

# **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).

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## **1. PLANNING APPLICATIONS**

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

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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.**        9/2012/0169/U

**Applicant:**

Mrs Karie Musson  
1 High Street  
Linton  
Swadlincote

**Agent:**

Mr Bryan Wolsey  
Bryan Wolsey (Planning) Ltd  
Ticknall  
Derbyshire  
DE73 7JY

**Proposal:**        **THE CHANGE OF USE OF DWELLING WITH BUSINESS  
USE TO A MIXED USE OF DWELLING, BUSINESS AND  
USE FOR OCCASIONAL ACCOMMODATION OF UP TO  
TEN PEOPLE AT 1 HIGH STREET LINTON  
SWADLINCOTE**

**Ward:**            **LINTON**

**Valid Date:**     **01/03/2012**

**Reason for committee determination**

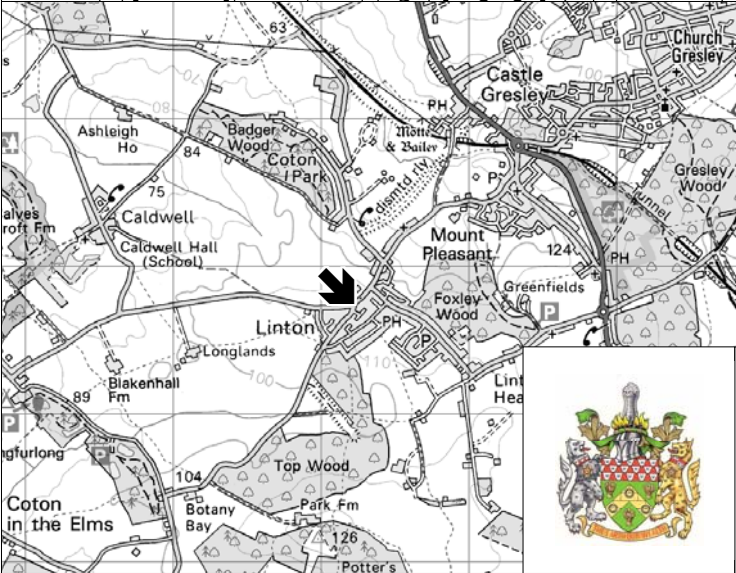
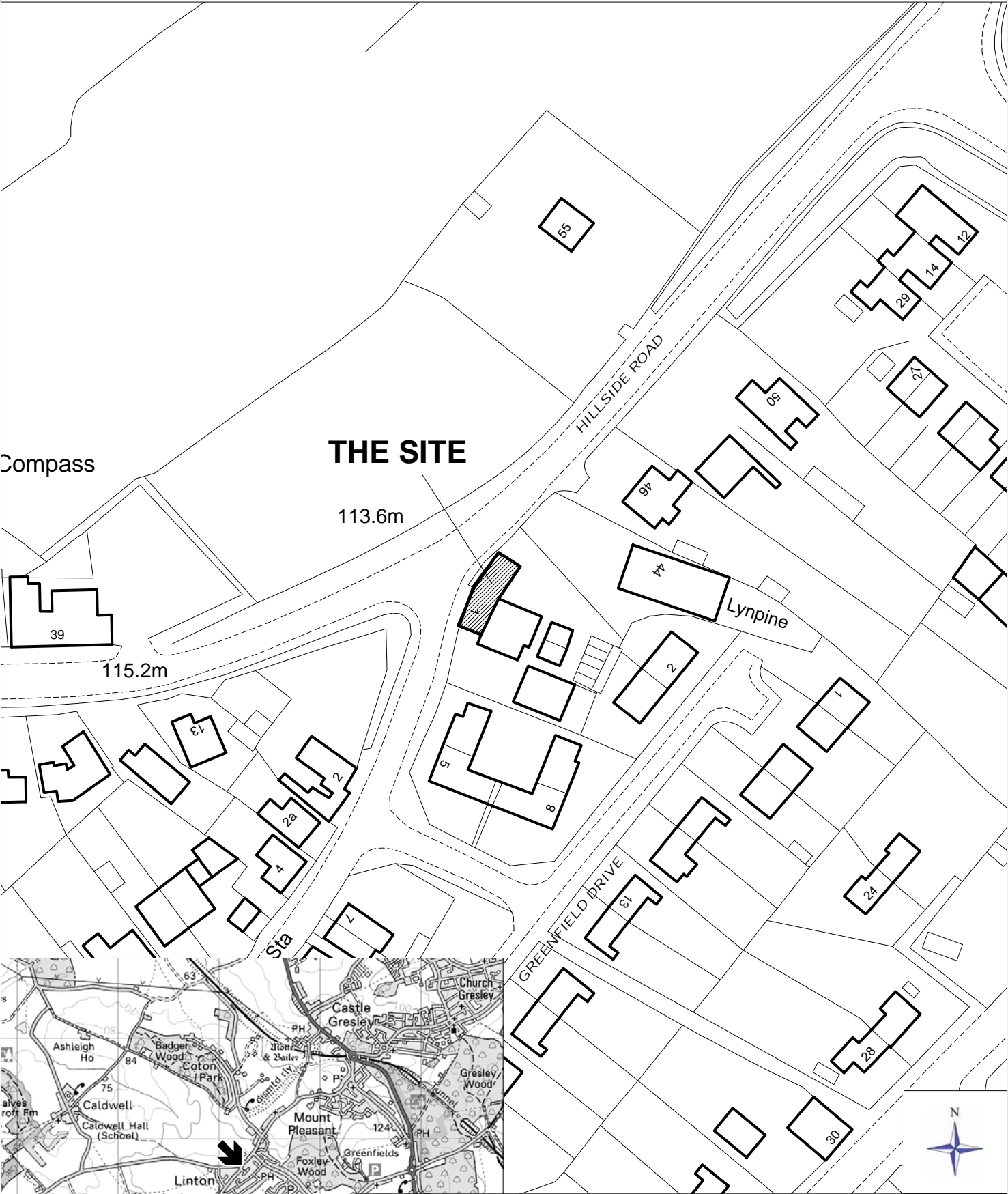
The application is brought to Committee at the request of Councillor Wheeler as local concern has been expressed about a particular issue and unusual site circumstances should be considered by Committee. Notwithstanding the previous decision by the Committee, members should be given the opportunity to consider the application in the light of the additional information submitted.

**Site Description**

The application site consists of a former shop, converted to living accommodation, which fronts onto High Street, Linton and is attached to the main dwelling of 1 High Street situated to the rear. Off-street parking for both the dwelling and the application site is located to the side of the premises. An existing outbuilding to the rear of the parking area has permission for B1 (business use) granted in 2004. The site is on a prominent corner position on the brow of a hill leaving Linton on the junction of High Street and Hillside Road. The surrounding area is residential in use and consists of two storey dwellings on Hillside Road and bungalows to the south on High Street.

**Proposal**

The applicant and her family run a theatrical production business from the premises part of which involves inviting visitors, often from abroad, to put on shows in the local area. The shop has been converted to living accommodation and is used to provide occasional accommodation for these visiting performers up to a maximum of ten persons at any one time.



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

The converted living accommodation comprises of a ground floor living area, a kitchen leading to a double shower room and a further room providing sanitary facilities. A staircase is situated within the living area leading to two first floor bedrooms with bunk beds to accommodate a maximum of up to eight people. The applicant has advised that a further two people could be accommodated in the living area downstairs.

Access to the accommodation is via an external door to the front of the building on High Street. Whilst the accommodation is linked to 1 High Street the only internal access is via an internal door at first floor level which is locked when the converted shop accommodation is occupied.

The current application is a re-submission of the previous application and has been submitted by the applicant with the intension of providing further clarification on the intended use and operation of the site and also suggests a number of conditions that the Council may consider would enable them to maintain a greater degree of control over the proposed use. The description on the current application has altered slightly to include the description 'use for occasional accommodation of up to ten people' and the application details advise that the use has currently ceased.

### **Applicants' supporting information**

A statement has been submitted in support of the application which includes the following details:

- The front part of the property is a former village shop which closed in 2009 when the former tenant shopkeepers retired. The rear of the property serves as both a dwelling for the applicant and her family and is a base from which the applicant and her husband run their theatrical production business.
- Part of the business involves inviting visitors, often from abroad, to put on shows in the local area. Until 2011, these visiting troupes were typically accommodated in local hotels and the like. However, given the expense of that accommodation and the availability of unused space in the now closed former shop premises the applicant began to provide, from June 2011, accommodation for the visiting performers.
- Typically these visits last no more than three days on each occasion and on average there are some 30 visits per annum. For the remainder of the time this part of the premises is unused.
- No further use of the premises for accommodating these visitors has been made since the refusal.
- This second application is being made in an attempt to explain in more detail the proposal which is unusual, if not unique, and it is thought likely that the "fear of the unknown or unusual" may have played a part in the earlier refusal and to justify the development in planning terms by reference to the development plan and other material considerations.
- The application site lies within the 'village confines' where there is a presumption in favour of 'new housing development'. The proposal does not accord with the conventional description or understanding of housing development. The peripatetic accommodation of a number of people for a few days at a time with long periods in between when part of the premises is unused is unusual if not unique. Although the visitors are able to make their own scratch meals within the rooms set aside for their use....the use operates

- much as tourist accommodation does. Nonetheless, it is accepted that testing the use against relevant housing policies is not inappropriate.
- With regard to Transport Policy 6, the development is not a 'major' development (by definition) and the scale of the development does not generate a need for off-site highway improvements. There are no proposals for changing the existing access, parking and turning facilities at the premises which are considered adequate for use.
  - The provision of accommodation for those performing at the shows organised and managed by the applicant's theatre company, which is lawfully based at the premises, clearly illustrates that there is a wider consideration of the value of the business and, therefore, to the local economy to consider. Employment Policy 1 is relevant and establishes a presumption in favour of the proposed development. The proposal is clearly related to and adjunct to the applicant's existing business use operating from the site and authorised by the Authority under planning permission 9/2004/0604.
  - It is a requirement of the Town and Country Planning (Development Management Procedure) (England) Order 2010 that the Local Planning Authority shall 'in determining the application, take into account any representations received from a consultee'. It is self evident that in this instance the professional and technical views of those employed to advise the planning authority were ignored. The basis of the Authority's reason for refusal cannot have been based upon any technical assessment.
  - The Authority's reason for refusal appears to be based on the comments of local residents who are clearly not independent in the matter. The statements have not been evidenced in any apparent way and no evidence of accidents or real highway danger has been made available.
  - The property is a former village shop which was relatively large with a significant potential clientele and opened long hours and typically persons in cars, vans etc. would be regular customers who parked on the public highway in and around the junction. In comparison the use proposed involves a single group of people who are only at the property for a few days at a time with long periods of time between visits where the front of the property is unused and thus no traffic generated. The visitors are mainly from abroad, they do not drive in private cars and are transported to and from various venues in a coach or mini-bus and the like. Accordingly, the number of movements is quite modest relative to the maximum number of people visiting or staying at the premises.
  - The second reason for refusal opines that there is insufficient amenity space for the number of intended occupiers and is contrary to Housing Policy 11. This policy applies only to new build and not to uses of existing property. The people staying for a few nights at a time are not engaged in conventional residential use or activity. They are guests of the applicant who stay a few days in a manner akin to a guest house. In contrast a house in multiple occupation is typically occupied by persons unknown to each other who would require or expect their own private amenity space. With the guest facility proposed (where everyone in the party or troupe knows one another) the provision of such facilities as a private garden is neither expected nor reasonable.
  - The applicant is agreeable to conditions relating to:
    - A temporary permission for two years, to enable the Local Planning Authority to monitor the use of the premises.

- That there are no more than 10 people to stay overnight.
- The total number of stays shall be limited to no more than 100 days per annum.
- Publication with a reasonable time beforehand of when visits are scheduled to take place.

## Planning History

9/2003/1498 - Change of use from A1 retail to B1 business use. Refused 6 February 2004.

9/2004/0604 - Change of use from A1 retail to B1 business use. Approved 7 July 2004.

