

REPORT OF THE DIRECTOR OF COMMUNITY AND PLANNING SERVICES

SECTION 1: Planning Applications

SECTION 2: Planning Appeals

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

1. PLANNING APPLICATIONS

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

Reference	Item	Place	Ward	Page
9/2013/0274	1.1	Netherseal	Seales	1
9/2012/0570	1.2	Acresford	Seales	6
CW9/2011/0002	1.3	Foston	Hilton	25

When moving that a site visit be held, Members will be expected to consider and propose one or more of the following reasons:

1. The issues of fact raised by the Director of Community and Planning Services' report or offered in explanation at the Committee meeting require further clarification by a demonstration of condition of site.
2. Further issues of principle, other than those specified in the report of the Director of Community and Planning Services, arise from a Member's personal knowledge of circumstances on the ground that lead to the need for clarification that may be achieved by a site visit.
3. Implications that may be demonstrated on site arise for consistency of decision making in other similar cases.

Item 1.1

Reg. No. 9/2013/0274/NO

Applicant:
Mr Dowell
The Lodge
Clifton Road
Netherseal
Swadlincote
DE12 8BX

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

Proposal: **PART REGULARISATION APPLICATION FOR CHANGE
OF USE FROM PADDOCK INTO DOMESTIC CURTILAGE
AND ERECTION OF EXTENSIONS AND ALTERATIONS
AT THE LODGE CLIFTON ROAD NETHERSEAL
SWADLINCOTE**

Ward: **SEALES**

Valid Date: **02/05/2013**

Reason for committee determination

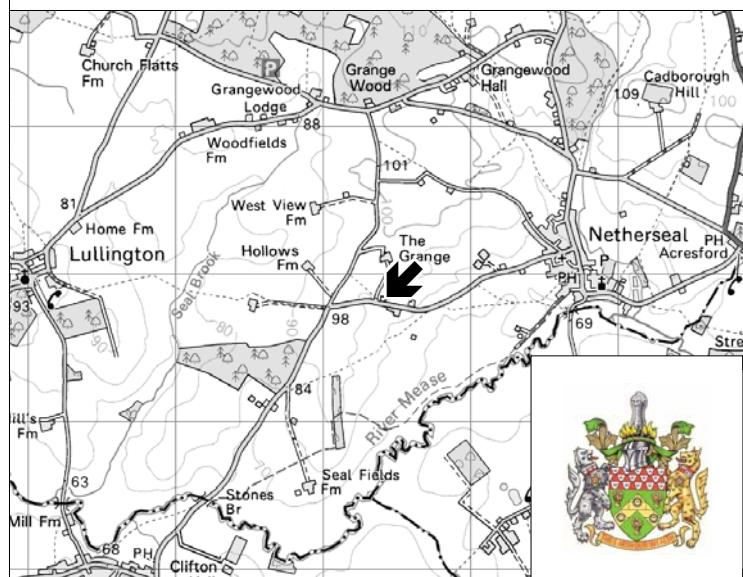
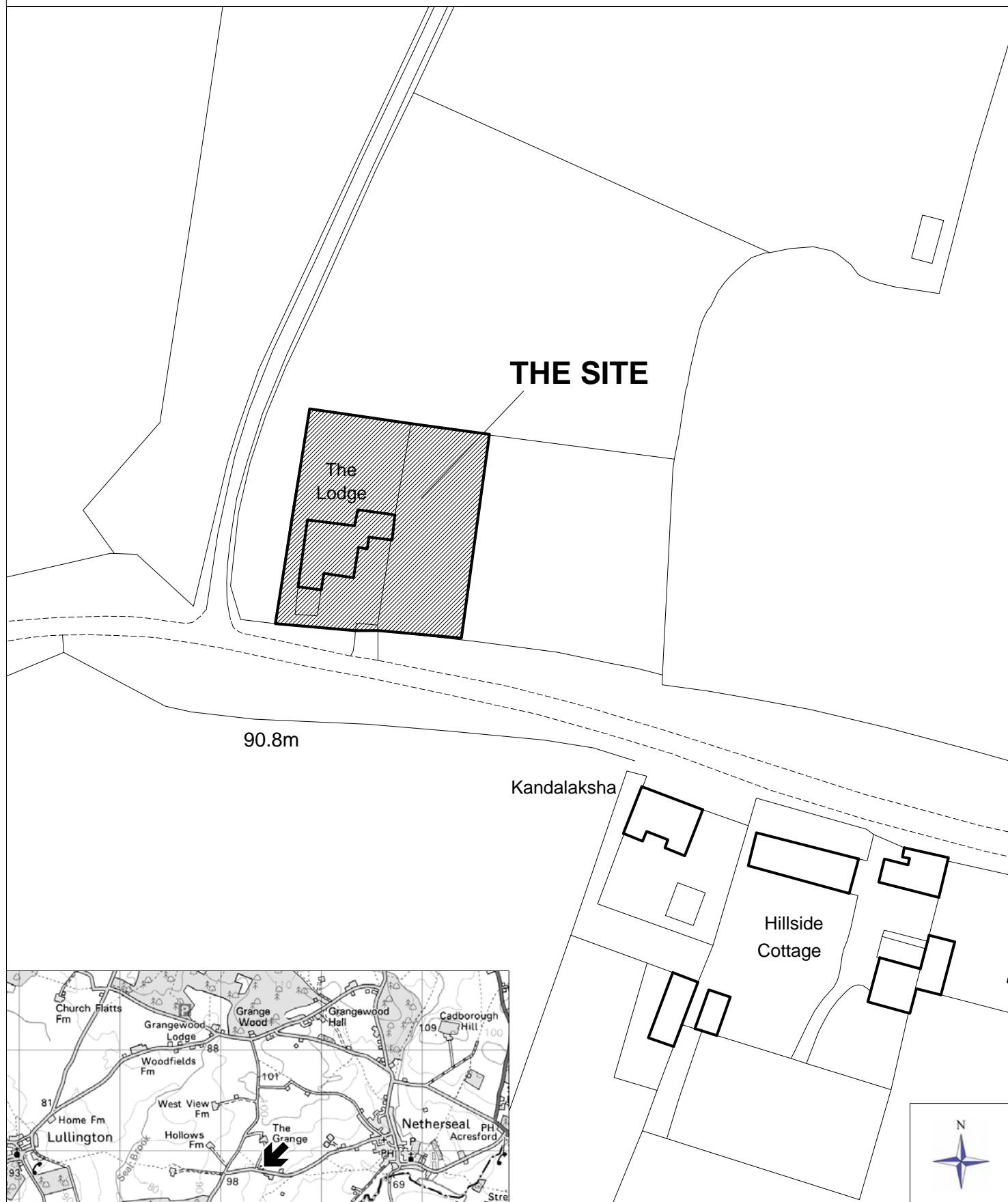
The application is brought to Committee as the applicant is the partner of a Council employee.

Site Description

The Lodge is a single storey, brick and tile, twin-gabled dwelling with an attached flat roof garage to the side. There are a number of sheds, outbuildings and motor vehicles in various states of repair within the garden and on part of the adjacent paddock. There is also a covered timber lean-to structure attached to one of the front gables, which provides covered storage for other motor vehicles. The dwelling is located on the northern side of Clifton Road within open countryside and is also located within the catchment area of the River Mease Special Area of Conservation (SAC).

Proposal

It is proposed to remove the existing flat roof side extension and garage and the various outbuildings and structures and replace them with 6.5m high (maximum) side and rear extensions to provide improved living accommodation, garaging for at least four cars, storage area and a covered outside garden area on the ground floor and three bedrooms, dressing rooms and a family bathroom within the roof space. The ridge height of the extensions would be no higher than that of the existing dwelling, with the



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height of the covered garden area being 5m. The proposal also includes the (retrospective) change of use of part of the adjacent paddock (approximately 410 sq m) to accommodate the proposed extension. The remainder of the paddock area would stay in its natural grassy state. The existing vehicular access would be widened slightly and new tree planting is proposed along the front boundary of the site. The majority of the existing frontage hedgerow would remain.

Applicants' supporting information

The submitted justification provides some useful history of the site, stating that both the dwelling and the adjacent paddock have been in family ownership in excess of 50 years and that the part of the paddock subject of this application has been used as domestic curtilage for at least the past 10 years, being cultivated for growing vegetables, although that area is now grassed over. The dwelling is in need of modernisation, including a thermal upgrade to provide a more liveable property by reducing heat loss through the building fabric. The proposal would benefit the site and surrounding area by bringing some order and reducing the current impact that has resulted from the outside storage.

Planning History

9/2012/1087 – The erection of extensions and alterations including loft conversion – Withdrawn 28/02/2013

Responses to Consultations

The County Highways Authority has no objections.

The Planning Policy Officer (Sustainability) does not consider that the proposal would have a detrimental impact on the River Mease SAC.

Responses to Publicity Reason

No comments have been received.

Development Plan Policies

The relevant policies are:

Local Plan: Saved Housing Policy 13 and Environment Policy 1.

Housing Design and Layout (SPG)

National Guidance

The National Planning Policy Framework (NPPF), paragraphs 56, 57, 58, 197

Planning Considerations

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

- Possible encroachment into adjacent paddock
- Scale and character of the extensions

Planning Assessment

Possible encroachment into adjacent paddock

The main issue to consider here is the loss of part of the paddock area and whether it would have a detrimental impact on the character of the open countryside. Under normal circumstances the gradual erosion of the countryside by the loss of rural fields and paddocks would usually be resisted. That said, the Supporting Statement argues that this part of the paddock has, historically, accommodated greenhouses and outbuildings in the past and was cultivated for the growing of vegetables for a number of years without complaint and that there are still concrete foundations of earlier buildings to prove this.

The first part of Saved Environment Policy 1 (Part A) does not generally support new development outside settlements unless it is:

- essential to a rural-based activity; or
- unavoidable in the countryside; and
- the character of the countryside, the landscape quality, wildlife and historic features are safeguarded and protected.

By the fact that the dwelling is in the countryside, the proposed extensions constitute unavoidable development in the countryside and therefore this criterion has been met. No wildlife species or historic features would be compromised by allowing the proposals and the character of the countryside and landscaping quality would not be unduly affected.

The second part of the policy (Part B) states that if development is permitted in the countryside it should be designed and located so as to create as little impact as practicable on the countryside. There is no doubt that the proposed extensions as submitted could not be accommodated on the land that is currently within the obvious domestic curtilage and therefore, if the principle of the extensions is acceptable in terms of their scale and character, the applicant would need the additional land on which to construct them. A statement has been submitted to affirm that the land has been used as additional domestic curtilage in excess of 10 years and the Local Planning Authority has no evidence to refute this claim.

Scale and character of the extensions

Saved Housing Policy 13 states that extensions to dwellings will be permitted provided the proposals are of a scale and character in keeping with the property and are not detrimental to the amenities of adjoining properties or the general character of the area. In this case there are no immediate neighbours that share a common boundary with the application site and therefore the proposal meets this criterion. With regard to scale, it is obvious when viewed on site that the original dwelling was fairly modest in size, although it has been enlarged over time by the addition of a front gabled extension, side entrance porch and garage, none of which are particularly in keeping with the original character of the building, although the front gabled extension endeavours to reflect the original front gable to the lounge. The proposed extensions would enlarge the dwelling quite considerably, increasing the floor area from approximately 181.85 sq.m to 285.75 sq.m (not including the covered outside garden area), a difference of 103.9 sq.m. That said, new planning legislation that came into force on 30th May 2013 allows detached dwellings to be extended by up to 8 metres from the rear elevation without the

requirement for planning permission. The proposed extension would extend 5.5m, which is well below what could be constructed under the new permitted development rights. In terms of the side elevation, taking into consideration the area of ground already covered by the existing porch and garage, the proposal would extend the side elevation by a further 9.6m, which is not considered to be unreasonable.

Furthermore, the design of the proposed extensions is in keeping with the original design of the property, with similar roof pitches and proportions. The bedrooms would be within the roof space, which assists in reducing the impact of the extension on the surrounding area. The insertion of a new window opening on the front facing gable would also improve the appearance of the dwelling. The rear first floor balcony would be recessed so that it would not project forward of the rear elevation, whilst maximising views over the surrounding countryside. The covered garden room would ensure privacy within the rear garden from people/drivers approaching the site along Clifton Road from the Netherseal direction.

In terms of overall benefit, the loss of the small area of paddock that is required in order to construct the extensions should be offset against the gain that would be achieved for the site as a whole, by its de-cluttering and re-ordering through the removal of the outbuildings, sheds and motor vehicles that litter the site, thereby providing added value to the character of the surrounding area. A continuous hedge could be planted along the entire length of the side extension to reduce its impact even further.

In conclusion, whilst the loss of part of the rural landscape would usually be resisted, it is considered that in this instance there is justification for the Local Planning Authority to support the proposal, as it would lead to a general improvement of the site and surrounding area by the removal of the various outbuildings and structures. The extensions, whilst sizeable, would complement the original dwelling, provide more functional and cost efficient accommodation and also ensure that all materials currently stored outside could be removed from sight. It is considered, therefore, that the proposals are in accordance with Local Plan Saved Housing Policy 13 and Environment Policy 1 and paragraphs 56, 57 and 58 of the National Planning Policy Framework.

Recommendation

GRANT permission subject to the following conditions:

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

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

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

Reason: To safeguard the appearance of the existing dwelling and the surrounding area.

3. 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 the planting of a continuous hedgerow along the eastern boundary between the side elevation of the extension and the paddock, together with indications of all existing trees and hedgerows on the land, and details of any to be retained, and measures for their protection in the course of development.

Reason: In the interests of the rural character of the area.

4. 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 completion of the development, 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 rural character of the area.

5. Notwithstanding the originally submitted details, this permission shall relate to the amended showing the double doors on the side elevation deleted from the scheme.

Reason: For the avoidance of doubt, the original submission being considered unacceptable and to allow a hedgerow to be planted along the side elevation.

6. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008, no buildings and no gates, walls, fences or other means of enclosure shall be erected on the application site, except as authorised under the submitted application or by any other condition attached to this permission, without the prior grant of planning permission on an application made in that regard to the Local Planning Authority.

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

Item 2.1

Reg. No. 9/2012/0570/U

Applicant:
Mr R Winson
The Caravan
Acresford Road
Acresford
Swadlincote
DE12 8AP

Agent:
Mr Roger Yarwood
Roger Yarwood, Planning Consultant
Wheatley Barn
Wheatley Road
Two Dales
Matlock
DE4 2FF

Proposal: **RETROSPECTIVE APPLICATION FOR THE CHANGE OF
USE FROM EQUESTRIAN LAND TO RESIDENTIAL
GYPSY SITE FOR ONE PITCH AT LAND AT SK2913
7405 OPPOSITE THE CRICKETTS INN ACRESFORD
ROAD NETHERSEAL SWADLINCOTE**

Ward: **SEALES**

Valid Date: **02/07/2012**

Members will recall this application was deferred at the meeting on 26th March 2013, as it considered that further drainage information was necessary in order to ascertain whether it would be possible to connect the development to the existing mains sewer at the junction of A444 and Acresford Road. Additional updates now appear in the report in italics.

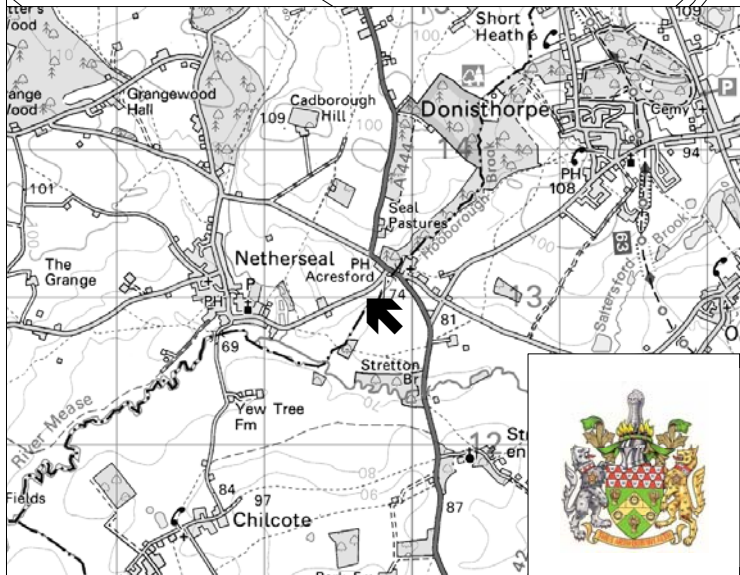
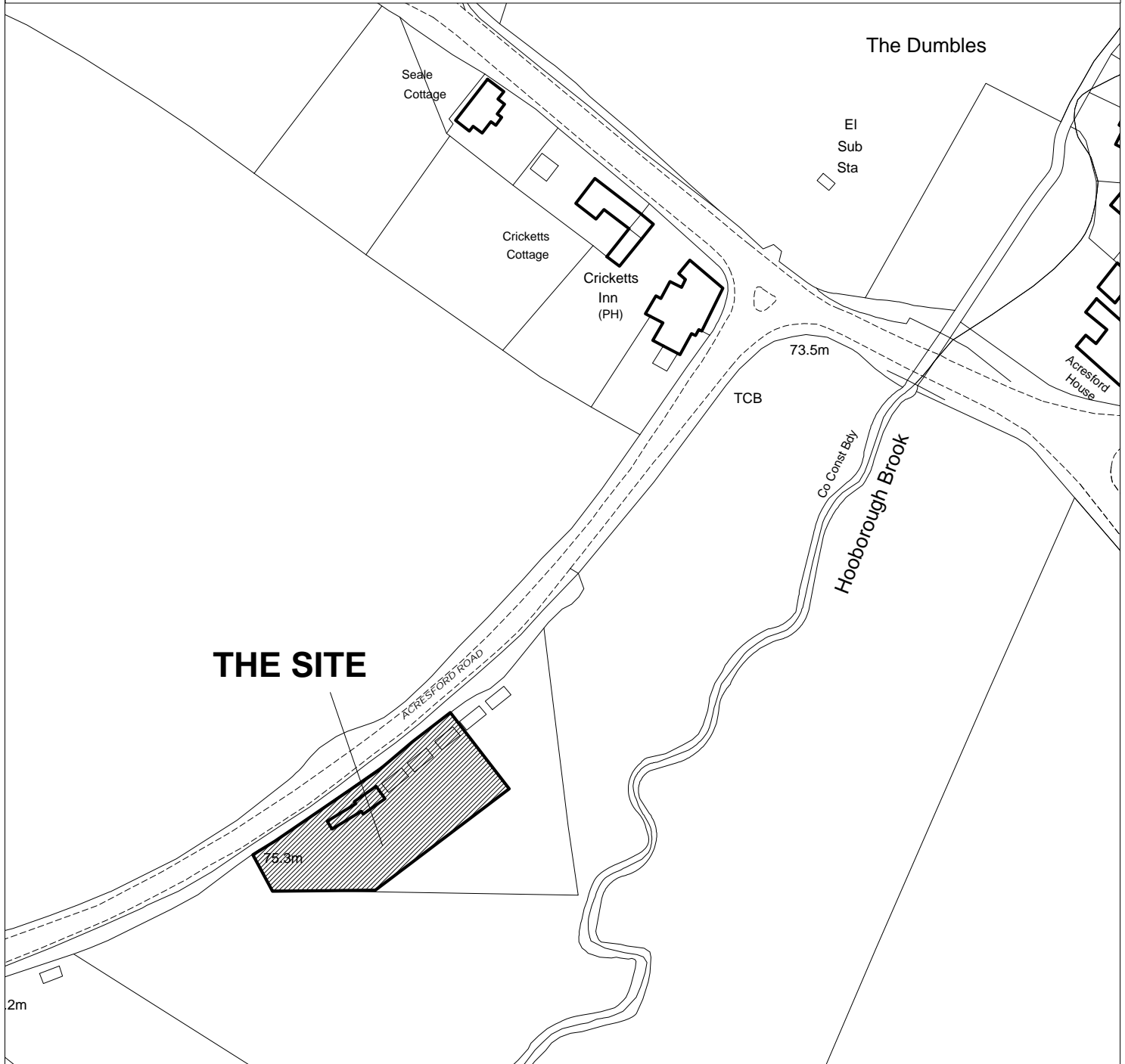
Reason for committee determination

Councillor Mrs Hall has requested that the application be determined by the Planning Committee, as local concern has been expressed about particular issues.

