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Date: 19 October 2015

Dear Councillor,

Planning Committee

A Meeting of the **Planning Committee** will be held in the **Council Chamber**, Civic Offices, Civic Way, Swadlincote on **Tuesday, 27 October 2015 at 18:00**. You are requested to attend.

Yours faithfully,

Chief Executive

To:- **Conservative Group**

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

Labour Group

Councillors Dunn, Pearson, Shepherd and Southerd.



AGENDA

Open to Public and Press

- 1** Apologies and to note any substitutes appointed for the meeting.
- 2** To note any declarations of interest arising from any items on the Agenda
- 3** To receive any questions by Members of the Council pursuant to Council procedure Rule No. 11.
- 4** REPORT OF THE DIRECTOR OF COMMUNITY AND PLANNING SERVICES **3 - 201**

Exclusion of the Public and Press:

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

REPORT OF THE DIRECTOR OF COMMUNITY AND PLANNING SERVICES

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

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

1. PLANNING APPLICATIONS

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

Reference	Item	Place	Ward	Page
9/2015/0354	1.1	Etwall	Etwall	5
9/2014/0562	1.2	Mickleover	Etwall	31
9/2014/0740	1.3	Hartshorne	Woodville	59
9/2015/0796	1.4	Overseal	Seales	93
9/2015/0648	1.5	Swadlincote	Linton	113
9/2015/0605	1.6	Castle Gresley	Church Gresley	124
9/2015/0211	1.7	Overseal	Seales	137
9/2015/0661	1.8	Hartshorne	Woodville	151
9/2015/0669	1.9	Findern	Willington & Findern	160
9/2015/0679	1.10	Church Gresley	Church Gresley	169
9/2015/0396	1.11	Newhall	Newhall	173

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

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

Item 1.1

Reg. No. 9/2015/0354/MR

Applicant:
**Sir John Port's Charity/
 Bloor Homes Ltd
 Midlands Division 7
 Calico Business Park
 Sandy Way
 Amington
 B77 4DS**

Agent:
**Mr Gary Lees
 Pegasus Group
 Unit 4 The Courtyard
 Hall Farm
 Church Street
 Lockington
 Derby
 DE74 2SL**

Proposal: **OUTLINE APPLICATION WITH ALL MATTERS
 RESERVED FOR THE DEVELOPMENT OF UP TO 99
 DWELLINGS, PUBLIC OPEN SPACE, DRAINAGE AND
 HIGHWAYS INFRASTRUCTURE AT LAND AT SK2731
 3037 WILLINGTON ROAD ETWALL DERBY**

Ward: **ETWALL**

Valid Date: **20/04/2015**

Reason for committee determination

This is a major application not in conformity with the development plan to which more than two objections have been received.

Site Description

The site extends to 5.18 hectares and is located on the eastern edge of Etwall and adjoins a site that has planning permission for up to 100 dwellings (Ref. 9/2013/1040) and referred to as 'Phase 1'. The latter site (the current application) adjoins the existing housing along Belfield Road, Springfield Road, Sycamore Close, Elms Grove, Gerard Grove and Willington Road. Land to the north, south and east is characterised by agricultural land and a more dispersed pattern of residential and business development. The land falls gently southwards away from Willington Road. Etwall Lodge, a Grade II listed building, is located to the north of the site, across Willington Road and an Ash tree protected by TPO 285 is located adjacent to the location of the surface water attenuation pond.

The site itself is presently in agricultural use and comprises across two field parcels defined by hedgerows and trees. There are three trees (two Ash, one Willow) situated around the site's southern perimeter that are protected by Tree Preservation Order no 285).

The application site forms part of an area of land identified for residential development in Policy H10 of the submitted South Derbyshire Local Plan Part 1.

Proposal

The planning application proposes up to 99 dwellings and the provision of vehicular access, public open space and surface water drainage. The application is in outline form with all matters reserved and is accompanied by an illustrative masterplan which indicates how the site could be developed and how the scheme would integrate with 'Phase 1' to provide a comprehensive scheme of some 199 dwellings.

The scheme would provide a mix of types, styles and sizes of houses, but would be predominantly characterised by family housing. 30% of the housing would be affordable.

A new vehicular access would be provided into the site from Willington Road, resulting in two vehicular accesses serving the overall scheme and a link road within the composite scheme.

An area of public open space would be provided in the western part of the site, forming a larger piece of open space centrally located within the combined scheme. Landscape areas would be provided around the site's southern and eastern boundaries, and a surface water attenuation area provided to the south of the site.

