

# **REPORT OF THE DIRECTOR OF COMMUNITY AND PLANNING SERVICES**

## **SECTION 1: Planning Applications**

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.**

<b>Reference</b>	<b>Item</b>	<b>Place</b>	<b>Ward</b>	<b>Page</b>
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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 Director 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 Director 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.

29/10/2013

**Item**            1.1

**Reg. No.**        9/2013/0493/NO

**Applicant:**  
Mr Malcolm Stainsby  
Forest View  
Cockshut Lane  
Melbourne  
DE73 8DG

**Agent:**  
Mr Mark Blood  
Mark Blood Building Design  
Manor Farm House  
London Road  
Shardlow  
DE72 2GR

**Proposal:**        **CHANGE OF USE FOR SITING OF 3 LOG CABINS  
INCORPORATING NEW VEHICULAR ACCESS ON  
LAND AT SK3727 2805 DERBY ROAD STANTON BY  
BRIDGE DERBY**

**Ward:**            **MELBOURNE**

**Valid Date:**     **24/06/2013**

**Reason for committee determination**

The application is reported to Committee at the request of Councillor Harrison because local concern has been raised about a particular issue.

**Site Description**

The site is part of a woodland that has become established on a disused quarry. Although the application site is relatively flat, the topography of the wider former quarry undulates as a consequence of that previous use. The site is largely screened from public vantage points by mature boundary vegetation. The specific area that would be occupied by the proposed cabins is now clear of any significant vegetation.

The site lies within the designated Stanton by Bridge Conservation Area.

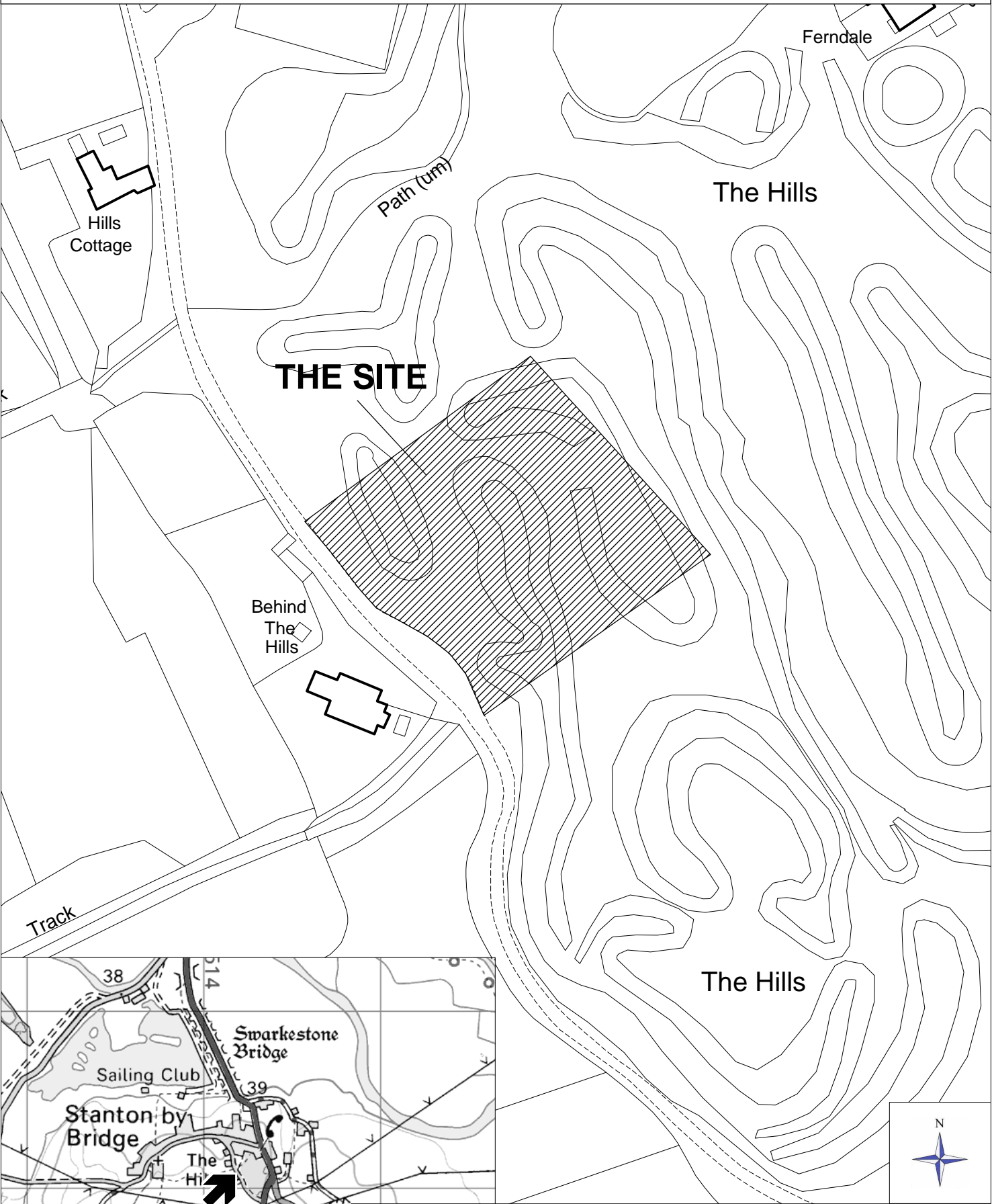
**Proposal**

The application is to use the land for 3 log cabin style mobile homes. A new vehicular access would be formed to Hills Lane, opposite the dwelling known as Behind the Hills. A parking area would be formed within the application site.