Site Description

The application site is approximately 0.10 ha in area and is located to the southeast of Acresford Road, approximately 120m southwest of The Cricketts Inn public house. The site is accessed via an existing field access gate. An existing mature hedgerow screens the site and adjoining land in the applicant's ownership from Acresford Road and the surrounding area. The site lies within open countryside. The course of the Hooborough Brook runs under the A444 before entering the adjacent field approximately 150m to the north-east, then runs in a south-easterly direction past the site before entering the River Mease at Netherseal, approximately 500m away. The Hooborough Brook forms the boundary between the South Derbyshire administrative area and that of North West

9/2012/0570 - Land at SK2913 7405 opposite The Cricketts Inn, Acresford Road, Netherseal, Swadlincote DE12 8AP



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Leicestershire district. The site is within the River Mease Special Area of Conservation (SAC). The River Mease is also a Site of Special Scientific Interest (SSSI).

Proposal

The proposed development, according to the application form, is for the change of use from equestrian land to residential gypsy caravan site with one pitch. At the time of the officer's site visit, an occupied mobile home, portable toilet, a stable and a dog kennel existed on the site. An amount of hardcore material was also brought onto the site prior to the appeal decision and the submission of this subsequent application.

Consequently, the application should be described as: The continued use of the land as a residential gypsy caravan site with one pitch, together with the retention of a mobile home, an area of hard surface, a stable block, portable toilet and dog kennel. The submitted plan indicates that the applicant intends to provide a fence and hedgerow around the curtilage of the site and proposes some tree planting along the northwest boundary. Foul drainage would be connected to the mains sewer at the junction of the A444 and Acresford Road. Surface water would be disposed of via a sustainable drainage system. The application forms state that parking space would be provided for one car and one light goods vehicle.

Following the decision to defer the application a letter was sent to the agent requiring the following information: -

- *details of all excavation works*
- *land falls*
- *dimensions/diameters of drainage pipes*
- *connection details*

The response to the letter was in an email dated 10th April 2011, which confirmed that foul drainage would be to the mains sewer and that Severn Trent Water has confirmed that a connection can be made to the mains sewer at the edge of the applicant's land. This would be achieved with a natural fall but this would need a levels survey.

Following receipt of this email the Council's Drainage Engineer was consulted on its contents, commenting that the following information should be provided: -

- *Topographical survey to ascertain if the levels are such that a gravity sewer connection is possible*
- *If not, a pump installation should be designed.*
- *Severn Trent Water approval to be sought for a pumped connection.*
- *Flow rates should be calculated so that a suitable pipe diameter*
- *Details of pipe bedding and trench reinstatement.*
- *If the mains sewer is located within the A444 a Road Opening Notice application should be made to the County Highways Authority*

This information was forwarded to the agent on 11th April 2013.

On 21st May 2013 a short report was received from a landscape and construction company, which gave the following information: -

1. *After the removal of the manhole lid located on the A444 we found a depth of 2m to the invert level.*

2. *A level was taken in the field where a manhole will be situated to take waste from the caravan. There is a 700mm fall from the level that was taken to the inlet level of the bottom of the manhole on the A444.*
3. *There is also a natural fall all the way down the field from the caravan's location to the point of the new manhole.*

Applicants' supporting information

The applicant has submitted a report on the impact on the River Mease SAC, which is available on the Council's website for Members to view. However, the salient points of the report are listed below:

- Most of the existing stables have already been removed;
- There is an existing concrete driveway;
- The intention is to connect to the public sewer;
- An explanation of the conservation objectives of the River Mease;
- Impact of the proposal on the SAC with regard to sewage treatment works, septic tanks and package treatment plants, misconnections, road run-off, drainage from fields and pollution incidents – the most relevant in this case being foul sewage, run-off from hardstandings and drainage from fields;
- A check of Severn Trent Water's records confirms that a sewer connection is possible;
- The Environment Agency and Natural England will have no objections as one caravan will not significantly impact on the operations of the sewage treatment works;
- There will be no pollution from the hardstanding as no industrial or commercial use is proposed;
- Ground conditions are free draining and the EA and NE have confirmed they have no objections;
- No chemical or organic fertilisation of the field is proposed;
- The stables that were previously sited on the land created a greater risk of pollution;
- The proposal would not interfere with proposed restoration of the river corridor.

Planning History

9/1992/0231 – Retention of shed, shelter and stable – Approved

9/2003/0748 – Erection of block of 3 stables – Withdrawn

9/2007/0243 – Formation of vehicular access – Approved

9/2008/0829 – Change of use of existing temporary stables and food store into permanent buildings with equine hardstanding – Approved

E/2011/00022 – Enforcement Notice against breach of planning control relating to the use of the land as a Gypsy site, removal of the caravan, portable toilet, hardcore material and reduction in height of the timber close boarded fence at the access where adjacent to the highway. Subsequent appeal (APP/F1040/C/11/2158251) dismissed (but see detail below).

Responses to Consultations

The Council's Drainage Engineer has commented on the latest drainage details received on 21st May, stating that the information is unsatisfactory for the following reasons: -

- It does not give any evidence that Severn Trent Water will approve the connection to their foul sewerage system within the highway.*
- It is stated that there is a 700mm fall from the proposed manhole location to the invert of the STW manhole but no topographical survey details are given to confirm this.*
- No flow rates or proposed pipe diameters are given.*
- No details of pipe bedding and trench reinstatement are given.*
- There is no evidence of any road opening notice application to the Highways Authority, which is essential to carry out this connection.*

Severn Trent Water Limited has no objections to the proposal and no comments to make. *In response to an officer enquiry in respect of connection criteria, Severn Trent Water would require confirmation of the contractor carrying out the work with a detailed method statement and risk assessment. So long as these details were satisfactory Severn Trent would be unlikely to impose a restriction on foul sewer connection.*

The County Highways Authority considers that emerging and forward visibility at the site access are satisfactory considering the likely vehicle speeds on the fronting road and on this basis there are no highway objections.

Natural England states that a local planning authority must only give planning permission for a development project where it can be demonstrated that any European wildlife site will not be adversely affected. Natural England also confirms that it is currently assisting the Council in its progression of a developer contributions scheme as part of the River Mease Water Quality Management Plan. The current proposal is for one caravan, which will connect to the mains sewer system. Natural England will not object to small-scale development such as this proposal in the absence of an agreed developer contributions scheme [since adopted]. At this point, therefore, Natural England has no concerns with regard to the proposal and its foul water discharge to mains. It is also noted that the application will provide a riparian buffer zone of greater than 24m in order to filter any diffuse water pollution – which is welcomed. Provided that the Local Planning Authority can ensure that the above measures for foul and diffuse water management (as well as the inclusion of soakaway for all surface water runoff from the new roof) can be secured via a suitably worded condition or legal agreement, then there is no objection on the grounds of impact on the River Mease SAC/SSSI.

The Environment Agency has no objections but makes comment with regard to the eastern-most part of the application site, which lies within Flood Zones 2 and 3, although the land where the caravan lies is not Flood Zone. The Agency recommends that if any further caravans are proposed for this site then an investigation into the flood risks at the site would need to be undertaken. The Agency has also verbally requested a condition on any approval that all foul drainage goes to the mains sewer, as shown on the submitted plan. On further consultation with regard to possible contaminated land and the River Mease SAC, the Agency advises that any proposed ground investigations should include:

1. At least four trial holes
2. Each sample should test the full depth of the hardcore. The proposal is for holes to a depth of 0.5m but the investigation will need to confirm the thickness of the material.
3. The suite of sample analysis is fairly standard and what is expected unless there was a particular concern about any other specific contaminant(s) due to former uses.

The Environmental Health Manager has no objection in principle. However, with the change of use proposed he is keen to ensure that any impact from domestic waste produced at the site and potential for spill of contaminants will not adversely impact on the Hooborough Brook. These concerns can be addressed through the caravan site licensing process. There is also a need to remind the applicant of the need to apply for an appropriate licence and that the Environment Agency may need to be consulted on any drainage/discharge to wastewater matters.

The Environmental Health Officer (Contaminated Land) recommends conditions in respect of contaminated land and stresses the importance of the applicant providing details of methods used to remove / remediate the ground affected by contamination as identified in the Sub Surface Consultants Ground Investigation Report, dated 8th October 2012. He also asks to be informed when the applicant intends to remove the contaminated material and validation or sign off to confirm the site has been remediated. He recommends a site inspection during the removal of the material, or 'before and after' photographs, plus evidence that the waste has been disposed of correctly (waste transfer note). Additionally, if replacement material is to be brought onto the site, evidence should be provided to confirm the source of the material is safe and uncontaminated.

The Planning Policy Officer (Sustainability) has screened the application under the terms of the 'Habitats Directive', which provides legal protection for habitats and species. He is of the opinion that provided waste water is discharged to the foul sewer there would be no effect on the SAC so long as the scheme complies with the River Mease Development Contribution Scheme. However, there is still potential for surface water drainage to affect water quality in the SAC where the development creates or mobilises pollution on site and where a clear pathway existing via which pollution could reach the Mease. It is therefore recommended that provided a condition is included in any permission to ensure the construction of soakaways and a riparian Buffer Zone to control surface water runoff between the development and the nearest watercourse, the scheme would not undermine the conservation objectives for the site and would have no impact on the Mease SAC.

In respect of the hardstanding, it is noted that the applicant has indicated his intention to remove the material and import clean material from a quarry source. This would negate the need for further sampling to define the extent of the contamination, although subsequent testing would be required to ensure any contaminated material has been removed.

In conclusion it is considered that the proposed development would have no impact on the River Mease SAC and therefore an appropriate Assessment is not required in this instance.

Derbyshire Wildlife Trust is not aware of any nature conservation interest on or adjacent to the site and it is not anticipated that the proposal will have a significant impact on features of nature conservation interest. The proposed new hedgerows and trees should be of native species, which would be of most benefit to local wildlife.

Netherseal Parish Council strongly objects to the application as it considers that the proposed development is detrimental to the surrounding countryside. The following concerns were expressed: -

- The application is retrospective as the caravan is already installed and occupied.
- The site is in a remote rural location outside the village confines. The use of the land for residential purposes is not essential to any rural based activity, neither is it unavoidable development in the countryside, as required by Environment Policy 1 of the Local Plan. There are already 12 legitimate Traveller Sites within South Derbyshire, plus others in North West Leicestershire, which the Parish Council considers should be sufficient and therefore negate the need for the use of agricultural land for this purpose.
- The site is within the catchment of the River Mease, which is a Special Area of Conservation. The applicant has stated that there will be no industrial activity or commercial processes uses on the site but the adjacent land, which is in his ownership, has been used for burning materials, giving off noxious fumes. There are concerns that deposits from these fires and run off from the hardstanding areas will find their way into the Hooborough Brook and impact on the integrity of the SAC, which is currently running above the recommended phosphate levels set by the Environment Agency.
- The Environment Agency's website shows the site to be at a severe risk from flooding and is therefore unsuitable for residential use.
- The site is a gateway to South Derbyshire and part of the National Forest. To allow a residential gypsy site in this location will be detrimental to the natural rural aspect of the area.

The Parish Council requests that a decision is made by the Planning Committee and not delegated to an officer. Before a decision is made a site visit should be made by all members of the Committee to ensure that they are familiar with the surrounding area and not make a judgement that is purely based on a plan where they cannot fully appreciate the impact it will make on the surrounding area.

Oakthorpe, Donisthorpe and Acresford Parish Council objects to the application for the following reasons: -

- The site is outside the village boundary and is not permitted development.
- The application is retrospective.
- The site is within the catchment area of the River Mease, which is a Special Area of Conservation (SAC).
- The applicant states that he will not be using the site for industrial or commercial activities but has already done so by the burning of materials that give off noxious fumes.
- Impact of pollution of the Hooborough Brook and thence to the River Mease.
- Noise pollution caused by barking dogs etc.
- NWLDC's Core Strategy Document for 2012 should be referred to – the proposed site does not adhere to the 12 key principles for planning.

- The site is waterlogged and not fit for habitation.

North West Leicestershire District Council has no comments to make on the proposal other than that it should be determined in line with the development plan unless material considerations indicate otherwise and subject to South Derbyshire District Council completing a Habitat Regulations Assessment which can demonstrate that the proposed development would not have a detrimental impact on the integrity of the River Mease Special Area of Conservation; either alone or in combination.

Responses to Publicity

Since being deferred in March the application has attracted further objections by way of 27 letters and 3 emails. However, none of the points made in this second batch of objections are new and are all covered within the lists detailed below.

Mrs Heather Wheeler MP believes that since the earlier application the Government has made changes to planning rules regarding traveller sites and in particular to retrospective applications, and considers that there are sufficient planning reasons for the application to be refused under Officers' delegated powers. If for any reason this is not the case she hopes that it will come before the Planning Committee.

The application has attracted many objections which take the form of:

- 291 copies of a signed standard letter
- 35 individual letters
- 23 emails

The standard letter contains 5 bullet points, as follows:

- The development is contrary to the Local Plan.
- The site is adjacent to a tributary of the River Mease, which is a Special Area of Conservation. The applicant has not satisfied the needs of the Planning Inspectorate APP/F1040/C/11/2158251.
- SDDC already has 12 Gypsy/Traveller sites with vacancies.
- The applicant has stated no commercial operations will take place at the site. However, regular burning of rubbish is taking place on site, in quantities which appear to be greater than that generated by personal use.
- The proposed site is adjacent to the A444 an important gateway to both SDDC district and the National Forest.

In addition to the above, the individual letters can be summarised as follows:

- a. The River Mease is under assault with the water quality below the optimum level because of high pollutants.
- b. The Regional Plan Appropriate Assessment for the River Mease SAC and SSSI states that (i) a number of measures should be in place before any future development is undertaken; (ii) evidence shows that the current situation is totally unsatisfactory and the condition of the SAC is degrading; and (iii) habitat quality is already in decline.
- c. No applications should be allowed until a well investigated and reasoned plan is put in place.
- d. The National Forest should be an oasis of calm and natural beauty for all to enjoy.

- e. The development will have a detrimental impact on the main portal to South Derbyshire, the National Forest, listed buildings (including an ancient water mill that dates back hundreds of years) and the conservation areas of Netherseal and Acresford.
- f. Various statements from the Planning Inspector's report, Natural England and the Planning Portal support objectors' views.
- g. Believes the site is being used for commercial purposes.
- h. How will the site be monitored, assessed and controlled for future contamination?
- i. Barking dogs could have an effect on the otter population.
- j. There is more than reasonable doubt about the likely impact of the development on the SAC.
- k. Quotes from Natural England relating to the granting of planning permission for projects that would adversely affect any European Wildlife Site.
- l. The District Council, as custodians of South Derbyshire, should protect the natural beauty of the River Mease and asks whether it will be able, in the future, to be sure that everything was done to safeguard, maintain and promote this beautiful environment.
- m. There is nothing to be gained by having a Gypsy site anywhere but more use should be made of ex-factory sites (brownfield) that are already unattractive.
- n. Contrary to the Local Plan and proximity to the A444 makes it more inappropriate.
- o. Increased danger to drivers caused by caravans and other large vehicles pulling into and out of the site. The site access is not safe.
- p. The site is subject to regular flooding thereby increasing the risk of pollutants leaching into the river.
- q. Increased possibility of theft, litter and dog attacks.
- r. Aims of the planning service are 'to balance what people wish to do with land and what some may see as unacceptable changes to the environment'. The decision should be made considering the wishes of the community who are totally against the one person who seeks to bring distress, upset and anger to our villages.
- s. Adverse impact on tourism and walkers.
- t. The applicant has already disregarded planning law by inhabiting the site without planning permission so cannot be relied on to conform to the legislation in the future.
- u. Travellers who wish to stop travelling have the same opportunities as everyone else to buy a property in the area.
- v. This would set a precedent for anyone to place a caravan and hardstanding on land where they wished to increase its value causing detriment to the rural area.
- w. It is inevitable that there will be more than one caravan on the site in the future resulting in more trouble and expense for the Council. Why would the applicant go to the expense of buying a field and connecting to the main sewer for a single caravan?
- x. Consideration should be given to existing Gypsy/Traveller sites in other areas of Derbyshire as South Derbyshire already has more pitches than any other local authority in Derbyshire.
- y. Works on the bridge crossing the A444 made provision for otters and crayfish and the abundance of other wildlife species that frequent the area increases the risk for the proposal to have an adverse impact on those species.
- z. The Burton Road pumping station is already congested and the neighbouring Council should be made aware of the situation.
- aa. Although the application form states that there are no trees or hedges on the site, it is clear that the site is surrounded by both.

