

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

## **SECTION 1: Planning Applications**

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 1995 (as amended) responses to County Matters and strategic submissions to the Secretary of State.**

<b>Reference</b>	<b>Item</b>	<b>Place</b>	<b>Ward</b>	<b>Page</b>
9/2014/1145	1.1	Kings Newton	Melbourne	23
9/2015/0480	1.2	Barrow	Aston	47
9/2015/0752	1.3	Hartshorne	Woodville	58
9/2014/1141	2.1	Kings Newton	Melbourne	62

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

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

**Item**            **1.1**

**Reg. No.**        **9/2014/1145/OS**

**Applicant:**  
**Mr Barry Maynard**  
**Linden Homes Midlands**  
**Ashurst**  
**Southgate Park**  
**Bakewell Road**  
**Orton Southgate**  
**PE2 6YS**

**Agent:**  
**Mr Peter Wilkinson**  
**Landmark Planning Ltd**  
**10 Salisbury Road**  
**Leicester**  
**LE1 7QR**

**Proposal:**        **OUTLINE APPLICATION (ALL MATTERS TO BE  
RESERVED) FOR THE RESIDENTIAL DEVELOPMENT  
OF UP TO 60 DWELLINGS AT LAND AT SK3825 9795  
AT JAWBONE LANE KINGS NEWTON DERBY**

**Ward:**            **MELBOURNE**

**Valid Date:**     **24/12/2014**

**Reason for committee determination**

The application is brought before the Committee as the application is for a major development that has attracted more than two objections and is not in accord with the development plan.

**Site Description**

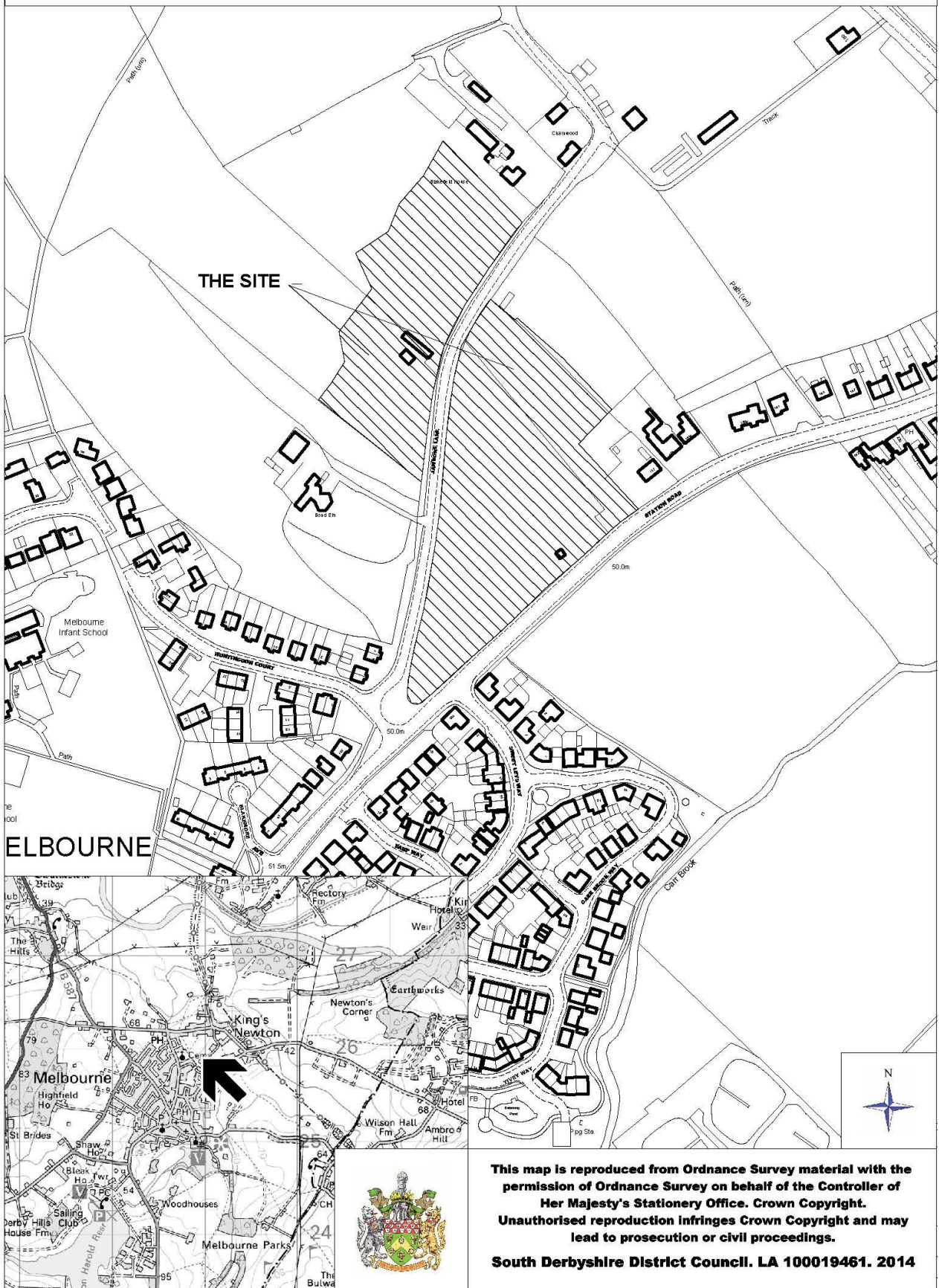
The application site comprises two parcels of pasture land used currently for the grazing of horses. The sites are separated by Jawbone Lane, a single width country lane running between Station Road and Kings Newton. The application site is located to the East of Melbourne and to the South of Kings Newton and occupies approximately 2.5 hectares.

A low single storey stone barn sits close to the boundary of the northern site with Jawbone Lane and is bounded to the north by grassland and to the east and west by residential plots, one being a former market garden holding.

The southern site is triangular in shape and surrounded on two sides by road, abutting residential and open grassland to the east, this site lies adjacent to the two development sites approved by committee on the southern side of Station Road.

The northern site is relatively open with a natural 2 metre hedgerow defining its edge with Jawbone Lane; the southern site is fully enclosed by a 2-3 metre hedgerow.

9/2014/1145 - Land at SK3825 9795 Jawbone Lane, Kings Newton DE73 8LZ



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The land slopes gently from Kings Newton down towards the Carr brook which allows the public right of way between the application site and Kings Newton to provide important views and vistas in particular of Breedon on the Hill Church.

The application site is located outside of the village confine (as set out in the Local Plan) to the eastern fringe of Melbourne (Housing Policy 5).

## **Proposal**

The application is an outline application with all matters reserved except access therefore this application is considering access to the site and the principle of development only; layout, scale, appearance and landscaping would be dealt with as a reserved matters application.

The development originally proposed the erection of up to 120 dwellings and ran north to the boundary of the site adjoining the public right of way; however this has been revised and now proposes the erection of up to 60 dwellings. The indicative plan submitted details 58 dwellings. The main access would be via Station Road and it is proposed to stop up a section of Jawbone Lane to prevent through traffic of vehicles but would incorporate a pedestrian/cycle route.

The bulk of the development would occur on the southern site facing on to station road which would be within close proximity of existing development and adopt a higher density profile as the northern site is proposed to be a more loose knit development. However the plan and scales provided are indicative at this stage. 30% of the dwellings proposed would be allocated for affordable housing.

## **Applicants' supporting information**

### The Design and Access Statement

This document outlines the proposal and the context of the site as grassland set between two settlements and outlines the accessibility of the site to local services and as the 2<sup>nd</sup> largest settlement in the district it provides the platform for further development which can be sustained by the settlement and is proximity to employment sites, defining Melbourne as a sustainable location. It states that the opportunities of the site outweigh the constraints however; the constraints would not be discarded. It draws on the building for life principles and outlines the policy status of the site and local policies and that the development would provide an economic, social and environmental role as per paras 14-15 of the NPPF.

### Heritage Report

The purpose of the report is to assess the potential effects of development on the setting of above-ground heritage assets.

There are no designated historic assets within the application site itself but the site has a varied historic context and development would affect the setting of a range of historic assets particularly the Kings Newton Conservation Area including the sequence of listed buildings on Main Street Kings Newton. The development would also affect the setting

of Melbourne Cemetery and its listed Chapels and of the house 'Charnwood' as an undesignated asset.

Some of the impacts on the setting of historic assets could result in partial loss of significance for the assets identified. Some of those losses can be mitigated by measures such as the creation of view corridors, screen planting and the retention of existing hedgerows and trees. The most significant impacts are those on the designated historic assets: the listed buildings and Kings Newton Conservation Area. These, together with retaining views of Breedon-on-the-Hill Church and Melbourne Church should be the priorities as the proposals for the site are developed.

Melbourne Cemetery Chapels are a designated asset and the Cemetery itself forms their setting. Views across the application site from the east shown in Panorama 2 and photo 17 are not seen from within either conservation area and are not therefore an aspect of the character of the conservation areas. Although the view shown in photo 18 is from a few metres outside the boundary of the Kings Newton Conservation Area it is not identified in the Character Statement as a principal view. The spire is sufficiently prominent not to be hidden completely by development in views from Jawbone Lane but the reservation of an area of open space in the north-western wedge of the development site would mitigate the impact of development on the visual presence of the spire in the local landscape.

Charnwood (dwelling on Jawbone Lane) is an undesignated asset identified in this report and thus of lesser significance than the designated assets identified above. Its setting is retained in views from the Kings Newton Conservation Area and its wider setting in Jawbone Lane can be largely retained by the landscape treatment to the Jawbone Lane frontage to the development.

#### Arboricultural implications Assessment

The report considers the health, condition and safety and other matters arising from the tree survey. It highlights the trees within and bordering the site that are of poor health and should be felled. It states what works are required before development, protection measures and after development care.

#### Ecology Appraisal

No designated sites, either statutory or non-statutory, were identified that would be affected by the proposed development. The habitats on site offered limited potential for ground nesting birds amongst the grassland habitat and nesting birds within the trees and hedgerows that border the site. There was suitable habitat for common reptiles. The report identifies the need for further surveys including a reptile and tree survey, and mitigation measures such as, a bird pre site check should be carried out If working March to end of August, The dismantlement works to the long thin storage barn should be conducted during the winter months under the supervision of a licenced bat worker in case bats are present and the hedge should be retained and enhanced.

#### Reptile Survey

This indicates that there is either zero, or a very low number of reptiles on site. Although no reptiles were recorded the habitat is still considered suitable to support reptiles and

therefore based on the results only very minor mitigation measures are considered necessary.

### The Flood Risk Assessment

This document highlights that the site lies within Flood Zone 1 and therefore has an annual probability of flooding of less than 1 in 1,000 years. It can therefore be concluded that there is no reason in terms of drainage or flood risk why the residential development proposed on the Jawbone Lane site should not be fully supported through the planning process.

### Foul Drainage Statement

There is an existing foul water sewer which passes through the development area which is under the control of Seven Trent Water Ltd. This comprises the original 225mm sewer which heads in a southerly direction and parallel to this there is a second 900mm tank sewer which was installed more recently by Seven Trent in order to cater for surface water ingress into their system upstream. This tank sewer protects the downstream network from being sensitive to high volumes of rainfall by receiving and holding extraordinary flows in storm conditions.

Seven Trent Water have been consulted with regards to the arrangements for foul water disposal for this scheme and they have confirmed that they would have no objection to an outfall into the existing 225mm pipe at locations which are ultimately going to be agreed in the context of the final approved layout. Seven Trent have noted that any required mitigation modelling and asset improvements would be funded by them once it has been possible to carryout preliminary modelling on the basis of the final connection locations.

The depth of the existing sewer system running through the site is capable of accepting gravity connections from the scheme although the areas closest to Station Road may require some minor raising of around 500-600mm in order to facilitate this and avoid the potential need for pumping. The initial layout plan anticipates this possibility by setting the units which front onto Station Road back by the required amount to not only accommodate any slight raising but also to allow for the required sewer easement for the new pipes installed to serve these plots. As a consequence therefore, it is considered there is a robust and sustainable solution available for foul water disposal albeit that it is acknowledged it would be appropriate to have a Pre-Commencement Condition incorporated within any consent issues to finalise the connection arrangements.

### Landscape and Visual Appraisal

The statement concludes with key landscape and visual considerations which have helped to inform appropriate design and mitigation as part of the master planning process.

The site is not covered by any policy or designation that recognises a specific landscape or visual importance. The most notable issues related to the proposed development site and designated areas/features, relates to the effect of development on views experienced by users of footpaths FP15, FP14, FP10 and FP11. It highlights the need for the proposals to respect the settings of the listed buildings within Melbourne

Cemetery to the west and King's Newton House to the northeast. The northern edge of the development should respect its proximity to King's Newton Conservation Area and the design of the proposed development should have consideration for potential views from National Cycle Route 6 (The Cloud Trail) along the dismantled railway to the northeast. However existing vegetation lining this route means that availability of views is restricted. But they could consider facilitating connections to local cycle routes along Jawbone Lane and Station Road.

There is potential for views from the Grade I Melbourne Hall Registered Park and Garden located over 650m south of the site would be considered when developing the proposed layout, but at this distance the proposed development is not expected to have notable effects on views from, or the setting of, this designated site. Effects would be most notable on the existing land use, but this is not considered to be of a notable quality or condition. The site does not appear to hold any notable cultural/historic value and appears to have been in long term agricultural use. The site demonstrates characteristics of the wider landscape character consisting of gently undulating farmland with rectilinear boundaries, often open but with some low hedges and few trees.

Effects on character would generally be limited to the extension to the north east of the built edge of Melbourne. Views of the site and proposed development would be gained from the eastern periphery of Melbourne but would soon be screened out by intervening properties and vegetation from potential viewpoints to the west resulting in the site being relatively contained. Separation between the site and potential viewpoints is largely provided on all sides by intervening fields. Whilst views from Main Street in King's Newton are generally restricted, careful consideration of views from the southern portion of the conservation area and associated footpath are required. The wider public right of way network beyond the dismantled railway to the north east is generally limited. The potential for longer distance views is generally limited to FP12 to the south east. Potential views from the Registered Park and Garden at Melbourne Hall to the south are restricted by distance and intervening development. Most notable visual effects would be experienced within the immediate surrounds of the proposed development, from adjacent properties and public rights of way.

### Noise Report

On the basis of the site measurement data, it is recommended that all habitable windows across the site have a minimum manufacturer's rating of Rw 33. These reductions should be from the window units as a whole, including the frame and any associated furniture. All habitable rooms should also be provided with proprietary wall or window mounted trickle vents to achieve background ventilation in accordance with the Building Regulations requirements. All such vents should, when open, have a minimum rated sound reduction of Dn,e,W 33. It is recommended that all gardens be screened from the adjacent Station Road by intervening dwellings or garage blocks. Where this cannot be achieved, garden boundaries adjacent to Station Road should be provided with solid barrier fencing of minimum height 2m and minimum mass 10kgm-2. In practice, this can be achieved with close boarded timber fencing.