Members will recall that a previous application, 9/2011/0804, to retain the change of use of the premises from a dwelling and business use to a mixed use of business and house in multiple occupation (maximum of 10 people) was refused by Committee in December 2011 following an officer recommendation for approval. The Committee report is attached for information as Appendix A.

The reasons for refusal were as follows:

1. *The property is located on a bend close to the junction with a classified road (Hillside Road). The use has been in operation for enough periods to enable the Local Planning Authority to assess that the position of the type and number of vehicles accessing the site and parking at the property on the public highway (lorries, mini-buses, coaches and cars) is such that those vehicles manoeuvring around parked vehicles on the bend is hazardous. This is because forward visibility on to High Street for vehicles approaching from the north east is considered severely compromised and so detrimental to highway safety. In addition, the unauthorised use of the site has revealed that vehicles at the premises often mount the footway causing a major obstruction for persons on the footway. This compromises their safety by forcing them on occasion to walk around such vehicles on to the carriageway. These vehicles whose forward visibility has already been limited as stated above, increases the hazards associated with the unauthorised use of the premise. The property cannot therefore safely accommodate the servicing and parking demands of the use and as such the grant of planning permission would be contrary to the provisions of Transport Policy 6 saved in the Adopted South Derbyshire Local Plan (1998).*
2. *Insufficient amenity space has been allocated for such a large number of occupiers of the property forcing occupants to loiter on the footway causing a disturbance to neighbours detrimental to their amenity. As such the proposal would not provide a reasonable level of amenity space and a safe functional layout for future occupiers and existing residents and would therefore be contrary to Housing Policy 11 a saved policy of the Adopted Local Plan (1998).*

## Responses to Consultations

The Highway Authority advises that the applicant has permission (9/2004/0604) for an unrestricted business use on the site already. It is considered, therefore, that the B1 use element of the application will be unlikely to result in any material change to existing

highway conditions. With regard to the change of use from a dwelling to a house in multiple occupancy, it advises that it should be borne in mind that the size of a family occupying a dwelling cannot be controlled and that multiple occupancy accommodation is generally associated with very low vehicle ownership. Notwithstanding this, the Highway Authority is aware of some concerns regarding parking issues at the site but in view of the extant uses on the site and the availability of parking space on adjacent land in the applicant's control, it is not considered that material detriment arising from the proposed use could be demonstrated and an objection on such grounds sustained. Accordingly a condition is recommended that car parking and manoeuvring be maintained throughout the life of the development.

The Crime Prevention Design Advisor has advised that there are no design or designing out crime issues. The current parking restrictions in the form of the double white line separator markings at the junction which prevent parking fall within the domain of the Highway Authority. Parking within 10m of a junction is an obstruction. Previous neighbourhood complaints and issues with obstruction of the junction by vehicles that this building and use is alleged to cause best remain with the Local Beat Team and Neighbourhood partnership. However, it is recommended that the parking within the site should be fully utilised.

The Environmental Health Manager has no objection.

Severn Trent Water has no objection.

The Private Sector Housing Officer does not raise any objections to the application as submitted but advises that the premises will require inspection and approval from his department and will require building regulation approval.\*

Linton Parish Council strongly objects to the application on the following grounds:

- a) The application states that all surrounding neighbours have been consulted but in fact no neighbours were aware or informed of this application.
- b) The Parish Council are concerned that this is another retrospective application as the property has been in use for this purpose for many months.
- c) The Parish Council has received several complaints with regards to parking issues caused by residents from this property due to them parking vehicles such as mini buses, coaches, lorries and cars on the very dangerous corner of High Street on the brow of a hill being Hillside Road.
- d) Parked vehicles are making it very dangerous also for children. The pick up and drop off point to and from school is opposite this proposed development.
- e) The activities at the premises are causing much distress especially to the nearby elderly residents due to the fact that vehicles associated with this property are parking for long periods of time half on the footpath and half on the road, which is not allowing enough space for a double buggy or disabled scooter to pass safely without going onto a busy highway.
- f) Health and Safety concerns due to electrical supply cables being left across the footpath from the property to vehicles on many occasions causing a trip hazard for pedestrians.
- g) The unchanged parking is completely unacceptable to the Parish Council and local residents.
- h) It has been reported that on occasions there have been 25 plus people residing in this small property.

- i) Reports of residents of the property being seen at the window in just their underwear which has concerned parents with small children.
- j) Problem with residents of the property smoking and eating on the footpath outside and littering area. Also intimidating for residents who have to pass large groups of mainly men/youths at any one time in this area.
- k) Impact on surrounding residents from noise pollution from the amount of people in one place and constant noise of large vehicles.
- l) Health and Safety Issues – the bedrooms are very small with insufficient or inadequate ventilation. Some of the rooms have no windows or emergency exits and it is urged that the Fire Department is involved along with the Building Inspector to look at the implications on the safety of the occupants.
- m) Personal washing facilities seem to be inadequate for the amount of people.

## **Responses to Publicity**

14 letters of objection have been received from 13 people raising the following comments/objections:

- a) Extra parking will cause problems. We live in sheltered accommodation for the elderly and already have parking problems as the roads are quite narrow and most of us do not have drives.
- b) Occasional Accommodation is 'infrequent' but going by what happened last year it is anything but infrequent.
- c) Are we still to be blighted with coaches arriving at all hours of the day and night, lorries and vans parked outside our houses for weeks on end and traffic in the High Street, snarled up by delivery lorries, vans and coaches.
- d) The premises still has very large windows and when people have been staying before they do not close the blinds and are on full display to anyone walking past.
- e) On previous occasions there appeared to be a lot more than 10 people staying there.
- f) A number of the residents used to congregate outside at night making an unacceptable amount of noise. Parties and loud music.
- g) When it was last being used large coaches would park in High Street, which is very narrow, loading and unloading causing a great deal of disruption for local residents.
- h) The property is being used for storage and is quite small to be accommodating the suggested number of people.
- i) Are we again to have washing drying on the High Street and underwear hanging up in the shop and bedroom windows?
- j) The application shows a large parking area which at the moment has one car parked in it and 5 cars parked on the High Street and Greenfield Drive.
- k) The Agent's Statement states that it will be for two or three days only with long periods when the premises are vacant, this was not the case as the Entertainers bring all their luggage with them which is left on the premises and return every night until they return home.
- l) If the application is passed consideration should be given to double yellow lines and designated parking bays places on High Street for residents to use with a restriction on the parking of buses, coaches and heavy goods vehicles on High Street and Caldwell Road.
- m) The application has not changed in respect to the major highway disruption that will occur if accepted.

- n) This small road cannot accommodate large vehicles for days at a time and is a clear hazard for both pedestrians and vehicles.
- o) On September 12<sup>th</sup> of last year, I witnessed at least 20 people occupying and living at said address.
- p) The accommodation is totally unsuitable for multiple occupancy, the plans show a standard of accommodation that certainly would not be considered suitable for people in both the public and private housing sectors, rented or owned.
- q) The large amounts of laundry has on several occasions led to dirty water flowing off the premises and onto the pavement which is a potential hazard when freezing conditions occur.
- r) Access is a problem, we have experienced constant parking problems with the numerous vehicles that arrive at these premises.
- s) High Street is sometimes impassable at the junction with Cauldwell Road.
- t) The bus which collects and returns these people at unsociable times the noise of such visits is just abused by leaving it running and causing pollution.
- u) It is only a matter of time before an accident happens.
- v) The Police have constantly been called out in the past due to coaches, numerous vans, lorries, mini buses and general cars blocking the pavement, obstructing traffic and causing much distress for visitors to the near by old people's bungalows.
- w) Dustbins have been left out for long periods of time littering the pavement.
- x) The toilet and personal washing facilities seem inadequate for the proposed amount of people.
- y) Why not support the local hotel and bed and breakfast with these people.

### **Development Plan Policies**

The relevant policies are:

Saved Local Plan: Housing Policies 5 & 11 and Transport Policy 6

EMRP: Policy 3

### **National Guidance**

National Planning Policy Framework (NPPF) paragraph 28.

Circular 08/2010: changes to planning regulations for dwelling houses and houses in multiple occupation.

### **Planning Considerations**

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

- Whether the additional information submitted overcomes the Council's reasons for refusal.
- Whether the additional information submitted for clarification and the conditions proposed overcome the Council's previous concerns in regard to the proposal such that the Council would be minded to take a different view.

### **Planning Assessment**

Transport Policy 6 advises that all proposals for development should incorporate adequate provision for access, parking, manoeuvring and off-street servicing. The proposed access, parking and turning facilities remain unaltered from that proposed

under the previous application with parking provided by the existing parking area to the side of the premises. The application details do however comment on the former use of the premises as a shop and associated vehicular movements and that customers would park on the public highway and around the junction. The details also advise that the proposed occupiers of the premises are mainly from abroad and do not drive in private cars and are transported to and from various venues in a coach or mini-bus and the like and that the number of vehicular movements is quite modest relative to the number of people visiting or staying at the premises. The Highway Authority maintain that they have no objection and that it is not considered that material detriment arising from the proposed use could be demonstrated. Issues regarding safe parking and use of the highway are a matter for police enforcement.

Housing Policy 11 seeks to provide reasonable amenities in terms of light, air and privacy for both existing and new dwellings and private amenity space. The submitted application makes no further provision for private amenity space within the application site but advises that the occupiers of the premises only stay for a few nights at a time and are not engaged in conventional residential use or activity staying in the premises as guests of the applicant in a manner akin to a guest house rather than a house in multiple occupation. The submitted details advise that the occupants of the facility are groups of people who know one another and the provision of such facilities as a private garden is neither expected nor reasonable.

Since the application was last considered by the Committee, Planning Policy Statements have been replaced by the NPPF. Paragraph 28 advises that sustainable growth and expansion of all types of business and enterprise in rural areas both through the conversion of existing buildings and well designed new buildings should be supported.

The proposed change of use is required in association with the existing theatrical production business run from the premises and would enable the applicant's to re-use the disused shop premises to accommodate the performers at a lesser expense than providing hotel accommodation. Performers from abroad would be transported in groups as discussed above limiting the number of additional vehicular movements created by the proposal. The proposal represents a sustainable expansion of an existing business and is considered to be in accordance with the requirements of NPPF paragraph 28.

In assessing the proposal in the light of the additional submitted details and justification and in view of the previous refusal, the proposal is in accordance with policy. The submitted details assist in clarifying the potential impact on highway conditions and that the use of the premises as described may negate the need for amenity space. In addition, the conditions proposed would provide the Authority with a greater degree of control over the proposed use than was previously offered. Further control can be exercised by the Council under other legislation in relation to living conditions and safety of occupation but which are not under the remit of the Planning Committee.

Members are requested to consider the additional information provided and the conditions proposed and consider as to whether, in their opinion, this allays previous concerns about the proposed change of use and sufficiently overcomes the previous reason for refusal.

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. This permission shall be for a limited period only, expiring on 7 June 2014 on or before which date the use shall be discontinued and the site reinstated to the satisfaction of the Local Planning Authority unless, prior to that date, an application has been made and permission has been granted for an extended period.  
  
Reason: To enable the Local Planning Authority to monitor the impact of the proposed use on existing highway conditions and residential amenity in the interests of protecting adjacent residential amenity.
3. Notwithstanding the submitted details, there shall be no more than 10 people residing overnight at the premises (as outlined in red on the submitted application site plan) unless otherwise agreed in writing by the Local Planning Authority.  
  
Reason: In the interests of the amenity of the area and occupiers of nearby residential properties.
4. Notwithstanding the submitted details, the application premises shall not be occupied in excess of 100 nights per annum unless otherwise agreed in writing by the Local Planning Authority.  
  
Reason: In the interests of the amenity of the area and occupiers of nearby residential properties.
5. In respect of Conditions 3 & 4 above the site owners shall maintain an up-to-date register of all visitors who stay overnight at the application premises and shall make that information available at all reasonable times to the Local Planning Authority. A copy of the register shall be submitted to the Local Planning Authority every year, the first copy to be submitted one year from the date of this permission and the following copies to be submitted annually on this date hereafter.  
  
