

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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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. 9/2008/0609/SGF

Applicant:

W G Tanker Group
Woodyard Lane
Foston
Derby
DE65 5PY

Agent:

Mr Stephen Cooper
The Winter Partnership
24 Rottingdean Place
Falmer Road
Brighton
East Sussex
BN2 7FS

Proposal: **The erection of a new workshop at The Transport Yard
Woodyard Lane Foston Derby**

Ward: **North West**

Valid Date: **03/06/2008**

Reason for committee determination

Given previous controversy regarding developments in the vicinity the application is brought before Members at the discretion of the Head of Planning Services.

Site Description

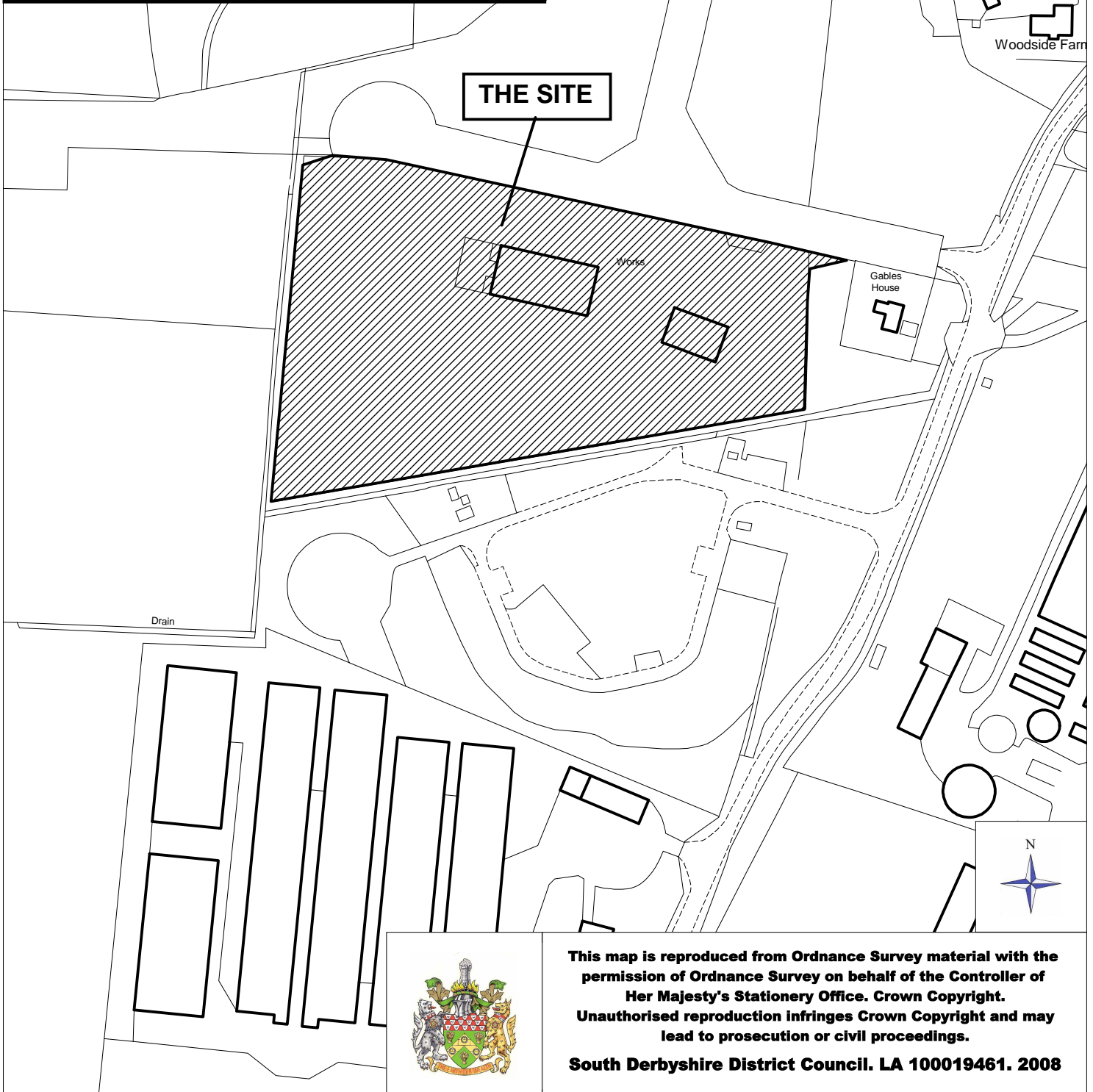
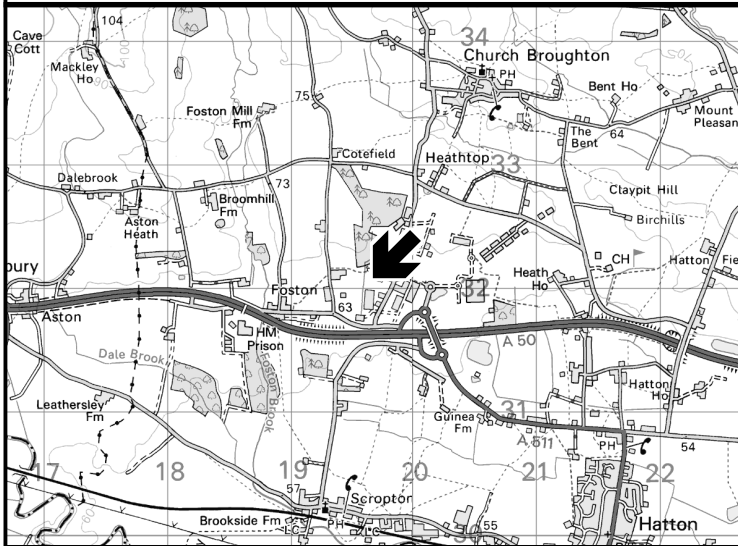
The site is relatively flat and has access from Woodyard Lane. It is bounded to the south, west and east by hedges and trees albeit that the hedge on the east and west boundaries are sparse. The north boundary is formed by a palisade fence some 2.1 metres high beyond which is the haulage yard of the original owner of this land. The oak trees at the east end of the site have a Tree Preservation Order on them.

There is the Council's Gypsy site with 22 plots beyond the south boundary. The nearest dwelling lies immediately south of the entrance to the site on its eastern boundary. The Midland Pig Producer site is to the east of Woodyard Lane where there are two dwellings. A dwelling (occupied by the owner of the haulage company) lies beyond the haulage yard to the north. The nearest dwellings on Hay Lane to the west are some 200 metres from the site boundary.

Proposal

It would be a steel portal frame building some 60 metres long x 21 metres wide. It would have an eaves height of 7.7 metres and a height to ridge of 8.7 metres. On part of the west elevation two mono pitch single storey store structures are proposed.

9/2008/0609/SGF - The Transport Yard, Woodyard Lane, Foston



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South Derbyshire District Council. LA 100019461. 2008

The building would be clad in a green composite panel to provide a degree of noise insulation outside the building from the operations that would take place within it.

Plant and machinery would be sited in the building to facilitate maintenance of vehicles brought to the site.

Applicants' supporting information

The proposed building on the west boundary of the site is to cater for the expansion of the firm that was established following the grant of planning permission some 4 years ago as a maintenance base for silo tank maintenance and general works.

A new contract awarded to the company has resulted in more employees and a need for a new workshop to cater for the expansion and ensure that any noise generating operations are undertaken in an insulated building. The building would be a steel portal frame building clad in colours to match the recently constructed workshop on the site.

Currently the grit blasting operations are taking place in an open sided building within the site and the company is aware of noise complaints from the locality. Noise surveys have indicated that the majority of the ambient noise levels at the site are generated by traffic on the A50 (TR). Notwithstanding this the proposed building would ensure that at a distance of 30 metres from it ambient noise levels would not be exceeded. Occupiers of caravans on the traveller site should not therefore notice the operations in the building. The houses to the west will not notice any discernable improvement due to noise levels from the A50 being the dominant source of noise in that area.

Since submission the application has been amended to remove the building away some 10 metres from the west boundary to permit the implementation of a landscaping scheme that would increase the density of the hedge on that boundary. Further improvements to the hedge on the south boundary with the traveller site are also proposed together with some additional tree planting.

The hours of operation requested on the application form are longer than the currently permitted hours. However, the applicants have agreed to be bound by the existing hours condition within the new building.

Planning History

There has been a haulage use on the 'Bentley' site for many decades, and the current operator secured planning permission in 2004 that included the erection of the new workshop on the current application site that lies to the south of the original haulage yard.

