

Dear Councillor,

**Planning Committee**

A Meeting of the **Planning Committee** will be held in the **Council Chamber**, Civic Offices, Civic Way, Swadlincote on **Tuesday, 06 June 2017 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 Mrs Coe, Ford, Mrs Hall, Harrison, Muller, Stanton and Watson

**Labour Group**  
Councillors Dr Pearson, Shepherd, Southerd and Tilley

## **AGENDA**

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

- 1** Apologies and to note any substitutes appointed for the Meeting.
  
- 2** To receive the Open Minutes of the Meeting held on 11th April 2017.  
  
Planning Committee 11th April 2017 Open Minutes **3 - 7**
  
- 3** To note any declarations of interest arising from any items on the Agenda
  
- 4** To receive any questions by Members of the Council pursuant to Council procedure Rule No. 11.
  
- 5** REPORT OF THE DIRECTOR OF COMMUNITY AND PLANNING **8 - 95**  
SERVICES

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

- 6** The Chairman may therefore move:-  
That in accordance with Section 100 (A)(4) of the Local Government Act 1972 (as amended) 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.
  
- 7** To receive any Exempt questions by Members of the Council pursuant to Council procedure Rule No. 11.

PLANNING COMMITTEE

11<sup>th</sup> April 2017

**PRESENT:-**

**Conservative Group**

Councillor Roberts (Chairman), Councillor Mrs Brown (Vice Chairman) and Councillors Atkin, Mrs Coe, Ford, Mrs Hall, Harrison, Mrs Patten (substituting for Councillor Watson) and Stanton

**Labour Group**

Councillors Dr Pearson, Richards (substituting for Councillor Tilley), Shepherd and Southerd

PL/214 **APOLOGIES**

Apologies were received from Councillor Watson (Conservative Group) and Councillor Tilley (Labour Group).

PL/215 **DECLARATIONS OF INTEREST**

The Committee was informed that no declarations had been received.

PL/216 **QUESTIONS BY MEMBERS OF THE COUNCIL PURSUANT TO COUNCIL PROCEDURE RULE NO.11**

The Committee was informed that no questions from Members of the Council had been received.

**MATTERS DELEGATED TO COMMITTEE**

PL/217 **REPORT OF THE DIRECTOR OF COMMUNITY AND PLANNING SERVICES**

The Director of Community and Planning Services submitted reports for consideration and determination by the Committee and presented oral reports to the Meeting to update them as necessary. Consideration was then given thereto and decisions were reached as indicated.

PL/218 **OUTLINE APPLICATION (ALL MATTERS EXCEPT FOR ACCESS TO BE RESERVED) FOR THE ERECTION OF 5 DWELLINGS (THREE TOWN HOUSES AND TWO APARTMENTS) WITH ASSOCIATED PARKING ON LAND TO THE REAR OF 61 HIGH STREET, NEWHALL, SWADLINCOTE**

It was proposed that this application be deferred for a site visit.

The registered speaker opted to return when the matter was rescheduled.

**RESOLVED:-**

***That the application be deferred to allow for a site visit to be conducted.***

PL/219 **CHANGE OF USE OF VACANT LAND TO A COUNTRY PARK AND THE CREATION OF FOOTPATHS, CYCLEWAYS AND OTHER ASSOCIATED WORKS AT LAND TO THE NORTH OF WILLIAM NADIN WAY, SWADLINCOTE**

This application was considered jointly with the application below.

PL/220 **OUTLINE APPLICATION WITH ACCESS FOR APPROVAL AND ALL OTHER MATTERS TO BE RESERVED FOR FUTURE APPROVAL FOR THE ERECTION OF A PUBLIC HOUSE/RESTAURANT (USE CLASS A4), A CAFÉ/RESTAURANT (USE CLASS A3) A RETAIL UNIT (USE CLASS A1) AND ASSOCIATED WORKS PLUS THE CREATION OF A CAR PARK AT LAND NORTH OF WILLIAM NADIN WAY, SWADLINCOTE**

This application was considered jointly with the application above.

Mr Stuart Ashton (applicant's agent) attended the Meeting and addressed Members on both applications.

The reports were presented by the Planning Services Manager explaining the history of the application, outlining the current scheme and highlighting that provision of these amenities would appeal better to the wider community.

Councillor Richards addressed the Committee as Ward Member for Newhall and Stanton expressing disappointment that the originally proposed hotel and 18-hole golf course were now not being provided. The Councillor was joined by other Members in maintaining the need for a hotel in the area.

Councillors discussed the history of the application and the implications of the current scheme, stating reasons for the developers to continue the consideration for the provision of a hotel. Some Members identified that the country park could potentially assist in attracting interest from developers in the hotel sector, which would be welcomed. Concerns relating to further housing developments, parking provision, public safety in relation to stray golf balls and potential service charges for the maintenance of the park were also raised. The Planning Services Manager addressed the issues raised highlighting that the design of the golf courses was yet to be finalised and that this application would enhance the area by potentially opening the facilities to the wider public.

**RESOLVED:-**

***That planning permission be granted as recommended in the report of the Director of Community & Planning Services.***

Abstention: Councillor Richards and Southerd.

PL/221 **THE ERECTION OF TWO BUNGALOWS AND ALTERED ACCESS AT 673 BURTON ROAD, MIDWAY, SWADLINCOTE**

It was reported that members of the Committee had visited the site earlier in the day.

The Area Planning Officer presented the report to Committee highlighting that this outline application showed an indicative layout of the development.

Councillor Dr Pearson addressed the Committee as local Ward Member explaining that although there are similar developments in area, the main concern related to the visibility at the access with it being on a slight bend of a busy road. The Area Planning Officer addressed this issue, informing members that the Highways Authority had not identified this as a concern.

The potential impact of this development on local amenities was raised and the Committee agreed that by restricting the development to single storey dwellings, it would also meet a need for bungalows in the area. The Planning Services Manager advised that the amenity assessment had been conducted on the basis of single-storey dwellings.

**RESOLVED:-**

***That planning permission be granted as recommended in the report of the Director of Community & Planning Services subject to the additional condition of single-storey dwellings only.***

PL/222 **THE VARIATION OF CONDITIONS 2, 21, 24 & 34 OF PLANNING PERMISSION REF: 9/2013/0663 (RELATING TO RESIDENTIAL DEVELOPMENT FOR 157 DWELLINGS (38 WITHIN DERBY CITY AND 119 WITHIN SOUTH DERBYSHIRE) AND ASSOCIATED INFRASTRUCTURE, LANDSCAPING FOUL WATER PUMPING STATION AND PUBLIC OPEN SPACE (CROSS BOUNDARY)) ON LAND AT SK3729 4656 SOUTH WEST OF HOLMLEIGH WAY, CHELLASTON, DERBY**

The Area Planning Officer updated the Committee that the consultation response from the Derbyshire Wildlife Trust had concluded that the proposed changes would have no ecological impact. It was explained that the applicant was looking to reduce the provision of affordable housing from 40% to 30% which would affect the housing layout and house types and also require changes to conditions 2, 21, 24 and 34.

Councillors sought clarification on the change of provision of affordable housing from 40% to 30% and its impact on Section 106 contributions. The Planning Services Manager explained that during the formulation of the Local Plan, a viability assessment was undertaken which highlighted that affordable housing provision of up to 30% was the right level that was attainable by most sites. The approved agreement fixed the provision at 40% and in order to lower this threshold approval was being sought in order to complete the legal process to make this amendment through a deed of variation. Members

queried the impact that this reduction would have on the number of dwellings and subsequent Section 106 contributions. The Planning Services Manager explained that the number of dwellings remained the same and therefore would not bear any impact on the level of Section 106 contribution.

**RESOLVED:-**

***That planning permission be granted as recommended in the report of the Director of Community & Planning Services, subject to the receipt of a deed of variation to the original Section 106 Agreement to accommodate the changes to affordable housing provision.***

PL/223 **THE REMOVAL OF CONDITION 3B OF PLANNING PERMISSION REF: 9/2015/0723 (RELATING TO OUTLINE APPLICATION (ALL MATTERS EXCEPT FOR ACCESS TO BE RESERVED) FOR RESIDENTIAL DEVELOPMENT FOR UP TO 24 DWELLINGS ON LAND AT SK2416 7131 COTON LANE, ROSLISTON, SWADLINCOTE**

The Area Planning Officer informed the Committee that a revised Informative had been drafted since the report stating that, for the avoidance of doubt, the Planning Authority will only require 0.22 hectares of such planting in accordance with the condition, and will not enforce the requirement in the Section 106 Undertaking. The Committee was also updated that the consultation response from the Derbyshire Wildlife Trust had concluded they had no comments.

Mrs Janet Hodson (applicant's agent) attended the Meeting and addressed Members on the application.

**RESOLVED:-**

***That planning permission be granted as recommended in the report of the Director of Community & Planning Services with the addition of a revised Informative.***

PL/224 **PROPOSED TREE PRESERVATION ORDER 446 – LAND AT SK3021 4304 BURTON ROAD, MIDWAY**

**RESOLVED:-**

***That this Tree Preservation Order (TPO) be confirmed without modification.***

PL/225 **LOCAL GOVERNMENT ACT 1972 (AS AMENDED BY THE LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985)**

**RESOLVED:-**

***That, in accordance with Section 100(A)(4) of the Local Government Act 1972 (as amended), the press and public be excluded from the remainder of the Meeting as it was 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 paragraphs of Part 1 of the Schedule 12A of the Act indicated in brackets after each item.*

**EXEMPT QUESTIONS BY MEMBERS OF THE COUNCIL PURSUANT TO COUNCIL PROCEDURE RULE No 11.**

*The Committee was informed that no questions had been received.*

The meeting terminated at 7.05pm.

COUNCILLOR A ROBERTS

CHAIRMAN

# **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).

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## **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 2015 (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>
9/2016/1144	1.1	Linton	Linton	10
9/2017/0417	1.2	Newhall	Newhall & Stanton	23
9/2017/0422	1.3	Rosliston	Linton	28
9/2017/0095	2.1	Aston-on-Trent	Aston	33

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**

**Ref. No.**        **9/2016/1144/SMD**

**Applicant:**  
**Mr P Robinson**  
**c/o Agent**

**Agent:**  
**Mrs Aida McManus**  
**AM Planning Consultants Limited**  
**17 Derwent Road**  
**Stapenhill**  
**Burton Upon Trent**  
**Staffordshire**  
**DE15 9FR**

**Proposal:**    **THE ERECTION OF 14 HOLIDAY LETS AND THE CREATION OF AN ALL WEATHER PITCH, ACCESS TRACK AND HARDSTANDING ALONG WITH ASSOCIATED LANDSCAPING AND RETENTION OF FISHING PEGS ON LAND AT SK2816 1014 COLLIERY LANE LINTON SWADLINCOTE**

**Ward:**            **Linton**

**Valid Date**    **23/11/2016**

**Reason for committee determination**

The item is presented to Committee as it is a major application subject to more than two objections.

**Site Description**

The application site comprises some 1.8 hectares of agricultural land with access to Colliery Lane. It is located to the rear (south) of numbers 1-10 Linton Heath, with boundaries to further agricultural land to the north and east of the site. The applicant owns further land immediately adjacent to the site comprising Robinsons House, a bungalow under construction (with mobile home temporarily sited for the applicant's use), four existing holiday lodges and a fishing pond.

The land is relatively level across the site with an existing hedgerow, scattered trees, and a drainage channel splitting the two 'halves' of the site. Overseal public footpath number 36 runs along the north-eastern boundary of the site, whilst the rear boundaries to the existing residential dwellings are made up of a mixture of outbuildings, fences and walls. The southern boundary to the site comprises mature hedgerow which continues to envelope the remaining land ownership to the south-west. A run of silver birch trees sits in the northern part of the site, whilst the fishing pond and access to the existing lodges is included within the southern part.



It is proposed to erect 14 lodges for holiday purposes, along with an access track which would loop through the site. Each lodge would benefit from an area of decking and a paved terrace. An all-weather pitch close to the pond is also proposed. A substantial amount of woodland planting is indicated around the lodges.

### **Applicant's supporting information**

The Planning Design & Access Statement notes the presumption in favour of sustainable development and it is considered that this high quality tourism accommodation would lie within a sustainable location and reflect the intrinsic character and beauty of the countryside, whilst ensuring that the rural economy would be supported. It is considered the scheme accords with the provisions of NPPF and local planning policy, with the proposal also providing National Forest planting and landscaping to ensure that the proposal blends into the character of the area and would not result in any adverse impact.

A Flood Risk Assessment & Surface Water Drainage Strategy (FRA) states that the site is in Flood Zone 1 (low probability of flooding) and notes that whilst the proposed use would be categorised as 'more vulnerable' in flood risk terms, the Environment Agency's flood risk mapping confirms is at a low probability of flooding with no major watercourses near the site. There are also no records of flooding at the site whilst the risk of flooding from other sources including surface water, underground water, sewer and reservoir is low. It is noted that the proposed development would lead to an increase in surface runoff which can be mitigated by implementing appropriate SuDS measures. Tree plantation, vegetated swales and porous driveway and parking bays would be implemented in order to improve the surface runoff from the site.

A Phase 1 Habitat Survey & Tree Survey has been completed, with amendment during the course of the application. No suitable features suitable for bats were identified within the site and bats are not considered to pose a constraint. There is suitable habitat for nesting birds such that site work should avoid disturbing nesting birds where possible, with any vegetation clearance ideally taking place outside of the breeding season. There was no evidence of the presence of badgers, reptiles and amphibians, but some suitable terrestrial habitat for great crested newt (GCN) within the survey area was identified. However the nearest records for this species are over 900m from the site, although ponds closer could potentially contain newts. Hence, whilst considered unlikely that GCN would be present, reasonable avoidance measures should be put in place to avoid unintentional harm.

Correspondence from the National Forest Company (NFC) confirms that in principle, this type of proposal fits in with the development of The National Forest. The current National Forest Destination Gap Analysis highlights the development of good quality visitor accommodation as a main priority for the destination; in particular, exemplar forest cabins. It is noted that the National Forest is growing far quicker in tourism terms than was originally predicted at its outset. Visitor numbers have grown rapidly from 5.7 million in 2003 to more than 7.8 million in 2014, generating expenditure in the area which has risen by 31% from £286.4m in 2003 to £373.8m in 2014, supporting more than 4,842 tourism related jobs. However, around 91% of these

visitors are day visitors and the NFC's goal is to increase the number of overnight stays to the greater benefit of the local economy. Research shows that day visitors spend on average just £37.73 per person, whereas an average of £55.25 per person per night is gained from non-serviced overnight trips. A development of this nature would contribute to the local economy through increased visitor spend as well as the use of local businesses in its operations, maintenance and supplies, and the demand for self-catering accommodation is increasing. It is stated that their comments are confined to visitor economy aspects and do not provide a comprehensive assessment of the full planning merits of the proposal.

### **Planning History**

- 9/2016/1226 Variation of condition 2 of planning permission ref: 9/2011/0684 – Approved January 2017
- 9/2013/0640 Erection of four holiday units, access and associated landscaping – Approved October 2013
- 9/2011/0684 Retention of a pond and associated earthworks – Approved October 2011

### **Responses to Consultations**

The National Forest Company (NFC) welcomes the principle of the development for additional visitor accommodation within The National Forest. The proposals are noted to include sufficient woodland planting and landscaping to exceed the expectations of policy INF8. However, amendments are needed to the proposed species mix and density, which can be secured by condition, as well as early delivery of planting on the phase 1 site.

Derbyshire Wildlife Trust (DWT) notes that whilst the majority of the development would be confined to the horse-grazed grassland, some hedgerow habitat would be lost in order to create access. However, where the proposed access track intersects the middle hedgerow, the habitat is either gapping or not present, such that the impact is considered negligible. It is recommended that the landscaping scheme compensates for any loss with native plant species comprising of the same species present (hawthorn, blackthorn, dog rose and oak). Where other gaps are present in the existing hedgerow, it is recommended these areas 'gapped up' with native species. A wet ditch is present along this hedgerow line. To the northern end, the ditch has bare soil and no vegetation present before becoming choked with vegetation and/or leaf litter in sections meaning limited aquatic vegetation is present. Removal of leaf litter management of the hedgerow and hedgerow base habitat is recommended as it is considered this would enhance the ditch and provide opportunities for it to establish aquatic vegetation. Due to the presence of fish in the ditches on site and suitable terrestrial habitat to the ponds off site, it is not considered that GCN are likely to present. In the unlikely event GCN are found, works should cease immediately and a suitable qualified and licensed ecologist contacted. It is recommended a Landscape and Ecological Management Plan is conditioned.

Natural England notes the site falls within the River Mease Special Area of Conservation (SAC) but advises that, if undertaken in accordance with the details submitted and subject to conditions, is not likely to have a significant effect on the SAC. Natural England also highlights their published Standing Advice on protected species whilst offering advice on biodiversity enhancements.

The Lead Local Flood Authority (LLFA) notes that there is no ground investigation to support and inform the application such that it is not possible at this time to confirm the surface water drainage hierarchy is achieved. It is also commented that the FRA makes no assessment of the adjacent watercourse or drainage ditch and how this may impact, or be utilised by the proposed development. If to progress, further information regarding the adjacent watercourse and its suitability to form part of the sustainable drainage of the site or the risk it may pose to the site is required. A review of the County Council surface water model outputs indicate that the proposed site is likely to be subject to surface water flooding during the critical storm duration in the 1 in 1000 year return period in its current land use. The model shows that 50% of the site may experience surface water pooling, with flows heading towards Colliery Lane. The proposed development should not increase the surface water flooding from this site and all surface water flows should be managed on site. The proposed discharge rate is also recommended to be the greenfield rate, but the LLFA seek that the detailed design stage shows a sensitivity test of plus 40% for climate change for a range of rainfall intensities. The information also does not identify any drainage which the LLFA would consider as sustainable, with proposed tanks not considered as sustainable drainage features. Overall it is considered it has not been demonstrated at this stage that priority has been given to SuDS as per the NPPF. Nonetheless, it is considered conditions can address these matters.

The Environment Agency notes that foul water would be connected to a mains connection, such that there is no objection.

Severn Trent Water Ltd has no objection subject to the inclusion of a condition.

The Environmental Health Officer seeks that drainage be addressed and installed prior to occupation, by way of condition. It is also noted that the lodges may need to comply with BS3632:2005 and that a site licence having regard to the Caravan Sites and Control of Development Act 1960 might also be necessary, with separation of at least 6 metres from each other to comply with licence requirements.

The Council's Environmental Protection Officer has no comments to make regarding contaminated land.

The Policy Designing Out Crime Officer has no objections or recommendations.

The County Highway Authority notes that Colliery Lane is not part of the adopted public highway and it is assumed a right of access does exist. With this in mind, there is no objection subject to a condition to ensure the provision of parking space within the site.

Peak and Northern Footpaths has no objection provided that the full width of the footpath remains unobstructed at all times. The path boundaries should also not be

solid fences, but hedges are acceptable provided that they are cut back to ensure that they do not encroach into the width of the path.

The County Planning Policy officer advises there would be no adverse impact to minerals safeguarding.

### **Responses to Publicity**

Linton Parish Council objects on the grounds of traffic problems that such a development would cause on an un-adopted road and on a very dangerous corner of Colliery Lane and Main Street. There is also objection on the grounds that the pumping station on Colliery Lane is already overflowing and cannot currently take any more development in that area.

Overseal Footpath group notes that the right of way, Overseal footpath 36, has been omitted from the application. Whilst having no reservations concerning the development, it is questioned whether there is an opportunity to change Sealwood Lane from a footpath to a bridleway to support the Derbyshire Greenway strategy. It is noted there is sufficient room to accommodate a bridleway along the north-eastern edge of the development and still allow sufficient tree planting, and with a number of liveries within 1km of the development it would give a valuable off road route that would link with other local bridleways.

Four representations have been received, raising the following concerns/points:

- a) already experience noise disruption over the summer months from visitors to the existing cabins, and this would increase with the proposals;
- b) existing disturbance and visual impacts from works ongoing to erect the bungalow;
- c) their garden would become completely over looked;
- d) light pollution that floodlights from an all-weather pitch would create, if this were to be the case;
- e) the application does not acknowledge/accommodate the public right of way; and
- f) the current footpath should be diverted around the periphery of the site and upgraded to bridleway status, providing a much needed off-road link for horse riders and cyclists to Green Lane, avoiding the increasingly busy A444.

### **Development Plan Policies**

The relevant policies are:

- 2016 Local Plan Part 1: S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), S6 (Sustainable Access), SD1 (Amenity and Environmental Quality), SD2 (Flood Risk), SD3 (Sustainable Water Supply, Drainage and Sewerage Infrastructure), SD4 (Contaminated Land and Mining Legacy Issues), SD5 (Minerals Safeguarding), BNE1 (Design Excellence), BNE3 (Biodiversity), BNE4 (Landscape Character and Local Distinctiveness), INF1 (Infrastructure and Developer Contributions),

INF2 (Sustainable Transport), INF8 (The National Forest) and INF10 (Tourism Development).

- 1998 Local Plan (saved policies): EV1 (Development in the Countryside), EV9 (Protection of Trees and Woodland) and EV11 (Sites and Features of Natural History Interest).

### **Emerging Development Plan Policies**

The relevant policies are:

- Submission Local Plan Part 2: BNE5 (Development in the Countryside) and BNE7 (Trees, Woodland and Hedgerows).

### **National Guidance**

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)

### **Local Guidance**

- Housing Design and Layout SPG
- River Mease SAC Developer Contributions Strategy 2 (DCS2)

### **Planning Considerations**

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

- The principle of development;
- Biodiversity impacts and enhancement;
- Drainage and flood risk;
- Highway capacity and safety; and
- Design and amenity.

### **Planning Assessment**

#### The principle of development

The erection of lodges for tourism purposes is acceptable for this National Forest location, the lodges sitting alongside the existing four lodges already in use on a regular basis. The nature of their construction both ensures a 'temporary' nature of development which can be reversed relatively easily should demand fall away at any stage in the future, whilst the design of the lodges reflect the woodland character which is an aim of the National Forest. The economic benefits to the National Forest as a whole, as well as to services and facilities in the village and nearby from the self-catering units proposed, must be recognised.