Reason: To enable the Local Planning Authority to monitor the use of the premises in accordance with the requirements of Conditions 3 & 4 of this permission and in the interests of the amenity of the area and of occupiers of nearby residential properties.
6. The premises shall not be used or operated in accordance with the terms of this permission unless a schedule of dates, setting out those dates for a six months period in advance of when the premises are to be used for the purposes hereby permitted, has been submitted to the local planning authority. Such a submission shall be made in writing and within at least one month prior to the commencement of the relevant six months period with subsequent schedules

submitted every six months thereafter. No variations to the approved schedule shall be made unless they have been made in writing and within one month prior to the proposed variation.

Reason: To enable the Local Planning Authority to monitor the use of the premises in the interests of the amenity of the area and of occupiers of nearby residential properties.

7. The car parking and manoeuvring space within the site as shown on the submitted car park plan shall be maintained throughout the life of the development free of any impediment to its designated use.

Reason: In the interests of highway safety.

**Item**            **1.2**

**Reg. No.**        **9/2012/0180/FM**

**Applicant:**

Mr Mark Jones  
Sunrise Homes Limited  
3 Trent Lane  
Weston on Trent  
DE72 2BT

**Agent:**

Mr Mark Blood  
Mark Blood Building Design  
Manor Farm House  
London Road  
Shardlow  
Derbyshire

**Proposal:**        **THE ERECTION OF A DETACHED DWELLING LAND AT  
ASKEW GROVE REAR OF 44 & 46 MILTON ROAD  
REPTON DERBY**

**Ward:**            **REPTON**

**Valid Date:**      **05/03/2012**

*Members will recall this case being deferred at its meeting of 8 May for a visit to the site to take place. There have been no changes to the report.*

**Reason for committee determination**

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

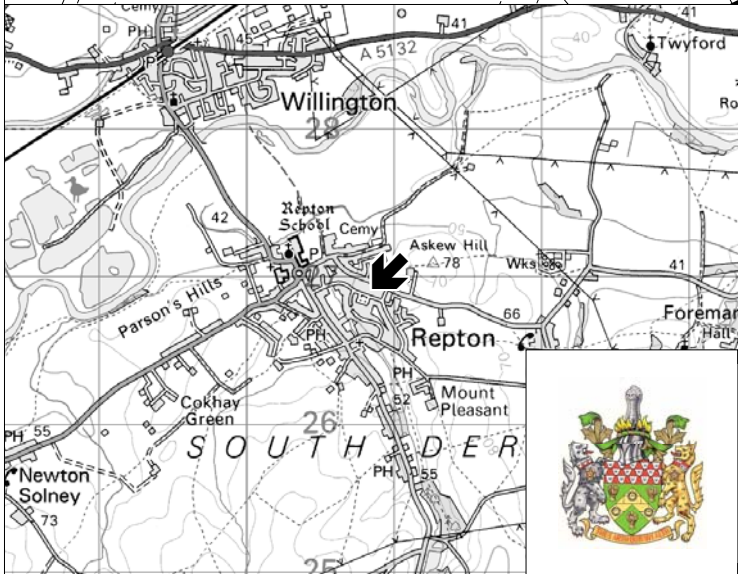
**Site Description**

The application site is located within Repton village confines and consists of part of the gardens to the rear of Nos 44 & 46 Milton Road. The site is set back from Askew Grove behind an existing residential development of four dwellings accessed from Askew Grove situated to the south and currently under construction. The surrounding development is predominantly two-storey dwellings but varied in character. The area of The Crescent and Askew Grove are pre-dominantly semi-detached c1950s pre-fabricated properties. Properties along Milton Road are predominantly semi-detached with long gardens to the rear. Askew Grove and The Crescent have been subject to considerable redevelopment by the applicant in recent years providing a mix of both traditional and more contemporary dwellings within the vicinity of the site.

**Proposal**

The application proposes the erection of a three-bedroom dwelling and attached garage with access from Askew Grove via an access permitted for the existing residential development currently under construction. The dwelling would measure 7.5m to the

**9/2012/0180 - Land at Askew Grove, Rear of 44 & 46 Milton Road, Repton, Derby DE65 6FZ**



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

ridge with first floor accommodation contained within the roofspace lit predominantly by rooflights. An additional parking space would be provided to the front of the garage.

### **Applicants' supporting information**

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

- The proposed dwelling will comprise of a detached dwelling of 1½ storey construction with first floor accommodation provided partially within the roof space.
- The ridge height will be 7.5m with an eaves height of 4.02m.
- The site will accommodate two on-site parking spaces (one being a garage) with vehicle turning provided within the site.
- The development is intended to provide a degree of additional affordable housing within this very popular residential area.
- Careful attention has been given to ensure that the layout and design of the proposed dwellings will accord very closely with the previously approved schemes on the adjacent sites and will therefore compliment these recently completed developments.
- The proposed dwelling will not be unduly prominent in the streetscene, and will ensure adequate private garden space is retained to serve the dwelling.
- The redevelopment of the site as proposed will provide adequate and more manageable garden areas to the existing dwellings on Moira Road.

### **Planning History**

9/2011/0794 – The demolition of two dwellings and the erection of four detached dwellings. Permitted 21.11.11.

### **Responses to Consultations**

The Highway Authority consider that the access previously approved under application 9/2011/0794 to serve the four new dwellings is adequate to serve an additional dwelling and has no objection subject to the provision of the previously approved access as agreed and the provision of parking and manoeuvring space as submitted.

The Environmental Health Manager has no comment.

Severn Trent Water has no objection subject to a condition requiring the submission of drainage details.

Repton Parish Council has raised the following concerns:

- Development on Askew Grove appears to be taking place in a piecemeal manner. If new applications had to be considered as a whole this would have resulted in S106 funding being made available to the Parish Council.
- To allow further development would lead to a high concentration of housing in this area.
- Removing and replacing existing housing stock is resulting in the loss of affordable housing for this area.

## **Responses to Publicity**

One letter of objection has been received raising the following concerns:

- The construction of this property does not comply with SDDC's proposals that any development in Askew Grove/The Crescent should maintain a similar street view to that currently visible and front the roadway.
- Given the piecemeal nature of the development the community does not appear to be benefiting greatly from S106 monies or community facilities.
- I understand that construction in gardens is not something that is likely to be favoured by planners in the future.
- The house will become part of an increasingly dense development. There is no other part of the village which contains so many buildings with little or no gardens.
- It does not provide affordable housing.
- There are already parking issues with the primary school on Springfield Road and the developer is only providing one car parking area.
- Increased vehicular access on Askew Grove - existing dangerous parking on Askew Grove reduces the road to a single lane with access and visibility for the owners of properties reduced.
- Adjacent occupiers are distraught with worry that the developer is forcing them out of their home by building around their entire home and garden.

## **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

## **Planning Considerations**

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

- The principle of development
- Design
- Impact on residential amenity
- Access and parking
- S106 Contributions

## **Planning Assessment**

### The principle of development

Paragraph 49 of the National Planning Policy Framework (NPPF) advises that housing applications should be considered in the context of the presumption in favour of sustainable development.

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

The application site is situated in a sustainable location within Repton village confines and surrounded by residential development on all sides with easy access to local facilities. Residential development of the site would accord with the above policies subject to acceptable design and appearance.

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 National Planning Policy Framework 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 application site is relatively enclosed by existing development and is not prominent within the streetscene. Properties along this part of Milton Road are predominantly semi-detached with rear gardens approximately 40m in length. Whilst the open character of these rear gardens can be viewed to some degree from Springfield Road situated to the east the application site is situated approximately 85m away from the road and the proposed dwelling would be relatively low in height being 7.5m to the ridge and not visually prominent. An element of 'backland' development has previously been accepted within the vicinity of the site with recent developments along Askew Grove including a development of two dwellings in the garden of Nos 32 & 34 Milton Road situated a few properties down to the west of the site. Any subsequent applications for 'backland' development would be subject to planning approval and assessed on their own merits with particular regard to their impact on the character of the area.

### Design

The proposal has been designed to be in keeping with recent development on Askew Grove and to meet the Council's minimum distance requirements in terms of overlooking and overbearance in relation to neighbouring properties. Whilst the design is therefore somewhat contrived in this regard, due to the enclosed nature of the site the property would not be a prominent feature within the street. The dwelling would be set back approximately 47m from the road frontage of Askew Grove and views of the dwelling from the road would be in keeping with the existing new development and acceptable aesthetically.

The Design Brief for Askew Grove and The Crescent, February 2010 predominantly focuses on the development of sites fronting onto Askew Grove and The Crescent and is not considered specifically relevant to this development proposal.

### Impact on residential amenity

The proposal complies with the Council's space about dwelling standards in relation to neighbouring properties and sufficient private amenity space has been provided for the proposed occupier. The dwelling would be situated in excess of 24m from the rear elevation of Nos. 44 & 46 Milton Road, with these dwellings retaining a garden 22m in length. The predominant use of rooflights to serve the first floor bedrooms has been

accepted in adjacent developments and it is not considered that this would have any significant adverse impact on the amenity of the proposed occupiers. The proposal is therefore considered to be in accordance with the Council's Guidance on new housing development and Housing Policy 11.

#### Access and parking

Access to the site would be via a recently permitted access to serve the new dwellings on the adjacent site. Sufficient on-site parking and manoeuvring space would be provided in accordance with Transport Policy 6 and the Highway Authority has no objections subject to conditions as above.

#### S106 contributions

The development follows on from a number of developments carried out by the applicant over recent years none of which has thus far exceeded five dwellings, the Council's standard minimum figure for seeking S106 developer contributions. However, it is recognised that the amalgamation of developments by the applicant along Askew Grove and The Crescent is likely to impact on local infrastructure. In view of this it is considered appropriate to seek S106 contributions towards healthcare and open space commensurate with the dwelling by way of a Unilateral Undertaking. The Education Authority has confirmed that an education contribution is not required.

#### Conclusion

The development would have minimal impact on the character and appearance of the streetscene and sufficient access and parking provision would be provided and could be required by condition. The development is in accordance with the above planning policies and the Council's Housing Design and Layout Guidance, particularly in relation to neighbouring properties, 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**

**A. To secure the signing of a Unilateral Undertaking under Section 106 of the Town and Country Planning Act 1990 (as amended) for contributions towards healthcare and recreation provision;**

**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. 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.

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

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

4. 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.

5. The first floor windows in the side elevation serving the Bedrooms 1 & 2 shall be permanently glazed in obscure glass.

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

6. The previously approved access, including geometry and visibility splays, approved under application 9/2011/0794, shall remain unaltered and unobstructed for the life of the development, the subject of this permission.

Reason: In the interests of highway safety.

7. The premises, the subject of the application, shall not be occupied until space has been provided within the application site in accordance with the application drawing no. 11042.05 for the parking and manoeuvring of residents' vehicles, laid out, surfaced and maintained throughout the life of the development free from any impediment to its designated use.

Reason: In the interests of highway safety.

8. 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.

Informatives:

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

**Item**            1.3

**Reg. No.**        9/2012/0308/FH

**Applicant:**

Mrs M Tyler  
4 Potters Croft  
Swadlincote

**Agent:**

Mr David Raybould  
David Raybould & Associates Ltd  
23A West Street  
Swadlincote

**Proposal:**        **THE ERECTION OF AN EXTENSION AT 4 POTTERS  
CROFT SWADLINCOTE**

**Ward:**            **SWADLINCOTE**

**Valid Date:**     **10/04/2012**

**Reason for committee determination**

Councillor Bambrick has requested that the application be dealt with by the planning committee as local concern has been expressed and the issues are finely balanced and should be debated by the committee.

**Site Description**

The application property is modern detached dwelling in a mainly residential area bounded on its frontage by a Pingle School. The applicant property is in a position where the dwellings roughly follow the curvature of the road, thus resulting in the dwellings not being sited in line with one another. The property sits approximately 1/4m higher than No.6 Potters Croft and is angled away from said neighbour.

**Proposal**

The application proposes to extend the dwelling to its side and frontage by way of both two-storey and single storey elements. An additional side bedroom window is proposed.