Responses to Consultations

Foston and Scropton Parish Council strongly object to the application on the basis that the development would result in another expansion of this quiet country lane and is seen as further extension of Dove Valley Park that has several plots available to accommodate this sort of use. The Parish Council is concerned that if this and other applications are permitted there would be major impact on traffic entering and leaving Woodyard Lane and also on traffic through Foston Village. The Parish Council

considers that if development goes ahead then consideration should be given to how traffic is controlled through the village.

The County Highway Authority has no comment.

The County Archaeologist has no objection to the development.

Severn Trent Water and the Environment Agency require foul water drainage to be agreed. The Environment Agency has agreed the surface water treatment regime.

The Environmental Protection Manager requires the hours of operation to be limited to those imposed on the existing workshop on the site, notwithstanding those requested in the application documents. It is also requested that a condition requiring the submission of details of dust extraction equipment to be submitted together with a noise survey to identify noise suppression measures for the site to cater for any significant increase in noise levels as a result of this development. Doors on the workshop should be closed during operations in the building and maintenance of plant and equipment should be undertaken in accordance with manufacturers recommendations to minimise the risk of prosecution under the Environmental Protection Act. These latter requirements are for an informative for the applicant.

Responses to Publicity

One letter has been received that comments on the application and makes suggestions for alterations that are summarised as follows:

- a) The building will be intrusive in its proposed position and the impact of the building would be increased by the use of the colour green, a pale grey or blue would be better.
- b) There is concern about the noise that may emanate from the building, it should be properly sound proofed and a noise impact study undertaken to assess noise from the ventilation equipment. All doors facing west should be kept shut and the west boundary should be provided with a landscaped bund.
- c) The hours of operation should be limited to those of the rest of the site – a further restriction on the hours of operation is also requested so that work finishes at 1800 on weekdays and 1400 on Saturdays.
- d) The boundary planting required by the previous permission has not been implemented and in order to ensure it is this time the condition should require bunding and planting prior to commencement of building operations. Should the application be refused, it is requested that landscaping required previously should be the subject of enforcement action.
- e) The proposed building would have a serious detrimental impact on the countryside in its submitted form.

Development Plan Policies

The relevant policies are:

Local Plan: Employment Policies 1,4,5 and Transport Policy 6.

Planning Considerations

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

- The Development Plan
- The impact of the building on the character and appearance of the countryside
- Noise impacts

Planning Assessment

Employment Policy 1 makes provision for the expansion of existing businesses on or adjoining their existing sites provided there are no significant traffic or other environmental impacts in terms of noise and visual intrusion.

The County Highway Authority has raised no comments and as such objection on traffic grounds would be difficult to sustain.

Noise issues have been addressed by the Environmental Protection Manager; there is no objection subject to conditions that limit hours of operation, provide for noise limitation measures if proven necessary and dust suppression measures when grit blasting takes place within the building.

The impact on the countryside from the development is of concern but the site would be viewed in the context of nearby woodland, hedges that screen the site from most public vantage points and distance from dwellings that look towards the site. When viewed from the west, the building would be seen in the context of the existing development, the nearest dwellings are some 200 metres away and there is intervening screening in the form of trees. Whilst trees can be removed, the distance between the proposed building and dwellings on Hay Lane is substantial and would not represent a significant impact on residential amenity subject to the imposition of the recommended conditions and their enforcement.

The concerns/objections of the resident is noted but it is considered that the amended plan and the requirements of the Environmental Protection Manager go some way to meeting the objections raised and that in the light of the above the development is considered acceptable under the provisions of Employment Policy 1.

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

Recommendation

GRANT permission subject to the following conditions:

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

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

2. Notwithstanding the originally submitted details, this permission shall relate to the amended drawing no.TWP-F08-002 received on 11 August 2008 together with the addendum to the planning statement.

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

3. No machinery shall be operated, no process shall be carried out and no deliveries taken at or despatched from the site outside the following times: 0600-1900 Monday to Friday, 0700- 1400 on weekends and public holidays

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

4. Before development is commenced, details of a scheme showing the means of extraction and filtration of dust shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall then be implemented prior to the first use of the premises and retained thereafter in accord with the manufacturers specification for maintenance.

Reason: In order to minimise the impact of dust and grit on the local environment.

5. Before development is commenced, a full assessment of noise likely to be generated within and on the building hereby approved shall be submitted to and approved in writing by the Local Planning Authority. The assessment shall include measure to control noise emanating from within and on the building in terms of its impact on nearby buildings and residential units and these measures shall be implemented prior to the first occupation of the building. Thereafter the noise control measures shall be retained in place and maintained in accordance with the manufacturers specification.

Reason: In order to ensure that noise levels from the building are controlled in the interests of the amenity of the occupiers of nearby residential units.

6. All planting, seeding or turfing comprised in the approved details of landscaping illustrated on the amended drawing TWP-F08-002 shall be carried out in the first planting and seeding seasons following the occupation of the buildings 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.

7. No lighting shall be erected on the site or on the building until precise details of the intensity, angling and shielding, and the area of spread of the lights have been submitted to and approved in writing by the Local Planning Authority. The lights shall be installed in accordance with these details and thereafter retained in conformity with them. The submitted scheme shall comply with the Institute of Lighting Engineers "Guidance notes for the Reduction of Light Pollution" (2000).

Reason: To preserve amenity.

8. Notwithstanding the provisions of Schedule 2 Part 8 of the Town and Country Planning (General Permitted Development) Order 1995, the building hereby permitted shall not be enlarged or extended without the prior grant of planning permission on an application made to the Local Planning Authority in that regard.

Reason: To maintain control in the interest of the character and amenity of the area.

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

Reason: In the interests of pollution control.

Informatives:

You are advised that the Environmental Health Manager would expect that all external doors be closed when works are undertaken within the building hereby permitted and that all works of maintenance and repair of plant and equipment should take place within the building to ensure that the opportunity for complaint under the provisions of the Environmental Protection Act are minimised

Item **1.2**

Reg. No. **9/2008/0764/U**

Applicant:

Mr W McCann
C/O Agent S G Design Studio Ltd

Agent:

Mr. S. Greaves
S. G. Design Studio
202 Woodville Road
Hartshorne
Swadlincote
Derbyshire
DE11 7EX

Proposal: **The change of use of garden to accommodate static caravans at 179 The Bungalow Linton Heath Linton Derbyshire**

Ward: **Linton**

Valid Date: **17/07/2008**

Reason for Committee determination

The application is brought before the Committee at the discretion of the Head of Planning Services as the subject is known to have been of concern to Members in the past.

The application was deferred at the meeting on 4th November in order to allow for further clarification to be sought as to who would occupy the proposed caravans. Further information will be reported verbally at the Committee Meeting.