### Geotechnical Assessment

In terms of potential contamination sources, the site would appear to be generally uncontaminated. Locally a historic unidentified tank was present on the site that may have been used for fuel storage and there are some soil mounds and brick rubble with



asbestos cement fragments along the northern boundary. Beyond the site boundaries, a landfill is present 165m to the north east and a cemetery is present approximately 60m to the west of the site.

These potential contamination sources may present a risk to human health, the water environment and water supply pipes.

The geology underlying the site is expected to include soils having a volume change potential i.e. the soils swells and shrinks with changing moisture content. This property would have an influence on foundation depths for the proposed development. This would be compounded by the presence of the trees/mature hedges on and surrounding the site, which would act to deepen the foundations. Shallow rock units may be present which may require breakout equipment in the event of deep excavations being required, such as may be necessary for drainage runs. Faults may be encountered beneath the site; where encountered there may be the need to include localised use of suitable reinforcement to span across such a feature. The published geology suggests that the ground conditions in some areas of the site may be suitable for the disposal of surface water to conventional soakaways.

Radon protection measures are not required. The site is situated upon a Secondary A Aquifer and the site is not located within a groundwater Source Protection Zone. The closest water feature to the site is the Carr Brook located some 200m to the south east of the site and the site is not in an area indicated to be at risk of flooding.

### Transport Assessment

The site is considered to lie in a sustainable location given that the services and facilities within the town centre are well connected to the site in terms of accessibility on foot and by bicycle. The site also benefits from good public transport links to the wider area. As agreed during pre-application scoping discussions with Derbyshire County Council Highway Authority, the impact of the proposed development on both the local highway network and the strategic highway network has been examined in detail.

Particular reference is made to the potential impact at the following locations:

- Station Road Site Access
- Huntingdon Court/Jawbone Lane
- Station Road/Huntingdon Court
- Station Road/Melbourne Road/Main Street/Industrial Estate
- Main Street/Jawbone Lane/Trent Lane

Capacity assessments have been undertaken at the locations listed above during the traditional AM (07:45-09:15) and PM (16:45-18:15) peak periods. These assessments have been undertaken using the industry standard computer modelling software 'Junctions 8'. The assessments are considered to be highly robust and have been carried out for three scenarios, Do Nothing 2014, Do Nothing 2020 and Do Something 2020. This methodology allows for a comparison between existing capacity and future capacity both with and without the Jawbone Lane development in place. It is therefore possible to quantify the potential impact of the proposed development. The modelling process has demonstrated that no issues in terms of highway capacity are predicted to arise as a result of the development-generated traffic. Any noticeable effect of the development traffic is negligible.

### **Planning History**

None of relevance to this site however development has been approved at two sites opposite Station Road and an application is currently being considered for the adjoining parcel on Jawbone Lane.

## **Responses to Consultations**

Severn Trent Water, The Environmental Health Manager, Contaminated Land Officer, East Midlands Airport and the Crime Prevention Design Adviser have no objection in principle.

The Development Control Archaeologist is satisfied with the additional field evaluation of the site and has submitted the report in line with NPPF para 128. The results show that there is no sub-surface archaeological context for the small finds found in the vicinity of the site, and suggest that the site is of low archaeological potential. He would therefore recommend in relation to below-ground archaeology that there is no need to place a further requirement upon the applicant, beyond submission of the site report to the Derbyshire HER and completion of the online OASIS record.

Historic England originally raised significant concerns towards the development of 120 dwellings. However, the amendment of the scheme to 60 dwellings and control/reduction of dwelling heights to single and one half storey are welcome in reducing the impact on Kings Newton conservation area, although it remains the case that development north of Jawbone lane would have some harmful impact on the significance that the conservation area draws from its setting, through the loss of historically associated open space and the reduction in the area of separation between the village and Melbourne – albeit it now to a lesser degree. There would be a change in character to the surroundings in which the conservation area is experienced to the south. Ultimately the local authority must weigh that reduced level of harm against the public benefits associated with the scheme being satisfied that they outweigh the harm and are accompanied by a 'clear and convincing' justification (paras 132 and 134 of the NPPF).

The Conservation Officer welcomes the reduction in housing in the amended proposal. This has reduced the impact on the setting of both the listed buildings and the Kings Newton Conservation Area. The increase in the gap between the existing village and the proposed site has helped to retain their current setting. Therefore the impact on the significance of local historic buildings would be negligible as the buildings and the surrounds in which they are experienced and their settings would be preserved. However, there would still be an impact on the views dependent on the layout and scale of the development. Overall, he would not object to the proposed application as on balance the harm to the significance of the heritage assets would largely be neutral or of minor significance.

The County Highway Authority notes that about a third of development traffic would route north along Jawbone Lane towards Kings Newton, this pattern being based on observation of the adjoining Huntingdon Court development. The rural nature of the lane and the shortcomings of the Jawbone Lane/Main street junction are recognised. However there is no evidence that existing vehicle movements along the lane result in detriment to highway safety (based on accident records). As such no objection is raised in principle. However the highway authority feels that a scheme to prevent traffic from using Jawbone Lane is justified via a stopping up of part of the lane. A satisfactory

access can be achieved and that a footway along Station Road frontage can be provided within controlled land.

The Strategic Housing Manager recommends a mix and types of affordable housing for 30% of the total number of houses on the site to be secured via a S106 agreement.

The County Council's Rights of Way Team notes that the proposal does not affect the adjoining public footpath but recommends informatives to ensure it is protected.

Natural England is satisfied that the Donington Park SSSI would not be affected. Subject to standing advice being followed, and conditions to enhance landscape and biodiversity, there is no objection.

The Derbyshire Wildlife Trust has no objection subject to conditions to protect existing wildlife and to secure habitat enhancement.

The Council's Drainage Officer indicates that the proposed site is unlikely to be subject to surface water flooding during the 1 in 100 year, would advise the developer takes account of standing advice when developing a drainage scheme and the SuDs are strongly promoted, in addition the developer should consider reports that the highway system of Jawbone Lane/Station Road is unable to cope during sustained rainfall.

NHS England have requested a contribution towards an enhancing capacity and infrastructure at existing local practises as the development would increase demand that cannot be easily accommodated within the existing primary care resources although a single handed GP development is unlikely to be supported

Derbyshire County Council Policy Team have advised that Councillor Chilton has raised concerns about the level of development coming forward in the area, the ability of existing infrastructure to cope, and the timely provision of sustainable facilities to serve the community and ensure development is sustainable. Local residents are in favour of keeping the village of Kings Newton separate from Melbourne so that it can retain its own heritage and character. Councillor Chilton notes and supports the requests relating to waste management, broadband services, education, and new homes designed to Lifetime Homes Standard. Councillor Chilton has commented that the need for low rise and low density housing for elderly residents has been mentioned to her on a number of occasions and the ageing population is a key issue that should be addressed by designing new homes to Lifetime Homes Standard. The County Council requests the following financial contributions:-

Financial contributions to be secured via Section 106 planning obligations:

- £56,995.05 towards the adaptation of a classroom to provide for 5 infant pupil places (Melbourne Infant School Classroom Project A) to be provided at Melbourne Infant School;
- £79,793.07 towards the adaptation of a classroom to provide for 7 junior pupil places (Melbourne Junior School Classroom Project A) to be provided at Melbourne Junior School;
- £154,585.53 towards 9 secondary pupil places; and
- £74,511.60 towards 4 secondary post-16 pupil places.

Advice to be provided via notes attached to planning permission (if granted) on:

- Access to high speed broadband services for future residents (in conjunction with service providers); and
- Designing new homes to Lifetime Homes standards.

## **Responses to Publicity**

Melbourne Parish Council has objected to both the original and revised submissions and its concerns are as follows:

- a) The open land around Kings Newton would be eroded to the detriment of the character of the conservation area.
- b) The type and scale of development would be alien to the distinctive character of Kings Newton.
- c) Existing facilities are inadequate.
- d) There would be increased traffic congestion in Melbourne.
- e) Existing traffic problems on Swarkestone Causeway would be exacerbated.
- f) Schools do not have capacity.
- g) The cumulative effect of development would put pressure on cemetery space in Melbourne and surrounding areas and provision should thus be made.

Melbourne Civic Society objects for the following reasons:

- a) The application is contrary to the adopted and emerging Local Plans. The latter makes adequate provision for housing. The development is premature and would prejudice successful implementation of the emerging plan.
- b) The scheme would detrimentally affect the significance of the Kings Newton Conservation Area, the site being open land identified in the Conservation Area Character Statement for Kings Newton as a key element of significance. The proposal would reduce the area of separation and transform the rural character of the historically associated agricultural land.
- c) The NPPF supports refusal on heritage grounds. There are no benefits that would outweigh the harm in this regard.
- d) The character of Jawbone Lane, a County Greenway, would be changed from rural to that of a housing estate. The amenity and safety of walkers and cyclists using this tourist route would be adversely affected.
- e) The Parish Council has resolved to prepare a Neighbourhood Development Plan, under the provisions of the Localism Act, supported by the district council. Very considerable progress has been made. The process is at risk if pre-empted by permissions for housing contrary to the development plan. This site is one of four speculative applications for 196 new dwellings in addition to 112 already permitted. Further permissions would deny the community the opportunity to influence the size and location of future developments, contrary to government policy.
- f) There would also be adverse impacts in respect of noise, schools and other facilities, drainage infrastructure, traffic congestion in the town and on Swarkestone Causeway and damage to the Causeway (ancient monument).

Kings Newton Resident's Association has objected and their concerns can be summarised as:

- a) The application is contrary to the adopted and emerging Local Plans. The latter makes adequate provision for housing.
- b) The scheme would detrimentally affect the significance of the Kings Newton Conservation Area, the site being open land identified in the Conservation Area Character Statement for Kings Newton as a key element of significance. The proposal would reduce the area of separation and transform the rural character of the historically associated agricultural land.
- c) Jawbone Lane, a County Greenway, would be severely affected by traffic. The amenity and safety of walkers and cyclists using this tourist route would be adversely affected. The Transport Assessment disregards the significance of the Greenway and the cumulative impact of other development in the area.
- d) There would be increased traffic congestion and safety impacts, in particular at the Jawbone Lane/Main Street junction.

Approximately 115 responses have been received to the original and amended application submissions and concerns raised can be summarised as:

- a) The development would be contrary to the adopted and emerging local plans, premature and prejudicial to the latter.
- b) In conjunction with other sites there would be gross over supply of housing in Melbourne and Kings Newton.
- c) Schools, medical services, public transport and other community facilities are inadequate to cope with the development.
- d) The proposal would prejudice the emerging Neighbourhood Plan.
- e) The flood risk assessment does not correctly identify historical flooding on the site. The area is prone to flood and dwellings have suffered damage as a result. There could be increased risk of flood to others.
- f) Aircraft noise is excessive and the noise report does not adequately address this issue.
- g) Chronic local traffic congestion in the village and Swarkestone Causeway would be exacerbated by the development.
- h) The scheme would detrimentally affect the significance of the Kings Newton Conservation Area, the site being open land identified in the Conservation Area Character Statement for Kings Newton as a key element of significance. The proposal would reduce the area of separation and transform the rural character of the historically associated agricultural land, leading to coalescence. The NPPF supports refusal on this basis.
- i) The setting of listed buildings would be harmed.
- j) The benefits do not outweigh the harm to heritage assets.
- k) There would be harmful landscape impact and important views of landmarks would be lost, contrary to the NPPF.
- l) There would be loss of wildlife habitats.
- m) There would be loss of outdoor leisure space and adverse impact on Melbourne as a tourist attraction.
- n) The rural character of Jawbone Lane would be harmed. The amenity and safety of walkers and cyclists using this tourist route would be adversely affected
- o) There would be increased risk of traffic related danger, including at the Jawbone Lane/Main Street junction. The Transport Assessment understates the problem.
- p) There would be loss of light and privacy.
- q) Sewerage is inadequate and the development would increase pollution.
- r) There would be loss of good quality agricultural land.
- s) The development would be too dense, resulting on poor living conditions.

- t) The Council has an adequate supply of housing land.
- u) Publicity has been inadequate.
- v) There would be increased crime.
- w) Because of the degree of harm this would not be sustainable development.
- x) Local footpaths should be improved at the developer's expense.
- y) There would be increased pollution.
- z) Section 106 contributions would not mitigate impacts.

## **Development Plan Policies**

The relevant Saved Local Plan Policies are:

Housing Policies H5, H8, H9 & H11, Environment Policy EV1, 9, 12, 13 and 14, Transport Policy T6, and Recreation and Tourism Policy R4 and 8

### **Housing Design and Layout SPG**

Emerging Local Plan Part One Policies include:

S1 - Sustainable Growth Strategy  
 S2 - Presumption in Favour of Sustainable Development  
 S4 - Housing Strategy  
 H1 - Settlement Hierarchy  
 SD1 - Amenity and Environmental Quality  
 BNE1 - Design Excellence  
 BNE2 - Heritage Assets  
 BNE3 - Biodiversity  
 BNE4 - Landscape Character and Local Distinctiveness  
 INF1 - Infrastructure and Developer Contributions  
 INF2 - Sustainable Transport  
 INF9 - Open Space, Sport and Recreation

## **National Guidance**

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

Paras 6-10 (Achieving sustainable development)  
 Paras 11-14 (The presumption in favour of sustainable development)  
 Para 17 (Core principles)  
 Para 32-34 (Promoting sustainable transport)  
 Chapter 6 (Delivering a wide choice of quality homes)  
 Chapter 7 (Requiring good design)  
 Para 72 (Promoting healthy communities)  
 Para 109 and 118-123 (Natural environments)  
 Chapter 12 (Historic Environments)  
 Para 186 (Decision-taking)  
 Para 196 & 197 (Determining applications)  
 Para 203 – 206 (Conditions and obligations)

National Planning Practice Guidance (NPPG) ID:2a, ID:3, ID:8, ID:18a, ID:21a, ID:23b, ID:26, ID:30, ID:37 and ID:25

## **Local Guidance**

Housing Design and layout SPG

## Planning Considerations

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

- The principle of the development
- Impact on setting of heritage assets
- Highway safety
- Biodiversity
- Noise
- Affordable housing
- Section 106 contributions

## Planning Assessment

### The principle of the development

The site lies outside the village confines as defined within the Local Plan and thus the application is not in accord with the development plan. Local Plan Housing Policy 8 restricts housing developments outside settlements to that necessary for the operation of a rural based activity, where it can be demonstrated that a countryside location is necessary. The proposal does not accord with this policy. However, the NPPF indicates that Local Plans should meet the full objective need for market and affordable housing in the housing market area. It states that housing applications should be considered in the context of the presumption in favour of sustainable development and that relevant policies for the supply of housing should not be considered up-to-date if the Local Planning Authority cannot demonstrate a five-year supply of deliverable housing sites. Paragraph 49 of the NPPF states:

*"Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites".*

There are two arms to this paragraph: (1) that the application should be considered in the context of the presumption in favour of sustainable development, and (2) SDLP housing supply policies should not be considered to be up-to-date if a 5-year housing supply cannot be demonstrated. In regard to point (2), paragraph 47 of the NPPF seeks "to boost significantly the supply of housing". It is therefore clear there is considerable emphasis on bringing forward significant housing provision as soon as possible. This is achieved through a rolling supply of deliverable sites sufficient to provide five-years of housing against projected requirements (a "5-year supply"). Where local planning authorities have failed to deliver a 5-year supply, an additional buffer is required. There is currently a shortfall in the 5-year supply. Whilst preferred strategic allocations in the emerging Plan would provide increased supply, their overall deliverability has not yet been found sound by an inspector and so only limited weight can be afforded to the relevant emerging policies at this time. As such the relevant adopted SDLP policies pertaining to new housing delivery cannot be considered up-to-date and the proposal must be considered in the context of the presumption in favour of sustainable development.

