



**F. McArdle**  
**Chief Executive**

Civic Offices, Civic Way,  
Swadlincote, Derbyshire DE11 0AH

**[www.south-derbys.gov.uk](http://www.south-derbys.gov.uk)**

**Please ask for: Democratic Services**

Phone: (01283) 595722 / 595848

Minicom: (01283) 595849

DX 23912 Swadlincote

Email :

[democraticservices@south-derbys.gov.uk](mailto:democraticservices@south-derbys.gov.uk)

Date: 17 August 2015

Dear Councillor,

### **Planning Committee**

A Meeting of the **Planning Committee** will be held in the **Council Chamber**, Civic Offices, Civic Way, Swadlincote on **Tuesday, 25 August 2015** at **18:00**. You are requested to attend.

Yours faithfully,

Chief Executive

To:- **Conservative Group**

Councillor Roberts (Chairman), Councillor Mrs. Brown (Vice-Chairman) and Councillors Atkin, Mrs. Farrington, Ford, Grant, Mrs. Hall, Stanton and Watson.

**Labour Group**

Councillors Dunn, Pearson, Shepherd and Southerd.



investor in excellence  
Housing Services

Page 1 of 127



## **AGENDA**

### **Open to Public and Press**

- 1** Apologies and to note any substitutes appointed for the Meeting.
- 2** To note any declarations of interest arising from any items on the Agenda
- 3** To receive any questions by Members of the Council pursuant to Council procedure Rule No. 11.
- 4** REPORT OF THE DIRECTOR OF COMMUNITY AND PLANNING SERVICES **3 - 127**

### **Exclusion of the Public and Press:**

- 5** The Chairman may therefore move:-  
That in accordance with Section 100 (A) of the Local Government Act 1972 the press and public be excluded from the remainder of the Meeting as it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that there would be disclosed exempt information as defined in the paragraph of Part I of the Schedule 12A of the Act indicated in the header to each report on the Agenda.
- 6** To receive any Exempt questions by Members of the Council pursuant to Council procedure Rule No. 11.
- 7** 14 WESTON HILL ENFORCEMENT 2015

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

## **SECTION 1: Planning Applications**

## **SECTION 2: Appeals**

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

-----

## **1. PLANNING APPLICATIONS**

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

<b>Reference</b>	<b>Item</b>	<b>Place</b>	<b>Ward</b>	<b>Page</b>
9/2014/0740	1.1	Woodville	Woodville	5
9/2014/1040	1.2	Aston	Aston	35
9/2015/0561	1.3	Hartshorne	Woodville	62
9/2015/0215	2.1	Etwall	Etwall	76
9/2015/0615	2.2	Sutton-on-the-Hill	Hilton	95

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.** 9/2014/0740/OM

**Applicant:**  
Mr Paul Burton  
Hallam Land Management  
Banner Cross Hall  
Ecclesall Road South  
Sheffield  
S11 9PD

**Agent:**  
Mrs Michelle Galloway  
Pegasus Planning Group Ltd  
4 The Courtyard  
Church Street  
Lockington  
DE74 2SL

**Proposal:** OUTLINE APPLICATION (ALL MATTERS RESERVED EXCEPT FOR ACCESS) FOR UP TO 400 DWELLINGS AND PROVISION OF NEW SCHOOL PICK UP/DROP OFF AREA, TOGETHER WITH ASSOCIATED HIGHWAY WORKS, PUBLIC OPEN SPACE, LANDSCAPING, PARKING AND ATTENUATION FACILITIES ON LAND AT BROOMY FARM WOODVILLE ROAD HARTSHORNE SWADLINCOTE

**Ward:** WOODVILLE

**Valid Date:** 27/08/2014

#### **Reason for committee determination**

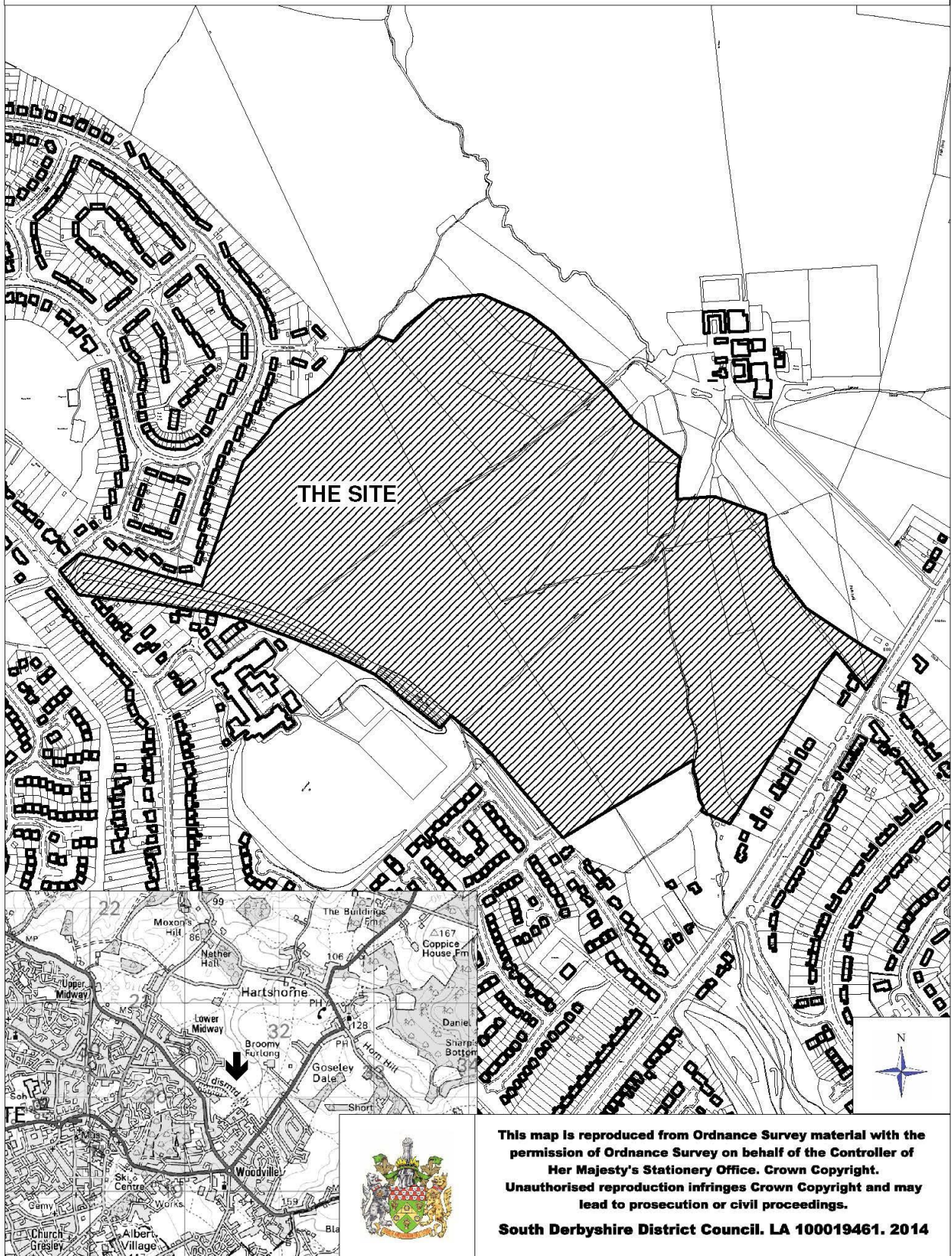
The item is presented to committee because this is a major development not in accordance with the Development Plan and subject to more than two objections.

#### **Site Description**

The site comprises some 27.5 hectares of agricultural land on the northern edge of Swadlincote, to the west of the A514 Hartshorne Road/Woodville Road and Goseley Estate, beyond existing housing along the A511 Burton Road, Granville Sports College and housing off Sorrell Drive to the south, and to the east of housing on Lincoln Way/Salisbury Drive. The southern boundary is defined by a disused railway cutting (leading to the Midway tunnel) and embankment, whilst Broomy Farm itself and associated buildings lie to the north of the site boundary.

The site comprises pasture grassland and arable fields crossed by a number of public rights of way (PRoW). Hedgerows and fences represent field boundaries within the site and along its boundaries with several trees within the site and along these boundaries. Those trees along the line of the former railway line are protected by a Tree Preservation Order (TPO). The land slopes from south to north, falling some 27m from

9/2014/0740 - Land at Broomy Farm, Woodville Road, Hartshorne,  
Swadlincote DE11 7EY





the highest to lowest points. There are a series of drainage ditches and small watercourses crossing the site at the low points.

## **Proposal**

The application is made in outline seeking permission for the erection of up to 400 dwellings and associated infrastructure. Housing would be in a mix of 1 to 5 bedroom dwellings incorporating a mix of types, styles and sizes. A new link road would connect Burton Road to Woodville Road running, in part, along the railway cutting, which would be filled. A pickup/drop off area for Granville Sports College would be secured just off this link road. Public open space (POS) and play equipment, along with Sustainable Drainage Systems (SuDS) and green infrastructure would also be secured – including a considerable degree of National Forest woodland planting to the north of the site.

## **Applicant's supporting information**

The Planning Statement notes the site is identified in the Local Plan Part 1 as a proposed allocation for residential development, and in line with the NPPF, weight can be attached to this emerging Plan due to its stage in preparation and the fact that the unresolved issues relating to housing requirements are highly unlikely to affect the requirement for residential development at Broomy Farm. Due weight can also be attached to the Development Plan, consisting of the South Derbyshire District Local Plan, according to its degree of consistency with the Framework. The Statement concludes that the development accords with the Local Plan where consistent with the NPPF and the proposals constitute sustainable development, delivering a wide range of economic, social and environmental benefits. The development would also help meet the Council's current housing land supply shortfall.

Design and Access Statement (DAS) outlines its supporting purpose in informing the design of the proposals, considering the site and its surroundings in terms of the physical, social and planning context and identifying the site's constraints and opportunities to present the design principles that have been derived. It also outlines the stakeholder participation and consultation undertaken as well as its key findings. The DAS considers access for all ages and abilities and what design solutions could be implemented to encourage sustainable modes of transport and facilitate movement for disabled persons. The main road would be suitable for busses whilst the existing PRow would be retained and enhanced. Street typologies are explored with the primary, secondary and tertiary routes creating a legible hierarchy of streets that play an important role in the creation of character, both across the scheme as a whole and at a more local level. Whilst Layout is reserved at this stage, a clear concept has been developed that can ultimately inform the location of streets, spaces, and buildings. The proposals have also been influenced by the characteristics of the site, its surroundings, the context of the local area and a series of good design principles, establishing a scheme that is rural in nature yet creates an urban edge to the existing settlement that would be harmonious to the setting of the surrounding landscape and provide a positive frontage to open spaces. Keynote buildings would be carefully sited to act as focal points within the scheme to aid legibility and help create an attractive street scene. They should also address important vistas throughout the scheme and will act as visual prompts for residents and visitors. Specific types of POS would be provided, including formal, informal amenity and space for children and young people. National Forest

planting would also be provided. Pedestrian safety would be achieved by securing reduced vehicle speeds through the design of the internal access roads and differences in road surface treatment.

Transport Assessment and Addendum identifies traffic generated would be 226 movements in the morning peak hour, 250 in the evening peak hour and 2079 daily movements. Strategic modelled traffic flows for the local highway network are provided modelling flows up to 2026 with and without development, including modelling with the proposed link road and Swadlincote Regeneration Route (SRR). Both accesses are projected to operate satisfactorily in terms of capacity and highway safety post development and the proposed link road would satisfy the 6Cs Design Guide. Initial advice indicates that there should be no insurmountable issues affecting the delivery of an access road along the cutting. In terms of the nearby Tollgate Island, the work identifies existing congestion based on observed flows and queue length surveys. However the link road would divert some existing movements away from this junction and be sufficient to ensure there would be no severe impact. The Assessment also confirms a potential 'lozenge' improvement scheme would improve conditions at the roundabout but this is not considered necessary given the link road would ensure there is no severe impact at the existing junction. As for other junctions within the area, modelling confirms that these would continue to operate satisfactory. It has also been concluded the development would not likely exacerbate any existing safety issues on surrounding roads. The proposed link road would be suitable to accommodate buses, and although initial discussions with the main local operator suggests they would not wish to divert services through the site in the first instance, they may wish to provide bespoke services in the future if demand becomes sufficient. To encourage sustainable travel a Travel Plan is recommended.

A Flood Risk Assessment identifies local watercourses run in a north-westerly direction through the site and are considered to be the primary flood risk to the development. Modelled flood levels during standard and extreme events and it is found that flood levels within the site varied but do not step significantly away from the watercourses. A recommendation that internal floor level are elevated at least 150mm above the finished external ground level is given, so to ensure any overland flows do not enter the new buildings. Dry access and egress is considered to be essential during extreme flood events and that the link road is located within flood zone 1 as far as practicable. A drainage approach utilising SuDS is recommended, which includes infiltration as the first tier although further investigation will need to confirm that this would be a practical solution for the site. However other SuDS techniques can be used and attenuation needs have been calculated. The second tier is to discharge to a watercourse.

Drainage Strategy Report notes that sewer records indicate a network of public foul and combined sewers crossing the site, meeting at a combined sewer overflow before heading north-west out of the site. The Report notes that Severn Trent Water has confirmed that network capacity improvements are not required, and whilst Milton Sewage Treatment Works does not currently have capacity to accommodate flows, Severn Trent Water has confirmed that capacity would be made available as and when necessary.

The Ecological Assessment identifies the site is not covered by any statutory designation, and there are no statutory sites within a 1km radius, SSSIs within a 2km radius or Special Protection Areas and Special Areas of Conservation within a 5km radius. The Woodville Disused Railway potential Local Wildlife Site (pLWS) is situated

to the south west of the study area and is highlighted as a potential unimproved grassland site. However the assessment identifies the habitats within this area do not meet the criteria to be designated as unimproved grassland and therefore loss of this site would not result in the loss of a pLWS. No further LWS or pLWS designations were identified within the study area. 32 bird species were recorded within the study area during the breeding bird surveys. All were common and widespread birds in Derbyshire and the UK, some are on the red and amber watch list. However only minor negative residual impacts are predicted on the local populations of skylark and yellowhammer. The overall assessment of potential effects to the local breeding bird population is that the development would not result in significant effects. No evidence of badger activity was identified within or on accessible land within 30m of the proposed site. The presence of bats using hedgerows and trees for foraging and commuting was observed, connecting with habitat immediately off site providing higher suitability for foraging and commuting through the wider area. No buildings are present within the study area and no trees were identified with suitable features for roosting bats. As such the presence of a roost site has not been identified as a statutory constraint to the proposed development. No Great Crested Newts were recorded within the pond on site or within any of the waterbodies surveyed within 500m of the site boundary and a reptile presence/absence survey did not record any reptiles or evidence of reptiles.

An Arboricultural Assessment notes trees across the majority of area are relatively limited and confined to a small number of individual specimens, groups and hedgerows that either divide the field parcels or have formed along their margins. The greatest concentrations of tree cover are associated with the brook course and the embankments of the former railway line. The remaining trees and groups form a number of outgrown boundary groups and internal hedgerows which are considered to be generally of low arboricultural quality and not hold any particular arboricultural value. The proposals would require some minor tree loss to provide access into the site from Burton Road although where possible trees would be retained to provide maturity to the landscaping and screening from the adjacent properties. The Woodville Road access would require the removal of small section of hedgerows and tree groups considered to be of low arboricultural quality. Trees being retained within the development would, where possible, be incorporated into areas of public open space or landscape buffer strips. Extensive new woodland planting would also form part of the landscaping scheme along the northern boundary, in line with national forest guidelines. Further new tree planting would also be provided within the site adjacent to internal roads, new cycle lanes and within residential gardens.

A Landscape & Visual Impact Assessment (LVIA) notes there are no formal planning designations relevant to landscape on site. The Landscape Character of Derbyshire (2003) assessment provides a basis for assessment and it is considered views towards the site from the west, south and south-east are limited by the existing settlement edge of Woodville, whilst there are a limited number of near distance views from the immediate boundaries of the site. There are also close views from the PRowS which cross the site. The site is located on a north facing slope and as such there are views from the north from higher ground. These more distant views are often somewhat filtered by subtle interactions and changes between the landform, associated vegetation and built form. The scheme would therefore be visible from a relatively localised area only and where it would be seen, the highest degree of adverse effects is limited to close views only. On the basis of this LVIA, in landscape and visual terms, development of the nature and scale proposed is considered to be acceptable.

Archaeology Report establishes that the site has low potential for remains of all archaeological periods. However due to the lack of previous systematic archaeological survey within the area, it is possible that there could as yet unrecorded remains within the study site. A Geophysical Survey Report identifies features of probable and possible archaeological origin including a former footpath, track way and historic field boundaries. A number of former cut features of possible archaeological origin and discrete anomalies possibly related to backfilled pits can also be seen. Remaining features are all modern in origin and relate to ploughing, services, a former sewage works and ferrous objects. A conditional approach is therefore considered proportionate.

A Specification for Earthworks covers the filling of the cutting and proposed grouting of the Midway Tunnel, although further specialist specifications and methods will be required in advance of grouting work.

A Utilities Assessment highlights that, barring electricity, there are unlikely to be any onerous new connection requirements as local water, gas and telecommunications infrastructure is fairly extensive in proximity to the development.

The Phase 1 Ground Report notes the majority of the site has remained undeveloped, being used predominantly for agricultural purposes although a sewage works was present within the central portion of the site from the early 1900s until the late 1980s. The cutting and railway line and a mining shaft in the northwest portion of the site are also noted. No made ground or superficial deposits are indicated to underlie the site and a Coal Authority Mining Report indicates that no recorded coal workings have taken place beneath the site. The general risk of the site presenting a risk to human health is considered low, particularly from the undeveloped parts of the site. Where historical land uses have impacted the site it is likely that some made ground may be present and the risk of contamination is considered low to moderate. Intrusive investigation and chemical testing would be required in order to confirm the contaminative status of the site and any identified risk to end users could be mitigated by adoption of typical remedial techniques. Intrusive works would also be required in order to identify ground conditions and provide foundation recommendations for the site.

A Noise Assessment identifies some need for acoustic glazing and ventilation solutions, whilst external noise levels for gardens have been assessed also. It is concluded that the noise impacts could be successfully addressed through detailed design and mitigation.

Air Quality Assessment confirms that the air quality effects of residential developments are dictated by the level and nature of traffic into and out of the proposed development and the effect this has upon existing traffic regimes. The Assessment considers three scenarios (reference case, with development and with development and the SRR). It is concluded that none of the receptors would be exposed to pollutants approaching the limits identified within the National Air Quality Objectives and the proposed development does not create or exacerbate any problems regarding air quality.

A Consultation Statement concludes that the consultation process has been positive and constructive, resulting in a masterplan for the site that has been refined following useful input from key stakeholders and local residents.

## Planning History

None relevant.

## Responses to Consultations

The Environment Agency considers the proposed development would be acceptable if planning conditions are included requiring a surface water drainage scheme for the site, appropriate mitigation for works to a watercourse, and precaution against unforeseen contamination from a former sewage works.

The County Flood Risk Management Team advises that any alteration to the impermeable surface area of the site may exacerbate surface water flood risk. Accordingly they strongly promote SuDS to be incorporated, ensuring that discharge from the developed site is as close to greenfield runoff rate as is reasonably practicable. Further advice on watercourses and drainage features, groundwater flooding and infiltration is offered. Finally they comment that no activities or works, including the proposed development, should deteriorate the ecological status of any nearby watercourse with the implementation of a SuDS scheme with an appropriate number of treatment stages appropriate in safeguarding against this.

Severn Trent Water seeks adequate foul and surface water drainage provision. They also confirm that whilst there are recorded incidents of blockages/flooding of surface and foul sewers in the vicinity, these are upstream of the site.

Natural England raises no objection commenting that the proposal is unlikely to affect any statutorily protected sites or landscapes. They advise that the Council should seek separate advice on the impacts on protected species, noting their standing advice. They also comment that the proposal may provide opportunities for biodiversity enhancement in accordance with paragraph 118 of the NPPF, such as the incorporation of roosting opportunities for bats or the installation of bird nest boxes; as well as opportunities to enhance the character and local distinctiveness of the surrounding natural and built environment.

Derbyshire Wildlife Trust raises no objection noting that surveys have been carried out to an acceptable standard. They concur with the assessment that the Woodville Disused Railway potential local wildlife site is unlikely to meet the criteria to be designated as a local wildlife site and, as such, does not present a constraint to the proposal, and that there are unlikely to be any impacts on protected species, including badger, great crested newts, roosting bats and reptiles. However it is noted little consideration has been given to any riparian species associated with the watercourse such that it is essential for a suitable undeveloped buffer to be maintained alongside it, and that any specific works required, such as road crossings, are preceded by an appropriate ecological survey and mitigation. It is understood and accepted that some hedgerow loss is inevitable but they would expect any loss to be kept to the absolute minimum, appropriately timed to avoid the nesting season, and that sufficient new hedgerow planting is provided to ensure there is no net loss of hedgerow priority habitat as a result. No ecologically important hedgerows in terms of the Hedgerow Regulations are to be removed. In addition they expect the retained hedgerows to be incorporated within green corridors rather than as private garden boundaries to the new dwellings, as their long-term retention and appropriate management cannot be guaranteed with their wildlife value likely to diminish as a result. Any areas of retained vegetation, including



hedgerows, trees and watercourses, should be protected from harm for the duration of works, and at least one of the SuDS ponds should be designed to hold water for a sufficient period of time to enhance the local amphibian population and compensate for the loss of the pond on the site. A detailed scheme for ecological mitigation, compensation and enhancement across the site, including emphasis on grassland creation which would help mitigate for the loss of suitable habitat for ground nesting birds such as skylark which has been recorded on the site.

The County Planning Control Officer confirms that, based on the estimated volumes of fill, the infilling of the cutting to form the access is engineering works and is not considered to be substantial in terms of waste import when compared against the overall proposed residential development.

The County Strategic Planning Officer seeks a contribution of £911,920.08 towards 80 primary school places at Eureka Primary School (through delivery of additional classroom accommodation (project A)), and that this should be secured by way of a planning obligation. They note that whilst the proposal would still have an impact on Household Waste & Recycling Facilities, they are unable to mitigate this impact because of the restriction on pooling contributions introduced by the CIL Regulations. They also seek that the development secures access to high speed broadband services for future residents whilst new homes are designed to Lifetime Homes standards. Finally The County recognises that the viability of development schemes will vary and that if the developer considers the contributions sought would impact on the viability of the proposal to the point where the scheme would not go ahead, a full financial appraisal should be provided for review.

The NHS Southern Derbyshire CCG considers the proposal would result in an increased patient population of approximately 1000 persons, affecting Woodville Surgery. The surgery is identified to have no spare capacity to manage increased patient demand, and space restrictions mean that the practice cannot provide the number of appointments to meet current demand. However the practice currently has a planning application submitted to develop a new surgery in close proximity to the current site, and has approval of the CCG and NHS England. The requested contribution of £152,160 would contribute towards the development of the new surgery.

The Strategic Housing Manager seeks that 30% of the total number of dwellings be provided as affordable housing, in a tenure split of which no less than 68% are for social/affordable rent and no more than 32% are for shared ownership. Based on 400 dwellings and needs in the local area, a mix of one to four bedroom properties for rent are requested (with a focus towards two and three-bed properties), whilst a mix of two and three-bed properties for shared ownership are requested (focussed towards two-bed properties). It is advised that affordable housing shall be 'pepper-potted' across the whole site in clusters comprising of no more than 10 affordable homes, with a cluster including no more than 6 flats; and that a Section 106 Agreement is used to secure the overall requirements.

The County Highway Authority raises no objection in principle to the amended A511 Burton Road access and the use of a signalised control. In respect of the A514 Woodville Road access, a simple priority junction incorporating a right-turn harbourage is considered to be acceptable in design and operational terms. The alternative roundabout design has also been considered. It recognises the concerns of residents and representatives but consultation with Derbyshire Constabulary has indicated that



the most recent survey, taken in the vicinity of the Goseley Avenue junction (i.e. within the 40 mph limit), revealed an 85%ile speed of 40 mph. On this basis there is no justification to seek the provision of a roundabout as a speed suppressing measure. Further, and more fundamentally, the roundabout would need to incorporate private accesses on the eastern side of Woodville Road generating confusion and inevitably a risk of rear shunts. In view of the foregoing the submitted roundabout scheme has adverse safety implications and is open to objection. The optional off-site works on Hartshorne Road/Woodville Road are not necessary to make the development acceptable or, conversely, that permission for the development should be refused if the works proposed were not implemented. In any case there are a number of associated noise, justification, street clutter and maintenance liability issues arising. They also do not sanction pick-up/drop-off facilities in general given the inference that use of the car is acceptable, contrary to the need to encourage non-vehicle modes. Further, in practical terms, it is considered unlikely that it would provide adequate space leading to increased and indiscriminate parking on approaches to the site. Notwithstanding these points, the Highway Authority raises no objection subject to conditions.

The County Rights of Way Officer advises that Woodville Public Footpath 3 and Hartshorne Public Footpaths 13, 14, 15 and 16 all cross the site. It is noted that these public rights of way (PRoW) are acknowledged in the DAS and the majority of appear to be sympathetically incorporated into the proposed development. It is advised that the PRoWs should be improved to an adoptable standard with a protected minimum width of 2 metres, with detailed specifications submitted to the County Council for approval. Where crossed by the proposed estate roads adequate safety/traffic calming measures should be put in place. The Rights of Way Officer also seeks a contribution of £30,000 towards the upgrading of Woodville Footpath No. 3 from Harebell Close to the site. It is advised that any deviation from legal alignments would require a formal diversion order, and that the routes should otherwise open and unobstructed at all times both during and on completion of the development.

Peak & Northern Footpaths notes all the footpaths affected have been considered in preparing the design of the development such that the applicant should be reminded that the full widths of these paths should remain open and unobstructed at all times, if not temporarily closed or permanently diverted. They also welcome the provision of paths segregated from traffic through green corridors and consideration should be given to a contribution to off-site improvements as adjoining footpaths would be used more intensively once the development has taken place.

The Development Control Archaeologist advises the site is within an area for which there is little data on prehistoric or Romano-British settlement and the majority records in the area relate to the medieval and post-medieval landscape in the form of ridge-and-furrow earthworks and post-medieval mining. A record for an Iron Age quernstone close to the northern site boundary does suggest that Iron Age occupation is likely in the vicinity, and given the scale of the proposal the potential for previously undiscovered archaeology is material. The geophysical survey identifies some archaeological potential which would need further investigation and recording. However these are relatively thinly spread and do not suggest complex or extensive remains on the site. For this reason it is considered the archaeological interest could be dealt with under a planning condition.

The Environmental Protection Officer advises there are no significant concerns with respect to contaminated land, although as there are historical features on the site which

do have the potential to present risks to site workers, end users and ecological receptors as a result of its development, conditions to identify and remediate any potential land contamination on the site are recommended.

The Environmental Health Officer seeks conditions to control dust emissions, noise and vibration impacts from the construction phase, as well as to control the hours of construction and prevent burning of waste materials arising.

The National Forest Company (NFC) welcomes the provision of 8.8ha of woodland planting, exceeding the 8.1ha normally expected under an application of this scale. The creation of the central park is welcomed as it would make best use of the retained hedgerow as a feature within the development and could provide an opportunity for specimen tree planting. The woodland should be secured in the first planting season following development and a Management Plan to ensure the woodland can establish successfully should be agreed. They also seek the creation of a National Forest character throughout the scheme at reserved matters stage, including the use of retained trees and hedgerows as features, the creation of tree lined roads, significant amounts of specimen tree planting within areas of open space and the design of balancing ponds as ecological features.

The Crime Prevention Design Adviser considers the layout to be generally unproblematic, but highlights the need to ensure surveillance of open space and parking courts. Outward looking elevations, in curtilage parking which is visible from within dwellings, secure individual rear garden access and a strong definition between private curtilage and public space are encouraged. It is noted that the most used footpath within the site links Thistle Close to Burton Road along the route of the former railway embankment, and part of this route runs between two banks of trees adjacent to the Granville School boundary. The route would benefit from being out in the open and close to housing where pedestrians could be seen. It is also requested that newly formed cycle and pedestrian routes have wide open aspects, are lit and in view of house frontages to encourage safe use. One short section of housing backing onto part of the former railway line would benefit from an enhanced rear boundary treatment for both security and privacy, and whilst proposals to link into the school site are not detailed at this stage, there should be no reduction in the existing levels of security.

## **Responses to Publicity**

Woodville Parish Council objects on the grounds the development would impact severely on Woodville, its community, services and highway infrastructure, with the proposals advanced not properly addressing existing well known and documented highway issues thus not appearing to be sustainable development.

Hartshorne Parish Council note their preferred access option for Woodville Road is the roundabout and while they appreciate there would be additional costs, in the long run it would be beneficial to all residents of the Parish. They also hope that any changes at Broomy Farm will not delay improvements to the Clock Island. In addition they raise the following concerns:

- i) before any development is considered, the problems at the Clock island should be fully resolved and the Woodville/Swadlincote Regeneration route complete;

- ii) concerned that the junction on to Woodville Road is too close to the brow of the hill near to the former 'Snooty Fox' , and it is felt that there is poor visibility particularly as the part of the road is 40 mph;
- iii) the new road would come out nearly opposite Goseley Ave almost creating a crossroad;
- iv) all possible road safety measures should be taken to ensure that the link road is not used as a 'rat run';
- v) consideration should be given to reducing the speed limit to 30 mph along Woodville Road;
- vi) the type junction onto the busy Burton Road is not clearly indicated and might cause issues for Lincoln Way users;
- vii) the link road would need to be of sufficient standard to take the high volume of traffic that would use it;
- viii) adequacy of bus services past the site;
- ix) whilst there is capacity at the Granville School, there is not at either Hartshorne or Eureka schools;
- x) if Eureka school is to be used there appears no means of getting there by foot other than to go onto Burton Road and down to Dunsmore Way;
- xi) there is little provision for a play/recreation area on the site leading to a greater demand on recreation grounds at Goseley and Salisbury Drive, such that financial sums should be granted to the Parish to update the existing play equipment;
- xii) assurance that the outline application extends only to the red line and development will not be allowed in the blue land;
- xiii) Hartshorne Parish is unsustainable and there are no provisions for any additional shops etc.; and
- xiv) the impact on neighbouring residential properties.

25 objections have been received from 36 different addresses, raising the following concerns:

#### Principle of development

- a) the land is green belt;
- b) plenty of brownfield for use instead of greenfield;
- c) it is outside the built up area;
- d) it is overdevelopment;

#### Services and facilities

- e) pressure on existing schools and doctors;

#### Highway capacity and safety

- f) existing congestion in Woodville, due to incomplete Swadlincote Regeneration Route (SRR), would be made worse;
- g) the Tollgate/Clock Island is already overloaded;
- h) if to go ahead, the SRR should be completed first;
- i) the new link road would become a 'rat run';
- j) possibility that Sandiccliffe Road and Dunsmoor Lane will become a rat run;
- k) increased use of Manchester Lane and Heath Lane;
- l) the junction onto the Woodville Road is too close to the Goseley Estate junction;

- m) visibility of the new Woodville Road junction over the brow of the hill;
- n) the limit on Woodville Road should be reduced to 30mph and traffic calming introduced;
- o) the junction of Dunsmore Way with the A511 should be made into a roundabout;
- p) obstruction of private accesses;
- q) difficulty of manoeuvring in and out of driveways safely;
- r) adequate parking provision for the dwellings;

#### Drainage

- s) surface water flooding issues to their property;
- t) foul water surcharges in the vicinity;

#### Landscape and visual impacts

- u) the land is a visual buffer between Midway and Hartshorne;
- v) huge impact on the countryside;

#### Design and character

- w) layout of site against existing rear boundaries;
- x) secure boundary treatments are needed to existing adjoining land;
- y) dwellings should not exceed two-storeys;
- z) security concerns from public access to rear of their property;

#### Amenity

- aa) retention of trees to provide privacy;
- bb) traffic to front and rear of their property;
- cc) loss of privacy to rear gardens;
- dd) proposed landscaping buffer should be placed on a bund;
- ee) increased light and noise pollution;
- ff) noise, dust and vibration effects from filling of cutting;

#### Other matters

- gg) loss of habitat for wildlife including ground nesting birds;
- hh) effect on great crested newts and bats;
- ii) there is a fault running through the site;
- jj) devaluation of their property;
- kk) loss of view;
- ll) future maintenance liability of boundaries; and
- mm) continued access to property during construction.

12 'Round Robin' letters have been received showing support for the roundabout access option on Woodville Road, noting two serious accidents in the last 6 months. It is felt the other schemes advanced would not necessarily reduce the speed of some drivers and bring about maintenance liabilities for the County.

A petition signed by over 300 residents has been received stating that the preferred option for access onto Woodville Road is for the roundabout and additional highway improvements on Hartshorne Road.

## **Development Plan Policies**

The relevant policies are:

- Saved Local Plan 1998: Housing Policies 4, 9 and 11 (H4, H9 and H11); Transport Policies 6 and 7 (T6 and T7), Environment Policies 1, 9, 11, 13 and 14 (EV1, EV9, EV11, EV13 and EV14), Recreation & Tourism Policy 4 (RT4) and Community Facilities Policy 1 (C1).

## **Emerging Development Plan Policies**

The relevant policies are:

- Submission Local Plan Part 1: S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), S4 (Housing Need), S6 (Sustainable Access), H1 (Settlement Hierarchy), H4 (Land at Broomy Farm, Woodville), H19 (Housing Balance), H20 (Affordable Housing), SD1 (Amenity and Environmental Quality), SD2 (Flood Risk), SD3 (Delivering Sustainable Water Supply, Drainage and Sewerage), SD4 (Contaminated Land and Mining Legacy Issues), SD5 (Minerals Safeguarding), BNE1 (Design Excellence), BNE2 (Heritage Assets), BNE3 (Biodiversity), BNE4 (Landscape Character and Local Distinctiveness), INF1 (Infrastructure and Developer Contributions), INF2 (Sustainable Transport), INF6 (Community Facilities), INF7 (Green Infrastructure), INF8 (The National Forest) and INF9 (Open Space, Sport and Recreation).

