

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).

1. PLANNING APPLICATIONS

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

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9/2009/1017	1.1	Swadlincote	Swadlincote	1
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When moving that a site visit be held, Members will be expected to consider and propose one or more of the following reasons:

1. The issues of fact raised by the Head of 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. 9/2009/1017/MRF

Applicant:
Mr Andrew Hine
George LB
Clifton Square
Clifton Street
Alderley Edge
Cheshire

Agent:
Mr Phil Clay
FJ Architects Ltd
Southgate House
Southgate
Wakefield

Proposal: **The Demolition Of The Existing Food Retail Unit And The Construction Of A Retirement Apartment Complex Comprising 60 Apartments, A Warden's Apartment And Communal Facilities Together With Associated Car Parking/Communal Gardens At Kwik Save Alexandra Road Swadlincote**

Ward: Woodville

Valid Date: 14/12/2009

This application was deferred for a site visit at the 2nd March Committee. ***The report has been updated with comments in bold italics.***

Reason for committee determination

The application is brought before the Committee as this is a major application that has attracted more than two letters of objection.

Site Description

This 0.57 hectare site is located to the south west of Swadlincote town centre on Alexandra Road. There is an existing single storey flat roof former Kwik Save building in the northern part of the site with an access road adjacent to the row of shops on the northern boundary of the site. The car park covers the remainder of the site and there is shrub land adjacent to parts of the western boundary. There is a single storey office building adjacent to the southern boundary, residential properties to the west and north west and a row of shops to the north. Sharpes Museum is to the north east and there is a public long-stay car park opposite. The Swadlincote Conservation Area boundary adjoins the site to the north, east and south (although the site is not within it).

There are twenty four trees on the site, the majority of which are adjacent to the northern and south western boundaries. There are two mature False Acacia trees on the site frontage. The land levels of the site reduce to the north with the southern boundary being four metres higher than that of the northern boundary.

Proposal

Planning permission is sought for the replacement of the Kwik Save building with a retirement apartment complex of 61 apartments. This comprises of 52 one bedroom apartments and 9 two bedroom apartments including a two bedroom apartment for a warden. The building would be predominately two storey with rooms in the roofspace of the central section on Alexandra Road. The complex would be a 'U' shape with an enclosed garden area to the west. The access road would be adjacent to the northern boundary and the car park to the west, where 20 spaces are proposed with four disabled spaces.

The building would have 35 degree gable roof pitch which would step down in sections as the land levels reduce to the north. The building would be hard up to the footpath and the frontage onto Alexandra Road would appear as a residential terrace to reflect the character of properties to the south on Alexandra Road. A gable end would be visible from the south and the mass of the roof is reduced by a lower section which links to a further section of what appear to be a row of terrace properties adjacent to the southern boundary. The elevations are further broken up and appear individual sections by the use of variable vertical cladding features that frame the windows.

The north eastern corner of the building would have a chamfered edge with a large section of curtain walling framed by timber cladding. The roof would overhang this section, supported by steel supports. This corner section would provide communal space for the residents. The ground floor frontage onto Alexandra Road would comprise staff facilities, a warden's office and communal space. The main entrance would be on Alexandra Road and residents have access points either directly from their apartments along the southern boundary or communal access points to the garden and car park to the west. The proposed building heights on the Alexandra Road frontage are an eaves height of 6m and a ridge height of 9 m.

Applicants' supporting information

Design and Access Statement

This document includes the background to the scheme, existing context, policy, concept, layout, amount, scale, appearance, materials, landscaping and accessibility. The site was acquired by the applicant 3 years ago and in that time the site has been marketed for retail use for 2 years with no interest. Alternative uses were then explored and due to the demand for sheltered accommodation in the Swadlincote area this proposal was progressed. The proposal is a result of lengthy discussions with the Local Authority and the concept section outlines the approach taken to reduce the overall mass of the building and break the building up into sections. The layout with the building close to the footpath edge responds to the character of Alexandra Road and the scale is consistent with neighbouring properties and the land level differences. The amount of accommodation is based on market research for retirement complexes for private operators as no end user has come forward at present with a definite interest. Overall the appearance of the building is a residential scale. Materials proposed are red brick, slate roof with sections of timber cladding and render. Pedestrian links to the town centre are good and it is anticipated that a high number of residents would walk or travel by bus.

Arboricultural Report

This report assesses the 24 trees on site. The two mature False Acacia trees on the site frontage are classed as category B – retention desirable. However, the loss of these specimens can be compensated by a proposed landscaping scheme which incorporates 15 new trees. Three trees on the south and south west boundary require removal due to arboricultural reasons.

Additional information on the type of residents and their likely parking needs

The accommodation proposed is described as Category II Sheltered Housing which is defined as “*grouped flatlets to meet the needs of the less active elderly people*”. The age of residents would be restricted to 60 years of age or over, except that where that resident over the age of 60 has a partner of 55 years of age or over, this partner may also occupy an apartment. This can be restricted by a planning condition. However, surveys have found that the average age of entry to such developments was 75 years and 6 months. Obviously, as time passes the average age of residents will increase. A study in relation to car ownership in this type of development shows that in the lower age group of 55-60 car ownership is 80% but this steadily declines as the ages of residents increase. Given the age profile of residents, very few would be in the youngest age group and the majority would be over the age of 75 and would have a relatively low car ownership level. This survey also found that 18% of residents gave up car ownership in the same year they entered sheltered housing. The rate of giving up car ownership was also above average in years immediately before and after entering this form of housing. Another factor is that 75% of residents were female. There is a tendency for women to have a lower car ownership and to give up car ownership at an earlier age.

Planning Policy Guidance 13: ‘Transport’ and Planning and Policy Statement 3 ‘Housing’ both advocate reducing reliance on the private car through maximum car parking standards.

PPG13 Paragraph 6 advises local authorities that they should:-

“use parking policies, alongside other planning and transport measures, to promote sustainable transport choices and reduce reliance on the car for work and other journeys;”

PPG 13 Paragraph 17 states that local authorities:-

“should revise their parking standards to allow for significantly lower levels of off-street parking provision, particularly for developments in locations, such as town centres, where services are readily accessible by walking, cycling or public transport”.

The survey includes information on car ownership from 78 similar developments opened from 2000 to 2004. It found that the maximum provision where there is high levels of accessibility to shops, services and public transport would be 0.19 spaces per 1 bedroom apartment and 0.34 spaces for two bedroom apartments. Spaces are not allocated but used on a first come first serve basis. Normal practice is to provide 3-4 spaces for use by essential maintenance staff and emergency medical visitors. The house manager would need a space and visitor spaces would be based on 0.1 spaces per apartment. These developments in general, however, do not provide visitor parking.

Each development has “Strategies” to encourage other modes of transport which is distributed to residents and is similar to policies advocated in travel plans.

The proposed complex would have one member of staff who would be on site 24 hours a day living in the warden’s apartment. Residents would be owner occupiers who are capable of looking after themselves with no additional assistance from nurses / carers.

The facilities within the complex include:

- Residents lounge with simple kitchen for tea making for residents to socialise,
- Warden’s office
- Guest suite for visiting family for those residents whose apartments are fully occupied.
- Self service laundry room
- Charging station for mobility scooters
- Emergency call points

The agents have submitted a further Parking Assessment document. This is to be read in conjunction with the survey details within the committee report. The assessment is based on 14 similar Category II Sheltered Housing developments in the country and is more specific to the case than the general parking policies in the Local Plan. The survey results have been accepted at Public Inquiry. Manual for Streets guidance advocates unallocated communal parking and no additional provision is needed for visitors. The 22 spaces proposed satisfies both the average and maximum parking ratios based on the survey information. The assessment concludes on site parking provision is adequate.

Planning History

All relating to the former supermarket and therefore not directly relevant.

Responses to Consultations

The Land Contamination Officer recommends a phased contamination condition be attached to any permission due to the potential for unknown filled ground associated with past quarrying.

Environmental Health has responded to consultation and has no comments to make.