The site lies adjacent to the built framework of Melbourne, which is classed as a Key Service Village in the emerging Plan's Settlement Hierarchy (Policy H1). Such settlements are envisaged to be capable of providing appropriate scale developments up to and including small strategic sites. However, this hierarchy presently carries limited weight and whilst the proposed development is of the scale envisaged for a Key Service Village, the site lies outside the village boundary, as defined by adopted Local Plan, Policy H5. The proposal therefore remains to be considered on first principles.

The connectivity of the settlement is considered to assist in demonstrating its sustainability. Melbourne is served by hourly bus services from Swadlincote and Derby. A multi-user Greenway runs close by connecting to Derby to the north and with regards to facilities, the village includes a Post Office, a convenience store and other shops, GP practice, a dentist, a primary school, a leisure centre, a library, playing pitches and public houses nearby. It is therefore accepted that the general location of this development is in a sustainable location in terms of its proximity to services, transport, amenities etc.

Since the Local Planning Authority is unable to demonstrate a 5-year supply, the presumption in favour of sustainable development, as set out in paragraph 14 of the NPPF, applies. This means:

*"...where the development plan is absent, silent or relevant policies are out of date, granting permission unless:*

*"any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole; or*

*"specific policies in this Framework indicate development should be restricted"*

However it is important to note that the NPPF provides a presumption in favour of sustainable development - not a presumption in favour of development. It must be made clear that this does not automatically mean that any and every application would be permitted; each scheme must still be tested against the prevailing policies and if harm is found, it remains the case that, on balance, applications can be refused. It is necessary, as a preliminary issue, to determine whether the proposed development is sustainable. Paragraph 6 of the NPPF states that "the policies in paragraphs 18 to 219, taken as a whole, constitute the Government's view of what sustainable development...means in practice...". Paragraphs 7 and 8 go further to split sustainable development into three roles: economic, social and environmental, whilst highlighting that these dimensions are mutually dependent (i.e. they should be sought jointly and simultaneously). It is thus reasonable to conclude that conflict with other parts of the Framework, and indeed Development Plan policies, could lead to the proposal being defined as unsustainable.

The focus therefore is to first consider whether the proposal is sustainable, or can be made sustainable through planning obligations and conditions, before considering whether any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits arising. The assessment so far establishes an 'in principle' acceptance of sustainability. In order to reach a conclusion as to whether the presumption would prevail, consideration needs to be given as to whether there are significant and demonstrable adverse impacts arising.



The NPPF, para 17, identifies the recognition of the intrinsic character and beauty of the countryside as part of a core planning principle. There is concern that the site lies within the countryside and is surrounded by open land, although limited to the north by Kings Newton and the highway to the south. Nevertheless the development would be 'medium' in scale and located close to existing housing. Furthermore, the potential visual impact could be reduced through the retention of existing hedgerows and trees and the provision of a reduced layout and scale of properties to the northern site. The revised application would preserve the important open character between the settlements and would ensure views to and from the conservation area are preserved, the proposal therefore accords with the sustainable development principles of the NPPF. Each application is assessed on its own merits; however the cumulative impact must also be assessed in particular the potential impact upon the character of Kings Newton Conservation Area and the setting of local historic assets.

The Council is currently unable to demonstrate a five year supply of housing land. In these circumstances, the NPPF indicates that planning permission should be granted unless adverse impacts would significantly outweigh the benefits, assessed against the policies in the NPPF.

#### Impact on setting of Heritage assets

Kings Newton was developed as a new "Ton", i.e. under common English understanding, a new settlement coming from the Anglo Saxon word 'tun', meaning fenced enclosure or farming village. From the detailed analysis of the conservation area and its history we know that this settlement was deliberately set apart from Melbourne, as a 12th century planned settlement.

Analysis of the Kings Newton Conservation Area has been undertaken in the Conservation Area History and the Kings Newton Conservation Area Character Statement 2011.

The Conservation Area History published by the District Council, explains its context as follows; "The presence of early freeholders in King's Newton might explain the separatist tradition in relation to Melbourne, and may help to explain why it became more prosperous in relation to its size than Melbourne did" (Kings Newton Conservation Area History, SDDC, published 2005). Its separate identity and its rather elite group of buildings ranged along the length of Main Street are part of its special interest and character. Whilst the Melbourne estate introduced small cottages along the length of the street, its high status was not significantly affected. Its separate identity from Melbourne is not only part of its special character it is what fundamentally defines its special historic and architectural character and what influenced the development, expansion and enhancement of the high status houses and their garden and parkland settings.

The Conservation Area Character Statements have been adopted by South Derbyshire District Council and have been subject to widespread public consultation and scrutiny and are now adopted. Local planning authorities must review their conservation areas from time to time (Section 69(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990). This process is very recent and the Conservation Area Character Statements (appraisals) are up-to-date and very relevant. The Kings Newton Conservation Area Character Statement, in referring to the distinct differences between Melbourne and Kings Newton, states "they are still physically separated by a few fields, predominantly in use for market gardening." In accordance with best practice,

conservation area designations do not include large open areas just as a means of protecting the wider landscape setting. But neither does this mean that the wider landscape is irrelevant when considering impacts on setting.

The Conservation Area Character Statement has five Principal Views on the map, which represent the most important views, with defining characteristics. This is made clear in the document. The loss, or substantial destruction, of any of these views would create significant harm to the character of the Conservation Area.

Development within the area between Station Road and Jawbone Lane (i.e. the lower part of the site) would have a relatively minimal impact on the setting of the heritage assets and in particular the Kings Newton Conservation area, provided that the house design is appropriate for the character of Melbourne and reflects the local vernacular and design details. This is particularly important with regards to the roofscape of the housing.

The development to the north of Jawbone Lane would impact on the setting of the conservation area and to a lesser extent the setting of the listed buildings. The impact of vistas from the hall through the gap in Main Street would be minor if they are still visible. This would therefore cause negligible harm to the setting of this building. As the housing has been moved further to the south it would not impact on the setting of the other listed buildings nearby. These tend to be inward looking onto Main Street and tend to be separated by ancillary buildings from the proposed development. In addition the increase in the gap between the existing village and the proposed site has helped to retain their current setting. Therefore the impact on the significance of these buildings would be negligible. Their settings would be preserved in accordance with para 131 - 134 of the NPPF.

The Kings Newton Conservation Area is separate from Melbourne and the open characteristics of a meaningful gap are of importance to the setting of Kings Newton and make a contribution to the significance of the heritage asset. The increase in the gap between the proposed housing and the conservation area has resulted in separation which would allow the medieval character of Kings Newton to be appreciated and thus the detrimental impact on the setting of the conservation area has been reduced. Screening in the form of native hedgerows would be important to reduce the impact of the proposed development and management measures should be agreed to ensure that the hedges are adequately maintained.

The proposed housing would have impacts on views from Jawbone Lane towards the conservation area which is at present uncluttered by development. Therefore at this point there would be some harm. However, this has been in part mitigated by the views through the site to the Conservation Area and it would be vital to retain these permanently. Therefore the proposed gaps to allow views through would be important to the success of any scheme. A landscape scheme that protects these views would be of importance within the reserved matters application.

The proposed heights of the new buildings would have an impact on views from the footpath to the rear of Main Street. However given the redesign in the layout and the provision of imagery shown, although indicative, the harm to the conservation area would be less than significant. The proposed buildings would be visible but the level of harm caused would be minor. It would be most important to ensure that the proposed housing has a low roofline. This is to ensure that the views from the footpath towards

the open ground and the church at Breedon are retained as far as possible and the vistas can continue to be appreciated as shown on views A and B from the proposed site imagery. The buildings to the north of the site should be single storey and perhaps where the ground level drops to one and a half storey. This would ensure that views to and from the conservation area, listed buildings and other heritage assets are protected. This would need to be agreed at the reserved matters stage. The materials would be important and it would be recommended that it be a dark blue Staffordshire tile or slate. This is to ensure that the eye is not drawn to the development when views are glimpsed within and on the edge of the conservation area.

### Highway safety

The application proposes the stopping up of a section of Jawbone Lane to the south west of the junction between the northern and southern sites; this has been designed to discourage drivers from using Jawbone Lane due to the increased level of traffic and substandard nature of the junction with Main Street, Kings Newton. However The County Highways Authority acknowledges that accident data and traffic monitoring/modelling demonstrates that limited vehicles exiting this junction therefore a full stop up of the lane is not required. The Stop up would involve a widening of the existing verges to naturally narrow the lane with sufficient space provided for a pedestrian/cycle route. A revised road layout and junction between the sites would be required to deter non-residents of this development from simply using the estate road as an alternative road, the estate road must make the turn into Jawbone lane difficult. The County Highway Authority is satisfied with this proposal and considers the junction at Station Road to be acceptable in terms of achieving the appropriate visibility and in terms of highway safety. The internal estate roads have not been assessed at this stage as they are only indicative and would be assessed at reserved matters stage. The County Highways Authority only need to consider the proposed access arrangement which is a junction with Station Road and whether a route from this point to the development could be achieved without detriment to highway safety, and as shown by the red outline of the application this is achievable. However the link roads/estate roads within the site in addition to parking would all be assessed at a reserved matters stage when layout is considered.

### Biodiversity

The habitat of the site at present comprise of a fields of improved grassland bordered by hedgerows on the southern side of the northern site and all boundaries on the Station Road site that meet the definition of UK BAP priority habitat. The submitted report is considered to be adequate in terms of assessing the impact on biodiversity and no protected species have been found on site. It is noted that no objection has been raised by Derbyshire Wildlife Trust who recommend the retention and enhancement of the existing boundary hedgerows should be fully reflected in any reserved matters application. Landscaping of the site is a reserved matter and the indicative site layout plan shows such a feature accommodated within the scheme. As such in terms of impact on wildlife and ecology this outline proposal is considered to be acceptable in principle, subject to appropriate conditions.

### Noise

The main source of noise affecting the site is aircraft over-flights as the site lies close to the flight path for East Midlands Airport. The assessment found that with suitable design

specifications such as roof insulation, appropriate roof tiles, thick insulated ceilings and specified double glazing; internal noise levels suitable for the protection of residential amenity would be achieved. The Environmental Health Manager accepts the findings of the noise report and recommends a condition requiring a scheme of sound attenuation as detailed in the report. This approach is considered to be reasonable and would ensure that the future occupiers of the site are suitably protected from noise.

### Residential Amenity

The application is in outline with all details reversed except for access, therefore only an indicative layout has been provided and no specific details in terms of the houses are known at this stage. The indicated proposed location is considered acceptable and at reserved matters stage the layout can be designed to ensure that it benefits from natural surveillance, such as dwellings directly overlooking it. An assessment of any potential overshadowing, overbearing, overlooking and loss of privacy would be undertaken at reserved matters stage. Any reserved matters application would be assessed against the Council's adopted space about dwellings standards. In regards to anti-social behaviour this is likely to be controlled by the proximity of dwellings when the layout is finalised at reserved matters stage and it is noted that the Police Crime Prevention Design Advisor would be consulted as part any reserved matters application.

### Affordable housing

In view of the scale of development the Strategic Housing Manager is satisfied that the appropriate mechanism for securing 30% affordable housing (18 dwellings in this case) is through the use of a Section 106 Legal Agreement whereby a matrix can be agreed to ensure an appropriate mix of affordable units are provided.

### Section 106 contributions

Paragraphs 203 to 205 of the NPPF relate specifically to planning obligations and advise that these should only be sought where they meet all the following tests:

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

The most recent Government legislation on the matter places a restriction on the use of planning obligations for financial contributions to the size of the development and to no more than 5 contributions per project eligible for a contribution.

Public Open space within the development would be secured through a S106 Agreement in line with the Council's Adopted SPG.

Normally, the County Council would request a contribution towards the provision of a new HWRC at a rate of £28.61 per dwelling in order to accommodate the additional demand arising from the proposed development. However, the County Council is aware that South Derbyshire District Council has already entered into five planning obligations for contributions towards delivery of a new HWRC in South Derbyshire. Therefore the County Council advises that under the pooling restrictions introduced by the Community Infrastructure Levy Regulations, the impact of this proposed development on the

provision waste management services cannot be mitigated via a Section 106 planning obligation.

The proposed development falls within, and directly relates to, the normal areas of Melbourne Infant School, Melbourne Junior School and Chellaston Academy (Derby City Authority). The proposed development of 60 dwellings would generate the need to provide for an additional 12 primary school places (5 infant and 7 junior), 9 secondary school places and 4 post-16 education places. The County Council's projections of pupil roll numbers were updated in January 2015. Melbourne Infant School has a current net capacity of 210 pupils and currently has 206 pupils on roll. Projections indicate that the number of pupils on roll would increase to 217 during the next 5 years. Melbourne Junior School has a current net capacity 265 pupils, and currently has 263 on roll. Latest projections indicate that pupil numbers would increase to 280 during the next 5 years. In both instances there would be no capacity to accommodate the additional pupils generated by the proposed development at the normal area primary school. The County Council therefore requests a financial contribution of £136,788.12 (providing for 12 primary school places) towards the adaptation of classrooms at both Melbourne Infant and Melbourne Junior Schools (Melbourne Infant School classroom project A and Melbourne Junior School Classroom Project A).

With regard to secondary school provision, the development falls within and directly relates to the normal area of Chellaston Academy (Derby City Council Education Authority). Chellaston Academy is over capacity and would not be able to accommodate the additional pupils that would be generated by the proposed development. Working jointly, Derbyshire County Council and Derby City Council are developing a strategy to provide additional capacity on a new site or sites that are yet to be confirmed. It is possible that existing normal areas and also the identified school may change as part of this process. It is not considered appropriate to agree Section 106 contributions targeted at a single school as this may ultimately not be where the investment is required. The County Council therefore requests contributions of £154,585.53 towards the provision of 9 secondary school places and £74,511.60 towards the provision of 4 post-16 places, totalling £229,097.13 to be provided in accordance with the emerging Secondary Strategy.