**Applicants' supporting information**

The applicant has supplied an ecological assessment, which assesses the site and its local surroundings, taking account of nature conservation interests within 1 km of the

**9/2013/0493 - Land at Derby Road, Stanton by Bridge DE73 7HY**



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

application site. It acknowledges that the site is contained within a potential Local Wildlife Site. The report notes the habitat types on and around the application site and identifies protected floral and faunal species. With regard to the specific area to be affected by the application it is noted that there are no protected flora and fauna. However the report notes the potential for impacts within the wider area of woodland with regard to:

- loss/disturbance of habitats;
- harm to badgers;
- disturbance to roosting foraging and commuting bats;
- harm to nesting birds; and
- loss of bird nesting habitat.

The above potential impacts are addressed through recommended mitigation, compensation and enhancement measures.

### **Planning History**

9/2012/0462 & 9/2013/0113 – similar applications on a different part of the woodland – both withdrawn.

### **Responses to Consultations**

The Highway Authority has no objection subject to conditions.

The Environment Agency has no objection subject to approval of a detailed scheme for disposal of foul drainage.

Subject to conditions Derbyshire Wildlife Trust does not object and makes the following comments on the ecological issues:

- White-letter hairstreak butterflies – there is no need to remove any healthy elm trees (a main need of the species). However many mature elms are affected by Dutch elm disease. It is recommended that some more disease resistant elms are planted to compensate for those presently dying.
- Bluebells and woodland field layer plants – there is no sign of native bluebells on the application site. There is no likely significant impact on native woodland field layer plants. DWT will assess the woodland next year to see if it meets any Local Wildlife Site selection guidelines. The current proposal would not necessarily preclude a designation at a later date.
- Bats – It is highly unlikely that bats would be affected (subject to control over artificial lighting).
- Pond – it is recommended that any proposal to create a pond should be deferred until DWT has established its suitability. [Comment: the application does not contain a proposal to create a pond although it is referred to in the ecological report as an aspirational proposal].
- Badgers – there would be no significant impact on badgers.

### **Responses to Publicity**

The Parish Meeting objects as follows:

- a) The site is outside the National Forest and there is no identified need for additional tourist accommodation. Holiday accommodation within the village has

declined from 50% in 2011 to 40% in 2012. Log cabin development at Riding Bank Lane Melbourne has yet to be completed. Similar development within the National Forest struggles to raise occupancy above 50% during the summer months. The Parish Meeting is not convinced that this development would increase tourism in South Derbyshire.

- b) The village is not a sustainable community with any amenities for visitors.
- c) Hills Lane is single track with only one passing place and has limited visibility. It is not suitable for any more traffic.
- d) The site is an established woodland habitat, which has already been disturbed by tree felling and clearing of habitat rich undergrowth.
- e) The proposal is neither essential nor unavoidable, contrary to Local Plan Saved Environment Policy 1.
- f) There would be conflict with the environmental objectives of the Local Plan to protect and enhance the countryside and preserve the character and identity of villages.
- g) There would be loss of woodland contrary to Saved Environment Policy 9.
- h) There would be significant disturbance to important ecological interests contrary to Saved Environment Policy 11.
- i) Saved Environment Policy 12 resists development that would have an adverse impact on the conservation area.
- j) There would be noise and traffic disturbance contrary to Saved Recreation and Tourism Policy 1.
- k) There could be access by travellers.
- l) There would be increased risk of fire in the woods.
- m) The ecological survey was not undertaken at the best time to obtain data. Further survey work should be carried out
- n) Cliffs in the former quarry would be a danger to visitors. Safety fencing would be detrimental to nature in the woodland.
- o) Further bat surveys should be undertaken.
- p) The NPPF seeks minimisation of impact on biodiversity and enhancements to it.

18 individual objections raise the following matters:

- a) Visitors would spread tree diseases in the woodland.
- b) The site is habitat for the White-letter Hairstreak butterfly, which is in serious decline.
- c) Hills Lane is not suitable for the extra traffic and there would be danger to road users.
- d) There is no need for such holiday accommodation. Existing accommodation in the village is under-occupied.
- e) The site is outside the National Forest and there is no identified need for additional tourist accommodation. Holiday accommodation within the village has declined from 50% in 2011 to 40% in 2012. Log cabin development at Riding Bank Lane Melbourne has yet to be completed. Similar development within the National Forest struggles to raise occupancy above 50% during the summer months.
- f) The site is an established woodland habitat, which has already been disturbed by tree felling and clearing of habitat rich undergrowth.
- g) The proposal is neither essential nor unavoidable, contrary to Local Plan Saved Environment Policy 1.

- h) There would be conflict with the environmental objectives of the Local Plan to protect and enhance the countryside and preserve the character and identity of villages.
- i) There would be loss of woodland contrary to Saved Environment Policy 9.
- j) There would be significant disturbance to important ecological interests contrary to Saved Environment Policy 11.
- k) Saved Environment Policy 12 resists development that would have an adverse impact on the conservation area.
- l) There would be noise and traffic disturbance contrary to Saved Recreation and Tourism Policy 1.
- m) The ecological survey was not undertaken at the best time to obtain data. Further survey work should be carried out
- n) Cliffs in the former quarry would be a danger to visitors. Safety fencing would be detrimental to nature in the woodland.
- o) Further bat surveys should be undertaken.
- p) The NPPF seeks minimisation of impact on biodiversity and enhancements to it.
- q) The village is not a sustainable community with any amenities for visitors. The bus service is inadequate.
- r) There could be access by travellers.
- s) There would be increased risk of fire in the woods. Neighbouring dwellings would also be at risk.
- t) Any benefit to tourism would be outweighed by harm to nature conservation interests.
- u) Loss of woodland would increase environmental noise.
- v) Visitors are less likely to respect the environment than local people.
- w) In the event of failure of the business there would be empty sheds in the woodland, attracting misuse.
- x) The Parish Meeting is supported in its objection.
- y) There would be overlooking to neighbouring property.

