

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

## **SECTION 1: Planning Applications SECTION 2: Appeals**

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

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## **1. PLANNING APPLICATIONS**

**This section also includes reports on applications for: approvals of reserved matters, listed building consent, work to trees in tree preservation orders and conservation areas, conservation area consent, hedgerows work, advertisement consent, notices for permitted development under the General Permitted Development Order 2015 (as amended) responses to County Matters and strategic submissions to the Secretary of State.**

<b>Reference</b>	<b>Item</b>	<b>Place</b>	<b>Ward</b>	<b>Page</b>
9/2015/0943	1.1	Church Broughton	Hilton	5
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When moving that a site visit be held, Members will be expected to consider and propose one or more of the following reasons:

1. The issues of fact raised by the 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.**        **9/2015/0943/NU**

**Applicant:**  
**Mr M Keenan**  
**42 Aycliffe Gardens,**  
**Alvaston**  
**Derby**  
**DE24 0BX**

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

**Proposal:**        **THE CREATION OF 3 ADDITIONAL PITCHES AND THE  
ERECTION OF AN AMENITY BUILDING AT  
BROUGHTON CARAVAN PARK SUTTON ROAD  
CHURCH BROUGHTON DERBY**

**Ward:**            **HILTON**

**Valid Date:**     **05/10/2015**

**Reason for committee determination**

The item is presented to Committee at the discretion of the Planning Services Manager.

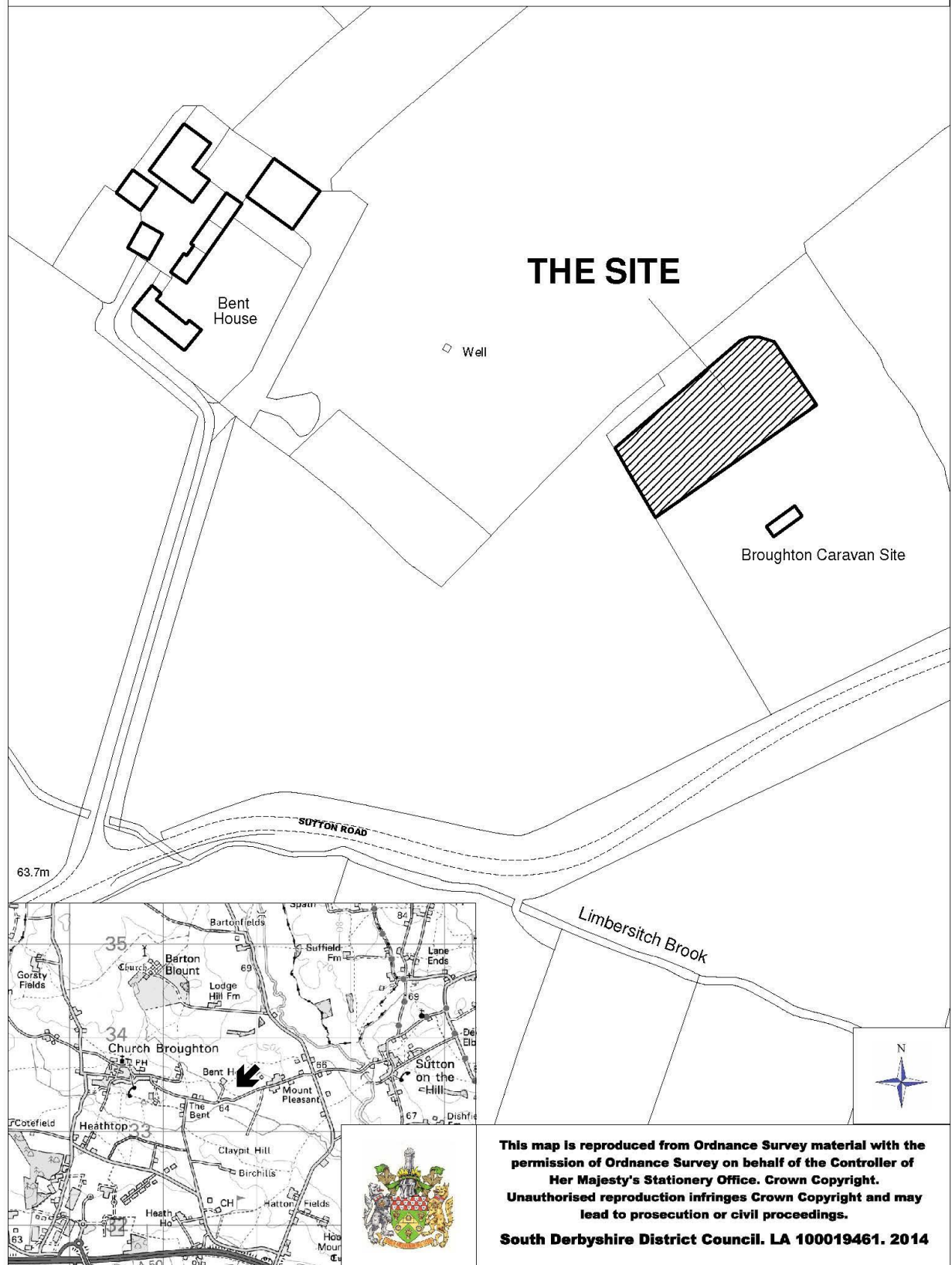
**Site Description**

The site lies to the north of Sutton Road approximately 600m west of the hamlet of Mount Pleasant and just over 1km east of the village of Church Broughton. The site area is 0.2 Ha and forms part of the larger Broughton Caravan site accessed from Sutton Road. Church Broughton Footpath 8 runs to the west and Footpath 6 runs to the north of the site. The Sutton Road boundary has 2m high hedging and entrance gates. The site is hard surfaced and enclosed by 1.8m fencing with hedging behind. Plot 4 is the northern most plot from the road boundary and the internal access road runs to the east.

**Proposal**

Planning permission is sought for the creation of three travellers additional pitches (four in total) on what was originally one plot) in the north western corner of the site within plot 4. The three additional caravan pitches would measure 12m x 9.5m and would have two vehicle spaces each. An internal access road within the plot would serve these 3 plots as well as the original one and would run parallel with the south eastern boundary of the plot. An amenity building is also proposed which would be

9/2015/0943 - Broughton Caravan Park, Sutton Road, Church Broughton,  
Derby DE65 5DB





located in the middle section of the plot adjacent to the northern boundary. That building would contain a kitchen, male, female and disabled toilet kitchen, tutor/play room and day room.

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

The supporting Design Statement states the proposal is to create 3 additional pitches and a single amenity building to serve the whole of the site. It would usually be the case that each pitch would be served by a separate amenity building but as this is a family site it is more convenient to have a single amenity building which all occupants can share. Broughton Caravan Park is divided into four sites each with its own travelling family and the applicant owns plot 4 and will live there with his extended family. Travelling children, especially females, are home tutored from their early teens for cultural reasons and help around the site with the female adults. For this reason, the applicant discussed provision of a single amenity block with the other plot owners and decided a larger block would be cheaper and more harmonious for the children. Smaller amenity blocks within each pitch were considered to have more impact on the rural area.

### **Planning History**

9/2012/0424 - Retrospective application for the retention of decking to plot one. application for proposed decking to plots 1a, 2, 3 & 4 and a timber shed to plots 1, 1a, 2, 3 & 4, Granted 18/7/12

9/2010/1085 - A retrospective application for the change of use of land to use as a residential caravan site for four gypsy families, each with two caravans, including laying of hardstandings, improvement of access and erection of amenity blocks, Refused 18/1/2011 – Allowed at appeal 7/9/2011

### **Responses to Consultations**

The County Highways Authority states that whilst the development would result in an increase in the traffic generated by the site and the access is not ideal, in view of the appeal Inspector's comments it is not considered that an objection could be sustained. Therefore, a condition is recommended requiring the provision of 2 parking spaces per pitch to be provided prior to being taken into use and maintained thereafter.

Church Broughton Parish Council objects for the following reasons:

- a. The Planning Inspector increased the number of pitches from 8 to 10 and the number of utility buildings from 4 to 6 despite the local resident's views on further increases in development.
- b. The further expansion will have a negative impact on the hamlet of Mount Pleasant and the local countryside.
- c. The Council had virtually met all traveller requirements at the time of the appeal decision and it is assumed this is still the case.

## Responses to Publicity

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

- a) The correct notification was not followed on this application.
- b) When permission for the site was granted residents were assured there would be a restriction to the number of caravans and pitches,
- c) Conditions on the original permission have not been met.
- d) There is a commitment of up to 19 in the SDDC area and there are 5 in the area which is more than our fair share.
- e) The size of the amenity block should be relative to the original size of the pitch and have more visual impact.
- f) Sub-division of the plot would set precedence for sub-division of other pitches amounting to 20 pitches as opposed to the current 5 and may mean more amenity blocks if this is not restricted.
- g) The amenity block's size means it could easily be used for commercial purposes so what controls to prevent this could be applied to restrict the building to domestic use in 5 to 10 years time when there may be different occupiers.
- h) The need for the tutor / playroom should be justified and ensured that its use is for education.
- i) A temporary wooden structure would be more appropriate for an amenity block.
- j) There would be an increase in vehicles using the site.
- k) Increased impacts in relation to noise and litter on the roadside.
- l) There would be an impact on the local school as its reputation and applications have already been affected by the increase in children from the site over a short period.
- m) The original site was created illegally over a Bank Holiday weekend and has the potential to grow into the size of a small village with the associated impact on infrastructure within the existing village.
- n) The access to the site is poor and roads and hedges are not maintained.
- o) If further plots are sub-divided this would increase traffic further and reduce the safety of the road.
- p) The impact on the watercourse and newts in the area should be considered.
- q) The existing septic tank capacity should be considered as there is a potential for wash out at times of high demand and roads regularly flood.
- r) There is a concern that the landscaping would not be carried out.
- s) The appeal Inspector made provisions for site expansion in the future and the amount the settlement could support.
- t) There have been occurrences of antisocial behaviour of the residents of the site and their dogs.
- u) A balance between a real need for further traveller's pitches and residential consent within the countryside should be considered and resultant harm on the countryside in relation to the NPPF.
- v) Guidance within the 'Planning Policy for Travellers Sites 2015' document states that the local amenity and environment should be protected and their scale should not dominate the nearest settled community.
- w) The Council has fulfilled its requirement for Traveller sites in relation to GTAA.
- x) There is already a sufficient density of pitches in this area and nearby and further pitches would detract from the appeal of the area.

- y) A planning permission for a dwelling was refused nearby due to its unsustainable location - more pitches are clearly not sustainable.
- z) The proposal would cause increased harm to the character and appearance of the area.
- aa) Circular 01/2006 is in the process of being revoked as it is regarded as a flawed document by Government.

## **Development Plan Policies**

The relevant policies are:

- Saved Local Plan: Housing Policy 15 (H15), Environment Policies 1 and 9 (EV1 and EV9), and Transport Policy 6 (T6).

## **Emerging Development Plan Policies**

The relevant policies are:

- Submission Local Plan Part 1: Local Plan Part 1 (Submission Version): S2 (Presumption in Favour of Sustainable Development), S4 (Housing Need), S6 (Sustainable Access), H21 (Sites for Gypsies and Travellers and for Travelling Showpeople), SD1 (Amenity and Environmental Quality), SD3 (Delivering Sustainable Water Supply, Drainage and Sewerage), BNE1 (Design Excellence), BNE4 (Landscape Character and Local Distinctiveness) and INF2 (Sustainable Transport).

## **National Guidance**

- National Planning Policy Framework (NPPF)
- National Planning Practice Guidance (NPPG)
- Planning Policy for Traveller Sites (PPTS)
- Noise Policy Statement for England (NPSE) 2010

## **Planning Considerations**

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

- The weight to be given to national and local planning policy;
- The need for gypsy pitch provision;
- Access to services and impact on local infrastructure;
- Highway safety;
- Impact on neighbouring amenity;
- Impact on character and visual amenity; and
- Drainage matters;

## **Planning Assessment**

### Weight given to national and local planning policy

The Development Plan forms the primary policy consideration for this application, although the NPPF, Planning Policy for Travellers Site (PPTS) and emerging Plan are material planning considerations carrying varying degrees of weight. Whilst

saved policy H15 is 'out-of-sync' to some degree with the PPTS, emerging policy H21 fully responds to the PPTS and has been subject to examination with no fundamental objections outstanding. Accordingly a moderate degree of weight can be afforded to both Development Plan policies whilst the PPTS itself also carries considerable weight. It is also important to note that H15 is not sensitive to settlement confines, recognising that such proposals often sit outside of settlements and/or adjoining them. The principle of development on this site is therefore acceptable. Notwithstanding the above, consideration against EV1 is necessary given its intention to protect and enhance the character of the countryside, and this is discussed below.

#### The need for gypsy pitch provision

An updated Gypsy and Travellers Accommodation Assessment (GTAA), published in June 2015, sets out a need for 14 pitches over 5 years from 1 April 2014, and subsequent need for 7, 8 and 9 pitches for each 5-year period thereafter respectively. Prior to the adoption of a Gypsy and Traveller Site Allocations DPD, this need must be met by individual applications in the interim, such as this one, at a rate of 2 to 3 pitches per annum. Since April 2014 permission has been granted for 4 pitches.

The Council met and exceeded its identified needs under the 2008 GTAA, however at present there is an undersupply of pitches compared with the need identified in the updated GTAA. Furthermore, the 5-year supply as required by the PPTS has not yet been met and as such significant weight must be afforded to the proposal.

#### Access to services and impact on local infrastructure

The PPTS advocates very strictly limiting new traveller sites in open countryside that is away from existing settlements. This site is somewhat away from existing settlements and not within identified settlement confines but is an established site and the proposals seek to consolidate their provision in this established location. The availability of transport modes, promotion of community cohesion, and ease of access to health services, shops and schools are all important in assessing the sustainability of a site. Development Plan policies reflect this point. In this case services and facilities are available within reasonable distance in Church Broughton and therefore the site is considered to be suitably located with respect to services and facilities for occupants of the site.

As to the impact on existing education, healthcare provision and community facilities; the development is not of a scale where contributions would normally be sought particularly given that the occupants are transient in nature such that existing provision is considered to suitably absorb any varying pressures arising. In any event, policy would not normally require contributions for such a small number of additional residences.

#### Highway and pedestrian safety

In terms of highway safety it is noted that Sutton Road is a rural lane but notwithstanding this the proposal still needs to be appropriate to this location. The scheme would result in an overall increase in the comings and goings and in order to come to a view on highway safety the opinion of the County Highway Authority has

been sought. In its reply it has stated that it does not object subject to the provision of parking. In policy terms it is noted that Local Plan Transport Policy 6 states that planning permission will not be granted for development which interferes with the free and safe flow of traffic and that policy is relevant as it echoes the NPPF at paragraph 32 which states, amongst other things, that safe and suitable access to the site can be achieved for all people; and development should only be prevented or refused on transport grounds where the impacts of development are severe. Examining the proposal it is clear that whilst the proposal would increase comings and goings in this location, it is considered that the proposal would not be contrary to the advice contained on Local Transport Policy 6 as well as paragraph 32 of the NPPF and therefore the proposal is considered to be acceptable in terms of highway safety.

#### Impact on neighbouring amenity

The PPTS notes that sites in rural areas should not dominate the nearest settled community. Whilst Mount Pleasant is close by and is a relatively modest hamlet, the provision of three additional pitches would not lead to such an intensification in the number of pitches that the overall site would dominate the existing hamlet. Whilst there may come a point where an increase in the number of pitches proposed on the site in the future which could lead to a different conclusion on this matter, that would have to be determined on the basis of the facts at that time. It is considered therefore that this development would respect the scale of, and would not dominate, the hamlet of Mount Pleasant. Whilst the proposal would extend the gypsy community in this location, amenity concerns must be substantiated if they are to form a reason for refusal. The position of the additional caravans and amenity building would be such that the impact resulting from noise disturbance and so forth would not be readily apparent.

#### Impact on character and visual amenity

Local policies and national guidance seek to ensure that development should respond to local character and reflect the identity of local surroundings; create safe and accessible environments where crime and disorder, and the fear of crime; would not undermine quality of life or community cohesion and be visually attractive. Saved and emerging policies require the development to be acceptable in environmental terms and capable of sympathetic assimilation into its surroundings. The existing site is now established and its intrusion into the open landscape would not be increased by this proposal. Whilst the amenity block is substantial the facilities contained therein are considered to be proportionate to the proposals. Whilst there would be views of the site from Sutton Lane they would be some distance and set within the context of the existing site. The provision of additional screening can be secured by further planting which can be controlled by condition. Hence the degree of harm arising is moderated by the nature of the site and proposed mitigation.

#### Drainage matters

The applicant proposes to direct foul water to an existing septic tank but the detail of that installation has not been submitted therefore it is unclear whether this is the best solution. As such it is considered that conditions should be imposed to appropriately address this matter.

As for surface water the use of sustainable drainage system is indicated on the application form but again no information has been submitted to demonstrate the detail of how this would be provided, but again conditions could alleviate these concerns to allow determination of the proposal at this time.

### Other matters

In terms of the other points raised, full consultation in line with the Council's Statement of Community Involvement was undertaken; the existing site is now lawful even if it was originally and any anti-social behaviour would be addressed by other legislation.

### Balancing of planning considerations

As outlined, the proposal attracts significant weight in favour by way of the lack of a 5-year supply of gypsy and traveller pitches – a supply which would be boosted under these proposals. Added to this is further weight afforded by the ability for the site to be developed, with conditions where necessary, without causing undue impact on neighbouring or visual amenity, nor cause pollution to the natural environment. Hence whilst there would be an increase in the number of pitches in this particular location, and the caravans and amenity building would intrude further into the countryside, these would be in the context of the existing site and any modest harm would not be likely to significantly and demonstrably outweigh the benefits of the proposal.

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

### **Recommendation**

**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 revised plans, drawing numbers: 23/04/15/1 Rev C and 23/04/15/2 Rev C, 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. This permission does not authorise the use of the land as a caravan site by any persons other than Gypsies and Travellers as defined in Annex 1: Glossary of the Government's Planning Policy for Traveller Sites (August 2015), or any subsequent policy or guidance which replaces that definition.  
Reason: To safeguard the site for occupation by Gypsies and Travellers.

4. No commercial activity or outside storage related to any trade or business shall take place on the site.  
Reason: To protect the visual and rural amenities of the locality.
5. No more than one commercial vehicle per pitch shall be kept on the land for use by the occupiers of the caravans hereby permitted, and they shall not exceed 3.5 tonnes in unladen weight.  
Reason: To protect the visual and rural amenities of the locality.
6. There shall be no more than 4 pitches on the site and on each of the 4 pitches hereby approved no more than 2 caravans shall be stationed at any time, of which only 1 caravan shall be a static caravan.  
Reason: For the avoidance of doubt and to ensure occupiers of the site are afforded sufficient room for amenity space.
7. The only caravans permitted to be stationed on the site shall be those which comply with the definition as set out in the Caravan Sites Act 1968.  
Reason: To safeguard the visual amenity of the countryside.
8. The hardsurfacing to the site shall be constructed using porous materials.  
Reason: In the interests of flood prevent and pollution control.
9. Notwithstanding the approved plans, no development shall take place until further details of a scheme for the disposal of surface and foul water have been submitted to and agreed in writing by the Local Planning Authority. This scheme shall include evidence of infiltration testing and details that proposed surface and foul water drainage means are of suitable capacity to accommodate flows, as well as demonstrating the site levels do not compromise the efficient operation of drainage runs. The scheme shall also provide a maintenance plan for the foul water infrastructure to guarantee it is in good working order throughout the period of use. The scheme shall be carried out in strict conformity with the approved details before the development is first occupied and the foul water infrastructure shall be managed in accordance with the approved maintenance plan thereafter.  
Reason: In the interests of flood protecting and pollution control.
10. Notwithstanding any details submitted or the provisions of the Town and Country Planning (General Permitted Development) Order 2015, prior to the installation of any walls, fences or gates plans indicating the positions, design, materials and type of boundary treatment to be erected shall be submitted to and approved in writing by the Local Planning Authority. The boundary treatment shall be completed in accordance with the approved details 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.
11. Notwithstanding the approved plans, prior to first occupation details of tree planting to the site edges shall be submitted to and approved in writing by the Local Planning Authority. Such details shall also include measures for the protection of existing trees (both their roots and canopies) during the course of development. All planting comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the site or the completion of the development, whichever is the

sooner; and any trees 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.