S106 contributions can be broken down as:

- £56,995.05 towards the adaptation of a classroom to provide for 5 infant pupil places (Melbourne Infant School Classroom Project A) to be provided at Melbourne Infant School;
- £79,793.07 towards the adaptation of a classroom to provide for 7 junior pupil places (Melbourne Junior School Classroom Project A) to be provided at Melbourne Junior School;
- £154,585.53 towards 9 secondary pupil places; and
- £74,511.60 towards 4 secondary post-16 pupil places.
- £33,060 towards improvement facilities and infrastructure at local NHS primary care services.

#### Miscellaneous issues including the loss of agricultural land

The application site is not in arable use and there is no evidence to suggest that it has recently been used for food production. As such it is unlikely that the development of the site would result in the loss of useful agricultural land.

## Conclusion

The above assessment demonstrates that there are no adverse impacts that cannot be adequately addressed through a Section 106 Agreement and conditions such as would outweigh the benefits of the scheme. The impact on the rural character of the area can be mitigated to an extent through the retention of existing hedgerows and the provision of additional perimeter planting. On balance, therefore, it is considered that the contribution the development could make toward addressing the five year housing land supply deficit, along with the associated social and economic benefits, would outweigh any environmental impact upon the rural character of the area and the character of Kings Newton Conservation Area and other heritage assets, such that the presumption in favour of sustainable development prevails. The development is therefore in accordance with the principles of the NPPF in particular para, 14, 17 131, 132 and 134 and policies EV1, EV12 and T6 of the South Derbyshire Local 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**

A. That the Committee delegates authority to the Planning Services Manager to conclude/negotiate the Section 106 Agreement/Unilateral Undertaking in pursuit of the provisions and contributions as set out in the planning assessment above;

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

1. (a) Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.

(b) The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the reserved matters to be approved.

Reason: To conform with Section 92(2) of the Town and Country Planning Act 1990.

2. Approval of the details of the layout, scale, appearance and the landscaping shall be obtained from the Local Planning Authority in writing before any development is commenced.

Reason: The application is expressed to be in outline only and the Local Planning Authority has to ensure that the details are satisfactory.

3. Notwithstanding the approved plan, dwellings on the northern site of Jawbone Lane shall be single or one and half storey in height, existing ground levels and finished floors levels shall be included with a reserved matters application.

Reason: To safeguard to the setting of the Kings Newton Conservation Area and important views and vistas to and from the settlement and Public footpath 15.

4. The development hereby permitted shall be carried out in accordance with plan YOR.2292-01K received on 22nd September 2015; unless as otherwise required by condition attached to this permission or allowed by way of an approval of

reserved matters or 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.

5. No development shall take place until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, has been submitted to and approved in writing by the local planning authority. The drainage strategy should demonstrate the surface water run-off generated up to and including the 100 critical storm will not exceed the run-off from the undeveloped site following the corresponding rainfall event. The scheme shall subsequently be implemented in accordance with the approved details before the development is completed.

The scheme shall include:

Surface water drainage system/s to be designed in accordance with either the National SUDs Standards, or CIRIA C697 and C687, whichever are in force when the detailed design of the surface water drainage system is undertaken.

Limiting the surface water run-off generated by all rainfall events up to the 100 year plus 30% (for climate change) critical rain storm so that it will not exceed the run-off from the undeveloped site and not increase the risk of flooding off-site.

Provision of surface water run-off attenuation storage to accommodate the difference between the allowable discharge rate/s and all rainfall events up to the 100 year plus 30% (for climate change) critical rain storm.

Detailed design (plans, cross, long sections and calculations) in support of any surface water drainage scheme, including details on any attenuation system, and the outfall arrangements.

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

Reason: To prevent the increased risk of flooding, both on and off site.

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

Reason: In the interests of pollution control.

7. Prior to being incorporated in the development 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 dwellings shall be submitted to and approved in writing by the Local Planning Authority. The work shall be carried out in accordance with the approved details.

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

8. If during development any contamination or evidence of likely contamination is identified that has not previously been identified or considered, then the applicant shall submit a written scheme to identify and control that contamination. This shall include a phased risk assessment carried out in accordance with the procedural guidance of the Environmental Protection Act 1990 Part IIA, and

appropriate remediation proposals, and shall be submitted to the LPA without delay. The approved remediation scheme shall be implemented in accord with the approved methodology.

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

9. Notwithstanding any details submitted or the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended), no dwelling shall be occupied until there has been submitted to and approved in writing by the Local Planning Authority plans indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed in accordance with the approved details before the development is occupied or in accordance with a timetable which shall first have been agreed in writing with the Local Planning Authority.

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

10. An ecological design strategy (EDS) addressing ecological mitigation, compensation, enhancement and restoration shall be submitted as part of the reserved matters application

The EDS shall include the following measures:

- a) Retention and protection of existing habitats, including the boundary hedgerows during construction.
- b) Provision for wildlife corridors, linear features and habitat connectivity.
- c) Tree, hedgerow, shrub, rough grassland and wildflower planting and establishment.
- d) Soil handling, movement and management.
- e) Creation, restoration and enhancement of semi-natural habitats.
- f) Creation of new wildlife features, e.g. bat, bird and insect boxes across the site on buildings and trees.

Reason: In the interests of ecology.

11. Any reserved matters application shall include the submission of a landscape and ecological management plan (LEMP) detailing long-term design objectives for nature conservation, management responsibilities and maintenance schedules for all landscape areas which are not in the ownership of individual properties to be approved in writing by the local planning authority. The LEMP should be carried out as approved.

Reason: In the interests of ecology.

12. Prior to the occupation of any dwelling, the new access shall be laid out in accordance with the application drawing YOR.2292-01K received on 22nd September 2015, drained, lit and constructed in accordance with Derbyshire County Council's specification for new estate streets, having a 5.5m carriageway, 2 x 2m footways, 6m radii and visibility sightlines of 2.4m x 43m in each direction, the area forward of which shall be level, constructed as footway and not form any plot or other sub-division of the site.

Reason: In the interests of highway safety.



13. Prior to the occupation of any dwelling, the stopping up of Jawbone Lane shall be laid out in accordance with the application drawing YOR.2292-01K received on 22nd September or in accordance with an alternative arrangement first agreed in writing by the Local Planning Authority and Derbyshire County Highways Team.

Reason: In the interests of highway safety.

14. Before any other operations are commenced, space shall be provided within the site for storage of plant and materials, site accommodation, loading, unloading and manoeuvring of goods vehicles, parking and manoeuvring of employees and visitors vehicles, laid out and constructed in accordance with detailed designs first submitted to and approved in writing by the Local Planning Authority. Once implemented the facilities shall be retained free from any impediment to their designated use throughout the construction period

Reason: In the interests of highway safety, specifically to ensure that construction traffic, workers' vehicles and plant can be safely accommodated off the public highway.

15. Throughout the period of development vehicle wheel cleaning facilities shall be provided and retained within the site. All construction vehicles shall have their wheels cleaned before leaving the site in order to prevent the deposition of mud and other extraneous material on the public highway.

Reason: In the interests of highway safety.

16. The internal layout of the site shall be in accordance with guidance contained in the 6C's Design Guide and Manual for Streets.

Reason: In the interests of highway safety.

17. A swept path diagram shall be submitted at Reserved Matters stage to demonstrate that emergency and service vehicles can adequately enter/manoeuvre within the site and leave in a forward gear.

Reason: In the interests of highway safety.

18. Prior to occupation of each dwelling the proposed new estate street, between each respective plot and the existing public highway shall be laid out in accordance with the approved reserved matters application drawings to conform to the County Council's design guide, constructed to base level, drained and lit in accordance with the County Council's specification for new housing development roads.

Reason: In the interests of highway safety.

19. Prior to their occupation, space shall be provided for each dwelling for the parking of two vehicles per 2/3 bedroom dwellings and three vehicles per 4+ bedroom dwellings, laid out and maintained throughout the life of the development free of any impediment to their designated use.

Reason: In the interests of highway safety.

20. Bin stores shall be provided within private land at the entrance to shared private accesses, in accordance with a scheme to be submitted and approved in writing by the Local Planning Authority, to prevent refuse bins and collection vehicles standing on the new estate street for longer than necessary causing an obstruction or inconvenience for other road users. The facilities shall be provided

prior to the first occupation of the dwellings to which they relate and shall be retained thereafter free from any impediment to their designated use.

Reason: In the interests of highway safety.

21. Prior to the occupation of any dwellings a scheme of sound attenuation shall be submitted and agreed in writing by the Local Planning Authority and the scheme shall be implemented in accordance with the agreed details.

Reason: To protect the amenity of future occupiers from aircraft noise.

Informatives:

This permission is the subject of a unilateral undertaking or agreement under Section 106 of the Town and Country Planning Act 1990.

That the hedgerows on the application site may contain nesting birds. It is an offence under the Wildlife and Countryside Act 1981 to intentionally kill, injure or take any wild British breeding bird or its eggs or damage its nest whilst in use or being built. The nesting season normally encompasses the months March to July inclusive. If you are in doubt as to requirements of the law in this regard you should contact English Nature, Peak District and Derbyshire Team, Manor Barn, Over Haddon, Bakewell, Derbyshire, DE4 1JE.

In dealing with this application, the Local Planning Authority has worked with the applicant in a positive and proactive manner through suggesting amendments to improve the quality of the proposal and 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.

Pursuant to Section 184 of the Highways Act 1980 and Section 86(4) of the New Roads and Streetworks Act 1991, at least 12 weeks prior notification should be given to the Environmental Services Department of Derbyshire County Council before any works commence on the vehicular access within highway limits; please contact 01629 538537 for further information. Pursuant to Sections 149 and 151 of the Highways Act 1980, the applicant must take all necessary steps to ensure that mud or other extraneous material is not carried out of the site and deposited on the public highway. Should such deposits occur, it is the applicant's responsibility to ensure that all reasonable steps (eg; street sweeping) are taken to maintain the roads in the vicinity of the site to a satisfactory level of cleanliness.

The applicant is advised to seriously consider the installation of a sprinkler system to reduce the risk of danger from fire to future occupants and property.

No materials arising from the demolition of any existing structures, the construction of new buildings nor any material from incidental and landscaping works shall be burnt on the site. The developer shall comply with the BRE Code of Practice to control dust from construction and demolition activities (ISBN No. 1860816126). The requirements of the Code shall apply to all work on the site, access roads and adjacent roads.

The Affordable Housing type and tenure mix required by Condition 23 should provide for 75% social rented and/or affordable rented and 25% intermediate housing.

**Item**            **1.2**

**Reg. No.**        **9/2015/0480/FM**

**Applicant:**  
**Mr Gary Supple**  
**20 Victoria Way**  
**Pride Park**  
**Derby**  
**DE24 8AN**

**Agent:**  
**Mr Christopher Lindley**  
**DPDS Consulting Group**  
**3 Gleneagles House**  
**Vernon Gate**  
**Derby**  
**DE1 1UP**

**Proposal:**        **THE DEMOLITION OF THE EXISTING BUNGALOW AND  
THE ERECTION OF A REPLACEMENT DWELLING AT  
HILL VIEW CHAPEL LANE BARROW ON TRENT DERBY**

**Ward:**            **ASTON**

**Valid Date:**     **01/06/2015**

**Reason for committee determination**

The application is reported to Committee at the request of Councillor Watson because local concern has been expressed about a particular issue and there are special personal circumstances of the applicant which members should consider.

**Site Description**

The site contains a bungalow with a large garden, located at the end of frontage development along Chapel Lane. It lies in the defined village confine and adjacent to the Barrow on Trent Conservation Area. The western boundary of the site is shared with Sunny Glen and Nos 1- 7 Club Lane. To the east is a field used as an animal sanctuary. Chapel Lane becomes unmade beyond the Club Lane junction.

The Environment Agency's Flood Risk Map shows the site split between Zones 2 & 3. The 1 in 100 year flood line is set at 39.13m above Ordnance Datum (AOD). Site levels in the vicinity of the proposed dwellings range from about 39.3m – 39.6m AOD.

**Proposal**

The application seeks permission for the demolition of the existing bungalow and erection of a detached two storey dwelling. This house would measure some 5.3m above existing ground levels to the eaves, and 8.5m above existing ground level to the ridge of the highest gable, which follows on from plot one of application 9/2015/0040 (two detached properties to be erected at the rear). The proposed replacement dwelling

[illegible]

would be in a similar location to the existing bungalow, but on a greater scale and footprint.

The existing access would be modified, with a new access being formed to serve the proposed dwelling which is separate to that which would serve the two dwellings to the rear.

The application is accompanied by a Flood Risk Assessment (FRA) that recommends finished floor levels at approximately 500mm above existing ground level (i.e. 39.88 AOD). This equates to a level 750mm above the 1 in 100 year flood level and 590mm above the 1 in 200 year flood level. The FRA acknowledges that in extreme flood conditions dry access along Club Lane would not be available and recommends a flood warning and evacuation plan.

A Phase 1 Habitat Survey and Great Crested Newt & Reptile Survey are also submitted.

### **Applicants' supporting information**

The supporting statement includes the following points:

- The proposal meets the Council's supplementary planning guidance 'Housing Design and Layout' and the applicant reserves the right to appeal against the decision.
- The proposal goes above and beyond the minimum distances specified in the supplementary planning guidance.
- Design principles agreed in the previous applications have been followed into the design.

The Reptile Survey did not find any presence of Great Crested Newts however some of the ponds within the site were assessed as having a good habitat for breeding great crested newts therefore a recommendation to advise all personnel are briefed on great crested newts and that works stops immediately if found.

The Bat survey found that a roost was present within the confines of the bungalow and that a license would be sought from Natural England for its removal. As a result mitigation measures have been incorporated into the proposal including bat boxes within the roof space.

The Flood Risk Assessment states that Comparison of the site survey levels to the Environment Agency's modelled flood levels shows that the southern half of the site lies in Flood Zone 1/2 similar to, but slightly larger than that shown on the South Derbyshire SFRA flood map. The proposed residential development should be constructed above the 1 in 200 year flood level to ensure that it is at the lowest possible risk of flooding. It is recommended that the minimum finished floor level of any residential property is set 750mm above the 100 year flood level and 590mm above the 200 year flood level. Sustainable drainage systems would be incorporated into the new development.

Infiltration techniques or attenuation would be used as appropriate to deal with surface water and ensure that the surface water runoff from the proposed development is restricted to the greenfield runoff rate for the equivalent flood event. This would effectively attenuate the surface water runoff from the proposed development and

ensure that there would be no increase in flood risk elsewhere as a result of the development.

## **Planning History**

9/2014/0228 – Outline permission for three dwellings on land to the rear granted by Committee on 26<sup>th</sup> August 2014.