- bb. Recent floods have left unacceptable levels of rubbish to be cleared and the River Mease would not be able to cope with any further potential waste as a result of the development.
- cc. Members of the Planning Committee should walk by the river and tributary streams to see the overall picture. Access can be gained from Mill Farm.
- dd. The development would undermine the effort that SDDC has put into regenerating the district following the closure of the coal mines.
- ee. The planning authority is reminded of the great duty placed upon it by the Planning Inspector to protect the SAC, specifically paragraph 18 of the decision which requires ‘..a high test’.
- ff. The applicant’s Report on the impact of the River Mease (SAC) is inaccurate, in that the hardstanding area is larger than described, the hardcore materials have not been analysed (where did it come from, how much has been deposited?). It could contain asbestos for all that is known. The application must fail on this issue alone. Whilst the Report does not deny the existence of protected species in the River Mease, there is no effort to control the dog and its constant barking day and night.
- gg. The smaller caravan on the site at the time of the appeal has been replaced with a larger caravan.
- hh. The site will inevitably become a brownfield site for more housing.
- ii. Netherseal is too small to sustain such a large site.
- jj. The site is used by commercial vehicles (pick-ups and vans).
- kk. Parking of HGVs on the wrong side of the road.
- ll. It is not clear what the applicant intends doing with the remainder of the adjacent land that is in his ownership. Recent media coverage highlights that unplanned usage of land by travelling communities should be taken into consideration.

Other comments from 23 emails submitted through the Council’s website can be summarised as follows:

- a. The site is in the National Forest on designated Green Belt land and, as such, no dwellings should be erected from new.
- b. Devaluation of the area and individual properties.
- c. No respect for the characteristics of surrounding houses and buildings.
- d. Existing covenants in place for other buildings forbid caravans
- e. Does not enhance the approach to the village of Netherseal.
- f. Although the submitted plan might mitigate the risks to the local environment, this has not been done to date and therefore the risks are considerable.
- g. Is the Council satisfied there is no availability on the land in Lichfield?
- h. The crossroads is an accident blackspot.
- i. Local drinking water aquifers that are below the site risk pollution from personal sewage disposal.
- j. The land is being artificially split solely for the purposes of assisting the application but in reality the land is one plot and, as such, it should be treated as a development bordering the Hooborough Brook, with a possible impact on the River Mease.
- k. Inaccuracies within the planning application forms.
- l. Understands that the Planning Inspector only dismissed the appeal on grounds of lack of information relating to the impact of the development on the SAC.
- m. If the applicant’s mother or sister, who own sites in Lichfield, cannot provide a pitch for him why should this District be expected to?

One letter of support has been received, which makes the following points:

- a. The proposal is to replace stables.
- b. Provided that the hardstanding contains porous materials there is less likelihood of an adverse impact on the SAC.
- c. SDDC only has one Gypsy and Traveller site, with 12 pitches, which is less than the recommended number of 16 per authorised site. This provision ignores the 1968 Act of Parliament; and the 1994 Act of Parliament has led to the current situation of a total lack of designated sites throughout the country.
- d. The burning of rubbish could be remedied by the payment of rates, thereby allowing waste to be disposed of at Council tips.
- e. The entrance to the site is not off the A444 so there are no 'gateway' issues.
- f. Gypsies and Travellers are groups of people that recognise the true value of the countryside and do their utmost to preserve it. The enclosure of common land has created problems where little existed in the past.

Development Plan Policies

The relevant policies are:

Saved Local Plan:

Housing Policies 8, 12 and 15; Environment Policies 1, 10 and 11, Transport Policy 6.

National Guidance

The National Planning Policy Framework (NPPF): Paragraphs 7, 17, 55, 109 and 118

Other Relevant Guidance/advice

ODPM Circular 06/2005: Biodiversity and Geological Conservation – Statutory Obligations and their impact with the Planning System.

Communities and Local Government: Planning Policy for Traveller Sites – March 2012

Planning Considerations

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

- Site history and the appeal decision
- The principle of the development
- Impact on the River Mease Special Area of Conservation (SAC)
- Highway safety
- Other issues

Planning Assessment

Site History and the Appeal Decision

Members will be aware that an appeal decision that relates to a particular application site is an important material consideration in the determination of a subsequent planning application on that site. This site is the subject of an appeal to the Planning Inspectorate against an Enforcement Notice relating to the unauthorised change of use

of the land from equestrian to the use for a residential Gypsy caravan site, including the stationing of a caravan and portable toilet block, the erection of boundary fencing and hard surfacing without planning permission. The appeal proceeded on the grounds set out in section 174(2)(a), (c), (f) and (g) of the Town and Country Planning Act 1990 (as amended). The appeal decision is dated 17th February 2012.

The summary of the appeal decision is that: 'Subject to partial success on grounds (c) and (g), the appeal is dismissed and the enforcement notice is upheld with corrections and variations'.

Ground (c) related to the hardstanding area and the boundary fencing. The Inspector concluded that the height of the boundary fencing was, at the time of the appeal site visit, within the permitted development limits, and therefore it did not amount to a breach of planning control. Consequently, the appeal was successful on ground (c) and the notice modified to delete reference to this aspect.

Ground (f) related to the view that the requirements of the enforcement notice were excessive. The Inspector concluded that, following his deliberations regarding ground (c), the wording of the notice should be corrected and a plan substituted to make clear the area of hard surfacing that was required to be removed. He concluded that the requirements of the notice would not, then, be excessive.

Ground (g) related to the period of time specified in the notice for compliance (3 months), which the appellant considered was an insufficient period of time in which to find alternative accommodation. The Inspector agreed and extended the compliance period to 6 months, which he considered allowed time for investigations to take place on the impact of the development on the SAC and for the submission and determination of a planning application.

With regard to ground (a) the Inspector considered that the main issues were as follows:

- 1) The effect of the development on the environment, in particular the character and appearance of the countryside and the integrity of the River Mease SAC;
- 2) Whether the site is in a sustainable location;
- 3) The impact on highway safety on Acresford Road and at its junction with the A444;
- 4) The general need for and provision of Gypsy sites in the area;
- 5) The accommodation needs of the appellant and his family and their personal circumstances.

The appeal decision sets out the Inspector's deliberations on each of these issues in turn, which can be summarised as follows:

- The Inspector was satisfied that the development would not cause any material harm to the character and appearance of the countryside, subject to suitable conditions. Nevertheless, he was concerned that it had not been shown that the development would not have an adverse effect on the integrity of the SAC, which weighed heavily against the grant of planning permission, given the legal tests applying to nature conservation sites of such importance. As such, he considered that the development conflicted with Local Plan Saved Policy H15 (iii), which requires all development to be acceptable in environmental terms.

- In terms of sustainability, the Inspector considered that the site is in a relatively sustainable location for one that is outside a settlement and is not remote from day-to-day services and facilities that need to be accessed, and on that basis concluded that Policy H15 (iv) had been met.
- With regard to highway safety, he concluded that the development would be unlikely to give rise to any material harm to highway safety, and that no harm in that regard had been demonstrated since the use commenced. He was satisfied that Policy H15 (vi) was fulfilled.
- The Inspector agreed with the appellant's agent that the adequacy of Gypsy site provision in South Derbyshire is not a reason for dismissing the appeal as there is no upper limit, but stated that the absence of any demonstrable general need was not a factor which weighed in favour of permitting the development, and concluded that there was no evidence of general unmet need for such sites in the District.
- With regard to the personal circumstances of the appellant, the Inspector gave consideration to the existence of a family-owned site in Lichfield and to the appellant's claims that there were no spaces available on that site during the winter months. He opined that the evidence with regard to the Lichfield site was inconclusive but he was not persuaded that occupying the site with one touring caravan would be out of the question, even on a temporary basis. He also made reference to the health of the appellant's daughter and the need for hospital treatment and access to medical facilities. He accepted that having a settled base would help in this regard, although recognised that the appeal site is not particularly close to a doctors' surgery or a hospital. However, he concluded that the personal circumstances of the appellant and his family and the seeming lack of a suitable pitch on any family site were factors that weighed in favour of permitting the development.

In summing up the Inspector ruled that a period of 3 months for compliance with the requirements of the enforcement notice was insufficient for the appellant to find alternative accommodation. He extended the compliance period to 6 months, to allow time for the gathering of evidence to show the likely impact of the development on the SAC and the submission and determination of a further planning application should the results prove favourable for the Local Planning Authority to permit the application.

The principle of the development

The Planning Inspector was satisfied that the development would not cause any material harm to the character and appearance of the countryside and that it would be acceptable in environmental terms provided it could be demonstrated that there would be no adverse impact on the integrity of the SAC. This means that it would be unsafe for the Council to refuse the application merely on grounds that the site is within open countryside and, consequently, contrary to Saved Environment Policy 1 and Housing Policy 5. The Inspector was of the opinion that the principle, therefore, was acceptable. A refusal based on this ground would, therefore, be difficult to defend at appeal, with the possible consequence of costs being awarded against the Council.

Impact on the River Mease Special Area of Conservation (SAC)

The Report on the Impact on the River Mease SAC that was submitted with the current planning application makes reference to foul and surface water drainage from the

development, run off from the hardstanding, and field drainage. It confirms that the development will be connected to the existing mains sewer at the junction of Acresford Road and the A444, a distance of some 165m. No objections have been made in this regard. Surface water is to go to a sustainable drainage system. The report omits to take into consideration any possible effects that the hardcore materials themselves may have had on the ground conditions and possible subsequent impact on the Hooborough Brook and River Mease. For this reason the applicant has been requested to undertake an analysis of the materials and a company specialising in such testing was appointed to undertake the work, involving the digging of 4 trial pits, chemical contamination laboratory testing and the issuing of an interpretative report.

The report, which was received on 30th October 2012, indicates that the imported hardcore materials have contaminated the site and that further assessments should be carried out involving water sampling and analysis. The agent has confirmed that the material is to be removed and replaced with clean quarry stone. Copies of the report have been forwarded to the Environment Agency, Natural England, Derbyshire Wildlife Trust and the Council's Environmental Protection Officer. Updated comments from these parties are as follows:

The Environmental Protection Officer considers that the investigatory work has been carried out to an acceptable professional standard and he supports the initial recommendations in the report, although he considers that remediation could be carried out without further sampling and analysis if it can be satisfactorily justified by the applicant. This should be done by way of a Remediation Method Statement (RMS) or Phase III Study, which is in line with county-wide guidance. He also requests that contamination conditions be included in the permission (if granted) as these would provide an enforceable route for requesting an RMS. He has also requested that the applicant provides evidence that the waste (existing hardcore) has been disposed of correctly and that any new hardcore is analysed to confirm that it is safe. He has expressed a wish to be present to oversee the removal of the hardcore.

The Environment Agency states that the analysis results indicate the presence of hydrocarbon contamination in the made ground at the site but that it is unclear if the contamination poses a risk to 'controlled waters' receptors as the report refers only to human health receptors. The report recommends further speciated analysis of soil samples and sampling of the Hooborough Brook to determine the specific risk posed by hydrocarbon contamination. The information also indicates that the contaminated material would be removed from the site and replaced by clean material. **This would negate the need for further investigation, however validation sampling would be required to ensure all contaminated material has been removed.** It is unclear if this proposal relates solely to the area of the trial pits or if it relates to the entire extent of the previously imported made ground. A copy of this response was sent to the agent who has confirmed that his client is willing to remove all the unauthorised hardcore material from the site together with the subsequent validation sampling to ensure the site is clean.

Natural England has no further comments to make with regard to the impact of the development on the natural environment and refers the Local Planning Authority back to the original comments made when the application was submitted (see above).

Derbyshire Wildlife Trust has no further comments to make on the application as the ground contamination is beyond the scope of its remit.

Following on from the above, the Council's Sustainability Officer has undertaken a Habitats Regulations Assessment, which concludes that the proposed development would have no impact on the River Mease SAC and no further assessment will be required.

Highway Safety

Although a number of neighbouring residents have objected on highway safety grounds, both the Planning Inspector and the County Highways Authority have not raised this as an issue. The Inspector refers to paragraph 66 of Circular 01/06, which advised that development proposals should not be rejected if they would only give rise to modest additional daily movements, as is the case here. Accordingly, there are no objections to the development on highway safety grounds.

Other issues

A number of issues have been raised by Mrs Heather Wheeler MP, the Parish Councils and neighbouring residents, some of which have already been addressed elsewhere in this report. Of the others, some are not material planning considerations, such as devaluation of properties, the presence of covenants on the land, the existence of other gypsy sites in Lichfield and noise from barking dogs, which is an environmental health issue.

The statement regarding the Green Belt is inaccurate as there is no designated Green Belt in the vicinity of the site. Although the application is retrospective, planning legislation allows for such applications to be made. There is no evidence to show there would be an adverse impact on tourism and walkers as a result of the development.

The Council owns two gypsy and traveller sites within the district, one of which (Lullington Crossroads) is managed by the Council; the other (Foston) is let on a long-term lease. At the time of writing this report Lullington has 5 empty plots, 3 of which are medium stay (maximum 6 months), the remaining 2 being transit plots (2 week stay maximum). One of the medium stay plots is to be occupied imminently. Whilst the Inspector opined that there was no evidence of general unmet need of provision, he concluded that there was some personal need of the appellant and his family that weighed in favour of granting permission. Notwithstanding this, in the absence of evidence to show that the development would not adversely affect the integrity of the SAC, he was led to conclude that planning permission must not be granted.

The appeal decision demonstrates that the District Council lost all the planning arguments bar one – the impact of the development on the River Mease SAC. At the time of the appeal the appellant had not submitted much in the way of drainage detail and therefore the Inspector had no choice but to deny planning permission. However, he made it abundantly clear that this was the only issue unresolved and therefore it is that issue alone that the determination of this application hangs on. If the Committee reaches the view that the applicant has demonstrated that no adverse impact on the SAC would arise or that any contamination can be successfully dealt with by way of remediation, then permission should be granted. The latest comments from the Environment Agency, Natural England and the Environmental Protection Officer relating to the soil and water sampling test results should guide the Committee on what decision it should make in this regard.

Should Members decide to refuse the application on more conventional planning grounds, such as the principle of the development, it should be appreciated that the Council would run the risk of substantial costs being awarded should a subsequent appeal be made to the Planning Inspectorate, as this would clearly be contrary to the Inspector's findings outlined above.

Subsequent to the application being made, the Council has adopted a Developer Contributions Scheme for the majority of commercial and residential developments within the River Mease SAC, particularly for the areas in and around Overseal, Netherseal, Lullington and Smisby. For the purposes of this application there is a requirement for the applicant to agree a financial contribution of £127, based on the calculation that the mobile home constitutes a one-bedroom dwelling. The principle of the Unilateral Undertaking has been agreed with the applicant's agent but the documentation has not yet been received (at the time of completing this report).

Conclusion

The principle of the development has been established by the planning appeal decision and the proposal is therefore in accordance with Local Plan Saved Environment Policy 1 and Housing Policies 5, 8, 12 and 15, paragraph 55 of the National Planning Policy Framework and Policy C of CLG Planning Policy for Traveller Sites.

The development is acceptable in highway safety terms, which, again, was assessed at the time of the enforcement appeal, and therefore Local Plan Saved Transport Policy 6 has been met.

Notwithstanding the above, during the course of three months the Local Planning Authority has endeavoured to obtain a satisfactory level of detail for the connection to the mains sewer without success. The agent has been briefed on several occasions about the level of detail required so that the Members can make an informed decision on the application but, so far, this has not been forthcoming. Without this information it is necessary to re-visit the appeal decision, in particular paragraph 19, which is repeated verbatim below.

'In the absence of any persuasive evidence and given the lack of precise detail of how the site drainage and possible ground pollution in the river catchment area will be handled, it has not been shown that the development would not be likely to have a significant effect on the SAC. This leads me to the view, applying the precautionary principle, that an appropriate assessment is necessary. It is not possible to carry out such as assessment in the absence of the required information. Paragraphs 20 and 21 of Circular 06/05 make it clear that it is not the for decision taker to show that the proposal will cause harm to the SAC in order to refuse the application or appeal but to be certain or convinced that it would not. The agent argues that the test on planning issues is not 'beyond reasonable doubt' but that is in fact the test to apply to a SAC based on the key authority on protected European nature conservation sites'

Members will recall that when previously considering the application, the case was presented with a recommendation to grant permission on the basis that the means of drainage for the site was made clear (albeit without precise details). However, strictly speaking, the applicant may not have satisfied the members' request. Should members

consider the submitted details inadequate, refusal of the application is recommended on grounds that the submitted drainage details are insufficient for the Council to be convinced that with certainty an adequate connection to the mains sewer can be achieved and hence that adverse effects on the SAC can be avoided (see suggested reason for refusal below).

However, should the members consider that sufficient detail has been provided, the application should be granted as previously recommended.

During the course of the application the Local Planning Authority has endeavoured to work with the applicant, via his agent, to achieve an acceptable scheme that could be supported. Although the negotiations have been unsuccessful, it is considered that the requirements of paragraphs 186 and 187 of the National Planning Policy Framework have been met.

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

Recommendation

A. Subject to the receipt of a Unilateral Undertaking under Section 106 of the Planning Act 1990 (as amended) to contribute the sum of £127 towards water quality management of the River Mease, then;

B. Subject to A, **GRANT** permission subject to the following conditions:

1. Within two months of the date of this permission a scheme of landscaping shall be submitted to the Local Planning Authority for written approval, 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.

2. 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 grant of this permission, and any trees or plants which within a period of five years from the grant of this permission 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.

3. Within one month of the date of this permission the existing unauthorised hardcore material on the site shall be removed and deposited to a waste transfer site, the details of which shall have first been submitted to and approved in writing by the Local Planning Authority. Evidence or certification of deposition to the agreed site shall also be submitted to the Local Planning Authority within one week of the material being removed. Full details of any replacement hardcore materials, including details of the source and a chemical analysis shall be submitted to and approved in writing by the Local Planning Authority prior to the replacement hardcore materials being deposited on site.

Reason: In the interests of safeguarding the integrity of the River Mease Special Area of Conservation and Site of Special Scientific Interest.

4. In accordance with Condition 3 above, following the removal of the unauthorised hardcore from the site, further validation sampling shall be carried out on the site before any new hardcore material is brought onto the site, in order to ensure that all contaminated materials have been removed from the land. In the event that the further validation sampling concludes that contamination remains present further remediation works shall take place in accordance with a scheme that shall have previously been submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of safeguarding the integrity of the River Mease Special Area of Conservation and Site of Special Scientific Interest.