The Highway Authority requires one parking space per three apartments and additional parking would be required for staff. An amended plan has been produced to accommodate these additional spaces. The access to the apartment complex for refuse collection, servicing, and removals vehicles is considered acceptable. Conditions relating to provision of a site compound, prevention of mud on the highway, the access and closure of the southern access to the existing car park and the laying out of the car park. ***It has confirmed that the additional parking assessment is acceptable and its original comments remain applicable.***

The Police Crime Prevention Design Advisor states that the land has a well defined boundary which can be fully secured. The building block fronts the road adding surveillance and activity. It is a good safe simple layout with inner courtyards and rear parking. However, there is a concern regarding the lack of defensible space to the front

especially with low level windows which some shown on the elevation drawings at lower leg level. These can be easily kicked and be subject to constant damage and nuisance. This could also have concerns for the personal privacy of pedestrians. Sections of blank brick wall also face the road and could be subject to graffiti. This is a well used route for youngsters accessing the nearby Leisure Centre where nuisance and congregation by youths is a constant problem. At least a 1m setback is required to avoid all of these issues and to provide necessary protection to the building and privacy for all. This space should be defined with low walls/railings as is the local context of existing residential properties fronting main roads in Swadlincote. With low level planting the defensible space could add quality, green up and improve the built environment in this Industrial street scene whilst providing safety, privacy and security.

Severn Trent Water has no objection subject to a drainage condition.

Responses to Publicity

Three letters of objection have been received from businesses on West Street and Alexandra Road and a residential property on West Street. Objections are summarised as follows:

- a) 45 West Street is 8 ft lower than the proposed complex and the proposed building extends significantly past the boundaries of the existing Kwik Save store.
- b) Loss of privacy as proposed windows on the northern elevation would overlook their bedrooms and living room.
- c) The proposed building would overshadow their property due to the land level difference and would appear 3 storey from their property.
- d) There are time restrictions on the current service road and it is proposed as the main access which would cause noise and pollution at unreasonable hours.
- e) Due to the close proximity of their property to the boundary the same consideration in terms of separation distance and scale should be afforded to their property.
- f) The rear boundary wall of their property has been damaged in the past by service vehicles.
- g) The site has in the past been a hotspot for unsociable youth activity and as such a gate and CCTV should be considered.
- h) Proposed tree planting on the north western boundary may cause damage to the boundary wall.
- i) There is a safety concern for drivers turning right exiting the site due to the steep gradient and it is directly opposite the car park where ambulances enter the road.
- j) The scale of the proposal is considered excessive.
- k) The site has a 1m higher land level than properties on West Street.
- l) There is land between 51 West Street and the Kwik Save site of unknown ownership.
- m) 51 West Street have maintained a hedge on the boundary for 30 years and want it to be retained.
- n) Their property would be overlooked by the car park and require a 2 m wall to be built on the boundary.
- o) Hours of construction and deliveries should be controlled to minimise noise nuisance to residents.
- p) The application site was previously a Clay pit and in 1994 Kwik Save applied for an extension where it was concluded that the land was unstable. In 1995 a section of the access road collapsed.

- q) The building would be closer to the road frontage and higher (three storeys) than any building in the immediate location.
- r) The building is out of character with this open section of Alexandra Road.
- s) The building control line should be adhered to and the landscaping on the frontage retained.
- t) The building would restrict the view of the shop units and the loss of a retail site would downgrade the shops to a backwater location.
- u) The car parking provision of 16 spaces for 62 apartments is not sufficient and may result in congestion and on street parking.
- v) There is a safety concern for pedestrians crossing Alexandra Road.

An additional letter of objection has been received from Mr McKay of 51 West Street. Objections are summarised below:

- 1) ***The location of the north west corner of the car park should be 2-3 yards from their boundary hedge.***
- 2) ***A boundary wall should be erected along their boundary of a height of 2 metres.***
- 3) ***The windows overlooking both 51 and 45 West Street should be obscure glazed.***
- 4) ***The building is too close to 45 West Street and should be moved a couple of yards to the south.***
- 5) ***The building should not be any closer to than the existing Kwik Save building.***
- 6) ***Any trees planted along 45 West Street's boundary should not cut further light out.***
- 7) ***Parking provision is not sufficient.***

Development Plan Policies

The relevant policies are:

East Midlands Regional Plan : 2, 3, 12, 48

Local Plan: Housing Policies 4 and 11, Community Facilities Policy 1, Transport Policy 6.

National Guidance

PPS1, PPS3, PPS15.

Planning Considerations

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

- The principle of development
- Design, scale and mass
- Highways Issues
- Trees and landscaping
- Residential amenity

Planning Assessment

The principle of development

The proposed site is classed as an edge of centre site in terms of retail development. The Council's Retail and Leisure Study Sept 2005 concluded that Swadlincote has a good provision of food stores. The site has been marketed for retail use for 2 years with no interest.

Residential development in this sustainable location (being well within the Swadlincote urban area) within close proximity to the town centre which is substantially surrounded by development is considered acceptable in principle.

Design, Scale and Mass

The proposed scheme for apartments is a result of extensive and lengthy pre-application discussions between the Architects and the Council's Planners, Design and Conservation Officer and Design Excellence Officer over two years.

The building is close to the Alexandra Road frontage at the request of officers as this is considered a characteristic of streetscene of Alexandra Road to the south with terraced properties tight up the footpath. Key design principles were to break up the building into individual elements accentuated by the stepping down of ridge heights as the land levels decrease to the north and the different set backs from the footway. Further features to provide more emphasis of this theme were requested during the application process. Thus, amended plans indicate only vertical timber cladding and grouping of the windows to ensure that the building appears as individual terraced properties rather than a large mass of building. The majority of the building is two storey, however, the roof space within the centre section fronting Alexandra Road would also be utilised.

The southern elevation of the building originally showed two gable ends, however, it was considered that this mass would appear dominant and out of keeping with the scale of existing buildings in the street. Amended plans indicate one gable then a lower link section to reduce the mass and scale and improve the appearance consistent with other single gables in the street. This elevation would now read as a gable which is linked to another terrace of properties running parallel with the southern boundary and reading as a separate street at right angles to Alexandra Road.

The north eastern corner of the building is particularly important due to its proximity to Sharpes Pottery and its need to address the street and links to the town centre from West Street. A chamfered edge with a large section of curtain walling framed by timber cladding is proposed with an overhanging hipped roof, supported by steel supports. This large glazed area provides an active frontage in the streetscene with a communal area for residents on the ground floor and a living area above. The building would be two storey in this area with a ridge height only 3.4m higher than the adjacent shop units. The main entrance to the building would be emphasised by sections of render and double height glazing which projects beyond the main wall of the building. This would create activity in the street and encourage residents and visitors to walk to and from the town centre.

Overall, the design is considered to be in keeping with the character of Alexandra Road and the adjacent Conservation Area. High quality materials would be secured by condition.

Highways Issues

The County Highways Authority requested more detail as to the provision of facilities for residents, levels of care, staff numbers in order to determine the parking provision. The applicant has confirmed that an end service provider has not been secured at this time, however, details of similar schemes in the country have been provided to inform the decision. The apartments would be for elderly residents (aged 60 plus) who wish to remain independent. The large majority of residents would not therefore have a private car and due to the close proximity to the town centre would either walk or travel by bus to and from the site. A condition restricting the age of residents would be attached to any permission.

The survey found that the maximum car parking provision where there is high levels of accessibility to shops, services and public transport would be 0.19 spaces per 1 bedroom apartment and 0.34 spaces for two bedroom apartments. The Highway Authority has confirmed that 1 space per 3 apartments is required which equates to 20.3 spaces. 20 spaces have been provided a therefore a further two spaces are required for staff parking and an amended plan now shows the requisite 22 spaces.

The agents have submitted a further Parking Assessment document. County Highways have confirmed that this additional report is acceptable and its original comments remain applicable.

Trees and Landscaping

A detailed survey of the trees on site has been undertaken and the majority are to be retained. The Council's Arboricultural Consultant considers the Arboricultural Report to be acceptable. However, due to the request of officers to locate the building close to the footpath, two mature trees would be lost on the site frontage. This is regrettable but the survey indicates that an additional 15 trees would be planted as part of the site's landscaping scheme. The compromise between ensuring the building respected the character of Alexandra Road and the loss of the trees had to be made and the former is considered to outweigh the latter. A landscaping scheme would be secured by condition.

Residential Amenity

There are residential properties adjacent to the north western and western boundaries of the street. No's 45 and 51 West Street are adjacent to the north western boundary and a new development of terraced properties accessed off Stanhope Road are adjacent to the south western boundary.

