

# **REPORT OF THE HEAD OF PLANNING SERVICES**

## **SECTION 1: Planning Applications**

## **SECTION 2: Appeals**

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

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## **1. PLANNING APPLICATIONS**

**This section 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) and responses to County Matters.**

<b>Reference</b>	<b>Item</b>	<b>Place</b>	<b>Ward</b>	<b>Page</b>
<b>9/2007/0618</b>	<b>1.1</b>	<b>Coton in the Elms</b>	<b>Seales</b>	<b>1</b>
<b>9/2008/0191</b>	<b>1.2</b>	<b>Rosliston</b>	<b>Linton</b>	<b>9</b>
<b>9/2008/0687</b>	<b>1.3</b>	<b>Repton</b>	<b>Repton</b>	<b>21</b>
<b>9/2008/0704</b>	<b>1.4</b>	<b>Egginton</b>	<b>Etwall</b>	<b>29</b>
<b>9/2008/0749</b>	<b>2.1</b>	<b>Dalbury Lees</b>	<b>North West</b>	<b>34</b>

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 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 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.**        **9/2007/0618/FM**

**Applicant:**  
Mr J Deakin  
C/O CT Planning

**Agent:**  
Christopher Timothy  
Trafalgar House  
20 A Market Street  
Lichfield  
Staffordshire  
WS13 6LH

**Proposal:**        **The conversion of farm buildings into three dwellings  
Church Farm Burton Road Coton-in-the-Elms  
Swadlincote**

**Ward:**            **Seales**

**Valid Date:**      **04/06/2007**

**Reason for committee determination**

Part of the application site is outside the development boundary for Coton in the Elms as defined in the adopted Local Plan.

**Site Description**

The site is an L-shaped group of traditional brick and tile farm buildings located on the edge of Coton in the Elms. The buildings are part of an enclosed courtyard along with the existing farmhouse. There are two existing accesses, one into the courtyard and one to the other, northwest, side of the farm buildings. To the northwest side of the buildings there is an existing area of hardstanding and access to a modern agricultural building, which is attached to the rear of the traditional buildings.

**Proposal**

Conversion of the traditional L- shaped buildings to form 3 dwellings. Access would be via the existing agricultural access to the north west of the buildings. Part of the hedge would be removed to improve visibility at the access and all agricultural use of the access would cease. A parking area would be created to the side of the buildings, largely on the existing hardstanding and the existing modern building to the rear of the site would be removed.

**Applicants' supporting information**

The Applicant has submitted a design and access statement which reaches the following conclusions:-



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The proposed development relates to the re-use of a traditionally constructed range of agricultural buildings within the village confines defined for Coton in the Elms. The principle of the residential re-use of the buildings is entirely consistent with Local Plan Housing Policy 7 having regard to the following:-

- The application buildings are evidently of some considerable age and are of a form, bulk and general design that are typical of many traditionally constructed agricultural buildings to be found in the surrounding area.
- The buildings are of a permanent and substantial construction and the proposed residential use can be introduced without the need for major or complete reconstruction.
- The application buildings can be converted to the proposed residential use with no requirement for extension. The proposed development utilises existing window openings; only one new opening is proposed. Consequently the application scheme is considered to be consistent with the character of the original building and would not be detrimental to the character of the settlement.
- The application buildings are well located to the existing residential development within Coton in the Elms that adjoins the site to the south and to the east.
- Coton in the Elms is a sustainable location in which to locate a development of 3 no. dwellings.
- The development has access to public transport.
- The conversion of the application buildings skilfully retains the agricultural character, thus safeguarding the character and appearance of the buildings.
- The setting of the buildings will be improved through the demolition of a modern agricultural building. The new residential curtilage will be sited within the area presently occupied by the building which is to be demolished. The remainder of the area of the building to be demolished is to be landscaped. This landscaping will contain the proposed residential curtilage, reduce the visual impact of the proposed car parking area and make a significant contribution towards the establishment of the National Forest.

## **Planning History**

No relevant planning history.

## **Responses to Consultations**

The Highway Authority has no objections to the proposal subject to conditions.

The Parish Council has no objections subject to ensuring that there is adequate car parking provision and that the highway authority comments on the visibility at the access to the site.

Severn Trent Water has no objections.

Environmental Health has no objections subject to conditions requiring a contaminated land investigation and any resulting remediation to be carried out prior to occupations of the buildings.

## **Responses to Publicity**

None received.

## **Development Plan Policies**

The relevant policies are:

RSS8:

Joint Structure Plan:

Local Plan: Housing Policy 7

## **Planning Considerations**

The main issues central to the determination of this application are the principle of residential conversion and the fact that part of the site is not within the defined development boundary and whether the proposed conversion is in keeping with the original buildings and is not detrimental to the character of the settlement.

## **Planning Assessment**

Housing Policy 7 of the Local Plan outlines a presumption in favour of the conversion of existing buildings to a residential use within villages and other rural settlements. The buildings themselves are located within the settlement boundary of Coton in the Elms as defined in the adopted Local Plan. However the proposed access, parking and parts of the curtilage areas are located outside the defined settlement boundary and cannot be accommodated within the development boundary. In mitigation the access is an existing farm access, the parking and curtilage areas are currently occupied by hardstanding and a large agricultural building, therefore the impact on the character of the countryside will be minimal. In addition a landscaping belt is proposed around the development which will screen the development and soften the transition between the domestic uses and the open countryside.

During the application process the option of providing the parking within the existing courtyard accessed via an archway created through the building was explored. However the Highway Authority commented that the arch was too narrow and they would have required a wider archway. It is considered that a wider archway would have resulted in an adverse impact on the character of the buildings contrary to the provisions of Housing Policy 7. Therefore the parking area in the position proposed, adjoining the buildings and on the site of existing hardstanding and buildings would be the least intrusive position.

The application proposes improving the access to maximise visibility, this would involve removing a set of brick steps on the end of the buildings and removing an 18.5 metre length of hedgerow to the north west of the access. There are existing trees, which are fairly prominent to the rear of the visibility splay, and these would remain and mitigate to some extent for the hedgerow removal. A replacement hedgerow would be required by condition to the rear of the visibility splay to minimise the impact. The replacement of the hedgerow in a position further back from the road will have an impact on the approach to the village from the north west, however the section of hedgerow to be removed is relatively short. The impact of the proposed development on the character of the countryside and settlement of Coton in the Elms is not considered so significant as to justify refusing planning permission.

The proposed conversion involves only very limited alterations to the buildings themselves, the scheme utilises existing openings and only one new opening is proposed. The scheme is therefore considered to be in keeping with the original buildings and accords with the provisions of Housing Policy 7 of the South Derbyshire Local Plan.

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. Unless otherwise agreed in writing by the Local Planning Authority no development shall be commenced until the access has been provided generally in accordance with the details shown on drawing no. 3153/5B. To the north-west of the access the area in advance of the replacement boundary hedge and, to the south-east, the area in front of the roadside elevation of Unit 3 (following demolition of the existing steps) shall be retained permanently free of obstructions exceeding 600mm in height.  
Reason: In the interests of highway safety.
3. Notwithstanding the submitted details the proposed gates shown on drawing no. 3153/5B shall, unless otherwise agreed in writing by the Local Planning Authority, open into the site only.  
Reason: In the interests of highway safety.
4. No development shall be commenced, other than in connection with the formation of the access and visibility sightlines referred to in Condition 2 above, until space has been provided within the site curtilage for storage of plant and materials, site accommodation, loading and unloading of goods vehicles, parking and manoeuvring of site operatives and visitors vehicles, laid out and constructed in accordance with a scheme first submitted to and approved in writing by the Local Planning Authority. The facilities shall thereafter be maintained throughout the construction period in accordance with the approved designs free from any impediment to their designated use.  
Reason: In the interests of highway safety.
5. Throughout the period of development vehicle wheel cleaning facilities shall be provided and retained within the site. All construction vehicles shall have their wheels cleaned before leaving the site in order to prevent the deposition of mud and other extraneous material on the public highway.  
Reason: In the interests of highway safety.
6. The premises, the subject of the application, shall not be occupied until space has been provided within the site in accordance with drawing no. 3153/5B for the

parking and manoeuvring of residents and visitors vehicles, laid out and retained throughout the life of the development free from any impediment to its designated use.

Reason: To ensure that adequate parking/garaging provision is available.

7. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995, the dwelling hereby permitted shall not be altered, enlarged or extended, no satellite dishes shall be affixed to the dwelling and no buildings, gates, walls or other means of enclosure (except as authorised by this permission or required by any condition attached thereto) shall be erected on the application site (shown edged red on the submitted plan) without the prior grant of planning permission on an application made in that regard to the Local Planning Authority.

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.

8. 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.

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. 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 must 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 should 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.

12. 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.

13. Large scale drawings to a minimum Scale of 1:10 of 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 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.

14. 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 building(s) and the character of the area.

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

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

16. Notwithstanding the originally submitted details, this permission shall relate to the amended drawings received on 24th July 2008.

Reason: For the avoidance of doubt, the original submission being considered unacceptable.

17. Prior to the commencement of development a schedule of works detailing all structural alterations to the building and extent of the building to be rebuilt shall be submitted to and approved in writing by the local planning authority, the development shall then be carried out in accordance with the agreed schedule.

Reason: The proposed development is conversion of the buildings only and no information has been submitted with the application to establish the structural integrity of the buildings.

#### Informatives:

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

- whether the land in question is already affected by contamination through source - pathway - receptor pollutant linkages and how those linkages are represented in a conceptual model;
- whether the development proposed will create new linkages, e.g. new pathways by which existing contaminants might reach existing or proposed receptors and whether it will introduce new vulnerable receptors; and
- what action is needed to break those linkages and avoid new ones, deal with any unacceptable risks and enable safe development and future occupancy of the site and neighbouring land.

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

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

For further assistance in complying with planning conditions and other legal requirements applicants should consult "Developing Land within Derbyshire - Guidance on submitting applications for land that may be contaminated". This document has been produced by local authorities in Derbyshire to assist developers, and is available from

[www.south-derbys.gov.uk/Environment/Pollution/LandPollution/contaminatedlandguide.htm](http://www.south-derbys.gov.uk/Environment/Pollution/LandPollution/contaminatedlandguide.htm)

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

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

Pursuant to Sections 149 and 151 of the Highways Act 1980, the applicant must take all necessary steps to ensure that mud or other extraneous material is not carried out of the site and deposited onto the public highway. Should such deposits occur, it is the applicant's responsibility to ensure that all reasonable steps (eg street sweeping) are taken to maintain the roads in the vicinity of the site to a satisfactory level of cleanliness. Pursuant to Section 163 of the Highways Act 1980, where the site curtilage slopes down towards the public highway measures shall be taken to ensure that surface water run-off from within the site is not permitted to discharge across the footway margin. This usually takes the form of a dish channel or gulley laid across the access immediately behind the back edge of the highway, discharging to a drain or soakaway within the site.