#### Biodiversity impacts and enhancement

With the Wildlife Trust satisfied in respect of impacts on protected species, subject to landscape management and enhancement, and existing trees and hedgerows to be

retained; there is no concern here. The landscaping proposals would help to enhance habitat provision at the site and provide an overall biodiversity enhancement.

Consideration is given to surface water quality leaving the site. The Drainage Strategy sets out that permeable paving and swales would be utilised, overcoming initial concerns regarding the approach to sustainable drainage and the opportunity to improve water quality and enhance biodiversity further. The plans have been amended to indicate the scope for swales should percolation tests demonstrate infiltration is not feasible – which seems likely given the response of the LLFA. With this in mind, conditions are appropriate in controlling the detailed drainage scheme which, coupled with the distance to the River Mease itself, is unlikely to have a discernible impact on the integrity of the SAC.

#### Drainage and flood risk

The concerns of the LLFA are noted, although it is clear they do not object and see conditions as appropriate in ensuring adequate drainage of the site. However, the hierarchy seeks infiltration and the above ground storage – the scope for which was not demonstrated on initial plans. Plans have been adjusted to respond to this concern and provide scope for storage and/or infiltration in swales, as well as porous paving, such that there is a feasible solution at this time. Notwithstanding this position, being Flood Zone 1 land, the proposal is unlikely to cause flood risks on or off-site to be exacerbated given a feasible means of sustainable drainage and discharge from the site has been established.

#### Highway capacity and safety

Additional vehicle movements would arise as a result of the proposal. However the movements are likely to be absorbed into the existing movements along Linton Heath and Main Street, with the site access onto Colliery Lane which is unadopted. The County Highway Authority raises no objection in principle, subject to parking provision being provided on site prior to occupation.

The comments in respect of the public footpath are noted. The proposal would not obstruct and/or compromise the use of the footpath as existing. Whilst the aspiration to upgrade the route is recognised, it would not be appropriate to require this of the applicant given it is not necessary for the development to proceed. A condition or a planning obligation would not fulfil the relevant tests for their imposition.

#### Design and amenity

The lodges follow the same style and appearance as to those already existing. Their low ridge lines also mean that, with time as the woodland planting matures, they would be assimilated into their surroundings. It has also been recognised, through amended plans, that the density of lodges towards the public footpath required 'loosening' so to allow the wooded belt to permeate in-between the built form. This also assists in developing two character areas within the site – one focussed within woodland and the other centred around the recreational 'offering' on the site (i.e. the fishing pond and the all-weather pitch – the latter which raises no concern).

The position of the lodges does not compromise privacy and shading to existing dwellings, whilst the use of the site does not attract objection from the EHO in respect of noise. Any floodlighting to the all-weather pitch would be development requiring permission in its own right and could be considered on its merits should an application be received.

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

## **Recommendation**

**GRANT** permission subject to the following conditions:

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

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

2. The development hereby permitted shall be carried out in accordance with plans/drawings 1613/10 and 1613/11 Rev B; 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 and in the interests of sustainable development.

3. Notwithstanding the provisions of Part C Class 3 of the Town and Country Planning (Use Classes) Order 1987 (as amended) and Part 3 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 2015, (or any Order(s) revoking or re-enacting either or both Order(s)); the lodges shall be used for the purpose of holiday accommodation only and for no other purpose, including any other purpose within Class C3 of the Order without the prior grant of planning permission by the Local Planning Authority, and:

- i. the building shall not be occupied as a person's sole, or main place of residence;

- ii. the accommodation shall not be occupied by a person or group of persons for a continuous period of more than 28 days and it, or other lodges constructed pursuant to planning permission ref: 9/2013/0640, shall not be re-occupied by the same person(s) within 3 months following the end of that period; and

- iii. the site operator shall maintain an up-to-date register of the names of all occupiers of the building, and of their main home addresses, and shall make that information available at all reasonable times to the Local Planning Authority.

Reason: The creation of unrestricted dwellings in this location would be contrary to the development plan and the objectives of sustainable development.

4. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, or any statutory instrument amending, revoking and/or replacing that Order; none of the lodges hereby permitted shall be enlarged, altered or extended, and no outbuildings, enclosures/boundary treatments or hard surfaces erected/created, without the prior grant of planning permission on an application made to the Local Planning Authority in that regard.

Reason: To maintain control in the interest of the character and amenity of the area, having regard to the setting and size of the development, the site area and effect upon neighbouring properties and/or the street scene.

5. No development shall commence until all existing trees and hedgerows on the site, which are not shown to be removed on the approved plan, are fenced with steel mesh fencing to 2.3m high supported by steel scaffold poles staked at 3 metre centres. The fencing shall be positioned at the outer limits of the root protection area for each tree/hedgerow and retained in position until all building works on adjoining areas have been completed unless otherwise agreed in writing with the Local Planning Authority.

Reason: To protect the trees/landscape areas from undue disturbance, noting that initial works could lead to unacceptable impacts.

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

Reason: In the interests of pollution control and protection of the River Mease SAC, noting that uncontrolled discharges could cause unacceptable impacts if the scheme is not designed correctly from the outset.

7. No development shall take place until a detailed assessment has been provided to and approved in writing by the Local Planning Authority to demonstrate that the proposed destination for surface water accords with the hierarchy in Approved Document Part H of the Building Regulations 2000. The assessment shall demonstrate, with appropriate evidence, that surface water runoff is discharged as high up as reasonably practicable in the following hierarchy:

- i) into the ground (infiltration);
- ii) to a surface water body;
- iii) to a surface water sewer, highway drain, or another drainage system;
- iv) to a combined sewer.

Reason: To ensure that it is possible to incorporate sustainable drainage systems before the development begins in the interests of flood protection.

8. No development shall take place until a detailed design, timetable for implementation and associated management and maintenance plan of surface water drainage for the site, in accordance with Defra non-statutory technical standards for sustainable drainage systems, has been submitted to and approved in writing by the Local Planning Authority. The scheme shall demonstrate that, as a minimum, suitable capacity is proposed to attenuate peak flows from the site. The scheme shall be carried out in conformity with the approved details prior to the first occupation of each respective lodge/hard surface served by the surface water drainage system.

Reason: To ensure that it is possible to incorporate sustainable drainage systems before the development begins in the interests of flood protection.

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

Reason: To safeguard the appearance of the buildings and the locality generally.

10. Prior to the first occupation of a dwelling hereby approved, a Landscape and Ecological Management Plan (LEMP) for all retained habitats within the development site shall be submitted to and be approved in writing by the Local Planning Authority. The plan should incorporate the details provided in the ecological appraisals and the content of the plan should include the following:

- a) Description and evaluation of features to be managed/enhanced or created, including the management of the ditch and hedgerows;
- b) Ecological trends and constraints on site that might influence management;
- c) Aims and objectives of management;
- d) Appropriate management options and methods for achieving aims and objectives;
- e) Timescales for implementation and subsequent actions;
- f) Prescriptions for management actions;
- g) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period);
- h) Details of the body or organisation responsible for implementation of the plan;
- i) Ongoing monitoring and remedial measures for where conservation aims and objectives of the plan are not being met; and
- j) Details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured as by the developer with the management body(ies) responsible for its delivery.

The approved plan shall be implemented in accordance with the approved details.

Reason: In the interests of safeguarding and enhancing the biodiversity offer of the site.

11. Prior to the first occupation each lodge comprising this development, the internal service road, parking and manoeuvring space shall be provided in accordance with the approved plan, in so far as necessary to serve that lodge, and thereafter be retained free of any impediment to their use for these purposes.

Reason: In the interests of highway safety.

12. Notwithstanding the approved plan, prior to the first occupation of a lodge hereby approved, revised details of the landscaping scheme shall be submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of the appearance of the area, recognising that the species mix and density proposed is not acceptable at the present time.

13. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

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

#### Informatives:

- a. 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 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. Overseal Public Footpath 36 must remain open, unobstructed and on its legal alignment at all times. There should be no disturbance to the surface of the route without prior authorisation from the Rights of Way Inspector for the area. Consideration should be given to members of the public using the route at all times. A temporary closure of the route may be granted to facilitate public safety subject to certain conditions. Further information may be obtained by contacting the Rights of Way Section. If a structure is to be erected adjacent to the right of way, it should be installed within the site boundary so that the width of the right of way is not encroached upon.
- c. The County Council do not adopt any private SuDS schemes. As such, it should be confirmed prior to commencement of works which organisation will be responsible for SuDS maintenance once the development is completed.
- d. The applicant should demonstrate, to the satisfaction of the Local Planning Authority, the appropriate level of treatment stages from the resultant surface water in line with Table 3.3 of the CIRIA SuDS Manual C697. This type of

development usually requires >2 treatment stages before outfall into surface water body/system which may help towards attainment of the downstream receiving watercourse's Water Framework Directive good ecological status.

- e. Any works in or nearby to an ordinary watercourse require consent under the Land Drainage Act (1991) from Derbyshire County Council (DCC) (e.g. an outfall that encroaches into the profile of the watercourse, etc). Upon receipt of any application (including the legislative fee) DCC has an 8 week legislative period in which to make a decision and either consent or object the proposals. If the applicant wishes to make an application for any works please contact [Flood.Team@derbyshire.gov.uk](mailto:Flood.Team@derbyshire.gov.uk).
- f. Severn Trent Water advise that although our statutory sewer records do not show any public sewers within the area you have specified, there may be sewers that have been recently adopted under The Transfer Of Sewer Regulations 2011. Public sewers have statutory protection and may not be built close to, directly over or be diverted without consent and you are advised to contact Severn Trent Water to discuss your proposals. Severn Trent will seek to assist you obtaining a solution which protects both the public sewer and the building.
- g. This project has been screened to assess its impact on the River Mease SAC under the Conservation of Habitat and Species Regulations 2010. The assessment has concluded that the development would cause no significant impact and therefore an Appropriate Assessment is not required.
- h. The proposed development lies within a coal mining area which may contain unrecorded coal mining related hazards. If any coal mining feature is encountered during development, this should be reported immediately to The Coal Authority on 0345 762 6848. It should also be noted that this site may lie in an area where a current licence exists for underground coal mining. Further information is also available on The Coal Authority website at: [www.gov.uk/government/organisations/the-coal-authority](http://www.gov.uk/government/organisations/the-coal-authority). Property specific summary information on past, current and future coal mining activity can be obtained from: [www.groundstability.com](http://www.groundstability.com).

**Item**            **1.2**

**Ref. No.**        **9/2017/0417/U**

**Applicant:**  
**Mr M Sandhu**  
**4 Breamar Close**  
**Derby**  
**DE24 3HD**

**Agent:**  
**Mr Ashar Shuja**  
**Edward Jones**  
**72 Dallow Street**  
**Burton On Trent**  
**Staffordshire**  
**DE14 2PQ**

**Proposal:**    **PART CHANGE OF USE FROM OFFICE TO TAXI BOOKING OFFICE AT PHOENIX AFTER SCHOOL AND HOLIDAY CLUB AT THE EBENEZER CHURCH HALL MAIN STREET NEWHALL SWADLINCOTE**

**Ward:**            **Newhall & Stanton**

**Valid Date**    **19/04/2017**

**Reason for committee determination**

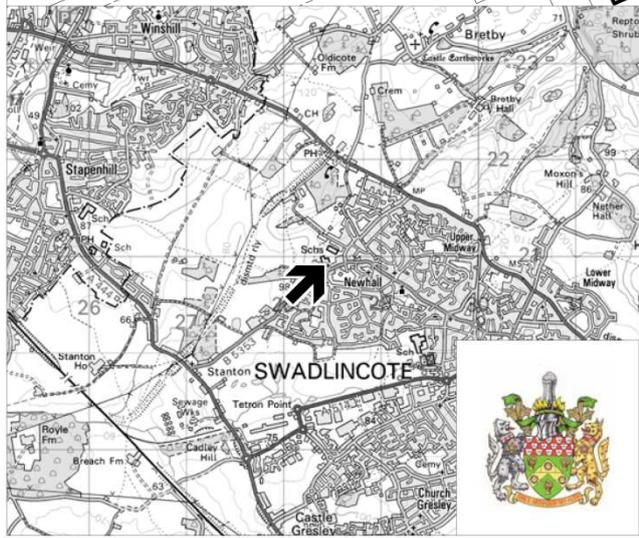
The item is presented to Committee at the request of Councillor Bambrick as local concern has been expressed about a particular issue; it is felt the Committee should debate the issues in the case which are finely balanced and because it is felt that unusual site circumstances should be considered by the Committee.

**Site Description**

The application site is situated on the northern edge of Newhall with access gained from Main Street. The application property consists of Ebenezer Church, an unlisted church, which has a small office extension, built at a later date. Gates joined to the eastern side of the office building lead onto an extensive grassed and well vegetated area to the rear. The application site is surrounded by well-established residential buildings; Newhall Community Junior School is situated on the Northern boundary, with shops and public houses also within close proximity. The total area of the application site 0.21 hectares.

**Proposal**

Consent is sought for the change of use of one of the existing office units (use class B1) to a taxi booking office (use class Sui Generis). The office is situated within a small extension which is adjoined to the North East side of Ebenezer Church. The office building is set back approximately thirty metres from Main Street behind an



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established parking area, with the change of use being sought on the south facing office only; there are no changes proposed internally or externally.

### **Applicant's supporting information**

Aside from the usual supporting plans, clarification was sought on the application not being used as a taxi rank. The agent confirmed in writing that the application proposal is for the 24 hour use of an office, where bookings are to be made for private hire vehicles only. No vehicles other than those that are working in the office (maximum of three) are to be parked on site; parking is to be on the southern part of the site adjacent to the church hall, on the existing hard standing. The office is not to be used by members of the public.

### **Planning History**

There is no relevant planning history.

### **Responses to Consultations**

The County Highway Authority and Environmental Health have no objection subject to a condition preventing vehicles working from the site.

### **Responses to Publicity**

One letter of objection has been received, raising the following concerns:

- a) There is not sufficient parking;
- b) Poor access to the site;
- c) Increase in noise pollution;
- d) Increase in traffic onto Main Street;
- e) Believe that the car park will be used by more than three cars and not just office staff;
- f) Impact on the amenity of a residential area; and
- g) Believes it could become a taxi rank if permission is granted

### **Development Plan Policies**

The relevant policies are:

- 2016 Local Plan Part 1: S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), SD1 (Amenity and Environmental Quality), INF2 (Sustainable Transport)

### **National Guidance**

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)

## **Planning Considerations**

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

- Amenity
- Highway safety

## **Planning Assessment**

### Amenity

Policy SD1 stipulates that the proposed use should not have an adverse impact on the amenity of neighbouring properties. Concerns have been raised due to the proximity of the proposed office to neighbouring residential properties, to the East and South. Whilst consent is sought for the use to operate on a 24-hour basis, there would be no undue noise (i.e. heavy machinery or other forms of noise pollution) resulting from the use as a private hire office, therefore there would be no adverse impact on neighbours and with the use of suitable conditions relating to vehicles, policy SD1 and the NPPF will be complied with.

The proposed change of use would be controlled by conditions with regard to the total number of staff and the use of the office; preventing it from becoming a taxi rank and restricting the vehicles parking on site for the office to a maximum of three.

The Council's Environmental Health Officer has assessed the application material and is satisfied with the application, subject to a condition that prevents vehicles working from the site.

### Highways safety

The application seeks to use the existing site access and parking area, there have been no objections to this raised by the County Highway Authority, subject to a condition restricting the office for private hire, where the vehicles are not based on site. Concerns have been raised due to the increase in the number of vehicles using Main Street as a result of this application if vehicles were to be based on site. The agent has confirmed that this would not be the case, private hire vehicles would not be on site, a condition would be also be attached to prevent this. There is sufficient parking to the South of the office building for up to 3 vehicles that would be used by office staff and, in effect, the site circumstances would therefore not change. As such the proposals are considered to comply with Policy INF2 and the requirements of the NPPF.

### Conclusion

The proposed change of use would be suitably controlled through the use of planning conditions to ensure that any potential adverse impact on the amenity of neighbouring residential properties would be prevented. The proposed use would comply with the requirements of the NPPF and Policies S1 and S2 as the proposal is deemed to be a sustainable development in addition to SD1 and INF2 of the adopted

Local Plan Part 1. The proposal would retain an office use within an established office building; visually there would be no change.

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

## **Recommendation**

**GRANT** permission subject to the following conditions:

1. The development permitted shall be begun before the expiration of three years from the date of this permission.  
Reason: To conform with Section 91(1) of the Town and Country Planning Act 1990 (as amended by Section 51 of the Planning and Compulsory Purchase Act 2004).
2. The development hereby permitted shall be carried out in accordance with proposed Floor Plan received on 19 April 2017; and proposed Block Plan, received on 19 April 2017; 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 and in the interests of sustainable development.
3. This permission shall relate to the use of the premises as a private vehicle hire booking office as described in your application and for no other purpose.  
Reason: In order that the Local Planning Authority may retain control over the future use of the premises and in the interests local residents amenity.
4. The number of vehicles parked on site for office staff shall be restricted to three, as stated in the application form there will be a maximum of 3 employees, unless otherwise agreed in writing by the Local Planning Authority.  
Reason: In the interests of highway safety and local residents' amenity.

### Informatives:

- a. 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 and suggesting amendments to improve the quality of the proposal. 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.

**Item**            **1.3**

**Ref. No.**        **9/2017/0422/Z**

**Applicant:**  
**Mrs Louise Glover**  
**South Derbyshire District Council**  
**Civic Offices**  
**Civic Way**  
**Swadlincote**  
**DE11 0AH**

**Agent:**  
**Mrs Louise Glover**  
**South Derbyshire District Council**  
**Civic Offices**  
**Civic Way**  
**Swadlincote**  
**DE11 0AH**

**Proposal:**     **CERTIFICATE OF LAWFULNESS FOR USE OF THE DWELLING WITHOUT COMPLIANCE WITH THE AGRICULTURAL TENANCY CONDITION AT THE BUNGALOW ROSLISTON FARM FORESTRY CENTRE BURTON ROAD ROSLISTON SWADLINCOTE**

**Ward:**           **Linton**

**Valid Date**    **07/04/2017**

**Reason for committee determination**

This item is presented to Committee as the land is owned by the Council.

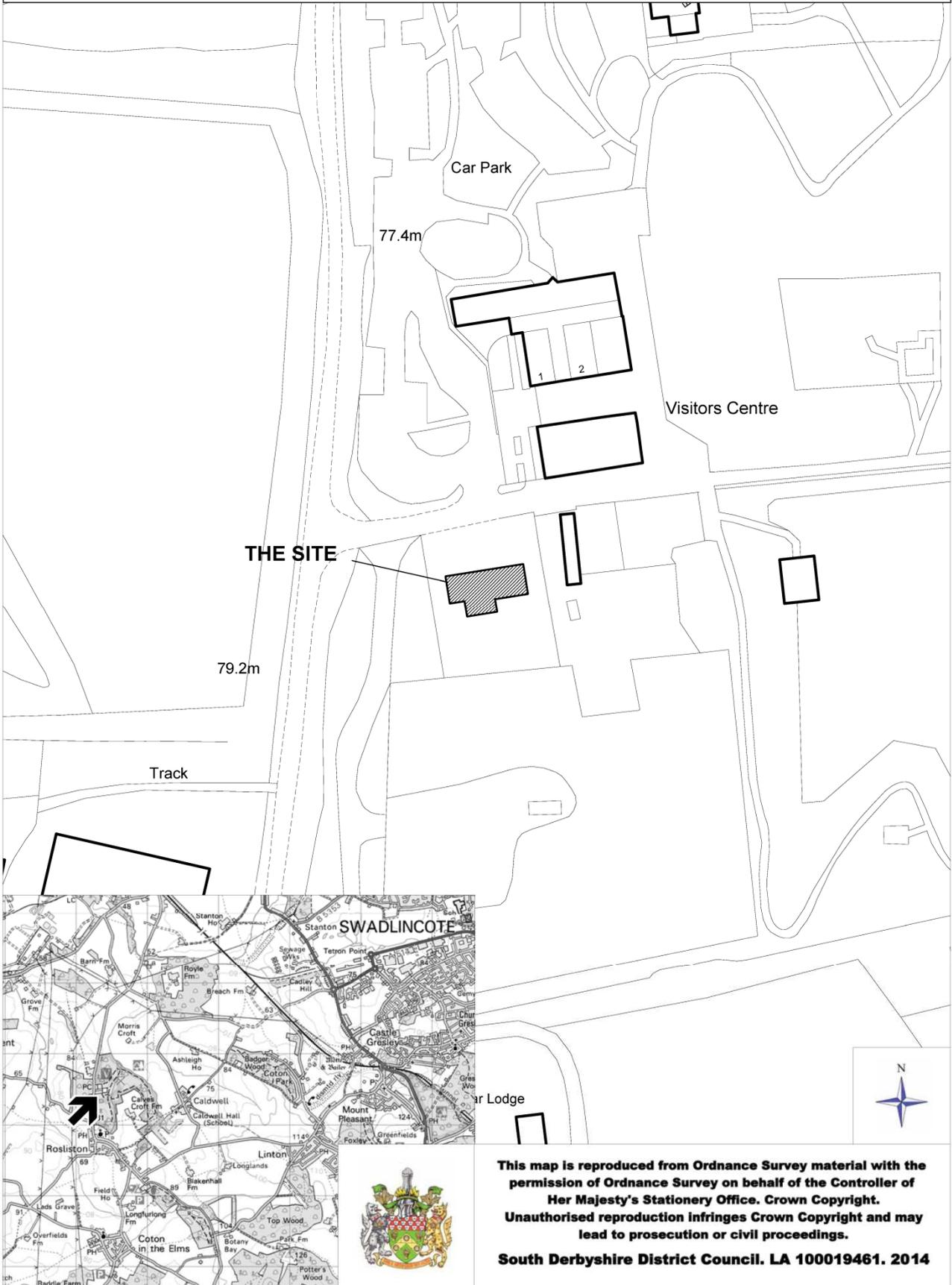
**Site Description and background**

The site consists of a single storey residential bungalow which is positioned adjacent to Rosliston Forestry Centre. The dwelling was originally permitted under planning application 1173/32 (i.e. in 1973) for the requirements of adjoining farm at that time and subject to a condition that the property must be occupied by people who work in agriculture. Following its purchase by the Council in 1993, permission was granted for the change of use to a Forestry Centre. The site included the curtilage of the bungalow and therefore the use of the bungalow as part of the new use of the land was established.

