

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

**SECTION 1: Planning Applications**

**SECTION 2: Planning Appeals**

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

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## **1. PLANNING APPLICATIONS**

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

<b>Reference</b>	<b>Item</b>	<b>Place</b>	<b>Ward</b>	<b>Page</b>
9/2010/0468	1.1	Netherseal	Seales	1
9/2011/0889	1.2	Foston	Hilton	32
9/2011/0890	1.3	Foston	Hilton	55
9/2012/0570	1.4	Acresford	Seales	60
9/2012/1048	1.5	Repton	Repton	77
9/2012/1056	1.6	Swadlincote	Swadlincote	83
9/2013/0027	1.7	Newton Solney	Repton	100
9/2013/0054	1.8	Repton	Repton	109
9/2013/0038	2.1	Hatton	Hilton	115

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 Head 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 Head 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.** 9/2010/0468/O

**Applicant:**  
Mr John Poultney  
J. W. Poultney & Son  
Gunby Farm  
Gunby Hill  
Netherseal  
Swadlincote  
DE12 8AS

**Agent:**  
Mr Scott Wilcox  
S & S Architecture Ltd  
21 Hackett Close  
Ashby De La Zouch  
Leicestershire  
LE65 2HP

**Proposal:** **OUTLINE APPLICATION ALL MATTERS RESERVED  
FOR CHANGE USE OF PART AGRICULTURAL FIELD  
AREA TO PROVIDE 8 LOG CABIN STYLE HOLIDAY  
LETS WITH PARKING AT GUNBY HILL NETHERSEAL  
SWADLINCOTE**

**Ward:** **SEALES**

**Valid Date:** **25/05/2010**

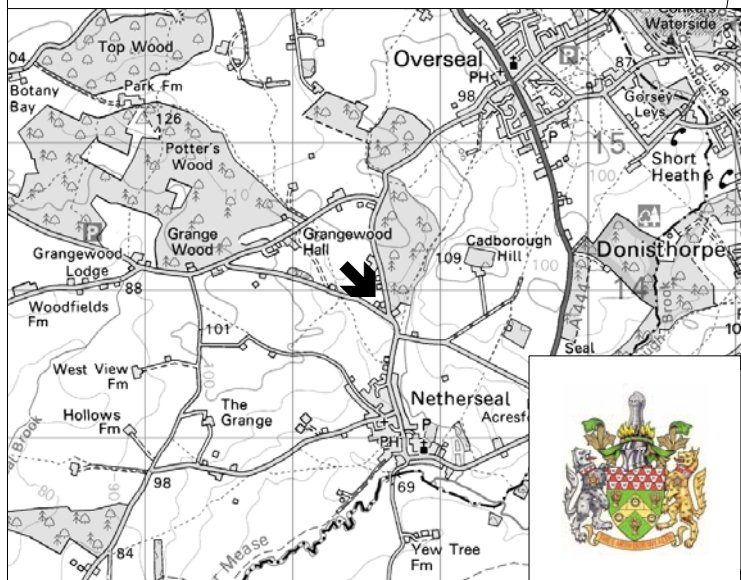
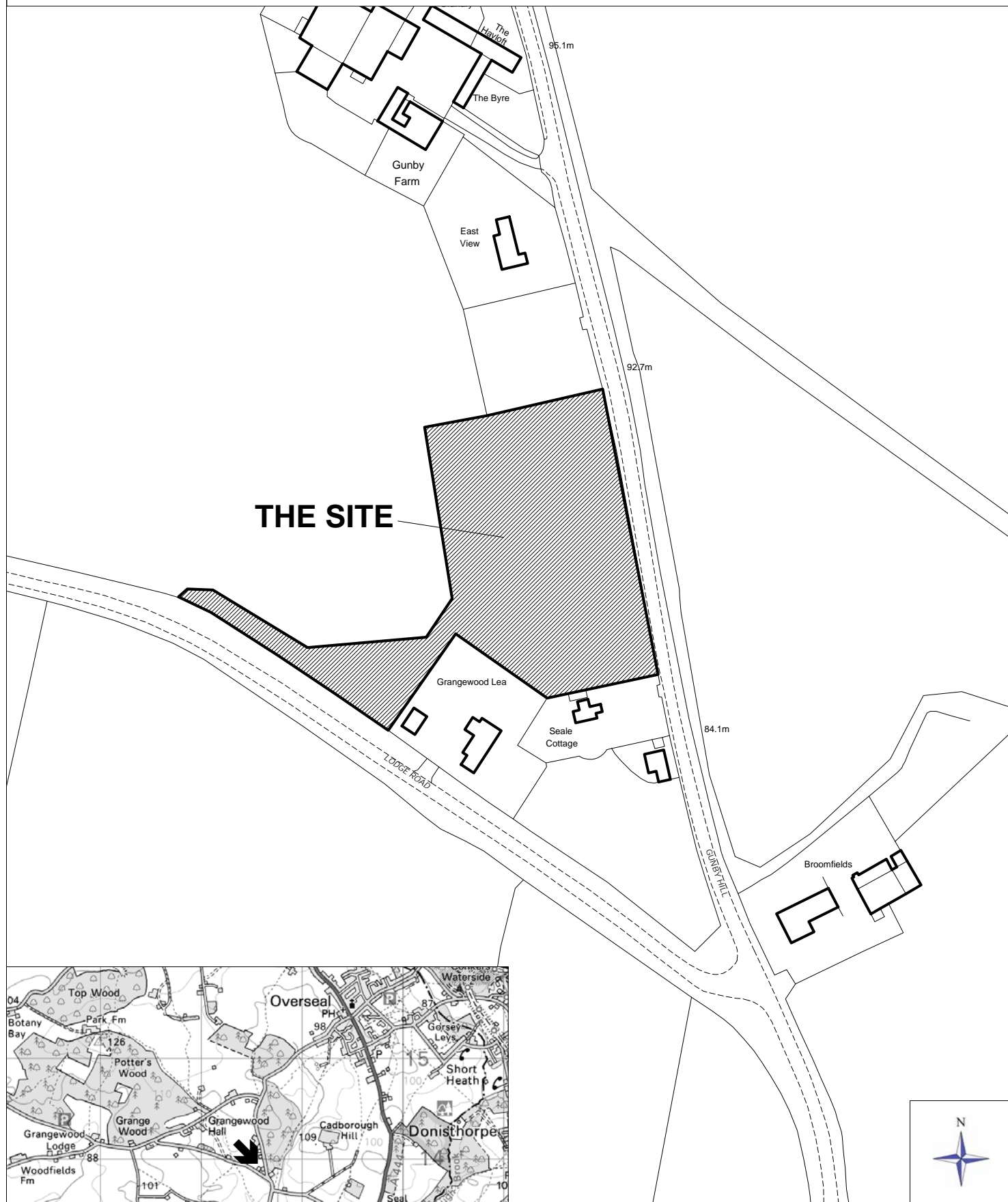
*The application was originally reported to committee for the meeting of 29 March 2011, but was deferred following receipt of a barrister's opinion, lodged by an objector immediately prior to the meeting of 29 March 2011. That opinion highlighted issues relating to potential adverse effects on the integrity of the River Mease Special Area of Conservation, and has caused further investigation to be undertaken in consultation with Natural England and the Environment Agency, and after considerable further representations, changes have been made to the scheme. There have been consequential amendments to this report in the interim. The changes are considerable and therefore the report has been rewritten. Reference to the earlier report should not be made, as it is no longer relevant to the proposed scheme.*

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

The application is brought to Committee as it was previously requested by Councillor Grant (former ward member) because local concern had been raised about a particular issue.

#### **Site Description**

The site lies in open countryside about 900 m to the north of the centre of the village of Netherseal and about 500m from its northern edge. It slopes to the south and west and there are clear public views from Lodge Lane and Public Footpath No 6 to the west. Transient public views are available from Gunby Hill, partially screened by the existing roadside hedge. More distant views of the site are available from the south. There are



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**South Derbyshire District Council. LA 100019461. 2010**

two dwellings adjacent to the southern boundary of the site (Seale Cottage and Grangewood Lea). Another property, 'Sandhurst', abutting the northern boundary, has been demolished and replaced with a new two-storey dwelling. East View and Gunby Farm complete the group of buildings in the immediate locality.

A hedge defines the eastern boundary with Gunby Hill. The western boundary is undefined, the site presently forming part of a larger field.

The nearest surfaced footway into the village of Netherseal starts at the junction of Gunby Hill/Main Street with Gorse Lane, where there is also a bus stop. There is an hourly bus service from Monday to Saturday. There is also access to public footpaths some 150 m to the west of the site access.

The local landscape is rolling fields defined by hedges and trees and the site lies within the National Forest.

The site also lies within the catchment of the River Mease. The river is a designated Site of Special Scientific Interest and is also a Special Area of Conservation.

## **Proposal**

The proposal is in outline, although an indicative layout shows 8 log cabin structures, to be used for holiday accommodation, arranged in a crescent, filling the gap between Sandhurst to the north and Seale Cottage and Grangewood Lea to the south. The Design and Access Statement indicates eaves height of 2.7 m and *height of 4.2 m* to the ridge. The vehicular access would be located on Lodge Road, some 95 m to the west of the boundary with Grangewood Lea. The illustrative plan also indicates areas of communal open space to the west of the proposed cabins.

During the course of the application process there has been extensive consideration of various alternative private sewage proposals. The application is accompanied by supporting information relating to the means of disposal of foul drainage, to sealed tanks, emptied from time to time by tankers for off site disposal.

## **Applicants' supporting information**

The applicant's main points are:

- The locality is served by public transport.
- It is within 5 miles of the M/A42, offering excellent transport links to national road network.
- The site is close to tourist attractions.
- Due to increased pressure on farming Gunby Farm has been the subject of previous diversification, providing lettings to local businesses. In order to maintain the applicant's family business, diversification is essential and the proposal would facilitate continued employment and some new jobs. Nevertheless the applicant relies on the proposal being in accord with local and national planning policies.
- Other local business would benefit from visitors to the facility.
- There is a need for tourist accommodation in the National Forest.
- EMDA has endorsed the proposal and may provide funding.

- Sustainable design principles would be employed.
- Landscaping would be undertaken to help assimilate the development in its wider setting and to maintain adequate privacy.
- The proposal is of a similar nature to other tourist related development permitted in the district.
- A landscape appraisal concludes that character of the countryside and its landscape quality will be safeguarded.
- The Good Practice Guide on Planning for Tourism acknowledges that the tourism industry is not exclusively geared to the summer months and ideally the applicant would want the flexibility to be able to offer holiday accommodation throughout the whole year. The condition clearly restricts the use of the premises to holiday use and provides an appropriate framework for monitoring and control purposes. On this basis, criterion (i) (closing the site for one month every year) seems unnecessary. Nonetheless, the applicant appreciate the flexibility implied in the use of the suggested condition and at this stage of the application (and as a gesture to the concerns of neighbours) is reluctantly prepared to accept the recommended wording but nevertheless is not convinced it is necessary.
- An ecology survey has been carried out which concludes that no water vole habitat would be affected. The site was re-visited on 15 March in response to alleged water vole sighting by a resident. A burrow was inspected but no evidence of the species was found. The ecologist is experienced and qualified to survey for water voles.
- An extended Phase 1 Habitat Survey was received on 28 March 2011, following a survey undertaken on 23 March 2011. The survey notes bluebells and recommends measures for them to be translocated if they are found to be of native variety. Although there is evidence of badger activity in the area there are no active setts within 30 metres of the site. The sett on the opposite side of Lodge Road is inactive. Recommendations are also made to protect badgers and nesting birds.

The surveys were updated in March 2013 and conclude that there would be no detrimental effect on local badger population, no impact on water voles and that there would be potential net benefit for wildlife.

Following difficulties in demonstrating that the original package treatment plant system would have no impact on the integrity of the River Mease SAC, the applicant has redesigned foul water arrangements and now proposes a scheme designed to separate all foul water generated by the development from the River Mease SAC. The relevant parts of the applicant's submissions are reproduced in full below:

*You will recall that progress on the Council's consideration of my clients planning application has been delayed due to concerns that have been raised by neighbours over its potential impact on the River Mease SAC/SSSI (notwithstanding that there are no objections from the Environment Agency or Natural England). My clients have therefore decided to re-consider their scheme and propose the use of a sealed-tank system for the collection and subsequent discharge of foul water from the site.*

*I have set out details below which explain the design and management proposals for such a scheme and I would anticipate your Council imposing a planning*

condition(s) to ensure strict compliance with these principles. I would be grateful if you would substitute these details into the application as an amendment.

## *1.0 Sealed Tank System - Design*

*1.1 In summary, there will 3 separate tanks with each tank serving a pod of 2 or 3 log cabins (see revised Drawing 2010.032-001D attached above). Each tank will be sized in accordance with British Waterway Code of Practice: Flows & Loads 3 and will be installed, serviced and maintained in accordance with the suppliers instructions (see document attached). The tanks will be sized to accommodate 30-days flow (calculated at maximum occupancy throughout the 30-day period - ie "worst-case-scenario). An alarm/alert system will be fitted to each tank to ensure that adequate warning is given to allow time for disposal arrangements to be made before a tank fills to capacity. Records of all alerts, together with subsequent emptying and disposal operations (including details of contractor(s) and disposal point(s) used) will be maintained for 12 months and will be made available for inspection by the LPA at reasonable notice to enable compliance monitoring. The effluent will be transported by licensed contractors to an authorised disposal point (sewage treatment works) outside the River Mease SAC/SSSI catchment area where its treatment and discharge will not affect the River Mease.*

*1.2 Each tank will be sized to serve 18 persons (3 chalets x 6 residents maximum occupancy each); 227l/d hydraulic load per head; (23PE based on hydraulic load) and will have 120cum capacity. Each tank will have a float switch and an alarm panel with flashing beacon and telemetry which will text the alarm to a chosen mobile phone. Each tank will be manufactured by the chop hoop filament winding process specifically designed for underground use which have been designed with reference to BS 4994:1987, BS EN 9761, 978 and BS EN 8581:2002. The tanks will be serviced and maintained in accordance with the suppliers recommendations and/or service contract to comply with guarantee requirements. This will include regular inspection and testing to check that the system is working properly and there are no leaks.*

## *2.0 Management Plan*

*2.1 A "Management Plan" covering installation, management, monitoring and servicing arrangements can be secured by condition. The Management Plan can also include a proportionate emergency plan procedure which will be put in place in the (unlikely) event that the system fails. This will provide for the restoration of functionality of the system as well as setting out a procedure to secure either the cessation of occupancy (of the cabins affected for the period the system is inoperable) or else the installation of an emergency back-up system until a repair is completed (such as use of a mobile tanker and pump arrangement or composting/cartridge toilets - with resulting waste to be transferred by licensed carrier to an approved disposal point outside the River Mease catchment area). The Management Plan would provide that these emergency measures are to be submitted to and to be approved by the LPA in advance of being implemented and all faults and repairs are to be recorded and reported to the LPA as they require.*

*In summary therefore, the scheme involves a set of simple principles -*

- . a properly constructed and maintained sealed system;*
- . a maintenance programme for the lifetime of the development;*

- . instant monitoring information which can be made available for compliance, monitoring and enforcement;
- . adequate access for maintenance/emptying;
- . scheme located away from watercourses/third party properties;
- . guaranteed routine tankage outside of the Mease catchment area

*The net result will be that sewage discharged from the proposed development via this process will not have any direct or indirect pathway to the River Mease SAC/SSSI and will be discharged at a location outside the River Mease catchment area where there will be no effect on the River Mease. These proposals are simple, effective, transparent and scientifically uncontroversial. On the basis of the above, there can be certainty that these drainage proposals will ensure that the scheme's foul drainage will not have a significant effect upon, and will not adversely affect the integrity of, the River Mease SAC.*

*These drainage proposals and an accompanying Management Plan can be secured by way of an appropriately worded planning condition which reflects the details set out above and will ensure that the development is carried out in accordance with these details.*

## **Planning History**

There are no previous applications affecting this particular site, although outbuildings at Gunby Farm have been converted to residential use and there are business units, with the latter remaining under the applicant's control.

## **Responses to Consultations**

The Parish Council objects for the following reasons:

- a) The site is in a prominent location and would be highly visible. Landscaping would take several years to grow.
- b) Lighting would have an adverse effect on the countryside, particularly in the autumn and winter.
- c) It is likely that sewerage would lead to contamination of the brook and the River Mease SAC. A recent appeal dismissal highlights this issue.
- d) There would be noise disturbance to neighbours.
- e) Pedestrian access to Gunby Hill would be unsafe and Lodge Road carries fast moving traffic.
- f) The proposal does not represent farm diversification.
- g) The development would become permanent dwellings as has apparently happened elsewhere in the local area. A precedent could be set for such schemes.
- h) There appears to be no provision for visitors and staff.
- i) The development would not blend in with its surroundings.
- j) The Committee should make a site visit to appreciate the impact of the development.
- k) The proposed wetland treatment bed and pond would have an adverse impact on the amenities of the adjoining neighbours and could cause a health hazard.

The Highway Authority has considered several sets of speed readings from the applicant and objectors and has undertaken its own speed survey. It has also had

regard to further reports commissioned by objectors and the latest sewage proposals. The Authority concludes that there is no highway safety objection in principle. However it wishes to see no pedestrian access onto Gunby Hill in the interest of safety. It also seeks the closure of the field access immediately to the east of the proposed access.

Derbyshire Wildlife Trust concludes that:

- a) The proposed development is unlikely to have any substantive ecological impact.
- b) There would be loss of a small section of species rich hedgerow (UK BAP Habitat). However, this loss would be fully compensated for by the creation of a new species rich hedgerow on the west side of the development.
- c) Other proposed landscaping would create habitats of greater value for wildlife than the current intensive agricultural use of the land.
- d) The water vole survey has been conducted using recommended survey methodologies and reported adequately. With reference to the Water Vole Conservation Handbook this is a 'straightforward case' as the conditions are sub-optimal for water vole and there is no meta-population of water vole in the area. The area 10 m either side of the affected area should be re-surveyed immediately prior to the commencement of works.
- e) While Bluebells are protected by law only insofar as it is illegal to sell them, it is recommended that any affected by the development should be re-planted.
- f) There is a very low probability of a Water Vole having moved into the watercourse and no need for the survey to be updated until prior to commencement of development.
- g) The presence of a Potential Local Wildlife Site along Lodge Road has no bearing on this application.

The Trust also comments that subject to the Environment Agency's recommendations regarding sewerage treatment and water discharge into the River Mease catchment, the proposal is unlikely to have any adverse effect on the integrity of this designated SAC and SSSI.

Natural England had not raised objection to previous package treatment plant proposals. Given the acknowledged importance of Natural England as a statutory consultee with specific expertise to advise on proposals within the River Mease catchment area, its final formal response on the present sealed tank scheme is set out in full below:

*Natural England is a non-departmental public body. Our statutory purpose is to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development.*

*In accordance with the Conservation of Habitats and Species Regulations 2010 (the 'Habitats Regulations'), the River Mease is designated as a Special Area of Conservation (SAC), requiring the highest level of protection, appropriate management, enhancement and where necessary restoration. The SAC site incorporates the lower reaches of the Gilwiskaw Brook downstream of Packington village, which are steep and fast flowing, and then the River Mease itself from its confluence with the Gilwiskaw Brook to its confluence with the River Trent.*

*The River Mease SAC is relatively un-modified lowland clay river and contains a diverse range of physical in-channel features, including riffles, pools, slacks,*

*vegetated channel margins and bankside tree cover, which provide the conditions necessary to sustain nationally significant fish populations of spined loach *Cobitis taenia* and bullhead *Cottus gobio*. Other internationally important habitats and species reliant upon the river are its *Ranunculus fluitantis* and *Callitriche-Batrachion* vegetation, white-clawed crayfish *Austropotamobius pallipes* and otter *Lutra Lutra*.*

*A local planning authority is a 'competent authority' under the Habitats Regulations, and in determining planning applications for development projects, must only give planning permission for a development project where it can be demonstrated that any European wildlife site will not be adversely affected. Development within the catchment of the River Mease SAC has the potential to contribute to adverse effects on the River Mease SAC in terms of poor water quality, and the relevant LPAs must therefore take this potential impact into account when determining planning applications in the catchment.*

*Thank you for providing Natural England with the most recent proposals for foul waste water disposal at the above site. Natural England has been involved in assisting the Council in seeking a Habitats Regulations compliant solution for this development for some time. We are aware of the very detailed and in depth investigations that have taken place in order to find the most suitable way forward for the management of waste water at this development site.*

*Natural England supports waste water solutions that are compliant with environmental legislation and best practice. This solution now proposed, which is for three sealed 'SPEL' storage tanks with off-site disposal, provides a mechanism by which the River Mease SAC can be fully protected. In the catchment of the River Mease SAC, the upmost concern is the protection of the SAC interest features, and where all other options have been explored, Natural England supports the use of a sealed tank system with off-site disposal. Natural England is fully aware of the efforts made by the applicant, consultants, South Derbyshire District Council, the Environment Agency and ourselves to find a suitable solution for this proposal and Natural England confirms that the current proposal for a sealed tank storage system with off-site disposal, given all other constraints and issues, presents the most suitable option having fully explored all alternatives. Natural England therefore supports this proposal, as we have done for other developments that have taken a similar approach in the River Mease catchment where alternatives are not feasible or viable.*

*The Council will need to ensure that adequate maintenance of the system, in accordance with manufacturer guidance, is secured in any permission given. Waste water treatment works within the River Mease catchment do not accept tankered waste water, and the waste will therefore automatically have to be taken out of catchment, thus ensuring no contribution of phosphate to the SAC. The Council should however consider how this can also be secured in any permission given, for certainty and completeness.*

*It is therefore advised that Natural England does not have any significant concerns with regard to this current proposal.*

Natural England affirms the findings of the extended Phase 1 Habitat Survey and Water Vole surveys and comments that the work undertaken is appropriately detailed and relevant to the application with all necessary ecological considerations having been

adequately considered. Natural England concurs with all recommendations made in the report and anticipates that conditions will be applied accordingly.

The Environment Agency has not objected at any stage, always acknowledging the Mease as an ultra sensitive watercourse which is both a SSSI and a SAC, a European designation of the highest standing. The Environment Agency is the technical specialist with regard to the validity of non-mains drainage solutions, and acts as competent authority under the Habitats regulations in considering such proposals. Given this acknowledged importance of the Environment Agency as a statutory consultee its final formal response is set out in full below:

*The Environment Agency is the main agency providing advice on improving resilience and adaptation to the effects of climate change, with particular regard on flood risk, water resources, water quality and aquatic biodiversity.*

*The application has been amended to incorporate the use of a sealed watertight cesspool for the receipt and storage of effluent with no discharge to either surface water or groundwater. A waste carrier, licensed by the Environment Agency will also be used to remove effluent off site to a sewage treatment works outside of the River Mease catchment.*

#### **Environment Agency position**

*We generally do not promote the use of cesspools other than in exceptional circumstances, however we have no objections to the proposed development as submitted. The applicant has satisfactorily demonstrated to us that the development cannot reasonably connection to a public sewer and there has been open consideration for alternative private sewerage options having had regard to the local water environment and the River Mease SAC.*

*C3/99 advises that where there is no other suitable or viable alternative options, the use of cesspools are acceptable in principle, provided they are properly constructed and maintained. The case for the use of cesspools has to be considered on a site specific basis and the applicant has been in consultation with us and Natural England to find an acceptable drainage solution.*

*The Environment Agency is satisfied that the measures in place will ensure the proper operation, recording and maintenance of the foul drainage scheme for the lifetime of the development. On this basis we are satisfied that the application proposes no negative effect on the River Mease SAC or local water environment.*

*The proposed development will be acceptable if the following measure(s) are implemented and secured by way of planning conditions on any planning permission.*

#### **Condition**

*The development hereby permitted shall not be commenced until such time as a scheme for foul drainage to a sealed cesspool to BS Standard has been submitted to, and approved in writing by, the local planning authority. The scheme shall include:*

- *The full structural details of the installation, including details of excavation and the tank*

- *The installation of a high level alarm in order that the effluent level, spillage or a disruption in service can be monitored.*
- *Maintenance of the scheme for the lifetime of the development*
- *Records of all alerts, emptying and disposals of the system for compliance monitoring.*
- *That all off site effluent disposals are outside of the River Mease catchment area.*
- *Sited at least 7 metres away of from habitable buildings and water supplies.*

*The scheme shall be fully implemented and subsequently maintained, in accordance with the scheme, or any changes as may subsequently be agreed, in writing, by the local planning authority.*

### **Reasons**

*The National Planning Policy Framework paragraph 109 states that the planning system should contribute to and enhance the natural and local environment by preventing both new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels of water pollution.*

### **Condition**

*Prior to the commencement of development an emergency management plan including details of the procedure of failure of the foul drainage scheme shall be submitted to and approved in writing by the local planning authority. The management plan shall detail responsibilities and timescales for the plans implementation, with temporary alternative arrangements for foul drainage during times of failure that do not cause pollution or discharge either directly or indirectly to the River Mease catchment.*

*The management plan shall be implemented as approved and any subsequent variations agreed in writing by the local planning authority.*

### **Reasons**

*The National Planning Policy Framework paragraph 109 states that the planning system should contribute to and enhance the natural and local environment by preventing both new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels of water pollution.*

The Economic Development Officer confirms that there is further demand for log cabins in and around the National Forest. He further comments that log cabins in particular are an ideal form of self catering accommodation entirely in keeping with the character of the destination, and of course require a rural location. Visit England, the national tourist board, is now promoting The National Forest as one of England's destinations, especially to the "active outdoors" market, as a primarily rural destination, and log cabins would hence be an ideal part of a short break or longer holiday. Demand for self-catering accommodation is growing much faster than for serviced accommodation, both nationally and locally, and seems to be part of a longer term trend.

Having visited the locality the Council's Drainage Officer comments that drainage from the proposed development would not impact on any flooding issue that there might be at this location.

The Environmental Health Officer advises that he has no significant cause for concern about the foul drainage arrangements. He also considers that risk of contamination from fertilizer and any other human activity on the land is low and insufficient to warrant any form of ground survey. Having discussed the matter at length with the neighbour he confirms that the development should not have an unreasonable impact on residential amenity.

Severn Trent Water Ltd has no objection in principle and has confirmed that there are no disposal points for tankered sewage in any of its treatment works in the River Mease catchment area. It affirms that the nearest site licensed to receive tankered waste is Claymills.

The access would pass over the root protection areas to an Ash tree and an Oak tree growing in the roadside hedge. The Tree Officer has commented on the trees affected by the access, noting that the Ash is in poor condition and is a potential hazard. The Oak should be protected by the use of an appropriate construction system where the access road passes across its root protection area.

The Conservation and Heritage Officer has confirmed that the proposal does not affect the setting of any listed buildings.

In response to a third party request for an EIA Screening Direction the Secretary of State directs as follows:

*“The Secretary of State has given careful consideration to the concerns expressed about waste water storage, disposal and potential impacts on the River Mease Site of Special Scientific Interest (SSSI) and Special Area of Conservation (SAC). He has given significant weight to the assessment of both Natural England and the Environment Agency in this regard. They are both satisfied that the solution proposed, namely 3 sealed storage tanks with off-site disposal, provide a safe mechanism by which the SSSI and SAC can be fully protected. The Secretary of State is also reassured by proposals to ensure that the waste water treatment works will not be within the River Mease catchment area. The Secretary of State has also considered other concerns relating to access for tanker deliveries and transport movements and the possible impact of noise and odour both during and after development works. However, he concludes that there is insufficient evidence that significant effects are likely to occur. There are no other factors in this individual case in this specific location, that either in isolation, or in combination with the above factors, would necessitate EIA. EIA is therefore not required.”*

The Secretary of State's direction is confined to the issue of Environmental Impact Assessment only.

## **Responses to Publicity**

Where an objector has sent multiple letters (including where representation has been made on their behalf) this has been counted as one objection. Additional letters, and some that have been withdrawn, are also accounted for. About 170 letters of objection (which are available for detailed inspection on the application file) have been received. 129 of the letters are of a standard format – 51 of these are from Netherseal addresses, 8 from other South Derbyshire addresses, 19 from the Stafford area, 4 from

Birmingham, 8 from Hertfordshire, 22 from other non-South Derbyshire addresses and 5 have no address. Objections have also been received from The Angling Trust, The Institute of Fisheries Management, Salmon and Trout Association, Barbel Association, The Association of Barbel Fishers, Barbel Fishing World, Pike Anglers' Club of Great Britain, Chairman of the River Deben Association, Pike Fly Fishing Association, Tony Campbell Fishing Coach, Disabled Angling Association, People's Trust for Endangered Species, Chartered Institution of Water and Environment Management, Chub Study Group, The River Foss Society, International Otter Survival Fund, Clean Rivers Trust, Prince Albert Angling Society, JB and Associates Fishing Coaches, Pride of Derby AA Ltd, The International Fly Fishing Association, Stoke on Trent Angling Society, National Anguilla Club, Get Hooked on Fishing, Derby and South Derbyshire Friends of the earth co-ordinator, Birmingham Anglers Association Ltd, Lure Angler's Society, Angling Trust Midlands Regional Forum, England Youth Flyfishing, Froglife, Team England Fly Fishing, Bass Anglers' Sportfishing Society, European Fishing Tackle Trade Association, Wheelyboat Trust, British Carp Study Group, Cam Valley Forum, Windermere Ambleside and District Angling Association, River and Lake Swimming Association, Staffordshire Predator Angling Group, Ribblesdale Angling Association, Eelfishing.co.uk, Mid Northants Trout Fishers Association, Bangor on Dee Angling Association, Osprey Specimen Group, International Carp Study Group, The Tenchfishers, Lark Angling & Preservation Society, Lamb Angling Club, Lake District Fly Fishing Association, Secretary of Stone Private Angling Club, Devon Fly Fishing, Dave Morris Area Coach France Kent & Sussex, Maidstone Victory Angling Society, South West Rivers Association, Coors Angling Club, CarpFishingTuition.co.uk, Paul Power Fishing Coach, Essex Fly Fishers Club, Broome Angling Society, Hon. Chairman and Secretary of the Civil Service Angling Society, Animal Concern Advice Line, Carleton Hill Fishery, Letchworth Garden City Angling Association Ltd, Alan Tomkins PAA Instructor, Andrew Kennedy Freelance Writer and Angler of 25 years, The Tees Rivers Trust, Bodmin Anglers Association, Grantham Angling Association, The Barbel Specialists, JB and Associates Fishing Coaches, Paul Power Fishing Coach, Tonbridge and District Angling and Fish Preservation Society, Mitre Angling, York and District Amalgamation of Anglers, Matchplay Angling Association, Winsford & District Anglers Association, Heron Angling Society, Slaithwaite and District Angling Club, Friends of Rivers, Winsford and District Angling Club, River Deben Association, Leicestershire Fly Fishing Association, Burton Mutual Angling Association, Angling Development Board, Thames Anglers Conservancy, Ivel Protection Associations, Don Catchment Rivers Association, Ripon Piscatorial Association, The Fly Dressers' Guild, River Chess Association, the National Mullett Club, Tunbridge Wells Fly-fishing Society, and Surfers against Sewage.

The adopted Statement of Community Involvement requires re-notification to neighbours only where they are likely to experience an increased effect from an amended proposal. On this basis, as a matter of courtesy, re-notification in respect of the last amendment to the sewage treatment proposals has only been undertaken in respect of the three neighbours adjoining the site. Therefore the responses to publicity listed below include all those made in respect of the application from the date of submission.

The objectors raise the following issues:

- a) The development would have a harmful impact on the character and appearance of the countryside. The site slopes and is visually prominent in the landscape, from dwellings, public footpaths and heritage assets.