**Applicants' supporting information**

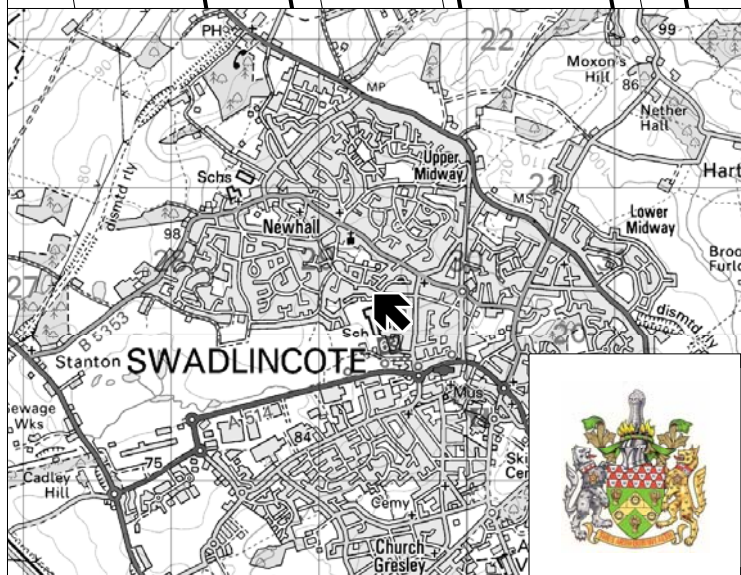
None.

**Planning History**

None.

**Responses to Consultations**

The Highway Authority does not object to the proposal.



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

## **Responses to Publicity**

The occupier of No.6 Potters Croft has objected to the application on the grounds that the scheme will affect light to their property and will have an adverse effect upon highway safety due to restricted views when they emerge from their driveway. The objector is also of the opinion that the proposal will be out of character in the area.

## **Development Plan Policies**

The relevant policies are:

Local Plan: Housing Policy 13 & Supplementary Planning Guidance 'Extending Your Home' (SPG)

## **National Guidance**

The National Planning Policy Framework (NPPF) Chapter 7.

## **Planning Considerations**

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

- The affect upon the amenities of neighbouring properties.
- The design of the proposal.
- The affect on the parking and highway safety.

## **Planning Assessment**

The closest potentially affected neighbouring property is at No.6 Potters Croft, which has a garage on the ground floor with a bedroom window above. The proposed side window would not have an angle of view capable of overlooking the protected amenity space of No.6. The proposal therefore complies with Housing Policy 13 and SPG on house extensions in terms of protection against overshadowing and undue overlooking of all neighbouring properties.

The extension is designed in a way that adds a prominent gable to the front elevation on its left hand side. This appears more pronounced given the aforementioned curvature of the street frontage. However, the extension has been so designed as to be in general proportion with the existing house such that its addition would not appear unduly prominent in the street scene.

On the advice of the Highway Authority highway safety would not be unduly affected.

Given the forgoing the proposal 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. 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.
3. The entire resultant land to the frontage of the property shall remain in perpetuity unobstructed for their designated use.  
Reason: To ensure that all the activities associated with the development are contained within the curtilage of the site, so as to avoid parking and manoeuvring on the highway to the detriment of highway safety.

**Informatives:**

The proposed development lies within an area that has been defined by The Coal Authority as containing potential hazards arising from coal mining. These hazards can include: mine entries (shafts and adits); shallow coal workings; geological fissures; mine gas and previous surface mining sites. Although such hazards are often not readily visible, they can often be present and problems can occur as a result of development taking place, or can occur at some time in the future. It is recommended that information outlining how the former mining activities affect the proposed development, along with any mitigation measures required, be submitted alongside any subsequent application for Building Regulations approval. 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. Such activities could include site investigation boreholes, digging of foundations, piling activities, other ground works and any subsequent treatment of coal mine workings and coal mine entries for ground stability purposes. Failure to obtain Coal Authority permission for such activities is trespass, with the potential for court action. Property specific summary information on coal mining can be obtained from The Coal Authority's Property Search Service on 0845 762 6848 or at [www.groundstability.com](http://www.groundstability.com)

**Item**            **1.4**

**Reg. No.**        **9/2012/0309/NO**

**Applicant:**

B L Trigg Ltd  
Mount Pleasant Chapel 158  
Mount Pleasant Road  
Castle Gresley  
Swadlincote

**Agent:**

Mr D Rutter  
Sycamore Villas  
36 Main Street  
Linton  
Swadlincote

**Proposal:**        **THE ERECTION OF REPLACEMENT FENCING/GATES  
AND THE REPLACEMENT OF THE DIESEL STORAGE  
TANK AT MOUNT PLEASANT CHAPEL MOUNT  
PLEASANT ROAD CASTLE GRESLEY SWADLINCOTE**

**Ward:**            **LINTON**

**Valid Date:**      **16/04/2012**

**Reason for committee determination**

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

**Site Description**

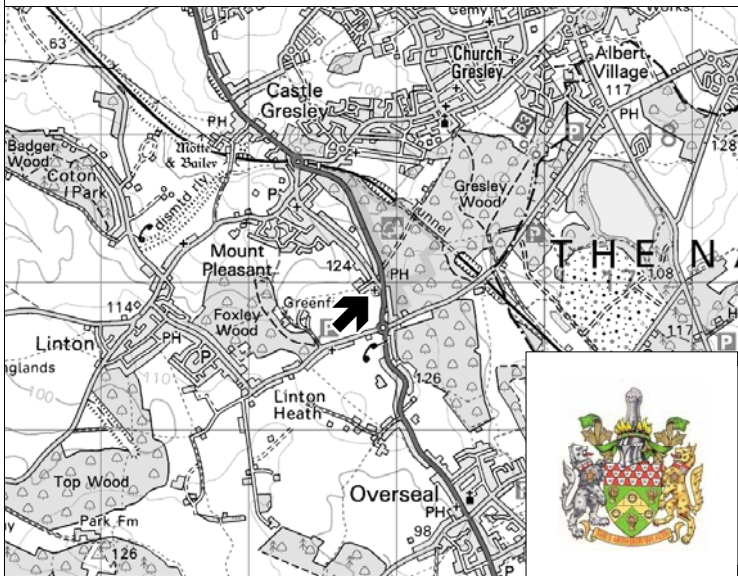
The application site lies to the rear of 158 Mount Pleasant Road and is operated by a lorry haulage company. The associated workshop occupies a former Methodist chapel. The rear gardens of residential properties on Fields Lane abut the northern boundary of the site and a caravan sales company is located to the southeast. The main lorry parking and turning area is to the southwest of the workshop building.

**Proposal**

The application is for the erection of replacement 2.1m high palisade fencing and gates between the workshop building and the boundary of the caravan sales premises; and the siting of a new 25,000 litre diesel tank to replace an existing tank which is adjacent to the lorry wash facility. Information submitted with the application indicates that the dimensions of the new tank would be 6.1m long by 2.8m wide by 2.2m high and would be finished in mid green enamel gloss to the side and roof. It would be located with its long side running parallel to the northern boundary of the site.

**Applicant's supporting information**

**9/2012/0309 - Mount Pleasant Chapel, Mount Pleasant Road, Castle Gresley, Swadlincote DE11 9JQ**



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

A Design and Access Statement has been submitted with the application, which makes the following points: -

- Re-siting and renewal of the fence and gates and removal of the raised kerb will alleviate problems of access to the south facing door and the employee car parking area.
- The existing diesel storage tank does not allow sufficient storage capacity. The new tank will include the latest safe storage features and allow the business to stock diesel in larger quantities at a better price thereby improving its competitiveness.
- The diesel tank will be positioned more or less on the same footprint as the existing, will be pre-painted green and provide better screening for the occupiers of neighbouring properties.
- Existing levels of activity and employment will remain the same.

### **Planning History**

9/2011/0715 – Retention of lorry wash area. Permitted 11/10/2011

### **Responses to Consultations**

The Environment Agency and the Environmental Health Manager have no comment to make.

The County Highways Authority has no objection.

Castle Gresley Parish Council objects on grounds that the tank is not in an appropriate place for its size. The new tank is shown turned round compared to the previous tank so that it is on more of the boundary line than before. It should not be sited next to the adjacent properties and the parish ask why it cannot be moved to the other side of the site.

### **Responses to Publicity**

One letter of objection has been received, which is summarised as follows:

- As land is not restricted; is it possible to re-site the new diesel tank away from rear garden boundaries?
- The new lorry wash facility already overlooks the garden of No.9 Fields Lane and the hard screening is not high enough to shield the lorry cabs.
- A cherry tree on the neighbour's property has not bloomed this year since branches on the boundary were cut back to facilitate the hard screening.
- The new diesel tank will not screen the view from the property and extra movement and noise will be created.
- Is it possible to provide some environmentally friendly screening that would absorb some of the noise, dust and movements in the yard?

### **Development Plan Policies**

The relevant saved policies are:  
Local Plan: Employment Policy 1.

## **National Guidance**

The National Planning Policy Framework (NPPF) (Chapter 19)

### **Planning Considerations**

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

- Development plan policy and national guidance.
- The impact of the proposal on the neighbouring residents.

### **Planning Assessment**

With regard to assessing the proposal against national and local policies, Saved Local Plan Employment Policy 1 supports existing industrial and business developments provided that they do not have a detrimental impact on the character of the locality or residential amenity and do not cause environmental or traffic problems.

Chapter 19 of the NPPF states that '*Planning should operate to encourage and not act as an impediment to sustainable growth*'.

The Council's SPG provides advice on the design of industrial developments, including works involving storage yards and open storage areas, advising that landscaping and/or other boundary treatments contribute significantly to the aesthetic qualities of a development.

The haulage business has been operating from this site for several years and is now well established. The company claims to be continually monitoring and endeavouring to improve the visual appearance of the site. The site is industrial in character and the proposals have no impact on the character of the area in which they are sited. The two elements of the development are for replacements, which would help to upgrade and improve the visual appearance of the site as well as (in the case of the diesel tank) improve the company's competitiveness in the current market. The impact of the proposal on the site is therefore minimal.

The impact of the replacement diesel tank on the neighbouring residents has been carefully considered. Some vegetation on the common boundary was cut back when the lorry wash facility was constructed. The existing vegetation and trees provide some screening to the yard, although there is some scope for further tree or shrub planting between the diesel tank and the common boundary. The company has also offered to put further screening panels in place to ensure that the impact of the diesel tank can be further reduced. The inclusion of a suitably worded condition will ensure that acceptable boundary treatment is in place before the tank becomes operational. The objection from the Parish Council, and subsequent suggestions relating to siting the tank elsewhere within the site, have been noted. Given the current location of the lorry wash facility, it makes sense to have both facilities close to each other, in order to minimise the number of lorry trips around the site, thereby avoiding an increase in engine noise and fumes.

The proposed replacement fence and gates would have no impact on the neighbouring residents who live on Fields Lane, although the fence will be attached to the boundary

of the adjacent caravan sales site. However, it is not envisaged that there will be any detrimental impact to that property.

In conclusion, it is not for the Local Planning Authority to dictate the location of the tank unless there is overwhelming evidence that its location would be unquestionably unsuitable. Indeed, in line with the current ethos set out in the NPPF, the Council should consider its role to facilitate such development in the interests of the continued success of the company.

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.
2. 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 (including landscaping between the proposed tank location and the boundary). 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 and the amenities of neighbouring residents.

3. No part of the development shall be carried out until precise details and specifications of the colour of the diesel tank have been submitted to and approved in writing by the Local Planning Authority. The work shall be carried out in accordance with the approved details.

Reason: To safeguard the appearance of the development and the amenities of the neighbouring residents.

## **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](http://www.groundstability.com)

**Item**            1.5

**Reg. No.**        9/2012/0339/TP

**Applicant:**

South Derbyshire District Council  
Civic Offices  
Civic Way  
Swadlincote

**Agent:**

Mr Martin P Buckley  
Community & Planning  
South Derbyshire District Council  
Civic Offices  
Civic Way  
Swadlincote

**Proposal:**        **THE PRUNING OF AN OAK TREE COVERED BY SOUTH  
DERBYSHIRE DISTRICT COUNCIL TREE  
PRESERVATION ORDER NUMBER 130 AT LAND  
ADJACENT TO 65 BRETBY HOLLOW NEWHALL  
SWADLINCOTE**

**Ward:**            **NEWHALL**

**Valid Date:**      **19/04/2012**

**Reason for committee determination**

The Council is the applicant.