9/2014/0919 – Approval of reserved matters for 9/2014/0228.

9/2014/1056 – Two dwellings – refused for amenity reasons due to the proximity of one of the properties to no 3 Club Lane.

9/2015/0040 – Two dwellings – approved by Committee after revisions made to the height and location of the dwellings.

## **Responses to Consultations**

The County Highways Authority has no objection subject to conditions. Recognise the dwelling would be served by a modified access approved under application 9/2014/0919.

The Environment Agency has no objection provided that evacuation measures are secured in the event of flooding of the road. Flood prevention conditions are also recommended in terms of finished floor levels.

The County Council Flood Risk management Team has no objections to the proposals. As there is an increase in impermeable area the applicant should be direct to our advice.

The Derbyshire Wildlife Trust has raised no objection subject to appropriate conditions and consideration of the habitats directive. Satisfied with the mitigation measures included within the design of the dwelling.

The Environmental protection Officer has no comments to make with regards to the application and contaminated land.

Severn Trent Water Ltd has no comment.

## **Responses to Publicity**

Barrow on Trent Parish Council has raised concerns at the development within a 200 and 100 year flood line which is bigger than the existing footprint, as per the previous proposals the PC find it large and overwhelming for the plot size causing overshadowing on the neighbouring house and in a very rural village location on a small lane, cannot stress how overdeveloped the plot is already.

Two neighbour comments have been received which can be summarised as:

- Not in keeping with scale and character of settlement
- Flooding concern as bungalow is in flood zone 3
- Proposed bedroom window is less than 21 metres away from dining room

- Would reduce light into living room, dining room and kitchen and lose privacy
- No objection to development but concerns around the adopted road on chapel lane
- Surface should remain as a natural soakaway for additional runoff

## **Development Plan Policies**

The relevant policies are:

South Derbyshire Local Plan Saved Housing Policies 5 & 11 (and its associated supplementary planning guidance), Environment Policies 9, 11 & 12, Transport Policies 6 & 7.

Emerging Local Plan (part one) 2014 policies include:

S1 - Sustainable Growth Strategy  
 S2 - Presumption in Favour of Sustainable Development  
 S4 - Housing Strategy  
 S6 - Sustainable Access  
 H1 - Settlement Hierarchy  
 BNE1 - Design Excellence  
 BNE2 - Heritage Assets  
 BNE3 - Ecology  
 INF2 - Sustainable Transport  
 SD2 - flood Risk

## **National Guidance**

National Planning Policy Framework (NPPF), in particular:

Paras 6-10 (Achieving sustainable development)  
 Paras 11-14 (The presumption in favour of sustainable development)  
 Para 17 (Core principles)  
 Chapter 6 (Delivering a wide choice of quality homes)  
 Chapter 7 (Requiring good design)  
 Chapter 10 (Flooding)  
 Chapter 11 (Natural environment)  
 Chapter 12 (Historic Environments)  
 Paras 186 & 187 (Decision-taking)  
 Para 196 & 197 (Determining applications)  
 Paras 203-206 (Planning conditions and obligations)

NPPG ID26 (Design), 21a (Conditions), 23b (Obligations), 18a (Historic environment)  
 ID7 (Flood Risk) ID8 (Natural environment).

## **Planning Considerations**

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

- The principle.
- Residential amenity.
- Impact on the character and setting of the conservation area.
- Flood risk.

- Highway safety and transport.
- Biodiversity

## Planning Assessment

### The principle

Paragraph 14 of the National Planning Policy Framework (NPPF) states *“at the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking.” The NPPF makes it clear that for decision-taking this means approving development proposals that accord with the development plan without delay and where the development plan is absent, silent or relevant policies are out of date, granting permission unless: any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole; or specific policies in this NPPF indicate development should be restricted.”*

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

In terms of the current Local Plan, Saved Housing Policy 5 defines a village confine within which the site lies. As such residential development is supported by the development plan, albeit the housing policy now has little weight. The emerging Local Plan Policy H1 identifies Barrow on Trent as a ‘Rural Village’ and favours development of limited infill and conversion of existing buildings and local scale affordable, and cross subsidy exception sites of up to 12 on appropriate sites and according to individual settlement circumstance. As such the proposal represents sustainable development that is acceptable in principle.

Although larger in scale it must be noted that this is a replacement dwelling which does not alter the density of dwellings on this site.

### Residential amenity

A main issue for consideration in this case is the impact of the development on the living conditions of adjoining neighbours in particular no. 1 Club Lane. The supplementary planning guidance suggests a minimum distance of 12 m from a main habitable room window of an existing dwelling to a proposed ‘blank’ 2 storey elevation. The guidelines assume a relatively level topography and little or no screening. Where this is not the case, the minimum distances may be increased/decreased as appropriate. Following negotiations in the previous application for two dwellings as approved by the Committee, the agent has adopted a similar approach and adopted a lower roof profile above the garage which is closest to no.1. The side wall would be approximately 17.8 metres (closest point) from the rear windows of no.1 Club Lane and approx. 14.5 metres from the ground floor conservatory.

Although the floor levels would be slightly higher than the neighbours, the dwelling would be well in excess of the minimum guideline distances in relation to No 1 Club Lane. In respect of Sunny Glen the distance from the nearest windows of that property to the proposed dwelling would be beyond 30 metres and outside of the 45 degree angle for any potential overlooking, again well in excess of the minimum guideline



distance. As such the development would not have an unreasonable overbearing impact on any neighbours and the relevant tests for overlooking set out in the SPG are met.

In view of the above considerations, the proposal would accord with Local Plan Saved Housing Policy 11. The development would satisfy the criteria of the policy to provide reasonable living conditions for existing and new occupiers.

#### Impact on the character and setting of the conservation area

The proposal lies adjacent to the conservation area. Although the dwelling would be larger than those in the immediate locality, its form would not be alien and it would be set back from the public highway to ensure it remains subservient to Chapel Lane and would only be evident when approaching the end of the lane. As such it would not appear unduly dominant or out of character in the public realm and would follow a similar design profile of the dwellings approved to the rear of the site. There is no proposal from the applicant or any highway requirement to make alterations to Chapel Lane. Subject to appropriate materials the proposed dwelling would preserve the setting of the conservation area, in accordance with Saved Environment Policy 12, BNE2 of the emerging local plan, and Chapter 12 of the NPPF and its associated guidance.

#### Flood risk

The submitted flood risk assessment demonstrates that the dwellings would not be at unacceptable risk in extreme flood events. However should Chapel Lane flood, dry access and egress would not be possible. The extant permission addressed this issue by proposing a Flood Warning and Evacuation Plan. The County Council's Emergency Planning Manager had confirmed that the proposed measures would be suitable and sufficient for this location. This could be secured by condition as with the extant permission. On this basis the Environment Agency does not object to the proposal subject to conditional safeguards as recommended below. Concern has also been expressed about additional hard surfacing and therefore run-off exacerbating existing flooding issues. The FRA recommends a SUDs solution for the site that would ensure run-off is restricted to greenfield flows (as existing). Such a scheme would be secured by condition before any work commences.

#### Highway safety and transport

On the advice of the Highway Authority there would be no adverse safety issues arising. The garaging and parking proposed is appropriate to the scale and nature of the development. As such the proposal is in accordance with Local Plan Saved Transport Policies 6 & 7, which remains consistent with the NPPF.

#### Biodiversity

The ecological survey outlined the presence of a roost at the bungalow. Bats are protected under the EU directive and as such any development that would result in a breach (disruption or destruction) of the Habitats Regulations (meaning that a bat license is required from Natural England) would have to be assessed against the three tests outlined in the directive. With regard to the three tests, these are as follows:-

1. The proposal must be for the purposes of preserving public health or public safety or other imperative reasons for overriding public interest including those of social or economic nature and beneficial consequences of primary importance for the environment. The current building is in a poor condition and its renovation would be costly and would provide no benefit. The replacement dwelling is in accordance with the NPPF and the bio diversity enhancement measures provide justification to allow the works in compliance with test 1 of the habitats regulations.

2. There is no satisfactory alternative

The test is concerned with the works proposed and whether the scheme as submitted is the only satisfactory option and that there are no alternatives available.

The do nothing option is not advisable as the building would deteriorate and become derelict structures which would diminish the character of this locality, this option would therefore not be of interest or benefit to either the protected species (bats) or the built environment.

3. The action authorised would not be detrimental to the maintenance of the population of the population of the species at a favourable status in their natural range

Full bat surveys have been carried out in accordance Natural England guidelines. Mitigation and ecological enhancement measures have been outlined within the reports and would be incorporated into the development. The Wildlife Trust is supportive of these proposals subject to suitable conditions and the enhancement measures would result in an ecological gain.

In conclusion, it is considered that the derogation tests are met with regard to the site, subject to the mitigation and enhancement measures being secured by condition, therefore there would be no deliberate disturbance caused to protected species. Paragraph 118 of the NPPF seeks to conserve and enhance biodiversity. The recommended conditions of the Derbyshire Wildlife Trust would secure compliance, also in accord with Local Plan Saved Environment Policies 9 & 11.

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 plan/drawing 101 Rev D, 102 Rev C and 103 Rev A received on 10th September 2015; unless as otherwise required by condition attached to this permission or allowed by way of an approval of a non-material minor amendment made on application under Section 96A of the Town and Country Planning Act 1990 (as amended).

Reason: For the avoidance of doubt.

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

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

4. No development shall take place until there has been submitted to and approved by the Local Planning Authority a scheme of landscaping, which shall include indications of all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection in the course of development. The scheme shall include proposals to retain and plant new native hedgerows

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

5. 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 and to provide biodiversity enhancement.

6. Finished ground floor levels shall be set at 39.88 metres above Ordnance Datum (mAOD) to accord with the recommendations of the approved Flood Risk Assessment, Version 2.0 by Julia Williams dated July 2014 and as shown on the submitted drawings.

Reason: To reduce the risk of flooding to the proposed development and future occupants.

7. Development shall not begin until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, has been submitted to and approved in writing by the Local Planning Authority in consultation with the Environment Agency. The scheme shall subsequently be implemented in accordance with the approved details before the development is completed. The scheme to be submitted shall demonstrate:

The utilisation of holding sustainable drainage techniques;

The limitation of surface water run-off to existing greenfield rates;

The ability to accommodate surface water run-off on-site up to the critical 1 in 100 year event plus an appropriate allowance for climate change, based upon the submission of drainage calculations; and

Responsibility for the future maintenance of drainage features.

Reason: To prevent the increased risk of flooding; to improve and protect water quality; to improve habitat and amenity; and to ensure the future maintenance of the sustainable drainage structures.

8. The Flood Warning & Evacuation Plan (appendix F to the submitted Flood Risk Assessment Version 2.0) shall be implemented on first occupation of the dwelling and shall be retained in accordance with that document thereafter.

Reason: To enable occupants to vacate the site before safe access is precluded by flood.

9. Prior to the first occupation of the development, the access to the site shall be created in accordance with Drawing No 102 Rev C and shall be provided with 2m x 12m visibility sightlines in each direction, the area forward of which shall be cleared and maintained thereafter clear of any obstruction exceeding 1m (600mm in the case of vegetation) in height relative to road level.

Reason: In the interests of highway safety.

10. Foul water shall be disposed of to the main sewer.

Reason: In the interests of pollution control.

11. Prior to the commencement of development, details and a timetable for implementation of how the ecological value of the site will be enhanced, through for example the provision of bird nesting and bat roosting features, shall be submitted to and approved in writing by the local planning authority. The approved measures shall be implemented in full and shall be retained as such thereafter

Reason: To enable any unidentified ecological interest to be identified and protected proportionately.

12. Notwithstanding any details submitted or the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended), no development shall take place until there has been submitted to and approved in writing by the Local Planning Authority plans indicating the positions, design, materials and type of boundary treatment to be erected. In particular the details shall demonstrate how potential overlooking from the ground floor windows in the west elevation to Plot 1 to the ground floor windows to 3 Club Lane will be precluded. The boundary treatment shall be completed in accordance with the approved details before the development is occupied or in accordance with a timetable which shall first have been agreed in writing with the Local Planning Authority.

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

Informatives:

When seeking to discharge the above planning conditions, please note that the Environment Agency does not consider the use of oversized pipes or box culverts to be sustainable drainage. Should infiltration not be feasible at the site, alternative above

ground sustainable drainage should be used.

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. 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.

06/10/2015

**Item** 1.3

**Reg. No.** 9/2015/0752/FH

**Applicant:**  
Mr R Thornewill  
South Derbyshire District Council  
Civic Offices  
Civic Way  
Swadlincote  
DE11 0AH

**Agent:**  
Mr Andrew Bennett  
Housing Adaptations  
South Derbyshire District Council  
Civic Offices  
Civic Way  
Swadlincote  
DE11 0AH

**Proposal:** THE ERECTION OF A SINGLE STOREY REAR  
EXTENSION AT 24 ELMSDALE ROAD HARTSHORNE  
SWADLINCOTE

**Ward:** WOODVILLE

**Valid Date:** 12/08/2015

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

The item is presented to Committee as the applicant is the Council.

#### **Site Description**

The application property is a semi-detached brick built dwelling in a residential location with similar properties around. The rear garden is enclosed by approximately 1.8m high close board fencing. The plot and its bounding neighbours sit at similar land levels.

#### **Proposal**

The application proposes the erection of a single storey rear extension to provide a bedroom and shower room for the disabled occupant.

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

None.

#### **Planning History**

None.

#### **Responses to Publicity**



A neighbour objects to the application on the following grounds;

- The application property has had structures erected without Council permission.
- The application property is Council owned.
- The occupier of the application property will take down a side element of the application property so that they can repair cars at the bottom of the garden.
- The application property has had a structure erected for breeding dogs as a business.
- The occupier does not do what the Council says they must do.
- The occupier has block paved the drive and not obtained permission from the Councils Housing department.
- The occupiers have chickens that go into other people's property.

### **Responses to consultations**

None.

### **Development Plan Policies**

The relevant policies are:

- Saved Local Plan : H13(LP)

### **National Guidance**

- National Planning Policy Framework (NPPF) 11-14, 17, 58, 196, 197.
- National Planning Policy Guidance (NPPG) ID21b, ID26.

### **Local Guidance**

- Supplementary Planning Guidance (SPG) 'Extending Your Home'.

### **Planning Considerations**

The main issues central to the determination of this application are the design of the proposal and the impact it would have on neighbouring properties.

### **Planning Assessment**

The proposal seeks to gain consent for a single storey rear extension to create a bedroom and a shower room for the disabled occupant.

The side facing bedroom window of the proposal is a substantial distance from the boundary with no.26 Elmsdale Road and would look onto an elevation of said neighbouring property that has no main room habitable windows. The proposal is not overlooking of a neighbouring property in this regard. The rear shower room facility window would look onto the occupier's garden towards several built structures that are within the plot of 24 Elmsdale Road. The proposal is not overlooking of a neighbouring property in this regard.