## **National Guidance**

- National Planning Policy Framework (NPPF) including (but not exclusively) paragraphs 6-8, 11-12, 14, 17, 32, 34-35, 47, 49, 58, 61, 69, 70, 73-75, 103, 109, 112, 118, 120, 123, 129, 131, 132, 134, 139, 203, 204, 206, 215 and 216.
- National Planning Policy Guidance (NPPG)

## **Local Guidance**

- Housing Design and Layout SPG.
- Section 106 Agreements – Guidance for Developers.

## **Environmental Impact Assessment**

The proposal has been screened under Regulation 5 of the Environmental Impact Assessment (EIA) Regulations 2011 for up to 400 residential units. The proposal is considered to fall within paragraph 10b of Schedule 2 to those Regulations, being an infrastructure project. However having taken into account the criteria of Schedule 3 to the Regulations, the proposal is not considered to give rise to significant environmental effects in the context and purpose of EIA. Accordingly the application is not accompanied by an Environmental Statement.

## Planning Considerations

The application is submitted in outline with matters of layout, scale, appearance and landscaping reserved. The masterplan is therefore indicative except for positions of access, which are to be considered in detail.

The access option at Burton Road has been amended to push the junction marginally south so to facilitate more 'stacking' and/or manoeuvring space on the link road, the re-aligned Lincoln Way and a private access. The most recent revision is that to be considered.

The initial access option at Woodville Road was for a simple priority junction with central filter lane. This option has been supplemented by a roundabout design and traffic calming measures south of the junction leading towards the Tollgate Island along Hartshorne Road. The applicant has advanced all these solutions for consideration by the Council, the County Highway Authority and other third parties.

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

- Principle of development and weight afforded to policy;
- Highway capacity and safety;
- Local services capacity;
- Affordable housing and viability;
- Drainage and flood risk;
- Land stability;
- Biodiversity and ecological impacts;
- Landscape, heritage and visual impacts; and
- Design and amenity.

## Planning Assessment

### Principle of development and weight afforded to policy

The site lies outside the settlement confines for Swadlincote although on its fringes. Saved policy H4 allows for development on the fringes of Woodville and Midway provided that the site is substantially surrounded by development and it does not result in a prominent intrusion into the rural landscape outside of the built up area (amongst other criteria). The proposal is considered to stretch beyond the allowances of this policy such that it is not catered for by way of saved policy H4. However it is the view that saved policy H4 can be afforded little weight as it is no longer playing a part in significantly boosting the supply of housing. In this vein emerging policy H4 allocates this site as part of the Local Plan Part 1 for up to 400 dwellings. The proposal also conflicts with saved policy EV1. Whilst not a housing policy, it has an indirect effect of restraining delivery. Notwithstanding this, the policy accepts that some development in the countryside is unavoidable and indeed it could be argued that this proposal could fall as 'unavoidable' given the current shortage in the supply of housing and recognition to date that its development is necessary in order to meet identified needs (i.e. by way of the emerging Plan allocation). Nevertheless the policy goes on to consider safeguarding character and landscape quality, as well as ensuring all development in the countryside is designed so to limit its impact on the countryside, and these



secondary parts of the policy provide a considerable degree of consistency with section 11 of the NPPF.

The NPPF's desire to significantly boost the supply of housing must be given significant weight, particularly in light of shortfall of the 5-year housing supply. The emerging Local Plan recognises this and seeks to provide this significant boost in a planned manner, through emerging Policy H4 and its criteria to mitigate impacts arising. It must be recognised that additional housing in this location is very well supported by a range of services. There are also economic benefits arising from the whole proposal – both short and long term, with construction phase employment and subsequent occupation leading to increased revenue to local businesses and services.

Setting the above matter aside, the sustainability of the development is paramount and it is important to strike the right balance between housing delivery and ensuring the environmental, social and economic needs of occupants and the existing community can be readily met. Whilst a lack of a 5-year supply might engage paragraph 49 of the NPPF, it does not automatically “stand down” local plan policies – merely challenges the weight which may be afforded to them; and an unsustainable development means the presumption in favour set out under paragraph 14 does not apply. With this point in mind attention is given to the impacts of the development and conflict with planning policy. For the presumption in favour of development to apply, sustainability must be viewed in the round, considering infrastructure, landscape, ecology, heritage, design and so forth. It is important to remember that sustainability and sustainable development is subjective – there is no minimum or consistent level beyond which a particular development can be said to be sustainable. It is a concept, and one that is determined differently from one site to another. The remaining parts of the report therefore give consideration to whether any other adverse impacts of granting permission would significantly and demonstrably outweigh the benefits of the proposals, after reaching a balance between the benefits and adverse impacts in a context that conditions or obligations may be used to mitigate or address an otherwise unsustainable impact.

#### Highway capacity and safety

There are three limbs to this part of the discussion, highlighted by the objections as outlined above – capacity, access design and speeding traffic on Woodville Road. Each is taken in turn.

The capacity of the Tollgate Island (Clock Roundabout) is acknowledged to be at or beyond its ‘design limit’. Peak hour queues on all approaches lead to considerable congestion concerns and the design of the roundabout itself is not conducive to multiple vehicle movements upon it at the same time. The Swadlincote Regeneration Route (SRR) is an ongoing strategic response to these issues, with its aim to allow Swadlincote to Ashby traffic to bypass the roundabout and create ‘headroom’. Use of surrounding routes to bypass this issue on a daily basis already occurs to a degree. It is therefore imperative that this proposal does not compound these issues. To this effect the applicant proposes a similar ‘bypass’ by way of a link road through the site. This would allow southbound traffic approaching along the A514, which wishes to travel towards Burton along the A511, to pass through the new development instead of passing through the roundabout. The same is true for those travelling in the opposing direction. Local traffic would also benefit from this additional option.

The County Highway Authority has through the course of the last 12 months considered the modelling undertaken very carefully. Indeed that originally submitted was subjected to further work so to exclude certain assumptions and so to establish a more likely effect. The modelling concludes the development would have a severe cumulative effect on the local highway network, even with the proposed link road. However if the SRR were brought into the modelling, thus creating headroom at the roundabout; the effects would be acceptable. Equally a reconfiguring of the island might also produce positive results. In this light, subject to a financial contribution towards the provision of the SRR, the proposal is acceptable in network capacity terms and should the delivery of the SRR stall for any reason; the contribution could be redirected towards improvement of the Tollgate Island itself.

Turning to the design of the Burton Road (A511) access, this has been adjusted to address neighbour objections relating to the proximity of the realigned Lincoln Way and private access to the new stop line at the proposed traffic signals on the junction. Vehicle tracking evidences that large domestic vehicles could safely and comfortably navigate this new arrangement. The traffic signals themselves would enable the prioritisation of traffic on the A511 such that traffic from the new development and that passing through from the A514 does not excessively interrupt the free flow along the Burton Road. Indeed this control limits the favourability of the road in peak hours and thus its likelihood to become part of a longer 'rat-run' via Manchester Lane.

The Woodville Road has been the focus of attention to date. There is a perceived safety issue along this stretch of road due to its wide and straight nature, allowing vehicles to travel at or just above the posted limit. The County's own observations demonstrate that on average this limit is adhered to such that resident's observations will likely stem from those drivers occasionally seen speeding. However it is important to note that this is an existing situation – it is not one which the development introduces and therefore should be mitigated. With suitable visibility available, it is for this reason the County Highway Authority considers the T-junction arrangement to be acceptable. Notwithstanding this the applicant responded to local concern by advancing a roundabout solution. This physical obstruction in the main flow of traffic would inevitably provide betterment in terms of speed reduction. Further calming measures were also advanced, with markings leading to conceptual narrowing of the carriageway. The Highway Authority has considered both sets of works but it does not consider that the roundabout provides a safe means of access for the development due to the need to accommodate private accesses on the eastern side of the road directly onto the roundabout. Furthermore this solution would require considerable and costly vertical realignment of the road to eliminate adverse camber issues, adversely affecting the delivery of other planning gains (see below). The calming measures all bring about their own issues, not least that provision of some is difficult to justify unless there is a significant and demonstrable road safety issue that needs to be overcome. This is the key point – none of these measures are necessary to address an impact which arises through the introduction of this development. The concerns stem solely from an existing situation, one which would continue irrespective of whether this development proceeds and one which residents should pursue with the Police and the County as a separate matter. Whilst the introduction of additional turning movements might raise fears of an increased risk of collision, the Highway Authority point to there being no evidence to substantiate a severe cumulative impact on highway safety. Hence for both the fact that the roundabout and traffic calming would not meet design criteria and for the additional proportion of available finance it would swallow; the T-junction solution is the only scheme which is feasible.



### Local services capacity

With the capacity of the highway network already discussed above, attention turns to the impact on other infrastructure.

The site is well connected by a range of routes and modes of transport. The proposed link road would be designed to cater for buses so to realise the benefits of the proposed drop off/pick up point for Granville Sports College, alleviating some congestion on the A511 during school runs. Existing footpaths would see an increase in their use as a result of the development and improvement of these within the site could be secured as part of the detailed design. There is one footpath however, running from Harebell Close to the site alongside the school playing fields (Woodville Footpath No. 3) which is not in a condition to support pedestrian traffic of a different nature and in increased numbers, being unsurfaced, unlit and unsuitable in wet conditions. There is considered to be a direct impact arising from the development which justifies the need for improvements to be made. The sum requested by the County Rights of Way Officer would secure improvements to this route, in whole or in part.

The provision of 400 dwellings would place pressure on existing schools, healthcare, sports and built facilities, and waste and recycling provision. With regard to the consultation responses above, the impact on secondary school and post-16 provision can be satisfactorily accommodated within existing and projected capacity, whilst primary school pressures could be addressed by way of contributions towards an identified project at Eureka School. These contributions are considered to be compliant with the CIL Regulations and paragraph 204 of the NPPF and can be secured by way of a Section 106 agreement. As for waste and recycling needs, whilst existing facilities in the District are already over capacity, the County recognises a request for a contribution would no longer be CIL compliant due to restrictions on the pooling of sums. The request for a contribution towards healthcare provision has tested against the same CIL limitations. The request identifies that an existing and relevant capacity issue exists and that the intended purpose of the sums and the amount sought are compliant both in terms of being proportionate and for a particular project designed to increase capacity. This request can also be secured under a Section 106 agreement.

A generous amount of open space would be provided on the site, with a central park and play area secured towards the centre of the site. Remaining open space would be a mix of smaller formal play areas and informal open space, leading down existing green and blue infrastructure towards the proposed woodland planting. The connectivity of the fringes of the proposal to existing open space off-site is limited such that it is not anticipated that pressures would arise on existing open space. No sports or built facilities would be provided yet the development would lead to additional pressure on existing facilities elsewhere. There is an identified project at Granville Sports College but as the County are presently considering a strategic approach to the school, it is not presently possible to commit the sums solely to this project. In the absence of this project, there is an alternative scheme which the proposal would equally place demands upon. This is an urban sporting hub for Swadlincote which seeks to address an overall deficiency within the urban area. This is also presently unfunded to which such pressures could be linked. Hence the requested sums are considered to be CIL/NPPF compliant although the S106 agreement will need to allow for diversion of funds to the most appropriate project at the time the development comes forward.

### Affordable housing and viability

Emerging policy sets a starting point of 30% with any reduction to be evidenced by way of viability work, whilst the NPPF advocates a need to provide a range of housing options. The SHMA also evidences such a need. The NPPF does however highlight that viability of development is a material planning consideration, directly affecting deliverability of schemes. The applicant advances that the scheme cannot achieve 30% affordable housing provision and has provided appropriate evidence. The District Valuer considers an 18% provision to be viable, given other financial gains from the site and elevated abnormal costs through addressing old sewage runs and treatment works, ground conditions and the filling of the cutting. This would give rise to a range of dwellings for social/affordable rent and shared ownership purposes, helping to boost affordable housing delivery and contribute to current shortfalls in provision, and could be adequately secured by way of a planning obligation. However Members should note this proportion was calculated on the basis of no contributions towards healthcare or footpath improvements, which have been requested since. Notwithstanding this the applicant has agreed to maintain the 18% provision.

### Drainage and flood risk

Severn Trent Water does not lodge an objection and evidence suggests there is sufficient capacity to receive foul water flows from the development. A conditional approach is considered appropriate. Surface water is to be drained to the watercourse via SuDS at a limited discharge rate and the Environment Agency, following further work to demonstrate the watercourse has sufficient capacity to receive flows, agrees with this principle subject to further details before development commences. In this vein the site can be suitably drained whilst not increasing the risk of flooding elsewhere.

### Land stability and contamination

The site falls outside of any areas considered to be at elevated risk of coal mining legacy. Suitable conditions can address any residual risk from former contaminative uses, such as the former sewage treatment works and foul drainage runs on the land. The former mineral railway line also has potential to provide a source of contamination, but again appropriate investigation and mitigation can address these concerns.

The main focus is on the fact that a considerable engineering exercise is necessary to facilitate the filling of the cutting. This cutting is presently holding water for some distance away from the tunnel mouth. With the tunnel underwater it is not wholly clear what the cause of the build-up is, but the water was completely pumped out in summer 2014 to allow investigation of the tunnel itself. It appears that a drain installed when the opposing end of the tunnel and related cutting was filled in the 1980s has become blocked or collapsed. Remedial works would ordinarily be necessary, but in light of the proposals the issue of collecting water would be addressed through new drainage systems installed in and adjacent to the highway. Notwithstanding this, Highways England advises that the tunnel is presently its responsibility and it is imperative that if the cutting is to be filled, that the tunnel is appropriately filled also in order to prevent the potential for, over time, collapse and/or surface subsidence. Liability issues aside, which are not a planning consideration, it is agreed that a method of fill and sealing of the tunnel prior to filling the cutting is necessary, as well as a method of fill and compaction of the cutting, in the interests of long term land stability – land which is to carry a key route through the development and the local area.

### Biodiversity and ecological impacts

The survey work undertaken and the response from the Wildlife Trust indicates that the impacts arising from the development would be acceptable subject to appropriate conditional control. The favourable conservation status of protected species would not be harmed such that the Council is considered to have discharged its duties under the Habitat Regulations. Long term enhancement can be secured by way of condition and landscaping detail at the reserved matters stage, whilst existing trees and hedgerows can be afforded appropriate protection. The loss of specimens within the area covered by the TPO can be minimised by careful design at the reserved matters stage, although many of the trees which would need to be removed are not individually of significant merit.

### Landscape, heritage and visual impacts

The site carries no statutory or local landscape designations and, despite comments received, the site is not designated as green belt. Nevertheless the absence of a landscape designation does not translate to a landscape which is not valued, and in turn one which the NPPF does not seek to protect. The correct approach, when reading section 11 of the NPPF as a whole and supported by an increasing number of appeal decisions, is to first determine what value the landscape has (if any) before determining the correct response to planning proposals.

The site is located within the local characterisation of the Coalfield Village Farmlands Landscape Character Type (LCT). The landscape context of the site includes the existing urban edge to the west, south and east. Open agricultural land to the north is characterised by an undulating landform with mixed woodland groups. The site currently comprises agricultural fields but is also influenced by its context of a transition between the existing urban edge and the wider landscape. The boundary hedgerows and mature trees to the boundaries provide a degree of enclosure, whilst the surrounding topography and woodland groups to the north and built form of Woodville and Midway also provide some visual containment. Urbanising elements include telegraph poles, horse paddocks and the highways that pass through the landscape. There is some inter-visibility between the landscape and local landmarks such as St. Peter's Church in Hartshorne. The value of the landscape is therefore limited to a reasonable degree by its context and it being a 'gap' between the existing built extent of Woodville and Midway.

The scheme would introduce residential development into a part of this wider landscape which is considered to be in keeping with the immediate context of the site. There will be a limited amount of tree and hedgerow removal, however new hedgerows and tree planting would be introduced. The requirements of emerging policy H4 would also be adhered to with a green buffer and landscaping on the north east and southern boundaries of the site, to help soften the impact on the surrounding rural landscape, create a new outward facing urban edge and link into the surrounding green infrastructure. The development is considered to be consistent with the LCT and round off the aforementioned 'gap' between Woodville and Midway limiting the effects of an incursion beyond the existing settlement confines. It would also not materially undermine the separation between Woodville and Hartshorne.

There are near distance views from the immediate boundaries of the site, including from Woodville Road as well as neighbouring residential properties. There are also close views from the PRowS that pass through the site itself. Visual effects on receptors in these locations in the short term would generally be moderate to major adverse, due to their close proximity. However this is a less than landscape effect, inevitable to a degree and would reduce in the longer term as woodland planting along the northern edge of the site becomes established. From receptors further to the north, visual effects are generally minor to moderate adverse, largely due to the elevated nature of the receptor and the sloping nature of the landform. Again these effects would also reduce in the longer term as woodland planting becomes established. Hence whilst the development would be visible, this would be from a relatively localised area and where it will be seen in the context of wider urban form. The harm arising here, and the effect on the enjoyment of PRowS, is not considered to be significant.

### Design and amenity

The concerns raised in respect of privacy are for consideration at the reserved matters stage. Notwithstanding this the indicative masterplan suggests a layout which would be compliant with adopted minimum distances set out in the SPG. Noise, dust and vibration concerns from the construction phase can be addressed by way of conditional control on working practices and hours of operation.

The layout provides a clear indication that a satisfactory layout can be achieved with outward facing development onto open edges of the development whilst existing rear boundary fences to dwellings can be appropriately treated with supplementary planting and/or enclosed by further private amenity space. The street hierarchy allows for legibility of routes away from the spine road and the proposed indicative massing, scale and height of development – along with feature squares, buildings and a mix of open drainage solutions interwoven with green infrastructure – would give rise to a pleasing overall design.

### Conclusion

The above assessment demonstrates that all the ‘technical’ issues associated with the proposed development would be acceptable, subject to conditions or obligations, where necessary. As a preferred site for residential development identified in the emerging Local Plan, the provision of up to 400 dwellings towards the Council’s housing needs must be afforded significant weight especially in light of the current shortfall in the five year housing supply.

The issue of sustainability as set out in the NPPF is a key matter and the proposal must be assessed against the three dimensions of sustainability: economic, social and environmental. As such, Members should be approving the current proposal provided that there would be no other adverse impacts that would significantly and demonstrably outweigh the benefits. The benefits of the development from an economic and social view include:

- Direct and indirect employment opportunities;
- Economic output as a result of the employment opportunities;
- Value of the development to the construction industry;
- Expenditure from future occupiers;
- The provision of market and affordable homes;

- The benefits to infrastructure brought about by the package negotiated under Section 106;
- New Homes Bonus, and
- Council tax revenue.

The detailed environmental analysis in the report demonstrates that benefits here would also ensue and exceed any shortcomings of the scheme in this regard. As such the various economic, social and environmental benefits brought about by its development weigh in favour of permission. As required by paragraph 14 of the NPPF, it has been shown that any adverse impacts of developing the site would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the emerging Local Plan or the NPPF taken as a whole.

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. Grant delegated authority to the Planning Services Manager to complete a Section 106 Agreement to secure financial contributions as set out in the report towards off-site highway and footpath works, education and healthcare provision, sports and built facilities and affordable housing;
- B. Acknowledge that the original priority T-junction with Woodville Road as the preferred access to the site; and
- C. Subject to A and B, **GRANT** permission subject to The following conditions:
  1. This permission is granted in outline under the provisions of Article 5(1) of the Town & Country Planning (Development Management Procedure) (England) Order 2015, and the further approval of the Local Planning Authority is required (before any development is commenced) with respect to the following reserved matters:
    - (a) appearance;
    - (b) landscaping;
    - (c) layout; and
    - (d) scale.

Reason: To conform with Section 92(2) of the Town and Country Planning Act 1990 (as amended by section 51 of the Planning and Compulsory Purchase Act 2004).

2. (a) Application for approval of the reserved matters listed at condition 1 shall be made to the Local Planning Authority before the expiration of three years from the date of this permission; and
  - (b) The development hereby permitted shall be begun before the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.



Reason: To conform with Section 92(2) of the Town and Country Planning Act 1990 (as amended by section 51 of the Planning and Compulsory Purchase Act 2004).

3. The reserved matters listed at condition 1 shall broadly be in accordance with the illustrative masterplan (ref: HALQ2011 Rev 07) and Design and Access Statement, and each application for reserved matters approval shall incorporate, in so far as relevant to that/those matter(s) and/or phase of development, the following specific detail/requirements:
- (a) undeveloped areas of green infrastructure adjacent to the watercourse and on the northern edge of the site, and that any specific works required with the potential to impact upon the watercourse and its banks be informed by an appropriate ecological survey which shall set out any required mitigation;
  - (b) except where to the rear of existing dwellings, retained hedgerows and trees shall, as far as practicable, not form boundaries to proposed dwellinghouses and be incorporated into public spaces/green infrastructure;
  - (c) at least one of the balancing ponds be designed to permanently hold water;
  - (d) a Landscape and Ecological Management Plan (LEMP) for all retained and created habitats outside of private areas, including grassland creation where feasible to mitigate for the loss of suitable habitat for ground nesting birds and details of the legal and funding mechanism(s) by which the long-term implementation of the LEMP will be secured by the developer with the management body(ies) responsible for its delivery;
  - (e) a site wide Phasing Programme including details of the proposed sequence of development across the site, strategic drainage and SuDS infrastructure, the extent and location of individual development phases or sub-phases and the associated access arrangements, programme and methodology for infilling of the former railway cutting, and timescales for implementation thereof;
  - (f) a Framework Travel Plan, including Travel Plan targets (relating to each phase or sub-phase where relevant) comprising immediate, continuing and long-term measures to promote and encourage alternatives to single-occupancy car;
  - (g) detailed designs for the residential estate streets, accesses thereto and garaging, car parking and manoeuvring space;
  - (h) detailed design for the provision of bin stores within private land at the highway end of private shared accesses to prevent refuse bins and collection vehicles standing on the residential street for longer than necessary causing an obstruction or inconvenience for other road users;
  - (i) a scheme, including a programme for implementation, for the disposal of highway surface water;
  - (j) details specifications of improvements (to an adoptable standard of at least 2 metres width) of the existing footpaths within the site;
  - (k) details of subterranean tree and hedgerow root protection/facilitation measures; and
  - (l) details of at least 8.1 hectares of woodland planting to be delivered on the blue land (as defined on the site location plan submitted with this

application), including the mix of species, planting methodology, timetable for planting and maintenance arrangements thereafter.

Reason: For the avoidance of doubt and in order to secure an appropriate detailed design which accords with best design principles under Building for Life criteria and Secured by Design, in the interest of highway safety and drainage, and in the interest of biodiversity conservation and enhancement.

4. No removal of buildings, hedgerows, shrubs or scrub shall take place between 1st March and 31st August inclusive, unless a recent survey has been undertaken by a competent ecologist to assess the nesting bird activity on site during this period; and details of measures to protect the nesting bird interest on the site have first been submitted to and approved in writing by the Local Planning Authority. The approved protection measures shall then be implemented as approved.

Reason: In the interests of safeguarding against harm to protected species.

5. The junctions to Woodville Road and Burton Road shall be constructed in accordance with the Phasing Programme referred to in condition 3 above and generally in accordance with the schemes shown on submitted plans ref: F11034/03D and F11034/51, but more specifically in accordance with detailed designs first submitted to and approved in writing by the Local Planning Authority. For the avoidance of doubt the developer will need to enter into an Agreement under Section 278 of the Highways Act 1980 in order to comply with the requirements of this condition.

Reason: In the interests of highway safety.

6. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015, or any Statutory Instrument amending, revoking and/or replacing it; the garage accommodation/parking space provided pursuant to reserved matters approval shall not be used other than for the garaging and parking of vehicles except with the prior permission of the Local Planning Authority granted on an application made in that regard.

Reason: To ensure an appropriate level of parking provision is provided and thereafter maintained for the life of the development, in the interests of highway safety.

7. No construction works shall take place on the site other than between 7:30am to 7:00pm Monday to Friday, and 7:30am to 1:30pm on Saturdays. There shall be no construction works (except for works to address an emergency) on Sundays or Public Holidays.

Reason: In order to protect the amenities of adjoining residential occupiers.

8. There shall be no burning of materials on site during the construction phase of the development. For the avoidance of doubt this includes any preliminary works to clear vegetation on site.

Reason: In order to protect the amenities of adjoining residential occupiers.

9. No generators shall be used on the site during the construction phase without details having first been submitted to and approved in writing by the Local Planning Authority.

Reason: In order to protect the amenities of adjoining residential occupiers.

Pre-commencement

10. No development or other operations on the site (including demolition, ground works and vegetation clearance) shall commence until a scheme which provides for the protection of all hedgerows and trees identified for retention growing on or adjacent to the site has been submitted to and approved in writing by the Local Planning Authority. The approved protection measures shall then be implemented prior to any development or operations commencing and thereafter retained until a time where vehicles or mechanical equipment cannot interfere with such hedgerow or trees, or completion of the development, whichever occurs first.

Reason: In the interests of maintaining existing habitat provision to the benefit of wildlife and visual amenity, recognising the potential for permanent and long term damage to such features could occur at the outset of any works on site.

11. No development of a phase or sub-phase shall commence until a scheme has been submitted to and approved in writing by the Local Planning Authority for that phase or sub-phase indicating:
- i) a construction traffic routeing plan
  - ii) the proposed temporary means of construction access
  - iii) site accommodation
  - iv) storage of plant and materials
  - v) areas for parking and manoeuvring of site operatives' and visitors' vehicles
  - vi) loading, unloading and manoeuvring of goods vehicles
  - vii) hours of operation; and
  - viii) method of prevention of debris being carried onto the highway.

Before any other operations are commenced the scheme shall be fully implemented in accordance with the approved details and be retained/followed as such throughout the construction period.

Reason: In the interests of highway safety, recognising that even initial stages of development could cause unacceptable impacts on the public highway.

12. (a) No development or other operations shall take place until a Written Scheme of Investigation (WSI) for archaeological work has been submitted to and approved in writing by the Local Planning Authority, and until any pre-start element of the approved WSI has been completed to the written satisfaction of the Local Planning Authority. The scheme shall include an assessment of significance and research questions; and
- (i) the programme and methodology of site investigation and recording;
  - (ii) the programme for post investigation assessment;
  - (iii) provision to be made for analysis of the site investigation and recording;



- (iv) provision to be made for publication and dissemination of the analysis and records of the site investigation;
- (v) provision to be made for archive deposition of the analysis and records of the site investigation; and
- (vi) nomination of a competent person or persons/organization to undertake the works set out within the WSI.

(b) No development shall take place other than in accordance with the archaeological WSI approved under (a).

(c) The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the archaeological WSI approved under (a) and the provision to be made for analysis, publication and dissemination of results and archive deposition has been secured.

Reason: To enable items of archaeological interest to be recorded/and or preserved where possible, noting that initial ground works could lead to the permanent loss of such items.

13. (a) No development shall commence until a scheme to identify and control any contamination of land, or pollution of controlled waters has been submitted to and approved in writing by the Local Planning Authority; and until the measures approved in that scheme have been implemented. The scheme shall include all of the measures (phases I to III) detailed in Box 1 of Section 3.1 the South Derbyshire District Council document 'Guidance on submitting planning applications for land that may be contaminated', unless the Local Planning Authority dispenses with any such requirement specifically and in writing.
- (b) Prior to first occupation of the development (or parts thereof) an independent verification report must be submitted, which meets the requirements given in Box 2 of Section 3.1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.
- (c) In the event that it is proposed to import soil onto site in connection with the development, this should be done to comply with the specifications given in Box 3 of Section 3.1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.
- (d) If required by the conceptual site model, no development shall take place until monitoring at the site for the presence of ground gas and a subsequent risk assessment has been completed in accordance with a scheme to be agreed with the LPA, which meets the requirements given in Box 4, Section 3.1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.

Reason: To protect the health of the public and the environment from hazards arising from previous contamination on or off the site which might be brought to light by development of it, noting that initial ground works have the potential to open up a new pathway to a receptor or mobilise contaminated material around or off the site.

14. No development shall commence until a dust mitigation strategy has been submitted to and approved in writing by the Local Planning Authority. The strategy shall take into account national practice guidance and highlight details of the likely resultant dust levels from activities during the construction phase at the nearest residential premises as well as those dwellings which may be occupied

as part of the development (or adjoining development), and set out measures to reduce the impact of dust on those residential premises. The approved strategy shall then be implemented throughout the course of development.

Reason: To protect the amenities of occupiers of adjoining and proposed residential properties, noting that initial ground works could give rise to unacceptable impacts.

15. No development shall commence until a scheme of noise and vibration control has been submitted to and approved in writing by the Local Planning Authority. The scheme should consider construction phase noise and vibration arising from the development, and the mitigation measures recommended in the noise report reference 13/4262/R1-0 submitted by the applicant in support of the application. The approved scheme shall then be implemented throughout the course of development.

Reason: To protect the amenities of occupiers of adjoining and proposed residential properties, noting that initial ground works could give rise to unacceptable impacts.

16. No development shall take place until details of the finished floor levels of the dwellings and other buildings hereby approved, and of the ground levels of the site relative to adjoining land levels, along with details of any retaining features necessary have been submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be constructed in accordance with the agreed levels and any approved retaining features.

Reason: To ensure that the visual impact of the development is minimised as far as possible and to ensure acceptable impacts on adjoining residential property, recognising that site levels across the site as a whole are crucial to establishing infrastructure routing/positions (i.e. roads, drainage, SuDS, etc.).

17. No development shall commence until a detailed surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, has been submitted to and approved in writing by the Local Planning Authority. The scheme shall subsequently be implemented in accordance with the approved details before the development is completed. The scheme to be submitted shall demonstrate:

- Surface water drainage system(s) designed in accordance with CIRIA C697 and C687 or the National SuDS Standards, should the latter be in force when the detailed design of the surface water drainage system is undertaken;
- Limiting the discharge rate generated by all rainfall events up to the 100 year plus 30% (for climate change) critical rain storm ideally to greenfield rates for the site but as a minimum so that it will not exceed the run-off from the undeveloped site and will not increase the risk of flooding off-site;
- Detailed design (plans, levels/cross sections, network details and calculations) in support of any surface water drainage scheme, including details on any attenuation system, and the outfall arrangements. Calculations should demonstrate the performance of the designed system for a range of return periods and storm durations inclusive of the 1 in 1

year, 1 in 2 year, 1 in 30 year, 1 in 100 year and 1 in 100 year plus climate change return periods;

- Details of how the on-site surface water drainage systems shall be maintained and managed after completion and for the lifetime of the development, to ensure long term operation to design parameters.

The surface water drainage system must deal with the surface water run-off from the site up to the critical 1% Annual Probability of Flooding (or 1 in a 100-year flood) event, including an allowance for climate change (i.e. for the lifetime of the development). Drainage calculations must be included to demonstrate this (e.g. MicroDrainage or similar sewer modelling package calculations which include the necessary attenuation volume). The approved scheme shall subsequently be implemented in accordance with the approved details and in accordance with a timetable submitted for approval in writing by the Local Planning Authority prior to development commencing.

Reason: To prevent the increased risk of flooding, to improve and protect water quality, and ensure future maintenance of the drainage system, recognising that initial stages of development to remodel ground levels and create access infrastructure could alter the existing drainage characteristics of the site.

18. No development involving works to or within the vicinity of the watercourse shall take place until such time as a scheme to demonstrate compensatory provision is made for any changes to the watercourse has been submitted to and approved in writing by the local planning authority. Such a scheme shall ensure that the overall linear length of open watercourse is replicated, fully implemented and subsequently maintained, in accordance with the timing/phasing arrangements embodied within the scheme.

Reason: To ensure the Water Framework Directive status of the watercourse does not deteriorate.

19. No development involving the creation of the Burton Road access, the filling of the Midway Tunnel and/or former railway cutting shall commence until a method statement for the filling of the Midway Tunnel and/or former railway cutting has been submitted to and approved in writing by the Local Planning Authority. The method statement shall include details of proposed drainage methods and measures to prevent surface and groundwater erosion of the fill, as well as any vibro-compaction methods. The filling works shall be carried out prior to first occupation of a dwelling.

Reason: In the interests of land stability and to minimise the risk of subsidence to infrastructure.

20. No development involving the construction of a road or a dwelling shall commence until details of a scheme for the disposal of foul water has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be carried out in conformity with the details which have been agreed before the development is first brought into use.

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

21. No development involving the construction of a street until details of the proposed arrangements for future management and maintenance of the proposed street(s) (within the phase or sub-phase where relevant) have been submitted to and approved in writing by the Local Planning Authority. The streets shall thereafter be maintained in accordance with the approved management and maintenance details until such time as an agreement has been entered into under Section 38 of the Highways Act 1980 or a private management and maintenance company has been established.

Reason: In the interests of highway safety and long term maintenance.

Other

22. If during development any contamination or evidence of likely contamination is identified that has not previously been identified or considered, then the applicant shall submit a written scheme to identify and control that contamination. This shall include a phased risk assessment carried out in accordance with the procedural guidance of the Environmental Protection Act 1990 Part 2A and appropriate remediation proposals, and shall be submitted to the Local Planning Authority without delay. The approved remediation scheme shall be implemented to the satisfaction of the Local Planning Authority.

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 its development.

23. 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 first occupation of the dwellings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species. The publically landscaped areas shall be maintained as such until these areas are transferred to the Local Authority or nominated maintenance company.

Reason: In the interests of visual amenity and to secure appropriate open space provision for occupiers of the dwellings hereby approved.