Reason: In the interests of visual amenity.

12. Prior to the first occupation of any of the pitches space shall be provided within the site curtilage for the parking and turning of two vehicles per pitch, laid out and maintained throughout the life of the development free from any impediment to its designated use.

Reason: In the interests of highway safety.

13. The construction of the amenity building hereby permitted shall not commence until samples of the proposed materials to be used in its external construction have been submitted to, and approved in writing by, the Local Planning Authority and the development shall only be undertaken in accordance with the materials so approved and shall be retained as such thereafter.

Reason: To ensure a satisfactory standard of external appearance

#### Informatives:

In dealing with this application, the Local Planning Authority has worked with the applicant in a positive and proactive manner through seeking to resolve planning objections and issues. 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.

Having regard to the provisions set out under the Caravan Sites and Control of Development Act 1960, an amendment to the existing Caravan Site Licence and supporting licence Conditions will be required. Please contact Environmental Services, South Derbyshire District Council, Civic Offices, Swadlincote, Derbyshire - tele: 01283 595950.



10/05/2016

**Item**                **1.2**

**Reg. No.**        **9/2016/0174/FM**

**Applicant:**  
**Mr J Read**  
**Field House**  
**Hobb Hill**  
**Hazelwood**  
**Derby**  
**DE56 4AL**

**Agent:**  
**Mr Ian McHugh**  
**IMcH Planning & Development**  
**Consultancy**  
**20 Attewell Close**  
**Draycott**  
**Derby**  
**DE72 3QP**

**Proposal:**        **THE ERECTION OF TWO DWELLINGS ON LAND AT**  
                         **SEALWOOD LANE OVERSEAL SWADLINCOTE**

**Ward:**            **SEALES**

**Valid Date:**      **24/02/2016**

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

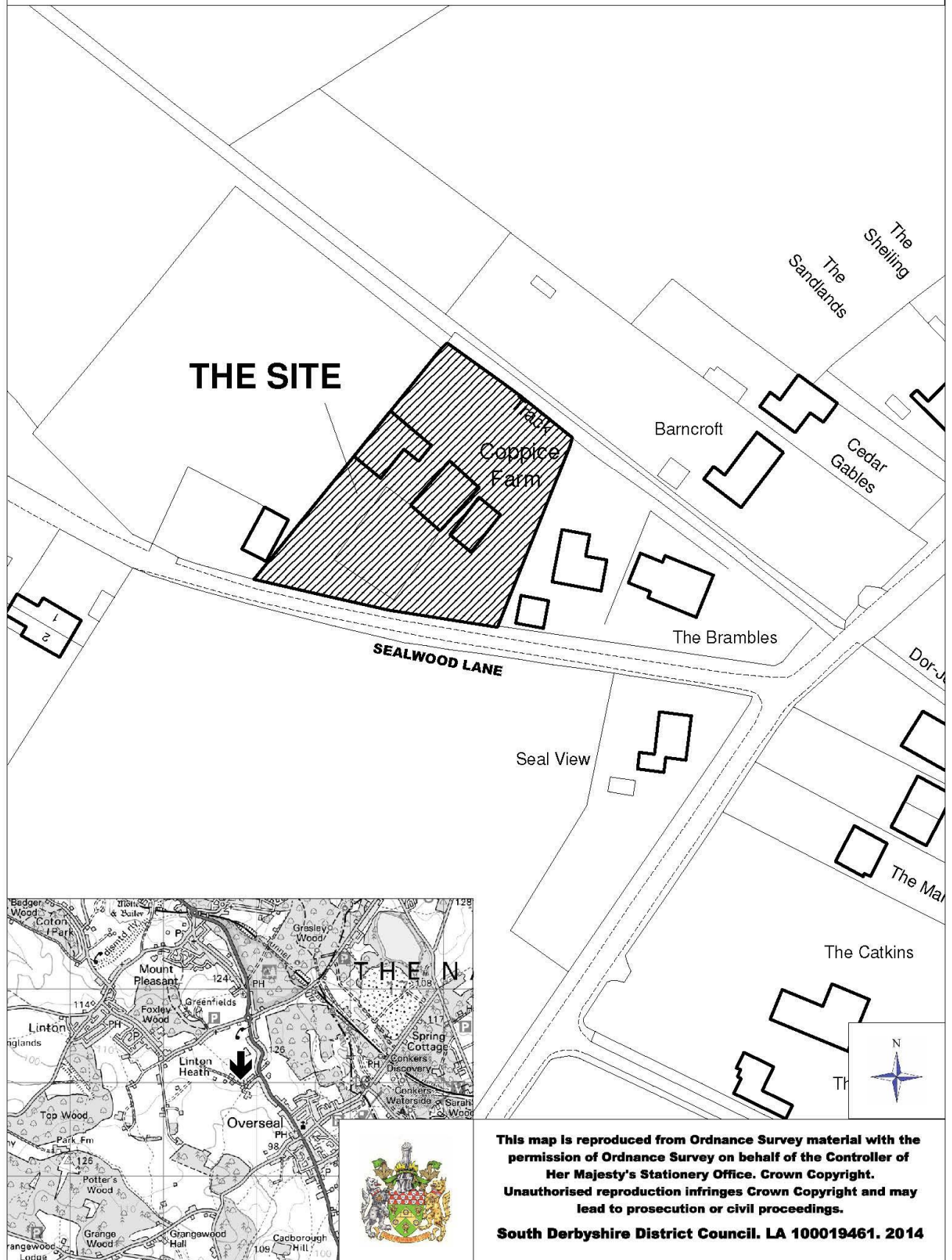
The item is presented to Committee at the request of Councillor Mrs Hall due to local concern being expressed about a particular issue.

#### **Site Description**

The site measures some 0.22ha and is situated on the northern side of Sealwood Lane, which links to the Burton Road (A444) via Green Lane. The site lies outside the defined settlement confines of Overseal and is within the National Forest and the River Mease Special Area of Conservation (SAC). It is located to the west of the former Coppice Farm, which has recently been redeveloped by the erection of a replacement two-storey dwelling and further dwelling of single storey form. The existing properties on Green Lane and Sealwood Lane comprise, in the majority, bungalows and 1.5 storey dwellings with occasional two-storey houses.

The site is enclosed by mature hedgerows to three sides (north, west and south). It contains two brick and tin-sheeted buildings, timber sheds and a metal shipping container; all of which are neglected and in various states of disrepair. The site is overgrown with dense bramble vegetation and contains probable evidence of a former commercial use (picture framing business?), being littered with broken glass, timber and other debris. There is also evidence of a concrete pad, which is also becoming buried under vegetation.

9/2016/0174 - Land at Sealwood Lane, Overseal, Swadlincote DE12 6JP



The site is generally open fronted and visible from Sealwood Lane and two adjoining public footpaths – number 36, the route which passes along Sealwood Lane; and number 6, which passes along the northern boundary. The site lies close to the highest ground in immediate to wider area being close to the crest of Mount Pleasant. There are extensive, open views across the surrounding countryside to the south, and equally uninterrupted views back towards the site from a number of public routes.

## **Proposal**

The proposed development comprises the demolition of the existing structures and the erection of two dwellings fronting Sealwood Lane, posing as single storey bungalows with rooms in the roofspace. Both dwellings would incorporate traditional features, such as segmental arched window heads and corbelled eaves and verges, and take access directly off Sealwood Lane; with integral single garages and sufficient space within the curtilage to accommodate the turning and parking of at least two vehicles each. One of the existing buildings would be retained until completion of the development in order to provide a habitat for barn owls which are present on the site.

## **Applicant's supporting information**

The Planning Statement draws on the previous decisions which did not resist the principle of development and outlines the further changes made to the scheme. It is advanced that the provision of two dwellings would provide some benefit to the local economy during construction and beyond, and whilst not significant in its own right it is argued that the development of smaller sites provides opportunities for smaller businesses. The proposal would also bring about a contribution towards the Council's housing needs whilst addressing an unkempt and untidy site without harming the character or appearance of the countryside. It is concluded that the proposal is sustainable development in accordance with the objectives of the NPPF.

A Bat Survey concludes that neither of the existing buildings have evidence of use by bats, although there is evidence of use by roosting barn owls as a permanent breeding site. As a result it is recommended that no work should be carried out during the breeding season whilst any clearance of site vegetation and demolition of buildings also avoids the bird nesting season. Temporary mitigation is recommended during the works.

A Reptile Survey has been undertaken at the request of Derbyshire Wildlife Trust. The Survey finds that the site contains a number of habitats and features suitable for reptiles and there are records in the locality of common lizard and slow worm. However, during the survey no reptiles were recorded and it is therefore considered likely that reptiles are absent or are at a very low population density. The Survey contains a list of recommendations to mitigate for initial site clearance and should any species come to light during the course of development.

A River Mease Impact Assessment recognises the potential impacts of the development would depend on a range of factors, such as scale and nature of the proposal, the timing of works, the distance to the sensitive receptor and the impacts of intervening land use. It is concluded that the application site lies only just within the SAC and at least 3km from the Mease itself, which is argued to be a

considerable distance; there are considerable farming and other activities which are likely to affect the catchment in the intervening land; and the development is small-scale, low density on a site where there are existing buildings and the footprint of the proposed development would be of a similar level to those existing buildings. It is therefore deduced that potential impacts are low and that suitable precautions can be applied during demolition, site clearance and the construction phases to adequately mitigate the risk. The increase in sewer loading would be mitigated for by way of the Developer Contribution Scheme (DCS), with surface water channelled into a sustainable drainage system (SuDS) to improve water quality before entering the storm water system.

## **Planning History**

- 9/2015/0796: Demolition of existing buildings and erection of 4 one to 1.5 storey dwellings – Refused October 2015 and presently subject to appeal
- 9/2014/1095: Demolition of existing buildings and erection of 4 detached two-storey dwellings – Refused June 2015
- 9/2010/0324: (adjoining site to the east) Demolition of existing dwelling (Coppice Farmhouse) and replacement with a detached two-storey dwelling and double garage along with the erection of a single storey dwelling - Approved May 2010

## **Responses to Consultations**

Natural England has no objections with regard to effects on the River Mease SAC and SSSI subject to conditions in respect of the capacity at the local sewage treatment works, the submission of details relating to the proposed SuDS, and compliance with the Developer Contribution Scheme (DCS).

The Environment Agency (EA) notes the site is located on a principal aquifer and within a protection zone. The applicant is therefore referred to the EA's 'Groundwater Protection: Principles and Practice' (GP3) document, noting that precautions must be taken to avoid discharges and spills to ground both during and after construction. The EA also notes the site influences the River Mease SAC and the development should not contribute to any further deterioration in the water quality of this watercourse. It is recommended the DCS be applied with foul drainage connected to the foul sewer (subject to sufficient network capacity and/or upgrading where necessary prior to either of the properties being occupied).

The Contaminated Land officer considers that the development may be at risk from ground gas migration and accordingly recommends a ground gas condition.

The Pollution Control officer considers the development, being close to existing residential properties, should be made subject to conditions to control hours of construction and deliveries as well as use of generators/pumps and burning of waste during works.

The County Highway Authority refers to comments made under previous applications where it was noted that whilst numbers of movements are not known, previous uses would have involved agricultural and commercial vehicles; visibility onto Sealwood

Lane is acceptable and, owing to its relatively short length, the proposal is unlikely to result in any significant danger or inconvenience to users; and whilst the limited carriageway width and absence of footways is not ideal, it was not considered a highway objection could be sustained given the likely low speeds and the visibility from Green Lane onto Burton Road being acceptable. Based on the fact the current application now proposes half the number of dwellings previously proposed; there are no objections subject to conditions relating to formation of the new access and visibility splays, and the provision and retention of parking space.

Derbyshire Wildlife Trust (DWT) commented under the previous application. It was considered that the survey work undertaken in respect of bats was satisfactory, but the presence of breeding barn owls, a specially protected species, required special attention. A building on the western boundary is proposed for retention during construction works but the other building, which also supports barn owl, is to be removed/demolished. DWT therefore highlighted the need for alternative temporary provision to be made, and this advice remains consistent under this application. A further survey is recommended immediately prior to the commencement of any work and the western building is temporarily retained, whilst one of the dwellings should incorporate a permanent accessible nest space. DWT also notes evidence of nesting house sparrow, a Species of Principal Importance, and recommends a further condition requiring the erection of two house sparrow terraces within the development. The Trust also considers the Reptile Survey to be adequate. Conditions to address these matters and other biodiversity interest are recommended.

## **Responses to Publicity**

Overseal Parish Council raises the following concerns:

- i) increase in the traffic problems on A444;
- ii) the school cannot cope with the children who would seek to attend;
- iii) even if there were space at the school for a further classroom, which there is not, it would not be sufficient as the children are likely to be of differing ages;
- iv) secondary schools are also unable to cope with increased demand;
- v) medical facilities in the village are over-stretched at present and could not deal with the additional demand; and
- vi) other public services are being reduced (e.g. the fire service).

Six objections have been received, raising the following concerns:

- bb) this proposal does not address the objections of the previous applications;
- cc) the area is outside of the village boundary;
- dd) this proposal is neither sustainable, nor for affordable local housing;
- ee) reference to other dwellings to support the application is not appropriate;
- ff) one new build would be more appropriate for this location;
- gg) no building greater in height than the current barns would be appropriate;
- hh) the dwellings would be higher than bungalows and not be in keeping at that point of the lane, standing proud of other dwellings;
- ii) all two storey properties on Green Lane and Sealwood Lane are farmhouses;
- jj) this site is one of the most prominent/highest in the area for many miles around;

- kk) the proposal would be sited on elevated ground and would remain overbearing;
- ll) the ridge height is actually 0.5m higher than the previous application;
- mm) poor quality design;
- nn) existing problems with the volume and speed of traffic on Green Lane and Sealwood Lane would be compounded by this proposal;
- oo) conflict between walkers and horse riders with vehicular traffic;
- pp) since the previous applications there is increased traffic coming from Short Wood Farm greyhound kennels at the end of Sealwood Lane; and
- qq) disturbing the ancient hedgerows would cause irrevocable damage to the existing habitat and wildlife;

One representation in support has been received, considering the proposal to be a perfect solution for the site, in keeping with the area and will tidy up the lane.

### **Development Plan Policies**

The relevant policies are:

- Saved Local Plan 1998:
- Housing Policies 5, 8 and 11 (H5, H8 and H11); Environment Policies 1, 10 and 11 (EV1, EV10 and EV11); and Transport Policy 6 (T6).

### **Emerging Development Plan Policies**

The relevant policies are:

- Submission Local Plan Part 1: S1 (Sustainable Strategic Growth Strategy), S2 (Presumption in Favour of Sustainable Development), S4 (Housing Need), S6 (Sustainable Access), H1 (Settlement Hierarchy), SD1 (Amenity and Environmental Quality), SD2 (Flood Risk), SD3 (Delivering Sustainable Water Supply, Drainage and Sewerage), BNE1 (Design Excellence), BNE3 (Biodiversity), BNE4 (Landscape Character and Local Distinctiveness), INF2 (Sustainable Transport), INF7 (Green Infrastructure) and INF8 (The National Forest).

### **National Guidance**

- National Planning Policy Framework (NPPF), particularly paragraphs 6, 7, 8, 14, 17, 32, 49, 55, 58, 59, 109, 118, 121, 203, 204 & 206.
- National Planning Policy Guidance (PPG), particularly ID:26 (Design), ID:3 (Housing land availability), ID:50 (Rural Housing), ID:21a (Conditions) and ID:23b (Obligations).

### **Local Guidance**

- Housing Design and Layout SPG
- River Mease DCS

### **Planning Considerations**

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

- The principle of development;
- Impact on local services and facilities;
- Design and visual impact;
- Highway matters; and
- Biodiversity.

Members should make note of the previous reason for refusal, applied to both of the recent applications identified above. This stated:

*“The design of the proposed development would be out of keeping, out of scale and overbearing on the existing settlement, contrary to the Saved Local Plan Housing Policy 11 and Chapter 7 of the NPPF”.*

Notwithstanding the following assessment, with the sole matter of contention relating to design and visual impact, Members should be wary of introducing new reasons to resist the proposal.

## **Planning Assessment**

### The principle of development

The site, together with existing properties in the vicinity, is some distance from the village confines boundary. The proposal thus conflicts with saved Housing Policy 5 in that it does not qualify as infill or for exception housing in the countryside, as well as saved Environment Policy 1. Nevertheless H5 and EV1 are policies relevant to the supply of housing and must be considered out-of-date in the context of the NPPF and the existing shortfall in respect of the 5 year housing land supply.

Notwithstanding this, if a 5 year supply were to exist either now or in the near future, it is still necessary to determine whether the proposal is sustainable in the round, as per the test set out in paragraph 14 of the NPPF. Returning to H5, this policy can be afforded little weight given it is failing to boost significantly the supply of housing and meet the identified needs (as made clear in the emerging Plan). In this context the proposal qualifies as ‘unavoidable’ under EV1 and turns to be examined against the qualitative elements of that policy – one of which extends to consideration of design and visual impact.

Drawing on the site’s location, it is not an unreasonable distance from services and facilities in Overseal – a village which is identified in the upper tier for villages in the emerging settlement hierarchy. Development of this quantum is thus considered to be appropriate in principle, and is certainly ‘organic’ in terms of the rate of growth. Furthermore it should be noted that the site may qualify as ‘brownfield’ under the definition in the NPPF, depending on whether the former commercial persisted sufficiently to establish this use permanently. In any case the site has been vacant for a considerable period of time with no reasonable expectation that it is likely to be used either in association with an agricultural use or for commercial purposes, and it does not make an identifiable positive contribution to the character of the area. The introduction of a use which brings about an active stewardship of the site would assist in achieving this objective. Drawing these matters together, it is considered that, whilst outside of the settlement confines, the proposal aligns with paragraph 55 of the NPPF which seeks to place housing in rural areas where it can help to sustain

existing services and communities; and in this respect is considered to be sustainable in principle – irrespective of the 5 year housing land supply situation.

### Impact on local services and facilities

The number of dwellings proposed does not trigger the need criteria for financial contributions towards recreation, health and education facilities. Overseal is well served by a range of local services and facilities, including a church, shops, a public house, takeaways, etc. such that occupants of the two dwellings proposed would likely make use of such facilities and contribute to the local economy in a positive fashion. The short term economic benefits of the construction phase also add to the positive benefits of the proposal.