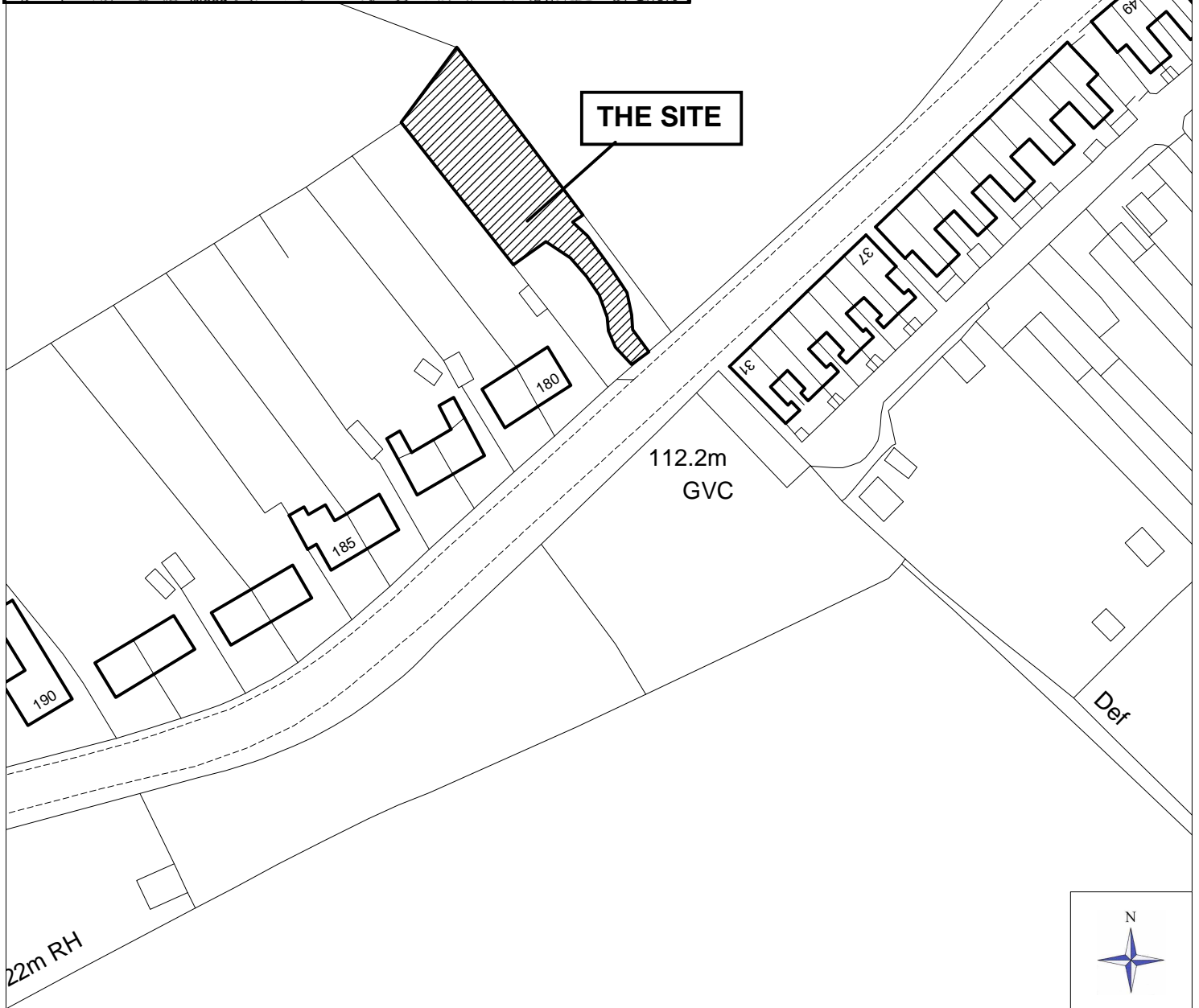
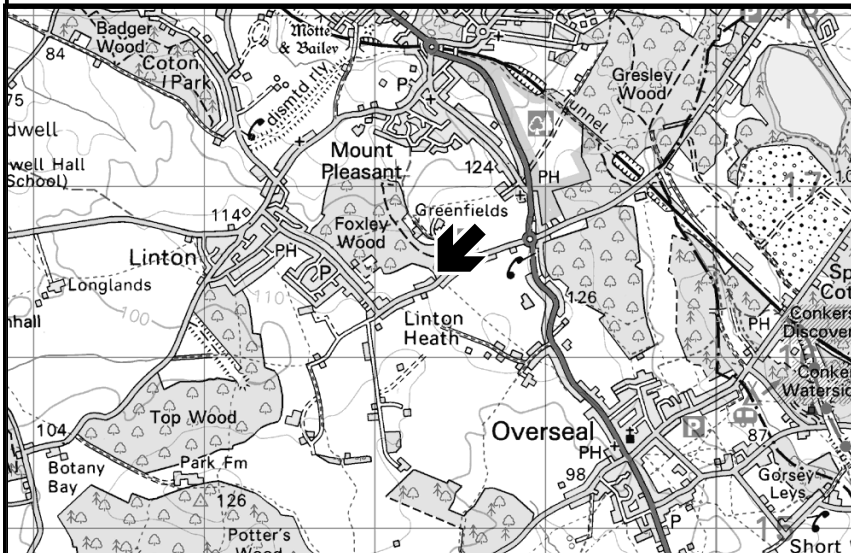
Site Description

The application relates to a site occupied by a large mobile home resembling a bungalow. The site is hard surfaced with gravel and bounded by close boarded fencing, with decorative entrance walls and pillars.

The application site is 15.5m across its road frontage and is approximately 56m deep. It is generally flat and is clear of all vegetation. The land to the north east comprises National Forest woodland planting whilst a ribbon of residential properties adjoins to the south west. There is open land on the opposite side of the road. The site lies within the countryside albeit adjacent to a recognisable ribbon of houses

Proposal

Initially the application sought permission to position a further 3 caravans on the site. However, this has been negotiated down to 2 in order to reduce the noise and disturbance to the neighbouring resident to the south west.



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South Derbyshire District Council. LA 100019461. 2008

There would be no extension of the site into the countryside as the additional caravans will be sited within the existing site. The two new caravans would be sited alongside the site's north eastern boundary and positioned one behind the other, both further back in the site than the present caravan (as shown on the amended plans received on 30th July 2008).

All pitches would gain access via the existing access driveway. Each pitch would provide standing for a single large caravan and have 2 parking spaces each.

Applicant's supporting information

The applicant is the person who secured the original planning permission on appeal. The additional caravans are required for his older children, reflecting the fact that he has more children living with him now than when the appeal was granted. There are currently five children of ages ranging from 2 – 18 years old living at the existing caravan on site together with both parents, making 7 occupants in total. There is also a young child currently living with his mother in Wales who is hoping to move in with this family later this year and an older son currently living away from home but who occasionally visits.

It is stated that council records should show telephone calls from the applicant to the Environmental Health section requesting larger additional bins, both last and this year, that will prove that the large family has occupied this site since moving there.

Essentially the present mobile home has 2 bedrooms and this is now too small to accommodate the parents and all the children. In traveller culture it is usual to allow older teenage children to occupy a separate caravan, although this is normally close by the parents home to provide care and supervision.

Planning History

Planning permission was granted on appeal to site two gypsy caravans in September 2006. (9/2005/0802) The Inspector considered that there was a demonstrable unmet need for gypsy sites in the District. He also accepted that whilst the development would extend the ribbon development there was an acceptability of gypsy sites on the edge of settlements and the low key nature of the proposal meant that it would not be out of keeping with its surroundings. He considered that in visual terms it would represent an appropriate transition between the built development and the woodland area to the north east.

The appeal allowed the siting of 2 caravans, reflecting the fact that at that time, the applicant owned two 25ft caravans. In 2007 the applicant applied under 9/20070751, to vary that consent to allow the siting of a single large mobile home. That was granted mainly having regard to the view that such a building would resemble a bungalow sited at the end of a row of houses.

Responses to Consultation:

County Highways Authority has no objection

Derbyshire Gypsy Liaison Officer states: Application supported;

- (i) There is a legal requirement on Council's to assess the accommodation needs of travellers and gypsies;
- (ii) Planning Circular of February 2006 requires gypsy pitches to be increased by 2009-2011,
- (iii) Derbyshire Councils have assessed such needs, in 2007;
- (iv) RSS requires a further 19 traveller/gypsy pitches in South Derbyshire, and DCLG; thinks this could be met by extending existing private sites by up to 4 pitches to allow for family growth;
- (v) DCLG supports a network of small sites rather than 1 large site.

Responses to Publicity

4 letters from neighbours making the following points:

- a) Is proposal for 2 or 3 additional caravans?
- b) Will result in a caravan park which is out of keeping,
- c) Applicant granted permission for the mobile home on the site for his own family,
- d) Do not believe there is a need for additional caravans for members of the applicant's family,
- e) Access unsuited to 4 residences,
- f) Access will be like a cul de sac and dangerous,
- g) Neighbours objected to original application to use site for caravans,
- h) Not a suitable place for a caravan site,
- i) Hideous units,
- j) Contrary to planning policy,
- k) Site suitable only for 1 dwelling,
- l) Caravans are out of keeping and character with detached and semi-detached houses in area,
- m) Access through a single gate to 4 units is dangerous,
- n) Increase risk of traffic accidents,
- o) Congested traffic on site,
- p) Applicant has not spoken to neighbours as he states,
- q) Original permission was for only one caravan, and this runs counter to that,
- r) For financial gain only,
- s) Loss of value of neighbours houses,
- t) There are caravan sites in Park Road only 500m away,
- u) Road is busy and usually there are cars parked on it
- v) Present use for 1 caravan is enough

Planning Guidance and Policies

Circular 01/06 - Planning for Gypsy and Traveller Sites

Derbyshire Gypsy and Traveller Accommodation Assessment 2008

Replacement RSS8: Policy 16 & Appendix 2

Retained Local Plan: Environment Policy 1, Housing Policy 15

National Guidance/Policy

Circular 01/06 - Planning for Gypsy and Traveller Sites post dates the Local Plan and, therefore, greater weight should be attached to it in making decisions on planning applications. It states that the Government's key objective for housing is to ensure that everyone has the opportunity of living in a decent home, and it promotes the encouragement of Gypsies to provide their own sites. Local Authorities should assess the needs of all parts of the community and make appropriate provision.

Derbyshire Gypsy and Traveller Accommodation Assessment 2008

Under the terms of Circular 01/2006, local authorities are required to rigorously assess the accommodation needs of Gypsies and Travellers and make site specific allocations for new public and private sites in development plans. (South Derbyshire was included in those authorities that had no needs survey.) Prior to that Derbyshire County Council has been co-ordinating a county-wide survey.

