshire.

- The appeal is made under The Environment Act 1995, Section 97 and the Hedgerow Regulations 1997, Regulation 9, against a Hedgerow Retention Notice.
- The appeal is made by A J Parker & Sons against South Derbyshire District Council.
- The Hedgerow Removal Notice application is dated 25/06/2012.
- The Hedgerow Retention Notice Reg.No.9/2012/0556/HR is dated 06/08/2012.
- The criteria given for determining that the hedgerow is important is that the hedgerow is shown on the Hartshorne Enclosure plan of 1766, held at the Derbyshire Records Office. It therefore meets the criteria of historic value and due to its location parallel to a public footpath (Hartshorne PF12) and the trees and species within it, it has significant landscape value. Its removal is therefore contrary to the Hedgerow Regulations 1997 as it is classed as an 'important' hedgerow.

Decision

1. I direct that the notice be modified by the deletion of the words:

'and due to its location parallel to a public footpath (Hartshorne PF12) and the trees and species within it, it has significant landscape value.'

Subject thereto I dismiss your appeal and uphold the notice as modified.

Procedural Matter

2. The length of hedgerow to be removed forms the eastern boundary of field parcel 8971 and the length is shown hatched on the plan submitted by the appellant and over-stamped 92012/0556 and date stamped 'South Derbyshire District Council Planning Services, Council Offices, 27 June 2012'.
3. I shall refer to *The Hedgerows Regulations 1997 A Guide to the Law and Good Practice* as 'The Guide'.

Grounds of Appeal

4. The family partnership applied to remove about 130m of hedgerow¹ which separates an existing field from a newly acquired field which had recently been purchased. The new field is a triangular shape of around 1.5 acres, and is a very awkward size and shape for modern farming practices. The hedge in question is very gappy and a report commissioned by the local authority states that the hedge does not meet the Wildlife and Landscape Criteria of the

¹ Application Form states 145m

Hedgerow Regulations 1997. The retention notice also states that a public footpath runs adjacent to the hedge, which is true, but many footpaths cross fields not next to hedges, so this factor is very spurious. The local planning authority has not entered into any discussion with the appellants about their concerns and note that the Planning Inspectorate recommends this course of action to both parties. The appellants proposed to plant a new hedge on the other side of the 'new' field adjacent to the green lane which joins Coal Lane and Pistern Hills. The (new) hedge would also have trees planted within it of mixed indigenous species. The entrance to the original field would be closed and the present entrance on the smaller field used as this has much better vision on to the highway.

Main Issues

5. The main issue is whether the length of hedgerow in question meets the criteria for being considered 'important'. And if so, whether there is sufficient justification to accept the loss of the important hedgerow.

Reasons

6. Paragraph 8.14 of The Guide indicates that there is a presumption in favour of protecting and retaining important hedgerows.
7. Regulation 4 of the 1997 Regulations states that for the purposes of section 97 of the Environment Act 1995, a hedgerow is important a) if it has existed for 30 years or more; and b) satisfies at least one of the criteria listed in Part II of Schedule 1 to the Regulations.
8. There are 8 criteria listed under Part II, 5 relating to archaeology and history, and 3 to wildlife and landscape. Criterion 5(a) requires that the hedgerow is recorded in a document held at the relevant date at a Record Office as an integral part of a field system pre-dating the Inclosure Acts. The earliest Inclosure Act mentioned in the Short Titles Act of 1896 was made in 1845. The length of hedge the subject of this appeal is shown on the Hartshorne Enclosure Plan of 1766 and was an integral part of the field system at that time. It is no part of the appellants' case that these records are incorrect, and I am satisfied that, for the purposes of Regulation 4, this length of hedge is appropriately defined as 'Important'.
9. The notice also states that *due to its location parallel to a public footpath (Hartshorne PF12) and the trees and species within it, it has significant landscape value*. Criterion 8 of Part II of the Regulations concerns hedgerows which are a) *adjacent to a bridleway or footpath* and b) *include at least 4 woody species, ascertained in accordance with para.7(3) and at least 2 of the features specified in paras.7(4)(a) to (g)*.
10. For the purposes of assessing the Wildlife and Landscape criteria of the Regulations, the council seeks the advice of Derbyshire Wildlife Trust. In its letter of 2nd August the Trust states that the hedge does not satisfy criteria 6, 7 or 8 of Part II of the Regulations. The Trust confirmed in that letter that it does not undertake any assessment of hedgerows against criteria 1 – 5 (archaeology and history).
11. While I disagree with the Trust's survey results in so far as they state that the hedge is not adjacent to a public right of way, when it clearly is and is

signposted accordingly (criterion 8(a)), the hedge does not satisfy criterion 8(b). To qualify under criterion 8 both elements a) and b) must be satisfied.