**Proposal**

A certificate of lawfulness for an existing use has been submitted for the dwelling to be occupied by residents who do not work within agriculture. The applicant has submitted evidence that supports that the use of the dwelling has been continuously occupied by people who do not work within agriculture for a period of in excess of ten years.

9/2017/0422/Z - The Bungalow, Rosliston Forestry Centre, Rosliston DE12 8JX



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## **Applicant's supporting information**

The Rosliston Forestry Centre Executive requested that a Certificate of Lawfulness for the bungalow be applied for as part of the transition process for seeking a new management company to take over the Centre from 1<sup>st</sup> April 2018. For the past 19 years the managers for the Forestry Centre have lived in the bungalow with their family.

The application for a Certificate of Lawfulness has been made to ease the way for a new management company taking over the site in April, they would have the restriction removed and the thoughts behind it are that they could use it as a resident for staff immediately, or look at changing the use to holiday accommodation.

A letter confirms that the property has been occupied since 4<sup>th</sup> July 1999 by occupiers who do not work in agriculture which is corroborated by a copy of the lease submitted (dated 12<sup>th</sup> January 2000) which stipulates the terms of the occupancy of the property. There is no reference to the use of the property by occupants who work in agriculture.

## **Planning History**

1173/32      Erection of a bungalow for use as a farm residence – Approved with conditions – 21/12/1973

9/1193/727      The extension and conversion of a farm building to provide a National Forest Visitor Centre and 6 craft workshops, and the formation of an associated car park.

Numerous other permissions relating to the further development of the centre.

## **Responses to Consultations**

No comments have been received with regard to the application.

## **Responses to Publicity**

An email has been received from the current occupiers who state that they have lived at the property since 31 December 1998.

## **Development Plan Policies**

There would be no relevant policies to assess the application against, as the application would not be assessed on planning merits but on the evidence that has been submitted in accordance with the legislation below:

- Section 191 of the Town and Country Planning Act 1990 (Certificate of Lawfulness for Existing Use/Development)
- Section 171 of the Town and Country Planning Act 1990 (Time Limits)

## National Guidance

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG) ID17.

## Planning Considerations

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

- The relevant legislation
- Why a Certificate of Lawfulness has been submitted
- Justification

## Planning Assessment

### The relevant legislation

There is an undoubted case that the change of use of the bungalow was established with the change of use permission issued in 1993. However, the removal of the agricultural occupancy condition was implied rather than stated explicitly. As such this application seeks to remove any doubt in legal terms.

An application of this nature would be considered under Section 191 of the 1990 Act as the use is claimed to be lawful by the passage of time. In terms of the use of building and land, this is 10 years, whereas operational development becomes lawful after 4 years. These time limits are set out in Section 171B of the 1990 Act. A local planning authority would need to consider whether, on the facts of the case and relevant planning law, if the specific matter would be lawful on the balance of probability. Therefore, the planning merits would not be relevant in the determination of this application and the onus would be on the applicant to provide sufficient information to support an application.

The NPPG states *"if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability"*.

### Why a Certificate of Lawfulness has been submitted

Rather than rely on the 'implications' of the 1993 permission it is considered that the issue of a certificate would avoid any doubt over the use of the bungalow at a time when the Centre is likely to be the subject of a new lease. As such, notwithstanding the implications of the 1993 permission, Condition 3 attached to planning permission 1173/32 specifies that the property must be occupied by those who work in agriculture. A certificate of lawfulness for existing development has been submitted for consideration as the applicant considers that there is sufficient evidence to demonstrate that The Bungalow has been occupied by those outside of the agricultural industry for in excess of ten years and that this would now be lawful due to the passage of time.

### Justification

The copy of the lease that has been submitted supports that the current occupiers have lived in the premises since January 2000 and there is no reference to the occupiers working within agriculture as part of the lease agreement.

No conflicting evidence has emerged as part of the consultation process that would cast doubt on the submitted evidence. The available planning history does not dispute the use of the building as residential and it would be considered that the applicant has demonstrated, on the balance of probability, that the building has been used as residential (use class C3) by people who do not work within agriculture, without material interruption for a period in excess of 10 years and even that this was always the intention given the inclusion of the bungalow in the curtilage of the 1993 permission.

### Conclusion

On the basis of the information that has been submitted and on the balance of probability, it would be considered that that the building has been used as residential (use class C3) by people who do not work within agriculture without material interruption for a period in excess of 10 years.

### **Recommendation**

**GRANT** a Certificate of Lawfulness:

1. The applicant has demonstrated, on the balance of probability, that the building has been used for residential purposes (class C3 of the Use Classes Order 1987 (as amended)) by occupiers who do not work within agriculture, without material interruption for a period in excess of 10 years.

### Informatives:

- a. In dealing with this application, the Local Planning Authority has worked with the applicant in a positive and proactive manner through quickly 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.

**Item**            **2.1**

**Ref. No.**        **9/2017/0095/OS**

**Applicant:**  
**Gladman Developments**  
**Gladman House**  
**Alexandria Way**  
**Congleton**  
**CW12 1LB**

**Agent:**  
**Gladman Developments**  
**Gladman House**  
**Alexandria Way**  
**Congleton**  
**CW12 1LB**

**Proposal:**    **OUTLINE APPLICATION (ALL MATTERS EXCEPT FOR ACCESS TO BE RESERVED) FOR THE RESIDENTIAL DEVELOPMENT OF UP TO 150 DWELLINGS, LAND FOR A COMMUNITY BUILDING, PUBLIC OPEN SPACE, LANDSCAPING AND SUSTAINABLE DRAINAGE SYSTEM (SUDS) AND VEHICULAR ACCESS POINT FROM WESTON ROAD ON LAND AT SK4129 0030 WESTON ROAD ASTON ON TRENT DERBY**

**Ward:**            **ASTON**

**Valid Date**    **08/02/2017**

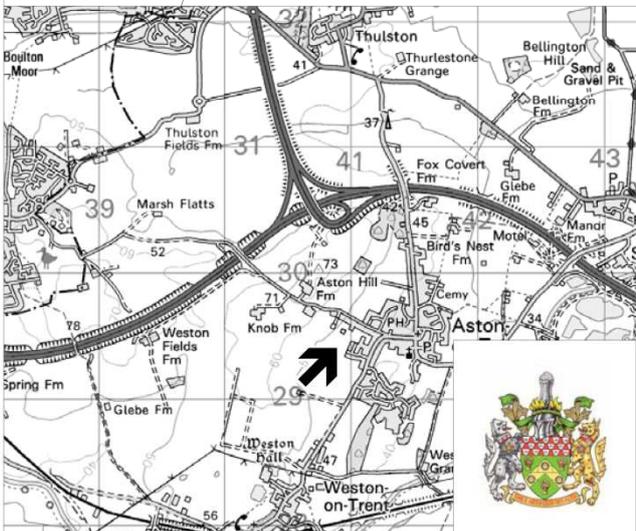
#### **Reason for committee determination**

The item is presented to Committee at the discretion of the Planning Services Manager noting the significant level of interest in the application and recent housing applications around the village.

#### **Site Description**

The site comprises an area of 10.3 hectares of agricultural land to the south-western edge of Aston-on-Trent, to the west of Weston Road. It is made up of two fields – the northern put to pasture whilst the southern, larger field is part of a larger arable field extending beyond the site boundary to the west. Beyond the northern boundary are further, small paddocks behind properties on Chellaston Lane. The northern field is enclosed by native hedgerow to the northern, western and southern boundaries (the latter of which also containing a ditch), with a small spinney and pond to the south-west corner. The eastern boundary is more fragmented with a mixture of hedgerow and garden fences to properties on Valerie Road and Ellison Avenue. The southern field is not enclosed to the southern, western and eastern sides, whilst it is also open to a further, smaller paddock to the eastern end of the northern boundary (behind properties on Valerie Road). A further drainage ditch runs east towards Weston Road and north/south along Weston Road creating the southern and western boundaries. Residential properties exist to the opposite side of Weston Road, looking out onto the site.

9/2017/0095/OS - Land at SK4129 0030 Weston Road, Aston on Trent DE72 2BB



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**South Derbyshire District Council. LA 100019461. 2014**

The land rises from east to west and also slightly from south to north across the western part of the site, creating a rise of some 10-15m across the site between the south-eastern and north-western corners. Weston Road is subject to a 30mph limit across the site frontage, where a field access exists to the south-eastern extent. Properties in the area are a mix of 1930s and later semi-detached and detached houses, with bungalows pre-dominant around Valerie Road/Ellison Avenue.

## **Proposal**

The application is made in outline for up to 150 dwellings, predominantly in a mix of detached and semi-detached houses up to 2.5 storeys in height, with the potential for some bungalows. Further land would be reserved for a community facility/GP surgery whilst public open space (POS) including a community orchard and allotments would be provided along with associated landscaping and drainage infrastructure (SuDS). Only access is to be considered in detail and 'fixed' under this application, with a single priority T-junction proposed onto Weston Road with potential for pedestrian links to the POS at the end of Valerie Road and northern end of the site frontage with Weston Road. The indicative layout suggests that the built form would sit adjacent to the settlement edge from Ellison Avenue around to Weston Road.

## **Applicant's supporting information**

A Planning Statement advances there are no unacceptable adverse impacts associated with the scheme and, as with any greenfield site, the development would introduce some changes to the area and urbanising effects. Despite these changes, it is argued that significant and demonstrable harm would not arise, and there are no technical or environmental impacts that would significantly and demonstrably outweigh the substantial benefits. It is advanced that the development would meet the aims and objectives of sustainable development, securing net gains across all three strands. The development is therefore sustainable, and viable and deliverable.

The Design and Access Statement is considered to demonstrate how the proposal has been formulated and how it responds to local context and policy set out within the accompanying Planning Statement. The document establishes certain parameters to be set should planning permission be forthcoming, alongside design principles that have informed the development of the Illustrative Framework and Site Layout. Large areas of open space proposed would provide ecological enhancement and effective public amenity for both existing and future residents, whilst also helping the development fade into open countryside beyond. The proposals contribute to the wider context through the creation of several community amenity features and also making land provision for a community facility/GP surgery. The design considers local character and context to provide a sensitive design based on best practice in urban design and accessibility. In addition, the proposal would provide a range of dwelling sizes, types and tenures that will contribute to the sustainable growth of Aston-on-Trent.

An Affordable Housing Statement sets out that the District has an acute affordable housing need which is reflective of the national picture. It is considered that the site is suitable for affordable homes given its accessibility, cycle and footpath links to

services and facilities within the village and with bus links to higher order settlements. The scheme is to meet the policy requirement of 30% affordable housing without subsidy, in a mix and tenure to be determined, and is a significant material benefit of the scheme.

The Transport Assessment reviews accident data for the local area for the most recent five years available. This data indicates 39 recorded accidents. 35 of these accidents were classified as 'slight' while 4 were classified 'serious'. There were no recorded fatal accidents. There is nothing to suggest that highway condition, layout or design were contributory factors. It is therefore concluded that there are no deficiencies in the highway network, or existing safety issues in the vicinity of the site, that would be exacerbated by the development proposals. The site would be accessed via a new priority junction from Weston Road, which has been designed in accordance with the 6Cs Design Guide and Manual for Streets. The proposed access includes 2.0m wide footways on both sides, with a new footway proposed along the site frontage to connect the existing pedestrian provision to the north-east to the existing bus stop located to the south-west of the site. The development would thereby provide improved access to the bus stop to existing residents of the surrounding area, in addition to residents of the proposed development. An assessment has been undertaken of the site's level of accessibility by sustainable modes, from which it can be concluded that realistic options exist for access to local amenities, education, and employment opportunities on foot, by cycle, and by public transport. It is proposed that occupiers of the proposed development would be made aware of the options available for sustainable modes of travel through the site's Travel Plan and also through welcome packs provided to residents and employees at the development. Junction capacity assessments have been undertaken at the proposed site access and at three further junctions on the local highway network. A robust assessment has been undertaken which included traffic generated by the Moor Lane and other Weston Road (refused) applications. The results of the junction capacity assessment indicate that the development proposals would have an overall negligible impact on the local highway network. Overall, the proposal complies with local and national policy and guidance in terms of transport impacts, with the NPPF confirming that development should only be prevented or refused on transport grounds where the residual cumulative impacts of the development are severe. Therefore, it is considered that there are no highways or transportation related objections.

The Landscape and Visual Impact Assessment (LVIA) considers both landscape and visual effects. In terms of landscape effects, the most significant permanent effects are deemed moderate and affect the south-western village/rural area fringe and the fields that are the development site. There are greater significance of effects which are temporary effects immediately after the development is completed and prior to the establishment of tree and hedgerow planting, and these are deemed as major/moderate to moderate. Loss of open gaps and consolidation of settlements was studied but, due to the position of the development and the current village fringe treatment, the overall impact would be low. In terms of visual effects, the viewpoints with the most significant long-term effects are advanced as:

- Major to Major/Moderate effects on adjacent properties with direct views over the development.

- Major/Moderate level of Significance: views from the footpath directly along the Weston Road boundary.
- Moderate-minor effects on users of the footpath approaching the site from the south at a distance of approximately 600m from the site
- Moderate-minor level of Significance from Chellaston Lane users and residents and from Valerie Road residents.

There are also Moderate short-term effects on the view from the Aston Hill Farm area until tree and hedgerow planting matures when the effect becomes Minor. Overall, it is advanced that the development would improve the village edge and balance the approach from Weston-on-Trent. As mitigation, it is proposed that native trees and shrubs are planted to screen the development from adjacent dwellings and to soften the effect on approach from Weston-on-Trent. Properties are designed to face outwards to create a positive village fringe, improving on the current situation. Housing is located in the portion of the fields that is closest to the village allowing a strong green buffer to mitigate the initial hard edge. To conclude, it is considered that much of the potential impact can be mitigated through a careful and integrated landscape scheme.

A Soil and Agricultural Use and Quality Report identifies that the majority of the site is grade 3a agricultural land (84%) with smaller areas of grade 3b (15%). The topsoil is considered to be a high quality resource for re-use in gardening and landscaping.

The Heritage Assessment notes extensive evidence of prehistoric activity to the south and east of Aston-on-Trent, to the south-east of the site. The Scheduled Monument Iron Age settlement and cursus, with other features to the south-east, is associated with archaeological remains of Neolithic, Bronze Age, Iron Age and Romano-British date. There is currently no evidence of prehistoric or Romano-British activity recorded within the site. The site has been under arable cultivation, but no cropmarks thought to be indicative of archaeological remains have been observed on aerial photographs. Ridge and furrow earthworks of probable medieval origin are visible within the site on historic aerial photographs. However, above ground remains have been ploughed out. Below-ground remains of ridge and furrow earthworks are not considered to be heritage assets. It is also concluded that the development would not result in any adverse impacts on the significance of designated heritage assets as a result of alteration to setting. The results of the Geophysical Survey primarily reflect modern activity associated with agriculture and industrial exploitation of the land, which correlates well with supplementary satellite imagery and historic mapping. Natural variations in the soils and geology have been identified across the site. A large, discrete area of strong responses has been detected along the western end of site and is collocated with the location of a former marl pit recorded on historic mapping. A linear feature extending east-west across the site may be resultant of associated activity with the pit or may represent a former boundary feature that has been deliberately infilled. Ploughing trends have been detected on east-west alignments across the site and are well correlated with recent agricultural activity visible on satellite imagery.

An Arboricultural Assessment finds that the tree stock on site bound the northern field parcel and consists of native species commonly associated with boundary hedgerows. The only loss in order to facilitate the proposed layout would be a small section of hedgerow to facilitate access. A single ash tree would also be removed,

but due to its impaired physical condition it has a limited life expectancy in any case and is not suitable for retention. The remainder of the trees on site can be retained and incorporated into the proposals.

An Ecological Appraisal entails a desk study, an extended Phase I Survey undertaken in June 2016, and a Habitat Suitability Index (HSI) and great crested newt (GCN) survey undertaken on an on-site pond in May and June 2016. No statutory or non-statutory nature conservation designations cover the site. One statutory designated site (Donnington Park Site of Special Scientific Interest (SSSI)) is located 1.9km to the south and two non-statutory Local Wildlife Sites (LWS) – Long Walk Wood LWS and Brickyard Plantation and Claypit LWS, are located 230m south-east and 830m north. None of these designated sites would be affected. The grassland and arable habitats forming the majority of the site are of low and negligible nature conservation value respectively. None of the hedgerows were identified as being Important in accordance with the wildlife and landscape criteria of the Hedgerow Regulations 1997. The more substantial lengths of hedgerow forming the boundaries to the grassland field and dividing it from the arable field were native species dominated and are defined as Species of Principal Importance (SPI). With the exception of some minor loss of hedgerow to allow for internal access, all of the hedgerows and mature trees would be retained. The landscape proposals provide significant areas of open green space allowing for native shrub and tree planting and species rich grassland creation, which in addition to the creation of new lengths of native species-rich hedgerow planted along the currently open western and southern boundaries, would greatly increase the overall biodiversity value of the site. Two mature trees identified as having the potential to support roosting bats would be retained within the proposed Public Open Space (POS) and subsequently no impacts are anticipated on any potential roost(s) present. The boundary features provide suitable foraging and commuting habitats to bats and adoption of a sensitive lighting strategy is recommended to avoid any potential impacts to flight-lines or areas of forage. The HSI assessment conducted found the pond to be of poor suitability for GCN and two presence/absence surveys recorded no evidence. A further four ponds were identified between 30m and 350m from the site. One of these ponds was found to have been infilled and due to their relatively recent creation, ornamental nature and distance from the site the remaining waterbodies are considered reasonably unlikely to support populations of GCN.

The Ecological Addendum records the findings of a further GCN survey of the pond and confirms the presence of standing water is restricted to a small, shallow pool, which based on its size and depth will have dried out during May. The HSI assessment considers the waterbody to provide 'Below Average' suitability to support GCN. Of the other waterbodies in the area, these are considered to be unsuitable or reasonably unlikely to support GCN. Taking into account all the above factors (the low suitability of the ponds, the absence of any amphibians during the surveys and the absence of any suitable ponds or records of GCN in the local area, it is considered that the presence of this species can be reasonably discounted. The Addendum also reasserts that the proposals would unlikely result in a significant impact on the local bird population and reptiles, and the development would likely result in the establishment of habitats more likely to benefit a wider range of generalist species. However, in the event that a small population of reptiles may be present within discrete areas of site it is considered prudent to recommend that a

precautionary approach to site clearance is implemented to minimise any risk of killing or injury. It is also maintained that the retention of the mature trees and majority of hedgerow, as well as suitable lighting, ensures bat populations are not negatively affected. The specific badger survey carried out confirmed no evidence of badger setts, but evidence of their foraging and commuting was recorded. The presence of a fresh latrines and snuffle holes also attribute this evidence to badger. As a result, no statutory constraints exist and as the scheme includes the provision of an extensive area of green space along the western and southern boundaries, connectivity would be maintained through the site and into the wider landscape. As a precautionary measure, prior to the commencement of works it is recommended that an update survey be undertaken to further assess the usage of the site.

The Flood Risk Assessment (FRA) identifies that the site lies in an area of Zone 1 Flood Risk where the Sequential and Exception Tests do not apply. There are no water bodies which present a source of risk to the development, and there is a spring just to the south west and ditch systems to the site boundaries. Development levels would need to be set to ensure that flows from the spring and within the boundary ditch systems are safely conveyed around the development and conveyed to the culvert at the north east corner thus mimicking the existing situation. In this regard it is noted that development of the site would inherently reduce uncontrolled surface water runoff into the boundary ditch systems. Geo-environmental assessment work has established that ground conditions are unlikely to prove suitable for an infiltration based drainage solution but would be assessed at a more detailed stage. On this basis it is proposed to connect surface water drainage to the existing culvert in the north east corner with flows limited to greenfield run off rates, thus mimicking existing run off in accordance with the NPPF. The proposed piped drainage system would be designed to contain flows from, at minimum, a 1 in 30 year event and discharge into an attenuation basin located along the north east boundary of the site prior to connection to the culvert. The piped system within the development would be put forward for adoption by Severn Trent Water, whilst the attenuation basin, control structure and connection to the culvert would become the responsibility of a management company set up for the development. Overall flows would be contained on site up to the 1 in 100 year plus climate change event prior to discharge to the culvert. Where required, land drainage systems would be introduced to pick up any residual land drainage and direct flows safely around the development. It is concluded that the FRA demonstrates accordance with the NPPF and that the development is not at risk of flooding from external sources, and would not increase flood risk elsewhere.

A Foul Drainage Analysis outlines how the development can be effectually drained without causing detriment to the existing public sewerage network. It is noted that Severn Trent Water Ltd has carried out an assessment of its local sewerage network in order to understand the likely impact of introducing new foul flows from this development. It has indicated that existing properties within Aston-on-Trent have previously been affected by sewer flooding and suggested that further analysis should be carried out to ascertain the effect the proposed development will have on the local public sewerage network. A sewer capacity assessment will be commissioned to allow Severn Trent Water to determine what level of available capacity there is in the existing public sewer network. The results of this study will either confirm that the foul flows from the development can be accommodated in the

public sewerage network, or may identify improvement works which can be carried out to provide any additional capacity deemed necessary. If the study identifies that public sewer improvement works may be required, the Severn Trent Water would have sufficient time to take any necessary action prior to foul flows from the development being discharged to the public sewer network. In light of this and that other legislative control suitably handles connection to the network, it is argued that it would be unnecessary and unreasonable to impose a planning condition relating to foul drainage.

An Air Quality Screening Report confirms there are no Air Quality Management Areas (AQMAs) within the District such that there is no concern in respect of air quality on the site. It is also noted that no monitoring takes place in the vicinity of the site. It is considered construction dust impacts will not be significant with appropriate mitigation in place. It is also considered that the number of dwellings proposed would not have a significant impact on road traffic. With background pollutant concentrations well below annual mean air quality objectives, any increase would not cause thresholds to be breached. The Donnington Park SSSI would also not be negatively affected, and prospective occupiers would enjoy acceptable air quality, dust and odour conditions.