The Accommodation Assessment was published in March 2008 and its principal role is to assess need to allow forecasts to be made to allow land use allocations of appropriate size to be included in emerging LDFs. The assessment took account of incidents of unauthorised encampments, the status of existing authorised private sites, the lifestyle and demographic profile of gypsies, the levels of occupancy on private and public sites and the twice yearly caravan counts undertaken on behalf of ODPM (now DCLG). The Accommodation Assessment confirms that there is a forecast growth in gypsy households.

Planning Considerations

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

- (i) The need for additional gypsy caravan pitches in the area.
- (ii) Conformity with the Development Plan including access to day-to-day facilities and intrusion into the countryside.
- (iii) Access and highway safety
- (iv) The personal circumstances of the applicant.
- (v) Relevant appeal decisions.
- (vi) Sustainability

Planning Assessment

The emerging policy for the RSS has set an overall level for gypsy site provision across the region. Policy 16 encourages Local Authorities and other public bodies to work together across administrative boundaries to identify land for additional pitch provision based on clearly evidenced assessments of need.

Appendix 2 to the emerging RSS8 sets minimum levels of provision for each part of the Region that should be identified in Local Development Framework Documents and the minimum additional provision for South Derbyshire is 19 pitches.

However the RSS appears to have merely transposed the figures from the Derbyshire Gypsy and Traveller Accommodation Assessment 2008 omitting the vital qualifying statement that made it clear some re-apportionment would be appropriate for public sites to ensure provision is made in areas of actual need, rather than simply perpetuating areas of existing provision. The Council has formally objected to this vital omission.

Housing Policy 15: Gypsy Caravan Sites is criteria based. The policy is permissive of caravan sites provided that:

- The site is in an area frequented by gypsies;
- That it is satisfactorily related in relation to other development;
- That it is acceptable in environmental terms; that it is reasonably accessible to services and facilities;
- That it is capable of sympathetic assimilation into its surroundings; and
- That there is adequate provision for access.

The need for additional gypsy caravan pitches in the area.

Caravan counts show that unauthorised encampments in South Derbyshire are skewed towards two areas in the District, namely the Hilton/Hatton areas in the north and Linton in the south. This could possibly be attributed to the fact that there are public caravan sites in the vicinity of these areas which might attract hopeful travellers, or relatives of families residing on those sites.

Existing public sites at Church Broughton and Lullington continue to be generally fully occupied with turnover of plots being relatively rare. Planning permissions for small private sites have been granted at Walton on Trent and Overseal in the past 5 years.

The Accommodation Assessment states that there is a forecast growth in gypsy households and that this will need to be met by provision of caravan pitches, in additions to those at the existing sites. As a result it is considered that this application would be justifiable to meet an identified need for gypsy caravan pitches.

Conformity with the Development Plan including access to day-to-day facilities and intrusion into the countryside

It is clear that this is an area already frequented by gypsies evidenced by the number of public, private sites and unauthorised encampments. The applicant has suggested that the new pitches would be occupied by relatives of the family already living on the site.

In environmental and landscape terms, the site is presently occupied by a large mobile home and the remainder of the site is gravel surfaced and used for parking vehicles. The additional 2 caravans proposed would be sited on the existing hard surface alongside the eastern boundary fence beyond which is the National Forest woodland.

Access and highway safety

The county highway authority has no objection to the use of the existing access for 3 caravans.

Personal Circumstances

Essentially the existing mobile home has 2 bedrooms, and the only way to accommodate dependent children is to site more caravans close enough to provide care and supervision.

Relevant appeal decisions

The following recent appeal decision is relevant.

An application to expand the gypsy caravan site at Crafty Flats Lane in Coton in the Elms, from 2 to 8 caravans was granted planning permission on appeal in July 2006. Although the Council refused permission on highway safety grounds, a matter that persuaded the Inspector to dismiss the appeal, the Inspector's comments are useful in examining the issues regarding the principle of expanding an existing gypsy site.

The gypsy status of the family was not disputed, they wished to live together in the traditional gypsy manner on the appeal site that was already in use for that purpose. Given the details provided the Inspector was satisfied that gypsy status of the appellant's family had been established in accordance with the definition in ODPM Circular 01/2006

There was also no dispute between the parties that the site was located within an area frequented by gypsies, that it is reasonably accessible to services and facilities, and that it would be capable of assimilation into its surroundings subject to extra landscaping being provided around the site boundary. The Council agreed that there was an unmet, although as yet unquantified, need for gypsy caravan sites in the general area. On the basis of the information supplied, his inspection of the site and its surroundings and the latest gypsy count figures for the District and County, the Inspector concurred with those views. He therefore agreed with the appellant that the proposed development met the majority of the criteria in both Structure Plan Housing Policy 8 (no longer relevant) and Local Plan Housing Policy 15.

He concluded a family need appeared to exist in that particular case which, subject to sensitive landscaping and screening, was capable of being acceptably accommodated on that occasion as an extension to the established site.

The previous permission for the site currently being considered confers acceptance that the family are gypsies and as such an exception to the normal policies for the protection of the countryside may apply as supported by Circular 01/06.

Sustainability

The closest village amenities lie in both Overseal and Linton, less than 1km away from the application site. A Post Office and primary school are in each of Overseal and Linton whilst medical and secondary school provision are further afield in Swadlincote.

Circular 01/2006 advises that rural settings for gypsy sites are acceptable in principle where they are not subject to special planning constraints. It goes on to advise local authorities to be realistic about the availability of alternatives to the car in accessing local services in rural areas. Given the overall scale of the proposal and the presence of

some local facilities within walking/cycling distance, it is considered that it would be difficult to sustain a refusal on the basis of accessibility to services.

Conclusion

To summarise, therefore, the development or extension of gypsy sites in countryside locations such as the current application, is inappropriate in planning terms unless, firstly, available data demonstrates that a need for such accommodation exists which cannot be met on any existing sites, and secondly the proposal is acceptable in other planning respects.

It is considered that the need has been justified with the natural expansion of the applicant's family since he first occupied the site being a further relevant consideration. The proposal satisfies Housing Policy 15, the site is satisfactory in terms of its location in relation to other development and there are no environmental issues that would preclude development.

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

Recommendation

GRANT permission subject to the following conditions:

1. The development permitted shall be begun before the expiration of three years from the date of this permission.
Reason: To conform with Section 91(1) of the Town and Country Planning Act, 1990 (as amended by section 51 of the Planning and Compulsory Purchase Act 2004).
2. This permission does not authorise the use of the land as a caravan site by any person other than gypsies and travellers as defined in paragraph 15 of OPDM Circular 01.2006.
Reason: To satisfy the identified need for additional sites for gypsy pitches in South Derbyshire, in a location where development might otherwise not be supported.
3. The additional caravans hereby approved shall be occupied only by the immediate family of the occupiers of the existing mobile home on the site, unless otherwise agreed in writing by the local planning authority
Reason: In order to meet the needs of the existing family on the site
4. No more than a total of 2 caravans shall be sited on the site at any one time
Siting more than this number of caravans may lead to an unacceptably detrimental effect on the residential amenity of neighbouring properties in accordance with adopted policy H15 of the South Derbyshire Local Plan 1998
5. No commercial activity shall take place on the site
Reason: Such use might lead to an unacceptably detrimental effect on the residential amenity of neighbouring properties in accordance with adopted policy H15 of the South Derbyshire Local Plan 1998

6. No residential caravan shall be brought onto the site until the hard standing for it and the associated car parking spaces have been provided and allocated for the corresponding caravan and thereafter retained for that caravan
Reason: To ensure that all the activities associated with the development are contained within the curtilage of the site, so as to avoid parking and manoeuvring on the highway to the detriment of highway safety.
7. No vehicles which exceed 3.5 tonnes unladen weight shall be parked or stored at the site
Reason: Such a use might lead to an unacceptably detrimental effect on the residential amenity of neighbouring properties in accordance with adopted policy H15 of the South Derbyshire Local Plan 1998
8. Notwithstanding the originally submitted details, this permission shall relate to the amended drawing no 208-44.01 revision A
Reason: For the avoidance of doubt, the original submission being considered unacceptable.
9. No development shall take place until there has been submitted to and approved by the Local Planning Authority a scheme of landscaping, which shall include indications of all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection in the course of development.
Reason: In the interest of the amenity of the area.
10. All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed with the Local Planning Authority.
Reason: In the interest of the amenity of the area.

Informatives:

The proposed development lies within a coal mining area. In the circumstances Applicants should take account of any coal mining related hazards to stability in their proposals. Developers must also seek permission from the Authority before undertaking any operations that involves entry into any coal or mines of coal, including coal mine shafts and adits and the implementation of site investigations or other works. Property specific summary information on any past, current and proposed surface and underground coal mining activity to affect the development can be obtained from the Coal Authority. The Coal Authority Mining Reports Service can be contacted on 0845 762 6848 or at www.coal.gov.uk. The development hereby authorised does not override the requirements of the Caravan Sites Act/Site Licence legislation.