12. Paragraph 8.16 of The Guide points out that the circumstances in which the removal of an important hedgerow is allowed to proceed are likely to be exceptional. Paragraph 8.20 notes that changes in the ownership of land, and subsequent rationalisation of holdings would usually not be enough to justify removal of an important hedgerow. Paragraph 8.19 states that cases involving personal financial loss are unlikely to be sufficient, while the impact on a business would have to be extremely serious for this to justify removal of an important hedgerow.
13. While I accept that removal of this hedgerow would allow a more efficient cultivation of the smaller field this cannot be said to amount to an 'extremely serious' impact on the farm business.
14. Paragraph 8.17 provides support for the removal of an important hedge in circumstances where there are over-riding arguments of public safety. In this regard, attention was drawn to the restricted visibility available for the drivers of agricultural plant and machinery emerging from the access to the larger field. While I accept that visibility for drivers of vehicles emerging from the smaller field access is far superior, Coal Lane is not a heavily trafficked road and there is no suggestion that there is an accident black spot in the vicinity of the existing larger field access. I conclude that these potential improvements to highway safety here do not amount to the exceptional circumstances that would justify the removal of this important hedgerow.

Conclusions

15. The Hedgerow Regulations seek to retain historical hedgerows that pre-date the Inclosure Acts. As set out in The Guide, the circumstances in which their removal might be allowed are likely to be exceptional. In this case there are no circumstances sufficient to justify the removal of the hedgerow. I have concluded that the hedgerow qualifies as an important hedgerow under criterion 5(a) of Part II to Schedule 1 of The Hedgerow Regulations 1997. However, I have also concluded that it does not qualify under criterion 8 and that the wording of the Retention Notice would need to be amended accordingly.
16. I have taken into account all other matters raised in this appeal, but have found nothing which outweighs the considerations leading me to my decision to dismiss the appeal.

Edward A Simpson

Inspector



Appeal decision

Site visit made on 18 December 2012

by Mike Croft MA DipTP MRTPI

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

Decision date: 2 January 2013

Appeal ref APP/F1040/A/12/2181259

86 Wilmot Road, Swadlincote, Derby, DE11 9BJ

- 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 Peter Webb against the decision of South Derbyshire District Council.
 - The application (ref 9/2012/0373), dated 27 April 2012, was refused by notice dated 10 July 2012.
 - The development proposed is the erection of one dwelling.
-

Decision

1. I dismiss the appeal.

Inspector's reasons

2. No 86 faces Wilmot Road to the south-west, and the dwelling in question would be built to the north of no 86 also facing south-west but further back than the existing house. The next property to the north-west, a single-storey building, has been converted to four residential units following a permission in 2006. The main issue is whether the appeal project would seriously harm the living conditions of the occupants of unit 2 there as a result of loss of daylight and/or sunlight to that unit's lounge window.
3. On daylight, I note that a single-storey part of the proposed dwelling would be less than 4 m from the boundary between the two properties. The lounge window I mention above is about 3½ m from the common boundary. The single-storey element would be in view directly ahead and to the left when viewed from that window. I do not consider that exception can be taken to the single-storey element of what is proposed in that respect. However, looking to the right from the window the single-storey element would rise to become two storeys in height, and this would be at a distance of less than 1 m from the common boundary. My assessment indicates that this would result in an obstruction of greater than the 25° in the vertical plane referred to by the appellant just within a 45° angle of view from the window. That tallies with the Council's representations on the point. The point is not fully determinative because, as the Council points out, the Building Research Establishment guidance to which the appellant relates his assessment does not constitute an instrument of planning policy. The position is finely

balanced, but it does suggest that more harm is likely to arise than the appellant is prepared to admit.