**Site Description**

Bretby Hollow is a residential housing estate with public access through it. The tree the subject of the application is situated along side this route close to the main road through the site.

**Applicants' supporting information**

A full survey of the proposed works has been submitted.

**Planning History**

None.

**Responses to Consultations**

None.

**Responses to Publicity**

**9/2012/0339 - Land adjacent to 65 Bretby Hollow, Newhall, Swadlincote  
DE11 0UE**



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

None.

### **Development Plan Policies**

The relevant policies are:

Local Plan: N/A

### **National Guidance**

British Standard Institute on Tree Works (BSI)

### **Planning Considerations**

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

- The acceptability of the proposed works in relation to the effect upon the tree.
- The acceptability of the proposed works in relation to the effect upon the street scene.

### **Planning Assessment**

The tree is a mature specimen that has high amenity value, contributing considerably to the street scene.

It has been demonstrated that the maintenance works proposed are necessary in the interests of preventing a danger to users of the footpath and surrounding private gardens.

### **Recommendation**

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

1. The works hereby granted consent shall be carried out in accordance with the British Standards Institute recommendations for tree work, a copy of the relevant sections being enclosed.

Reason: In the interest of the health and safety of the trees.

**Item**            **1.6**

**Reg. No.**        **9/2012/0341/NO**

**Applicant:**

Forestry Commission  
West Midlands Forest District  
Lady Hill  
Birches Valley  
Rugeley

**Agent:**

Grace Plant & Associates  
111 Kidderminster Road  
Bewdley  
Worcs

**Proposal:**        **THE ERECTION OF AN EXTENSION TO FORM A TOILET  
BLOCK AT THE GLADE ROSLISTON FORESTRY  
CENTRE BURTON ROAD ROSLISTON SWADLINCOTE**

**Ward:**            **LINTON**

**Valid Date:**      **25/04/2012**

**Reason for committee determination**

The application has been brought to committee because South Derbyshire District Council has an ownership interest in the wider site.

**Site Description**

The Glade is an existing arena set within a woodland area, which is accessed via a track leading off the main access into the site from the Burton to Rosliston road. The arena comprises a timber-clad building with open-air stage and wedding venue with a marquee.

**Proposal**

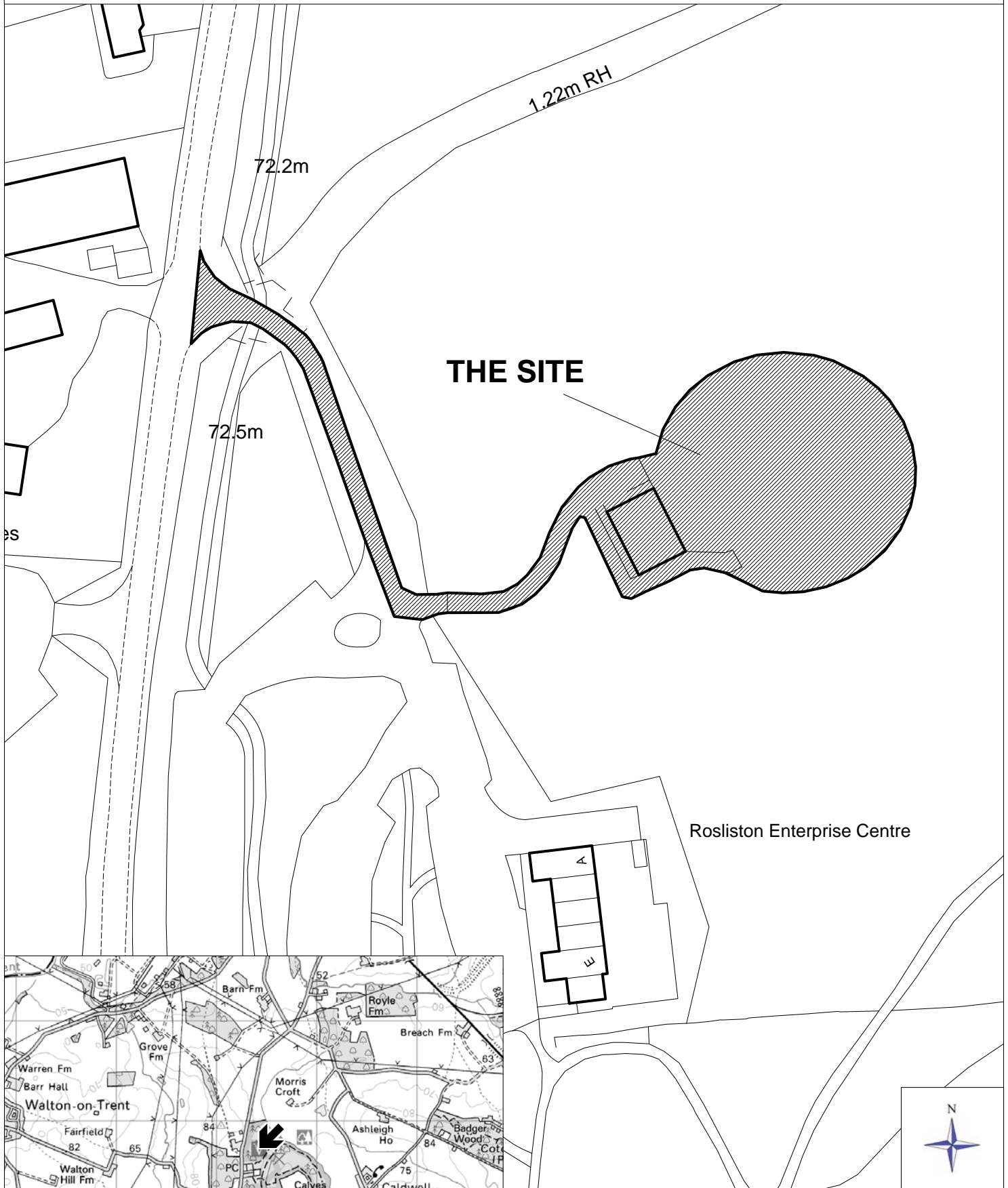
Mobile toilets are currently brought to the site for events. This application is for the erection of a permanent toilet block building measuring 9.3m long by 4.35m wide by 3.7m high to the top of the mono-pitch roof. The building would be attached to the side elevation of the existing building and constructed in materials to match, i.e. plastic coated steel roof sheets and vertical timber cladding for the walls. Four rooflights would provide external lighting to the building. Public access would be from the front of the building with one toilet for performers being accessed via the existing changing rooms.

**Planning History**

9/2005/1502 – Formation of performance arena and associated building, floodlighting and seating area – Approved 02/05/2006

**Responses to Consultations**

**9/2012/0341 - The Glade, Rosliston Forestry Centre, Burton Road,  
Rosliston, Swadlincote DE12 8JX**



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

Severn Trent Water and the Environmental Health Manager have no objections.

### **Responses to Publicity**

None received.

### **Development Plan Policies**

The relevant policies are:

Local Plan Saved Policies: Environment Policies 1, 9 and 10, Recreation and Tourism Policy 1.

### **National Guidance**

The National Planning Policy Framework (NPPF) – Chapter 8.

### **Planning Considerations**

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

- Design
- Impact on the surrounding area

### **Planning Assessment**

The design of the proposed toilet block is in keeping with the existing building, with a similar roof style and proposed use of matching materials. The building is modest in size and does not have an adverse impact on either the existing building or its setting. The proposal therefore is in accordance with Environment Policies 1 and 10, and Recreation and Tourism Policy 1. Chapter 8 of the NPPF seeks to ensure that the planning system facilitates social interaction and creates healthy, inclusive communities.

The woodland setting of the existing building provides ideal and natural screening. The proposed toilet block building would not necessitate the removal of any trees and therefore its impact will be minimised from the outset. Its permanence would obviate the need for portable facilities to be constantly delivered to the site. The proposal therefore complies with Local Plan Policy Env9.

### **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.
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.

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](http://www.groundstability.com)

**Item**            **1.7**

**Reg. No.**        **9/2012/0379/FM**

**Applicant:**

Mr Baker  
202 Woodville Road  
Hartshorne  
Swadlincote

**Agent:**

Mr Stephen Greaves  
S G Design Studio Ltd  
202 Woodville Road  
Hartshorne  
Swadlincote

**Proposal:**        **THE ERECTION OF A DETACHED DWELLING AT 37  
BASS'S CRESCENT CASTLE GRESLEY SWADLINCOTE**

**Ward:**            **LINTON**

**Valid Date:**      **27/04/2012**

**Reason for committee determination**

The application has been brought to committee because the site is owned by South Derbyshire District Council and the Council is also the applicant.

**Site Description**

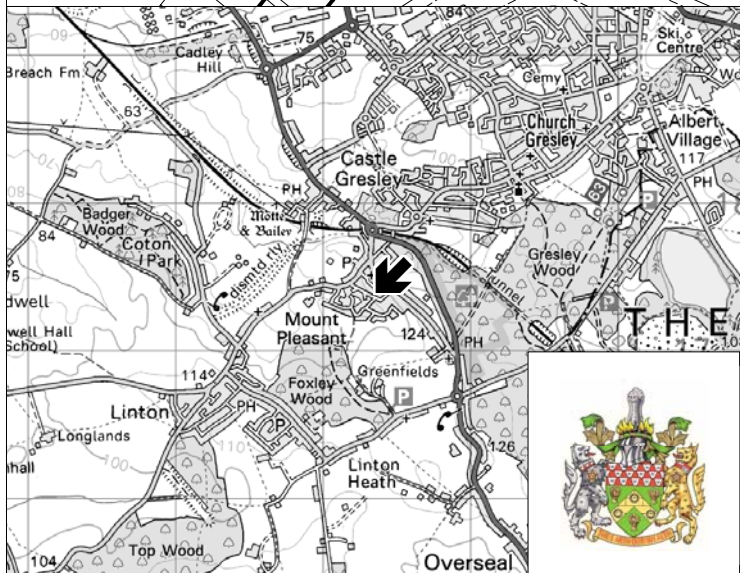
The land subject of this application is to the southwest of No.37 Bass's Crescent and is currently undeveloped. It is screened from the road by a 1.8m high close-boarded fence. No.37 is a rendered, plain fronted, end of terrace, two-storey property positioned on the back edge of the footway. No.39 is a linked, semi-detached, two-storey dwelling, which is set back approximately 6m from the back edge of the footway and has a lawned area to the front. Owing to the ground contours, No.39 is slightly elevated when compared to the application site.

No.37 and the other terraced dwellings in the row have no off-street parking, although there is a range of garages on the opposite side of the road. No.39 has off-street parking to the rear, accessed through an archway to the side of the property underneath a first floor bedroom.

The site is located within the residential area of Castle Gresley and surrounded by domestic properties. It measures 10.6m wide by approximately 44m deep and has a gross area of 466 square metres. The site levels rise slightly from front to rear.

**Proposal**

The application is for the erection of a detached, two-storey, four bedroom dwelling on the site. The submitted plans show the dwelling would be set back from the back edge



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

of the footway by approximately 1m. It would have a staggered roof height, being 8.2m high adjacent to No.37 and 7.9m high adjacent to No.39. It would project 4m forward of No.39 and 1m back from the front elevation of No.37. The dwelling would have a gabled roofline above the master bedroom and a gabled canopy over the front entrance door to reflect the design of No.39. Part of the front elevation has been recessed in order to reduce the mass of the building.

The proposal does not include any off-street car parking, as it is not possible to provide the necessary visibility splays. There are no restrictions on the adjacent highway with regard to parking.

### **Applicants' supporting information**

The site is currently a derelict, brownfield piece of land within the development boundary of Castle Gresley and its development would much enhance the area and improve the street scene. It is close to all services and public transport routes and is therefore considered to be sustainable in terms of Local Plan Housing Policy H4.

The application has been submitted following pre-application discussions with the District Council and the County Highways where it was agreed that, owing to restricted visibility splays, it would be acceptable in this location to have no off-street parking. The positioning of the proposed dwelling has been considered bearing in mind the two neighbouring properties. In the interests of both continuity of the building line and the street scene it is considered that a staggered frontage would be preferable.