As such the proposed single storey structure would not be overbearing upon neighbouring properties and would be of an acceptable design that is in keeping with the host property. A condition that ensures the use of matching materials will ensure sympathetic execution of the development.

The proposal has no impact upon the current parking arrangement.

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

## **Recommendation**

**GRANT** permission under Regulation 3 subject to the following conditions:

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

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

2. All external materials used in the development to which this permission relates shall match those used in the existing building in colour, coursing and texture unless otherwise agreed in writing by the Local Planning Authority.

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

## **Informatives:**

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.

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**            **2.1**

**Reg. No.**        **9/2014/1141/OS**

**Applicant:**  
**Investin Properties**  
**C/O Agent**

**Agent:**  
**Miss Liberty Stones**  
**Fisher German**  
**St Helens Court**  
**North Street**  
**Ashby De La Zouch**  
**Leicester**  
**LE65 1HS**

**Proposal:**        **OUTLINE APPLICATION (ALL MATTERS EXCEPT FOR  
ACCESS TO BE RESERVED) FOR THE RESIDENTIAL  
DEVELOPMENT OF UP TO 44 DWELLINGS AND  
DETAILED MEANS OF ACCESS ON LAND AT SK3825  
9087 JAWBONE LANE KINGS NEWTON DERBY**

**Ward:**            **MELBOURNE**

**Valid Date:**     **03/12/2014**

**Reason for committee determination**

The application is brought before the Committee as the application is for a major development that has attracted more than two objections and is not in accordance with the development plan.

**Site Description**

The site extends to 2.3 hectares (ha) and is located to the north east of Melbourne. The proposed development adjoins the existing settlement boundary; a predominantly residential area.

The application site forms a long rectangular tranche of market garden / agricultural land to the south of Kings Newton, which also contains one dwelling. It was enclosed from part of one of the former open fields serving Kings Newton. Although now largely open and no longer divided into separately managed strips, as part of the East Midlands open-field system, the character of the agricultural landscape, of aggregated and consolidated furlongs from the former open field, has not changed significantly in this location since it was farmed during the medieval period.

The site is bounded to the south west by existing residential development at Huntingdon Court and Oaklands Way. Melbourne cemetery abuts the northern corner of this boundary. The south eastern boundary of the site is defined by Jawbone Lane.

**THE SITE**

**MELBOURNE**

Melbourne Infant School

Melbourne Junior School

Cemetery

Station Road

50.0m

North Arrow

**Map Legend:**

- THE SITE
- MELBOURNE
- Melbourne Infant School
- Melbourne Junior School
- Cemetery
- Station Road
- 50.0m
- North Arrow

**Map Description:**

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

Agricultural land forms the adjoining land use to the northern boundaries where parcels of land are dissected by a public right of way which runs between Melbourne and Kings Newton.

The site currently has a mixed use comprising a large residential property and associated curtilage and agricultural land currently used for crop trials. The site slopes gently from its highest point 63.47(m) at the west to its lowest point at the east 53.75 (m).

Access to the site is currently gained from Jawbone Lane via the existing driveway to the residential property. A pavement runs along the north western side of Jawbone Lane.

The application site is located outside of the village confine (as set out in the Local Plan) on the eastern fringe of Melbourne.

## **Proposal**

Outline planning permission is sought for residential development of up to 44 dwellings including 30% affordable units, with approval of access sought at this stage whilst all other matters including appearance, layout, scale and landscaping are reserved for future approval.

The application is accompanied by an indicative site layout plan which shows predominately detached dwellings with some semi-detached properties and terraces forming the affordable housing, an attenuation pond would be positioned to the front bordering Jawbone Lane with a sweep of open space along the eastern edge with enhanced planting along the boundary with the neighbouring development site. Access is proposed from Jawbone Lane, this would be a new junction and not a modification of the existing access. The indicative layout plan shows the dwellings fronting the main estate road with parking and garaging predominantly set back to the side or rear, the montage diagrams and Design and Access statements suggest a scale of two storeys for the properties drawing on the Sweet Leys development as a guide.

The development originally proposed up to 69 dwellings and revised submission of 44 also raised concerns and the LPA was working with the agents to lower the scheme to approx. 22 units to follow the revised principles of the neighbouring Jawbone Lane development site (9/2014/1145). However on final submission a lower scheme was not considered viable for the landowner and the revision for up to 49 dwellings was formally submitted for consideration by the LPA.

## **Applicants' supporting information**

### Planning Statement

The development plan is out of date and little weight can therefore be attached to policies relating to housing supply. Furthermore, the emerging Local Plan has not yet been examined or found sound; little weight can therefore be given to the housing supply policies and proposals contained within it. Within such a policy vacuum, and having regard to the Councils five year housing land supply shortfall, the application therefore needs to be considered in the context of the presumption in favour of sustainable development, as detailed within the NPPF. It is clear that the site fulfils the

three dimensions of sustainable development detailed within the NPPF providing a highly sustainable residential development that would have positive social, economic and environmental benefits. When considered against the test set out in paragraph 14 of the NPPF the benefits of granting planning permission are considerable, and there are no adverse impacts which would significantly or demonstrably outweigh these benefits. The proposed development is therefore considered to be in full accordance with paragraph 14 of the NPPF. In such circumstances planning permission should be granted, subject to the imposition of appropriate conditions and a S106 obligation.

### Design and Access Statement

The planning application is submitted for consideration on the basis that it would provide an immediately deliverable contribution to the Council's supply of deliverable sites, in order to assist in meeting the current shortfall against the required 5 year supply. The Indicative Masterplan demonstrates a sensitive development of dwellings, immediately north of Melbourne, which could be successfully integrated into the surrounding landscape. The Masterplan provides a firm basis for detailed consideration at Reserved Matters application stage. The outline planning application is considered to accord with the principles set out in National and Local planning policy and guidance.

### Cultural Heritage Assessment

The Potential Development Area (PDA) lies within an area with some potential for archaeological remains to be uncovered. This comprises remains associated with medieval or post-medieval agricultural activity, and in particular associated with a pond shown on 19th century maps in the south-eastern part of the PDA. It is also possible, although unlikely, that earlier (prehistoric or Roman) remains could be uncovered, based on the find-spots of such material in the surrounding area. The lack of recent development on the PDA, aside from the construction of the house and barn, means that it is likely that earlier archaeological remains would survive across the majority of the PDA.

The proposed development involves residential development of the site, which would involve the construction of numerous houses, plus parking, access routes, and landscaping. The ground works involved in this would impact on any archaeological remains present within the PDA.

It is anticipated that some further work may be required in relation to the potential buried archaeological resource, because of the size of the PDA and the lack of recent development

The proposed development would not harm the significance of the majority of heritage assets within the wider area. The extension of Melbourne to the north would reduce the separation and distinctiveness of Kings Newton Conservation Area, although the retention of some agricultural land between the two settlements would minimize this impact. Similarly the rural isolation of Charnwood would be reduced slightly but this would have only a negligible impact on the significance of this asset.

It is therefore considered that the proposed development would have some effect on the significance of the aforementioned heritage assets in the area, building on the effect of the residential development to the south. This is only a minor impact to the designated assets equating to less than substantial harm in NPPF terms, and the undesignated

assets being of lesser significance such that any impact on their setting is considered less harmful.

It is agreed that the separation between Kings Newton and Melbourne is a part of the setting of the Kings Newton Conservation Area. It is also agreed that in order for it to contribute to the significance of the Conservation Area this separation should have a rural and open character.

It is noted that the 'Principal View' in the 2011 conservation area character statement appears to be directed not directly south towards the edge of settlement at Melbourne – where much of the proposed development would lie - but to the south-east, along the open corridor of agricultural land that stretches past Jawbone Lane and Station Road to the countryside beyond. This is in many respects a more logical way of appreciating the rural location of the Conservation Area than a view that takes in only modern development at the edge of a small area of open fields.

### Landscape and Visual Impact Assessment

Having reviewed the local landscape related policy, published character assessments and visited the site; it is considered that the effect of the proposals upon the character of this area; the site's location adjacent to existing development; and the effect of the proposals upon the visual environment would be limited.

The assessment demonstrates that the proposals could be integrated without detriment to the localised and wider character. The layout of the scheme has responded to the topography of the site and both its scale and location appear to be a sensible, coherent and logical extension of the village of Melbourne to the east, away from the heritage dominated western realms. The site development could be accommodated within the receiving visual environment. Furthermore, it is found to be in accordance with the relevant saved policies of the South Derbyshire District Council Local Plan 1998 and within the overall context of the NPPF and the requirement to accommodate sustainable development.

It is therefore considered that the proposed development of the scale and nature proposed could be accommodated without detriment to the receiving environment and as such is supportable from a landscape and visual perspective.

### Affordable Housing Delivery Plan

It is accepted that in accordance with the emerging Local Plan Policy H20 the scheme would be required to provide up to 30% affordable housing by dwelling number.

Whilst suggesting 65% of the affordable housing for Social Rent and 35% for Shared Ownership, the applicant is willing to refine the mix in consultation with the Council's Housing department to ensure that any specific local housing needs are met.

The Applicant, should the site be approved for development, is willing to secure delivery of the affordable units by the completion of a legal agreement under Section 106 of the Town and Country Planning Act 1990.

### Flood Risk Assessment

In consideration of all the information available, including that contained within the



Strategic Flood Risk Assessment for the district, the risk of flooding to the proposed development from all sources is considered to be low. As the proposed development would be restricted to Flood Zone 1, it would not displace floodwater in the 1 in 100 year event. No floodwater storage mitigation measures are therefore proposed. The implementation of an attenuation based sustainable surface water drainage strategy, as outlined within Section 5 of this report, would ensure that there is no increase in flood risk to surrounding areas resulting from the disposal of surface water run-off in the post development scenario during lower order rainfall events and a reduction in flood risk in more extreme events. A safe dry route of access/egress would be available from the proposed development. Whilst flood risk can never be entirely eliminated, it is considered that the residual flood risk to the development from all sources is low. There would be no increase in the residual flood risk to other areas as a result of the development proposals.

### Noise Assessment

Long term noise measurement surveys have been undertaken at the site, representative of day and night time periods to quantify the nature and level of incident noise upon the proposed development. The local noise climate is dominated by overhead aircraft due to the close proximity of East Midlands Airport.

Utilising the measured level, calculations have been undertaken for generic residential dwelling rooms to develop glazing and ventilation specifications and evaluate the internal noise levels. To comply with internal noise levels based upon good practice guidance given in WHO Guidelines for Community noise and British Standard 8233:2014, acoustically acceptable glazing and ventilation to meet minimum requirements have been specified within Sections 5.1 – 5.5. It should be noted however that glazing requirements are for habitable rooms only and are not applicable to bathrooms, circulation spaces, etc. From the measured results, it has been found that the site falls below the upper limit of guidance for external amenity areas.

### Ecological and Reptile Assessments

The survey site is not designated for its nature conservation interest. There are several Local Wildlife Sites within 2km of the boundary, the closest being approximately 700m northeast of the survey site, a section of Melbourne Railway designated for its unimproved neutral grassland. This is not thought to be affected by the works. The survey site comprises a residential area with well managed gardens and orchards as well as an arable field. The habitats were well managed and comprised botanical species typical of their habitat type. The site provides some potential for nesting birds and foraging/commuting mammals. Trees should be protected and any new planting schemes should seek to include a high proportion of native species, of local provenance, which provide fruit, nectar and/or seed sources. Any storage of materials or machinery should be on hard standing or bare ground and access tracks should be in place before construction begins. To minimise any potential impact or disturbance to protected breeding birds, vegetation clearance should be undertaken outside of the bird breeding season, i.e. from late August and be completed by late February. No further surveys are recommended. General good working practices should be adhered to in order that mammals do not become trapped within open pipes or excavations. No further surveys are recommended.

No evidence of bats was found during the survey. The main building on site showed negligible potential for roosting bats as it was well sealed with no lifted flashing, cracks

in walls or missing roof tiles. The remaining two buildings on site were also considered unsuitable for roosting bats, given the lack of roosting features and the fluctuating temperatures likely to present within, owing to the materials the buildings were constructed from. No potential roosting features were observed on the trees on site e.g. cracks, split limbs, rot holes or woodpecker holes. Hedgerows could be retained within the development as these may provide suitable commuting/foraging habitat for bats. No further surveys are recommended. No evidence of reptiles or amphibians was found on site and the habitats were generally considered sub-optimal. Several ponds were located within 500m of the site and a single great crested newt record was found. However, because of the sub-optimal habitat on site, the presence of significant dispersal barriers between the ponds and the site, and because of the poor connecting habitat between the ponds and the site, further surveys are not recommended.

Although the results of the survey suggest that the development proposals are unlikely to result in harm to reptile populations, it is very difficult to prove absence of a protected species on a site. It is therefore possible that there could be a small number of reptiles present at the time of construction works taking place. If a reptile is seen during construction, works should stop and an ecologist contacted. As reptiles are highly mobile species, there is the potential for them to colonise the areas of suitable habitat in the future. Therefore, if there is a delay prior to the onset of the works (i.e. over two years until the works commence) the habitats should be re-assessed for their potential to support reptiles.

#### Statement of Community Involvement

A public consultation event was held on Thursday 28th August between 4:00pm–7:00pm at the Melbourne Assembly Rooms, with leaflets distributed to a wide area surrounding the site to inform residents of the event. A total of 103 residents attended the consultation with 57 comments received. Concerns were raised in relation to access and traffic, services and facilities, drainage and flooding, open space and landscaping, ecology, coalescence with and impact on Kings Newton, affordable housing and site layout. These matters are considered to have been satisfactorily addressed in the planning application and its supporting documentation.

#### Transport Statement

The report reviews the development proposals within the context of current Government and local policy guidance, and has reviewed the existing sustainability of the development, in particular with regards to accessibility by modes other than the private car. An Access and Movement Strategy has been prepared to manage down the number of single occupancy vehicle trips generated by the proposed development in line with current policy and guidance. In considering the potential impact of the proposed development on the local highway network, a high level assessment of the proposals was undertaken. The results of this analysis demonstrate that the impact of future development traffic on the local highway network would be negligible. However, works to widen Jawbone Lane to the south of the proposed site access have been identified as part of the proposals, consistent with where the greatest proportion of development traffic is expected to originate to/ from. Overall, the report demonstrates that the proposed development would not have a material adverse impact on the safety or operation of the adjacent highway network. It further concludes that the development is in full accordance with the transport policy tests for new developments as set out in the NPPF paragraph 32.



## Tree Survey

At the time of the survey no definitive layout was shown or any detailed access proposals agreed but there are no major tree constraints at present. In arboricultural terms the site is deemed suitable for development providing the better trees within the site are retained and protected during development, as well as the established hedgerows along field boundaries. It is also essential that any trees and hedgerows beyond site boundaries are not compromised too any great degree by site activity. An Arboricultural Impact Assessment and Method Statements would be prepared in the future to accompany any application for full planning permission.