**Item**                **1.2**

**Reg. No.**        **9/2008/0191/F**

**Applicant:**

Tamworth Co-Operative Society Ltd  
5 Colehill  
Tamworth  
Staffordshire  
B79 7HJ

**Agent:**

Tim Hayward  
Haden Ritchie Partnership  
The Manor House  
Lichfield Street  
Tamworth  
Staffordshire  
B79 7QF

**Proposal:**        **The erection of a convenience store, A5 unit and two dwellings at Rosliston Branch Tamworth Co-operative Society Ltd Main Street Rosliston Swadlincote**

**Ward:**            **Linton**

**Valid Date:**        **15/02/2008**

**Reason for committee determination**

Councillor Wheeler has requested this application is brought to Committee because local concern has been expressed about a particular issue.

**Site Location and Description**

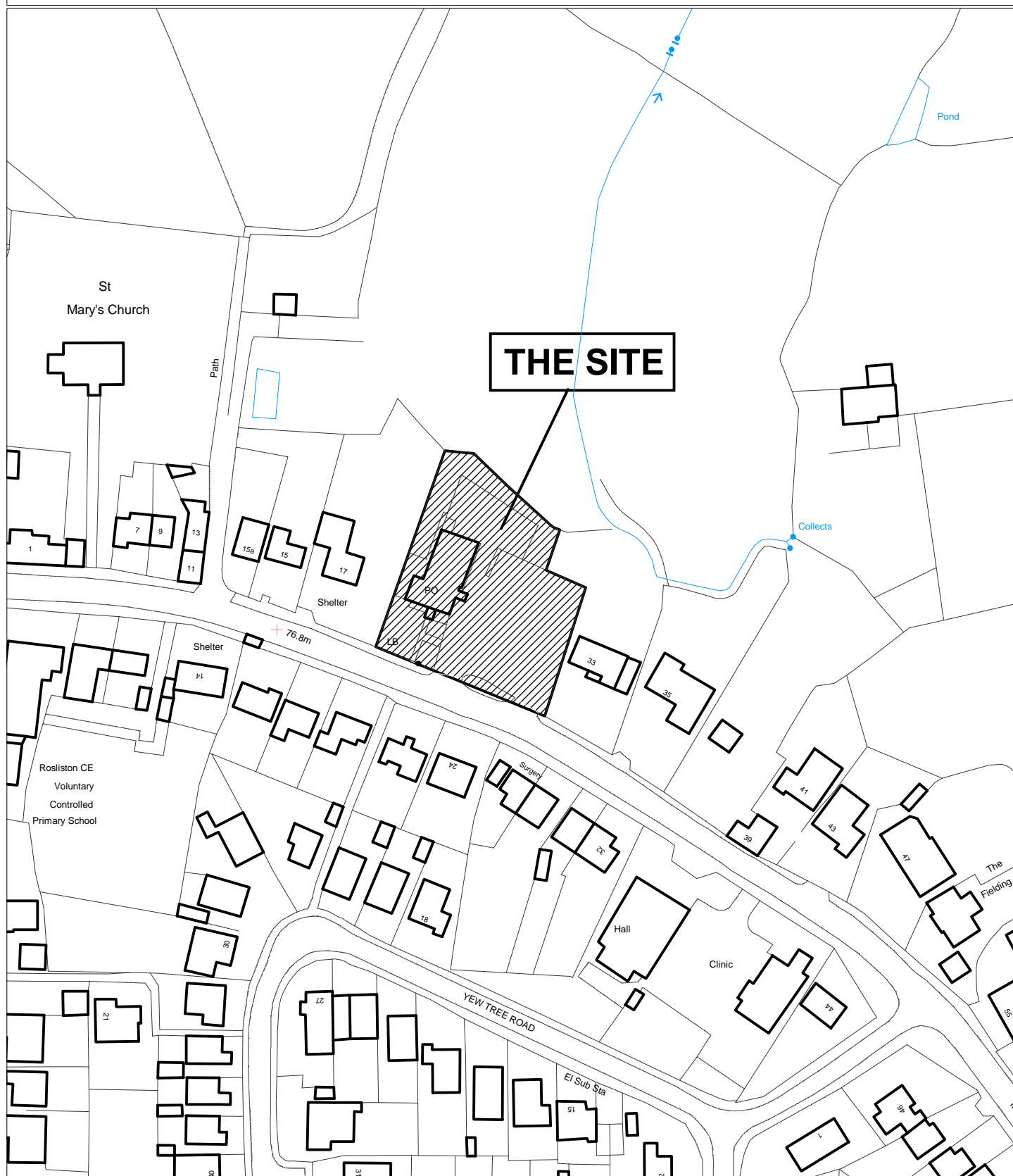
The site is located north of Main Street in the heart of the village. The eastern half of the site is now vacant and used for car parking following the demolition a petrol filling station. A convenience store with integrated Post Office is located on the western half of the site.

The site measure approximately 42 metres at the widest point and approximately 50 metres at the longest point between residential properties 17 and 33. Residential development bounds the site at the east, south and west sides. To the north of the site are open fields.

**Proposal**

This application is a detailed proposal for a wholesale redevelopment of the site. The plans show the erection of a commercial building, to accommodate a new convenience store with integrated Post Office and an A5 unit (hot food takeaway), together with two new detached dwellings.

The new store and takeaway would be located on the present car parking area with 2 houses on the site currently occupied by the store..



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The proposed convenience store would have a floor area of 251 sq.m would have a trading floor of approximately 153sq m which is comparable with the present store. The proposed A5 unit would be 92.9 sq.m. The proposed building incorporates a hipped roof design with a maximum height of 8.5m.

This building would face Main Street and be set back approximately 14m behind the pavement. Nine car parking spaces are proposed at the front of the commercial building with a gated access to the side of the building leading from the existing central access point to a servicing area at the rear of the site. This area would provide unloading facilities for both commercial units and 5 staff parking spaces.

The 2 detached houses would have four-bedrooms and incorporate gable roofs to a maximum height of 8m and integrated single garages. The dwellings would be separated from the commercial development as they would have a separate access point and off road turning area. The design and position of the new houses is considered acceptable and the siting has been amended to reflect the fact that the adjacent site at 17 main Street has outline planning permission for redevelopment for 3 new dwellings.

### **Applicants' supporting information**

The applicants have indicated that Rosliston is of insufficient size to generate sufficient margins to warrant the cost of constructing a new store. The Co-op state that the existing store which is a prefabricated style including asbestos is not capable of adequate refurbishment and alteration. In order to provide and run a shop in the village, it would need to be subsidised by the sale of the 2 houses and the lease/rent from the A5 takeaway unit.

The applicants have submitted a traffic impact assessment with the application assessing likely traffic flows from the new shop and the A5 unit. The opening hours used for the assessment are store 08:00 to 20:00 and A5 unit 17:00 to 22:00. (The application states that the store opening hours will be as the existing store and the takeaway 12:00 to 15:00 and 17:00 to 23:00 Monday to Saturday and 17:00 to 23:00 on Sunday) This means that the store and the takeaway will have different core business hours so that the number of parking spaces will be sufficient to be shared between customers to both businesses.

The traffic consultants carried out a survey of customer traffic at a similar village store (Whittington, Staffordshire) and established that only 47% of customers arrived by car, falling to 37% car borne on Saturday midday peak period. In considering traffic flows from that larger store the applicants conclude that the new store should see 19 arrivals and 17 departures in a weekday peak period, falling to 15 and 13 on Saturday peak period. Furthermore they suggest that this would lead to a maximum of 4 cars being present on the site at any one time in peak weekdays and less customers cars at other times.

The consultants analyse traffic generated by the proposed A5 takeaway and make the point that there will only be a 3 hour period when both units would be open to customers. The modest size of the takeaway unit means that it is forecast that there should be a maximum of 4 customers present at any 1 time

## **Planning History**

Two previous planning applications for a shop and takeaway were refused under 9/2005/0141 and 9/2005/1123. Both proposed a similar layout for the site.

9/2005/0141 proposed a store of 267 sq m, 7 parking spaces and a takeaway. A concurrent application to build 2 houses was also submitted under 9/2005/0142. That application was refused due to inadequate parking and reversing from the servicing bay onto the highway. Those grounds of refusal have been addressed by the current plan which proposes 9 customer parking spaces, 5 staff parking spaces to the rear, and includes a lorry manoeuvring space so that delivery vehicles can enter and leave the site in a forward direction.

Planning application 9/2005/1123 proposed a similar development but with 9 parking spaces and a rear service yard. This application was refused on the grounds of being over intensive, with insufficient off street parking. These reasons stemmed from the concerns of the CHA who indicated that the hot food takeaway would create traffic movements in addition to those from the new store and there was insufficient parking for both uses, likely to result in on street parking which in turn might cause problems of visibility to cars exiting the site. The applicants have address this point by commissioning a report from a traffic consultant, which is summarised above.

## **Responses to Consultations**

Severn Trent Water has raised no objections subject to no development being undertaken in close proximity to public combined sewers at the location.

Contaminated Land Officer requires conditions regarding a contaminated land assessment and any necessary ameliorative measures to be undertaken.

The Parish Council has recommended the provision of additional litterbins and restriction's be applied to vehicles delivering goods to the proposed premises. It also suggests that the supporting traffic survey be given limited weight in the assessment of the application as Rosliston is of a distinctly different character to Whittington [used as a comparable site in the Transport Statement].

Following several queries raised about the submitted Transport Statement, the Highways Authority has raised no objection subject to conditions being added to the planning consent to mitigate concerns over parking provision, inter-visibility splays and adequate turning areas.

The Pollution Control Manager has raised no objection in principle subject to the submission of a noise survey (of ventilators, etc), the opening hours being restricted to Monday to Saturday 1700hrs - 2300hrs, Sunday 1700hrs - 2200hrs for the A5 use and a fume extraction system subject to further approval.

The Police Liaison Officer has raised no objection to the proposed scheme but has recommended several crime prevention measures be considered including anti-ram bollards, grilles/shutters on doors/windows, monitored CCTV alarm system and secure access gates.

## Responses to Publicity

One letter of support has been received from the occupier of no.28 Main Street (opposite the application site) supporting the proposal on the grounds of:

- The proposed store will help meet demand for local food shopping (especially for those who have difficulty travelling), as the village gets bigger.
- The A5 unit would not have any impact and would be another facility for the village.
- The car parking proposed is adequate and the delivery lorries cause no problems.
- Most of the residents opposing the development do not live near the application site.

Seven letters of objection and a petition with 33 signatures have been received raising concerns related primarily to the proposed takeaway (A5 use) in that it would adversely affect the local environment and:

- Increase noise for local residents e.g. in the early morning from newspaper deliveries and in the late evening due to the unsociable opening hours and comings and goings of patrons and associated vehicular traffic e.g. engine noise, doors openings and shutting.
- Increase litter which would be evident throughout the village and not just outside the store.
- Attract vermin/pests.
- Takeaway would attract anti-social behaviour, vandalism and petty crime.
- Unpleasant cooking odours.
- Increase demand for on-street parking
- Car parking insufficient for the proposed retail store, takeaway and 2 residential dwellings
- Infrequent bus services and poor pedestrian linkages from surrounding areas.
- Access, parking area and turning area too small and could result in accidents.
- Increase traffic generation from the scheme coupled with existing uses within the locality would create highway safety issues.
- Increase traffic, resulting in increased air pollution from vehicle exhaust fumes
- The proposed takeaway with proposed illuminated signage would be detrimental to the rural and village character of the area and result in the 'urbanisation' of the village and result in significant light pollution.
- Takeaway will result in a loss of privacy for neighbouring properties on the opposite side of 'Main Street' as the serving area of the A5 unit will look out onto these properties.
- Insufficient need
- Would not create any benefits.
- The viability of the scheme is questionable in comparison with the store in Whittington in respect of the type of goods sold.
- Concerns over the validity and accuracy of supporting information and statements.
- The boundary wall height between the new convenience store and the property at 33 Main Street is increased to keep privacy for the occupier
- The removal of the proposed takeaway from the scheme could provide significant financial benefits.