The objective of the design is to minimise overlooking of neighbouring properties from first floor windows and overshadowing of neighbouring ground floor windows. The staggering of the front elevation reduces the mass of the roof and improves the character. The front elevation replicates the proportions of the neighbouring properties, with a recessed section to minimise the mass of the frontage, whilst maximising internal space. A staggered roofline is proposed, with the western gable being of similar proportions to that of No.37.

### **Planning History**

There is no planning history attached to this site.

### **Responses to Consultations**

Castle Gresley Parish Council objects to the [lack of] parking but not the application in principle and supports infill building but considers parking arrangements should be reconsidered and provided on site similar to the adjacent property where there is an archway so parking can be access to the rear. Bass's Crescent already has on-street parking issues.

Severn Trent Water has no objections to the proposal subject to the inclusion of conditions relating to the submission, approval and implementation of a scheme for the disposal of surface water and foul sewage.

The County Highways Authority responds by stating that whilst it is not ideal that the proposed dwelling has no off-street parking, an access could not be provided with satisfactory visibility and that parking on-street would be considered more of an

inconvenience than a danger. In addition, the Authority asks that a condition is included to remove any permitted development rights and that planning permission would be needed to create a domestic access to the site, in order to prevent the creation of a substandard access.

### **Responses to Publicity**

Three neighbouring households have concerns regarding the following:

- loss of privacy;
- excavation and changes in ground levels could affect the retaining wall to the rear, which, in turn, could impact on the neighbour's driveway;
- incorrect information on the design and access statement regarding some adjacent land;
- increased parking on an already busy street;
- increased danger from crossing the road between parked cars;
- poor visibility when driving along the street.

### **Development Plan Policies**

The relevant policies are:

Local Plan Saved Housing Policy 4 and Transport Policy 6.

Supplementary planning guidance: Housing Design and Layout (SPG)

### **National Guidance**

The National Planning Policy Framework (NPPF)

### **Planning Considerations**

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

- Development plan policy and national guidance and advice
- The impact of the proposal on the amenities of neighbouring residents
- The impact of the proposal on the street scene and surrounding area
- The lack of off-street car parking

### **Planning Assessment**

#### Development Plan policy and national guidance

Local Plan Saved Housing Policy 4 supports new residential development within or on the fringes of Castle Gresley provided that the site is substantially surrounded by the development, and

- (a) is not a prominent intrusion into the rural area;
- (b) does not involve the loss of the best agricultural land;
- (c) does not constitute ribbon development other than the infilling of a small gap in a substantially built-up frontage;
- (d) does not place excessive demands on public services;
- (e) does not involve the development of open spaces, gaps or features that make a valuable contribution to the character or quality of the area;

- (f) is of suitable scale and character; and
- (g) does not prejudice the continued viability of adjacent industrial or community facilities.

The proposal is not within a rural area and does not form part of agricultural land. It does not constitute ribbon development but does infill a small gap in a substantially built-up frontage. However, the gap does not make a valuable contribution to the quality of the area. The introduction of one further dwelling in this location would not place excessive demands on existing services. The design and scale is acceptable and no industrial or community facilities would be prejudiced by the proposal. It is considered, therefore, that the proposal is in compliance with this policy.

Transport Policy 6 requires new development to incorporate adequate provision for access, parking, manoeuvring and off-street servicing. In this case, off-street car parking and manoeuvring cannot be provided. The reason for this is that the Council does not own the land or buildings either side of the application site and is therefore unable to provide the required visibility splays. Any visibility splays would therefore be substandard. During discussions between the District Council (as landowner) and County Council (as highway authority) it was agreed that it would be better to provide no access and parking at all rather than provide a vehicular access with substandard visibility, which could ultimately prove dangerous to drivers and pedestrians. The issues raised by the neighbour with regard to increased parking have been considered. However, without a Traffic Regulation Order in place it is not possible to control the amount of on-street parking that currently takes place. On-street parking would occur here regardless of whether or not the site is developed. For these reasons, it is considered that a case can be made for granting planning permission even though the scheme does not strictly comply with the advice in Policy T6.

The NPPF states that *'In assessing and determining development proposals, local planning authorities should apply a presumption in favour of sustainable development'*. This is a brownfield site within the urban area that has a range of facilities to serve its residents and which is also served by main transport routes. There is a regular bus service to Swadlincote and Burton where connections can be made to other centres. It is a sustainable site that meets the requirements of the new national guidance, providing further justification for the approval of a scheme offering no off-street car parking.

#### The impact of the proposal on the amenities of neighbouring residents

There are two neighbouring properties that could be affected by the proposal. However, there would be no overlooking involving principal windows. The position of the new dwelling forward of No.39 means that views into the rear garden of that property would be minimal. The location of the new dwelling in relation to No.37 is such that there would be no overlooking from first floor windows of the new dwelling to No.37's rear conservatory, as the new dwelling would extend further down the site than the neighbouring property. There are no policies or standards in the Local Plan or the supplementary planning guidance that restrict overlooking of rear gardens from first floor windows, however the proposed siting of the dwelling is a result of the careful consideration of neighbouring residents' amenities and is considered to be the most favourable location in terms of impact.

With regard to the concerns expressed by the neighbouring resident to the rear of the site, the ground levels, particularly in the vicinity of the retaining wall, can be controlled by condition.

#### The impact of the proposal on the street scene and surrounding area

The site is currently screened from the street by a close-boarded fence, which adds little to the general character of the area. The proposal represents the infilling of a small gap in a substantially built-up frontage, which is in line with the Local Plan Policy H4. The intention to stagger the line of the building on the street frontage assists in linking the proposed dwelling with existing housing. It is considered that the development of the site in the manner proposed would improve and make a positive contribution to the character of the street scene.

#### The lack of off-street car parking

There is a clear choice here between developing the site as shown without any off-street parking, or with off-street parking but with an unacceptable level of danger to users of the site and the highway. The Parish Council has suggested that parking provision could be achieved by including an archway in the design of the proposed dwelling that would facilitate parking to the rear. However, this would not overcome the lack of visibility, particularly to the north-west, when emerging from the site, and it is for this reason that the Highways Authority has agreed to a scheme with no off-street parking.

#### Conclusion

The proposal put forward is considered to be the only workable solution that would ensure that the site is sustainably developed and deal with the current adverse effect that the site is having on the area.

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.
2. 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.
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. Prior to the development hereby approved commencing, details of the finished floor levels of the building 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.

5. Notwithstanding the provision of the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008, the dwelling hereby permitted shall not be enlarged or extended without the prior grant of planning permission on an application made to the Local Planning Authority in that regard.

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

6. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995, there shall be no external alterations, including the insertion of new windows, to the building other than as approved under this permission.

Reason: In the interests of preserving the amenities of neighbouring residents and the character of the completed development.

7. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Amendment) (No2) (England) Order 2008 (as may be amended), no new vehicular accesses into the site shall be formed without the prior granting of planning permission made in that regard by the Local Planning Authority.

Reason: In the interests of highway safety.

8. Notwithstanding any details submitted or the provisions of the Town and Country Planning (General Permitted Development)(Amendment)(No2)(England) Order 2008, 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 amenities of neighbouring residents.

#### 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](http://www.groundstability.com)

**Item**            **1.8**

**Reg. No.**        **9/2012/0389/FM**

**Applicant:**

Mr Luke Magill  
Corner House  
Woodshop Lane  
Swarkestone  
Derby

**Agent:**

Mr Andrew Shannon  
Montague Architects Limited  
9 Vernon Street  
Derby

**Proposal:**        **THE ERECTION OF A DETACHED DWELLING AND  
GARAGE AT LAND ADJACENT TO CORNER HOUSE  
WOODSHOP LANE SWARKESTONE DERBY**

**Ward:**            **ASTON**

**Valid Date:**      **01/05/2012**

**Reason for committee determination**

The application is referred to Committee at the request of Councillor Atkin because the issues are very finely balanced and there are unusual site circumstances.

**Site Description**

The site is the side garden to Corner House, situated on the edge of the village. Its boundary with Barrow Lane (A5132) comprises a generally un-maintained mixed hedge. The site contains a number of garden trees, the largest of which are located at the site periphery.

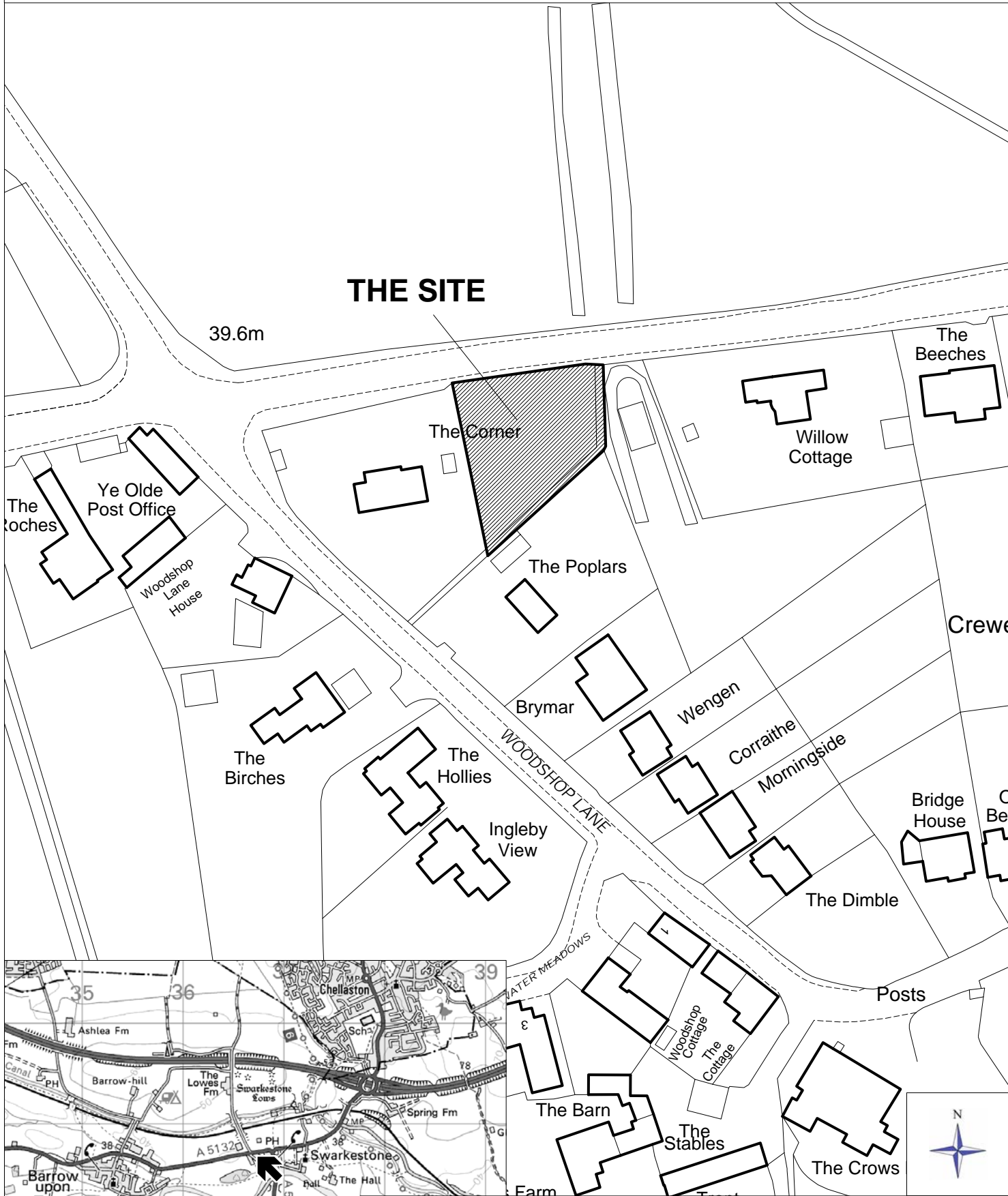
The site lies in the village confine, as defined by the South Derbyshire Local Plan, and also within the Swarkestone Conservation Area.