Item **1.3**

Reg. No. **9/2008/0901/A**

Applicant:

Mr Matt Swindles
14 Windmill Street
London
W1T 2DY

Agent:

Mr Matt Swindles
Primesight Ltd
Charlotte House
14 Windmill Street
London
W1T 2DY

Proposal: **The retention of two free standing illuminated display signs at Y Pas Garage Northbound Derby Road Egginton Derby**

Ward: **Etwall**

Valid Date: **29/08/2008**

Reason for committee determination

In accordance with procedure the application is brought before the Committee as there is an objection from a statutory consultee. The report however, will set out why, due to changes in legislation, the Committee has no alternative but to disregard the objection.

Site Description

The site of the adverts is on the north boundary of the site that lies to the west of the A38. It is generally flat and the adverts are set against a low boundary hedge.

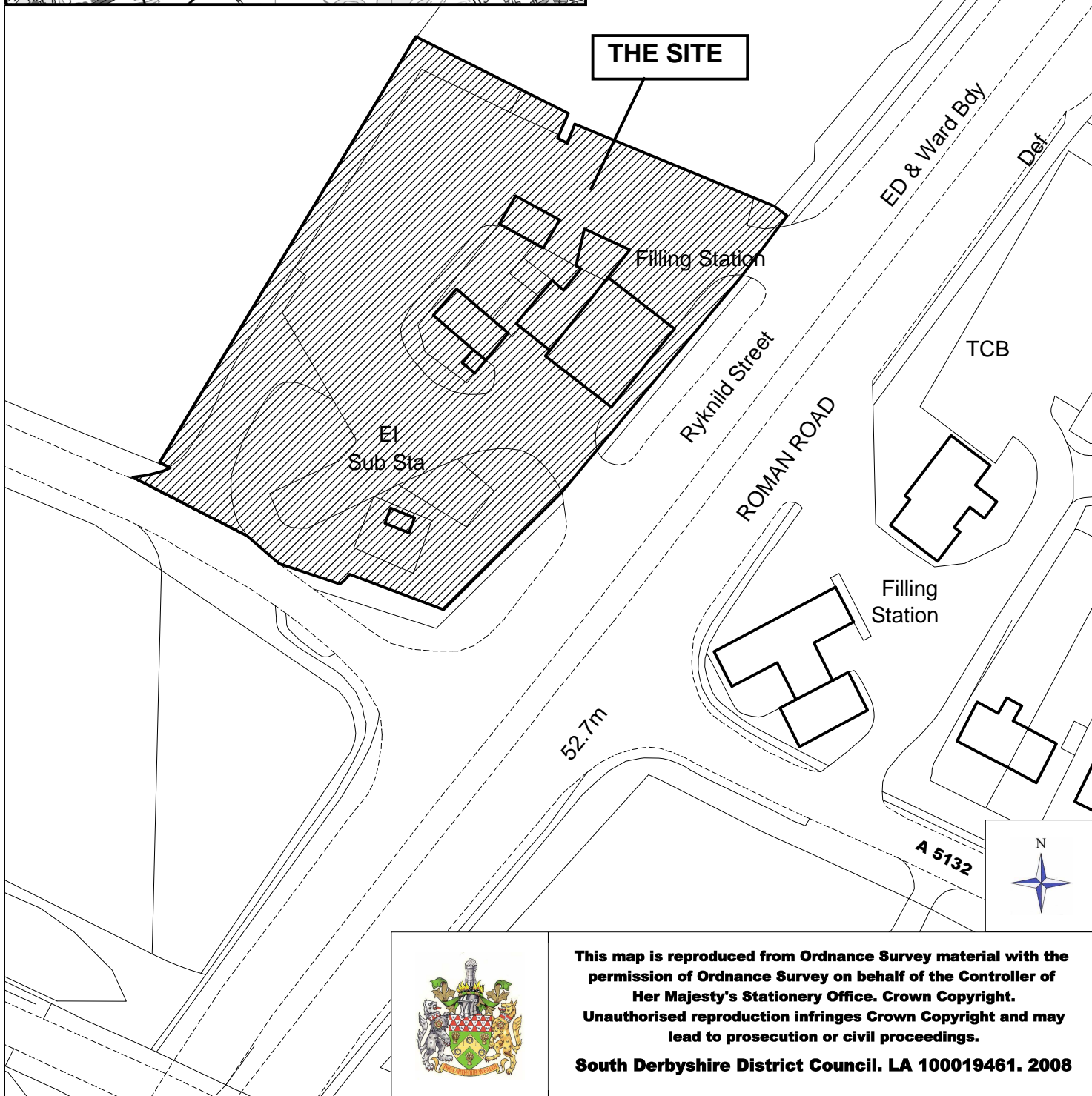
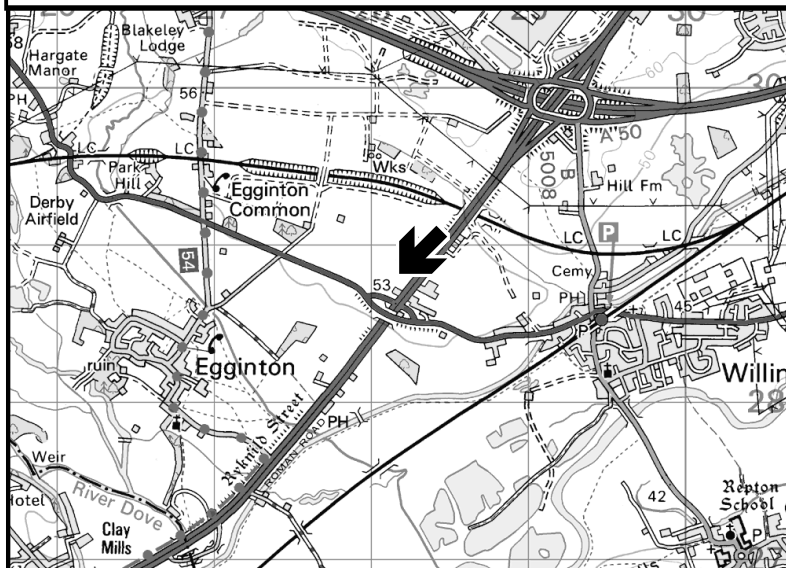
Proposal

To retain the adverts on site in the form described in the application.

Applicants' supporting information

The applicants draw attention to Class 13 of Schedule of the 2007 Advertisement Regulations 2007 that allows the retention of an advert, including illuminated adverts on sites where they have been in position in the 10 years prior to 6 April 2007. The applicants are reviewing their portfolio of sites where this has occurred and are applying under this provision to seek the retention of the signs.

9/2008/0901/A - Y Pas Garage Northbound, Derby Road, Egginton



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South Derbyshire District Council. LA 100019461. 2008

Planning History

The site has operated as a petrol-filling site since the 1950's; numerous applications have been permitted over the decades but none for an advert as set out in the application document.

Responses to Consultations

Willington Parish Council has no objection

The Highways Agency has objected to the application on the basis that the signs could prove a distraction to users of the trunk road. However, the Agency appears not to have appreciated the circumstances of the application and have responded as if being consulted on a normal application.

The County Highway Authority has no comment.

Responses to Publicity

None

Planning Assessment

Under normal circumstances regard would be had to Development Plan policies, National Guidance and the Council's own Supplementary Planning Guidance that look at visual impact and highway safety. However, on this occasion no consideration of the merits or otherwise of the proposal is permissible as they have been in place for the time specified in the regulations and therefore the Committee has no alternative but to allow the application.

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

ADVISE the applicants that the Local Planning Authority acknowledges that the advert has been in place for a period of 10 years and that the advert as described in the application and supporting documents is therefore authorised to the extent described in the application. No other illuminated advert may be displayed without the prior written approval of the Local Planning Authority in response to an application made in that regard.

Informatives:

Advise that LPA has no objection to the retention of the signs provided that the intensity of illumination is not altered except in response to an application made and approved under the Town and Country Planning (Control of Advertisement) (England) Regulations 2007 for an alteration to the advertisements.

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
9/2008/0082	Bretby	Repton	Allowed	Delegated
9/2008/0194	Melbourne	Melbourne	Dismissed	Delegated
9/2008/0320	Newhall	Newhall	Dismissed	Delegated
E/2007/0162	Newhall	Newhall	Dismissed	Delegated



Appeal Decision

Site visit made on 21 October 2008

by **P Bentham-Hill** BA MRTPI

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

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

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

Decision date:
10 November 2008

Appeal Ref: APP/F1040/A/08/2081280

Bretby Lodge, Bretby Hall Park, Bretby, Derbyshire, DE15 0QQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Mr and Mrs M Taylor-Dawes against the decision of South Derbyshire District Council.
- The application Ref 9/2008/0082/FH, dated 16 January 2008, was refused by notice dated 20 March 2008.
- The development proposed is the erection of a conservatory.