- The type of A5 use could be restricted to those that would be consumed at home rather than eaten in the vicinity.
- 46 people attended a recent Parish Council meeting regarding the proposed scheme, 14 had no objection, 26 objected to the A5 unit and 6 objected on grounds of traffic generation.
- Whilst the proposed takeaway is undesirable, the shop is an essential part of the villagers needs so if the only way to keep a shop is to have a takeaway food unit in the village then it should be allowed.
- Takeaway will create late night noise.
- Takeaway may not subsidise store as claimed.
- Takeaway market locally is limited.
- Will reduce price of proposed new houses as they would be next to a takeaway.

## **Development Plan Policies**

The relevant policies are:

RSS: Policy 4

Local Plan: Housing Policies 6 & 11, Shopping Policy 3 and Transport Policy 6.

National Planning Policy Statements: PPS1, PPS3, PPS7

## **Planning Policy Summary**

South Derbyshire Local Plan

Housing Policy H6 promotes small housing development in rural settlements providing it represents the infilling of small gaps, not normally more than 2 dwellings in keeping with the scale and character of the development.

Housing Policy 11 promotes the high quality design and landscaping of new development.

Shopping Policy 3 will permit small shops provided they do not adversely affect the amenities of neighbouring properties and adequate access; car parking and servicing facilities are provided.

Transport Policy 6 requires new development proposals to incorporate adequate provision for access, (including public transport where appropriate) parking, manoeuvring and off-street servicing.

National Planning Policy Statements

PPS1 promotes the sustainable development of brown field land, the proposed development aims to achieve this by providing the village with a local convenience store to reduce the need to travel by private car and facilitate the efficient re-use of previously developed land.

PPS3 seeks to provide high quality housing on brownfield land.

PPS7 advises local authorities to facilitate and plan for accessible new services and facilities particularly where there is an identified need for new or expanded services to strengthen the role of a particular local service centre. It also advises local authorities to support mixed and multi-purpose uses that maintain community vitality.

## **Planning Considerations**

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

- The principle of the development,
- Impact on residential amenity,
- Impact on highway safety,
- The quality of the design and layout of the scheme, and
- Whether the revised proposals overcome the previous reasons for refusal.

## **Planning Assessment**

The application site is a brownfield location within a serviced village of which small-scale retail and residential development is considered acceptable in principle in accordance with the aims and objectives of development plan policies and advice set out in PPS1, PPS3 and PPS7.

### Residential Amenity

The proposal has been assessed taking into account the orientation and the distance of the proposed dwellings to the nearest existing residential property and the standards set out in the Council's Supplementary Planning Guidance (SPG). There is an existing 1.7 metre high wall separating the development from no. 33 Main Street (the nearest neighbouring dwelling). It is considered that the proposal would have a minimal impact on the neighbouring property in terms of loss of light, outlook or privacy given that the nearest building (the convenience store) would be single storey only. On the other side of the site, no. 17 Main Street stands some 10 metres from the boundary and would therefore suffer no undue loss of amenity from the proposed adjoining houses when measured against the SPG. That site has outline planning permission for 3 replacement dwellings. This would involve constructing new dwellings within the rear part of the site and the likely siting of the permitted dwellings has been taken into account in assessing the impact of the 2 houses proposed by this application. The space around and between all the new dwellings is considered acceptable.

Neighbours concerns about smell and disturbance from the proposed A5 takeaway have been assessed by the Council's Pollution Control Manager. His response is that these issues can be controlled through the imposition of conditions restricting opening times, incorporating suitable noise abatement and fume extraction systems. Equally, to reduce the level of light pollution, a condition may be attached to control the level of the external lighting at the site. It should be borne in mind that neither previous applications for a takeaway unit have been refused on the basis of concerns about noise, smell and other disturbance.

Several concerns have also been raised over potential anti-social behaviour, vandalism and crime. However on the advice of the Crime Prevention Officer a condition may be added requiring a scheme for crime prevention/security measures be submitted for approval.

Overall, there would no significant impact on the amenities of the occupiers of neighbouring residential properties by way of loss of light, outlook, privacy, unacceptable crime, noise, or light pollution.

### Design and Layout

The scheme shows the convenience store building in traditional style typical of such structures but reflecting the materials and colours found in the village. The houses and the proposed units are considered acceptable in terms of layout, massing, scale and style and as such would not have an unacceptable impact on the visual amenity of the street scene, landscape or historic character of the area in accordance with Local Plan Housing Policies 6 and 11 and Policy 4 of the Regional Spatial Strategy of the East Midlands (RSS8).

In respect of highway safety/traffic generation issues, the County Highways Authority has no objection to the scheme and as a result it is considered that there would be no significant impact on highway safety/traffic generation in accordance with Transport Policy 6 of the Local Plan.

In considering objectors concerns over insufficient demand and viability, the proposed development would provide increased retail choice and additional facilities to the benefit of local residents in accordance with advice contained in PPS7.

As regards to the reasons for refusal in the previous application (for a very similar scheme) relating to over intensive development, highway safety, traffic generation and parking provision they have been addressed by this revised scheme and therefore the proposal is now 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 as 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. A sample of both the roof tile and the brick shall be submitted for approval in writing by the Local Planning Authority before work commences.  
Reason: To ensure the building/extension is in keeping with its surrounding in the interest of the character and visual amenity of the area.
3. There are public sewers, which cross the site. No building shall be erected or trees planted within 2.5 metres of the 300mm public combined sewer. The applicant may wish to apply to Severn Trent Water to divert the sewer in accordance with Section 185 of the Water Industry Act 1991.

To maintain essential access for maintenance, repair, renewal and to protect the structural integrity of the public sewerage system.

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

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

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

B) Prior to occupation of the development (or parts thereof) an independent verification report must 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 should be done to comply with the specifications given in Box 3 of section 3.1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.

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

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

6. The opening hours of the A5 unit shall be limited to Monday to Saturday 1700hrs - 2300hrs, Sunday 1700hrs-2200hrs.

Reason: In the interests of the amenities of the occupiers of neighbouring residential properties.

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

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

8. All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any

part of the development or in accordance with the programme agreed with the Local Planning Authority.

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

9. 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.

10. Prior to any other works commencing, the temporary car parking arrangements shall be laid out in accordance with the amended application drawing no 8744/16/01 and maintained available throughout the duration of the construction works for the parking and manoeuvring of customer and staff vehicles.

Reason: In the interests of highway safety.

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

Reason: In the best interests of highway safety.

12. Prior to the commercial premise being taken into use, the access shall be laid out in accordance with drawing 5313.17c, having a minimum width of 5m, being constructed as a splayed vehicular crossover and being provided with 2m x 2m x 45° visibility splays, the area forward of which shall be maintained in perpetuity clear of any obstruction exceeding 600mm in height relative to the nearside carriageway edge. The access shall be surfaced in a solid bound material and provided with measures to ensure that surface water does not escape from within the site onto the footway.

Reason: In the best interests of highway safety.

13. Prior to the commercial premises being taken into use, the car parking, manoeuvring and servicing areas shall be laid out in accordance with the application drawing, paved in a solid bound material and maintained thereafter free of any impediment to their designated use.

Reason: In the best interests of highway safety.

14. Prior to the commercial premises being taken into use, the existing access at the eastern end of the site shall be stopped up and reinstated in accordance with a scheme first submitted to and approved by the local Planning and county Highway Authorities.

Reason: In the best interests of highway safety.

15. Prior to any other works commencing on the residential units (except demolition and site clearance), the new access shall be created to the site, laid out in accordance with the drawing 5313.17c having a minimum width of 5m, being

constructed as a splayed vehicular crossover and being provided with 2m x 2m x 45° pedestrian intervisibility splays, the area for ward of which shall be maintained in perpetuity clear of any obstruction exceeding 600mm in height relative to the nearside carriageway edge. The access shall be surfaced in a solid bound material and provided with measures to ensure that surface water does not escape from within the site onto the footway.

Reason: In the best interests of highway safety.

16. Prior to the occupation of the first dwelling, space shall be provided within the site curtilage for the parking and turning of two vehicles per dwelling, laid out in accordance with the revised application drawing and maintained thereafter free of any impediment to its designated use.

Reason: In the best interests of highway safety.

17. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995, the garage accommodation/parking space to be provided in connection with the development shall not be used other than for the above stated purpose except with the prior permission of the Local Planning Authority granted on an application made in that regard.

Reason: To ensure that adequate parking/garaging provision is available.

18. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995, none of the dwellings hereby permitted shall 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.

19. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995, no buildings and no gates, walls, fences or other means of enclosure (other than as shown on the plan no. 5313.17 shall be erected on the application site without the prior written approval of the Local Planning Authority.

Reason: To ensure that any such structures are appropriate to the character and appearance of the building.

20. Prior to the first use of the site hereby permitted, details of a fume extraction system (to include extraction rates, discharge height, elevation drawings where necessary, and conditioning) shall be submitted to and approved in writing by the local planning authority and implemented in accordance with the approved scheme.

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

21. Before the commercial units hereby approved are brought into use, a scheme for the provision of external waste bins shall be submitted to and approved by the local planning authority and subsequently implemented.

Reason: To protect the local environment from undue waste and litter.

22. The development shall not be commenced until precise details of the intensity, angling and shielding, and the area of spread of the lights have been submitted to and approved in writing by the Local Planning Authority. The lights shall be

installed in accordance with these details and thereafter retained in conformity with them. The submitted scheme shall comply with the Institute of Lighting Engineers "Guidance notes for the Reduction of Light Pollution" (2000).

Reason: To preserve amenity and/or prevent danger to road users.

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

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

24. The deliveries shall be taken at or despatched from the site outside the hours of 07:30 - 23:00 hours nor at any time on Sundays, Bank or Public Holidays.

Reason: To ensure that the use does not prejudice the enjoyment by neighbouring occupiers of their properties.

25. 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 ensure the stability of the development, having regard to the comments of the British Coal Corporation (see copy letter attached).

26. Notwithstanding the originally submitted details, this permission shall relate to the amended site layout drawing no 5313.17c

Reason: For the avoidance of doubt, the original submission being considered unacceptable.

#### Informatives:

The proposed development lies within a coal mining area. In the circumstances Applicants should take account of any coal mining related hazards to stability in their proposals. Developers must also seek permission from the Authority before undertaking any operations that involves entry into any coal or mines of coal, including coal mine shafts and adits and the implementation of site investigations or other works. Property specific summary information on any past, current and proposed surface and underground coal mining activity to affect the development can be obtained from the Coal Authority. The Coal Authority Mining Reports Service can be contacted on 0845 762 6848 or at [www.coal.gov.uk](http://www.coal.gov.uk).