- b) Changes of use at Gunby Farm have led to harmful visual, environmental and traffic impacts. Landscaping has been ineffective.
- c) The proposed development would result in harmful loss of privacy and outlook to neighbouring dwellings.
- d) There would be noise (in conflict with PPS24), smells and light pollution.
- e) Sewerage from the development would result in damage to the ecology and integrity of the River Mease European Special Area of Conservation and SSSI, in particular from discharge of excessive phosphate levels. The applicant has not provided the necessary information to enable an appropriate assessment to be undertaken. The evidence that has been supplied is factually inaccurate and misrepresentative of the conservation issues. Using the flowchart in Circular 06/2005 the development cannot be permitted. Environmental evidence supplied by the applicant is flawed.
- f) The proposed treatment plant would be reliant upon specialist chemical dosage, which would be unreliable.
- g) There may be harm to Badgers, Bluebells, Otter (which exist along the River Mease), Great Crested Newt and Water Vole habitat. The Water Vole Survey was undertaken at the wrong time of year.
- h) There would be an increase in carbon emissions, from the build phase and subsequent operation.
- i) Any access onto Gunby Hill, which is narrow, would be dangerous.
- j) The proposed access on to Lodge Road fails to provide adequate visibility, having regard to vehicle speeds along the road. Speed surveys by the applicant are not representative of the actual situation.
- k) The use of Lodge Road by pedestrians would be dangerous.
- l) 3 accidents in Lodge Road, resulting in fatalities, have been reported locally. More fatal accidents would occur.
- m) The topography of the site and the lack of footways on the highways would preclude access by the elderly, disabled, children and those with impaired mobility, failing to satisfy PPS1's requirement for social inclusion.
- n) The proposal would not be a sustainable business, would not achieve the applicant's job creation estimates, would not improve quality of life for residents and existing visitors, or result in social progress and would not protect the environment; contrary to the sustainability objectives of PPS1.
- o) Existing holiday homes have poor occupancy rates and the proposal would lead to further dilution in this regard.
- p) The proposal does not represent a farm diversification project, as it is understood that the applicant does not operate a significant farm business. Therefore no positive weight can derive from a farm diversification argument.
- q) A site visit is essential.
- r) The scheme could develop into a larger scale development.
- s) The development would be contrary to policies for development in the countryside and does not satisfy the criteria for recreation and tourism proposals.
- t) A neighbouring well could be contaminated.
- u) Proposed screen planting would diminish light to Seale Cottage.
- v) Screening would take a long time to be effective, if at all.
- w) Many ramblers, horse riders, cyclists and the general public use the local footpaths and Lodge Road and their enjoyment of the setting would be diminished.

- x) There are no reasonably accessible local facilities, contrary to sustainable development objectives.
- y) The access and locality floods. A flood risk assessment should be undertaken.
- z) There is poor access by public transport to tourist attractions in the area.
- aa) There is substantial local opposition including objections from local businesses.
- bb) There is no evidence that new tourist accommodation could not be accommodated in or close to an existing village at a more suitable site.
- cc) There would be additional traffic in the local villages, where there is also limited parking.
- dd) The development does not compare favourably with the sustainable log cabin development of 6 units in 154 acres at Rosliston Farm.
- ee) Noise would adversely affect wildlife and livestock.
- ff) The land may be contaminated by agricultural chemicals.
- gg) Netherseal does not offer anything for tourists.
- hh) A full ecological survey should have been undertaken.
- ii) There would be air pollution from the burning of fuel.
- jj) Activity on the site would cause a neighbour's dogs to bark and dogs brought onto the site may also increase noise.
- kk) This is major application that should be accompanied by an Environmental Assessment and range of other assessments.
- ll) The site may be subject to mining subsidence and an investigation should be undertaken.
- mm) A precedent would be set for further unacceptable development in the countryside.
- nn) A motor vehicle reclamation yard would be more suitable.
- oo) The development is for second homes, not tourist accommodation.
- pp) The abandoned Local Plan (Policy LRT 3 & LRT 4), via the Planning Policy Position Statement should be given weight and a sequential test should be applied.
- qq) Proposed planting would change the landscape character of the area.
- rr) It is unlikely the planting would be successful.
- ss) There may be more sequentially suitable sites.
- tt) Permitting this application would be inconsistent with comparable cases elsewhere, which were refused.
- uu) Drinking water would be polluted.
- vv) The water vole survey should be updated.
- ww) New tree planting would adversely affect drainage structures.
- xx) There would be loss of important hedgerow to form the access.  
Furthermore the proposed reed bed and pond would make maintenance of the hedge difficult and any cuttings could fall in to the reed bed and pond reducing their functionality.
- yy) The site is a nitrate vulnerable zone.
- zz) Mature trees of high amenity value along the roadside would be destroyed by the access and ponds/reed beds. A tree survey should be undertaken and the relevant British Standard applied. The trees should be protected..
- aaa) The waste water Treatment Plan does not include consideration of "other" flows into the wastewater treatment; nor define when flow is present in the receiving watercourse; nor does it include any means of monitoring flow in the receiving watercourse.

- bbb) Phosphates at the confluence with the River Mease would be 43 times the requirement of the conservation target for the SAC.
- ccc) The efficiency of the wetland system for phosphate removal diminishes over time.
- ddd) More details of the reed bed should be sought now. The exact mechanism for phosphate removal in reed beds is still unclear.
- eee) Reed beds can freeze in winter and are not suitable for the current UK climate.
- fff) A unique study of flow in the un-named watercourse should be undertaken over a period of many months, and then a suitable level of flow and how this can be monitored and recorded can be determined and a methodology of control for release of effluent into the watercourse be established. The scheme does not provide adequate protection when the brook is dry. There could be up to 13 days when sewage enters the dry watercourse unchecked.
- ggg) A fully automated monitoring and diversion system should be used – a manual system is insufficiently secure and responsive.
- hhh) Tankering effluent away may be unacceptable for pollution reasons and would create unsatisfactory traffic movements.
- iii) The pond would be a huge reservoir for pollutants, only feet away from a Mease tributary.
- jjj) DETR Circular 02/99 advises against the use of package treatment plants for holiday accommodation where occupation and maintenance are irregular.
- kkk) The amenity pond and reed bed present health and safety hazards, such as risk of children drowning, rodents, water snakes, bacteria and viruses associated with reed beds, smells, insects and contamination to the neighbouring property.
- lll) If the pond/reed bed is fenced of this will be out of character with the countryside.
- mmm) The scale of the pond/reed bed in comparison with the overall site area demonstrates how inappropriately dense the development would be.
- nnn) The pond/reed bed would preclude essential landscaping.
- ooo) The watercourse is unstable insofar as it quickly runs dry and also regularly floods, particularly at the bottom of Lodge Road during heavy rain.
- ppp) There would be noise and disturbance to occupants of Grangewood Lea caused by vehicles passing alongside its garden. At night headlamps would shine into the windows.
- qqq) The pond could flood the neighbouring property.
- rrr) The water treatment proposal would no longer comply with the Environment Agency' Standard Rules Permit.
- sss) No assessment is made of other pollutants including BOD and NH3.
- ttt) Construction Assessment to be undertaken before decision taken. Existing trees and hedgerow would shade the reed bed and impair its efficiency, contrary to Building Regulations.
- uuu) The effects of evaporation have not been taken into account and would result in higher concentrations of pollutants in the pond.
- vvv) The hydraulic gradient from the treatment plant to the outfall may be inadequate.

- www) Intermittent occupation the log cabins would starve the treatment plant of the bacteria it needs to be effective and this issue has not been addressed.
- xxx) Occupancy patterns should be known now to enable the effect of winter conditions on the efficiency of the treatment system to be evaluated.
- yyy) There is a potential risk to human health from micro-organisms in treated effluent.
- zzz) Manure has recently been spread on the field and this would increase pollution risk.
- aaaa) Unauthorised works have been undertaken to the access which could adversely affect the SAC( including the use of tarmac planings), wildlife, flora and drainage, and have resulted in the loss of hedgerow.
- bbbb) A report by the Safer Roads Foundation raises highway safety concerns.
- cccc) The need for sewage treatment works contribution may render the scheme unviable.
- dddd) A new speed survey commissioned by an objector (December 2011, received April 2012) shows that visibility at the access is inadequate.
- eeee) The development is not sustainable in the terms of the NPPF.
- ffff) Traffic Management Adviser for Association of British Drivers considers that highway safety would be adversely affected.
- gggg) The development would harm the setting of nearby listed buildings.
- hhhh) Landscaping would be ineffective and no level of mitigation would improve the visual amenity of near residents. Open views would also be lost.
- iiii) Landscaping would unacceptably reduce light to the occupants of the neighbouring dwellings.
- jjjj) Vehicles using the access would have a harmful landscape impact, including at night.
- kkkk) Lighting from the site would have a harmful visual impact at night.
- llll) A surfaced footway should be provided along Lodge Road. Other off site highway improvements should also be undertaken.
- mmmm) There is a septic tank in the middle of the site, which has caused the site to be contaminated and thus cause serious risk of pollution to the River Mease. Officers will need a JCB to investigate this. (Officer comment – no relevant evidence has been supplied to support this allegation).
- nnnn) There would be increased risk of crime. (Officer comment – the application does not fall within a category that would generate consultation with the Police. No evidence has been offered to substantiate this contention).
- oooo) The site is in an area at risk of flood and a sequential test should be undertaken. (Officer comment: The site is not in Flood Zone 2 or 3, nor is it a Flood Zone 1 which has critical drainage problems and which has been notified to the LPA by the EA. A sequential test and FRA is therefore not required).
- pppp) The culvert will cause flooding and pollution. Flooding along Lodge Road has been observed and documented. A hydraulic assessment should be undertaken to comply with relevant legislation.
- qqqq) Water run-off from the development, including surface water, will cause flooding and contamination, including public areas.
- rrrr) Package treatment plants should not be sited in areas at risk of flooding.
- ssss) Flooding in Lodge Road is dangerous for road users.
- tttt) Climate change will cause more flooding and this should be taken in or account.

- uuuu) The use of cesspools is contrary to Environment agency policy and would generate 324 journeys of 6480 miles per annum, or 18 loads per month.
- vvvv) Cesspools are illegal in Scotland.
- wwwv) The cesspools would not meet requisite standards.
- xxxx) Spillages and overflows would likely occur causing pollution and health hazards and harm to the SAC.
- yyyy) Tankers would cause unacceptable noise to neighbours and site occupiers.
- zzzz) The cesspools would reduce the area of available amenity space. The amenity space would be inadequate.
- aaaaa) The site is currently listed as Grade 2 (very good quality) agricultural land – National Planning Guidance, Chapter 11 states 'local planning authorities should seek to use areas of poorer quality land in preference to that of a higher quality'.
- bbbbb) The driveway is too narrow and the turning areas inadequate for tankers. There would be danger to site users.
- ccccc) There would be unacceptable odours and health risks from the cesspools to neighbours and site users.
- dddd) The cost of the cesspool system would render the development unviable. The business plan should be examined.
- eeeee) Sewage would need to be pumped to the tanks because of site levels.
- ffff) Tankering effluent is unsustainable.
- ggggg) The proposal is contrary to the Council's supplementary planning guidance on new housing.
- hhhhh) Installation of the tanks may impinge on mine shafts and a Coal Mining Risk Assessment is required.
- iiii) In winter the tankers will be unable to reach the site because of the gradient.
- jjjj) The tankers' impact on the road network has not been assessed.
- kkkkk) Due to high maintenance costs there is a common practice of puncturing the bottoms to reduce cost.
- llll) There would be a proliferation of cesstanks in the River Mease catchment, with resultant increases in traffic and unsustainability.
- mmmmm) Inadequate parking will lead to cars parking in Lodge Road.
- nnnnn) Because of the sloping ground there would be ground pressure leading to fracturing of the tanks.
- oooo) Vehicles from the site would transfer contaminants to the River Mease SAC.
- ppppp) The EA should not have granted a Standard Rules Permit.
- qqqqq) The occupiers of Cadorough Hill, a location outside the flood risk area, have indicated (to a third party) that they would be more than happy to provide log cabins within their wood for tourists. Cadborough Hill is an ideal setting within the National Forest.
- rrrrr) Access for emergency vehicles would not be adequate.
- sssss) Refuse collection facilities are not provided for in the proposals.
- tttt) Large quantities of materials will need to be excavated and clean material imported which could affect drainage.
- uuuuu) There would be problems with monitoring and enforcement.
- vvvvv) The red line does not extend to include the sustainable urban drainage system.
- wwwww) A landscape report identifies five high sensitivity viewpoints – Lower window/southern boundary of Seale Cottage; upper window/southern

- boundary Seale Cottage; Grangewood Lea; public footpath and The Lodge (listed building to the west; and Grangewood Hall (listed building). Medium-high impacts are identified from public footpaths 5 & 6.
- xxxxx) The root system to the Oak would be damaged as too much of the root protection area would be affected.
- yyyyy) The Highway Authority's assessment of the access issues is inadequate and should be reassessed.
- zzzzz) SDDC's decision not to require an EIA is flawed because the site area is .9920 ha and not .715 ha as stated in the screening matrix; a hydrological survey is needed for the culvert; natural water flows have already been changed by the culvert for the adjacent new access; culverting is contrary to EA policy and increases flood risk and also contrary to the NPPF; loss of agricultural land; risk of contamination to the R Mease and Sherwood Sandstone Aquifer; no noise survey; no analysis of light pollution; landscape impact; assessment of future phases of development; impact on neighbours. (Officer comment: The relevant issues have been taken into account in the EIA Screening Process – the objector's representations do not raise any new or significant matters that would cause the opinion to change. Furthermore he sought a Screening Direction from the Secretary of State and this Direction is that no EIA is required. The local planning authority must observe any such direction, although they may in exceptional circumstances ask the Secretary of State to cancel or vary it if they consider that there is good reason to do so. The LPA sees no good reason to do so.)

Where commissioned reports have been submitted on behalf of an objector, they have been taken into account in the preparation of the Planning Assessment below. Some of the reports address issues that were relevant only to the previous package treatment plant proposals. Where necessary, reports have been seen by relevant consultees.

### **Development Plan Policies**

South Derbyshire Local Plan: Recreation and Tourism Policy 1, Transport Policies 6 and 7, Environment Policies 1, 9, 10 & 11;  
East Midlands Regional Plan Policies 24, 29 & 42.

It should be noted that the Secretary of State's intention to abolish the Regional Plan is contained within the Localism Act and he has stated that this is a material consideration. Nevertheless the Regional Plan remains as the statutory development plan and Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires: "If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."

### **National Guidance**

National Planning Policy Framework (NPPF), in particular:

Paras 6-10 (Achieving sustainable development)  
Paras 11-14 (The presumption in favour of sustainable development)  
Para 17 (Core principles)  
Chapter 3 (Supporting a prosperous rural economy)

Chapter 4 (Promoting sustainable transport)  
Chapter 7 (Requiring good design)  
Chapter 10 (Meeting the challenge of climate change, flooding etc.)  
Chapter 11 (Conserving and enhancing the natural environment)  
Paras 186 & 187 (Decision-taking)  
Para 193 (Local planning authorities should only request supporting information that is relevant, necessary and material to the application in question.)  
Para 196 & 197 (Determining applications)  
Paras 203-206 (Planning conditions and obligations)  
Annex 1 (Implementation)

Good Practice Guide on Planning for Tourism.

### **Planning Considerations**

- The principle.
- Impact on the countryside.
- Residential amenity.
- Ecology.
- Traffic, Access and Highway safety.
- Environmental Impact Assessment

### **Planning Assessment**

#### The Principle

Paragraph 7 of the NPPF identifies three dimensions to sustainable development: economic, social and environmental. Paragraph 8 makes it clear that these roles should not be undertaken in isolation, because they are mutually dependent.

Paragraph 14 of the NPPF introduces a presumption in favour of sustainable development. For decision-taking this means:

- approving development proposals that accord with the development plan without delay;
- and where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:
  - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or
  - specific policies in the Framework indicate development should be restricted.

Paragraph 119 makes it clear that the presumption will not apply where development requiring appropriate assessment under the Birds or Habitats Directives is being considered, planned or determined. In this case appropriate assessment is not required (see Ecology and Environmental Impact Assessment sections below) and thus the presumption applies.

Saved Environment Policy 1 of the Local Plan is the overarching development plan policy for development away from settlements. It is not inconsistent with the NPPF. It requires development to be either essential to a rural based activity, or unavoidable in the countryside, and the character of the countryside, the landscape quality, wildlife and

historic features are to be safeguarded and protected. If development is permitted in the countryside it should be designed and located so as to create as little impact as practicable on the countryside. For the reasons set out in the following paragraphs of this report (including by reference to other relevant development plan policies) the proposal is unavoidable in the countryside (providing self catering accommodation in the National Forest to meet an acknowledged need identified in the National Forest Strategy 2004 -2014) and meets the other relevant criteria for acceptability. The Economic Development Officer confirms that there is further demand for log cabins in and around the National Forest. He further comments that log cabins in particular are an ideal form of self catering accommodation entirely in keeping with the character of the destination, and of course require a rural location. He comments that Visit England, the national tourist board, is now promoting The National Forest as one of England's destinations, especially to the "active outdoors" market, as a primarily rural destination, and log cabins would hence be an ideal part of a short break or longer holiday. Demand for self-catering accommodation is growing much faster than for serviced accommodation, both nationally and locally, and seems to be part of a longer term trend.

While log cabins are ostensibly dwellings, the justification to Housing Policy 8 of the Local Plan makes it clear that this policy is intended to deal with proposals for dwellings to be occupied as main places of residence in support of a rural based activity (such as farming). Recreation and Tourism Policy 1 is therefore the appropriate topic based policy for this proposal.

Local Plan Recreation and Tourism Policy 1 indicates that tourist facility proposals will be permitted provided that development does not cause disturbance to local amenity by virtue of noise and traffic generation; adequate provision is made for pedestrian and vehicular access, parking, screening and landscaping and they are of appropriate scale and design and are well integrated with their surroundings.

Regional Plan Policy 24 seeks to promote further development of the rural economy, acknowledging the role of tourism in this regard. Policy 42 indicates that areas with potential for tourism should maximise economic benefit and minimise adverse impact on the environment. Measures should include provision for additional tourist facilities including accommodation close to popular destinations that have adequate environmental and infrastructure capacity, particularly those within walking and cycling distance. The justification for the policy states that the National Forest is a strong regional attraction in its own right. The policy is consistent with Paragraph 28 of the NPPF.

Chapter 3 (Paragraph 28) of the NPPF 28 states that planning policies should support economic growth in rural areas in order to create jobs and prosperity by taking a positive approach to sustainable new development. To promote a strong rural economy, local and neighbourhood plans should include:

- supporting the sustainable growth and expansion of all types of business and enterprise in rural areas, both through conversion of existing buildings and well designed new buildings; and
- support sustainable rural tourism and leisure developments that benefit businesses in rural areas, communities and visitors, and which respect the character of the countryside. This should include supporting the provision and

expansion of tourist and visitor facilities in appropriate locations where identified needs are not met by existing facilities in rural service centres.

The provision of tourist accommodation to meet the identified need for overnight accommodation in the National Forest, as identified in the National Forest Strategy, and as a strong regional attraction in its own right, is a contributor to that sustainability objective. Resisting such proposals as a matter of principle is intrinsically counter to the economic sustainability of the National Forest and the districts (including South Derbyshire) that benefit from this developing tourism resource. The provision of overnight accommodation encourages longer stays thus reducing traffic generated by day visits (from The National Forest Company's sustainability report 2007).

Sustainability issues relating to impact on the countryside, residential amenity, highway safety and ecology are addressed below. In terms of location, a site within 1km of the village centre so that visitors can experience the National Forest, while still being able to access village facilities without relying on the private car, is sustainable. A location within or immediately adjacent to a larger built-up area would not provide the same countryside experience and the proposal for log cabins in the National Forest to meet an identified need is therefore compliant with Local Plan Saved Environment Policy 1, being unavoidable in the countryside. It will be noted, from the representations received, that ramblers, horse riders, cyclists and the general public use the local footpaths and Lodge Road, so it is not unreasonable to expect that users of the log cabins would do likewise. Furthermore there is no safety objection from the Highway Authority and thus no reason to suppose that users of the log cabins would be unable to use the same networks for walking and cycling.

There is no clear strong link to a current farm regime, and the proposal therefore carries little weight as a farm diversification project. However the development plan and national guidance on the rural economy lend favour to the proposal insofar as it would provide tourist accommodation in the National Forest, where there is an acknowledged need for accommodation that would provide for short breaks (National Forest Strategy 2004-2014), and also within reasonable proximity of other tourist attractions. As such the development is acceptable in this location, in principle.

The Good Practice Guide on Planning for Tourism states:

"The nature of holidays in this country has become increasingly diverse, in location, in season and in duration. Many people go away several times a year, often for short breaks and not exclusively in the summer months. Much of this demand is for self-catering accommodation – whether in new or converted buildings or in caravan holiday homes. This spread of demand improves the use that is made of this accommodation and so is advantageous to the businesses which provide it and to those host communities which are supported by the spending that it generates. It can help to reduce the disadvantages of seasonal employment, including the difficulties of retaining trained and experienced staff.

Whilst extension of the season has these advantages, the demand for this accommodation may occur in areas in which the provision of permanent housing would be contrary to national or local policies which seek to restrict development, for example in order to safeguard the countryside. The planning system can reconcile these two objectives through the use of occupancy conditions designed to ensure that holiday accommodation is used for its intended purpose. Planning authorities

commonly impose such conditions when granting permission for self-catering holiday accommodation.

Planning authorities will frame these conditions according to local circumstances, and in accordance with general Government advice that conditions should be reasonable and fair. They will also need to frame them so that they can be readily enforced by the authority but in a way that is not unduly intrusive for either owners or occupants.”

The recommended condition is very closely aligned with the example set out in the Good Practice Guide, with an additional limitation, based on consistency with recent grants of permission for log cabins elsewhere in the district.

With regard to the loss of agricultural land, the site is located on a slope between existing buildings and forms a very small part of the adjacent farmland. As such its loss would not be significant.

The abandoned Local Plan policies are not part of the development plan. Nevertheless, by reference to the Planning Policy Position Statement, the Local Plan Inspector observed that permanent tourism accommodation in the form of static caravans was acceptable in principle inter alia in the National Forest. The National Forest Strategy post dates the closure of the Local Plan Inquiry and identifies a need for log cabins, which are considered to be more satisfactory than static caravans in this case, because of their appearance and harmony with the National Forest Strategy, which is itself a material consideration by setting a relevant and clear economic objective for this regional tourist resource.

#### Impact on the countryside

The topography of the site means that it would be clearly visible from the west, including the footpath network (as identified in the objector’s landscape report) in the period following development. However with an appropriate landscaping scheme the visual impact would reduce over a period of time, such that the development would integrate acceptably with its surroundings. The proposed landscaping can be secured by condition and is a material consideration. It should be noted that the existing mature planting around the existing dwellings has a significant softening effect, which would be complemented by the maturation of new planting associated with this development. The single storey log cabins would sit between existing two-storey development. In this context, while there may be a short-term impact, the proposal would not bring about demonstrable harm to the general character and appearance of the area in the medium to long term. Tree planting, as proposed, is entirely appropriate in the National Forest, in landscape character terms.

Construction works for the access would have the potential to further damage the poor Ash tree specimen immediately to the west of the proposed access and the roadway would also pass under the canopy of a semi-mature Oak with no apparent defects. Whilst the Oak tree, in its context of being one of many hedgerow trees in the area, is not worthy of Tree Preservation Order, there is no good reason to damage it. A condition requiring an appropriate construction method for the access, insofar as it may influence the tree, would adequately protect it as a retained tree in the requisite landscaping scheme. The Ash tree is in poor condition and, in the context of other mature trees in the locality, and the substantial new planting proposed, its loss to the

landscape would not be significant should it not be feasible to retain it. It is not worthy of a Tree Preservation Order.

The proposal is thus in accord with Local Plan Saved Environment Policies 9 & 10.

A planning condition would ensure that lighting is appropriate to its context, based on the Institution of Lighting Professionals Guidance Note for the Reduction of Obtrusive Light (2012). This would be sufficient to ensure compliance with Paragraph 125 of the NPPF.

With the recommended conditions on landscaping and lighting and having regard to the site's context set between existing groups of buildings the proposal would meet the requirements of Local Saved Environment Policy 1 for the character of the countryside, the landscape quality, wildlife and historic features to be safeguarded and protected, and designed and located so as to create as little impact as practicable on the countryside. For the same reasons the development would meet the requirements of Saved Recreation and Tourism Policy 1 and Chapter 7 of the NPPF, being of appropriate scale and character and well integrated with its surroundings.

Notwithstanding the objector's landscape report the Conservation and Heritage Officer has confirmed that the proposal would not affect the setting of any listed buildings.

The issue of landscape impact on the two dwellings to the south, as also identified in the objector's Landscape Assessment is addressed in the following section.

#### Residential Amenity

The site falls from Sandhurst to Seale Cottage and Grangewood Lea. Testing the proposal against the supplementary planning guidance for new housing development (which sets out reasonable standards for privacy, overbearing and light and thus forms an objective basis for assessing this proposal) the proposed low buildings would not have demonstrable adverse impact on the occupiers of Sandhurst, subject to precise siting and design of the buildings, which can be controlled by appropriate submission and consideration of reserved matters.

Seale Cottage and Grangewood Lea are set at a lower level than the application site and therefore the minimum standards set out in the supplementary guidance need to be increased to take account of the topography. Seale Cottage was subject to a grant of planning permission to extend towards the application site by some 3 metres, bringing it to about 1 metre from the boundary – the application for the extension was received on 14 December 2010, granted on 25 January 2011 and it has now been built. The indicative layout shows the proposed buildings to be some 21m and 30 m away from Seale Cottage, taking into account the completed extension, and Grangewood Lea respectively at the nearest points and 20m and 9m from the respective boundaries. In terms of overbearing and loss of light this would comfortably meet the normal tests of acceptability, even taking into account the recently constructed extension to Seale Cottage. However the elevated positions of the log cabins could, without adequate control, potentially cause overlooking. This issue would therefore be safeguarded by condition and through the reserved matters process, for example by restricting the insertion of windows on certain elevations, or by siting cabins so they do not overlook. Appropriate planting between the neighbouring dwellings and the log cabins would further protect privacy and this can be controlled by landscaping condition.

Views over the site by the occupiers of Seale Cottage and Grangewood Lea would inevitably be changed. However it is long established in planning practice that the system should not be used to seek to protect private views per se.

This type of development would not be expected to generate noise, smells, light pollution or an increased risk of crime over and above general residential levels. The application does not fall within a category that would generate consultation with the Police. The attraction is the National Forest, rather than on site activity. However visitors would still be expected to spend time on site and avail themselves of the site facilities, including use of the communal open space. The illustrative drawing indicates communal space set well away from neighbours, separated from them by log cabins and landscaping such that there would be low probability of unreasonable disturbance. This would be secured by consideration of siting and design via reserved matters approval and landscaping condition. Although the Environmental Health Officer has no objection, in the event of nuisance the Environmental Protection team would be able to impose remedial action. An appropriate condition would enable any potential noise generating communal facilities to be considered and controlled.

8 Log cabins would not generate significant levels of traffic movement, including service vehicles, such that neighbours would be unreasonably disturbed. There would be traffic associated with building operations, but for a project of this scale the impacts on amenity would not be unreasonable.

Therefore the proposal meets the requirements of Saved Recreation and Tourism Policy 1, to avoid causing disturbance to local amenity by noise or traffic generation. For the same reasons the proposal would not be in conflict with Paragraph 123 of the NPPF as it would not give rise to significant adverse impacts on health and quality of life as a result of noise from new development.

### Ecology

The three specialist consultees (Natural England, The Environment Agency and Derbyshire Wildlife Trust) do not consider that harm would be caused to ecological interests. In particular they do not consider that there will be any adverse impact on the integrity of the SAC and SSSI with the latest proposals for foul water disposal. However conditions are recommended to ensure that the development does not result in pollution to the SAC, including the requirement to submit a scheme for the approval of SDDC which will include the installation of the proposed sealed cesspool tank system and associated works, together with a management plan, and a requirement to comply with any approved scheme.

Compensation for the loss of part of the hedge to the access and the habitat benefits identified by Derbyshire Wildlife Trust would be secured through landscaping conditions. There is no evidence of impact on great crested newts, otters (given that the River Mease SAC will not be adversely affected) or water voles.

There is no evidence that a neighbouring well could be contaminated. The Environment Agency has raised no concerns about drinking water and neighbours already discharge treated effluent to the watercourse.

An assessment has been undertaken for under Regulation 61 of the Conservation of Habitats and Species Regulations 2010, prepared by a Habitats Directive specialist, in order to establish whether the development is likely to have a significant effect on the River Mease SAC. The assessment identifies the conservation interest features and objectives of the SAC and describes the development proposed. The applicant has provided such information as the authority may reasonably require to enable it to determine whether an appropriate assessment is required. Additional information from other sources, including the Environment Agency and Natural England, together with a review of potential projects which could act in combination with the development, has been gathered. This additional information, together with responses from the statutory consultees has allowed the potential impact to be considered in detail sufficient to enable the Authority to satisfy itself that no significant effects either alone or in combination will arise as a result of the development proposed. In reaching this view, there is no need for the Authority to proceed to undertake a full appropriate assessment. However, based on the information presented, and having regard to the responses received from both Natural England and the Environment Agency it can be concluded to the satisfaction of the Local Planning Authority that it is beyond reasonable scientific doubt that the proposal will have no adverse effect on the integrity of the River Mease SAC.

In addition the Secretary of State, in his Screening Direction, has fully considered this issue in concluding that the proposal is not EIA development. The conclusion is that the SSSI and SAC can be fully protected with the foul water scheme now proposed.

Therefore the issue of impact on the SAC does not amount to a material consideration that would warrant refusal of planning permission, provided that appropriate conditions are imposed as recommended by the Environment Agency, in accordance with Paragraphs 203 & 206 of the National Planning Policy Framework.

Additional conditions and informatives recommended by Natural England and Derbyshire Wildlife Trust would adequately safeguard protected wildlife, other wildlife, and other natural history interests.

For these reasons the proposal would satisfy the requirements of Saved Environment Policy 11 of the Local Plan and Chapter 11 of the NPPF, by avoiding disturbance to designated sites or to protected species of wildlife.

On the advice of Derbyshire Wildlife Trust the proposed landscaping could create habitats of greater value for wildlife than the current intensive agricultural use of the land, thus contributing positively to the overall objectives of Policy 29 of the East Midlands Regional Plan, which seeks to enhance biodiversity. This could be achieved by landscape condition.

#### Traffic Access and Highway Safety

The proposal would not generate substantial vehicle movements. The provision of overnight accommodation encourages longer stays thus reducing traffic generated by day visits (from The National Forest Company's Sustainability Report 2007).

The objection in regard to risk to pedestrians on Lodge Road is not sustainable and is countered by evidence that there are already significant pedestrian, cycle and equine

users. Risk to pedestrians has also been considered by the Highway Authority, which sees no reason to object.

On the advice of the Highway Authority the proposed access would not give rise to unacceptable risk. Whilst pedestrians would have to walk on verges, or in the carriageway, from the site to reach the footway at Gorsey Lane, they could also use Footpath no 6, joining it where it crosses Lodge Road about 150 m to the west of the proposed site access. Footpaths 5 & 18 can also be joined here. The recommended condition would physically preclude convenient pedestrian access to Gunby Hill and given the choices available it is unlikely that there would be any attempts by pedestrians to gain access onto Gunby Hill.

An appropriate condition would secure adequate access for people with a disability within the application site. It would be reasonable to require access arrangements for the disabled on site, so that people with impaired mobility can be included in the user group for the proposal.

### Environmental Impact Assessment

In response to the latest foul sewage proposals a formal screening opinion, under the Town and Country Planning (Environmental Impact Assessment Regulations), was issued by the Council to the applicant on 11 February 2013 and a copy has been placed on the public register.

The Secretary of State's subsequent Screening Direction, issued on 25 February 2013, is final. In this individual case in this specific location, and after considering the updated foul water proposal for the scheme, EIA is not required.

### Conclusion

The proposal would meet an identified need for tourist accommodation in the National Forest and would comply with the development plan and national guidance for such development. Being located between existing built development, and by virtue of the low height of the buildings and proposed landscaping, the impact on the character of the countryside would be acceptable. Reasonable standards of amenity for neighbours would be protected. There would be no demonstrable harm to highway safety or ecological interests.

The local planning authority has worked positively and proactively with applicants, based on seeking solutions to the SAC related problems arising in dealing with the planning application in accordance with its statutory duty under The Town and Country Planning (Development Management Procedure) (England) (Amendment No.2) Order 2012 and in accordance with national policy in Paragraphs 186 & 187 of the NPPF. There would be no adverse impact to the integrity of the SAC or to the SSSI, subject to the imposition of conditions as recommended by Natural England and the Environment Agency and as identified through the Habitats Regulations screening process. In particular conditions would secure ongoing regular monitoring and maintenance of the sewage tanks and compliance with the applicant's management plan. The proposal accordingly complies with planning policy and with the requirements of the Conservation of Habitats and Species Regulations 2010 in all respects.