Decision

1. I allow the appeal, and grant planning permission for a conservatory at Bretby Lodge, Bretby Hall Park, Bretby, Derbyshire, DE15 0QQ in accordance with the terms of the application, Ref 9/2008/0082/FH, dated 16 January 2008, and the plans submitted with it, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
 - 3) No development shall take place until large scale drawings (to a minimum scale of 1:10) of the external joinery, including horizontal and vertical sections, the precise construction method of openings and cill and lintel details have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved drawings.
 - 4) The external joinery shall be in timber and painted to a colour and specification which shall have been agreed with the local planning authority. The joinery shall be painted in accordance with the agreed details within three months of the date of completion of the development unless otherwise agreed in writing by the local planning authority.
 - 5) Pointing of the proposed building shall be carried out using a lime mortar no stronger than 1:1:6 (cement:lime:yellow sand). The finished joint shall be slightly recessed with a brushed finish.
 - 6) A sample panel of pointed brickwork, one metre square, or such other area as may have been agreed by the local planning authority shall be prepared for inspection and approval in writing by the local planning authority before the work is generally executed.

Main issues

2. I consider the main issues in this appeal to be the effect of the proposed development on the character and appearance of the Bretby Conservation Area and the setting of the Grade II Listed Building, Bretby Hall.

Reasons

3. The proposed conservatory will be subordinate in scale, style and appearance to Bretby Lodge. As the Council has acknowledged, it is appropriate in design and form to the dwelling of which it will form part. As a free-standing building in its own grounds, the appearance of Bretby Lodge will not be harmed by the addition of the proposed development, which will be largely screened from longer views across the open parkland by the contours of the site and the landscaping along its south-western boundary.
4. The character and appearance of the conservation area and the setting of Bretby Hall have been dramatically altered in recent years by the demolition of former hospital buildings and the construction of Carnarvon Court and Bretby Lodge itself. However, these features are now an essential part of the character of the area and the setting of the Hall and must form part of the context for the proposed development.
5. Whilst the proposed conservatory will not necessarily enhance the character or appearance of the conservation area, it will not have a harmful effect on either of these attributes. It will be seen as an acceptable and appropriate addition to Bretby Lodge, tending to complement the garage wing on its north-western flank, sympathetic both in scale and design and unobtrusive in the wider context. To the extent therefore that it will have a relatively neutral effect on that context, I conclude that it will preserve both the character and appearance of the Bretby Conservation Area and is in accord with the advice in PPG15¹ and the objectives of Environment Policy 12 of the South Derbyshire Local Plan.
6. In the context of the contribution to the setting of Bretby Hall formed by the new development at Carnarvon Court and Bretby Lodge, the proposed conservatory is of little significance. Whilst it will extend the built form of Bretby Lodge further forward of the front elevation of the Hall, it will be within the established curtilage of the Lodge and will not intrude into the wide expanse of lawn which is the principle feature associated with the Hall itself. In broader vistas from the south west, where it might be seen in the same field of view as the Hall, the conservatory will appear as a subordinate element of Bretby Lodge, partly hidden by the land form. From the north-east, the vegetation which forms the backdrop to Bretby Lodge will prevent the conservatory intruding on any view of the Hall.
7. Accordingly, I conclude that the proposed development will not have a harmful effect on the setting of the Grade II Listed Building and will therefore be in accord with Environment Policy 13 of the South Derbyshire Local Plan.

P Bentham-Hill

INSPECTOR

¹ paragraph 4.20



Appeal Decision

Site visit made on 9 September 2008

by **Edward A Simpson JP BA(Hons)**
MRTPI

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

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

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Decision date:
10 October 2008

Appeal Ref: APP/F1040/A/08/2077413

Showroom attached to Garage, Castle Lane, Melbourne, DE73 8JB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant [outline] planning permission.
- The appeal is made by Mr Ansir Mahmood against the decision of South Derbyshire District Council.
- The application Ref 9/2008/0194/U, dated 01/02/2008, was refused by notice dated 10/04/2008.
- The development proposed is change of use from showroom to hot food takeaway.

Procedural Matters

1. The description of development in the application form states that *'Food will be sold and a(n) eating area will be provided for 'eating in'.* I have taken this additional explanation into account in determining the appeal.

Decision

2. **I dismiss the appeal.**

Main issue

3. The main issues in this case are:
 - (a) the impact of the proposal on the amenities of residents of nearby dwellings; and,
 - (b) the impact of parking on highway safety.

Reasons

Issue a)

4. The appeal site falls within an industrial/business area. However, it lies adjacent to residential property fronting the northern side of Castle Lane and at Lillypool; the rear access to this residential development being taken from this part of Castle Lane. As a single unit providing a take-away facility it has the potential to act as a congregating point, and I note that the Derbyshire Constabulary Crime Prevention Design Advisor for the area expresses concerns that the walled entrance to Lillypool, which offers both light and shelter, may attract anti-social behaviour, particularly in the evening when this area would otherwise be quiet.

5. The concern raised as to this potentially harmful impact of the proposal is one with which I concur, particularly as the site is away from the main shopping centre of Melbourne where evening activities of this kind could be more readily supervised. In view of the potential detrimental impact on residential amenity I conclude that the proposal would be contrary to local plan shopping policy 3.
6. I have considered whether this objection could be overcome by the imposition of a condition limiting opening hours but conclude that such a limitation would be unreasonably onerous for a hot food take-away.
7. I have also noted concerns raised as to potential loss of amenity due to cooking smells but conclude that these could be adequately controlled by the installation of appropriate ventilation equipment.

Issue b)

8. From the photographs submitted, and from what I saw during my site visit, it is apparent that there is already a high demand for roadside parking, with many vehicles also parked on pavements; thus forcing pedestrians to walk in the road. This is an already hazardous situation for both pedestrians and motorists.
9. One of the photographs accompanying the application is titled 'partial view of parking area from inside the unit'. That purports to show a parking area in front of the southern elevation of the showroom. However, that area is also a principal access to Melbourne Garage and is located in the bell mouth to the access road to the industrial unit to the rear of the appeal premises. To propose to use this area for car parking associated with the proposed hot food take-away would constitute an unacceptable risk to motorists and other road users.
10. In this respect I note the concerns raised by the owner of Peter Hawkins Ltd, the occupier of the premises to the rear, who also points out that that access road is owned by that company and not available for general parking. The plan denoting parking areas submitted with the appeal documentation indicates a larger area of land for parking to the north-east of the appeal building and adjacent to the premises occupied by Peter Hawkins Ltd. This falls within an area outlined in blue, although from the certificates accompanying the planning application it would appear that the appellant is not the owner of the site and has no control over the larger area of car parking referred to. I conclude with respect to this issue that the appeal proposal would unnecessarily increase hazards to pedestrians and other road users contrary to the terms of shopping policy 3 and that this is both sufficient and further reason to justify a refusal of planning permission.
11. For the reasons given above I conclude that the appeal should be dismissed.

Edward A Simpson

Inspector



Appeal Decision

Site visit made on 21 October 2008

by **P Bentham-Hill** BA MRTPI

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

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

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Decision date:
5 November 2008

Appeal Ref: APP/F1040/A/08/2081937

**Land adjacent to 143 Park Road, Newhall, Swadlincote, Derbyshire
DE11 OTX**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr R Brood against the decision of South Derbyshire District Council.
- The application Ref 9/2008/0320/F, dated 9 March 2008, was refused by notice dated 12 May 2008.
- The development proposed is the erection of a 2-bed detached bungalow.

Decision

1. I dismiss the appeal.

Main issue

2. I consider that the main issue in this appeal is the effect of the proposed development on the character and appearance of the surrounding area.

Reasons

3. Nos 141 and 143 Park Road occupy a prominent position on the edge of the built up area of Newhall where the orientation of their principle elevation defines the approach to the village and marks the limit of the built-up area. The gardens in front of these dwellings, in the triangular area between Park Road and Woodview Road, form an important part of their setting and provide a valuable transition between the surrounding rural area and the settlement of Newhall.
4. The proposed development would compromise the open character of the approach to the village and intrude on views of the buildings which provide a clear definition of its limits. It would extend residential development along the frontage of Woodview Road towards the road junction in an obtrusive manner, emphasised by the prominence of its end elevation, without regard to its context and the role of the area.
5. I accept that the commercial development to the north of Park Road contrasts with the residential character of that to the south. However, that area is less visible in the approach to the settlement and tends to highlight the important role of the open garden land as a setting for Nos 141 and 143 and the value of protecting it from unsympathetic development.