The following outlines items which the Environmental Health Department considers should be included in the scheme required by condition 7 above:

1. An extraction flue system should be installed which draws air from above the cooking area by use of a canopy and extraction fan. This air should pass through, as a

minimum, a grease filter (to remove the grease component of the emissions), a pre-filter (to remove any remaining fine particles from the emissions) and a carbon filter (to remove the odour component from the emissions). These filters should be cleaned and changed for new as per the manufacturer's guidelines (normally at least every 6 months).

2. The flue discharge should be at least one metre above eaves level and should incorporate a Venturi type outlet.

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

For further assistance in complying with planning conditions and other legal requirements applicants should consult "Developing Land within Derbyshire - Guidance on submitting applications for land that may be contaminated". This document has been produced by local authorities in Derbyshire to assist developers, and is available from [www.south-derbys.gov.uk/Environment/Pollution/LandPollution/contaminatedlandguide.htm](http://www.south-derbys.gov.uk/Environment/Pollution/LandPollution/contaminatedlandguide.htm)

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

You are required to contact Derbyshire County Council's Environmental Services Department (01629 580000 ext 7595) giving at least 3 months notice prior to commencing any works within the public highway.

**Item**            **1.3**

**Reg. No.**        **9/2008/0687/NGF**

**Applicant:**

Zytek Engineering Ltd  
Main Street  
Repton  
Derby  
DE65 6NZ

**Agent:**

Birch Upton Associates  
22 Ashdene Close  
Sutton Coldfield  
West Midlands  
B73 6HL

**Proposal:**        **The erection of an assembly unit at Zytek Engineering Ltd Main Street Repton Derby**

**Ward:**            **Repton**

**Valid Date:**      **25/06/2008**

**Reason for committee determination**

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

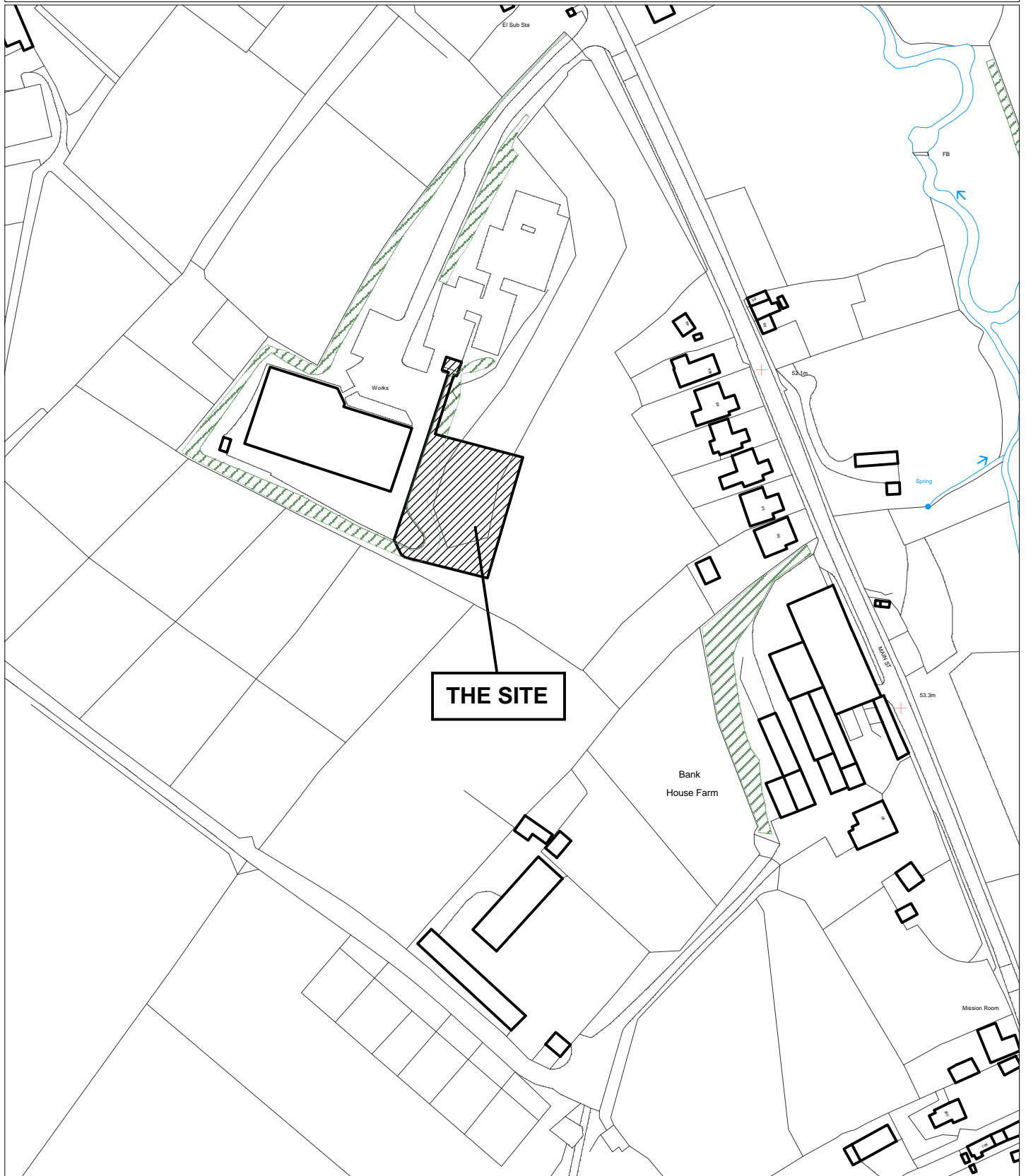
**Site Description**

The application site lies in a rural location on the edge of Repton village. The site is situated adjacent to the existing Zytek facility which occupies the site of a former Council depot, previously a quarry. Part of the site forms a landscaped screening bund approved under the original consent for the existing facility. To the southwest of the site are open fields; to the southeast is a dry valley that slopes down towards the east to the residential properties fronting onto Main Street.

**Proposal**

The applicant's propose to erect a two-storey hybrid prototype chassis assembly unit adjacent to the existing Zytek building. The proposed building would cover an area of 910m<sup>2</sup> and be split over two-levels. The height of the proposed building would be the same as the existing building measuring 6.2m to eaves and 8m to ridge and would be constructed in materials to match the existing facility. An area of the existing landscape bund would need to be removed to allow for the new building.

The number of employees on site would increase by 24 to 75 in total. The proposed hours of work would alter from that currently permitted (8am to 5pm Monday to Friday with occasional overtime on Saturday) to 6am to 10.30pm Monday to Friday and 6am to 12 pm Saturday.



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## **Applicants' supporting information**

A Design and Access Statement, supporting letter and traffic survey have been submitted in support of the application and are available for inspection on the file. The documents make the following points:

- The ZyteK Group are at the cutting edge of greener road and race car technology and are a world leader in the fields of hybrid and electric vehicle drivetrain and chassis development. This is exemplified by the electric powered Smart car developed by the Group for Mercedes Benz of which 100 of these environmentally friendly vehicles are to be provided to the Metropolitan Police.
- Due to an increased demand for research and development skills in the hybrid and electric vehicle drivetrain and chassis design and development the company are seeking to expand. The space required is more than is currently available at the company's existing facilities at Fradley and Banbury. The intention is to close the Banbury facility and concentrate the drivetrain (motors and controllers) side of the business at Fradley. Space is therefore needed to develop the drivetrains onto chassis for both road and race. It is proposed to undertake this element at Repton hence the requirement for a new building, the subject of this application.
- The proposal is intended to provide a building that meets the needs of the client, has minimal impact on its location, is of compatible design to the existing buildings on the site and is to be constructed of high quality materials that are energy efficient and sustainable.
- The location is dictated by the need to impose minimal impact on the existing environment and to interact with the existing engineering facility.
- The design will show sensitivity to the existing site and vernacular of the adjacent ZyteK building and be constructed to match the existing ZyteK building facades. The roof will be low pitched and not exceed the height of the existing ZyteK building.
- An effective indigenous tree species screen will be provided.
- The key indicators of the traffic survey are that vehicle movements to and from ZyteK in Repton represents less than 1.5% of all vehicle movements on Main Street for that day and that the existing ZyteK parking facilities are more than adequate.
- ZyteK has owned the Main Street site for nearly 20 years and is happy and settled in Repton, employing several local people with a sincere desire to expand its operation in Repton.

## **Planning History**

Planning permission for the current facility was granted in 1991 (ref 9/1190/0841). Permission was granted for an extension to the southwestern corner of the existing building and the formation of a car park in 2000 (ref 9/2000/0338).

## Responses to Consultations

The Highway Authority comment that whilst the existing access is a little below standard in terms of visibility for emerging drivers, vehicle speeds along this section of Main Street are generally restrained and there is no recent history of accidents in the vicinity. On balance the additional vehicle movements generated by the development are unlikely to result in material harm to such an extent that would justify a refusal of planning permission.

There is no evidence that the existing parking facilities are insufficient to cater for additional staff/visitor traffic.

The Contaminated Land Officer has no objections.

Environmental Health has no objection providing the noise from the new unit does not exceed the background L90 (averaged over 15 minutes) at the site boundary at any time.

The Council's Drainage Officer advises that the proposed building is sited on land which due to its contours collects surface water pluvial flows during periods of prolonged or intense rainfall and recommends a condition requiring the applicant to carry out further investigations to determine whether surface water drainage works are desirable to deal with flows. Amended plans have been received re-siting the new building adjacent to this 'valley' but it is recommended that investigations should still be carried out to ensure that flooding does not occur.

Severn Trent – response awaited and will be reported at Committee

Natural England has no objection.

The Parish Council objects as follows:

- a) The site is a greenfield site and lies outside the village envelope.
- b) The proposal is inappropriate in a rural village.
- c) The proposal is inappropriate being 30 yards away from neighbouring houses and will intrude on privacy to gardens and block light to rear windows.
- d) The village infrastructure is not suitable for additional vehicle movements. There is serious concern about the condition of The Cross, an ancient monument which is continually being damaged by large vehicles.
- e) Movement of materials and the final product and waste material will increase vehicular movements, probably at unsociable hours.
- f) Increased vehicular movements will cause traffic jams and be hazardous to schoolchildren within the village.
- g) The correct and sustainable location for such manufacturing facilities is in existing designated industrial sites along the A38 and A50 corridors.
- h) The large building will be more exposed and seen from surrounding roads and public footpaths.
- i) The area is prone to flash flooding which will be made worse.

Repton Village Society objects as follows:

- a) The development is on a Greenfield site outside of the village envelope and represents a further industrialization of what is a residential area.
- b) The present buildings on site are hidden within the former quarry; the site lines of the proposed development will have considerable visual impact on the surrounding area.
- c) Increased volume of traffic will add to an existing traffic problem within the village.
- d) Further building will add to existing flooding problems with less area for water to be absorbed.
- e) The existing drainage system is already under considerable pressure. The proposal will increase this pressure and possibility that the system will not be able to cope with the amount of surface water in bad weather.