The local planning authority could not be certain that previous package treatment plant schemes would comply with the test set out in the Habitats Regulations, applied to this individual case in this specific location. As such the use of cesspools in this case is acceptable. Therefore, given the economic benefits of the scheme, its role in making a choice of overnight accommodation available to meet an identified need for visitors to the National Forest, its compliance with the development plan and the lack of objection from consultees, when weighing the three sustainability criteria in Paragraph 7 of the NPPF the proposal represents, on balance, sustainable development.

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

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

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

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

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

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

Reason: In the interests of the appearance of the area to comply with Local Plan Saved Environment Policies 1,9 and 10.

4. Before any other operations are commenced, a new vehicular access shall be formed to Lodge Road generally in accordance with the revised application drawing (2010.032 - 001D), laid out, constructed and provided with visibility splays extending from a point 2.4m back from the carriageway edge, measured along the centreline of the access, for a distance of 150m towards the north-west and 120m towards the south-east, measured along the nearside carriageway edge, or such other distances as may subsequently be agreed in writing with the Local Planning Authority. The land in advance of the visibility splays shall be

maintained throughout the life of the development clear of any object greater than 0.6m in height relative to the adjoining nearside carriageway channel level.

Reason: In the interests of highway safety and to comply with Local Plan Saved Transport Policy 6.

5. Notwithstanding the submitted drawing no. 2010.032-001D the access shall be provided with radii the dimensions of which shall be submitted to and approved in writing by the Local Planning Authority pursuant to Condition 2.

Reason: In the interests of highway safety and to comply with Local Plan Transport Policy 6.

6. Notwithstanding submitted drawing no. 2020.32-001D the sole means of access shall be from the approved access to Lodge Road only there shall be no means of access at any time (either vehicular or pedestrian) to Gunby Hill.

Reason: In the interests of highway safety and to comply with Local Plan Saved Transport Policy 6.

7. Further to Condition 6 above details of the means of precluding access to Gunby Hill, and means of closure of the field access to Lodge Road (approximately 12 m to the east of the proposed new vehicular access) shall be submitted to and approved in writing before the development begins and the approved measures shall be implemented prior to the first use of the development.

Reason: In the interests of highway safety and to comply with Local Plan Saved Transport Policy 6.

8. The development shall not be brought into use until space has been provided within the application site in accordance with the details required pursuant to Condition No 2, for the parking and manoeuvring of visitors/ customers/ service and delivery vehicles, laid out, surfaced and retained throughout the life of the development free from any impediment to its designated use.

Reason: In the interests of highway safety and to comply with Local Plan Saved Transport Policy 6.

9. The development hereby permitted shall not be commenced until such time as a scheme for foul drainage to a sealed cesspool to BS Standard has been submitted to, and approved in writing by, the local planning authority. The scheme shall include:

- The full structural details of the installation, including details of excavation and the tank
- The installation of a high level alarm in order that the effluent level, spillage or a disruption in service can be monitored.
- Maintenance of the scheme for the lifetime of the development
- Record keeping of installation, all alerts, emptying of and disposals from of the system and maintenance for compliance monitoring.
- That all off site effluent disposals are outside of the River Mease catchment area.
- The installation shall be sited at least 7 metres away of from habitable buildings and water supplies.

The scheme shall be fully implemented and subsequently maintained, in accordance with the scheme, or any changes as may subsequently be agreed, in writing, by the local planning authority and all records shall be made available to the local planning authority on request.

Reason: The National Planning Policy Framework paragraph 109 states that the planning system should contribute to and enhance the natural and local environment by preventing both new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels of water pollution. Furthermore the condition is imposed to comply with Chapter 11 of the NPPF, Local Plan Environment Policies 1 and 11 and Article 3 of the Habitats Directive to ensure that the sewerage and sewage disposal systems serving the development are effective at this location without causing pollution to controlled waters. The site is located on a principal aquifer and within the catchment of the River Mease, an ultra-sensitive watercourse which is both a Site of Special Scientific Interest and a Special Area of Conservation, a European designation of the highest standing.

10. Prior to the commencement of development an emergency management plan including details of the procedure in the event of failure of the foul drainage scheme shall be submitted to and approved in writing by the local planning authority. The management plan shall detail responsibilities and timescales for the plans implementation, with temporary alternative arrangements for foul drainage during times of failure that do not cause pollution or discharge either directly or indirectly to the River Mease catchment.

The management plan shall be implemented as approved and any subsequent variations agreed in writing by the local planning authority.

Reason: The National Planning Policy Framework paragraph 109 states that the planning system should contribute to and enhance the natural and local environment by preventing both new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels of water pollution. Furthermore the condition is imposed to comply with Chapter 11 of the NPPF, Local Plan Environment Policies 1 and 11 and Article 3 of the Habitats Directive to ensure that the sewerage and sewage disposal systems serving the development are effective at this location without causing pollution to controlled waters. The site is located on a principal aquifer and within the catchment of the River Mease, an ultra-sensitive watercourse which is both a Site of Special Scientific Interest and a Special Area of Conservation, a European designation of the highest standing.

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

Reason: To comply with Chapter 11 of the NPPF, Local Plan Saved Environment Policies 1 and 11 and Article 3 of the Habitats Directive. The site is located on a principal aquifer and within the catchment of the River Mease, an ultra-sensitive watercourse which is both a Site of Special Scientific Interest and a Special Area of Conservation, a European designation of the highest standing, such that it is necessary to control this aspect of the development.

12. No development shall take place 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:
- the parking of vehicles of site operatives and visitors
  - loading and unloading of plant and materials
  - storage of plant and materials used in constructing the development
  - wheel washing facilities
  - measures to control the emission of dust, dirt and any waterbourne contaminants during construction
  - the materials and method of construction for the construction of the site access, in particular where it crosses the existing watercourse.

Reason: To comply with Chapter 11 of the NPPF, Local Plan Saved Environment Policies 1 and 11 and Article 3 of the Habitats Directive. The site is located on a principal aquifer and within the catchment of the River Mease, an ultra-sensitive watercourse which is both a Site of Special Scientific Interest and a Special Area of Conservation, a European designation of the highest standing, such that it is necessary to control this aspect of the development.

13. The landscaping details required pursuant to Condition 2 shall include a buffer of planting designed to preclude access to the areas between the proposed log cabins and the adjoining dwellings to the north and south.

Reason: To maintain reasonable standards of privacy and amenity for the occupiers of those dwellings to accord with Local Plan Saved Recreation and Tourism Policy 1.

14. Prior to being incorporated in the application site details of any communal facilities or equipment shall be submitted to and approved in writing by the Local Planning Authority and any such approved facilities shall be implemented only in accordance with those details.

Reason: To ensure that any noise generating usage of the site will not cause harm to the amenities of the occupiers of nearby dwellinghouses to accord with Local Plan saved Recreation and Tourism Policy 1.

15. Notwithstanding the originally submitted details, this permission shall relate to the amended drawing no. 2010.032 - D.

Reason: For the avoidance of doubt, the original submission being considered unacceptable.

16. Details and specifications of the access construction, where it passes over the root protection areas of existing trees shall be submitted to and approved in writing by the local planning authority before the access is constructed. The access shall be constructed in accordance with the approved details and specifications.

Reason: To avoid unnecessary damage to the existing tree in the interests of the appearance of the area to accord with Local Plan Saved Environment Policy 9.

17. No development shall take place until a scheme indicating provision to be made for access to the site by people with disabilities has been submitted to the Local

Planning Authority. The scheme as approved shall be implemented before the development is brought into use.

Reason: To ensure adequate opportunity of access for people with disabilities to accord with Local Plan Saved Recreation and Tourism Policy 1 and Transport Policies 6 and 7.

18. Any external lighting shall be installed in accordance with details and specifications which shall have previously been submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of the appearance of the area to accord with Local Plan Saved Recreation and Tourism Policy 1.

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

Reason: The Local Planning Authority is only prepared to grant permission for holiday accommodation (in accordance with Saved Local Plan Recreation and Tourism Policy 1) because another dwellinghouse in this location would be contrary to the development plan and the objectives of sustainable development as set out in PPS3 and PPS7.

20. Unless as may be approved through the reserved matters, notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended), no boundary structures shall be erected until there has been submitted to and approved in writing by the Local Planning Authority plans indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be implemented in accordance with the approved details only.

Reason: In the interests of the appearance of the area to accord with Local Plan Saved Recreation and Tourism Policy 1.

21. No works involving the crossing of the watercourse running alongside Lodge Road shall be undertaken until a further water vole survey and programme of construction works for this part of the development has been submitted to and approved in writing by the Local Planning Authority. The survey shall address the watercourse and its embankments, insofar as they are directly affected by the works, and all land within 10 metres of the area so affected.

Reason: To ensure that any new water vole habitat is adequately protected in accordance with Chapter 11 of the NPPF, Local Plan Saved Environment Policy 11 and the provisions of the Wildlife and Countryside Act 1981.

**Informatives:**

Pursuant to Section 184 of the Highways Act 1980 and Section 86(4) of the New Roads and Streetworks Act 1991, at least 3 months prior notification should be given to the Director of Environmental Services at County Hall, Matlock (telephone 01629 580000 and ask for the District Highway Care Manager on extension 7595) before any works commence on the vehicular access within highway limits.

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.

Further to Condition 2 the design and layout of the log cabins should include measures to prevent overlooking to the neighbouring dwellings.

The proposed development lies within a coal mining area which may contain unrecorded mining related hazards. If any coal mining feature is encountered during development, this should be reported to The Coal Authority. Any intrusive activities which disturb or enter any coal seams, coal mine workings or coal mine entries (shafts and adits) requires the prior written permission of The Coal Authority. Property specific summary information on coal mining can be obtained from The Coal Authority's Property Search Service on 0845 762 6848 or at [www.groundstability.com](http://www.groundstability.com)

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

Culverting the watercourse will require the consent of Derbyshire County Council Tel: 01629 538563 ; email: [flood.team@derbyshire.gov.uk](mailto:flood.team@derbyshire.gov.uk); Or post to: Derbyshire County Council, Flood Risk Management Team, County Hall, Matlock DE4 3AG

It is recommended that any excavations on site should be either covered at night or fitted with suitable mammal ramps in order to prevent badgers(or any other mammals) from being trapped.

**Item**            **1.2**

**Reg. No.**        **9/2011/0889/SGF**

**Applicant:**  
**ATL Limited**  
**Woodyard Lane**  
**Foston**  
**Derby**  
**Derbyshire**  
**DE15 0WL**

**Agent:**  
**MR John Church**  
**John Church Planning**  
**Consultancy Ltd**  
**Victoria Buildings**  
**117 High Street**  
**Clay Cross**  
**Chesterfield**  
**Derbyshire**  
**S45 9DZ**

**Proposal:**        **THE ERECTION OF A WAREHOUSE EXTENSION & ASSOCIATED OFFICES AND WAREHOUSE/LIGHT INDUSTRIAL UNITS AT ATL LIMITED WOODYARD LANE FOSTON DERBY**

**Ward:**            **HILTON**

**Valid Date:**      **07/12/2011**

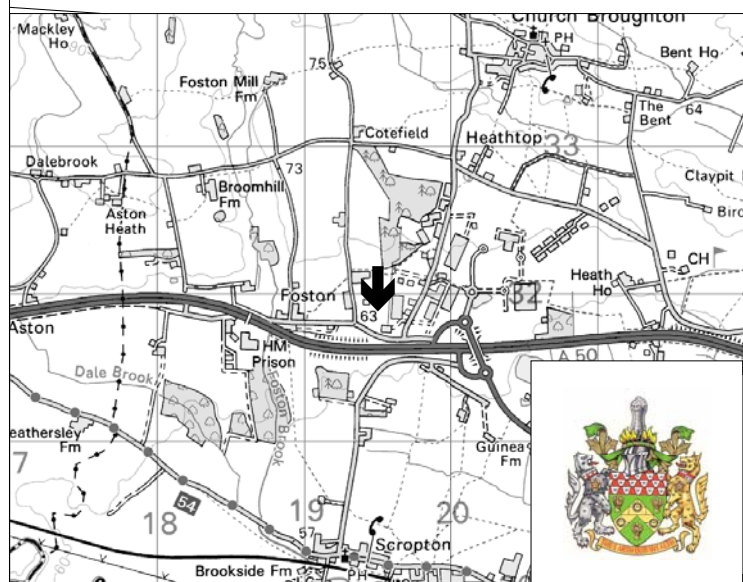
This is a joint report for 9/2011/0889 and 9/2011/0890. The report has been delayed due to extensive negotiations between the applicants, the Highways Agency and the Environment Agency. The contents of this report apply equally to 9/2011/0890 save for the recommendations and the terms of the Section 106 Agreements where the contributions vary according to the type of planning application.

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

These are major planning applications to which more than two objections have been received and as such determination falls to the Planning Committee.

#### **Site Description**

The ATL ownership boundaries extend along the old route for Uttoxeter Road from its junction with Woodyard Lane in a westerly direction as far as Hay Lane. It then extends north along Hay Lane to the south west corner of Lawn House and then follows the south and east boundary to Lawn House where it extends along the east boundary of Foston Farm Produce (as was). It then follows the north boundary of that site before turning south along the boundary to WG Tankers; then it follows the west boundary of the Gypsy site turning east back towards Woodyard Lane along the south boundary of the Gypsy site and then to the south back to Uttoxeter Road. The site encompasses the former Brandon Turkey sheds as well as the former dog kennels and nursery on Hay Lane.



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South Derbyshire District Council. LA 100019461. 2010

The physical context for the development lies in the location of the premises of ATL Ltd, the southern part of the applicant's ownership comprises existing distribution warehouses and the Company's headquarters offices. Immediately to the north of this area are the former turkey farm and associated buildings that benefit from planning permission, and are used for storage and distribution purposes. To the west of these buildings a clearly defined boundary with open land separates the existing built-up part of the ownership from Hay Lane.

The boundary to Hay Lane forms a substantial block of woodland previously used as a nursery and kennels, and is subject to a Tree Preservation Order. To the north of the woodland there is an existing open break alongside Hay Lane. The northern limit of the applicant's ownership comprises a parcel of land where there is planning permission for the erection of a cold storage building.

Access to the site would be from Woodyard Lane. This was recently improved following the grant of planning permission for another development within the application sites.

Public Footpath No 8 follows the north boundary of the former Foston Farm Produce part of the site.

## **Proposal**

The scheme originally submitted in 2011 as an outline planning application has been amended to remove some of the units adjacent to Woodyard Lane. The full planning application is unchanged and involves adding an additional bay to the existing warehouse building and the erection of a separate unit on the west side of the site.

The revised outline planning application relates to further development on land in the control of the applicant to the north of the existing site. The layout and access to these developments is sought now with all other matters reserved for subsequent permission. The outline development is a large warehouse built on the area of the existing turkey sheds and a range of other smaller units primarily used by companies associated with the ATL transport facilities. This is the application that has been amended to remove some of the units immediately to the north of the site access.

Not part of this planning application is the erection of a large cold store building currently under construction that was granted planning permission in 2008 and the applicants intend to undertake the development for what is stated to be a specific end user. The location of this building is shown on the drawings accompanying the planning applications as land within the control of the applicants.

The materials of construction would be the same or similar to those used to construct the extensions to the original hanger building; these are a grey colour.

## **Applicants supporting information**

The applications as amended are supported by the following documentation:

- Revised Planning Statement – February 2013
- Landscape and Visual Impact Assessment - December 2010.

- Ecological Assessment & Protected Species Survey - August 2011.
- Flood Modelling Study - August 2012 and Revised Flood Risk Assessment - September 2012.
- Transport Assessment - August 2011 and Technical Note – Traffic Impact - July 2012.
- Revised Framework Travel Plan - July 2012.
- Noise Levels and Predictions - April 2011.
- Tree Report - June 2009.
- Revised Design & Access Statement - January 2013.

A summary of the issues in each document is contained in the Planning Statement and the recommendations for conditions will be summarised below but the full documents are available for inspection on the working files.

Following discussions with the applicants about the objections raised, the applications have been further amended to include acceptance of a condition requiring mounding and acoustic fences along the entire west boundary of the operational areas of the site.

### The Planning Statement

The applicant reaffirms that the company continues to expand since its move to Foston. When the application was submitted it directly employed some 153 people. It is contended that the development would create another 140 - 150 jobs.

The company has won numerous contracts to supply logistic services in England and Wales to several companies involved in the tyre manufacturing business. It is also involved in contacts with food manufacturers in particular Nestle for whom the company currently provides part of Nestle's logistic requirements.

The company has an immediate requirement for some 30,000sqm of warehouse floor space that currently cannot be met at the site. In order to minimise lorry journeys the company intends to consolidate its operations at Foston. The buildings would be used predominantly by ATL, although a limited number of other occupiers would have a close working relationship with the company. The company turnover has increased in the past 3 years from £5m in the year to 31 March 2010, to £12m over the 9 months to 31 December 2012.

It is considered that planning policy nationally, regionally and locally supports the grant of planning permission for both planning applications. The NPPF supports development that is supportive of the rural economy as a matter of principle and the applicants seek support for this view by reference to Paragraphs 17, 31, 32 & 35 of the NPPF.

The Regional Plan (Policy 20) and Economy Policies 1, 4 & 5 support the principle of economic activity subject to other environmental impacts being considered acceptable such as noise, access and transportation issues that form a requirement of Economy Policy 8 in the Local Plan.

The applicant asserts that the technical reports both as submitted and as revised in support of the application provide no overriding considerations that prevent a successful development being implemented. The proposals are submitted through two planning applications, firstly, in terms of the application for full planning permission, to provide for

immediate expansion needs at the site. Secondly, the outline planning application seeks to form the basis for a programmed development of the remainder of the applicant's ownership in a manner that is consistent with the Development Plan and other planning strategies within an overall framework for the assimilation of the development into its surroundings. The mitigation measures are set out in conclusions reached in the various survey reports.

The applicant asserts that the contents of those reports and the various recommendations therein provide sufficient safeguards for the Local Planning Authority to be satisfied that the development can be undertaken without significant detriment to the countryside, local residents and the wider environment. The development would be in accord with the provisions of the Development Plan as set out in Section 38(6) of the Planning and Compulsory Purchase Act 2004, which states that planning permission should be granted unless material considerations dictate otherwise. The development accords with the economy objectives as set out in the NPPF in the quoted paragraphs and thus the policies of the Development Plan continue to carry significant weight in the determination of the planning applications. The applicant therefore contends that planning permission should be granted subject to conditions as recommended in the various Technical Reports that accompany the planning application.

The applicant is willing to undertake the payments to the Highways Agency for improvements to the Sudbury interchange on the A50TR as set out in the Transport Assessment.

#### The Design and Access Statement

This document sets out the design process for each of the applications and contains much of the information set out in the 'Site and its Surroundings' above. It confirms that the buildings will reflect that appearance and character of those already on the site

In particular it is asserted that the boundary to Hay Lane forms a substantial block of woodland previously used as a nursery, which is subject to the Tree Preservation Order that would mitigate the impact of the proposals on dwellings on Hay Lane. To the north of the woodland an existing open break alongside Hay Lane will be the subject of a previously approved intensive landscaping based on a mound incorporating a 1.8m high acoustic fence on its apex. This would be planted to form both a visual and physical barrier between the ATL Ltd's premises and the public highway that also has scattered housing alongside it on the west side. The northern limit of the applicant's ownership comprises a parcel of land where planning permission has been granted for the erection of a cold storage building.

In terms of landscape significance, an overriding factor is that this site occupies the lower part of the Dove Valley, although it is well separated from the river itself. The overall character of the area, including that containing the Dove Valley Park, is of generally flat land, rising slightly towards the north, interspersed with woodlands, hedgerows and a limited amount of housing, predominantly once associated with agriculture and similar uses.

Employment sites now dominate land east of the site; and these also continue in a northerly direction along the west side Woodyard Lane for some distance. Hay Lane is predominantly rural in character and it has the protected woodland that separates it from the houses on the west side of Hay Lane.

It is asserted that whilst the proposals intrude marginally on the area containing the Tree Preservation Order, the proposals provide for a substantial reinforcement of screen planting in the area to reflect its established character. The previously permitted screen mound on the open land on the west boundary together with substantial landscaping occupying the break to the north of the woodland will be provided in accordance with proposals that have already been approved.

### The Landscape and Visual Appraisal

This discusses the site and its surroundings, provides information on the documents used and references to inform the appraisal and examines the policy background in terms of landscape impact. Having done that the document assesses the impact of the development form 3 localities – Hay Lane, Uttoxeter Road and Woodyard Lane.

Hay Lane – the assessment looks at the existing situation, the proposed mitigation measures, which in this case involve the installation of a landscape bund and landscaping on the open land to the north of the Hay Lane frontage. Here the assessment states that the impact during construction on residents and road users would be of minor significance and that after completion the impact would be nil in terms of its significance.

Uttoxeter Road – There are no houses impacted by the proposals, a landscape bund would be constructed along the frontage that would help to screen the development areas once established and planted with the recommended species. It is stated that there would be a minor impact on this road frontage during development with no significant impact once the development is complete.

Woodyard Lane – The view is of predominantly commercial operations with no dwellings directly affected by the development. Again it is contended that the development phase of either development would be minor with nil significant impact once the development is completed.

The reason for these conclusions is the initial and longer-term impact of the strategic landscaping scheme already permitted as a part of the 2008 planning application, as now amended. It has been refined and would provide, in the applicant's view, substantial screening from those parts of the site that currently have no screening. In the light of this, the landscape and visual impacts of the development would be mitigated.

### Ecological Assessment

The ecological assessment identifies a number of issues relating to plant species and habitat that may need to be included as part of a mitigation scheme. A potential badger run through a part of the site was identified and a part of the site may be used for foraging by badgers.

No evidence of bats using buildings either as a roost or maternity roost was found in any of the existing buildings on the site but there is evidence of bats foraging along the hedges within or on the edge of the site. Of the 5 hedges found on the site, 4 would be retained within the development. There is potential for bats to roost in some of the trees on the site that have cavities or splits in them. If trees were to be felled, then they would

require inspection prior to felling works to trees. It is an offence to disturb bats when undertaking development without first obtaining a licence from Natural England. The provision of Bat boxes is recommended to mitigate any potential loss of habitat. Careful control of lighting in the areas around the borders of the site is necessary.

Great Crested Newt and other amphibians – no great crested newts were found during survey work, the nature of the watercourses through the site would preclude their use of that feature. Other amphibians may be disturbed during development and they would benefit from relocation during the development.

Barn owls use a building and a tree within the site for roosting, rather than breeding, and use the scrubland within the site for hunting. Other bird species have been identified in and around the site some of which are on the red and amber lists as vulnerable species. Tree planting and alternative habitat creation are proposed that would help to mitigate the impact of the new built development.

Flora – Golden dock has been identified on the site and this is a rare Derbyshire plant. It can be relocated to other parts of the site where wetland habitat is proposed. The development proposals would remove its existing location.

### Tree Survey and Landscape Proposals

A tree survey accompanies the planning application and recommends various trees to be removed from the area of the TPO and others be retained but subject to remedial works to improve their long-term viability. The impact of the removal of the trees is to provide an additional area of development. The areas adjacent to the retained trees and planting would be roadways where the site adjoins the TPO part of the site.

The submitted proposals comprise replacement tree planting in the area of the TPO, beefing up of retained hedges on the site, individual tree and shrub planting within the site and confirms details of the landscape mound and associated landscaping on the currently open field on the north west corner of the development.

The landscape proposals that accompany the planning application include a previously permitted scheme in respect of application no 9/2008/0707 that is included for information and would not form a part of either planning permission should Committee be minded to grant planning permission.

### The Flood Risk Assessment

The Assessment identifies the local water- course, (the Foston Brook) and drainage channels that feed into it and ultimately it flows into the River Dove at Scropton. The site itself is located within Flood Zones 1, 2 & 3a albeit that the proposals would effectively reclassify the site as lying within Flood Zone 1.

The amended drainage strategy, informed by the flood modelling exercise states that in order to address the potential flooding arising from increased impermeable areas, it is proposed that surface water flows should be controlled within the site by the use of strategically placed hydro brakes or similar control structure throttles. The new surface water drainage strategy aims to reduce flows from the site from some 305l/s from the existing hard surfaced areas to 143.1l/s from the site when completely developed (arising from the full and outline planning applications). These flow rates have been

calculated based on a 1 in 100 year storm allowing for climate change. It is asserted that the land drainage system in the area would be relieved in the event of such a storm once the drainage strategy has been implemented.

The discharge rate of 143.1l/s is derived from four distinct drainage areas within the site that have been individually assessed by the consultants. The main current issue that is addressed is the inability of an existing culvert to accept flows that are generated both within the application sites and the wider area. As a part of the drainage strategy, a larger culvert is to be installed to allow water to flow to the watercourses rather than backing up and causing overland flows at times of heavy rainfall. The installation of the overall drainage strategy needs to occur before other elements of the applications are implemented.

The various elements of the drainage strategy would remain in the control of the applicant company that would be responsible for the future maintenance of the system.

Foul Water can discharge direct to the foul water sewer that passes through the site; Severn Trent Water has confirmed this to the applicants.

Transport Assessment – reference to this is made in the Planning Statement above. The conclusions in this statement are for the provision of an additional footway along Woodyard Lane to Uttoxeter Road to facilitate access to the local bus stop; the upgrading of the bus stop to include bus timetable information; the provision and subsequent implementation of a Travel Plan, details of the plan accompany these applications and provide contributions towards the improvement to the Sudbury junction on the A50 - £9,490.13 for the full planning application and £20,838.46 in respect of the outline planning application. Subject to these mitigation measures the applicants contend that the impacts of the developments would be compensated for or mitigated to a point where planning permission could be granted.

Noise Assessment – The noise assessment asserts that the major noise source in the locality is the A50 and that for the greater part of the day activities on the application sites is likely to be difficult to discern. The report acknowledges the planning permission for the cold store may have an impact on the occupiers of Lawn Farm but that the mound and acoustic fencing constructed in the field to the west of the site would help to mitigate that impact. Overall, the applicants conclude that the development could be undertaken without material noise impacts on the locality. However in response to the Environmental Health Manager comments, the applicants have agreed that a bund and acoustic fencing should for part of the application.

**Planning History** – since ATL moved onto the site:

2003/0024 – extension to the original hanger building and two loading bays  
2004/1311 – further extension to the original hanger and offices.  
2006/0845 – retention of concrete roadway  
2006/1387 – warehouse and office + a 2008 amendment  
2007/0135 – conversion of poultry units to storage and distribution  
2008/0938 – conversion of bungalow to offices  
2008/0707 – storage building and access roads

## **Responses to Consultations**

The applications as originally submitted attracted a holding direction from the Highways Agency and a request for further details from the Environment Agency. As a result the application has been delayed. The consultees have been given 21 days to comment on the amended applications and where a response has been received that is reported below. Otherwise the response to the original consultation is reported. In the main the comments received relate to both applications but where the comments differ they are also reported.

Foston and Scropton Parish Council unanimously voted to object to both planning applications. The reasons for objection reflect the objections summarised in the 'Responses to Publicity' below but the Parish Council objections are summarised as follows:

- The previous limits to the hours of operation should be retained in place and 24-hour operation refused.
- The size and scale of the development are out of character with the area.
- Noise and light pollution would affect nearby residents as well as fumes from lorries operating on the site.
- The impact on the local highways would be unacceptable and detrimental to road safety. Other lorry operators have applied for a licence to operate from the ATL site and there would be 100 tractor units and 130 trailer units based on the application sites
- This is a remote location and the operatives would travel considerable distances to get to work, the use of public transport is unfeasible.
- Land drainage is a known and considerable problem in the area; large amounts of new buildings and hard surfacing would adversely impact the local drainage system on Woodyard Lane and Watery Lane.
- Screening of the site permitted in previous applications and not yet implemented, appears not to have been proposed in these applications.

The County Highway Authority requires the provision of a footway between the site entrance on Woodyard Lane and the pavement on the north side of Uttoxeter Road with a minimum width of 2.0m. This footway would also require deterrent kerbing to reduce the risk of lorries parking on the footway whilst waiting to access the site. In terms of access the existing accesses on Woodyard Lane would require 2.4m x 103m visibility sight lines and all accesses to Hay Lane require stopping up. The car parking provision is considered inadequate with little or no provision shown for the existing complex. Subject to assurances from the applicants about the operation of the submitted travel plan, it is considered acceptable.

The drainage proposals are considered acceptable to the County Highway Authority subject to installation and proper maintenance of the system. It agrees with the assessments of the Environment Agency and the Council's Land Drainage engineer regarding the impact of the proposed drainage works on surface water flows south of the A50.

The Highways Agency has issued holding directions preventing the applications from being determined. The Agency is now satisfied that subject to the agreed financial contributions for each of the applications being incorporated into a Section 106 agreement it has no objection to either of the applications. However, it has issued a

further holding direction to enable it to ensure that it can be assured that the 106 Agreement meets its requirements.

The Environment Agency having considered the all the new information has raised no objection to the development provided that the drainage scheme is implemented in accordance with the submitted information and the details of the type of drainage equipment to be installed being approved prior to the works being undertaken. It has also confirmed that the flows into the Watery Lane ditch south of the A50 would be reduced if the new drainage scheme was implemented.

Severn Trent Water has no objection or comment to make on the application.

The Derbyshire Wildlife Trust confirms that whilst the surveys have been undertaken to the appropriate standard, there is a lack of mitigation measures outlined in the documentation but conditions are recommended to ensure proper mitigation is achieved. The mitigation should seek to ensure that the replacement rough grassland should be provided and the gold dock should be transplanted into that new area. It should also contain measures to ensure that roosting/nesting owls are not driven away as a result of the development in accordance with the requirement on the Local Planning Authority to ensure that protected species do not suffer loss of habitat. A habitat management and monitoring plan for all new and retained treed and open areas should be provided before the development is commenced. Conditions are recommended to achieve these requirements as recommended by the Derbyshire Wildlife Trust.

The Development Control Archaeologist having considered ground conditions and developments in the area has no requirement for an archaeological investigation prior to the development being commenced.

The Environmental Health Manager notes the contents of the Noise Assessment and subject to his recommended conditions to mitigate any potential noise impacts, the noise issues are considered are appropriately mitigated. The Environmental Health Manager has had regard to the 24-hour operation of the site in conflict with the current recommended operating hours applied to parts of the site and this is the reason that additional noise mitigation has been requested. Subject to the implementation of these conditions and the maintenance in place of the acoustic fence, the development is considered acceptable.

There is evidence of contamination at or around the site that requires investigation and the Environmental Health Manager recommends the standard conditions for this.

Crime Prevention Officer confirms that previous comments will continue to apply where it is considered that the 24/7 operation would deter criminal activity due to a permanent presence on the site that should if possible extend across the whole site. It has a well-defined boundary but there are areas where existing hedges and fences may require reinforcement. The wooded area is of some concern due to it providing cover for potential criminals.

The Council's Land Drainage Officer has examined the new drainage scheme and subject to the proper implementation of the surface water drainage details, the scheme is considered acceptable provided that it is properly constructed and maintained.

## Responses to Publicity

The original objections are summarised below, subsequent objections will be summarised after those where there are new objections beyond those first summarised.