No. 45 West Street is a detached property set back from the West Street frontage to the rear of 37-41 West Street. This property has an approximately 2m lower land level than the site and its rear boundary has a 2m high block work wall. There are two patio doors and a window serving the lounge on the ground floor rear elevation of the property with two bedroom windows at first floor level. The eastern elevation has a secondary lounge window and a bedroom window above.

A detailed assessment of the relationship of the scheme with this property has been undertaken. As the Council's space standards could not be met, amendments were requested which resulted in moving the two nearest ground floor and first floor bedroom windows on the nearest part of the building around the corner to the western elevation

to prevent any overlooking. The new window position would not afford a view into any of the rear windows of this property due to the 45° angle taken from the centre of the window not cutting the property. The adjacent window on the ground and first floor of the nearest apartment serving kitchen areas is also slightly below the space standards and as such a condition requiring these windows to be obscure glazed is considered necessary to protect the privacy of No 45 West Street. In relation to overshadowing, the sectional drawing provided indicates that a two-storey element at the rear would be some 14m from the nearest main habitable room window on No 45. The SPG guidance would suggest a minimum distance nearer 14.4m. However, this must be considered with other factors. The rear of the property is already overshadowed to some extent by the 2m block wall, which is at the land level of the application site, and existing trees within the garden area. This in combination with such a marginal shortfall would not amount to such a significant detriment to amenity that would justify moving the building further away.

The new residential properties with access from Stanhope Road are set at angle with the western boundary of the site. The land level of these properties decrease slightly to the north west. Two bedroom windows are proposed on the ground and first floor of the nearest western elevation. Window to window distances are 21m and above, which is in accordance with Council guidance.

In light of the concerns raised by both 45 and 51 West Street, the agent has confirmed that the glass to the stairwell and corridor of the North-West corner of the building (those facing no's 45 and 51) shall be obscure glazed. This has been added to condition 4. The agent states that "boundary and planting will be conditioned under any planning approval, and details will need to be submitted to and agreed with the LPA before any works can take place. They have advised Mr McKay that they would be looking to install a 2.1m high timber close boarded fence to the boundary of the land to no.51 West Street, and would not look to plant tall trees/shrubs to the boundary of no.45 West Street. This should prevent car head lights from shining towards their property at night. As the full site is under our clients ownership (as shown on land registry plans) we will still be developing the car park as set out on our drawings". Condition 9 relates to boundary treatment and the concerns of 51 West Street shall be taken into account prior to discharging this condition.

Other issues raised by objections / Consultations

Damage to boundary walls, land ownership and boundary disputes are not material planning matters, however, the grant of planning permission does not override these legal issues. The landscaping scheme secured by condition shall ensure suitable species are proposed which do not cause stability issues for boundary walls. Boundary treatments will be controlled by condition. A condition requiring the scheme of crime preventions measures to be submitted would be attached to any permission. Hours of construction and deliveries would be controlled by condition to minimise noise nuisance to residents. A contaminated land condition would ensure that the land is suitable for the proposed use and building regulations ensure the building is safe. The loss of view of the shop units due to the position of the building and loss of adjacent retail use having an impact on the adjacent businesses are not planning matters which weigh significantly when assessed against the main issues.

The Police Crime Prevention Design Advisor comments in relation to provision of defensible space on Alexandra Road is noted, however, a compromise to achieve a building that reflects the character of the existing streetscene of Alexandra Road and does not have an adverse impact on the adjacent Conservation Area had to be made. Potential vandalism of the windows and walls at ground floor level would be dealt with by the management of the complex and suitable measures could be undertaken to address this issue if it arises.

Conclusion

The principle of residential development is considered acceptable in this sustainable location surrounded by existing residential properties. The design, scale and mass is considered to sufficiently reflect the character of Alexandra Road and would therefore offer an enhancement to the adjoining Conservation Area. Highways issues have been addressed and conditions are recommended. The residential amenity of neighbouring properties would not be significantly affected due to amendments made. The majority of existing trees shall be retained and a suitable landscaping scheme secured by a condition. The proposal therefore accords with the above mentioned policies.

Recommendation

Subject to the expiration of the amended plan consultation period to delegate the Head of Planning Services powers to deal with any representations received, to **GRANT** permission subject to the following conditions:

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

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

2. No part of the development shall be carried out until precise details, specifications and, where necessary, samples of the facing materials to be used in the construction of the external walls and roof of the building have been submitted to and approved in writing by the Local Planning Authority. The work shall be carried out in accordance with the approved details.

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

3. No development shall take place until construction details of the chamfered roof section have been submitted and approved in writing by the Local Planning Authority and the development shall be built in accordance with these agreed details.

Reason: To ensure the visual amenity of this element of the scheme.

4. The kitchen windows on the ground and first floor in the northern wall of the building annotated on plan No. A (10) -05 Rev B and the stairwell / corridor windows on the ground and first floor of the northern and western elevations on the north western corner of the building shall be permanently glazed in obscure glass.

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

5.
 - A) The development shall not be commenced until a scheme to identify and control any contamination of land, or pollution of controlled waters has been submitted to, and approved in writing by, the local planning authority (LPA); and until the measures approved in that scheme have been implemented. The scheme shall include all of the measures (phases I to III) detailed in Box 1 of section 3.1 the South Derbyshire District Council document 'Guidance on submitting planning applications for land that may be contaminated', unless the LPA dispenses with any such requirement specifically and in writing.
 - B) Prior to occupation of the development (or parts thereof) an independent verification report shall be submitted, which meets the requirements given in Box 2 of section 3.1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.
 - C) In the event that it is proposed to import soil onto site in connection with the development, this shall be done to comply with the specifications given in Box 3 of section 3.1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.
 - D) No development shall take place until monitoring at the site for the presence of ground/landfill gas and a subsequent risk assessment has been completed in accordance with a scheme to be agreed with the LPA, which meets the requirements given in Box 4, section 3,1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.

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

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

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

7. 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.

8. Notwithstanding the originally submitted details, this permission shall relate to the amended drawing no's A (00)-01 A, A (00)-02 A, A (10) -00 C, A (10)-01 B, A (10)-02 B, A (10)-03 B, A (10)-04 B, A (10)-05 B, A (10)-06 B, A (10)-07 B, A (10)-09 and A (10)-10.

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

9. 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.

10. Large scale drawings to a minimum Scale of 1:10 of eaves and verges and external joinery, including horizontal and vertical sections, precise construction method of opening and cill and lintel details shall be submitted to and approved in writing by the Local Planning Authority before building work starts. The eaves and verges and external joinery shall be constructed in accordance with the approved drawings.

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

11. Prior to commencement of development further details of the gutters and downpipes shall be submitted and agreed in writing by the Local Planning Authority and constructed in accordance with the approved drawings.

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

12. 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.

13. 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.

14. 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.

15. 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.

16. Hours of construction shall be restricted to 0800 to 1700 Monday to Friday and 0800 to 1230 on Saturdays. No work shall be carried out on Sundays or Bank Holidays.

Reason : To preserve the amenities of adjacent residential properties.

17. 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, all laid out and constructed in accordance with detailed designs first submitted to and approved in writing by the Local Planning Authority, and maintained throughout the construction period in accordance with the approved designs free from any impediment to its designated use.

Reason: In the interests of highway safety.

18. Before any of the operations hereby approved are commenced facilities shall be provided as agreed in writing with the Local Planning Authority to prevent the deposition of extraneous material on the public highway and shall be maintained throughout the construction period.

Reason: In the interests of highway safety.

19. Before any other operations are commenced, the existing access to Alexandra Road shall be modified in accordance with the amended application drawing A (10)-00 C, laid out, constructed in accordance with a scheme first submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of highway safety.

20. Before any other operations are commenced (excluding creation of the revised access, the subject of the previous condition above), the existing southern vehicular access to Alexandra Road shall be permanently closed with a physical barrier and the existing vehicle crossover reinstated as kerbed footway in a manner to be agreed in writing with the Local Planning Authority in consultation with the County Highway Authority.

Reason: In the interests of highway safety.

21. Residential units shall not be occupied until space has been provided within the application site in accordance with the revised application drawing A(10)-00 C for the parking of residents and staff vehicles, laid out, surfaced and maintained throughout the life of the development free from any impediment to its designated use.