5. Further to Condition 3 above, at least 48 hours' notice shall be given to the Local Planning Authority of when the existing unauthorised hardcore material is to be removed from the site in order to allow a representative of the Local Planning Authority to be present during the excavation and removal of the materials.

Reason: To ensure the Local Planning Authority is satisfied that the method and extent of removal is acceptable.

6. No burning of materials shall take place on the site or adjoining land shown edged in blue on the submitted plans.

Reason: In the interests of the appearance of the site, the character of the area and the integrity of the River Mease Special Area of Conservation and Site of Special Scientific Interest.

7. The site shall not be occupied by any persons other than Gypsies and Travellers as defined in the annex to 'Planning Policy for Travellers Sites' (DCLG March 2012).

Reason: The residential use of the site by any other member of the community would be contrary to the provisions of the development plan, particularly Saved Local Plan Housing Policy 8 and Environment Policy 1.

8. No commercial activities whatsoever, including the storage of materials, shall take place on the land or the adjoining land edged blue on the submitted plan.

Reason: In the interests of the appearance of the site, the character of the surrounding area and the integrity of the River Mease Special Area of Conservation and Site of Special Scientific Interest.

9. No more than one commercial vehicle, which shall not exceed 3.5 tonnes in weight, shall be stationed, parked or stored on the site or the adjoining site edged blue on the submitted plan.

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

10. Notwithstanding any details submitted or the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended), within two months of the date of this permission, details of the positions, design, materials and type of boundary treatment to be erected on the site shall be submitted to and approved in writing by the Local Planning Authority. The boundary treatment shall be completed in accordance with the approved details 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 site and character of the area.

11. This permission shall relate to the amended plan received on 23rd July 2012 showing in particular the accurate siting of the mobile home.

Reason: For the avoidance of doubt.

12. Any caravan positioned on the site shall be capable of being towed on the public highway in accordance with the relevant Highways Act legislation, without division into separate parts.

Reason: For the avoidance of doubt.

13. Within two months of the date of this permission details for the construction of the proposed sustainable drainage system for the disposal of surface water and a riparian Buffer Zone shall be submitted to and approved in writing by the Local Planning Authority, and the development shall be carried out in accordance with the approved schemes unless consent is given by the Local Planning Authority to any variation.

Reason: To ensure the site can be satisfactorily drained, and in the interests of the integrity of the River Mease Special Area of Conservation and Site of Special Scientific Interest.

14. If, during the course of the development, any other 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 accordance 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 and in the interests of the integrity of the River Mease Special Area of Conservation and Site of Special Scientific Interest.

15. All foul drainage shall be directed to the mains sewer that runs along the A444 to the northeast of the application site.

Reason: For the avoidance of doubt and to ensure there is no detrimental impact on the integrity of the River Mease Special Area of Conservation and Site of Special Scientific Interest.

16. Within one month of the date of this permission, a detailed scheme for the construction of the foul sewer to run from the site to a mains connection in the A444 to the north east shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented in full within 6 months of the date of its approval. Failure to meet this timetable shall result in the cessation of the use hereby permitted and the caravan, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 28 days of the date of the failure to meet the requirements of this condition.

Reason: In the interests of the protection of the River Mease SAC from pollutants.

Informatives:

The proposed development lies within a coal mining area which may contain unrecorded coal mining related hazards. If any coal mining feature is encountered during development, this should be reported immediately to The Coal Authority on 0845 762 6848.

Further information is also available on The Coal Authority website at www.coal.decc.gov.uk

Property specific summary information on past, current and future coal mining activity can be obtained from The Coal Authority's Property Search Service on 0845 762 6848 or at www.groundstability.com

The applicant should be aware of the need to apply for a Caravan Site Licence for this proposal.

Suggested Reason for refusal

- 1. Insufficient detailed information has been submitted to demonstrate that connection to the mains sewer under the A444 is achievable. Without that connection it is likely that an alternative drainage system would be required for which no detail has been submitted, which could have an adverse impact on the integrity of the River Mease Special Area of Conservation and Site of Special Scientific Interest, contrary to Local Plan Saved Policy 11 and paragraphs 7, 17, 109 and 118 of the National Planning Policy Framework.*

Item 2.2

Reg. No. CW9/2011/0002/CW

Applicant:
MIDLAND PIG PRODUCERS LTD

Agent:
NAOMI LIGHT
FISHER GERMAN LLP
THE GRANGE
80 TAMWORTH ROAD
ASHBY DE LA ZOUCH
LEICESTERSHIRE
LE65 2BW

Proposal: PROPOSED ERECTION OF A 2,500 BREEDING SOW PIG REARING UNIT WITH GRAIN STORE, FEED MILL, FEED HOPPERS, MESS BLOCK, WATER TREATMENT BUILDINGS TOGETHER WITH STORAGE BUILDINGS FEEDING AN ASSOCIATED ANAEROBIC DIGESTION FACILITY, SERVICE BUILDING, DIGESTATE AND METHANE GAS STORAGE TANKS SUPPLYING AN ELECTRICITY GENERATION FACILITY AND INCORPORATING A VISITOR CENTRE, 4 AGRICULTURE WORKERS DWELLINGS AND GARAGING, STRATEGIC LANDSCAPING, INCLUDING THE FORMATION OF BUNDS, A SURFACE WATER ATTENUATION POND, AND RAINWATER RETENTION AREA WITH SITE PARKING FACILITIES, WEIGHBRIDGES, SECURITY FENCING AND ASSOCIATED INFRASTRUCTURE UNDER DCC CW9/0311/174 AT LAND OFF UTTOXETER ROAD FOSTON

Ward: HILTON

Valid Date: 08/04/2011

Reason For Committee Determination

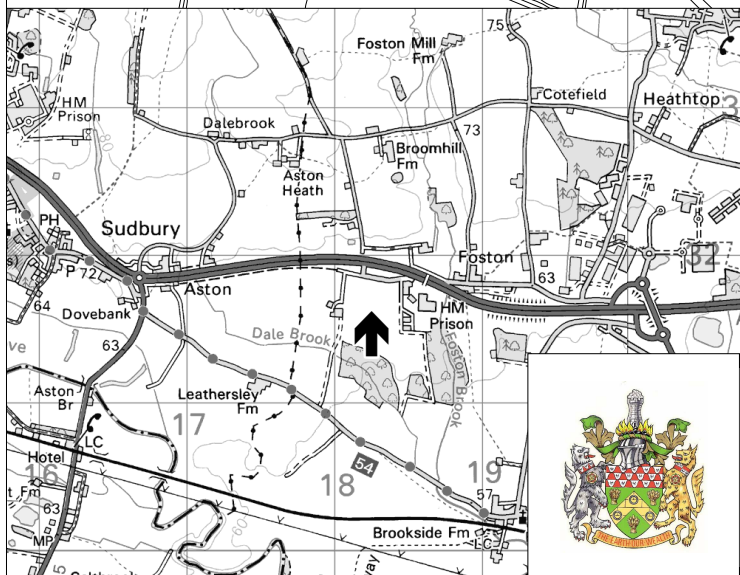
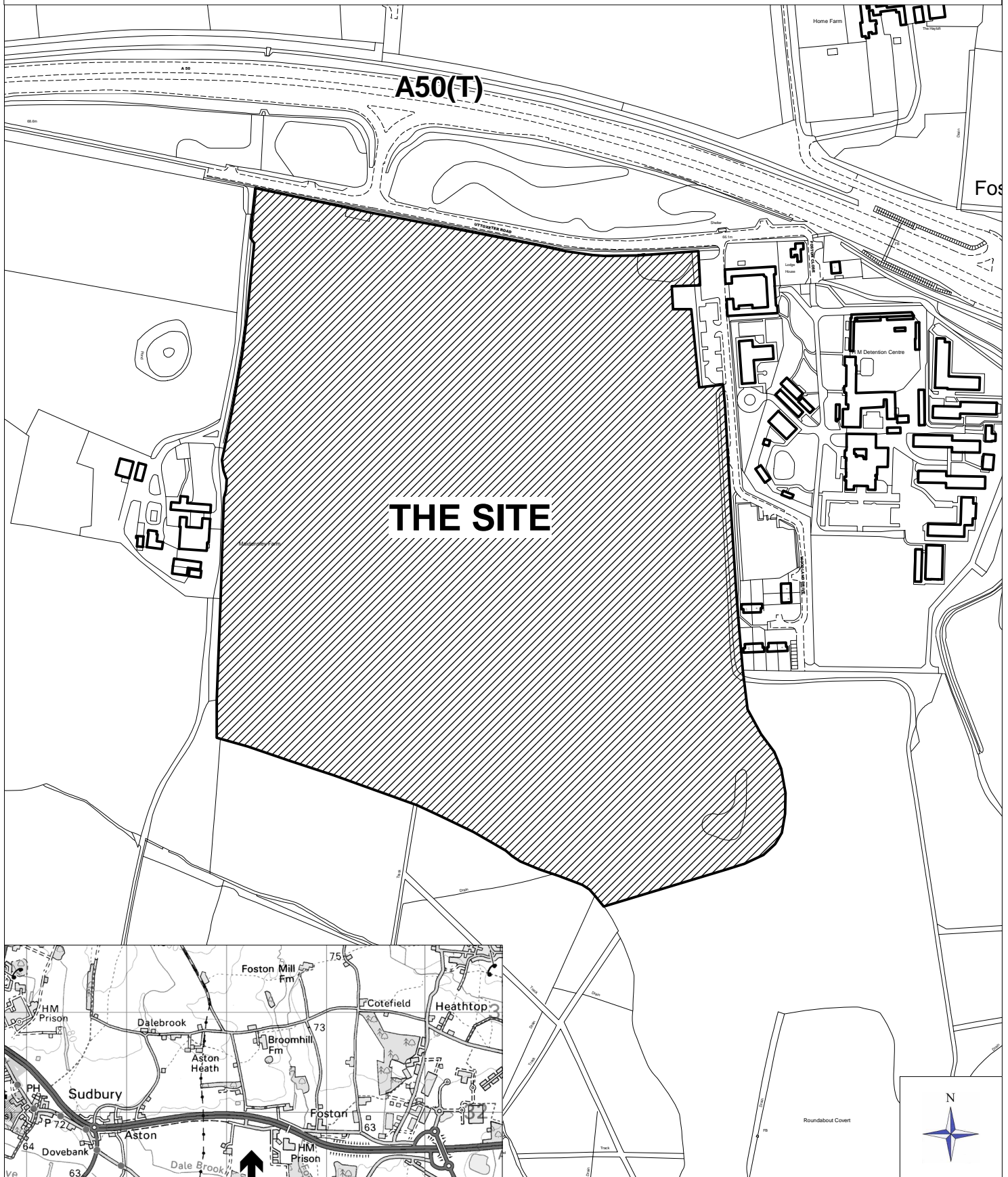
The County Planning Authority has reconsulted this Council on this application because it has received additional information and it asks if this Authority wishes to amend its comments about the application in the light of that additional information.

Previously the Committee resolved to object to the development and a copy of the previous report to Committee is attached for information and what follows is an addendum to that report.

The reasons for objection were as follows:

'Landscape and visual impact'

CW9/0311/174 - Land off Uttoxeter Road, Foston, Derby (DE65 5DL)



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South Derbyshire District Council. LA 100019461. 2010

Environment Policy 5 of the Adopted Local Plan requires that agricultural development (a significant proportion of which this is) be of an appropriate scale; not detract from views across the countryside nor have an adverse impact on landscape or heritage features. Environment Policy 1 seeks to ensure that outside settlements, new development in the countryside is not permitted unless it is essential to a rural based activity or unavoidable in the countryside and countryside character, landscape quality, wildlife and historic features are safeguarded and protected. It is the view of the Council that both of these policies are compromised by the proposed development. The size and scale of the combined hybrid industrial/agricultural development would be overbearing, dominate the landscape and would constitute a significant detrimental intrusion into the countryside. No amount of landscaping or bunding could mitigate this intrusion to any meaningful extent. Although the ES examines visual intrusion and concludes that the intrusion is mitigated to an acceptable degree, this was undertaken during the months when foliage was not depleted as it would be during the winter and therefore the mitigation claimed is inaccurate. One must conclude that in the case of a development of this magnitude in this location, no amount of bunding and/or planting could ever result in sufficient alleviation of the catastrophic effects caused by the development to the landscape. It must also be the case that a development of this nature is not unavoidable in the countryside. The buildings and processes as described are much more akin to those found in industrial development and therefore a 'need' for this open countryside location cannot be demonstrated.

'Of equal import is the proximity of the proposed development to the listed buildings at Foston Hall to the west. Although apparently compromised by its current use and recent developments, the District council in granting permission at the site has always tried to ensure that the functional prison developments required have been largely reversible and therefore one must consider the future potential uses of the buildings and their setting. Environment Policy 13 of the Local Plan requires the decision maker to consider preserving the setting of listed building. Clearly, a development the size and scale of that proposed could never be said to preserve the existing open countryside setting of the adjacent listed buildings which would have a particularly marked effect should the use as a prison ever cease and a new more conventional use be sought which would take advantage of its setting. Thus it is more relevant to consider the future preservation of the listed building put in jeopardy should the development be permitted. PPS5 reinforces this approach at paragraph HE7.2. It must be the case that other sites with less restrictive constraints further from receptors and known heritage assets should be examined before permission is granted here.

'Thus the development would not comply with any of the development plan policies cited.

Environmental effects

'It has not been sufficiently demonstrated that the effects of unquantifiable noise, odour, and underground vibration would not give rise to serious environmental effects arising from the operation of the processes proposed. It is true that much evidence has been submitted in support of the science behind the processes to be employed on the site necessary for its tolerable operation. Notwithstanding all this, there appears to be sufficient doubt in the mind of the public body whose responsibility it is to ensure that public health is protected. In the summary of its letter to the County Planning Authority, the Health Protection Agency states that:

The application does not provide detailed analysis and risk assessment of potential point source and fugitive emissions to air, of: odour; particulate matter; ammonia; bioaerosols; or emissions from the proposed CHP plant.

Detailed consideration of these emissions will be required as part of the Environmental Permit application for the site, and will enable the HPA to comment on the potential for risk to health. Since this information has not been included within the Environmental Impact Assessment, we are not able to provide any further comment, as there is insufficient information upon which to base an opinion.

'With regard to its detailed assessment of the potential impact of bio aerosols for example, it states that:

Recent research³ has found that those living up to 150m downwind of an intensive swine farming installation could be at risk of adverse human health effects associated with exposure to multi-drug resistant organisms.

It is anticipated that further evidence on the potential of installations to result in bioaerosol emissions, and of the potential health effects of these emissions on nearby communities, will become available over the next few years. This is a research area for both the EA and the HPA.

The application does not include detailed discussion or risk assessment of potential for emissions of bioaerosols.

'It is therefore perhaps not surprising that the local community is less than certain and is fearful of the potential environmental and health effects of the development which are far from known and this is especially concerning when the responsible public body can give no comfort at this stage. As such there is little or no confidence in the permitting process that is operated by the Environment Agency. Indeed, it is in such cases that the courts have acknowledged that the public perception and the ensuing fear can be a material consideration. In Newport Borough Council v. Secretary of State for Wales and Browning Ferris Environmental Services Ltd (1998) it was held to be lawful to refuse planning permission for a waste treatment plant in the face of local objections founded (erroneously) on anxieties concerning public safety. The Court of Appeal decided that such anxieties were a material consideration and that it was an error of law to hold that the genuine fears on the part of the public, unless objectively justified, could never amount to a valid ground for refusal. This means, of course, that mere perceptions of possible harm can be overriding in the planning process and such is the case here.

'Concern has also been expressed about the situation in the event of an emergency on the site such as an outbreak of foot and mouth disease. In such case it would be likely that a total shutdown would be necessary. It is difficult to accept that in such a situation, 24-hour access to the prison could be maintained. An evacuation of a fully stocked plant is also unrealistic as suggested in the submitted Crisis Recovery Plan. The Plan, for all its other considerations, does not consider the possibility of on site destruction of all animals. In such cases during the last outbreak, mountainous pyres were necessary. Should this be required when the site is fully stocked the impact could be catastrophic and it is difficult to understand how this would operate in the case of 25,000 pigs.

'Little regard also appears to have been had to the presence of Foston Hall Prison's c.300 inmates and their visiting families, which it is feared could give, rise to human rights issues.

Access and transport

'This area of concern brings into question the whole sustainability and green credentials of the development. In addition to the predicted 18,500 tonnes/annum of feed required to enter by road, in order to maintain sufficient levels of operation of the anaerobic digestion facility, an additional 45,000 tonnes/annum of kitchen and garden waste would also have to be imported. Overall, it is estimated that the development would generate some 172 traffic movements per day. In the event of a closure of the main A50, as happens from time to time, much of this traffic could be diverted through local villages and residential areas. The Local Planning Authority considers that this material, step change to the levels of heavy vehicle movements in the area, would be bound to give rise to ever greater incidences of congestion and accidents (particularly at the nearby Sudbury roundabout A50 junction with the A515) –not to mention the increase in noise arising from this junction with the requirement for constant deceleration and acceleration.

'In conclusion, it is the council's view that the proposed facility due to its size, scale, its siting beyond the built-up limits of a settlement, its industrial function, nature and appearance would be an incongruous feature in this countryside location (in conflict with PPS 1, 4 and 7) and would have a marked detrimental effect on the setting of the adjacent listed buildings at Foston Hall (contrary to PPS5). The Council does not believe that the proposed landscape and planting works would adequately mitigate against the harm created by this large development and its associated activities particularly during the winter months: which impact has been inadequately assessed by the applicant. The proposals would result in an intrusive development into the open countryside contrary to local, regional and national planning policy for the reasons set out above. The substantial increase in traffic generation could lead to serious problems on the adjoining and surrounding road network and additional noise generation. In terms of pollution control, it has not been demonstrated that there can ever be any guarantee that pollutants from the development would not affect the amenity of adjacent residential properties though noise, odour (and other air borne pollutants), and potential underground vibration. As such the genuine and substantial public fears over the potential long term health impacts on nearby residents is a material consideration sufficient to amount to a good reason to justify refusal.'

The Amended scheme

The following is a summary of the main changes to the application in terms of proposals for the site itself and changes to the policy background for the development.