Objections to the applications as originally submitted consist of 22 responses to both applications. The objectors make the same points to both applications. 15 of the letters in respect of both applications take a standard format. The objections can be summarised as follows:

- a) Planning Policy dictates that where there is an adverse impact on the local environment then planning permission should be refused. Policy Environment Policy 1, Employment Policy 1, 5 & 6 – the reasons why these policies apply are set out individually below.
- b) The proposals would result in 24-hour working on a site that has previously had a limitation on the hours of operation in the north and west parts of the site (9/2008/0707 refers). That permission and a previous one granted at appeal were only granted as the hours of operation could be controlled this type of control should be continued. Previous planning permissions have included conditions limiting operating hours. In the light of this 24-hour operation could be used as a reason for refusal with little fear that the refusal could be overturned at appeal.
- c) The removal of trees in the TPO would significantly increase the views into the application site for residents on Hay Lane. The trees are only being removed to facilitate extra development. The landscaping proposed in the SW corner is totally inadequate as there are several dwellings within a few metres of this boundary. The removal of trees along this boundary is not minimal but represents about 29% of the wooded area and removal should be resisted.
- d) Any new dwelling on the Woodview site would be subject to excessive noise. Indeed even if a new dwelling was not put on the site, the dwellings on Hay Lane would suffer increased noise as the internal site road is close to the west boundary of the site. The proposal involves the loss of residential land at Wood View
- e) The bunding and acoustic fencing along the west boundary is necessary to protect residents on Hay Lane. A minimum height 4.5m is required along the north and east boundary to Wood View to protect residents on Hay Lane. That landscaping bund and fence imposed on the 2008 application is not sufficient to mitigate this much larger scheme, as the proposed roadway would be a key source of noise. 24-hour operation means that acoustic mitigation is even more important. Noise levels on the existing site are already a problem without the extra development.
- f) The buildings are not all required for the operators' own use so the business cannot benefit from the policy that allows the expansion of firms for their own use. The additional floor space of some 26,772sqm, for both applications, would have a significant impact on the character of the countryside and the locality. Foston is not the place for such large-scale development as there is a lack of locally available labour and the area has poor transport links. It is identified as a village of character in the Needwood and South Derbyshire Claylands and development would have a significant impact on this gateway to the village.
- g) The development would significantly increase the amount of traffic on the highways particularly at peak times (144 movements in 2 hours on and off the site)

- h) The operator already has permission for a large warehouse on the north part of the site and this should be built before any other permission is granted.
- i) Industrial activity would be brought closer to Hay Lane to the detriment of the occupiers of the adjacent dwellings.
- j) The amount of lighting proposed is considered excessive for this rural, area lighting on the site is already a problem.
- k) It would be inconsistent and perverse to grant planning permission on the basis that the developments are contrary to planning policy for the reasons that the principle, impact on the countryside, residential amenity would be irreparably damaged, highway safety and flood risk all dictate that planning permission should be refused.

A further 44 letters have been received objecting to the development. The additional objections to the amended scheme can be summarised as follows:

- a) Development of a green field site is out of character with the locality.
- b) The whole of the site has never been a part of RAF Church Broughton site as is claimed by the applicants.
- c) The majority of the 'new' jobs on the site would be transferred from other locations causing commuting by car.
- d) Flood risk remains a concern and there would be lots of additional flows from the increased paved areas.
- e) The noise survey does not take account of the sudden loud noises that occur at the site that are regularly heard up to ¼ mile away in Foston and these noises startle horses.
- f) Bunding/acoustic fencing proposals remain absent potentially causing detriment to local residents.
- g) There remains a request that a condition be imposed restricting working hours as has occurred on past permissions.
- h) Drivers will naturally take a short cut to the site through Foston village and ATL have no means of controlling this use of the highway. The increased use of the road by heavy goods vehicles will cause danger to residents

## **Development Plan Policies**

The relevant policies are:

Regional Plan: Policy 20

Local Plan: Employment Policies 1, 4, 5 & 8; Transport Policies 6 & 7.

## **National Guidance**

The NPPF - Paragraphs 17, 29, 31, 32, 35, 186, 187 & 215.

## **Planning Considerations**

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

- The Development Plan.
- Access Considerations
- Noise/lighting Considerations
- Drainage implications
- Landscape and Ecology considerations.

- Crime prevention.

## **Planning Assessment**

### The Development Plan

The NPPF, para 19, indicates that *“significant weight should be placed on the need to support economic growth through the planning system”*.

Para 28 says that planning authorities should support economic growth in rural areas. It says that local plans should *“... support the sustainable growth and expansion of all types of business and enterprise in rural areas, both through conversion of existing buildings and well designed new buildings.”*

In the light of the above it is considered that the provisions of Local Plan Employment Policy 1: Existing Industry continue to carry weight in the decision making process in accordance with para 215 of the NPPF. This allows for the expansion of industrial and business uses on, or adjacent to, their existing sites, provided that the proposal is not detrimental to the character of the locality or residential amenity and does not cause environmental or traffic problems.

The proposal, as described in the application form, is for *“the extension of the ATL logistics / warehousing depot”*. In the Revised Design and Access Statement, dated January 2013, para 6 indicates that the proposals *“... relate to the redevelopment of the area comprising the former turkey farm, the addition of new buildings as extensions to the existing substantial warehousing and offices, the construction of new buildings required to support client functions and proposals that will ensure the sustainable growth of the Company in the medium to long term.”*

The proposal includes new office development. However, since the office element of the proposal would form part of the extended logistics and warehousing depot, it can be considered to be ancillary to the B8 warehouse and distribution uses. Therefore, it is not considered appropriate to apply the sequential test in this instance as can be required in para 24 of the NPPF.

The proposal is therefore considered to be in accordance with the NPPF and Local Plan Employment Policy 1, subject to it being acceptable in terms of the impact on the character of the locality, residential amenity and environmental and traffic considerations. These considerations are now discussed below.

### Access Considerations

The pedestrian and vehicle access to the site and the local bus route can both be achieved either within the site boundaries or on land within the highway and subject to the recommended conditions the County Highway Authority is satisfied that the development is acceptable from that point of view. The applicants note the County Highway Authority concerns about the lack of parking provision but their objective is to meet the known requirements of the application site as a whole rather than meet a theoretical need set as set out by the County Highway Authority.

There is a balance to be struck in the consideration of the application as to whether the perceived lack of car parking provision warrants a recommendation of refusal. There is

room on land within the control of the applicant to accommodate parking requirements from the part of the development that is subject to the full planning application. Refusing that application would be difficult to sustain at appeal as the applicants would be able to point to land in their control to meet any overspill of parking.

Car parking provision on the 'outline application site' would be subject to further assessment at the time of the reserved matters application and if it were demonstrated that additional parking provision was required, the siting of the buildings within the layout could be amended to accommodate this.

Access and parking is a requirement the condition requiring the submission of reserved and other matters. It is to be remembered that the illustrative layout of the site shown in the outline planning application is for information only access and layout are the only matters to be determined at this stage. The appearance of the buildings is reserved for subsequent approval.

Objectors have expressed concern about lorries accessing the site through the village. It is true to say that there is nothing stopping east bound lorry traffic on the A50 using the public highway passing through the village to access the site. However, it is understood ATL has control over its own fleet and equipment is installed to allow the fleet manager to monitor the route taken by each of the lorries in its fleet.

Other operators are given site access requirements and are directed towards the A50 interchange at Dove Valley Park but it should be stated again that the applicants cannot control which route other drivers choose to access the site. But it is only those drivers arriving from the west on the A50 that would be able to use the minor access to Foston Village.

The applicants have accepted the required payments of the Highways Agency as reasonable and the amounts for each application are set out in the recommendations below and thus the Highways Agency has no objection to the proposals. The remaining holding objection is not an obstruction to the Authority to determine whether it is mindful to grant permissions and the recommendation below is for permission to be withheld pending an appropriate undertaking being received. The Highways Agency will be consulted on the draft undertakings when received. As the Highways Agency is satisfied that the impact of the development can be accommodated on the A50 Trunk Road subject to the receipt of monies towards the improvement of the Sudbury Junction has no objection to the development.

#### Noise/Lighting Considerations

The noise mitigation and crime prevention comments have a degree of similarity in that the crime prevention officer is looking for the boundary fencing to be boosted. The Environmental Health Manager seeks additional bunding and acoustic fencing alongside the proposed site access road on the east side of the woodland near the west boundary of the site. The applicants have accepted that extra screening/fencing is necessary and have agreed that the submitted landscaping scheme requires amendment. A condition to this effect is recommended.

The other significant objection raised by objectors is the 24-hour operation of the site. The Environmental Health Manager's requirement for the extra bunding and fencing is designed to take account of that operating period.

The presence of this extra screening would go some way to meeting the objectors concerns about noise and visual impact but is unlikely to result in the objections to 24-hour operation being withdrawn and the perceived noise implications arising from that.

It should be noted that the Noise Report accompanying the planning applications did not require the any extra mounding/screening as now proposed. It is as a result of comments from the Parish Council and community, that the applicants have agreed to provide the extra screening as a means of mitigating the visual and perceived noise impacts referred to by the Parish Council and objectors

Members will need to balance the noise and lighting objections against the weight and importance to be afforded to the NPPF advice with regard to boosting the local economy.

Objectors' comments about the lighting scheme currently under consideration are accepted as the proposals illustrated clearly relate to an earlier evolution of the proposals. A condition requiring the submission of an up-to-date lighting scheme is recommended should members resolve to grant the planning permissions.

#### Drainage Implications

Members are asked to note the applicants submissions in respect of surface water flooding, the objections raised by the Parish Council and the community with regard to flooding issues, the response from the Environment Agency and the Council's land drainage officer to the latest drainage strategy all as summarised above.

It is clear from local representations and from the concern expressed by the Environment Agency in response to the application as originally submitted, that there is a current surface water flooding issue not just from this site but also in the wider area. The Environment Agency required further assessment of the flood implications for the wider area including the land south of the A50 where the surface water from this area ultimately drains prior to entering the Foston Brook and thence the River Dove. The Land Drainage officer is aware of flooding in the wider area where this surface water would discharge, if no mitigation measures were put in place.

The crucial elements of the submitted scheme are the proposals to retain water within the application site; not just from the site but the wider area around it where the submitted flood model identifies that surface water would flow towards and across the application site. The proposals are now to gather this surface water at times of heavy rain and retain it within the site to be released in a controlled manner into land drainage ditches that adjoin the site. The proposals also include upgrading existing culverts and ditches within the site to assist in the control of waters generated or crossing the application sites.

It will be noted that currently, water draining from the site and wider area to the local land drainage system is estimated within the Flood Risk Assessment at 315l/sec whereas the controlled flows to the ditches adjacent to the application sites would be limited to 143l/sec. The current situation is that at times of heavy rain the local drainage ditches are unable to cope and surface water flows towards Foston village and the Hay Lane as well as affecting Woodyard Lane.

The proposed scheme would ensure that these surface water flows are retained in the site boundaries and then released in a controlled manner to the local drainage system and away from Foston village and Hay Lane.

These controlled flows would ultimately discharge to a culvert beneath the A50, this emerges on the south side of the A50 and Watery Lane and discharges to a land drainage ditch that runs parallel to Watery Lane as it goes south towards Scropton. The Environment Agency is satisfied that the controlled flows from the development site should reduce the amount of water arriving in Watery Lane ditch at times of heavy rain and reduce the propensity for that ditch to surcharge at such times of, thus reducing the potential for the flooding of Watery Lane, a view shared by the County Highway Authority as Lead Local Flood Authority and the Council's Land Drainage Officer.

Whilst the concerns/objections of the Parish Council and community on land drainage issues are noted and understood, the development proposals now before the Committee including the surface water mitigation scheme, adequately address these concerns/objections provided the scheme is implemented as proposed and thereafter maintained within the application site. Responsibility for maintaining the wider land drainage ditches rests with riparian owners and/or the County Highway Authority.

Conditions are recommended to ensure that the new surface water drainage system is installed for both of the application sites prior to the occupation of the buildings for which full planning permission is sought. A condition requiring the submission of an on-site maintenance scheme of the system is also recommended such that the outfall discharge rate is maintained for the duration of the development.

In conclusion, the amended proposals address surface water drainage issues to a point where consideration can be given to the grant of planning permission.

Severn Trent Water has no objection to the applications and foul water drainage considerations are not at issue for these applications.

#### Landscape and Ecology Considerations

The buildings would reflect that appearance and character of those already on the site albeit that the smaller units will not have the height of the main buildings on the site. The appearance of the buildings proposed in the outline planning application on the Turkey Farm is not part of this application but it is anticipated it would have a profile similar to the other large buildings on the site.

Members will note the objections to the development on the issue of noise and the complaints that the development lacks any form of screening or noise protection along the west side of the area proposed for development. This is an issue that has caused concern to the Environmental Health Manager and as a side issue to the loss of trees and screening along this boundary raised by the Tree Officer. The Environmental Health Manager welcomes the provision of the mound and acoustic fence as does the tree officer in that both will afford the opportunity to increase screening of the developed site by virtue of the fence and an area of raised ground into which trees could be planted to provide an earlier screen to the area that would be developed. A condition is recommended on both applications to require the submission of details of the mounding and fencing as a part of an amendment of the submitted landscaping scheme to take account of these changes at the boundary.

The Council's Tree Officer has examined the woodland and noted that there are large ancient Oak trees within the woodland order area that are worthy of full TPO protection. There are numerous birch, hawthorn, elm, sycamore and willow several of which have fallen or have major defects. If left to its own devices the area would develop into natural woodland.

The application proposes the removal of some trees in the woodland area, (excluding the oak trees), and this would change its character from a natural unmanaged woodland into a smaller fully managed woodland incorporating new specimens (within a minimum 5-year aftercare plan). It is acknowledged that the removal of the trees and the time taken for the new planting to become established would result in a significant change to the outlook from the houses on Hay Lane. However, the new planting scheme has been drawn up to provide an effective screen which, together with the extra mound and fence, has the potential, once established, to provide a pleasant outlook for residents, albeit not the dense wild woodland it currently is.

The recommendation is to approve the felling, approve the proposed planting, with an aftercare plan, and once complete the woodland area TPO should be amended to one with individual trees and groups.

As stated above, the extra mounding and fencing proposed is proposed as a part of the noise mitigation scheme has the potential to provide a permanent screen for residents on Hay Lane and the planting of the mound would help to make the effectiveness of the tree screen more apparent at an earlier stage.

The submitted landscaping scheme would require amendment to reflect the **extra** screen mound and fence and a condition to this effect is recommended along with a condition requiring the long term management of all landscaped areas is recommended. The consideration of the impact of these works on the visual amenity of the area must be carefully weighed against the need for economic growth in the district as promoted by the NPPF.

The Derbyshire Wildlife Trust requirements for conditions relating to the installation of the bird/bat boxes, the submission of a management regime for the aftercare of the landscape and habitat areas are recommended. Consideration of the amendment of the submitted landscape scheme would include an area of rough grassland where the golden dock and other plants can be transplanted to maintain the biodiversity of the area.

These conditions should ensure that the wildlife and ecological issues arising from the development are adequately addressed.

### Crime Prevention

In respect of the Crime Prevention Design officer's comments regarding the wooded area, the provision of the mounding and fence should make that area more secure. If permission were granted, a further consultation with the crime prevention team would be undertaken on the revised landscaping/noise attenuation plans.

### Overall Conclusions

Consideration of this application has been long and complicated but officers are now in a position to make a recommendation for both planning applications.

Consideration has been given to the need for an EIA but the material submitted in support of the planning applications is sufficient to assess the environmental impacts of the proposals and address any of the significant impacts that would arise from the development. Based on these facts that there is an existing storage use established on the site and that there are existing business uses around the site, an EIA is not required for these applications and screening opinions to this effect have been placed on the Part 1 record.

Having regard to all the above material considerations, the application is considered to accord with the advice in the NPPF in respect of economic development in rural areas.

The provisions of Employment Policy 1 continue to apply to the consideration of these applications as it is in accord with the provisions of the NPPF. Thus having considered the implications arising from the grant of planning permission for the development as set out in Employment Policy 1 and the provisions of Policy 20 of the Regional Plan, the development is considered to accord with the provisions of the Development Plan.

It is considered that the concerns of the Parish Council and objectors about the impact of the development on the application site and the wider area have been addressed in the information and drawings now accompanying the applications and for the reasons set out in this report, planning permission is recommended for both.

### **Recommendation**

Subject to the receipt of a signed unilateral undertaking to the sum of £9,490.14 in respect of improvements to the A50 interchange east of Sudbury, **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. Notwithstanding the originally submitted details, this permission shall relate to the following list of supporting documents and plans:  
Planning Statement - (John Church Planning Consultancy Ltd) - February 2013,  
Revised Design & Access Statement (John Church Planning Consultancy Ltd) January 2013, Landscape and Visual Impact Assessment (Peter Eaton & Associates Ltd) December 2010, Ecological Assessment & Protected Species Survey (Arbor Vitae Environment Ltd) August 2011, Flood Modelling Study (Thomas Mackay Environmental Solutions (August 2012) and Revised Flood Risk Assessment (M-EC Ltd) September 2012.  
Transport Assessment (Mewies Engineering Consultants Ltd) August 2011 and Technical Note - Traffic Impact (MEC Consulting Engineers), November 2012,  
Revised Framework Travel Plan (Mewies Engineering Consultants Ltd) July 2012.  
Noise Levels and Predictions (Noise Suppression (Chesterfield) Ltd) April 2011,

Tree Report (Bradley Environmental Consultants) June 2009.

Drawings: -

Overall Development Plan -12914-01N, Proposed Site Section - 12914-02C,  
Planning Phase Drawing - 12914-03E, Proposed Road Elevations - 12914-04C,  
Existing Site Plan - 12914-05, Full Planning Outline on Site Plan - 12914 07D,  
Unit 16, Floor Layouts - 12914-12, Unit 16, Elevations - 12914-13,  
Unit 18, Floor Layout and Elevations -12914-14, Proposed Drainage Layout  
(Sheet 1 of 3) - 12914-100/S1D, Proposed Drainage Layout (Sheet 2 of 3) -  
12914-100/S2F, Proposed Drainage Layout (Sheet 3 of 3) - 12914-100/S3C,  
Drainage Details - 12914-101, Drainage - Overview of full site - 12914-102B,  
Landscape and Structure Planting - DRG/ATL/WLF/JC/PEA/03/DHB, Landscape  
and Structure Planting - DRG/ATL/WLF/JC/PEA/04/DHB, Tree Survey (TPO308-  
208SDCC) Tree/Hedge Removal - ATL/WLF/JC/PEA/05/DHB.

Reason: For the avoidance of doubt, the original submission being considered unacceptable.

3. Notwithstanding the submitted information, details of a lighting scheme for the site shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall thereafter be used to illuminate the site for the duration of the development and shall be maintained in accordance with the manufactures specifications. The submitted scheme shall indicate the position of all light sources and shall demonstrate that the lighting does not spill outside the site boundaries nor on the landscaped and open areas outside operational areas and the night sky.

Reason: The submitted details no longer reflect the arrangement of the site layout and further details are required to ensure that the scheme only illuminates those areas necessary to the operation of the site.

4. Before the development is commenced, the landscaping details shown on Drawings DRG/ATL/WLF/JC/PEA/03/DHB & 04DHB shall be resubmitted to the Local Planning Authority to illustrate the construction of a landscape mound along the west side of the operational area. The landscape mound shall be supplanted by an acoustic fence 1.8m high at its apex along its whole length but shall avoid the root area of any ancient oak tree identified on Drawing ATL/WLF/JC/PEA/05/DHB and contained within the area of SDDC TPO 208. The submitted scheme shall also contain proposals for the creation of an area of rough grassland to replace that lost to the development and shall include a schedule for the transplanting important plant species to that area, most notably the Golden Dock. The rough grass area shall be thereafter be maintained as a species habitat for such plants for the duration of the development. A schedule of landscape maintenance for all landscaped areas shall accompany the submitted revised landscape scheme and all landscaping shall thereafter be maintained in accordance with the approved details.

Reason: To provide an acceptable visual and acoustic screen and replacement habitat to the proposed development to the users and occupiers of properties on Hay Lane in the interests of mitigating the impact of the new built development on the site and the 24 hour operation of the site and to ensure that important native plant species are retained in the locality.

5. Before the development is generally commenced the area of rough grassland required by condition 4 above shall be formed and plants within the existing rough grassland identified in the Ecological Study accompanying the application shall be relocated to this new area of rough grassland. The area shall thereafter be maintained in accordance with the approved scheme of landscape maintenance for the area. Thereafter all other planting, seeding or turfing comprised in the approved details of landscaping required by Condition 4 above shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

Reason: In the interests of the appearance of the area and to ensure that the replacement habitat and landscaping is established in accordance with good practice.

6. All external materials used in the extension of the warehouse and construction of Unit 18 to which this permission relates shall match those used in the existing warehouse building in colour and profile unless otherwise agreed in writing by the Local Planning Authority.

Reason: To safeguard the appearance of the locality generally.

7. Before the development is commenced details for the provision of bat and bird boxes including provision for barn owls, to be located within the site or within the structure of the buildings hereby permitted shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented and the bird and bat boxes shall thereafter be retained in position for the duration of the development.

Reason: In order to ensure that existing habitat in order to maximise the opportunity to encourage wildlife habitat creation within the site. Reason: Evidence of barn owls roosting at the site have been identified in the ecology report accompanying the application. Barn owls are specifically protected under Schedule 1 of the Wildlife and Countryside Act 1981 and the condition is imposed in accordance with Section 25(1) of the Act as an expedient provision to conserve a protected species.

8. Further to Condition 7 above and 30 days before any development is undertaken on the application site a barn owl roosting/nesting box shall be provided within 200m of the application site boundary in a location to be agreed in writing by the Local Planning Authority. The barn owl roosting/nesting box shall be retained in place for a minimum of 30 days after the permanent provision required by Condition 7 above has been put in place.

Reason: Evidence of barn owls roosting at the site have been identified in the ecology report accompanying the application. Barn owls are specifically protected under Schedule 1 of the Wildlife and Countryside Act 1981 and the condition is imposed in accordance with Section 25(1) of the Act as an expedient provision to conserve a protected species.

9. No building or construction work on the site shall be commenced until evidence has been provided to the Local Planning Authority that no birds are nesting in

any of the buildings to be demolished immediately prior to the works commencing.

Reason: Evidence of barn owls roosting at the site have been identified in the ecology report accompanying the application. Barn owls are specifically protected under Schedule 1 of the Wildlife and Countryside Act 1981 and the condition is imposed in order to allow the Local Planning Authority to discharge its obligation under Section 25(1) of the Act.

10. Prior to the occupation of either Unit 18 or extension to the existing warehouse hereby permitted, the surface water drainage scheme set out in the Flood Modelling Study (August 2012) and the revised Flood Risk Assessment (September 2012) and illustrated on Drawings 12914 -100/S1D, 100S2F, 100S3C, 101 and 102B shall be implemented in accordance with the submitted details such that the surface water outfall from the development is limited to 143.1l/sec and the alterations to the existing culvert as listed in the Flood Risk Assessment are undertaken with the exception of the requirements of Condition 11 below.

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

11. The development hereby permitted shall not be commenced until such time as the actual scheme to improve the existing surface water disposal system has been submitted to, and approved in writing by, the local planning authority. The surface water drainage scheme shall include a detailed assessment of the drainage items to be installed and be accompanied by full calculations proving their suitability along with a layout showing their positions and levels on site.

The scheme shall be fully implemented and subsequently maintained, in accordance with the timing / phasing arrangements embodied within the scheme or within any other period as may subsequently be agreed, in writing, by the Local Planning Authority.

Reason: To prevent flooding by ensuring the satisfactory storage of/disposal of surface water from the site and reduce flooding to the proposed development and future users.

12. Before the development is commenced details of a footway between the site access on Woodyard Lane to the footway on Uttoxeter Road and thence to the bus stop on Uttoxeter Road together with details of the improvements to the bus stop both as set out in paragraph 10.6 as mitigation measures in the Traffic Impact Assessment shall be submitted to and approved in writing by the Local planning Authority. The submitted details shall demonstrate a minimum footpath width of 2m and show the retention of deterrent kerbing to the whole of the Woodyard Lane frontage. The submitted details shall also demonstrate visibility sight lines measuring 2.4m x 103m in each direction to any access on Woodyard Lane.

Reason: In the interests of highway safety.

13. Notwithstanding the submitted travel plan a further draft of the Travel Plan shall be submitted to and approved in writing by the Local Planning Authority. The new draft shall incorporate the following amendments:

6.3

Recommended Travel Survey timetable:

- Initial staff travel survey should be undertaken within one month of full occupation of the ATL premises, along with surveys of all employees of all other units on site at that time.
- Subsequent surveys - of all employees on site - should take place on the anniversary of this first survey.
- The results of each survey, along with an action plan should be submitted in the form of a report to both the local planning authority and Derbyshire County Council, within one month of the survey completion.

### 7.3

An acceptance that cycle parking needs to be provided in prominent locations, close to work sites and convenient for users, as per car parking provision. The precise quantity, nature and locations shall be included in a detailed drawing accompanying the revised draft.

### 8.3

#### Travel Plan co-ordinator

Contact name and details of the Travel Plan co-ordinator should be supplied to the local planning authority in consultation with Derbyshire County Council on appointment, and no later than three months prior to first site occupation, as described.

### 8.5

The Travel plan co-ordinator shall establish a site wide forum, at which site occupants are able to discuss areas of mutual interest. This should include the Travel Plan as an agenda item at least twice per year.

Once established, the remit of this group should include the ongoing Travel Plan implementation beyond the initial five-year period.

Following approval of the revised travel plan its provisions shall be implemented on first occupation of the buildings hereby permitted.

Reason: The use of a travel plan helps to reduce the need to travel to the site by the private motorcar and as such helps to establish the sustainability of the development. The Local Planning Authority consider that the submitted travel plan requires further amendment and this condition is imposed to ensure that an approved Travel Plan accords with best practice to ensure a minimum use of the private motor car to access the site.

14. 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.

15. A) The development shall not be commenced until a scheme to identify and control any contamination of land, or pollution of controlled waters has been submitted to, and approved in writing by, the local planning authority (LPA); and until the measures approved in that scheme have been implemented. The scheme shall include all of the measures (phases I to III) detailed in Box 1 of section 3.1 the South Derbyshire District Council document 'Guidance on submitting planning applications for land that may be contaminated', unless the LPA dispenses with any such requirement specifically and in writing.
- B) Prior to occupation of the development (or parts thereof) an independent verification report shall be submitted, which meets the requirements given in Box 2 of section 3.1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.
- C) In the event that it is proposed to import soil onto site in connection with the development, this shall be done to comply with the specifications given in Box 3 of section 3.1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.
- D) No development shall take place until monitoring at the site for the presence of ground/landfill gas and a subsequent risk assessment has been completed in accordance with a scheme to be agreed with the LPA, which meets the requirements given in Box 4, section 3.1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.
- Reason: To protect the health of the public and the environment from hazards arising from previous contamination of the site which might be brought to light by development of it.

Informatives:

The County Highways Authority recommends that consideration be given to the inclusion of the following into the Travel Plan:

6.4 The 10% reduction in SOV should be considered as the minimum target figure for the Travel Plan to achieve during its lifetime.

7.4 Please clarify the precise mechanism for these works to be undertaken.

(nb. The recommendation is for an agreed financial contribution to be set aside for this work to be implemented by the District or County Council).

7.5 Welcome Packs

The Travel Plan, its features and benefits, should be incorporated into the induction process for all new staff.

The Travel Plan should also be incorporated into any monitoring and progress regime for existing staff.

Consider signposting staff to relevant journey planning websites, inc:

- [www.travelineeastmidlands.co.uk](http://www.travelineeastmidlands.co.uk). 0871 2002233.
- [www.derbybus.info/times](http://www.derbybus.info/times).
- [www.nationalrail.co.uk](http://www.nationalrail.co.uk). 08457 48 49 50. (For long distance work based journeys, eg attendance at Conferences & Seminars)
- [www.transportdirect.info](http://www.transportdirect.info). for journey planning and find a cycle route.
- Any other relevant websites for local transport operators, as appropriate.

Consider provision of:

- Discounted or free 'taster' tickets for public transport.

- Discount vouchers for redemption at local cycle and outdoor wear retailers.
- Personalised Journey Planning. This to be made available to all members of staff - whether new or existing - on occupation of the development.
- Incentives for staff, these to be integrated into existing employer reward or incentive schemes.

#### 10.5 Remedies

Scope should exist within the Travel plan process to develop and implement additional initiatives, and refine existing ones as the plan progresses.

Sufficient resources should be set aside throughout the lifetime of the plan to undertake remedial actions should progress towards SOV targets fall below expected levels.

Where development is proposed, the developer is responsible for ensuring that development is safe and suitable for use for the purpose for which it is intended. The developer is thus responsible for determining whether land is suitable for a particular development or can be made so by remedial action. In particular, the developer should carry out an adequate investigation to inform a risk assessment to determine:

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

A potential developer will need to satisfy the local authority that unacceptable risk from contamination will be successfully addressed through remediation without undue environmental impact during and following the development. In doing so, a developer should be aware that actions or omissions on his part could lead to liability being incurred under Part IIA, e.g. where development fails to address an existing unacceptable risk or creates such a risk by introducing a new receptor or pathway or, when it is implemented, under the Environmental Liability Directive (2004/35/EC).

Where an agreed remediation scheme includes future monitoring and maintenance schemes, arrangements will need to be made to ensure that any subsequent owner is fully aware of these requirements and assumes ongoing responsibilities that run with the land. The phased risk assessment should be carried out in accordance with the procedural guidance of the Environmental Protection Act 1990 Part IIA. The contents of all reports relating to each phase of the risk assessment process should comply with best practice as described in the relevant Environment Agency guidance referenced in footnotes 1-4, to the relevant conditions attached to this permission.

For further assistance in complying with planning conditions and other legal requirements applicants should consult "Developing Land within Derbyshire - Guidance on submitting applications for land that may be contaminated". This document has been produced by local authorities in Derbyshire to assist developers, and is available from [http://www.south-derbys.gov.uk/business/pollution/contaminated\\_land/default.asp](http://www.south-derbys.gov.uk/business/pollution/contaminated_land/default.asp) Reports in electronic formats are preferred, ideally on a CD. For the individual report phases, the administration of this application may be expedited if a digital copy of these reports is also submitted to the pollution control officer (contaminated land) in the environmental health department: [pollution.control@south-derbys.gov.uk](mailto:pollution.control@south-derbys.gov.uk).

**Item**            1.3

**Reg. No.**        9/2011/0890/SGO

**Applicant:**  
ATL Limited  
Woodyard Lane  
Foston  
Derby  
Derbyshire  
DE15 0WL

**Agent:**  
Mr John Church  
John Church Planning  
Consultancy Ltd  
Victoria Buildings  
117 High Street  
Clay Cross  
Chesterfield  
Derbyshire  
S45 9DZ

**Proposal:**        **OUTLINE APPLICATION ALL MATTERS RESERVED  
(EXCEPT FOR ACCESS AND LAYOUT) FOR  
EXTENSION OF LOGISTICS / WAREHOUSE DEPOT AT  
ATL LIMITED WOODYARD LANE FOSTON DERBY**

**Ward:**            **HILTON**

**Valid Date:**      **07/12/2011**

*Please see the Committee Report on 9/2012/0889 for the contents of the Officers' Report on this application.*

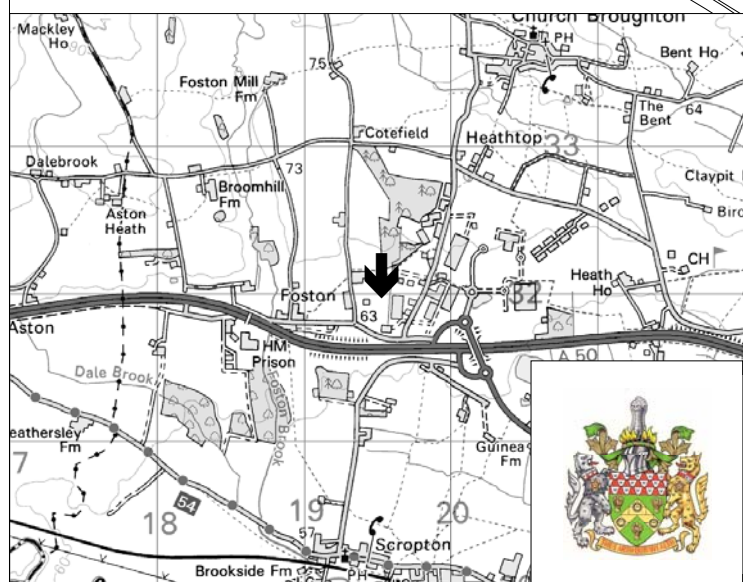
**Recommendation**

Subject to the receipt of a signed unilateral undertaking in the sum of £20,838.46 for Strategic Highway Improvements to the A50 at Sudbury **GRANT** permission subject to the following conditions:

1.     (a) Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.  
  
      (b) The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the reserved matters to be approved.