Reason: In the interests of highway safety.

22. The development hereby permitted shall only be occupied by persons where at least one member of the household is aged 60 years or over (the qualifying age) save that such restriction shall not apply to the continued occupation of any of

the apartments by a surviving spouse, partner or member of the household under the qualifying age after the death of the member of the household who was of the qualifying age.

Reason :To ensure the parking provision meets the requirements of the development.

23. The area set aside for service / refuse collection / removals vehicles shown on plan No. A (10)-10 shall be reserved for this purpose in perpetuity free from any impediment to its designated use.

Reason: In the interests of highway safety.

Informatives:

The proposed development lies within an area which could be subject to current coal mining or hazards resulting from past coal mining. Such hazards may currently exist, be caused as a result of the proposed development, or occur at some time in the future. These hazards include: Collapse of shallow coal mine workings; Collapse of, or risk of entry into, mine entries (shafts and adits); Gas emissions from coal mines including methane and carbon dioxide; Spontaneous combustion or ignition of coal which may lead to underground heatings and production of carbon monoxide; Transmission of gases into adjacent properties from underground sources through ground fractures; Coal mining subsidence; Water emissions from coal mine workings.

Applicants must take account of these hazards which could affect stability, health & safety, or cause adverse environmental impacts during the carrying out their proposals and must seek specialist advice where required. Additional hazards or stability issues may arise from development on or adjacent to restored opencast sites or quarries and former colliery spoil tips. Potential hazards or impacts may not necessarily be confined to the development site, and Applicants must take advice and introduce appropriate measures to address risks both within and beyond the development site. As an example the stabilisation of shallow coal workings by grouting may affect, block or divert underground pathways for water or gas. In coal mining areas there is the potential for existing property and new development to be affected by mine gases, and this must be considered by each developer. Gas prevention measures must be adopted during construction where there is such a risk. The investigation of sites through drilling alone has the potential to displace underground gases or in certain situations may create carbon monoxide where air flush drilling is adopted. Any intrusive activities which intersect, disturb or enter any coal seams, coal mine workings or coal mine entries (shafts and adits) require the prior written permission of the Coal Authority. Such activities could include site investigation boreholes, digging of foundations, piling activities, other ground works and any subsequent treatment of coal mine workings and coal mine entries for ground stability purposes. Failure to obtain Coal Authority permission for such activities is trespass, with the potential for court action. In the interests of public safety the Coal Authority is concerned that risks specific to the nature of coal and coal mine workings are identified and mitigated.

The above advice applies to the site of your proposal and the surrounding vicinity. You must obtain property specific summary information on any past, current and proposed surface and underground coal mining activity, and other ground stability information in order to make an assessment of the risks. This can be obtained from The Coal Authority's Property Search Service on 0845 762 6848 or at www.groundstability.com.

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

For further assistance in complying with planning conditions and other legal requirements applicants should consult "Developing Land within Derbyshire - Guidance on submitting applications for land that may be contaminated". This document has been produced by local authorities in Derbyshire to assist developers, and is available from http://www.south-derbys.gov.uk/business/pollution/contaminated_land/default.asp Reports in electronic formats are preferred, ideally on a CD. For the individual report phases, the administration of this application may be expedited if a digital copy of these reports is also submitted to the pollution control officer (contaminated land) in the environmental health department: pollution.control@south-derbys.gov.uk. Any security measures implemented in compliance with the approved scheme should seek to achieve the 'Secured By Design' accreditation awarded by Derbyshire Constabulary. Written confirmation of those measures should then be provided to the Local Planning Authority.

Item 1.2

Reg. No. 9/2010/0048/FH

Applicant:
Mr K S Atwal
The Bungalow
The Hill Sinfin Lane
Barrow-on-Trent
Derby

Agent:
M J Harrison
7 Hall Park
Barrow On Trent
Derby

Proposal: **Retrospective Application For The Erection Of
Extension And Conservatory (Amended Scheme Of
Previously Approved Planning Application
9/2008/0393/FH) At The Bungalow The Hill Sinfin Lane
Barrow On Trent Derby**

Ward: **Aston**

Valid Date: **19/01/2010**

Reason for committee determination

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

Site Description

The building is situated within the extensive grounds of The Hill. The closest public vantage point is the top of Moor Lane, at a distance of about 350 metres.

Proposal

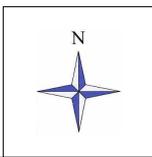
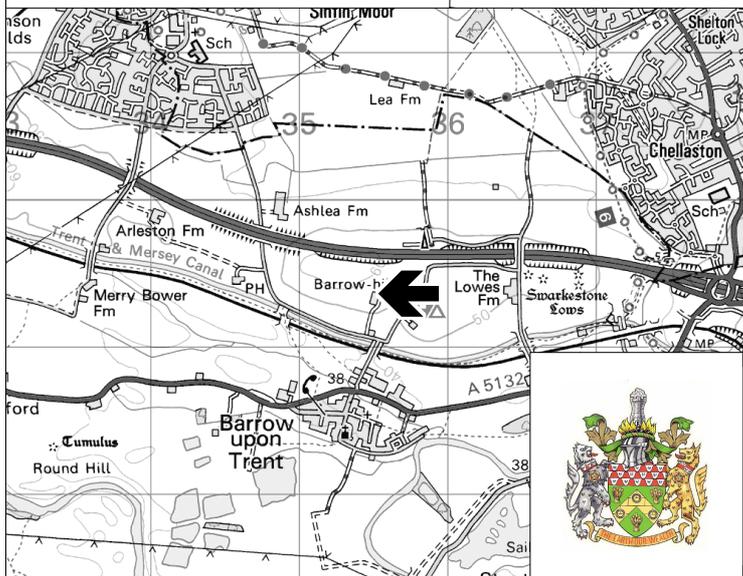
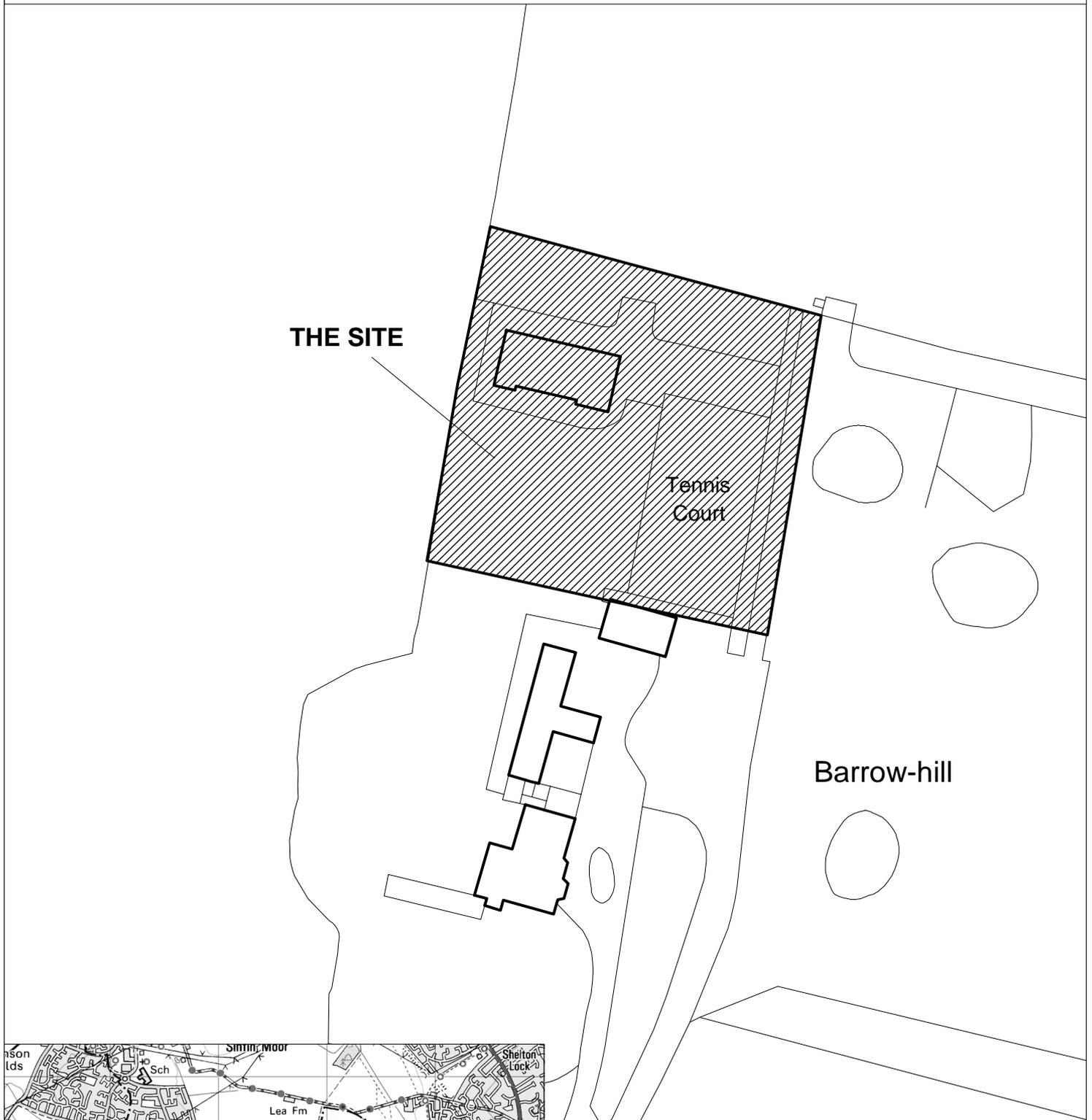
Work on the extension is well underway. It differs from a previously approved application (9/2008/0393) by being wider and slightly higher. There are also some changes to the windows, along with a single storey projection.