Agricultural operation

The extent and layout of the pig housing and the feed mill and agricultural dwellings remain the same. The main change on the pig housing building is the introduction of flues to each of the vents of the air filter system rather than the wood filters exhausting at ground level. The maximum height of these flues above the ridgeline of the buildings is 1.0 metre – In total there would be 14 flues at the end of each pig building either on

the north or south extremity of each range. Otherwise the proposal for the actual pig buildings remains unchanged.

There is another major change in that at each end of the building complex unloading (at the west end) and loading (at the east end) buildings are proposed to limit noise emissions during these operations.

Bio Gas and Water Treatment Area

The proposed number of tanks adjacent to the old A50 (now the access to Foston Prison and other dwellings) and the access road to the site has been reduced from 13 to 6. There are two land field digestate tanks, one with a diameter of 45m and the other 34m – these tanks would have a maximum height above ground of 10m with a conical roof to the top of the tanks with the tanks being 8m high). A new building would be introduced this part of the site to ‘denitrify’ the digestate in its liquid form (20m x 15m x 4.5m). A pasturiser tank 3.5m dia. x 6.0m high), a smaller digestate (8m dia. x 10m high), tank final effluent tank (8m dia. x 10m high) and liquor-balancing tank (7m dia. x 10m high) complete the structures in this area.

All the tanks would have a concrete wall structure with the ground first having been lined with 2 geotextile layers, one impermeable in accordance with standard practice to prevent any passage of pollution to ground water. All tanks would be contained within bunds that would contain spillages from any of the tanks.

Service Building Area

This is the area that has seen most changes in terms of the overall layout with several structure previously contained within the building being located outside it. The 2 generators would now be located adjacent to the north boundary, adjacent to Old Uttoxeter Road be contained within individual sound proofed containers (20m x 5m) within a 5m high acoustic barrier of a material to be determined. Flues would also be insulated and extend 5m above the height of each container.

Immediately adjoining the service building is a building described as a Chemical Scrubber. It is contained in a 12 x 2.5 x 2.6m high container and has a 1.0m dia. x 11.5m high flue some 8.9m of which extends above the structure. The purpose of the scrubber structure is to process and remove odours from the service building prior to discharge to the atmosphere. This is a different proposal to that originally proposed that relied on the same filters that would apply to the pig buildings air scrubbers

A centrifuge structure is also proposed immediately to the west of the Main Service buildings it would be 20.0m long x 2.5m x 5.0m high. The colour of all the above structures is proposed to match that of the service building.

An 11m dia. x and 6.0 m high bio gas storage tank is now proposed in the north west corner of the site and immediately to the south east of the composting vessels is a tank of the same dimensions that would store up to 5 days of digestate in the event of a problems with one or more of the underground anaerobic digestion gas producing chambers.

The final change in this area is the creation of a substantial hardstanding on which Ag-bags would be stored. These are large plastic bags within which the

processed/composted digestate would be stored prior to collection by farmers to spread on the land to create the crops to feed to the livestock within the holding. This is a part of the Green Circle approach advocated by the applicants.

Material importation to add to Pig Effluent for composting and methane extraction

If planning permission were granted and in the initial phases of the development, the applicant now proposes to mix the pig effluent with maize grown on its own farms rather than import green waste into the site. This, it is stated, has two purposes, one to test systems with a material that is neutral in terms of odours, bearing in mind that the pig effluent is contained within a sealed disposal system. The other reason is to test that system and other odour control measures on the pig buildings to ensure that they are functioning correctly prior to the importation of green waste. If permission were granted, then the 'testing' period would give the applicants time to source green waste with a planning permission in place. This has proved to be a problem as contractors are reluctant to sign for a site that does not exist.

Policy Changes

Local and county policies identified in the previous report continue to apply to this development.

National Policy has changed significantly in the form of the National Planning Policy Framework (NPPF). Members will recall that the aims of the framework are to provide for the grant of planning permission for development that is sustainable and beneficial to the rural economy. The NPPF also asserts the primacy of the Development Plan in determining planning applications.

In their amended submission the applicant has drawn attention to the relevant paragraphs in the NPPF that it states apply to the consideration of this application. They also recognise that some of the guidance behind the rescinded PPG and PPS remains in place and have addressed these in the amended submission.

Accordingly, the application is accompanied by various documents dealing with noise and odour, a needs assessment for the housing accommodation as well as updated information on the ecological and flood risk assessments amongst other documents.

Responses to publicity

The Local Planning Authority has not undertaken any further consultation on the application, as this is a matter for the County Planning Authority. Two letters have been received from the chair of the local action group that states the amendments do nothing to meet the objections raised by this Council [see above]. The Council's objections to the development should be maintained as none of the issues relating to impact on the countryside, noise, odour, and transport issues and the fear of the potential impact on health in the locality. The Local Planning Authority is urged to maintain its objection to the development.

Further planning assessment

Members will recall that the NPPF states where policies in out of date Local Plans are in line with NPPF policy then those policies continue to carry weight in determining planning applications – paragraph 215. The need for the Local Planning Authority to

negotiate positively with developers to explore solutions to the problems associated with planning applications is also a part of the NPPF at paragraphs 186 and 187.

In principle the objector is correct, the changes do not radically alter the proposals in regard to the impact on the countryside and on the question of access and transport issues. It is understood that the main aim of the changes is to maximise odour control and noise emissions, hence the additional buildings to cater for the delivery and export of stock and the changes to the pig buildings to provide for vertical emissions at height rather than at ground level. The health issues are covered by other legislation but the this Planning Committee has relied on the 'Newport' case as set out in the Council's original objection, to reflect the concerns of local people on the health impacts arising from this development.

The Environmental Health Manager will report on the proposed noise and odour control measures directly to the County Planning Authority. If comments are available prior to the meeting, then they will be reported verbally.

Members' instructions are sought

01/11/2011

Item **1.6**

Reg. No. **CW9/2011/0002/CW**

Applicant:
MIDLAND PIG PRODUCERS LTD

Agent:
NAOMI LIGHT
FISHER GERMAN LLP
80 TAMWORTH ROAD
ASHBY DE LA ZOUCH

Proposal: **PROPOSED ERECTION OF A 2,500 BREEDING SOW PIG REARING UNIT WITH GRAIN STORE, FEED MILL, FEED HOPPERS, MESS BLOCK, WATER TREATMENT BUILDINGS TOGETHER WITH STORAGE BUILDINGS FEEDING AN ASSOCIATED ANAEROBIC DIGESTION FACILITY, SERVICE BUILDING, DIGESTATE AND METHANE GAS STORAGE TANKS SUPPLYING AN ELECTRICITY GENERATION FACILITY AND INCORPORATING A VISITOR CENTRE, 4 AGRICULTURE WORKERS DWELLINGS AND GARAGING, STRATEGIC LANDSCAPING, INCLUDING THE FORMATION OF BUNDS, A SURFACE WATER ATTENUATION POND, AND RAINWATER RETENTION AREA WITH SITE PARKING FACILITIES, WEIGHBRIDGES, SECURITY FENCING AND ASSOCIATED INFRASTRUCTURE UNDER DCC CW9/0311/174 AT LAND OFF UTTOXETER ROAD FOSTON**

Ward: **HILTON**

Valid Date: **08/04/2011**

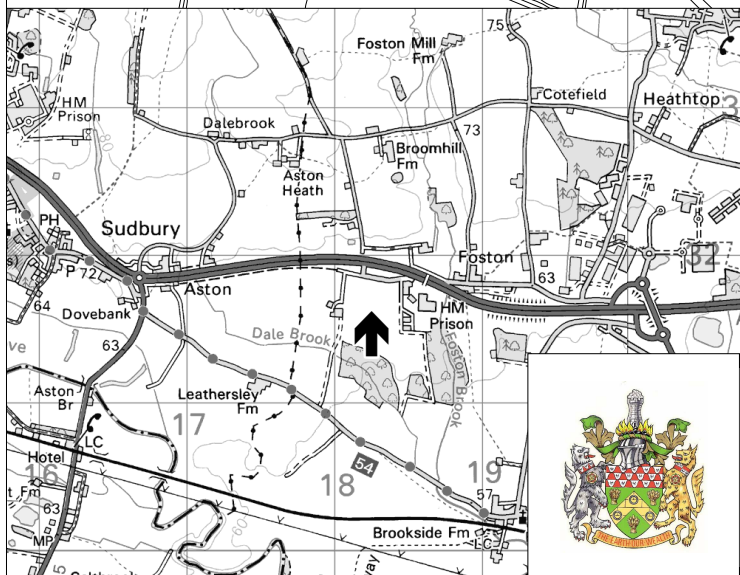
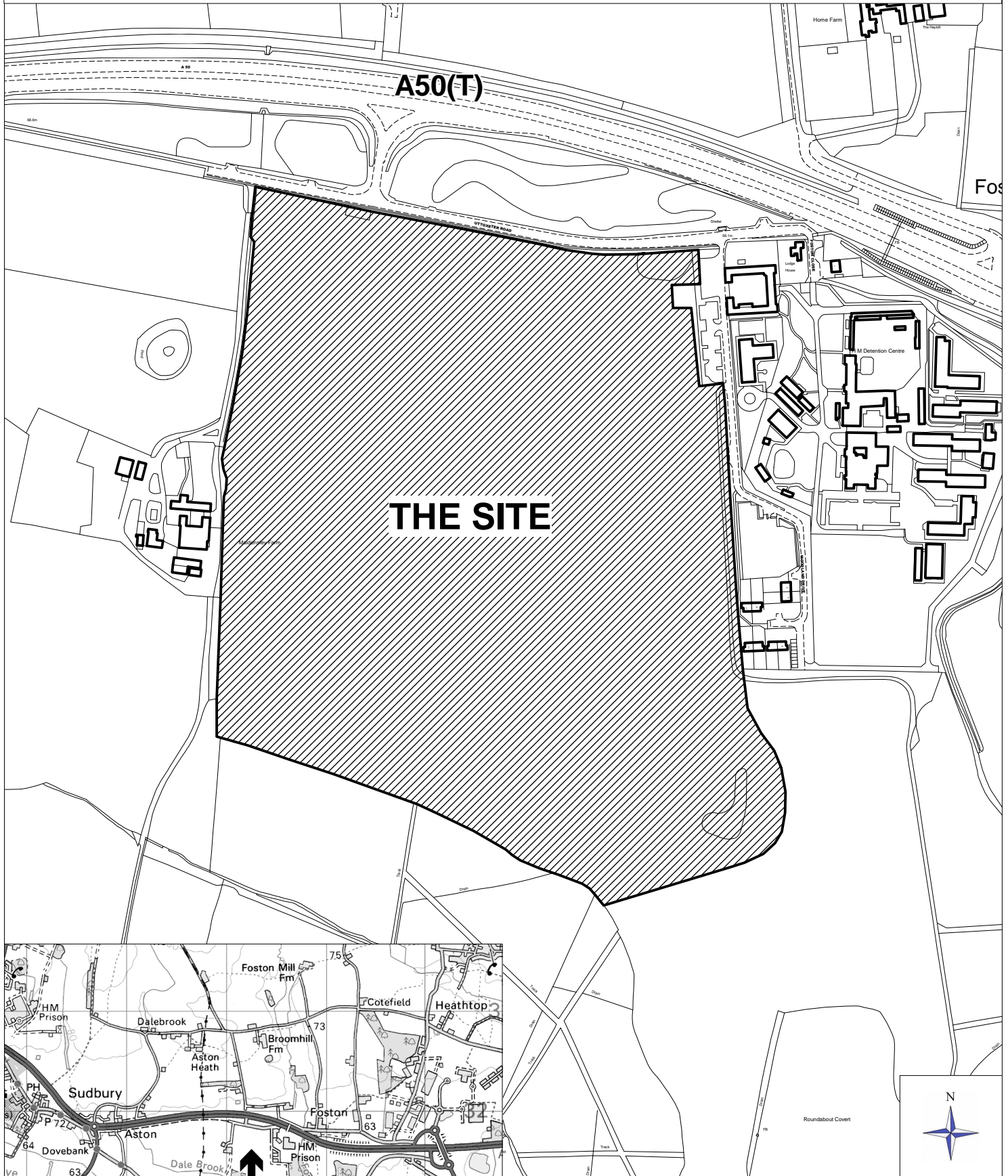
Report on additional information received from the applicants in respect of the proposed Pig Farm at Uttoxeter Road Foston.

Members will recall that at the meeting on 31 May 2011 it was resolved that the Council's comments on this application be deferred pending receipt of further information relating to the objection raised by the Environment Agency and the lack of an Emergency Plan for the site in the event that any of the systems proposed was to fail. The County Council has now received that information and it has asked this Authority to formulate its comments on the application.

This report is an addendum to the previous Committee report which is appended.

In addition to the information requested by this Council, the applicants have also amended the application in that the height of the flues has been reduced to 10m from the 25m previously specified. A further landscape impact assessment has also been submitted together with additional elevations relating to the tank farm and photographs

CW9/0311/174 - Land off Uttoxeter Road, Foston, Derby (DE65 5DL)



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South Derbyshire District Council. LA 100019461. 2010

relating to the impact of landscaping at Day 1, Year 5 and Year 15. These images will be displayed at the meeting.

Further information required by the Planning Committee

Environment Agency considerations

Ground Water

Since the last meeting when this application was presented, the applicants have been in discussion with the Environment Agency about its objection based on water quality implications arising from the development. Within the submission of the additional information is a letter from the Environment Agency to the applicants' agents. In that letter the Agency states that it has received sufficient information in support of the applicant's application for an Environment Agency permit to be able to advise the applicant that if that same information were submitted to the County Planning Authority, the Agency would be in a position to withdraw its objection to the proposal.

The Environment Agency has confirmed to the County Planning Authority that it no longer objects to the development on the basis that any impact on ground waters can be controlled or mitigated. In the light of this the Environment Agency has withdrawn its previous objection to the development subject to the imposition of conditions to control surface water outfall from the site, and a condition that requires the development to be undertaken in accordance with the submitted Flood Risk Assessment. The letter also draws attention to the requirement to obtain a permit from the Environment Agency to cover issues such as noise, dust and odours before bringing the site into operation. The Environment Agency also notes that its consent is required to abstract water from the ground and for any discharges to watercourses. These latter three controls operate outside the remit of planning control.

This Environment Agency response confirms the applicants' view that the environmental permitting process should provide the Committee with the assurance that these issues will be controlled but not through the planning permission. If the Environment Agency issues a permit the Company would be answerable to the Environment Agency for any breach of the Permit should that be granted rather than this Council's Environmental Health Enforcement Protection Team.

Crisis Management Plan

The submitted Crisis Management Plan is available for inspection on the file. It will be noted that each area of potential emergency has been covered and a distinct line of responsibility identified. It covers areas such as fire, mechanical breakdown of plant and equipment, contamination of the digesters, disease outbreak and staff ill health amongst other issues. The applicants acknowledge that the document is not something that can be set in stone as is the case with all Health and Safety matters, procedures need to develop over time and in the light of experience and that is the intention with the Crisis Management Plan. The Environment Agency has also recognised this in its response to the County Planning Authority.

As with the ground water issue, the responsibility for ensuring the safe operation of the site lies with the Environment Agency through its Permitting process. The Company is

obliged to obtain a Permit prior to opening the facility and it can be closed by the Environment Agency if there is a failure to adhere to the requirements of the permit.

The Environmental Health Enforcement Manager has responded to the County Council and has sought the imposition of several conditions that amongst other things would secure the shut down of the facility in the event of an emergency at the site that exceeds the parameters set by the Environment Agency.

Other Issues

The Health Protection Agency (HPA) has submitted information to the County Planning Authority setting out its role in the Permitting Process operated by the Environment Agency. It advises that it has set parameters that require a recommended separation distance between houses and pig buildings. It states that it would review the proposals at Foston as a part of its role in the permitting process and advises the Environment Agency as to whether the measures proposed in the application would minimise or avoid a risk to human health [although members are reminded that this is not a material planning consideration].

Members may also be aware that Natural England raised an objection to the development. Additional information has been submitted to the County Planning Authority that has satisfied the Derbyshire Wildlife Trust. At the time this response was prepared, the County Planning Authority had not received a response from Natural England, any response that is received will be reported at the meeting if available.

Updated Planning Assessment

Members are referred to the Planning Assessment as reported to the 31 May 2011 meeting that should be read in conjunction with the following.

The applicants have addressed the issues that were raised by the Committee at the May meeting relating to crisis management and ground water. The Environment Agency is now satisfied on the ground water issue subject to the imposition of conditions. As stated above, the Environment Agency would be responsible through its permitting process for monitoring compliance with any permit that it may issue in respect of noise odour and other emissions and it will consult the HPA on all these matters prior to issuing a permit and other matters such as water abstraction and surface water discharge consent are also controlled by the Agency.

In the light of this the environmental impacts of the development are controlled via the Environment Agency and would not in those circumstances form a valid reason for this Authority to object to the development.

Pre-application discussions.

There were extensive discussions with the applicants prior to the submission of the previous planning application that was withdrawn. Arising from those discussions officers identified that any application would fall under the requirements of Schedule 1 of the Environmental Impact Regulations and given its open countryside location it would be for the applicants to justify that location. The significant issues that were identified related to noise, smell, access and impact on the highways, visual intrusion, flood risk, impact on the setting of the Foston Hall Listed building and the need to assess if there

were archaeological remains within the site. The applicants were also advised to consult the local community prior to making an application. The above information formed the basis of this Council's then Scoping Opinion in respect of the requirements of the Environmental Impact Assessment Regulations 2011 and the Screening Opinion that preceded the Scoping Opinion were both on the Planning Register prior to that application being withdrawn. It is considered that the current application is compliant with those Regulations.

Clearly smell was to be a crucial determining factor and the applicants were confident that it could be addressed. This odour reduction system is now proposed in the current planning application and is to be combined with the flushing system described towards the start of this report as the means by which odour reduction would be achieved at the application site.

The applicants have also introduced the flushing system at one of its existing farms in Staffordshire. Environment Health and Planning Officers have visited this site and it can be reported that in that location and with the numbers of pigs at that facility, it appeared that odours were considerably reduced by the flushing system.

The Development Plan

East Midlands Regional Plan

The policies of the East Midlands Regional Plan remain relevant to the consideration of the application but in the event that the Localism Bill is approved, the EMRP will cease to have effect. It will be for the County Council to decide the weight to be applied to the policies in the Regional Plan.