### Design and visual impact

This matter formed the sole reason for refusal on the previous applications. As highlighted above, this forms the crux of assessment of this current proposal. The previous refusals focussed on the development being (a) out of keeping, (b) out of scale and (c) overbearing on the existing settlement. These three points have been examined in some detail as part of the current appeal against the most recent refusal.

#### (a) Out of keeping

Housing fronting onto Green Lane and Sealwood Lane are exclusively single plot depth. There is no tandem or 'backland' development in the vicinity, with dwellings fronting onto and having a visual association and relationship with the highway and public thoroughfares. In general, dwellings along these two lanes are also set some distance back from the highway, with large intervening front gardens.

The previous proposal would have brought about frontage development facing Sealwood Lane, but also tandem development to the rear. With public footpaths to both the front and rear of the site, such an arrangement would be conspicuous and this would be even more pronounced from Sealwood Lane by way of the shared driveway – it could be argued that this would be uncharacteristic of the locality. The proximity of the built form to the highway did not assist either, with the frontage plots just 6 metres from the carriageway edge, whilst the density of development (a useful tool in establishing whether a proposal harmonises in relation to neighbouring buildings and the local area) would have equated to 18.2 dwellings per hectare (dph) – considerably higher than the circa 6dph to 12dph as is the general norm in the immediate vicinity.

This proposal addresses this issue by limiting the development to fronting Sealwood Lane only. In turn this allows for the properties to fall back into the site and achieve a more generous front garden. The density of the development would fall to circa 9dph – sitting comfortably amongst the existing character and pattern of development in this locale. For these reasons, the proposal is no longer considered to be out of keeping.

#### (b) Out of scale



Dwellings in the vicinity are predominantly single storey bungalows. In the majority, the eaves and ridge lines are low to the ground, respecting the rising landform. This assists in ensuring built form does not rise prominently above the village and open countryside to the south. Where two-storey dwellings exist, these are mainly former isolated farmsteads (or their subsequent replacements); whilst any one-and-a-half storey dwellings (i.e. those with higher eaves lines and/or dormer windows) are positioned towards lower contours.

The existing buildings represent a limited built footprint on the wider site and follow the aforementioned character in terms of scale. Previously the dwellings fronting Sealwood Lane carried higher eaves – some 3.5m from ground level whereas existing bungalows in the vicinity have eaves at around 2.5m. Coupled with a considerable depth (range) and 45 degree pitch, the ridge lines sat at around 7m – well above the predominant counterparts in the vicinity.

This proposal seeks to address the previous concerns by removing suggestion of a 1.5 storey design through omission of the dormer windows. The presence of rooflights in their place is not considered to provide the same perception of scale, and the roof form would still exist in the same profile with or without them. The eaves and ridge lines for plot 2 align with bungalows in the vicinity, whilst the levels for Plot 1 would be reduced by some 200mm and the eaves and ridge by a further 150mm – adding to the overall reduction in scale. As a result, the ridge and eaves levels of both dwellings are considered to harmonise with the aforementioned pattern in the locality to the degree that they do not appear out of scale.

#### (c) Overbearing on the existing settlement

In the context of the previous refusal, this is a reference to the position and elevation of the development (as opposed to neighbouring amenity issues) and its failure to assimilate into views of the site and the wider environs. It was felt it appeared dominant and overbearing against the backdrop of other urban form.

The above discussion regarding the density of the built form, the position of the development on the highest ground along Sealwood Lane and Green Lane, the proximity of built form to the highway and the general scale of the dwellings now proposed; is considered to address this perception of an overbearing development.

As previously noted, the site has little visual quality and makes a very limited contribution to the open and rural character of the countryside. In the wider context of residential form and the rural vernacular being reflected in the appearance of these dwellings (i.e. header, cill, verge and eaves detailing, and a traditional roof pitch); it is considered that the proposed development would appear as a continuation of the Coppice Farm development and compare favourably with Coppice Farm. Most importantly, it is considered that the proposed development would not have a significant or demonstrable impact on the character or appearance

of the area, nor on the amenities of neighbouring occupiers, and consequently the objectives of the NPPF would not be compromised.

### Highway matters

The Highway Authority considers that this proposal would not generate a level or type of traffic which would be undesirable – particularly in the context of previous use(s). It should be remembered that Sealwood Lane and Green Lane are not through roads and the level of traffic is quite low in relative terms. In this light it is not considered the impact could be demonstrated as severe under the scope of paragraph 32 of the NPPF. Suitable vehicular access can be provided and whilst pedestrians would have to use the carriageway and/or public rights of way to access services and facilities in Overseal; it not considered an unattractive route to the degree it would reasonable preclude this option. Car parking would be provided within the site at a ratio of at least 3 spaces per dwelling, which is more than advocated in SPG. On street parking is therefore unlikely.

### Biodiversity

The consultation response of the Wildlife Trust confirms that impact on protected species and species of importance can be satisfactorily mitigated for. No substantive change is apparent since the determination of the previous application. The subsequent use of the site, with appropriate landscaping secured by condition, could provide an overall enhancement in habitat terms.

With the outfall from the site influencing the River Mease SAC and SSSI, the application has been screened in accordance with the Habitat Regulations. It is concluded that there is not likely to be a significant impact arising. Mitigation by way of the River Mease DCS remains necessary however to satisfy this conclusion, and there is a requirement for a contribution of £708 towards water quality management.

### Conclusion

With matters of principle, highway safety, biodiversity and impact on local services consistent with previous findings, the focus is on whether this revised submission overcomes the reason for refusal given on the previous applications. For the above reasons it is concluded that this scheme satisfies all relevant design aspirations and the concerns raised by Members and third parties to the previous proposals. Regard must be had to the presumption in favour of sustainable development (paragraph 14 of the NPPF) in that the benefit of housing towards the 5 year supply (and the existing deficit) has to be balanced against the harm arising. Moreover, to justify resisting the proposals the harm must significantly and demonstrably outweigh the benefit. It is considered now that it cannot be reasonably argued that the proposal would bring about visual harm, but instead would provide a net benefit in design and visual terms.

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 delegated authority be granted to the Planning Services Manager to secure the signing of a legal agreement under Section 106 of the Act in pursuit of the contribution as set out in the planning assessment above; and

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

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

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

2. The development hereby permitted shall be carried out in accordance with plans/drawings 16/CFO/01, 15/CFO/02, 15/CFO/03c, 15/CFO/04c, 15/CFO/06b; 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 works of demolition or construction, and no deliveries shall be received or dispatched from the site during the construction phase, other than between the hours of 0800 and 1800 Monday to Friday and the hours of 0800 and 1300 on Saturdays. There shall be no works or deliveries during the construction phase on Sundays or Public Holidays with the exception of work needed during an emergency.

Reason: In the interests of protecting the amenities of neighbouring properties.

4. There shall be no burning of waste on site during the demolition and construction phase, whilst no generators or pumps shall be used during the demolition and construction phase without details having first been submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of protecting the amenities of neighbouring properties.

5. Prior to any works commencing on site, including demolition of any of the buildings, a scheme of hard and soft landscaping which shall include indications of all existing trees and hedgerows on the land and details of those to be retained, together with measures for their protection in the course of development, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the protective measures shall be installed prior to any works commencing on site whilst all hard landscaping works shall be completed prior to first occupation of the development.

Reason: In the interests of the appearance of the area and to ensure existing vegetation is adequately protected.

6. Prior to any works commencing on site, including demolition of any of the buildings, the entire frontage of the site with Sealwood Lane shall be cleared and maintained throughout the life of the development clear of any obstruction exceeding 600mm in height relative to the level of the Lane for a distance of 2m into the site from the highway boundary in order to ensure that visibility available to drivers emerging onto Sealwood Lane is maximised.

Reason: In the interests of highway safety, recognising that adequate visibility is required during both the construction and occupation phases.

7. Prior to any works commencing on site, including demolition of any of the buildings, a barn owl nesting/roosting box shall be provided on site in accordance with a scheme to be submitted and approved in writing by the Local Planning Authority. The box shall be erected at least 30 days prior to works commencing, shall not be subjected to disturbance during demolition and construction works and shall maintained in place thereafter.

Reason: In the interests of safeguarding and enhancing habitat for protected species.

8. Immediately prior to the commencement of any demolition on the site, a further survey shall be carried out to ascertain whether there are any barn owls nesting within the buildings. If barn owls are found to nesting then no demolition works shall take place until such time as the nesting period has ended and the young have left the nest.

Reason: Barn owls nest all year round and an up-to-date survey would ascertain whether the demolition of the building is appropriate at that time, in the interests of safeguarding protected species.

9. No development involving the construction of a dwelling shall commence until details to show the provision of nesting facilities for barn owls to be incorporated within at least one of the dwellings hereby approved have been submitted to and approved in writing by the Local Planning Authority. The works shall be carried out in accordance with the approved details and the facilities shall be provided before the dwelling is first occupied and shall be retained as such thereafter.

Reason: In the interests of safeguarding and enhancing habitat for protected species.

10. No development involving the construction of a dwelling shall commence until details to show the provision and location of at least two house sparrow terraces within the development have been submitted to and approved in writing by the Local Planning Authority. The terraces shall be installed in accordance with the approved details prior to first occupation of the development hereby approved.

Reason: In the interests of the preservation and enhancement of a Species of Principal Importance.

11. No development involving the construction of a dwelling shall commence until a suitable scheme for the prevention of ground gas ingress has been submitted to and approved in writing by the Local Planning Authority. Alternatively the site shall be monitored for the presence of ground gas and a subsequent risk assessment completed in accordance with a scheme to be agreed with the Local Planning Authority, which meets the requirements given in Box 4, section 3,1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'. Upon completion of either, verification of the correct installation of gas prevention measures (if any) shall be submitted to and approved in writing by the Local Planning Authority prior to their incorporation (if relevant) and the subsequent occupation of the development hereby permitted.

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.

12. No development involving the construction of a dwelling shall commence until details of a scheme for the disposal of surface and foul water shall be submitted to and agreed in writing by the Local Planning Authority. The submitted scheme shall include a detailed SuDS and soakaway plan to ensure the River Mease water quality conservation targets can be met, along with details to confirm adequate capacity for the relevant waste water treatment works to receive foul flows (if foul water is discharge to a public sewer). The approved scheme shall be carried out in conformity with the details which have been agreed before the development is first brought into use.

Reason: To ensure that the integrity of the River Mease Special Area of Conservation is not compromised, and in the interests of pollution and flooding control.

13. No development involving the construction of a dwelling shall commence until details of the finished floor levels of the dwellings hereby approved, and of the ground levels of the site relative to adjoining land levels, have been submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be constructed in accordance with the agreed levels.

Reason: To protect the amenities of adjoining properties and the locality generally.

14. No development involving the construction of a dwelling shall commence until 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 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.

15. Notwithstanding any details submitted or the provisions of the Town and Country Planning (General Permitted Development) Order 2015, before the erection of any boundary treatments plans indicating the positions, design, materials and type of boundary treatment to be erected shall be submitted to and approved in writing by the Local Planning Authority. The boundary treatment(s) shall be completed in accordance with the approved details before the respective dwelling is first 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.

16. All planting, seeding or turfing comprised in the approved details of soft 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.

17. Prior to the first occupation of any new dwelling hereby permitted, the new accesses, parking and manoeuvring space shall be laid out in accordance with application drawing 16/CFO/06b, provided with measures to prevent surface water run-off from within the site discharging onto Sealwood Lane and maintained throughout the life of the development free of any impediment to their designated use.

Reason: In the interests of highway safety.

#### Informatives:

This project has been screened to assess its impact on the River Mease SAC under the Conservation of Habitat and Species Regulations 2010. The assessment has concluded that the development would cause no significant impact and therefore an Appropriate Assessment is not required.

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 the Derbyshire Wildlife Trust, East Mill, Bridge Foot, Belper, Derbyshire DE56 1XH, telephone 01773 881188.

The routes of Public Footpaths 6 and 36 must remain open, unobstructed and on their legal alignment at all times. There should be no disturbance to the surface of the routes without prior authorisation from the Rights of Way Inspector for the area. Consideration should be given to members of the public using the routes at all times. A temporary closure of the routes may be granted to facilitate public safety subject to certain conditions. Further information may be obtained by contacting the Rights of Way Section at Derbyshire County Council, Shand House, Dale Road South, Matlock, Derbyshire DE4 3RY, telephone 01629 539781. If a structure is to be erected adjacent to the rights of way, it should be installed within the site boundary so that the widths of the rights of way are not encroached upon.

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 533190 for further information.

The Highway Authority recommends that the first 5m of the proposed access driveway should not be surfaced with a loose material (i.e. unbound chippings or gravel etc.). In the event that loose material is transferred to the highway and is regarded as a hazard or nuisance to highway users the Authority reserves the right to take any necessary action against the householder.

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).

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

In dealing with this application, the Local Planning Authority has worked with the applicant in a positive and proactive manner through pre-application discussions, seeking to resolve planning objections and issues, 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.

**Item**                **1.3**

**Reg. No.**            **9/2016/0098/FM**

**Applicant:**  
**Mr Neil Martin**  
**9 Scarsdale Avenue**  
**Allestree**  
**Derby**  
**DE22 2LA**

**Agent:**  
**The Derby Architecture Co**  
**44 West Bank Road**  
**Allestree**  
**Derby**  
**DE22 2FZ**

**Proposal:**            **THE ERECTION OF EXTENSIONS AND ALTERATIONS  
TO EXISTING WORKSHOP AND GARAGE TO CREATE  
A DWELLING AT LAND TO THE REAR OF 89  
EGGINTON ROAD ETWALL DERBY**

**Ward:**                **ETWALL**

**Valid Date:**        **27/01/2016**

**Reason for committee determination**

Councillor Mrs Brown has requested that this application be brought to Committee to debate the issues in this case which are finely balanced.

**Site Description**

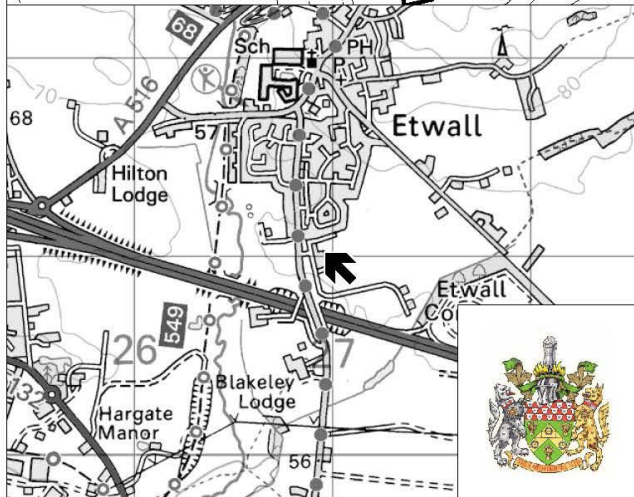
This is a substantial original outbuilding that may have served one or both of the dwellings fronting Egginton Road, numbers 87 and 89, plus a large detached double garage/store/workshop. The outbuilding forms a part of the boundary to 3 Grove Park that lies to the east of the application site, a high boundary wall then extends from that application building for a part of the shared boundary between the application site and 3 Grove Park and then there is a hedge for the remainder of that boundary. 3 Hollies Court has a boundary fence on the southern boundary that extends adjacent to the existing garage and beyond. 87 and 89 Egginton Road have a substantial leylandii type hedge on its rear, eastern boundary in front of the outbuilding, some 5 metres high. On the application side of the boundary this hedge has been cut back to reveal the boundary fence and a Spruce tree which is protected by a preservation order lies in the rear garden of 3 Grove Park.

**Proposal**

The proposal is a resubmission of a previous application that was refused planning permission and for which a subsequent appeal was dismissed. The current scheme proposes a two storey extension behind the existing garage/store/workshop which would link to the existing two storey outbuilding as well as a single storey garage on the southern side of the existing two storey outbuilding. The existing garage would



9/2016/0098 - Land to the rear of 89 Egginton Road, Etwall, Derby DE65 6NP



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South Derbyshire District Council. LA 100019461. 2014

be converted to a kitchen/dining area linking in to the ground floor of the proposed two storey extension with a living room and reception at ground floor level, a study, shower room, lobby, guest bedroom with en-suite also at ground floor level. A new attached single garage is also proposed on the other side of the two storey outbuilding. At first floor level the existing two storey outbuilding would contain two bedrooms, both with en-suite bathrooms, with the first floor of the new two storey extension containing a landing as well as a master bedroom with en-suite and dressing room.

The main differences between the previous scheme that was refused permission and dismissed at appeal and the current scheme are that the first floor element of the two storey link extension has been relocated; the western roofslope of the two storey link extension has been hipped rather than gabled; the ground floor of the two storey link extension has been set further away from the boundary with No.3 Hollies Court; the first floor of the two storey link extension has been set further away from the boundary with No. 3 Hollies Court, even further than the ground floor (though closer to the shared rear boundary with No 3 Park Grove); the finished floor level of the two storey link extension would be set lower than previously proposed and 'dug-in'; the existing garage is proposed to have the western gabled roof replaced with a hipped roof; and rooflights have been set at 1850mm relative to first floor internal floor level.

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

The application is accompanied by a Design and Access Statement which describes the site and the buildings as well as the nature of the proposal. It explains that in the opinion of the applicant the proposals comply with the Council's adopted standards as well as planning policies and describes the nature of the development. It explains that care has been taken to redesign the proposals to further avoid overshadowing beyond that shown in the previous scheme.

### **Planning History**

9/2013/0095 - The change of use from workshop to a residential dwelling and the erection of a link to garage incorporating a garden room and an extension on south elevation – Approved 25-Apr-13

9/2013/0096 - The erection of a double garage – Approved 09-Apr-13

9/2014/0832 - The erection of extensions and alterations to existing workshop and garage to create a dwelling – Withdrawn 31-Oct-2014

9/2014/1049 - The erection of extensions and alterations to existing workshop and garage to create a dwelling (resubmission of application ref: 9/2014/0832) – Refused for the following reason:

*"Because of its bulk and location the proposed two-storey extension would have an over dominant and overbearing impact on adjoining dwellings, in particular No 3 Hollies Court, to the detriment of the amenity of the occupiers, thereby contrary to South Derbyshire Local Plan Saved Housing Policy 11 and the core principle in paragraph 17 of the NPPF, to seek a good standard of amenity for all existing occupants of land and buildings. Furthermore the two-storey extension, because of*

*its bulk and form, would not be in keeping with the modest scale of the original host building, thereby contrary to Saved Housing Policy 7.”*

An appeal was lodged against that refusal but the Inspector dismissed the appeal. On the first point (neighbour impact) the Inspector concluded that the proximity of what would be a substantial amount of new built form close to and along much of the rear garden boundary of No 3 Hollies Court, would represent such a significant change that it would result in an over-dominant impact on outlook. He stated that the presence of the new built form, which together with the garage to be converted would visually enclose a significant part of the rear garden of No 3, would be so imposing as to feel overbearing. As a result, he considered that the proposals would unacceptably harm the neighbours' enjoyment of their property, especially their back garden.

On the second point (design) the Inspector concluded that the proposal would have an acceptable overall appearance and that the new two-storey extension would be sympathetic and proportionate addition to the host buildings. He stated that the proposals would be in keeping with the character and appearance of the host building and the local area.

### **Responses to Consultations**

The County Highway Authority has no objection subject to a condition relating to visibility.

The Environmental Health Manager (Contamination) has no objection but requests a condition relating to protection of the building from ground gas ingress and to cover any unexpected contamination.