A Noise Screening Report considers the various potential noise sources and receptors – both existing and proposed. It is likely that the dominant noise source would be road noise, in particular from Weston Road. However the impacts are unlikely to be significant. The distance to the A50 also means that there are unlikely significant effects from this source. Noise from farming of adjacent land is also unlikely to be an issue. Any increase in road noise as a result of the development is likely to be imperceptible.

The Phase 1 Geo-environmental Assessment notes the site is in an area of sporadic historic extraction activities with brickworks to the north, but all some distance from the site. The nearest gravel pit 200m to the east in the area of the former hospital disappears in conjunction with redevelopment of the hospital for housing. Gravel workings recorded on site from 1882 disappear, having been filled by 1982 with commercial waste, non-hazardous industrial wastes and wastes from the construction industry. This landfill presents a source of risk. The site is not at risk from coal mining. Strip foundations appropriate generally, but abnormal foundations are anticipated in landfill area, all subject to investigation. Ground conditions anticipated as being unlikely to be suitable for surface water infiltration.

A Socio-Economic Sustainability Statement supports the application. It highlights historical and projected rates of population growth and that the future growth is to be accommodated across the District with economic benefits captured by allowing smaller, sustainable settlements to grow. It is noted that Derbyshire is a sought-after location to live, with the ratio of house prices to earnings higher than average, and the development of 150 market and affordable dwellings would go some way to improving this situation. It is highlighted that paragraph 19 of the NPPF states significant weight should be placed on the need to support economic growth through the planning system, and it is advanced that the benefits here would be substantial.

A Statement of Community Involvement (SCI) outlines that the applicant obtained pre-application advice from planning officers, and engaged other statutory consultees to discuss key issues. It is also noted that they attended an informal pre-application discussion with members of Aston on Trent Parish Council in January 2017 where the Parish Council confirmed their objection to the proposed development with concerns focused on planning policy, traffic, a perception of overdevelopment in the settlement and the fact that part of the site lies within Weston on Trent Parish boundary. Leaflets outlining the development principles and seeking comments were distributed on 10<sup>th</sup> January 2017 to over 905 households and businesses within the proximity of the site, 55 people initially responded to the leaflet by post and via email. These comments are summarised and responded to in the SCI. A good proportion of comments received were constructive and useful in shaping the development as it progresses. A key concern of local residents is the impact the development would have on the local highway network and current planning policy. It will be demonstrated that the highways network is able to comfortably accommodate any additional traffic generated, and that the local policy position is out of date and unable to deliver the required housing. Throughout the consultation process, the applicant also encouraged suggestions as to how the local community could benefit from the proposed development, and the applicant will discuss the ideas put forward with the Council. Implementation of the agreed community benefits would be guaranteed through their inclusion within a Section 106 agreement.

### **Planning History**

None.

### **Responses to Consultations**

The County Planning Policy Officer advises that the development would generate the need to provide for an additional 30 primary pupils. Weston on Trent CE (Aided) Primary School has a net capacity of 105 pupils and currently has 122 pupils on roll. Whilst the latest projections show this number to fall to 95 during the next 5 years, there are already 77 dwellings approved within the catchment creating a demand for an additional 15 primary pupils. As a result, the primary school would not have sufficient capacity to accommodate the 30 pupils generated. Chellaston Academy (Derby City) would cater for secondary/post-16 education needs. The development would generate the need to provide for an additional 22 secondary and 9 post-16 pupils. The Academy has a net capacity of 1,650 pupils and currently has 1,676 pupils on roll. The latest projections are indicating an increase to 1,854 pupils during the next 5 years such that current and future projections show the school does not have sufficient capacity to accommodate the additional pupils created by the development. In light of the above, the County Council requests financial contributions of £341,970.30 for a classroom extension at Weston on Trent Primary and £545,526.94 towards a scheme of works to accommodate additional pupils at Chellaston Academy. Only one previous request has previously been secured towards this latter project.

The Southern Derbyshire CCG advises that whilst there are a couple of practices potentially affected, there is 1 practice most likely to be affected, this being Alvaston

Surgery. The practice does not have spare capacity to manage increased patient demand resulting from the development and space restrictions mean that the practice currently does not meet national benchmarked levels for capacity to meet future demand. As such the proposal would exacerbate this situation. The practice is however looking to increase space to provide additional capacity to meet demand and a contribution of £57,060 is requested.

The Open Space & Facilities Development Manager outlines the need to contribute towards outdoor sports and built facilities in the vicinity of the site, these being facility developments at Aston Recreation Ground and improvements to the Community Sports Pavilion on Aston Recreation Ground. The sums would be determined on the basis of the normal amounts per bedroom (£220 and £122.80 respectively) with a single request for each project to date arising from the Moor Lane development.

The County Highway Authority has considered the Transport Assessment and raises no concerns with the data submitted. The Travel Plan also raises no concerns, with it possible to secure this through condition along with obligations for a monitoring fee and a contribution towards securing an element of the County cycleway strategy in the vicinity of the site. In terms of the proposed access, the principle is considered acceptable subject to conditions in respect of timing of its provision, geometry, visibility splays, and extension of the Weston Road footway. Further conditions seek to set out the requirements and scope for a reserved matters application and detailed design. The Highway Authority also note that the proposal of 150 dwellings sits on the threshold between seeking a second point of access or not, and consideration should be given to whether this is required.

The County Minerals Planning Officer advises a small section of the southern field abutting Weston Road lies within the sand and gravel resource, as defined on the BGS Mineral Resource Map. Whilst the developer may wish to investigate the quality and quantity of the resource and the potential to remove the sand and gravel as part of the development; given the relatively small amount of mineral that may be affected there are no significant concerns in terms of minerals safeguarding.

The Development Control Archaeologist advises there is an HER record for medieval ridge and furrow over the whole site and surrounding area, although this is no longer extant in earthwork form because of arable ploughing of the site. More relevant is the general high potential for prehistoric archaeology in the area around Aston. The scheduled Neolithic cursus site is about 750m south-west and the prehistoric remains (Late Bronze and Iron Age open settlement) associated with the Aston Hall Hospital site are about 300m away. Whilst the heritage assessment notes the lack of cropmarks on the proposal site, the presence of known cropmarks is not a reliable guide to archaeological potential. The proposed crematorium site on Derby Road (about 1.4km to the north) had no known cropmarks, but a system of Iron Age enclosures was identified through geophysics and trial trenching. There is some evidence on the site and in historic mapping for gravel extraction in the 19<sup>th</sup>-20<sup>th</sup> centuries, although this does not appear particularly extensive. The site therefore has a high potential for prehistoric archaeological remains, based on the concentration of remains in the vicinity, and on the recent work at Aston Hall Hospital and Derby Road. The geophysical survey does not suggest complex or extensive archaeological remains, although there are a few anomalies of possible

archaeological origin that require testing by evaluation trenching. Further archaeological work could be deferred to a conditioned scheme to comprise evaluation trenching followed by further mitigation as appropriate in the event of significant findings.

Natural England has no comments to make.

Derbyshire Wildlife Trust notes that there was initially insufficient information provided to demonstrate that the development would not have a detrimental impact on protected species. The Addendum however now addresses this. They concur that ponds on or nearby are unlikely to support amphibians, including great crested newt (GCN). While it is unfortunate that access was not permitted to survey one pond in an adjacent garden, given the lack of records for GCN in the area it is considered unlikely for GCN to be present and affected by the proposed. Although it is acknowledged that the site has some potential to support small numbers of ground nesting priority bird species, including skylark, it is accepted that due to presence of suitable surrounding habitats, the proposal is unlikely to result in a significant impact on local populations of priority bird species. The majority of the site is comprised of habitats that are considered to be largely unsuitable for reptiles although it is acknowledged that there are a few areas, predominately on the site boundaries, that offer greater suitability for reptiles. As these areas are largely to be retained, a conditional precautionary approach to site clearance is appropriate. Two trees are identified as having potential to support roosting bats, but again these are to be retained and, as such, would remain unaffected by the proposal – thus not posing a constraint if the trees are protected by condition. All of the habitats likely to provide foraging and commuting opportunities for bats would be retained, and with new habitat creation, including an orchard, allotment, shrub and grassland creation, a SuDs feature and approximately 600m of native hedgerow planting; the proposals would not adversely affect the local bat population. Survey work also confirms no evidence of badger setts but there is evidence of badgers using the site for foraging and commuting. The proposed green space provision should maintain suitable foraging and commuting opportunities for the local badger population, and a further survey and precautionary measures prior to and during construction can address any residual concerns. Overall, it is considered the proposal would result in a net gain of biodiversity. They further advise control of the timing of any vegetation removal to avoid impacts on nesting birds and the protection of all areas of habitat identified for retention through the erection of adequate protective fencing for the duration of the works. Enhancement of retained features should be pursued through restoration of the pond and the establishment of wet woodland in accordance with a Landscape and Ecological Management Plan (LEMP) required by a condition.

The Lead Local Flood Authority (LLFA) notes the FRA states soakaways would not be a suitable means of disposing of surface water, but yet it appears an appropriate ground investigation to support and inform that statement has not been undertaken. Therefore it cannot be presently demonstrated that the drainage hierarchy has been followed. It is noted that it is proposed to attenuate surface water on site via a linear attenuation basin before being discharged into the watercourse at the north-east corner of the site. It is noted that no evidence has been provided that treatment stages for surface water have been considered to improve the water quality prior to disposal. The FRA also indicates a higher than acceptable rate of discharge which is

not compliant with DEFRA non-statutory technical standards. The County Council surface water model outputs also indicates that the eastern part of the site is likely to be subject to surface water flooding during peak storm events and thus the Council should be satisfied that the SuDS are designed so not to result in a surcharge onto any adjacent land or the public highway. Notwithstanding these shortcomings, it is recommended that conditions be attached to address these matters and ensure an appropriate drainage system at the detailed design stage.

The Council's Drainage Officer advises of recorded flooding to adjacent properties to the south of the site on Weston Road, and that there is a piped system which goes under the highway and outfalls into the field ditch opposite such that the existing field ditch on Weston Road needs to be maintained and not infilled.

Severn Trent Water Ltd has no objection subject to the inclusion of a condition.

The Contaminated Land Officer does not have any significant concerns with respect to contaminated land, but the site is on and within influencing distance of historical features which could present hazards during the sites development. The recommendation put forward to undertake an appropriate intrusive site investigation is supported and should be conditioned.

The Environmental Health Officer has no objections in principle.

The Police Designing Out Crime Officer advises there are no objections in principle, nor to the indicative detail, commenting that subject to the usual set of design recommendations there is no reason why the development shouldn't be acceptable in community safety terms. One area which needs to be explored however is the future of the existing link at the end of Valerie Road and how this might be secured in a suitable manner.

## **Responses to Publicity**

The Campaign to Protect Rural England (CPRE) Derbyshire Branch objects on the following grounds:

- i) the site is located outside the settlement confines for Aston on Trent;
- ii) the council has been able to demonstrate a 5 year supply of housing land;
- iii) no justification exists to warrant a departure from the plan-led approach to the delivery of assessed housing needs within the area;
- iv) residential development of the scale proposed would lead to the significant loss of valuable arable and pasture land and an unwarranted incursion into the countryside;
- v) brownfield sites are to gain planning permission by 2020 to meet housing needs;
- vi) this development is on a greenfield site and not necessary to meet housing needs; and
- vii) the erosion of the gap between the two settlements of Aston-on-Trent and Weston-on Trent and would cause significant harm to the character and appearance of the area and the local landscape reducing the separation of the two settlements.

Aston on Trent Parish Council objects on the following grounds:

- i) it is an application which seeks to join 2 parishes together;
- ii) the site would be outside the settlement boundary as designated in Local Plan;
- iii) any building outside the settlement boundary of a key service village should be limited to 25 dwellings;
- iv) SDDC can demonstrate a 5 year housing supply;
- v) it is located on agricultural land which currently separates Aston on Trent & Weston on Trent – two separate communities, each with their own identity, church, schools and village events;
- vi) once the merging of the two villages is established and visible to all, it will be not reversible;
- vii) the current bus service is not acceptable for an identified key service village with 1 bus per hour Mon – Sat and no service on Sunday or Bank Holidays, and any new development would bring an increase in vehicular use as there are no alternatives;
- viii) the County Council are proposing to withdraw the early morning service which currently allows young people to attend Derby College;
- ix) the village currently struggles to cope with the volume of traffic along Weston Road, and any development would further increase the volume of traffic within the village centre; and
- x) there are several misrepresentations within the application, including
  - connectivity to rail and air travel (only by private vehicle);
  - the range of shops being the Village Shop & the Post Office;
  - there are few employment opportunities within the village, the land around Aston Hall is not public – instead private with a concessionary path to Willow Park Way;
  - the 'regular bus services' are once per hour and no service beyond 6pm or on Sundays/Bank Holiday;
  - school provision, both primary and secondary, is inadequate for a development of this size and neither have the capacity to provide places for a significant number of children; and
  - despite most of the site being in the parish of Weston on Trent, no efforts were made to deliver any consultation leaflets to Weston such that a full and proper consultation of the 2 affected parishes has not taken place.

Weston on Trent Parish Council objects on the following grounds:

- i) the site is not shown in the draft Part 2 Local Plan, so the site should not be developed;
- ii) the development significantly closes the gap between Weston & Aston villages, removing the separation between the historic east & west settlements and would adversely affect the identity and character of both villages;
- iii) unlike the Richmond Homes site, the development is outside of Aston Village boundary and would effectively graft a large housing estate onto the village,

- not in keeping with the varied character and low density of existing housing in Weston & Aston;
- iv) the proposed masterplan is poor with the site treated in isolation and with no obvious effort to integrate the development into the existing community;
  - v) a number of community facilities are shown but there is no mention of how these are to be funded and managed long-term;
  - vi) this proposal comes shortly after the extension of the Richmond Homes site to include a housing development, which already meets a proportion of South Derbyshire's rural housing needs, and is too much development in too short a time making it difficult to assimilate and integrate the new development into the existing community;
  - vii) the roads in Weston & Aston are already congested and any increase in traffic would threaten the safety of motorists, cyclists, horse riders & pedestrians in both villages;
  - viii) the main road through Weston is narrow, particularly at the eastern entrance to the village and at the railway bridges at the western end;
  - ix) the junction of Swarkestone Road and the A514 at Cuttle Bridge been difficult and dangerous to use for many years now and has recently become even more difficult to enter and exit from due to the increased volume of high speed traffic resulting from the opening of the Infinity Way, and additional traffic would cause additional delays and increase the likelihood of serious accidents;
  - x) the road in Aston village leading from Weston is effectively single lane, due to parked cars and the junction at Aston Post office is very congested, with recent incidents where HGVs have got stuck and caused delays, and the proposed development would cause more delays and increase the likelihood of accidents;
  - xi) the existing bus service is restricted and likely to be cut further, whilst the service would need to be extended in the evenings and at weekends to support additional development;
  - xii) both Weston & Aston Primary Schools are at, or near, capacity and could not support an additional development which is likely to include a large proportion of family homes
  - xiii) Chellaston Academy is heavily oversubscribed and an additional development would make this situation worse, leading to a greater proportion of Weston & Aston children having to go elsewhere for secondary schooling, further fragmenting the community. the local doctors surgery in Aston is already full and appointments are difficult to make, with this surgery part of the larger Alvaston Medical Centre, which is also under pressure;
  - xiv) the potential Community Facility/GP Surgery may provide an additional building but does nothing to improve staffing or equipment;
  - xv) the general infrastructure in both Weston & Aston cannot cope with another development of this scale.
  - xvi) if the application is successful the site would be sold to another developer, leaving open the possibility of further changes to the plan and there is no guarantee that what could eventually be built would conform to the current master plan;
  - xvii) the application makes no mention of the long-term management of the various community facilities shown on the master plan;

- xviii) any future increase in the number of houses and/or a reduction in the percentage of affordable houses or community facilities would be a particular concern, as would any degradation in the provision for flood prevention;
- xix) the application is an attempt to bypass the Local Plan Part 2 process which calls for 150-400 houses across all key service villages, which includes Aston, and only 150 across all local service and rural villages, which includes Weston; and the proposal on a site single site alone is unnecessary and disproportionate (and should not be considered until the Plan is complete).

Save Aston & Weston Village Environments (SAVE) objects on the following grounds:

- i) a public meeting was held and attended by 105 residents, with an overall view of opposition to such a development;
- ii) the tone of the application and the public consultation carried out is considered to be poor as the parish of Weston on Trent in which the application predominantly sits were not consulted at all;
- iii) assertions are made by the developer that the proposal is specific to the site, yet it is actually a formulaic, re-used plan also being pushed in East Leak, not at all focused on the local needs and character of the area;
- iv) the developer states that SDDC do not have a deliverable 5 year housing supply only 2 weeks after an email from the planning officer stating that the Council do indeed have that supply;
- v) within the Local Plan Part 1 strategic sites of more than 100 houses were allocated across the District, and Aston on Trent has new housing allocated under Part 1 so there should be no further need for a development of this size
- vi) as the smallest key service village in the District, Aston should be allowed to grow at a sustainable rate to develop facilities to accommodate the growing needs of new families moving in;
- vii) planning is now granted for a site on Moor Lane under the draft Local Plan 2 which is sufficient to meet the needs of our villages and the District;
- viii) the development is outside the settlement boundaries of both Aston and Weston as existing and emerging;
- ix) any development outside the settlement boundary should be classed as a cross-exceptions site and therefore limited to no more than 25 affordable houses for a key service village or 15 for a local service village;
- x) the development would cross two parishes therefore making integration into either village difficult and this has not been considered in any way by the developer;
- xi) the air quality screening report only scopes impacts for up to 125 dwellings whereas the application is for 150 dwellings, and hence the conclusions should not be considered valid;
- xii) whilst the air quality report considers that current pollution levels are well below annual mean objectives and assumes the impact of the development would not significantly increase this; it does not consider peak concentrations – particularly those off site at the junction between Weston and Derby/Shardlow roads in Aston and at the junction towards Swarkestone to gain access to the A50 and the causeway.
- xiii) the air quality impact to residents on Weston Road, Derby Road and Shardlow Road is of particular concern as it is known that these roads already

- become congested at peak traffic periods, and the Richmond and Moor Lane developments would compound this;
- xiv) there is already a noted material difference at the Swarkestone junction resulting from the improved link roads recently completed in the Chellaston area, and without consideration of these points the air quality survey would be flawed;
  - xv) the error and lack of attention to the air quality report means that all other reports should be tested with additional rigor;
  - xvi) the noise assessment also only scopes impacts for up to 125 dwellings, and hence the conclusions should not be considered valid whilst the acceptability of all other elements of the application should be questioned once again;
  - xvii) residential development of more than 100 units may have negative impacts on the Donnington Park SSSI;
  - xviii) there would be an impact to the ecology of the area during any build phase of development;
  - xix) although not ecologically diverse in their own right, the fields with the hedges and trees are situated next to further land free of human influence and disturbance allowing birds of prey hunting opportunities, the use by hare, migratory geese in spring and autumn, and – owing the regular flooding of the area – heron;
  - xx) the ecological survey lacks local insight and has not given sufficient consideration to the actual ecological importance of the site;
  - xxi) surface water flooding of the site is not so much of a risk as it is a certainty with standing water regularly seen in the existing field close to Weston Road, varying in depth and extent and being a semi-permanent feature;
  - xxii) the flood risk mapping reflects the spring to the west and the site topography, with a significant proportion of the north-east section of the proposed development at 'high' flood risk;
  - xxiii) the development poses an increased risk of flooding for both existing and prospective residents with it not possible to mitigate due to increased rates of discharge and changes in the structure and surfaces of the site;
  - xxiv) there will be significant flows that are either going to impact on existing surface water drainage through Aston-On-Trent, with problems arising when the storage capacity is exceeded;
  - xxv) the former gravel pit is recorded to have been filled with commercial waste, non-hazardous industrial wastes and wastes from the construction industry, and this landfill presents a source of risk such that the site should not be considered as appropriate for residential development;
  - xxvi) the assessment of visual impact is flawed in several respects, one of which is the assertion that the housing along Weston Road and the 20<sup>th</sup> century development of Aston-On-Trent have degraded the area; whereas that these are strong examples of typical 1930s architecture found in this part of the village, and far from degrading the visual appearance of this area, these dwellings give character and context to the village;
  - xxvii) the statements regarding the visual character of Aston-On-Trent are extremely subjective in their nature, being dismissive of the positive aspects of visual character;
  - xxviii) an additional 150 dwellings on elevated land will have a massive and unwelcome impact on the appearance of the village from within;

- xxix) the access onto Weston Road can only be described as dangerous and the access from Yates Avenue onto Weston Road was closed over fears on safety grounds;
- xxx) the safety and impact on the Swarkestone Road junction;
- xxxi) the impact of Richmond Homes and Moor Lane on the highway;
- xxxii) the bus service is inadequate; and
- xxxiii) the doctor's surgery is at capacity.

Lakeside Gardens Residents' Association objects on the following grounds:

- i) Aston-on-Trent simply does not have the infrastructure necessary to absorb the proposed population increase this development would generate;
- ii) congestion at the heart of the village has become a significant problem in recent years, with vehicles building up around rush hours and school times, and parked around shops and services, causing inconvenience and danger on a daily basis;
- iii) there are no places available at the village primary school and secondary education is not available resulting in students having to be bused to Chellaston School which itself is under massive pressure resulting from the housing growth in its catchment area;
- iv) whilst the village does have a doctor's surgery, it is extremely busy and very difficult to get an appointment, with parking highly problematic, and the demands on that surgery have already increased and will further increase as a result of the building of the Richmond retirement village;
- v) the offer of a new doctor's surgery facility is no more than a piece of PR, offering no more than an unwanted parcel of land - where is the funding coming from?
- vi) the proposal would negatively 'infill' the rural space separating the two distinct villages of Aston and Weston;
- vii) if granted, developers will be queuing up to file their applications for a parcel of land on either side of Weston Road between the two villages;
- viii) the national and local need is for housing that is affordable – primarily, decent quality housing for rent, and the development makes no meaningful contribution to that need.