### **Development Plan Policies**

The relevant policies are:

South Derbyshire Local Plan: Recreation and Tourism Policy 1, Transport Policies 6 and 7, Environment Policies 1, 9, 10, 11 & 12

### **National Guidance**

National Planning Policy Framework (NPPF), in particular:

Paras 6-10 (Achieving sustainable development)  
 Paras 11-14 (The presumption in favour of sustainable development)  
 Para 17 (Core principles)  
 Chapter 3 (Supporting a prosperous rural economy)  
 Chapter 4 (Promoting sustainable transport)  
 Chapter 7 (Requiring good design)  
 Chapter 11 (Conserving and enhancing the natural environment)  
 Paras 186 & 187 (Decision-taking)  
 Para 196 & 197 (Determining applications)  
 Paras 203-206 (Planning conditions and obligations)  
 Annex1 (Implementation)

Good Practice Guide on Planning for Tourism.

## **Planning Considerations**

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

- The principle.
- Impact on the conservation area and the countryside.
- Ecology.
- Residential amenity.
- Traffic, Access and Highway safety.

## **Planning Assessment**

### The Principle

Saved Environment Policy 1 of the Local Plan is the overarching development plan policy for development away from settlements. It is not inconsistent with the NPPF. It requires development to be either essential to a rural based activity, or unavoidable in the countryside, and the character of the countryside, the landscape quality, wildlife and historic features are to be safeguarded and protected. If development is permitted in the countryside it should be designed and located so as to create as little impact as practicable on the countryside. For the reasons set out in the following paragraphs of this report (including by reference to other relevant development plan policies) the proposal is unavoidable in the countryside (providing self-catering accommodation close to the National Forest which would help to meet an acknowledged need identified in the National Forest Strategy 2004 -2014), and it also meets the other relevant criteria for acceptability. Visit England, the national tourist board, is now promoting the National Forest as one of England's destinations, especially to the "active outdoors" market, as a primarily rural destination, and log cabin style mobile homes would hence be a component of a short break or longer holiday. Demand for self-catering accommodation is growing much faster than for serviced accommodation, both nationally and locally, and appears to be part of a longer term trend.

While log cabins/mobile homes are ostensibly dwellings, the justification to Housing Policy 8 of the Local Plan makes it clear that this policy is intended to deal with proposals for dwellings to be occupied as main places of residence in support of a rural based activity (such as farming). Recreation and Tourism Policy 1 is therefore the appropriate topic based policy for this proposal.

Local Plan Recreation and Tourism Policy 1 indicates that tourist facility proposals will be permitted provided that development does not cause disturbance to local amenity by virtue of noise and traffic generation; adequate provision is made for pedestrian and vehicular access, parking, screening and landscaping and they are of appropriate scale and design and are well integrated with their surroundings.

Chapter 3 (Paragraph 28) of the NPPF 28 states that planning policies should support economic growth in rural areas in order to create jobs and prosperity by taking a positive approach to sustainable new development. To promote a strong rural economy, local and neighbourhood plans should include:



- supporting the sustainable growth and expansion of all types of business and enterprise in rural areas, both through conversion of existing buildings and well designed new buildings; and
- support sustainable rural tourism and leisure developments that benefit businesses in rural areas, communities and visitors, and which respect the character of the countryside. This should include supporting the provision and expansion of tourist and visitor facilities in appropriate locations where identified needs are not met by existing facilities in rural service centres.

The provision of tourist accommodation to meet the identified need for overnight accommodation in the National Forest, as identified in the National Forest Strategy, and as a strong regional attraction in its own right, is a contributor to that sustainability objective. Although the site is not within the Forest boundary it is very close and provides close access to it. Resisting such proposals as a matter of principle is intrinsically counter to the economic sustainability of the National Forest and the districts (including South Derbyshire) that benefit from this developing tourism resource. The provision of overnight accommodation encourages longer stays thus reducing traffic generated by day visits [from The National Forest Company's sustainability report 2007]. In terms of location, the village has no meaningful facilities. However Melbourne and Derby are accessible by the bus service that runs through the village.

The Good Practice Guide on Planning for Tourism states:

*“The nature of holidays in this country has become increasingly diverse, in location, in season and in duration. Many people go away several times a year, often for short breaks and not exclusively in the summer months. Much of this demand is for self-catering accommodation – whether in new or converted buildings or in caravan holiday homes. This spread of demand improves the use that is made of this accommodation and so is advantageous to the businesses which provide it and to those host communities which are supported by the spending that it generates. It can help to reduce the disadvantages of seasonal employment, including the difficulties of retaining trained and experienced staff.*

*Whilst extension of the season has these advantages, the demand for this accommodation may occur in areas in which the provision of permanent housing would be contrary to national or local policies which seek to restrict development, for example in order to safeguard the countryside. The planning system can reconcile these two objectives through the use of occupancy conditions designed to ensure that holiday accommodation is used for its intended purpose. Planning authorities commonly impose such conditions when granting permission for self-catering holiday accommodation.*

*Planning authorities will frame these conditions according to local circumstances, and in accordance with general Government advice that conditions should be reasonable and fair. They will also need to frame them so that they can be readily enforced by the authority but in a way that is not unduly intrusive for either owners or occupants.”*

The recommended condition is very closely aligned with the example set out in the Good Practice Guide, with an additional limitation, based on consistency with recent grants of permission for log cabins elsewhere in the district.

Having regards to these factors the proposal represents sustainable development that is acceptable in principle.