### **Responses to Publicity**

Two letters have been received that object to the development for the following reasons:

- a) I request a site visit be made by Planning Committee to see for themselves the very little difference between the two plans.
- b) The Design and Access Statement incredibly states the proposals are broadly similar to the single storey scheme previously approved – it is not.
- c) Discussions were had with the applicant and options explored but the applicant did not contact us about the submission and the revised scheme does not reflect our suggestions.
- d) The applicant's desire for a garden view from the bedroom result in the view from the rear of our property would be the two storey extension not the trees and sky we see now.
- e) The slight set back of 0.86m will make little difference to the impact of the extensions.
- f) The proposals would still overshadow the rear of our property.
- g) The proposals would have an impact in terms of height, mass, overshadowing and loss of privacy, unlike the approved scheme which was single storey.
- h) The two storey extension would overshadow the whole of our rear garden, being the full length of it.
- i) The size is not typical of any in the village and would be out of keeping.

- j) It is too large and too close to No. 3 Hollies Court and will overshadow my garden and obscure views from the rear of my house.
- k) The proposals would still have an overbearing effect on my neighbours property, creating a tunnelling effect and affecting light to their house and garden.
- l) The set back of 1.1m would have little effect on the visual appearance of the building from my garden.
- m) The approved plans were acceptable as they were single storey.
- n) I do not believe that a number of discussions have taken place between the applicant and the neighbour.

Etwall Parish Council reiterated its objection to the previous scheme in which it stated that the proposals would take away privacy for the surrounding properties which was reflected in condition 3 of the approved scheme. It stated that the property will be a full two storeys and will overlook surrounding properties contrary to that condition. It also stated that the two storey extension will have considerable mass and when viewed from 3 Hollies Court will overshadow the garden, reducing light particularly in winter and will increase overshadowing. It states that the appeal was dismissed by the Inspector and the revised plans do not mitigate the previous concerns of the Parish, District or Inspector.

### **Development Plan Policies**

The relevant policies are:

- Saved Local Plan 1998:

### **Emerging Development Plan Policies**

The relevant policies are:

- The Adopted Local Plan: Housing Policies 5 & 11.
- Submission Local Plan Part 1: Policy BNL1.

### **National Guidance**

- National Planning Policy Framework (NPPF).
- National Planning Policy Guidance (NPPG).

### **Local Guidance**

- SPG - 'Housing Design and Layout'

### **Planning Considerations**

The main issues central to the determination of this application are whether the proposals have adequately addressed the previous reasons for refusal read against the appeal decision. As such the key matters are:

- Design
- The impact on the amenity of neighbours.

## Planning Assessment

### Design

The previous application was refused by Planning Committee and in the reason for refusal reference was made to the design of the previous proposals, stating that the two-storey extension, because of its bulk and form, would not be in keeping with the modest scale of the original host building. This matter was considered by the Inspector when considering the appeal who stated that the proposal would have an acceptable overall appearance and that the new two-storey extension would be sympathetic and proportionate addition to the host buildings. He also stated that the proposals would be in keeping with the character and appearance of the host building and the local area.

Whilst the current proposals are different from the appeal scheme they follow the same general design principles and are not so different from the appeal scheme to reasonably conclude that the design of the proposals would be inappropriate. The proposed siting, size and design of the proposed extensions and conversion, relative to the surroundings, would create an acceptable form of development that would not be detrimental to the overall visual amenity of the area. The development must be assessed on the basis of the immediate location. As such in design terms the proposals are considered to be acceptable.

### The impact on the amenity of neighbours

The previous application was refused by Planning Committee and in the reason for refusal reference was made to the adverse impact on neighbours that would have resulted from the previous proposals, stating that because of its bulk and location the proposed two-storey extension would have an over dominant and overbearing impact on adjoining dwellings, in particular No 3 Hollies Court, to the detriment of the amenity of the occupiers. This matter was considered by the Inspector when considering the appeal who stated that the proximity of what would be a substantial amount of new built form close to and along much of the rear garden boundary of No 3 Hollies Court, would represent such a significant change that it would result in an over-dominant impact on outlook. He stated that the presence of the new built form, which together with the garage to be converted would visually enclose a significant part of the rear garden of No 3 Hollies Court, would be so imposing as to feel overbearing. As a result, he considered that the proposals would unacceptably harm the neighbours' enjoyment of their property, especially their back garden.

The current proposals have been amended following discussions with officers and the neighbours at No 3 Hollies Court, although agreement with the neighbours was unable to be reached. Nevertheless, a view has to be taken on whether the revisions to the proposals are considered adequate to overcome that element of the reason for refusal, taking into account the Inspector's appeal decision on the previous scheme.

The outbuilding lies in close proximity to neighbouring houses, in particular 3 Hollies Court and 2 & 3 Grove Park. Firstly, examining the impact of the conversion including new extensions on the 2 Grove Park, that interrelationship is similar to that which would have resulted from the previously approved scheme, with a single first floor bedroom window in the side, southern elevation, albeit that the bedroom has been moved further from that shared rear boundary. As such no undue impact on the

amenity enjoyed by the occupiers of that property arises above that which would result from the implementation of the approved scheme.

Turning to the impact of the proposal on the occupiers of 3 Grove Park, whilst the proposed two storey extension has been moved closer to the shared boundary with that property and it would have an impact on the occupiers of that property in terms of overbearance, overshadowing and loss of light, the proposal would not have any undue impact that would be at such a level that would offend the Council's standards to justify refusal of the application. In terms of loss of privacy and overlooking there would be no first floor windows facing that property except a proposed first floor bedroom window serving the master bedroom. However, the distances between that bedroom window and the principal lounge window, principal bedroom window and conservatory of 3 Grove Park would be set at distances that comply with the standards set out in the SPG. Accordingly in terms of loss of privacy and overlooking the proposal would not result in any undue impact on the occupiers of that property to reasonably justify refusal of the application.

With regards to the impact of the development on the amenity of the property to the west, 3 Hollies Court, that property has principal kitchen and lounge windows facing the proposal as well as principal first floor bedroom windows. Those windows would face the two storey extension as well as the ground floor windows in the extended and converted outbuilding serving the reception, study, lobby and guest bedroom windows at ground floor as well as the en-suite and bedroom window at first floor level. However, in terms of the distances between these windows, the proposed development complies with the standards set out in the SPG. Whilst an objection has been received from the occupiers of No 3 Hollies Court which states that the revisions do not address their concerns or those raised by the Inspector, in terms of loss of privacy and overlooking, the proposal would not, notwithstanding the comments received, have any undue impact that would be at such a level to reasonably justify refusal of the application.

The proposed two storey extension would be further away from the boundary with No 3 Hollies Court (the property on which the impact was deemed unacceptable in the appeal decision) than the previous scheme such that the first floor element would be set between approximately 3.7m and 4.3m away from that boundary. Furthermore, the hippping of the western part of the two storey element of the link extension and the proposed hippping of the roof of the existing garage which is currently gabled and approximately 5.5m from the kitchen windows of No 3 Hollies Court, all help to reduce the impact of the structure on the occupiers of the neighbouring dwelling. It should be noted that No 3 Hollies Court has an unconventional layout between the dwelling and its garden which results in the existing garage already lying directly in front of the principal kitchen windows and adjacent to the lounge. The existing single storey garage also forms a bulky addition to the garden boundary, behind the boundary fence. Whilst the proposals would extend the mass of the garage along the shared garden boundary the first floor element has been set further away. Whilst the proposals would still create a significant mass relative to the rear garden of that property, on balance, it is considered that the proposals have been adequately amended such that they would not create such a significant adverse impact on the amenity of the occupiers of that property in terms of overbearance to justify refusal of this scheme.

## Conclusion

The proposal would result in the reuse of a traditional outbuilding for productive use in a manner that would create an acceptable form of development whilst not having any undue impact on the amenity of neighbours.

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

## **Recommendation**

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

1. The development permitted shall be begun before the expiration of three years from the date of this permission.  
Reason: To conform with Section 91(1) of the Town and Country Planning Act, 1990 (as amended by section 51 of the Planning and Compulsory Purchase Act 2004).
2. This permission relates to the plans validated by the Local Planning Authority on 27th January 2016, as well as the additional plans received on 26th April 2016 and any variation to the approved drawings may need the approval of the Local Planning Authority.  
Reason: For the avoidance of doubt as to what is approved.
3. Notwithstanding the details shown on the approved plans, prior to the first occupation of the dwelling hereby permitted, the windows serving the reception, study and lobby at ground floor as well as the en-suite and bedroom 3 on the western elevation of the converted outbuilding shall be permanently glazed in obscure glass in accordance with a scheme first approved in writing by the Local Planning Authority. Once installed these windows shall be permanently retained with obscure glass.  
Reason: To avoid overlooking of adjoining property in the interest of protecting privacy.
4. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (or any Order revoking and re-enacting that Order) no window or opening (other than any that may be shown on the approved drawings) shall be formed in any elevation or roofslope of the development hereby approved unless planning permission has first been granted by the Local Planning Authority.  
Reason: To avoid the possibility of overlooking in the interests of preserving the amenity of residents.
5. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (or any Order revoking and re-enacting that Order), the dwelling hereby permitted shall not be extended or altered externally, have its roof enlarged or altered, be provided with a porch, incidental building or structure, or be painted externally.  
Reason: In view of the form of the development, in the interests of visual amenity and to protect the amenity of neighbours.

6. Gutters and downpipes shall have a black finish and be fixed direct to the brickwork on metal brackets.

Reason: In the interests of the appearance of the building, and the character of the area.

7. All plumbing and service pipework, soil and vent pipes, electricity and gas meter cupboards and heating flues shall be located inside the building unless specifically agreed in writing by the Local Planning Authority. The type, number, position and finish of heating and ventilation flue outlets shall be agreed in writing with the Local Planning Authority before development is commenced.

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

8. No part of the development shall be carried out until precise details, specifications and, where necessary, samples of the facing materials to be used in the construction of the external walls and roof of the extensions and the making good of brickwork within the buildings 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.

9. No development shall take place until a suitable scheme for the prevention of ground gas ingress has been submitted to and approved in writing by the Local Planning Authority (LPA). Alternatively, the site shall be monitored for the presence of ground gas and a subsequent risk assessment completed in accordance with a scheme to be agreed with the LPA, which meets the requirements given in Box 4, section 3,1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.

Upon completion of either, verification of the correct installation of gas prevention measures (if any) shall be submitted to and approved in writing by the LPA prior to the occupation of the development hereby permitted.

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.

10. 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.

11. The boundary hedgerow shall be reduced in height to a level no greater than 600mm above the adjacent carriageway channel level and shall thereafter be retained at that height throughout the lifetime of the development.



Reason: In the interests of highway safety.

Informatives:

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.

The applicant is advised that following consultation with Derbyshire Wildlife Trust, they advise that if any work is undertaken that affect the roof space, voids and/or roof tiles consideration should be given to the possibility of bats and that work should proceed with caution. If any bats or signs of bats are found work should cease immediately and advice should be sought from a professional ecologist.

For assistance in complying with planning conditions and other legal requirements applicants should consult "Developing Land within Derbyshire - Guidance on submitting applications for land that may be contaminate". This document has been produced by local authorities in Derbyshire to assist developers, and is available from:

[http://www.south-derbys.gov.uk/environment/pollution/contaminated\\_land/default.asp](http://www.south-derbys.gov.uk/environment/pollution/contaminated_land/default.asp)

The administration of this application may be expedited if completion or verification evidence is also submitted to the Environmental Protection Officer (Contaminated Land) in the Environmental Health Department at:

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

Further guidance can be obtained from the following:

1. CIRIA C665: Assessing the risks posed by hazardous ground gases into buildings
2. CLR 11: Model Procedures for the Management of Contaminated Land.
3. CLR guidance notes on Soil Guideline Values, DEFRA and EA.
4. Investigation of Potentially Contaminated Land Sites - Code of Practice, BSI 10175 2001.
5. Secondary Model Procedure for the Development of Appropriate Soil Sampling Strategies for Land Contamination, R & D Technical Report P5 - 066/TR 2001, Environment Agency.
6. Guidance for the Safe Development of Housing on Land Affected by Contamination Environment Agency. ISBN 0113101775.
7. BS 8576:2013 Guidance on investigations for ground gas. Permanent gases and Volatile Organic Compounds (VOCs).

**Item**                **1.4**

**Reg. No.**           **9/2015/0893/FM**

**Applicant:**  
**Mr Mark Goodwin**  
**75 Derby Road**  
**Hilton**  
**DE65 5FG**

**Agent:**  
**Mr Mark Pringle**  
**Making Plans Architecture**  
**Ivy Lodge**  
**5 Twyford Road**  
**Willington**  
**DE65 6DE**

**Proposal:**           **THE ERECTION OF A DETACHED BUNGALOW AND A  
GARAGE AT 49 EGGINTON ROAD HILTON DERBY**

**Ward:**                **HILTON**

**Valid Date:**        **23/09/2015**

**Reason for committee determination**

Councillor Mrs Plenderleith has requested that this application be brought to Committee as local concern has been expressed about a particular issue.

**Site Description**

The application site is an area of garden which is located at the rear of 49 Egginton Road and would be accessed from Egginton Road with a garage erected adjoining a garage already approved in connection with an extension at 49 Egginton Road to create a double garage. The site is relatively level and has recently been cleared. The site lies south of properties on Willowfields and immediately to the south of the rear garden of an adjacent property to the north-west, 47 Egginton Road. The site lies within the village development boundary and is in a residential area.

**Proposal**

The application is in full and the proposals were amended during the consideration of the application and are to erect a bungalow on the site comprising a hall, a joint lounge/kitchen/dining room, 3 bedrooms and a bathroom. Access would be accessed via Egginton Road with parking in a garage which would adjoin a recently approved garage to serve the existing property, 49 Egginton Road, to create a double garage on the front with the bungalow then set at the rear with modest rear garden.

**9/2015/0893 - 49 Egginton Road, Hilton, Derby DE65 5FG**



## **Planning History**

9/2014/0580 - Outline application for the erection of a new bungalow and detached garage with access for approval now and all other matters reserved for future approval – Approved 14-Aug-2014.

9/2014/0837 - The erection of extensions and garage and alterations to vehicular access – Approved 04-Nov-14.

## **Responses to Consultations**

The County Highway Authority has no objection subject to conditions relating to visibility splays, access being modified first, two parking spaces being provided and any gates being set 5m into the site. Informatives are also requested.

## **Responses to Publicity**

Two letters of objection received on the original plans and a further two letters on the amended plans which can be summarised by the following points:-

- a) Will a fence be erected around the whole of the property as we had a summerhouse which has now gone and a 5ft wall?
- b) It is sad that the older part of the village is slowly vanishing and dominated by new estates – our property dates back to 1897 and is one of the oldest.
- c) The existing mixed hedge borders 47 & 49 Egginton Road.
- d) The size of the bungalow has increased from that shown on the outline and is now closer to my property infringing on light to 47 Egginton Road.
- e) It will box in my property.
- f) It will dominate and loom over my property and garden.
- g) It is 3 bedrooms, not two.
- h) The hedge is not conifer or evergreen, is in parts lower than 2m meaning views can be taken through it and they have destroyed the fence at the fence at the bottom of my garden.
- i) Clearing the site has exposed the roots of the hedge.
- j) It is too big for the plot.
- k) There is no need for this development.
- l) It will affect privacy of neighbours.
- m) The toilet window will face the living area of the adjacent property which affects privacy.
- n) There will be no turning space leading to reversing on or off onto a busy road, close to a junction causing an obstruction.

## **Development Plan Policies**

The relevant policies are:

Saved Local Plan 1998: Environment Policies 1 and 8; Transport Policy 6; Housing Policies 5 and 11.

## **Emerging Development Plan Policies**

The relevant policies are:

Emerging Local Plan Part 1: S2, H5, H11, SD1, SD4, BNE1, INF2

### **National Guidance**

- National Planning Policy Framework (NPPF) Para 11-14 (The Presumption in favour of sustainable development), Para 17 (Core Principles), Chapter 6 (Housing), Chapter 7 (Requiring good design), Paras 186 & 187 (Decision-taking), Para 196 & 197 (Determining applications), Paras 203-206 (Planning conditions and obligations).
- National Planning Policy Guidance (NPPG)

### **Local Guidance**

- SPG Housing, Design and Layout

### **Planning Considerations**

Whilst this application is not a reserved matters application in relation to the existing, extant outline permission, that outline approval sets a precedent for the principle of erecting a dwelling on the site. As such the main issues central to the determination of this application are:

- Design and layout
- Highway safety, and
- Impact on neighbours

### **Planning Assessment**

#### Design and layout

The proposal would provide a vehicular access from Egginton Road with a garage on the frontage adjoining a recently approved garage to serve the existing property, 49 Egginton Road. Pedestrian access would then be provided to the bungalow which is proposed to be at the rear. In terms of the character of the area there are a mix of house styles and designs in the locality and the garage would create frontage buildings with the bungalow behind but screened to some extent by the garage which itself would consolidate the appearance of the frontage of this part of the street. The bungalow is of modest scale but even so has details in the building to add interest to it. The NPPF at paragraph 64 states that permission should be refused for development of poor design that fails to take opportunities for improving character and quality of an area. The stance is echoed in Saved Local Plan Policy H5 which requires development to be in keeping with the scale and character of the settlement and emerging Local Plan Policy BNE1 which states, amongst other things, that all new development will be expected to be well designed, embrace the principles of sustainable development, encourage healthy lifestyles, enhance people's quality of life as well as being visually attractive and appropriate. In this case the principle of providing a dwelling in this location would create an acceptable form of development that would not be detrimental to the overall visual amenity of the area and the design achieves an acceptable development. As such in

design/character terms the proposal is considered to accord with the requirements of the NPPF.

### Highway safety

In terms of highway safety it is noted that Egginton Road is a busy, classified road, with the junction of Willowfields close by to the west and as such the proposal needs to be appropriate to this location. The scheme would result in an overall increase in the comings and goings and in order to come to a view on highway safety the opinion of the County Highway Authority has been sought. In their reply they have stated that they do not object subject to the conditions. In policy terms it is noted that Local Plan Transport Policy 6 states that planning permission will not be granted for development which interferes with the free and safe flow of traffic and that policy is relevant as it echoes the NPPF at paragraph 32 which states, amongst other things, that safe and suitable access to the site can be achieved for all people; and development should only be prevented or refused on transport grounds where the impacts of development are severe. Policy INF2 of the emerging Local Plan states, amongst other things, that planning permission will be granted for development there is no undue detrimental impact upon highway safety. Examining the proposal it is clear that whilst the proposal will increase comings and goings, and in view of the fact that outline permission is already in place with access agreed in this location and with these general arrangements, it is considered that the proposal would not be contrary to the advice contained on Local Transport Policy 6 as well as paragraph 32 of the NPPF and therefore the proposal is considered to be acceptable in terms of highway safety.

### Impact on neighbours

Saved Housing Policy 11 of the adopted South Derbyshire Local Plan states, amongst other things, that new housing will be permitted provided that the development provides reasonable amenities in terms of light, air and privacy for existing and new dwellings. emerging Local Plan Policy SD1 states that the Council will support development that does not lead to adverse impacts on the environment or amenity of existing and future occupiers within or around proposed developments.

This approach is complemented and supported by the aims of the Council's adopted Supplementary Planning Guidance "Housing Design and Layout" which seeks to achieve a reasonable level of amenity for occupants of existing and new dwellings and states that new single storey dwellings will be considered in terms of their effect on existing dwellings, on their merits. Furthermore, one of the core principles of the National Planning Policy Framework (NPPF), as set out in para. 17, is to secure a good standard of amenity for all existing and future occupants of land and buildings.