Over 300 objections have been received, raising the following concerns/points:

#### Principle of development

- a) the development is outside the settlement boundary as adopted and proposed;
- b) the development is over the 25 threshold in the Local Plan and is not affordable;
- c) any development outside of settlement boundary should be classed as cross-exceptions site;
- d) due to the extent of housing allocated in the Local Plan Part 1, there should not be a need for a development of this size;
- e) the Council is able to demonstrate a 5 year housing land supply and the submitted information is incorrect;
- f) it is not necessary to meet the District's need;

- g) the site has been considered unsuitable as part of the Local Plan Part 2;
- h) the proposed allocation on Moor Lane is far more suitable and this should be sufficient to meet needs;
- i) new development should be proportionate to the villages;
- j) use should be made of brownfield land as priority over greenfield sites;
- k) Aston has suffered a disproportionate number of developments in recent years;
- l) planning approvals should be 'plan-led', with Part 2 of the Local Plan still out to consultation;
- m) land within the village has been designated as suitable for building and smaller sites within the village would not have such a great impact;
- n) the Plan limitations of 15 dwellings and 25 dwellings for key and local service villages are reasonable to protect rural character;
- o) the adverse impacts of the development, its size, location and design would significantly and demonstrably outweigh the benefits it brings;
- p) SDDC can meet their housing needs without this site;
- q) the settlement boundaries provide a strong premise for defining and protecting the countryside from unnecessary encroachment;
- r) the proposal will increase the size of Aston by 20%;
- s) the social character of the two villages is different and must be kept separate to ensure their individuality is maintained;

#### Landscape, character, design and heritage

- t) the rich fertile soil should be kept for agriculture in accordance with policy BNE4;
- u) the development would close the space between the two villages changing the character of each village;
- v) the 20<sup>th</sup> century dwellings add character to the villages and do not degrade the visual appearance of the village, as stated in the Visual Impact Assessment;
- w) the proposal would have a detrimental impact on the open countryside approach to Aston from Weston;
- x) why would the site not be considered as a valued landscape?;
- y) the development would destroy the charm and character of both villages;
- z) development should enhance and improve places – this does neither;
- aa) the development should conserve heritage, not bring together two historic settlements;
- bb) the site is considered to form a strategic gap between the two settlements;
- cc) the development would profoundly affect the village, its shape, character and delineation;
- dd) the development is contrary to policy BNE5 of the Local Plan Part 2 as it would not conserve and enhance the district's countryside green character;
- ee) the development is not well related to Aston;
- ff) the development would ruin the setting of Weston Hall;
- gg) the development would tower over the existing bungalows that abut the site;

- hh) the site is to be overdeveloped with reduced space between properties affecting privacy;
- ii) loss of views and overshadowing from the housing on Yates Avenue;
- jj) the dead ends proposed do not provide enough space for visitor parking;
- kk) as this is speculative there is no guarantee the development would be high quality design;
- ll) uncertainty as to the meaning of 'key building';

#### Highway safety and capacity

- mm) the villages already suffer with heavy traffic causing jams, which will get worse with the crematorium and Richmond development;
- nn) the current weight restrictions are totally ignored;
- oo) parking in the village causes a daily nuisance;
- pp) lack of frequent bus services which are under threat, with the service only running between 7am and 6:30pm and with no service on a Sunday;
- qq) 300 new vehicles would gridlock Weston and Aston;
- rr) the Transport Assessment is inadequate and based on the trips for the retirement village which is an entirely different demographic;
- ss) the transport survey does not take in to account the increase in traffic from the Richmond development, of which 250 people would need to drive to their place of employment;
- tt) the combined impact of the development and that at Moor Lane.
- uu) traffic surveys should be taken at peak times at the centre of the village during the normal working week;
- vv) increased risk of accidents on Weston Road which is a bus route;
- ww) danger to pedestrians and children accessing the school, including from HGVs;
- xx) HGVs struggle to manoeuvre within Aston;
- yy) on-street parking issues already exist around the village shop and the post office, causing traffic to back up in both directions;
- zz) the site access is on a blind spot on a convex bend and would be difficult to judge when to turn left and right;
- aaa) safety for pedestrians on Weston Road, people do not travel at 30mph and there are likely to be accidents;
- bbb) the junction of Swarkstone Road and Cuttle Bridge is already difficult and dangerous, and will be made unacceptable;
- ccc) the Weston Road and Swarkestone Road junction is dangerous and improvements are needed;
- ddd) dwellings erected on the Bonny Price island would affect the level of traffic through the villages;

#### Infrastructure impacts

- eee) the proposal makes no meaningful contribution to social and affordable housing or local infrastructure;
- fff) Aston does not have a surgery and it is already difficult to obtain an appointment at the satellite medical centre;
- ggg) surgeries in Alvaston and Chellaston are massively overstretched;

- hhh) there is no information on how the doctors surgery would be delivered, as well as recreational spaces, paths and tracks to a communal orchard;
- iii) facilities proposed at the retirement village do not include a doctor's surgery, thus already increasing pressure on existing services;
- jjj) the village schools are filled to capacity; with no primary school places and children need to be bused to Chellaston for a secondary school;
- kkk) the amenities and infrastructure of the village cannot cope with the scale of development;
- lll) the villages would be overwhelmed;
- mmm) the existing village shop is not a food store as described in the application;
- nnn) cumulative impacts have not been adequately taken in to account;
- ooo) the village hall and recreation centre are constantly overbooked;
- ppp) lack of facilities for older children and teenagers in the villages;

#### Drainage/flooding

- qqq) heavy rain causes frequent flooding at the site;
- rrr) the site has been underwater on occasions within the last twelve months;
- sss) a significant portion of the north-east of the site is at high risk of flooding;
- ttt) the drains cannot currently cope with heavy rainfall and the development would remove the ability for surface water to currently go to ground;
- uuu) resultant increase in the local water table;
- vvv) the pumping station has failed recently, this will add to the problem;
- www) the proposal would increase the likelihood of flooding for existing and future residents;
- xxx) water runs off the fields and fills the culvert at the back of Valerie Road;

#### Protected species/biodiversity

- yyy) permanent loss of wildlife due to impact on Long Walk Wood and proximity to Donnington Park Site of Special Scientific Interest;
- zzz) loss of hedgerow for visibility splays would be detrimental;
- aaaa) bats are often seen flying around the area as well as heron;
- bbbb) impact on the existing broadleaved woodland;
- cccc) the cumulative impacts have not been adequately taken in to account;
- dddd) the ecology reports are full of secondary information, and gaps in surveys;
- eeee) impact on loss of habitat and the pond (a water supply);

#### Pollution and ground conditions

- ffff) increases in CO<sub>2</sub> from increased traffic;
- gggg) increase in noise and light pollution;
- hhhh) the Noise Report is inadequate as it relates to 125 dwellings as opposed to 150 dwellings;
- iiii) the Air Quality Report is inadequate as it relates to 125 dwellings as opposed to 150 dwellings and has not addressed peak concentrations and locations;

- jjjj) the impact of the alabaster mines has not been taken into account;
- kkkk) due to issues of contaminated and hazardous ground gases highlighted in the Geo-Environmental Assessment, the site should not be considered suitable for residential development;
- llll) there is a two acre landfill in the centre of the development;
- mmmm) potential damage to foundation to dwellings on Weston Road from construction traffic;

### Other matters

- nnnn) the inaccuracies in supporting documents raises concerns as to the validity of other documents and calls the applicant into question;
- oooo) until the impact of the retirement village is realised, no new development should take place;
- pppp) developments should be attached to the urban edge of cities;
- qqqq) there is not an economic case for the development other than the benefit to the developer;
- rrrr) which Parish receives the financial benefits, as Aston bears the brunt yet receives none of the compensation?;
- ssss) the land is not in Aston as indicated in the submission, but Weston;
- tttt) residents are tired of local planners simply acquiescing to the greed of the developers and the local residents are looking for them to represent the people they are supposed to serve.

Heather Wheeler MP objects as it is not in the recently agreed Local Plan. The 150 extra homes are not needed and there is no public policy or planning policy to go against the Local Plan.

Rob Davison County Councillor echoes much of the above concerns stating that approval of this application would in itself be incompatible with sustainable development because of the existing and insurmountable infrastructure issues. Concurrently such approval would begin an inevitable domino effect, within 15 years resulting in the elimination of two distinct settlements and their combination into a linear version of Hilton. The many views of residents have been almost universally expressed in valid planning terms as well as reflecting civic identity. The application should be refused.

A single letter of support notes that Aston on Trent needs more housing and there has been a lack of development for decades, with more houses leading to better facilities and shops and a better bus service.

### **Development Plan Policies**

The relevant policies are:

- 2016 Local Plan Part 1: S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), S4 (Housing Strategy), H1 (Settlement Hierarchy), H20 (Housing Balance), H21 (Affordable Housing), SD1 (Amenity and Environmental Quality), SD2 (Flood Risk), SD3 (Sustainable Water Supply, Drainage and Sewerage Infrastructure), 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) and INF9 (Open Space, Sport and Recreation).

- 1998 Local Plan (saved policies): H5 (Village Development), H8 (Housing Development in the Countryside), EV1 (Development in the Countryside), EV9 (Protection of Trees and Woodland), EV11 (Sites and Features of Natural History Interest) and EV14 (Archaeological and Heritage Features).

### **Emerging Development Plan Policies**

The relevant policies are:

- Submission Local Plan Part 2: SDT1 (Settlement Boundaries and Development), H23 (Non-Strategic Housing Allocations), BNE5 (Development in the Countryside), BNE7 (Trees, Woodland and Hedgerows) and BNE10 (Heritage).

### **National Guidance**

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)

### **Local Guidance**

- Housing Design and Layout SPG
- Section 106 Agreements – A Guide for Developers

### **Planning Considerations**

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

- Principle of development;
- Agricultural land quality;
- Landscape and visual impacts;
- Impact on heritage assets;
- Biodiversity/ecology;
- Highways;
- Drainage;
- Layout, design and residential amenity; and
- Infrastructure capacity and mitigation

## **Planning Assessment**

### Principle of development

The application must be determined in accordance with the Development Plan unless there are material considerations that indicate otherwise.

Whilst the site falls majority in the Weston Parish, the site relates more to the settlement of Aston and hence it is appropriate to consider it on this basis. Policy H1 sets out the settlement hierarchy for the District with Aston-on-Trent defined as a Key Service Village (KSV) where the scale of development should respect the capacity of services and facilities to support the development in principle. It is on this basis that strategic allocations were made down to KSV level in the Local Plan Part 1 (LP1) with non-strategic allocations to be considered under the Part 2 (LP2) process. This site does not benefit from an adopted or emerging allocation in either part of the Plan, and with it sat outside of the settlement confines (both adopted and emerging), it conflicts with the Development Plan. Regard is had to policy H1 where exceptions are allowed for affordable housing delivery, but this scheme far exceeds the cap of 25 dwellings and does not qualify under the criteria for such an exception. Saved policies H5 and EV1, along with emerging policy BNE5, work alongside policy H1 and the allocations made in the LP1 and LP2 to steer new housing development to the most sustainable locations whilst providing the balance of protecting the intrinsic qualities of the South Derbyshire countryside. This successfully executes the strategic aims of policy S1 and provides a plan-led system for the District – reflecting the first bullet of paragraph 17 of the NPPF and the definition of sustainable development.

It is recognised that the applicant considers the Council cannot demonstrate a deliverable 5 year supply of housing, and in turn the relevant policies for the supply of housing should not be considered up-to-date. In light of the recent Supreme Court ruling, this would extend to policy H1 and saved policy H5 only. Notwithstanding this position, appeal decisions in recent years have recognised that a shortfall in housing supply might constitute an 'unavoidable need' under saved policy EV1 (or even emerging policy BNE5 which will replace that policy).

Adoption of the LP1 in summer 2016 meant that the Council could demonstrate a 5 year housing supply. This supply is made up of over 13,600 dwellings across the Plan period, against an actual assessed need of 12,618. The method of calculating supply brings forward the recent shortfall and applies the 20% buffer advocated by the NPPF, and still bakes in an 'oversupply' across the Plan period – address the shortfall and delivering projected needs in the most sustainable fashion. Some 700 further dwellings are to be allocated under the LP2, highlighting the pragmatic approach to maintaining supply and achieving overall delivery, and this part of the Plan has recently completed examination without supply issues raised by the Inspector. The Council is thus looking to provide well above the minimum housing requirements for the Plan period, meeting the intentions of the NPPF to 'significantly boost the supply of housing'.

The Council's published position is that a supply of 5.33 years exists. The Jawbone Lane appeal decision however cannot be simply dismissed and here the Inspector

considered the supply fell just short of 5 years. That appeal decision was predicated on his acceptance of an alternative 'start date' for calculating the rolling supply. Nonetheless, in the same decision the Inspector confirmed that the Council would be able to demonstrate a 5.27 year supply from 2017. That date has come and, by default reference to that decision, a 5.27 year supply now exists. Notwithstanding that position, further permissions for some 240 dwellings have been granted since that appeal decision, such as Court Street in Woodville, Moira Road in Woodville, Swadlincote Road in Woodville, Milton Road in Repton, Moor Lane in Aston, and the Mandarin restaurant in Hilton. Coupled with Jawbone Lane itself, these additional sites would now boost the supply to a degree which would place it well clear of the 5 year minimum – a supply which would be further boosted by the adoption of the LP2 later in the summer.

Further regard is had to the status of the settlement confines in the interim period between the adoption of the LP1 and LP2, where the 1998 confines still persist. The Inspector in the Mandarin appeal took the view that the age of the boundary in Hilton made saved policy H5 out of date. However, he did not say the same about policies S4 & H1 which direct housing to within settlements, unless otherwise allocated or an exception site. He also, oddly, did not find a deficiency in the housing supply to reach the conclusion that the confines were not delivering the District's housing needs. Recent case law has confirmed that the age of a settlement boundary is not the determining factor – it is whether it is preventing the significant boost of housing the NPPF seeks to secure. Given the above discussion regarding housing supply and the advanced stage of the LP2 (which does not propose to extend the confines around Aston further than for the Richmond and Moor Lane sites), the settlement confines can be relied upon.

As a consequence of the overall position in respect of the Development Plan, paragraph 49 of the NPPF is not engaged and in turn the 'tilted balance' under paragraph 14 cannot be applied. The development of 150 dwellings outside the settlement boundary of Aston is contrary to a raft of policies designed to guide and deliver housing in the District in a sustainable manner, and the development of this site is not unavoidable. Accordingly the principle of development on this site is not appropriate.

#### Agricultural land quality

The site has been the subject of a Soils & Agricultural Quality Report, which identifies that the site contains soils which classify the entire site as 'Best and Most Versatile' (BMV) (84% of the site is Grade 3a, 15% is grade 3b and 1% is non-agricultural). The land is sufficiently large enough to accommodate modern agricultural machinery and the limited extent and position of grade 3b in both fields does not appear to be a major impediment to how it can be cultivated.

Policy BNE4 of the LP1 and paragraph 112 of the NPPF seek to protect BMV agricultural land, and wherever possible direct development to areas of lower/poorer quality land. The applicant provides little justification for this loss – simply that the housing is required to meet objectively assessed needs. The PPG states "*where significant development of agricultural land is demonstrated to be necessary, local planning authorities should seek to use areas of poorer quality land in preference to*

*that of a higher quality*". Whilst no prescriptive methodology is set out, the general 'flavour' of appeal decisions dealing with this form of conflict has been to seek a sequential analysis of alternative sites to ascertain whether the proposed site needs to be released. In this case no such analysis has been undertaken and it is unlikely to provide support to the proposals given a 5 year supply exists, the site does not feature in the emerging LP2 and there are many sites of poorer quality land in the SHLAA which could fare better than this.

Hence, there is conflict with policy BNE4 and indeed it is considered, given the extent of land lost and the relatively low availability of BMV land across the District; that this loss is significant in terms of the NPPF. The negative economic and environmental effects from the loss of BMV land weigh heavily against the sustainability of the proposal.

### Landscape and visual impacts

The site is located within the national 'Trent Valley Washlands' character area, and the local 'Lowland Village Farmlands' character area. These character areas are described as gently rolling, almost flat, lowland with river terraces, containing mixed farming with arable cropping and improved pasture, medium to large regular fields with thorn hedgerows, and discrete red brick villages with farms and cottages. It is considered that these character areas are reasonably accurate in describing the landscape character of the application site. It is acknowledged that the site does not exhibit the qualities that would deem it to be a 'valued' landscape for the purposes of the NPPF. However, this does not mean that the site is not valued locally and an assessment needs to be undertaken as to the impact of the proposed development on the character and appearance of the area.

There are a number of policies which are relevant to this assessment. Indeed the objectives of the LP1 and the LP98 are clear that new developments need to protect and enhance the open countryside and the quality of the landscape, and preserve the identity, character and environmental quality of South Derbyshire's villages and rural settlements. Policy S1 of the LP1 highlights that *"it is essential that the District's heritage assets, landscape and rural character are protected, conserved and enhanced"*. Policy BNE1 seeks, amongst other objectives, to ensure that new developments create places with locally inspired character that responds to their context and have regard to valued landscapes, townscape, and heritage characteristics. With new developments expected to be visually attractive, appropriate, which respect important landscape, townscape and historic views and vistas. Landscape character and local distinctiveness considerations are further set out in policy BNE4. This policy seeks to protect the character, local distinctiveness and quality of the District's landscape through careful design and the sensitive implementation of new development. In particular part B of the policy sets out that *"...development that will have an unacceptable impact on landscape character (including historic character), visual amenity and sensitivity and cannot be satisfactorily mitigated will not be permitted"*.

The site comprises open undeveloped agricultural fields, with the southern field having a distinct lack of enclosure to all but part of the northern boundary (with the northern field); which cumulatively, coupled with the other open fields in-between the

villages of Aston and Weston, give this area its open character, providing visual and spatial relief between the villages. The sense of openness provided by this open landscape aids in enhancing the feeling of separation and punctuation between the two villages, giving each one an identity and this area its strong character. The character of the site is first experienced passing along Weston Road (by foot or car) from Weston itself, along the ribbon of development to the north of that village, as well as the emergence from the built form of Aston on Trent as it opens out across the site frontage. The visual and perceptual gaps in-between existing villages are one of the strong characteristics of South Derbyshire, which provide numerous settlements with their own identity and individual character.

The Council's Landscape Consultant has considered the submitted LVIA. It is not agreed that a development of the scale proposed would allow the existing field pattern to remain a dominant and strongly evident characteristic of the area. Development comprising houses, roads and boundary treatments, as well as reinforcement of the presently open field boundaries would enclose the open views and be detrimental to the character of the area. As a result, the claimed low magnitude of effect is disputed with the loss of open views more than 'minor'. A higher threshold of impact would exist. The expansion of the village south-westward by around 100-110m would represent a substantial move for a village of this size and would impact on the views and openness to this area, and in turn have more of an impact visually than the LVIA suggests – particularly in winter months when views are less screened. It is noted that the LVIA does not consider the difference in impact between the seasons.

Overall the setting is of a rural village and a large scale development of this size would impact on the form and massing of the village. It is not considered to infill and instead expands the existing boundary of it in a noticeable fashion. Disguising it by reinforcing the boundaries with tree cover would need careful consideration as this to could add an incongruous element to the landscape – the national character area noting that “tree cover is variable although rarely prominent”. Conversely, when considering the indicative layout, the depth of tree planting likely to arise would fail to ameliorate the prominent development in an effective fashion – particularly considering the indicated scale (up to 2.5 storey) and density (31 dwellings per hectare). There would instead be a loss of open fields which is un-reversible and an expansion of the urban mass. The photos in the LVIA show the extent of the development and the views to open countryside would be foreshortened. It could be argued that whilst the gap between the two villages would in theory be kept, in practice the development would compromise the feeling of openness and separation. The development would impact both on the resource of the actual landscape as a resource, reducing the visual relief the existing open fields provide, as well as being more visually prominent towards the skyline.

The proposed mitigation is not considered to sufficiently alleviate the visual impact of the development and its detrimental impact on the local landscape and character and appearance of the area, the proposal conflicts with policies S1, BNE1 and BNE4 of the LP1 and saved policy EV1. It also conflicts with policy BNE5 of the LP2 which has reached an advanced stage, setting out relevant criteria and only supports new development in the countryside where, amongst other things, it would not unduly impact on landscape character. The above discussion finds that the proposal would

have an undue impact on landscape character, and represent an unwarranted visual intrusion into the countryside.

### Impact on heritage assets

As noted above, the site lies within an area of high archaeological potential. An initial objection from the Development Control Archaeologist has been overcome by way of the geophysical survey, to the extent that a condition can secure the need for further investigation and reporting. With the site not influencing the setting of listed buildings or the character of a conservation area, the level of harm arising from the development of the site is considered to be outweighed by the public benefits arising in heritage respects only.

It is agreed that the proposal would not have an effect on the setting of designated heritage assets. However, what appears to be a possible undesignated asset – a standing stone in northern field indicated on 1885 OS mapping, is of interest. There is some local suggestion that these may be related to the navigation lines to the cursum to the east of the village, but there is little evidence to support this claim. However, it is not considered to be a significant constraint with it possible retain the stone in situ as part of a 'pocket park' or square designed into the eventual layout of the site.

### Biodiversity/ecology

The Wildlife Trust initially objected on the grounds that insufficient information had been submitted to demonstrate that the development would not have a detrimental impact on protected species, and that the Council could not discharge its duties under the Habitat Regulations. The concern was in respect of great crested newt (GCN), ground nesting birds, reptiles, bats and badgers – leading to a new loss of biodiversity across the site, contrary to policy BNE3 and paragraph 118 of the NPPF. The Ecological Addendum addresses the concerns raised by the Trust, particularly in respect of the need for further surveys; and conditions are requested to secure further pre-commencement surveys as necessary as well as mitigation for loss of habitat, protection of retained habitats and enhancement of existing and creation of new landscape features for biodiversity gain. Overall, there is considered to be a slight biodiversity gain with these measures secured.

### Highways

The concerns as to capacity of the local road network and the safety of particular junctions are noted. However the submitted Transport Assessment has been considered by the County Highway Authority who raises no concerns with the data submitted. With this in mind, it is reasonable to conclude that the impacts on the network would not reach the high threshold of 'severe' – either individually or cumulatively. In addition, the submitted Travel Plan is considered appropriate in principle and subject to a monitoring fee, secured by obligation, could be implemented.