Newton Solney Parish Council welcome the proposal which will bring additional jobs to the area but express concern regarding the use of very large vehicles to transport the finished product.

### **Responses to Publicity**

43 letters of objection have been received. The comments are summarised as follows:

- The site is a Greenfield site outside the village envelope. Allowing development would set a precedent.
- The development would be the start of industrialisation of the village.
- The siting of a large modern building on a Greenfield site in an attractive rural area is not appropriate, sustainable or environmentally correct.
- If the building of private houses is not allowed outside the village envelope why is there a different rule for Zytec?
- The village is a conservation area and should remain so.
- The proposal is not in the best interest to the long-term future of the village.
- Inappropriate use in rural village not in keeping with rural landscape.
- The proposal is in an elevated and will be visible from surrounding village.
- The site will become an eyesore when viewed from Mount Pleasant.
- The original Zytec plant in the old quarry made good use of an existing brownfield site and was hidden from view. The new building will be more exposed with the removal of a large part of the earth bank constructed to provide screening to the existing building. It would be many years before a new screen could become effective.
- The proposed building would be visible from three public footpaths in the area making it a blot on the landscape which will become more visible in winter when the trees are out of leaf.
- There is no shortage of vacant brownfield sites in the area which should be looked at if Zytec are looking to diversify their operations.
- Repton is a residential area and developments of this size and type belong on industrial estates with suitable infrastructure.
- Repton is a historic village with several Grade I listed buildings. Lorries travelling past these buildings will damage them.
- Increased traffic flow in village on an already busy road.

- There are three schools in Repton. Increased traffic will decrease the safety of these young people and create an additional safety hazard to pedestrians.
- Lorries coming through village will cause traffic jams and restrict access for emergency vehicles.
- The access roads are unsuitable for further large vehicles.
- Supplies of materials will be delivered by road and finished product shipped out along narrow, often congested roads.
- HGVs will increase pollution and add to current nuisance of high traffic levels.
- Increased hours of operation suggest shift working with increased noise and traffic disturbance.
- Light pollution to immediate dwellings and village.
- The finished height and location of the structure would affect our privacy and light.
- There is experience of flash flooding from the higher ground. Constructing an industrial building will reduce the capacity of the ground to absorb rainwater and further increase flash flooding problems.
- The new development will add to an already overburdened waste water system in Repton.
- The proposal is a threat to wildlife and their habitats.
- The new facility is a chassis assembly unit which is a change of use from ZyteK's existing operation.
- The proposed development is NOT an essential requirement for the future of ZyteK. It is not essential to have the facility next door to the existing building.
- Whilst the creation of jobs is positive the jobs are unlikely to be filled by local people.
- The planned increase by ZyteK will have little or no impact on the village or local economy.

**Amended Plans** – the deadline for consultees and responses to publicity expires prior to Committee and a verbal update will be provided at the Committee meeting.

## **Development Plan Policies**

The relevant policies are:

RSS8: Policy 1

Local Plan: Environment Policy 1 and Employment Policy 1

## **Planning Considerations**

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

- The principle of development.
- The impact on the character and appearance of the countryside.
- The impact on residential amenity.
- Highway safety.
- Wildlife
- Flooding

## Planning Assessment

The application site is in a rural location outside the main built up area of the village and Repton Conservation Area.

The regional and local planning policies identified above seek to promote and improve economic prosperity, employment opportunities and regional competitiveness by allowing for the expansion of existing industrial and business uses in both urban and rural areas providing that there is no detriment to the character of the locality or residential amenity and that the proposal does not cause environmental or traffic problems. As such development of the site is acceptable in principle subject to other material considerations.

The original proposal sited the new building at the head of the dry valley in an elevated position above Main Street. Acknowledging the concerns of local residents regarding the potential visual impact of the building the applicant has submitted amended plans re-positioning the new building closer to the existing building in order to minimise the overall impact. The amended position would involve the removal of a large section of a landscaping bund which currently screens the existing Zytek building.

The existing Zytek building is visible from the public footpath that runs from Mount Pleasant to the northeast of the site. The new building would also be visible from this footpath. The amended position of the new building is better related to the existing building and would appear as an extension to this building. There would be partial views of the rooftop from the public footpath to the south of the site. Views of the new building from Main Street would be obscured by the existing residential properties along this road. On balance the proposal is not considered to be of undue visual harm particularly when viewed against the farm buildings situated in an elevated position to the southeast of the site.

The land slopes upwards from Main Street towards the application site. The floor level of the new building would match that of the existing building which is situated some 6.5m above the ground level of the residential properties to the east of the site on Main Street. The nearest rear boundary of these properties is 50m away from the proposed building with the nearest rear elevation being some 70m away. In view of the distance from the new building to these properties there is not considered to be any significant adverse impact on the amenity of these properties. (Whilst there is no guidance on minimum distances between offices/employment buildings and residential properties, if we were considering residential to residential the minimum distance would be 21m increased to 25 to account for a variation in levels) Whilst it is acknowledged that the new building is in a more visually prominent position than the existing building in relation to these properties a more comprehensive landscaping scheme than indicated on the submitted plans would assist in mitigating the potential impact and could be dealt with by condition.

The existing facility has operated without causing undue disturbance to local residents and the control over noise recommended by Environmental Health would ensure the amenity of neighbours would be protected.

The traffic survey submitted with the application suggests that whilst there will be an increase in the number of cars and vans visiting the site there will be no increase in the number of lorries. The Highway Authority advises that on the basis of the information

submitted the additional vehicle movements generated by the development are unlikely to result in material harm to the extent that would warrant a refusal on this basis. The amended siting of the proposed building replaces the previously proposed additional parking spaces on site. Although the Highway Authority has some concern regarding the absence of additional car parking there is no evidence to suggest that the existing facilities are insufficient to cater for any increase in staff/visitor traffic associated with the new development.

Natural England has no objection to the proposal and satisfied that there is no adverse affect on wildlife within the vicinity of the site.

A condition requiring further investigation into the impact of the proposed development on surface water drainage and the submission of a scheme as necessary will address potential flooding issues.

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. Notwithstanding the originally submitted details, this permission shall relate to the amended drawing nos. 01A, 02A and 03A received 6 August 2008.  
Reason: For the avoidance of doubt, the original submission being considered unacceptable.
4. The level of noise emanating from the site shall not exceed the background L90 (averaged over 15 minutes) at the site boundary at any time.  
Reason: In the interests of the amenities of the occupiers of nearby dwellings.
5. Prior to the commencement of the development a scheme, including cross sections, detailing the level of proposed excavation and measures to be implemented for the disposal of excavated material shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented in accordance with the agreed details prior to the first occupation of the new building.  
Reason: In the interests of the appearance of the site.

6. 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.
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. Further to condition 7 above, soft landscape details shall include planting plans; written specifications including cultivation and other operations associated with plant and grass establishment; schedules of plants (noting species, plant sizes and proposed numbers/densities where appropriate) and the implementation programme.
- Reason: In the interests of the appearance of the area.
9. All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed with the Local Planning Authority.
- Reason: In the interests of the appearance of the area.
10. The development shall not be commenced until an Engineers report to identify whether a surface water drainage scheme is required to deal with surface water flows has been submitted to and approved in writing by the Local Planning Authority. This should include flows from the proposed structure and existing flows from adjacent land.
- If a scheme is identified this shall be approved by the Local Planning Authority and implemented in accordance with the conclusions of the report unless the Local Planning Authority dispenses with any such requirement specifically and in writing
- Reason: In the interests of flood protection.
11. The hours of work shall be 6am to 10.30pm Monday to Friday and 6am to 12pm Saturday. There shall be no working on Sundays or Bank Holidays.
- Reason: In the interests of the amenities of the area.
12. Notwithstanding the development hereby permitted there shall be no floodlighting on the site.
- Reason: In the interests of the amenity of the area.

**Item**                **1.4**

**Reg. No.**        **9/2008/0704/FH**

**Applicant:**

Mr Willis Ian Brown  
The Old Rectory  
Church Road  
Egginton  
Derby  
DE65 6HP

**Agent:**

Mr D M Rickard  
The Orangery  
10 Church Road  
Egginton  
Derby  
DE65 6HP

**Proposal:**        **The retention of the vehicle and garden implement store with an addition of an upper floor door, spiral stairway, two small windows and one small roof light at Old Rectory Church Road Egginton Derby**

**Ward:**                **Etwall**

**Valid Date:**        **02/07/2008**

**Reason for committee determination**

The applicant is related to an elected member of the Authority.

**Site Description**

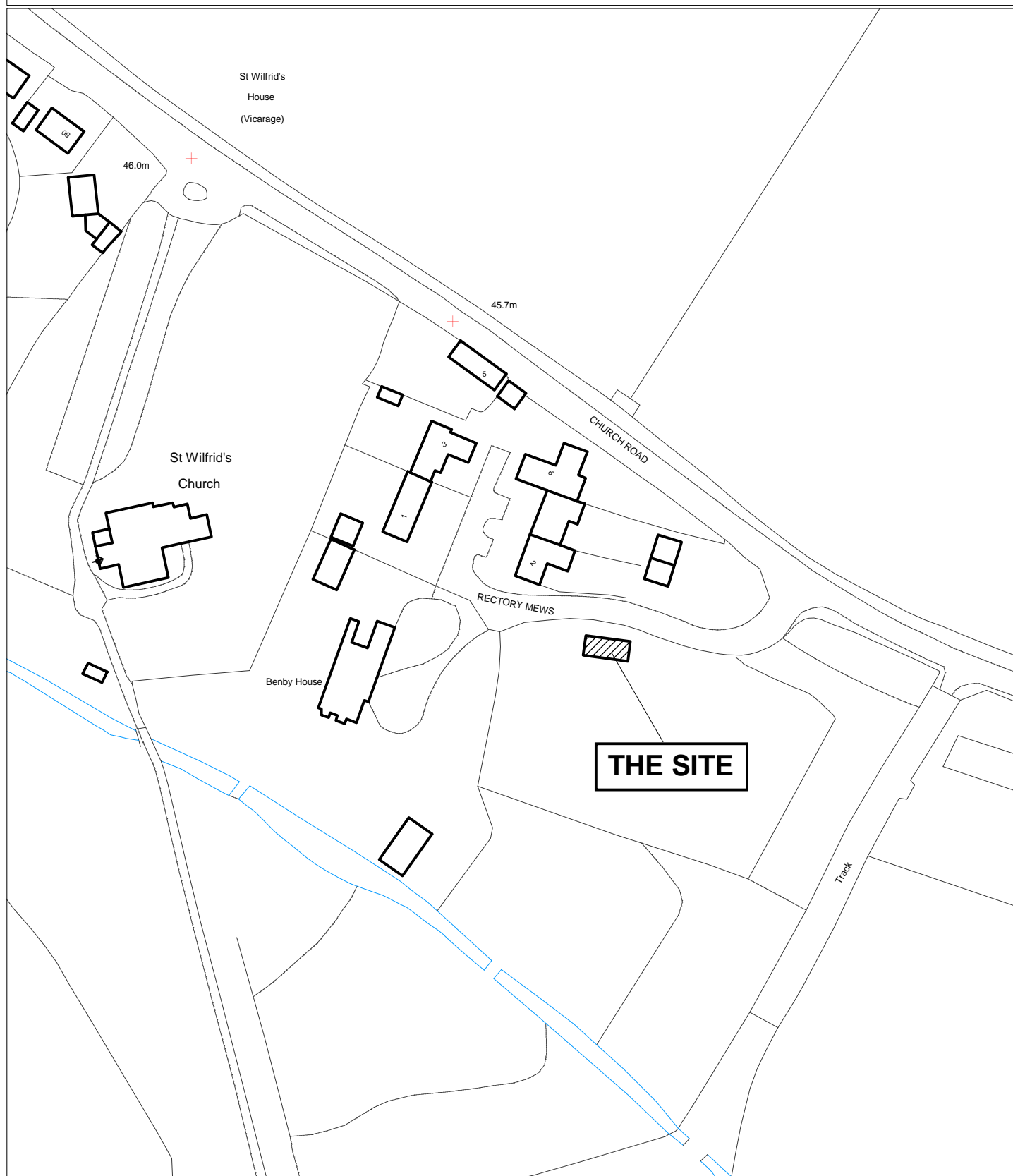
The building lies in the grounds of the Old Rectory and is under construction adjacent to the drive to the barn conversions and new dwellings known as Rectory Mews. There is no wider public access to the drives that serve the development. Separated from the application site by the original drive to the Old Rectory, is a dwelling that has windows that look towards the application site. On the application site is a laurel hedge with deciduous tree planting behind that separates the structure from the drive. There is a low fence in the vicinity of the habitable rooms to windows in the kitchen, side lounge window and conservatory of the immediately adjacent dwelling. No other properties are directly affected by the building.