As the proposal would be single storey and no main habitable rooms would be provided on the southern elevation, the proposed dwelling, if approved, would not result in any undue impact on the amenity of the occupiers of the existing property, 49 Egginton Road, or the property to the east, 51 Egginton Road due to the distance to that property. The only other impact would be on the amenity of the occupiers of the property to the north, 47 Egginton Road, as the proposed bungalow would lie immediately south of most of the length of their main garden area. 47 Egginton Road also has main habitable room windows in the east and southern elevations. However, those windows are at ground floor and can be adequately screened by

fencing and there is an existing hedge on that boundary which provides some screening. The layout and design is not considered to result in any undue adverse impacts on the level of amenity that the occupiers of that dwelling could reasonably expect to enjoy. Saved Housing Policy 11 of the adopted South Derbyshire Local Plan states, amongst other things, that new housing will be permitted provided that the development provides reasonable amenities in terms of light, air and privacy for existing and new dwellings. emerging Local Plan Policy SD1 states that the Council will support development that does not lead to adverse impacts on the environment or amenity of existing and future occupiers within or around proposed developments. Furthermore, one of the core principles of the National Planning Policy Framework (NPPF), as set out in para. 17, is to secure a good standard of amenity for all existing and future occupants of land and buildings. The Council's Supplementary Planning Guidance "Housing Design and Layout" also states that in terms of their effect on existing dwellings, on their merits, and in this case the proposal is considered to create a suitable living environment for the existing neighbours as well as the future occupiers of the proposed dwelling and is in accordance with those planning policies.

### Conclusion

The site lies within the village development boundary, would be provided with an appropriate access and adequate parking, is of an acceptable design without having any undue impact on the amenity of neighbours and as such is considered to be acceptable.

### **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 the revised drawings received by the Local Planning Authority on 16th February 2016 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. The dwelling shall not be occupied until a detailed scheme for the boundary treatment of the site, including position, design and materials, and to include all boundaries or divisions within the site, has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be completed before the dwelling is first occupied or such other timetable as may first have been agreed in writing with the Local Planning Authority.  
Reason: In the interests of visual amenity to protect the amenity of neighbours.

4. No development shall commence until details of the finished floor levels of the buildings hereby approved and of the ground levels of the site relative to adjoining land levels have been first submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be constructed in accordance with the agreed level(s).

Reason: To protect the amenities of adjoining properties and the locality generally, recognising that initial ground works can set the benchmark for final levels for construction purposes.

5. Notwithstanding the submitted details, no development involving the construction of the dwelling hereby approved shall commence until precise details, specifications and, where necessary, samples of the facing materials to be used in the construction of the external walls and roof of the building and all hardsurfaced areas 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.

6. Before any works involving the construction of the new dwelling commences, the entire site frontage for a distance 2m back from the highway boundary, shall be cleared of, and subsequently maintained throughout the lifetime of the development clear of, any object greater than 1m in height (0.6m in the case of vegetation) relative to the adjoining nearside carriageway channel level.

Reason: In the interests of highway safety.

7. Before any works involving the construction of the new dwelling commences the access shall be modified, laid out and surfaced to base course in accordance with the approved plans.

Reason: In the interests of highway safety.

8. Prior to the occupation of the dwelling hereby permitted the off street car parking spaces, including the space in the garage, shown on the approved plans, shall be provided and the spaces shall then be retained for their intended use throughout the lifetime of the development.

Reason: In the interests of highway safety.

9. Notwithstanding the provisions of the Town and Country Planning Act (General Permitted Development) Order 2015 (or any Order revoking or re-enacting that Order), any gates or other barriers to the vehicular access shall be set back a distance of 5 metres from the highway boundary and shall be hung so as to open inwards only.

Reason: In the interests of highway safety.

10. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, or any statutory instrument amending, revoking and/or replacing that Order; the dwelling hereby permitted shall not be altered externally, enlarged, extended or provided with ancillary outbuildings without the prior grant of planning permission on an application made to the Local Planning Authority in that regard.



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

**Informatives:**

The Highway Authority recommends that the first 5m of the proposed access driveway should not be surfaced with a loose material (i.e. unbound chippings or gravel etc.). In the event that loose material is transferred to the highway and is regarded as a hazard or nuisance to highway users the Authority reserves the right to take any necessary action against the householder.

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 Section 163 of the Highways Act 1980, where the site curtilage slopes down towards the public highway measures shall be taken to ensure that surface water run-off from within the site is not permitted to discharge across the footway margin. This usually takes the form of a dish channel or gulley laid across the access immediately behind the back edge of the highway, discharging to a drain or soakaway within the site.

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 to overcome planning 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.

10/05/2016

**Item**                **1.5**

**Reg. No.**           **9/2015/1023/TP**

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

**Agent:**  
**Mr Martin Buckley**  
**South Derbyshire District Council**  
**Civic Offices**  
**Civic Way**  
**Swadlincote**  
**DE11 0AH**

**Proposal:**           **THE FELLING AND PRUNING OF TREES COVERED BY**  
**SOUTH DERBYSHIRE DISTRICT COUNCIL TREE**  
**PRESERVATION ORDER NUMBER 131 AT WILLOW**  
**PARK WAY, YATES AVENUE AND MAPLE DRIVE**  
**ASTON ON TRENT**

**Ward:**                **ASTON**

**Valid Date:**        **28/10/2015**

**Reason for committee determination**

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

**Site Description**

There are four areas of trees to be worked on along the Willow Park Way, Yates Avenue and Maple Drive area of Aston on Trent. The immediate area is residential.

**Proposal**

The application proposes to carry out various works to several trees in four different areas.

**Applicant's supporting information**

None.

**Planning History**

None.

**Responses to Consultations**

**9/2015/1023 - Trees at Willow Park Way/Yates Avenue/Maple Drive, Aston on Trent**



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South Derbyshire District Council. LA 100019461. 2014

The tree officer is of the opinion that all works proposed are necessary and suitable for each tree.

### **Responses to Publicity**

A representation was received by email (dated 23/12/2015) requesting the addition of trees within this application. The tree officer looked into this matter and chose not to include any works for any other trees within this application.

### **Development Plan Policies**

The relevant policies are: None.

### **Emerging Development Plan Policies**

The relevant policies are: None

### **National Guidance**

- National Planning Policy Framework (NPPF) : None
- National Planning Policy Guidance (NPPG) : None.

### **Local Guidance**

- SPG : None

### **Planning Considerations**

The main issue central to the determination of this application is whether the works to the trees are justified.

### **Planning Assessment**

The works proposed are in the interests of safety and sound tree management and are therefore considered acceptable.

### **Recommendation**

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

1. The work hereby approved shall be carried out within two years of the date of this consent.  
Reason: To conform with Regulation 17(4) of the Town and Country Planning (Tree Preservation) (England) Regulations 2012, in order to enable the local planning authority to consider any proposals beyond this period in the interests of safeguarding the amenity value of the tree(s).
2. The work shall be carried out in accordance with BS3998:2010 - Tree Work.  
Reason: To safeguard the health of the tree(s).

#### 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.

**Item**                **2.1**

**Reg. No.**        **9/2015/0906/FM**

**Applicant:**  
**Mrs J Arthers**  
**Dale Farm,**  
**Bretby Lane**  
**Newton Solney**  
**Burton on Trent**  
**DE15 0RX**

**Agent:**  
**Philip Anthony**  
**PCA Building Services Consultancy**  
**40 Uttoxeter Road**  
**Mickleover**  
**Derby**  
**DE3 9GE**

**Proposal:**        **The conversion of an agricultural building to residential use at Dale Farm Newton Lane Newton Solney**

**Ward:**            **REPTON**

**Valid Date:**     **14/10/2015**

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

The application is reported to Committee at the request of Councillor Stanton because there are special personal circumstances of the applicant which members should consider, the committee should debate the issues in this case which are very finely balanced and unusual site circumstances should be considered by committee.

#### **Site Description**

The site is located on Bretby Lane off Newton Lane between the settlements of Newton Solney and Bretby. Newton Lane is a narrow road enclosed by high hedges and Dale Farm is situated approximately 55 metres from the boundary of Newton Road, separately by fields within the acreage of the farm.

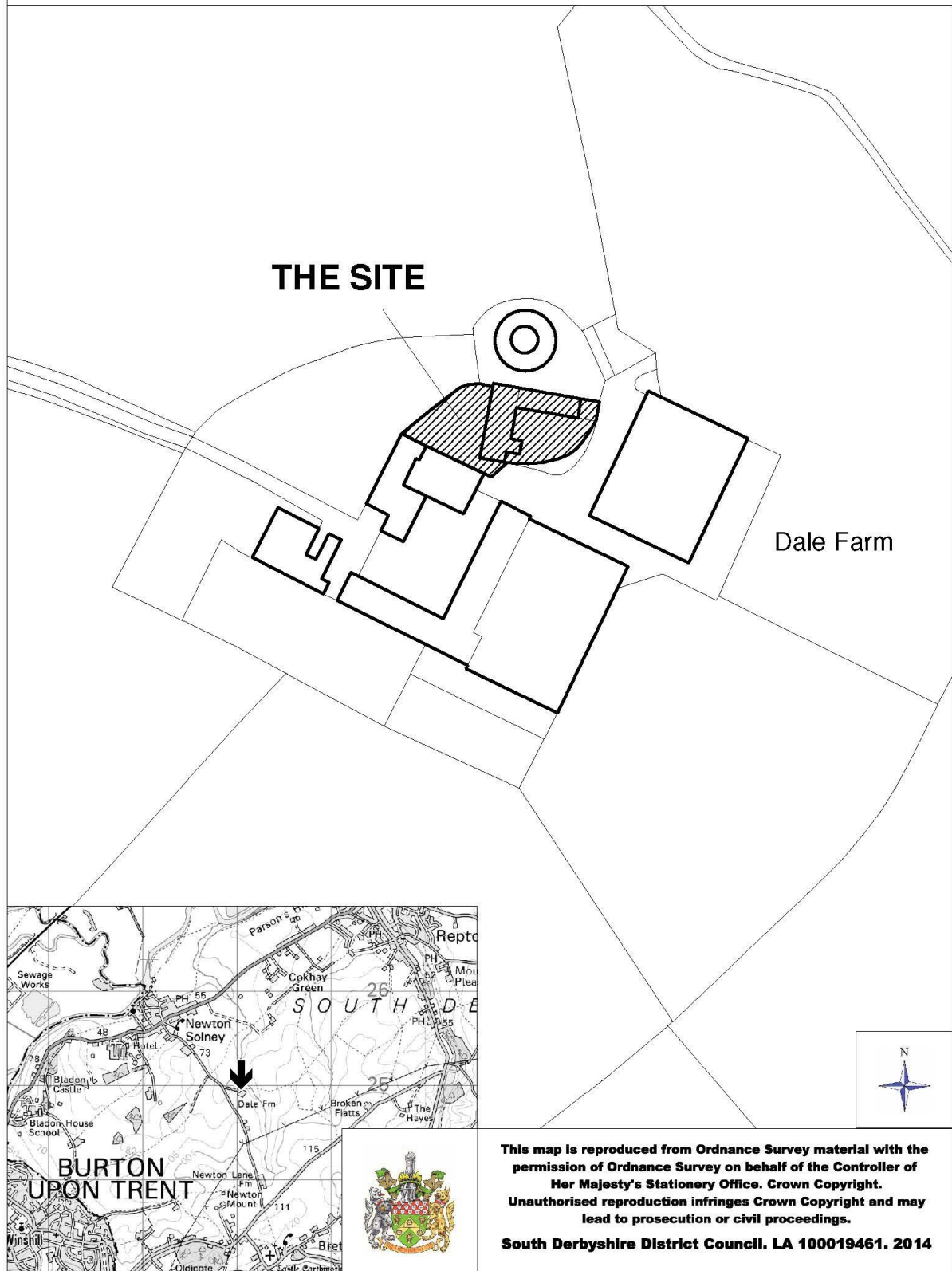
The farm house is located at the entrance to the farm and outbuildings and agricultural buildings are to the south east and north east with open fields adjacent.

#### **Proposal**

Conversion of a stable block and implement store to a single dwelling is proposed for the farm's owner. The stable block is a single storey brick and tile building to the north east of the farm house and the implement shed is attached but has natural stone walls and the roof timbers visible as the tiles have been removed. A conversion to create a two bedroom dwelling with integral garage and a small garden to the south east and two parking spaces to the west is proposed.

#### **Applicants' supporting information**

9/2015/0906 - Dale Farm, Newton Lane, Newton Solney, Burton on Trent  
DE15 0RX



The Design and Access Statement outlines planning policy, the site description, site context, proposal, access and landscaping and sustainability. It states the farm is currently used for stabling 25 horses with accommodation for a further 10 and harvesting of haylage for use on site and for sale. The Structural Appraisal states that the stable block is structural sound and just requires works to comply with Building Regulations. The implement store walls are capable of refurbishment with repointing and a new inner wall erected. The implement store floor slab and roof require total refurbishment and the original tiles would be re-used.

The conversion and occupancy by the farm's owner would allow the daughter and her family to take up residency in the farm house. The daughter is actively involved in the stabling and haylage and currently travels from Newton Solney every day, whilst her mother concentrates on the office side of the business.

The Bat Survey concluded that Stables B and C had no potential for bats and stable A had a negligible potential for bats.

### **Planning History**

9/2004/0245 – Conversion into three dwellings of the stable block, Refused May 2004 (Adequate housing supply and countryside location reason)

0198/0834 – The renewal of planning permission 9/1192/0668/F for the conversion into three dwellings and a garage block of the farm buildings, Granted March 1998

0197/0792 – The extension and conversion to provide a dwelling of the northern most farm building, March 1997

1192/0668 - The conversion into three dwellings and a garage block of the farm buildings, Granted April 1993

### **Responses to Consultations**

The Highway Authority object to the application on the basis of additional vehicle movements at a location where forward visibility and emerging visibility are substandard, contrary to the best interests of highway safety. Previous permissions were subject to access improvements within controlled land opposite the access which is no longer shown within the control of the applicant. These permissions have not been implemented and access improvements have not been completed.

Derbyshire Wildlife Trust considers that sufficient information has been provided in relation to ecology. No evidence of bats was found. Conditions are recommended in respect of bird mitigation for nesting birds and no works within the bird breeding season.

### **Responses to Publicity**

None

### **Development Plan Policies**

The relevant policies are:



Local Plan: EV1, H7, H11 and T6

The emerging Local Plan Part 1 policies include:

- S2 - Presumption in Favour of Sustainable Development, H1 – Settlement Hierarchy, SD1 - Amenity and Environmental Quality, BNE1 - Design Excellence, BNE3 – Biodiversity, BNE4 - Landscape Character and Local Distinctiveness, INF2 Sustainable Transport,

### **National Guidance**

- National Planning Policy Framework (NPPF) paragraphs 17, 28, 32 , 49, 55, 56, 58, 118, 196, 197
- National Planning Practice Guidance (NPPG) 26

### **Planning Considerations**

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

- Principle of development
- Highways Issues
- Character and Amenity

### **Planning Assessment**

#### Principle of development

The application site is located within the countryside and thus Local Plan Housing Policy H7 applies. In the countryside conversion of buildings to provide residential accommodation will be permitted provided that the building is of a form, bulk and design in keeping with its surroundings; it is suitable for conversion without extensive alteration, rebuilding and/or extension and it would be in keeping with the character of its surroundings. The Emerging Plan Policy H1 considers conversions within rural areas to be acceptable.

The framework in paragraph 28 advocates support of the rural economy and diversification of agriculture. In paragraph 55 it states new isolated homes in the countryside should be avoided unless there are special circumstances such as re-use of redundant or disused buildings that would lead to an enhancement to the immediate setting.

The proposal to convert an existing redundant stable and agricultural building that are low level traditional farm buildings adjacent to the existing farm complex is considered acceptable in principle. The Structural Appraisal submitted indicates that the conversion would not result in extensive alteration or rebuilding and only small extensions in terms of continuation of the roof on the stable and extension to the implement store to provide a garage are proposed. The design of the conversion is considered to be in keeping with the character of the surrounding farm buildings. The farm use has diversified into stabling and the proposal would enable the business to be run more efficiently by having the main employee on site. The implement store's conversion would enhance the appearance of the farm complex. The proposal is

therefore considered to comply with Local Plan policy H7, Emerging Local Plan Policy BNE1 e) and the Framework in this regard.

### Highway issues

Both the Local Plan Policy T6 and Emerging Plan Policy INF2 state that new development should have adequate provision for safe and convenient access. Framework paragraph 32 requires safe and suitable access to be achieved.

The Highway Authority contends that the existing access onto Newton Lane is substandard in terms of forward visibility and emerging visibility and any increase in vehicle movements would be contrary to the best interests of highway safety. As stated above the farm's current use is for stabling of 25 horses with accommodation for a further 10 and harvesting of haylage for use on site and for sale. Previous applications that were granted for additional residential conversions at the farm were subject to access improvements involving land opposite that was within the control of the applicant at the time. The blue line submitted with this application does not include this land and as such the applicant is not able to make the improvements to the access visibility required. The Highway Authority requires a sufficient forward visibility and a 2.4m x 70m visibility sightline in the south easterly direction. The Highway Authority made the suggestion that the access be moved to a position south of the existing access. This may result in the loss of significant lengths of hedgerow on Newton Lane which would have an impact on its character.

The agent has not provided reasons why the access visibility cannot be improved but has sought to justify why vehicle movements would not increase. He contends that the traffic flow into and out of the site is considerably less than when it was a full working farm to which lorries and tractors were entering and leaving the site throughout the day. He is of the opinion that traffic flow would reduce as the applicant's family would be living on the site and not travelling to and from the site as at present.

The personal circumstances of the applicant do not override the Highway objection to the increased use of a substandard access. The farm is currently used for stabling, however, there would be nothing to prevent it being used again in the future more intensively for traditional farming. Furthermore, upon granting planning permission, there would be no restriction on the farmhouse and converted dwelling being sold separately. Both of these options would result in the increase in use of the substandard access to the detriment of highway safety, contrary to Local Plan Policy T6, Emerging Local Plan Policy INF2 and Framework paragraph 32.

### Character and Amenity

The design and appearance of the conversion is considered acceptable as it would be in keeping with the existing buildings and those within the farm complex. New openings have been kept to a minimum and the character of the buildings would be retained and enhanced in accordance with Housing Policy H7. Adequate parking and garden space is proposed. The proposed conversion would not have an impact on the amenity of the existing farmhouse as it is 35m north east separated by existing stable buildings. The proposal therefore accords with Local Plan Policy Housing 11 and Framework paragraph 17.

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 proposal would result in the increase in use of a substandard access in terms of forward visibility and emerging visibility, whereby a safe and suitable access to the site cannot be achieved to the detriment of Highway safety, contrary to Local Plan Policy Transport 6, Emerging Local Plan Policy INF2 and Framework paragraph 32.

## **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 providing the opportunity to overcome reasons for refusal. However despite such efforts, the planning objection has not been satisfactorily addressed. As such it is considered that the Local Planning Authority has implemented the requirement set out in paragraphs 186 and 187 of the National Planning Policy Framework.