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

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



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South Derbyshire District Council. LA 100019461. 2010

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

3. Notwithstanding the originally submitted details, this permission shall relate to the following list of supporting documents and plans:

Planning Statement - (John Church Planning Consultancy Ltd) - February 2013, Revised Design & Access Statement (John Church Planning Consultancy Ltd) January 2013, Landscape and Visual Impact Assessment (Peter Eaton & Associates Ltd) December 2010, Ecological Assessment & Protected Species Survey (Arbor Vitae Environment Ltd) August 2011, Flood Modelling Study (Thomas Mackay Environmental Solutions (August 2012) and Revised Flood Risk Assessment (M-EC Ltd) September 2012. Transport Assessment (Mewies Engineering Consultants Ltd) August 2011 and Technical Note - Traffic Impact (MEC Consulting Engineers), November 2012, Revised Framework Travel Plan (Mewies Engineering Consultants Ltd) July 2012. Noise Levels and Predictions (Noise Suppression (Chesterfield) Ltd) April 2011, Tree Report (Bradley Environmental Consultants) June 2009.

Drawings: -

Overall Development Plan -12914-01N, Proposed Site Section - 12914-02C, Planning Phase Drawing - 12914-03E, Proposed Road Elevations - 12914-04C, Existing Site Plan - 12914-05, Full Planning Outline on Site Plan - 12914 08D, Proposed Drainage Layout (Sheet 1 of 3) - 12914-100/S1D, Proposed Drainage Layout (Sheet 2 of 3) - 12914-100/S2F, Proposed Drainage Layout (Sheet 3 of 3) - 12914-100/S3C, Drainage Details - 12914-101, Drainage - Overview of full site - 12914-102B, Landscape and Structure Planting - DRG/ATL/WLF/JC/PEA/03/DHB, Landscape and Structure Planting - DRG/ATL/WLF/JC/PEA/04/DHB, Tree Survey (TPO308-208SDCC) Tree/Hedge Removal - ATL/WLF/JC/PEA/05/DHB.

Reason: For the avoidance of doubt, the original submission being considered unacceptable.

4. Notwithstanding the submitted information, details of a lighting scheme for the site shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall thereafter be used to illuminate the site for the duration of the development and shall be maintained in accordance with the manufactures specifications. The submitted scheme shall indicate the position of all light sources and shall demonstrate that the lighting does not spill outside the site boundaries nor on the landscaped and open areas outside operational areas and the night sky.

Reason: The submitted details no longer reflect the arrangement of the site layout and further details are required to ensure that the scheme only illuminates those areas necessary to the operation of the site.

5. No part of the development shall be commenced unless and until the landscaping scheme required by Condition 4 & 5 and the surface water drainage scheme required by Condition 10 of planning permission 9/2011/0889 have been implemented to the satisfaction of the Local Planning Authority or such other timetable as may be agreed in writing by the Local Planning Authority.

Reason: The landscaping scheme and surface water drainage provision set out in conditions 4 & 10 of planning permission 9/2011/0889 were at the heart of the reason for granting that planning permission. The details accompanying the planning application for this development are the same as those approved in that application and the Local Planning Authority seeks to ensure that the approved schemes are in place prior to the development on this part of the applicants site.

6. Before the development is commenced details for the provision of bat and bird boxes including provision for barn owls, to be located within the site or within the structure of the buildings hereby permitted shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented and the bird and bat boxes shall thereafter be retained in position for the duration of the development.

Reason: In order to ensure that existing habitat in order to maximise the opportunity to encourage wildlife habitat creation within the site. Reason: Evidence of barn owls roosting at the site have been identified in the ecology report accompanying the application. Barn owls are specifically protected under Schedule 1 of the Wildlife and Countryside Act 1981 and the condition is imposed in accordance with Section 25(1) of the Act as an expedient provision to conserve a protected species.

7. Further to Condition 6 above and 30 days before any development is undertaken on the application site a barn owl roosting/nesting box shall be provided within 200m of the application site boundary in a location to be agreed in writing by the Local Planning Authority. The barn owl roosting/nesting box shall be retained in place for a minimum of 30 days after the permanent provision required by Condition 6 above has been put in place.

Reason: Evidence of barn owls roosting at the site have been identified in the ecology report accompanying the application. Barn owls are specifically protected under Schedule 1 of the Wildlife and Countryside Act 1981 and the condition is imposed in accordance with Section 25(1) of the Act as an expedient provision to conserve a protected species.

8. No building or construction work on the site shall be commenced until evidence has been provided to the Local Planning Authority that no birds are nesting in any of the buildings to be demolished immediately prior to the works commencing.

Reason: Evidence of barn owls roosting at the site have been identified in the ecology report accompanying the application. Barn owls are specifically protected under Schedule 1 of the Wildlife and Countryside Act 1981 and the condition is imposed in order to allow the Local Planning Authority to discharge its obligation under Section 25(1) of the Act.

9. The development hereby permitted shall not be commenced until such time as the actual scheme to improve the existing surface water disposal system has been submitted to, and approved in writing by, the local planning authority. The surface water drainage scheme shall include a detailed assessment of the drainage items to be installed and be accompanied by full calculations proving their suitability along with a layout showing their positions and levels on site.

The scheme shall be fully implemented and subsequently maintained, in accordance with the timing / phasing arrangements embodied within the scheme

or within any other period as may subsequently be agreed, in writing, by the local planning authority.

Reason: To prevent flooding by ensuring the satisfactory storage of/disposal of surface water from the site and reduce flooding to the proposed development and future users.

10. Before the development is commenced details of a footway between the site access on Woodyard Lane to the footway on Uttoxeter Road and thence to the bus stop on Uttoxeter Road together with details of the improvements to the bus stops both as set out in paragraph 10.6 as mitigation measures in the Traffic Impact Assessment shall be submitted to and approved in writing by the Local planning Authority. The submitted details shall demonstrate a minimum footpath width of 2m and show the retention of deterrent kerbing to the whole of the Woodyard Lane frontage. The submitted details shall also demonstrate visibility sight lines measuring 2.4m x 103m in each direction to any access on Woodyard Lane. The footway and other requirements shall be implemented prior to the first occupation of the buildings hereby permitted.

Reason: In the interests of highway safety.

11. Notwithstanding the submitted travel plan a further draft of the Travel Plan shall be submitted to and approved in writing by the Local Planning Authority. The new draft shall incorporate the following amendments:

#### 6.3

Recommended Travel Survey timetable:

- Initial staff travel survey should be undertaken within one month of full occupation of the ATL premises, along with surveys of all employees of all other units on site at that time.
- Subsequent surveys - of all employees on site - should take place on the anniversary of this first survey.
- The results of each survey, along with an action plan should be submitted in the form of a report to both the local planning authority and Derbyshire County Council, within one month of the survey completion.

#### 7.3

An acceptance that cycle parking needs to be provided in prominent locations, close to work sites and convenient for users, as per car parking provision. The precise quantity, nature and locations shall be included in a detailed drawing accompanying the revised draft.

#### 8.3

Travel Plan co-ordinator

Contact name and details of the Travel Plan co-ordinator should be supplied to the local planning authority in consultation with Derbyshire County Council on appointment, and no later than three months prior to first site occupation, as described.

#### 8.5

The Travel plan co-ordinator shall establish a site wide forum, at which site occupants are able to discuss areas of mutual interest. This should include the Travel Plan as an agenda item at least twice per year.

Once established, the remit of this group should include the ongoing Travel Plan implementation beyond the initial five-year period.

Following approval of the revised travel plan its provisions shall be implemented on first occupation of the buildings hereby permitted.

Reason: The use of a travel plan helps to reduce the need to travel to the site by the private motorcar and as such helps to establish the sustainability of the development. The Local Planning Authority consider that the submitted travel plan requires further amendment and this condition is imposed to ensure that an approved Travel Plan accords with best practice to ensure a minimum use of the private motor car to access the site

12. 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.

13. A) The development shall not be commenced until a scheme to identify and control any contamination of land, or pollution of controlled waters has been submitted to, and approved in writing by, the local planning authority (LPA); and until the measures approved in that scheme have been implemented. The scheme shall include all of the measures (phases I to III) detailed in Box 1 of section 3.1 the South Derbyshire District Council document 'Guidance on submitting planning applications for land that may be contaminated', unless the LPA dispenses with any such requirement specifically and in writing.
- B) Prior to occupation of the development (or parts thereof) an independent verification report shall be submitted, which meets the requirements given in Box 2 of section 3.1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.
- C) In the event that it is proposed to import soil onto site in connection with the development, this shall be done to comply with the specifications given in Box 3 of section 3.1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.
- D) No development shall take place until monitoring at the site for the presence of ground/landfill gas and a subsequent risk assessment has been completed in accordance with a scheme to be agreed with the LPA, which meets the requirements given in Box 4, section 3,1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.

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

**Item**            **1.4**

**Reg. No.**        **9/2012/0570/U**

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

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

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

**Ward:**            **SEALES**

**Valid Date:**     **02/07/2012**

**Reason for committee determination**

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

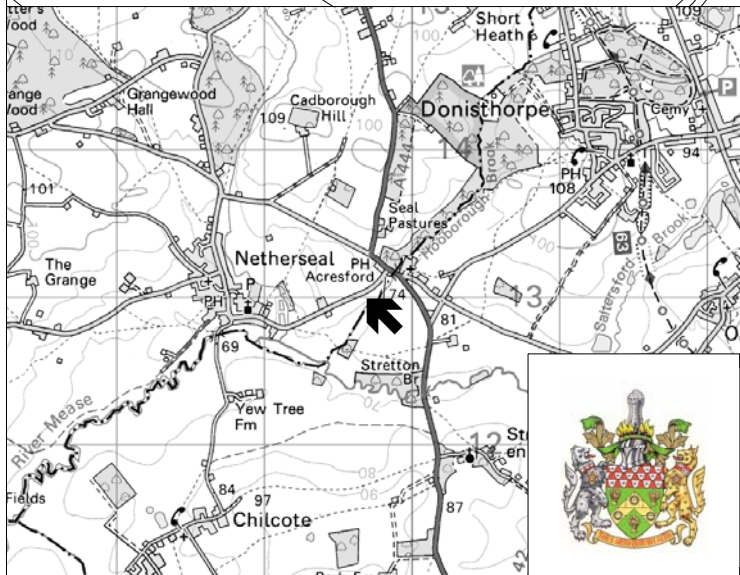
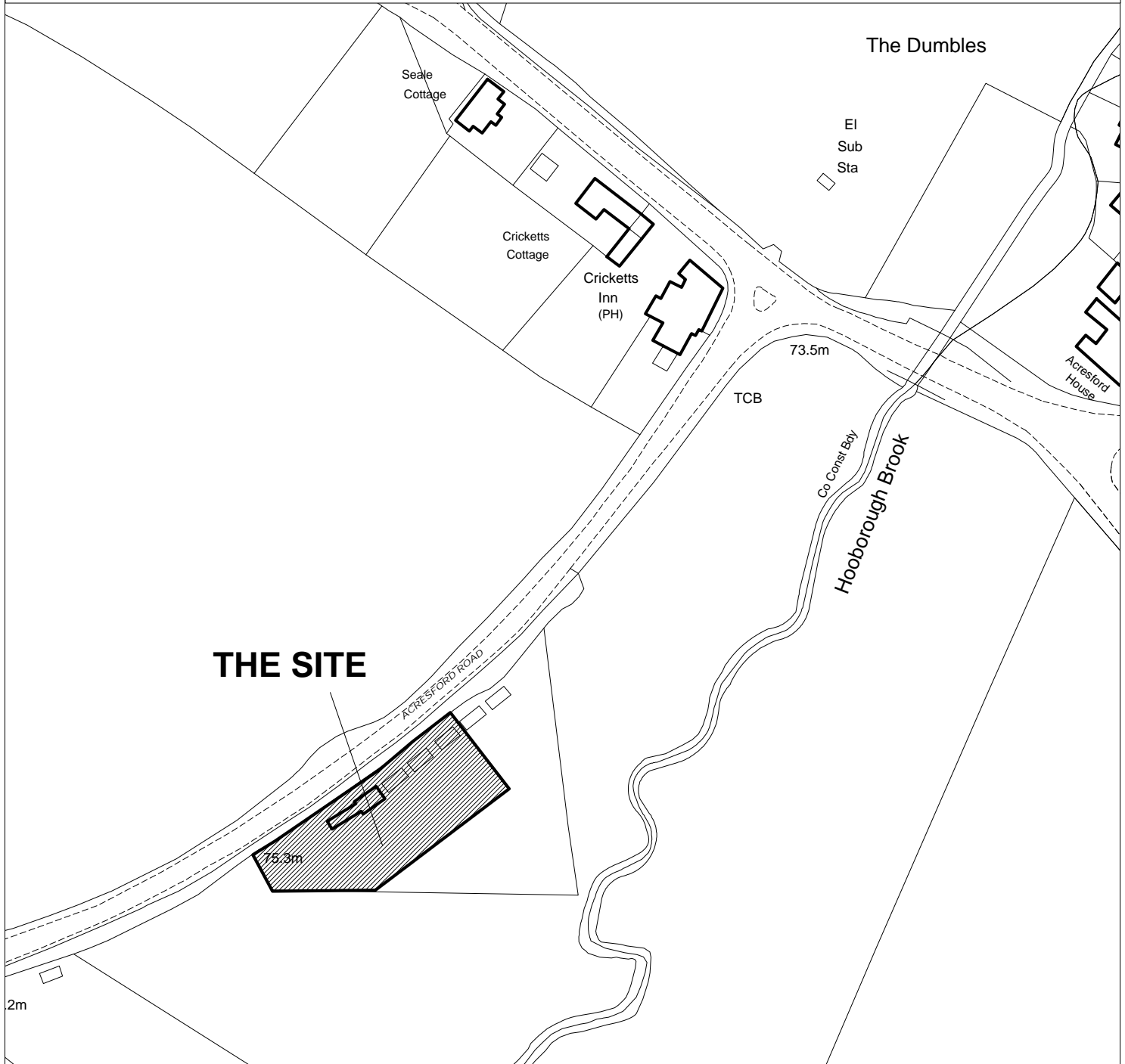
**Site Description**

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

**Proposal**

The proposed development, according to the application form, is for the change of use from equestrian land to residential gypsy caravan site with one pitch. At the time of the

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



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**South Derbyshire District Council. LA 100019461. 2010**

officer's site visit, an occupied mobile home, portable toilet, a stable and a dog kennel existed on the site. An amount of hardcore material was also brought onto the site prior to the appeal decision and the submission of this subsequent application.

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

### **Applicants' supporting information**

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

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

### **Planning History**

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

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

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

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

E/2011/00022 – Enforcement Notice against breach of planning control relating to the use of the land as a Gypsy site, removal of the caravan, portable toilet, hardcore

material and reduction in height of the timber close boarded fence at the access where adjacent to the highway. Subsequent appeal (APP/F1040/C/11/2158251) dismissed (but see detail below).

## **Responses to Consultations**

Severn Trent Water Limited has no objections to the proposal and no comments to make.

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

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

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

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

The Environmental Health Manager has no objection in principle. However, with the change of use proposed he is keen to ensure that any impact from domestic waste produced at the site and potential for spill of contaminants will not adversely impact on the Hooborough Brook. These concerns can be addressed through the caravan site

licensing process. There is also a need to remind the applicant of the need to apply for an appropriate licence and that the Environment Agency may need to be consulted on any drainage/discharge to wastewater matters.

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

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

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

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

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

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

- The application is retrospective as the caravan is already installed and occupied.
- The site is in a remote rural location outside the village confines. The use of the land for residential purposes is not essential to any rural based activity, neither is it unavoidable development in the countryside, as required by Environment

Policy 1 of the Local Plan. There are already 12 legitimate Traveller Sites within South Derbyshire, plus others in North West Leicestershire, which the Parish Council considers should be sufficient and therefore negate the need for the use of agricultural land for this purpose.

- The site is within the catchment of the River Mease, which is a Special Area of Conservation. The applicant has stated that there will be no industrial activity or commercial processes uses on the site but the adjacent land, which is in his ownership, has been used for burning materials, giving off noxious fumes. There are concerns that deposits from these fires and run off from the hardstanding areas will find their way into the Hooborough Brook and impact on the integrity of the SAC, which is currently running above the recommended phosphate levels set by the Environment Agency.
- The Environment Agency's website shows the site to be at a severe risk from flooding and is therefore unsuitable for residential use.
- The site is a gateway to South Derbyshire and part of the National Forest. To allow a residential gypsy site in this location will be detrimental to the natural rural aspect of the area.

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

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

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

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

### **Responses to Publicity**

Mrs Heather Wheeler MP believes that since the earlier application the Government has made changes to planning rules regarding traveller sites and in particular to

retrospective applications, and considers that there are sufficient planning reasons for the application to be refused under Officers' delegated powers. If for any reason this is not the case she hopes that it will come before the Planning Committee.

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

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

The standard letter contains 5 bullet points, as follows:

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

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

- a. The River Mease is under assault with the water quality below the optimum level because of high pollutants.
- b. The Regional Plan Appropriate Assessment for the River Mease SAC and SSSI states that (i) a number of measures should be in place before any future development is undertaken; (ii) evidence shows that the current situation is totally unsatisfactory and the condition of the SAC is degrading; and (iii) habitat quality is already in decline.
- c. No applications should be allowed until a well investigated and reasoned plan is put in place.
- d. The National Forest should be an oasis of calm and natural beauty for all to enjoy.
- e. The development will have a detrimental impact on the main portal to South Derbyshire, the National Forest, listed buildings (including an ancient water mill that dates back hundreds of years) and the conservation areas of Netherseal and Acresford.
- f. Various statements from the Planning Inspector's report, Natural England and the Planning Portal support objectors' views.
- g. Believes the site is being used for commercial purposes.
- h. How will the site be monitored, assessed and controlled for future contamination?
- i. Barking dogs could have an effect on the otter population.
- j. There is more than reasonable doubt about the likely impact of the development on the SAC.
- k. Quotes from Natural England relating to the granting of planning permission for projects that would adversely affect any European Wildlife Site.
- l. The District Council, as custodians of South Derbyshire, should protect the natural beauty of the River Mease and asks whether it will be able, in the future, to be sure that everything was done to safeguard, maintain and promote this beautiful environment.

- m. There is nothing to be gained by having a Gypsy site anywhere but more use should be made of ex-factory sites (brownfield) that are already unattractive.
- n. Contrary to the Local Plan and proximity to the A444 makes it more inappropriate.
- o. Increased danger to drivers caused by caravans and other large vehicles pulling into and out of the site. The site access is not safe.
- p. The site is subject to regular flooding thereby increasing the risk of pollutants leaching into the river.
- q. Increased possibility of theft, litter and dog attacks.
- r. Aims of the planning service are 'to balance what people wish to do with land and what some may see as unacceptable changes to the environment'. The decision should be made considering the wishes of the community who are totally against the one person who seeks to bring distress, upset and anger to our villages.
- s. Adverse impact on tourism and walkers.
- t. The applicant has already disregarded planning law by inhabiting the site without planning permission so cannot be relied on to conform to the legislation in the future.
- u. Travellers who wish to stop travelling have the same opportunities as everyone else to buy a property in the area.
- v. This would set a precedent for anyone to place a caravan and hardstanding on land where they wished to increase its value causing detriment to the rural area.
- w. It is inevitable that there will be more than one caravan on the site in the future resulting in more trouble and expense for the Council. Why would the applicant go to the expense of buying a field and connecting to the main sewer for a single caravan?
- x. Consideration should be given to existing Gypsy/Traveller sites in other areas of Derbyshire as South Derbyshire already has more pitches than any other local authority in Derbyshire.
- y. Works on the bridge crossing the A444 made provision for otters and crayfish and the abundance of other wildlife species that frequent the area increases the risk for the proposal to have an adverse impact on those species.
- z. The Burton Road pumping station is already congested and the neighbouring Council should be made aware of the situation.
- aa. Although the application form states that there are no trees or hedges on the site, it is clear that the site is surrounded by both.
- bb. Recent floods have left unacceptable levels of rubbish to be cleared and the River Mease would not be able to cope with any further potential waste as a result of the development.
- cc. Members of the Planning Committee should walk by the river and tributary streams to see the overall picture. Access can be gained from Mill Farm.
- dd. The development would undermine the effort that SDDC has put into regenerating the district following the closure of the coal mines.
- ee. The planning authority is reminded of the great duty placed upon it by the Planning Inspector to protect the SAC, specifically paragraph 18 of the decision which requires '...a high test'.
- ff. The applicant's Report on the impact of the River Mease (SAC) is inaccurate, in that the hardstanding area is larger than described, the hardcore materials have not been analysed (where did it come from, how much has been deposited?). It could contain asbestos for all that is known. The application must fail on this issue alone. Whilst the Report does not deny the existence of protected species in the River Mease, there is no effort to control the dog and its constant barking day and night.

- gg. The smaller caravan on the site at the time of the appeal has been replaced with a larger caravan.
- hh. The site will inevitably become a brownfield site for more housing.
- ii. Netherseal is too small to sustain such a large site.
- jj. The site is used by commercial vehicles (pick-ups and vans).
- kk. Parking of HGVs on the wrong side of the road.
- ll. It is not clear what the applicant intends doing with the remainder of the adjacent land that is in his ownership. Recent media coverage highlights that unplanned usage of land by travelling communities should be taken into consideration.

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

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

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

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

## **Development Plan Policies**

The relevant policies are:

EMRP Policies: 16: Regional Priorities for Provision of Gypsies, Travellers and Travelling Show People; 26: Protecting and Enhancing the Region's Natural and Cultural Heritage

Saved Local Plan:

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

### **National Guidance**

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

### **Other Relevant Guidance/advice**

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

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

### **Planning Considerations**

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

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

### **Planning Assessment**

#### Site History and the Appeal Decision

Members will be aware that an appeal decision that relates to a particular application site is an important material consideration in the determination of a subsequent planning application on that site. This site is the subject of an appeal to the Planning Inspectorate against an Enforcement Notice relating to the unauthorised change of use of the land from equestrian to the use for a residential Gypsy caravan site, including the stationing of a caravan and portable toilet block, the erection of boundary fencing and hard surfacing without planning permission. The appeal proceeded on the grounds set out in section 174(2)(a), (c), (f) and (g) of the Town and Country Planning Act 1990 (as amended). The appeal decision is dated 17<sup>th</sup> February 2012.

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

Ground (c) related to the hardstanding area and the boundary fencing. The Inspector concluded that the height of the boundary fencing was, at the time of the appeal site

visit, within the permitted development limits, and therefore it did not amount to a breach of planning control. Consequently, the appeal was successful on ground (c) and the notice modified to delete reference to this aspect.

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

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

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

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

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

- The Inspector was satisfied that the development would not cause any material harm to the character and appearance of the countryside, subject to suitable conditions. Nevertheless, he was concerned that it had not been shown that the development would not have an adverse effect on the integrity of the SAC, which weighed heavily against the grant of planning permission, given the legal tests applying to nature conservation sites of such importance. As such, he considered that the development conflicted with Local Plan Saved Policy H15 (iii), which requires all development to be acceptable in environmental terms.
- In terms of sustainability, the Inspector considered that the site is in a relatively sustainable location for one that is outside a settlement and is not remote from day-to-day services and facilities that need to be accessed, and on that basis concluded that Policy H15 (iv) had been met.
- With regard to highway safety, he concluded that the development would be unlikely to give rise to any material harm to highway safety, and that no harm in that regard had been demonstrated since the use commenced. He was satisfied that Policy H15 (vi) was fulfilled.
- The Inspector agreed with the appellant's agent that the adequacy of Gypsy site provision in South Derbyshire is not a reason for dismissing the appeal as there is no upper limit, but stated that the absence of any demonstrable general need was not a factor which weighed in favour of permitting the development, and

concluded that there was no evidence of general unmet need for such sites in the District.

- With regard to the personal circumstances of the appellant, the Inspector gave consideration to the existence of a family-owned site in Lichfield and to the appellant's claims that there were no spaces available on that site during the winter months. He opined that the evidence with regard to the Lichfield site was inconclusive but he was not persuaded that occupying the site with one touring caravan would be out of the question, even on a temporary basis. He also made reference to the health of the appellant's daughter and the need for hospital treatment and access to medical facilities. He accepted that having a settled base would help in this regard, although recognised that the appeal site is not particularly close to a doctors' surgery or a hospital. However, he concluded that the personal circumstances of the appellant and his family and the seeming lack of a suitable pitch on any family site were factors that weighed in favour of permitting the development.

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

#### The principle of the development

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

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

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

The report, which was received on 30<sup>th</sup> October 2012, indicates that the imported hardcore materials have contaminated the site and that further assessments should be

carried out involving water sampling and analysis. The agent has confirmed that the material is to be removed and replaced with clean quarry stone. Copies of the report have been forwarded to the Environment Agency, Natural England, Derbyshire Wildlife Trust and the Council's Environmental Protection Officer. Updated comments from these parties are as follows:

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

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

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

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

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

#### Highway Safety

Although a number of neighbouring residents have objected on highway safety grounds, both the Planning Inspector and the County Highways Authority have not raised this as an issue. The Inspector refers to paragraph 66 of Circular 01/06, which advised that development proposals should not be rejected if they would only give rise to modest

additional daily movements, as is the case here. Accordingly, there are no objections to the development on highway safety grounds.

### Other issues

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

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

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

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

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

Subsequent to the application being made, the Council has adopted a Developer Contributions Scheme for the majority of commercial and residential developments within the River Mease SAC, particularly for the areas in and around Overseal, Netherseal, Lullington and Smisby. For the purposes of this application there is a requirement for the applicant to agree a financial contribution of £127, based on the

calculation that the mobile home constitutes a one-bedroom dwelling. The principle of the Unilateral Undertaking has been agreed with the applicant's agent but the documentation has not yet been received (at the time of completing this report).

### Conclusion

The principle of the development has been established by the planning appeal decision and the proposal is therefore in accordance with East Midlands Regional Plan Policy 16, Local Plan Saved Environment Policy 1 and Housing Policies 5, 8, 12 and 15, paragraph 55 of the National Planning Policy Framework and Policy C of CLG Planning Policy for Traveller Sites.

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

The development is now acceptable in terms of its impact on the River Mease SAC and SSSI, with the Environment Agency, Natural England and the Council's Environmental Protection Officer now being satisfied that contamination issues can be satisfactorily resolved, subject to conditions relating to remediation and validation. The proposal is therefore in accordance with East Midlands Regional Plan Policy 26, Local Plan Saved Environment Policy 11 and paragraphs 7, 17, 109 and 118 of the National Planning Policy Framework.

In light of the above the Local Planning Authority has implemented the requirements of paragraphs 186 and 187 of the National Planning Policy Framework.

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

### **Recommendation**

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

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

1. Within two months of the date of this permission a scheme of landscaping shall be submitted to the Local Planning Authority for written approval, which shall include indications of all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection in the course of development.

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

2. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the grant of this permission, and any trees or plants which within a period of five years from the grant of this permission die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar

size and species, unless the Local Planning Authority gives written consent to any variation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Reason: For the avoidance of doubt.

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

Reason: For the avoidance of doubt.

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

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

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

Reason: To protect the health of the public and the environment from hazards arising from previous contamination of the site which might be brought to light by development of it and in the interests of the integrity of the River Mease Special Area of Conservation and Site of Special Scientific Interest.

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

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

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

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

Informatives:

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

Further information is also available on The Coal Authority website at [www.coal.decc.gov.uk](http://www.coal.decc.gov.uk)

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

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

**Item** 1.5

**Reg. No.** 9/2012/1048/B

**Applicant:**  
Mrs Loren Pope  
The Bulls Head  
Chilled Pubs Ltd  
T/A The Bulls Head  
84 High Street  
Repton  
Derby  
DE65 6GF

**Agent:**  
Mrs Loren Pope  
The Bulls Head  
Chilled Pubs Ltd  
T/A The Bulls Head  
84 High Street  
Repton  
Derby  
DE65 6GF

**Proposal:** THE REMOVAL OF CONDITION 3 OF PLANNING  
PERMISSION 9/2012/0528/NO AT THE BULLS HEAD 84  
HIGH STREET REPTON DERBY

**Ward:** REPTON

**Valid Date:** 22/01/2013

Members will recall that this application was deferred at the meeting held on 5<sup>th</sup> March 2013 pending the outcome of a site visit. Changes to this report since Members' consideration at 5<sup>th</sup> March Committee are in *italics* below. The planning assessment and recommendation are unchanged.

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

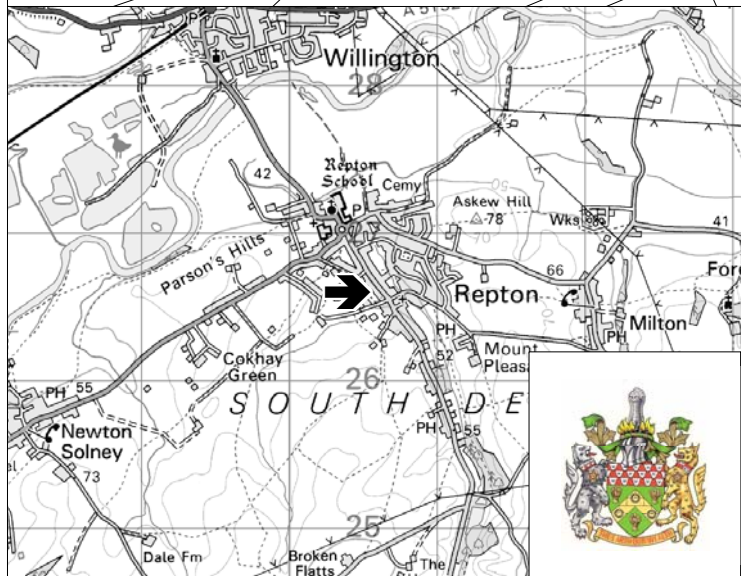
The application is brought to Committee at the request of Councillor Stanton because of the level of public concern that has been raised.

#### **Site Description**

The Bulls Head Public House is situated on the western side of Main Street, Repton, within the Repton Conservation Area. The public house is served by a large car park to the immediate south of the building, together with garden and patio areas to the rear. Part of the garden area is occupied by a marquee measuring approximately 18m x 11.4m x 4.9m to the ridge that was approved last year. There are residential properties located either side of the public house, with a mix of residential and commercial properties on the opposite side of High Street.

#### **Proposal**

The application is for the removal of condition 3 attached to planning permission 9/2012/0528 for the erection of an all year round marquee. Condition 2 of that



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South Derbyshire District Council. LA 100019461. 2010

permission restricts the opening hours of the marquee to: 11am to 11pm Monday to Thursday; 11am to midnight Friday and Saturday; and 11am to 10pm Sundays.