**Proposal**

The need for planning permission has arisen because the height of the building now exceeds that when planning permission is not required. Since the application was submitted, it has been amended so that there would be one roof light in the south facing roof slope. The type of roof light has also been specified.

**Applicants' supporting information**

The height of the structure would now be 4.8 metres. This was necessitated by the need to ensure that the Staffordshire roof tiles were weather proof. This application also differs from the original proposals in that it is now intended to make use of the roof



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space in the structure for storage purposes. To this end a spiral staircase is proposed on the west side of the building together with a door. Two windows are proposed in the east end and there is a single roof light as referred to above.

The applicants contend that the structure has little impact on the character and setting of the listed building and have submitted photographs to support this contention, arguing that the laurel hedge and trees adequately screen it from the house.

In respect of the views from neighbour's dwellings, the only view it is argued is of the apex of the roof and this view would be further mitigated when the tiles are put onto the roof when it would become 'lost' amongst the vegetation. It is also argued that the neighbour's dwelling has been opened up to views by their own actions to views by persons using the drive to Rectory mews.

Given that the ground floor is entirely open, it would allow floodwaters to pass through should the land flood albeit that the structure is sited at a high point in the site and a previous hardstanding has been removed and the land returned to a permeable state thus improving ground water drainage.

The raising of the roof height would match more closely the character of the structure relative to its neighbours and it is hoped that the addition of the spiral staircase would add a sympathetic detail to the simplicity and austerity of the building's design. The new windows are to provide light and ventilation to the upper floor and would be unobtrusive and not overlook any neighbour.

In response to a request to resite the spiral staircase to the east side of the building, the applicant has responded as follows:

With respect to the location of the spiral stairway, it is proposed to locate this at the west end of the vehicle store as the east end provides an essential turning space for vehicles and additional parking. It is proposed to comprehensively landscape the west elevation with mature evergreens and conifers, which would effectively mass up with the existing, maturing and reasonably dense tree screen, to provide an all year round comprehensive screening - so mitigating any potential for overlooking. In addition, the roof void of the vehicle store will be accessed only infrequently and very occasionally via a boarded door.

From the photographs included in the application pack, you will see that the neighbour has considerably lowered a boundary fence and hedge, so that any casual visitor or resident of Rectory Mews using the main driveway and access to this group of dwellings, is able to comprehensively look into the main habitable rooms of this dwelling on a daily basis. Clearly and historically therefore, it would appear that privacy has not been an issue or concern for the occupiers. Nevertheless, we have no wish to add to any concerns over intrusion or privacy and therefore suggest that the additional proposals for planting and the infrequency of use of this non-dwelling "store" will offer reassurance and comfort to the neighbour.

## **Planning History**

The original structure was part of a proposal to form a separate drive to the Old Rectory. The houses on Rectory Mews were granted planning permission in the early 1990's.

## **Responses to Consultations**

Egginton Parish Council has no objection. It noted that the Chair of the Parish Council took no part in the discussions about the application.

## **Responses to Publicity**

One objection has been received that makes the following points:

- a) There has been no public consultation as stated on the application form.
- b) The trees that would screen the development are deciduous and would not act as a screen in the autumn and winter.
- c) It is not clear what type of machinery is to be stored in the building
- d) The building has been sited to minimise the impact on the Old Rectory and imposes an adverse impact on the neighbours.
- e) The applicant should have been aware that a 45° pitch was necessary and this suggests that the intention was always to use the roof space for storage.

## **Development Plan Policies**

The relevant policies are:

Saved Local Plan: Environment Policy 13

## **Planning Considerations**

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

- The Development Plan
- Impact on the Listed Building
- Impact on neighbours.

## **Planning Assessment**

The development is in general conformity with Development Plan policies and subject to scheme being permitted in accordance with a single roof light as accepted by the applicant the development and the recommended conditions it is considered to conform to Development Plan policy. The view of the roof from the adjacent house would be mitigated by its cladding with the Staffordshire Blue tiles that have received the approval of the Design & Conservation Officer.

The concern of the neighbour about the spiral staircase is to some extent justified. A person at the top of the spiral staircase would have clear views down into habitable accommodation in the neighbour's dwelling; photographs from the neighbour's property will be displayed at the meeting to demonstrate this.

The applicant was asked to amend the scheme so that the spiral staircase was located at the east end of the structure so that any views would be obscured by the building itself and the response is set out in the 'Applicant's Supporting Information above.

In summary, the applicant considers that as the staircase would be used infrequently and that it is proposed to plant evergreen species to add to the existing planting there should be no adverse impact on the neighbours, as any such views would be screened.

Until such time as the evergreen trees become established, there would be views from the top of the staircase down into the windows of the adjacent dwelling. The applicants have planted significant numbers of trees before this structure was constructed that do mitigate the visual impact of the structure that is located some 15 metres from that dwelling. Further evergreen planting would take time to become established but would ultimately screen the views of the windows. It is accepted that the potential use of the staircase would be limited, particularly if the use of the upper floor was restricted to storage associated with the occupiers of The Old Rectory by condition. There would be little or no prospect of persons lingering at the top of the stairway with the intent of staring into the rooms of the neighbouring dwelling. Accordingly the applicant's case for the staircase on the west elevation is accepted subject to the planting of evergreen trees as suggested by the applicant.

Subject to the amendments and the recommended conditions, the retention of the building 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. Notwithstanding the originally submitted details, this permission shall relate to the scheme as amended by your e-mail dated 28 July 2008 and relates to the insertion of 1 No rooflight in the south roof slope of the building comprising a 'CR8' provided by the Rooflight Company and measuring 615mm x 875mm. The precise location for the rooflight shall be agreed in writing with the Local Planning Authority before the works are recommenced and the rooflight shall then be implemented in accordance with the agreed details.  
Reason: For the avoidance of doubt, the original submission being considered unacceptable.
3. The external metal frame, timber boarding, fascias and joinery shall have a matt black appearance unless otherwise agreed in writing by the Local Planning Authority.  
Reason: In order to ensure that the appearance of the structure is in keeping with its setting in the grounds of a Grade II Listed Building.
4. Before works are recommenced a scheme for the planting of evergreen trees species shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented prior to the first

occupation of the first floor storage accommodation in the building hereby permitted.

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

5. All planting comprised in the approved details shall be implemented in accordance with the above timetable and any trees that within a period of five years from the occupation of the first floor storage accommodation 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.

6. No part of the building hereby permitted shall be separated from the ownership of The Old Rectory, Rectory Mews, Egginton Derbyshire. The building shall be used solely for the purposes as described in your application unless the Local Planning Authority has granted planning permission for an alternative use in response to a planning application made in that regard.

Reason: In order to ensure that the use of the storage accommodation is limited in the interests of the amenity of the occupiers of nearby dwellings.

7. Notwithstanding any details submitted, precise details of the type, size and position of the proposed rooflight shall be submitted to and approved in writing by the Local Planning Authority. The approved rooflight shall be fitted such that its outer face is flush with the plane of the roof, unless otherwise agreed in writing with the Local Planning Authority.

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

**Item**                **2.1**

**Reg. No.**        **9/2008/0749/FM**

**Applicant:**

Mr Mrs John Tivey  
Long Lane  
Dalbury Lees  
Ashbourne  
Derbyshire  
DE6 5BJ

**Agent:**

Mrs Sylvia Harris  
Anthony Short & Partners  
34 Church Street  
Ashbourne  
Derbyshire  
DE6 1AE

**Proposal:**        **The erection of a dwelling at Thurvaston Stoop Long Lane Dalbury Lees Ashbourne**

**Ward:**            **North West**

**Valid Date:**     **24/07/2008**

**Reason for committee determination**

Councillor Bale has requested that Committee determine this application, as there are special personal circumstances of the applicant, which Members should consider.