The South Derbyshire Local Plan

Environment Policies 1 & 5 – the issue here is whether the development can be justified in this countryside location. There is no doubt that the application will have a material impact on the character and appearance of the countryside. An assessment of the visual and landscape impact along with noise and odour implications are set out below in 'Material Planning Considerations'. The primary use of the site is as an agricultural business where a location in the countryside can be said to be necessary as locating a pig farm immediately adjacent to a town or village may not be acceptable. This site enjoys a reasonably remote location away from settlements but with excellent access to the trunk road network and a farm is a use normally found in the countryside. Whilst acknowledging the serious objections in terms of visual intrusion and landscape impact, the application site is considered to be well located in terms of its surroundings; being well screened from the south by existing plantations and having a well landscaped trunk road on its northern boundary. With the exception of the views set out below in Visual and Landscape Assessment, this existing screening helps to ensure that the farm buildings would not intrude unduly into the wider landscape. This screening also helps to visually separate the proposed use from the nearby Foston Hall Prison with its Grade II listed buildings. Accordingly the farm is considered acceptable in terms of the above policies. However, the determining factor will be whether the mitigation measures outlined in the planning application are sufficient to warrant a recommendation of 'No Objection' to the County Planning Authority.

Housing Policies 8 & 11 – if the development were permitted then the justification for the housing associated with the development has been confirmed as set out in the information supporting the application. If permitted the dwellings should be subject to an occupation condition similar to the agricultural occupancy condition but designed to reflect the mixed occupation of the proposed dwellings referred to in the supporting information. In addition the offer to demolish the existing houses on the Woodyard Lane site referred to in the application documents should be secured through either a Section 106 Agreement or a Unilateral Undertaking depending on the requirements for an agreement identified by the County Planning Authority as part of its consideration of the planning application.

Employment Policies 4, 5 & 8 – These policies contain a presumption against new employment development in the countryside except in locations on the edge of established settlements where a need is established. The exception is not applicable to this site. As stated above, the primary use of the site is considered to be large-scale agricultural development where a location in the countryside is acceptable in principle subject to the policy and material planning considerations set out in this report.

The anaerobic digester (AD) part of the application could be accommodated in a business park or industrial estate as a separate entity. However, this application must be judged on its own individual merits and it is the strong assertion of the applicants that the pig farm is reliant on the AD part of the application and vice versa; without one there would be no other part of the development. The AD plant is well related to the trunk road network and where there are proven flows of Green Waste currently using the road. The applicants assert that these sources could easily be diverted onto this site to assist with renewable energy generation. The County Planning Authority will have to assess whether this part of the proposal accords with its policies.

On the basis that the pig farm and AD elements are interlinked it is necessary to assess the visual, noise, traffic and odour impacts of this development before a determination as to the suitability can be made and following that a recommendation to the County Planning Authority on this Council's view on the planning application. These areas are considered in the following section of this report.

Waste Policies

Derbyshire County Council, as the waste planning authority, is responsible for assessing the application against the policies in the Derby and Derbyshire Joint Waste Disposal Local Plan. However, as stated above many of the criteria in that Plan are similar to those in the South Derbyshire Local Plan relating to the control of development in the countryside and will be a determining factor for the County Planning Authority.

Material Planning Considerations

Government Advice on all issues - PPS & PPG

There is a wide presumption against unwarranted development in the countryside – this is more so in areas of green belt or SSSI. However this site has no special protection and it is for the applicant to justify the countryside location. The applicant has submitted a justification for the use to be located in the countryside and refers to various Government policy and advice documents to support that contention. In particular the

need for a diverse rural economy that reflects modern farming practices and minimises visual intrusion. The application is accompanied by information that addresses the issues identified in the various areas of Government advice such as PPG 24 – Planning and Noise, PPS 25 – Development and Flood Risk and particular weight is given to PPS 10 and 22, which deal with Sustainable waste disposal and Renewable Energy. The issue to be considered is if the benefits arising from the recycling of pig waste and other green waste are so strong as to allow for the formation of a new large-scale farming unit in the countryside. However, there may be an overriding factor in terms of other impacts such as visual intrusion that may outweigh that presumption in favour of addressing waste recycling and renewable energy. These issues are considered further under separate headings below.

Visual impact

This is the most significant potential impact arising from this development. The proposal has been carefully assessed in this regard and three main areas have been identified as locations where the development would be visible in the wider landscape. These are at high ground between Tutbury and Hanbury, from the A50 heading east from Sudbury and on footbridge over the A50 at Foston. Below is a discussion of the impacts on these three areas, followed by an assessment of the more localised visual impacts.

The high ground between Tutbury and Hanbury – Hanbury village lies almost directly south of application site and commands views over the Dove Valley and the development contained within it. Photographs have been taken from the churchyard in the village but there may be other high spots along the ridge from which the site would be visible. From Hanbury there are views of the site but these are seen in the context of other major development in the Dove Valley such as Dove Valley Park and the Cranberry Foods site at Scropton. The site itself is also seen in the context of substantial areas of tree plantation that would assist in mitigating the views of this substantial development from the Church Yard and wider village at Hanbury. These are distant views with the main pig buildings in the foreground and the service buildings and other structures in the background, seen against the background of the landscaping along that part of the A50. The site would be seen as a significant addition in the landscape of the Dove Valley but because of the distance from the ridgeline to the site, the sensitivity of this impact is considered low.

The A50 heading east from Sudbury, including the footpath adjacent to the A50 – the photographs are taken from the lay by on the A50 on its northern side. These illustrate that there would be views from the A50 of the service building with its 3 x 10m high associated exhaust stacks with some views of the feed mill and other smaller buildings. This is perhaps the most prominent view of the site. The application plans have proposed landscaping in the form of bunds and tree planting in the northwest corner of the site and along the western boundary. In addition the view must be assessed against the Guidelines for Landscape and Visual Impact Assessment (GLVIA) and the other guidance referred to above. The first is a standard methodology that has been used at Appeal Inquiries to assist with assessing landscape impact. In that document, whilst landscape impact can be seen as significant, the viewpoint from the road is seen as having low visual sensitivity because that view is seen from a trunk road. For the purposes of this Planning Assessment the methodology in the Landscape Assessment document is accepted and from the A50 the view is deemed to be significant but its sensitivity is low. When this is combined with the mitigation measures proposed in the form of the landscaped bunds it is considered that the visual impact of the development

would be mitigated to a point where refusal of the application on visual impact grounds would not be sustainable at appeal.

The footbridge over the A50 at Foston – photographs have been taken from the footbridge. The main view of the site is from the bridge itself where there is a view of the site along the old Uttoxeter Road. This view would take in the tanks and silos, the service building and the access to the site. As with the above assessment this would be a transient view of the site by users of the footbridge. Whilst the impact is significant from the footbridge the sensitivity of the view is low.

Local Visual Impact

Visual Impact on Houses; Maidensley Farm and Woodland Drive – These properties are in closest proximity to the site. The houses are referred to and assessed in the application documents. The site would be visible from the upper floors of the Maidensley Farm house; ground floor views and views from habitable room windows on the barn conversions would be screened both by buildings in the case of Maidensley Farm and the existing hedge on the boundary of the application site in the case of the barn conversions. The application plans propose a 30m wide by 2m high landscape bund along the boundary to the Maidensley Farm complex and this is considered to have the potential to mitigate views that may be possible through the existing boundary hedge. The orientation of the houses on Woodland Drive is such that there would be no views into the site from the majority of those houses from main habitable room windows. The application proposes that there be significant tree planting along the eastern boundary of the site, in part to screen the development and in part to mitigate potential noise from the site. Due to the proximity of the houses at Maidensley Farm and Woodland Drive the proposal could have an adverse visual impact, however, for the reasons set out above, the development has sufficient mitigation measures proposed to minimise that impact.

Visual Impact on Foston & Scropton Villages and their hinterland – Due to the presence of substantial areas of trees, hedges and landscaping to the A50, there is no direct visual impact arising from the development at either of these villages. Members will be aware of isolated properties to the North of the A50 but from these houses, the landscaping associated with the A50 provides ample screening of the proposed site. There will probably be views of the 10m high flues and possibly the roof of the services building that is some 11m to the ridge. None of these views are considered significant and would not constitute grounds for refusing planning permission.

Visual Impact on Foston Hall Prison – The proposed landscape master plan would mitigate any visual impact on the setting of the listed building. The prison site has already degraded the immediate setting of the building by the erection of security fences and the provision of additional temporary prison buildings. These are all demountable and it is possible that the setting of the listed hall and stables could be restored should the prison be closed. However there does not appear to be any prospect of this happening and this application should be judged on its merits at the time of the application.

Overall Conclusion on Visual Impacts

It is considered that the viewpoints and local impacts identified above are not sufficient on their own to warrant refusing planning permission. They represent views of low sensitivity at the closest points to the site or are distant views of the site in the context of

a valley landscape that is already degraded by other development. The impact on local houses can be either largely mitigated or houses have no direct views to the built development on the site. Provided the development is subject to conditions requiring the implementation of the Landscape Master Plan, following the approval of the precise details of that plan, then it is considered that the development is in accordance with the requirements of Environment Policies 1 & 5 of the adopted South Derbyshire Local Plan in terms of the agricultural buildings.

Odour and Dust Issues

The overall methodology for assessing the odour impacts has been accepted by the Environmental Health Enforcement Manager. The conclusion of the air quality assessment is that the submitted report adequately addresses the odour issues at all the potential receptors identified in the report in principle. None of the houses identified, including those on Woodland Drive and Maidensley Farm, are sufficiently close to be affected by odours once the air from all buildings on the site has been treated by the methods described above in the 'Applicants Supporting Information'. Subject to these being implemented should planning permission being granted, the Environmental Health Enforcement Manager has no objection to the development.

The AD service building would appear as a large agricultural building, similar in size to the composting building at Egginton Common. That too has an eaves height that allows lorries to tip and it has sliding doors that seal the building prior to tipping. The building also operates under negative pressure and there is a carbon filter system in operation. There are houses in close proximity to that building as occurs on this application site. According to the Environmental Health Enforcement Manager's records there have been no reports of odour complaints arising from that building.

The proposed filter system at the current application site on the AD Service building is much more up to date in that particulates within the building would be substantially removed prior to discharge to the atmosphere through the carbon filter.

The installation of the odour and dust control systems is considered essential if the planning application were granted permission. The Environmental Health Enforcement Manager has requested that the County Planning Authority impose conditions to ensure that these measures are put in place prior to the commencement of the operation of the building.

Noise Issues

The application is accompanied by a Noise Report that addresses the issue of noise in terms of impact on local dwellings arising from the operation of the site including the loading of pigs prior to transport for slaughter. In terms of the general operation of the site, the buildings and other machinery can be constructed to ensure that noise impacts are minimised and mitigated. In loading pigs, a mitigation measure is proposed in the form of a 4.0m high fence around the loading area to form a solid barrier around it.

The Environmental Health Enforcement Manager advises that the noise generated by the development is unlikely to be greater than that occurring from the A50 and the supporting information accompanying the application supports this point of view.

The Environmental Health Enforcement Manager states that subject to the implementation of the mitigation measures identified in the Noise Report at paragraphs 5.1 to 5.10, it is unlikely that any concerns about noise would be sufficient to warrant objection to the development

Updated Overall Conclusion

This is clearly a very contentious planning application. The issues are far reaching in that there has never been a planning application for a pig farm of this scale submitted in this country although it is understood that there is a farm in Yorkshire that has up to 3,500 breeding sows. If permitted, the development would be a first in terms of intensive farming because of its scale and the associated reuse of waste material to produce energy, heat and crops to serve the whole food manufacturing cycle proposed in the application. Having taken all the submitted information, responses from consultees and examined all the policy considerations as set out above, the conclusion is that whilst this is a substantial development in the countryside, the primary use of the site is agricultural and as such a location in the countryside can be acceptable.

The AD and composting operation, including the containers and silos to produce methane and fertiliser is a use that could potentially be provided at an industrial site rather than in the countryside location. However, if members are minded to accept that the pig farm can reasonably be accepted in this location, then there is such a close synergy between the two uses that the AD operation should be accepted as well. This is as the case for them to be located together has, it is considered, been made. Given the level of proposed odour control and exhaust air filtration for this aspect of the development and the overall appearance as a part of a larger farm complex, the AD complex is considered to conform to Development Plan policies subject to the recommended conditions.

Recommendation

That Derbyshire County Planning Authority be advised that subject to the signing of a Section 106 Agreement to secure the demolition of the houses at the existing pig farm on Wood Yard Lane Church Broughton and the payment of any contributions for matters identified by other consultees, then South Derbyshire District Council has **NO OBJECTION** to the proposed development subject to the following conditions:

1. The occupation of the dwellings shall be limited to the family and/or dependents of a person employed, or last employed, wholly or mainly, in the operation of the pig farm hereby permitted or in forestry.

Reason: The site is within open countryside where the Development Plan provides that development shall be confined within the limits of an existing town or village, except where there are other overriding reasons justify a departure from that policy. The Local Planning Authority is concerned to ensure that such workers' dwellings are maintained available to meet the needs of the locality and to avoid proliferation of dwellings in the countryside.

2. Before any building is brought into use the odour control measures assessed in the report by the SLR Odour Impact Assessment dated March 2011 shall be installed in accordance with manufacturers instruction.

Reason: To ensure the Odour Control measures set out in the EIA are implemented prior to the occupation of any building on the site.

3. Noise mitigation measures shall be implemented in accordance with the noise control recommendations set out in Paragraphs 5.1 - 5.10 (shown as 5.1 - 5.7 and the 5.1 - 5.3 on pages 9 & 10 of the Hepworths Acoustics report dated March 2011) and stated as being required at Paragraph 7.6 in the same document prior to the first use of any of the buildings hereby permitted.

Reason: In order to ensure that the site operates in accordance with the mitigation measures proposed in the submitted EIA.

4. The site, its plant and equipment shall be operated and maintained strictly in accordance with manufacturers requirements. In the event that there is a breakdown of noise or odour control measures, the site shall be prepared for shutdown in accordance with a timetable that has been submitted to and approved in writing by the County Planning Authority. For the avoidance of doubt the breakdown of the odour control system will have been considered to have occurred if odours at the site boundary exceed 3 ouE/m³ as a 98th percentile of hourly means at the site boundary being the measure described in Section 3.1 of the Odour Impact Assessment prepared by SLR in its report dated March 2011.

Reason: In order to ensure that the site operates in accordance with the mitigation measures proposed in the submitted EIA.

5. There shall be no loading of animals at any time outside the hours of 0700 and 1000 on any day as set out in paragraph 5.6 of the report prepared by Hepworths Acoustics dated March 2011.

Reason: In order to ensure that the site operates in accordance with the mitigation measures proposed in the submitted EIA.

6. Before any building is brought into use the landscape bunds and noise, security fence shall be formed and constructed in accordance with detailed drawings that shall have received the prior written approval of the County Planning Authority. The planting of the landscape bunds shall be undertaken in accordance with a detailed planting plan submitted to and approved in writing by the County Planning Authority, using the species identified by FCPR in its Landscape and Visual Assessment dated March 2001 at Figure 11 in Appendix 8 to the submitted EIA. The landscaping bunds, planting and fences shall thereafter be maintained in accordance with a Landscape Management Plan that shall be submitted to and approved in writing by the County Planning Authority.

Reason: In order to ensure that the site operates in accordance with the mitigation measures proposed in the submitted EIA.

7. Control of the hours of operation during construction 0730 - 1830 Monday to Friday, 0730 - 1300 on Saturday with no construction activities on Sunday Bank or Public Holidays.

Reason: In the interests of the occupiers of nearby houses.

8. The imposition of such dust and mud on road conditions as deemed necessary by the County Planning Authority in accordance with its standard requirements for waste disposal sites both during construction and during the operation of the site if permitted.

Reason: In the interests of the amenity of the occupiers of nearby houses.

2. PLANNING AND OTHER APPEALS

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

Reference	Place	Ward	Result	Cttee/Delegated
9/2012/0986	Dalbury Lees	Etwall	Allowed	Delegated
9/2012/0911	Kings Newton	Melbourne	Dismissed	Delegated
9/2012/0786	Hilton	Hilton	Dismissed	Delegated
9/2012/0536	Etwall	Etwall	Withdrawn	Committee



Appeal Decision

Site visit made on 22 April 2013

by J.P. Watson BSc MICE FCIHT MCMI

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

Decision date: 17 May 2013

Appeal Ref: APP/F1040/A/13/2192641

Land between "Lamorna" and "Pembroke", Main Street, Lees, Ashbourne, Derbyshire DE6 5BE

- 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 Jonathon Coomb against the decision of South Derbyshire District Council.
 - The application Ref 9/2012/0986, dated 20 November 2012, was refused by notice dated 16 January 2013.
 - The development proposed is the erection of two dwellings.
-

Decision

1. The appeal is allowed and planning permission is granted for the erection of two dwellings at land between "Lamorna" and "Pembroke", Main Street, Lees, Ashbourne, Derbyshire DE6 5BE in accordance with the terms of the application, Ref 9/2012/0986, dated 20 November 2012, subject to the conditions set out in the final paragraph of this Appeal Decision.

Preliminary

2. The appeal is made in respect of an outline application for planning permission with access and layout to be determined now.

Application for costs

3. An application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

Main Issue

4. The main issue is whether the appeal development would be in keeping with the scale and character of the settlement.

Reasons

5. The development plan consists of saved policies of the South Derbyshire Local Plan (May 1998) ("the LP"). Housing Policies 5 and 11 are saved by Direction of the Secretary of State and my attention is drawn to both. Housing Policy 5 restricts new housing development in Lees (and other identified villages) to that which can be accommodated in the village confines as defined on the proposals map, and requires development to be in keeping with the scale and character of the settlement. Housing Policy 11 says that proposals for new housing developments will be permitted if they provide six specific things,

among which are (ii) reasonable amenities in terms of light, air and privacy for both existing and new dwellings; and (iv) private amenity space and space for landscaping.

6. Reference is also made to Supplementary Planning Guidance "Housing Design and Layout" ("the SPG"), adopted by the Council in 2004 following consideration of responses to public consultation. The SPG sets out the seven overriding aims of the Council, one of which is "reasonable levels of amenity for occupants of existing and new dwellings." It also considers private amenity space, saying that the Council will set no minimum level of required provision and that designs should reflect the need or otherwise for gardens.
7. The National Planning Policy Framework ("the Framework") considers good design in its section 7. Development should add to the overall quality of the area; create attractive and comfortable places to live, work and visit; respond to local character and history and reflect the identity of local surroundings. There are elements of consistency between those parts of the LP to which I have referred and the Framework, and between the highlighted part of the SPG and the Framework. In the main issue raised in this appeal the Framework does not lead in a different direction to the identified LP policy elements and planning guidance. In view of that consistency I give full weight to those policy elements and guidance.