Applicants' supporting information

Planning Statement

South Derbyshire District Council has an acknowledged five year supply housing shortfall. In such circumstances the Framework (paragraph 14) advises that relevant policies on housing supply should be considered out of date and the Council is required to grant planning permission unless any adverse impacts would significantly and demonstrably outweigh the benefits or specific Framework policies indicate development should be restricted.

The site does not fall within any of the restrictive designations listed. Furthermore, the proposals are accompanied by robust technical evidence that demonstrates that any adverse impacts would be minimal and would not outweigh the benefits arising from the proposals.

Of the Development Plan policies that remain relevant to the consideration of the planning application proposal, the scheme is in accordance with them. The application site is proposed to be allocated for residential development in the draft Part 1 Local Plan at Policy H10. The principle of residential development is thus established and planning permission has already been granted for residential development on part of this allocated site. The fact that the number of dwellings would exceed the number set out in Policy H10 does not render the proposals contrary to Policy H10. Indeed, the Council's recent resolution to grant planning permission for 485 dwellings on proposed allocation site H7 (375 dwellings) demonstrates that this is not determinative in considering the acceptability of such development proposals.

The proposals would deliver economic benefits as outlined in the sections above. The expected mix of new housing (30% affordable) together with the proposed combination

of on-site open space, the site's accessible location and the provision of facilities through financial contributions would ensure delivery of the social aspects of sustainability. Features of ecological interest on the site, such as the trees and hedgerows, would be retained where possible and biodiversity enhanced through supplementary landscaping and new habitat creation. The proposals are thus considered to be consistent with the Framework's presumption in favour of sustainable development.

The proposals are consistent with the relevant saved policies in the local plan and with the emerging policies of the Local Plan Part 1. It is therefore considered that any adverse impacts do not significantly and demonstrably outweigh the benefits of delivering new housing.

In accordance with section 38(6) of the Planning and Compulsory Purchase Act (2004) and the presumption in favour of sustainable development, the application should therefore be granted planning permission.

Transport Assessment and Travel Plan

The Transport Assessment has reviewed the development proposals in line with current Government and local policy guidance and concluded that the proposals are in accordance with the policies on sustainable developments. The TA has reviewed the existing sustainability of the development in particular with regards to accessibility by modes other than the private car.

The TA provides a detailed assessment of likely traffic generation from the development and concludes that, with the exception of the creation of the site access points, there are no specific off-site improvements required to mitigate development impact.

The TA concludes that the proposed development would have no material adverse impact on the safety or operation of the adjacent highway network.

The site is well located in terms of public transport with bus stops to regular bus services located within 400m walking distance from the centre of the site. These provide frequent services to Derby, as well as other local destinations.

The Travel Plan proposes:

- Measures to Promote and Encourage Walking and Cycling;
- Measures to Promote and Encourage Public Transport Use;
- Measures to Promote and Encourage Car Sharing; and
- Measures to Reduce the Need to Travel.

Implementation, management and monitoring systems would be put in place to ensure that the Travel Plan achieves its key objectives to:

- Deliver a long-term and sustained commitment to changing and widening travel choice;
- Address the access needs of residents by enabling walking, cycling, public transport and car sharing;

- Promote healthy lifestyles and raise awareness about the benefits of utilising sustainable travel opportunities; and
- Build upon good urban design principles that open up the permeability of the development encouraging walking and cycling as the first choice for local trips.

Flood Risk Assessment

There are no prohibitive engineering constraints in developing the proposed site for the proposed residential usage.

Assessment of fluvial flood risk shows the land to lie in Flood Zone 1 and hence be a preferable location for residential development when considered in the context of the NPPF Sequential Test. Assessment of other potential flooding mechanisms shows the land to have a low probability of flooding from overland flow, ground water and sewer flooding.

Means to discharge storm and foul water drainage have been established that comply with current guidance and requirements of Severn Trent Water.

Foul water discharged from development would be directed to the existing Severn Trent Water Network.

The site is able fully to comply with NPPF guidance together with associated local and national policy guidance.

Ecological Report

The site was surveyed based around extended Phase 1 survey methodology, as recommended by Natural England, in July 2013, with an updated walkover survey carried out in September 2014. In addition specific surveys were undertaken in respect of protected species.

There are not considered to be any significant adverse effects on any statutory and non-statutory sites of nature conservation interest from the development proposals.

There are nine trees that have developed features suitable to support roosting bats, such as cracks and rot holes. It is considered the hedgerows and trees offer suitable foraging and navigational opportunities for bats. These trees and the vast majority of the hedgerow network would be retained within the development proposals, and the proposals have been designed such that foraging and navigational opportunities for bats are retained.