**Proposal**

The application proposes a detached house, similar in character and scale to the existing Corner House. A new vehicular access would be formed to Barrow Lane. The roadside hedge would be removed to facilitate visibility at the point of access and a new stone wall would be constructed to the frontage, to match the existing boundary wall. These works would create a margin between the new wall and the carriageway edge of 1.6 m – 2.3 m. Some garden trees would also be removed, although those at the site periphery would not be affected by the development.

**Applicants' supporting information**

**9/2012/0389 - Land adjacent to Corner House, Woodshop Lane,  
Swarkestone, Derby DE73 7GR**



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

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

The Design and Access Statement makes reference to the removal of the roadside hedge and some garden trees. It states that a hedge would be planted behind the new stone wall and new tree planting would also be undertaken to replace those to be lost.

### **Planning History**

9/2008/0348 – Extensions to dwelling – permitted. The existing house was previously served by a vehicular access to Barrow Lane. However this has been sealed up, with a new access formed to Woodshop Lane to serve the existing dwelling.

### **Responses to Consultations**

The Highway Authority has no objection subject to conditions requiring visibility sightlines, parking, and control over any gates.

Severn Trent Water Ltd has no objection.

The Environmental Health Manager recommends conditions to deal with any contaminants in the ground arising from nearby historical landfill operations.

### **Responses to Publicity**

Objections have been received from two neighbouring properties:

- a) The dwelling would be too large for the plot and would be too close to the boundaries, not appropriate to the scale of the site.
- b) The development would be harmful to the character of the conservation area, which is typified by large houses in large plots, providing open green spaces and views of the countryside.
- c) If permitted the development would give rise to similar applications to build in gardens.
- d) There would be loss of privacy to the garden and summerhouse to the adjoining property.
- e) The access onto Barrow Lane would be dangerous. The previous occupier made a new access to Woodshop Lane. The 30 mph speed limit has had little impact on vehicle speeds. Previous applications to form new accesses to Barrow Lane have been resisted on highway safety grounds.
- f) The removal of the roadside hedge and trees would result in the loss of valuable habitat.

### **Development Plan Policies**

The relevant policies are:

East Midlands Regional Plan Policies 1, 2, 3 & 27  
South Derbyshire Local Plan Saved Housing Policies 5 & 11, Environment Policies 9 & 12 and Transport Policy 6.

### **National Guidance**

National Planning Policy Framework (NPPF) Para's 11- 14 and Chapters 6, 7 & 12

## **Planning Considerations**

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

- The principle
- Impact on the character and appearance of the conservation area.
- Highway safety.
- Residential amenity.

## **Planning Assessment**

### The principle

The site lies within the built up part of the settlement and is acknowledged as such in policy terms, by inclusion of the site within the defined village confine referred to in Housing Policy 5. Swarkestone has a bus service and is easily accessible to Derby. Therefore the application is sustainable in spatial planning terms, in accord with Policy 3 of the Regional Plan. Paragraphs 11-14 of the NPPF make it clear that there is a presumption in favour of sustainable development and Chapter 6 seeks to deliver a wide choice of high quality homes.

### Impact on the character and appearance of the conservation area

A fundamental element of sustainability is the impact of the development on the character and appearance of the Swarkestone Conservation Area. The character of Barrow Lane is defined by frontage dwellings, all of which are detached houses, with clear space between them. The pattern is continued into Woodshop Lane albeit that the dwellings there are more closely spaced on the east side of the lane. The application layout respects the spacious frontages to Barrow Lane with a distance of some 12 m being maintained between the main two storey walls of Corner House and the proposed dwelling. While the frontage hedge would be removed, its protection in its current state cannot be enforced. The proposed stone boundary wall and new planting behind it would be in keeping with character and appearance of the conservation area. The trees that would be removed are not of such high amenity value as to outweigh the provision of a new house in this sustainable location. New landscaping is proposed as required by Local Plan Saved Environment Policy 9. The appearance of the new house would be appropriate to its context. As such the proposal is in accord with Regional Plan Policies 2 & 27 and Saved Environment Policy 12 of the Local Plan and Chapters 7 & 12 of the NPPF.

### Highway safety

On the advice of the Highway Authority there would be no harm to highway safety interests subject to the recommended conditions. The imposition of the 30 mph speed limit along Barrow Lane means that the relevant visibility standards can be achieved. Therefore the development would accord with Local Plan Saved Transport Policy 6

### Residential amenity

The scheme meets the tests for separation distances set out in the adopted supplementary planning guidance on Housing Design and Layout, which are used to test proposals against Saved Housing Policy 11. As such the impact on the amenities of

neighbours is demonstrably acceptable. There would be some overlooking to neighbouring gardens, in particular from first floor windows, but this is common to most residential areas and cannot reasonably be avoided.

### Conclusion

The site is in area where residential development is acceptable and the design and layout would be appropriate to the conservation area. There would be no demonstrable harm to the living conditions of neighbours or to highway safety interests. As such the development would be in conformity with the development plan and with the objective of allowing sustainable development in accordance with the National Planning Policy Framework.

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

### **Recommendation**

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

1. The development permitted shall be begun before the expiration of three years from the date of this permission.  
  
Reason: To conform with Section 91(1) of the Town and Country Planning Act, 1990 (as amended by section 51 of the Planning and Compulsory Purchase Act 2004).
2. No part of the development shall be carried out until precise details, specifications and, where necessary, samples of the facing materials to be used in the construction of the external walls and roof of the building and the new boundary wall (including its capping) 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.
3. Large scale drawings to a minimum Scale of 1:10 of eaves and verges and external joinery, including horizontal and vertical sections, precise construction method of opening and cill and lintel details shall be submitted to and approved in writing by the Local Planning Authority before building work starts. The eaves and verges and external joinery shall be constructed in accordance with the approved drawings.  
  
Reason: The details submitted are inadequate to determine whether the appearance of the building would be acceptable.
4. External joinery shall be in timber and painted to a colour and specification which shall have been previously agreed in writing by the Local Planning Authority. The joinery shall be painted in accordance with the agreed details within three months of the date of completion of the development unless otherwise agreed in writing by the Local Planning Authority.  
  
Reason: In the interests of the appearance of the buildings and the character of the area.

5. Gutters and downpipes shall have a black finish.  
Reason: In the interests of the appearance of the buildings, and the character of the area.
6. All plumbing and service pipework, soil and vent pipes, electricity and gas meter cupboards and heating flues shall be located inside the building unless specifically agreed in writing by the Local Planning Authority. The type, number, position and finish of heating and ventilation flue outlets shall be agreed in writing with the Local Planning Authority before development is commenced.  
Reason: In the interests of the appearance of the buildings and the character of the area.
7. Pointing of the proposed buildings and boundary wall 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 buildings and wall.
8. A sample panel of pointed brickwork/stonework 1 metre square or such other area as may be agreed by the Local Planning Authority shall be prepared for inspection and approval in writing by the Local Planning Authority prior to the implementation of any other works of pointing. The works shall be carried out in accordance with the approved sample.  
Reason: In the interests of the appearance of the buildings and the locality generally.
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. No site clearance works or development of a phase shall take place until there has been submitted to the Local Planning Authority for its written approval a scheme showing the type, height and position of protective fencing to be erected around each tree to be retained on or adjacent to the application site. The scheme shall comply with BS 3990:2010.  
No site clearance works or development shall be commenced in the vicinity of the protected tree or hedgerow until such a scheme is approved in writing by the Local Planning Authority and thereafter the development hereby permitted shall only be carried out in accordance with the approved scheme. The area

surrounding each tree within the protective fencing shall remain undisturbed during the course of the works, and in particular in these areas:

- (i) There shall be no changes in ground levels;
- (ii) No material or plant shall be stored;
- (iii) No buildings or temporary buildings shall be erected or stationed;
- (iv) No materials or waste shall be burnt within 20 metres of any retained tree or hedgerow; and
- (v) No drain runs or other trenches shall be dug or otherwise created; without the prior written consent of the Local Planning Authority.

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

12. Before any other operations are commenced a new vehicular access shall be created to the A5132 Barrow Lane in accordance with application drawing 1913-101, laid out, constructed and provided with 2.4m x 43m visibility splays in both directions, 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.

13. The premises, the subject of the application, shall not be occupied until space has been provided within the application site in accordance with the application drawing no. 1913-101 for the parking and manoeuvring of residents' vehicles, laid out, surfaced and maintained throughout the life of the development free from any impediment to its designated use.

Reason: In the interests of highway safety.

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

Reason: In the interests of highway safety.

15. 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.

16. 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.

17. Notwithstanding the provision of the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008, the dwelling hereby permitted shall not be enlarged or extended without the prior grant of planning permission on an application made to the Local Planning Authority in that regard.

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

18. Unless as may otherwise be agreed in writing with the Local Planning Authority the windows to all of the habitable rooms on the north, west and eastern facades of the proposed development shall be fitted with secondary glazing to a specification of Rw 33dBA or better. The provision of the ventilation within these rooms should be such that the ventilation rates for dwellings specified in Approved Document F of the Building Regulations are capable of being achieved with the windows closed.

Reason: To protect the occupants from road noise, given the close proximity of the A5132.

19. 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.

#### Informatives:

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

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

## **2. PLANNING AND OTHER APPEALS**

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

<b>Reference</b>	<b>Place</b>	<b>Ward</b>	<b>Result</b>	<b>Cttee/Delegated</b>
E/2011/00148 & 9/2011/0257	Overseal	Seales	Dismissed	Delegated



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# Appeal Decision

Hearing held on 14 February 2012

Site visit made on 14 February 2012

**by Claire Sherratt DipURP MRTPI**

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

**Decision date: 23 May 2012**

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## **The Conifers, Park Road, Overseal, Swadlincote, Derbyshire DE12 6JS**

**Appeal A: APP/F1040/C/11/2161631**

**Appeal B: APP/F1040/C/11/2161632**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeals are made by Mr S Calladine (Appeal A) & Mrs L Calladine (Appeal B) against an enforcement notice issued by South Derbyshire District Council.
  - The Council's reference is E/2011/00148.
  - The notice was issued on 22 July 2011.
  - The breach of planning control as alleged in the Notice is the unauthorised material change of use of the Land from a residential caravan site for one gypsy family and two caravans to a mixed use of gypsy caravan site and general caravan site for persons of non gypsy status, together with the addition of 3 mobile homes, without planning permission.
  - The requirements of the notice are to:
    - 1) Permanently cease the use of the Land as a general caravan site for persons of non-gypsy status.
    - 2) Permanently remove from the Land the 3 static mobile homes currently stationed there, and any equipment and paraphernalia associated therewith.
  - The period for compliance with the requirements is by midnight on 27 November 2011, which is 60 days from the date on which the Notice takes effect.
  - Appeal A is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended.
  - Appeal B is proceeding on the grounds set out in Section 174(2) (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.
- 

## **Appeal C: APP/F1040/A/11/2161627**

- 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 S Calladine against the decision of South Derbyshire District Council.
  - The application Ref 9/2011/0257, dated 01 April 2011, was refused by notice dated 15 July 2011.
  - The development proposed is the change of use of the land permitted for 8 caravans for gypsy / traveller use by the addition of 3 mobile homes for dual use either by members of the gypsy / traveller community or as low-cost, affordable residential homes for members of the local community in need of accommodation.
-

## **Decisions**

### **Appeals A & B**

1. The enforcement notice is quashed.

### **Appeal C**

2. The appeal is dismissed.

### **Procedural Matters**

3. After the close of the hearing, the National Planning Policy Framework ('the Framework') and Planning Policy for Traveller Sites ('the Traveller Policy') came into force. The parties were invited to comment on whether the publication of either of these documents would be of any relevance to their respective cases. I have had regard to these additional representations in reaching my decision<sup>1</sup>.
4. At the Hearing an application for costs was made by South Derbyshire District Council against Mr Calladine. This application is the subject of a separate Decision.