Informatives:

- a. In dealing with this application, the Local Planning Authority has worked with the applicant in a positive and proactive manner through pre-application discussions, seeking to resolve planning objections and technical issues, suggesting amendments to improve the quality of the proposal, meetings and negotiations, and promptly determining the application. As such it is considered that the Local Planning Authority has implemented the requirement set out in paragraphs 186 and 187 of the National Planning Policy Framework.
- b. This permission is the subject of a unilateral undertaking or agreement under Section 106 of the Town and Country Planning Act 1990.

- c. The Environment Agency does not consider oversized pipes or box culverts as sustainable drainage. Should infiltration not be feasible at the site, alternative sustainable drainage should be used, with a preference for above ground solutions.
- d. For further assistance in complying with planning conditions and other legal requirements applicants should consult “Developing Land within Derbyshire – Guidance on submitting applications for land that may be contaminated”. This document has been produced by local authorities in Derbyshire to assist developers, and is available from [www.south-derbys.gov.uk/environment/pollution/contaminated\\_land/default.asp](http://www.south-derbys.gov.uk/environment/pollution/contaminated_land/default.asp). Reports in electronic formats are preferred, ideally on a CD. For the individual report phases, the administration of this application may be expedited if a digital copy of these reports is also submitted to the Environmental Protection Officer (contaminated land) in the Environmental Health Department: [thomas.gunton@south-derbys.gov.uk](mailto:thomas.gunton@south-derbys.gov.uk).

Further guidance can be obtained from the following:

- CLR 11: Model Procedures for the Management of Contaminated Land
  - CLR guidance notes on Soil Guideline Values, DEFRA and EA
  - Investigation of Potentially Contaminated Land Sites - Code of Practice, BSI 10175 2001.
  - Secondary Model Procedure for the Development of Appropriate Soil Sampling Strategies for Land Contamination, R & D Technical Report P5 - 066/TR 2001, Environment Agency.
  - Guidance for the Safe Development of Housing on Land Affected by Contamination Environment Agency. ISBN 0113101775.
- e. Pursuant to Section 278 of the Highways Act 1980, no works may commence within the limits of the public highway without the formal written Agreement of the County Council as Highway Authority. Advice regarding the technical, legal, administrative and financial processes involved in Section 278 Agreements may be obtained from the Economy, Transport and Environment Department at County Hall, Matlock. The applicant is advised to allow at least 12 weeks in any programme of works to obtain a Section 278 Agreement
- f. Pursuant to Section 38 of the Highways Act 1980, and the Advance Payments Code of the Highways Act 1980, the proposed new estate roads should be laid out and constructed to adoptable standards and financially secured. Advice regarding the technical, financial, legal and administrative processes involved in achieving adoption of new residential roads may be obtained from the Economy, Transport and Environment Department at County Hall, Matlock.
- g. The application site is affected by Public Rights of Way (as shown on the Derbyshire Definitive Map). These route must remain unobstructed on their legal alignment at all times and the safety of the public using it must not be prejudiced either during or after development works take place. Further information can be obtained from the Rights of Way Duty Officer in the Economy, Transport and Environment Department at County Hall, Matlock. You are also advised:
- the granting of planning permission is not consent to divert or obstruct a public right of way; and

- if it is necessary to temporarily obstruct a right of way to undertake development works then a temporary closure is obtainable from the County Council. Please contact 08456 058 058 for further information and an application form.
- h. The Crime Prevention Design Adviser advises that in submitting details under a reserved matters application, that (1) all exposed housing elevations are well treated to allow a view between interiors and external space; (2) where housing is set in blocks of more than two properties rear garden access should originate within the view of associated houses either by using gated undercroft alleyways, through plot access where practical, or by breaking up housing blocks into two or less; (3) that enclosed parking courtyards would be best gated or overlooked; and that (4) the open aspects of the footpath route and proposed links are not compromised by any landscaping sited between footpath and the development.
- i. The National Forest Company advocates the creation of a National Forest character throughout the scheme at reserved matters stage, including the use of retained trees and hedgerows as features, the creation of tree lined roads, significant amounts of specimen tree planting within areas of open space and the design of balancing ponds as ecological features.
- j. New housing should be designed to addresses safety and the needs of vulnerable people. Domestic sprinkler systems are exceptionally effective through their ability to control a fire and help prevent loss of life. As a minimum, new residential development should incorporate a 32mm mains water riser which will enable the installation of domestic sprinkler systems, and ideally should incorporate the sprinkler systems themselves. The cost of installing a 32mm mains water riser is approximately £26 per dwelling and the cost of a domestic sprinkler system is approximately £1500. Derbyshire Fire and Rescue Service can advise further on such provisions.



**Item** 1.2

**Reg. No.** 9/2014/1040/MAF

**Applicant:**  
Dignity Uk  
C/O Agent

**Agent:**  
Mr Mark Alcock  
Harris Lamb Planning Consultancy  
Grosvenor House  
75-76 Francis Road  
Birmingham  
B16 8SP

**Proposal:** THE CONSTRUCTION OF A NEW CREMATORIUM WITH  
ASSOCIATED CAR PARKING, MEMORIAL GARDENS  
AND ACCESS OFF LAND AT SK4030 8696 DERBY  
ROAD ASTON DERBY

**Ward:** ASTON

**Valid Date:** 06/11/2014

**Reason for committee determination**

Cllr Watson has requested that the application be considered by the Planning Committee as local concern has been expressed about a particular issue and that unusual site circumstances should be considered by the committee.

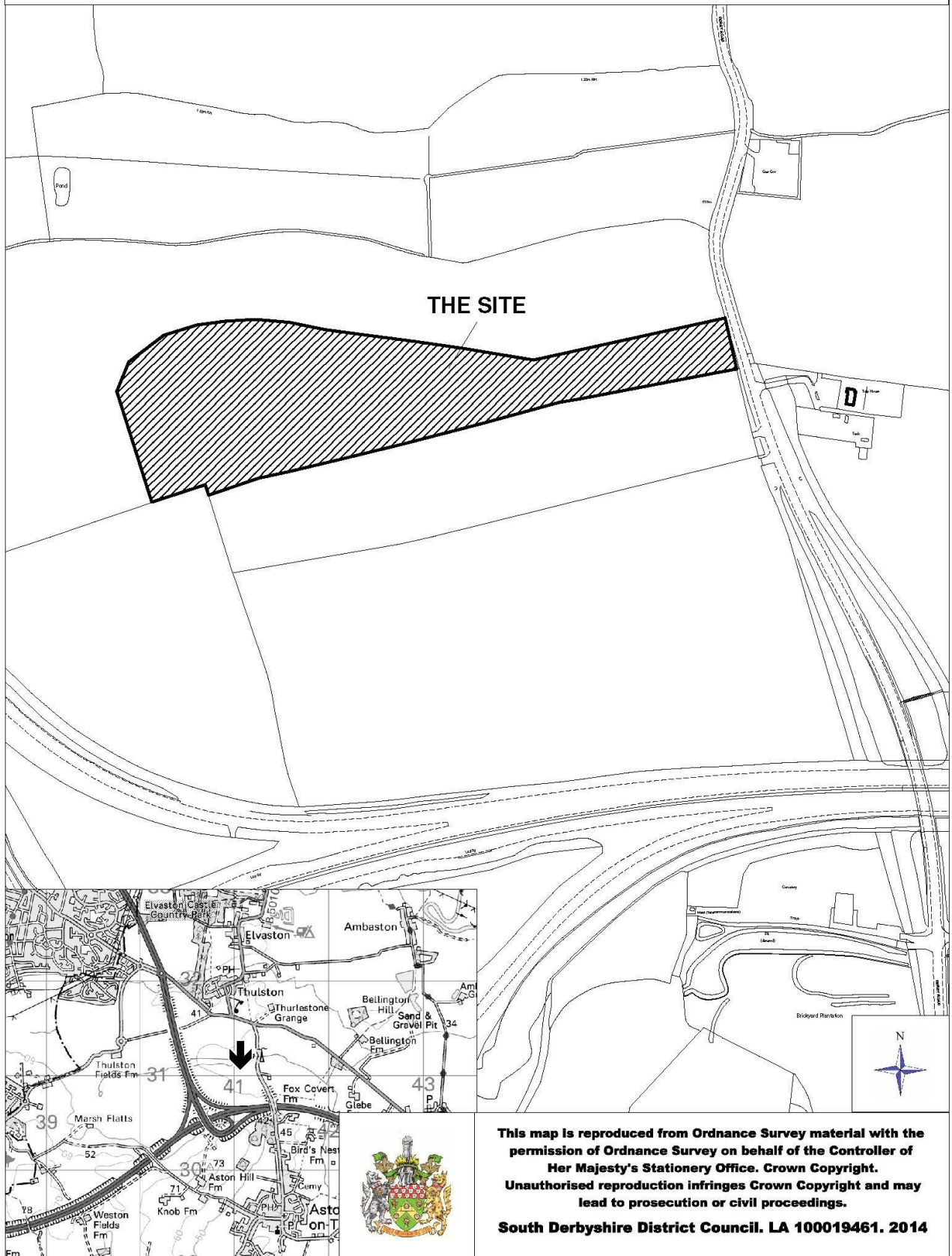
**Site Description**

The application site is located approximately one mile north from the centre of Aston on Trent and relates to a parcel of low lying agricultural land off Derby Road near to the junction between the A6 and the A50 in the Green Belt. The site is set within the open countryside outside of any village confine or urban settlement. The site is bounded on two sides by Derby Road and the A50, the lighting columns for which are highly visible from the site, the remaining boundaries are hedgerows which dissect the open countryside into separate parcels of land, differing in size and shape. A detached property and a National Grid gas pumping station are located close to the site, the telecoms tower within the National Grid site is a notable feature in the landscape along with the mature trees which aid in screening the pumping station, forming a small pocket woodland to reflect the more dense woodland to the north and north west in the locality of Thulston/Elvaston.

**Proposal**

The application proposes the erection of a new crematorium with associated car parking, memorial gardens and access. The crematoria would be approximately 500

9/2014/1040 - Land at SK4030 8696 Derby Road, Aston on Trent, Derby  
(DE72 2AF)





square metres and consist of a single chapel that would be able to seat approx. 100 people. Most crematoriums have two chapels which can often cause congestion within and outside of the premises. The crematoria would be located in a largely flat featureless area of land and would be a single storey building which would sit within the height framework of existing trees within the site. It is proposed to position the building toward the western boundary of the site set approx. 420 metres back from the edge of Derby Road; this ensures the correct stand-off zone from the gas pipeline running through the site is adhered to. An existing access would be widened to provide visibility splays for the proposed access off Derby Road which would dissect the site to provide access to the crematoria and the large car park proposed as part of the scheme. A large memorial garden would be incorporated into the top end of the site surrounding the building, including a water feature, seating and footpaths.

The design adopts a low flat roof profile which would not extend above 5 metres; a special flue has also been designed to fit with this, sitting 2 metres above the roof. The building would adopt a mixed palette of materials including, stone filled gabion walls, coloured render, red cedar cladding, a green wall (filled with plants) and sedum roof.

The extensive landscape scheme proposes to form a pocket woodland to follow on from that surrounding the neighbouring National Grid gas pumping station. The existing boundary hedgerows would be supplemented with new planting, all hard landscaping surfaces would be permeable, with a mix of surfaces used to define the differing routes/spaces within the site.

The service road, footpaths and car park would employ a restricted palette of robust materials combining a rural aesthetic with clean modern lines. On-site lighting would be incorporated into the site to ensure safe movement of visitors through the site; these would be controlled to opening times with a night light used during the evening above the site. It is proposed to control lighting levels to avoid light pollution.

The crematorium would be open Monday to Friday 09:00 to 17:00 hours, with the ability to provide for weekend cremations upon request; the crematorium would offer one hour service intervals between cremations rather than 45 minutes at other crematoriums.

## **Applicants' supporting information**

### **Design and Access Statement**

To be read in conjunction with the other supporting documents and application drawings. In summary it states that the application is for the creation of a new single chapel crematorium with integrated, publicly accessible, landscape design. It incorporates the protection and enhancement of existing site features such as the mature hedgerows. The crematoria would be a low intensity use with emphasis on quality rather than quantity, typically hosting six funeral services per day in hourly slots. The design of the building would utilise the latest cremator technology incorporating dust and mercury abatement filtration systems and computer controlled emission control to the strictest current legislation and this is independently monitored for operational licensing purposes. The building would be of a subservient, low visual impact building design which is modern and individual in character and which creates a real sense of place, connecting seamlessly to its landscape setting. The development of managed landscaped memorial gardens and publicly accessible walks with an emphasis on

native species and increasing biodiversity would enhance the site and provide a tranquil environment.

### Need Assessment

The assessment states that the facility is proposed to provide more choice for local people (and to lessen the difficulty in obtaining convenient time slots for cremations); to reduce the distance that people need to travel; to improve the qualitative experience for mourners; and to provide capacity for future increases in death rates. Population and death rates are projected to increase over the coming years.

In assessing the need for a new crematorium, they defined a catchment area based on gravity model principles that is having regard to the relative distance and journey times to other facilities, 30 minutes is generally accepted to be the maximum reasonable journey time to a crematorium. They then examined whether there would be sufficient deaths in that area to justify a new facility, finding that the future service level would be over 800 which is in excess of the level that Dignity considers to be viable. The assessment also examined the magnitude of diversion from existing facilities if the proposed crematorium was granted planning permission. It was found that the facilities surrounding the proposal's catchment area would continue to operate at about or above 1,000 cremations *per annum* per chapel, significantly in excess of the 750 services *per annum* level that Dignity considers to represent a viable proposition. The exception is Bretby but this would not be materially affected by the proposal anyway as there is minimal overlap in their catchment areas.

There is a strong qualitative need for a new facility, not least through a significant reduction in travel times and mileage on the highway network. A new facility would also ensure that more people can choose services at their preferred times, and the one-hour service periods offered by Dignity – compared with 40 to 45 minutes elsewhere – would enable less-hurried services to be conducted. The one-hour slots would help resolve scheduling issues too, for example by reducing the likelihood of multiple services being on the site at the same time.

The cremator would meet current emissions and abatement standards as set out in the latest guidance on this matter, Process Guidance Note PG5/2 (12).

4.8 In conclusion, the assessment considers that there is both a quantitative and qualitative need for a new crematorium in this part of the district.

### Sequential Assessment

This submission has demonstrated that there are no opportunities to provide a crematorium facility within, or on the edge of, built up areas due to the requirements of the Crematorium Act 1902 and because they are not available, viable or suitable. The report also demonstrates that the chosen site is the most suitable area for a new crematorium. The other areas assessed were discounted following a detailed site appraisal.

The areas assessed were discounted for the following reasons: -

- Area 1 - Land to the west of Borrowash / south of the A52 – not considered to be readily available or viable because the area is within multiple ownership and is being promoted for residential development in the Strategic Housing Land Availability Assessment.

- Area 2 - Land to the west of Ockbrook / north of the A52 – not considered to be readily available or viable because it is being promoted for residential by the landowner. The area also falls within a high quality landscape area.
- Area 3 - Land to the east of Ockbrook – discounted on highways grounds. A potential access off the A52 has been assessed as being unsuitable. The area also falls within a high quality landscape area.
- Area 4 - Land to the east of Borrowash / south of the A52 – discounted on landscape grounds. A crematorium development would detract from the rural setting of the settlement and would detract from existing rural views, located within the Green Belt.
- Area 5 - Land at Boulton Moor, Derby – not suitable, viable or available. The area is located adjacent to a primary school and two areas of public open space. Part of the area has also been allocated for a new cemetery. The remaining area has been promoted by the landowner for residential development in the Strategic Housing Land Availability Assessment.
- Area 6 - Land at Marsh Flats, Derby – not considered to be readily available or viable because it is being promoted for residential by the landowner.
- Area 7a – Land between Barrow upon Trent and Swarkestone and the A50 – discounted on highways grounds. A potential access point off Areston Lane has been assessed as being unsuitable in highways terms (see appendix 6). Furthermore, the area is located outside of Dignity's search area and, therefore, it is considered to be suboptimal in qualitative terms. The area was also discounted on landscape and visual grounds.
- Area 7b – Land between A5132 and the Trent and Mersey Canal – discounted on highways grounds. A potential access point off the A5132 Twyford Road Areston Lane has been assessed as being unsuitable in highways terms (see appendix 6). Furthermore, the area is located outside of Dignity's search area, therefore, it is considered to be suboptimal in qualitative terms. The area was also discounted on landscape and visual grounds.
- Area 7c – Land between A5132 and the Trent and Mersey canal – discounted because any crematorium development would detract from the strong rural character of the area and would be clearly visible from residential properties along western edge of area. The area has also been discounted because it is located outside of Dignity's search area and, therefore, it is considered to be suboptimal in qualitative terms. This is because it is not easily accessible from Derby or the communities in South Derbyshire.

In conclusion, the sequential assessment demonstrates that the application site is the most appropriate location for a new crematorium facility. It is available, viable and suitable. All of the sites assessed fail to not meet some, or all, of these tests.

### Transport Statement

Due to the proposed use of the site as a crematorium, and its rural location, it is expected that the majority of site users would choose to travel by private car; As the opening hours of the crematorium would be 09:00 – 17:00, and that the first and last services of the day are not typically as popular as those at midday and early afternoon, it is expected that the proportion of trips occurring during the network peak hours would be small; An assessment of the impact of both average and large services generating trips in the network peak hour has been undertaken to ensure the design of the new access is robust. The assessment demonstrates that with an average service

attendance the crematorium would be expected to generate up to 20 vehicular movements, and a large service up to 104 vehicular movements in the morning/evening network peak hours.

The maximum number of services able to take place per day is eight. Based on the average number of trips generated by a services of 16, and those generated by staff and visitors, the crematorium would on average generate 157 weekday daily trips. If a large service, on occasion, occurred it is expected that daily trip generation would be greater. The impact of additional traffic generated by the development on the site access junction during the network peak hours has been assessed using PICADY. The results show that the proposed junction options are expected to operate with reserve capacity in both 2016 (year of opening) and 2026 when both average and large attendances occur. It is also noted that very little reduction in capacity or increase delay is expected to occur as a result of development traffic during both average and large attendances;

A parking accumulation assessment has demonstrated the maximum demand for on-site parking would be approximately 120 vehicles based on a large service (100 vehicles). While demand for parking would exceed parking spaces formally provided during large services, additional capacity is available on the site internal access road and this should be used to ensure demand is met on-site; xi. Based on average attendances (16 vehicles) to services, maximum demand for parking is approximately 36 vehicles; and due to the infrequency of large services and the large residual capacity available during average attendances of 54 spaces, the provision of on-site car parking is considered to be appropriate. It is concluded that the development should be considered acceptable in transport and highway terms

### Ecological Appraisal

The study area included the application area, the field in which it is located and the section of Derby Road that is visible from the proposed access. One pond was identified, but was found to be dry and unsuitable for supporting protected amphibian species. The application area incorporates part of the arable agricultural field and parts of two of the field boundaries. The proposals would require land take of arable agricultural land, field margins, and a short section of hedgerow and an equivalent length of dry ditch. None of these impacts are considered likely to result in an impact to nature conservation out with the zone of immediate effect. The land take described above is not anticipated to result in any impacts to protected species that are significant out with the zone of immediate effect. However, site clearance works have the potential to impact directly on nesting birds if undertaken during the bird breeding season. It is recommended that clearance works are undertaken outside the typical bird breeding season (March to August inclusive). Should this not be possible, clearance works would only commence following a nesting bird check and once an ecologist has confirmed that no nesting birds are present within the working area.

### Landscape and Visual Impact Assessment

Careful attention given to the location and design of the proposed building, car park and crematorium parkland, having regard to the conservation and enhancement of landscape character and visual amenity. The architectural and landscape design proposals are of high quality and would provide a strong sense of place for the proposed crematorium. These trees would, together with existing trees associated with

the smaller fields north of the site, contribute to a subtle 'layered effect' of vegetation in the local landscape with resultant filtering of views across the landscape.

Views of the proposed development from the west would be greatly restricted by the enclosure provided by the vegetated embankments of the A6 and by other tree and shrub vegetation in the intervening landscape. There would be no views of the proposed development from Aston-on-Trent, from the section of Derby Road between the village and the A50 or from the bridleway and public footpaths between Aston-on-Trent and the A50. There would be negligible changes to existing views from the farmstead at Aston Hill Farm as the residential buildings are not orientated towards the site. Glimpsed views of the proposed development would be obtained from some parts of the cemetery on the edge of the A50. Views would be shortened by the proposed tree and shrub planting but the overall well-treed character of the views would be enhanced. There would be negligible changes to all night-time views from the south in the context of the tall highway lighting columns along the A6.

At Year 1 and Year 5, the proposed building and structural tree/shrub planting would result in overall low level changes of slight adverse significance for the medium sensitivity drivers, cyclists and pedestrians using the southern section of Derby Road as a whole. Winter views of the proposed building, lighting and car park would be partially enclosed and filtered by the proposed on-site and off-site vegetation. Summer views would be substantially enclosed and filtered by this proposed vegetation framework, which would include trees planted at 4m to 5.5m high. The proposed development would result in overall minor changes to existing views from Tulip House, affecting a small proportion of the view. They would represent low level changes of moderate adverse significance for this high sensitivity viewer during the day at both Year 1 and Year 5.

The extent of visibility of the proposed development from viewpoints to the north of the site would be restricted by buildings at Thulston, by the trees and hedgerows in the rural landscape south of the village and by the mature tree growth associated with Elvaston Castle Country Park. Views of the proposed development from the sections of the B5010 to the north and northeast of the site and from northern sections of Derby Road would be generally difficult to obtain in summer views and would be typically restricted to transient glimpsed views through gaps in the roadside hedgerow.

The quality of the local landscape would be enhanced by the establishment of new trees in an agricultural landscape where trees are sparsely represented and by the enclosure of existing views of the traffic and lighting columns on the A50 and A6 (winter views from the B5010 and Derby Road). The net result would be that the re-development proposals would enhance the *site specific* openness of the Green Belt.

One of the key aims of the county landscape character assessment is to manage change by helping ensure that new development respects and, where practicable, contributes to enhancing the local character and sense of place of the landscape. The proposed development respects the sensitivities of the South Derbyshire landscapes in that, first and foremost, it would not be located in one of areas that is identified as sensitive in the county landscape character assessment

The proposed development would respect the key characteristics of the Lowland Village Farmlands LCT and would be in accordance with the county landscape character assessment in that (1) site hedgerows would be properly managed, (2) the proposals



would complement the aims of the Biodiversity Action Plans for Derbyshire by enriching biological diversity, (3) the prominence of the A50 and A6 transport corridors would be reduced and (4) indigenous tree and shrub species would be substantially used, including a proportion of large, long lived species.

### Flood Risk Assessment

The Environment Agency has classified the site as being located within Flood Zone 1, i.e. at low risk from fluvial or tidal flooding. The assessment concludes that there is a negligible risk to the site of flooding from other sources, including groundwater, surface-water, reservoirs and canals. A British Geological Survey Infiltration SuDS (sustainable urban drainage scheme) report has identified that infiltration SuDS are unlikely to be a viable primary method for surface water disposal at the site, but discharge to the nearby watercourse is likely to be feasible. Therefore the proposed site drainage should incorporate SuDS features, to limit the effects of the development on surface water run-off. As a result a detailed drainage scheme would be required for the site; this would ensure that the proposals would not generate significant additional flow rates or volumes of surface water run-off. Overall the proposed development would be safe from flooding, without increasing the likelihood of flooding elsewhere.

### Phase 1 Site Investigation Report

The assessment states that the site has remained largely undeveloped since the early 1880s, except for a small building located along the southern boundary of the site from 1919 to 1963. No significant potential historical or current sources of contamination have been identified, and the risk to any future receptors on the site is considered to be low, therefore no further site investigation or risk assessment is considered to be necessary.

The site is likely to be underlain mainly by good founding strata comprising sand and gravel drift deposits although there may be a localised area of deep made ground close to the centre of the site as a result of backfilling of a pond that was previously present. This area should be avoided when selecting the location of the proposed buildings and structures if possible. The risk of instability from previous mineral workings and mining is low. The assessment recognises that soakaways may be feasible for surface water disposal on the majority of the site. A number of recommendations are made including; drilled boreholes within the footprint of the proposed structures with a windowless sampling rig in order to log ground conditions in accordance with British Standard BS5930:1999, undertake in situ geotechnical testing and to take soil samples. Subsoil and groundwater samples should be analysed for pH and water-soluble sulphate in accordance with guidance from BRE Special Digest 12 in order to specify protection measures for concrete against chemically aggressive ground.

### Soils and Agricultural Use Quality

The study of 14ha of agricultural land of Derby Road has identified fine loamy soils underlain variably by sandy or clayey subsoil. Land over permeable sandy subsoil is limited to draughtiness and/or stoniness to grade 2 quality. Land over slowly permeable clayey subsoil is limited by soil wetness to grade 2 or sub-grade 3a quality. The 250 – 300mm thick topsoil across the whole site would form a high quality resource for landscaping use if the site is developed.

## Statement of Community Involvement

During the public consultation events the main views expressed were:-

- Emissions and environmental impact
- The need for a new crematorium and why this site in particular
- Intensity of use
- Highways Safety
- Development within the Green Belt
- Building design including height of the flue
- Ecological Impact and biodiversity
- Construction management issues

All of these issues are addressed in the technical and environmental reports that accompany the application. The proposed development was well received by a significant number of local residents and this is reflected in the feedback forms received. However, the majority of the attendees opposed the scheme. The statement demonstrates and concludes that the issues raised during the pre-application consultations can be overcome and there are no reasonable grounds for refusal.

## Tree Survey

A full topographic survey of the site was provided; this was used as the basis for producing the tree survey plan. All trees included in the survey are native species. They are predominantly ash (*Fraxinus excelsior*) and English oak (*Quercus robur*), with some field maple (*Acer campestre*) and crack willow (*Salix fragilis*) scattered between them. One sycamore (T7, *Acer pseudoplatanus*) is located along Derby Road north east of the site. The majority of the trees are mature, in reasonably good condition and of moderate value in particular as part of the northern field boundary and along the Derby Road frontage in the east. They have therefore been classified as BS5837 category B trees. They all have varying levels of dead wood in their canopy and may require some work, in particular those located along the public highway in the east. Four trees have been assessed as being of high quality, mainly due to their physical condition potentially qualifying them as veteran trees. Recommendations include protection of the root protection area by fencing off areas marked on the tree survey plan.

## General

The operator of the crematorium, Dignity, state that they are committed to maintaining the quality of the environment and undertake to act whenever necessary to meet or exceed the standards of current environmental legislation. The company continues to review its policies, systems and services to find ways to limit its environmental impact. For example it states that it invested £7 million in its portfolio of crematoria to conform to the Government directive to reduce mercury emissions from crematoria by 50% before the end of 2012 and have won an award for environmental best practices and the company aims to reduce its future carbon footprint and continues to submit its data to the Carbon Disclosure Project, a not-for-profit organisation that aims to improve the environment by measuring disclosures from thousands of organisations across the world's major economies.

## **Planning History**

None

## Responses to Consultations

The County Highways Authority has no objection to the proposed development subject to conditions. They are satisfied that the revised plan detailing the required visibility sightlines of 2.4 metres x 120 metres can be achieved and should be conditioned.

The Environmental Protection Officer has no comments or objections to make with regards to contaminated land. But would stress the need for a timely environmental permit application which would need to be in place before operation, therefore the officer has requested an informative to remind applicant of this.

The Environmental Health Manager has no objection but states that the proposed installation will require a Local Authority Pollution Prevention and Control (LAPPC) Part B permit, issued under The Environmental Permitting (EP) (England and Wales) Regulations 2010 (SI 2010/675). The Environmental Permitting regime aims to protect the environment and human health and to encourage regulators to promote best practice in the operation of regulated facilities, and continue to fully implement European legislation.

Under the permit the operator must provide appropriate operational control and emissions abatement plant to ensure flue gas emissions are within statutory limits. Specific provisions are in place to ensure that mercury concentrations are adequately abated.

Severn Trent Water has no objection to the proposal.

The Health and Safety Executive does not advise on safety grounds, against the granting of planning permission in this case in terms of proximity to major hazard sites/pipelines.

The County Archaeological Officer advises that the proposal area is within a site on the Derbyshire Historic Environment Record (HER 16611), a large area of medieval ridge and furrow earthworks recorded in 1989 to the north-west of Foxcovert Farm, Aston. The proposal site has however been subject to intensive arable cultivation in the intervening period, and it seems likely that these earthworks no longer survive. However the site is within an area of wider archaeological interest associated with the Trent Valley and its environs, which is a focus of prehistoric activity. Remains of multi-period prehistoric archaeology are known to the east of Aston village, including the Scheduled Monument associated with the Aston Cursus and its associated monuments. This site extends to within about 1km of the current proposal site. Comparatively little is known about the area north of the A50, part from numerous records of medieval ridge and furrow, although prehistoric cropmarks are recorded south of Glebe Farm (1km SE), and Iron Age settlement and land boundaries are currently being excavated during the early phases of the Boulton Moor housing development (900m NW). Therefore in the light of the above observations, the site has potential for below-ground archaeological remains, and the significance of any below-ground archaeology should be established through further field evaluation of the site in order to comply with para 128 of the NPPF.

Natural England advises that the proposal is unlikely to affect any statutorily protected sites.

Derbyshire Wildlife Trust has considered the Extended Phase I Habitat Survey and acknowledges that no evidence of badger were recorded and that the single pond recorded within 500 metres of the site was dry and unsuitable to support great crested newts. The habitats on site are considered to have some suitability to support nesting birds, including ground nesting birds. Some of the mature trees are considered to have potential to support roosting bats. From the survey information they are satisfied that there are unlikely to be any impacts on protected species, including badger, great crested newts and roosting bats, as a result of the proposed development. It is considered that adequate survey work has been submitted in support of this application. It is understood that 7 metres of hedgerow would be lost to provide access to the site. It recommends that new native hedgerow planting is provided as part of the landscaping to ensure there is no net loss of hedgerow priority habitat as a result of the proposed development.

It is understood that none of the mature trees are to be lost as part of the development of the site, and therefore impacts on roosting bats are not anticipated. The report states that the loss of 7 metres of hedgerow habitat that could be used by foraging bats is not considered to be a significant loss of habitat. The Trust have requested conditions to secure the habitats enhancement opportunities and management of these in addition to no development occurring if nesting birds are present within the hedgerow and details of external lighting.

The County Planning Control Team has provided a Mineral Consultation Area response and makes no objection to the development. They recognise that the site is underlain by sand and gravel resources, and is covered by the Mineral Consultation Area (MCA), as defined in the adopted Minerals Local Plan. The MCA ensures that minerals of economic importance are safeguarded and are, therefore, taken into account in the assessment of applications for non-mineral development to avoid their needless sterilisation. Policy MP17 of the adopted Minerals Local Plan should be taken into account in the assessment of this application. This states that the mineral planning authority would resist proposals for development which would sterilise economically workable mineral deposits, except where there is an overriding need for the development and prior extraction cannot reasonably be undertaken or is unlikely to be practicable or environmentally acceptable. The emerging Minerals Local Plan for Derbyshire and Derby would also include policies to this effect.

The County Planning Team in most cases wish to ensure the application of this policy and would ask the applicant to provide further information which assesses the quality and quantity of the resource and the viability of extracting it as part of the development before making a final decision on a response to the proposal. However, in this case, it considers that there are circumstances which require a more flexible stance. These are the relatively small size of the site and the nature of the proposal. The sterilisation of mineral on a site of this size is not likely to be significant and it recognises that the removal of the mineral as part of a development such as this is unlikely to be practical. It would seem pragmatic in this case, therefore, to not ask for further information regarding the mineral.

The Environment Agency has not raised an objection subject to conditions as the proposed development would only meet the requirements of the National Planning Policy Framework if the measures as detailed in the Flood Risk Assessment submitted with this application are implemented and secured by way of a planning condition on any planning permission.

## Responses to Publicity

Aston on Trent Parish Council has objected to the proposed development which can be summarised as;

- No early consultation
- Would dispute that 2500 flyers for public consultation were delivered
- Close proximity to A50 and A6 so cannot be a tranquil environment
- Designated as Green Belt
- Industrial encroachment is unnecessary and unacceptable
- There is no demonstrable need with local crematoriums at 50% capacity
- Alternative sites area available within the Derby City Boundary which the Crematorium would serve.
- Close to a dangerous bend on a busy road
- Traffic problems in Aston would be exacerbated
- Airborne pollution and toxin emissions – concern for residents health and proximity of primary school
- Proximity to Brickyard plantation which is a designated biodiversity site with rare butterflies and orchids
- Lack of bus parking and disabled spaces
- Would not become a place of peace and calm for a number of years due to new landscaping.

The East Midlands Butterfly Conservation Group has submitted comments in response to the revised information raising concern as to the proximity of the Aston Brickyards Biodiversity site and 23 species of Butterflies at this site in particular the white letter hairstreak which is under threat locally due to the continued impact of Dutch Elm Disease. This species is a section 41 species of principal importance under the NERC Act in England. No reference is made to the presence of this species within the ecology report or the air quality report which is of concern to the group.

9 letters of objection have been received in response to the revised information from local residents and 9 letters of objection were received in response to the original submission. Concerns raised can be summarised as:

- Increase in traffic on a busy and fast country lane
- Lots of parking spaces indicates a high usage
- Only 500 metres from Grove Farm and adjoining dwellings
- Pollution from smoke and fumes at site
- Should be in a more sheltered location away from the public due to the complexity and nature of the business
- Potential to increase traffic issues in Thulston and Aston on Trent
- Rip up prime agricultural land
- Close to A50 so not a tranquil environment
- Buildings would present a visual intrusion in the countryside
- Unsuitable access
- Sets a precedent for further development on neighbouring land
- Unacceptable in Green Belt
- Expansion of other crematoriums in 20 mile radius should be given priority
- No need for a crematorium when others are not running at capacity.