#### Impact on the conservation area and countryside

The topography of the site and existing screening means that there would be very little impact on the character and appearance of the countryside, when viewed from any public area. Boundary vegetation along the road frontage would need to be cut back in order to achieve the Highway Authority's recommended visibility splays. However the remaining vegetation would be preserved and augmented by condition, in accord with Local Plan Saved Environment Policy 9. With the recommended condition on landscaping, and having regard to the site's well screened context, the proposal would meet the requirements of Local Saved Environment Policy 1 for the character of the countryside, the landscape quality, wildlife (see ecology section below) and historic features to be safeguarded and protected, and designed and located so as to create as little impact as practicable on the countryside. For the same reasons the development would meet the requirements of Saved Recreation and Tourism Policy 1 and Chapter 7 of the NPPF, being of appropriate scale and character and well integrated with its surroundings.

The visual impact on the public realm would be minimal and traffic generated by the development would not have a demonstrable impact on the character of the locality. As such the character and appearance of the conservation area would be preserved following development, in accordance with Local Plan Saved Environment Policy 12 and Chapter 12 of the NPPF.

#### Ecology

Derbyshire Wildlife Trust, as the specialist consultee has assessed the applicant's ecology report and has also visited the site. The conclusion of that assessment, in ecological terms, is that conditions recommended by the Trust would adequately safeguard protected wildlife, other wildlife, and other natural history interests. Furthermore the appropriate conditions as recommended would facilitate the mitigation and enhancement of the habitat value of the wider site. With regard to the pond mentioned in the ecology report an informative would make it clear that any such works would be subject to further planning approval.

For these reasons the proposal would satisfy the requirements of Saved Environment Policy 11 of the Local Plan and Chapter 11 of the NPPF, by avoiding disturbance to designated sites or to protected species of wildlife.

#### Residential Amenity

The site of the log cabins would be set well away from existing dwellings. The new access would be located immediately opposite Behind the Hills, but the limited amount of traffic generated by the proposal would not have undue adverse impact by way of noise and disturbance.

#### Traffic, Access and Highway Safety

The proposal would not generate substantial vehicle movements and the Highway Authority has raised no objection in highway safety terms. There would be adequate

parking provision on site for visitors' vehicles. As such the proposal is compliant with Saved Transport Policy 6.

An appropriate condition would secure adequate access for people with a disability within the application site, in accordance with Saved Transport Policy 7. It would be reasonable to require access arrangements for the disabled on site, so that people with impaired mobility can be included in the user group for the proposal.

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 more than three log cabins (mobile homes) shall be placed on the application site.

Reason: For the avoidance of doubt and to enable the local planning authority to consider the impacts of more intensive use of the land for this purpose.

3. Before the use commences details and specification of the log cabins (mobile homes) shall be submitted to and approved in writing by the local planning authority; and the log cabins (mobile homes) shall be placed on the application site in accordance with the approved details and specifications only.

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

4. No development shall take place until a scheme indicating provision to be made for access to the site by people with disabilities has been submitted to the Local Planning Authority. The scheme as approved shall be implemented before the development is brought into use.

Reason: To ensure adequate opportunity of access for people with disabilities to accord with Local Plan Saved Recreation and Tourism Policy 1 and Transport Policies 6 and 7.

5. Any external lighting shall be installed in accordance with details and specifications which shall have previously been submitted to and approved in writing by the Local Planning Authority. No other external lighting shall be installed on the application site or within the area defined by a blue line on drawing no. 12025.2A.

Reason: In the interests of the appearance of the area and to minimise impact on ecological interests to accord with Local Plan Saved Recreation and Tourism Policy 1 and Environment Policy 11.

6. Notwithstanding the provisions of Part C, Class 3 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, (or any Order revoking or reenacting that Order), the premises hereby permitted shall be used for the

purpose of holiday accommodation only and for no other purpose, including any other purpose within Class C3 of the Order without the prior grant of planning permission by the Local Planning Authority, and:

- i. the log cabins shall only be occupied for 11 months in any calendar year and in particular shall not be occupied between 14 January and 14 February in any calendar year;
- ii. the log cabins shall be used for holiday purposes only;
- iii. the log cabins shall not be occupied as a person's sole, or main place of residence; and
- iv. the site operators shall maintain an up-to-date register of the names of all owners and make best endeavours to maintain an up-to-date register of the names of all occupiers of individual log cabins on the site , and of their main home addresses, and shall make that information available at all reasonable times to the local planning authority.

Reason: The Local Planning Authority is only prepared to grant permission for holiday accommodation (in accordance with Saved Local Plan Recreation and Tourism Policy 1) because another dwellinghouse in this location would be contrary to the development plan and the NPPF objectives of sustainable development.

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

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

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

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

9. Before the use commences details of any footpath routes through the land shown edged in blue on drawing no.12025.02A shall be submitted to and approved in writing by the Local Planning Authority. No other such routes shall be formed without the prior written approval of the Local Planning Authority.

Reason: To ensure that any such routes do not conflict with protected species habitat.

10. Before the use commences an Ecological Management Plan (EMP) shall be submitted to and approved in writing by the Local Planning Authority. The EMP shall provide details and measures of how the woodland will be managed in the long-term including the removal of non-native species, the planting of native species (including disease resistant elm) and enhancement measures for fauna including the erection of bird and bat boxes and the creation of a wildlife pond.

The approved details and measures shall be implemented in accordance with the EMP.

Reason: To ensure that ecological interests are protected and enhanced in accordance with paragraph 118 of the National Planning Policy Framework.

11. Prior to any other works commencing, the new access shall be formed into the application site, and shall be located and laid out in accordance with the application drawing no.12025.01A and provided with 2m x 33m visibility sightlines in each direction, the area forward of which shall be cleared and maintained free of any obstruction exceeding 1m in height (600mm in the case of vegetation) relative to the nearside carriageway edge.