Planning History

9/0198/0833 - convert building to form dependant relative accommodation
9/2002/1075 - single storey extension
9/2006/1033 - remove occupancy condition
9/2008/0393 - two-storey extension

Responses to Consultations

The Parish Council objects to the retrospective nature of the application and considers that there would be increased traffic over the narrow railway and canal bridges and Deepdale Lane. A site visit is requested.



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South Derbyshire District Council. LA 100019461. 2010

Responses to Publicity

None received.

Development Plan Policies

The relevant policy is:

Local Plan Saved Housing Policy 13

National Guidance

PPS7

Planning Considerations

The main issue central to the determination of this application is the impact on the character and appearance of the countryside.

Planning Assessment

The application is a revised submission. The extension would be wider and higher, with some detail changes, but its impact on the general character of the area would be about the same. As such there would be no increased harm to the countryside as a result of the development.

No neighbours would be affected and no additional traffic would be generated.

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 condition:

1. 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.

Item 1.3

Reg. No. 9/2010/0119/NO

Applicant:

Hilton Parish Council
Sole Trustees of Hilton Village Hall
Peacroft Lane
Hilton
Derby

Agent:

Blair Gratton Architects Ltd
29 York Street
Derby

Proposal: **The Erection Of Extensions And Internal Works To Provide A Cafe And Addition To The Hall Incorporating A Library, Resource Centre And A New Main Entrance At Hilton Village Hall Peacroft Lane Hilton Derby**

Ward: **Hilton**

Valid Date: **09/02/2010**

Reason for committee determination

Councillor Mrs Plenderleith has asked that this application be reported to Committee as Members will benefit from consideration of this well designed and much needed community facility.

Site Description

The site is level and forms part of the open space provision around the village hall. To the north it is enclosed by the boundary fences to houses, other than the part of that boundary adjacent to the car park where there is a grass mound to supplement the fencing. The east boundary abuts the primary school playing field and is formed by a weld mesh fence. To the south of the building the ground is open but ultimately adjoins the housing on Soar Close. To the north east of the current village hall building are the flats served off Back Lane and south of these is the scout hut and other open space facilities such as a multi use games area and the playing fields beyond.

Proposal

The proposal involves the addition of another hall that would double up as a performance space with associated offices and storage space. The more dramatic addition is the glazed café facility that would overlook the open spaces and play areas to the south and west of the existing village hall.

Applicants' supporting information

The applicants have undertaken extensive public consultation that has lead to the application scheme being developed in terms of the facilities to be provided. The main

area of debate was how to extend the existing building in a manner that reflected the wishes of the community. The submitted scheme was devised to reflect the function of the building and to change the emphasis of the main elevation to allow direct supervision of the external public areas. The visual representations have been produced to demonstrate how the existing and proposed development will sit together. A new access is proposed on the south side of the complex to link to the newly constructed footpath network. Internal alterations to the existing building are proposed to better link with the proposed extensions and to facilitate the provision of a library and resource centre.

Consultations have been undertaken with the Crime Prevention Design Adviser and his recommendations have been incorporated into the design.

It is considered that the use of cedar boarding on the upper parts of the main building will compliment the brick used in the original building and make a modern statement about the design of the new facilities. The glass walls to the café area will help to provide supervision of the external play areas that is sadly lacking with the existing building. The use of white render at the lower level would provide a crisp modern appearance to the building again complementing the existing brick building.

In response to the County Highway Authority concerns about parking the applicants have commented as follows:

- The cafe is to support the existing users of the whole site - i.e. it will be promoted as an additional facility for users of the site, including external public areas. The only time that the operators of the hall have seen the car park full is when the drama group is putting on a show at all other times the car park is underused - the drama group would make use of the extended hall but all that would do is allow the existing main hall to be used as a sports court.
- Phase 2 parking was provided and hard surfaced when the grounds to the hall were landscaped in anticipation of the erection of these extensions. It is not consider that the hall operators should be penalized for providing the parking facilities in advance of the erection of the extension.

Planning History

Planning permission for the village hall site was granted as part of the original outline planning permission for the redevelopment of the Hilton Depot. Monies and land were provided by the developers, which together with monies from the sale of the original village hall site provided the present building, the original plans for which showed an extension.

The design principles for the village hall were to produce a building that reflected the previous military use of the site and the drill hall appearance of the bulk of the building reflects those principles. As the depot site developed the land around the village hall has also been developed to provide landscaped areas with play and skateboard areas and also footpaths that link the village hall to the development on the depot site.

Responses to Consultations

As applicants Hilton Parish Council has declined to comment on the application.

The County Highway Authority has raised concerns about the parking provision at the site and has requested that the applicant address this concern. The view is that the extended building could generate a need for over 100 spaces albeit it is recognised that the new extension is ancillary to the existing use. It is also recognised that Government advice is that alternative means of transport should be encouraged. In the light of the above additional information from the applicants, the County Highway Authority concerns remain but if the Committee is minded to grant planning permission, then it would request that the car parking areas be retained as such and no other uses be allowed on the parking areas.

The Environmental Protection Manager has no comments.

The Contaminated Land Officer recommends that any existing gas protection measures in the original building should not be disturbed as a result of the development.

Responses to Publicity

None

Development Plan Policies

The relevant policies are:

EMRP: Policies 1 & 2,

Saved Local Plan policies: Community Facilities Policy 1

National Guidance

PPG 17

Planning Considerations

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

- The development plan
- The design of the building
- Parking provision.

Planning Assessment

The development is in accord with the provisions of the development plan and accords with the approved master plan for the redevelopment of Hilton Depot – providing as it does the additional community facilities envisaged in the master plan when it was drawn up in the early 1990s

The design of the hall and the café are in marked contrast to the utilitarian appearance of the phase 1 building. Its materials are modern in their derivation and reflect a 21st century design concept. The aim of the architects was to provide a modern addition to the original building that would complement it and help to provide a wider range of service to the local community. It is considered that this has been achieved in the

design of the cafe and the new hall to a point where albeit different from the original building it would provide a modern addition of which the community could be proud.

There are public views of the site in which the original building and the new extension would be seen close up such as from the footpaths and from the scout hut. Occupiers of the Back Lane flats adjacent to the site would have oblique views of both elements of the building 'end on'. Here the view of the building would be of cedar cladding to the upper part of the wall and white self-coloured render to the lower part. It is considered that these materials would complement the brick on the original hall building.

The views of the site from other dwellings are either obscured by the existing building, are fairly distant due to playing fields and public open areas or are obscured by the bund referred to earlier. There would be no adverse impact on the occupiers of these properties from the design of the new building.