**Site Description**

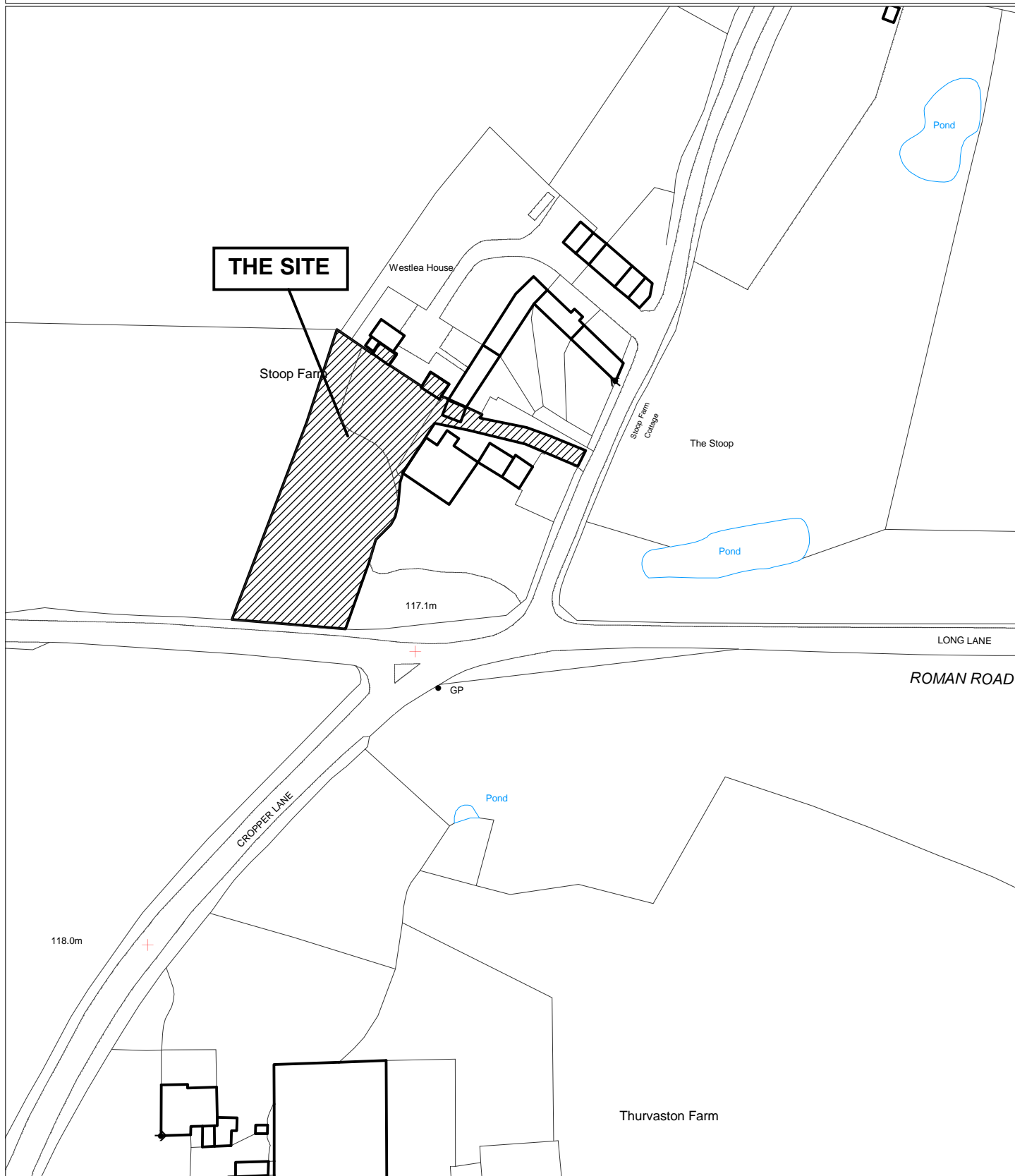
The site occupies part of the garden to Thurvaston Stoop. The site has a substantial hedge and trees along part of the west boundary but the area where the dwelling would be located is open albeit that a holly hedge/trees has recently been severely pruned and is now regenerating for part of this site. The north boundary is formed by the outbuildings and gardens to the barn conversions whilst the south and east boundaries are open to the rest of the house curtilage.

**Proposal**

The proposal is to build a purpose-built dwelling to accommodate the personal needs of one of the applicants who is confined to a wheelchair. Whilst there is accommodation proposed in the roof space of the dwelling, this would be used to accommodate visitors/family. Access to the site would be via the existing drive to Thurvaston Stoop that would be widened to allow two vehicles to pass one another.

**Applicants' supporting information**

A letter from the applicants' doctor supports the application in which it is stated that there is full backing for the applicants' case. There is no prospect for an improvement to the health of one of the applicants who is confined to a wheelchair and is likely to remain so for the rest of his life. Easy access provided by a single storey dwelling with wheel chair friendly spaces would improve the situation for the applicants, particularly his wife who is a full time carer. They are unable to cope in the existing house.



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The applicants bought the property some 20 years ago. Recently a rare debilitating disease that has left one of the applicants entirely dependant on a wheel chair. The existing house has been temporarily adapted to take account of his needs but the house does not lend itself to permanent adaptations. Indeed the costs of adaptation would be significant for very little benefit. The current house is too large for the applicant's needs and with the large garden, is no longer suitable for the applicants and they consider it would be better used as a family dwelling.

One of the applicants requires long periods of bed rest but also likes to cook and make use of his computer. It is the body that is affected by the illness not his mind. A new dwelling would enable the applicant to live a better life whilst allowing more freedom for the carer and not putting a significant drain on savings.

It is stated that a farm building used to occupy the site of the proposed dwelling, a map extract from the 1970's is submitted to prove the point. It is claimed that had the building remained in position it is likely that it would have been converted to residential use along with the remaining farm building. Evidence of the presence of the building has been found when gardening has taken place but it is accepted that the building no longer exists. However, it is requested that the current case be viewed as an exceptional one rather than just receiving blanket consideration. No other persons would be affected by the erection of the dwelling and to deny the applicants the right to a purpose-built home that would improve their quality of life seems harsh.

The dwelling has been designed to have the appearance of a barn conversion with spacious accommodation to cater for the wheel chair. The height of the building has been kept to 1.5 storeys and the materials would match the existing barn conversions. It has been designed to take account of the views available to the west that is particularly important when bed rest is required. It also helps to control the aspect of the dwelling so there is no overlooking of Thurstaston Stoop.

It is acknowledged that bats are present at the site and the applicants would work with English Nature to ensure that roosts are not adversely affected. A letter from English Nature to the applicants accompanies the application. Highways issues have been addressed but full compliance with the County Highway Authority requirements is not possible. The County Highway Authority is undertaking speed-readings but the results are not yet available.

It is asserted that over the years, the width of the junction onto Long Lane has been extended due to over-running so it is in effect wider than it appears on the plans.

The applicants undertook pre-application discussion with the Area Planning Officer and the proposals have been drawn up to take account of those discussions. However it is recognised that the proposal does not fall in line with planning policy and that the only way to test the personal circumstances issue is to make the planning application.

## **Planning History**

There is no planning history for this site.

## **Responses to Consultations**

The County Archaeologist has no comment, as it is unlikely that the development would affect archaeological remains.

The County Highway Authority has objected to the development as submitted as there is insufficient information to ascertain if a satisfactory access can be provided.

## **Responses to Publicity**

Any responses will be reported at the meeting.

## **Development Plan Policies**

The relevant policies are:

RSS8: Policies 1,2, 3, 4, 6 and 30

Saved Local Plan Policies: Environment Policy 1, Housing Policy 8

## **Planning Considerations**

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

- Development Plan Policies and Government advice
- Personal circumstances
- Highway considerations.

## **Planning Assessment**

Development Plan policies strictly control development in the countryside to preserving the countryside from unnecessary housing development. Exceptions are permitted to meet the needs of established rural businesses and with regard to housing it is usually limited to meeting the requirements of agricultural enterprises. The replacement of existing dwellings is also a means of building new dwellings in the countryside.

Government advice in PPS 1 is that new development should aim at protecting and enhancing the natural and historic environment, the quality and character of the countryside, and existing communities. The erection of new dwellings in isolated countryside locations does not conform to countryside protection policies or the tenet of Government advice.

Whilst one can have sympathy with the personal health circumstances of the applicant, planning policies seek to protect the countryside from unnecessary housing development. Houses are present for a long time after the particular personal circumstances of an applicant no longer apply and the result is an unjustified dwelling in the countryside that is detrimental to the character of the area. Financial considerations, although important to applicants, are not a material planning consideration.

The planning policy considerations are paramount in this case. At the time of writing the response from the Highway Authority had not been received and will therefore be reported verbally at the meeting.

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**

**REFUSE** permission for the following reason:

1. In the countryside new housing development is limited to that which meets the needs of established rural enterprises, usually agricultural workers dwellings. Accordingly, for a dwelling to be permitted there has to be a reasoned justification for it to be located in the countryside and that the business it is intended to support should have a viable long-term future. In this application the case for the dwelling is based on the personal needs of the applicant to meet a long-term debilitating illness. Whilst there is sympathy for the personal circumstances of the applicants the justification for the dwelling is not sufficient to outweigh the normal presumption against housing development in the countryside and the erection of a house in this location would represent an unwarranted intrusion into the countryside to the detriment of the rural character of the area.
2. The application documents as submitted contain insufficient information to allow a proper assessment of the safety of the access.

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

<b>Reference</b>	<b>Place</b>	<b>Ward</b>	<b>Result</b>	<b>Cttee/delegated</b>
9/2007/0575	Midway	Midway	Dismissed	Delegated



# Appeal Decision

Inquiry held on 23 & 24 April and 11 July 2008

Site visit made on 11 July 2008

by **Simon Rawle** BA (Hons) Dip TP MRTPI  
Solicitor

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

The Planning Inspectorate  
4/11 Eagle Wing  
Temple Quay House  
2 The Square  
Temple Quay  
Bristol BS1 6PN

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**Decision date:**  
**11 August 2008**

**Appeal Ref: APP/F1040/A/07/2053566**

**529 & 543 Burton Road, Midway, Swadlincote, DE11 0DQ**

- 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 Bovis Homes Ltd, Jengate Ltd, C & P Owen and C & G Harvey against the decision of South Derbyshire District Council.
- The application Ref 9/2007/0575/MR, dated 9 May 2007, was refused by notice dated 10 August 2007.
- The development proposed is for 23 dwellings with associated garages, highways and infrastructure.

## Procedural Matters

1. It was necessary to adjourn the Inquiry. During the adjournment, the appellants produced an additional plan which showed the position of all trees to be removed/retained. The details of this plan were reflected on a revised landscape plan. Some species on this plan were also revised. In addition, a revised plan showing the proposed parapet/retaining structure along Burton Road was also submitted. These plans were subject to re-consultation. Given that fact and bearing in mind that the proposed changes did not result in major amendments to the scheme, I consider that no-one would be prejudiced by me accepting these revised plans as appeal plans and I have determined the appeal on that basis.
2. In addition, I have received an executed unilateral undertaking. This provides for the provision of various contributions towards National Forest planting, off site open space and education. I have afforded this document significant weight in the determination of the appeal.

## Decision

3. I dismiss the appeal.

## Main issues

4. I consider that the main issues in this case are;
  - Whether the proposed development would have an adverse impact on the character and appearance of the area with particular regard to the impact on protected trees;

- Whether the proposal would have an adverse impact on the living conditions of local residents; and
- Whether affordable housing should be provided as part of the proposal and if so whether satisfactory arrangements are in place to secure such accommodation.

## **Reasons**

### *Character and Appearance*

5. The development plan includes those saved policies contained within the South Derbyshire Local Plan adopted in 1998. Housing Policy 4 indicates that housing development within or on the fringes of Midway will be permitted subject to meeting certain criteria, including that the proposal would not involve the development of open spaces, gaps and landscape features which make a valuable contribution to the character or the environmental quality of the area. The appeal site is located within the National Forest. Environment Policy 10 seeks to ensure that any proposed development within the forest does not conflict with other proposals of the local plan and is accompanied by appropriate tree planting. Amongst other things, Environment Policy 9 sets out that development which would lead to the loss of areas of woodland or specimen trees of value to their landscape setting will not be permitted.
6. The appeal site comprises the domestic curtilages to two large residential properties. The character and appearance of the appeal site can be divided in two. The northern area closest to Burton Road comprises formal planted areas, lawns and a tennis court as well as some domestic buildings. The southern portion of the site comprises an area of unmanaged grassland planted with a number of semi-mature trees. The Council accept that the northern portion of the appeal site is an appropriate location for residential development and I agree.
7. Both prior to and during the Inquiry both parties outlined their respective view on the character and appearance of the southern part of the site and there is considerable disagreement between the parties in relation to the value of the southern part of the site and more particularly about the amenity value of the existing trees in this part of the site. Both parties used different methods to assess the amenity value of the trees. Notwithstanding each party's criticism of the others method, what is important is whether the conclusion reached reflects accurately the amenity value of the southern part of the appeal site.
8. Although there are a number of individual and groups of trees throughout the site which are protected by a Tree Preservation Order, the Council are concerned about groups G6, G7, G8 and G9. Having heard the evidence and visited the site I agree that these groups of trees are the most relevant and although I have considered the character and appearance of the existing site in its entirety I have paid particular regard to these groups of protected trees.
9. As outlined above, during the adjournment the appellants produced a detailed plan which clearly highlighted those trees which would be removed and those that would be retained. The vast majority of protected trees in the southern part of the site would be removed with only some of the trees nearest the

boundary retained. To my mind the impact on the character and appearance of the area would be dramatic and undoubtedly detrimental.