Reason: In the interests of highway safety.

12. Prior to the commencement of the use the existing access shall be physically closed in accordance with a scheme that shall have previously been submitted to and approved in writing by the local planning authority. The access shall remain closed in accordance with the approved scheme thereafter.

Reason: In the interests of highway safety.

13. Prior to commencement of the use the car parking and manoeuvring space shall be laid out in accordance with the submitted drawing no. 12025.01A and shall thereafter be retained free of any impediment to its designated use.

Reason: In the interests of highway safety.

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

Reason: In the interests of pollution control.

#### Informatives:

In dealing with this application, the Local Planning Authority has worked with the applicant in a positive and proactive manner through seeking to resolve planning objections and issues. As such it is considered that the Local Planning Authority has implemented the requirement set out in paragraphs 186 and 187 of the National Planning Policy Framework.

The details to be submitted under condition 3 should have the appearance of timber lodges.

Further to Condition 9 the creation of footpath routes will need planning permission if engineering operations are proposed.

Further to Condition 10 the EMP shall include measures to secure:

- . at least five disease resistant elm trees (preferably the Ulmus Sapporo Autumn Gold variety which is known to be compatible with the needs of the butterfly) at suitable locations within the woodland. This would help to conserve a UK BAP priority species;
- . the removal of any non native Spanish bluebells (these hybridise with native bluebells and pose a long term threat to the survival of native populations); and
- . enhancement measures including the creation of a woodland 'ride' (path), and the erection of at least 5 bird and 2 bat boxes to be implemented within 18 months of the development commencing.

Further to Condition 10 any pond will need planning permission if engineering operations are proposed.

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

The grant of planning permission does not entitle developers to obstruct the adjacent public rights of way (Footpath no 7).

29/10/2013

**Item**            **1.2**

**Reg. No.**        **9/2013/0587/TP**

**Applicant:**  
**Mr Michael Harrison MCIAT, ACIOB**  
**7 Hall Park**  
**Barrow On Trent**  
**Derby**  
**DE73 7HD**

**Agent:**  
**Mr Michael Harrison MCIAT, ACIOB**  
**7 Hall Park**  
**Barrow On Trent**  
**Derby DE73 7HD**

**Proposal:**        **THE FELLING OF A CEDAR OF LEBANON TREE**  
                         **COVERED BY SOUTH DERBYSHIRE DISTRICT**  
                         **COUNCIL TREE PRESERVATION ORDER NUMBER SED**  
                         **1996 AT 7 HALL PARK BARROW ON TRENT DERBY**

**Ward:**            **ASTON**

**Valid Date:**     **26/07/2013**

**Reason for committee determination**

Councillor Peter Watson has asked that this application be brought to Committee on the grounds that local concern has been expressed about a particular issue.

**Site Description**

This is a Cedar of Lebanon tree sited about 3m from the rear of the extended dwelling at 7 Hall Park Barrow on Trent.