The County Highway Authority raised concerns about the extent of the parking provision at the site. The extensions are intended to enhance the facilities currently provided at the village hall. The applicants have argued that additional use of the car park according to their research is unlikely to be much more than 10% above current normal daily activities. However, it is acknowledged that the drama group performances do attract large numbers of vehicles. It is also noted that parents picking up or dropping off children at the primary school frequently make use of the parking facilities in the village hall in the mornings and afternoon. The additional points of entry are designed to reduce the need to travel to the centre by the car from within the village.

The existing car park provision is considered adequate to meet the normal daily activities at the hall. Given that parking standards are maximums then it would be unreasonable to require additional parking to meet an occasional peak in parking demand.

Overall the scheme presents an exceptional design which is a welcome addition to the facilities provided in Phase 1 of the village hall.

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. The existing parking areas associated with the development illustrated on Drawing No 542.06 shall be retained available for their designated use in perpetuity.

Reason: To ensure that adequate parking provision is retained available to serve this community facility.

Informatives:

The contaminated land officer has noted that if the original structure to which the extension will be attached has any gas protection measures (for example venting, gas proof DPM or ventilation of underfloor voids), then these must be implemented to at least the same standard and specification in the design and construction of the extension to continue protection against accumulations of hazardous gases. The construction of the extension must not impede, disrupt or damage the existing gas protection measures of the original building.

Item 1.4

Reg. No. 9/2010/0123/NO

Applicant:
Mr K S Atwal
The Bungalow
The Hill, Sinfin Lane
Barrow-on-Trent
Derby

Agent:
M. Harrison
7 Hall Park
Barrow On Trent

Proposal: The erection of a barn and settling pond at The Hill
Sinfin Lane Barrow-on-Trent Derby

Ward: Aston

Valid Date: 10/02/2010

Reason for committee determination

The Head of Planning Services considers this application should be brought to the attention of Development Control Committee because of its proximity to application 9/2010/0048 on this agenda.

Site Description

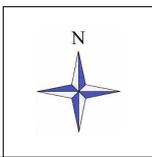
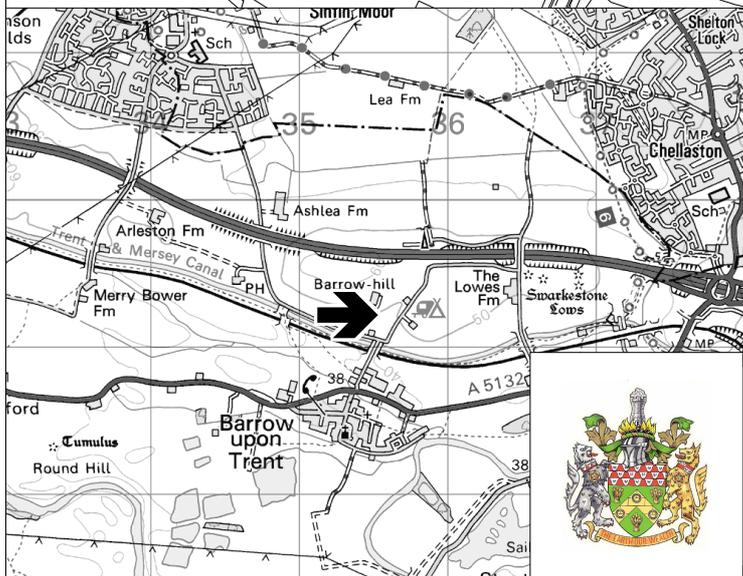
The site is part of the extensive grounds to The Hill.

Proposal

The proposal is in retrospect. The building and pond are substantially complete. The building would contain a machinery maintenance area, offices, boot room/changing area, records office, stores, and a canteen. The upper part of the building would be clad with Yorkshire timber boarding. The lower part, as built, is brick. The application is in substitute for 9/2001/1002.

Applicants' supporting information

- The building would serve the current agricultural business, which includes arable and livestock farming. The holding amounts to 37 ha around the site and 50 ha in the surrounding area. Vehicles to be maintained include two tractors, a 3 tonne lorry, a light truck, a mower, and ploughing, hedging, ditching and cutting equipment.
- The building would be occupied by farm personnel involved in the arable and livestock businesses, including facilities for seasonal labour.
- The pond would take storm water from the building and other buildings at The Hill. The pond would also enable boggy land bordering Sinfin Lane to dry out and to be cultivated.



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Planning History

9/2001/1002 – agricultural building.

Responses to Consultations

The Parish Council raises the following objections:

- a) Concern has been expressed over several years about the development of the site.
- b) Retrospective applications should not be considered.
- c) There could be risk to other properties in the event of failure of the pond banks.
- d) There would be increased traffic in Deepdale Lane and on the narrow railway and canal bridges.
- e) The appearance of the building would be inappropriate.
- f) The purpose of the lake is deemed to be dubious

The Highway Authority and the Council's drainage engineer have no objection.

Responses to Publicity

None received.

Development Plan Policies

The relevant policies are:

South Derbyshire Local Plan Environment Policies 1 & 5

National Guidance

PPS7

Planning Considerations

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

- The principle.
- Impact on the character and appearance of the area.
- Drainage.

Planning Assessment

Agricultural development in the countryside is favoured by policy as a matter of principle, subject to environmental, traffic and visual matters.

Trees filter views of the site from Moor Lane. The visual impact of the building would not be substantially greater than the previously approved scheme. The pond would have little visual impact.

There is no evidence that the pond would produce a risk of flood to other land.

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 Yorkshire boarding, as shown on the application drawings, shall be applied to the walls of the building before it is brought into use and shall be retained as such thereafter.

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

2. The building shall be used for the purpose of agriculture only and shall not be used for the purposes of any other trade or business.

Reason: For the avoidance of doubt, to comply with the development plan in respect of new building in the countryside, and in the interests of highway safety.

Item 1.5

Reg. No. 9/2010/0127/FO

Applicant:

South Derbyshire District Council
c/o S G Design Studio Limited
202 Woodville Road
Hartshorne
Swadlincote

Agent:

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

Proposal: **The Erection Of A Detached Dwelling And Single
Garage At 14 Grange Close Melbourne Derby**

Ward: **Melbourne**

Valid Date: **10/02/2010**

Reason for committee determination

The Council owns the site.

Site Description

The site is vacant, prior to which it was part of the garden to the adjoining property.

Proposal

This is a full application for a 3 bedroom detached dwelling and garage.

Applicants' supporting information

The application follows a withdrawn application in outline. The current application is a full application, similar to the initial scheme but with the following alterations:

- The property has moved eastwards to the neighbouring boundary by 750 mm and forward by 600 mm. This has allowed for the master bedroom to include an en-suite. Thus the previously non-obscured window, which fell short of the 21m minimum distance, would now be an obscured bathroom window which has no minimum requirements.
- As a result of the above the only window to the master bedroom would meet the minimum distance of 21m to the neighbouring ground floor conservatory.
- The rear ground floor has been extended in width to allow for an enclosed hallway leading to the front door, thus eliminating the inner room situation to the first floor bedrooms and allowing the removal of the side window to bedroom 2, which is now close to the boundary. The only window for this bedroom is now a high-level rooflight to the front.

- A single garage is included, which would obscure the ground floor to ground floor neighbouring windows.

Planning History

The previous outline application 9/2009/0731 was withdrawn following the meeting held on 3 November 2009.

Responses to Consultations

Melbourne Civic Society and the Parish Council have no objection.

The Highway Authority and the Contaminated Land Officer have no objection in principle. Severn Trent Water Ltd had no objection to the outline application. Any further comments will be reported verbally.

Responses to Publicity

Two neighbours object on the grounds of:

- a) Overlooking, loss of light and loss of privacy.
- b) The proposal is not significantly different to the previous application.
- c) The Committee was previously sympathetic to neighbours' objections.
- d) A bungalow would be more acceptable.

Development Plan Policies

The relevant policies are:

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

National Guidance

PPS1, PPS3

Planning Considerations

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

- The principle.
- Impact on the general character of the area.
- Residential amenity.
- Highway safety

Planning Assessment

The site lies in the village confine and, being most recently used as garden, can be considered to be previously used land. Melbourne is a settlement with a good range of facilities. Therefore development of the site as proposed would be in accord with general sustainable development principles.