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

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

<b>Reference</b>	<b>Place</b>	<b>Ward</b>	<b>Result</b>	<b>Cttee/Delegated</b>	<b>Page</b>
9/2014/1039	Newton Solney	Repton	Allowed	Committee	59
9/2014/1140	Hartshorne	Woodville	Dismissed	Committee	71

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## Appeal Decision

Inquiry held between 23 and 25 February 2016

Site visit made on 24 February 2016

**by Nick Palmer BA (Hons) BPI MRTPI**

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

**Decision date: 13 April 2016**

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**Appeal Ref: APP/F1040/W/15/3121527**

**Land east of Newton Road, Winhill, Burton-upon-Trent, South Derbyshire**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Barratt Homes North Midlands against the decision of South Derbyshire District Council.
  - The application Ref 9/2014/1039, dated 29 October 2014, was refused by notice dated 4 June 2015.
  - The development proposed is up to 100 dwellings, including open space, access and associated service infrastructure.
- 

### Decision

1. The appeal is allowed and planning permission is granted for up to 100 dwellings at land east of Newton Road, Winhill, South Derbyshire in accordance with the terms of the application, Ref 9/2014/1039, dated 29 October 2014, subject to the conditions set out in the attached schedule.

### Procedural Matters

2. The application is for outline planning permission with all detailed matters apart from access reserved. I have considered the proposal on this basis.
3. An illustrative master plan was submitted with the application and subsequently amended. I have considered the amended plan on the basis that it is illustrative of a possible layout.

### Main Issues

4. From all that I have read, heard and seen I consider the main issues in the appeal to be:
    - i) the effect of the proposed development on the character and appearance of the area;
    - ii) the contribution that the proposal would make to housing supply; and
    - iii) whether the proposal would accord with the presumption in favour of sustainable development having regard to its accordance with the development plan and the economic, social and environmental dimensions of sustainable development.
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## **Reasons**

### *Character and Appearance*

5. The appeal site is open agricultural land consisting of two fields to the immediate north of Winshill which is a suburb of Burton upon Trent. The site is separated from the built up area by Dale Brook which forms a clear natural boundary feature including a number of trees. To the west of Newton Road is the open valley of the River Trent. The land levels rise on both sides of Dale Brook and fall towards the River Trent.
6. There are hedgerows along both sides of Newton Road which has a distinct rural character north of the built up area. A dwelling (Keepers Cottage) is adjacent to the road frontage and the south western part of the site and there is a large 19<sup>th</sup> century building (Bladon Paddocks) to the north. To the rear of that building are some former farm buildings which are included in the site.
7. The landscape to the east of Newton Road forms part of the Melbourne Parklands Landscape Character Area (Estates Farmlands) in the County Council's landscape character assessment<sup>1</sup>. The rising landform away from Dale Brook, the hedgerows along the field boundaries and the trees along the brook are typical of the Estates Farmlands landscape character. Bladon Paddocks and Keepers Cottage are consistent with the rural character of the area.
8. The rising land away from Winshill and in relation to the Trent valley gives the site prominence in the wider landscape. The site is visible at a distance from Burton upon Trent on the other side of the valley as well as from the residential area of Winshill. This combined with the clear separation of the site from the built up area and its distinct character gives the site some scenic value.
9. The boundary hedgerows are typical landscape features and the central hedge dividing the two fields is likely to be of historic interest in that it appears to pre-date the field enclosures of the 18<sup>th</sup> century. The central hedgerow would be substantially retained within the illustrative layout shown on the master plan and the hedges along the road frontages would be either retained or replanted.
10. For these reasons I consider that the site has some value as a landscape but that it is not exceptional in this respect. The site is representative of the landscape character but does not have rarity. The County Council<sup>2</sup> has assessed the landscape as being unified and coherent but that it is of secondary sensitivity. The Council's Landscape and Visual Impact Assessment<sup>3</sup> considers that the landscape has medium susceptibility to change.
11. For these reasons the landscape does not warrant protection in terms of its sensitivity. The site is not out of the ordinary in terms of its landscape value and thus is not a valued landscape which requires protection in accordance with paragraph 109 of the National Planning Policy Framework (the Framework).
12. It would be necessary to leave an open margin adjacent to the brook to avoid the easement for the gas main which runs adjacent to the brook. The

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<sup>1</sup> Landscape Character of Derbyshire (2003)

<sup>2</sup> Derbyshire County Council Technical Support Document 1: Areas of Multiple Environmental Sensitivity (2013)

<sup>3</sup> TEP Landscape and Visual Impact Assessment paragraphs 2.51 and 4.3

illustrative layout indicates wide areas of open space adjacent to the brook and the road frontage. The layout would differ from that of the urban area and would be set back from the historic buildings on Newton Road. However I see no reason why this aspect of the proposal would be harmful to the character and appearance of the area and indeed the generous areas of open space would give a more open character in relation to the adjacent countryside.

13. The function of the central hedgerow as a field boundary would clearly be altered as would its setting in the landscape but the illustrative layout shows this to be incorporated within a central area of open space. This historic landscape feature would still be legible as such and there is no evidence that its longevity would be prejudiced.
14. The proposed footway works may affect the hedges along the road frontages but the appellants propose to translocate or replant the hedges where necessary. The land on the western side of the road falls away but I saw on my visit that there appears to be adequate space to replant or translocate.
15. The proposal would include mitigation in the form of the open space areas and new planting to be provided. However the proposed development would significantly affect the character and appearance of the area by extending the urban area into the countryside. The proposal would result in significant visual change to the site which would be widely visible. Although I find that the landscape does not have sufficient value to warrant protection, I also find for the above reasons that the proposal would be harmful in terms of its effect on the character and appearance of the area. Taking into account the visual prominence of the site I give significant weight to that harm.
16. The site is outside the defined settlement boundaries in the South Derbyshire Local Plan (LP) (1998) where saved Policy EV1 of the LP restricts new development unless it is unavoidable. Part A (iii) of that policy requires that the character of the countryside and the landscape quality are safeguarded and protected. That policy is not entirely consistent with the Framework in as much as paragraph 109 only requires the protection of valued landscapes. However its aim in general terms remains consistent with paragraph 17 of the Framework which requires the recognition of the intrinsic character and beauty of the countryside. For the reasons given the proposal would not accord with saved Policy EV1.
17. The South Derbyshire Submission Local Plan Part 1 (LPP1) is at an advanced stage in its adoption process, having been subject to examination. The Council has indicated that Policies BNE1 and BNE4 of that document are likely to be adopted in their current form. In accordance with paragraph 216 of the Framework significant weight can be given to those policies.
18. Policy BNE1 of LPP1 requires well designed development that responds to context and has regard to valued landscape. Policy BNE4 of LPP1 requires the protection and enhancement of the landscape through careful design and restricts development that would have an unacceptable impact on landscape character, visual amenity and sensitivity that cannot be satisfactorily mitigated.
19. The layout and design of the development are not matters for consideration but the illustrative layout demonstrates regard for the existing landscape features of the brook, trees and hedgerows. For these reasons the proposal would

accord with Policy BNE1 and in part with Policy BNE4 of LPP1. However the proposal would conflict with Policy BNE4 in terms of its visual impact.

#### *Housing Supply*

20. The Council accepts that it cannot demonstrate a five year supply of deliverable housing sites. There is currently a 4.2 year supply but the Council says that this will increase to over 5 years on adoption of LPP1 which is expected in May 2016. The appellant questioned the likelihood of the May adoption date and considered that this is more likely to be June or July taking into account possible objections in relation to a strategic allocation at Mickleover.
21. The identified annual housing requirement in the Council's trajectory is 1,295 dwellings per annum which is a step change from previous delivery rates. The Council has provided recent examples of developments which support its view that it is working towards this higher level of provision. There are also a number of outstanding planning applications and appeals which if approved would add to housing land supply. However if the annual requirement is not achieved this would have the effect of increasing the deficit.
22. It may be the case that the Council will be able to demonstrate a five year supply of deliverable housing sites in the near future. However that possibility is far from certain. Given that the supply is some way short of five years at the present time the proposed development would in terms of the number of dwellings proposed make a significant contribution to housing supply. The Framework<sup>4</sup> requires local planning authorities to boost significantly the supply of housing. For these reasons I attach significant weight to the benefit of the proposal in helping to address the shortage in housing land supply.

#### *Sustainability*

23. The site is said to be between 1.1km and 1.9km from local facilities in Winshill and 2km from the centre of Burton upon Trent. The local facilities include a convenience shop, primary school, high school and medical centre. Pedestrians would need to cross Newton Road and then cross back again but footpaths and crossing points are to be provided on both sides of the road. The road has a 40 mph speed limit and local residents say this is often exceeded. The local facilities are within walking distance but it is also likely that many residents would use their cars. The site has a reasonably good level of pedestrian access and the Highway Authority has no objection in terms of pedestrian safety.
24. The site would also have good accessibility by bicycle to the urban area and by public transport given that there are regular bus services along Newton Road. For these reasons the proposal would accord with paragraph 17 of the Framework in terms of making the fullest possible use of public transport, walking and cycling.
25. The illustrative master plan shows a potential footpath link between the development and Brookside. This provision may be funded by means of the contribution to be secured by the planning obligation but it cannot be relied upon because of uncertainty regarding the ownership of the land off Brookside.

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<sup>4</sup> Paragraph 47



26. The proposal would enable residents to support local services and the construction of the development would be of benefit to the local economy albeit for a temporary period.
27. The provision of new housing including a mix of housing types and affordable housing would be beneficial in the context of the identified shortfall. The generally good level of accessibility to services and facilities would be beneficial socially.
28. The site is indicated to be of very good agricultural land quality (Grade 2) on the Natural England Agricultural Land Classification map. However no detailed evidence has been presented in this respect. The loss of agricultural land does not form part of the reason for refusal and the Council indicated<sup>5</sup> that its loss would not be significant in relation to the total area of Grade 2 land available. However the loss of good quality agricultural land weighs against the proposal both environmentally and economically.
29. I have found that there would be harm to the character and appearance of the area and in this respect the proposal would not meet the environmental dimension of sustainable development. However the accessibility to services by means other than the car would accord with the environmental dimension. Protected species surveys were submitted with the application. The proposal would include an area of open space along its southern boundary and adjacent to Dale Brook which would provide a wildlife corridor. Subject to the imposition of conditions to safeguard habitats the proposal would have no adverse effect on biodiversity.
30. There is an easement adjacent to the gas pipeline through the southern part of the site within which development is restricted. The proposed wildlife corridor would coincide with that easement. It has also been demonstrated that the development would not be adversely affected in terms of flood risk given that it would be sited away from the areas at risk of flooding from Dale Brook.
31. Overall, considering these matters in the round the development would accord with the economic and social dimensions of sustainable development but there would be some harm in respect of the environmental dimension.

#### *Other Matters*

32. The Highway Authority has no objection to the proposal in terms of highway safety and I see no reason to disagree with that conclusion.
33. Local residents in objecting to the proposal have the support of their Member of Parliament. I have had regard to all other matters raised but those matters do not alter my conclusions on the main issues.

#### **The Unilateral Undertaking**

34. The Unilateral Undertaking would secure affordable housing, the provision of open space and a balancing pond and financial contributions towards outdoor and built sports facilities, transport infrastructure to be provided as part of the Burton Integrated Transport Strategy, primary and secondary schools and the monitoring of the submitted Travel Plan. Because the educational, transport and recreational needs arising from the development would relate to the

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<sup>5</sup> Mr Nash XX

adjacent urban area which is in Staffordshire the Council has agreed with East Staffordshire District Council and Staffordshire County Council that the financial contributions would be transferred to those authorities.

35. The need for improvements to education, sports and highway infrastructure arising from the development has been explained by East Staffordshire District Council and Staffordshire County Council. The financial contributions have been calculated using standard methodologies.
36. The Council has confirmed that in respect of all financial contributions the restriction on the number of pooled contributions as set out in the CIL Regulations<sup>6</sup> would not be exceeded.
37. The affordable housing provision is necessary to meet the Council's policy requirement. The open space is necessary to provide for the future residents' recreation. The balancing pond is necessary in order to provide for the sustainable drainage of the site.
38. The Travel Plan would require monitoring by the County Council. Because this would require annual audits of performance including liaison with the Travel Plan coordinator the contribution towards monitoring would be justified.
39. For these reasons the obligations contained in the Unilateral Undertaking are necessary and meet the other tests in regulation 122 of the CIL Regulations.

#### **Planning Balance**

40. I have found that there would be significant harm to the character and appearance of the area and I give significant weight to this consideration. I also give limited weight to the harm arising from the loss of good quality agricultural land.
41. The measures to be secured by the Unilateral Undertaking other than the affordable housing are neutral in the planning balance because they would offset the impacts of the development.
42. There would be no harmful effects in terms of highway safety, flood risk or proximity to the gas pipeline and these aspects should also be considered as neutral in the balance.
43. The proposal would be of significant benefit in addressing the identified shortfall in housing supply. There would also be significant benefit arising from the affordable housing provision.
44. I have found that the proposal would meet the social and economic dimensions of sustainable development. There would be harm in terms of the environmental dimension but also some benefits in this respect. Overall the economic, social and environmental gains would outweigh the harm to these dimensions of sustainable development.
45. It is common ground between the main parties that in the absence of a five year housing land supply, policies for the supply of housing are not up-to-date. To the extent that Policy EV1 of the LP restricts housing development outside settlements it is a policy for the supply of housing.

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<sup>6</sup> Community Infrastructure Levy Regulations 2010 regulation 123 (3)

46. Paragraph 14 of the Framework states that where policies are absent, silent or out-of-date, 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 as a whole.
47. The significant and limited weights that I have given to the identified harms do not outweigh the two significant weights that I give to the benefits of the proposal. The adverse impacts of granting permission do not therefore significantly and demonstrably outweigh the benefits of doing so.
48. The proposal would not accord with saved Policy EV1 of the LP or with Policy BNE4 of LPP1. I give reduced weight to Policy EV1 reflecting its lack of consistency with the Framework. Also, although I give a significant level of weight to Policy BNE4 given its advanced stage, it cannot carry full weight because it is not part of the development plan. Although I have found some conflict with the development plan the above material considerations indicate that permission should be granted.
49. Considered as a whole the development would be sustainable for the reasons given.

### **Conditions**

50. I have had regard to the tests in paragraph 206 of the Framework in imposing conditions. A list of conditions was agreed in broad terms between the main parties subject to a number of detailed comments. I have imposed those conditions subject to some changes as set out below.
51. Condition 4 sets out requirements in terms of reserved matters. The matters included are necessary to ensure that the detailed scheme provides open space, landscape planting, play facilities, details of levels and refuse bins and that access and parking arrangements are acceptable.
52. The Council requested that the details to be submitted under reserved matters should include at least one SuDS pond designed to permanently hold water. I appreciate that such ponds may be of value for biodiversity but no specific evidence has been provided to justify this requirement, including in the responses from the County Council and the Environment Agency. In the absence of specific justification such a requirement would not be necessary.
53. The Council also requested that details of phasing be submitted under reserved matters. The provision of the open space and its phasing is covered by the Unilateral Undertaking and I see no need to include a requirement to approve the phasing of the residential development.
54. Condition 5 is necessary to ensure that nesting birds are not adversely affected by construction works. Condition 6 is necessary to ensure that the development is not at unacceptable risk of flooding. Condition 7 is necessary to ensure hedges are protected during construction and that any translocation of hedges is controlled.
55. Condition 8 is necessary to ensure that barn owls are protected during the construction period. Condition 9 is necessary in the interests of highway safety and living conditions.

56. The Highway Authority requested the approval of details of a temporary access for construction purposes separately to the requirement to obtain full approval for the main proposed access. The appellant explained at the Inquiry that the main access would be constructed and used as the means of access for construction purposes and I see no reason to impose a separate condition in this respect.
57. Condition 10 is necessary in the interest of the health of the future occupants. Conditions 11 and 12 are necessary to ensure that the development meets the required standards in terms of sustainable drainage and to avoid pollution.
58. Condition 13 is necessary in the interest of biodiversity. Condition 14 is necessary in the interest of highway safety. Condition 15 is necessary to encourage sustainable travel.
59. Finally condition 16 is necessary to ensure that the approved landscaping is carried out in a timely manner. The Council requested a ten year establishment period for the planting scheme but five years would normally be adequate for this purpose and no specific evidence has been put forward to justify a longer period.

**Conclusion**

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

*Nick Palmer*

INSPECTOR

### **Schedule of Conditions**

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The details submitted pursuant to the reserved matters under condition 1 shall broadly be in accordance with the illustrative masterplan (ref EMS.2365.01.H) and section 5 of the Design and Access Statement (October 2014), and each application for reserved matters approval shall incorporate, as far as is relevant to that/those matter(s) and/or phase of development the following requirements:
  - (a) undeveloped areas of green infrastructure adjacent to existing hedgerows and trees and to the watercourse;
  - (b) tree planting within the street scene;
  - (c) detailed scheme(s) in respect of hedges to be replanted or trans-located;
  - (d) details of the ground levels, finished floor levels of the buildings and any retaining works;
  - (e) refuse bin collection points at the entrance to shared private drives, sufficient to accommodate two bins per dwelling served. The approved refuse bin collection points shall be provided before the dwellings to which they relate are occupied and shall be retained thereafter for that use.
  - (f) The road layout shall be designed in accordance with 'Manual for Streets' and include car parking provision of at least 2 spaces per dwelling. The spaces shall be provided before the dwelling(s) to which they relate are occupied and shall thereafter be retained for that purpose.
  - (g) A swept path analysis shall be submitted to demonstrate that service and emergency vehicles can successfully enter and manoeuvre within the site; and
  - (h) a detailed scheme for provision of a locally equipped area for play (LEAP).
- 5) No hedgerow, shrub or scrub shall be removed between 1 March and 31 August unless a survey for any nesting bird(s) has been undertaken by a competent ecologist and the results of the survey together with proposals for hedgerow, shrub or scrub removal have been submitted to and approved in writing by the local planning authority.
- 6) No development shall take place within the River Trent/Dale Brook flood plain as identified in the Flood Risk Assessment Ref 2013/1199 Rev A.

Finished floor levels of all residential buildings shall be set at a minimum of 600mm above the 1 in 100 year plus climate change flood level.

- 7) No site clearance, ground works or development shall take place until a scheme for the protection of hedgerows and trees has been submitted to and approved in writing by the local planning authority. The approved measures shall be carried out before any equipment, machinery or materials are brought onto the site and shall be maintained until all equipment, machinery and materials have been removed from the site.
- 8) No site clearance, ground works or development shall take place until a scheme of mitigation and enhancement for the protection of Barn Owls has been submitted to and approved in writing by the local planning authority. Development shall take place in accordance with the approved scheme.
- 9) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
  - i) storage of plant and materials used in constructing the development
  - ii) site accommodation
  - iii) loading and unloading of plant and materials
  - iv) the parking of vehicles of site operatives and visitors
  - v) routes for construction traffic
  - vi) hours of operation
  - vii) details of vehicle wheel cleaning facilities which shall be provided and retained during the ground works and construction periods; and
  - viii) pedestrian and cyclist protection and any proposed temporary traffic restrictions.
- 10) No development shall take place until a site investigation of the nature and extent of contamination has been carried out in accordance with a methodology which has previously been submitted to and approved in writing by the local planning authority. The results of the site investigation shall be made available to the local planning authority before any development begins. If any contamination is found during the site investigation, a report specifying the measures to be taken to remediate the site to render it suitable for the development hereby permitted shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures before development begins.