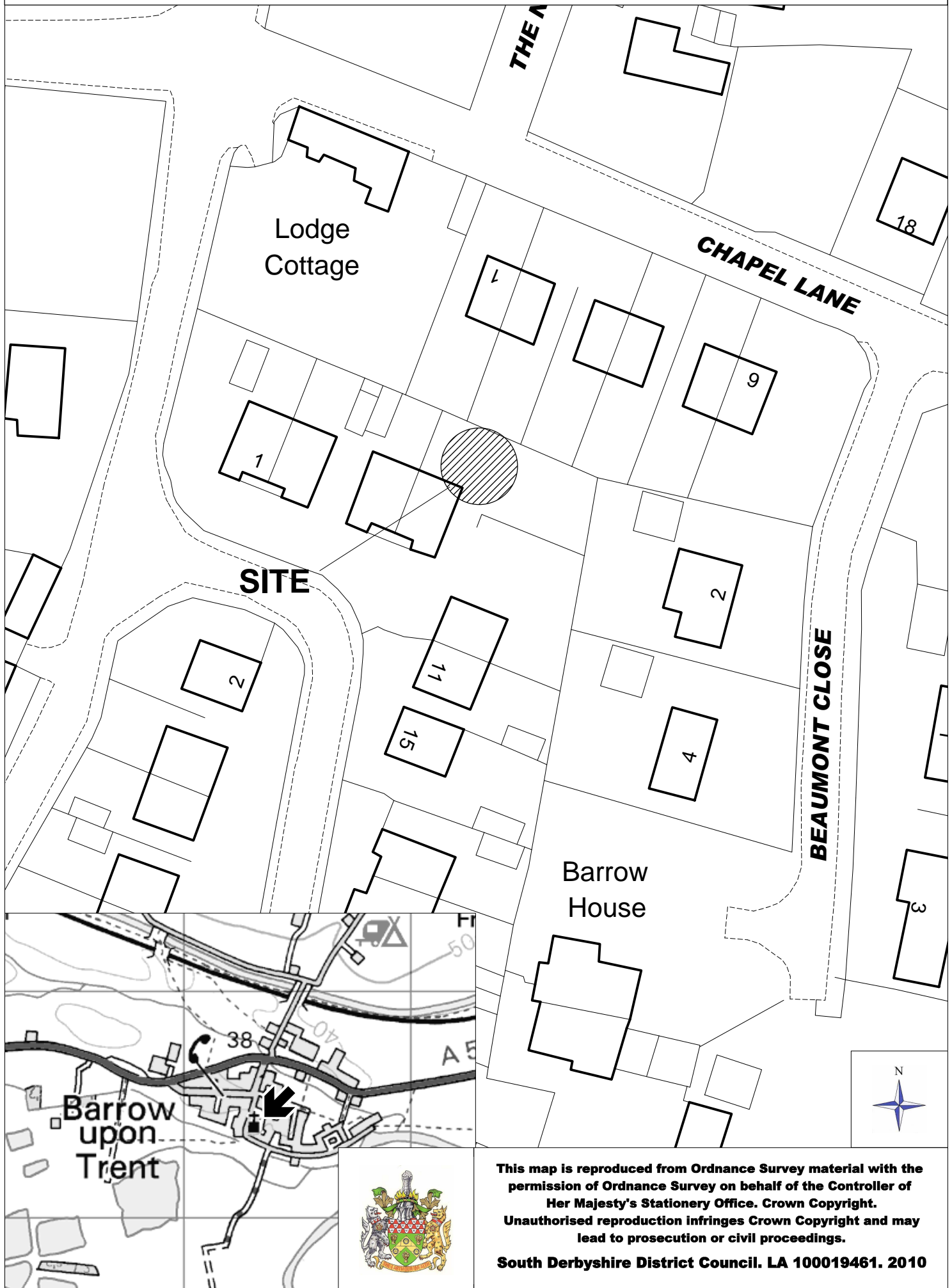
**Proposal**

The proposal is to fell the tree.

**Applicants' supporting information**

The applicant states that the tree continues to shed branches since the last refusal of consent to fell in 2011, causing damage to the house. The presence of the tree is also causing anxiety for neighbours. Falling needles and nesting birds are also an inconvenience. The main reasons for the request are the falling branches, the proximity to the applicant's and neighbour's houses and the large wound at the base of the tree.

The application is supported by a structural engineer's report that confirms that the tree has caused no structural damage since the dwelling was erected but expresses the opinion that the tree has reached a critical height in respect of root action and any further growth could lead to damage to property.



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The arboricultural report draws attention to the proximity of the tree to the extended dwelling and a significant wound in the side of the tree that has the potential to allow disease to enter the tree and ultimately result in its death. Attention is drawn to the risk of further branches being shed by the tree at times of high wind.

### **Planning History**

Consent to fell the tree was refused in 2011 (9/2011/0117), on the basis that the tree's health circumstances did not warrant loss of the tree's amenity value at that time.

### **Responses to Publicity**

The Parish Council objects to the loss of the tree and it makes reference to another application to fell similar trees at an adjacent dwelling which was refused even though there was evidence of branches falling from that tree causing damage to property. As such it suggests this application should also be refused.

One neighbour response has been received supporting the felling of the tree on the grounds that the branches have fallen from the tree with significant risks to the occupiers of 6 & 7 Hall Park. The rear boundary of a neighbouring property is only 5m from the tree and causes nuisance in the form of falling needles and significant shadow. If the tree falls then the property would be at risk. If refused, then significant maintenance of the tree is required to reduce the canopy and any unsafe branches. Trees should be preserved but not at the expense of safety.

### **Development Plan Policies**

The relevant policies are:

Local Plan: Saved Environment Policy 9.

### **National Guidance**

Protected trees - A guide to tree preservation procedures

### **Planning Considerations**

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

- The health of the tree
- Impact on property
- Previous decisions

### **Planning Assessment**

#### **The Health of the trees**

This is a Cedar of Lebanon that has a very unusual form in that all its live growth is set at the top of the trunk. There is a large wound at the base of the tree that extends some 1.2m up the trunk. The cedar of Lebanon has a deep tap root and there is evidence that the root system is starting to be affected.

The Council's Tree officer has confirmed that the tree will continue to decline over time but it may take up to 10 years for the tree to be in a condition where felling would be justified on the basis that it is dying or dangerous without the need for an application to the Council.

### The impact on properties

The next consideration is the proximity of the tree to the dwelling and the 'liveability' of the applicant's and neighbour's dwellings. The applicant has stated that the tree continues to shed branches and this has caused damage to his property and is causing anxiety to the occupiers neighbouring properties. The tree lies some 3 m from the rear of the house and is some 23 m high with an ultimate height of 30 m. Whilst the structural engineers report advises that no damage has yet occurred to the house due to the nature of the ground conditions, this eventuality cannot be ruled out. The tree lies within 3m of the rear of the houses and visually dominates the rear aspects of the dwellings.

### Previous Decisions

Consent to fell was refused in 2011 but since that time the wound in the side of the trees has worsened and there is evidence of decay within the wound. The tree was clearly in place when the houses were built in the 1970's and as such has contributed to the amenity of the area for some 40 years; its contribution being an area of greenery at the top of a long trunk. The tree has an abnormal shape in terms of the species and has a limited life span according to the report accompanying the application and this is confirmed by the tree officer.

However the proximity of the tree to the house and the assertion of that it continues to drop branches are considered to be sufficient justification to allow its removal in the interests of the living conditions of the occupiers of the houses. Although it is in a rear garden the top of the tree is visible from a wider area, but there are numerous other trees around the property that would continue to provide a wooded appearance in the Conservation Area.

### Conclusion

In view of the onset of the tree's decline, the potential risk to property, the existence of other high canopy trees in the area, along with the liveability issues, in this case it is considered that the application to fell is justified.

### **Recommendation**

**GRANT** consent.

1. The works hereby granted consent shall be carried out within two years from the date of this permission.

Reason: To enable the Local Planning Authority to retain control over the works.