4. The appellant argues that the lounge window would have been considered when permission was granted for the conversion I mention in paragraph 2 above. No doubt that was so, but that would have been in the context of the circumstances that existed then and cannot imply acceptance of whatever might be proposed on the appellant's side of the boundary. Given the small size of unit 2's lounge window, and its likely importance as a source of natural daylight to the lounge, I am satisfied that the appeal project would bring harm in terms of loss of such daylight.
5. Turning to sunlight, my assessment is that the main impact of the appeal project on unit 2's lounge window would be in the late morning and early afternoon. This would be when overshadowing would arise from the two-storey part of the proposed development. Later in the day, as the sun moves towards the south-west, that effect would diminish and then disappear.
6. My assessment therefore is that harm would arise both in terms of loss of diffuse daylight and loss of sunlight. It is clear to me that, in combination, these two factors are sufficient to warrant permission being withheld. Housing Policy 11 of the South Derbyshire Local Plan, adopted in 1998, says that proposals for new housing development will be permitted subject to reasonable amenities in terms of light for existing dwellings. I accept the appellant's point that the policy wording is not prescriptive, and the links between the Council's case on this project and its Supplementary Planning Guidance "Housing Layout and Design" are somewhat tenuous, but I have come to the conclusion that the loss of daylight and sunlight would not be reasonable in relation to Housing Policy 11.
7. I appreciate that what is proposed would be otherwise sustainable, but my decision to dismiss the appeal arises for the reasons I have indicated.

Mike Croft

Inspector

Appeal Decision

Site visit made on 3 December 2012

by Nigel Harrison BA (Hons) MRTPI

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

Decision date: 10 December 2012

Appeal Ref: APP/F1040/A/12/2169687

Land adjacent 2a Orchard Street, Newhall, Swadlincote, Derbyshire, DE11 0JS

- 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 Kevin Paling against the decision of South Derbyshire District Council.
- The application Ref: 9/2010/1156 dated 16 December 2010 was refused by notice dated 22 December 2011.
- The development proposed is the erection of a detached bungalow.

Decision

1. The appeal is dismissed.

Procedural Matters

2. On 27 March 2012 the Government published the National Planning Policy Framework (*The Framework*). The documents listed at Annex 3, which include most pre-existing Planning Policy Guidance Notes (PPG's) and Planning Policy Statements (PPS's) are now cancelled. These include PPG14: *Development on Unstable Land* referred to in the decision notice. For a 12-month period paragraph 214 says decision takers can give full weight to development plan policies adopted since 2004, even if there is a limited degree of conflict with the Framework. However, I am satisfied that there is no significant conflict between those saved policies of the *South Derbyshire Local Plan* (LP), adopted 1998 to which I have been referred, and the provisions of the Framework.
3. The description of the development above is taken from the Council's decision notice, as I consider it more accurately describes the proposal.
4. Although dated 16 December 2010, the application is date-stamped as having being validated by the Council on 8 November 2011.

Main Issue

5. Notwithstanding all other considerations, the Council has stated that it has no objections to the principle of a dwelling on the site. I therefore consider the one main issue in this case is whether the scale and siting of the proposed dwelling is acceptable taking into account its effect on the living conditions of the occupiers of neighbouring properties.