The design would reflect if not replicate the prevailing character and appearance of the existing houses in Grange Close. Its location would not disrupt the linear grain of the existing frontages and there would be minimal visual impact arising from the development. Therefore the proposal would be appropriate in its urban context

The drawings demonstrate that the minimum distances set out in the relevant supplementary planning guidance can be met. Therefore the impact on the amenities of the occupiers of neighbouring dwellings would be acceptable.

Subject to the recommended conditions of the Highway Authority there would be no harm to highway safety interests.

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 under Regulation 3 subject to the following conditions:

1. The development permitted shall be begun before the expiration of three years from the date of this permission.
Reason: To conform with Section 91(1) of the Town and Country Planning Act, 1990 (as amended by section 51 of the Planning and Compulsory Purchase Act 2004).
2. No part of the development shall be carried out until precise details, specifications and, where necessary, samples of the facing materials to be used in the construction of the external walls and roof of the building(s) have been submitted to and approved in writing by the Local Planning Authority. The work shall be carried out in accordance with the approved details.
Reason: To safeguard the appearance of the existing building and the locality generally.
3. 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.
4. 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.

5. Before any other operations are commenced a new vehicular access shall be formed to Grange Close in accordance with the application drawings, laid out, constructed and thereafter retained.

Reason: In the interests of highway safety.

6. Prior to the first use of the development hereby permitted, parking facilities shall be provided so as to accommodate two cars within the curtilage of the dwelling. Thereafter, (notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995), two parking spaces, measuring a minimum of 2.4m x 4.8m, shall be retained for that purpose within the curtilage of the site.

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

7. The en-suite window in the rear wall of the building shall be permanently glazed in obscure glass.

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

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. Unless as may otherwise be agreed in writing with the Local Planning Authority the garage shall be constructed prior to the first occupation of the dwelling.

Reason: To avoid overlooking to neighbouring properties.

10. 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.

11. This permission shall relate to the drawing nos 209-42.01 Rev C & 209-42.02.

Reason: For the avoidance of doubt.

Informatives:

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

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

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.

Item 1.6

Reg. No. 9/2010/0138/U

Applicant:
Mr Geoffrey Oakey
31 Ashbourne Drive
Castle Gresley
Swadlincote

Agent:
Mr Geoffrey Oakey
31 Ashbourne Drive
Castle Gresley
Swadlincote

Proposal: **The Retrospective Application For The Change Of Use
Of One Room Of Dwelling To Taxi Office At 31
Ashbourne Drive Castle Gresley Swadlincote**

Ward: **Church Gresley**

Valid Date: **18/02/2010**

Reason for committee determination

The application is brought before Committee at the request of Councillor Rhind because local concern has been raised about a particular issue, which should be considered by the Committee.

Site Description

The site is located on Ashbourne Drive in Castle Gresley, a cull-de-sac accessed from Castle Road. 31 Ashbourne Drive is an extended semi-detached property set on a triangular plot located in the corner adjacent to the turning head. There is a driveway to the side of the property and the driveways of 31 and 33 are divided by a 1m high post and chain fence. The property has a detached flat roof garage to the side at the bottom of the driveway.

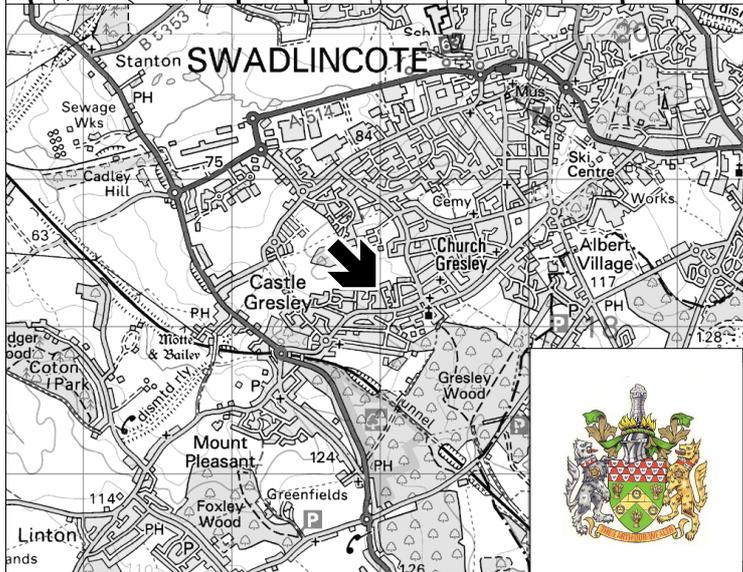
Proposal

Retrospective planning permission is sought for a change of use of one room of the dwelling to a taxi office. The taxi business has two cars and the two employees live at the address. The majority of the business is airport transfers and the business does not operate through the night. The applicant has stated that the use was started in March 2009.

Applicants' supporting information

Copies of a full week's bookings have been provided to indicate the amount of business and number of returns to the property. Monday, Thursday and Friday were the busiest days with returns.

Planning History



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9/1991/0151 - The erection of a two storey extension on the flank of the semi detached house, Granted July 1994

Responses to Consultations

The County Highways Authority has no objections based on the operation of the use as described in the supporting letter and booking details. It considers that highway safety issues are unlikely to occur in view of the limited traffic flows and speeds on Ashbourne Drive. It is considered that there is no justification for a refusal of planning permission on highway safety grounds since there would be no basis to demonstrate material harm in the event of an appeal.

Environmental Health has yet to respond and their comments shall be reported verbally.

Responses to Publicity

Five letters of support have been received which state the following: -

- The taxi business is run with the up most regard for their neighbours
- It does not cause nuisance or disturbance to neighbouring properties
- The business has not caused a parking problem
- The majority of the business is airport runs which limits the number of journeys
- Many residents are elderly and it is a great comfort to have a taxi service on the doorstep
- No. 2 Ashbourne Drive (opposite) has had no disturbance and has offered that they could use their driveway for parking if necessary.

One letter of objection has been received which raised the following concerns:-

- They never expected a taxi business to be run in a wholly residential area
- The business has caused noise and disturbance for the past few years and their last complaint was in July 2009
- When the business first started a room was used that was near to their property and they could hear the bookings being taken at all times of the day and night.
- The applicant's vehicle is parked over the pavement, blocking the right of way and their driveway.
- A third vehicle is parked on the corner and restricts visibility for vehicles and makes pedestrians walk on the road
- Having taxis running 24 hours a day, 7 days a week is a disturbance and how many more cars are they going to have to put up with.
- They request a site visit prior to any decision being taken.

Development Plan Policies

The relevant policies are:

East Midlands Regional Plan: Policies 3, 12 and 48

Local Plan: Policy Transport 6

National Guidance

PPS1: Delivering Sustainable Development

Planning Considerations

The main issues central to the determination of this application are the impact on the amenity of existing residential properties that abut the site by virtue of vehicle movements, noise and disturbance.

Planning Assessment

Based on the evidence submitted and case law it was clear that a change of use of the property had occurred and therefore a change of use application was invited prior to any enforcement action being taken. The main issue in this case is whether the number of vehicle journeys at the property has a significant adverse impact on the amenity of neighbouring properties.

The use has been in operation since March 2009 and both Mr and Mrs Oakey (the applicants) are employed in the business. Two cars operate from the property; one is an estate car and the other a 'people mover' vehicle. A further vehicle is kept at a local garage and the applicant exchanges the vehicles so only two vehicles are parked at the dwelling at any one time. The vehicles are reversed onto the driveway and thus it is not evident from the street that they are private hire vehicles. It is clear from the photographs that both vehicles fit onto the driveway and do not obstruct the pavement or driveway of the neighbouring property.

The majority of the regular business is school runs and airport transfers. In the sample week supplied there were 6 airport transfers between Monday – Sunday and five school runs between Monday – Friday. One vehicle generally completes all the bookings and the second vehicle normally completes the school run if the main vehicle is busy. There are on average throughout the week 8 bookings per day and the main vehicle would not return to the property until they are all completed. Having assessed the sample week's bookings returns to the house range from 1 - 5 per day, with the majority being 3 returns. This assessment is based on the use of two cars when the bookings clash. The bookings are at regular intervals to destinations around the Swadlincote, Burton and Ashby area. Airport transfers are to Birmingham, East Midlands and Manchester airports.