6. The Council has referred to Policy 4 of the Regional Spatial Strategy (RSS8) and I consider that the failure of the proposal to respect the local built character conflicts with the general aim of that policy to promote better design. Equally relevant are PPS1 and PPS3 which indicate that development should respond to the local context and that design which is inappropriate in its context should not be accepted. Accordingly, I conclude that the proposal would harm the character and appearance of the surrounding area and conflict with the objectives of Policy 4 of RSS8, PPS1 and PPS3.
7. I note the appellant's reference to an outline planning permission for a three-bedroom detached bungalow granted in 1993; however it is clear that the circumstances of that case were entirely different from those of the present appeal. That dwelling would have been sited closer to No 143 and would not have had the same intrusive effect on its setting as the current proposal. In any event, each application must be treated on its merits and evidence of the approval of an apparently similar proposal is not a justification for development which would be harmful on the appeal site.

P Bentham-Hill

INSPECTOR

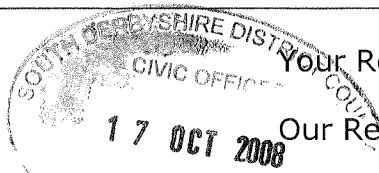


The Planning Inspectorate

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<http://www.planning-inspectorate.gov.uk>

Mrs G Richards
Development Control
South Derbyshire D C
Civic Offices
Civic Way
Swadlincote
Derbyshire DE11 0AH



Your Ref: E/2007/00162

Our Ref: EMP1040/147/12

Date: 16 October 2008

Dear Mrs Richards

TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED), SECTION 208

APPEAL AGAINST TREE REPLACEMENT NOTICE

APPELLANT: MRS S CHAMBERS

SITE AT: 70 JOHN STREET

I enclose a copy of our Inspector's decision on the above appeal following the site visit on 3 July 2008.

The appeal decision is final unless it is quashed following a successful challenge in the High Court on a point of law (see enclosed leaflet). If the challenge is successful the case will be returned to us by the Court for re-determination. However, if it is to be re-determined, it does not necessarily follow that the original decision on the appeal will be reversed.

An appeal may only proceed with the permission of the Court. An application under Section 289 of the Town & Country Planning Act 1990 for leave to appeal must be made to the Court promptly and in any event within 4 weeks of the decision in question, unless the period is extended by the Court.

A decision will not be overturned by the Court merely because someone does not agree with an Inspector's judgment. It would need to be shown that a serious mistake was made by the Inspector when reaching his or her decision or, that the site visit was not handled correctly, or that the appeal procedures were not carried out properly. Even if a mistake has been made, the Court may decide not to quash the decision if it is decided that the interests of the person who has sought to challenge the decision have not been prejudiced.

If you have any complaints or questions about a decision, or about the way we have handled the appeal write to:



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

Phone No. 0117 372 8252

Fax No. 0117 372 8139

Email: complaints@pins.gsi.gov.uk

The Quality Assurance Unit will investigate your complaint and will endeavour to reply within three weeks.

Yours sincerely

Lee Richards

Environment Appeals Administration

Enc





The Planning Inspectorate

Costs and Decisions Team	Direct Line	0117-372 8218
5/03 Kite Wing		
Temple Quay House	Switchboard	0117-372 8000
2 The Square	Fax No	0117-372 6298
Temple Quay	GTN	1371-8594
Bristol BS1 6PN		

Mr M Hardy
Fraser Dunchurch Ltd
15 Wheeler Gate
Nottingham
NG1 2NA

CIVIC OFFICES

17 OCT 2008

PLANNING SERVICES

Ref: EMP/1040/147/12

Council Ref: E/2007/00162

Date: 16 OCT 2008

Dear Mr Hardy

**TOWN & COUNTRY PLANNING ACT 1990
THE TOWN AND COUNTRY PLANNING (TREES) REGULATIONS 1999
THE SOUTH DERBYSHIRE DISTRICT COUNCIL (LAND AT NO. 70 JOHN
STREET, NEWHALL) TREE PRESERVATION ORDER NO. 219, 2004
APPEAL BY MRS S CHAMBERS**

1. I am directed by the Secretary of State for Communities and Local Government to refer to your client's appeal against South Derbyshire District Council's Tree Replacement Notice, dated 15 January 2008, in respect of the planting of a replacement tree on land at 70 John Street, Newhall, Swadlincote.

WRITTEN REPRESENTATIONS AND SITE VISIT REPORT

2. The Council's reasons for issuing the Tree Replacement Notice were set out in section 3 ("reasons for issuing the notice") of the Notice and amplified in their questionnaire and statement dated 15 January 2008 and 29 February 2008 respectively. The arguments in support of your client's appeal were given in the grounds of appeal dated 11 February 2008 and amplified in your attachment to the appeal.

3. An Inspecting Officer has visited the site on 3 July 2008 and a copy of his report, which includes a description of the site and its surroundings, is enclosed. His appraisal is set out in paragraphs 4.1 to 4.2 of the report, with his conclusions in paragraphs 5.1 to 5.2.

SECRETARY OF STATE'S CONSIDERATIONS

4. The Secretary of State has considered the Inspecting Officer's report, the written representations submitted in support of your client's appeal and those of the Council.

Grounds (b)

It was contended by you that the duty to replace the tree under Section 206(1) is not applicable because the appeal tree was a fruit tree cultivated for fruit

production. However, the Secretary of State considers that the duty under Section 206(1)(b) applies as the apple tree was protected by the 2004 Order when it was felled between 1 May and 30 June 2007. Accordingly, she does not consider that in all the circumstances of this case the duty to plant a tree imposed by Section 206(1) should be dispensed with. Therefore the Secretary of State considers that your appeal on these grounds should fail.

Grounds (d)

The Secretary of State accepts that the area is poorly treed and agrees with the Inspecting Officer's comments, at paragraph 4.1 of the report, that the planting of a replacement tree is required in the interests of the visual amenity of the area. The Secretary of State therefore concludes that your appeal on these grounds should fail.

Grounds (e)

For the reasons set out in paragraphs 4.2 of the Inspecting Officer's report the Secretary of the State is satisfied that the location of the place on which the existing apple tree is planted is suitable for that purpose. Therefore the Secretary of State considers that your appeal on these grounds should fail.

FORMAL DECISION

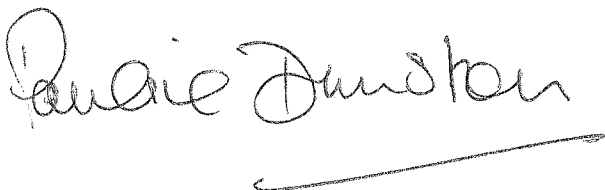
5. Accordingly, for the reasons given above and by the Inspecting Officer, the Secretary of State upholds the Notice and dismisses your client's appeal. However, she notes that the Inspecting Officer has suggested an alternative size of replacement tree and you may therefore wish to discuss this with the local authority.

RIGHT TO CHALLENGE THE DECISION

6. The attached notes set out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within 28 days of the date of this letter and the Planning Inspectorate's complaints procedures.

7. A copy of this letter has been sent to South Derbyshire District Council and Mrs S Chambers.

Yours sincerely

A handwritten signature in cursive script, reading 'Pauline Dunston', with a long horizontal flourish underneath.

PAULINE DUNSTON

Authorised by the Secretary of State to sign in that behalf

The Planning Inspectorate
Temple Quay House
2 The Square
Temple Quay
Bristol
BS1 6PN

File ref: EMP1040/147/12

To: The Secretary of State for Communities and Local Government

Madam

I have been asked to advise on the appeal by Mrs S Chambers, made under Section 208 of the Town and Country Planning Act 1990 against the tree replacement notice served by South Derbyshire District Council in relation to land at 70 John Street, Newhall, Swadlincote, Derbyshire, and to carry out an inspection of the site on your behalf. On Thursday 3rd July 2008, I made an accompanied site visit in the presence of Mrs Chambers (Appellant) and Mrs G Richards (Senior Development Control Enforcement Officer from South Derbyshire District Council) and Mr N Lawrence (student on work experience accompanying Mrs Richards).

The grounds of appeal are:

- that in all the circumstances of the case the duty imposed by section 206(1) of the 1990 Act should be dispensed with in relation to any tree
 - that the planting of a tree in accordance with the notice is not required in the interests of amenity or would be contrary to the practice of good forestry
 - that the place on which one of the trees is required to be planted is unsuitable for the purpose
- 1) This report contains a description of the appeal site and surroundings and my appraisal of the requirements of the notice, on the basis of my observations and the written representation of the parties. It is illustrated by various photographs, which are appended.
- 2) **THE SITE AND SURROUNDINGS**
- 2.1 Newhall is situated on the southern side of the A511 Burton Road, immediately to the north-west of Swadlincote.
- 2.2 John Street is a cul-de-sac running in an almost north-westerly direction off the western side of Oversetts Road. Number 70 is a semi-detached, two-storey house and the end property on the southern side of the road. It is one of a small number of older properties within an area of more modern development, comprising dwellings of varied style and size.