Reasons

6. The appeal site is a back-land site surrounded by a mixture of types and styles of dwellings. The appellant's own dwelling No 2a Orchard Street is to the south-west, and No 2 Orchard Street (a bungalow); and 'Pinewood' (a chalet-style dwelling) adjoin the eastern boundary. Other dwellings fronting High Street abut the northern boundary. Access would be taken from Orchard Street. The site is presently overgrown and rather unkempt, although I understand it once contained a large garage building.
7. LP Housing Policy 4 says residential development within the settlement will normally be permitted provided that a number of criteria are satisfied. Most relevant here is criterion (vi) which requires development to be of a suitable scale and character. Criterion (iv) of LP Housing Policy 11 is also relevant and says new housing will be permitted provided there is a reasonable standard of amenity in terms of light, air and privacy for both existing and new dwellings.
8. The proposed bungalow would be located within 1m of the common boundary with No 2 and 'Pinewood' and would occupy much of the width of this somewhat constrained plot. No 2, closest to the bungalow, has only a very narrow rear garden about 3.5m in depth. Consequently, the eastern gable elevation of the bungalow would be only about 4.5m away from No 2's rear elevation, which contains a conservatory and other principal habitable room windows. Although the Council has provided no minimum separation distances I consider this would result in an overbearing form of development, an unacceptable sense of enclosure, and a somewhat oppressive outlook to the occupiers of No 2.
9. Furthermore, although the rear windows of 'Pinewood' would not directly face the side elevation of the proposed bungalow, its rear garden is similarly narrow and the bungalow would still be prominent in views from those windows; adding to the sense of enclosure and poor outlook. The position of 'Pinewood' also means there would be some direct overlooking of the front garden area of the bungalow (and oblique overlooking of its front elevation), leading to unsatisfactory privacy levels for future occupiers.
10. I accept that the rear-facing windows of No 2 and 'Pinewood' already have a relatively poor aspect due to the presence of existing tall fences on the boundary. However, I consider the proposal would significantly worsen this situation for the reasons given in the preceding paragraph. I note the appellant's argument that the appeal site is at a significantly lower level than No 2 and 'Pinewood'. Whilst this is so, the upper part of the bungalow would be clearly visible above the fence, and does not overcome the harm which I have identified above. Nor it is appropriate to rely on fences or vegetation to screen an otherwise unacceptable from of development, as their retention cannot be guaranteed in the long term.
11. I appreciate that the bungalow has been designed in an attempt to reduce its impact on neighbours' amenities, taking into account the constraints imposed by this enclosed site. In particular the narrower gable is presented towards the neighbouring dwellings and the ridge height is kept to a minimum. However, in my view this aim has not been achieved. It has led to a somewhat cramped scheme; with the close juxtaposition of dwellings being at odds with what is more typical in the area.

12. In considering this issue I am mindful of the advice in Paragraph 17 of the *Framework* which says the planning system should always seek to ensure high quality design and a good standard of amenity for existing and future occupiers of land and buildings. I consider the proposal fails to achieve these objectives.
13. Therefore, I conclude on the main issue that due to its effect on outlook, the proposal would materially harm the living conditions of the occupiers of No 2 Orchard Street and 'Pinewood'. It would also result in an unsatisfactory living environment for future occupiers of the proposed dwelling with regard to privacy. Accordingly I find it would conflict with LP Housing Policies 4 and 11.

Other Matters

14. The appeal site is identified as being within a 'Coal Mining Development Referral Area' where potential land stability and other safety risks associated with former coal mining activity is likely to be greatest. The application was not accompanied by a Coal Mining Risk Assessment (CMRA), and as such the Council says it is unable to assess whether any potential instability problems could be mitigated. Paragraph 109 of the Framework says the planning system should prevent development from contributing to or being put to at risk from unacceptable levels of soil, air, water, noise pollution or land instability. Whilst I accept that this objection could potentially be resolved, and note that some coal mining information was submitted with the application, the absence of a full CMRA adds weight to my decision to dismiss the appeal.

Conclusion

15. I am aware that the Council granted outline permission for a dwelling on the site in 2005¹ (with all matters reserved for subsequent approval), and this has now lapsed. However, I have no information relating to the circumstances which led to the granting of planning permission, although it would have been assessed against a different national and local development plan policy background. Although this recent planning history of the site is a material consideration, it does not affect my conclusion on the main issue which must be decisive. In any event, each application and appeal falls to be considered on its own merits.
16. Therefore, for the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Nigel Harrison

INSPECTOR

¹ 9/2005/0334 Approved 19 July 2005



Appeal Decision

Site visit made on 18 December 2012

by Alison Lea MA (Cantab) Solicitor

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

Decision date: 11 January 2013

Appeal Ref: APP/F1040/A/12/2184616

55 Derby Road, Melbourne, Derby DE73 8FE

- 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 Adam Devey-Smith against the decision of South Derbyshire District Council.
- The application Ref 9/2012/0390, dated 16 April 2012, was refused by notice dated 7 August 2012.
- The development proposed is the conversion and extension of the existing building to form 8 residential units.