Condition 3 states: -

*'The hours of use specified in Condition 2 above shall be applicable until 13<sup>th</sup> February 2013 after which time the marquee shall not be open to customers outside the following times: 11am to 11pm Monday to Saturday and 11am to 10pm Sunday unless otherwise authorised under a Temporary Event Notice signed by the Licensing Authority and issued under the Licensing Act 2003'.*

*The reason for imposing the condition states: 'To ensure that the use does not prejudice the enjoyment by neighbouring occupiers of their properties'.*

### **Applicants' supporting information**

*During the meeting of 5<sup>th</sup> March 2013 it was confirmed by the applicant that the marquee is insulated against noise transfer, the details of which are as follows: -*

#### *Marquee materials*

- *Details and samples of the marquee outer skin fabric and UPVC walls were submitted and approved as part of the discharge of conditions relating to the erection of the marquee in 2012.*
- *The outer skin of the marquee (roof covers and walls) is manufactured using a 650gm PVC that is Flame Retardant to the latest British safety standards / U.V. inhibited and anti-fungicidal protected. A non-standard cream colour was sourced at the request of the Parish Council.*
- *On the inside of three marquee walls the elevations are fitted with UPVC walling panels, which are approximately 3 inches thick with an air break in the centre. The panels give strength to the marquee in addition to providing heat insulation and noise reduction properties.*
- *On the inside of the two gable end panels there is wall papered plasterboard, which gives the effect of old brick walls. The plasterboard also provides heat insulation and noise reduction.*
- *The long elevation facing the upper terrace has double-glazed window and door units, as per the approved drawing.*
- *The entire roof is lined with insulation pads (resembling mattress toppers), approximately 2.5 inches thick and specifically designed for marquee heat and noise insulation.*
- *The entrance and exits are fitted with automatic electronic doors – minimising heat and sound loss.*

#### *Noise control*

- *The detailed specification for the sound system was signed off by John Mills, Environmental Health Officer.*
- *The system consists of 15 x chuck speakers, an amplifier and sound limiter.*
- *The system does not have a bass speaker and has been designed to allow an even distribution of low background music suitable for dining.*
- *The system cannot and will not be used for any 'foreground' music events. If any 'one off' events which require foreground music (e.g. Christmas and New Year family fun days) a Temporary Event Notice will be applied for in the usual*

*manner. Any additional music systems used for any 'one off' events are to be installed and removed in accordance with each Temporary Event Notice.*

- *After the sound system was installed a sound engineer and The Noise Pollution Control Officer from SDDC set the maximum sound output on the system.*
- *Given the fact that the marquee is only used for dining, the sound system is never operated to the maximum level set by SDDC.*

*The applicant is willing to provide more detailed specifications of materials and/or equipment on request.*

## **Planning History**

9/2007/1413 – Proposed levelling of garden and erection of umbrellas – Approved 28/01/08

9/2011/1001 – Erection of an all year round marquee over existing beer garden terrace – Approved 9/02/12

## **Responses to Consultations**

The Environmental Health Manager has no objection to the proposal subject to the previously approved noise attenuation measures being adhered to. *He has no objection to the sound insulation measures that have been incorporated into the marquee. The premises has demonstrated over an extended time period an ability to manage noise levels from marquees and do not give rise to complaint, and the new sound system has been designed to ensure that noise breakout is minimised. In the event that noise levels from this extended use cause unreasonable levels of disturbance, he can request a review of their licence with a view to introducing additional controls, which could include a reduction in the hours of use.*

Repton Parish Council objects to the application on the grounds that an extension to the licence governing the marquee would increase the level of noise pollution to the surrounding area – in particular to the surrounding properties and would affect residents enjoying the peace of their own homes.

Repton Village Society has commented on behalf of residents who live near the Bulls Head stating that they suffer noise and disturbance from its customers when they leave the premises late at night. As the car park is not large enough to accommodate the number of customers they are now able to serve, cars are left on the High Street and other streets/lanes running from it. The banging of car doors and noisy behaviour at midnight and beyond is very disruptive for local residents.

## **Responses to Publicity**

Fifteen emails and one letter have been received, all of which object to the proposal. Their comments can be summarised as follows:

- a. All year round noise and disturbance from the garden and marquee and from slamming doors, loud talking, starting and revving engines and horns from cars, taxis and minibuses.
- b. Inadequate size of the Bulls Head car park to cope with existing trade.
- c. Later opening hours will result in late arrivals and departures.
- d. Increased traffic.

- e. Minor damage to domestic properties as a result of cars parking outside houses.
- f. Increased opportunity for anti-social behaviour, including fighting and damage to residents' cars.
- g. Pre-cursor to extend the public house.
- h. Ground levels mean that the pub garden and marquee are on the same level as neighbouring bedroom windows and the noise from the garden and marquee often disturb sleep.
- i. The entire village is being ruined by the pub as it is becoming one large overspill car park.
- j. No benefit to the residents of the village merely a money-making venture for the owners.
- k. The number of tables / covers / sittings provided does not equate to the number of car parking spaces available for patrons.
- l. A residents' parking scheme would alleviate some of the issues caused by on-street parking by pub customers.
- m. Negative impact on residents' quality of life.
- n. Devaluation of properties.
- o. Dangerous parking causes obstructions; the Police should be more active.

### **Development Plan Policies**

The relevant policies are:

EMRP: Policy 27 (Regional Priorities for the Historic Environment)  
 Saved Local Plan: Policy EV12 (Conservation Areas)

### **National Guidance**

National Planning Policy Framework (NPPF), paragraphs 28, 70, 123 and 131

### **Planning Considerations**

The main issue central to the determination of this application is the noise and disturbance to neighbouring residents that could be caused by a permanent extension of opening hours.

### **Planning Assessment**

Condition 3 was imposed on the original planning permission for the marquee (9/2012/0528) at the request of the Environmental Health Officer because the proposed extension of opening hours could, potentially, impact on the amenities of the neighbouring residents. It was considered that a temporary period of 12 months (expiring on 13<sup>th</sup> February 2013) would be sufficient to indicate whether the longer hours would have such an impact as to warrant the shorter opening hours for the marquee to be reinstated.

It should be noted that the main public house currently enjoys the longer opening hours, i.e. 11am to 12pm Fridays and Saturdays and this would not change should the current application for the marquee be refused. Whilst this could result in the level of noise and disturbance being slightly less, there is no guarantee of this as it is likely that customers would transfer into the main building or the garden to continue their evening if the marquee closes at 11pm.

Whilst objections have been received in relation to this application, the Council has not received any complaints whatsoever from neighbouring residents during the 12-month period. It would be difficult, therefore, to substantiate a refusal on the basis of noise and disturbance, particularly as the Environmental Health Manager has not raised any objections to the application to remove the condition, and also that other controls could be put in place should the extended hours of use cause unreasonable levels of disturbance. The parking of patrons' vehicles on the highway is not within this Council's control and the County Highways Authority has not seen fit to impose a Traffic Regulation Order on High Street at this point or any of the streets/lanes leading off it in the vicinity of the public house. The issue of anti-social behaviour is a matter for the police, as is the alleged damage to residents' cars.

With regard to other issues raised by residents, devaluation of property is not a material planning consideration and the Local Planning Authority has no control over market forces. Any future proposal to extend the public house would need planning permission and the scheme would be assessed on its merits at that time.

In terms of policy, paragraph 28 of the NPPF supports the growth and expansion of all types of business and enterprise in rural areas and the retention and development of local services, including public houses. Paragraph 70 seeks to ensure that planning allows for the development and modernisation of established shops, facilities and services in a sustainable way, retaining them for the benefit of the community. The marquee was originally argued on the basis that it is required in conjunction with an existing thriving pub business within the village. Whilst concerns raised at that time with regard to insufficient parking within the existing car park were acknowledged, it was not considered that the marquee would intensify the use of the premises to such a degree that would sustain an objection on highway safety grounds.

Paragraph 123 of the NPPF seeks to ensure that any significant adverse impacts on health and quality of life in relation to noise arising from new development are avoided. The condition on the previous permission relating to the control of noise remains relevant to this proposal and will be reinstated to ensure that the marquee remains compliant with the above guidance.

Paragraph 131 of the NPPF advises that in determining applications, account should be taken of the positive contribution that conservation of heritage assets can make to sustainable communities, including their economic viability and the desirability of new development making a positive contribution to local character and distinctiveness.

The marquee assists in the sustainability of the existing business within the Repton Conservation Area and, in the absence of any formal complaints to the Council from the neighbouring residents, there is no reason why condition 3 should not be removed to allow a midnight closing time on Fridays and Saturdays to bring it in line with the main public house building. Should a formal complaint be made to the Council at any time in the future, an investigation would be made under Environmental Health legislation. It is concluded that the proposal accords with local and national policy requirements and guidance and is therefore considered to be acceptable.

*Nothing that has been submitted since 5 March Committee that alters the assessment or recommendation.*

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

## **Recommendation**

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

1. This permission shall be for a limited period only, expiring on 28th February 2017, on or before which date the marquee shall be removed and the site reinstated to the satisfaction of the Local Planning Authority unless, prior to that date, an application has been made and permission has been granted for an extended period.

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) and to ensure that the fabric has not deteriorated to the detriment of the visual amenity and character of the Conservation Area.

2. Notwithstanding the submitted details the marquee shall not be open to customers outside the following times: 11am to 11pm Monday to Thursday; 11am to midnight Friday and Saturday; and 11am to 10pm Sunday, unless otherwise authorised under a Temporary Event Notice signed by the Licensing Authority and issued under the Licensing Act 2003.

Reason: To ensure that the use does not prejudice the enjoyment by neighbouring occupiers of their properties.

3. Notwithstanding the submitted details, the use of the marquee shall be carried out in accordance with the scheme for the control of noise approved under planning permission 9/2011/1001.

Reason: To ensure that the use does not prejudice the enjoyment by neighbouring residents of their properties.

4. Notwithstanding the submitted details and unless otherwise agreed in writing by the Local Planning Authority, the colour of the marquee shall be an 'off-white' or 'ivory' colour as agreed in writing by the Local Planning Authority in the letter dated 10th September 2012.

Reason: In the interests of the character and appearance of the Repton Conservation Area.

**Item**                **1.6**

**Reg. No.**            **9/2012/1056/RSD**

**Applicant:**  
**Mr I Reynolds**  
**Maplevale Developments Ltd**  
**& George LB Ltd**  
**Trafalgar House**  
**20a Market Street**  
**Lichfield**  
**Staffordshire**  
**WS13 6LH**

**Agent:**  
**Mr Christopher Timothy**  
**CT Planning**  
**Trafalgar House**  
**Lichfield**  
**Staffordshire**  
**WS13 6LH**

**Proposal:**            **THE DEMOLITION OF FOOD RETAIL UNIT AND  
ERECTION OF 51 DWELLINGS (33 DWELLINGS AND 18  
APARTMENTS) AND ASSOCIATED WORKS AT  
FORMER KWIK SAVE SITE ALEXANDRA ROAD  
SWADLINCOTE**

**Ward:**                **SWADLINCOTE**

**Valid Date:**        **02/07/2012**

**Reason for committee determination**

The application is brought before the Committee, as this is a major application that has attracted more than two letters of objection.

**Site Description**

This 0.57 hectare site is located to the south west of Swadlincote town centre on Alexandra Road. There is an existing single storey flat roof former Kwik Save building in the northern part of the site with an access road adjacent to the row of shops on the northern boundary of the site. The car park covers the remainder of the site and there is shrub land adjacent to parts of the western boundary. There is a single storey office building adjacent to the southern boundary, residential properties to the west and north west and a row of shops to the north. Sharpes Museum is to the north east and there is a public long-stay car park opposite. The Swadlincote Conservation Area boundary adjoins the site to the north, east and south (although the site is not within it).

There are fifteen trees on the site and four groups of trees, the majority of which are adjacent to the northern and western boundaries. There are two mature False Acacia trees on the site frontage. The land levels of the site reduce to the north with the southern boundary being four metres higher than that of the northern boundary.

**Proposal**

Planning permission is sought for 51 dwellings which includes 25 two bedroom, 8 three bedroom properties and 18 one bedroom apartments. The access is proposed in the

**9/2012/1056 - Former Kwik Save Site, Alexandra Road, Swadlincote  
DE11 9AZ**



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**South Derbyshire District Council. LA 100019461. 2010**

centre of the site and two storey dwellings with two and a half storey apartments are proposed on the Alexandra Road frontage within 1 m of the footway. The apartments are proposed in a 'C' shape that extend adjacent to the access road.

The remainder of the dwellings run parallel with the western and southern boundaries with rear gardens adjacent to the boundaries. Car parking is proposed within the site and would not be visible from Alexandra Road and a total of 60 spaces are proposed which equates to 1.3 spaces for the dwellings and 1 space per apartment. A community garden at the centre of the site and a private garden for the apartments are proposed. All individual houses would have their own rear garden space.

## **Applicants' supporting information**

### DAS and Planning Statement

This document outlines the scheme and states that it is anticipated that a Social Registered Landlord would manage 41 of the dwellings with 10 as private. The density proposed would be 89 dwellings per hectare, which is considered appropriate in this sustainable town centre location. The design of the dwellings on the site frontage reflects that of existing dwellings on the street and dwellings are grouped together and step down to respond to the topography of the site. Two storey dwellings and two and a half storey apartments are proposed. The dwellings would be designed to Code of Sustainable Homes Level 3 and would have the capability to incorporate renewal energy.

The planning statement describes the site, its planning history and the relevant planning policy. The document picks out relevant parts of the previous appeal decision for the site in relation to the sheltered housing scheme which referred to the principle of residential being acceptable and the scale of 'terraced heritage of domestic scale architecture in the area'. Sufficient amenity areas are proposed.

### Tree Survey

This survey has assessed every tree on site and categorised them in line with the British Standard requirements. The majority of trees along the northern and western boundaries are category C trees, which are low quality. The two False Acacia trees on the site frontage are classed as good quality but are likely to be compromised by the demolition of the adjacent building. The two Poplar trees which were covered by TPO 53 are no longer present adjacent to the western boundary.

### Bat and Bird Survey

No evidence of bats using the building were found, however new roosting opportunities can be created under the ridge tiles of the new roofs of dwellings. The trees on site do not represent roosting opportunities for bats but are used by nesting birds.

### Coal Mining Risk Assessment

This report identifies a recorded shaft within 20m located beneath 44-48 Alexandra Road and the published geology shows the outcrop of the Coal Measures to be present beneath the site. The Coal Authority have no record of shallow workings but do highlight

that shallow seams may exist. The report concludes that the mining risk posed by this site can be mitigated by routinely adopted measures.

### Viability Assessment

This assessment includes all the usual costs and revenues associated with the development and shows a significant project deficit.

Trent and Dove Housing (the end user) have stated that the higher level of two bedroomed properties are proposed in response to the Government's policy in respect of under-occupancy penalties in the current welfare reforms.

### **Planning History**

9/2009/1017 - The demolition of the existing food retail unit and the construction of a retirement apartment complex comprising 60 apartments, a warden's apartment and communal facilities together with associated car parking/communal gardens, refused at committee 23/3/10 and dismissed at appeal in September 2010. The Inspector felt that the design was suitable as it respected the terraced tradition of the area. He considered that the proposed building would not harm the character and appearance of the area and would enhance the appearance of the adjoining conservation area and would not adversely affect the setting of the nearby listed building. The amount of garden space was adequate and suitable for the location and number of residents. The appeal was dismissed on the basis of the security aspects of the living conditions of future residents. This was remedied with a revised application in 2010 (9/2010/1035) and therefore granted permission in March 2011.

### **Responses to Consultations**

The Highways Authority has no objections in terms of the access and car parking levels. The internal road would not be put forward for adoption and would remain private and an informative is required to ensure adoption is not sought in the future. Conditions are recommended in respect of a construction compound, temporary access for construction purposes, mud prevention, increasing the width of the footway, a lighting scheme, car parking and manoeuvring areas to be laid out and submission of a residential and workplace travel plan.

The Council's Tree Officer considers the Tree Survey to be accurate and factual. Most trees are in poor condition and several have defects and are unsuitable for long term retention. The two prominent False Acacia's are in fair condition. However, the rooting architecture is suspect and certain to be compromised by groundworks if retained. There are several (Birch, Rowan, Whitebeam) that may provide a ready made semi-natural screen to the shops along the northern boundary (the majority of which are to be retained).

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

National Forest Company states that as the site is 0.57 ha 20% of the site area should be for woodland planting which equates to 0.11ha. There is an awareness that a viability assessment is likely to indicate that limited funds are available due to the high percentage of affordable housing. However, an off-site contribution of £2,200 is requested.

The Education Authority states that the development is within the normal area of Church Gresley Infant School, Pennine Way Junior School and The Pingle School. As one bedroom apartments are not included, the 33 dwellings would generate 7 primary and 5 secondary pupils. The infant school is oversubscribed and the junior school is almost at capacity and will be within the next 5 years. The secondary school has surplus capacity and falling rolls in the next 5 years. Contributions are therefore sought for the infant and junior school places which equates to £79,793.

The County Council are also requesting the following:-

On-site provision of infrastructure to enable high-speed broadband;

£1,464.21 towards the provision of additional waste management capacity;

and £18,360 for additional library service revenue costs at Swadlincote Library.

Derbyshire Wildlife Trust considers the bat and bird report submitted to be acceptable and accepts its findings. The recommendation of the report to provide bat roosting opportunities within the new development and the use of native trees in the landscaping scheme is supported. A condition to ensure nesting birds are protected is recommended.

The Housing Strategy Manager supports the application. She accepts that the concentration of affordable housing here is relatively high but she considers that this opportunity should not be missed for the following reasons:

- a. the scheme has attracted scarce funding from the HCA and therefore should be supported;
- b. the location being close to the town is ideal for those on low incomes to access services;
- c. the site currently has an adverse impact on the image of the town centre;
- d. there is currently a shortfall in affordable housing in the Swadlincote urban area and the scheme would provide much needed homes of the right size and type and offers a good mix.

The PCT has yet to respond to consultation and this will be reported verbally at committee.

The Coal Authority has no objection subject to a condition relating to if remedial works are required for shallow mine workings.

The Police Crime Prevention Design Advisor states that the amended layout is a far safer, unfortunately let down by the proposed path adjacent to the side of plot 21 where there would be low levels of natural surveillance. All properties have a front entrance including the one bedroom flats from the internal road. If a path is absolutely necessary then a ginnel through the main three storey block starting from inside the internal access road diving plots 22,25,28 and 10,13,18 is a safer option to be considered. The sub divisional fencing specification is still inadequate. The safe containment of pets and the personal safety of children with a minimum of 1.8m fencing is necessary, which may be of materials visually open in design in part, for neighbour cohesion if desired. All gates should be key lockable from both sides, especially into private rear space from communal links.

## **Responses to Publicity**

Three letters of objection were received on the originally submitted scheme (with duplicate letters from 51 West Street) from businesses on West Street and Alexandra Road and residential properties on West Street. Four letters of objection have been received in response to re-consultation on amended plans. Objections are summarised as follows:

- a) There is a hedge on the western boundary with 51 West Street that the owners have maintained continually for the last 34 years and thus would give a substantial right of ownership.
- b) The hedge on the boundary with 51 West Street is a roost for a large colony of Sparrows and should not be removed.
- c) No.51 West Street would be directly overlooked by bedrooms of 8 of the dwellings and the application site is 1m higher than their ground level and they would want a 2m fence erected on the higher level with proper foundations due to previous infilling of land.
- d) In relation to noise and disturbance during construction an condition restricting hours of working is requested.
- e) There is a field adjacent to the western boundary which should not be encroached or built on and there is a land ownership dispute regarding it.
- f) The southern boundary of the site is not accurate and should be amended and the close proximity of the nearest dwelling may disrupt the foundations of the Union office.
- g) The parking proposed is not sufficient as the development is likely to generate up to 104 cars and increased use of the public car park opposite would limit space for people working in the town centre.
- h) There is Japanese Knotweed on site which should be dealt with before damage to properties occur.
- i) The increase in traffic would cause traffic problems on West Street and Hearthcote Road and a S106 to improve this junction is recommended.
- j) No's 37-45 West Street are owners of part of the land and no notice has been served.
- k) The ground level of 45 West Street is 8ft lower than the site and as such their privacy would be seriously compromised with plot 51 having views into their bedrooms, living room and garden area.
- l) The recycling bins adjacent to the northern boundary would provide easy access to 45 West Street and hazards from the waste.
- m) Significant overshadowing of No.45 West Street due to the land level difference, a reduction of 50%.
- n) The car parking adjacent to the northern boundary would cause noise pollution and fumes at all hours of the night and day.
- o) The access road in the original position adjacent to the northern boundary does not have sufficient visibility.
- p) There are concerns for the stability of 45 West Street's boundary wall during construction and if trees are planted adjacent.
- q) The location of utilities is not clear and rainwater would run onto their property due to the lower ground level.
- r) The proposal is not in keeping with the boundary of the Conservation Area and the adjacent Grade II listed building at Sharpe's Pottery.
- s) A pedestrian crossing is required for the new residents.
- t) The density of housing is too great and there are regulations controlling density of social housing for good reasons.
- u) Loss of light to garden area of No.51 and trees and shrubs planted within the proposed garden should have height restrictions on them.

- v) The amended access position would need traffic safety measures and the amended parking number is still inadequate.
- w) Boundary treatments should be put in place prior to any building works to retain security and privacy.
- x) The view of the row of shops on Alexandra Road would be severely affected by the amendments and thus would reduce trade.
- y) The shops have a lower land level and as such there is a concern that the current drainage would not cope and cause flooding to their site.
- z) The retaining wall along the northern boundary with the shops should not be damaged or its stability affected by tree planting.
- aa) The amended plan does not show an accurate southern boundary line.
- bb) An assessment of No.45 boundary wall has been undertaken and it is found to have insufficient foundations.
- cc) For a social housing scheme the development lacks bungalows for elderly or disabled people and changing plots 50 and 51 to bungalows would overcome the privacy issues.

## **Development Plan Policies**

The relevant policies are:

East Midlands Regional Plan: 2, 3, 12, 48

Local Plan: Environment Policy 9, Housing Policies 4 and 11 (and SPG 'Housing Design and Layout') and Transport Policy 6.

## **National Guidance**

NPPF Paragraphs 17, 32, 49, 56, 57, 60, 61, 69, 111, 118, 120, 121, 131.

## **Planning Considerations**

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

- The principle of development
- Design, scale and mass
- Highways Issues
- Trees and landscaping
- Residential amenity
- Affordable Housing
- Viability and Section 106 Contributions

## **Planning Assessment**

### The principle of development

Local Plan Housing Policy 4 states that residential development within the built-up area of Swadlincote is permitted provided that the site is substantially surrounded by development. The principle of residential development was established in 2010 when the Planning Inspector in his decision noted the Council had no objection to the principle and he heard no arguments to depart from this view. Therefore residential development in this sustainable location (being well within the Swadlincote urban area) within close proximity to the town centre which is substantially surrounded by development is considered acceptable in principle. This is not altered by the policy set out in the NPPF.

### Design, Scale and Mass

Housing Policy 4 also states that residential development within the urban area is acceptable provided it is of a suitable scale and character. Equally, paragraph 17 of the NPPF seeks (inter alia) to secure high quality design and good standards of amenity. In this case the design and scale reflects that of the existing terraced properties along Alexandra Road and thus complies with these policies. Significant amendments have been sought in order to improve the design of the proposed dwellings and apartments particularly on the Alexandra Road frontage with involvement from the Design Excellence Officer and Conservation Officer. The applicant has taken on board the majority of improvements suggested and the result is a high quality scheme which is considered to be of a higher standard than that previously approved. The buildings are close to the Alexandra Road frontage at the request of officers as this is considered a characteristic of the streetscene of Alexandra Road to the south with terraced properties tight up the footpath. Key design principles were to break up the dwellings in pairs accentuated by the stepping down of ridge heights, include rendered properties to add interest, include traditional features such as chimneys, flat canopies above doors and stone lintels and cills.

Low level walls provide defensible space for the residents and add to the character of the street and the apartments although complimentary in design add further interest in terms of the higher ridge height, dormers and arched feature on the gable adjacent to the access road. High quality materials and detailing shall be secured by condition to ensure the design is not compromised.

### Trees and Landscaping

Environment Policy 9 relates to protection of trees of value to their landscape setting and conditions to secure planting of trees. A detailed survey of the trees on site has been undertaken and indicates a loss of 10 trees, 8 of which were found to be of low quality. The Council's Tree Officer considers the Arboricultural Report to be acceptable. However, due to the request of officers to locate the dwellings close to the footpath, two mature trees would be lost on the site frontage. This is regrettable but replacement trees within the community garden and to break up the car parking areas are proposed to compensate. The compromise between the ensuring the dwellings respect the character of Alexandra Road and the loss of the trees had to be made and the former is considered to outweigh the latter. A landscaping scheme would be secured by condition.

### Residential Amenity

Housing Policy 11 relates to layout and design of housing developments and through standards set out in the SPG, requires that they provide: a reasonable environment, reasonable amenities in terms of light, air and privacy for both existing and new dwellings, safe, functional and convenient layouts and private amenity space and landscaping.

Having carried out a full assessment of the proposal in relation the SPG, two plots on the site required amendment. No. 45 West Street is a detached dwelling adjacent to the north western corner and has a 2m lower land level than the site. Plot 51 was proposed within 8 metres of this property. A 2m high boundary wall exists at the higher land level

and as such only the top of the properties bedroom windows are visible. However, to improve this relationship the applicants have set plots 50 and 51 back towards the western boundary a further 2m and moved the nearest plot 2m from the boundary. Setting the dwellings further back in the plots does not represent an overlooking concern as the rear windows of No.45 would not be within the 45 degree sector of view of the proposed windows of Plot 51 and thus the space standards are complied with. The applicant's have provided a sectional drawing of the relationship that indicates the proposed dwelling would not be visible from the ground floor lounge windows of No.45 due to the existence of the boundary wall. Moving plot 51 away from the boundary also serves to mitigate any issues in relation to the stability of the wall and the applicants have obtained the advice of their engineers in relation to the wall and confirmation that the dwellings can be built without any further pressure being placed on this wall has been given.

Plot 42 proposed a bedroom window on the southern elevation which did not meet the Council's space standards in relation to existing properties on Lakin Close to the west. This plot has been moved further away from the boundary and the window removed and replaced by a rooflight in this room together with a small obscure glazed non-opening window on the rear elevation which ensures compliance with the space standards. No. 51 West Street is to the north west and there is a distance of 27 metres being the dwelling and plot 51 is its revised position and as such there is no significant issue in respect of privacy in relation to this property.

All dwellings have rear private gardens and the apartments have a private communal garden.

#### Other issues raised by objections / Consultations

Damage to boundary walls, land ownership and boundary disputes are not material planning matters, however, the grant of planning permission does not override these legal issues. The southern boundary line has been amended. The landscaping scheme secured by condition shall ensure suitable species are proposed which do not cause stability issues for boundary walls. Loss of light to garden areas are not considered to be material in this case and boundary treatments will be controlled by condition. A condition requiring the scheme of crime preventions measures to be submitted would be attached to the permission. Lighting has been introduced to the path adjacent to plot 21 to improve security and this plot does have a ground floor living room overlooking the path. Fencing between properties would be 1.8 m in height adjacent to the rear of properties and would reduce down to increase neighbour cohesion. Hours of construction and deliveries would be controlled by condition to minimise noise nuisance to residents. A contaminated land condition would ensure that the land is suitable for the proposed use and building regulations ensure the building is safe. The loss of view of the shop units due to the position of the building and loss of adjacent retail use having an impact on the adjacent businesses are not planning matters which weigh significantly when assessed against the main issues.

#### Affordable Housing

Chapter 6 of the NPPF seeks to ensure the delivery of a wide choice of high quality homes and in particular paragraph 50 LPAs should target size, type, tenure and range of housing that is required in particular locations, reflecting local demand. The Housing Strategy Manager supports the application. She accepts that the concentration of

affordable housing here is relatively high but she has been involved in negotiations to secure 8 three bedroom properties to provide an improved mix of dwellings. Trent and Dove Housing would retain management of 41 of the dwellings and thus would ensure a good mix of residents and avoid concentrations of certain groups. The project has been shown to be at the very limit of viability due to the limited amount of grant available. The site is ideal for this type of tenure as it is within close proximity of the town centre giving residents very good access to local services. The mix of dwellings with the incorporation of some 3 bedroom properties is considered to provide a more sustainable mix and would meet the shortfall of affordable dwellings in the Swadlincote urban area.

### Viability and Section 106 Contributions

Paragraph 173 of the NPPF requires that developments be considered for viability to ensure that developers and landowners secure competitive returns and schemes are therefore deliverable.

The breakdown of Section 106 contribution requests are:

- Infant and junior school places which equates to £79,793.
- £1,464.21 towards the provision of additional waste management capacity;
- £18,360 for additional library service revenue costs at Swadlincote Library.
- £2,200 off site National Forest Planting
- Medical contribution of £26,140
- Open Space c.£31,332
- Public Open Space - Outdoor Facilities c.£18,480
- Public Open Space - Built Facilities c.£10,248

The viability report has been assessed by the District Valuer as the applicant's contend that with the Section 106 contributions proposed the scheme is unviable. The District Valuer concludes that revenue from the scheme would be significantly out-stripped by the costs and therefore no surplus funds for Section 106 contributions would accrue.

### Conclusion

The principle of residential development is considered acceptable in this sustainable location surrounded by existing residential properties. The design, scale and mass is considered to sufficiently reflect the character of Alexandra Road and would therefore offer an enhancement to the adjoining Conservation Area. Highways issues have been addressed and conditions are recommended. The residential amenity of neighbouring properties would not be significantly affected due to amendments made. The majority of existing trees shall be retained and a suitable landscaping scheme secured by a condition. The proposal therefore accords with the above mentioned policies.

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

### **Recommendation**

- A.** Grant delegated authority to the Head of Community and Planning Services to consider any further representations received during the publicity period,
- 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. No development shall take place until 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. The scheme shall be carried out in conformity with the details which have been agreed before the development is first brought into use.

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

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

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

4. Notwithstanding any details submitted or the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended), no development shall take place until there has been submitted to and approved in writing by the Local Planning Authority plans indicating the positions, design, materials and type of boundary treatment to be erected. 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.

5. Notwithstanding the originally submitted details, this permission shall relate to the amended drawing no's 674/100 Rev D, 674/101 Rev C, 674/102 Rev B, 674/103 Rev D, 674/104 Rev C, 674/105 Rev C, 674/106 Rev D, 674/107 Rev A, 674/108, 1295/15 Rev B and 1295/112 and 181012/01.

Reason: For the avoidance of doubt, the original submission being considered unacceptable.

6. The window serving the bedroom in the western elevation of Plot 42 shall be permanently glazed in obscure glass and non-opening.

Reason: To avoid overlooking of adjoining property in the interest of protecting privacy.

7. No development shall take place until there has been submitted to and approved by the Local Planning Authority a scheme of landscaping, which shall include indications of all existing trees and hedgerows on the land, and details

of any to be retained, together with measures for their protection in the course of development.

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

8. Prior to the first occupation of the development hereby permitted, measures to minimise the risk of crime to meet the specific security needs of the application site and the development shall be implemented in accordance with a scheme previously submitted to and approved in writing by the Local Planning Authority.

Reason: In pursuance of the Council's duty under section 17 of the Crime and Disorder Act 1998 to consider crime and disorder implications in exercising its planning functions; to promote the well-being of the area pursuant to the Council's powers under Section 2 of the Local Government Act 2000 and to reflect government guidance.

9. A) The development shall not be commenced until a scheme to identify and control any contamination of land, or pollution of controlled waters has been submitted to, and approved in writing by, the local planning authority (LPA); and until the measures approved in that scheme have been implemented. The scheme shall include all of the measures (phases I to III) detailed in Box 1 of section 3.1 the South Derbyshire District Council document 'Guidance on submitting planning applications for land that may be contaminated', unless the LPA dispenses with any such requirement specifically and in writing.

B) Prior to occupation of the development (or parts thereof) an independent verification report shall be submitted, which meets the requirements given in Box 2 of section 3.1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.

C) In the event that it is proposed to import soil onto site in connection with the development, this shall be done to comply with the specifications given in Box 3 of section 3.1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.

D) No development shall take place until monitoring at the site for the presence of ground/landfill gas and a subsequent risk assessment has been completed in accordance with a scheme to be agreed with the LPA, which meets the requirements given in Box 4, section 3,1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.

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

10. No removal of trees or shrubs shall take place between 1st March and 31st August inclusive, unless a recent survey has been undertaken by a competent ecologist to assess the nesting bird activity on site during this period, and details of measures to protect the nesting bird interest on the site, have first been submitted to and approved in writing by the local planning authority and then implemented as approved.

Reason: In the interests of the wildlife.

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

Reason: In the interests of highway safety.

12. Before any other operations are commenced (excluding demolition/ site clearance) a temporary access for construction purposes shall be formed to Alexandra Road, laid out, constructed and provided with 2.4m x 43m visibility splays in each direction in accordance with the application drawing 674/106 Rev D, the area in advance of the sightlines being cleared of all obstructions greater than 1m in height (0.6m in the case of vegetation), maintained in accordance with the approved scheme throughout the contract period free from any impediment to its designated use.

Reason: In the interests of highway safety.

13. Before any of the operations hereby approved are commenced facilities shall be provided as agreed in writing with the Local Planning Authority to prevent the deposition of extraneous material on the public highway and shall be maintained throughout the contract period.

Reason: In the interests of highway safety.

14. Prior to the first occupation of any dwelling, the footway fronting the site shall be widened to 2m and reconstructed (including the reinstatement of the existing accesses into the site) in accordance with Derbyshire County Council's standards for adoptable roads, all in accordance with the approved plan 674/106 Rev D.