If, during the course of development, any contamination is found which has not been identified in the site investigation, additional measures for the remediation of this source of contamination shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures.
- 11) No development shall take place until the detailed design of 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 scheme shall demonstrate that the surface water run-off generated up to and including the 1 in 100 year plus 30% critical rain storm will not exceed the run-off from the undeveloped site following the corresponding rainfall event. The scheme shall be designed in accordance with Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version) and shall include all necessary measures for attenuation storage, highway drainage and outfall arrangements, and details of the management and maintenance of the system for the lifetime of the development. Development shall take place in accordance with the approved scheme.

- 12) No development shall take place until a scheme for the disposal of foul drainage has been submitted to and approved in writing by the local planning authority. Development shall take place in accordance with the approved scheme.
- 13) Before any dwelling is occupied a Habitat Management Plan for all retained and created habitats including measures for enhancement, management responsibilities and the time scale for implementation shall be submitted to and approved in writing by the local planning authority. The Habitat Management Plan shall be implemented in accordance with the approved details.
- 14) Before any dwelling is occupied the new road junction and pedestrian facilities on both sides of Newton Road shall be constructed in accordance with plan Ref NTT/2204/007 Rev P1. The road shall be constructed to at least base level with a minimum width of 5.5m and 10m radius kerbs. Visibility splays of 2.4m x 128m in both directions shall be provided within which there shall be no obstruction exceeding 600mm in height. The gradient of the access shall not exceed 1 in 30 for the first 10m into the site from the highway boundary. The footways shall be provided as shown on plan Ref NTT/2204/007 Rev P1 to a width of 2m.
- 15) The approved Travel Plan (Ref NTT2204TP dated 7 October 2014) shall be implemented in accordance with the targets, measures, incentives and monitoring measures as specified therein.
- 16) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the first occupation of the dwellings or the completion of the development, whichever is the sooner; and any 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.

## **APPEARANCES**

### **FOR THE LOCAL PLANNING AUTHORITY:**

Jack Smyth, of Counsel

He called

Ian Grimshaw MRTPI CMLI

Director of The Environment  
Partnership Ltd

Chris Nash MRTPI

Principal Area Planning Officer, South  
Derbyshire District Council

### **FOR THE APPELLANTS:**

Hugh Richards, of Counsel

He called

Jeremy Peachey BSc (Hons) M.LD CMLI

Landscape Design Director, Pegasus  
Group

Michael Downes MRTPI

Director, Aspbury Planning Ltd

### **INTERESTED PERSON:**

Bryan Wolsey Dip TP

Dip Arch. Cons MRTPI

on behalf of the Bladon Fields  
Residents Group

## **DOCUMENTS SUBMITTED AT THE INQUIRY**

### **Submitted by the Council**

- 1) List of suggested conditions
- 2) E-mail from Mr Nash to Mr Galij 8 February 2016
- 3) Responses from consultees on the planning application
- 4) Closing submissions on behalf of the Council

### **Submitted by the Appellant**

- 5) Opening statement on behalf of the appellant
- 6) Unilateral Undertaking
- 7) Closing submissions on behalf of the appellant

### **Submitted by Mr Wolsey**

- 8) Submissions on behalf of the Bladon Fields Residents Group



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## Appeal Decision

Inquiry held on 15 - 18 March 2016

Site visit made on 17 March 2016

**by Gloria McFarlane LLB(Hons) BA(Hons) Solicitor (Non-practising)**

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

**Decision date: 05 April 2016**

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**Appeal Ref: APP/F1040/W/15/3119206**

**Land at Ticknall Road, Hartshorne, Swadlincote**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Property Bond Ltd against the decision of South Derbyshire District Council.
  - The application Ref 9/2014/1140, dated 24 November 2014, was refused by notice dated 15 April 2015.
  - The development proposed is residential development (class C3), public open space, green infrastructure, school car park and associated works at land at Ticknall Road, Hartshorne, Derbyshire.
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### Decision

1. The appeal is dismissed.

### Procedural matters

2. The application was an outline application with all matters reserved except for access to Main Street and Ticknall Road. It was, however, agreed between the Parties that there would be a maximum of 64 houses and that this maximum limit could be imposed by a planning condition.
3. It was agreed by the Parties that the Council could not demonstrate a five years' supply of housing and that the shortfall is significant. It was also agreed that the delivery of this site would not undermine the provisions of the Emerging Local Plan post adoption, whenever that might be<sup>1</sup>. In the circumstances no evidence was called in respect of the issue of the five years' housing land supply and I will take the agreed position into account in my determination of the appeal.
4. The reasons for refusal refer to saved Policies EV1 and EV8 of the South Derbyshire Local Plan 1998 (the Saved Local Plan) and Policy BNE1 of the Emerging Local Plan Part 1 (the Emerging Local Plan). It has, however, been agreed between the Parties that many other policies in both the Saved Local Plan and the Emerging Local Plan are relevant<sup>2</sup> and I will take the relevant policies referred to into account where appropriate. Similarly many other paragraphs of the National Planning Policy Framework (NPPF) are relevant over and above those mentioned in the reasons for refusal.

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<sup>1</sup> Statement of Common Ground Part 4

<sup>2</sup> Statement of Common Ground paragraphs 3.8 and 3.9

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5. In addition to the two listed buildings named in the reasons for refusal, Manor Farm and St Peter's Church, the settings of which are considered below, there are a number of other listed buildings in Hartshorne together with a number of non-designated heritage assets. Whilst references have been made in the documents and evidence to these other listed buildings and non-designated heritage assets, for the purposes of this appeal I will only take into account the settings of the two listed buildings as stated in the reasons for refusal.
6. Mr Atkin for the Appellant and Mr Grimshaw for the Council agreed a route<sup>3</sup> for the site visit which took place on the afternoon of 17 March 2016. They accompanied me as did Miss Stones for the Appellant and Mr Nash for the Council. The route was some 10km<sup>4</sup> along PRowS in and around Hartshorne and in the surrounding area. I was able to see from many locations and viewpoints, some of which were where Mr Atkins and Mr Grimshaw had taken photographs exhibited in their proofs, the landscape and the settings of the two listed buildings and I will refer to my observations in the course of this Decision.
7. A s.106 agreement<sup>5</sup> was made between the Owner of the appeal site, the Appellant, the Council and the Mortgagee which I will consider below.

### **Main Issue**

8. I consider that the main issue is the effect of the proposal on the character and appearance of Hartshorne and the surrounding area taking into particular account the settings of listed buildings; the effect on landscape; the effect on the pattern of built development in Hartshorne; and the sustainability of the proposal in terms of the National Planning Policy Framework (NPPF).

### **The appeal site and proposal<sup>6</sup>**

9. The appeal site is an agricultural field of some 5.02 hectares located 'in the centre of Hartshorne'<sup>7</sup>. It is bounded by hedgerows which border Ticknall Road and Main Street to the west. There are residential properties on the opposite side of the highway as well as a primary school and a public house. To the south there are residential properties and there is agricultural land to the east. The northern edge is bordered by existing woodland containing a watercourse which runs east to west.
10. Vehicular and pedestrian access is currently via a gate off Ticknall Road opposite the junction with Repton Road. A Public Right of Way (PRow) bisects the site from this point, running east-west and there are further PRowS beyond the eastern edge of the site and the National Forest Way passes along the western side of the site, along the public highway.
11. The site slopes gently from south to north and beyond the site the land rises to the north and east to form elevated ridges with further PRowS across the landscape. The two listed buildings, Manor Farm and St Peter's Church, are on elevated positions above the appeal site.

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<sup>3</sup> Document B

<sup>4</sup> As advised by Mr Atkin

<sup>5</sup> Document C

<sup>6</sup> The contents of this part of the Decision are mainly taken from the Statement of Common Ground - Parts 1 and

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<sup>7</sup> Miss Stones' proof paragraph 2.1.1

12. The indicative masterplan<sup>8</sup> shows a maximum of 64 dwellings located north of the line of the PRow that runs across the site. Vehicular and pedestrian access would be via a new access off Ticknall Road and there would be a further access off Main Street to serve a car park. The pedestrian access to the PRow would remain. In the area south of the PRow as well as the car park there would also be a children's play area and a community green. There would be National Forest planting to the north and east of the residential area together with areas of landscaping and planting to the west.

## **Reasoning**

### ***The character and appearance of Hartshorne***

13. Although Hartshorne is mentioned in the Domesday Book as having two estates there is no contemporary evidence about where, if any, settlements were located. Historical maps of Hartshorne were submitted to the Inquiry and one with the date of 1821<sup>9</sup> shows the Church, Manor Farm and some other buildings in a cluster around Church Street with other buildings along Ticknall Road and Repton Road which are identified as The Nether Town. A later map dated 1882<sup>10</sup> shows a greater cluster of buildings around the Church; buildings at the junction of Main Street and Repton Road; buildings around the Mill Pond at Ticknall Road; and development along Repton Road and Brook Street. Maps up to 1951<sup>11</sup> show little development and it is not until a map dated 1960 that development appears to have increased. Since then, as can be seen from aerial photographs dated 1999, 2010 and 2012<sup>12</sup> and Miss Vallender's plan showing the historic development of Hartshorne up to 2015<sup>13</sup>, there was a relatively large increase in dwellings in the period 1961-1996 with some infilling since that date.
14. Although the areas of development are not so named on any of the historical maps, Hartshorne is now divided between Lower Hartshorne and Upper Hartshorne and each has its separate settlement boundary. The appeal site is located between the two with its southern boundary forming a settlement boundary of Upper Hartshorne and its north-western boundary forming a settlement boundary of Lower Hartshorne.
15. Residential development in both Upper and Lower Hartshorne has predominantly been along the main roads, that is, Woodville Road, Main Street, Ticknall Road and Repton Road, with limited development beyond that along roads such as Brook Street, Pear Tree Close and other short cul-de-sacs. It is a matter of obvious fact that there has been no development of the appeal site but although various reasons for this were suggested by witnesses to the Inquiry, I cannot speculate why this is the case.
16. Built development is apparent when walking or driving through the village and there seemed to me to be no apparent dividing line between Upper and Lower Hartshorne given the presence of the primary school, the adjacent buildings and the public house all of which are outside the settlement boundaries. But the appeal site is on the opposite side of the road from those buildings and its

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<sup>8</sup> Drawing No BIR.4453\_37A

<sup>9</sup> CD.25 – Map 1

<sup>10</sup> CD.25 – Map 2

<sup>11</sup> CD.25 – Map 8

<sup>12</sup> CD.25 – Aerial 1 - 3

<sup>13</sup> Plan JV03 in Volume II of Miss Vallender's proof. The Council took issue with some of the dating but I do not consider that affects the overall accuracy of the plan

depth and open nature provide an element of separation between the more built-up parts of the village. I found this to be particularly so when I made an unaccompanied visit in the evening<sup>14</sup> when the darkness of the appeal site, despite the presence of street lighting along the adjacent roads, contrasted with the lights in the dwellings in the more built-up areas.

17. Development in Hartshorne is therefore predominantly linear and given the numbers of dwellings proposed and the indicative masterplan this linearity would not be reflected in the proposal because it would be a nuclear development of some depth leading off one main access onto Ticknall Road into the appeal site. Layout is not a matter before me but the Parties agreed that any development would be broadly in accordance with the indicative masterplan<sup>15</sup>. The Design and Access Statement<sup>16</sup> cited by Miss Stones<sup>17</sup> advises that the development 'will be a place with distinctiveness, having its own identity, theme and a vernacular which can positively contribute to both the character of Hartshorne and the wider landscape context'. Whilst I accept that not all parts of a village should look the same and that the layout may change to some limited extent I consider that a proposed development with its own distinctiveness, identity and theme would not respond to local character, reflect the identity of local surroundings, and improve the character of an area as advised by the NPPF<sup>18</sup>. Furthermore the proposed estate form of the development with one major access reflecting a gated community and pedestrian accesses some distance from the built-up areas would not be well related to the village and would not address the connections between people and places and integration of the development into the built environment as advised by the NPPF<sup>19</sup>.
18. I therefore find that the proposal would have a harmful effect on the character and appearance of Hartshorne and the pattern of development in the village.

### ***The Settings of Manor Farm and St Peter's Church***

19. Both Manor Farm and St Peter's Church are listed buildings and s.66 of the Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990 provides that 'in considering whether to grant planning permission for development which affects a listed building or its setting, [the decision maker], shall have special regard to the desirability of preserving the building or its setting'.
20. In the Glossary to the NPPF the meaning of the setting of a heritage asset is stated as 'The surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral'. Good Practice Advice from Historic England advises that 'setting is not a heritage asset ... its importance lies in what it contributes to the significance of the heritage asset'<sup>20</sup> and in assessing the effect of a proposed development a check-list of the potential attributes of a development

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<sup>14</sup> On 17 March 2016 as I was requested to do by both the Appellant and the Council

<sup>15</sup> Suggested and agreed condition 3 – Statement of Common Ground part 8

<sup>16</sup> CD2.4

<sup>17</sup> Paragraph 8.5.26 of Miss Stones' proof

<sup>18</sup> Paragraphs 58 and 64

<sup>19</sup> Paragraph 61

<sup>20</sup> The Setting of Heritage Assets – Historic Environment Good Practice Advice in Planning: 3 Paragraph 9 SDDC CD.19

affecting setting is set out which includes such factors such as position in relation to landform; prominence, dominance, or conspicuousness; and competition with or distraction from the asset<sup>21</sup>.

21. Reports and evidence relating to, among other things, the two listed buildings, were provided by both the Council and the Appellant and oral evidence was also called by both Parties. The first Heritage Statement was compiled on behalf of the Appellant by CgMs<sup>22</sup> at the time of the application. This statement found that the proposal would result in no harm to the settings of either Manor Farm or St Peter's Church. The Council instructed Mel Morris Conservation<sup>23</sup> to make an assessment and to comment on the Heritage Statement by CgMs. Mel Morris did not agree with the way in which the CgMs assessment had been carried out and found less than substantial harm to the setting of Manor Farm and no harm to the setting of St Peter's Church. The proofs of evidence and oral evidence given to the Inquiry by Mr Robertson for the Council and Miss Vallender for the Appellant were, to mind, confusing and contradictory about the way in which their assessments had been carried out and their conclusions.
22. It was agreed that the appeal site itself has no historical features in that, for example, it does not have any evidence of 'ridge and furrow' as many other fields in the vicinity of Hartshorne do. There was, however, no apparent disagreement that the appeal site contributes to the significance of both Manor Farm and St Peter's Church and is therefore within their settings; I have no reason to consider otherwise.
23. Manor Farm is a Grade II listed building of high significance located at the end of Church Street. It is physically located on a ridge with land, including the appeal site, falling away to the north, east and south. Its significance derives from the combination of the survival of its 17<sup>th</sup> century fabric and later additions in the 19<sup>th</sup> and 20<sup>th</sup> centuries. Although in the past its formal frontage may have been to the south its current main elevation is to the north which overlooks, among other aspects, the appeal site. There are currently unimpeded views of the Manor Farm from a number of various public view points including those along Ticknall Road, the PRow across the appeal site and from numerous other locations in the extensive PRow network in the surrounding area.
24. I appreciate that the primary setting of Manor Farm comprises, among other things, those buildings and structures closest to it and that there may no longer be any historical associations or relationships between Manor Farm and other listed buildings in the vicinity or between the village and the residential development therein. I also appreciate that the appeal site is only one field within the historic landscape which contributes to the setting of Manor Farm. But I consider that the undeveloped nature of the appeal site and its agricultural use which reflects the historical and functional farming use associated with the listed building makes a significant contribution to the setting of Manor Farm. The appeal site, together with its part in the wider agricultural and rural landscape, enhances Manor Farm's prominence on the ridge in the landscape and this prominence would be adversely affected and the historical and functional links would be lost by the construction of the

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<sup>21</sup> Assessment Step 3

<sup>22</sup> CD2.14

<sup>23</sup> SDDC CD.26



proposed residential development and which would, in addition, distract from Manor Farm's conspicuous location by introducing a considerable amount of built development, including dwellings of two and two-and-a-half storeys high, into its setting.

25. With regard to Manor Farm both Mr Robertson and Miss Vallender agreed that the proposal would result in less than substantial harm to the heritage significance of Manor Farm, albeit Miss Vallender considered the harm to be slight whereas Mr Robertson considered it to be moderate.
26. The Secretary of State in a decision in respect of Land at The Asps<sup>24</sup> refers to 'minimal, less than substantial harm to one listed building and very limited, less than substantial harm to the significance of a non-designated [heritage asset]'<sup>25</sup>. However, the authorities to which I have been referred<sup>26</sup>, one of which post-dates the Secretary of State's decision, do not qualify less than substantial harm as it is referred to in paragraph 134 of the NPPF. The consensus of the authorities is that 'when a development will harm a listed building or its setting, the decision maker must give that harm considerable importance and weight. That harm also gives rise to a strong presumption against the grant of planning permission. This is linked to the duty under s.66 [to have special regard to the desirability of preserving the building or its setting]'<sup>27</sup>.
27. Despite their difference in methodology one area of agreement between Mr Robertson and Miss Vallender was that less than substantial harm would be caused to the setting of Manor Farm by the proposal and I have no reason to consider otherwise. I therefore give this harm considerable importance and weight.
28. St Peter's Church is also a Grade II listed building of high significance. It dates from the 14<sup>th</sup> or 15<sup>th</sup> centuries but is believed to be on the site of an earlier church. It was extensively restored in the 1830s by an architect of some repute<sup>28</sup>. The Church is located on Church Street on land that rises above the wider parish. The tower is an extremely conspicuous landmark that enables the Church to be seen from numerous public viewpoints in the village and the surrounding area.
29. Similarly with Manor Farm the immediate setting of St Peter's Church would not be affected by the proposal but similar reasons as those set out above also apply to St Peter's Church. The elevated position and visibility of the Church is a part of its historical, and on-going, religious significance. The appeal site makes a significant contribution to the setting of the Church and the proposal would interrupt the current clear views towards the Church from within and around the village and in the wider landscape.
30. Miss Vallender analyses the impact of the proposed development on the heritage significance<sup>29</sup> of St Peter's Church but the analysis appears to me to

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<sup>24</sup> APP 5 – APP/T3725/A/14/2221613

<sup>25</sup> APP 5 – paragraph 36

<sup>26</sup> SDDC CD.17 – Barnwell Manor Wind Energy Ltd v East Northamptonshire DC, English Heritage, National trust and SSCLG [2014]EWCA Civ 137. SDDC CD.18 – The Queen oao The Forge Field Society and others v Sevenoaks DC and others [2014] EWHC 1895 (Admin). APP 10 Forest of Dean DC V SSCLG and Gladman developments Ltd [2016] EWHC 421 (Admin)

<sup>27</sup> Paragraph 38 of Forest of Dean

<sup>28</sup> H Stevens of Derby

<sup>29</sup> Paragraphs 4.54 – 4.59 of Miss Vallender's proof

be insufficiently clear to enable her to reach her conclusion that 'the proposed development will cause no harm to St Peter's Church'<sup>30</sup> given her finding that 'the experience of St Peter's Church within the appeal site will change but the scale of this is at the very low end of less than substantial harm'<sup>31</sup>. This implies to me that there would be less than substantial harm to the setting of St Peter's Church occasioned by the proposal. Mr Robertson concluded that the proposal would cause less than substantial harm to the significance of St Peter's Church<sup>32</sup> and I have no reason to conclude otherwise.

31. The Forest of Dean case establishes that the balancing exercise in paragraph 134 of the NPPF, that is, that the harm should be weighed against the public benefits of the proposal, is an exercise that must be carried out and come out in favour of the Appellant before any other matters are weighed in the planning balance as required by paragraph 14 of the NPPF<sup>33</sup>. This is a matter I will consider below.