A small room on the ground floor of the property to the front of the property's side extension is used as a booking office. All bookings are taken by phone and there are no callers to the dwelling. The objector mentions the noise disturbance from this room when the use first started, but this does not appear to be an issue any longer.

The case law on this subject focuses on enforcement notices and decisions are based on the number of journeys, number of vehicles and externally visible radio equipment. The business has two vehicles which are not evidently private hire vehicles and this number is normally associated with a residential use. The bookings are taken by phone at the dwelling and no radio equipment is used therefore no aerial has been erected at the dwelling. To all intense and purpose to an observer the building appears in residential use.

In 2000, an Inspector held that the use of one room in a dwelling was not harmful to the amenities of adjoining residential properties, subject to the imposition of conditions. The principal planning issues raised by mini-cab offices are: a) disturbance to neighbours

due to increased vehicle movements and general activity, particularly where an office is manned late into the night, and b) traffic hazards caused by on-street parking congestion or inadequate access arrangements. A case in Lambeth, considered the benefit to local residents and had letters of support and was allowed at appeal.

Whilst these cases are not identical to this particular application, they provide guidance on whether the use is acceptable. Of the cases that were unsuccessful at appeal, the uses were more intense than that detailed in this application. They involved more vehicles, mini-buses, on-street parking and more journeys. Car parking is not an issue in this case as only two vehicles are in use and there is off street parking for the vehicles. A condition limiting the vehicles to two and retention of the parking provision is considered sufficient to ensure the use does not intensify.

Controlling hours of use by condition is not considered to be reasonable in this case. The majority of the business is airport transfers which are at all times of the day and night, therefore, in deciding this application, a judgement on whether the impact of the use based on the sample week of bookings should be made. Five letters of support from neighbouring properties provides evidence that no nuisance or disturbance is caused by the vehicle movements or the parking of vehicles. As the property is residential and the employees of the business both reside at the address; limiting the number of times they return to the property is not considered reasonable or enforceable. It would be difficult to ascertain which journeys were personal and which journeys related to the business and residents of neighbouring properties are not limited in this way.

A condition limiting the use of the property to that of the applicant is considered necessary as the assessment of the impact on residential properties is based on the information submitted with the application. If the property was sold and another operator continued the use they may not be as considerate to neighbours as the applicant (as stated in the supporting letters).

To conclude, having considered the applicant's supporting information and the case law on the subject, it is considered that the use would not have an adverse impact on the residential amenity of neighbouring properties provided that conditions limiting the number of vehicles to two, retention of the parking area and limiting the use to the applicants are attached to any permission.

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. Only two private hire vehicles can be parked at the property at any one time and the driveway shall be retained for parking free of obstructions for the life of the use.

Reason: In the interests of highway safety.

2. This permission shall enure for the sole benefit of Mr and Mrs Oakey as residents of 31 Ashbourne Drive, Castle Gresley.

Reason : As the assessment is based on their business only and to protect the amenity of neighbouring residential properties.

2. PLANNING AND OTHER APPEALS

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

Reference	Place	Ward	Result	Cttee/delegated
9/2009/0773	Hatton	Hatton	Part Allowed/Dismissed	Delegated



Appeal Decision

Site visit made on 29 January 2010

by **Mick Boddy F Arbor A FICFor CEnv**

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

The Planning Inspectorate
4/09 Kite Wing
Temple Quay House
2 The Square
Temple Quay
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Date:

- 2 MAR 2010

Appeal Ref: APP/TPO/F1040/961

21 Elmwood, Church Mews, Hatton, Derbyshire, DE65 5QG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of consent to undertake work to trees protected by a Tree Preservation Order subject to conditions.
- The appeal is made by The John Hughes Law Practice, on behalf of the appellant, Mr B A Woodyet, against the decision of South Derbyshire District Council.
- The application Ref: 9/2009/0773/TP, which was registered on 16 September 2009, was approved on 6 November 2009.
- Consent was granted for the pruning of three sycamore trees - T2, T3 & T5 of the TPO - subject to four conditions. The conditions in dispute are No.3 and No. 4.
- Condition 3 states that: *'At least one weeks prior written notice of the date of the commencement of the works hereby granted consent shall be given to the Local Planning Authority.'* The reason given for this condition is: *'So as to enable a Planning Officer to be present on site in order to agree the extent of works before they are commenced, in the interest of the health and safety of the trees, and to ensure that the appearance of the tree [sic] and the character of area is [sic] not unduly harmed.'*
- Condition 4 states that: *'Notwithstanding the submitted details, the extent of the work to the trees the subject of this application are as follows; Pollarding of the two trees adjacent to the south boundary of the dwelling to the level that pollarding took place previously; the single tree adjacent to the west boundary of the property, crown reduction of 30% is hereby permitted and crown rising [sic] to a maximum level of 4 metres above existing ground levels.'* The reason given for this condition is: *'For the avoidance of doubt and, in the interest of the health and safety of the trees, and to ensure that the appearance of the tree [sic] and the character of area is [sic] not unduly harmed.'*
- The relevant Tree Preservation Order (TPO) is the South Derbyshire District (Land off Church Mews, Hatton) Tree Preservation Order No. 57 (1987), which was confirmed on 24 September 1987.

Decision

1. I allow the appeal against Condition 3 and hereby cancel this condition.
2. I dismiss the appeal in relation to Condition 4.

Preliminary Matters

3. In the Grounds of Appeal the appellant's agent contends that Condition 3 is unlawful. Whilst I am unable to consider whether or not the condition is lawful within this decision, I have determined this element of the appeal on the basis of whether the condition is necessary and reasonable.

Main Issues

4. I consider that the main issues in this case are:
 - a. Whether the imposition of Condition 3 is required in the interests of the health and safety of the trees, and to ensure that the appearance of the trees and the character of area are not unduly harmed.
 - b. Whether or not there is sufficient justification to amend Condition 4 to permit the reduction of the crown of T5 by 50% rather than the 30% stipulated and to remove the 4 metre restriction on the level of crown lifting permitted.

Reasons

Condition 3

5. I consider that if the Council had any concerns over the extent of works permitted and how these should be executed, they should have specified the details clearly in writing, to ensure that the appointed contractor can implement these without the risk of misinterpretation. In this instance, I consider that this is satisfactorily addressed by Condition 2 which stipulates that the works be carried out in accordance with the British Standard Recommendations for Tree Work (BS3998:1989 – currently under revision).
6. The use of such a condition creates the potential for a degree of uncertainty as to how the two parties perceive what has been permitted, which could result in a situation where the works cannot be agreed at the site meeting.
7. The imposition of the condition also imposes potential restrictions on the timing of the works, as it is assumed that the Council officer would only attend site during normal working hours.
8. In relation to this first issue, I consider that the imposition of Condition 3 under the prevailing circumstance is neither reasonable nor justified.

Condition 4

9. The tree adjacent to the western boundary, T5, is currently 16.5 metres tall and was previously topped at around 10 metres; the permitted reduction of 30% would therefore bring it down to just below this level. The current crown clearance over the garden is around 3 metres; the permitted crown lifting would therefore increase this by approximately one metre.

10. It was clarified with Mr Shaw's arboricultural contractor that the proposed 50% reduction related to the overall dimensions of the tree, which would bring its height down to just above 8 metres. If the restriction on the extent of crown lifting permitted were also to be waived, it could result in a situation where all of the branching could be removed from the tree.
11. Whilst this sycamore contains a number of defects and structural weaknesses, I do not consider that these currently warrant the 50% crown reduction proposed. Although referring to crown thinning, the current British Standard Recommendations for Tree Work (BS3998:1989) states the leaf area removed should not normally exceed 30% of the original coverage. In this instance, I consider it appropriate to apply a similar restriction to the percentage of the crown to be removed, as this will actually result in a proportionately greater reduction in the foliage bearing growth.
12. In relation to this second issue, I consider there to be insufficient justification to amend Condition 4 to increase the extent of pruning permitted.

Conclusions

13. I have concluded that the imposition of Condition 3 is neither reasonable nor justified under the circumstances and therefore allow this element of the appeal and cancel this condition.
14. With regards to Condition 4, I find there to be insufficient justification to amend this condition and therefore dismiss this element of the appeal.

Mick Boddy

Arboricultural Inspector