15. Prior to the first occupation of any dwelling, the new access shall be provided to Alexandra Road, laid out in accordance with the application drawing 674 / 106 Rev D and provided with visibility sightlines of 2.4m x 43m, the area forward of which shall be cleared, and maintained throughout the life of the development clear, of all obstructions greater than 1m in height (0.6m in the case of vegetation) relative to the nearside carriageway edge.

Reason: In the interests of highway safety.

16. Prior to the occupation of any dwelling, a lighting scheme for the development shall be submitted to and approved in writing by the local Planning Authority and County Highway Authority in order to ensure that the proposed lighting on the development will not dazzle or distract drivers on the adjacent highway.

Reason: In the interests of highway safety.

17. Prior to the first occupation of any dwelling, the car parking and manoeuvring space shall be laid out in accordance with the application drawing 674/106 Rev D and maintained thereafter free of any impediment to its designated use.

Reason: In the interests of highway safety.

18. Prior to the development being taken into use, the applicant shall submit for approval a detailed Residential and Workplace Travel Plan with Specific, Measurable, Attainable, Relevant and Time-bound (SMART) objectives. The Travel Plan shall set out proposals, including a timetable to promote and monitor travel by sustainable modes which are acceptable to the Local Planning Authority, and shall be implemented in accordance with the timetable set out therein, unless otherwise agreed in writing by the Local Planning Authority. Reports demonstrating progress in promoting sustainable transport measures shall be submitted annually, on each anniversary of the date of the planning consent, to the Local Planning Authority for approval for a period of five years from first occupation of the development.

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

19. If remediation of the areas of shallow mine workings and/or any other mitigation measures are required that are not detailed in the Coal Mining Risk Assessment these shall be submitted to and approved by the Local Planning Authority prior to commencement of development. The development shall be undertaken in accordance with the recommendations of the Coal Risk Assessment.

Reason: The details submitted are inadequate to determine whether the appearance of the building would be acceptable.

20. Notwithstanding the submitted details, large scale drawings to a minimum Scale of 1:10 of external joinery, including horizontal and vertical sections, precise construction method of opening and cill and lintel details shall be submitted to and approved in writing by the Local Planning Authority before building work starts. The external joinery shall be constructed in accordance with the approved drawings.

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

21. Prior to the development hereby approved commencing, details of the finished floor levels of the buildings hereby approved and of the ground levels of the site relative to adjoining land levels, shall be 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: In the interests of the appearance of the area.

22. No development shall take place until there has been submitted to and approved by the Local Planning Authority a scheme of hard landscaping, which shall include details of the community garden and be implemented in accordance with the approved scheme.

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

23. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the 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 interest of the amenity of the area.

24. Prior to the commencement of development elevational details of the bike and bin storage areas shall be submitted and approved in writing by the Local Planning Authority and the areas erected in accordance with the approved details.

Reason: In the interest of the amenity of the area.

25. Construction hours shall be restricted to 0800 to 1700 Monday to Friday and 0800 to 1230 on Saturdays. No work shall be carried out on Sundays or Bank Holidays.

Reason: To ensure that the use does not prejudice the enjoyment by neighbouring occupiers of their properties.

26. 41 of the dwellings hereby permitted shall not be occupied other than as 'affordable housing' as defined in the National Planning Policy Framework Glossary 2 and prior to the following details having been submitted to and agreed in writing by the Local Planning Authority:

- i) the arrangements for the transfer of the affordable housing to an affordable housing provider[or the management of the affordable housing] (if no RSL involved) ;
- ii) the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing; and
- iii) the occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.

The properties shall thereafter be occupied and managed in accordance with the approved details.

The provisions of the condition shall not apply to:

A charge or mortgagee, receiver or administrator of the Affordable Housing Provider (AHP) that is the freehold owner of the Affordable Dwelling Units or any part thereof or a receiver or administrative receiver of the AHP to the intent that such mortgagee in possession receiver or administrator shall be entitled to dispose of the Affordable Dwelling or part thereof free of the obligations contained in the condition.

Reason: The development was assessed and evaluated and the normal Section 106 contributions waived on the basis of the applicant's supporting information (Viability Report) that specified the development would comprise 41 properties to be owned and managed by a Housing Association. The details of securing such provision were not submitted as part of the planning application.

27. Prior to commencement of development details of the Management Company that shall be responsible for the future maintenance of all shared/ not allocated areas such as roads, footways and parking areas within the site shall be submitted and approved in writing by the Local Planning Authority and implemented in accordance with the approved details.

Reason: In the interests of highway safety.

Informatives: You are advised:

The Highways Authority advise that the following clause should be included in any sale/lease or similar stating that "the developer/owner/lessee or successor in title of all or any part of the development shall not at any time, either alone or jointly with others, seek the adoption of any part of the access road as highway maintainable at the public expense, it being the intention that the same shall at all times remain a private road up to the point where it Alexandra Road rear of the footway on the western side of the highway.

The phased risk assessment should be carried out in accordance with the procedural guidance of the Environmental Protection Act 1990 Part IIA. The contents of all reports relating to each phase of the risk assessment process should comply with best practice as described in the relevant Environment Agency guidance.

For further assistance in complying with planning conditions and other legal requirements applicants should consult "Developing Land within Derbyshire - Guidance on submitting applications for land that may be contaminated". This document has been produced by local authorities in Derbyshire to assist developers, and is available from [http://www.south-derbys.gov.uk/environment/pollution/contaminated\\_land/default.asp](http://www.south-derbys.gov.uk/environment/pollution/contaminated_land/default.asp). Reports in electronic formats are preferred, ideally on a CD. For the individual report phases, the administration of this application may be expedited if a digital copy of these reports is also submitted to the Environmental Protection Officer (contaminated land) in the Environmental Health Enforcement department: [thomas.gunton@south-derbys.gov.uk](mailto:thomas.gunton@south-derbys.gov.uk).

Further guidance can be obtained from the following:

- CLR 11: Model Procedures for the Management of Contaminated Land
- CLR guidance notes on Soil Guideline Values, DEFRA and EA

- Investigation of Potentially Contaminated Land Sites - Code of Practice, BSI 10175 2001.
- Secondary Model Procedure for the Development of Appropriate Soil Sampling Strategies for Land Contamination, R & D Technical Report P5 - 066/TR 2001, Environment Agency.
- Guidance for the Safe Development of Housing on Land Affected by Contamination Environment Agency. ISBN 0113101775.

Pursuant to Section 184 of the Highways Act 1980 and Section 86(4) of the New Roads and Streetworks Act 1991, at least 3 months prior notification should be given to the Director of Environmental Services at County Hall, Matlock (telephone 01629 580000 and ask for the District Highway Care Manager on extension 7595) before any works commence on the vehicular access within highway limits.

Pursuant to Section 38, the Advance Payments Code and Section 278 of the Highways Act 1980, the proposed fronting footway should be laid out and constructed to adoptable standards and financially secured. Advice regarding the technical, financial, legal and administrative processes involved in achieving adoption of new residential roads may be obtained from the Department of Environmental Services at County Hall, Matlock (tel: 01629 580000).

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 onto the highway. 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.

Pursuant to Sections 149 and 151 of the Highways Act 1980, the applicant must take all necessary steps to ensure that mud or other extraneous material is not carried out of the site and deposited on the public highway. Should such deposits occur, it is the applicant's responsibility to ensure that all reasonable steps (eg; street sweeping) are taken to maintain the roads in the vicinity of the site to a satisfactory level of cleanliness.

Where development has been approved subject to the preparation and implementation of a Travel Plan, the applicant is obliged to submit the appropriate documentation to the Local Planning Authority well in advance of the development being taken into use. Advice regarding the content of Travel Plans may be obtained from the Director of Environmental Services at County Hall, Matlock (tel: 01629 580000 and ask for the Transportation Section).

The proposed development lies within a coal mining area which may contain unrecorded coal mining related hazards. If any coal mining feature is encountered during development, this should be reported immediately to The Coal Authority on 0845 762 6848. Further information is also available on The Coal Authority website at [www.coal.decc.gov.uk](http://www.coal.decc.gov.uk) Property specific summary information on past, current and future coal mining activity can be obtained from The Coal Authority's Property Search Service on 0845 762 6848 or at [www.groundstability.com](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.

During construction you are requested to ensure that your or any other contractors' vehicles are parked legally and in a manner that shows consideration to the occupiers of adjacent and nearby properties. Thank you for your co-operation.

**Item**            **1.7**

**Reg. No.**        **9/2013/0027/U**

**Applicant:**  
**Mr Greg Hibell**  
**Newton House**  
**Bretby Lane**  
**Bretby**  
**Burton On Trent**  
**DE15 0RY**

**Agent:**  
**Mr Greg Hibell**  
**Newton House**  
**Bretby Lane**  
**Bretby**  
**Burton On Trent**  
**DE15 0RY**

**Proposal:**        **THE CHANGE OF USE OF AGRICULTURAL BUILDINGS  
 TO PROVIDE FUNCTION/WEDDING VENUE AT  
 NEWTON HOUSE BRETBY LANE NEWTON SOLNEY  
 BURTON ON TRENT**

**Ward:**            **REPTON**

**Valid Date:**     **24/01/2013**

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

The application has been brought to Committee at the request of Councillor Peter Smith because local concern has been expressed about a particular issue.

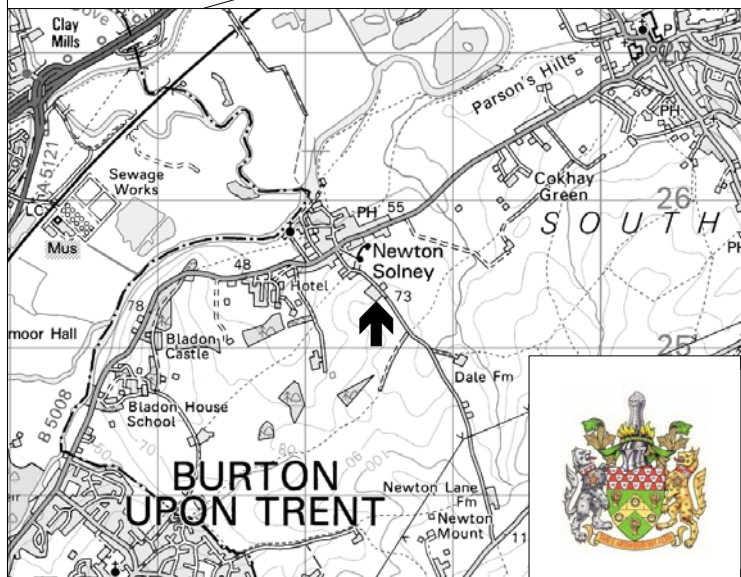
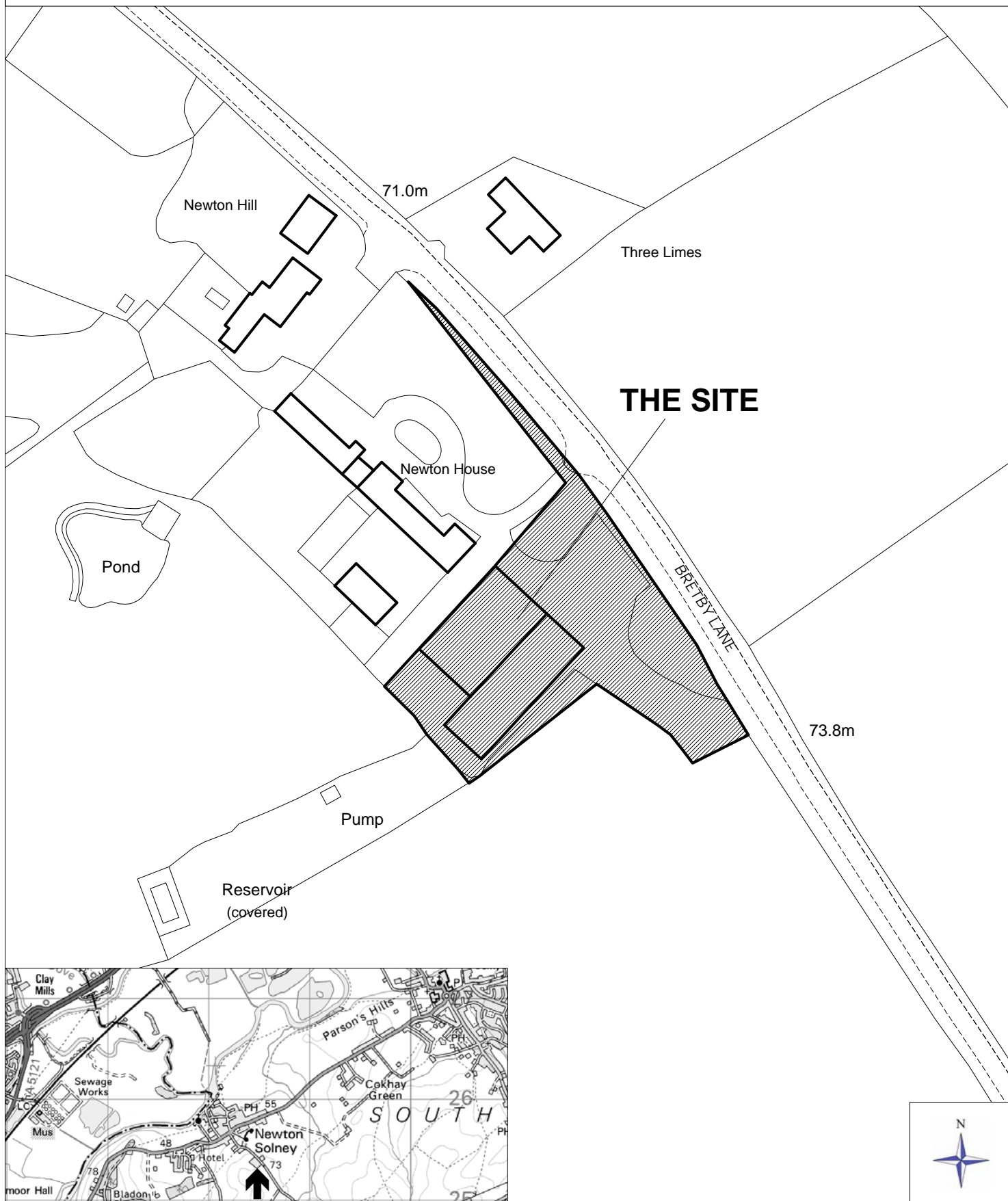
#### **Site Description**

Newton House is located on the western side of Bretby Lane, on the outskirts of Newton Solney outside the village confine boundary. Whilst the main house and some of its outbuildings are within the Newton Solney Conservation Area, the two modern agricultural buildings, the subject of this application, and the southern-most vehicular access are not. The main house is screened from the road by high hedges whilst the agricultural buildings are screened by timber fencing and hedgerows and separated from the road by a large car parking area.

#### **Proposal**

The proposal is for the conversion of the two modern, single storey buildings to provide a function or wedding venue. Barn 1, which is the larger of the two buildings, would be used to host the functions for a maximum of 120 seated guests, whilst Barn 2 would provide toilets, a catering area and storage. All functions would have exclusive use of the venue with only one function taking place at any one time. The functions would primarily take place at weekends and all events would cease by midnight, with all music and entertainment finishing at 11:30pm.

**9/2013/0027 - Newton House, Bretby Lane, Bretby, Burton on Trent  
DE15 0RY**



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**South Derbyshire District Council. LA 100019461. 2010**

Provision has been made for the parking of 57 cars within the site, some of which would use the existing car park to the front of the buildings with other spaces being provided to the rear and side of the buildings.

### **Applicants' supporting information**

A Planning Statement has been submitted and below are the more salient points:

- The application follows pre-application discussions with both planning and environmental health officers.
- The facility will provide for a niche market that is not currently served in the area.
- A maximum of 30 events per year would take place.
- It will use local independent businesses and suppliers for catering, bar facilities, entertainment, flowers, linen hire, venue dressers etc.
- It will encourage economic growth in the area and bring employment opportunities to local people and increase tourist revenue.
- It will increase trade for local hotels for guests who wish to stay overnight.
- The proposal will assist in the diversification of the rural economy and retention of employment.
- Internal alterations to the buildings will reduce sound emissions. Sound levels will not exceed 90 dBA for each function and a limiter can be installed if deemed necessary.

A separate Noise Assessment has been submitted which provides details of when the assessment was carried out and the type of equipment used. The main source of noise breakout is from the felt covered section of the gable end walls and the cement particle board roof.

Recommendations include: -

1. The triangular sections of the gable end walls above the 3m high blockwork should be filled in by extending the 3m dense blockwork wall upwards to form a seal with the existing cement particle board pitched roof. The outer face of the new sections of wall should be fitted with shiplap timber cladding to match the rest of the external walls and to provide a small amount of additional noise attenuation. The inside face of the new wall sections should be lined with timber boards on battens to match the rest of the interior wall treatment.
2. The existing roof provides a low level of sound insulation and therefore an independent ceiling will need to be installed. The roof lights should be boarded over and the roof should be inspected any holes repaired using section of cement particle board. Acoustic mastic sealant should be used to seal new sections. An independent timber or steel frame should be constructed with a separation distance of at least 300mm below the existing roof. The underside should be lined with one layer of 18mm Fermacell plasterboard and two layers of 12.5mm Fermacell plasterboard. The cavity above the new ceiling should be lined with 200mm acoustic mineral fibre insulation.
3. Other recommendations relate to treatment of the doors and the setting of an upper limit for music levels.

In addition to the above, details have also been received of a system called Sound Ceilings, which offer sound solutions to night clubs, marquees, pubs, hotels, etc. According to the submitted details, the system guarantees noise reduction of 10dB outside the entertainment venue, meets Council noise regulations and is ideal for both live and reproduced music. The system allows for increased volume and improved sound quality in specific areas whilst leaving adjacent areas free from excessive noise. The area of high-level sound is confined and the volume heard a few metres away is reduced by 50%. Full details of the system can be found on the Council's website as part of the application documents. The applicant is willing to offer a demonstration of the system should Members wish it.

### **Planning History**

9/1282/851 – Conversion to dwelling and farm office  
9/785/851 - Conversion of outbuildings to service flat  
9/1987/0871 – Use of land as domestic garden  
9/2005/0796 – Conversion to dwelling and farm office without complying with Condition 2 of 9/1282/851  
9/2005/0797 – Conversion of outbuildings to service flat without complying with Condition 4 of 9/785/0327

### **Responses to Consultations**

The Council's Conservation and Heritage Officer has raised no objections subject to conditions regarding landscaping details and implementation.

The County Highway Authority has no highway objections to the proposal subject to conditions in respect of the access and visibility splays and the provision of the car parking spaces.

The County Archaeologist is satisfied that there will be no archaeological impact resulting from the proposals.

The Environmental Health Manager (Noise) requires a noise limiting device to be installed and maintained in such a manner so as to control all sources of amplified music at the premises during events, which should be set at a limit determined by the Local Planning Authority's authorised officer. It is suggested that the applicant employs an acoustic consultant to design the noise reduction measures in order to ensure their effectiveness. He also offers advice on food hygiene and health and safety requirements. In response to the latest Noise Assessment details he considers the findings reasonable and recommends all the insulation measures are implemented and for the avoidance of doubt a plan detailing the structural alterations be submitted and agreed prior to works commencing. He also requires a scheme of noise control detailing the management measures to be employed by staff to control noise (including but not restricted to doors and windows being closed except for access and egress, and perimeter noise checks). As the measures are designed to contain noise levels of no more than 97 dB(A) a noise limiter would be required to be set at a level agreed with the LPA. The applicant should arrange this work with a competent contractor in a manner approved and overseen by the LPA.

With regards to live music, no more than one such event per month between the hours of 8pm and 11pm should be permitted. However, the noise limiter would need to be

bypassed for such an event and the LPA would have to be able to agree a scheme that was practical and enforceable in relation to this. The Environmental Health Manager has suggested that a potential solution is to require that the applicant registers, with him, events that would occur without the limiter.

The Environmental Health Officer (Contaminated Land) requires a standard condition relating to ground contamination as the plot sits on a former manufacturing site of clay bricks and tiles.

Severn Trent Water Limited has no objection to the proposals.

### **Responses to Publicity**

Fourteen emails have been received from local residents which object to the proposals for the following reasons:

- a. Noise nuisance from the music, late night traffic and departing guests.
- b. Danger to walkers and horseriders from increased use of the access and Bretby Lane, which is narrow and winding with blind bends, is not illuminated and does not have footpaths.
- c. Bretby Lane cannot accommodate additional volume of traffic.
- d. Loss of amenity as the enjoyment of gardens will be detrimentally affected.
- e. Inaccuracies on the application forms regarding removal of hedges, neighbour consultation and the commencement of the use. The use has already commenced with at least four events being held so far.
- f. What sound insulation is proposed to other walls and the roof?
- g. The surface conditions on Bretby Lane, particularly during the winter months, make driving hazardous.
- h. The elevated position of the site will cause noise to travel and impact on the wider community.
- i. No benefit to the village itself as all food, drink and staff will come from elsewhere.
- j. This is a 'whisper quiet' environment and it is not fair that residents should have music disturbing their peace and quiet 30 times a year.
- k. The site is already a venue for an annual charity event, the noise from which is extremely invasive.
- l. Noise emissions during the summer when windows and doors are open.
- m. Vibration from loud music can be felt in adjacent houses.
- n. There is potential for an additional 3420 journeys per year on a lane where two cars can barely pass.
- o. Newton Solney already has an up-market wedding venue, which employs local residents.
- p. Noise and disturbance caused by heavy goods vehicles using Bretby Lane to deliver and take away staging, seating, music and catering. The lane is not designed for such traffic.
- q. Existing residents have a right to privacy.

### **Development Plan Policies**

The relevant policies are:

East Midlands Regional Plan (EMRP): Policies 18 (Regional Priorities for the Economy), 24 (Rural Diversification), 27 (Regional Priorities for the Historic Environment)

Saved Local Plan: Employment Policy 4; Environment Policies 1 and 12; Transport Policy 6.

## **National Guidance**

The National Planning Policy Framework (NPPF), paragraphs 28, 122, 123, 126, 186 and 187.

## **Planning Considerations**

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

- The principle of the development
- Impact on neighbouring amenities through noise disturbance
- Highway matters

## **Planning Assessment**

### The Principle of the Development

The proposed change of use of these two agricultural buildings to form a wedding venue has been submitted as a rural diversification scheme. The buildings are constructed from steel frames with blockwork and timber clad walls and fibre cement roofs and are typical of many modern agricultural buildings found in the surrounding area. The buildings are of a permanent and substantial construction and do not require any external alterations or extensions, other than those required under the noise mitigation assessment.

EMRP Policy 18 advises the encouragement and fostering of the regional economy and states that it is important to raise skill levels, develop the service sector and high value manufacturing and create innovative businesses, so that the region is better placed to maintain economic competitiveness.

EMRP Policy 24 advises that local authorities, and Sub-Regional Partnerships should work together to promote the continued diversification and further development of the rural economy, where this is consistent with a sustainable pattern of development and the environmentally sound management of the countryside.

Local Plan Saved Employment Policy 4 supports proposals for the diversification of the rural economy provided they do not conflict with other proposals in the Local Plan; and the reuse or adaptation of the agricultural and other rural buildings for new commercial, industrial or recreational uses will be permitted provided their form, bulk and design are in keeping with their surroundings and the proposal is acceptable on environmental and traffic grounds.

Paragraph 28 of the NPPF urges support of economic growth in rural areas in order to create jobs and prosperity by taking a positive approach to sustainable new development and by, *inter alia*, supporting the sustainable growth and expansion of all types of business and enterprise in rural areas, both through conversion of existing

buildings and well designed new buildings. It also promotes the development and diversification of agricultural and other land-based rural businesses.

The proposal is considered to be sustainable development, in principle, as the site is located close to the village and existing buildings would be used. Whilst the buildings are of little architectural merit, it would be preferable to bring them back into some sort of beneficial use rather than have them deteriorate over time, the result of which could have a negative impact on the setting of the Newton Solney Conservation Area. Subject to the recommendations of the Conservation and Heritage Officer, the rural setting of the conservation area would be preserved in accordance with Saved Environment Policy 12.

In light of the above policies it would appear that the proposal would constitute a sustainable scheme and therefore the principle of the development would be acceptable.

#### Impact on neighbouring amenities

One of the main issues raised by the neighbouring residents relates to the impact of noise from the development, with most of the objections received raising this as an important concern, particularly as, according to the residents, the use has already commenced.

Paragraph 123 of the NPPF advises that planning decisions should aim to avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development. However, it goes on to state that decisions should mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new development, including through the use of conditions.

The Environmental Health Officer has been involved in this application since pre-application discussions took place on site some time ago. The advice provided at the time was that a noise attenuation scheme would be required in order for the development to be made acceptable. Given the advice in paragraphs 186 and 187 of the NPPF that local planning authorities should approach decision taking in a positive way in order to foster the delivery of sustainable development, and look for solutions rather than problems so that applications for sustainable development can be approved where possible, it is proposed to impose conditions relating to noise attenuation measures, as recommended by the Environmental Health Manager. The recommended conditions include the improvements and mitigation measures recommended in the Noise Assessment dated March 2013 incorporating the installation of the 'Sound Ceilings' scheme.

#### Highway Matters

On the advice of the Highway Authority the increased use of Bretby Lane would not give rise to demonstrable harm to highway safety interests. Adequate parking provision would be made on site. On this basis the proposal is in conformity with Local Plan Saved Transport Policy 6.

#### Other issues

Although this is a retrospective application it is still necessary to consider the application on its own merits. Section 73A of the Town and Country Planning Act enables an application to be made following the commencement of development.

The presence of other such venues in the vicinity of the village is not a material planning consideration as market forces and freedom of choice will usually dictate which venues are the most popular.

### Conclusion

To conclude, the proposal constitutes a sustainable scheme by reutilising existing buildings and land for economic development purposes. Issues of noise and disturbance could be addressed by suitable conditions in order to afford reasonable protection to the amenities of neighbouring residents. The level of concern relating to the increased use of Bretby Lane is a highway matter and there is no evidence that safety would be compromised.

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. Within two months of the date of this decision the existing access to Bretby Lane shall be modified in accordance with the application drawings, laid out, constructed and provided with 2.4m x 150m visibility splays in each direction, the area in advance of the sightlines being maintained clear of any object greater than 1m in height (0.6m in the case of vegetation) relative to adjoining nearside carriageway channel level.  
Reason: In the interests of highway safety.
2. Within two months of the date of this decision, the 60 parking spaces shown on the submitted drawings shall be provided within the application site for the parking and manoeuvring of visitors', staff and service/delivery vehicles, each parking space measuring a minimum of 2.4m x 4.8m, laid out, surfaced and maintained throughout the life of the development free from any impediment to its designated use.  
Reason: In the interests of highway safety.
3. Prior to any further events taking place within the application buildings, a noise limiting device shall be installed, fitted and maintained in such a manner as to control all sources of amplified music at the premises during such events, in accordance with a scheme that has first been submitted to and approved in writing by the Local Planning Authority. The noise limiting device shall be set at a level that has previously been agreed in writing by the Local Planning Authority. The work shall be carried out in strict accordance with the approved scheme and noise levels.  
Reason: In order to safeguard the amenities of the neighbouring residents.
4. No more than 30 events per annum shall be held within the application buildings. The site operators shall maintain an up-to-date register recording the events that

have been held and shall make that information available at all reasonable times to the local planning authority.

Reason: In order to safeguard the amenities of neighbouring residents.

5. Before any further events take place within the application buildings, a drawing detailing the structural alterations required as part of the noise attenuation measures for the buildings, as detailed within the submitted Noise Assessment dated March 2013 and the submitted ceiling sound system received on 13th March 2013, shall be submitted to and approved in writing by the Local Planning Authority. The approved schemes shall be installed to the written satisfaction of the Local Planning Authority and shall remain in situ for the life of the development.

Reason: In order to safeguard the amenities of neighbouring residents.

6. Within two months of the date of this decision a scheme of landscaping for the site frontage with Bretby Lane shall be submitted to and approved in writing by the Local Planning Authority, which shall include indications of all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection in the course of development.

Reason: In the interests of the appearance of the area and the setting of the Newton Solney Conservation Area.

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

Reason: In the interests of the appearance of the area and the setting of the Newton Solney Conservation Area.

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

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

9. No more than one live music event shall take place per calendar month, with each event lasting no more than three hours, between the hours of 20:00 and 23:00. Details of the scheme for the bypassing of the noise limiter device for these events shall be agreed in writing by the Local Planning Authority and each event to be run without the limiter shall be registered with the Local Planning Authority one month in advance of the event taking place.

Reason: In the interests of the amenities the neighbouring residents.

10. Before any further events take place within the buildings a scheme shall be submitted to and approved in writing by the Local Planning Authority detailing the management measures proposed to be employed by the staff to control noise, which shall include (but not restricted to) ensuring that doors and windows remain closed during events, except for access and egress and for perimeter noise checks. The scheme shall be operated in accordance with the approved details for the duration of the use hereby permitted.

Reason: In the interests of the amenities of the neighbouring residents.

**Informatives:**

Pursuant to Section 184 of the Highways Act 1980 and Section 86(4) of the New Roads and Streetworks Act 1991, at least 3 months prior notification should be given to the Environmental Services Department at Derbyshire County Council (telephone Gail Mordey on 01629 538537) before any works commence on the vehicular access within highway limits.

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 163 of the Highways Act 1980, where the site curtilage slopes down towards the public highway, measures should 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 dished channel or gulley laid across the access immediately behind the back edge of the highway, discharging to a drain or soakaway within the site.

The applicant should contact the Council's Environmental Health Department to discuss food hygiene and health and safety requirements. All food businesses (including the handling/service of food) need to register with the department at least 28 days before trading.

**Item**            **1.8**

**Reg. No.**        **9/2013/0054/FM**

**Applicant:**  
**Mr David Nally**  
**3 Dove View**  
**Tutbury**  
**Burton on Trent**  
**DE13 9NW**

**Agent:**  
**Mr Darryn Buttrill**  
**Bi Design Architecture Ltd**  
**79 High Street**  
**Repton**  
**Derbyshire**  
**DE65 6GF**

**Proposal:**        **THE ERECTION OF A REPLACEMENT DWELLING AT 46**  
                         **MAIN STREET REPTON DERBY**

**Ward:**            **REPTON**

**Valid Date:**      **30/01/2013**

**Reason for committee determination**

The application is brought to Committee at the request of Councillor Stanton because local concern has been expressed about a particular issue.