## **Planning History**

November 1965 (865/132) - Planning permission granted for a single dwelling subject to an agricultural occupancy condition.

September 2002 (9/2002/0762) - Planning permission granted for an extension to the dwelling.

October 2013 (9/2013/0563) - Removal of agricultural occupancy restriction approved.

## **Responses to Consultations**

Severn Trent Water, The Environmental Health Manager, Contaminated Land Officer and the Crime Prevention Design Adviser have no objection in principle.

The Development Control Archaeologist objects on the basis that the site has the potential to contain buried archaeological remains and recommends further evaluation to enable the level of significance to be assessed.

Historic England considers that the (amended) scheme would affect the significance of the Kings Newton Conservation Area. Kings Newton pre-dates Melbourne and has historically been distinct from it, this separation being identified in the Conservation Statement for Kings Newton as a key element of significance. The proposal would reduce the area of separation and transform the character of the historically associated agricultural land. It states that the application affects the significance of Kings Newton conservation area and may also affect the significance of individual listed buildings. Therefore the decision maker must take into account the statutory requirement to have special regard to the desirability of preserving the setting of a listed building (s.16 1990 Act) and to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area which is required irrespective of harm. The NPPF identifies conservation areas as heritage assets and states that their significance can be damaged by development within their setting. It goes on to state that if the LPA agrees with the assessment of less than substantial harm then the NPPF clearly advises that the harm should be weighed against the public benefits associated with the scheme and that it must be accompanied by a clear and convincing justification (paras. 132 & 134). It reminds us that less than substantial harm does not equate to acceptable harm, as demonstrated by the recent raft of appeal decisions.

The Conservation officer considers that the development would neither preserve nor enhance the character or appearance of the conservation area. There is a "strong

presumption” against granting planning permission for development which would harm the character or appearance of a conservation area as the contribution that the open agricultural setting makes to both the character and appearance of the conservation area is high. He goes on to explain that the open space beyond the cemetery to the west provides an important part of its setting and adds to its significance. It provides an understanding of the ritual landscape evolving in the rapidly changing Victorian cemetery designs which at the time was attempting to address the significant cultural break from the tradition of the previous 1000 years of burial in churchyards. It thoughtfully combines the two design styles in particular that framed by the archway to the informal vista beyond. Retaining a less formal rural landscape beyond the cemetery is particularly important and developing housing adjacent to this feature would not contribute positively to the setting. It would provide a sense of enclosure and formality where at present the formal landscape follows into the informal landscape beyond. This would cause harm and be detrimental to the setting of the heritage asset.

The Highway Authority notes that about a third of development traffic (12/13 vehicles at peak times) would route north along Jawbone Lane towards Kings Newton, this pattern being based on observation of the adjoining Huntingdon Court development. The rural nature of the lane and the shortcomings of the Jawbone Lane/Main street junction are recognised. However there is no evidence that existing vehicle movements along the lane result in detriment to highway safety (based on accident records). As such no objection is raised in principle. The Highway Authority notes, without prejudice, another planning application which could potentially justify a scheme to prevent traffic from using Jawbone Lane.

The Strategic Housing Manager recommends a mix and types of affordable housing for 30% of the total number of houses on the site.

The County Council’s Rights of Way Team notes that the proposal does not affect the adjoining public footpath but recommends informatives to ensure it is protected.

Natural England is satisfied that the Donington Park SSSI would not be affected. Subject to standing advice being followed, and conditions to enhance landscape and biodiversity, there is no objection.

Derbyshire Wildlife Trust has no objection subject to conditions to protect existing wildlife and to secure habitat enhancement.

The Council’s Drainage Officer seeks further investigation of the culvert to which surface water would discharge.

## **Responses to Publicity**

Melbourne Parish Council objects as follows:

- i) The open land around Kings Newton would be eroded to the detriment of the character of the conservation area.
- ii) The type and scale of development would be alien to the distinctive character of Kings Newton.
- iii) Existing facilities are inadequate.
- iv) There would be increased traffic congestion in Melbourne.
- v) Existing traffic problems on Swarkestone Causeway would be exacerbated.

- vi) Schools do not have capacity.
- vii) The cumulative effect of development would put pressure on cemetery space in Melbourne and surrounding areas and provision should thus be made.

Melbourne Civic Society objects for the following reasons:

- i) The application is contrary to the adopted and emerging Local Plans. The latter makes adequate provision for housing. The development is premature and would prejudice successful implementation of the emerging plan.
- ii) The scheme would detrimentally affect the significance of the Kings Newton Conservation Area, the site being open land identified in the Conservation Area Character Statement for Kings Newton as a key element of significance. The proposal would reduce the area of separation and transform the rural character of the historically associated agricultural land.
- iii) The NPPF supports refusal on heritage grounds. There are no benefits that would outweigh the harm in this regard.
- iv) The character of Jawbone Lane, a County Greenway, would be changed from rural to that of a housing estate. The amenity and safety of walkers and cyclists using this tourist route would be adversely affected.
- v) The Parish Council has resolved to prepare a Neighbourhood Development Plan, under the provisions of the Localism Act, supported by the district council. Very considerable progress has been made. The process is at risk if pre-empted by permissions for housing contrary to the development plan. This site is one of four speculative applications for 196 new dwellings in addition to 112 already permitted. Further permissions would deny the community the opportunity to influence the size and location of future developments, contrary to government policy.
- vi) There would also be adverse impacts in respect of noise, schools and other facilities, drainage infrastructure, traffic congestion in the town and on Swarkestone Causeway and damage to the Causeway (ancient monument).

Kings Newton Resident's Association also objects:

- i) The application is contrary to the adopted and emerging Local Plans. The latter makes adequate provision for housing.
- ii) The scheme would detrimentally affect the significance of the Kings Newton Conservation Area, the site being open land identified in the Conservation Area Character Statement for Kings Newton as a key element of significance. The proposal would reduce the area of separation and transform the rural character of the historically associated agricultural land.
- iii) Jawbone Lane, a County Greenway, would be severely affected by traffic. The amenity and safety of walkers and cyclists using this tourist route would be adversely affected. The Transport Assessment disregards the significance of the Greenway and the cumulative impact of other development in the area.
- iv) There would be increased traffic congestion and safety impacts, in particular at the Jawbone Lane/Main Street junction.

Some 118 responses have been received to the original and amended submissions:

- a) The development would be contrary to the adopted and emerging local plans, premature and prejudicial to the latter.
- b) In conjunction with other sites there would be gross over supply of housing in

Melbourne and Kings Newton.

- c) Schools, medical services, public transport and other community facilities are inadequate to cope with the development.
- d) The proposal would prejudice the emerging Neighbourhood Plan.
- e) The flood risk assessment does not correctly identify historical flooding on the site. The area is prone to flood and dwellings have suffered damage as a result. There could be increased risk of flood to others.
- f) Aircraft noise is excessive and the noise report does not adequately address this issue.
- g) Chronic local traffic congestion in the village and Swarkestone Causeway would be exacerbated by the development.
- h) The scheme would detrimentally affect the significance of the Kings Newton Conservation Area, the site being open land identified in the Conservation Area Character Statement for Kings Newton as a key element of significance. The proposal would reduce the area of separation and transform the rural character of the historically associated agricultural land, leading to coalescence. The NPPF supports refusal on this basis.
- i) The setting of listed buildings would be harmed.
- j) The benefits do not outweigh the harm to heritage assets.
- k) There would be harmful landscape impact and important views of landmarks would be lost, contrary to the NPPF.
- l) There would be loss of wildlife habitats.
- m) There would be loss of outdoor leisure space and adverse impact on Melbourne as a tourist attraction.
- n) The rural character of Jawbone Lane would be harmed. The amenity and safety of walkers and cyclists using this tourist route would be adversely affected
- o) There would be increased risk of traffic related danger, including at the Jawbone Lane/Main Street junction. The Transport Assessment understates the problem.
- p) There would be loss of light and privacy.
- q) Sewerage is inadequate and the development would increase pollution.
- r) There would be loss of good quality agricultural land.
- s) The development would be too dense, resulting on poor living conditions.
- t) The Council has an adequate supply of housing land.
- u) Publicity has been inadequate.
- v) There would be increased crime.
- w) Because of the degree of harm this would not be sustainable development.
- x) Local footpaths should be improved at the developer's expense.
- y) There would be increased pollution.
- z) Section 106 contributions would not mitigate impacts.
- aa) The Jawbones would be lost.

Two letters support the application, one emphasising the need for new housing.

### **Development Plan Policies**

The relevant Saved Local Plan Policies are:

- Housing Policies H5, H8, H9 & H11, Environment Policy EV1, 9, 12, 13 and 14, Transport Policy T6, and Recreation and Tourism Policy R4 and 8

Emerging Local Plan Part One Policies include:

- S1 - Sustainable Growth Strategy
- S2 - Presumption in Favour of Sustainable Development
- S4 - Housing Strategy
- H1 - Settlement Hierarchy
- SD1 - Amenity and Environmental Quality
- BNE1 - Design Excellence
- BNE2 - Heritage Assets
- BNE3 - Biodiversity
- BNE4 - Landscape Character and Local Distinctiveness
- INF1 - Infrastructure and Developer Contributions
- INF2 - Sustainable Transport
- INF9 - Open Space, Sport and Recreation

## **National Guidance**

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

- Paras 6-10 (Achieving sustainable development)
- Paras 11-14 (The presumption in favour of sustainable development)
- Para 17 (Core principles)
- Para 32-34 (Promoting sustainable transport)
- Chapter 6 (Delivering a wide choice of quality homes)
- Chapter 7 (Requiring good design)
- Para 72 (Promoting healthy communities)
- Para 109 and 118-123 (Natural environments)
- Chapter 12 (Historic Environments)
- Para 186 (Decision-taking)
- Para 196 & 197 (Determining applications)
- Para 203 – 206 (Conditions and obligations)

National Planning Practice Guidance (NPPG) ID:2a, ID:3, ID:8, ID:18a, ID:21a, ID:23b, ID:26, ID:30, ID:37 and ID:25

## **Local Guidance**

- Housing Design and Layout SPG
- Melbourne Conservation Area Character Statement
- Kings Newton Conservation Area Character Statement 2011

## **Planning Considerations**

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

- The principle of the development
- Impact on setting of heritage assets
- Highway safety
- Biodiversity
- Noise
- Affordable housing
- Section 106 contributions

## Planning Assessment

### The principle of the development

The site lies outside the village confines as defined within the Local Plan and thus the application is not in accord with the development plan. Local Plan Housing Policy 8 restricts housing developments outside settlements to that necessary for the operation of a rural based activity, where it can be demonstrated that a countryside location is necessary. The proposal does not accord with this policy. However, the NPPF indicates that Local Plans should meet the full objective need for market and affordable housing in the housing market area. It states that housing applications should be considered in the context of the presumption in favour of sustainable development and that relevant policies for the supply of housing should not be considered up-to-date if the Local Planning Authority cannot demonstrate a five-year supply of deliverable housing sites. Paragraph 49 of the NPPF states:

*"Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites".*

There are two arms to this paragraph: (1) that the application should be considered in the context of the presumption in favour of sustainable development, and (2) SDLP housing supply policies should not be considered to be up-to-date if a 5-year housing supply cannot be demonstrated. In regard to point (2), paragraph 47 of the NPPF seeks "to boost significantly the supply of housing". It is therefore clear there is considerable emphasis on bringing forward significant housing provision as soon as possible. This is achieved through a rolling supply of deliverable sites sufficient to provide five-years of housing against projected requirements (a "5-year supply"). Where local planning authorities have failed to deliver a 5-year supply, an additional buffer is required. There is currently a shortfall in the 5-year supply. Whilst preferred strategic allocations in the emerging Plan would provide increased supply, their overall deliverability has not yet been found sound by an inspector and so only limited weight can be afforded to the relevant emerging policies at this time. As such the relevant adopted SDLP policies pertaining to new housing delivery cannot be considered up-to-date and the proposal must be considered in the context of the presumption in favour of sustainable development.

The site lies adjacent to the built framework of Melbourne, which is classed as a Key Service Village in the emerging Plan's Settlement Hierarchy (Policy H1). Such settlements are envisaged to be capable of providing appropriate scale developments up to and including strategic sites. However, this hierarchy presently carries limited weight and whilst the proposed development is of the scale envisaged for a Key Service Village, the site lies outside the village boundary, as defined by adopted Local Plan, Policy H5. The proposal therefore remains to be considered on first principles.

The connectivity of the settlement is considered to assist in demonstrating its sustainability. Melbourne is served by hourly bus services from Swadlincote and Derby. A multi-user Greenway runs close by connecting to Derby to the north and with regards to facilities, the village includes a Post Office, a convenience store and other shops, GP practice, a dentist, a primary school, a leisure centre, a library, playing pitches and public houses nearby. It is therefore accepted that the general location of this

development is in a sustainable location in terms of its proximity to services, transport, amenities etc.

Since the Local Planning Authority is unable to demonstrate a 5-year supply, the presumption in favour of sustainable development, as set out in paragraph 14 of the NPPF, applies. This means:

"...where the development plan is absent, silent or relevant policies are out of date, granting permission unless: any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole; or specific policies in this Framework indicate development should be restricted"

However it is important to note that the NPPF provides a presumption in favour of sustainable development - not a presumption in favour of development. It must be made clear that this does not automatically mean that any and every application would be permitted; each scheme must still be tested against the prevailing policies and if harm is found, it remains the case that, on balance, applications can be refused. It is necessary, as a preliminary issue, to determine whether the proposed development is sustainable. Paragraph 6 of the NPPF states that "the policies in paragraphs 18 to 219, taken as a whole, constitute the Government's view of what sustainable development...means in practice...". Paragraphs 7 and 8 go further to split sustainable development into three roles: economic, social and environmental, whilst highlighting that these dimensions are mutually dependent (i.e. they should be sought jointly and simultaneously). It is thus reasonable to conclude that conflict with other parts of the Framework, and indeed Development Plan policies, could lead to the proposal being defined as unsustainable. Furthermore, paragraph 9 of the NPPF goes on to indicate that sustainable development involves seeking positive improvements not only in the quality of people's lives but also the quality of the built, natural and historic environments.

The focus therefore is to first consider whether the proposal is sustainable, or can be made sustainable through planning obligations and conditions, before considering whether any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits arising. The assessment so far establishes an 'in principle' acceptance of sustainability. In order to reach a conclusion as to whether the presumption would prevail, consideration needs to be given as to whether there are significant and demonstrable adverse impacts arising.

Insofar as the relevant policies for assessing the application against the development plan are concerned paragraph 17 of the NPPF states that the planning system should recognise the intrinsic character and beauty of the countryside. Environment Policy 1 and Housing Policies 5 and 8 of the LP are consistent with these objectives. The proposal would be in clear breach of these national and local policies, and as such would not comprise sustainable development as described in the NPPF.