The comments in respect of the single access point are noted but are not considered to justify a refusal given the number proposed is on the threshold itself; and whilst a

further access from Valerie Road might provide a more 'permeable' development, it is understood that there is an unregistered piece of land which would compromise the deliverability of a further access in this location. Whilst it is not unreasonable to assume that, if developed, the land to the north behind Chellaston Lane would come forward at some future stage, this would have to provide for its own access and as such the requirement of a second (or emergency) access point cannot be justified.

With the above points in mind, and no objection to the position and geometry of the proposed access onto Weston Road, the highway impacts are considered to satisfy policy INF2 of the LP1.

### Drainage

The findings of the FRA are of little concern, with it possible in principle to achieve a sustainable rate of surface water drainage from the developed site. The lack of an objection from the LLFA, despite their concerns/comments, is notable, and existing surface water flood risk can be managed to ensure this is either alleviated or does not pose an increased risk to existing or prospective occupiers. The Foul Drainage Analysis is noted however. It is claimed that a condition should not be attached to control this matter as it is covered by separate legislation. This may be so, but it does not control the timing of further study/survey work of the sewer network to establish whether capacity exists or not (and if off-site mitigation is required). This would be a necessary cost for the developer to bear outside of the planning process, but it remains necessary to require the developer to have undertaken this further work before the construction (and occupation) of dwellings reaches a critical point. As such a condition is warranted in this respect.

### Layout, design and residential amenity

Policy BNE1 outlines specific criteria that should be adhered to when designing new developments. The NPPF supports this policy, as well as more specific guidance in the PPG. All these documents advocate developments with locally inspired character which respond to their context, function well and add to the overall quality of the area over the lifetime of the development. Policy SD1 supports development that does not lead to adverse impacts on the environment or amenity of existing and future occupiers, and again paragraph 17 of the NPPF supports this principle.

The layout is indicative and simply identifies the areas for residential development area, the community facility/surgery site, the likely position of the SuDS and the POS (including community orchard and allotments). It accounts for the fixed position of the access onto Weston Road and facilitates pedestrian connection to the end of Valerie Road (subject to an easement). Further pedestrian connections to land to the north (behind properties on Chellaston Lane) can be safeguarded through the detailed layout stage. In broad terms, it is a logical layout with the built form 'hugging' the existing edge of the village and with open spaces and landscaping to the south and western sides. The position of the community orchard and allotments is less than ideal however, being at the furthest distance from the majority of existing and prospective residents in the village, in turn limiting their attractiveness on foot. The community facility/GP surgery is better positioned however, being close a main route into/out of the village (notwithstanding comments below).

The prospective scale of dwellings is generally appropriate, with ridge heights typical of two-storey dwellings in the area. The 2.5 storey additions may however appear somewhat prominent across the open landscape to the south and careful consideration as to their number and spread would be required at the reserved matters stage. Indicative appearance also seems appropriate. It appears possible to accord with separation standards set out in the SPG, and an assessment of the detailed layout and specific relationships between properties would occur at the reserved matters stage.

#### Infrastructure capacity and mitigation

The capacity of the local highway network is discussed above. The quality of the bus service is an existing shortcoming and would not be worsened by this proposal, nor does it make the proposal unsustainable outright. It must be recognised that increases in population can assist in sustaining some services, whilst exceeding the capacity of others. The shops, for instance, might benefit economically but the environmental effects of increased traffic and pollution may temper such benefits.

The land offered for a community facility/GP surgery is noted. The applicant advances this as a benefit of the development, worthy of weight in the decision making process. However, it is necessary to first establish whether this is a tangible benefit (i.e. is it deliverable). To this end, the CCG has been directly approached by officers to establish if there is a desire to secure land for a new surgery in Aston and, if so, whether the CCG would be able to fund the construction and operation of a new surgery. The CCG has confirmed they are not looking for a new surgery, but instead that the practices in the area are looking to expand their existing premises. They also confirm that the CCG does not hold funds to facilitate the construction of a new surgery – not without national funding and financial contributions through the planning system, but there also has to be a desire from the practices themselves. As to whether there is community interest in a new community hall/centre, no evidence of this has been provided and it is known from ongoing work on other sites that a meaningful community centre requires funding in the order of £750,000 to be constructed and fully kitted for use. To this end, a community and/or GP facility is not a tangible or realistic prospect. Coupled with the responses discussed below, it is also not possible to demonstrate that securing the land for this purpose would be CIL compliant. Accordingly, this 'benefit' is not attributed any weight in the determination of the application.

The evidence for financial contributions towards education and healthcare is set out in the consultation responses above. These sums are considered to be CIL compliant and could be secured under a section 106 agreement. Whilst the need for a community orchard and allotments has not been substantiated by the applicant, they form part of the POS offer put forward. Subject to a Locally Equipped Area for Play (LEAP) also being secured, the POS would comply with the Council's section 106 guidance, although there would need to be careful consideration as to the future access, management and ownership of the orchard and allotment. With the above discussion in respect of the community facility, the request from the Open Spaces and Facilities Manager is justified. These are projects pursuant to the draft Open

Space, Sport and Community Facilities Strategy and the section 106 guidance sets out the relevant amounts which could be secured by planning obligations.

In summary, the proposal (if developed to 150 dwellings) would secure the following contributions:

- £341,970.30 towards a classroom extension at Weston on Trent Primary;
- £545,526.94 towards a scheme of works to accommodate additional pupils at Chellaston Academy;
- £57,060.00 towards improving the capacity of Alvaston Surgery to accommodate additional patients;
- £220.00 per bedroom created towards outdoor sports facility developments at Aston Recreation Ground;
- £122.80 per bedroom created towards built facilities improvements at the community sports pavilion on Aston Recreation Ground; and
- Travel Plan monitoring fee of £5,000.

The applicant advances the provision of 30% affordable housing, in line with policy. It is noted that the strategic need for affordable housing has not been met as might have been hoped in recent years, although the delivery of a number of sites in the last couple of years and further allocations coming forward is helping to address this issue alongside a number of affordable only or exception sites. A mix of tenures and types would be secured in line with the Strategic Housing Market Assessment (SHMA) – in this case through the section 106 agreement given the size of the development.

### Summary

The Development Plan is the starting point for decision making and a proposed development that conflicts with it should be refused unless other material considerations indicate otherwise. The position is that in excess of a 5 year housing supply can be demonstrated and policies relevant for the supply of housing can be relied upon – even where they relate to settlement boundaries which were set some time ago. This approach accords with recent judgements. With the LP2 close to adoption, the supply will increase further in the next few months and there are no indications that the shortfall to date cannot be catered for in the manner envisaged when the LPP1 was found sound and subsequently adopted.

In considering whether the proposal actually constitutes sustainable development as set out by the three dimensions in the NPPF, the provision of 150 dwellings, part of which would be for affordable housing needs, compliments the economic and social roles through facilitating a choice of housing as well as the construction and subsequent input to the local economy. The creation of the community orchard and allotments also provide some social benefit, albeit tempered by its peripheral location to the wider village and the need to secure appropriate ‘custodians’ going forward. However, the loss of BMV agricultural land alongside the moderate landscape and visual harm is considered to carry significant weight against the proposal. Moreover, this proposal is an unplanned approach to the strategic and sustainable delivery of housing across the District advocated by the plan led system – in particular policies S1 and S4. With the site not featuring in the emerging LP2, having been discounted

by the Council in its preparation of this, there is further indication that the development is not sustainable in principle – it failing to achieve the mutually balanced approach under paragraph 7 of the NPPF, and the specific environmental harm which arises from the development confirms this. Consequently, it is not considered there are other material considerations which outweigh the primacy of the Development Plan.

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

## **Recommendation**

**REFUSE** permission for the following reasons:

1. The site is located outside the settlement confines for Aston on Trent and does not benefit from an allocation in the Local Plan Part 1 or emerging Local Plan Part 2. The proposed development also fails to qualify as an affordable led scheme. With the proposal not benefitting from any other policy presumption in favour, and the Council being able to demonstrate in excess of a 5 year deliverable supply of housing land; no justification exists in order to justify a departure from the plan-led approach to sustainable delivery of objectively assessed housing needs within the District. The proposed development would therefore represent an unwarranted incursion in to the countryside, leading to the unjustified loss of greenfield land and not representing sustainable development in principle; contrary to policies S1, S4 and H1 of the Local Plan Part 1, saved policies H5 and EV1 of the Local Plan 1998, emerging policies SDT1 and BNE5 of the Local Plan Part 2, and the provisions of the NPPF.
2. The site is identified as majority grade 3a agricultural land, considered to be 'Best and Most Versatile' (BMV). The economic and other benefits of BMV agricultural land should be recognised through the planning system, with such land safeguarded as far as is practicable by steering new development towards areas of poorer quality land. The applicant has failed to demonstrate that the development of this site is necessary and could not be accommodated elsewhere on a lower quality of land, especially when a 5 year housing land supply exists and the site is not an emerging allocation in the Local Plan Part 2. Given the limited availability of BMV agricultural land in the District and the size of the site concerned, the loss is considered to be significant and contrary to policy BNE4 of the Local Plan Part 1, saved policy EV1 of the Local Plan 1998, emerging policy BNE5 of the Local Plan Part 2, and paragraphs 17 and 112 of the NPPF (along with accompanying practice guidance).
3. The proposal would result in the enclosure and sub-urbanisation of an area of land which contributes to the open, legible and spacious break in-between the built environment of Aston-on-Trent and Weston-on-Trent, and would result in significant harm to the character and appearance of the area and the local landscape - visually and perceptually reducing the separation of the two settlements to an unacceptable degree whilst introducing a dense urban form

in prominent aspects on the approach to the village. The proposal is therefore contrary to policies S1, BNE1 and BNE4 of the Local Plan Part 1, saved policy EV1 of the Local Plan 1998, emerging policy BNE5 of the Local Plan Part 2, and paragraph 17 of the NPPF.

Informatives:

- a. Notwithstanding this refusal, the Local Planning Authority has worked with the applicant in a positive and proactive manner through pre-application discussions and offering the opportunity to overcome objections lodged by consultees, so to avoid the number of reasons for refusal. However despite such efforts, there remains fundamental planning objections and issues cannot be overcome, either in principle or at this time. 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>
9/2016/0452	Derby Road, Swarkestone	Aston	Dismissed	Delegated
9/2016/0479	The Castle Way, Willington	Willington & Findern	Allowed	Committee
9/2016/0818	Bretby Lane, Bretby	Repton	Dismissed	Delegated
9/2016/0860	Wragley Way, Stenson Fields	Stenson	Allowed	Delegated
9/2016/0865	Wallfields Close, Findern	Willington & Findern	Dismissed	Delegated
9/2016/1053	Brambling Crescent, Mickleover	Etwall	Dismissed	Delegated
9/2016/1222	Fishpond Lane/Duck Street, Egginton	Etwall	Dismissed	Delegated
9/2016/1245	Springwood Fisheries, B587	Melbourne	Allowed	Delegated



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## Appeal Decision

Site visit made on 24 April 2017

by **Susan Ashworth BA (Hons) BPL MRTPI**

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

Decision date: 16 May 2017

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**Appeal Ref: APP/F1040/W/16/3160424**

**Land to the rear of Trentside Cottages, Derby Road, Swarkestone, Derbyshire DE73 7GW**

- 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 Haywood against the decision of South Derbyshire District Council.
  - The application Ref 9/2016/0452, dated 9 May 2016, was refused by notice dated 5 August 2016.
  - The development proposed is to construct a single storey new 3 bedroomed dwelling house.
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### Decision

1. The appeal is dismissed.

### Main Issues

2. The main issues in this case are:
  1. Whether the proposal would preserve or enhance the character or appearance of the Swarkestone Conservation Area.
  2. The effect of the proposal on the settings and significance of nearby Crewe and Harpur Arms and Stables a Grade II listed building; St James Church a Grade II\* listed building; The Swarkestone Grandstand a Grade I listed building and the Swarkestone Causeway, a Scheduled Ancient Monument.
  3. Whether the proposal constitutes a sustainable form of development having regard to the development plan and the National Planning Policy Framework (the Framework).

### Reasons

*Whether the proposal would preserve or enhance the character or appearance of the Conservation Area*

4. The site comprises an open, flat area of grassed land, incorporating a stable block adjacent to its southern boundary. It is located adjacent to a sharp bend in the A514 which at this point has a wide verge. The site is enclosed by post and rail fencing and lies immediately adjacent to residential development to the south and open countryside to the east. It is opposite the car park to the Crewe and Harpur Arms Public House and a residential property at the junction of the A514 with Barrow Lane.

5. The proposal is for the construction of a detached three-bedroom bungalow on the site, utilising an existing access through neighbouring land. The bungalow, which would be sited immediately adjacent to the western boundary of the site, would be constructed in brick.
6. Swarkestone is a small fragmented settlement, situated to the north of the River Trent. The settlement pattern includes clusters of development, with areas of open space between and no obvious village centre.
7. The site lies within the Swakestone Conservation Area which incorporates both buildings and open spaces. The Swarkestone Conservation Area Character Statement 2014 notes that 'Overall, the Conservation Area is characterised by many open spaces with long views across the fields and few interruptions'. The appeal site, which appears visually continuous with the open fields to the east, and affords expansive views across open countryside, makes a positive contribution to the conservation area's character.
8. The proposed development, which would be highly prominent from the A514, would introduce a domestic building into the space and as such would erode the openness and rural character and appearance of this part of the conservation area. In addition, the presence of the dwelling, although single storey in height, would interrupt the long range views which are a defining feature of the area. I accept that the dwelling would be carefully positioned on the site at a point where some long range views of St James's Church are already obstructed by a barn in a neighbouring field. Nevertheless the character of the area doesn't rely solely on views of focal points. Moreover, the whole of the site would have a domestic use and consequently the development would have an urbanising impact on the character of the area.
9. My attention has been drawn to a planning application for a bungalow at the rear of Trentside Cottages. I do not have the full details of the case before me. Consequently I cannot be sure that the context for the approval of the development was the same as for the proposal before me, which I must treat on its merits.
10. No objection has been made by the Council to the design of the proposed dwelling and I accept that its external materials would reflect those of the surrounding development. Nevertheless this would not outweigh the harm caused by the loss of openness and harm to the character and appearance of the area.
11. For the reasons set out above, the proposal would neither preserve nor enhance the character or appearance of the conservation area. The proposal would therefore be contrary to Policies of BNE1, BNE2 and S1 of the Local Plan Part 1 and Policy EV12 of the South Derbyshire Local Plan 1998 which in various ways and amongst other things, seek to protect, conserve and enhance heritage assets and ensure that development respects its context.
12. The approach in the Framework paragraph 134 is that where there is less than substantial harm to the significance of a designated heritage asset, as in this case, that harm should be weighed against the public benefit of the proposal. The public benefit of the proposal lies in the provision of one

additional unit of accommodation. However, the Council can currently demonstrate a 5 year housing land supply and the benefit of one additional unit is limited. Consequently the benefit of the proposal does not outweigh the harm to the heritage asset which attracts considerable weight on the negative side of the balance.

*The effect of the proposal on the setting and significance of nearby listed buildings and a scheduled ancient monument*

13. The site lies in close proximity to several other heritage assets, the nearest being the Crewe and Harpur Arms Public House and Stables, and the Swarkestone Causeway, a Scheduled Ancient Monument (SAM). At a greater distance away are St James's Church and The Swarkestone Grandstand, a pavilion associated with Swarkeston Hall.
14. The setting of a heritage asset is defined in the National Planning Policy Framework as 'the surroundings in which a heritage asset is experienced'. On that basis the site lies within the setting of the heritage assets outlined above. The Framework notes that 'elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral'.
15. There is no assessment before me of the contribution the appeal site makes to the significance of the listed buildings and SAM. It seems to me that the significance of the listed building lies primarily in their history, design and fabric. That of the SAM lies in its archaeology.
16. There is already built development around the Crewe and Harpur Arms and closer to the SAM than the appeal site. The proposal, by introducing built form in close proximity to the Crewe and Harper Arms and the SAM would clearly change their settings. However, on the basis of the evidence before me, it would not affect their significance as heritage assets.
17. The Church and Grandstand were clearly designed to be seen from the surrounding area. Consequently the surrounding open landscape allows the appreciation of the assets and thereby makes a positive contribution to their significance. However, given the distance between the site and the listed buildings, and the presence of other sporadic development in the landscape, the proposal would have little impact on the wider setting and thereby the significance of those buildings. The development would be seen against the backdrop of existing urban development from any vantage points in these buildings and as such any existing views out from the buildings would be unharmed.
18. Consequently I am satisfied that the special interest of the heritage assets would be preserved.

*Whether the proposal constitutes sustainable development*

19. The Framework sets out a presumption in favour of sustainable development which it states has three dimensions; economic, social and environmental. The proposal would make a minor contribution to the economy and would provide an additional unit of accommodation. However, it is a greenfield site and furthermore, the conservation of heritage assets is a key aspect of sustainable development.

20. The development plan for the area includes the South Derbyshire Local Plan 1998 and the South Derbyshire Local Plan Part 1 (LP Part 1) adopted in June 2016. In order to promote sustainable development Policy H1 of the LP Part 1, sets out a settlement hierarchy strategy to direct new development to the most sustainable settlements. Under this strategy Swarkestone is defined as a 'Rural Village' where development of a limited nature will be allowed within the settlement as applicable or adjacent to it as an exception or cross subsidy site.
21. The site lies outside the defined settlement boundary. Whilst I understand this boundary is under review as part of consideration of the Local Plan Part 2, I understand that the submission version of the Plan also excludes the site from the settlement boundary. There is nothing before me to suggest that the site should be considered as an exception site and the development is therefore contrary to Policy H1 as outlined above.
22. Therefore in terms of both the Framework and the development plan, the proposal represents an unsustainable form of development.

**Conclusion**

23. For the above reasons, taking into account all other matters raised, the appeal is dismissed.

*S Ashworth*

INSPECTOR



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## Appeal Decision

Site visit made on 10 April 2017

**by Jonathan Price BA(Hons) DMS DipTP MRTPI**

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

**Decision date: 4<sup>th</sup> May 2017**

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**Appeal Ref: APP/F1040/W/17/3167369**

**Land at The Castle Way, Willington, Derbyshire DE65 6BW**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by G D Golding Skip Hire Limited against the decision of South Derbyshire District Council.
- The application Ref 9/2016/0479, dated 13 May 2016, was approved on 30 November 2016 and planning permission was granted subject to conditions.
- The development permitted is change of use of vacant land to an area of hard standing for skip storage (Use Class B8).
- The condition in dispute is No 13 which states that: This permission shall be for a limited period only, expiring at the end of 24 months from the first use of the site hereby permitted, on or before which date the use shall be discontinued and the site reinstated to the satisfaction of the Local Planning Authority unless, prior to that date, an application has been made and permission has been granted for an extended period.
- The reason given for the condition is: 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) in order that the impact of the noise from the site can be assessed.

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### Decision

1. The appeal is allowed and the planning permission Ref 9/2016/0479 for change of use of vacant land to an area of hard standing for skip storage (Use Class B8) at land at The Castle Way, Willington, Derbyshire DE65 6BW granted on 30 November 2016 by South Derbyshire District Council, is varied by deleting condition 13 and amending Condition 7 as set out below.
  - 7) The use allowed shall not commence until a Site Management and Operation Plan has been submitted to and approved in writing by the local planning authority. The skip storage use shall thereafter comply with the requirements of the approved plan.

### Application for costs

2. An application for costs was made by G D Golding Skip Hire Limited against South Derbyshire District Council. This application is the subject of a separate Decision.

### Background and Main Issue

3. The site with permission for the storage of skips is contained within roads forming part of a grade separated junction to the A38 trunk road. The A38 is a busy two-lane dual carriageway which runs directly alongside the western site boundary. The southern boundary abuts the raised section of the A5132 which crosses the trunk road. Access to the site is from the north directly from The
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Castle Way which links to the on and off slip roads to the southbound carriageway of the A38.

4. There is a counterpart site within a similar road arrangement on the opposite side of the A38 which contains a car sales operation. There are trunk road service facilities at both the off slips immediately north of this junction. The services on the east side have an exit onto The Castle Way. East from these there is frontage housing along the north-side The Castle Way which faces the appeal site. These 1930s semi-detached houses pre-date the more recent changes to the road system which have altered the previously more rural character of this area. The large amount of traffic using the A38, and this junction, creates a relatively high volume of background noise which was evident at my visit during the middle of the day
5. The skip storage permitted would have convenient access to the strategic road network via the adjacent the A38. The main part of the site is currently undeveloped and a small section in the western corner contains a pumping station building and compound. The approved use would provide over-flow storage capacity for a main skip hire business operating from Burton-on-Trent. As such the proposal had envisaged a level of use averaging at two skip deliveries per day, resulting in four movements to and from the site.
6. The permission is subject to conditions that there will be no more than 10 vehicle movements bringing skips in or out of the site per day, and limiting these to taking place only between 0800 – 1700 Mondays to Fridays and 0800 – 1200 on Saturdays, with the requirement that no skip or vehicle maintenance takes place here. The Council's decision was based on a Noise Assessment and a further condition ties the approved use to its recommendations. Additional conditions relate to the requirements for the improved new access and landscaping and another limits the consent to skip storage only and not a general B8 use.
7. The Council had considered an officer recommendation for approval subject to these conditions, but decided that the permission should also be for a two-year temporary period to allow time to assess the noise impacts of the use before deciding whether or not to grant a permanent consent. The appeal concerns only the condition that makes the approval temporary for two years. Consequently the main issue whether this condition is necessary and reasonable having regard to the living conditions of the occupiers of the adjacent houses along The Castle Way, with particular regard to the effects from noise.