- Environmental and public health risks – 16% of mercury pollution comes from crematoriums
- Nitrogen Oxide dispersal map shows an area stretching over Aston Brickyard Plantation – a biodiversity site
- Should use brownfield sites
- Building would be an eye sore until the landscaping matures
- There are 5 other crematoriums located within a 30 minute radius of the site
- Concerned that parts of the ecology report have been redacted
- Central government have raised concerns about the level of harm created to green land by inappropriate development.

## **Development Plan Policies**

The relevant policies are:

South Derbyshire Saved Local Plan Policies include: Employment Policies 4, 8 and 9, Environment Policies 1, 9 and 14, Transport Policy 6 and Green Belt Policies 1 and 6.

Emerging Local Plan Part 1 2014:

S1 – Strategic Growth Strategy

S2 - Presumption in Favour of Sustainable Development

S3 – Environmental Performance

S6 - Sustainable Access

S8 – Green Belt

E2 – Other industrial and business development

SD1 – Amenity and Environmental Quality

SD2 – Flood Risk

SD5 – Minerals Safeguarding

BNE1- Design Excellence

BNE3 – Biodiversity

BNE4 - Landscape Character and Local Distinctiveness

INF2 - Sustainable Transport

County Council adopted Mineral Local Plan

## **National Guidance**

National Planning Policy Framework (NPPF), relevant paragraphs include:

Paras 6-10 (Achieving sustainable development)

Paras 11-14 (The presumption in favour of sustainable development)

Para 17 (Core principles)

Chapter 7 (Requiring good design)

Chapter 9 (Protecting Green Belt Land)

Chapter 11 (Natural Environment)

Para 196 & 197 (Determining applications)

NPPG ID:42 (travel plans and transport assessment), ID:32 (Air quality), ID:26 (Design), ID:21a (Conditions), ID:9 (Duty to cooperate), ID:8 (Natural environment).

## **Planning Considerations**

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

- Need and alternative sites
- Development in green belt and impact on openness
- Character and appearance
- Loss of agricultural land
- Pollution
- Highway Safety

## **Planning Assessment**

The application site lies outside a settlement boundary, is previously undeveloped and designated as Green Belt, Local Plan policies seek to contain development as where as possible within settlements. However, it now carries limited weight when measured against more recent NPPF objectives that are supportive of sustainable growth and expansion of all types of business in rural areas, particularly where they are well related to existing settlements and facilities. Aston on Trent contains a range of services as Thulston is more limited but both have a regular bus service, the stops for which are within walking distance of the site. While most crematorium journeys are likely to be made by private car, the site is accessible by alternative modes of transport and therefore considered to be a sustainable location.

It must be recognised however that it is very difficult for this type of development to be located within settlements due to the restrictions applied by The Crematorium Act 1902 which requires crematoria to be situated within tranquil settings and prohibits their construction within 200 yards (approx. 183 metres) of any dwelling house, except with the consent, in writing, of the owner, lessee and occupier of such house. It is also a requirement of the Act that crematoria must not be located within 50 yards (approx. 46 metres) of any public highway, nor in the consecrated part of the burial ground of any burial authority. The Government publication entitled *The Siting and Planning of Crematoria* is also of relevance. This guidance explains that sufficient land is required to provide an appropriate setting for the crematorium, internal access roads, parking space, and space for the disposal of ashes, and it refers to sites coming forward of 2-4ha in size. Therefore due to the restrictions on crematoriums it is inevitable that they are likely to be in countryside locations and therefore unavoidable in the countryside which would comply with policy EV1 of the Local Plan.

### Need and Alternative Sites

The application has been supported by a need assessment and a sequential test to demonstrate that there are no other alternative and available sites. The sequential test was revised after concerns were raised that an insufficient number of sites had been addressed. The applicant was provided with a map of other sites within and outside of South Derbyshire to assess and these are included in the updated sequential assessment.

The sequential assessment included a search area covering a 50 mile radius and includes 3 local planning authority areas; Derby City Council, South Derbyshire and Erewash Borough Council. 19 sites were identified however 7 of these were discounted before an assessment as they were sites identified for or had secured planning for housing developments. The remaining sites were assessed against the criteria under the cremations act and the crematoriums government guidance before

being assessed against other constraints and designations including Flood Zones, Green Belt, Proximity to Schools and playing fields, access and the availability of sites, the process ultimately determined the suitability of each site.

The areas assessed were discounted for the following reasons: -

- Area 1 - Land to the west of Borrowash / south of the A52 – not considered to be readily available or viable because the area is within multiple ownership and is being promoted for residential development in the Strategic Housing Land Availability Assessment.
- Area 2 - Land to the west of Ockbrook / north of the A52 – not considered to be readily available or viable because it is being promoted for residential by the landowner. The area also falls within a high quality landscape area.
- Area 3 - Land to the east of Ockbrook – discounted on highways grounds. A potential access off the A52 has been assessed as being unsuitable. The area also falls within a high quality landscape area.
- Area 4 - Land to the east of Borrowash / south of the A52 – discounted on landscape grounds. A crematorium development would detract from the rural setting of the settlement and would detract from existing rural views, located within the Green Belt.
- Area 5 - Land at Boulton Moor, Derby – not suitable, viable or available. The area is located adjacent to a primary school and two areas of public open space. Part of the area has also been allocated for a new cemetery. The remaining area has been promoted by the landowner for residential development in the Strategic Housing Land Availability Assessment.
- Area 6 - Land at Marsh Flats, Derby – not considered to be readily available or viable because it is being promoted for residential by the landowner.
- Area 7a – Land between Barrow upon Trent and Swarkestone and the A50 – discounted on highways grounds. A potential access point off Areston Lane has been assessed as being unsuitable in highways terms (see appendix 6). Furthermore, the area is located outside of the catchment search area and, therefore, it is considered to be suboptimal in qualitative terms. The area was also discounted on landscape and visual grounds.
- Area 7b – Land between A5132 and the Trent and Mersey Canal – discounted on highways grounds. A potential access point off the A5132 Twyford Road Areston Lane has been assessed as being unsuitable in highways terms and flood risk. Furthermore, the area is located outside of the catchment search area, therefore, it is considered to be suboptimal in qualitative terms. The area was also discounted on landscape and visual grounds.
- Area 7c – Land between A5132 and the Trent and Mersey canal – discounted because any crematorium development would detract from the strong rural character of the area and would be clearly visible from residential properties along western edge of area and local historic assets. The area has also been discounted because it is located outside of the catchment search area and, therefore, it is considered to be suboptimal in qualitative terms. This is because it is not easily accessible from Derby or the communities in South Derbyshire to be appropriate as sustainable development.

The Sequential test details each site assessment and the outcome; this demonstrated that there were no other alternative sites outside or within the Green Belt that were available.

*NPPF Part 3 – Supporting a prosperous rural economy* – States that planning policies should support economic growth in rural areas in order to create jobs and prosperity by taking a positive approach to sustainable new development. This to include the support of sustainable growth and expansion of all types of business and enterprise in rural areas, both through conversion of existing buildings and well-designed new buildings; the promotion of the development and diversification of agricultural and other land-based rural businesses; and the promotion of the retention and development of local services and community services in villages, this is supported by Local plan policy E4 and E8 whereby new development should be reflective of the surrounding rural character.

The demand for the proposed facility is based on a number of factors, including:

- the age profile, death rate and trends of the local population;
- difficulties in obtaining a preferred time and date slot for a cremation service;
- increasing lack of cemetery space in churchyards;
- an increase in cremation as preferred method of dealing with bereavement;
- the travel distance and routes to the nearest crematorium not only for cremation services but also for subsequent visits to the memorial gardens of the deceased; and
- the inability of existing facilities to offer an appropriate interval between cremation services.

The Office for National Statistics (OFS) has estimated, for example, that (from 2010) the population of the United Kingdom is projected to increase by 4.9 million to 67.2 million over the 10 year period to 2020 and to 73.2 million in 2035. The number of deaths is also projected to increase. This is not only because of the general increase in the number of people in the country but also because there was a 'baby boom' following the Second World War, a group which forms today's older generation. The most recent static from the OFS shows that the population has increased by half million between 2014 and 2015 which supports the projected increase.

Based on data from the Cremation Society of Great Britain ('CSGB'), the UK cremation rate has been approximately 75%. Therefore crematoriums do not operate at full capacity, locally those rates range between 55 – 70 % due to seasonal fluctuations. These numbers would suggest that the crematoriums are not operating at capacity, however on closer inspection the local crematoriums are oversubscribed at peak times in the day and this is causing a back log of cremations leaving families waiting up to 3 weeks for a cremation. The tendency of crematoria not to perform at their theoretical maximum capacity was recognised by the Inspector in the appeal APP/D0840/A/09/2098108 where the Inspector said *that it was not entirely realistic to suggest that every available time slot, especially those in the early mornings or late afternoons, could or would be utilised. The consequence of this is that the practical capacity of a crematorium would be less than a theoretical figure (i.e. if one assumes that all available timeslots would be used).*

For the assessment of quantitative need, the agent adopted a four-stage approach whereby they:

1. defined a closed catchment area for the proposed crematorium using a gravity model; and identified other crematoriums that may be affected within the catchment
2. calculated the population rate and number of deaths in that area at 2013, and the population and death rates at 2018 and 2023;

3. examined the number of cremations that those death rates could give rise to; and
4. estimated diversion from existing facilities and whether, following diversion, those facilities would continue to operate at a sustainable level.

According to the Office for National Statistics 2010 based projections, annual death rates are projected to be as follows:

2013 – 2014 – 542,523;

2023 – 2024 – 560,406 (3.3% increase from 2013 – 2014); and

2033 – 2034 – 629,338 (12.3% increase from 2023 – 2024).

In the twenty years between 2013 – 2014 and 2033 – 2034, the annual number of deaths is projected to increase by approximately 16%. The population projections for the catchment area show that the population across the area is projected to grow in the five years from the base year (2013) as well as in the five years from 2018 to 2023. The population is expected to increase from 127,594 in 2013 to 132,868 in 2018 and 138,264 in 2023. Death rates are also expected to grow, albeit at a slightly slower rate than population. The mortality growth rates are expected to increase from 1,074 in 2013 to 1,115 in 2018 and 1,156 in 2023 and based on data from the Cremation Society of Great Britain; the UK cremation rate has been approximately 75% over the most recent five years for which data are available.

Following the opening of the proposed facility, all the other local crematoria facilities (Markeaton, Bretby, Loughborough and Bramcote) would continue to operate at about or above 1,000 cremations per annum and significantly in excess of the 750 services per annum that is considered to be the norm to represent a viable facility. The exception is Bretby but this would not be materially affected by the proposal anyway as there is minimal overlap with its catchment areas.

Markeaton – between 1,044 – 1,130

Bretby – between 867 – 872

Loughborough – between 1,613 – 1,641 and

Bramcote – between 1,386 and 1,420

This demonstrates that with the growth in population and deaths, the existing crematoriums would still operate at a similar level to existing numbers which is not considered to cause harm to the financial viability of the sites and their continued use.

The most recent crematorium in Swanwick has not been included as this is outside of the catchment area and would not meet the 30 minute travel time for a cortege which has been adopted as a rule of thumb in a number of appeals as a satisfactory journey time and was accepted as a basis for the assessment of need in the appeal decision (APP/M1005/A/12/2188880; Land East of Derby Road, Swanwick; decision dated 9th July 2013).

There is also a qualitative need for a new facility. This is based on a journey time analysis. The Office of Fair Trade (OFT) recommends an optimum travel time of within 30 minutes to crematoria for a cortege. Therefore at an average speed of 20 mph this provides a maximum travel distance of 10 miles. There are no crematoria facilities within the OFT recommended travel time for this catchment area, Bramcote would be the closest with a journey time of 40 minutes. Concerns raised by objectors have commented on journey times of 30 minutes but these refer to travel by car rather than that of a cortege which is considerably less.



The proposed crematorium would also ensure that more people can choose services at their preferred time, and the one hour service periods offered compared with 30 – 45 minutes elsewhere would enable less hurried services to be conducted. Having a single chapel on site rather than double would allow for greater capacity to accommodate larger funerals. The proposed crematorium would offer service intervals lasting one hour. The proposed service interval is a significant improvement over what is currently offered at a number of other facilities, notably Markeaton where intervals are 40 minutes with a maximum service time of 30 minutes. It is also an improvement over Bramcote (45 minutes), Loughborough (45 minutes) and Bretby (45 minutes). The site would also accommodate a 43" cremator offering an important improvement that addresses the increasing demands for wider facilities, only one other cremator exists within the 5 other sites noted above. A family room would also be provided where people can make decisions or receive remains in a quiet environment.

Research shows that the Planning Inspectorate has been putting significant weight on the needs of the bereaved in terms of not only travel time but the provision of appropriate timescales for funerals to take place and the experience on site.

Overall the application demonstrates that there is an acceptable qualitative and quantitative need for a crematorium in this locality which would promote the rural economy and be of benefit to the local community in accordance with employment policy 4 and 8 of the Local plan and chapter 3 of the NPPF.

#### Development within the Green Belt

Local Plan Policy G6 along with Paragraph 89 of the NPPF specifies the provision of appropriate facilities for cemeteries as an exception to the general classification of new buildings in the Green Belt as inappropriate, as long as the openness of the Green Belt is preserved and there is no conflict with the purposes of including land within it. However, this is not the case for a crematorium as it does not fall within the definition of a cemetery; therefore the proposed development would represent inappropriate development, which by definition is harmful to the openness of the Green Belt, unless very special circumstances can be demonstrated. Substantial weight should be given to any harm to the Green Belt. Very special circumstances would not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.

Openness is one of the essential characteristics of the Green Belt. It is the absence of buildings or development. Hence openness is epitomised by the lack of buildings rather than those that are unobtrusive or screened in some way. As such, there is a clear distinction between openness and visual impact as judged when assessing the impact upon character and appearance.

There are many factors that contribute to Green Belt openness and these include not only the height, scale and massing of any built development, but also the landscape and visual quality and character of the Green Belt. The essential character and quality of this part of the Green Belt is provided by the fields, tree belts and woodland in the local landscape and these are key components of Green Belt openness. There are a number of built developments in the local landscape that result in variation in level of openness in the local Green Belt.

The proposed building of 500 square metres, walling and hard surfacing would all reduce openness in that structures or development would exist where there are currently none. Parked cars would not be permanent but would have a similar effect. As a result the overall impact on openness would be a negative one.

However, as demonstrated by the sequential test, there are no other alternative or available non green belt sites and the applicants have demonstrated a qualitative and quantitative need for a new crematorium in this area which carries significant weight. The proposal also carries further benefit in achieving sustainable development that is of a high quality design, all of these coupled with the long term landscape enhancement are considered to represent special circumstances that outweigh the harm caused by inappropriate development within the Green Belt which complies with policy G1 and G6 of the Local Plan and the objectives outlined in chapter 9 of the NPPF.

### Character and Appearance

The surroundings have a rural character with largely flat, open fields. The wider landscape is not devoid of buildings but these are scattered as might be expected in a countryside setting

The proposed development would be well integrated into the character of existing views by the sensitive design and location of the building and by the landscape proposals, which would provide the framework and setting for the building. The predominantly mellow, earthy colours of the proposed building materials would be visually recessive and would complement the local palette of materials. The proposed vegetation framework would be well integrated into the character of existing views and would relate well to its context in landscape character terms. The proposed single storey building has a strong horizontal emphasis and would be perceived as a low-lying structure that is well-grounded in the site landform. Views of the proposed 5m high building (with additional 2m height of flue) would be partially enclosed and filtered by the proposed structural native tree/shrub planting along the site periphery and site field. This proposed vegetation would include trees planted at 4m to 5.5m high. The proposed off-site native tree planting would, together with proposed on-site trees and existing trees along the field boundaries to the north, contribute to a subtle 'layered effect' of vegetation in the local landscape with resultant filtering of views towards the site.

The main building would have a compact layout in a crisp style commensurate with its function incorporating a flat pitched, sedum roof. Hard surfacing for the parking areas would be permeable rather than tarmac. In this way the proposal has been designed to minimise its impact and the NPPF confirms that the Government attaches great importance to the design of the built environment. The proposal would also comply with ID:26 of the NPPG which encourages innovative design and an improved relationship between buildings and their surroundings. Nevertheless, the proposal would introduce a new building, hard surfacing and a large car park which would bring about a change to the existing countryside character of the site.

In terms of appearance the site is well contained visually within the wider locality. However, the building would not be invisible and would be apparent from Derby Road and part of the A6 as it drops to the north. Nevertheless, this in itself is not necessarily objectionable. As previously described the surrounding area has sporadic buildings and the proposal would be compatible with that pattern. Moreover, because of its size and the amount of surrounding land that would remain free from buildings it would not have

a dominant or overbearing visual impact. In view of this and as the effect of the proposed development would be localised the overall implications for the appearance of the area would be minimal.

The analysis so far has not taken into account the proposed landscaping. Clearly this would take some time to come to maturity and to achieve the end result anticipated by the applicant; however it would be helped on its way by the planting of species at a height of approx. 4 metres as noted above. Furthermore, in general terms, it would be poor planning to rely solely on planting to hide a development. However, there are other considerations to take into account here. The applicant observes that the landscaping would be professionally managed. Whilst this and the exact nature of any planting can be covered by condition it is also likely that any operator would have a vested interest in creating an attractive, tranquil place befitting the solemnity of the occasion as this is a key objective of the proposal and the company. The trees shown on the landscape plan are therefore something more than annotations on a plan but an intrinsic part of the scheme. Furthermore, the landscape has been identified as one which is not of the highest quality and where enhancement could and should be sought.

Against this background the extensive planting proposed would assist by creating new pockets of woodland with stronger belts along the existing hedges and highways. These would be intrinsically beneficial by providing new landscape features strengthening and reinforcing the rural qualities of the area, where pocket woodlands are characteristic and link with the parkland setting surrounding Thulston and Elvaston to the North and North West. This would be entirely in line with the NPPF to enhance the natural environment and Policy EV1 of the Local Plan which seeks to safeguard the character of the countryside.

Furthermore, in the longer term the planting would soften and screen the proposed development including the memorial garden features and car park. Therefore in due course the effect on the character and appearance of the area would be a positive one to the rural character and bio-diversity of the site which promotes the natural environment in accordance with policy EV1 of the Local Plan and ID:8 of the NPPG.

### Loss of Agricultural Land

The site comprises grade 3a agricultural land. Grade 3a, together with grades 1 and 2, is the best and most versatile land, which the NPPF seeks to safeguard for agriculture. There is no saved Local Plan Policy for the protection of agricultural land, therefore significant weight is provided to the NPPF. There is no firm evidence that land of lower quality, brownfield land, or land which is within the built-up area is available as an alternative.

The NPPF sets out a less than prescriptive policy towards good quality agricultural land. Paragraph 112 requires that the benefits of the best and most versatile land should be taken into account, and that where significant development of agricultural land is necessary, areas of poorer quality land should be used in preference to that of a higher quality. The site classified as 3a would have an intrinsic value to the farmstead; however it is surrounded by land of an equal or higher value and it is acknowledged that not all of the parcel of land would be occupied by the site and the proposal would not result in significant development of agricultural land. In this situation the NPPF does not require that efforts should be made to use poorer quality land, nor does it require that an

overriding need should be demonstrated for development of the best and most versatile land.

### Pollution

An air quality dispersal model prepared on behalf of the applicant has demonstrated the presence of modelled concentration levels of air quality pollutants on ambient background levels not to be significant. As a consequence, the operation of a crematorium in the location proposed is not considered to have an adverse impact on local air quality.

Matters relating to emissions are governed by part B of the Environmental Protection Act 1990 and the Environmental Permitting (England and Wales) Regulations 2010 as a prescribed process and require authorisation in the form of an Environmental Permit, this must be renewed annually. This would be required prior to the crematorium's operation, and this would control emissions to comply with Emission Limit Values for pollutants. Any emissions would be closely monitored and any infringements would be governed by the Local Authority as the licensing authority, any breaches would result in the site being closed until works carried out to improve emissions. In consideration of this issue, paragraph 122 of the NPPF reminds us that *'...local planning authorities should focus on whether the development itself is an acceptable use of the land, and the impact of the use, rather than the control of processes or emissions themselves where these are subject to approval under pollution control regimes. Local planning authorities should assume that these regimes will operate effectively.'*

The site is within about 200m of the A6 and 300m of the A50 and so air quality may be affected by traffic pollutants from these busy highways. However, there is no indication that development would be in an area of poor air quality or clear evidence that the cumulative impact of emissions associated with the highway coupled with those from the crematorium would have an unacceptable adverse impact on air quality. The proposal accords with the requirements of ID:32 of the NPPG.

Some representations question the suitability of a crematorium in this location close to busy roads, where quiet contemplation is desirable. However, there is nothing to demonstrate that the experience for mourners would be made unpalatable by noise.

### Highway Safety/Access

There is no car parking standards for crematoria in the South Derbyshire Local Plan. A total of 95 car parking spaces are proposed, including 90 spaces for service attendees and five for staff. Five disabled spaces would be provided in the general car park with one space provided in the staff parking area. There would also be provision for cycle parking, with 7 Sheffield stands, providing 14 cycle parking spaces being provided next to the visitors car park;

The County Highway Authority is satisfied that adequate visibility splays can be provided and that the increased use of the site would not cause detriment to highway safety. The site would not be as intensively used as others identified above, this is due to the reduced hours of opening, reduced level of services and use of a single chapel.

It is predicted that the bulk of movements to the site would be from the north accessed direct from Derby or the A6, avoiding the need to travel through local villages.

## Other

The site is within Flood zone 1 and is therefore considered an appropriate site for development. However there is the potential for surface water flooding. The proposal states that Sustainable Urban Drainage (SUDs) would be utilised and a requirement for conditions has been requested by the Environment Agency to ensure green field rates are not exacerbated.

## Conclusion

The totality of the other considerations outlined, on balance, appears to outweigh the harm to the Green Belt by reason of inappropriate development and the harm to its openness and purposes. When looked at in the round, the need for a crematorium and the lack of reasonable alternatives coupled with the visual improvements that would eventually ensue mean that very special circumstances have been demonstrated to justify a recommendation to approve.

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. The PPG advises that where local planning authorities are minded to grant permission for 'inappropriate' development in the green belt which would have a significant impact on openness, the case must be referred to the Secretary Of State under the Town And Country Planning (Consultation) (England) Direction 2009. This gives the Secretary Of State the option to call-in the application for his own determination.

## **Recommendation**

**Advise the Secretary of State that the Council is minded to GRANT** permission subject to the following conditions:

1. The development permitted shall be begun before the expiration of three years from the date of this permission.  
Reason: To conform with Section 91(1) of the Town and Country Planning Act, 1990 (as amended by section 51 of the Planning and Compulsory Purchase Act 2004).
2. The development hereby permitted shall be carried out in accordance with plans/drawings reference 14.03.01-F, 14.03.02-F, 14.03.06, 14.03.07 and SK\_P032 received on 30th October 2014; unless as otherwise required by condition attached to this permission or allowed by way of an approval of a non-material minor amendment made on application under Section 96A of the Town and Country Planning Act 1990 (as amended).  
Reason: For the avoidance of doubt.
3. If during development any contamination or evidence of likely contamination is identified that has not previously been identified or considered, then the applicant shall submit a written scheme to identify and control that contamination. This shall include a phased risk assessment carried out in accordance with the procedural guidance of the Environmental Protection Act 1990 Part IIA, and appropriate remediation proposals, and shall be submitted to the LPA without



delay. The approved remediation scheme shall be implemented in accord with the approved methodology.

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

4. Prior to works or ground clearance taking place on site an archaeological field evaluation including geophysics and trial trenching of the site in addition to a Written Scheme of Investigation for archaeological work shall be submitted to and approved by the Local Planning Authority in writing and shall be carried out in accordance with the programme set out in the archaeological Written Scheme of Investigation.

Reason: To enable further archaeological investigation of the site and items of archaeological interest to be recorded/and or preserved where possible.

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

Reason: To safeguard the rural character of the Green Belt.

6. Prior to construction works taking place an amended landscape scheme shall be submitted to and approved in writing by the Local Planning Authority, which shall include indications of all existing trees and hedgerows on or adjacent to the site (including those which would have their root or canopy structure affected), 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, recognising that initial clearance and groundworks could compromise the long term health of the trees/hedgerows affected.

7. All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed with the Local Planning Authority.

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

8. No burials or cremations shall occur other than between 0900 and 1700 hours on weekdays and no more than one service shall take place between the hours of 10:00 and 13:00 on Saturdays, and at no time on Sundays or Bank/Public Holidays.

Reason: For the avoidance of doubt and to avoid use of the site at unsocial hours in safeguarding the character of the site and amenity of local residents.

9. The development hereby permitted shall not be commenced until a Construction Method Statement has been submitted to, and approved in writing by the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:

- I. The parking of vehicles of site operatives and visitors;
- II. Loading and unloading of plant and machinery

- III. Storage of plant and materials used in the construction of the development;
- IV. The erection and maintenance of security hoardings including decorative displays and facilities for public viewing where appropriate;
- V. Wheel cleaning facilities
- VI. Measures to control the emission of dust and dirt during construction;
- VII. A scheme for recycling/disposing of waste resulting from demolition and construction works;
- VIII. Measures to control noise during construction ;
- IX. A signage strategy for construction traffic.

Reason: To safeguard the amenity of residents within Aston on Trent and to ensure no conflicts occur that could affect highway safety.

10. Before any other operations are commenced, a new vehicular and pedestrian access junction shall be formed to Derby Road in accordance with the revised application drawing 001-P02, and provided with visibility sightlines extending from a point 2.4 metres from the carriageway edge, measured along the access, for a distance of 120 metres in each direction measured along the nearside carriageway edge. The land in advance of the visibility sightlines shall be retained throughout the life of the development free of any object greater than 1 metre in height (0.6m in the case of vegetation) (above ground level in case of junction) relative to the adjoining nearside carriageway channel level.

Reason: for the interest of highway safety

11. The proposed access shall be provided with 10 metre radii and will have a minimum width of 5.5 metres in accordance with the revised application drawing 001-P02.

Reason: In the interests of highway safety

12. The site shall not be brought into use until space has been provided within the application site in accordance with drawing no. 14.03.02-F for the parking, loading and unloading, picking up and setting down passengers and manoeuvring of visitors, staff, service and delivery vehicles, laid out and surfaced. Once provided, any such facility shall be maintained throughout the life of development free from any impediment to its designated use.

Reason: In the interests of highway safety.

13. The development permitted by this planning permission shall be carried out in accordance with the approved Flood Risk Assessment (FRA) AL/4915/140509/FRA and the following mitigation measures detailed within the FRA (Paragraph 6.5.10):

A SuDS scheme including the limitation of surface water run-off generated by the 1% Annual Exceedence Probability critical storm so that it will not exceed the run-off from the undeveloped site and not increase the risk of flooding off-site.

The mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the timing / phasing arrangements embodied within the scheme, or within any other period as may subsequently be agreed, in writing, by the local planning authority.

Reason: To prevent flooding by ensuring the satisfactory storage of/disposal of surface water from the site.

14. The development hereby permitted shall not be commenced until such time as a scheme to dispose of foul drainage has been submitted to, and approved in writing by, the local planning authority. The scheme shall be implemented as approved.

Reason: To ensure a satisfactory and legal means of foul sewage disposal and prevent pollution of the Aston Brook.

15. The development hereby permitted shall not be commenced until such time as a scheme to install oil and petrol separators has been submitted to, and approved in writing by, the local planning authority. The scheme shall be implemented as approved.

Reason: To protect the water environment

16. No removal of hedgerows, trees or shrubs, or any ground clearance work, shall take place between 1st March and 31st August inclusive, unless a competent ecologist has undertaken a careful, detailed check of vegetation and the arable field for active birds' nests immediately before the vegetation or the site is cleared and provided written confirmation that no birds will be harmed and/or that there are appropriate measures in place to protect nesting bird interest on site. Any such written confirmation should be submitted to the local planning authority

Reason: To protect the presence of breeding birds within the field boundaries.

17. No development shall commence on site until a detailed Landscape and Ecological Management Plan has been submitted to and approved in writing by the LPA. All such approved measures must be implemented in full and maintained thereafter

Reason: To protect and enhance the bio-diversity of the site and surrounding landscape

18. Before installation, a scheme must be submitted to, and approved in writing by, the Local Planning Authority detailing the proposals for external lighting. All works must be fully implemented in accordance with the approved scheme before the use commences. The lights must be positioned on site to minimise light trespass and glare, and maintained as such throughout the working life of the installation.

Reason: to protect the rural character and natural distinctiveness of the Green Belt

#### Informatives:

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

Pursuant to Sections 149 and 151 of the Highways Act 1980, the applicant must take all necessary steps to ensure that mud or other extraneous material is not carried out of

the site and deposited on the public highway. Should such deposits occur, it is the applicant's responsibility to ensure that all reasonable steps (eg; street sweeping) are taken to maintain the roads in the vicinity of the site to a satisfactory level of cleanliness. Where development is proposed, the developer is responsible for ensuring that development is safe and suitable for use for the purpose for which it is intended. The developer is thus responsible for determining whether land is suitable for a particular development or can be made so by remedial action. In particular, the developer should carry out an adequate investigation to inform a risk assessment to determine:

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

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

If you wish to discharge treated sewage effluent into a surface water or to ground you may require an Environmental Permit from us. In some cases you may be able to register an exemption. You should apply online at <http://www.environment-agency.gov.uk/business/topics/permitting> or contact us for an Environmental Permit application form and further details on 08708 506506.

The granting of planning permission does not guarantee the granting of a permit under the Environmental Permitting Regulations 2010. A permit will be granted where the risk to the environment is acceptable.

To qualify for a registered exemption the rate of sewage effluent discharge must be 2 cubic metres a day or less to ground or 5 cubic metres a day or less to watercourse. You must also be able to satisfy a number of specific criteria.

A Standard Rules Permit is available for discharges of secondary treated sewage (to surface water only) of between 5 cubic metres a day and 20 cubic metres a day. Discharges of treated sewage greater than 2 cubic metres a day to ground and greater than 20 cubic metres a day to surface water require a Bespoke Permit. The applicant is reminded of environmental permitting requirements in relation to Crematoria. The proposed installation is subject to Local Authority Pollution Prevention and Control (LAPPC) Part B permitting, imposed by The Environmental Permitting (EP)(England and Wales) Regulations 2010 (SI 2010/675) as amended. In accordance

with Schedule 5, paragraph 2 of the EP Regulations, operators must make an application on the form provided by the local authority and must include the relevant fee. This application must be successfully determined and granted by the Local Authority prior to operation. Part B permit application timescales can be up to four months, excluding time given with a request for information notice, time taken to determine a request for commercial confidentiality (under an appeal, information must remain withheld until determination of the appeal), or time taken to consult on offsite conditions. Full background information and guidance is provided in Defra's Environmental Permitting General Guidance Manual on Policy and Procedures for A2 and B Installations and Process Guidance Note 5/2 (12) Statutory Guidance for Crematoria. South Derbyshire District Council's Environmental Permitting Team can be contacted on 01283 595945 or by emailing [thomas.gunton@south-derbys.gov.uk](mailto:thomas.gunton@south-derbys.gov.uk).



**Item** 1.3

**Reg. No.** 9/2015/0561/OX

**Applicant:**  
**Mr & Mrs M Mudge**  
**c/o Agent**

**Agent:**  
**Mr Andrew Thomas**  
**Thomas Taylor Planning Ltd**  
**Castle House**  
**South Street**  
**Ashby de la Zouch**  
**LE65 1BQ**

**Proposal:** **OUTLINE APPLICATION (ALL MATTERS TO BE RESERVED) FOR THE RESIDENTIAL DEVELOPMENT OF UP TO 7 DWELLINGS TOGETHER WITH ASSOCIATED ACCESS AND PARKING ARRANGEMENTS AND ALTERATIONS TO 43 REPTON ROAD HARTSHORNE SWADLINCOTE**

**Ward:** **WOODVILLE**

**Valid Date:** **24/06/2015**

**Reason for committee determination**

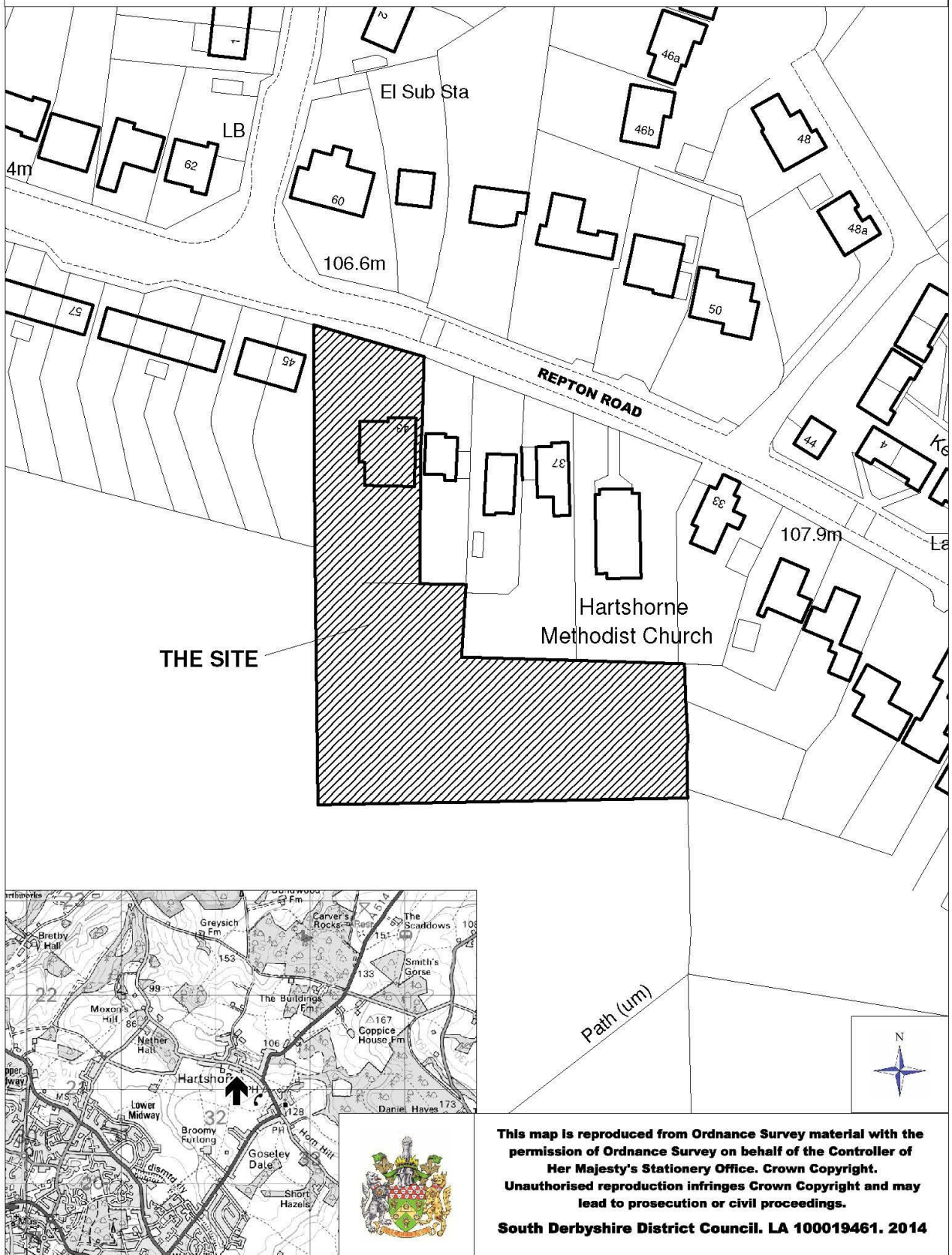
The item is presented to committee because this is a development not in accordance with the Development Plan, and at the request of Councillor Mrs Coe on the basis that local concern has been expressed about a particular issue, that the committee should debate the finely balanced issues in this case and consider unusual site circumstances.