- 2.3 To the west is The Leys, forming part of an extensive development of two-storey, semi-detached properties; whilst immediately to the north is Leys Court, a recently completed infill development of three bungalows.
- 2.4 To the west side of the Appellant's house is an extensive garden area of 21 metres in width by 18 metres deep adjacent to the house but with southern section narrowing to 14 metres in depth. The garden is primarily laid to lawn, with borders adjacent to the boundaries, and slopes slightly down from north to south. The western boundary, which abuts the rear gardens of the neighbouring properties on The Leys, is formed by a 2.5 metre tall Leyland cypress hedge. A twin-stemmed rowan (T2 of the TPO) is situated 2.5 metres in from the boundary hedge, approximately in line with the centre of the side elevation of the house.
- 2.5 Whilst there is an apple tree and a goat willow in the neighbouring garden to the south and various immature conifers and ornamental broadleaves in the gardens of a number of the other nearby properties, there are few trees of stature in the vicinity. The closest mature broadleaved tree of note is an ash growing in the garden of 1 St Johns Drive to the east.
- 2.6 Background information on the preservation order and the planning history of the site is contained in the Council's appeal statement.

3) DESCRIPTION OF THE REQUIREMENTS OF THE NOTICE

- 3.1 The tree replacement notice was served following the removal of an apple tree scheduled as T1 of the South Derbyshire District Council (Land at 70 John Street, Newhall) Tree Preservation Order No. 219 (2004). The removal of the tree was authorised as it was dying but the Council issued a notice for its replacement on 15th January 2008, following unsuccessful attempts to secure planning permission for the development of the garden.
- 3.2 The tree replacement notice requires that a heavy standard walnut be planted in a position indicated on a plan appended to the notice; this being approximately 9 metres from the centre of the western elevation of the house and coinciding with position of the stump of the removed apple tree.

4) APPRAISAL

- 4.1 Despite being in the side garden of the property, the remaining protected rowan is visually prominent from the adjacent section of The Leys and associated spur that provides access to Leys Court. Being located slightly to the east of the rowan, the replacement walnut would be similarly visible from the adjacent road and neighbouring properties, thus enhancing the visual amenities of the area, which is not particularly well-treed. There are no forestry implications in this instance.
- 4.2 The garden is relatively extensive and there is sufficient space to accommodate a walnut tree without restricting the growing of other plants or impinging on the general enjoyment of the garden. The location specified for the planting of the replacement walnut is reasonable and appropriate. Walnut is a suitable species and a reasonable alternative to the apple it is replacing. However, there is considered to be no need for the tree to be the heavy-standard size specified and a standard tree (8-10 cm girth at 1m/ 2.5 – 3m tall) is considered to be more appropriate as this should be more tolerant of transplanting and therefore easier to establish.

5) CONCLUSIONS

- 5.1** With the exception of the size of tree specified, the requirements of the notice are considered reasonable and justified on the grounds of the amenity that will be provided by the replacement tree.
- 5.2** There is no overriding need for the replacement tree to be of the size specified and a walnut is more likely to establish satisfactorily if planted as a slightly smaller 8-10 centimetre girth standard.

M Boddy *F Arbor A MICFor CEnv*

18th July 2008

ATTACHMENTS

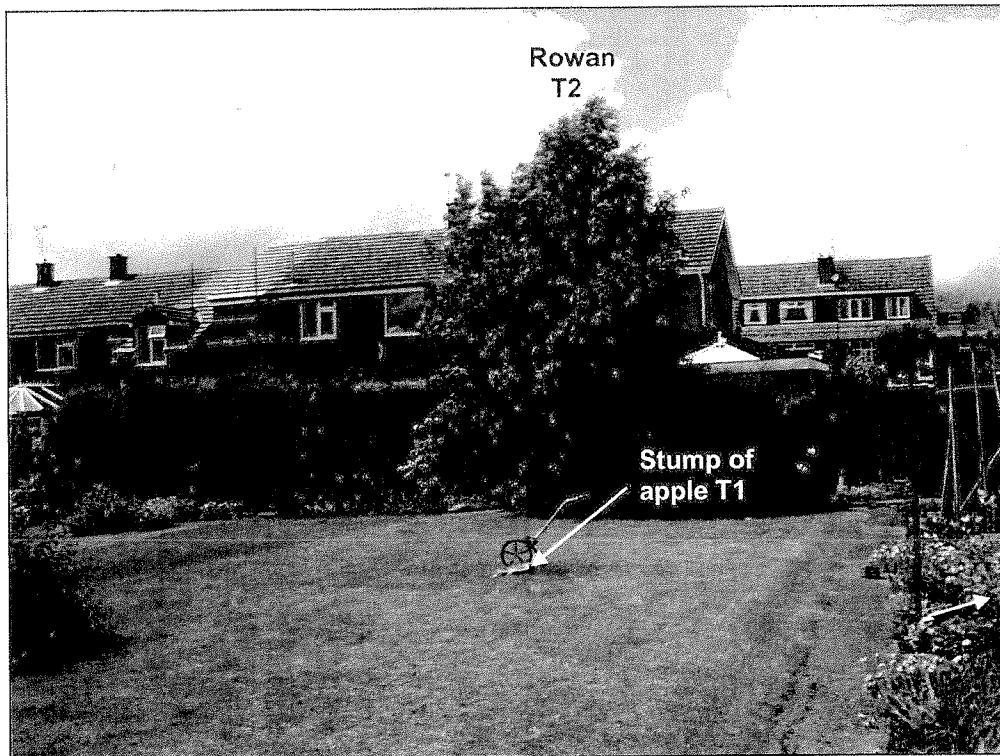
- Photos 1 to 4



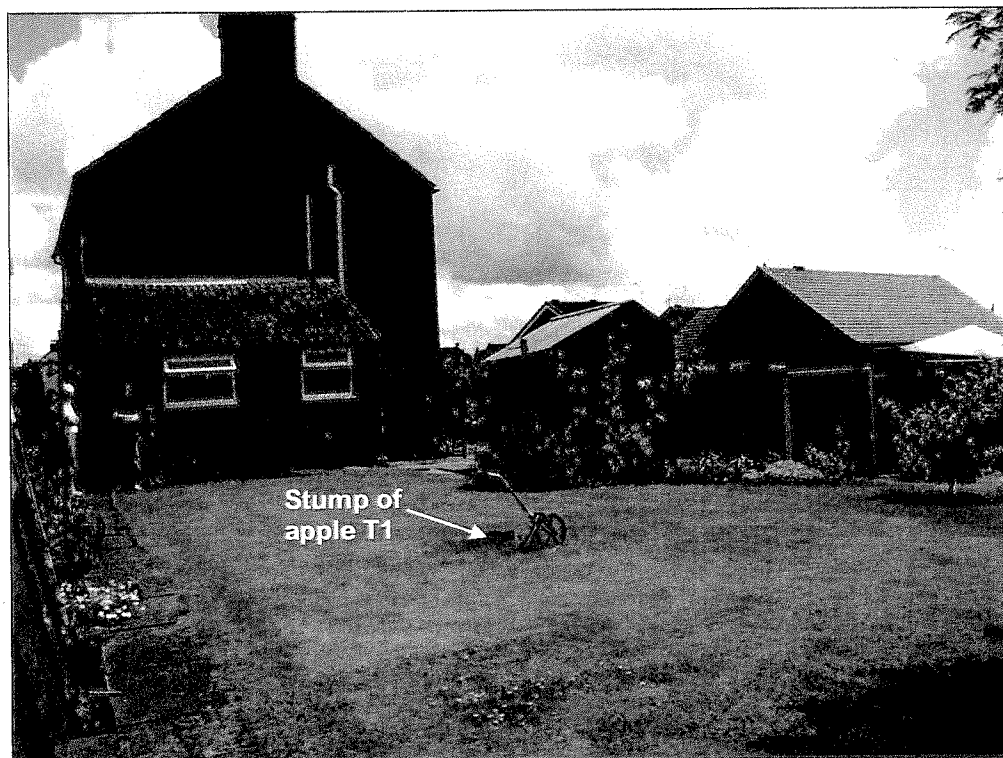
1) Appellant's property viewed from John Street to the east



2) Appellant's property viewed from The Leys to the north-west



3) Garden viewed from the side of the house to the east



4) House and apple stump viewed from the garden to west