### ***The Landscape***

32. A considerable amount of evidence was given to the Inquiry, both written and oral, in respect of landscape matters on behalf of the Appellant and the Council. There was very little agreement between the witnesses, Mr Atkin and Mr Grimshaw, and I did not find the, to my mind, overly detailed and complex analysis of the landscape provided by both witnesses particularly helpful. I note that Mr Atkins, on behalf of the Appellant, ascribed the appeal site medium value in landscape value terms.
33. Whilst I accept that the appeal site is an agricultural field on the outskirts of a village and that it has no specific features or physical attributes of its own so that it is not a 'valued landscape' within the meaning of paragraph 109 of the NPPF, it is, in my opinion, notable in that it forms part of a wide sweep of generally undeveloped, save for the occasional farm development, countryside rising to the north and north-east towards the ridge of the bowl in which Hartshorne sits. The undeveloped nature of the landscape, including the appeal site, could be seen in many viewpoints, both near and far, and was also apparent along the gaps (rides) in the National Forest planting. As the planting in the National Forest matures it may well be that these views are different but glimpses of the appeal site and its place within the wider landscape would, in my opinion, remain. For these reasons I do not consider that the appeal site is visually contained or that views of it are confined as suggested by the Appellant<sup>34</sup>.
34. Within wider views of Hartshorne from the north and north-west the residential development along Ticknall Road on the opposite side from the appeal site appears negligible because of its limited depth in from the road and its location at the bottom of the bowl. In contrast, the proposal would extend deep into the appeal site and there would be a relatively small amount of open land to the south of the PRoW, part of which would be a car park.
35. The proposal would result in the loss of a green and open space that forms an integral part of the wider, undeveloped countryside. The currently

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<sup>30</sup> Paragraph 7.6 of Miss Vallender's proof

<sup>31</sup> Paragraph 4.59 of Miss Vallender's proof.

<sup>32</sup> Paragraph 3.16 of Mr Robertson's proof

<sup>33</sup> APP 10 Forest of Dean – Paragraphs 39 and 47 and the Appellant's closing submissions paragraph 29

<sup>34</sup> APP 13 The Appellant's closing submissions – paragraph 39 e

undeveloped field would be replaced by a suburban environment including a considerable amount of housing, associated roads and domestic gardens. I accept that landscaping is not a matter before me and that planting, particularly National Forest planting, could mitigate some of the adverse visual aspects of the proposal, but planting and screening could introduce features that could be equally incongruous in the rural landscape as the proposed built development.

36. I also accept that change is not necessarily harmful but I consider that the extent of the proposal and its location would be detrimental in views from many locations within the surrounding area as well as locally within the village, from the Manor Farm and along the PRoW that runs across the site and that mitigation measures in the form of landscaping and planting would not overcome the harm.
37. I therefore conclude that the proposal would have a harmful effect on the landscape.

### ***Sustainability***

38. Paragraph 14 of the NPPF sets out the presumption in favour of sustainable development which comprises three elements – economic, social and environmental. Miss Stones addressed these matters in her evidence<sup>35</sup>. The economic benefits she set out included the direct employment that would arise in the construction of the proposal; the generation of Gross Value Added contribution to the immediate area's economy; the future occupiers' need for services; and their contribution to the labour market. With regard to the social role Miss Stones contended that the benefits of the proposal included the provision of housing, both market and affordable; the provision of a children's play area; and the location itself which has good access to services and facilities although many are not in the village itself. Mr Nash agreed that the appeal site was in an accessible location. The benefits in respect of the environmental role were said to include new woodland planting; the creation of a new ecological corridor along the northern and eastern edges of the development; and the Appellant's case that the proposal would not cause harm to either the landscape or to the setting of St Peter's Church and negligible harm to the setting of Manor Farm.
39. In addition the s.106 Agreement provides for a number of benefits within the three elements. Pursuant to that Agreement 30% of the dwellings would be affordable dwellings with the mix of tenures and other details having been/to be agreed with the Council. There would also be financial contributions towards the Goseley Community Centre extension project; towards the provision a new classroom at Hartshorne Church of England Primary School; towards the provision of a new GP surgery in Woodville; towards the maintenance of the National Forest planting; towards the maintenance of the open space land; towards the Granville Sports College sports pitch improvement project; and, following the grant of reserved matters approval, towards the ongoing maintenance of the sustainable urban drainage system.
40. I am satisfied that the proposal would a make positive contribution to the economic aspects of sustainable development and I am also satisfied that there

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<sup>35</sup> Miss Stones' proof paragraphs 8.3 – 8.6.5



would be a positive contribution towards housing supply. By virtue of the s.106 Agreement there would be some contribution towards the social element.

41. Although I note that there is agreement between the Parties that the proposal would be sustainable so far as location was concerned I question this given that the village has very limited facilities and services which include the primary school, a number of public houses, a cricket club, a weekly Post Office and a bus stop with a service once an hour between Derby and Swadlincote. There are no services or facilities such as a shop, GP surgery, leisure facilities other than those mentioned above, or a secondary school all of which are located some distance away and which in the main would require transport by private vehicle. To this end I note that the proposed development would have parking spaces in excess of the Council's standards.
42. Furthermore, I have found that there would be less than significant harm to the settings of the two listed buildings to which I must give considerable importance and weight and I have also identified harm to the landscape and to the character and appearance of Hartshorne. Whether the proposed car park, which was originally proposed as a car park for the school until the Highway Authority advised that it would not support a drop-off/pick-up facility because it discouraged the use of non-car modes for taking/collecting children to and from school<sup>36</sup> and so which is now described as being a car park for people using the play facilities and open space with an ancillary use for the school, would be a benefit is a moot point. Similarly I question the benefit of the proposed children's play area which would be in close proximity to the existing playground/recreational area adjacent to the primary school which I saw in use on my visit.
43. I accept that all three roles do not have to pass a test in order for a proposal to be acceptable and that any proposal would be likely to result in change and have adverse impacts such that it may not comply with one of the roles. However, taking all of the above matters into account I consider that the proposal would not, on balance, be sustainable development in the terms of the NPPF.

### **The Saved Local Plan**

44. S.38(6) of the Planning and Compulsory Purchase Act 2004 requires that any application (or in this case, appeal) must be determined in accordance with the development plan, unless material considerations indicate otherwise.
45. Saved Policy EV1 seeks to restrict new development outside settlements unless it is (i) essential to a rural based activity; or (ii) unavoidable in the countryside; and (iii) the character of the countryside, the landscape quality, wildlife and historic features are guarded and protected and if development is permitted it should be designed and located so as to create as little impact as practicable on the countryside. It is agreed that Saved Policy EV1 is a relevant policy for the supply of housing and it therefore falls within paragraph 49 of the NPPF. In the agreed absence of a five years' supply of housing it cannot be considered to be up-to-date; it is not, however, to be ignored and depending on the circumstances of the case, weight can be attached to it. Paragraph 14 of the NPPF advises that where a policy is out-of-date planning permission should be granted unless any adverse impacts of doing so would significantly

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<sup>36</sup> C3 - Letter dated 25 February 2015 bundle of consultation responses

and demonstrably outweigh the benefits when assessed against the policies of the NPPF taken as a whole.

46. I have been referred to a plethora of Inspectors' appeal decisions and Secretary of State appeal decisions by both the Appellant and the Council relating to, among other things, the weight to be attached to policies such as Saved Policy EV1. Different facts and different policies apply in each appeal decision and the most pertinent in my opinion in this appeal are those which relate specifically to Saved Policy EV1.
47. The appeals I was referred to included High Street, Linton<sup>37</sup> where the outline proposal for 110 dwellings on an agricultural field was considered to be contrary to Saved Policy EV1 but it had little weight. In Land at New House Farm<sup>38</sup> the outline proposal was for up to 300 dwellings on agricultural land and the policy was found to be out-of-date but the Inspector did not specify what weight, if any, he had given to it. In Land north east of Coalpit Lane<sup>39</sup> an outline proposal was for up to nine dwellings on undeveloped land outside the village and the policy was found to be broadly consistent with the NPPF and it was given material weight. In Land at Main Street<sup>40</sup> an outline proposal for over 55s housing in an open field was found to be contrary to criterion (iii) of the policy but again no mention was made of the weight given to the policy. In Land at SK2816<sup>41</sup> which was an outline application for residential development, Saved Policy EV1 was found not to be consistent with the NPPF and was consequently given limited weight. In Land at Valley Road<sup>42</sup> a proposal for 64 dwellings in a field was found to be in limited conflict with the policy and 'whilst the policy is out-of-date insofar as it restricts housing supply, its objective to protect the countryside and its intrinsic character are consistent with paragraph 17 of the NPPF and this must be weighed against other considerations'.
48. The appeal decisions are therefore inconclusive about such matters as whether Saved Policy EV1 is consistent with the NPPF or not and about what weight should be given to it. The NPPF recognises the intrinsic character and beauty of the countryside<sup>43</sup> and the aim of Saved Policy EV1 is to protect the countryside from development and I therefore consider that the policy is not inconsistent with the NPPF.
49. The reasons for refusal also cite Saved Policy EV8 the heading of which is 'Open spaces in villages and settlements' and it seeks to ensure that such features which make a valuable contribution to the character or environmental quality of individual villages and settlements are safeguarded from development. The Appellant's contention was that the site was not in the village but in the countryside and that the policy did not therefore apply. But I note with some interest that the description of the site in the Statement of Common Ground begins with the sentence 'The site is located in the village of Hartshorne and comprises 5.02 hectares of agricultural land located centrally to the settlement'. The description of the site being 'in the village/in the centre of Hartshorne' is also found in other documents submitted by the Appellant

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<sup>37</sup> CD4.1 APP/F1040/A/14/2214428

<sup>38</sup> CD4.2 APP/F1040/A/14/2228361 and APP/F1040/A/15/3005774

<sup>39</sup> SDDC CD39 APP/F1040/W/15/3004663

<sup>40</sup> SDDC CD40 APP/F1040/W/15/3136939

<sup>41</sup> APP 7 APP/F1040/W/15/3134873

<sup>42</sup> SDDC CD41 APP/F1040/W/15/3033436

<sup>43</sup> Paragraph 17 point 5

including the Design and Access Statement<sup>44</sup>, Miss Stones' proof<sup>45</sup> and the OPUN letter<sup>46</sup>.

50. Whether Saved Policy EV8 is applicable or not I consider that because it restricts development, which includes housing, it is also out of date. Paragraph 109 of the NPPF refers to the protection of valued landscapes and the aim of Saved Policy EV8 is to safeguard open spaces which make a valuable contribution and, whether the appeal site is a valued landscape for the purposes of the NPPF and whether it makes a valuable contribution as required by Saved Policy EV8 or not, I consider that the policy is consistent with the NPPF.
51. However, as both Saved Policies EV1 and EV8 are out-of-date, and taking into account all the decisions, authorities and submissions that were made I consider that both Saved Policy EV1 and Saved Policy EV8 should be accorded limited weight.

### **The Emerging Local Plan**

52. Consultation is currently taking place on the proposed modifications to the Emerging Local Plan following a note dated 7 January 2016 from the Inspector<sup>47</sup>. The Inspector wrote that once she had considered the responses she should be able to complete her report which, as submitted by the Council, infers that she considers that the Emerging Local Plan is sound<sup>48</sup>. The Council anticipates the adoption of the Emerging Local Plan at a meeting on 19 May 2016, although Miss Stones thought that June 2016 was a more likely date. In any event, it would appear that adoption of the Emerging Local Plan is not too far off.
53. This would indicate that on adoption the Council would be able to demonstrate a five years' supply of housing which, even if fragile as suggested by Miss Stones and in the Rebuttal submitted to the Inquiry<sup>49</sup>, renders the housing policies in the Emerging Local Plan relevant, albeit with limited weight, in this appeal.
54. The Policies that are relevant are Policy BNE1 which expects development to be well designed and one of the principles to be taken into account relates to the creation of places with a locally inspired character that respond to their context and have regard to valued landscape, townscape and heritage characteristics; Policy BNE2 which expects development to protect, conserve and enhance heritage assets such as listed buildings and their settings; and Policy BNE4 which seeks to protect the character, local distinctiveness and landscape of South Derbyshire.

### **Conclusions on the main issue**

55. For the reasons given above I conclude that the proposal would have a harmful effect on the character and appearance of Hartshorne and the surrounding

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<sup>44</sup> CD2.4 paragraph 1.5

<sup>45</sup> Paragraph 2.1.1

<sup>46</sup> Exhibited to Miss Lewis' proof which in turn was exhibited to Miss Stones' proof

<sup>47</sup> SDDC CD38

<sup>48</sup> C5 The Council's closing submissions paragraph 28

<sup>49</sup> APP 1

area; it would result in less than significant harm to the settings of Manor Farm and St Peter's Church which are both listed buildings; it would have a harmful effect on landscape and on the pattern of built development in Hartshorne; and would not be sustainable development within the terms of the NPPF. Although having limited weight, the proposal would be contrary to Saved Policy EV1 of the Saved Local Plan and Emerging Local Plan Policies BNE1, BNE2 and BNE4.

### **Other Matters**

56. There are currently consultations taking place about whether any part/parts of Hartshorne should be designated as a Conservation Area/Area of Special Character<sup>50</sup> and whether any areas in Hartshorne should be designated as Local Green Spaces<sup>51</sup>. As these matters are still the subject of consultation I cannot speculate what the outcome may be; there are currently no Conservation Areas/Areas of Special Character in Hartshorne nor are there any designated Local Green Spaces and it is this present situation that I have to take into account in this appeal.
57. Any recreational use of the appeal site that there may have been in the past, and the last event appears to have been in 2012, was limited and, as the land is privately owned, dependent on the wishes of landowner. I therefore give no weight to any past recreational use of the appeal site.
58. The Appellant placed some emphasis on the proposal including woodland planting and green infrastructure which the National Forest Company considers would further the National Forest character of the proposals and tie the proposed development to the woodland which surrounds the site<sup>52</sup>. However, the consultation response is in relation to the environmental and landscaping aspects of the proposal in relation to the setting within the National Forest and specifically excludes a comprehensive assessment of the full planning merits of the application. I therefore give this little weight.

### **Conditions**

59. The NPPF advises that consideration should be given to whether an otherwise unacceptable development could be made acceptable through the use of conditions and that conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects<sup>53</sup>.
60. I have considered the suggested and largely agreed conditions<sup>54</sup>. Whilst they meet the tests in the NPPF and are all relatively straightforward 'usual' conditions that would generally be imposed on an outline proposal such as this, given my findings in respect of the main issue I do not consider that their imposition would render the unacceptability of the proposal acceptable.

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<sup>50</sup> SDDC CD43

<sup>51</sup> APP 9

<sup>52</sup> CD2.30

<sup>53</sup> Paragraphs 203 and 206 of the NPPF

<sup>54</sup> Statement of Common Ground Part 8

### **NPPF paragraph 134 balance**

61. Paragraph 134 advises that 'where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use' and case law has established that this exercise must be carried out and come out in favour of the Appellant before any other matters are weighed in the planning balance as required by paragraph 14 of the NPPF.
62. The harm that would result to the settings of two listed buildings from the proposal must be given considerable importance and weight. The identified harm also gives rise to a strong presumption against the grant of planning permission. In favour of the proposal is the provision of much needed housing, both market and affordable, and the other public benefits that have been mentioned above in my consideration of the sustainability of the proposal. However, the harm to the settings of Manor Farm and St Peter's Church would be permanent and irreversible and I conclude that this harm would outweigh the public benefits of the proposal and I dismiss the appeal.

### **The planning balance**

63. Given my finding against the Appellant in respect of the paragraph 134 balance it follows that the adverse impacts of the proposal would also significantly and demonstrably outweigh the benefits in applying the paragraph 14 balance and that there should be no grant of planning permission.

### **The s. 106 agreement**

64. I have commented above on the obligations contained in the s.106 agreement. As I have reached the conclusion that the appeal should be dismissed there is no necessity for me to consider it further.

*Gloria McFarlane*  
Inspector



## **APPEARANCES**

### **FOR THE APPELLANT**

Mr S Choong            Counsel

He called

Miss L Stones        who gave evidence on planning matters  
BA(Hons) Dip TP MRTPI

Ms J Vallender       who gave evidence on heritage matters  
MA ACifA

Mr J Aitkin            who gave evidence on landscape and visual impact matters  
BSc(Hons) DIP LIM CMLI

### **FOR THE LOCAL PLANNING AUTHORITY**

Mr J Smyth            Counsel

He called

Mr C Nash            who gave evidence on planning matters  
MRTPI MA BSc(Hons)

Mr I Grimshaw        who gave evidence on landscape matters  
CMLI MRTPI MA MSc(Dist) BA(Hons)

Mr N Robertson      who gave evidence on heritage matters  
MIHBC MA(Hons) Dip-Heritage

### **INTERESTED PERSONS**

Mr J Gosden           Chairman of the Hartshorne Village Residents Association

## **DOCUMENTS SUBMITTED AT THE INQUIRY BY THE APPELLANT**

APP 1 – Rebuttal to the Council’s Proof of Evidence Addendum

APP 2 - Review of a Conservation Area Appraisal

APP 3 - Duplicated in the Council’s core documents and so not submitted

APP 4 – Aiden Jones v Mordue and SSCLG and South Northamptonshire Council  
[2015] EWCA Civ 1243

APP 5 - Secretary of State Decision - Land at The Asps APP/T3725/A/14/2221613

APP 6 - Cheshire East BC v SSCLG and Richborough Estate Partnerships LLP  
[2015] EWHC 410 (Admin)

APP 7 – Inspector’s Decision – Land at Linton Heath APP/F1040/W/15/3134873

APP 8 - Duplicated in the Council’s core documents and so not submitted

APP 9 – Appendix D – Local Green Spaces

APP 10 – Forest of Dean DC v SSCLG and Gladman Developments Ltd  
[2016] EWHC 421 (Admin)  
APP 11 – Suffolk DC v Hopkins Homes Ltd and SSCLG and Richborough Estates  
Partnership LLP v Cheshire East BC and SSCLG [2016] EWCA Civ 168  
APP 12 – Opening submissions on behalf of the Appellant  
APP 13 – Closing submissions on behalf of the Appellant

#### **DOCUMENTS SUBMITTED AT THE INQUIRY BY THE COUNCIL**

C1 – Addendum to the evidence of Miss Nicola Sworowski  
C2 - Additional Council Core Documents SDDC CD38 – CD45  
C3 – Responses to the application for the proposal which informed the s.106  
Agreement  
C4 – Responses to the application for the proposal which informed the agreed  
suggested conditions  
C5 – Closing submissions on behalf of the Council

#### **OTHER DOCUMENTS SUBMITTED AT THE INQUIRY**

Document A - Mr Gosden's statement  
Document B - Plan of the accompanied site visit route  
Document C - S.106 Agreement  
Document D - Agreed suggested condition 31

#### **THE APPELLANT'S CORE DOCUMENTS**

Lever arch files containing as follows:

CD 1.1 to CD 1.15 – two files  
CD 2.1 to CD 2.10 – two files  
CD 3.1 to CD 3.4 - one file  
CD 4.1 to CD 4.27 – two file  
CD 5.1 – one file  
CD 6.1 to 6.8 – two files  
CD 7.1 to CD 7.2 – one file

#### **THE COUNCIL'S CORE DOCUMENTS**

One lever arch file containing SDDC CD1 – SDDC CD45 (including CD38-CD45  
submitted during the Inquiry)