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this case are

- (i) whether the proposal would result in on street parking which would be prejudicial to highway safety and the free flow of traffic and in harm to the living conditions of future occupiers of the development and of the occupiers of neighbouring properties; and
- (ii) the effect of the proposal on the living conditions of future occupiers of the development with particular regard to private amenity space and bin storage.

Reasons

3. The appeal site consists of a 2 storey building with a frontage to Derby Road and an attached outbuilding to the rear. It is situated within the Melbourne Conservation Area. It has an access to Derby Road and provides an area of hardstanding for the parking and manoeuvring of vehicles. The premises were last used as offices, occupied by the appellant's company, the Oneoff, but are currently vacant. The planning permission for the office use, and a subsequent extant permission to extend the office use, is personal to the Oneoff; the reason given being that the planning authority was only prepared to grant permission on the basis of the personal circumstances of that occupier and wished to retain control over the impact on highway safety in the event of a future change of occupier.
4. The proposal is for the conversion and extension of the building to form 7, two bed apartments and 1, one bed apartment. The Council accepts that the site is

in a location where, in principle, residential development is acceptable and that the character and appearance of the conservation area would be preserved. I agree.

Parking

5. It is accepted that the site access is substandard in terms of visibility and for this reason the Council states that it would not wish to see use of the access intensified. The existing parking and manoeuvring area for 4 vehicles would therefore be retained. The appellant has provided a Highway Statement which suggests that average trip generation per dwelling, Monday to Friday would be 2.43 trips, amounting therefore to 20 trips per day for 8 apartments. However, as there would be only 4 parking spaces within the site, it is acknowledged that the development would be likely to result in some off-site parking. To avoid people using the access only to find that all the spaces were occupied, the Highway Statement suggests that the 4 parking spaces either be allocated to specific flats or separately rented. It is also recommended that a welcome pack be given to residents to encourage cycling and the use of public transport, and I note the proximity of the bus stop to the site.
6. Derby Road has single yellow parking restrictions on both sides in the vicinity of the access to the site. Although I note that there is some on-street parking permitted in nearby streets, at the time of my site visit, in the early afternoon, the area was congested and little parking was available. In particular cars were parked partly on the pavement along both sides of one of the narrow adjacent streets.
7. Reference is made to a public car park located about 160m from the site in which spaces would be likely to be available in an evening. However, I agree with the Council that this is not a convenient distance for residential parking and I agree with the submissions of some interested parties that it is likely that future residents of the development would try to find space in nearby streets and perhaps in particular in Dunncliffe Lane, which is a nearby cul-de-sac with a footway through to Derby Road adjacent to the development. The searching for spaces and parking in already congested residential roads is likely to lead to conditions which are prejudicial to highway safety and to the free flow of traffic and to impact adversely on the living conditions of occupiers of properties on those roads.
8. I note the correspondence with the Council which suggests that further parking restrictions could be introduced if highway safety were compromised and that any blocking of access to properties in Dunncliffe Lane would be an offence which could be dealt with by the police. However, The National Planning Policy Framework (NPPF) states that decisions should aim to ensure that developments will function well and add to the overall quality of the area. In my opinion, due to the requirement for parking which would be generated by the development, it would not function well and would harm the quality of the area.
9. The Highway Statement concludes that the expected traffic generated by the proposed residential use would be considerably less than that associated with the traffic estimated from the permitted offices. The appellant states that the "fallback" situation of the existing lawful use of the site is an important material consideration. I accept that the site has the benefit of planning permission for office use and an extant permission to extend the building to provide additional

office accommodation. I also note that, although the permission was granted on the basis of only 4 of 9 employees using cars to get to work, the Highway Statement suggests that prior to vacating the site, 25 employees drove to the site in separate cars and that the permission to extend the offices would have resulted in an additional 9 members of staff. It is suggested that this correlates with the traffic generation figure for small offices provided by the TRICS database.