**Site Description**

The site comprises the curtilage of 43 Repton Road which comprises a detached two-storey house set within an extensive domestic garden area to its rear, extending to approximately 0.38 hectares. The site is L-shaped extending around the rear of numbers 35 to 41 Repton Road, number 35 being the former Methodist Chapel now converted to a dwelling. To the west is the rear garden for number 45 and agricultural land beyond, the latter extending around the south of the site. A public footpath crosses that field beyond the southern boundary, leading towards the cricket ground to the east. Repton Road is subject to traffic-calming measures across the site frontage, and an existing vehicular access serves the property from a gravelled parking/turning area.

The site is level and enclosed by a mix of mature trees and hedges. A pergola and timber decking area with water feature is located in the rear garden together with a mix of lawn and shrubs. The site has a general appearance of a mature garden. There is a mix of house styles in the immediate area with the majority comprising detached or

9/2015/0561 - 43 Repton Road, Hartshorne, Swadlincote DE11 7AF



semi-detached houses although some bungalows and terraces of houses are also present.

## **Proposal**

The application is made in outline with all matters reserved and seeks to establish the principle of residential development of up to 7 new dwellings together with the formation of a revised access to Repton Road and associated alterations to 43 Repton Road (demolition of conservatory and provision of replacement screen walling).

Notwithstanding this an indicative layout typical streetscene elevation has been submitted to suggest principles for access, layout, scale, appearance and landscaping (the “reserved matters”). These suggest the development of one 3-bed bungalow; four 3-bed houses and two 4-bed houses

## **Applicant’s supporting information**

The Design and Access Statement sets out the design principles for the development. The principal objective being to ensure the development of the site in a way which is sympathetic to its surroundings. A variety of styles of building and materials are found throughout the village and nearby. Subsequent submission of design details would demonstrate a scheme which compliments its surroundings and reinforces local identity by reflecting local building characteristics.

6 two storey dwellings are indicated with ridge height of approximately 8.5m in a mix of semi-detached and detached houses. The illustrative proposals also show a single-storey property on the site where development would be closest to the rear of existing properties on Repton Road (although this could also have rooms in the roof-space subject to detailed design and providing controlled aspect where necessary). The proposed dwellings would be arranged as a small group, typical of development throughout Hartshorne.

The dwellings would likely be of brick construction with tiled roofs whilst landscaping would look to retain mature hedges and trees wherever possible. Vehicle parking and circulation areas within the site would mostly be hard surfaced and a new private drive access would be formed to serve the development and the existing house.

A Planning Statement outlines the principles of national and local policies, including sustainable development. It is advanced that the Council cannot identify sufficient land to satisfy its objectively assessed housing need in accordance with the requirements of the NPPF and little weight can be attached to the existing Local Plan policies.

Notwithstanding the policy approach, these proposals are considered to represent sustainable development in their own right and in a form which is in accordance with the policies of the emerging Plan. Furthermore there would be no adverse impacts that would significantly and demonstrably outweigh the benefits of the scheme when assessed against the policies in the NPPF taken as a whole. Whilst this is a relatively modest housing proposal it would provide 7 new dwellings that would make a contribution to the supply of housing in the rural area in a way that would be entirely in-balance and compatible with the pattern and scale of development in Hartshorne. The provision of new housing would contribute to the current housing shortfall and would support the vitality and viability of Hartshorne. Furthermore the proposals would not harm highway safety or have an unacceptable impact on trees or ecology. Any remaining issues can be resolved through the imposition of suitably worded conditions.

An Ecological Survey identifies a former, now dry, pond within the garden which, given records of Great Crested Newt within 230m of the site, requires precautionary mitigation to protect against the newts in terrestrial form. The survey also considered potential for bats within the part of the dwelling to be removed and within trees, but no roosts were identified although existing hedgerows and trees should be retained to facilitate foraging and commuting. There is potential for disturbance to nesting birds by removal of trees, but control can be exercised over this. No other protected species or designated sites would be affected by the development.

An Arboricultural Report and Method Statement identify the existing trees on and influenced by the proposed development, assessing their value and suitability for retention. Root Protection Area (RPA) of the trees surveyed are calculated and recorded, and it is at this distance/around this area that tree protective barriers should be erected around any trees to be retained. Where construction is proposed within these areas special techniques should be employed.

### **Planning History**

None relevant.

### **Responses to Consultations**

The County Highway Authority comments that Repton Road is subject to a 30mph speed limit and as such visibility splays measuring 2.4m x 43m are typically sought in both directions from any access. The submitted illustrative site plan shows splay lengths of only 33m. However Repton Road carries speed suppression features in the form of speed humps, reducing vehicle speeds adjacent to the site. This, coupled with guidance contained within Manual for Streets 2, leads to the conclusion that providing visibility is taken to the extremities of the site frontage in both directions; visibility is acceptable. Elsewhere, whilst recognising the application is outline with all matters reserved, the Highway Authority advises, based on the indicative layout, that 7 dwellings could be accommodated within the site and suitable access arrangements can be secured. They advise that the applicant would expected to provide swept path plans with any reserved matters application clearly demonstrating that refuse vehicles can manoeuvre within the site would be required and that they would unlikely to consider the eventual street for adoption. Accordingly, there are no highway objections subject to conditions being included.

The Pollution Control Officer recommends that conditions be attached to control dust emissions, noise and air quality on the site during the construction phase.

Severn Trent Water raises no objection but requests an informative be added.

### **Responses to Publicity**

Hartshorne Parish Council objects on the following grounds:

- i) the proposal falls outside the village envelope;
- ii) Hartshorne village is unsustainable with very limited transport links to the main towns in the area;
- iii) along other proposed development the existing school in Hartshorne would be unable to accommodate any additional students;



- iv) suitability of access onto Repton Road; and
- v) it being 'backland' development which affects the privacy and outlook of existing properties.

Hartshorne Village Residents Association (HVRA) urges rejection of the proposal for the following reasons:

- i) the site was once part of the arable field behind;
- ii) it is outside the village framework or envelope as defined;
- iii) a grant of permission would create a precedent which other developers would seek to exploit;
- iv) if granted it may prejudice or undermine any defence the Council may have in appeal on a current refusal in the village; and
- v) it would be an intrusion into the surrounding countryside.

3 objections have been received raising the following concerns:

- nn) it would be a massive overdevelopment of an existing garden; concerns over the retention and future maintenance of existing and proposed trees adjacent to their property, and would prefer a brick wall to be erected instead;
- oo) the proposed road is too narrow and would not provide suitable turning space for refuse and emergency vehicles;
- pp) it would erode one of the old village streets with an 'out-of-character' access;
- qq) the access would cause noise and disruption to homes; and
- rr) the plans do not reflect that the "proposed garage" at the rear of the old Methodist Chapel is well under construction.

## **Development Plan Policies**

The relevant policies are:

- Saved Local Plan 1998: Housing Policies 5, 8 and 11 (H5, H8 and H11); Transport Policy 6 (T6), Environment Policies 1, 9 and 11 (EV1, EV9 and EV11), Recreation & Tourism Policy 4 (RT4) and Community Facilities Policy 1 (C1).

## **Emerging Development Plan Policies**

The relevant policies are:

- Submission Local Plan Part 1: S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), S4 (Housing Need), S6 (Sustainable Access), H1 (Settlement Hierarchy), H19 (Housing Balance), SD2 (Flood Risk), SD3 (Delivering Sustainable Water Supply, Drainage and Sewerage), BNE3 (Biodiversity), BNE4 (Landscape Character and Local Distinctiveness), INF1 (Infrastructure and Developer Contributions), INF2 (Sustainable Transport) and INF9 (Open Space, Sport and Recreation).

## **National Guidance**

- National Planning Policy Framework (NPPF) including (but not exclusively) paragraphs 6-8, 11-12, 14, 17, 32, 47, 49, 53, 73, 103, 109, 118, 120, 123, 203, 204, 206, 215 and 216.



- National Planning Policy Guidance (NPPG)

## **Local Guidance and Evidence**

- Housing Design and Layout SPG.
- Section 106 Agreements – Guidance for Developers.
- The Strategic Housing Market Assessment 2013 (SHMA).
- Core Strategy Topic Paper – Settlement Hierarchy (July 2014).

## **Planning Considerations**

As discussed above the application is made in outline with all matters of detail reserved. The main issues central to the determination of this application are:

- Principle of development and weight afforded to policy;
- Highway safety;
- Hedgerow, trees and ecology;
- Landscape and visual impacts;
- Drainage and flood risk; and
- Design and layout principles.

## **Planning Assessment**

### Principle of development and weight afforded to policy

The site lies outside the settlement confines for Hartshorne, not catered for by way of saved policy H5 and beyond the scope and intentions of saved policy H8. It therefore conflicts with H8 as well as saved policy EV1. Beginning with H5, it is the view that this policy can be afforded little weight as it is no longer playing a part in significantly boosting the supply of housing. The purpose of H8 does not align with a proposal of this nature and thus the policy is not considered applicable. EV1 however is not a housing policy – it instead has an indirect effect of restraining delivery. Notwithstanding this, the policy accepts that some development in the countryside is unavoidable and indeed it could be argued that this proposal could fall as ‘unavoidable’ given the current shortage in the supply of housing. Nevertheless the policy goes on to consider safeguarding character and landscape quality, as well as ensuring all development in the countryside is designed so as to limit its impact on the countryside, and these secondary parts of the policy provide a considerable degree of consistency with section 11 of the NPPF.

With this in mind, the decision rests on the sustainability balance when considering the above policies and the merits of the proposal. The desire to significantly boost the supply of housing must be given significant weight, particularly in light of shortfall of the 5-year housing supply. The emerging Local Plan recognises this and seeks to provide this significant boost in a planned manner. The NPPF allows flexibility in utilising existing residential gardens to provide for housing needs. The emerging Hierarchy envisages this quantum of development for Local Service Villages such as Hartshorne so there is some affinity with the emerging Plan. In this sense the principle of the existing services and infrastructure to support this scale of development has already been established at a strategic level, although detailed consideration of this remains necessary. There are also economic benefits arising from the whole proposal – both

short and long term, with construction phase employment and subsequent occupation leading to increased revenue to local businesses and services.

Setting the above matter aside, the sustainability of the development is paramount with it important to strike the right balance between housing delivery and ensuring the environmental, social and economic needs of occupants and the existing community can be readily met. Whilst a lack of a 5-year supply might engage paragraph 49 of the NPPF, it does not automatically “stand down” local plan policies – merely challenges the weight which may be afforded to them; and an unsustainable development means the presumption in favour set out under paragraph 14 does not apply. With this point in mind, attention is given to the impacts of the development and conflict with planning policy. For the presumption in favour of development to apply, sustainability must be viewed in the round whilst remembering that sustainable development is subjective – there is no minimum or consistent level beyond which a particular development can be said to be sustainable. It is a concept, and one that is determined differently from one site to another. The remaining parts of the report therefore give consideration to whether any other adverse impacts of granting permission would significantly and demonstrably outweigh the benefits of the proposals, after reaching a balance between the benefits and adverse impacts all the time noting that conditions or obligations may be used to mitigate or address an otherwise unsustainable impact.

### Section 106 obligations

The site is of a scale which triggers consideration whether contributions towards education and healthcare would be required. Members will be aware that the NPPG was amended a while ago to preclude Councils from seeking contributions on developments of 10 or less. The guidance was very recently quashed in the High Court such that it appears that the Council’s former threshold of 5 dwellings or more can be relied upon again. Unfortunately, due to the proximity of the ruling and the time of writing this report, it has not been possible to obtain comments from the County and the NHS. Any requests will therefore be reported to the Committee at the meeting.

The likely number of dwellings does also trigger consideration of impacts on play and open space, built and sports facilities. With no provision on site and with existing deficiencies identified in the local area which would be further compounded by this development, the seeking of financial contributions towards these items is warranted and CIL compliant.

### Highway Safety

With the application in outline and no concern raised in respect of capacity of surrounding routes, the County Highway Authority has simply considered the ability to serve the development with safe and suitable access. Whilst visibility might fall below standard in terms of local guidance, recent national guidance allows for a greater degree of flexibility so that actual road speeds, as opposed to the posted limit, are considered in establishing visibility requirements. In this context it is considered that a safe access can be provided in line with saved policy T6 and paragraph 32 of the NPPF. Considering this further there is also a footway to the southern side of Repton Road allowing suitable access for a range of modes of transport.

The Highway Authority also consider there is sufficient room within the site to accommodate the dwellings proposed whilst simultaneously catering for adequate

access dimensions, and turning and parking space. Accordingly conditions are recommended.

### Hedgerows, trees and ecology

There are a number of semi-mature and mature trees on or immediately adjacent to the site which might be under threat from any development of the site. These trees provide an important screening of the existing built form of Repton Road when viewed from the public footpath to the south, and would assist in softening and screening the proposed dwellings from this aspect. In response a Tree Preservation Order has been placed on selected individuals and groups, selectively protecting species and specimens worthy of merit and which would be appropriate in the context of new residential development. The Tree Officer supports this approach, making particular note of a group of young Oaks to the south-west corner which, when mature and subject to appropriate management, will provide a focus on the site. A tree protection condition is warranted in light of the status of the trees and importance of existing hedgerows in supplementing the biodiversity value of the site.

Whilst at the time of writing a response has not been received from the Wildlife Trust, the survey appears to have been carried in accordance with recommended standards. The recommendations, as outlined above, are supported and it is considered the development is not constrained by significant protected species matters which could not be addressed by way of condition.

### Landscape and visual impacts

The site carries no statutory or local landscape designations. Nevertheless the absence of a designation does not translate to a landscape which is not valued, and in turn one which the NPPF does not seek to protect. The correct approach, when reading section 11 of the NPPF as a whole and supported by an increasing number of appeal decisions, is to first determine what value the landscape has (if any) before determining the correct response to planning proposals.

This site lies within the Coalfield Village Farmlands Landscape Character Area and within the National Forest. The scale of the development and intrusion out from the existing urban form is not considered to be significant on a landscape basis, with the incursion seen within the character of the village. The character in this part of the village (known as Lower Hartshorne) is largely linear fashion. However the village is also characterised a handful of limited incursions away from the primary roads through the settlement, such as the former Chesterfield Arms (Adams Close) to the west, the rear of the bakery to the east, Millpool Crescent off Ticknall Road and (to a larger degree) Pear Tree Close opposite the site to the north of Repton Road. The key point to note however is the limited extent of the 'depth' of these developments away from the primary route, which maintains the predominantly linear character of this part of the wider settlement.

As to visual impacts existing residents would suffer a loss in aspect but as Members will be aware, loss of a private view is not a material planning consideration. The visual impacts are therefore confined to public vistas, in this case being from the road and the public footpath. From the road the development will be largely hidden from view with an access road providing the only suggestion of development. This access in itself would not sit out of kilter with existing minor roads and shared driveways in the vicinity. From

the rear of the site, views of the development will be seen against the backdrop of existing built form and beyond the now protected tree line and existing and/or enhanced hedgerow. It would broadly reflect the 'tandem' arrangement of development to the rear of the bakery and adjoin existing residential gardens to the east. The visual impacts are therefore modest. Overall the proposal is considered to maintain the intrinsic qualities of the surrounding landscape and townscape whilst not adversely affecting public aspects of the site.

### Drainage and flood risk

Recent evidence from nearby sites suggests that the site can be suitably drained in terms of foul flows with capacity to receive flows at treatment works. In terms of flood risk the site lies within Flood Zone 1 pushing the focus towards ensuring suitable surface water drainage and/or attenuation on site to ensure flows leaving the site align with existing greenfield rates. A condition is appropriate to address these matters.

### Design and amenity

Detail design matters would be reserved for consideration under a later application. Nevertheless the indicative masterplan achieves a broadly acceptable layout with separation which would likely accord with minimum standards set out in the SPG. The scale and design indicated also accords with local character and vernacular. Trees and shading would be an important consideration in the detailed design of the site but there is no reason to doubt that a suitable form of development could not be achieved.

### Summary

The assessment identifies that highway safety, infrastructure, ecological, landscape and visual, and drainage impacts would be acceptable, subject to conditions or obligations where necessary; and a suitable form of development could be secured at reserved matters stage. The provision of up to 7 dwellings towards housing needs does carry weight in the overall context of housing need across the Plan period, given recent steers by Inspectors on appeals elsewhere; and this weight must be significant weight given the current shortfall of a 5-year housing supply. The economic benefits are also considered to contribute to a degree. Hence when considering the three dimensions of sustainable development and whether there is a mutual balance reached under the proposals, it is considered that this development is sustainable and the harm arising is limited and thus fails to outweigh the benefits of the proposal.

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

### **Recommendation**

- A.** Grant delegated authority to the Planning Services Manager (subject to legal confirmation of the recent High Court ruling) to complete a Section 106 Agreement to secure financial contributions towards education and healthcare (subject to CIL compliant requests being received prior to the meeting), and open space, sports and built facilities; and
- B.** Subject to A, **GRANT** permission subject to the following conditions:

1. This permission is granted in outline under the provisions of Article 5(1) of the Town & Country Planning (Development Management Procedure) (England) Order 2015, and the further approval of the Local Planning Authority is required (before any development is commenced) with respect to the following reserved matters:
  - (a) access
  - (b) appearance;
  - (c) landscaping;
  - (d) layout; and
  - (e) scale.

Reason: To conform with Section 92(2) of the Town and Country Planning Act 1990 (as amended by section 51 of the Planning and Compulsory Purchase Act 2004).

2. (a) Application for approval of the reserved matters listed at condition 1 shall be made to the Local Planning Authority before the expiration of three years from the date of this permission; and  
(b) The development hereby permitted shall be begun before the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.

Reason: To conform with Section 92(2) of the Town and Country Planning Act 1990 (as amended by section 51 of the Planning and Compulsory Purchase Act 2004).

3. The reserved matters listed at condition 1 shall incorporate, in so far as relevant to that/those matter(s), the following specific detail:
  - (a) details of demolition/alteration necessary to number 43 Repton Road in order to facilitate access;
  - (b) details of proposed mitigation and biodiversity enhancement as outlined in section 6 of the Extended Phase 1 Survey by BJ Collins dated December 2014; and
  - (c) details of subterranean tree and hedgerow root protection/facilitation measures.

Reason: For the avoidance of doubt and in order to secure an appropriate detailed design which accords with best design principles under Building for Life criteria and Secured by Design, and in the interest of biodiversity conservation and enhancement.

4. No removal of buildings, hedgerows, shrubs or scrub shall take place between 1st March and 31st August inclusive, unless a recent survey has been undertaken by a competent ecologist to assess the nesting bird activity on site during this period; and details of measures to protect the nesting bird interest on the site have first been submitted to and approved in writing by the Local Planning Authority. The approved protection measures shall then be implemented as approved.

Reason: In the interests of safeguarding against harm to protected species.



5. No construction works shall take place on the site other than between 7:30am to 7:00pm Monday to Friday, and 7:30am to 1:30pm on Saturdays. There shall be no construction works (except for works to address an emergency) on Sundays or Public Holidays.

Reason: In order to protect the amenities of adjoining residential occupiers.

6. There shall be no burning of materials on site during the construction phase of the development. For the avoidance of doubt this includes any preliminary works to clear vegetation on site.

Reason: In order to protect the amenities of adjoining residential occupiers.

7. No generators shall be used on the site during the construction phase without details having first been submitted to and approved in writing by the Local Planning Authority.

Reason: In order to protect the amenities of adjoining residential occupiers.

8. No development or other operations on the site (including demolition, ground works and vegetation clearance) shall commence until a scheme which provides for the protection of all hedgerows and trees identified for retention growing on or adjacent to the site has been submitted to and approved in writing by the Local Planning Authority. The approved protection measures shall then be implemented prior to any development or operations commencing and thereafter retained until a time where vehicles or mechanical equipment cannot interfere with such hedgerow or trees, or completion of the development, whichever occurs first.

Reason: In the interests of maintaining existing habitat provision to the benefit of wildlife and visual amenity, recognising the potential for permanent and long term damage to such features could occur at the outset of any works on site.

9. Before any other operations are commenced, the existing access shall be modified to Repton Road and provided with visibility sightlines extending from a point 2.4m metres from the carriageway edge, measured along the centreline of the access, to the extremities of the site frontage abutting the highway in each direction in accordance with a scheme submitted to and approved in writing by the Local Planning Authority under any application relating to access as a reserved matter. The area in advance of the visibility sightlines shall be retained throughout the life of the development free of any object greater than 1m in height (0.6m in the case of vegetation) relative to adjoining nearside carriageway channel level.

Reason: In the interests of highway safety, recognising that construction works could cause unacceptable impacts.

10. No development shall commence until a dust mitigation strategy has been submitted to and approved in writing by the Local Planning Authority. The strategy shall take into account national practice guidance and highlight details of the likely resultant dust levels from activities during the construction phase at the

nearest residential premises as well as those dwellings which may be occupied as part of the development, and set out measures to reduce the impact of dust on those residential premises. The approved strategy shall then be implemented throughout the course of development.

Reason: To protect the amenities of occupiers of adjoining and proposed residential properties, noting that initial ground works could give rise to unacceptable impacts.

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

Reason: In the interests of highway safety.

12. No development involving the construction of a dwelling shall commence until a scheme of noise mitigation measures has been submitted to and approved in writing by the Local Planning Authority. The scheme should consider noise from the surrounding road network and any other local noise sources that are deemed significant to the site. The scheme shall then be implemented in accordance with the approved details.

Reason: To protect the amenities of occupiers of proposed residential properties.

13. The access, the subject of condition 9 above, shall not be taken into use until 2m x 2m x 45° pedestrian intervisibility splays have been provided on both sides of the access at the back of the footway, the splay area being maintained throughout the life of the development clear of any object greater than 0.6m in height relative to footway level.

Reason: In the interests of highway safety.

14. The new dwellings, the subject of the application, shall not be occupied until space has been provided within the site curtilage for the parking of residents' and visitors' vehicles, located, designed, laid out and constructed all as approved in writing by the Local Planning Authority under any application relating to access as a reserved matter, and thereafter maintained throughout the life of the development free from any impediment to its designated use.

Reason: To ensure adequate parking and turning space, in the interests of highway safety.

15. The access, the subject of condition 5 above, shall not be taken into use until 2m x 2m x 45° pedestrian intervisibility splays have been provided on both sides of the access at the back of the footway, the splay area being maintained throughout the life of the development clear of any object greater than 0.6m in height relative to footway level.

Reason: To ensure an appropriate level of parking provision is provided and thereafter maintained for the life of the development, in the interests of highway safety.

### Informatives

- a. In dealing with this application, the Local Planning Authority has worked with the applicant in a positive and proactive manner through promptly determining the application. As such it is considered that the Local Planning Authority has implemented the requirement set out in paragraphs 186 and 187 of the National Planning Policy Framework.
- b. This permission is the subject of a unilateral undertaking or agreement under Section 106 of the Town and Country Planning Act 1990.
- c. Pursuant to Section 184 of the Highways Act 1980 and Section 86(4) of the New Roads and Streetworks Act 1991 prior notification shall be given to the Department of Economy Transport & Environment at County Hall, Matlock regarding access works within the highway. Information, and relevant application forms, regarding the undertaking of access works within highway limits is available via the County Council's website:  
[www.derbyshire.gov.uk/transport\\_roads/roads\\_traffic/development\\_control/vehicular\\_access/default.asp](http://www.derbyshire.gov.uk/transport_roads/roads_traffic/development_control/vehicular_access/default.asp), email [ETENetmanadmin@derbyshire.gov.uk](mailto:ETENetmanadmin@derbyshire.gov.uk) or telephone Call Derbyshire on 01629 533190.
- d. The Highway Authority recommends that the first 5m of the proposed access driveway should not be surfaced with a loose material (i.e. unbound chippings or gravel etc). In the event that loose material is transferred to the highway and is regarded as a hazard or nuisance to highway users, the Authority reserves the right to take any necessary action against the householder.
- e. Pursuant to Sections 149 and 151 of the Highways Act 1980, steps shall be taken to ensure that mud or other extraneous material is not carried out of the site and deposited on the public highway. Should such deposits occur, it is the applicant's responsibility to ensure that all reasonable steps (e.g. street sweeping) are taken to maintain the roads in the vicinity of the site to a satisfactory level of cleanliness.
- f. Severn Trent Water advises that there is a public sewer located within the application site. Public sewers have statutory protection by virtue of the Water Industry Act 1991 as amended by the Water Act 2003 and you may not build close to, directly over or divert a public sewer without consent. You are advised to contact Severn Trent Water to discuss your proposals who will seek to assist you in obtaining a solution which protects both the public sewer and the proposed development.
- g. New housing should be designed to addresses safety and the needs of vulnerable people. Domestic sprinkler systems are exceptionally effective through their ability to control a fire and help prevent loss of life. As a minimum, new residential development should incorporate a 32mm mains water riser which

will enable the installation of domestic sprinkler systems, and ideally should incorporate the sprinkler systems themselves. The cost of installing a 32mm mains water riser is approximately £26 per dwelling and the cost of a domestic sprinkler system is approximately £1500. Derbyshire Fire and Rescue Service can advise further on such provisions.

**Item**            2.1

**Reg. No.**        9/2015/0215/OS

**Applicant:**  
**Ms Hannah Ellis**  
**The Estate Office**  
**Gainsborough Developments**  
**Egginton Hall**  
**Egginton**  
**Derby**  
**DE65 6HP**

**Agent:**  
**Ms Caroline Chave**  
**Chave Planning**  
**Enterprise Centre**  
**Bridge Street**  
**Derby**  
**DE1 3LD**

**Proposal:**        **OUTLINE APPLICATION WITH ALL MATTERS  
RESERVED FOR DEVELOPMENT CONSISTING OF 52  
DWELLINGS, A RESIDENTIAL CARE HOME,  
COMMUNITY HUB, AND FORMATION OF ACCESS  
ROAD, PROVISION OF OPEN SPACE AND  
ASSOCIATED WORKS ON LAND AT SK2732 1638 MAIN  
STREET ETWALL DERBY**

**Ward:**            **ETWALL**

**Valid Date:**     **19/03/2015**

#### **Reason for committee determination**

This major application is brought before the Committee as it is a major application which is a departure from the development plan where more than two objections have been received.

#### **Site Description**

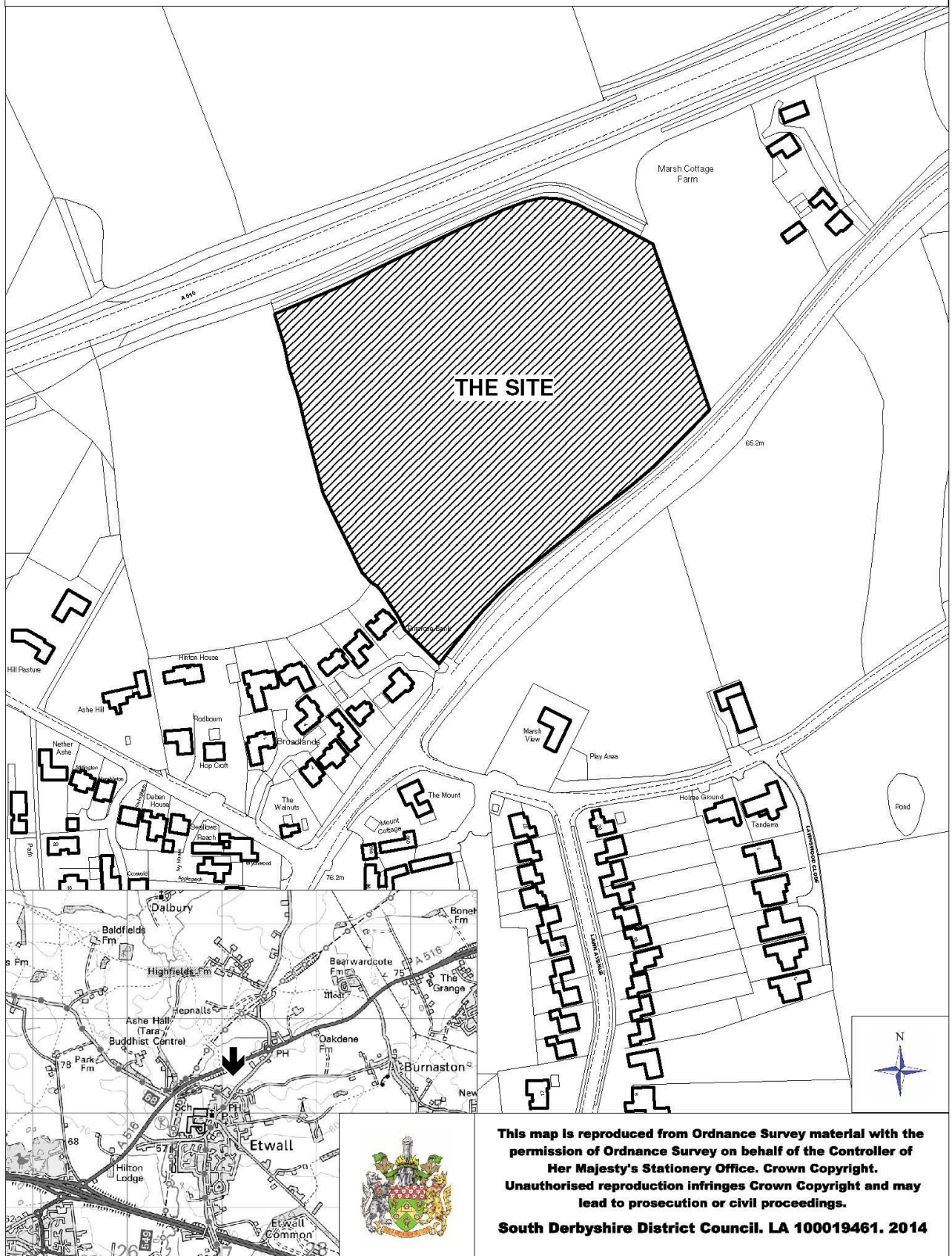
This 3.4 hectare site is located to the north of Etwall village and is bounded to the north by the A516, the main road linking the A50 at Hilton top the west with the A38 in Derby to the east. Main Street lies immediately to the south and farmland to the east and west. The site is grassland with hedges to the southern, eastern and western boundaries and a thick group of trees to the north between the site and the A516.

#### **Proposal**

The application is in outline only with all matters reserved for future approval therefore permission is sought for the principle of developing the site for residential purposes consisting of accommodation for people aged over 55 comprising of 13 bungalows and 12 apartments plus a further 27 self-build dwellings, a 60 bed residential care home for the elderly and a community hub. Whilst access is not for approval at this stage the indicative Masterplan shows a single point of access from Main Street with the



9/2015/0215 - Land at SK2732 1638, Main Street, Etwall, Derby (DE65 6NX)



This map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the Controller of Her Majesty's Stationery Office. Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings. South Derbyshire District Council. LA 100019461. 2014

community hub adjacent to the access; the care home in the north-western corner adjacent to the A516 and a SUDs feature in the north-eastern corner.

### **Applicants' supporting information**

Design and Access Statement outlines the location, access and facilities including an assessment of distance to services, bus and cycle routes. It includes a landscape and visual analysis with viewpoints identified. The surrounding context and character are described with photographs and the housing needs in the area are discussed. The relevant planning policy is outlined and supporting surveys are summarised. Details of pre-application discussions with the Council, consultees and medical practices are given together with a summary of the public consultation exercise undertaken. The evaluation section makes the case for the development and provides an assessment for Building for Life. Conclusions drawn are that the scheme would create a well-designed place to live with the benefit of provision of community facilities.