Scale and Character

8. This part of the village consists of a single street with, on either side, individual houses on plots of various sizes. The appeal site is an undeveloped parcel of land behind a high unkempt hedge and those parts of the site that can readily be seen from the street bear mature scrub vegetation. Development along the street is predominantly residential. Many but not all of the residential properties have hedges at the street frontage.
9. The Council is concerned the development would appear cramped and out of character with the remainder of the settlement. The appellant presents a schedule of nearby plot sizes and building footprints. That, together with the nominally 1:1250 scale Ordnance Survey and the "access details" drawing (which shows the proposed layout) clearly show that the density of development at the appeal site, and the plot sizes, would be of the same order as those at some other properties nearby, such as "The Poppies", "Pascoe Vale" and "Radley". The layout of the development as shown on the submitted drawing would not make it appear cramped.
10. Reference is also made to the proportion of the appeal site that would be paved. Other properties nearby have a large proportion of their frontages (visible from the street) laid to gravel or harder surfacing ("The Poppies", "Meadow View", "Pascoe Vale", "Lamorna") and the appeal access and layout would be similar in that respect.
11. The Council considers roadside hedges to be a characteristic of the village and points out that the appeal drawings show no hedge on the developed site frontage. The appellant replies that hedges could be provided. The Council expects that a new length of pavement would be provided where none currently exists but I find no mention of such a proposal in the drawings, the design and access statement or elsewhere among the appellant's material.

12. Scale, appearance and landscaping are reserved matters, not part of the current appeal. The access and layout of the appeal proposal, as shown on the "access details" drawing, would be in keeping with the character of this part of the settlement. There is no contention that the character of this part of Lees differs significantly from that of any other part, and I saw no such difference. I conclude that the appeal scheme would be in keeping with the character of the settlement.
13. The site is in the built framework of Lees. In building two new houses, the proposal would introduce a proportionately very small increase in the number of dwellings in the village. The development would therefore be in keeping with the scale of the settlement. Thus the development would meet both the requirements of LP Housing Policy 5 that have been identified. It would replace an unkempt hedge with residential frontage and so would add to the overall quality of the area.

Other Matters

14. Section 4.0 of the Council's Statement sets out the case for the local planning authority, and that case addresses the matters of scale, character and loss of garden land. There is no evidence that the appeal site is or was garden land. Neither Housing Policy 5 nor Housing Policy 11 refers to the use of garden land. Attention is directed to paragraphs 48 and 53 of the Framework: paragraph 48 says that residential gardens should not figure in allowances that local planning authorities may include in their assessment of the housing supply, and paragraph 53 directs local planning authorities to consider the case for setting out policies to resist inappropriate development of residential gardens. Nothing before me indicates that the Council has set out such a policy, and the matter of garden land as a factor in the assessment of housing supply has no bearing on this appeal.
15. The Council's decision notice refers to the provision of private amenity space on the site and says that the cramped appearance of the site arising from the development would give rise to unacceptable living conditions for future owners of the houses. I have found that the layout of the development as shown on the submitted drawing would not make it appear cramped. It is clear from the drawing that amenity space would be provided and that there could be space for landscaping (which is a reserved matter). Requirement (iv) of LP Housing Policy 11 would be met appropriately at this initial stage, and the SPG is explicit that there is no minimum requirement in respect of private amenity space. The decision notice refers to the SPG which requires reasonable levels of amenity; and Housing Policy 11 (ii) identifies the "reasonable amenities" that are required. There is no reasoned contention that those could not be provided, and it seems to me that they could.
16. Interested parties draw attention to paragraph 47 of the Framework and its requirement that local planning authorities should identify and update annually a supply of specific deliverable sites, and to the associated definition of deliverability. Paragraph 47 is about actions that local planning authorities should take to ensure that their local plan makes enough provision for new housing. Paragraph 14 of the Framework is clear that development proposals that accord with the development plan should be approved without delay, unless material considerations indicate otherwise. Development has stopped at two sites in Lees, and some home owners there have had difficulty in selling their houses. I do not accept that the circumstances at those other sites are a

consideration to which significant weight should be attributed in this appeal, and no case is put to explain how they are. No matter has been raised in which the appeal proposal would not meet the requirements of the development plan.

Conclusion

17. I have considered all other matters raised but find nothing that leads away from the conclusion that the appeal should be allowed and planning permission granted, subject to conditions.

Conditions

18. The Council has suggested conditions, should planning permission be granted. A condition is necessary to identify the reserved matters. Time conditions are necessary to comply with the Town and Country Planning Act 1990. The drawing now approved should be identified so as to define the permission. Conditions regarding the form of the access and parking and turning arrangements on site are necessary to maintain highway safety. A condition regarding the establishing of the approved landscaping is necessary to maintain the appearance of the area. Drawing No. 10 is marked "The design details shown here are for illustration only" and so I have regard to paragraph 44 of the Annex to DoE Circular 11/95 in respect of that drawing.
19. The planning permission that I grant is therefore subject to the following conditions:
- 1) Details of the appearance, landscaping, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved. The details shall include, among other things, details of the finished floor levels of the buildings hereby approved and of the ground levels of the site and driveways on it relative to adjoining land levels and to levels in the carriageway adjacent to the site.
 - 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
 - 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
 - 4) The development hereby permitted shall be carried out in accordance with the details approved pursuant to condition (1) and in accordance with the approved drawing titled "Proposed Access Details" dated 09/06/05 and bearing the note "Site Layout Superimposed On Survey Drawing By GMA dated 13.06.05".
 - 5) Before any other operations are commenced, a new vehicular access shall be created as shown on the approved drawing save that, notwithstanding the figured dimensions, the width of the access shall be 4.1 metres. The access shall be laid out, constructed and provided with visibility splays measured 2.4 metres back from the carriageway edge to the extremities of the site frontage abutting the highway in each direction and the area in the visibility splays shall be permanently kept clear of any obstructions to

visibility exceeding 1.0 metre (or 0.6 metres in the case of vegetation) above the adjoining carriageway nearside channel level.

- 6) Prior to the first use of the development hereby permitted, parking facilities shall be provided to accommodate two cars in the curtilage of each dwelling, and turning space to allow vehicles to enter and leave the site in a forward gear as illustrated on the approved drawing, and those spaces and turning area shall be permanently retained and kept available for parking and turning. Each parking space shall be rectangular and at least 2.4 metres wide and 4.8 metres long.
- 7) 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 5 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 approval to any variation.

J.P. Watson

INSPECTOR



Costs Decision

Site visit made on 22 April 2013

by J.P. Watson BSc MICE FCIHT MCMI

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

Decision date: 17 May 2013

**Costs application in relation to Appeal Ref: APP/F1040/A/13/2192641
Land between "Lamorna" and "Pembroke", Main Street, Lees, Ashbourne,
Derbyshire DE6 5BE**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Jonathon Coomb for a full award of costs against South Derbyshire District Council.
 - The appeal was against the refusal of planning permission for the erection of two dwellings.
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Decision

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

Reasons

2. Circular 03/2009 advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary [or wasted] expense in the appeal process.
3. A full award of costs is sought. The application is made on seven grounds.
4. Ground 1 contends that the Council behaved unreasonably before determining the planning application and that, had the Council made its opinions known earlier, a scheme acceptable to the Council could have been provided, permission would have been granted, and the need for an appeal avoided.
5. The evidence is that the applicant included with the planning application a letter dated 21 November 2012 which concluded "If you do require any further information to enable permission to be granted please contact me as soon as possible within the statutory 8-week determination period." And, because it did not regard the proposal as capable of being made acceptable, the Council did not contact the applicant's agent. It considered such an approach to be futile. That is contrary to Paragraph 186 of the Framework ("LPAs should approach decision-taking in a positive way to foster the delivery of sustainable development.") and contrary to paragraph A28 in the Annex to Circular 03/2009 ("[To] minimise the likelihood of costs being awarded against them [...] there should be constructive co-operation and dialogue between the parties at all stages".) Article 31(1)(cc) of the Town and Country Planning (Development Management Procedure) (England) Order 2010 had become current at the time of the Council's decision and reflects an expectation that local planning authorities shall work with applicants in a positive and proactive

manner based on seeking solutions to problems arising in dealing with a planning application; but the decision notice carries no Article 31(1)(cc) statement. The Council behaved unreasonably in not seeking negotiation or discussion with the applicant.

6. Ground 2 contends that the Council behaved unreasonably in introducing a new element in its reason for refusal that could have been raised (but was not raised) when the same proposal was refused planning permission in 2005. I find no unreasonable behaviour by the Council in the current appeal because there is no reason why the Council, in making its 2013 decision, should be fettered by its 2005 decision.
7. Ground 3 contends that the Council has not properly interpreted its Supplementary Planning Guidance "Housing Design And Layout". In reply, the Council says that "both saved Housing Policy 11 and its associated SPG make it clear that there should be reasonable levels of amenity for occupants without prescribing a minimum standard." But Housing Policy 11 is silent as to the degree of provision of private amenity space; it merely says that there should be some. The SPG's section that deals with private amenity space is explicit that the Council will set no minimum level of required provision, but designs should reflect "the need or otherwise for gardens."
8. Lines 8 and 9 of the reason for refusal refer to the need, in policy, to secure reasonable levels of amenity for occupants. Housing Policy 11 distinguishes between the terms "amenity" (which in its proviso (ii) is explained as light, air and privacy) and "private amenity space" (which in the SPG's section of that name is clearly intended to mean "private garden"). Therefore the need to which the decision notice refers at lines 8 and 9 is a need for reasonable levels of light, air and privacy. Lines 16-17 and lines 17-18 refer to "levels of private amenity space" and introduce a comparison of the appeal proposal (and its private amenity space) with the levels of private amenity space at nearby dwellings. That is a matter for Housing Policy 5. But the Council conflates Housing Policy 5 and Housing Policy 11 and, because Housing Policy 11 is silent as to the amount of private amenity space (as is the associated SPG), the Council does not substantiate its contention that the scheme is contrary to Housing Policy 11. In that, the Council behaved unreasonably in the way described in paragraph B16 of the Annex to Circular 03/2009.
9. The decision notice refers to Housing Policy 5, which requires development to be in keeping with the scale and character of the settlement. Ground 4 of the costs application contends that the Council brought insufficient evidence to support its position in respect of the character of the village. The Council's position that is expressed in the decision notice is that "development permitted in other parts of the settlement and that in the immediate vicinity of the site is characterised by larger plots with a reasonable degree of private amenity space around them". This was challenged in the Grounds of Appeal. The Council's written statement includes this in support of its position: "Views up and down the lane will reveal houses in grounds that are more substantial than the areas that would be available to occupiers of the proposed dwellings." The appellant provided a schedule of nearby properties with, for each, details of the site area and building coverage. The Council's position on this point lacks substance and objective analysis. Since the density and scale of development is at the heart of the appeal, it was unreasonable of the Council to bring only the evidence that it did in those matters.

10. The Council observes that the general character of a settlement is best assessed through a site visit. But in this case the property sizes are relevant and at issue, and those cannot reliably be assessed simply by viewing from public land.
11. Ground 5 contends that the Council brought insufficient evidence to support its position (in the decision notice) that the appeal scheme would be “cramped and almost wholly taken up with hard surfacing”. Although the Council re-states its position in paragraph 4.1 of its written statement, it provides no analysis to add substance or any explanation to that opinion. In that, the Council behaved unreasonably in the way described in paragraph B16 of the Annex to Circular 03/2009.
12. Ground 6 contends that the Council has been unduly selective in identifying references from the National Planning Policy Framework. The applicant refers to text in bullet 3 of Paragraph 14, and to text in Paragraph 47. It is clear that the Council considers the appeal scheme to not comply with the development plan, in which case the Paragraph 14 reference would add little, although I note that Paragraph 14 is among those the Council lists as relevant in paragraph 3.1 of its Statement. Paragraph 47 is principally about housing land supply, a matter raised neither in the Planning Design and Access Statement nor in the Grounds of Appeal and so not in dispute when the Council prepared its submission. I do not find unreasonable behaviour by the Council here.
13. Ground 7 contends that the Council unreasonably misinterpreted Paragraphs 48 and 53 of the Framework. The decision notice includes: “The NPPF at Paragraphs 48 and 53 discourages the use of garden land for the provision of windfall sites particularly where development would be harmful to the local area.” The Council refers to Paragraphs 48 and 53 at 3.4 in its Statement but, notwithstanding paragraph 2.2 of the Planning Design and Access Statement which reports that the site has been vacant for many years, brought no evidence to support its contention that the site is garden land (to which Paragraphs 48 and 53 could be relevant). Nor does it reconcile the decision notice sentence I have cited here with Paragraph 48 (which says that residential gardens should not figure in any allowance for windfall sites made in the five-year supply of housing land) or Paragraph 53 (which says that local planning authorities should consider whether to set out policies to resist inappropriate development of residential gardens). In not substantiating that matter which it had raised, the Council behaved unreasonably in the way described in paragraph B16 of the Annex to Circular 03/2009.
14. In summary, I have found unreasonable behaviour by the Council in the following respects:
 - a) In not seeking negotiation or discussion with the applicant regarding the planning application;
 - b) In not substantiating its contention that the appeal scheme is contrary to Housing Policy 11;
 - c) In not supporting with substantial evidence its position in respect of the character of local development, with regard to plot sizes and private gardens nearby and in other parts of the settlement;
 - d) In not substantiating its contention that the appeal scheme would be “cramped and almost wholly taken up with hard surfacing”;

- e) In not substantiating its position that the appeal site is garden land and that the proposed development is therefore to be discouraged.
15. The applicant contends that the Council's lack of engagement at planning application stage resulted in unnecessary expense by him in the appeal process; and that the difficulty was compounded by the Council's incorrect assessment of the character of the area. No reasoned case is put to the contrary. I am satisfied that, had the Council applied the principles summarised in my paragraph 5, correctly applied its policies, assembled more substantial evidence regarding the character of the settlement, and adopted a supportable position regarding the status of the site as "garden land" or otherwise (and the policy implications of that), then reasonable negotiations would have led to agreement between the parties as to the form of an acceptable scheme at this outline stage. The cost of the appeal process would then have been avoided.
16. The circumstances necessary for an award of costs are therefore in place.

Costs Order

17. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that South Derbyshire District Council shall pay to Mr Jonathon Coomb, the costs of the appeal proceedings described in the heading of this decision.
18. The applicant is now invited to submit to South Derbyshire District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

J.P. Watson

INSPECTOR



Appeal Decision

Site visit made on 9 April 2013

by Beverley Doward BSc BTP MRTPI

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

Decision date: 20 May 2013

Appeal Ref: APP/F1040/A/13/2190380

Main Street, Kings Newton, Derby, Derbyshire

- 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 John Mayers against the decision of South Derbyshire District Council.
 - The application Ref 9/2012/0911, dated 30 October 2012, was refused by notice dated 20 December 2012.
 - The development proposed is the conversion and extension of former agricultural storage barn to one dwelling.
-

Decision

1. The appeal is dismissed.

Procedural Matter

2. Different site addresses are given on the planning application, the Council's decision notice and the appeal form. However, I consider that the address used on the planning application is sufficient to identify the site and I have therefore used it in this decision.

Main Issue

3. The main issue in this case is the effect of the proposed development on the character and appearance of the host building and the surrounding countryside.

Reasons

4. The appeal building is a small and simple two storey brick and tile structure dating from around the late 19th century. Historically it was used as an agricultural storage building and is similar to other buildings in the locality which were used in connection with the market garden industry although it now appears disused. It is located in the centre of a field within the countryside to the west of the small settlement of Kings Newton. The surrounding area is predominantly agricultural in nature although there are a number of individual buildings in residential and commercial use within the landscape.
5. The appeal proposal seeks to convert the building to a one bedroom dwelling and would involve the addition of a single storey side extension. Consequently, of the policies referred to by the Council, Housing Policy 7 of the South Derbyshire Local Plan 1998 (LP), which relates to the conversion of buildings outside settlements to provide residential accommodation, is most relevant to the appeal.

6. The proposed extension would be modest in size. However, because of the small size of the existing building, it would significantly increase the footprint of development on the site. Furthermore, the ridge height of the extension in relation to that of the current building would result in a substantial increase in the volume of built development. In these respects the proposed extension would significantly alter the building's rectangular form and increase its scale.
7. The proposed extension would be located on the eastern side of the building. Therefore, because of the fall of the land northwards, it would not be visible from Wards Lane or from the drive serving the Chantry Farm shop. However, when viewed through the gaps in the hedgerow along Main Street and from the gate which provides access off Main Street, it would appear as an over dominant addition and would detract from the simple and modest appearance of the host building.
8. Although the proposed conversion would use most of the existing window and door openings there would be substantial alteration to the north elevation by the insertion of large glazed openings at ground and first floor and a balcony. These features would appear overly domestic and alien to the utilitarian design of the agricultural building which sits in an isolated position in the centre of a field.
9. The proposed dwelling would be served from the existing field access from Main Street. However, it would be necessary to create a curtilage for the building which currently has none. That proposed, although relatively small, would result in a change to the open agricultural character of the land and coupled with the domestic paraphernalia, which would be likely to be associated with a residential curtilage, would be detrimental to the character and appearance of the surrounding countryside.
10. To conclude therefore, the appeal proposal would cause material harm to the character and appearance of the host building and the surrounding countryside. Accordingly, it would be contrary to LP Housing Policy 7 which, amongst other things, seeks to ensure that the conversion of buildings to provide residential accommodation outside settlements can be achieved without extensive alteration, rebuilding and/or extension and that it is in keeping with the character of its surroundings.
11. Furthermore, in so far as the appeal proposal would involve the re-use of a redundant/disused building it would in part constitute one of the exceptions to the advice set out in paragraph 55 of the National Planning Policy Framework (the Framework) to avoid new isolated homes in the countryside. However, it would fail to meet the other prerequisite of the exception of leading to an enhancement to the immediate setting. Consequently, it would be contrary to the Framework.
12. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Beverley Doward

INSPECTOR



Appeal Decision

Site visit made on 5 April 2013

by David Kaiserman BA DipTP MRTPI

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

Decision date: 25 April 2013

Appeal Ref: APP/F1040/A/13/2190480

Land at SK2431 3339, Burntheath Lane, Hilton, Derbyshire DE65 5FE

- 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 Mrs S Chadwick against the decision of South Derbyshire District Council.
 - The application Ref 9/2012/0786, dated 5 September 2012, was refused by notice dated 2 November 2012.
 - The development proposed is the construction of a timber holiday-let building with associated access.
-

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue in this case is whether or not the appeal site is an appropriate location for the use, having regard to planning policies designed to encourage tourism while at the same time safeguarding the amenity of the countryside.