10. At present this part of the appeal site has the appearance of a pleasant wooded area which already makes a positive contribution to the character of the area. I have no hesitation in concluding that this part of the appeal site makes a valuable contribution to the character and the environmental quality of the area and as such is just the sort of area that the relevant policies of the development plan seeks to protect. Notwithstanding that in the future woodland management will be required and some of the existing trees will be thinned and disease will strike down some other trees, over time this area will further mature and will further enhance the area.
11. I accept that there is no public access to the appeal site. However, the value of this area can be appreciated from the adjacent public open space and is particularly important when viewed from the residential area to the south where the depth of the area of trees can clearly be appreciated.
12. I have taken full account of the whole package of works associated with the proposal. These include the proposed landscaping proposals and the National Forest contribution, which could pay for a large number of replacement trees to be planted elsewhere, possibly within the adjacent open space. I have also taken account of the fact that some of the existing species of trees are not appropriate within an urban area. However, I cannot agree with the appellants that there would be a qualitative gain as a result of the totality of the development proposals. Rather, the loss of the trees and their replacement with a residential development would have a significant adverse impact on the character and appearance of the area and any benefits associated with the proposal would clearly be outweighed by the harm caused to the area.
13. In accordance with the objectives of national planning advice, although the site would not be developed at a particularly high density it would undoubtedly make more efficient use of previously developed land within an existing residential area in comparison to the existing situation. This weighs in favour of the proposal. However, the objectives of making more efficient use of land should not be at the expense of other objectives. Contrary to the advice contained within *Planning Policy Statement 3: Housing (PPS 3)* and *Planning Policy Statement 1: Delivering Sustainable Development (PPS 1)*, the proposal would not contribute positively to making this particular place better for people. Moreover, the proposed development would fail to integrate with or complement the local area and would fail to take the opportunity that this site provides to improve the character and quality of the area.
14. I therefore conclude that contrary to the objectives of Housing Policy 4, the proposal would involve the development of an attractive wooded area which makes a valuable contribution to the character and the environmental quality of the area. Moreover, contrary to Environment Policy 9 the proposed development would lead to the loss of an area of woodland which has significant value to this particular setting. The fact that the proposal would result in the loss of protected trees within the National Forest reinforces my view that the proposal would be entirely incompatible in this location.

### *Living Conditions*

15. Having visited the appeal site and carefully considered the evidence I consider that the only residents that could potentially be adversely affected by the proposal are the occupants of No. 9 Milton Avenue. This property has a kitchen window in the flank wall facing the appeal site. As requested I viewed the appeal site from this property. Housing Policy 11 seeks to protect the living conditions of neighbouring residents. I have also had regard to the advice contained within the Housing Design and Layout Supplementary Planning Guidance on separation distances. This advises that first floor bedrooms should be located 18 metres from kitchen windows of a neighbouring property. Although, the existing window is a side window, it is the only window serving the kitchen and therefore unacceptable overlooking of this room should be avoided. However, the guidelines assume a relatively level topography and little or no screening. I observed that there is screening between No. 9 and the proposed position of the nearest plots. Notwithstanding the significant difference in levels the existing vegetation combined with appropriate boundary treatment (which could be secured by condition) would ensure that direct views from the upstairs bedrooms would not cause such an unacceptable loss of privacy as to justify dismissing the appeal.
16. In addition, although the proposed houses would be located at a higher level than No. 9, as they would be set back from the common boundary by a minimum of about 9 metres the proposal would not appear overbearing when viewed from this neighbouring property.
17. I therefore conclude that the proposal would not have an adverse impact on the living conditions of local residents and consequently the proposed development would accord with the objectives of the relevant development plan policy and the SPG that deals with this matter.

### *Affordable Housing*

18. Local Plan Housing Policy 9 is a saved policy which deals with affordable housing. This sets out that housing development will be subject to negotiation between the local planning authority and developers to provide a proportion of affordable housing for rent or sale. This general advice is undoubtedly a material consideration and accords with national planning advice. The explanatory text in support of the policy refers to Circular 13/96 and is very outdated. It advises that during 1997/1998 the Council intended to undertake a needs survey and to prepare supplementary planning advice. It also sets out that arrangements will also be put in place to monitor the situation on a regular basis. At that time, in relation to, amongst others, Housing Policy 4, the explanatory text set out that within the urban area of Swadlincote affordable housing will be sought on sites of 1.5 hectares or more (40 dwellings).
19. Much more recently, national planning advice contained within Planning Policy Statement 3 – Housing (PPS 3), sets out that the national indicative minimum site size threshold should be 15. The question of weight is important. Housing Policy 9 has been saved. However, the Direction Letter specifically set out that extended policies should be read in context and where policies were adopted some time ago it is likely that material considerations, in particular the emergence of new national and regional policy and also new evidence will be

afforded considerable weight in decisions. Specific reference is made to PPS 3. The appellants accepted at the Inquiry that PPS 3 should be afforded more weight than the local plan. I agree.

20. However, that is not the end of the matter. PPS 3 also sets out that local planning authorities will need to undertake an informed assessment of the economic viability of any thresholds and proportions of affordable housing proposed. In terms of the need for affordable housing, it is common ground between the main parties that although further work was required in relation to the Housing Needs Survey, there was an affordable housing shortfall within South Derbyshire.
21. This is of course an important material planning consideration. I accept that the Council have not undertaken a full assessment of the economic viability of their preferred threshold of 15. This is unfortunate and clearly more work has to be done. However, to my mind this is not fatal to the Council's case in relation to the provision of affordable housing. The circumstances in relation to affordable housing have dramatically changed since adoption of the local plan. The explanatory text in support of Housing Policy 9 is so outdated that very little weight can be afforded to it. That said, the advice contained within the policy itself is still relevant, as this sets out that whether or not affordable housing should be provided on a particular site should be subject to negotiation. Given, the fact that there is clear need for affordable housing within South Derbyshire and that the advice contained within PPS 3 clearly outweighs any guidance found within the local plan, I consider that the starting point in any such negotiation should be a threshold of 15.
22. It would appear to me that the appellants have failed to engage in any meaningful negotiation on the need for affordable housing and have justified that stance on the contents of the local plan. However, such an approach would result in an unacceptable policy vacuum at a time when there is a clear need for affordable housing. No evidence has been presented which indicates why in viability terms, affordable housing should not be provided on the appeal site.
23. Although, I do not consider that the Council have adequately justified the need to provide affordable housing provision at 40% on this particular site, I have formed the clear view that there is a need for an element of affordable housing. Given that satisfactory arrangements have not been put in place to secure such accommodation, the proposal conflicts with national planning advice which deals with affordable housing. This significantly adds to my concerns in relation to this proposal.
24. In reaching that view I have taken account of previous planning appeals that have been brought to my attention and which have dealt with this issue. A number of these pull in different directions. In each case there are some similarities with this appeal, but also significant points of difference. My colleagues' analyses in those cases have been helpful but I have considered this appeal on its own individual merits. In particular, in relation to the cases within Mapperley and Leicester (relied on by the appellants) it is evident that unlike here, the relevant local plan policies were adopted quite recently in 2005 and 2006 respectively. Therefore, the planning policy context in those cases is entirely different to this case which lessens their weight as material planning considerations.

## **Conclusion**

25. I have found that the proposal would not have an adverse impact on the living conditions of neighbouring residents. However, this is outweighed by the fact that the proposal would have an adverse impact on the character and appearance of the area and that satisfactory arrangements have not been put in place to secure an element of affordable housing on the site. For this reason I conclude that the appeal should be dismissed.

*S.M Rawle*

INSPECTOR

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Mr Christopher Young of Counsel	Instructed by South Derbyshire District Council.
He called	
Miss Alison Briggs BSc (Hons) DipTP MRTPI	South Derbyshire District Council.
Mr Peter Wood BSc (Hons) DipLA MLA	South Derbyshire District Council.
Mr Robert Line BSc FCIH MBA	B.Line Housing Information Ltd on behalf of South Derbyshire District Council.

### FOR THE APPELLANTS:

Mr Hugh Richards of Counsel	Instructed by Mr Herrod of Bovis Homes Ltd
He called	
Mr Ian McDermott Dip Arb (RFS)	McDermott and Associates, Treecare, 148 Hydes Road, Wednesbury, West Midlands, WS10 0DR
Mr Barry Moore BA (Hons) DipLD MLI FIHT	Moore Environment, Griffin House, 9 Coventry Road, Coleshill, Birmingham, B46 3BB
Mr Michael Downes MA BPI MRTPI	Antony Aspbury Associates, 20 Park Lane Business Centre, Park Lane, Nottingham, NG6 0DW

### INTERESTED PERSONS:

Mr David Sheridan	464 Burton Road, Midway, DE11 0DW
Miss Stork	44 Audens Way, Midway, Swadlincote

## DOCUMENTS

- 1 Statement of Common Ground
- 2 Previous Appeal Decision – 100 Havelock Street
- 3 Bundle of 5 previous appeal decisions
- 4 Summary of Proof of Evidence of Alison Briggs
- 5 Shade Analysis – Patrick Stileman Ltd
- 6 Committee Report and planning permission for a site at Chestnut Avenue, Midway
- 7 Opening Submissions – The appellants
- 8 Tree Retention/Removal Plan (Plots 11,12 and 13)
- 9 Guidance Note 4 – Amenity Valuation of Trees and Woodlands
- 10 Draft and Executed Unilateral Undertaking
- 11 Covering Letter dated 23 June 2008, enclosing letter to the Council dated 17 June, revised landscape proposals, tree retention/removal plan 2 and revised proposals for parapet/retaining structure.
- 12 Copies of letters from 6 interested parties (one on main proposal and five on amended plans)

- 13 Previous Appeal Decision – Temple Road, Dorridge
- 14 Extract from Local Plan
- 15 Extract of Companion Guide to PPG 17
- 16 Updated List of Agreed Conditions
- 17 Supporting Information and proposed condition in relation to concern about impact of proposal on the retaining wall of 12 Milton Avenue.
- 18 List of Landscape Proposal changes
- 19 Closing Submissions – The Council
- 20 Closing Submissions – The appellants