A supporting Planning Statement describes the site and its surroundings and states whilst there is no planning history on the site it has been highlighted as available for development in the Council's Strategic Housing Land Availability Assessment. A description of the illustrative proposal is provided and potential S106 contributions outlined. It identifies that public open space would be provided on site together with an off-site contribution based on the housing only. Due to the self-build nature of part of the development and other housing being leasehold an off-site financial contribution for affordable housing may be sought. Planning Policy is summarised and planning considerations such as economic, social, environmental, design and amenity, flood risk and highways issues are assessed. Conclusions drawn are that the positive impacts of social and economic benefits outweigh the negative aspects in term of landscape impacts and loss of countryside.

The applicant's agent has also written to clarify matters that have emerged during the consideration of the application and states the following:-

- The access roads within the development are to be adopted by the County Highways Authority – the Masterplan indicates a road designed to adoptable standards. The access is not to be gated. The mention of gates in public consultation has been misconstrued – a 'gateway' design feature in connection with the 'gatehouse' community hub might be incorporated and in keeping with the name of the development (Etwall Gate) but it is not to be 'gated' in the sense of preventing access.
- The Public Open Space is to be managed and maintained by a Private Management Company. This will be funded by a management charge upon all of the properties within the development (including a proportionate charge for the care home). It is common nowadays for a private management company to be used to maintain public open space rather than it being adopted by the local authority for a commuted sum. It is also common for such privately maintained areas to be available for public access in perpetuity and indeed this is the case for this development. Public access to the public open space can be written in to the s106 agreement and they are not concerned that this will result in additional pressure upon the maintenance regime or misuse of the space, since the site would benefit from on-site managers and the open spaces are well supervised.

- The Community Hub would be available to public access in the same manner as a community hall. The space could be hired for events and clubs etc. It is intended that this would be the base for a 'Live at Home' scheme, which is a scheme run locally by the Methodist Housing Association (MHA) providing social contact and support for older people who wish to continue living at home without becoming isolated. MHA operates over 70 Live at Home schemes throughout the country. The range of services varies at each scheme, as they respond to the needs of older people in each community, but can include: one to one befriending and support; information and signposting; lunch clubs; social activities; outings and holidays. The Community Hub building would also be the site administration office and would be retained and managed by Gainsborough Developments.
- The foul pumping station and foul sewers within the site are to be managed by Severn Trent Water. The compound has been located in accordance with their standards, with direct access from the adopted highway, and the rising main will also be located within the adopted highway.
- Although not a planning matter, they are aware that concerns have been raised within the community regarding the leasehold nature of the proposed over-55s housing provision. They would like to provide reassurance that there will be no obligatory 'sell-back' clause on the leasehold and the leasehold will be structured in a similar way to many sheltered schemes around the country where leaseholds can be bought and sold freely.

Noise Assessment includes calculations and tables based on surveys undertaken. It states that the ambient noise levels are predominantly determined by traffic noise. It concludes that sufficient mitigation measures would ensure noise levels within the development should fall within the relevant noise standards.

Extended Phase 1 Habitat Survey states that no protected species were found within the site and recommendations for the retention of hedgerows, provision of a wildflower meadow surrounding the balancing pond and roosting opportunities for bats are made.

Transport Statement considers the site to be accessible by a range of sustainable travel modes with good walking and cycling infrastructure. Main Street is a bus route with two regular services throughout the day and the bus stop is within the 400m recommended distance from the development. The development would create an additional two bus trips during an average peak hour and existing services could cater for this additional demand. The proposed development would generate up to 49 two-way vehicles in a peak hour and once these divide on Main Street the traffic increases are not considered material. The access has been designed to the relevant standards and visibility splays and would operate well within capacity. The report concludes that it has been demonstrated that the additional travel demand can be accommodated on the local transport infrastructure without any adverse impacts.

Phase 1 Site Appraisal states that as the site has been an agricultural field since 1881 the risk of contamination is low. The only identified potential sources of contamination are the made ground from the historic building on site and ground gas from the potentially backfilled ponds and nearby historic landfill. The recommendation is that a Phase II ground investigation is undertaken which is often a planning condition.

Flood Risk Assessment states the site is within Flood Zone 1. The closest local water course is Etwall Brook and this has a brook bed 7m lower than the lowest point on the site and thus is discounted from a source of flood risk. The EA flood mapping confirms that the site would not be at risk of flooding in a 0.1% (1:1000 year) probability flood event due to flooding from any local watercourses. The technical guidance to the NPPF states that developments of a more vulnerable category such as proposed residential use are appropriate within Flood Zone 1. Recommendations include:- floor levels set a minimum of 150mm above the surrounding external levels, an attenuation pond utilised for a site control SUDs feature together with a shallow graded swale, other SUDs features such as permeable paving incorporated into any scheme, surface water discharge limited to existing annual average surface water runoff rate via a culvert and foul water drained to an adopted foul pumping station.

## **Planning History**

None relevant.

## **Responses to Consultations**

The Highways Authority has no objection provided that the Main Street footway is widened to 2m extending round the radii of the junction. Conditions are recommended to secure this together with conditions in relation to the provision of a temporary access; submission of a construction management plan; mud prevention measures; junction visibility splays; surface water drainage works; reserve matters layout being in accordance with 'Manual for Streets'; access gradients; estate streets; parking; bin stores and swept path analysis.

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

The Environment Agency has no objection subject to conditions requiring a SUDS scheme and mains foul sewage infrastructure scheme to be submitted.

Derbyshire County Council's Flood Risk Team has no objections subject to conditions in respect of submission of a SUDS scheme and further details in relation to the discharge to the existing culvert.

The Council's Contaminated Land Officer recommends a phased contamination condition due to the site being within influencing distance of historical activity which could give rise to pollution.

NHS England advises that the Wellbrook Medical Centre does not have capacity to accommodate the additional patient demand and they wish to expand in order to meet those demands. As such a contribution of £19,780 is requested to be secured through a S106 Agreement.

Derbyshire Wildlife Trust has no objection and supports the retention of hedgerows proposed, creation of the balancing pond with wildflower meadow and provision of bat roost features. Conditions are recommended in respect of vegetation removal, submission of a Landscape and Ecology Creation and Management Plan (LEMP)

Natural England has no comments to make.



The Environmental Health Officer has no objections subject to a condition requiring all bedrooms in the care home that face the A516 to have acoustically treated mechanical ventilation.

The Police's Crime Prevention Design Advisor has no objections as the design principles proposed should meet the criteria for community safety and designing out crime.

Derbyshire County Council's Developer Contributions Officer states that the following contributions are required:-

£56,995 towards the provision of 5 primary places at Etwall Primary School.

£68,704.68 towards the provision of 4 secondary school places at John Port School.

£37,255.80 towards the provision of 2 post-16 places at John Port School.

Etwall Parish Council objects to the application due to insufficient detail in relation to how the priority allocation of Etwall's residents would occur, confirmation of whether a gated community is proposed, would the wider community have use of the open space and recreational facilities, waste bin provision, adoption of roads, period of construction and restrictions on the over 55's dwellings. Concerns are raised with regard to the insufficient parking provision, noise from the A516 being underestimated, surface water run-off, village facilities not being accessible by means other than the car which would increase congestion, lack of public transport links to Willington and risk from a gas main that runs through the site. The site is green field outside the village envelope and should be declined on those grounds. The proposal when combined with the 100 houses at Willington Road, Etwall and the intermodal park would prove too much for Etwall's resources and village services.

## **Responses to Publicity**

Fourteen letters of objection have been received and they are summarised as follows:-

- a) There is a lack of capacity at the primary and secondary schools
- b) There is no GP surgery in the village and Hilton surgery is oversubscribed.
- c) There is an existing problem with traffic in the village which would be exacerbated by this proposal.
- d) It would swallow up one of the green spaces that keep the village a village and not a suburb.
- e) The proposal is not in keeping with the village.
- f) The site lies outside the natural village boundary which is not identified for development in the Local Plan which may set a precedent for further building on land adjacent.
- g) The mixture of tenure of properties causes concern with regard future maintenance and the development timescale of the self-build sites would be difficult to control.
- h) The over 55s element would have an unsupportable effect on local GP services.
- i) The transport survey is flawed as the bus services are limited and two services only run in term time.
- j) If the internal roads are unadopted it would attract maintenance charges which would cause conflict with local residents using the community facilities.



- k) John Port school is at capacity and future pupil numbers should be considered in light of future developments at Willington Road, Etwall, Mickleover and Hilton which are all within the school's catchment area.
- l) If it is to be a gated community it would affect the community spirit.
- m) Bowling green facilities are not required as there is an existing facility that is underused.
- n) The care home residents adjacent to the A516 would have to keep the windows closed due to the noise which is not acceptable.
- o) Noise from the A50 has not been adequately considered.
- p) High management fees to future residents due to roads being unadopted would limit residents to only the wealthy.
- q) The owner of the adjacent site at Partap House has planning permission for a 60 bed care home and this application if approved would deter investors or developments.
- r) The Partap House site is brownfield and should be developed before greenfield and has better visibility, access and accessibility to services than the application site.
- s) The proposal would spoil the green approach to the village.
- t) Is a retirement complex actually needed in the village? The developers have not provided any evidence or consulted with DCC.
- u) Developers should not be allowed to profit from speculative proposals whilst the local plan is finalised and they should wait for consideration under stage 2 of the plan.
- v) There will be an increased risk of flooding along Etwall Brook.
- w) The fact the bungalows on site would be leasehold means that existing residents of Etwall would not move into the development.
- x) The ratio of retirement properties to self-build plots is variable and it could mean a small number of elderly residents living within a building site for a considerable time.
- y) The speed survey was taken between 09:05 and 10:10 which is after the peak morning rush and the traffic survey does not take account of other consented schemes.
- z) Planning permission was previously rejected for this parcel of land.
- aa) The site should be strategically evaluated with all other SHLAA sites within Part 2 of the plan.
- bb) The proposal is similar to the application 9/2014/0727 (Hill Pasture, Sutton Lane – Outline for 5 dwellings) as it would result in severe and harmful erosion of the rural landscape of the area in conflict with a core principle of the NPPF.
- cc) The proposal is contrary to saved Environment Policy 1 and Housing Policy 8 of the Local Plan which are consistent with paragraphs 14 and 55 of the NPPF.
- dd) The area is distinctly rural and open, forming an identifiable transition between Etwall and the wider countryside.
- ee) There are water pressure issues that exist in the village.

Three letters of support have been received which are summarised as follows:-

1. The opportunity for larger self-built plots in the village is welcomed.
2. The application would offer modern and suitable accommodation to many over 60s residents that currently occupy large houses within the village.
3. The proposal is well thought out with the use of green spaces, without any overcrowding.

4. If approved the speed restrictions should be reduced to 30mph on the adjacent road.
5. The site makes a limited contribution to the area's character.
6. It is important that the hedgerows are retained and the proposed development offers an attractive and safe environment.

## **Development Plan Policies**

The relevant policies are:

Local Plan: Housing Policies 8, 9 and 11, Environment Policy 1, Transport Policy 6, Recreation and Tourism Policy T4, Community Facilities Policy 1

Emerging Local Plan:

Policy S2: Presumption in Favour of Sustainable Development

Policy S4: Housing Need

Policy S6: Sustainable Access

Policy H1: Settlement Hierarchy

Policy SD1: Amenity and Environmental Quality

Policy SD2: Flood Risk

Policy SD3: Delivering Sustainable Water Supply, Drainage and Sewerage

Policy SD4: Contaminated Land and Mining Legacy issues

Policy BNE1: Design Excellence

Policy BNE3: Biodiversity

Policy BNE4: Landscape Character and Local Distinctiveness

Policy INF1: Infrastructure and Developer Contributions

Policy INF9: Open Space, Sport and Recreation

## **National Guidance**

National Planning Policy Framework (NPPF), in particular:

Paras 6-10 (Achieving sustainable development)

Paras 11-14 (The presumption in favour of sustainable development)

Para 17 (Core principles)

Chapter 4 (Promoting sustainable transport)

Chapter 6 (Housing)

Chapter 7 (Requiring good design)

Chapter 10 (Meeting the challenge of climate change, flooding etc.)

Chapter 11 (Conserving and enhancing the natural environment)

Paras 186 & 187 (Decision-taking)

Para 193 (Local planning authorities should only request supporting information that is relevant, necessary and material to the application in question.)

Para 196 & 197 (Determining applications)

Paras 203-206 (Planning conditions and obligations)

Annex 1 (Implementation)

National Planning Practice Guidance (NPPG)

2a - Housing and economic development needs assessments

3 - Housing and economic land availability assessment

8 - Natural Environment  
7 - Flood Risk and Coastal Change  
10 - Viability  
21b - Determining a planning application  
23b, Planning obligations  
26 - Design  
30 - Noise  
33 - Land affected by contamination  
37 - Open space, sports and recreation facilities, public rights of way and local green space  
42 - Travel plans, transport assessments and statements in decision-taking

## **Local Guidance**

SPGs - Housing Design and Layout, Developer Contributions, Better Design for South Derbyshire.

## **Planning Considerations**

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

- The principle of development
- The Council's five-year housing land supply and sustainability
- Traffic and transport
- Urban design
- Flood risk and drainage
- Ecology
- Residential amenity
- Affordable housing
- S106 contributions
- Overall conclusion

## **Planning Assessment**

### The principle of development

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires *that "if regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts, the determination must be made in accordance with the Plan unless material considerations indicate otherwise"*.

Paragraph 14 of the National Planning Policy Framework (NPPF) states *"at the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking"*. The NPPF makes it clear that for decision-taking this means approving development proposals that accord with the development plan without delay and where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:

- *“any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole; or*
- *Specific policies in the NPPF indicate development should be restricted”.*

Paragraph 215 states that due weight should be given to relevant policies in existing plans according to their degree of consistency with the framework.

The site lies within defined countryside, outside, although physically attached to, the village settlement boundary, with open countryside on the northern, eastern and most of the western boundaries. Insofar as the policies in the adopted Local Plan are concerned, the weight to be attached to those policies is dependent on their level of consistency with the NPPF (Paragraph 215). The adopted Local Plan contains numerous saved policies relating to new residential development and development within the countryside, some of which have been found to be consistent with the NPPF following various appeal decisions by the Planning Inspectorate.

The site is outside the confine boundary of Etwall, as shown in Inset 11 of the Proposals Map of the adopted Local Plan. When assessing the proposal against the housing policies in the adopted Local Plan it is clear that the development would be contrary to policies 5 and 8, being located outside the settlement boundary. Consequently Saved Housing Policy 5 (Village Development) cannot be met, as this requires new housing development to be restricted to that which can be accommodated within the village confines. Housing Policy 8 only supports new housing development in the countryside provided that it is necessary to serve a rural-based activity or that it is necessary to be in a countryside location. Again, this is not the case here. However, in general terms, Housing Policies 5 and 8 are not consistent with the NPPF as they are policies aimed at controlling the supply of housing and at present cannot be considered up-to-date as the Council is unable to demonstrate a five year housing supply, an overarching requirement for policies to be compliant with the NPPF.

Part A of Saved Environment Policy 1 is similar to Housing Policy 8 in that it requires new development to be either essential to a rural-based activity, or unavoidable in the countryside, and that the character of the countryside, the landscape quality, wildlife and historic features are safeguarded and protected. Part B of the policy 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”*. Whilst the application is in outline and therefore not sufficiently detailed to assess the finer impacts, nevertheless it is possible to assess the wider impacts and effects of the development and this is discussed in considerably more detail as part of the Landscape and Visual Impact section below. However, in general terms, Environment Policy 1 may be consistent with the NPPF as Paragraph 17 states that one of the core principles is to recognising the intrinsic character and beauty of the countryside and can be viewed as not being a policy to restrict housing, moreover to ensure the protection of the countryside.

The emerging Local Plan identifies Etwall as a Key Service Village under Policy H1, which allows for developments of a range of scales up to and including small strategic sites. However, the Plan carries only limited weight as it has not completed its Examination in Public and therefore has not been found to be ‘sound’. It would be unwise, therefore, to rely on this policy to either support or refuse the proposal.

Given that the proposal does not accord with Saved Housing Policies 5 and 8 of the adopted Local Plan, it is considered that the principle of proposed development has not been met. Notwithstanding this, the decision is not as evident or transparent as the above policy considerations appear to suggest. There are other important material considerations that are fundamental to the outcome of this application, one of which is the Council's five year housing land supply.

#### The Council's five-year housing land supply and sustainability

In terms of housing supply, paragraph 47 of the NPPF requires Local Planning Authorities to use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in the housing strategy over the plan period. In addition there is a burden on the local authority to identify and update annually a supply of specific deliverable sites sufficient to provide five years' worth of housing against their housing requirements with an additional buffer of at least 5% (moved forward from later in the plan period) to ensure choice and competition in the market for land. Paragraph 49 states that housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered to be up-to-date if the Local Planning Authority cannot demonstrate a five year supply of housing.

In terms of paragraph 14 of the NPPF the presumption in favour of sustainable development must apply unless there are adverse impacts that would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF as a whole. Notwithstanding some recent appeal decisions, it has been made clear through other appeal decisions made since the inception of the NPPF that any negative considerations would need to be substantial in order to justify refusal of an application that makes a meaningful contribution to strategic housing need. The mere presence of less than optimal planning circumstances for any given development is not likely to outweigh the presumption in favour.

The Council is currently unable to demonstrate that it has a five year housing land supply (the current figure is 4.48 years). Paragraph 49 of the NPPF is specific on this subject and it states: *"Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five year supply of deliverable sites"*. It follows, therefore, that as the Local Planning Authority is unable to demonstrate a five year housing supply, Members should be approving the current proposal, provided that they consider the site to be sustainable and that there would be no adverse impacts that would *significantly* and *demonstrably* outweigh the benefits the scheme would provide.

The issue of sustainability as set out in the NPPF is a key matter and the proposal must be assessed against the three dimensions of sustainability: economic, social and environmental. As such, Members should be approving the current proposal provided that there would be no other adverse impacts that would significantly and demonstrably outweigh the benefits.

The benefits of the development from an economic and social view include:-

- Direct and indirect employment opportunities;



- Economic output as a result of the employment opportunities;
- Value of the development to the construction industry;
- Expenditure from future occupiers;
- The provision of market and a contribution towards affordable homes;
- The provision of self-build opportunities;
- The provision of community facilities within the community hub;
- The provision of a care home;
- New Homes Bonus, and
- Council tax revenue.

In terms of policy the most relevant for landscape impact is Saved Environment Policy 1 of the adopted Local Plan (Development in the Countryside). This states that:

*“A. Outside settlements new development will not be permitted unless:*

- (i) It is essential to a rural based activity; or*
- (ii) Unavoidable in the countryside; and*
- (iii) The character of the countryside, the landscape quality, wildlife and historic features are safeguarded and protected.*

*B. 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”.*

This policy has been used as a reason for refusal in many instances and has been argued successfully at appeal, although it must be acknowledged that in the case of the Linton appeal the Inspector attached limited weight to the Council’s concerns, as he considered that site to be well contained and that the development would not breach natural landscape boundaries, such as broad tree belts, woodland and ridges. In regards to this current proposal, however, the application site is very prominent and would be visible from a distance in the wider landscape. The application site forms a pleasant, open field which is key to the rural character of the area and the setting of the village itself and characteristic of its landscape character type. The proposed development, even in summer when hedgerows and trees would be in full leaf, would be highly visible with no actual buffer zone between open countryside and the village settlement.

Paragraph 17 of the NPPF sets out the 12 core land-use planning principles that should be used to underpin both plan-making and decision-taking, one of which is that planning should:

*“...take account of the different roles and character of different areas, promoting the vitality of our main urban areas, protecting the Green Belts around them, recognising the intrinsic character and beauty of the countryside and supporting thriving communities within it”.*

Similarly, Chapter 11, paragraph 109, of the NPPF – *Conserving and enhancing the natural environment* – also emphasises the importance the planning system has on contributing towards and enhancing the natural and local environment by, amongst other things, protecting and enhancing valued landscapes, geological conservation interests and soils.

The application is supported by a Landscape and Visual Impact Assessment (LVIA), which has already been summarised elsewhere in this report. However, in order to fully assess the contents and conclusions of the LVIA, the Local Planning Authority has engaged the services of a Landscape, Architecture and Environmental Planning Consultant who has undertaken a review of the LVIA and has provided advice by way of a report setting out his findings. He starts by stating that the LVIA correctly identifies the “zone of influence” but states that it downplays the adverse impact of the extension of the settlement boundary into what is now open countryside e.g. views in the LVIA show the location of the site but not the height or massing of the Development and there are no ‘street level’ views provided from the Main Street or the Public Footpath to the west of the site. He states that whilst the LVIA provides the ‘visual views’ it fails to follow any clear methodology for the assessment of the impact of the new development on change in value of these views or change in landscape character, as would normally be expected in any LVIA following the national guidelines provided by Guidelines for Landscape and Visual Impact Assessment, 3<sup>rd</sup> Edition or similar professional guidance. This failure results in subjective conclusions with no real indication of how they have been arrived. He considers that both the submitted Design and Access Statement and the LVIA fail to adequately address the issue of adverse impact of the development upon the Etwell Conservation Area or address the heritage issues which are key components of the ‘value judgements’ related to landscape and visual assessment. Currently the conservation area benefits from the impression that you are leaving a distinct rural village character and heading straight into the open countryside which helps define the rural character of the village and the Conservation Area and the proposed urban streetscape and clear views into the development site would detract from the current impression of a rural village. He states that the current approach to the village outskirts from the north is very rural with the clear impression of open countryside giving way to a rural village ahead. The road has high hedges and almost ‘sunken roadway’ setting. A new development on the higher ground to the north of this road would be extremely dominant and adversely affect the rural character of this area.

He states that the development would clearly lead to the loss of ‘openness’ of the countryside in this particular location but acknowledges that the landscape character of the site and views into and out of the site are all common for this vicinity - it is not a degraded area of landscape – nor is it an area of ‘higher’ than normal landscape value for this area.

Examining the proposed Masterplan he states that the proposed site layout is simple and un-imaginative and whilst it is understood why the Public Open Space (SUDS balancing pool etc.) has been located in the north-east lower corner of the site, it is unfortunate that this lower area is not used for housing which would be shielded from view from most vantage points. He is of the opinion that it would be much better for the higher ground alongside the ‘Main Street’ to be used a POS as this would result in the stepping back of the new building development from this edge.

Consequently, and contrary to the findings within the applicant’s LVIA, he is of the opinion that the proposed development would have a significant visual impact and recommends that the development is refused based on the landscape issues related to the loss of open countryside and the moving of the village boundary out to a new line which will inevitably lead to pressure for additional development infill on this side of the village. He adds that notwithstanding these in principle objections, if the development was to be supported for other planning reasons, it is recommended that the impact needs to be reduced, e.g. by providing a clear 30m deep native woodland planting belt

alongside the 'Main Street' (rather than the proposed urban streetscape with a few trees) and reorientation of the road framework to minimise clear views into the site from the 'Main Street', as the proposed Masterplan layout exacerbates the impact.

Whilst it is acknowledged that the application site and surrounding countryside does not benefit from any statutory landscape designation, the review of the LVIA shows that many elements are highly subjective assessment statements and show poor judgement. It is considered that the proposal would, therefore, be in conflict with Saved Environment Policy 1 of the adopted Local Plan, one of the core principles of the NPPF as set out in paragraph 17, the advice in paragraph 109 of the NPPF relating to the protection and enhancement of valued landscapes and the advice in section ID 8-001-20140306 of the NPPG.

### Traffic and transport

The proposed means of access to the site, whilst indicative, would be via a new junction to Main Street along with the provision of an extension of the footway to allow access for pedestrians between the site and the village.

It is acknowledged that at certain times the local roads are busy however, there is no evidence to show that the proposed development would have any undue impact on the highway network and thus the potential to affect the wider transport infrastructure. The NPPF makes it clear in paragraph 32 that development should only be prevented or refused on transport grounds where the residual cumulative impacts of the development are severe.

Local Plan Transport Policy 6 states that planning permission will not be granted for development which interferes with the free and safe flow of traffic and that policy is relevant as it echoes the NPPF at paragraph 32. Having considered the advice of the County Highway Authority as well as the information accompanying the application it is considered that the proposal would not lead to such an adverse degradation of highway safety to be reasonably considered to be contrary to the advice contained on Local Transport Policy 6 as well as paragraph 32 of the NPPF. In this case there is no evidence that the cumulative impact would be severe and as such, notwithstanding the comments received, in highway safety terms the proposal is considered to be acceptable.

### Urban design

The application is in outline form only and all matters are reserved for future approval therefore it is not possible to carry out a full Building for Life assessment at this stage. Looking at the illustrative Masterplan in itself, and setting aside the in principle objection in terms of impact on the countryside, the proposal would otherwise present some key aspects that would form the basis of a reasonable scheme in urban design terms. It is reasonably well served by the public transport and within an acceptable distance of numerous facilities within the village, including educational, commercial and community facilities that help to make it a sustainable development. The illustrative Masterplan provides a reasonable basis on which the development can be planned and evolve from. Issues relating to design and layout of the houses, how they relate to spaces, crime reduction measures and the provision of parking would be addressed through reserved matters submissions, although the principle objectives for these can be secured by conditions at this stage. In view of the urban design and open space matters

considered above the proposal would accord with Chapter 8 of the NPPF and Saved Recreation and Tourism Policy 4 of the Local Plan.

### Flood risk and drainage

The site has a reasonable slope, with levels falling from Main Street towards the A516. It is unconstrained by flood risk mapping published by the Environment Agency. The main focus therefore lies on surface water drainage arising from the development and it is noted that there have been issues with regards to the flooding of properties in the village and therefore this issue is of particular importance. Sustainable Urban Drainage Scheme (SUDS) are to be incorporated within the scheme, as shown on the illustrative Masterplan in the form of a surface water attenuation pond in the north-east corner in the open space. The applicant is proposing to discharge from the pond to an existing watercourse adjacent to the attenuation pond. The Environment Agency as well as the County Flood Risk team have stated that they raise no objection to the proposal subject to conditions. Notwithstanding the comments submitted, in terms of flood risk the proposal is therefore considered to be acceptable.

As to foul water, despite concerns from neighbours, Severn Trent Water raises no objection subject to a condition. They do not raise concern either regarding capacity at the Etwall Sewage Treatment Works.

Notwithstanding the submitted comments, subject to the recommended conditions, the development would be in accord with Chapter 10 of the NPPF and the NPPG.

### Ecology

This ecological report submitted with the application was an extended Phase 1 Habitat Survey and no protected species were found within the site. The report recommended the retention of hedgerows, provision of a wildflower meadow surrounding the balancing pond and the provision of roosting opportunities for bats. The proposals will have no adverse impacts on any statutory or non-statutory designated sites and as such the proposal accords with national and local planning policy for ecology and nature conservation.

With regards to wildlife on site, surveys found no constraints in this respect and the submitted reports were assessed by Derbyshire Wildlife Trust who consider that the ecological works have been undertaken appropriately and their comments can be secured through the imposition of suitably worded conditions. Subject to the recommended conditions of Derbyshire Wildlife Trust biodiversity at the site would be enhanced.

### Residential amenity

The site is immediately adjacent to the established residential properties on Primrose Bank and the development of the site will clearly have a significant impact on the nearest of those properties. However, the property immediately adjacent does not have principal windows to main rooms on that side that would be unduly affected by the proposal although the interrelationship between the new homes and the existing ones will be properly assessed at reserved matters stage. A layout and design that accords with the Council's adopted residential space guidelines and the internal arrangements of individual dwellings would be assessed at reserved matters stage and the site therefore

provides ample scope for reasonable amenities in terms of light, air and privacy for both existing and new dwellings; safe, functional and convenient layouts; private amenity space, and space for landscaping in accordance with Local Plan Saved Housing Policy 11.

### Affordable housing

The Council's Housing Strategy Manager has advised that the development should normally provide 30% affordable housing on-site based on the number of dwellings proposed, i.e. 16 of the 52 dwellings proposed, excluding the care home, with a split of 75% (16 units) for rent and 25% (4 units) intermediate housing. As this is a somewhat unusual development, promoting a care home, self-build units and specialist accommodation for the over 55's the Council's Housing Strategy Manager has agreed that a commuted sum in lieu of on-site provision would be appropriate in this case, with the final amount calculated by the District Valuer based on these figures. The applicant has initially indicated that they would be agreeable to this approach in principle.

### S106 Contributions

The Council's Housing Strategy Manager advises that there is a need for affordable housing in Etwall but in this case requests the developer provide a financial contribution in lieu of on-site provision equivalent to 16 units, 12 for rent and 4 for intermediate housing with a mix and tenure split reflecting the SHMAA.

The Planning Policy Officer at the County Council has advised that whilst Etwall Primary School currently has 279 pupils on its roll, with a capacity of 280, the projection of pupil numbers takes it over capacity in the next five years and as such it has insufficient capacity to accommodate the pupils arising from the development.

They advise that John Port School currently has 1,957 pupils on its roll, with a capacity of 2,070, but the projection of pupil numbers alongside the additional growth in housing numbers planned will mean that it will have insufficient capacity to accommodate the pupils arising from the development.

In view of this they have also requested that the developer pay a financial contribution towards the following:-

£56,995 towards a project to secure the provision of 5 primary places at Etwall Primary School.

£68,704.68 towards a project to secure the provision of 4 secondary school places at John Port School.

£37,255.80 towards a project to secure the provision of 2 post-16 places at John Port School.

A S106 contribution for built and outdoor facilities is required towards specific projects in the village at either Frank Wickham Hall and/or Etwall Leisure Centre, in line with the Council's adopted standards which is formula based depending on the number of bedrooms. As this is unknown at this outline stage it would be reasonable to assume an average number of bedrooms of 2.5 per dwelling, thus equating to £15,860 for built facilities as well as £28,600 for outdoor facilities. However, as the application is in



outline the final layout and housing mix has yet to be confirmed. Consequently the Section106 agreement (S106) should be worded to reflect this scenario. The S106 should also secure the provision of a quantum of public open space on site in line with the provision shown on the illustrative Masterplan, suitably equipped and this would offset the need for the developer to pay a contribution for off-site open space.

NHS England requested a financial contribution of £19,780 towards healthcare provision at the Wellbrook Medical Centre in Hilton.

From a planning point of view legislation states that there are legal tests for when a S106 agreement can be utilised and these are set out in regulation 122 and 123 of the Community Infrastructure Levy (CIL) Regulations 2010 as amended (and as set out in para. 204 of the NPPF). S106 agreements, in terms of developer contributions, need to address the specific mitigation required by the new development. The tests are that they must be:

1. Necessary to make the development acceptable in planning terms
2. Directly related to the development; and
3. Fairly and reasonably related in scale and kind to the development.

In this case it is considered that the provision of the affordable housing, contributions towards education, healthcare, provision of on-site open space and equipment as well financial contributions for off-site built and outdoor facilities are compliant in principle (subject to pooling rules).

It should be noted that whilst the application is in outline form the applicant has indicated that the POS and SUDS would be not be adopted by the Council, instead managed by a Maintenance Management Company.

### Overall conclusions

The above assessment demonstrates that all the 'technical' issues associated with the proposed development would be acceptable, subject to conditions or obligations, where necessary. The provision of up to 52 dwellings towards the Council's housing needs must be afforded significant weight especially in light of the current shortfall in the five year housing supply. The provision of a financial contribution for off-site affordable housing equivalent to 30% would help meet affordable housing needs and also adds further weight in favour of the proposal. The provision of planting within the site in terms of biodiversity would also contribute in favour to a degree. From an economic and social view, the site would bring many benefits to the village, would provide self-build opportunities as well as bespoke accommodation for over 55s and would help support local services and there are, as stated above, many other benefits that would arise as a result of the development.

However, in environmental terms it is the landscape and visual impacts that cause the greatest concern. The very character of this site and environs draws its strength from the existing robust settlement boundary between rural and urban created by the existing properties on Primrose Bank and the village including conservation area beyond. The existing approach from the north and east would be severely undermined and the proposal would be extremely dominant and adversely affect the rural character of this area fundamentally from a wholly rural perception to one of urban character. The overall appreciation and resulting value of the site would be adversely impacted with the

strong affinity the site has with the rural area to the north and east. Whilst mitigation could go some way to alleviate the impact it is not considered sufficient to redress this loss of value. In addition, the very nature of the development as set out in the illustrative Masterplan would result in properties situated on an elevated part of the site relative to Main Street, highly visible on this main route into and out of the village and from the surrounding countryside to the north and east, eroding the pleasant, essentially rural approach to the village.

The Minister for State for Housing and Planning has recently written to the Planning Inspectorate stating that harm to landscape character is an important consideration and recently dismissed appeal cases serve as a reminder of one of the twelve core principles at paragraph 17 of the NPPF. It is noted that whilst statutorily designated landscapes quite rightly enjoy the highest degree of protection, outside of these designated areas the impact of development on the landscape can be an important material consideration. It is also noted that recent cases also reflect the wider emphasis within the NPPF on delivering sustainable outcomes, which means taking full account of the environmental as well as the economic and social dimensions of development proposals. Hence, irrespective of whether the development is unavoidable or not, the secondary 'test' under saved Environment Policy 1 is still of considerable relevance in this assessment whilst paragraph 109 of the NPPF also holds considerable weight.

The absence of a five year housing land supply does not mean an automatic approval must follow. It also does not mean that no regard should be had to the principle of protecting and enhancing valued landscapes. The absence of a five year supply merely affects the weight which may be afforded to the Development Plan, but the NPPF must still be considered in the round and in the eyes of sustainable development, as set out in paragraphs 6 to 8. Hence, when considering the three dimensions of sustainable development and whether there is a mutual balance reached under the proposals, it is considered the environmental dimension suffers a significant adverse impact. There is therefore reasonable doubt over the overall sustainability and in this light it is considered that the benefits of providing both market and affordable housing towards the five year supply, as well as the other identified economic and social gains, are clearly and demonstrably outweighed by the adverse impacts of the proposal on the visual landscape character.