29/10/2013

**Item**            **1.3**

**Reg. No.**        **9/2013/0715/RSD**

**Applicant:**  
**Mr R Baker**  
**Venture Homes (Midlands) Ltd 38**  
**Chestnut Way**  
**Repton**  
**DE65 6FQ**

**Agent:**  
**Mr David Raybould**  
**David Raybould & Associates Ltd**  
**23A West Street**  
**Swadlincote**  
**DE11 9DG**

**Proposal:**        **APPROVAL OF RESERVED MATTERS OF**  
                         **APPLICATION 9/2010/0535 FOR RESIDENTIAL**  
                         **DEVELOPMENT OF 14 DWELLINGS ON LAND TO THE**  
                         **REAR OF 33 TO 59 COURT STREET WOODVILLE**  
                         **SWADLINCOTE**

**Ward:**            **WOODVILLE**

**Valid Date:**      **02/09/2013**

**Reason for committee determination**

The item is referred to committee because this is major application having received more than two objections.

**Site Description**

The site comprises an area to the rear of number 33 to 59 Court Street, with an area to provide for access between numbers 43 and 49. Whilst the dwellings either side of the access are detached there is a mix of terrace, semi-detached and detached dwellings along the length of Court Street. To the north of the site is an area of playing fields, to the east is an open area associated with 80 Bernard Street, and to the west is an access track in the ownership of another party. The land rises from Court Street to a high point just short of the hedgerow boundary with the playing fields, with this providing quite a substantial slope back to the highway and frontage properties. The rear gardens to those dwellings on Court Street have depths of around 25 metres, and are bordered by a mix of traditional coping and brick topped walling and timber fencing – both to heights of between 1.2 and 2 metres.

**The Proposal**

The proposal follows outline approval (with all matters reserved except for access) for residential development of the site in 2007 (9/2007/0823). Indicative plans with that application showed 14 dwellings in semi-detached and terraced blocks. The life of that permission was extended in 2010 (9/2010/0535). This application for Reserved Matters

# 9/2013/0715 - Land to rear of 33-59 Court Street, Woodville DE11 7JJ



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South Derbyshire District Council. LA 100019461. 2010

seeks approval for layout, scale, appearance and landscaping to “complete” the permission and allow for its implementation.

### **Applicants’ supporting information**

A Contaminated Land Risk Assessment (CLRA) identifies the proximity to a former landfill to the west (now the restored Woodland Park) and no known coal mining entry points within or close to the site. The report notes some uncertainties are considered to exist in relation to the former nursery activities and possible made ground on the site, and metals and hydrocarbons could be present in the soil at concentrations above guideline values. Consequently it is recommended that a Phase 2 investigation is undertaken with sampling of the site in order to assess the possible risks of contamination.

### **Planning History**

9/2010/0535 Application to extend the time limit for implementation of Outline application 9/2007/0823 (all matters except means of access to be reserved) for residential development

9/2007/0823 Outline application (all matters except means of access to be reserved) for residential development

9/2006/0700 Approval of Reserved Matters for the erection of five detached bungalows

9/2003/0495 Outline application (all matters to be reserved except for means of access) for residential development

9/2002/1267 Outline application (all matters to be reserved except for means of access) for residential development

### **Responses to Consultations**

The Highway Authority notes the scheme is identical in highway terms to the 2007 permission and the principle of development is still acceptable, subject to the same conditions attached to that permission.

The Coal Authority notes that the application site falls within the defined Development High Risk Area; with indication that the site is in an area likely to have been subject to historic unrecorded underground coal mining at shallow depth. It is noted that the CLRA provides a general summary of coal mining records but does not go on to specifically assess whether past coal mining activity poses a risk to the proposed development. However it is noted that a Phase 2 site investigation is undertaken, incorporating boreholes. As such they recommend that the boreholes are drilled to circa 30m depth to determine if shallow coal mine workings have taken place beneath the site, and that this and any remedial measures necessary are secured by way of condition.

The Police Crime Prevention Design Advisor raises no objection to the proposal.

Severn Trent Water Ltd raises no objection subject to a condition requiring details of foul and surface water drainage.

### **Responses to Publicity**

3 objections have been received, raising the following concerns regarding:

- a) overlooking of gardens from proposed windows to the dwellings; and

- b) access provisions for construction vehicles due to the size of the road.

A couple of representations query whether consideration can be given to providing vehicle access to the rear of properties 51, 53, 55 and 57 Court Street.

## **Development Plan Policies**

The relevant policies are:

Saved Local Plan: Housing Policies 4 and 11 (H4 and H11) and Transport Policy 6 (T6).

## **National Guidance**

National Planning Policy Framework (NPPF) paragraphs 7, 8, 11, 12, 14, 17, 32, 39, 49, 53, 58, 61, 69, 118, 120, 121, 186, 187, 203, 206 and 215.

Circular 11/95 – The use of conditions

## **Local Guidance**

Housing Design and Layout SPG.

## **Planning Considerations**

As the principle of development has been established, including relevant contributions under an existing Section 106 agreement, the main issues central to the determination of this application are:

- Residual matters relating to access
- Design
- Impact on neighbouring amenity
- Land contamination and stability

## **Planning Assessment**

### Residual matters relating to access

The principle of access in the position shown at the outline stage is still considered to be acceptable from the Highway Authority's point of view. The layout is considered suitable to allow for free circulation and turning, with garages amended to provide sufficient internal space. Condition 7 of the outline permission requires 3 spaces to be provided and retained to each dwelling unless otherwise approved by the Local Planning Authority in accordance with the then current standards. Current standards are not so prescriptive in that the scheme is acceptable at two spaces per dwelling.

The request to consider access for existing properties is noted, but this is not a matter which can be imposed by way of condition as it is not relevant to the development proposed, or necessary for it to be made acceptable. It is however a matter which the applicant is encouraged to consider out of good neighbour relations. The proposed house types also appear to be suitable for disabled access.

The Highway Authority's response seeks the imposition of conditions attached under the 2007 and 2010 consents. However this application complements that permission,

and is integral to it. The conditions attached to the outline permission still require addressing in equal measure to any attached here, such that it is not necessary to impose the conditions again, thus adhering to the tests set out in the NPPF and Circular 11/95.