The Council is currently unable to demonstrate a five year supply of housing land. In these circumstances, the NPPF indicates that planning permission should be granted unless adverse impacts would significantly outweigh the benefits, assessed against the policies in the NPPF.

The applicant draws on the SHLAA to add weight to the application, which states:

*The site is a mixed use site that is currently used for market gardening and contains a dwelling which is located on Jawbone Lane, Kings Newton. There is access onto Jawbone Lane. We have suggested a site capacity of 49 dwellings. There is high developer interest on the site. The site is considered to be potentially suitable as it is currently restricted by local planning policy as the site is in an area protected by countryside policy. The site is considered available as the existing use would not need to be relocated. The site is in single ownership. The site is considered achievable as it is a mixed use site and there is a reasonable prospect that the site will be financially viable and is available for residential development in the future.*

However this is a desk based exercise to identify potential sites for housing and is not a policy document. The sites included are those put forward by landowners and have not been through a thorough analysis (such as that required in a planning application) and therefore the SHLAA document is of limited weight.

### Impact on setting of heritage assets

There are two main aspects to the assessment of this consideration which must be examined: the impact on the setting of the Kings Newton Conservation Area, and the impact on the cemetery as a curtilage for important listed buildings which it accommodates. Although these two heritage assets are considered separately they are nonetheless related in this context.

#### a) Impact on the Kings Newton Conservation Area

The historic, open, agricultural aspect of the setting of Kings Newton makes an important contribution to the significance of Kings Newton, to its appearance and to its character. The panoramic view from the south side of Kings Newton along Footpath 15 is one of the best places to appreciate the importance of the agricultural setting of the settlement and the contrast between its linear planned form and its open setting and historic context and relationship with Melbourne. This is most clear in the Viewpoints 5, 6 and 7 in the report prepared by Aspect Landscape Planning.

Kings Newton was developed as a new “Ton”, i.e. under common English understanding, a new settlement coming from the Anglo Saxon word ‘tun’, meaning fenced enclosure or farming village. From the detailed analysis of the conservation area and its history we know that this settlement was deliberately set apart from Melbourne, as a 12th century planned settlement.

Analysis of the Kings Newton Conservation Area has been undertaken in the Conservation Area History and the Kings Newton Conservation Area Character Statement 2011.

The Conservation Area History published by the District Council, explains its context as follows; “The presence of early freeholders in King’s Newton might explain the separatist tradition in relation to Melbourne, and may help to explain why it became more prosperous in relation to its size than Melbourne did” (Kings Newton Conservation Area History, SDDC, published 2005). Its separate identity and its rather elite group of buildings ranged along the length of Main Street are part of its special interest and character. Whilst the Melbourne estate introduced small cottages along the length of the street, its high status was not significantly affected. Its separate identity from Melbourne is not only part of its special character it is what fundamentally defines its special



historic and architectural character and what influenced the development, expansion and enhancement of the high status houses and their garden and parkland settings.

The Conservation Area Character Statements have been adopted by South Derbyshire District Council and have been subject to widespread public consultation and scrutiny and are now adopted. Local planning authorities must review their conservation areas from time to time (Section 69(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990). This process is very recent and the Conservation Area Character Statements (appraisals) are up-to-date and very relevant. The Kings Newton Conservation Area Character Statement, in referring to the distinct differences between Melbourne and Kings Newton, states “they are still physically separated by a few fields, predominantly in use for market gardening.” In accordance with best practice, conservation area designations do not include large open areas just as a means of protecting the wider landscape setting. But neither does this mean that the wider landscape is irrelevant when considering impacts on setting. The diminution of a meaningful gap and the development of this field, between Melbourne and Kings Newton, would cause harm to the special architectural and historic interest of the Kings Newton Conservation Area, which by definition is determined by its rural and agricultural setting.

The Conservation Area Character Statement has five Principal Views on the map, which represent the most important views, with defining characteristics. This is made clear in the document. The loss, or substantial destruction, of any of these views would create significant harm to the character of the Conservation Area. The proposed development affects both the foreground and the middle ground and this would block a section of the important panoramic view identified in the Statement. The intensification of development here would encroach on Kings Newton in a way which is damaging to the agricultural setting of the Conservation Area, diminishing and urbanising the landscape setting. In this instance, the contribution that the open agricultural setting makes to both the character and appearance of the conservation area is high. This is best seen and would have greatest impact from the conservation area, in looking across the fields from the public footpath (FP15) between 56 and 58 Main Street and towards the settlement from the public footpath network (FP15 and FP14).

In particular it is the size and density of the proposal which would be detrimental to this setting. However, it is envisaged that a lower density development on part of the site relating to existing areas of residential development to the south/south-west retaining key views, could be possible without undue harm.

- b) The impact on the setting of the Melbourne Cemetery as the formal setting of listed buildings therein

It has been identified in particular that the archway in the cemetery has been deliberately designed to frame the informal vista beyond (the northern part of the application site) and that retaining a less formal rural landscape beyond the cemetery is particularly important. As such developing housing on the north-western area of the site adjacent to this heritage asset would not contribute positively to the setting. It would provide a sense of enclosure and formality where at present the formal landscape follows into the informal landscape beyond. This would cause harm and be detrimental to the setting and significance of the heritage asset. The Cultural Heritage Assessment accompanying the application recognises this to some degree: *‘These glimpsed views of countryside contribute to the peaceful nature of the experience within the cemetery*

*but have a neutral contribution to the communal, aesthetic and evidential value of the chapels and the gates themselves.’* So, whilst the contribution made by the countryside beyond is acknowledged as part of the setting of the cemetery, the assessment fails to consider the impact of the loss of the contribution the countryside views make to the setting and significance of the heritage asset.

### c) Conclusion

In this case the applicant has failed to recognise the importance of the setting of the Conservation Area and the listed buildings but simply states that the site lies outside the conservation area boundary and has no impact on the listed buildings. In case law, this is now not sufficient justification and the setting of a heritage asset is a material consideration in all cases, not just listed buildings.

Any assessment of setting must take into account the contribution that setting makes to the significance of a designated heritage asset. English Heritage advises: *“A conservation area that includes the settings of a number of listed buildings, for example, would also have its own setting, as would the town in which it is situated. Views from within extensive heritage assets can also be important contributors to significance: for example, views from the centre of an historic town, through the townscape to its surrounding countryside, or from an historic house, through its surrounding designed landscape to the countryside beyond. Some views may contribute more to understanding the significance of a heritage asset than others. This may be because the relationships between the asset and other historic assets or places or natural features are particularly relevant; because of the historical associations of a particular view or viewing point; or because the composition within the view was a fundamental aspect of the design of the heritage asset. Intentional inter-visibility between heritage assets, or between heritage assets and natural features, can make a particularly important contribution to significance. Some assets, whether contemporaneous or otherwise, were intended to be seen from one another for aesthetic, functional, ceremonial or religious reasons.”* (English Heritage, *The Setting of Heritage Assets*, 2011).

As clarified in the recent Barnwell Manor case (Court of Appeal case no. C1/2013/0843), the setting of a designated heritage asset is a material consideration, which has great weight when considering any application for development. This is informed by Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990, which imposes a “General duty as respects listed buildings in exercise of planning functions.” Subsection (1) provides: *“In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.”* In addition Section 72 of the same Act requires the planning authority to pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area.

Whilst there is no specific requirement to assess the impact of development on the setting of conservation areas under the Act, provision is made for this in the National Planning Policy Framework 2012. This makes no distinction between listed buildings and conservation areas, both of which are designated heritage assets: *“When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation. The more*

*important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting.” (para 132).* This is also reflected in a number of recent appeal decisions, where impact on the setting of a conservation area was a determining factor.

Within a conservation area the requirement in section 72(1) to pay “special attention” should be the first consideration for the decision-maker and has considerable importance and weight. In this instance, the development would neither enhance nor preserve the character or appearance of the conservation area. There is a “strong presumption” against granting planning permission for development which would harm the character or appearance of a conservation area. This can be affected by development both inside the conservation area and outside the conservation area, if the development is within its setting. This is particularly important where the setting contributes to the significance and leads to a clear appreciation of the significance of the conservation area.

### Highway safety

The application proposes a new access into the site instead of a modification/widening of the existing. The County Highway Authority is satisfied with this proposal and considers the proposed junction to be acceptable in terms of achieving the appropriate visibility and in terms of highway safety. The internal estate roads have not been assessed at this stage as they are only indicative and would be assessed at reserved matters stage. The County Highways Authority only need to consider the proposed access arrangement which is a junction with Jawbone Lane and whether a route from this point to the development could be achieved without detriment to highway safety, and as shown by the red outline of the application this is achievable. However the link roads/estate roads within the site in addition to parking would all be assessed at a reserved matters stage when layout is considered.

### Biodiversity

The habitat of the site at present comprise of a fields of improved grassland bordered by hedgerows on the southern and western sites, old aerial photos show an orchard ran along the eastern boundary, however the trees have been removed in the last few years, opening the site further. The existing landscaping meets the definition of UK BAP priority habitat. The submitted report is considered to be adequate in terms of assessing the impact on biodiversity and no protected species have been found on site. It is noted that no objection has been raised by Derbyshire Wildlife Trust who recommend the retention and enhancement of the existing boundary hedgerows should be fully reflected in any reserved matters application. Landscaping of the site is a reserved matter and the indicative site layout plan shows such a feature accommodated within the scheme. As such in terms of impact on wildlife and ecology this outline proposal is considered to be acceptable in principle.

### Noise

The main source of noise affecting the site is aircraft over-flights as the site lies close to the flight path for East Midlands Airport. The assessment found that with suitable design specifications such as roof insulation, appropriate roof tiles, thick insulated ceilings and specified double glazing; internal noise levels suitable for the protection of residential amenity would be achieved. The Environmental Health Manager accepts the findings of

the noise report and recommends a condition requiring a scheme of sound attenuation as detailed in the report. This approach is considered to be reasonable and would ensure that the future occupiers of the site are suitably protected from noise.

### Residential Amenity

The application is in outline with all details reversed except for access, therefore only an indicative layout has been provided and no specific details in terms of the houses are known at this stage. The indicated proposed location is considered acceptable in terms of distances between elevations of existing and proposed. A further assessment of any potential overshadowing, overbearing, overlooking and loss of privacy would need to be undertaken at reserved matters stage. Any reserved matters application would be assessed against the Council's adopted space about dwellings standards.

### Affordable housing

In view of the scale of development the Strategic Housing Manager is satisfied that the appropriate mechanism for securing 30% affordable housing (18 dwellings in this case) is through the use of a Section 106 Legal Agreement whereby a matrix can be agreement to ensure an appropriate mix of affordable units are provided.

### Section 106 contributions

Paragraphs 203 to 205 of the NPPF relate specifically to planning obligations and advise that these should only be sought where they meet all the following tests:

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

The most recent Government legislation on the matter places a restriction on the use of planning obligations for financial contributions to the size of the development and to no more than 5 contributions per development, provided that specific projects can be identified. The Government's current size limit stands at developments of 11 dwellings and above; OR developments in excess of 1000 square metres floor area. In this case the proposed development would exceed 11 dwellings, and consequently the requirement for financial contributions towards specific infrastructure projects is justified.

As the development is considered inappropriate and unacceptable the contributions associated with the development would not outlined in the report.

### Miscellaneous issues including the loss of agricultural land

The application site is not in arable use and there is no evidence to suggest that it has recently been used for food production. As such it is unlikely that the development of the site would result in the loss of useful agricultural land.

### Conclusion

The Framework (NPPF 2012) makes it clear that the presumption in favour of sustainable development means proposals which accord with the development plan should be approved without delay, unless material considerations indicate otherwise. It

states that where the development plan is absent, silent or relevant policies are out-of-date, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

The proposed development would impinge on views of the landscape setting and open fields and change the perception and composition of many views from countryside to a modern housing estate, out of keeping with the linear and separate character of the village to the detriment of the character of the Conservation Area of Kings Newton. The encroachment of the development would start to create the character of a merged settlement to the detriment of Kings Newton's sense of place and identity as a separate settlement. Also, the development would fail to preserve the setting of the cemetery through the encroachment of the northern part of the site into an important vista which the cemetery and its listed buildings rely.

However, it is necessary to perform the 'planning balance' when assessing whether the application is acceptable in terms of sustainability. Both in terms of economic and social benefits the development would: generate construction jobs; would increase the potential for spending which would support local business and services; increase the supply of market and affordable homes generating economic activity; generate new homes bonus for the Council; generate financial contributions for local infrastructure (albeit only in mitigation for impact). Notwithstanding these, it is considered the benefits of the proposed development are not sufficient to outweigh the harm that would be caused to the significance of the designated heritage assets affected.

As the development would cause significant harm the development would not amount to sustainable development and para 14 of the NPPF does not, therefore apply. Even if para 14 was deemed to apply, the adverse impacts of granting permission would significantly and demonstrably outweigh any benefits of the proposal. Overall the proposed development fails to comply with Policies EV 1, 12 and 13 of the Local Plan and para 14, 17, 131, 132 and 135 of the NPPF.

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

## **Recommendation**

REFUSE permission for the following reason:

1. The proposed development by reason of its encroachment into open countryside and merging of two settlements would result in the diminution of what is considered a meaningful gap between Melbourne and Kings Newton, and would fundamentally cause harm to the special architectural and historic interest of the Kings Newton Conservation Area, which by definition is characterised by its rural and agricultural setting. The proposed development would impinge on views of the landscape setting and open fields and change the perception and composition of many views from countryside to a modern housing estate, out of keeping with the linear and separate character of the Kings Newton village. Similarly the proposal would cause harm by developing housing on the north-western area of the site adjacent to the Melbourne Cemetery. The proposed development would provide a sense of enclosure and formality where at present

the formal landscape follows into the informal landscape beyond. This would cause harm and be detrimental to the setting and significance of the heritage asset.

In conclusion the development would be contrary to paragraph 17 of the NPPF and Environment Policy 1, 12 and 13 of the South Derbyshire Local Plan 1998 that seek, among other things, to ensure that development is only permitted if heritage assets are protected from harm. The proposal would fail to preserve the setting of Kings Newton Conservation Area and the setting of Listed buildings in Melbourne Cemetery contrary to paragraph 131, 132 and 135 of the NPPF that require account to be taken of the desirability of sustaining and enhancing the significance of heritage assets and, indeed, the continued conservation of the features themselves as well as their setting. Therefore the development would not amount to a sustainable form of development as the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits.

#### Informatives:

Notwithstanding this refusal, 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 the proposal/meetings and negotiations/providing the opportunity to overcome reasons for refusal. However despite such efforts, the planning objections and issues have not been satisfactorily addressed/the suggested amendments have not been supplied. 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.