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

## **Recommendation**

**REFUSE** permission for the following reason:

1. The character of this site is defined by its strong relationship to the rural area to the north and east and exhibits many of the typical and pleasing features of the local and national landscape character area descriptions, with hedgerows and trees and gently sloping landform from south to north, all providing a strongly appreciated value to those passing the site along public routes. In addition Main Street at this point holds a wholly rural character reflecting the above landscape characteristics with Main Street having high hedges and appearing as an almost 'sunken roadway' setting, limiting its current intrusion. Furthermore, the very character of this site and environs draws strength from the robust delineation

between rural and urban as the settlement is approached from the north and east. Additionally when leaving the village centre the impression is that you are leaving a distinct rural village character and heading straight into the open countryside which helps define the rural character of the village and the conservation area on what is the principal route into the heart of the historic centre of the village on what would have historically been the main road linking Derby and Stoke. The proposed urban streetscape and clear views into the development site would detract from the current impression of a rural village. When considering the three dimensions of sustainable development and the mutual balance required, it is considered the proposal is unbalanced by way of the environmental dimension suffering disproportionately against the economic and social gains identified. It is considered thus that the benefits arising from the development, including the provision of a care home, open market over 55's specialist accommodation and self-build opportunities, a community hub, as well as contributions to off-site affordable housing provision, a significant contribution towards the five year housing supply, as well as any ancillary gains, are clearly and demonstrably outweighed by the adverse impacts of the proposal. The proposal is therefore considered to be contrary to Saved Environment Policy 1 of the adopted Local Plan, and Policy BNE1 of the emerging Local Plan Part 1 and conflicts with paragraphs 6 to 8, 17 and 109 of the National Planning Policy Framework.

#### Informatives:

Notwithstanding this refusal, the Local Planning Authority has worked with the applicant in a positive and proactive manner through pre-application discussions, by seeking to resolve planning objections and issues, by agreeing to meetings and entering into negotiations. However despite such efforts, the planning objections and issues have not been able to be satisfactorily addressed. As such it is considered that the Local Planning Authority has implemented the requirements set out in paragraphs 186 and 187 of the National Planning Policy Framework.

**Item**            **2.2**

**Reg. No.**        **9/2015/0615/FM**

**Applicant:**  
**Mr A Hall**  
**Gravelly Bank Farm**  
**Rodsley Lane**  
**Yeaveley**  
**Derby**  
**DE6 2DT**

**Agent:**  
**Mr A Hall**  
**Gravelly Bank Farm**  
**Rodsley Lane**  
**Yeaveley**  
**Derby**  
**DE6 2DT**

**Proposal:**        **THE ERECTION OF A DETACHED DWELLING AT LAND  
TO THE REAR OF FIELDGATE HOUSE MARLPIT LANE  
SUTTON ON THE HILL DERBY**

**Ward:**            **HILTON**

**Valid Date:**      **06/07/2015**

**Reason for committee determination**

The application is brought to committee at the request of the Councillor Ford and Councillor Dunn as local concern has been expressed about a particular matter, unusual site circumstances should be considered and there are issues relating to housing policies that should be debated.

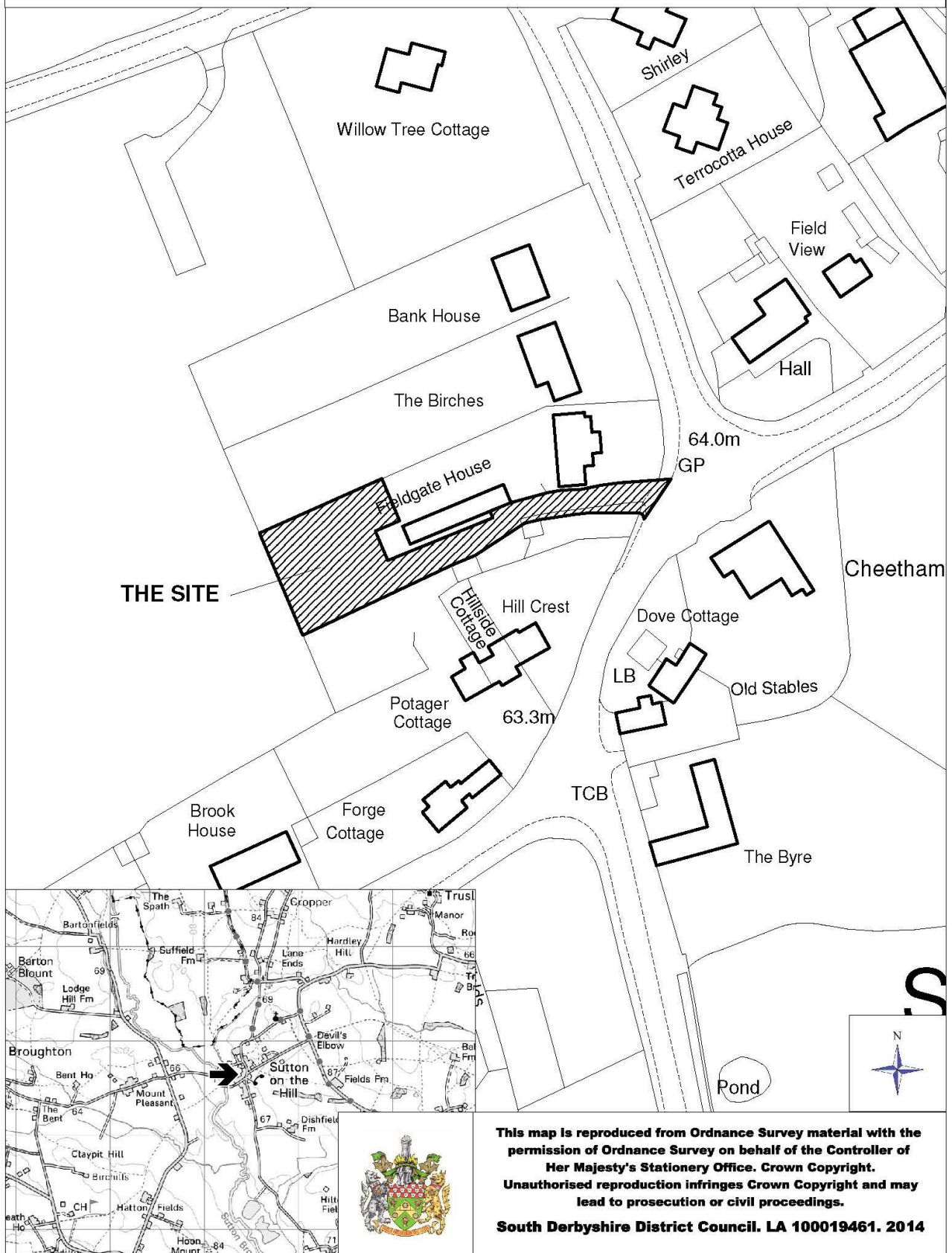
**Site Description**

The application site is located at the junction of Marlpit Lane and Dish Lane, to the rear of Fieldgate House, which is a detached, two-storey dwelling on the western side of the road. An existing vehicular access to the south of Fieldgate House extends into the site and currently serves three cottages to the south of the application site. An existing brick and tile barn that has recently been converted to residential use is also served by the existing access.

The site has an open aspect to the west over agricultural land and shares common boundaries with the rear gardens of The Birches to the north, Fieldgate House to the east and the curtilages of Potager Cottage, Hillside Cottage and Hill Crest to the south. The barn conversion is located to the east. The three cottages to the south of the site are of a more traditional style, albeit these have been enlarged at the rear by fairly recent, modern, single and two-storey extensions, which are evident from the application site.

Whilst the site is shown as being outside the confine boundary on the Proposals Map for the adopted Local Plan, the principle of some form of residential use has been

**9/2015/0615 - Land to the rear of Fieldgate House, Marlpit Lane, Sutton on the Hill, Derby DE6 5JB**





established by the granting of planning permission for the change of use from agricultural use to domestic use and the erection of a detached garage that was approved in October 2013.

## **Proposal**

This is a full application for the erection of a single dwelling on the site, which would incorporate the existing garage that is currently under construction and granted under 9/2013/0666. The original plans showed an L-shaped, part two-storey and part single storey dwelling of varying roof heights with full height glazing in the middle section of the dwelling. Following negotiations the application has been amended to show a T-shaped property on plan comprising 1 and 2½ storey elements, a design that seeks to address the character and style of the adjacent single storey barn conversion to the east. The height of the middle section of the dwelling, at two and a half storeys, reflects a concept of a traditional farmhouse with single storey 'converted barns' projecting from the main element.

The proposed dwelling would provide accommodation on 2½ levels, with living room, dining/kitchen, bedroom, study, w.c. and utility on the ground floor and four further bedrooms, two on the first floor and two within the roofspace. Each of these bedrooms would incorporate en-suite facilities.

## **Applicants' supporting information**

The applicant has submitted a Design and Access Statement to support the application. Briefly, this can be summarised as follows:

- The previously approved garage will be incorporated into the proposal;
- The design has been carefully thought out with no detrimental impact on the aesthetics of the barn through the use of materials and form;
- Materials will be used that complement those of the surrounding buildings;
- The design has incorporated some barn-like features such as large openings and simple forms;
- Access to the building will be ramped in accordance with Building Control Regulations;
- The dwelling has been designed to achieve the minimum distances;
- The position will exploit views to the south.
- A precedent has been set by the approval on appeal of two dwellings on land at Common Lane to the north of the application site;
- The application would be less visible than the appeal site, thereby having less impact on the built environment;
- The proposal is considered to be sustainable, as confirmed by the Inspector at the Common Lane appeal;
- There would be no impact on the natural or built environment as the site already has a residential use;
- The proposal will improve the housing stock.

## **Planning History**

9/2013/0323 – Conversion of barn to dwelling – approved 25/06/2013

## **Responses to Consultations**

The Environment Agency has no issues with the proposal.

The Environmental Protection Officer (contaminated land) has no comments to make.

Severn Trent Water has no comments on the proposal.

The County Highway Authority comments that the proposal is not considered ideal, owing to the limited visibility from the site access onto Marlpit Lane. However, considering the rural nature and the low vehicle flows on Marlpit Lane an objection to the creation of one additional dwelling would be difficult to sustain in this instance. On that basis, there are no objections subject to a condition being included on any consent relating to the provision of space within the application site for the parking and manoeuvring of residents' vehicles, prior to occupation.

Derbyshire County Council Flood Team recommends that surface water attenuation is provided by a Sustainable urban Drainage Scheme (SuDS) and reminds the LPA of its responsibility to ensure arrangements are in place for ongoing maintenance of drainage systems.

## **Responses to Publicity**

Three letters of objection have been received in response to the originally submitted plans, which make the following points:

- a. The proposal is not justified in terms of the planning permission for the detached garage;
- b. Contrary to the applicant's assertions the design of the proposed dwelling is a pastiche, being a complete mixture of styles, materials and roof heights;
- c. The two houses that were granted on appeal do not set a precedent as both houses have direct frontage to Common Lane and they are not second row development, as is proposed;
- d. Approval would set a precedent for owners of adjacent land to make similar applications, which would be detrimental to the character of the village;
- e. The application site is outside the village confine and constitutes undeveloped land, unlike the barn conversion which involved an existing building;
- f. The village has no services and no regular public transport and therefore the occupiers will be totally dependent on the private car;
- g. The proposed dwelling will not be affordable for local people;
- h. Whilst the existing access has been improved the access is still on a blind bend and much of the work required to improve the access under the previous permission for the barn conversion is yet to be carried out;
- i. There are no other houses in the village that have been built on back land;
- j. Contrary to Part 1 of the Local Plan as it is not infill development or a conversion of an existing building;
- k. The village is already growing through the conversion of existing buildings and new build development, plus a further application for a fish farm and dwelling at appeal;

- l. Overlooking of gardens of Fieldgate House and The Birches and is too large for the plot;
- m. Increased traffic close to village hall where playgroup sessions are held;
- n. Out of keeping with established pattern of development;
- o. Overbearing and inappropriate scale;
- p. Not all development should be approved because the Council does not have a five-year housing supply;
- q. No precedent for buildings in this location.

Further objections have been submitted in response to the amended plans which are summarised as follows:

- a. Insufficient time in which to consider the amendments – this should be extended to 21 days;
- b. Concerned that the proposed amendments were suggested by Council officers, particularly when concerns had been raised about overbearing and overlooking;
- c. No precedent for backland development of this scale or for dormer windows at third floor;
- d. Revised scheme does not address previous objections;
- e. Erosion of character of the village;
- f. The tight deadline for receipt of comments suggests that neighbouring residents' comments are not being taken into account;
- g. Assurances are required that the officer's recommendation will not be published until residents' comments have been fully considered;
- h. Factors such as the appeal decision and the previous permission should not carry weight;
- i. Scale and mass is incongruous and detracts from amenity;
- j. Would appear as a stand-alone building rather than as part of the village and would dominate the surrounding area;
- k. Modern appearance more appropriate to a suburban estate – contrary to the design principles of the NPPF;
- l. The dwelling would dominate the boundary with The Birches and create a sense of enclosure;
- m. Loss of sunlight and introduction of shadow to rear part of garden;
- n. Overlooking from windows in side and front elevations;
- o. Appeal decision does not set a precedent for backland development;
- p. No special circumstances to allow development
- q. Existing access has not been completed in line with condition on previous consents for the barn conversion and the garage and larger accommodation will increase number of vehicles using cul-de-sac;
- r. Previous approvals removed permitted development rights in order to safeguard the open nature of the surrounding countryside;
- s. All other houses in the village front the road;
- t. Size of house relative to the plot size is disproportionate;
- u. Precedent for other plot owners to make similar applications;
- v. Size of house could attract 3 – 4 cars using a below-standard access;
- w. No justification to create a replica farmhouse and barn conversion-type development;
- x. Heritage is about preserving existing buildings, not creating new buildings as replicas.
- y. Sutton on the Hill is not a sustainable village.

One further email has been received from a firm of planning consultants acting on behalf of residents who live in a property on Brook Lane, which is approximately 50m to the southwest of the application site. Briefly, the following points are made:

- a. The original and subsequently modified designs represent an inappropriate form of development for this part of the village;
- b. The village is typified by frontage development, located within substantial plots, with rear gardens forming part of the setting of the village;
- c. The proposal will detract from the character of the village as the highest elements of the dwelling would be located on an east-west axis closest to the rear boundary of the plot and will appear as an incongruous feature in its open surroundings;
- d. Massing would be out of keeping with neighbouring properties and traditional, long-established development;
- e. Adverse impact on established setting and amenity
- f. Uncharacteristic form of development in the village and therefore fails to comply with Section 7 of the NPPF and is contrary to paragraph 58 as it does not provide for a high quality and inclusive design or establish a strong sense of place.
- g. Does not respond to the local character and history and will not appear visually attractive by means of its overbearing impact arising from inappropriate massing;
- h. Severely limited visibility on exit which could impact on pedestrians at a point where children frequently pass.
- i. Any improvement on visibility would result in the loss of important hedgerow – a feature of the street scene;
- j. For all the above reasons the proposal is contrary to Saved Housing Policy 11 and Transport Policy 6 and the NPPF.

## **Development Plan Policies**

The relevant policies are:

**Local Plan:** Saved Housing Policies 5, 8, 11; Environment Policy 1; Saved Transport Policy 6

Housing Design and Layout Supplementary Planning Guidance (SPG)

**Emerging Local Plan:** S2, S6, H1, H19, SD1, BNE1, BNE4, INF1, INF2

## **National Guidance**

The National Planning Policy Framework (NPPF), paragraphs 7, 8, 9, 12, 14, 17, 29, 49, 53, 55, 56, 57, 64, 186, 187, 206

National Planning Practice Guidance (NPPG)

## **Planning Considerations**

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

- Principle of development

- Five-year housing land supply and sustainability, including recent appeal decision
- Design and character
- Residential amenity
- Highway matters

## Planning Assessment

### Principle of Development

Planning permission has previously been granted on the application site for the change of use from agricultural land to domestic use and the erection of a detached building for use as a garage with ancillary room above (9/2013/0666). The garage was intended, at that time, to serve the adjacent barn conversion. However, since then an appeal against the refusal of an application for the erection of two dwellings on a site fronting Common Lane and located some 40m northwest of the site has been allowed. A comparable appeal decision is a material consideration for the purposes of determining an application for similar development under similar circumstances and this is discussed in more detail in the paragraphs below.

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that “if regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts, the determination must be made in accordance with the Plan unless material considerations indicate otherwise”.

Paragraph 14 of the NPPF states: “*at the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking*”. The NPPF makes it clear that for decision-taking this means approving development proposals that accord with the development plan without delay and where the development plan is absent, silent or relevant policies are out-of-date, granting permission, unless:

- “*any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole; or*
- *Specific policies in the NPPF indicate development should be restricted*”.

Paragraph 215 states that due weight should be given to relevant policies in existing plans according to their degree of consistency with the framework.

Whilst the site technically lies outside the defined settlement boundary insofar as the adopted Local Plan is concerned, planning permission has previously been approved for its change of use from agricultural land to a domestic use. The rear gardens of The Birches and Bank House, two properties to the immediate north of the application site, have been extended into the countryside, following the grant of approval in 1994 (9/1994/0740). A condition of that consent restricts the erection of domestic buildings, gates, walls, fences and other means of enclosure, in the interests of protecting the open character and appearance of the area. The western boundary of the application site continues the extended boundaries of those two properties.

In determining the application in 2013 for the change of use from agricultural land to domestic use a view was taken that as the adjacent properties enjoy relatively long rear



gardens it would be somewhat anomalous for the boundary of the village to have an irregular shape. Notwithstanding the consideration in 1994 that the open character of the adjacent countryside should be maintained, the permission in 2013 also allowed for the construction of the garage building, which, in itself, restricts the open character to the rear of the application site to some degree. The garage subject of the 2013 permission is currently under construction, although the plans submitted in support of the current application show an amended garage design which deletes the first floor annexe/store, rear-facing dormer windows and the external flight of steps. Notwithstanding this, the scale and form of the previously-approved garage are in no way comparable to the proposed dwelling subject of this application.

A separate application (9/2015/0616) for the erection of a detached single garage to serve the barn conversion has already been granted planning permission under delegated powers as the proposal is not considered to be contrary to policy.

Given the above planning history of the application site and that of the neighbouring properties, it can be concluded that the principle of some kind of residential use of the site has been accepted, although conditions on both the 1994 and 2013 consents removed permitted development rights for incidental buildings, structures or enclosures without the prior grant of planning permission, as the Local Planning Authority needed to ensure the character of the settlement and the surrounding area was safeguarded and protected. It is considered, therefore, that whilst the principle of the change of use to a use associated with existing residential properties was, and is, acceptable, it doesn't necessarily follow that the principle of a stand-alone dwelling would be acceptable, particularly when considering the current form and character of the settlement. Therefore, the proposal is considered to be contrary to the development plan, in particular Saved Housing Policies 5 (B) and 11 and, therefore, the principle of the development is not accepted. Notwithstanding this, Members will need to be aware that various recent appeal decisions have concluded that certain housing and environment policies are considered to be out-dated and are given little weight; and that they should not be used as a reason for refusal if a housing proposal would contribute to the five-year housing land supply and is considered to be a sustainable form of development. Sustainability, particularly in relation to the current proposal, is discussed in the ensuing paragraphs.

#### Five-year housing land supply and sustainability, including recent appeal decision

In terms of housing supply, paragraph 47 of the NPPF requires local planning authorities to use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in the housing strategy over the plan period. In addition, there is a burden on the local authority to identify and update annually a supply of specific deliverable sites sufficient to provide five years' worth of housing against their housing requirements with an additional buffer of at least 5% (moved forward from later in the plan period) to ensure choice and competition in the market for land. Paragraph 49 states that housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered to be up-to-date if the local planning authority cannot demonstrate a five year supply of housing.

In terms of paragraph 14 of the NPPF the presumption in favour of sustainable development must apply unless there are adverse impacts that would significantly and

demonstrably outweigh the benefits, when assessed against the policies in the NPPF as a whole. It has been made clear since the inception of the NPPF that any negative considerations would need to be substantial in order to justify refusal of an application that makes a meaningful contribution to strategic housing need. The mere presence of less than optimal planning circumstances for any given development is not likely to outweigh the presumption. The Council is unable to demonstrate that it has a five year housing land supply and therefore it follows that Members should be approving the current proposal, provided that they consider the site to be sustainable and that there would be no adverse impacts that would *significantly* and *demonstrably* outweigh the benefits the proposal would provide.

The Inspector for the appeal for the two dwellings fronting Common Lane acknowledged in his decision letter that the future occupiers of the properties would need to travel to larger villages or towns for a full range of shops, services and employment opportunities. Given the rural nature of the site it is likely that the majority of those visits would be by car, as it is for existing residents of the village. The Government recognises, at paragraph 29 of the NPPF that opportunities for sustainable transport options will vary from urban to rural areas. In this context the proposal would result in a modest increase in car journeys but no evidence was presented at the appeal to suggest that this increase would be significantly detrimental in environmental terms.

The current application should be assessed in light of the above comments, which are relatively recent in planning terms (28<sup>th</sup> January 2015) in that the proposal is for a single dwelling which would result in a modest increase in car journeys and therefore would not impact significantly in environmental terms with regard to the increase in car journeys.

Paragraph 7 of the NPPF identifies a three-stranded definition of sustainable development based on economic, social and environmental factors. The proposal would have small economic and social benefits resulting from:

- Direct and indirect employment opportunities;
- Economic output as a result of the employment opportunities;
- Value of the development to the construction industry;
- Expenditure from future occupiers;
- New Homes Bonus; and
- Council Tax revenue.

In order to be truly sustainable, however, the proposal has to be fully acceptable in environmental terms, including its impact on the existing built form of the settlement and its scale and massing in relation to existing development. For the reasons explained in the following section it is considered that the proposal does not fully comply with the environmental role of sustainable development and, as the three roles are mutually dependent and the economic, social and environmental gains should be sought jointly and simultaneously (paragraph 8 NPPF), the proposal cannot be considered to be a truly sustainable form of development.

### Design and character

With regard to the overall character of the settlement, Sutton on the Hill comprises an eclectic mix of dwelling types, styles and ages, the majority of which are set within large

plots and arranged in a fairly loose form, but all having a direct relationship with the surrounding road network, such that the village has a predominantly linear form. The proposal, however, would be the exception, the site being located to the rear of existing housing, with no direct relationship with the highway network. It would also represent the only backland development within the settlement and result in a property with limited amenity space uncharacteristic with its immediate surroundings. It would therefore, have a detrimental impact on the existing open and green character and built form of the village and the surrounding area. This view is underpinned by the Planning Inspector for the Common Lane appeal, who opined that the “...*proposed density and layout* (of the appeal proposal) *would reflect the spacious and verdant character of the immediate area*”. It is considered, therefore, that the proposal would be contrary to Part B of Saved Housing Policy 5, which requires development to be in keeping with the scale and character of the settlement; and Part (i) of Saved Housing Policy 11, which requires new housing developments to provide a reasonable environment for the public at large.

The original design was considered to be rather contrived in favour of retaining the double garage as part of the scheme and incorporating roofs of various pitches and heights. However, it expressed no strong relationship to the existing adjacent barn conversion, which is a single storey building of simple design with well-proportioned openings set in reveal and low, corbelled eaves. In line with paragraph 187 of the NPPF negotiations have resulted in the submission of the revised scheme, the concept of which is based on a barn conversion-type development comprising two single storey elements (typical of traditional barns) and a higher 2½ storey section (typical of a traditional farmhouse) including two dormer windows. Traditional features, such as arched window and door heads and corbelled eaves have been included within the amended scheme.

The predominant design within the settlement is 2 storeys, although Fieldgate Farmhouse on Dish Lane is part 2½ storeys. However, this property is sufficiently distant from, and has no direct relationship with, the application site. When seen in its immediate context the dwelling would dominate and dwarf the terrace of cottages to the southeast, which are traditional brick and tile dwellings with low eaves. The proposed dwelling would also be prominent from wider views of the village from the northwest and southwest. It is considered that the proposed dwelling would be out of keeping with the traditional built form of this part of the village and therefore it would not comply with Saved Housing Policies 5 (B) and 11 of the adopted Local Plan and the design objectives of the NPPF.

In light of the above considerations, the revised design does not overcome the Local Planning Authority's original concerns with regard to the backland location of the proposal, including its impact and setting on the existing linear form of the settlement, and the adverse impact that would result from a dwelling that would dominate its immediate surroundings, the village as a whole and the wider environs.

#### Residential amenity

With regard to the prescribed minimum distances between new and existing dwellings, advice in the adopted SPG, Housing Design and Layout, states that:

*“In order to protect existing dwellings from overbearing and to protect outlook, the blank/non-habitable elevation of a proposed two-storey property should not breach the minimum distance within the sector of view of the relevant ground floor primary windows of the existing property”. ... “For dwellings of three or more storeys, greater distances of the order of 20% more will be required based on the particular merits of the proposal”.*

The closest residential property to the application site (at 5 metres) is the (currently vacant) converted barn which has a living room window facing the dwelling. However, the relationship between the living room window of the barn conversion and the ground floor bedroom window of the proposed dwelling is such that there is unlikely to be any privacy issues, owing to the living room window of the barn conversion being outside the sector of view. It is probable that the ground floor bedroom window of the proposed dwelling would impact on the closest side window/door in the northwest elevation of the barn conversion. However, this could be overcome by suitable boundary treatment. Furthermore, the barn conversion is in the ownership of the applicant and therefore any future occupier of that property would be aware of the current situation in this regard.

The new dwelling would be 20m distant from the rear boundary of Fieldgate House and 39m from the house itself. The two and a half storey element of the proposed dwelling would be some 46m – 50m distant from Fieldgate House and some 50m – 52m from The Birches. The highest minimum distance between habitable room windows prescribed in the SPG is 21m. Even allowing for an increase of 20% above those minimum distances for a development of more than 2 storeys in height, i.e. an additional 4.2m, the distances between the existing dwellings and the proposed dwelling would be well within the prescribed minimum distances.

The internal space has been designed so that no habitable room windows would overlook the rear gardens of the existing dwellings from the first and second floors, although, owing to the height of the proposed dwelling (9.6m) just 2 metres from the boundary, it would impact on the rear garden of The Birches and result in a sense of enclosure to that part of the rear garden area.

Ground floor windows facing The Birches, serving the kitchen and study, could be screened by boundary treatments, details of which would be required by condition. The first floor windows would serve en-suite rooms and a walk-in wardrobe, which are not habitable rooms as prescribed in the Housing Design and Layout SPG. It is usual for the windows of en-suite rooms to be obscure glazed, although this could be secured by condition. The second floor bedrooms would be served by rooflights on this elevation, from which there is unlikely to be any overlooking as they would be set 1.8m above eye level. The dormer windows within the roof on the southeast facing elevation would be at sufficient distance so as not to impact on other properties to the south. It is considered, therefore, that there would be no adverse impact on the amenities of neighbouring residents relating to overlooking and loss of privacy.

### Highway matters

The County Highway Authority has acknowledged that the existing situation with regard to visibility onto Marlpit Lane is not ideal. However, given that the proposal is for a single dwelling and that the increased use of the access is therefore likely to be modest, no objections have been made to the proposal on highway safety issues, subject to the parking and turning area being made available prior to occupation. It would be difficult, therefore, to sustain a reason for refusal based on highway safety grounds.

### Miscellaneous issues

- The fact that the proposal would constitute back land development is not, in itself, a reason to refuse the application, particularly as amenity issues have been addressed and many Planning Inspectors consider that such sites are classed as infill. However, it is important to stress that the village is not characterised by such development and in this instance, therefore, a case can be made to refuse the proposal on the basis that it would have an adverse impact on the character and setting of the village and the harm caused by permitting the proposal would *significantly* and *demonstrably* outweigh the benefits of the proposal.
- With regard to precedent, as each planning application proposal is assessed on its own merits there is no case to refuse the application on precedent.
- In terms of the policies in the Local Plan Part 1 these have not been found to be 'sound' as the Examination in Public has not been concluded and the Plan has not yet been adopted by the Council.
- The lack of a five-year housing land supply is an important material consideration and only those proposals that would *significantly* and *demonstrably* outweigh the benefits the proposal would provide should be refused.
- As already stated an appeal decision, where there are similarities to a planning proposal, is a material consideration that carries some weight in the determination of other applications;
- The consultation period for amended/revised plans is prescribed as 10 days as set out in the Council's published Statement of Community Involvement as approved by Full Council.

### Overall conclusions

As with many planning decisions, a balance needs to be achieved between the contribution that a proposal would make towards the Council's housing land supply and any harm that would ensue as a result of the development. The lack of a five-year housing land supply is a material consideration in favour of the proposal, bearing in mind the outcome of the previous appeal at Common Lane which considered that even a modest addition to the housing supply would be valuable. However, in this instance the harm that would be caused as a result of the development outweighs that consideration.

The principal of the proposed dwelling is not considered to be acceptable as it would likely have an adverse impact on the open character and appearance of the area. Furthermore, the proposal would not constitute a wholly sustainable form of development as the environmental strand of sustainability has not been met owing to the resultant uncharacteristic form of development in relation to the existing pattern of development. Additionally, owing to its scale and massing, neither the original scheme nor the amended design reflects the character and scale of existing development, both in its immediate setting or within the wider settlement. For these reasons Members are requested to refuse the application as per the recommendation.

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



## **Recommendation**

**REFUSE** permission for the following reasons:

1. The character and form of Sutton on the Hill is typified by frontage development set within substantial plots. The location of the proposed dwelling on a backland site would result in an uncharacteristic form and pattern of development which would detract from the historic setting and linear character of the village, contrary to Saved Housing Policies 5(B) and 11 of the adopted Local Plan and the objectives for achieving sustainable development, as specified in paragraphs 6 to 8, 14, 17 and 57 of the National Planning Policy Framework.
2. The scale and massing of the proposed dwelling would be unsympathetic to the long-established traditional form of existing development and would represent an incongruous feature within the adjacent open countryside, contrary to Saved Housing Policies 5(B) and 11 of the adopted Local Plan and paragraphs 6 to 8, 14, 17, 56 to 58 and 64 of the National Planning Policy Framework. The proposed development would therefore significantly and demonstrably outweigh any benefits of the proposal when assessed against the above policies in the National Planning Policy Framework.

Informatives:

Notwithstanding this refusal, the Local Planning Authority has worked with the applicant in a positive and proactive manner by seeking to resolve planning objections and issues and suggesting amendments to the proposal. However despite such efforts, the planning objections and issues have not been satisfactorily addressed. As such it is considered that the Local Planning Authority has implemented the requirement set out in paragraphs 186 and 187 of the National Planning Policy Framework.

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

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

<b>Reference</b>	<b>Place</b>	<b>Ward</b>	<b>Result</b>	<b>Cttee/Delegated</b>
9/2014/0385	Linton	Seales	Dismissed	Delegated
9/2014/0504	Stanton by Bridge	Melbourne	Dismissed	Delegated
9/2014/0566	Coton in the Elms	Seales	Dismissed	Delegated
9/2014/0792	Hilton	Hilton	Dismissed	Committee
9/2014/1049	Etwall	Etwall	Dismissed	Committee

---

## Appeal Decision

Site visit made on 4 February 2015

**by D J Barnes MBA BSc(Hons) DipTP MRTPI**

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

**Decision date: 26 February 2015**

---

**Appeal Ref: APP/F1040/A/14/2221821**

**Littleholm Kennels, Coton Park, Linton, Swadlincote DE12 6RG**

- 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 and Mrs D Snell against the decision of South Derbyshire District Council.
  - The application Ref 9/2014/0385, dated 12 April 2014, was refused by notice dated 27 June 2014.
  - The development proposed is the demolition of kennel facilities and erection of 4 new dwellings.
- 

### Decision

1. The appeal is dismissed.

### Main Issue

2. It is considered that the main issue is the effect of the proposed development on the character and appearance of the surrounding area.

### Reasons

3. The appeal site includes a range of single storey buildings which were previously used as kennels and are proposed to be demolished to be replaced by the erection of four 2-storey dwellings. The National Planning Policy Framework's (the Framework) definition of previously developed land excludes land that is or has been occupied by agriculture and forestry but there is no specific exclusion of buildings used as kennels. However, the Framework also notes that it should not be assumed that the whole curtilage of any previously developed land should be developed.
  4. By reason of its location outside the confines of a settlement defined by Housing Policy 5 of the South Derbyshire Local Plan (LP), the site is situated within the open countryside where LP Housing Policy H8 seeks to restrict the erection of dwellings except in certain specific circumstances. The proposed development does not accord with any of these circumstances.
  5. The Council acknowledges that it cannot demonstrate a 5-year supply of deliverable housing sites. The Framework is clear that where there is a shortfall the relevant Local Plan housing policies should not be considered to be
-

up-to-date and that due weight should be given to the relevant policies according to their degree of consistency with the Framework's policies.