#### **Reasons**

8. Paragraph 206 of the National Planning Policy Framework (the Framework) requires that planning conditions should only be imposed where they are necessary, relevant to planning and the development to be permitted, enforceable, precise and reasonable in all other respects.
9. The Planning Practice Guide<sup>1</sup> (PPG) acknowledges that under section 72 of the Town and Country Planning Act 1990 the Council may grant planning permission for a specified temporary period only. However the PPG advises that where a proposal complies with development plan policy or where material

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<sup>1</sup> Paragraph: 014 Reference ID: 21a-014-20140306

- considerations indicate otherwise that planning permission should be granted, a temporary permission would rarely pass the Framework test of necessity.
10. The Council has made the permission temporary for a two year period as a trial run to assess the effect of the development on the area. This is one circumstance where the PPG advises such a condition may be appropriate. The reason relates to the need to protect the living conditions of the occupiers of the adjacent houses along The Castle Way from any unforeseen noise problem where these residents already experience a more continuous level of background traffic sound from the A38.
  11. Traffic noise is a relatively constant sound that residents would become attenuated to. More sudden and intermittent sounds, such as might arise from the movement of large hollow metal skips, the release of security chains and from heavy vehicle reverse warning alarms, could have a more disturbing impact and harm the living conditions of nearby residents by exacerbating the existing background traffic sound and adversely affecting health and well-being.
  12. However, having considered the evidence in the appellant's Noise Assessment<sup>2</sup>, I am persuaded that such intermittent sounds would be at a level below and contained within that of the ambient sound levels of the nearby road traffic. It is noted that the Council's environmental health officer found no fault with the Noise Assessment's findings. I am aware of no proposals to monitor the noise of the permitted operation and, with safeguards the other conditions provide, am not persuaded that the noise generated by the approved use would cause material harm to the living conditions of the residents nearby. Therefore, a condition providing for a two-year temporary permission would not in this case pass the test of being necessary required by the Framework.
  13. The implementation of the permission would require significant investment to surface the site, create the improved access and reinforce the boundary planting. Consequently, the condition that the permission would be temporary for two years, with no guarantee of a subsequently permanent consent, would be unreasonable in relation to the initial outlay of expenditure required. The Framework test of reasonableness would not be met.

#### **Other Matters**

14. Consideration has been given to the further concerns raised by interested parties. Regarding the matter of visual intrusion and the loss of rural views these would not provide sufficient grounds to question the permission already granted, particularly given conditions that would require supplementary boundary planting.
15. Regarding any harmful impacts arising from the cleanliness of the skips, or those collecting stagnant water, and any resulting nuisance caused by smell, insects or the attraction of vermin, much would depend on the satisfactory operation and management of the site. The same would apply to any problems arising from dust.
16. The existing Condition 7 requires that the scheme be implemented in accordance with the general measures recommended in the Noise Assessment. Some of these, such as hours of operation are controlled through separate

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<sup>2</sup> Noise Assessment – Proposed Skip Storage Facility, Castle Way, Willington, Derbyshire – Vibrock 23 August 2016

conditions. Others, such as avoiding any unnecessary horn usage or staff shouting would not be realistically enforceable.

17. Therefore Condition 7 is replaced with a condition that the skip storage use be carried out in accordance with a Site Operation and Management Plan which should be the subject of prior written agreement with the Council. Thereby the Council might decide what measures it might seek to ensure the operation takes place in a neighbourly manner to minimise any reasonably unavoidable harm to occupiers living nearby. Such a condition would be necessary in the interests of the living conditions of nearby residents.

**Conclusion**

18. The Council's concerns, and those of neighbouring occupiers, are appreciated. Nevertheless, I find no reason to question the appropriateness in planning terms of the use permitted. For the reasons given, I have not found the condition which grants approval for a temporary two-year period to be either necessary or reasonable. Apart from Condition 7, which is amended for the reasons explained, the other conditions would meet the tests set out in the Framework. Consequently, having taken into consideration all other matters raised, I conclude that the appeal should be allowed in the terms set out above.

*Jonathan Price*

INSPECTOR



## Costs Decision

Site visit made on 10 April 2017

by **Jonathan Price BA(Hons) DMS DipTP MRTPI**

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

Decision date: 4<sup>th</sup> May 2017

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### **Costs application in relation to Appeal Ref: APP/F1040/W/17/3167369 Land at Castle Way, Willington, Derbyshire DE65 6BW**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by G D Golding Skip Hire Limited for a full award of costs against South Derbyshire District Council.
  - The appeal was against the grant subject to conditions of planning permission for change of use of vacant land to an area of hard standing for skip storage (Use Class B8).
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### **Decision**

1. The application for an award of costs is refused.

### **Reasons**

2. The Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. Whilst the appeal decision found the condition contested to fail the tests of necessity and reasonableness this does not lead me to a conclusion that the behaviour of the Council had itself been unreasonable. The requirement for a noise assessment was a reasonable requirement to provide the evidence necessary to enable the Council to make an informed decision. This expense was neither unnecessary nor wasted and not incurred as part of the subsequent appeal.
4. The evidence is that the Council Committee had conducted a prior site visit and heard from both the appellant and an interested party before making a decision which had been the subject of prior debate. The Council is not bound by the recommendations of its officers and, given the location close to residential properties and the potential harm to health and wellbeing that might derive from noise, this matter is of some substance. Although the appeal succeeded in this case this is not indicative of unreasonable behaviour on the part of the Council.
5. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

*Jonathan Price*

INSPECTOR

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## Appeal Decision

Site visit made on 18 April 2017

by **S J Lee BA(Hons) MA MRTPI**

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

Decision date: 19<sup>th</sup> May 2017

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**Appeal Ref: APP/F1040/W/16/3166115**

**219 Bretby Lane, Bretby, Burton on Trent DE15 0QR**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Mr & Mrs John Orton against the decision of South Derbyshire District Council.
  - The application Ref 9/2016/0818, dated 5 August 2016, was refused by notice dated 11 October 2016.
  - The development proposed is the erection of one dwelling.
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### Decision

1. The appeal is dismissed.

### Procedural Matter

2. The application was submitted in outline with all matters reserved except for access. I have considered the appeal on this basis.

### Main Issues

3. The main issues in this case are;
  - Whether the development would be in an acceptable location in relation to local and national policies on housing in the countryside, having particular regard to access to facilities by a range of modes of transport;
  - The effect of the development on the character and appearance of the area; and
  - The effect of the development on highway safety, with particular regard to visibility.

### Reasons

#### *Location and Access to Facilities*

4. The appeal site comprises part of the side garden of 219 Bretby Lane. This is a detached dwelling set within a relatively spacious and verdantly landscaped plot. The dwelling currently has two points of access, one of which would be utilised by the development. To the rear of the site lies a large garden centre and car park, the access to this is to one side of the site. To the other is a detached dwelling that is also set within a large plot. Opposite the site is a pair of semi-detached dwellings.
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5. The nearest settlement to the site is Bretby. There is no defined settlement boundary for this village. However, the small cluster of dwellings within which the site lies is detached from what might logically be considered the main built form of this small village by both distance and open fields. There is an absence of core village facilities within the immediate vicinity of the site and, other than the garden centre and small number of dwellings, the site and its surroundings lie predominantly within a rural setting of open fields and agricultural land rather than forming an integral part of a village. For the purposes of considering the development against relevant local and national policies, I therefore consider the site to lie outside a settlement within the countryside.
6. The development plan consists of the South Derbyshire Local Plan Part 1 (2016)(LP1) and the saved policies of the South Derbyshire Local Plan (1998)(SDLP). The South Derbyshire Local Plan Part 2 (LP2) has been submitted for Examination. Paragraph 216 of the National Planning Policy Framework (the Framework) states that from the day of publication, decision-takers can give weight to relevant policies in such plans according to certain criteria. As I have not been given detailed information as to the extent of any unresolved objections I can give only limited weight to these emerging policies at this time.
7. LP1 Policy H1 states that in rural areas outside settlements development will be limited to the infilling of small gaps. Notwithstanding the limited weight given to this policy, I note the LP2 Policy BNE5 continues with this approach. SDLP Policy H6 and LP2 Policy BNE5 define infill as the filling of a small gap, for normally not more than two dwellings within small groups of houses. I have used this as a guide. I do not accept the appellants' argument that a site does not need to have development to either side of it to constitute a 'gap'. The approach suggested could simply lead to the extension of a ribbon of development into the countryside, which would be at odds with the intention of the policy.
8. There is a dwelling to one side of the site and the access to the garden centre to the other. However, it is clear on the ground that No 219 is the last building along the frontage of Bretby Lane for some distance. The garden centre buildings are set well back from the roadside and thus do not create any sense of a continuous built-up frontage. Beyond the entrance to the garden centre, the character of the area is that of the open countryside and thus the site cannot realistically be considered to represent a gap in the existing built form. The development would clearly lead to an extension of development along the frontage of the lane and thus I do not consider it would logically constitute infill. The requirements of LP Policy H1 would not therefore be met.
9. SDLP Environment Policy 1 (EV1) and Housing Policy 8 (H8) seek to restrict development outside settlements to that which is necessary to support established rural based activities. There is no suggestion that the development would meet the requirements of these policies. In terms of the location of development, both parties have drawn my attention to paragraph 55 of the Framework. This states that to promote sustainable development in rural areas, dwellings should be located where they can maintain or enhance the vitality of rural communities. An example given is where development in one village can help support facilities in another. The site is not in a village and there is no evidence before me that the vitality of the nearest settlements is under threat, such that the development of a single dwelling in the countryside

- beyond their extent would be of any particular benefit. The economic benefits derived from one additional dwelling in such a location would be limited in any event.
10. Other than the garden centre, which is unlikely to provide much in the way of meeting everyday needs, there is nothing before me which suggests that the site has good access to services or facilities. Neither party has drawn my attention to the existence of any particular facilities within Bretby. However, it would be reasonable to assume that as the village is in the lowest tier of the settlement hierarchy, and does not warrant a settlement boundary, that it is not well served by facilities meeting the daily needs of residents. Neither has any evidence been put forward which demonstrates that the site would be well served by public transport, including the proximity of bus stops, regularity of services or destinations. Without any substantive evidence to the contrary, I conclude that future occupants would be reliant on the car for the majority of their everyday needs.
  11. A reliance on the car is not necessarily unusual in rural areas. Nonetheless, the Framework still encourages development to be located where it can make the fullest possible use of public transport, walking and cycling. The development would not lead to a significant number of trips, but the likely effect of allowing development in locations such as this would be a cumulative increase in less sustainable trips across the area. The likely dependency on the car would also suggest that there would be little functional link or connection between this location and a particular settlement or set of services. This would further diminish any potential benefit to the vitality of any nearby community.
  12. Paragraph 55 also seeks to avoid isolated homes in the countryside unless one of a number of 'special circumstances' are met. It does not define what is meant by isolated. However, whilst the development would not be remote from other buildings, it would be located in the countryside, outside any defined settlement and would be effectively and functionally isolated from everyday services and facilities. When considering paragraph 55 as a whole, I consider that the site should be considered isolated in the context of this policy. There is no suggestion that the development would meet any of the 'special circumstances' needed to justify a development in this location.
  13. The development would therefore result in conflict with LP1 Policy H1 and SDLP policies EV1 and H8 and paragraph 55 of the Framework which seek to locate development in the most sustainable and accessible locations and resist isolated development in the countryside.

*Character and appearance*

14. The application is in outline only and both design and layout are reserved matters. Nonetheless, the likely effect on the countryside character of the site from any form of residential development can still be given consideration.
15. The street scene in this location has an overwhelming rural character. The garden and in particular the boundary treatment is verdantly landscaped and contributes positively to this character. The development would not constitute infill and would inevitably lead to the incremental extension of the physical built form into the countryside. While it may be possible to develop the site without removing the existing boundary treatment, any form of development here would still be likely to be visible from the roadside and would clearly result in a

change in character of the site from an open and undeveloped garden. This would serve to diminish the rural character of the area. A dwelling located as shown on the indicative plan would also result in a reduction in the plot width of No 219, shrinking the current spacious nature of the site to the likely detriment of the street scene.

16. The Council's third reason for refusal relates to their concern in relation to the potential loss of hedgerow and trees fronting onto the site. However, I have concluded below that there would be no necessity to make any alterations to the existing visibility splays. As such, there would equally be no requirement to remove the hedgerow or tree from the frontage. If I had been minded to allow the appeal, then this is an issue that could have been addressed at reserved matters stage. I therefore see no conflict with LP1 Policy BNE4, SDLP Environment Policy 9 or Paragraph 109 of the Framework which seek to protect landscape features such as trees or hedgerows.
17. Nonetheless, whilst the scale of encroachment in this case would not be large, it would still result in additional sprawl of the built form outside a village into the countryside. This would materially harm the rural character and appearance of the wider area. Accordingly, there would be conflict with SDLP Policy EV1 which seeks to ensure the character of the countryside is protected. It would also conflict with the Framework's core planning principle of protecting the intrinsic beauty of the countryside as set out in paragraph 17.

*Highway safety*

18. The development would utilise one of the two existing accesses into the site. One fronts directly onto Bretby Lane and the other is accessed from a track that runs between No 215 and No 217. The access fronting directly onto Bretby Lane appears to be the most commonly used. As this access would continue to serve a single dwelling, the development would not lead to any material increase in the level of usage of this access. This access would appear to have been in place for some time and there is nothing before me which suggests that current levels of visibility have led to any issues in terms of safety. I do not consider that the development would lead to any material increase in risk from the use of this access.
19. The secondary access did not appear to be in as frequent use from No 219, but there also appeared to be no physical reason why it could not be used. The access track also already serves other dwellings. Whilst the development would be likely to lead to some increase in the use of the access, the level of intensification is unlikely to be significant. Again, I have nothing substantive before me which suggests the existing use of this access has been the cause of any accidents or that the additional vehicular movements resulting from the development would be such to result in material harm.
20. From what I saw, visibility from the main access is reasonably extensive and the hedgerows do not impede this to a significant degree. Visibility for the secondary access is more restricted, but nevertheless, I did not consider it to represent an inherently dangerous situation exiting the site, particularly in the context described above.
21. I am mindful that local road users will be aware of the potential for vehicles to be leaving these areas and, notwithstanding the speed limit of the road, it is clear that you are approaching a small cluster of dwellings from either

direction. These factors would help to ensure drivers will be aware of the potential for cars leaving properties and would take necessary precautions. The presence of the access to the garden centre and junction with Mount Road would also have some likely effect on the speed of vehicles passing the site and their awareness of the vehicles exiting or entering the various accesses and junctions.

22. I do not consider there is sufficient evidence that the marginal increase in use of existing long standing residential accesses would result in a material increase in risk to highway safety. As such, I find there would be no conflict with LP1 Policy INF2 which seeks, amongst other things, to ensure appropriate provision is made for safe and convenient access to development.

#### **Other Matter**

23. Although a small part of the site falls within the Bretby Conservation Area (BCA) the indicative layout does not suggest that a dwelling would encroach into this area. The narrowness of the site at this point would also suggest that any change in character here would be negligible. Therefore, notwithstanding my concern over the general impact on the character and appearance of the street scene, the development would be unlikely to have any material effect on the BCA itself or its setting.

#### **Conclusion**

24. Notwithstanding my conclusion on highway safety, I have found that the development would conflict with the development plan and Framework in terms of their policies on housing in the countryside and resisting isolated development outside settlements. It would also result in harm to the rural character and appearance of the area. Balanced against this is the provision of a single dwelling to the housing land supply, to which I given moderate weight. None of the other matters raised would carry any more than limited weight in favour of the development.
25. I have had regard to the appeal decisions put to me by both parties and the dispute regarding the 5 year housing land supply. In particular, I have noted the decision at Jawbone Lane<sup>1</sup>, its conclusions relating to the housing land supply and the Council's views on this decision. However, even if I were to find that the Council were not able to demonstrate a 5 year supply of deliverable housing land and the relevant policies for the supply of housing were not considered up-to-date, I would still conclude that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits of one dwelling when considered against the Framework as a whole.
26. As a result, the application of paragraph 14 of the Framework would not indicate that permission should be granted and the proposal would not represent sustainable development. In the circumstances of this appeal, the material considerations considered above do not justify making a decision other than in accordance with the development plan. For this reason, I conclude that the appeal should be dismissed.

*S J Lee* INSPECTOR

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<sup>1</sup> Appeal reference: APP/F1040/W/16/3147682



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## Appeal Decision

Site visit made on 10 April 2017

by **Jonathan Price BA(Hons) DMS DipTP MRTPI**

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

Decision date: 4<sup>th</sup> May 2017

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**Appeal Ref: APP/F1040/W/16/3162554**

**Land adjacent to 166 Wragley Way, Stenson Fields, Derby DE24 3DZ**

- 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 Hardev Singh Rehal against the decision of South Derbyshire District Council.
  - The application Ref 9/2016/0860, dated 15 August 2016, was refused by notice dated 14 October 2016.
  - The development proposed is the material change of use of open space to residential garden land.
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### Decision

1. The appeal is allowed and planning permission is granted for material change of use of open space to residential garden land at 166 Wragley Way, Stenson Fields, Derby DE24 3DZ in accordance with the terms of the application, Ref 9/2016/0860, dated 15 August 2016, subject to the following conditions:
  - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: plan of extend garden date-stamped by the Council on 15 August 2016.
  - 2) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no enlargement or extension of the dwelling to which this permission relates shall cover the residential garden land hereby allowed without the prior grant of planning permission on application made to the local planning authority.

### Main Issue

2. The main issue is the effect of the proposal on the character and appearance of the area.

### Reasons

3. The appellant has fenced in an area of grassed public open space which abuts the side wall and side of the back garden to No 166. The application was seeking to regularise this, but the Council's decision was to refuse consent for the change of use to garden land sought. The appeal property is on the edge of a large estate of modern housing facing onto Wragley Way, which is a main through route and defines the current southern extent of residential development, beyond which there are fields.
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4. There is a surfaced footway running in a straight line through this area of open space leading to the end of a cul-de-sac within the estate. The largest part of this strip of open space had been between this footway and No 166 and more than half of this remains. It is not land adopted by the Council but appears to be maintained and formed part of the public open space allocated when the housing which included the appeal property was approved.
5. Whilst appreciating the Council's case that areas of public open space within this housing estate should be preserved, and taking account of the concerns of interested parties that if allowed this development might establish a precedent for further such space to be amalgamated into private gardens, in this case I find little harm arising from the development that has occurred. A smaller area of open space abuts the footpath into the estate further along Wragley Way to the east which is a similar situation.
6. The remaining grassed area to the west of No 166 would be sufficient to provide visual relief between the frontage housing along Wragley Way and provide views into the estate. This would preserve an open gap sufficient to make a valuable contribution to the appearance of this area and for the proposal to comply with saved Policy 8 of the South Derbyshire Local Plan of May 1998. As a consequence I find no material conflict with policies BNE 1 and BNE 4 of the Council's Part 1 Local Plan of 2016.

#### **Conclusion**

7. The Council has recommended a condition removing permitted development rights to extend the existing dwelling. I have instead imposed a condition to prevent the extension of the house over the additional garden land approved without prior planning permission from the Council. Exceptional circumstances would warrant such a condition, in the interests of character and appearance, to preserve an acceptable level of openness within the frontage of housing along the street. In the interest of certainty, a condition is necessary which specifies the plan to which this approval relates. Subject to these two conditions, and on the basis of the reasons given, I conclude that the appeal should be allowed.

*Jonathan Price*

INSPECTOR



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## Appeal Decision

Site visit made on 19 April 2017

by **Richard Duggan BSc (Hons) DipTP MRTPI**

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

Decision date: 09 May 2017

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**Appeal Ref: APP/ENV/3162624**

**23 Wallfields Close, Findern, Derbyshire DE65 6QL**

- The appeal is made under regulation 19 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012 against a refusal to grant consent to undertake work to a tree protected by a Tree Preservation Order.
  - The appeal is made by Mr Stephen Copeland against the decision of South Derbyshire District Council.
  - The application Ref: 9/2016/0865, dated 17 August 2016, was refused by notice dated 12 October 2016.
  - The work proposed is to fell one Sycamore tree.
  - The relevant Tree Preservation Order (TPO) is 'Land at 23 Wallfields Close, Findern, Tree Preservation Order No 417 (2015)', which was confirmed on 22 March 2016.
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### Decision

1. The appeal is dismissed.

### Main Issues

2. The main issues in relation to the appeal is whether the Council's decision to refuse consent for the proposed work to the protected tree is justified, having regard to the contribution that the tree makes to public amenity and the reasons put forward for the work.

### Reasons

#### *Amenity value*

3. Wallfields Close is characterised by mainly detached two storey properties sited within relatively large plots with driveways and lawned areas fronting the highway. Although some of the houses have trees to the front they are mostly small immature specimens and I noted that there are very few large mature trees in the immediate locality. The appeal tree is one of three trees located on the grass verge adjacent to the highway, and due to the lack of mature trees in the area they are a prominent landscape feature on Wallfields Close. The broad canopy of the appeal tree is an obvious feature seen throughout the street.
4. Overall, the Sycamore tree provides significant local amenity value which adds to the visual amenity of the area. In this context, the tree has a degree of individual specimen amenity value and makes a significant contribution to the character of the area. I consider that the protected tree contributes to the amenity of its surroundings and felling the Sycamore tree would have a harmful effect on the local environment and its enjoyment by the public, as

well as having a potentially detrimental effect on the health of the adjacent tree.

*Justification for the work*

5. The basis of the appellant's case is the concern about the tree being too close to the telephone pole and the associated risk to the wires, its harmful effect on the lawn, and the low amenity value of the tree.
6. I noted at my site visit that the upper branches of the tree do interfere with the telephone wires and in windy conditions have the potential to be a hazard. Nevertheless, in my opinion, this could be remedied to some extent by comparatively modest works to prune, trim back and thin the branches within the crown rather than felling the tree. I see no reason why the tree would not successfully withstand this level of pruning and continue to make a positive contribution to public amenity, whilst also addressing some of the concerns of the Appellant and local residents. This level of pruning would also assist in reducing the amount of shading and improve grass growth underneath the canopy of the tree.
7. I have noted the concerns raised by neighbours regarding the safety of residents and that the tree should be felled for safety reasons. However, no information has been supplied in the form of an arboricultural report or detailed tree survey which identifies a present danger or quantifies the extent of the associated risk. Whether or not there is a high risk of the tree or large branches falling should be assessed on the basis that there is a present danger. I have no evidence to support the claim that the tree is immediately dangerous and hence needs to be felled. In any event, I observed the tree and it appears to be in relatively good condition with no obvious signs of defects or intrusive decay which might cause it to fall in high winds.
8. My attention has been drawn to the felling of a tree on Local Authority land. I do not have the full details of this case and so cannot be sure that it represents a direct comparison to the appeal proposal. In any event, each case must be determined on its individual merits.
9. Having regard to the above, I conclude that the proposed works would result in the loss of a tree that makes a positive contribution to the character and appearance of the area. Based on the available evidence as presented, I conclude that there are insufficient grounds to justify the proposed works, and that consent should not be granted.
10. I note the reference to a replacement tree and I agree that in the event of the appeal being allowed I have the opportunity to require replacement planting. However, the proposal of a replacement tree is not sufficient in its own right to make the loss of the appeal tree reasonable and justified.
11. I have considered all other matters raised but none outweigh my conclusions on the main issues and that this appeal should be dismissed.