### Design

The design is considered to be the best possible for the site given its shape, with a mixture of parking solutions proposed (garages and driveway spaces). The scale of the dwellings proposed is characteristic of the predominant two-storey housing in the area. The original elevational drawings submitted were somewhat lacking in detail, but amendments now incorporate traditional detailing prevalent in the area. Conditions can secure such detail and an existing outline condition requires details of materials. Drainage proposals are also limited in detail, with surface water requiring careful consideration given the slope of the site. Severn Trent Water seeks such information prior to development commencing. As condition 13 of the outline permission seeks drainage information, and this condition still applies; there is no need to attach them again.

Hard and soft landscaping is detailed in a submitted schedule. This confirms access and circulation areas to be finished in tarmac, with paved paths around the properties. This is generally acceptable save for the fact that a pedestrian footway is not proposed meaning pedestrians will need to share the access road. As such, a different colour or type of tarmac is necessary to provide a shared surface to raise awareness of drivers and slow vehicle speeds. The boundary treatments to the northern and eastern boundaries are to be close boarded fences, with a wall to the more public western boundary. A mix of treatments will exist within the site. The proposed soft landscaping of lawns to the individual plots and a selection of shrubs and trees for other areas is acceptable in principle, but the plan lacks detail as to the locations and extent of planting. As such conditions shall be attached to ensure appropriate provision and subsequent maintenance.

### Impact on neighbouring amenity

Regard is had to adopted guidance. There is over 40 metres between habitable windows from plots 5 through 10, and even when accounting for the substantial slope of the site this is considered to be acceptable. Side first floor windows to plots 1 and 14 can be maintained as obscured glazing through condition. The comings and goings of domestic and service vehicles to the proposed dwellings is also not considered to unacceptably harm living conditions for occupiers of the existing dwellings adjoining the access. Some disturbance and inconvenience from construction activities is inevitable for a short time but already limited by conditions on the outline permission (pertaining to hours of working and wheel washing).

### Land contamination and stability

Conditions on the outline permission raised awareness of this matter. The CLRA submitted goes some way to addressing these conditions, but further investigation and detail is necessary from the point of the Coal Authority and the Environmental Health Officer. As such further conditions are considered necessary to reflect the progress so far but to secure completion of investigatory or remedial measures prior to the occupation of the site.

## Recommendation

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

1. The development hereby permitted shall be carried out in accordance with plans/drawings 0305/2013/4578, 0209/2013/4578a, 0209/2013/4578b and 0209/2013/4578c all received on 2 September 2013; unless as otherwise required by condition attached to this permission.

Reason: For the avoidance of doubt.

2. Notwithstanding the particulars of the application, prior to development commencing additional and/or revised details of soft landscaping shall be submitted for approval in writing by the Local Planning Authority. The approved revised or additional details shall then be incorporated into the development.

Reason: The submitted details are considered either unsatisfactory or incomplete and contrary to the full requirements of conditions attached to the outline permission - namely a lack of detail as to where planting will occur within the site.

3. a) No development shall commence until Phase II contaminated land works and investigation have been undertaken in accordance with the proposed schedule of works received by email dated 14 October 2013.

b) No works to construct the dwellings shall commence until design drawings or specifications for the gas protection measures to be incorporated within the dwellings has been submitted to and approved in writing by the Local Planning Authority. Such measures shall be sufficient to meet 'Characteristic Situation 2' (Low Risk) in accordance with CIRIA 665 and an Amber 1 classification in accordance with the NHBC traffic light system, and installed in accordance with the approved details.

c) Prior to first 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'.

d) 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'.

Reason: In recognition of progress of contaminated land investigation since the grant of outline permission and partial addressing of the requirements of conditions attached therein, and 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.

4. No development shall commence until phase 2 investigation works for coal mining legacy, including boreholes to be drilled to circa 30 metres depth in order to establish the exact situation regarding ground conditions, shall be undertaken and the findings reported to the Local Planning Authority for approval. Such boreholes may be combined with those required under condition 3. In the event that the investigations confirm the need for remedial works to treat the areas of shallow mine workings to ensure the safety and stability of the proposed development, such remedial works shall be identified by the investigation report



(e.g. preparatory ground works or gas protection measures). Any approved remedial works shall be undertaken prior to the commencement of development, and any approved protection measures shall be incorporated into the dwellings hereby approved.

Reason: To ensure the stability and safety of the development, having regard to the Coal Mining Risk Assessment undertaken.

5. No works to construct the dwellings shall commence until large scale drawings to a minimum scale of 1:10 of eaves and verges, including horizontal and vertical sections, have been submitted to and approved in writing by the Local Planning Authority. The eaves and verges shall be constructed in accordance with the approved drawings.

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

6. Prior to the first occupation of the dwellings hereby approved, a landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas other than small privately owned domestic gardens, shall be submitted to and approved by the Local Planning Authority. The landscape management plan shall be carried out as approved.

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

7. The windows at first floor in southern elevations of plots 1 and 14 shall be permanently glazed in obscure glass.

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

#### Informatives:

For the avoidance of doubt, the conditions 2 and 3 recognise that some detail or progress has been provided or made as to addressing the requirements of conditions 1, 9, 10 and 15 of the outline permission ref: 9/2010/0535. However the detail submitted under this application or provided informally so far is insufficient to fully discharge the requirements of those conditions.

In dealing with this application, the Local Planning Authority has worked with the applicant in a positive and proactive manner through working with the applicant to agree amendments to improve the quality of the proposal, as well as conditions conditions, and quickly determining the application. As such it is considered that the Local Planning Authority has implemented the requirement set out in paragraphs 186 and 187 of the National Planning Policy Framework.