6. Because of the date the Local Plan was adopted, LP Housing Policies H5 and H8 are not entirely consistent with the Framework's presumption in favour of sustainable development and I am mindful that paragraph 55 of the Framework refers to new isolated homes being avoided in the countryside unless there are special circumstances. In this case, by reason of the site's relationship to a group of residential and commercial buildings, I agree with the appellant's claims that the appeal scheme would not amount to isolated dwellings in the countryside and would, therefore, accord with the up-to-date policy of the Framework to which I give greater weight than LP Housing Policies H5 and H8 in the determination of this appeal.
7. This judgement reflects the approach adopted by my colleagues when determining the appeals at The Field and Hatton Lodge concerning whether, in principle, these proposals would amount to the erection of isolated dwellings elsewhere within South Derbyshire District (Refs APP/F1040/A/13/2202043 and APP/F1040/A/13/2202043). The other 2 cases referred to by the appellant concern schemes within other districts and, for this reason, little weight has been attached to them in the determination of this appeal (Refs APP/K2420/A/12/2168670 and APP/P3040/A/14/2211781).
8. Although they are in a poor condition, because of their height the existing kennels are not particularly prominent features within with open and verdant countryside which surrounds this group of commercial and residential buildings. This assessment also applies when the site is viewed from both the adjacent road and public footpath. However, the proposed 2-storey dwellings, detached garages and surfaced areas would increase the amount of built development across the site. The ridge heights of the proposed dwellings would be materially higher than the existing kennels. By reason of the intensification of the built development on the appeal site, the proposed development would substantially erode the existing open and verdant character and appearance of the surrounding area.
9. This adverse harm would be accentuated by the suburban design of the proposed dwellings and the associated detached garages which would be sited adjacent to the road. The need for parts of the frontage hedges to be removed to provide access to the proposed dwellings and, potentially, the passing place would also have a detrimental effect on the generally rural character of the road.
10. I acknowledge that the proposed development would be capable of supporting the social and economic dimensions of sustainable development as identified in the Framework. These matters include the re-use of previously developed land, the creation of construction jobs, income from Council tax and the provision of new homes which would also assist in addressing the shortfall in the supply of deliverable housing land. Further, although not located within or adjacent to a settlement, there are some local facilities which could be accessed by means other than a private car, including at Linton, and there are bus stops within walking distance of the site. These facilities could be capable of meeting the day-to-day needs of the future occupiers. Although it is not by

itself a reason for this appeal to fail, the future occupiers would need to travel to higher order facilities and employment if they did not work at home.

11. However, for the reasons given, the proposed development would fail to satisfy the environmental dimension of sustainable development. There would be a conflict with LP Environment Policy 1 concerning development in the countryside being designed and located to create as little impact as practicable on the countryside. There would also be a conflict with the Framework which refers to the recognition of the intrinsic character and beauty of the countryside.
12. The adverse harm which has been identified would substantially and demonstrably outweigh the potential social and economic benefits of the appeal scheme. This judgement is not altered by the personal circumstances which have been identified by the appellant. It is therefore concluded that the proposed development would cause adverse harm to the character and appearance of the surrounding area and, as such, it would conflict with LP Environment Policy 1 and the Framework. Accordingly, and taking into account all other matters including the Framework's presumption in favour of sustainable development, it is concluded that this appeal should fail.

*D J Barnes*

INSPECTOR



---

## Appeal Decisions

Site visit made on 27 May 2015

**by Mike Hayden BSc DipTP MRTPI**

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

**Decision date: 28 July 2015**

---

### **Appeal A: APP/F1040/W/15/3002915**

#### **Nutwood, St Brides, Stanton Hill, Stanton by Bridge, Derbyshire DE73 7NF**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Class Q of Part 3 to Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015.
  - The appeal is made by Miss Veronica Revill against the decision of South Derbyshire District Council.
  - The application Ref 9/2014/0504, dated 20 May 2014, was refused by notice dated 30 July 2014.
  - The development proposed is conversion of timber framed barn to living accommodation for holiday lets or permanent accommodation.
- 

### **Appeal B: APP/F1040/W/15/3002902**

#### **St Brides, Stanton Hill, Stanton By Bridge, Derbyshire DE73 7NF**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant, subject to conditions, of approval required under Class E of Part 6 to Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015.
  - The appeal is made by Miss Veronica Revill against the decision of South Derbyshire District Council.
  - The application Ref 9/2014/0741/D, dated 31 July 2014, was granted approval by notice dated 30 September 2014 subject to a condition.
  - The development granted approval is agricultural and forestry road on areas of farmland and woodland south west and north of St Brides.
  - The conditions in dispute are the limitations on the proposed roads on the area of land south west of St Brides to detailed access plan (option B) and to the proposed roads on both areas of land for forestry purposes only.
- 

### **Decisions**

1. Appeal A is dismissed.
2. Appeal B is dismissed in so far as it relates to the request for prior approval under Class A of Part 6 to Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015. Appeal B is allowed in so far as it relates to access A and the approval Ref 9/2014/0741/D for the siting and means of construction of agricultural and forestry road on areas of farmland and woodland south west and north of St Brides, Stanton Hill, Stanton By Bridge, Derbyshire DE73 7NF granted under the provisions of Class E of Part 6 to Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 on 30 September 2014 by the South Derbyshire District Council is varied by the deletion of the words 'detailed

access plan (option B) received on 01/09/2014' and their replacement with the following words:

'access points A and B as shown on the plans attached to the Highways/Planning statement submitted by the appellant dated 30 August 2014'.

#### **Application for costs**

3. An application for costs was made in respect of both appeals by Miss Veronica Revill against South Derbyshire District Council, which is the subject of a separate Decision.

#### **Procedural Matters**

4. The applications the subject of these appeals were made under the Town and Country Planning (General Permitted Development) Order 1995 (as amended). A new consolidated Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) came into force on 15 April 2015. Under the new GPDO, permitted development rights for the change of use of agricultural buildings to dwellinghouses now fall under Class Q of Part 3 to Schedule 2, rather than Class MB. Likewise permitted development rights for agricultural and forestry development now fall under Classes A to E of Part 6 to Schedule 2. The legislation provides that any applications made under the provisions of the previous GPDO should be treated as if made under the new GPDO. Therefore, I have determined both appeals on this basis.
5. In the banner heading for Appeal A I have used the description of the proposal set out in the application form. Although this is different to the description of the proposal in the Council's decision notice, it reflects the proposed development for which prior approval was sought. However, I am clear that the application was seeking prior approval for permitted development under Class Q(a) and (b) and I have determined the appeal on this basis. In the banner heading for Appeal B I have used the description of development in the Council's decision notice as this more accurately describes the location of the proposed roads than the description in the application form.
6. Part of the appellant's case in respect of Appeal A is that the local planning authority failed to determine the application within the 56 day period specified in paragraph W(11)(c) of Part 3 to Schedule 2 of the GPDO, prior to which the development must not begin. However, the evidence submitted by the Council shows that although the application was submitted on 27 May 2014, it was not valid in accordance with paragraph W(2) of the GPDO until 6 June 2014 when a plan indicating the site and showing the proposed development was received. The Council made its decision on 30 July 2014, the date on the decision notice, and according to its records, notified the appellant on the same day. Although the appellant states that she was not informed until 4 August 2014, the evidence submitted by the Council leads me to conclude that the decision was made and notified within the 56 day period.

#### **Main Issues**

7. The main issues in respect of the two appeals are:
  - whether the proposed conversion of the barn to residential use constitutes permitted development under Class Q of Part 3 to Schedule 2 of the GPDO in respect of its use as part of an agricultural unit and the extent of its curtilage (Appeal A);

- whether the proposed agricultural and forestry road constitute permitted development for agriculture under Class A of Part 6 to Schedule 2 of the GPDO (Appeal B);
- the effect on highway safety of the proposed access A onto Shepherds Lane for the agricultural and forestry road (Appeal B).

## **Reasons**

### *Permitted development (Appeal A)*

8. Paragraph Q.1(a) of the GPDO states that development is not permitted by Class Q if the site (for which the change of use is proposed) was not used solely for an agricultural use as part of an established agricultural unit on 20 March 2013 or when it was last in use. Much evidence has been submitted by the appellant and the Council on this matter from which I draw the following conclusions.
9. The appeal site at Nutwood is part of an established agricultural unit. Paragraph X of the GPDO defines "established agricultural unit" as agricultural land occupied as a unit for the purposes of agriculture. The fact that the land is registered with an agricultural holding number indicates that it is owned and held for the purposes of agriculture. Since 2009 the agricultural unit to which the barn relates has comprised land of approximately 28 hectares at St Brides, of which the appellant states that 5.1 hectares is agricultural land. This indicates that the majority of the unit is woodland, which does not point to forestry being ancillary to the farming of the land but rather that the agricultural unit is jointly used for farming and forestry. Although a larger farming operation existed on approximately 194 hectares of land until 2009, the appellant states that it was for the current smaller operation that the barn was constructed. This suggests that the barn has been in use since 2009 as part of the current agricultural unit which is in use for both farming and forestry. The application form for the appeal proposal also states that the barn was in use immediately before 20 March 2013 for the storage of both forestry and agricultural produce and materials.
10. On this basis, I conclude that although the barn is on land which is part of an agricultural unit, it was not solely used for an agricultural use prior to 20 March 2013, but for woodland and forestry purposes as well, which are carried out at a level within the unit where they could not be considered to be ancillary to the agricultural use. Therefore, the proposed change of use does not constitute permitted development under Class Q.1(a).
11. Permitted development under Class Q(a) of the GPDO comprises the change of use of a building and any land within its curtilage. The Council maintains that the curtilage for the appeal proposal exceeds the allowances defined in the GPDO. Paragraph X of Part 3 to Schedule 2 of the GPDO states that "curtilage" for the purposes of Class Q means "(a) a piece of land immediately beside or around the agricultural building closely associated with and serving the purposes of the building, or (b) an area of land immediately beside the agricultural building not larger than the area occupied by the building, whichever is the lesser."
12. Based on the submitted plans, the approximate footprint of the barn is 55 square metres. However, the prior approval application form states that the area of land within the curtilage of the barn for which change of use is



proposed is 0.25 acre (approximately 0.1 hectare or 1,000 square metres). On this basis the curtilage of the barn for which change of use is proposed exceeds the limit of the curtilage for which change of use is permitted under Class Q.

13. Therefore, I conclude that with respect to the use of the appeal site prior to 20 March 2013 and the size of the curtilage of the barn, the appeal proposals do not constitute permitted development under Class Q of the GPDO. Consequently, it is a development for which an application for planning permission is required. An application for planning permission would be a matter for the local planning authority to consider in the first instance and cannot be addressed under the prior approval provisions set out in the GPDO.

*Permitted development (Appeal B)*

14. Under Class A of Part 6 to Schedule 2 of the GPDO, engineering operations, such as the laying out of roads, constitute permitted development for agriculture where they are carried out on land comprised within an agricultural unit of 5 hectares or more, are reasonably necessary for the purposes of agriculture and satisfy the limitations in paragraph A.1.
15. The site for Appeal B comprises both Nutwood to the south-west of St Brides and Norwood to the north. I have concluded above that the site for Appeal A at Nutwood is part of an agricultural unit of more than 5 hectares. Norwood is part of the same unit. It was evident from my site visit that the land at both Nutwood and Norwood is used for agriculture as well as forestry and that the proposed road is necessary to gain access to grazing land as well as woodland. Accordingly, the development would be necessary for the purposes of agriculture.
16. However, paragraph A.1(e) of part 6 to Schedule 2 of the GPDO stipulates that development is not permitted under Class A if the ground area covered by the development would exceed 465 square metres. The application form states that the total length of the road in Nutwood and Norwood would be 1,040 metres to a width of 3.1 metres, covering a total of 3,224 square metres. On this basis the proposals would exceed the limitation for permitted development under paragraph A.1(e). The same limitation does not apply to the formation of private ways under Class E of Part 6 and, therefore, as determined by the local planning authority, the proposed road would constitute permitted development for the purposes of forestry.
17. I note that a previous application (Ref 9/2009/0316) for the same works and a recent application (9/2014/0807) for separate roadways were both approved by the Council under Parts 6 and 7 of the former GPDO. However, I can only deal with the appeals before me and these decisions do not override the provisions of the GPDO, which I have applied to this case.
18. Therefore, I conclude that the proposed roads would not constitute permitted development under Class A of Part 6 to Schedule 2 of the GPDO. Consequently, if the appellant wishes to obtain consent for the proposed roads explicitly for the purpose of agriculture, this would be a development for which an application for planning permission is required. Such an application would be a matter for the local planning authority to consider in the first instance and cannot be addressed under the prior approval provisions set out in the GPDO.

*Highway Safety (Appeal B)*

19. Under Paragraph E.2(a) of Part 6 to Schedule 2 of the GPDO, prior approval is required for the siting and means of construction of a private way permitted by Class E. Based on the Highways and Planning statement submitted with the application, the appellant sought approval for two points of access for the road through Nutwood onto Shepherds Lane. Access A, involving the creation of a new access onto Shepherds Lane at the southern corner of the triangular grazing field, and access B, involving the hard surfacing of an existing access gate onto the metalled part of Shepherds Lane at the northern corner of the triangular field, with access taken along the eastern boundary of the field.
20. According to the statement from the Highway Authority, Shepherds Lane is an adopted public highway, an unclassified road which runs from Melbourne Common to Stanton Hill (A514). Its northern section from St Brides at the northern corner of the triangular field to the A514 is metalled. Its southern section from the dwelling at Windy Ridge to Melbourne Common is a roughly surfaced track and the junction onto Melbourne Common has restricted visibility. It is evident from this that the preferred route for agricultural and forestry vehicles accessing Nutwood would be from the A514 along the northern metalled section of Shepherds Lane.
21. Although the vehicular rights over the full length of Shepherds Lane are disputed by the Highway Authority, it is a public highway and permission already exists for vehicles to access Shepherds Lane from the agricultural and forestry road in Nutwood allowed under the separate prior notification (Ref: 9/2014/0807). That access is at a point further south on Shepherds Lane than the proposed access A. Therefore, whilst I acknowledge that, in terms of highway safety, access B would be the preferred access to and from Nutwood, avoiding the whole of the unmade section of Shepherds Lane, this would not prevent agricultural and farming vehicles from using almost the full length of the unmade section of Shepherds Lane to and from the existing approved access. By allowing access A, in addition to access B, forestry and agricultural vehicles accessing Nutwood would be encouraged to use a shorter section of the unmade part of Shepherds Lane, thereby reducing the potential for conflict with other users of Shepherds Lane.
22. Therefore, I conclude that the use of the proposed access A onto Shepherds Lane for the agricultural and forestry road would reduce harm to highway safety. Consequently it would accord with saved Policy T6 of the South Derbyshire Local Plan (May 1998) which requires adequate access for new development and with paragraph 32 of the National Planning Policy Framework which seeks safe and suitable access to sites for all users.

**Conclusion**

23. For the reasons given above and having regard to all other matters raised, I conclude that Appeal A should be dismissed and that Appeal B should be allowed in respect of the use of access A to Nutwood but dismissed in respect of request for prior approval for the proposed roads under Class A of Part 6 to Schedule 2 of the GPDO. I have varied the grant of approval for the agricultural and forestry road accordingly.

*M Hayden*

INSPECTOR



---

## Appeal Decision

Site visit made on 25 June 2015

**by Gary Deane BSc (Hons) DipTP MRTPI**

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

**Decision date: 23 July 2015**

---

### **Appeal Ref: APP/F1040/W/15/3004663**

#### **Land northeast of Coalpit Lane, Coton in the Elms, Derbyshire DE12 8EX**

- 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 Mrs J Braithwaite against the decision of South Derbyshire District Council.
  - The application Ref 9/2014/0566, dated 11 June 2014, was refused by notice dated 12 August 2014.
  - The development proposed is residential development (up to 9 No dwellings) with associated infrastructure (one access off Coalpit Lane).
- 

#### **Decision**

1. The appeal is dismissed.

#### **Procedural matter**

2. The application was submitted in outline form with all matters reserved for subsequent approval except access. I have assessed the proposed development on the same basis.

#### **Main Issues**

3. The Council accepts that it cannot demonstrate a 5-year supply of deliverable housing sites. Paragraph 49 of the National Planning Policy Framework (the Framework) states that in these circumstances, relevant policies for the supply of housing should not be considered up-to-date.
  4. This finding has implications for the application of the presumption in favour of sustainable development, which lies at the heart of the Framework. Paragraph 14 of the Framework says that where relevant policies of the development plan are out of date, the presumption in favour of sustainable development means that unless material considerations indicate otherwise planning permission should be granted: that is unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
  5. In that context, I am obliged to determine whether the adverse impacts of granting planning permission for the proposed development would significantly and demonstrably outweigh the benefits. In this regard, I consider that the main issues are the effect of the proposal on the character and appearance of the local area and on highway safety for users using Coalpit Lane.
- 

[www.planningportal.gov.uk/planninginspectorate](http://www.planningportal.gov.uk/planninginspectorate)

## **Reasons**

### *Character and appearance*

6. The site is a parcel of undeveloped and largely overgrown land that is located beyond the village confines of Coton in the Elms, as Inset 8 of the Proposals Map and Housing Policy 5 of the South Derbyshire Local Plan (LP) define it. Consequently, the site falls within the countryside. LP Housing Policy 8 sets out the circumstances within which new housing development will be permitted within the countryside, none of which would apply in this case.
7. By operation of the Framework, LP policies that seek to restrict housing development outside the defined settlement limits should be considered out of date. Therefore, the location of the site outside the defined village confines is not, in itself, a policy bar to its residential development. The requirement in LP Environment Policy 1 to ensure that new development safeguards the character of the countryside remains, however, an important consideration. While I note the age of the LP, I consider this policy to be broadly consistent with the aims of the Framework and so I afford it material weight.
8. Although the site abuts a car park to a public house on one side and there is some existing housing along the southwestern side of Coalpit Lane, the appellant's opinion that the new development would support the established pattern of development or that it would be a sympathetic extension of the main built up area is, to my mind, overstated. The site abuts open fields on two sides. On a third side, the adjacent car park similarly falls within the countryside as it is defined in the LP. On the fourth side, and while legible as built form in the landscape, the 3 properties on the opposite side of Coalpit Lane have a modest presence in the context of the site and the surrounding views of it. A sizeable gap also separates these properties from the main village. Despite the vegetation that marks most of the site's boundaries, there is a strong degree of visual inter-connectivity between the site and the broadly open rural landscape that almost surrounds it.
9. In that context, the proposed development would obtrude into this open undeveloped area, palpably extending the built form of the village into the countryside. That character would be transformed from an area of open undeveloped land that currently blends almost seamlessly into the open rural landscape to one occupied by new built form where people would live and visit.
10. The obtrusion would be most acutely felt in views from the adjacent car park and, in all likelihood, from Coalpit Lane in both directions. From these vantage points, the sense of urbanisation and encroachment into the countryside would be evident because the new built form would appear to be clearly detached from the main village. Having viewed the site from each of these locations, I have little doubt that the proposal would be a visually disruptive and an unwelcome addition to the countryside. That the new development would be likely to occupy an elevated position in relation to the road due to the notable difference in ground levels and necessitate the removal of a sizeable length of the vegetation along the highway frontage to facilitate access, would accentuate its seriously harmful visual impact.
11. The appellant considers that the proposal would provide a greater sense of balance with the properties that face the opposite side of Coalpit Lane and that

it would create a more visually assertive edge to the settlement. However, it is my judgement that neither of these outcomes is needed or desirable here as a characteristically loose pattern of development on the fringe of the village gives way to broadly open fields. To the contrary, the subtle balance of this sensitive interface between settlement and landscape would be lost by the introduction of new built form, to the significant and material detriment of the intrinsic character of the local area.

12. The appearance, scale, layout and landscaping of the proposal could, to some extent, mitigate the visual impact of the development. These are matters reserved for subsequent approval. However, it is likely that the new built form would still be clearly visible from the adjacent car park and along Coalpit Lane notwithstanding detailed design considerations.
13. Overall, I conclude on the first main issue that the site forms an integral part of the countryside beyond the village confines of Coton in the Elms. The proposed change from undeveloped land to residential development would have a seriously adverse impact on the character and appearance of the local area, in conflict with LP Environment Policy 1. This policy states that where development is permitted in the countryside it should be designed and located to create as little impact as practicable on the countryside.

#### *Highway safety*

14. A new, shared driveway is proposed to serve the new development off Coalpit Lane, which has no footways as it passes the site. The Council objects to the proposal mainly on the basis that the scheme would force pedestrians that wish to walk from the site into the main village out into the carriageway with obvious implications for their safety.
15. However, the level of extra pedestrian and vehicle movements generated by the proposal would be relatively low, even if the site were to accommodate the maximum number of new dwellings sought. As scale and layout are matters for future consideration there may also be an opportunity at a later stage to incorporate some form of refuge for pedestrians from passing vehicles as part of the scheme, to which the appellant has referred. In doing so, the potential conflicts between traffic and cyclists or pedestrians would be reduced.
16. On balance, I am not convinced that the proposal would cause a significant safety hazard for users of Coalpit Lane to the extent that planning permission should be withheld on this particular ground. Accordingly, I find no material conflict with LP Transport Policies 6 and 7 and the Framework insofar as they broadly aim to achieve secure safe, suitable and convenient access for all.

#### *Other matters*

17. Paragraph 47 of the Framework notes that local planning authorities should boost significantly the supply of housing. As the Council is currently unable to demonstrate a 5-year supply of deliverable housing sites, the need for more housing carries considerable weight in support of the appellant's case.
18. The site is reasonably well connected to places of employment, shops, schools, health, leisure and other services that are available in Burton on Trent, Swadlincote and to a lesser extent in Coton in the Elms. Local bus services



would also provide an opportunity for future occupiers to travel to some of these destinations by public transport. The development would contribute to the local economy during the construction phase and thereafter as future occupiers would be likely to support local services and facilities. These considerations are encouraged in the Framework and lend support to the appellant's case primarily within the economic and social dimensions of sustainable development.

19. However, sustainability has an environmental dimension and the Framework is to be read as a whole. Recognition of the intrinsic character and beauty of the countryside is one of the core principles of the Framework as are the need to take into account the different character of different areas and to contribute to conserving and enhancing the natural environment. For the reasons given, I consider that the proposal would not adhere to these important principles.

#### **Planning balance**

20. The proposal would contribute to meeting some of the shortfall in housing land, to which I attach considerable weight. The site is in a reasonably accessible location and there would also be some economic and social benefits if the development were to proceed. The concerns raised with regard to highway safety do not significantly weigh against the appellant's case.
21. Nevertheless, I conclude that the harm to the character and appearance of the local area caused by the proposal would significantly and demonstrably outweigh the benefits of the appeal scheme. As such, I conclude that the proposal does not amount to sustainable development and so the presumption in favour of such development does not apply.
22. In reaching this finding, I have had regard to the appeal decisions to which the main parties refer. From the limited information provided there are, it seems to me, notable differences between these appeals and the proposal before me in terms of the scale, location and site characteristics. Consequently, few direct parallels can be drawn from these appeal cases and the proposal, which, in any event, should be assessed on its own merits. Therefore, I attach limited weight to these appeals for the purpose of this appeal.

#### **Conclusion**

23. Overall, for the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

*Gary Deane*

INSPECTOR

## Appeal Decision

Site visit made on 10 July 2015

**by Jonathan Hockley BA(Hons) DipTP MRTPI**

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

**Decision date: 28 July 2015**

---

**Appeal Ref: APP/F1040/W/15/3006111**

**31 Peacroft Lane, Hilton, Derby DE65 5GH**

- 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 Sarah Waller against the decision of South Derbyshire District Council.
  - The application Ref 9/2014/0792, dated 15 August 2014, was refused by notice dated 3 February 2015.
  - The development proposed is described as 'there will be no external changes. We wish to change the use to a pre-school and after school club'.
- 

### Decision

1. The appeal is dismissed.

### Main Issue

2. The main issue in this case is the effect of the proposed change of use on the living conditions of nearby residents, with particular reference to noise and disturbance.

### Reasons

3. No 31 Peacroft Lane is a reasonably sized house located directly adjacent to the main entrance to Hilton Primary School. The proposal seeks to change the use of the property from a dwelling to a pre-school and after school club. Information submitted states that the use would operate from 0700 until 1900, and that at full capacity, which would be expected in around 2 to 3 years, the nursery/school club could accommodate 40 children.
4. Although detached, there is only a small gap between No 31 and its nearest neighbour to the south, No 33 Peacroft Lane. To the rear there is a development of bungalows set off Bancroft Close, with No 5 sharing a rear boundary with the appeal site. It was clear from my site visit that the private rear gardens of both these properties are used often by their owners; No 33 has a conservatory on its northern edge, next to No 31 and a sitting out area located behind this. No 5 has a shingled rear garden with an area used for sitting outside located next to the property.
5. Saved Community Facilities Policy 1 of the South Derbyshire Local Plan, May 1998 (the Local Plan) states that proposals for new community facilities will be permitted provided that development does not cause disturbance to local amenity by virtue of noise or traffic generation. The National Planning Policy Framework (the Framework) has as one of its core planning principles that



planning should always seek a good standard of amenity for all existing occupants of buildings.

6. Whilst there are other uses nearby, such as the school, the appeal site is set in a primarily residential area. The proposal would thus bring a new use into the immediate surrounding area. I consider that the introduction of, within 3 years, 40 children for pre and after school play into such an area would create issues of noise and disturbance, particularly for those adjoining neighbours at No 33 Peacroft Lane and No 5 Bancroft Close. The numbers of children likely to be playing in the property and within the rear garden would in my judgement adversely affect the living conditions of the occupiers of these properties, especially during periods of dry weather when they might reasonably expect to enjoy their rear gardens. Whilst the appellant states that children would be prevented from causing undue disturbance or that they would be taken to a local playground, this may not always be possible.
7. I note that a key reason for the proposed development would be to provide a pre and after school club for children from the adjacent primary school. As such, the proposal would not add to the very busy traffic environment around the school drop off and pick up times that I noted at my site visit. Children would in general be dropped off prior to school opening hours and later on after school traffic has died away. Outside of school hours a business plan submitted with the planning application expects that by year 3 there would be 30 arrivals between 0700 and 0900, including 10 arrivals between 0700 and 0800, and 34 departures between 1700 and 1900. However, drops off and pick ups at such times would cause some limited noise and disturbance to neighbouring residents. Whilst not significant, the effect of such drop offs and pick ups adds weight to my overall decision. I do not consider that parents would be likely to use the car parking stated to be agreed with the various pubs and the hotel in the village, all of which are a reasonable walking distance from the appeal site.
8. I accept that the noise and disturbance from play is unlikely to reach the levels that the school playground would and that the traffic generation would be much less than the traffic around at school drop off and pick up times. However, the presence of the school is well established and local residents will be inured to a certain degree to play times and the effect of the school run. The appellant has submitted some information regarding residential noise. However, the information provided appears to be Australian and would not therefore necessarily be relevant in this instance.
9. The appellant considers that a precedent has been set in the village by other childcare facilities. However, I noted on my site visit that Little Stars appeared to be located on the edge of the settlement and had a sizable car park. Cherry Tree Day Nursery did appear to be located in more of a residential area but I have no information on their opening hours or capacity. The Scout Hut and Village Hall are both effectively located in their own grounds with large car parks. Moreover each case must be dealt with on its own merits.
10. I therefore conclude that the proposed change of use would have an adverse effect on the living conditions of nearby residents, with particular reference to noise and disturbance. The proposal would be contrary to the Local Plan and to the Framework.

*Other Matters*

11. I have no reason to doubt that the safety and care of children is the primary concern of the appellant, and I note that the proposal would provide much needed childcare facilities for local parents and would provide jobs. However, be that as it may I do not consider that these benefits outweigh the harm that the proposal would cause to the living conditions of adjoining residents.
12. The appellant has concerns over the way that the planning application was dealt with and considers that some objections have been made on a personal basis. However, complaints against the Council's handling of the application should be made in the first instance through the Council's own complaints system.

**Conclusion**

13. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

*Jon Hockley*

INSPECTOR

---

## Appeal Decision

Site visit made on 25 June 2015

**by Gary Deane BSc (Hons) DipTP MRTPI**

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

**Decision date: 28 July 2015**

---

**Appeal Ref: APP/F1040/W/15/3006164**

**Land to the rear of 89 Egginton Road, Etwall, Derby DE65 6NP**

- 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 NM Joinery Limited against the decision of South Derbyshire District Council.
  - The application Ref 9/2014/1049, dated 3 November 2014, was refused by notice dated 11 February 2015.
  - The development proposed is the change of use from workshop to a residential dwelling and the erection of a link to garage incorporating a living room and an extension on south elevation.
- 

### Decision

1. The appeal is dismissed.

### Procedural matters

2. An application for costs was made by the appellant against the Council. This application is the subject of a separate decision.
3. At the site visit, I viewed the site from 3 Hollies Court and did so with the consent of the occupiers of this adjacent property. The main parties accompanied me during the viewing from No 3 apart from inside this dwelling, which I carried out unaccompanied.
4. Interested parties raise concerns about the accuracy of some details given on the plans and within the written evidence. My assessment of the proposal is based on all of the evidence before me and an inspection of the site and its surroundings including observations from No 3. On that basis, I am satisfied that the details of the appeal scheme as shown on the plans and within the written evidence allow a reasonable assessment of the development sought.

### Main issues

5. The main issues are the effect of the proposed development on:
    - the living conditions of the occupiers of nearby residential properties with particular regard to outlook and visual impact; and
    - the character and appearance of the host building and the local area.
-

## **Reasons**

6. The proposal is to alter, extend and convert a 2-storey outbuilding and a single storey garage, both of which are detached buildings that stand at the rear of 89 Egginton Road, to form a new dwelling. It follows the Council's decision to grant planning permission<sup>1</sup> for a similar scheme in 2013 (the 2013 scheme).
7. Compared to the 2013 scheme, a new 2-storey extension would be introduced to enlarge each of the existing buildings and connect them with living accommodation on both floors. The new addition would be taller, larger and thus more substantial in built form than the 2013 scheme, which included a single storey extension to link the buildings. Changes are also proposed to the fenestration and detailing of the buildings to be converted to reflect a remodeling of the internal layout that was previously approved. I consider that the 2013 scheme is a realistic fallback position against which the proposal before me should be assessed.

### *Living conditions*

8. With the new 2-storey element noticeably lower in height than the 2-storey building to which it would attach and with its relatively low eaves, the appeal scheme has been carefully designed to reduce the visual impact of the new built form on the occupiers of nearby residential properties, notably at 3 Hollies Court. From what I saw, it is the occupiers of this adjacent property, which backs onto the site with the garage to be converted just beyond the rear boundary, that are most likely to be affected by the proposal.
9. In the rear elevation of No 3, there are ground floor windows that serve a living room and kitchen and first floor windows that serve bedrooms. I observed that the upper end gable wall and roof slope of the existing garage on the site dominates views from most of the rear windows of No 3 and from its back garden. By extending the garage, as proposed, the flank wall of this existing building would be extended and raised in height. The new element of this sidewall would be set back from, although still close to, a significant length of the common boundary between the site and No 3.
10. Views from the rear windows of No 3, most of which serve habitable rooms, and its rear garden, which provides the main outdoor space for the occupiers of this property, would include the upper part of the new 2-storey extension and a considerable expanse of roof slope above the enlarged garage to be converted. Having viewed the site from No 3, I am persuaded that the proximity of what would be a substantial amount of new built form close to and along much of the rear garden boundary of No 3, would represent such a significant change that it would result in an over-dominant impact on outlook. To my mind, the presence of the new built form, which together with the garage to be converted would visually enclose a significant part of the rear garden of No 3, would be so imposing as to feel overbearing. As a result, I consider that the appeal scheme would unacceptably harm the neighbours' enjoyment of their property, especially their back garden.
11. In reaching this finding, I acknowledge that, with one exception, the proposal would meet the minimum separation distances between new dwellings and

---

<sup>1</sup> Ref 9/2013/0095/FM dated 25 April 2013



existing houses set out in the Council's Supplementary Planning Guidance, *Housing Design and Layout* (SPG). I also note that the proposed roof design of the new 2-storey element is asymmetrical to position the proposed ridgeline generally away from the back garden of No 3.

12. Therefore, I conclude on this issue that the proposal would cause significant harm to the living conditions of the occupiers of No 3, in conflict with Housing Policy 11 insofar as it aims to safeguard residential amenity. It is also at odds with a core principle of the National Planning Policy Framework (the Framework), which states that planning should always seek to secure a good standard of amenity for all occupants of land and buildings.

*Character and appearance*

13. By introducing new 2-storey built form, the proposal would add to the scale and mass of the completed building compared to the approved scheme. However, the lower ridge height relative to the 2-story building to be converted and the relatively low eaves would ensure that the proposal would visually read as a subordinate addition in height, bulk and form. Furthermore, the full extent of the new extension would not be evident from any single direction outside of the site because it would be partly screened by existing buildings and boundary features. Little of the appeal scheme would be seen from Egginton Road given that the main body of the site is visually enclosed by existing development.
14. Having regard to all these matters, I consider that the finished building would have an acceptable overall appearance and that the new 2-storey extension would be sympathetic and proportionate addition to the host buildings. Therefore, I find that the proposal would be in keeping with the character and appearance of the host building and the local area. As such, I find no material conflict with LP Housing Policy 7. This policy notes that the conversion of buildings to residential use will be permitted if the proposal is in keeping with the original buildings and not detrimental to the character of the settlement.

*Other matters*

15. As the Council is unable to demonstrate a 5-year supply of deliverable housing sites the proposal would contribute albeit in a modest way to meeting some of that shortfall. It would also add to the choice of new housing and make an efficient use of the existing buildings, which appear to be under utilised. The proposed development would contribute to the local economy during the construction phase and also afterwards as future occupiers would be likely to support local services and facilities. These considerations are encouraged in the Framework and lend support to the appellant's case primarily within the economic and social dimensions of sustainable development. On each of these points, the 2013 scheme would do likewise. Nevertheless, I attach considerable weight to these considerations.
16. Compared to the approved scheme, the proposal would provide some larger rooms and thus improve the living conditions of future occupiers with regard to their living accommodation. I have also found in favour of the proposal in relation to the second main issue. I attach moderate weight to each of these considerations.



17. I also note that a representation supports the proposal noting that the area's character and appearance would be improved. The Officer's report also recommended that planning permission be granted subject to conditions.
18. Nevertheless, on balance, I conclude that the harm to the living conditions of the occupiers of No 3 caused by the proposal would significantly and demonstrably outweigh the benefits of the appeal scheme. For this reason, I find that the proposal does not amount to sustainable development and so the presumption in favour of such development does not therefore apply.
19. Interested parties raise several additional objections including light, privacy and access. These are important matters and I have taken into account all of the evidence before me. However, given my findings on the first main issue, these are not matters on which my decision has turned.

**Conclusion**

20. Overall, for the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

*Gary Deane*

INSPECTOR