*Richard Duggan*

INSPECTOR



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## Appeal Decision

Site visit made on 19 April 2017

by **Richard Duggan BSc (Hons) DipTP MRTPI**

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

Decision date: 11 May 2017

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**Appeal Ref: APP/ENV/3166255**

**15 Brambling Crescent, Mickleover, Derby DE3 0UT**

- The appeal is made under regulation 19 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012 against a refusal to grant consent to undertake work to a tree protected by a Tree Preservation Order.
  - The appeal is made by Mr Scott Williams against the decision of South Derbyshire District Council.
  - The application Ref: 9/2016/1053, dated 30 September 2016, was refused by notice dated 2 December 2016.
  - The work proposed is fell one Horse Chestnut tree.
  - The relevant Tree Preservation Order (TPO) is 'Land at Pastures Hospital, Mickleover Tree Preservation Order No 132 (1996)', which was confirmed on 5 February 1997.
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### Decision

1. The appeal is dismissed.

### Main Issues

2. These are; the amenity value of the Horse Chestnut tree and the impact of felling it on the character and appearance of the area, and whether there are sufficient grounds to justify felling it.

### Reasons

#### *Amenity value*

3. The appeal property is located within a modern housing estate characterised by two storey detached dwellings set within relatively spacious plots. During my visit I saw that the development contained very mature few trees with only a limited number of tall specimens located along the boundaries. As such, they are dominant and important landscape features within the housing development.
4. The Horse Chestnut tree subject to this appeal tree is a fine, mature specimen located in the rear garden of the appeal property, and the canopy is clearly visible in the street scene above the ridge of the property. The tree contributes positively to the wider character and appearance of the area, being one of a number of trees located to the rear of Nos 15, 17 and 19 Brambling Crescent.
5. Due to their size and position the appeal tree and the other grouping of trees are prominent features and are seen in views from a number of other streets

and cul-de-sacs within this residential area. As such, they play a significant part in softening public views of the built environment.

6. Felling the Horse Chestnut tree at this time would significantly diminish the quality of the street scene given the tree's position, size, form and attractive character. Such action would mean the removal of a feature which otherwise is likely to continue to enhance the quality of the public realm well into the future. I consider that the removal of the tree would have a harmful effect on the local environment and its enjoyment by the public.
7. Therefore, I conclude that the protected tree contributes to the amenity of its surroundings and its removal would be harmful to the character and appearance of the area.

*Justification for felling*

8. The basis of the Appellant's case is the concern about the amount of debris, specifically conkers, falling from the tree and the potential damage that this would cause to the property and the risk of injury to the occupants of the house. The Appellant also has concerns regarding the nuisance caused by sap and the potential hazard of branches falling.
9. I note the strength of feeling regarding the amount of debris falling within the garden area, and I have sympathy with the matter of clearing large amounts of fallen conkers during the autumn months and the potential nuisance and hazard this may cause. However, I do not regard this as a justification for felling this healthy tree as this is a natural and ordinary consequence of having trees, especially Horse Chestnut, within a residential environment. The clearing of tree related debris and tree sap is part of routine household maintenance when living in proximity trees, and in isolation it provides little justification for removing a high quality protected tree.
10. The Appellant also raises concern regarding the use of the tree by pigeons which defecate on the garden thus causing a health and safety issue for the inhabitants of the property. Whilst I understand that clearing up bird mess and droppings from the lawn is an inconvenience, I am not satisfied that felling the appeal tree is a proportionate solution to the matter.
11. The Appellant is clearly concerned about the scale and size of the tree, the proximity to the appeal property and the potential for branches to fall in the winter months. However, no information has been supplied in the form of an arboricultural report which identifies a present danger of falling limbs or branches. Whether or not there is a high risk of the limbs or branches falling should be assessed on the basis that there is a present danger, but I have no evidence to support the claim that the tree is immediately dangerous and hence needs to be felled. A tree will shed branches and debris, this factor is a natural characteristic of all trees. Dead wood can be removed under the TPO exemption, and the removal of dead and dying branches forms part of the general maintenance of a property with protected trees.

12. I conclude that based on the available evidence as presented there are insufficient grounds to justify felling this protected Horse Chestnut tree. Having taken account of all matters raised, I have concluded that the appeal should not succeed.

*Richard Duggan*

INSPECTOR

## Appeal Decision

Site visit made on 3 May 2017

by **David Murray BA (Hons) DMS MRTPI**

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

Decision date: 19<sup>th</sup> May 2017

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**Appeal Ref: APP/F1040/W/17/3167940**

**Land at junction of Fishpond Lane and Duck Street, Egginton, Derby, DE65 6HG**

- 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 Ms Anna Harrison against the decision of South Derbyshire District Council.
  - The application Ref. 9/2016/1222, dated 24 November 2016, was refused by notice dated 19 January 2017.
  - The development proposed is the erection of a dwelling.
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### Decision

1. The appeal is dismissed.

### Main Issues

2. The main issues are:
  - Whether the proposal accords with the strategy in the development plan;
  - Whether the Council can demonstrate a five year supply of new housing land;
  - The effect on the character and appearance of the area.

### Reasons

#### *Background*

3. The appeal site comprises an area of open grassed land which lies adjacent to a modern detached dwelling (No. 104) and a larger field to the south on the edge of the village of Egginton. There is an existing vehicular access to the side of the site which serves fields to the rear and from which it is proposed to provide a driveway to a new detached dwelling. This would have two floors of accommodation but the upper floor would be partly set in the roofspace and lit by both windows in the gable and dormer windows.

#### *Policy context and five year supply*

4. The development plan for the area includes saved policies in the South Derbyshire Local Plan 1998 (the 1998 Plan) and the South Derbyshire Local Plan Part 1 adopted in June 2016 (LPP1). I will consider the degree of accord of any saved policy with the more recent National Planning Policy Framework
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(the Framework) as it arises in the issues below. The Council is also producing a Local Plan Part 2 (LPP2) which is being examined about the same time as this appeal. Although the plan is not formally adopted, the policies in the submitted plan can be given some weight at this advanced stage in the process.

5. The appellant says that at the time that the application was made the Council could not demonstrate a five year supply of new housing sites in accordance with paragraph 47 of the Framework, accordingly it is submitted that paragraphs 49 and the final bullet point of paragraph 14 are engaged and that policies which restrict the supply of housing should be considered as 'out of date'. The appellant's agent refers to the Council's last position statement (July 2016) which concluded that the Council could demonstrate 5.33 years supply. However, as reflected in the findings of the Inspector in appeal APP/F1040/W/W/163147682 (as referred to the Jawbone Lane decision), it was accepted that in the period 2016-2021 there would only be a 4.82 year supply.
6. The Council says that a five year supply could be demonstrated when the LPP1 was adopted in June 2016 and the LPP2 makes further allocations for housing development which will ensure the delivery of a five year supply. However although the examination of the LPP2 is imminent at the time of decision of this appeal, its provisions cannot be regarded as final. This limits the weight that can be given to the input of LPP2 proposals into the land supply calculation. The Council says that planning permission has been granted for some 237 houses since the Jawbone Lane decision which overcome the minor shortfall in supply identified, but I share the appellant's agent's concern about the robustness of this data and the way in which it fits in with the published trajectory of housing supply.
7. Overall, on the evidence put to me I have doubt over whether the Council can demonstrate at the moment that a five year supply of new housing land exists in accordance with paragraph 47 of the Framework. Even so, the proposal needs to be considered in the context that the degree of under provision appears (mathematically) very small and if the single dwelling now put forward was permitted, it would have a very limited effect on rectifying under-delivery.

*Accord with the strategy in the development plan*

8. The 1998 Plan defines a village boundary for Egginton and the appeal site lies outside but adjacent to this boundary and saved Policy H5 seeks to restrict development outside of the confines of the village and in the countryside. As such saved Policy H8 applies and the proposal for an open market residential dwelling is not one of the exceptions advanced in this policy. Therefore the proposal does not accord with the provisions of this part of the development plan. The Framework has a core principle of recognising the character and beauty of the countryside and I find that these policies broadly accord with the terms of the Framework notwithstanding my findings on land supply above.
9. In terms of the LPP1, the relevant policy is H1 which introduces a settlement hierarchy within which development will be permitted depending on the scale and services in the settlement. Egginton is recognised to be a 'Rural Village' in which development of a limited nature will be allowed subject to (i) it being within the settlement boundary or adjacent as an 'exceptions' site or cross-subsidy development ; or (ii) or a limited infill and conversion of an existing building. The final element of the policy refers to other areas outside settlements where only limited infill and conversions will be acceptable. In this

case part (i) is not applicable as the site is not within the settlement and the scheme is for open market housing and is not put forward as a housing exception or cross-subsidy development.

10. In terms of the part (ii) of the policy, the explanation for the policy does not define 'limited infill' but I take this to mean circumstances where development would fill in a gap between existing buildings or other development. Although the appeal site lies on the edge of existing development, the nature and character of the open field to the south of the site mean that the additional house would not constitute an 'infill' of this frontage. It would not complete or finish the urban form and the same arguments in favour of further additions could be repeated and repeated. Therefore, I find that the proposal conflicts with LPP1 Policy H1. LPP2 Policy BNE5 has a similar test of 'infilling' for new development in the countryside which is breached for the same reasons.
11. Overall, on this issue, reading the various parts of the development plan as a whole, I conclude that while Eggington is a sustainable location for small scale development, the proposal does not accord with its provisions for site specific reasons.

*Effect on the character and appearance of the area*

12. In assessing this effect I have had regard to the appeals decisions set out in the representations which relate to adjoining land but I have considered the visual impact of the proposal on its individual merits. At my site visit I looked at the site from the public realm of Duck Street and Fishpond Lane particularly where they meet on the corner.
13. When approaching the site from the east along Fishpond Lane to the corner, the open area of land stretching north up to the boundary with the existing dwelling (No. 104) affords views of the open countryside beyond. The land along the frontage has an undeveloped rural character and the appeal site contributes to this in its own right as well as being visually part of the larger area of field to the south. The settlement boundary mentioned in paragraph 8 above, although long standing, still reflects the present character of the land and the clear distinction between the built up environment of the village and the surrounding countryside.
14. Although there is some scattered vegetation along the roadside I do not agree with the appellant's agent that the development proposed would be well screened from the public roads. Even though the house proposed will be slightly lower than No. 104, the resulting development would be prominent to the public realm and would materially erode the open area. Further, because of the layout of the new house on the narrow site, I find that it would appear squeezed onto the end of the built-up frontage rather than result in a harmonious transition of build development with the countryside.
15. Overall, I agree with the Council that the proposed house would encroach into the undeveloped countryside setting of the village and this would significantly harm its character and appearance, contrary to the provisions of Policy BNE4 of the LPP1.

*Other matters*

16. I note that the appellant was born in the village and continues to live there. She also farms locally and it is said on her behalf that the new house will help to provide some security against theft and other crime on the land. However, the application is put forward as an open market house and I have considered it on this basis and not as one in connection with a functional agricultural need on a farm or for special personal circumstances.

*Planning balance*

17. The proposal needs to be seen in the context that the government seeks to encourage sustainable development and significantly boost the supply of housing. Within this framework Councils need to be able to demonstrate a five year supply of land for new housing. On the evidence submitted I have concerns that the Council is able to do that at the moment pending the examination and adoption of the LPP2. However, even if I was to apply less weight to the policies in the development plan that generally restrict the supply of housing, and to the conflict with policies that I have identified, in this case the appeal proposal if approved would not make much difference to rectifying any deficit in supply.
18. I also acknowledge that as limited further development, the additional house, and its subsequent occupiers may contribute to the vitality of the rural community and help maintain local services and facilities and there will be a short term limited economic benefit deriving from the construction of the property.
19. On the other hand I have found that the development of the site as proposed would not be an appropriate form of infilling and it would be likely to lead to pressure for more development said to be similar. Further, I have found that the development would be prominent and would be significantly harmful to the rural edge of the village as it would materially erode the open rural character that exists. This harm means that the proposal does not fulfil the environmental dimension of sustainable development as set out in the Framework as the proposal would not contribute to protecting the natural environment.
20. The harm identified needs to be balanced with the benefits of development but overall I conclude that the adverse impacts significantly and demonstrably outweigh the benefits when the Framework is applied as a whole. Therefore, the other considerations do not outweigh the conflict with the development plan even if lesser weight is given to this at the moment.

**Conclusion**

21. For the reasons given above I conclude that the appeal should be dismissed.

*David Murray*

INSPECTOR



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## Appeal Decision

Site visit made on 3 May 2017

by **David Murray BA (Hons) DMS MRTPI**

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

Decision date: 19<sup>th</sup> May 2017

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### Appeal Ref: **APP/F1040/W/17/3169776**

### **Springwood Fisheries, Melbourne, Derby, DE73 8BJ.**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Springwood Fisheries against the decision of South Derbyshire District Council.
- The application Ref. 9/2016/1245, dated 30 November 2016, was refused by notice dated 25 January 2017.
- The application sought planning permission for the siting of five holiday chalets without complying with a condition attached to planning permission Ref. 9/2013/0952, dated 17 January 2014.
- The condition in dispute is No. 7 which states that:

Notwithstanding the provisions of Part C, Class 3 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, (or any Order revoking or re-enacting that Order), the mobile homes hereby permitted shall be used for the purpose of holiday accommodation only and for no other purpose, including any other purpose within Class C3 of the Order without the prior grant of planning permission by the Local Planning Authority, and:

- i. the log cabins shall only be occupied for 11 months in any calendar year and in particular shall not be occupied between 14 January and 14 February in any calendar year;
- ii. the log cabins shall be used for holiday purposes only;
- iii. the log cabins shall not be occupied as a person's sole, or main place of residence; and
- iv. the site operators shall maintain an up-to-date register of the names of all owners and make best endeavours to maintain an up-to-date register of the names of all occupiers of individual log cabins on the site, and of their main home addresses, and shall make that information available at all reasonable times to the local planning authority.

- The reason given for the condition is: The Local Planning Authority is only prepared to grant permission for holiday accommodation (in accordance with Saved Local Plan Recreation and Tourism Policy 1) because another dwellinghouse in this location would be contrary to the development plan and the NPPF objectives of sustainable development.
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### Decision

1. The appeal is allowed and planning permission is granted for the siting of five holiday chalets at Springwood Fisheries, Melbourne, Derby, DE73 8BJ, in accordance with the application Ref. 9/2016/1245 dated 30 November 2016,
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without compliance with condition number 7 previously imposed on planning permission Ref. 9/2013/0952, dated 17 January 2014, but subject to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect and subject to the following new condition 7 set out in the attached Schedule.

### **Main Issues**

2. The main issue is whether the restriction on occupancy still serves a proper planning purpose and whether its lifting to facilitate the full time residential occupation of 'The Outlook' is justified by the functional needs of the fishery and its tourism use, notwithstanding the loss of one unit of holiday accommodation that would result.

### **Reasons**

#### *Background*

3. The appeal site is located in open countryside and comprises a day ticket course fishery with two ponds in extensive landscaped grounds together with an office/café and an area of parking. There is also overnight accommodation for guests in either caravans or chalets as shown in the planning history of the site where planning permission was granted in 2010 for touring caravan pitches and in 2013 permission was granted for five holiday chalets. It is a condition on the latter permission that the applicant seeks to vary to enable one of the chalets (named the Outlook) to be used as residential accommodation for a site manager all year round as opposed to holiday accommodation for a limited period per year.
4. At the time of my visit I noted that there were 5 touring caravans sited on the grassed area around the ponds and static units in the form of timber 'pods' and a larger static mobile home, and there were in the region of 10 people fishing at numbered pegs around the ponds.

#### *Policy context*

5. The development plan includes: saved policies in the Council's South Derbyshire Local Plan (1998); the provisions of the South Derbyshire Local Plan Part 1 adopted in 2016; and the emerging Local Plan Part 2 - Submission Document. The weight to be attached to the 'saved' and emerging policies depends on their degree of consistency with the National Planning Policy Framework (the Framework).
6. Overall it appears to me that the relevant policies seek to strictly control new residential development in the countryside away from any defined settlement but policies such as INF10 also support tourist development in appropriate locations. Further, the Council says that the site lies in the National Forest and that this is an area which has an established need for overnight tourist accommodation.
7. In terms of the National Planning Policy Framework (the Framework) this encourages sustainable development and recognises the need to support a prosperous rural economy and achieve sustainable growth through the expansion of all types of business and enterprises in rural areas both through the conversion of existing buildings and well designed new buildings

(paragraph 28). However, isolated new homes in the countryside should be avoided unless there is special justification (paragraph 55).

*Whether generally an essential restriction*

8. Given the policy basis set out above it is clear to me that permanent new residential development, even in the form of caravans, mobile homes or chalets, should not be permitted in this location away from settlements, services, and facilities unless there is special justification. As such, condition 7 imposed on the development involving the use as holiday chalets should not be generally lifted as it continues to fulfil a proper planning purpose.

*Functional need*

9. The appellant's case is that there is a functional need for a manager to live on site in the larger of the chalet units and the condition should be amended to reflect this. The agent says that the presence of a manager is needed on site all of the time because of the need to welcome and manage guests who can arrive late in the evening; the site is open to visitors 24 hours a day and 7 days a week; and to provide a degree of security to prevent theft, particularly of equipment and the poaching of fish.
10. The Council questions the functional need for accommodation on site and considers that the concerns about security could be overcome by for example a CCTV system, and also question the timing and extent of the 'turnround' of guests.
11. While a detailed business case and breakdown of the turnover and number of guest arrivals and departures has not been submitted, it appeared to me at the site visit that there had been a significant investment made in the enterprise with the formation of the lakes, the stocking of the fish and the provision of a café/office. This was supplemented by the number of 'hook-ups' for touring caravans that I observed together with the holiday chalet /pods which overlooked one of the lakes. The overall site appeared attractive and well managed.
12. With touring caravans staying overnight and the arrival of customers staying at the 'pods' at any time, I do not consider it unusual in a specialist tourism facility such as this to require the presence of some day to day supervision on site and for that supervision to be present in the evening in normal circumstances. Although a live CCTV system may improve some aspects of security it is unlikely to be a practical alternative for greeting new customers and allocating a pitch or other accommodation.
13. Overall I am satisfied that the extent and nature of the enterprise gives rise to a functional need for manager's accommodation on site.

*Loss of tourist accommodation*

14. The Council is also concerned that the use of one chalet for a manager's unit would result in the loss of a tourist unit which would act against the local economic benefit of tourism. However, I do not consider that this change of a single unit would significantly damage such wider public benefit or the strategy advanced in Policy E1 of the Part 1 Local Plan and the change is put forward in order to better manage the other overnight accommodation provided in the first place. If the loss of this unit was critical to the business itself, it appeared

to me that there was adequate space around the fishery for replacement accommodation. I conclude on this issue that the proposal would not materially harm wider tourism interests or conflict with relevant policies in the development plan.

*Planning balance*

15. Bringing together my conclusions on the main issues, I have found that while condition No.7 imposed on permission 9/2013/0952, fulfils a clear planning purpose and should generally be retained, the scale and nature of the recreational and tourist facilities on site are such that there is a functional need for day to day accommodation on site for a manager. Further, the widening of the scope of occupation of the unit known as the Outlook would not harm the wider tourism industry locally or its prospects for growth.
16. The proposal would make use of a residential chalet already on site, and which is of a low key design appropriate to its rural surroundings. Therefore, I am satisfied that the proposal is an exceptional case for a residential use consistent with the general provisions of saved Policy H8 and emerging Policy H25 and paragraph 55 of the Framework. I will therefore allow the appeal. However, although the permission for the holiday accommodation is a permanent one, as the residential needs stemming from the tourist accommodation and the fishery is a relatively recent one and not been proved in the longer term, I will restrict the occupation of the Outlook as manager's accommodation to a temporary period of three years which accords with the general stance in part D of emerging Policy H25
17. This decision is only in respect of condition No. 7 imposed on permission 9/2013/0952 and the other conditions imposed on this still apply where subsisting and capable of taking effect. I will also impose a new condition No. 7 to restate the restrictions on the occupancy of the remaining four log cabins and a further clause applying only to the occupation of The Outlook to restrict the occupation of this chalet to tourist accommodation as per the remainder of condition 7 or to person(s) currently employed in the management of the enterprise currently known as Springwood Fisheries (and dependants) to reflect the special circumstances put forward in the case and to prevent the establishment of a general residential use.

**Conclusion**

18. For the reasons given above I conclude that the appeal should be allowed.

*David Murray*

INSPECTOR

Schedule containing new condition No.7

- 7 .Notwithstanding the provisions of Part C, Class 3 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, (or any Order revoking or re-enacting that Order), the mobile homes hereby permitted, other than the chalet known as The Outlook, shall be used for the purpose of holiday accommodation only and for no other purpose, including any other purpose within Class C3 of the Order without the prior grant of planning permission by the Local Planning Authority, and:
- i. the log cabins shall only be occupied for 11 months in any calendar year and in particular shall not be occupied between 14 January and 14 February in any calendar year;
  - ii. the log cabins shall be used for holiday purposes only;
  - iii. the log cabins shall not be occupied as a person's sole, or main place of residence; and
  - iv. the site operators shall maintain an up-to-date register of the names of all owners and make best endeavours to maintain an up-to-date register of the names of all occupiers of individual log cabins on the site, and of their main home addresses, and shall make that information available at all reasonable times to the local planning authority.

The chalet known as The Outlook shall only be used for tourist accommodation as set out above or as residential accommodation by person(s) employed in the management and operation of the enterprise currently known as Springwood Fisheries (and dependants of such a person) for a limited period of three years starting from the date of this decision. Thereafter the occupation of the chalet shall revert to tourist accommodation, as regulated by sections i) to iv) above, unless otherwise permitted by the Council or the Secretary of State on appeal.