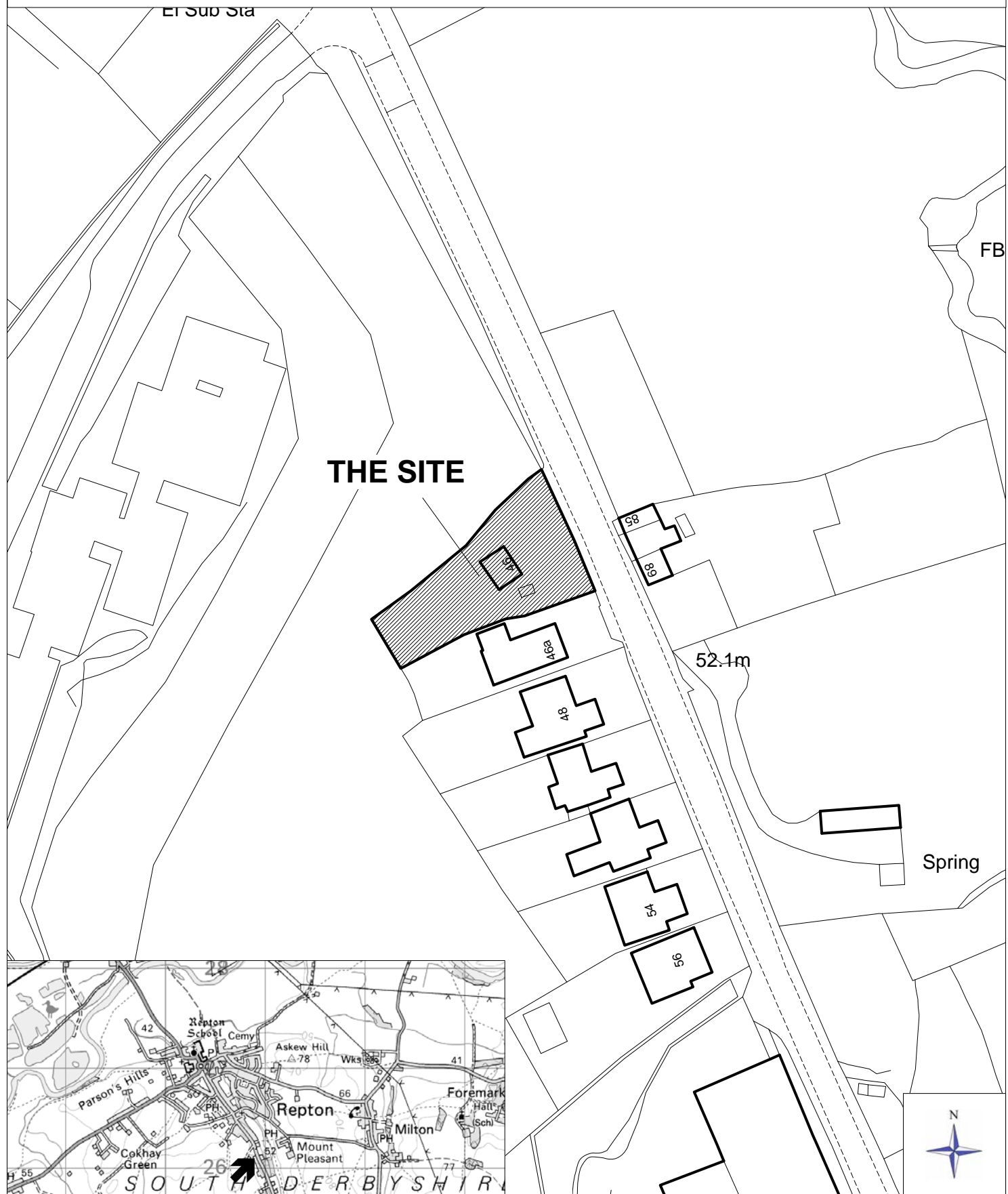
**Site Description**

The site lies to the south of Repton and presently carries a small white rendered bungalow, small outbuilding to the rear, a vehicular access and driveway, and amenity space. The plot comprises approximately 755m<sup>2</sup>, to the west side of Main Street, but beyond the confines of the settlement boundary. It is separated from the ribbon of development that connects into the village by a paddock to the north. It borders further open countryside to the west; a ribbon of large detached dwellings to the south; and a detached cottage to the east, across the highway.

The site carries a range of ornamental planting with hedgerow to the northern boundary, and a low level wall with ornamental hedgerow to the highway edge. The existing bungalow is of prefabricated post-war design and rendered white. It is small in scale, being only single storey, but sits upon the natural rise in the land from the front to the rear of the site.

**Proposal**

It is proposed to demolish the existing bungalow and replace it with a larger two-storey dwelling with inter-connected garage to the front, cut into the slope of the land. This dwelling will be constructed in more conventional materials – brick and tile. In addition a new vehicular access will be created and the existing access closed.



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**South Derbyshire District Council. LA 100019461. 2010**

## **Applicants' supporting information**

A Design and Access Statement (DAS) has been submitted in support of the application, a copy of which is on the Council's website. For ease, the salient points of the DAS are as follows:

- The site is sustainably located, just a short distance from the Repton settlement boundary where suitable services exist.
- The replacement dwelling is a more suitable and sustainable family dwelling house than that presently on site.
- The design reflects the vernacular of the local area, with the scale in keeping with existing dwellings to the south, along Main Street.
- The dwelling has been laid out and designed so not to unacceptably impact on neighbouring amenity or appear overly intrusive in the street scene.
- Existing planting will be retained wherever possible, and complimented accordingly.

## **Planning History**

9/1995/0900 – Erection of a detached dwelling on the side garden – Approved in Outline on 4 April 1995.

9/1995/0900 – Erection of a split-level detached dwelling on the side garden – Reserved Matters approved on 7 December 1995.

## **Responses to Consultations**

The Environmental Health Manager notes the site is with influencing distance of 3 areas of unknown filled ground and a former refuse disposal site within 60 metres to the west. It is therefore considered the development may be at risk from ground gas migration and ingress. Given the proposal will disturb present ground conditions, creating a new pathway to the receptor (the proposed dwelling and its occupants); conditions are recommended to ensure either a scheme to ensure appropriate prevention of ground gas ingress, or a suitable site investigation.

Severn Trent Water has not raised any concerns.

## **Responses to Publicity**

Repton Parish Council objects to the application on the grounds that the garage is located too close to the road. They request that the development is sympathetic to the area and not too close to the road, despite contravening policy H8 of the Local Plan.

Whilst the adjacent neighbours were consulted, along with Repton Village Society; no responses have been received from these parties.

## **Development Plan Policies**

The relevant saved policies are:

- East Midlands Regional Plan (2009): Policy 1 (Promoting Better Design).
- Local Plan (1998): H8 (Housing Development in the Countryside), EV1 (Development in the Countryside), T6 (New Development) and T7 (Pedestrians and People with Disabilities).
- Supplementary Planning Guidance: Housing Design and Layout SPG.

## **National Guidance**

National Planning Policy Framework (NPPF) – paragraphs 17, 32, 51, 58, 60, 63, 96, 120, 121, 186 and 187.

## **Planning Considerations**

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

- The principle of a replacement dwelling
- The scale and design of the dwelling
- The impact on neighbouring amenity

## **Planning Assessment**

Housing Policy 8 of the Local Plan allows for replacement dwellings in the open countryside subject to their being no net increase in the number of units; the form and bulk does not substantially exceed the original; the dwelling is substantially on the same site as the old; and design is in keeping with the surroundings. The main focus here is on the form and bulk of the proposal. It is clear that the replacement dwelling is considerably larger than the existing, and hence conflict with policy exists. However attention is given to whether there are specific factors here which are either individually or cumulatively considered to outweigh this conflict.

Firstly, the existing dwelling is of poor quality and provides limited living accommodation for modern requirements. The existing bungalow totals just 48 square metres in floor space, suitable at most for one or two-person occupation (with reference to Design for Homes Standards ((an industry standard guide)). It is constructed from concrete pre-fabricated panels and timber, with little to no insulation. There is considered to be a material benefit by providing additional living space and to a standard where it does not lead to unnecessary wastage of energy in its use – indeed the proposal includes photovoltaic panels to the southern roof slope at the rear.

Secondly, the existing design is out of kilter with surrounding properties – both in terms of footprint and appearance. It also sits upon the natural slope of the land such that existing floor levels are some 1.7 to 2 metres above the footway. Numbers 46a to 56 Main Street give an average footprint of around 173 square metres, with those properties “cut in” to the slope of the land, providing a level vehicular access with garage and living accommodation above and behind. The proposal here looks to reflect this with the ridgeline slightly lower than number 46a. The more conventional appearance of brick and tile elevations with timber and ridgeline detailing is more

pleasing than the existing, and indeed picks up on the local vernacular of Repton to a greater degree than neighbouring dwellings.

Thirdly, whilst the increase in scale is substantial, the resulting built form is not considered to be too great for the size of the plot concerned. It is broadly similar to neighbouring properties in terms of plot density, and more crucially the impact on neighbouring properties is considered to be in line with policy and adopted guidance. Particular focus has been given to a side facing study window at number 46a. However this window already is shaded by the host property and an existing boundary treatment – both of these factors would not alter. The degree of change would arise from the proposed built form that projects above the boundary treatment. Whilst below the recommended separation, there are no proposed windows to this elevation and control over future changes can be added. The orientation between the two properties also means that any change is to diffuse sunlight only, and here the gap between the properties and roof pitch still allows an acceptable level of diffuse light to reach the window at number 46a. It is thus not considered that a refusal could be sustained on this ground. Beyond this point, separation to the cottages across the highway is acceptable and a suitable level of external amenity and turning/parking space is provided without providing a cramped layout.

Finally whilst the main bulk of the dwelling sits behind a “building line” formed by the principal elevations of the adjacent dwellings; attention is given to the garage projection which sits forward of this line. Whilst forward of this theoretical line, assessment is based on whether there is undue harm to the street scene. The proposed garage is single storey and set into the existing ground level by 0.5 to 1.5 metres and some 4 metres back from the footway, lessening its prominence in the street scene. The result is that views from the north will be of the ridgeline, with its mass hidden behind increasing land levels and the existing boundary hedge. The view from the south will also be curtailed by a boundary treatment with number 46a; and landscaping between the gable end of the garage and the highway can further soften the impact. In addition, with this plot being the last before an open land along Main Street, this arrangement creates a “bookend” to the ribbon of properties here. It is therefore considered this design can be supported.

In respect of highway considerations the Highway Authority has no general concerns to the proposed relocation of the access, subject to conditions. It is understood they recognise that the new arrangement would represent an improvement by way of provision of a turning area within the site and improved parking arrangements.

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 shall relate to drawings 1042N 01 and 1042N 06.

Reason: For the avoidance of doubt.

3. 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. 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 the Local Planning Authority, which meets the requirements in Box 4, Section 3.1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.

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

4. Upon completion of either of the options outlined in condition 3, 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 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.

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

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

6. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008, no openings shall be inserted the southern elevation of the dwelling hereby permitted 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 amenity of the area, having regard to the setting and size of the development, the site area and effect upon neighbouring properties.

7. Before any other operations are commenced a new vehicular access shall be created to Main Street in accordance with the application drawings, laid out, constructed and provided with 2.4m x 40m visibility splays in each direction, the area in advance of the sightlines being maintained throughout the life of the development clear of any object greater than 1m in height (0.6m in the case of any vegetation) relative to the adjoining nearside carriageway channel level.

Reason: In the interests of highway safety.

8. Before any other operations are commenced (excluding the creation of the new access, the subject of condition 7 above), the existing vehicular access to Main Street shall be permanently closed with a physical barrier and the existing vehicle

crossover reinstated as footway in a manner to be agreed in writing by the Local Planning Authority in consultation with the County Highway Authority.

Reason: In the interests of highway safety.

9. The premises, subject of the application, shall not be occupied until space has been provided within the site in accordance with the application drawings for the parking and manoeuvring of residents' vehicles, laid out, surfaced and maintained throughout the life of the development free from any impediment to its designated use.

Reason: In the interests of highway safety.

#### Informatives:

The phased risk assessment should be carried out in accordance with the procedural guidance of the Environmental Protection Act 1990 Part IIA. The contents of all reports relating to each phase of the risk assessment process should comply with best practice as described in the relevant Environment Agency guidance referenced in footnotes 1-4, to the relevant conditions attached to this permission.

For further assistance in complying with planning conditions and other legal requirements applicants should consult "Developing Land within Derbyshire - Guidance on submitting applications for land that may be contaminated". This document has been produced by local authorities in Derbyshire to assist developers, and is available from [http://www.south-derbys.gov.uk/business/pollution/contaminated\\_land/default.asp](http://www.south-derbys.gov.uk/business/pollution/contaminated_land/default.asp) Reports in electronic formats are preferred, ideally on a CD. For the individual report phases, the administration of this application may be expedited if a digital copy of these reports is also submitted to the pollution control officer (contaminated land) in the environmental health department: [pollution.control@south-derbys.gov.uk](mailto:pollution.control@south-derbys.gov.uk).

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. 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 Director of Environmental Services at Derbyshire County Council before any works commence on the vehicular access within highway limits. Please contact Gail Mordey on 01629 538537 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). In the event 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 163 of the Highways Act 1980, where the site curtilage slopes down towards the public highway, measures should 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 dished channel or gulley laid across the access immediately behind the back edge of the highway, discharging to a drain or soakaway within the site.

**Item**            2.1

**Reg. No.**        9/2013/0038/FO

**Applicant:**  
**Mr Richard Hesse**  
**Hatton Lodge**  
**Uttoxeter Road**  
**Hatton**  
**Derby**  
**DE65 5PX**

**Agent:**  
**Mr Richard Hesse**  
**Hatton Lodge**  
**Uttoxeter Road**  
**Hatton**  
**Derby**  
**DE65 5PX**

**Proposal:**        **OUTLINE APPLICATION (ALL MATTERS RESERVED)**  
**FOR THE ERECTION OF TWO DWELLINGS AT HATTON**  
**LODGE UTTOXETER ROAD HATTON DERBY**

**Ward:**            **HILTON**

**Valid Date:**     **12/02/2013**

**Reason for committee determination**

Councillor Bale has requested that this application is reported, as the Committee should consider unusual site circumstances.

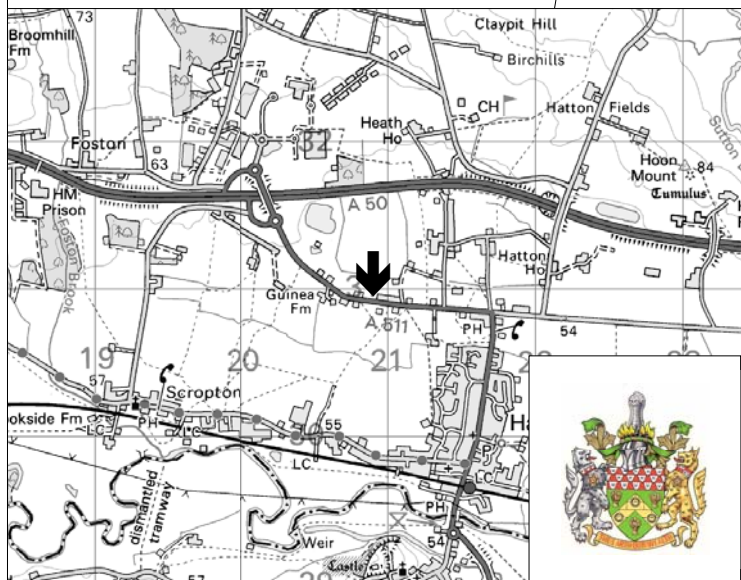
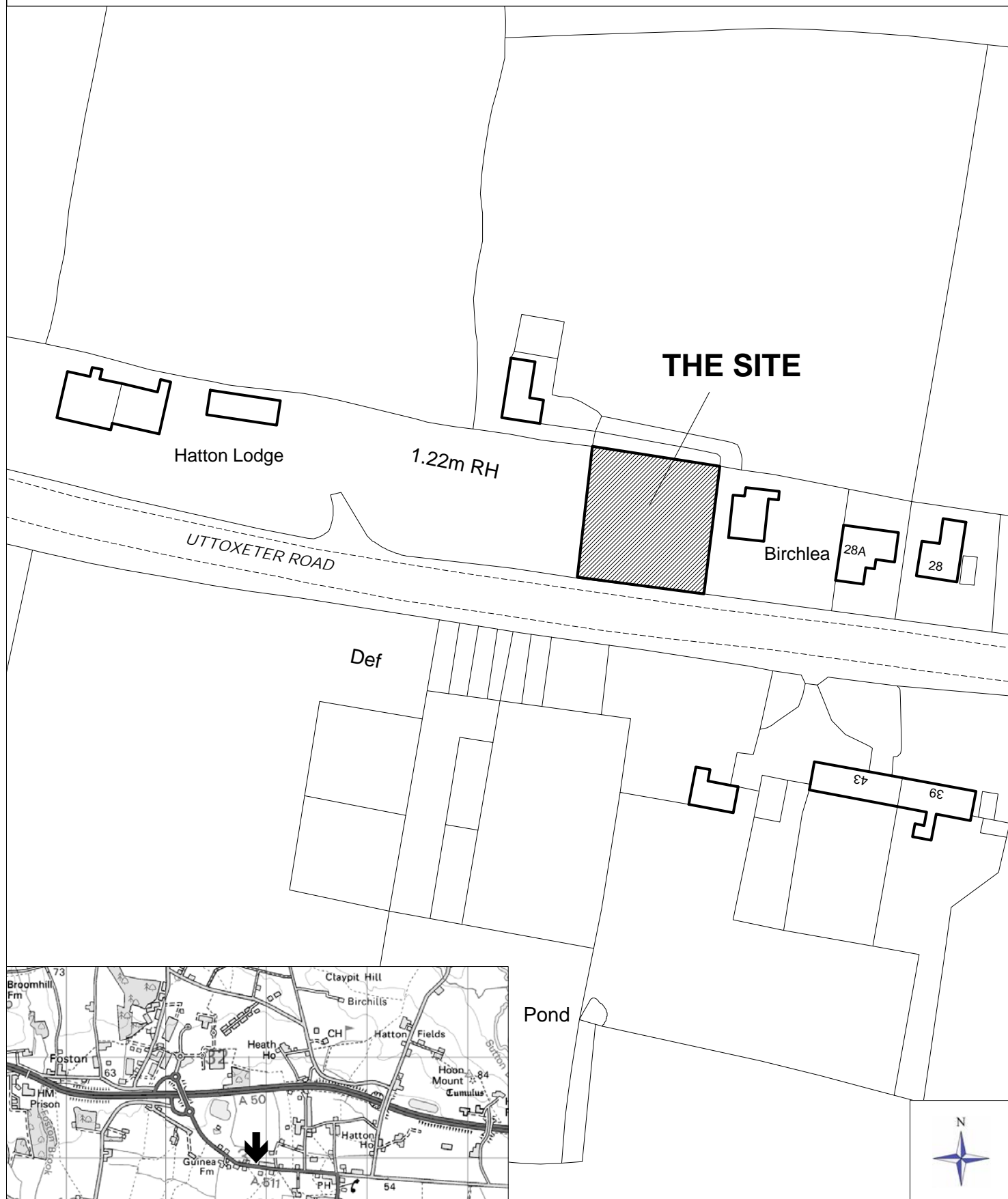
**Site Description**

The site forms a part of an elongated garden to Hatton Lodge that runs parallel to Uttoxeter Road. The roadside thorn hedge is some 3 – 4 m high and an evergreen hedge some 1.8 – 2.0m high separates the site from the adjoining property, Birch Lea. The northern boundary of the site is a 1.8m high part lap and part post and wire fence. The boundary to the rest of the garden is primarily open but there is the remnant of a hedge. Some trees lie within the site or close to its boundary. The garden is currently used as a lawned area.

**Proposal**

The proposal is as described above, two houses are proposed each with its own access point to Uttoxeter Road. Approval of the principle of the development and the access points are all that is sought at this stage, a subsequent application for the details of the development would be required before the development is commenced should outline planning permission be granted.

**Applicants' supporting information**



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The applicant states that each access would be 3 – 4 metres wide and that the houses would be of a similar height to the adjacent house and confirms that final details would be discussed when the full planning application is submitted.

The applicant notes that the road has been downgraded in importance since the last planning application, and is no longer a trunk road.

It is asserted that the development constitutes infill development and is not outside the confines of the settlement with ample evidence of this on the south side of Uttoxeter Road.

In rebutting the previous reason for refusal, the applicant asserts that the site is not in the countryside but forms a part of the garden to Hatton Lodge and permission has been granted on other plots in the same area. The view is that the development would cause no intrusion into the countryside and would add to existing development in the area.

There is a desperate need for affordable housing as stated in Government Policy and the houses would be in walking distance of Dove Valley Park. Structure Plan policies no longer apply to the development.

### **Planning History**

A previous planning application for houses on this site was refused in 1996 (9/1996/0620).

### **Responses to Consultations**

Foston and Scropton Parish Council and the County Highway Authority comments are awaited.

Severn Trent Water has no objection.

### **Responses to Publicity**

One letter has been received objecting to the application on the grounds that:

- Highway safety would be compromised;
- The proposal does not conform to Housing Policy 6 in the Local Plan in that it would extend a ribbon of development into the countryside and is not infilling a small gap. The development would adversely affect the rural character of the area.
- There is no need for further housing development and the houses would be located on land that has been agricultural until incorporated into the garden of Hatton Lodge.
- The proposal constitutes garden grabbing contrary to Government policy and the houses would overlook an adjacent house to the detriment of the residential amenity of the occupiers. There would be a loss of light.
- Wildlife that uses the area would be affected. The hedges that would be lost are teeming with wildlife. Horses in the adjacent field would be adversely affected by noise from the site both during construction and when occupied.

## **Development Plan Policies**

The relevant policies are:

Regional Plan: Policies 1, 3, 12.

Local Plan: Housing Policy 6, Environment Policy 1 & 8, Transport Policy 6.

## **National Guidance**

NPPF at Paras 55, 214 & 215 apply to the consideration of this application.

## **Planning Considerations**

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

- The Development Plan
- Highway considerations.

## **Planning Assessment**

The NPPF states at Paragraph 214 & 215 that the policies in a an out of date Local Plan can continue to carry weight if the policies reflect the intentions of the NPPF. In this case Housing Policy 6 is consistent with the objectives if para 55 of the NPPF and thus carries weight as does Environment Policy 1 and Housing Policy 8 as they all seek to ensure that housing development is only permitted in the countryside where there is an established need or the proposal is to replace an existing dwelling.

Housing Policy 6 allows housing development in other rural settlements where it comprises development that is the infilling of a small gap in an otherwise built up frontage. This is why the dwellings permitted to the east have been granted planning permission in the relatively recent past. The application site occupies a part of a substantial gap at the west end of the row of houses on the north side of Uttoxeter Road. The gap is clearly capable of taking more than 2 dwellings and the development would extend an area of housing in a manner that is clearly contrary to the provisions of Housing Policy 6.

The next Development Plan issue is whether there is justification for the erection of new dwellings in this location to meet the needs of established rural business as provided for in Housing Policy 8. The applicant alludes to the proximity of the proposed housing to Dove Valley Park, but without claiming that this proximity justifies the new houses. To allow this development on that basis would provide a substantial precedent for other landowners in the vicinity to make the same case and lead to other inappropriate development in the countryside. Members will have the opportunity to consider wider housing allocations in the forthcoming Local Plan Document.

It is noted that precedent should not normally have a role in decision taking; the issue in this case does have wider implications that should be taken into account. There is no justification to allow the development contrary to the normal presumption against housing development in the countryside.

The creation of the access points would result in the loss of most if not the entire roadside hedgerow in order to facilitate visibility sight lines. This would remove a significant feature in this area but it should be bourn in mind that the removal of the hedges could not be controlled by the refusal of planning permission. This report was

drafted prior to the receipt of County Highway Authority comments and as such if an objection is received, the recommendation may have to be amended to take that into account.

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

## **Recommendation**

**REFUSE** permission for the following reasons:

1. The recognition of the countryside for its intrinsic character and beauty is acknowledged as a core planning principle at Paragraph 17 of the NPPF and at paragraph 55 Local Planning Authorities are encouraged to avoid isolated houses in the countryside unless there is specific justification for the development. Paragraph 215 advises that where out of date local plans are in line with the principles of the NPPF then those policies can continue to carry weight in determining planning applications. Housing Policy 6 of the adopted South Derbyshire Local Plan makes provision for the infilling of small gaps for not more than two dwellings within a substantially built up frontage, the proposed development would extend development into the countryside rather than consolidate an existing ribbon of development it is contrary to the provisions of this policy. In the absence of any justification for the erection of two dwellings in the countryside the development is contrary to the provisions of Environment Policy 1 and Housing Policy 8 of the adopted Local Plan and as these policies are in accord with the NPPF, they continue to carry significant weight in the decision making process.

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

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

<b>Reference</b>	<b>Place</b>	<b>Ward</b>	<b>Result</b>	<b>Cttee/Delegated</b>
9/2012/0365	Barrow	Aston	Dismissed	Delegated



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# Appeal Decision

Site visit made on 12 February 2013

by **Andrew Jeyes** BSc DipTP MRTPI

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

**Decision date: 13 March 2013**

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## **Appeal Ref: APP/F1040/A/12/2185656**

### **Stable Lodge, Twyford Road, Barrow-on-Trent, Derby DE73 7HA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land without complying with a condition subject to which a previous planning permission was granted.
  - The appeal is made by Mr D Gardiner against the decision of South Derbyshire District Council.
  - The application Ref 9/2012/0365, dated 23 April 2012, was refused by notice dated 14 September 2012.
  - The application sought planning permission for *the erection of an extension for use as ancillary living accommodation* without complying with a condition attached to planning permission Ref 9/2006/1461/FH, dated 13 March 2007.
  - The condition in dispute is No 3 which states that:  
*The living accommodation hereby permitted shall be occupied solely by members of the household of Stable Lodge 4 Poplars Farm Twyford or by domestic staff, and shall not be severed from the main house as a separate and unconnected dwelling.*
  - The reason given for the condition is:  
*Permission is granted in the light of your particular personal circumstances. Although the erection of an extension to provide additional accommodation to be used in conjunction with the existing dwelling is acceptable, the Council would not normally be inclined to allow the formation of a separate residential unit in this locality. Since the extension includes all the domestic facilities necessary for the establishment of a separate self-contained unit, the Council hereby seeks to make it clear that separate occupation is not authorised by this permission.*
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## **Decision**

1. The appeal is dismissed.

## **Application for Costs**

2. An application for Costs was made by Mr D Gardiner against South Derbyshire District Council. This application is the subject of a separate Decision.

## **Main Issues**

3. The main issues are: whether the occupancy condition is reasonable and necessary having regard to planning policies relating to the provision of housing within the countryside; and whether there is flood risk associated with the proposal.

## **Reasoning**

### *Background*

4. The site is part of an isolated small conversion scheme of five properties formed from former barns to Poplars Farm, the original farmhouse now being two properties. The

appeal building was erected as a self-contained extension to one of the five original converted properties. The application for the extension was submitted as a "Householder Application" to be used to accommodate an elderly mother and was subject to the occupancy condition. The condition was justified at the time of the grant of permission to comply with then extant planning policy.

5. The appellant indicates that the extension is no longer required to house his mother as she is now resident in a nursing home, thus the justification for a linked occupation to the original dwelling is no longer applicable: a revised form of condition is proposed. At present, it is indicated that the appellant and his wife live within the extension and the main property, *Stable Lodge*, is sub-let to a third party.

#### *Occupancy Condition*

6. The initial condition was applied in accordance with guidance in Circular 11/95<sup>1</sup>, which indicates that such a condition is acceptable in cases where the creation of a new separate dwelling would otherwise be unacceptable. It further indicates that where the need for separate occupation disappears, proposals for separate occupation should be considered favourably, as there would generally be no justification for requiring the building to stand empty or be demolished.
7. The National Planning Policy Framework [The Framework] indicates that isolated new homes in the countryside should be avoided unless there are special circumstances such as where the development would re-use redundant or disused buildings and lead to an enhancement to the immediate setting.
8. Saved Housing Policy 7 of the South Derbyshire Local Plan 1998 [LP] allows the conversion of existing buildings outside of settlements to residential use, providing it is suitable for conversion and in keeping with the character of its surroundings. Saved LP Housing Policy 8 precludes new housing development in the countryside unless there is a specific justification, and this is supported by saved Environment Policy 1; these policies relate to the creation of new dwellings within the countryside.
9. The extension was clearly intended to form a separate unit of accommodation and would not normally have been accepted in this isolated countryside position unless there was specific justification. The justification for the exception disappeared over a comparatively short period. The proposed separate occupation would give rise, as does the existing situation on site, to the formation of an additional independent dwelling in the countryside in an unsustainable location. There is no justification made for such a dwelling.
10. Whilst the appellant argues that, when occupied by his mother, the extension functioned as a separate dwelling, this ignores the fact that the original application was for a domestic extension and was to be occupied by a relative (or staff), which was controlled by condition. The lack of an internal connection does not justify calling the extension a separate unit of independent housing accommodation. There is no evidence to indicate why the extension cannot be occupied as part of *Stable Lodge*, the property that was originally extended, thus not being needlessly left vacant.
11. Whilst saved Housing Policy 7 allows conversions of existing buildings to residential use, this building is already in residential use as an extension to *Stable Lodge*. Its separation would be tantamount to forming a new independent dwelling within the countryside. Whilst there would be little impact in terms of effect on the character and appearance of the countryside, such a new independent dwelling would be in an unsustainable location. This would be contrary to saved Local Plan policy and policy within The Framework.
12. The Framework clearly indicates that to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural

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<sup>1</sup> Circular 11/95: *The Use of Conditions in Planning Permissions*

communities and that isolated new homes in the countryside should be avoided unless there are special circumstances.

13. The appellant suggests that the existing condition allows occupation by a separate household, but such a household formed by someone employed as domestic staff should have a connection to the occupiers of *Stable Lodge* as the extension should not be severed from the main house as a separate and unconnected dwelling.
14. The appellant's suggested revised form of the condition would require the extension and *Stable Lodge* to be occupied as a single planning unit with no separation or sub-division through ownership to form two or more separate planning units. The Council consider that such a condition would be unenforceable. In my view, the suggested replacement condition would not meet the tests set out within Circular 11/95, as it would not be reasonable or enforceable and in any case, occupation of the property as two separate independent units of living accommodation, as intended, would not meet the terms of such a condition.
15. For these reasons, I conclude that the imposition of the original occupancy condition is both reasonable and necessary having regard to planning policies relating to the provision of housing within the countryside and that there is no justification to replace it.

#### *Flood Risk*

16. The Council raised concerns in relation to potential flood risk in the reason of refusal, but now accept that the proposed variation of the condition would not lead to any significant increased detriment to flood issues. As the structure exists and no works are proposed, then the flood risk situation would not be altered. There would therefore be no additional conflict with The Framework which seeks the avoidance of inappropriate development in areas at risk of flooding by directing development away from areas at highest risk, but where development is necessary, making it safe without increasing flood risk.

#### **Conclusions**

17. Taking account of the above, and all other matters, the lack of potential increased flood risk does not outweigh my conclusions in relation to the need to retain the occupancy condition. For the reasons given, and taking all other matters including representations into account, the appeal is dismissed.

*Andrew Jeyes*

INSPECTOR



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# Costs Decision

Site visit made on 12 February 2013

by **Andrew Jeyes BSc DipTP MRTPI**

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

**Decision date: 13 March 2013**

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**Costs application in relation to Appeal Ref: APP/F1040/A/12/2185656  
Stable Lodge, Twyford Road, Barrow-on-Trent, Derby DE73 7HA**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Mr D Gardiner for a full award of costs against South Derbyshire District Council.
  - The appeal was against the refusal of planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land without complying with a condition subject to which a previous planning permission was granted.
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## Decision

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

## Reasoning

2. Circular 03/2009 advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. In respect of the condition, the reason of refusal is clear that the objection to replacing the original condition is the turning of a self-contained extension allowed to house a family member into an independent dwelling unit, whose occupation would not be related in any way to the occupation of the host building, *Stable Lodge*. I have decided, agreeing with the Council, that the imposition of the original occupancy condition was both reasonable and necessary to justify the exception to normal planning policy relating to the provision of isolated dwellings within the countryside.
4. The Council identified appropriate policy for assessment of the proposal, including that contained within the National Planning Policy Framework [The Framework]; it is not necessary for the Council in its written report to review all available policy, but to identify that policy that it relies upon in reaching its decision. The original condition was applied taking account of the merits of the case and reasonably restricts occupancy to persons that have a connection with *Stable Lodge* through the prevention of use of the extension as a separate and unconnected dwelling.
5. The condition suggested by the appellant relating to the retention of the original dwelling and the extension within the same ownership was considered unenforceable by the Council. In my view, whilst being difficult to enforce, it would not prevent separate unrelated occupation, leading to use of the extension as a completely independent dwelling, contrary to policy. Nor do I agree that the original condition already allows occupation as a single independent unit, as such a household formed by someone employed as domestic staff should have a connection to the occupiers of *Stable Lodge* as the extension should not be severed from the main house as a separate and unconnected dwelling.

6. Overall, in respect of consideration of whether the occupancy condition is reasonable and necessary having regard to planning policies relating to the provision of housing within the countryside, the Council put forward sufficient evidence of substance to justify their decision and in this respect I do not find that the Council has acted unreasonably.
7. In respect of flood risk, the Council consulted the Environment Agency as the site is within the functional floodplain, who advised that a sequential test for flooding was not necessary and that it was for the Council to decide if the proposal was a change of use and whether a flood risk assessment was necessary; it is for the Council to consider the results of such consultation when received. No consultation was carried out on the original application for the extension as this was not required for householder development. The Council now accept that the proposed variation of the condition would not lead to any significant increased detriment to flood issues, but this was not made evident until submission of their appeal statement.
8. As indicated, in my view, as the structure exists and as no works are proposed, then the flood risk situation would not be altered. The Council's indication that policy in The Framework that development in areas of risk of flooding should be avoided was not therefore supported by any evidence of substance. As such, it was unreasonable to include such matters within the reason of refusal.

### **Costs Order**

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

*Andrew Jeyes*

INSPECTOR