### **The Notice**

5. The Notice relates to a material change of use of land. Some time was spent at the hearing discussing the wording of the Notice. It is the nature of the occupation of the site by persons not meeting the definition of gypsies or travellers and the number of caravans that the Notice seeks to attack.
6. The appeal site has a somewhat complicated planning history in that its use as a caravan site for gypsies and travellers is permitted by two separate permissions, each relating to only part of the overall area, but with different planning conditions. Part of the site is covered by a planning permission granted in 2004<sup>2</sup>. Condition 8 of that permission limits occupancy of the caravans to the appellant and his family. The other part of the site is covered by a permission granted in 2007<sup>3</sup> which has a condition restricting occupancy of the site to gypsies and travellers (condition 2). Condition 3 restricts the number of caravans to no more than two on each pitch and Condition 4 requires the caravans to be capable of being towed on public roads.
7. Notwithstanding the description of the alleged breach, no change of use is involved because the use remains for residential purposes, albeit restricted by conditions. The mobile homes which are the subject of the enforcement action cannot be placed on either part of the site without falling foul of one or more of these conditions. It is clear therefore that the wording of the Notice is incorrect and would be more appropriately expressed as the carrying out of development without compliance with conditions.
8. The Notice is seeking to achieve the removal of the three static caravans and ensure the site is not occupied by persons who would not meet the definition of a gypsy or traveller. It was common ground between the main parties that the description of development in the 2004 permission relates to the siting of two caravans. On this basis, there were two (rather than three) additional

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<sup>1</sup> Documents 7-10

<sup>2</sup> Reference 9/2004/1306/U

<sup>3</sup> Reference 9/2007/0804/F

caravans stationed on the 2004 part of the site when the Notice was served, although I am mindful that no condition was imposed limiting the number of caravans to two.

9. The parties agreed a revised description of the alleged breach of planning control at the hearing. This referred to the stationing of two caravans in breach of planning permission 9/2004/1306 and occupation of the caravans by persons other than the appellant as required by condition 8.
10. However, that in itself is problematic. The Notice relates to both areas of land and at the time the Notice was served and at the time of my visit the overall number of caravans occupying the enforcement site was well within the combined numbers intended. It seems to me, that the notice cannot require the caravans to be removed while it refers to the wider area.
11. There is no restriction on the size of the caravans where they are currently sited on the 2004 part of the site and so they do not fall foul of any conditions in this regard. At the time the Notice was served, none of the caravans were occupied by the appellant or his family and so were occupied in breach of condition 8 of the 2004 permission.
12. It would therefore be necessary to correct the notice to reflect that the breach of planning control is the carrying out of development without compliance with condition 8 only. However, this would make the Notice far less onerous than the Council intended it to be. It would also have little practicable effect as the remaining requirement of the Notice is to cease the use of the land by persons of non-gypsy status; not to cease the use of the land by persons other than the appellant and his family. The occupation of the caravans by someone meeting the definition of a gypsy or traveller would therefore comply with the Notice despite remaining in breach of condition 8. As the Notice would no longer achieve what it was intended to do, I consider the Council would be seriously prejudiced if I were to correct the Notice in this way. Even if I were to reduce the area on the plan that accompanies the Notice to correspond with the area of the 2004 permission only, a requirement to remove the caravans would be excessive to remedy the breach of planning control as corrected.
13. Notwithstanding the discussion relating to the wording of the Notice, for the reasons given above I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the 1990 Act as amended since injustice would be caused were I to do so.
14. To conclude, the enforcement notice is invalid and will be quashed. In these circumstances the appeals under the various grounds and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not fall to be considered. Had I been able to correct the Notice it would also have been necessary to remove the date specified in the period for compliance which has been overtaken by the appeal process. Instead it would be sufficient for the Notice to simply refer to 60 days from when the Notice comes into effect.

## Appeal C

### Reasons

15. Appeal C concerns the area of land covered by both the 2004 and 2007 permissions. Again, no material change of use of the land would occur. As such, I consider the development would be more accurately described as simply *'the continued use of land for the stationing of 8 caravans for occupation by gypsies and travellers and the stationing of 3 additional mobile homes for dual occupation by either gypsies and travellers or members of the settled population in need of low-cost, affordable accommodation'*. I will determine the appeal on this basis.
16. The Council takes no issue with the occupation of the site 'in principle' by persons meeting the definition of gypsies and travellers. The main issue is whether the site would be suitable for the stationing of three additional caravans for occupation by gypsies and travellers or for members of the settled population in need of low-cost, affordable accommodation'.
17. The site is outside a defined settlement boundary, in open countryside, where general housing policies in the South Derbyshire Local Plan (LP) seek to resist new residential development outside the settlement limits defined in the LP. The LP was adopted in May 1998. As it pre-dates 2004, paragraph 215 of the Framework is relevant. This stipulates that due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework. At the heart of the Framework is a presumption in favour of sustainable development. I share the view of the Council that the relevant environment and housing policies broadly accord with the Framework and so can still be afforded significant weight.
18. The appellant's mother-in-law owns a residential mobile home park on the opposite side of the road. Occupation of these units is unrestricted although in practice, it is occupied by persons from both the settled population and gypsies and travellers. The appellant explained, based on enquiries often made to his mother-in-law about the availability of accommodation on her site, that there appeared to be a demand for both. If the appeals were to succeed, during the months when gypsies and travellers tend to be away travelling, the appellant could rent the 3 additional units to the settled population, thereby maximising the potential of the site.
19. The Council accepted that there was an identified need for affordable local needs housing in the area. This may provide justification for development outside a settlement boundary. Indeed, the Council has preliminarily identified a site on the edge of the settlement boundary of Overseal that may provide a suitable site, albeit this is a matter to be determined as part of a future Development Plan Document that will identify such sites.
20. Nevertheless, I am concerned that no mechanism has been put forward by the appellant to demonstrate how the occupation of the accommodation to those with a need for local affordable housing would be secured in perpetuity. Even if it had been, at times when the accommodation is occupied by a member of the settled population, it is no longer providing available accommodation to meet the needs of a gypsy or travellers and vice versa.
21. The Council has a duty to assess and identify land to meet the needs of all the population. Despite assurances from the appellant at the hearing that it is his

intention to give priority to gypsies and travellers, I fail to see how the Council could be confident that the additional caravans were contributing to the accommodation needs of the gypsy and traveller community or whether they were providing affordable local needs accommodation at any given time; it would be a continually changing situation and impossible for an assessment to be made. Such a circumstance could potentially give rise to double counting and an inadvertent under provision of local needs housing or accommodation for gypsies and travellers in the future.

22. From my observations on my visit, I am satisfied that the site could accommodate the additional caravans without appearing unduly cramped. The layout of the site including the siting of the caravans could be agreed to ensure that the development would not have any adverse impact on the Oak tree adjacent to the site that is the subject of a Tree Preservation Order. Similarly, based on the additional evidence submitted to the hearing relating to the capacity of the existing sewage package treatment plant, I am satisfied that a condition requiring a suitable drainage scheme to be agreed would overcome concerns relating to the disposal of foul sewage from the site.
23. Nevertheless, for the reasons set out in paragraph 21 above, I consider the prospect of dual occupation to be impracticable and prejudicial to the Council's ability to assess the accommodation needs of the two sectors of the community in question.
24. To conclude, the development would conflict with relevant development plan policies that generally restrict residential development in open countryside. For the reasons given above I conclude that Appeal C should be dismissed.

*Claire Sherratt*

INSPECTOR

## **APPEARANCES**

### **FOR THE APPELLANT:**

Mr Clarke	Acting on behalf of the Appellant.
Mr Calladine	The Appellant.

### **FOR THE LOCAL PLANNING AUTHORITY:**

Tim Denning	Area Planning Officer for South Derbyshire District Council (SDDC).
Alan Barrett	Enforcement Officer for SDDC.
Gaynor Richards	Senior Enforcement Officer for SDDC.

## **DOCUMENTS (received at the Hearing)**

- 1 Written Statement from Overseal Parish Council.
- 2 Overseal Rural Housing Need and Proposed Development Mix.
- 3 Plan identifying the 2004 and 2007 planning application sites.
- 4 E-mail correspondence from the Environment Agency (Water Quality).
- 5 Extract from Proposals Map.
- 6 Suggested condition relating to affordable housing.

## **DOCUMENTS (received after the hearing in response to the publication of the National Planning Policy Framework and the Planning Policy for Traveller Sites)**

- 7 Response on behalf of the Appellant.
- 8 Response of South Derbyshire District Council.
- 9 Comments of the Council on the response of the Appellant.
- 10 Comments on behalf of the appellant on the response of the Council.



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## Costs Decision

Hearing held on 14 February 2012

Site visit made on 14 February 2012

**by Claire Sherratt DipURP MRTPI**

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

**Decision date: 23 May 2012**

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**Costs application in relation to Appeals A & B: APP/F1040/C/11/2161631 & 2161632 and Appeal C: APP/F1040/A/11/2161627.**

**The Conifers, Park Road, Overseal, Swadlincote, Derbyshire DE12 6JS**

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5) and sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by South Derbyshire District Council for a full award of costs against Mr & Mrs S Calladine.
  - The hearing was in connection with an appeal against an enforcement notice alleging an unauthorised material change of use of land from a residential caravan site for one gypsy family and two caravans to a mixed use of gypsy caravan site and general caravan site for persons of non-gypsy status, together with the addition of 3 mobile homes, without planning permission (Appeals A & B); and the refusal of planning permission for the change of use of land for dual use either by members of the gypsy / traveller community or as low cost, affordable residential homes for members of the local community in need of accommodation (Appeal C).
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### Decision

1. The application for an award of costs is allowed in the terms set out below.

### The submissions for South Derbyshire District Council

2. The submissions were made in writing prior to the hearing and so it is not necessary for me to repeat them in full. Reliance is placed on paragraphs A28, B13 and B30 of Circular 03/2009 in particular.

### The response by Mr and Mrs Calladine

3. The appellant believed that he could put 3 static caravans on the 2007 site. Although the local planning authority advised him this did not comply with the planning permission, for sometime he believed it did. Having made enquiries and confirmation that the stationing of the caravans would be in breach of the relevant conditions of the 2007 permission he intended to make a retrospective application. However, there was a delay and in the meantime the Council served a breach of condition notice. In order to satisfy the notice the caravans were moved onto the area related to the 2004 permission. The appellant was aware that his actions were in breach the 2004 conditions and so made an application for the retention of the caravans retrospectively. This was refused and an enforcement notice subsequently served. As landowners the appellants are free to exercise their right of appeal and it was not unreasonable to do so.

## **Reasons**

4. Circular 03/2009 advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
5. Clearly the appellants were entitled to exercise their right of appeal against both the refusal of planning permission and the enforcement notice. However, in doing so, they should exercise their right responsibly. Appeals are not to be entered into lightly or as a first resort, without prior consideration to making a revised application which meets reasonable local planning authority objections. Planning authorities and applicants should enter into constructive pre-application discussions. In this case the Council had already indicated it was unlikely to support an application.
6. Paragraph B13 of the Circular in particular confirms that an appellant is at risk of an award of costs being made against them, on the basis of the available evidence, if the appeal or ground of appeal plainly had no reasonable prospect of succeeding on the basis of the application submitted to the planning authority. This may occur when the proposal is clearly contrary to or flies in the face of national planning policy and no, or very limited, other material considerations are advanced with inadequate supporting evidence.
7. Relevant development plan policies resist residential development outside the defined settlement boundaries. It was therefore incumbent on the appellant to justify why residential development should be granted. No substantive evidence was submitted to demonstrate a need for additional accommodation for gypsies and travellers and more importantly, given the Council's key concern, no evidence was submitted by the appellant to demonstrate a need for low cost affordable housing. It was the Council who produced evidence confirming these matters. Crucially, no mechanism was put forward to the hearing by the appellant to demonstrate how the occupation of the accommodation for those with a local need would be secured and thereafter retained in perpetuity. In such circumstances the appeals had no reasonable prospect of success.
8. I consider the appellant acted unreasonably as Appeal A, ground (a) and Appeal C were unsupported by any substantive evidence and had no reasonable prospect of success. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in Circular 03/2009, has been demonstrated and that a full award of costs is justified.

## **Costs Order**

9. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Mr and Mrs S Calladine shall pay to South Derbyshire District Council, the costs of the appeal proceedings, such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal more particularly described in the heading of this decision.
10. South Derbyshire District Council is now invited to submit to Mr & Mrs S Calladine, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the

parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Supreme Court Costs Office is enclosed.

*Claire Sherratt*

INSPECTOR