10. The Council does not dispute that the levels of parking potentially generated by the lawful use is highly relevant. However, both permissions are personal to the previous occupier and the premises are now vacant, the Oneoff having moved to larger premises. Use as offices by any other occupier would require an application to the Council thereby giving the Council the opportunity to consider the issue of parking and traffic generation. This therefore limits the weight I give to the fallback position.
11. The Council states that any on-street parking associated with an office use would occur during normal working hours which would coincide with a reduction in residents' use of the street for parking. However, the proposal would transfer the times of demand for parking associated with the site from daytime to evenings and weekends, thereby exacerbating existing inconveniences. Although the appellant states that there are no conditions concerning working hours on the office consent and that the previous occupier frequently worked into the evening, this is again a matter which could be considered and controlled by the Council when considering any future application for office use. I therefore agree with the Council that the proposal is likely to result in a demand for parking at different times to an office use.
12. Taking all of these matters into account I conclude that the proposal would fail to provide sufficient on site parking to serve the development and that this would lead to a demand for parking in an area which is already heavily parked and congested. This would be likely to be prejudicial to highway safety and the free flow of traffic and have a significant adverse effect on the living conditions of the occupiers of properties in adjoining streets. It would be contrary to Transport Policy 6 of the South Derbyshire Local Plan (LP) which provides that all proposals for development should incorporate adequate provision for access, parking, manoeuvring and off-street servicing.

Living conditions

13. The plans show a small area of amenity space at the rear of the site. The appellant states that the area is considered to be more than sufficient to meet the operational requirements of the proposed development, particularly having regard to the site's town centre location. However, no details or analysis have been provided and it is unclear whether the area, which appears subdivided on the plans, would be private to the adjacent apartments, thereby leaving 5 of the apartments without any useable open space other than the parking area. If it is proposed that the area would be communal, I note that it would be accessed along a passageway to the side of apartment 5, which has windows in that elevation and would be directly overlooked by the bedroom windows in apartments 4 and 5. This is likely to limit the use occupiers of the remaining apartments would make of this area and would impact adversely on the living conditions of the occupiers of those apartments. I conclude therefore that the majority of the apartments would not have access to any useable private amenity space, even for sitting out or drying washing.

14. LP Housing Policy 11 states that proposals for new housing will be permitted subject to them providing a number of specified matters including private amenity space and space for landscaping. The Council's supplementary planning guidance "Housing Design and Layout" (SPG) which was adopted in 2004 following public consultation sets no minimum level of required provision of amenity space in order to encourage an increase in the density of housing. However, it also states that for blocks of flats some level of amenity space will be expected to be provided for the use of residents, for example, to facilitate the storage of a refuse bin and allow for the drying of washing.
15. The majority of the site would be hard surfaced and I accept that some provision has been made for the storage of refuse bins. Although I note the Council's concern that the area is inadequate, due to the number of bins provided per household as a result of recycling policies, I accept that it is likely that sufficient storage could be provided and that a condition could require further details to be submitted and approved.
16. Nevertheless, I conclude that due to the lack of private amenity space the proposal would be contrary to LP Housing Policy 11 and advice in the Council's SPG.

Other matters

17. The appellant refers to the presumption in favour of sustainable development, described in the National Planning Policy Framework (NPPF) as a golden thread running through decision taking. The NPPF also states that to achieve sustainable development the 3 dimensions of economic, social and environmental gains should be sought jointly and simultaneously. However, due to the lack of on site parking and lack of amenity space I conclude that this development would not function well and the harm that would be caused outweighs the benefits of this proposal.
18. Although not a reason for refusal, it is clear that the Council had expected that a financial contribution towards the provision of Open Space, education and healthcare would be provided by means of an undertaking to be made under Section 106 of the Act. Correspondence has been provided which shows that contributions were agreed but no undertaking has been provided. The appellant states that no evidence has been provided by the Council to demonstrate any shortfall of Open Space or under provision in education and healthcare facilities. Although I have been provided with Section 106 Agreements: A Guide for Developers dated April 2010, no information regarding the status of this document, or the various appendices provided, is available. Accordingly I am not satisfied that I have adequate evidence about the need for the obligation. Given my conclusion on the main issues I have not considered this matter further.

Conclusion

19. For the reasons given I conclude that the appeal should fail.

Alison Lea

INSPECTOR