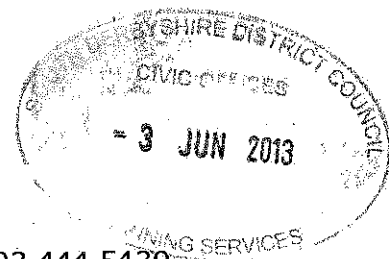
Reasons

3. The land subject of the appeal is an unused plot running to 0.06ha, described on the application form as a yard area serving adjacent pasture land, but now redundant. It lies close to the end of a narrow lane which stops a short distance to the south at a turning head, adjacent to the A50 trunk road. Diagonally opposite, and nearer the cul-de-sac end, there are two dwellings, and there is a large agricultural building about 20m away from the northern edge of the site. Other than these features, the only other buildings in the vicinity are a small scattering of farm and residential properties beginning around 130-150m to the north. The land is entirely undeveloped to the west and south (save for the A50 itself) and is set within a generally open landscape.
 4. The appeal proposal involves the construction of a substantial single-storey building, 15.3m long by 6.1m wide, containing four bedrooms, two bathrooms and a kitchen / dining / living area. It would be built of timber, with a tiled roof, and be sited parallel to, and a short distance behind, the Burntheath Lane frontage. Parking is proposed for six cars.
-

5. "Saved" Local Plan Recreation and Tourism policy 1 permits holiday accommodation of this kind, so long as three criteria are met. The Council accept that the first two of these are satisfied. The third requires development to be of an appropriate scale and design and to be well integrated with its surroundings. No objection is raised by the Council to the scale and design in their own terms (and I have no reason to take a different view), but concern is raised both about the urbanising effect of the scheme and the fact that the site is poorly located in respect of local tourist attractions.
6. I agree with the Council on the first of these two points. The site cannot be said to be well integrated into its surroundings, as required by criterion (iii) of the policy. It would instead represent an undesirable extension of a loose pattern of buildings which I consider would have a harmful effect on the character of the open countryside in this location. Moreover, were planning permission to be granted, it would make it progressively more difficult for the Council to resist similar proposals, resulting in cumulative harm. I have no observations to make about the location of the site in relation to local tourist attractions: no evidence has been submitted on that point and it is not, in any event, something which is referred to in the Local Plan policy.
7. An additional reason for refusal suggested that the proximity of the site to the A50 would give rise to complaints about noise. This is not a point to which I have given much weight. It seems highly unlikely that any tourists occupying the accommodation would feel justified in complaining (to whom?) about traffic noise, especially since the proximity of the road is a factor they would be able to take into account when deciding whether make a booking.
8. I accept that there are local and national planning policies which are designed to support rural enterprises, and have taken them into account in arriving at my decision. I am, however, unable to make any comment as to the relevance of a decision by the Council to approve three holiday cottages at Oaklands Farm in Church Broughton, since I have no information about the planning background to that case. More importantly, I have sought to determine the appeal on its own merits, and in the light of current planning policies for the area.

David Kaiserman

INSPECTOR

**Costs & Decisions Team**

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Mr T R Denning
Area Planning Officer
South Derbyshire District Council
Civic Offices
Civic Way
Swadlincote
Derbyshire DE11 0AH

Your Ref: 9/2012/0536
Our Ref: APP/F1040/A/12/2183433
Date: 30 May 2013

Dear Sir

**LOCAL GOVERNMENT ACT 1972 - SECTION 250(5)
TOWN AND COUNTRY PLANNING ACT 1990 - SECTIONS 78 AND 322A
LAND TO THE SOUTH OF BURNASTON LANE, ETWALL, DERBYSHIRE
APPEAL BY BOWLER ENERGY LLP: APPLICATION FOR COSTS**

1. I am directed by the Secretary of State for Communities and Local Government to refer to the Planning Inspectorate's email of 4 March 2013, confirming the withdrawal of the appeal by Bowler Energy LLP. The appeal was against South Derbyshire District Council's failure to decide, within the prescribed period, an application for planning permission for the installation of 2 x 50kw wind turbines with cabling mounted on free standing 36m monopole masts on separate 6m x 6m concrete basis with 3 blades with a 9.6 m radius, on land described above.

2. This letter deals with the Council's application for an award of costs against the appellants as made in a letter dated 18 March 2013. The appellants replied in their email of 10 April 2013. As these representations have been made available to the parties, it is not proposed to summarise them. They have been carefully considered.

Summary of the decision

3. The formal decision and costs order are set out in paragraphs 22 & 23 below. The application succeeds to the extent that a partial award of costs is being made.

Basis for determining the costs application

4. In planning appeals, the parties are normally expected to meet their own expenses, irrespective of the outcome of the appeal. Costs are awarded only on the grounds of "unreasonable" behaviour, resulting in unnecessary or wasted expense.

5. Section 322A of The Town and Country Planning Act 1990 enables the Secretary of State to award appeal costs against any appeal party whose unreasonable behaviour directly results in the late cancellation of an inquiry or hearing, so that expense incurred by any of the other parties is wasted. Published policy guidance for such cases is in CLG Circular 03/09 (referred to below as the Costs Circular). The application for costs has been considered in the light of this guidance,

the appeal papers, the parties' correspondence on costs and all relevant circumstances.

Reasons for decision

6. All the available evidence has been carefully considered. The decisive issue is considered to be whether or not the appellants acted unreasonably by withdrawing the appeal when they did, with the result that the Council incurred wasted expense in preparing to resist it. The guidance in paragraphs A12, regarding the general conditions for an award of costs in appeal cases, and B43 to B50 of the Costs Circular is particularly relevant.

7. Paragraph B46 of the Costs Circular warns that if an appeal is withdrawn without any material change in the planning authority's case, or any other material change in circumstances, relevant to the planning issues arising on the appeal, an award of costs is likely to be made against an appellant if there are no other exceptional circumstances.

8. The relevant sequence of events leading to the withdrawal of the appeal has been carefully examined. The appeal was received on 10 September 2012 and the appellants indicated that they wished the appeal to proceed by way of the written representation procedure. The appeal was made against South Derbyshire District Council's failure to decide within the appropriate period an application (9/2012/0536) dated 19 June 2012 for the installation of 2 x 50kw wind turbines mounted on free standing 36m monopole masts on separate 6m x 6m concrete bases with a blade of 9m. The Planning Inspectorate's letters of 15 November 2012 confirmed that the appeal would be determined by way of the written representation procedure and set out the timetable for the receipt of the documents for the appeal. The letter to the appellants drew attention to the policy guidance on awards of costs in the Costs Circular, and referred to an enclosed copy of the explanatory booklet, "*Costs Awards in Planning Appeals*". The letter also warned that withdrawal of an appeal, at any stage in the proceedings, without good reason could place the appellants at risk of an award of costs.

9. By email dated 10 October 2012 the Council requested that the Planning Inspectorate change the procedure for determining the appeal from written representations to an informal hearing. The reason given was to allow members of the public to have an opportunity to appear in person and express their views. There then followed an exchange of correspondence between the Planning Inspectorate, the Council and the appellants¹ regarding the most appropriate procedure for determining the appeal. This culminated in an email dated 20 December 2012 from John Norville of the Planning Inspectorate to the principal parties confirming that, in exercise of the authority under s319a of the 1990 Act (as amended), the Planning Inspectorate had decided to change the appeal procedure to a hearing. The Planning Inspectorate's subsequent letters of 20 December 2012 to the parties confirmed that the appeal would now be determined by way of the hearing procedure and set out the timetable for the submission of the parties hearing statements². The letter to the appellants repeated the warning regarding the possibility of an award of costs if the appeal was withdrawn without good reason.

10. On 14 January 2013 the Planning Inspectorate informed the parties that the hearing would take place on 5 March 2013 (for 2 sitting days). The Council's and the appellants' statements for the hearing were received on 31 January 2013. It is noted that on 27 February 2013 John Norville of the Planning Inspectorate wrote to Mr

¹ The appellants maintained that written representations and a site visit was the most suitable procedure for determining the appeal

² Both the Council and the appellants submitted their statements for the written representation procedure on 19 November 2012 and the appellants submitted final comments on 10 December 2012 before the appeal procedure was changed

Wolsey of Bryan Wolsey (Planning) Limited acting on behalf of BERATE (a group of local residents) in response to their letter of 7 December 2012 questioning the procedural validity of the appeal. The letter stated:

"In summary, you contend that the appeal is/may be invalid on the grounds that a) there has been an infraction of s78 of the Act in that the name of the appellant is not consistent with the applicant and b) that an incorrect landownership has been completed on the appeal form.

On the first issue, the Inspectorate finds your claim has no merit. The intended applicant/appellant (as confirmed by the appellant's agent) is Bowler Energy LLP whose name appears on both the application and appeal form. The second has substance since the Inspectorate understands that there has been no change in the landownership position between the date of the application (when notice of the development was served on David Bowler SIPP Trustees Ltd and Gaynor Bowler) and submission of the appeal. It would therefore have been appropriate for the appellant to have served notice of the appeal on the relevant landowners and for details to have been reflected in completion of a certificate B (rather than certificate A).

At the Inspectorate's request the appellant has rectified the position by:-

- Submitting a Certificate B*
- Serving notice of the appeal on the landowners*
- Securing written confirmation from the landowners that they have no objection to the appeal proceeding.*

As there is nothing to suggest that the appellant has sought to mislead the Inspectorate (or to affect the wider public interest), and in the knowledge that the land owners have no objection to the appeal and will have the opportunity to attend the appeal hearing and to speak about the proposals, the Inspectorate does not consider that they or anyone else with an interest in the case has suffered prejudice as a result of this turn of events.

In the circumstances the Inspectorate is satisfied that the steps taken by the appellant to rectify the initial landownership declaration are effective without prejudice to anyone involved in the process. Accordingly the Inspectorate is satisfied that the appeal Hearing can proceed to open as arranged on 5 March."

A copy of this letter was sent to the Council and the appellants.

11. By letter dated 28 February 2013 in response to the Planning Inspectorate's letter of 27 February 2013 BERATE gave their reasons why they disagreed with the Planning Inspectorate's conclusions on the validity issue. They remained of the view that there was no legitimately made appeal and hence the hearing arranged for 5 March 2013 should not proceed. It was requested that the letter be passed to the Inspector appointed to determine the appeal in advance of the hearing so that he could consider the points made. There then followed an exchange of correspondence between the Planning Inspectorate and the appellants regarding issues around the procedural validity of the appeal and the possibility of a judicial review challenge by BERATE to the appeal decision. With regard to the appellants' specific request set out in their email of 27 February 2013 to adjourn the hearing to a later date to minimise the risk of challenge John Norville of the Planning Inspectorate replied to the appellants on 1 March 2013. The email stated:

"The Inspectorate has carefully reviewed the matter, taking into account Mr Wolsey's further response (attached) to my letter of 27 February and remains

of the view that the Hearing should proceed to open as arranged on 5 March. Any further related submissions will be considered by the Inspector as a preliminary matter after the Hearing has opened."

12. However, by email dated 4 March 2013 the appellants withdrew the appeal. The email stated:

"I refer to various emails.

To avoid any judicial review challenge to any Decision made on the appeal, we would like to withdraw this appeal.

It is appreciated there is the possibility of a Costs order. We do not however anticipate there will be any wasted costs.

It is our intention to resubmit the application to the Local Authority. If, as anticipated the Local Authority refuses the application or fails to reach a decision within the statutory period, an appeal would be resubmitted."

The Planning Inspectorate confirmed the withdrawal of the appeal and cancellation of the hearing by email dated 4 March 2013.

Conclusions

13. It is expected that the statutory right of appeal will be used in a reasonable manner. Having made the appeal the view is taken that it was the appellants' responsibility to proceed with it to a decision unless there had been a material change in the planning authority's case, or any other material change in circumstances relevant to the planning issues arising on the appeal. The appellants' decision to withdraw the appeal when they did needed to be weighed against the risk of an award of costs against them. This risk was brought to the appellants' attention in procedural correspondence from the Planning Inspectorate. The appellants would, or should, have been aware that by withdrawing the appeal when they did the Council would have incurred preparation costs for the abortive appeal in accordance with the Planning Inspectorate's set timetable.

14. It is evident from their costs representations of 10 April 2013 that the appellants withdrew the appeal because they considered that it was likely that the procedural validity of the appeal would be successfully challenged at the hearing. It appears that the appellants had concerns regarding objections made on behalf of BERATE as to whether the appeal was valid. The appellants argue that they took the reasonable step of withdrawing the appeal so that they could resubmit a planning application to the Council. By doing so, all appeal parties, including local residents, would avoid the risk of incurring unnecessary costs of attending the hearing if the Inspector decided the appeal was invalid. However, the Secretary of State notes that the Planning Inspectorate's letter of 27 February 2013, as recorded in paragraph 10 above, gave specific advice about the procedural defect. The letter clearly indicated that the Planning Inspectorate was satisfied that the appellants had taken the necessary steps to rectify the landownership declaration issue without prejudice to anyone involved in the appeal process. The letter also advised that the appeal hearing would take place as arranged.

15. As the appeal was withdrawn, thus ending the proceedings, the issues arising on it remain unresolved. The Secretary of State has no further jurisdiction in the appeal process. It is therefore not possible nor would it be appropriate for the Secretary of State to express a view on whether or not the appeal was valid. Furthermore, only the Courts can provide an authoritative view on disputes regarding matters of law, including the application of published policy.

16. While the Secretary of State understands the appellants wish for the appeal parties to avoid the risk of incurring any unnecessary expense in the appeal process, the consequence of their decision to withdraw when they did was that no hearing took place. The view is taken that this was their personal choice. The appellants had the option of proceeding with the appeal to the arranged hearing and having the procedural validity issue considered by the Inspector. In the event, however, the appellants are considered to have vacated or abandoned the procedural aspects of the appeal and any case that they might have put in support of the development by withdrawing it. Whether or not the arguments raised by the third party BERATE had merit and would have been successful, can only be a matter of speculation because the appellants decided to withdraw the appeal the day before the hearing was due to take place. Furthermore, at the time of withdrawal there had been no judicial review challenge to the appeal.

17. The overall conclusion reached is that the appellants acted unreasonably. There is no evidence to suggest that the Council would not have been prepared to defend their resolved reason for refusing the appeal application³ at the forthcoming hearing if the appeal had not been withdrawn. On the contrary, it is noted that the Council incurred abortive preparatory expense in contesting the appeal as recorded in paragraphs 9 & 10 above. The appellants reason for withdrawing the appeal when they did does not demonstrate any material change in circumstances, relevant to the planning issues arising on the appeal; and it is concluded that it was the appellants' choice to decide not to continue with the appeal and to withdraw it in favour of resubmitting a further planning application to the Council. The Secretary of State also notes that the appellants appear to accept in their costs representations that the incorrect Ownership Certificate had been completed when the appeal form was submitted. He therefore concludes that the withdrawal falls squarely within the scope of paragraph B46 of the Costs Circular.

18. The Secretary of State is therefore satisfied that the appellants' withdrawal of the appeal for the reasons stated was unreasonable and caused the Council to incur wasted expense in preparing for an abortive appeal. An award of costs will therefore be made.

19. As to the extent of the award, the view is taken that the Inspectorate's letter of 15 November 2012 sent in the early stages of the appeal gave sufficient warning to the appellants that withdrawal of the appeal at any stage of the proceedings without good reason could result in an award of costs against them. The view is therefore taken that the appellants had adequate opportunity from that date to consider the position in relation to the risk of costs in the event of the withdrawal of the appeal. It is therefore considered that a partial award of costs from 29 November 2012 (inclusive) is justified. This allows a nominal period for the appellant to fully consider the standard warning on costs.

20. The Secretary of State has also considered the appellants' contention that no wasted expense would have been incurred by the Council because the work undertaken will be re-usable in any future appeal made against the Council's refusal of a resubmitted planning application. However, at the time of issuing this costs decision the Planning Inspectorate has no record of receiving such an appeal. Whether or not any expense might be re-usable is therefore considered to be hypothetical at this point in time. The Secretary of State does not therefore agree with the appellants' argument that no wasted expense would have been incurred by the Council as a result of the withdrawal of the appeal.

21. While the Secretary of State has the power to award to a party the costs necessarily and reasonably incurred in relation to the proceedings before him, he does

³ As set out in their letter to the Planning Inspectorate dated 17 October 2012.

not determine the amount payable. The amount of costs incurred will be for the parties to resolve by agreement on the basis of full particulars, or failing that, in the context of an application to the Senior Courts Costs Office for a detailed assessment. This is explained in paragraph A21 of the Costs Circular.

FORMAL DECISION

22. For these reasons, it is concluded that a partial award of costs against the appellants, on grounds of "unreasonable" behaviour resulting in wasted expense, is justified in the particular circumstances.

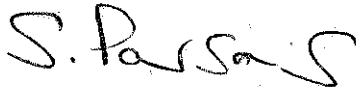
COSTS ORDER

23. Accordingly, the Secretary of State for Communities and Local Government in exercise of his powers under section 250(5) of the Local Government Act 1972, and sections 78 and 322A of the Town and Country Planning Act 1990, and all other powers enabling him in that behalf, **HEREBY ORDERS** that Bowler Energy LLP shall pay to South Derbyshire District Council their costs of the appeal proceedings before the Secretary of State, limited to those costs incurred from 29 November 2012 (inclusive), such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal by Bowler Energy LLP more particularly described in paragraph 1 of this letter.

24. You are now invited to submit to the appellants, to whom a copy of this letter has been sent, details of those costs with a view to reaching agreement on the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for detailed assessment by the Senior Courts Costs Office is enclosed.

25. There is no statutory provision for a challenge to a decision on an application for an award of costs. The procedure is to make an application for judicial review. This must be done promptly.

Yours faithfully



STEVE PARSONS

Authorised by the Secretary of State
to sign in that behalf