The provision of new buffer planting, the planting of new native hedgerows and trees, the creation of new areas of wildflower grassland, and attenuation basins, diversify the range of habitats present within the site and would provide enhanced opportunities for foraging bats, while the erection of bat boxes on suitable retained trees will provide new roosting opportunities for bats within the site.

Planting / habitat creation measures will also provide new and enhanced opportunities for nesting and foraging birds and a range of other wildlife e.g. invertebrates, while the erection of bird boxes within the site would also provide new nesting opportunities for birds.

Further recommendations have been made to safeguard other protected and notable species present within the site, including nesting birds. Recommendations have also been made to achieve ecological enhancements for such protected/notable species wherever possible.

Arboricultural Assessment

A revised assessment was received which states that all of the tree cover on site is situated within established boundary hedgerows. The north east and southern boundaries of the site contain the majority of mature specimens on the site, whereas the western boundary, adjacent to residential properties, contains younger ornamental specimens positioned in back gardens.

Several small sections of the central linear hedgerow H3 would need to be removed to accommodate the positioning of the road layout and for the pedestrian footpath network bisecting the site.

In order to facilitate the proposed main access point off Willington Road into the site, to accommodate the visibility splay requirements and to allow for the widening of Willington Road, a small section of the hedgerow H10, along with the mature trees T33 to T42, positioned along the sites frontage, would need to be removed.

Three of the individual trees were considered to be unsuitable for retention (category U), T35, T36 and T7. These trees would be recommended for removal on the grounds of safety for arboricultural related reasons irrespective of future development proposals.

In this instance it is felt that the loss of the tree cover along the northern boundary is unavoidable and every option for their retention has been considered before drawing that conclusion.

Arboriculturally the loss of these specimens can be sufficiently mitigated for through new planting of trees, tree groups and hedgerows as part of a robust and detailed landscape scheme. The development proposals outline new areas of extensive planting in particular illustrated along the north and west boundaries of the site, boundaries which are currently devoid of significant tree cover. Furthermore a number of incidental areas of open space shall be created to provide buffering and natural landscape softening to help detract the stark appearance of the large built structures.

Having appraised the above plan for any arboricultural implications that may arise as a result of the proposed layout it would appear that despite the loss of a number of prominent tree specimens the layout is able thorough its design to retain a significant proportion of the tree cover defining the boundaries of the site.

Further to this the opportunity to plant trees as part of the development of this site would give a net increase in tree cover, create new amenity and ensure continuation of tree cover locally for both landscape quality and nature conservation through supporting local wildlife habitats by linking hedgerows and trees beyond the site boundaries.

At current there is a general lack of age diversity across the site, the majority of the specimens are of a mature to over mature age and are unlikely to have a useful life expectancy greater than 40 years old. This would result in a significant loss of the larger

individual specimen trees on site without any successive trees to replace them, having a detrimental effect on the wider local landscape character. It is therefore considered that the opportunity for development provides a realistic opportunity to ensure successive tree cover.

Design and Access Statement

The design solution for the site is influenced by the physical, social and economic context to inform the final proposals. The design concept plan has been prepared illustrating the key principles that have guided the detailed development of the final illustrative layout.

The Design and Access Statement confirms the applicant's commitment to the delivery of a high quality development that is sensitive to the local context of Etwall and its immediate context. In particular, the design proposal takes into account the need to create character areas that are unique to the scheme, but also reflect the identity of the local area.

The proposals aim to make the most efficient use of land that is appropriate to the nature and setting of the site. The scheme successfully promotes better access to local facilities and public transport, with clear access into the site and good pedestrian linkages to surrounding uses.

The layout and urban form of the scheme is such that it supports crime prevention and community safety, with development clearly overlooking public spaces and streets.

The landscape design is responsive to the setting and character of the site. Hedgerows and trees have been maintained, where possible, and inform the structure and layout of residential parcels and green infrastructure.

Service Supply and Foul Appraisal

The report identifies the potential service supply solutions for Water, Gas, Electricity and Telecommunications, for the development and also includes the results of the foul modelling assessment completed by Severn Trent Water.

The Service Supply Strategy demonstrates that the proposed development can be accommodated with normal network services without prohibitive reinforcements to the existing networks.

Some localised, non-prohibitive reinforcements may be necessary together with protections or diversions where existing plant is affected by the proposals.

Archaeological Assessment

In accordance with government policy (National Planning Policy Framework) the assessment draws together the available archaeological, historic, topographic and land-use information in order to clarify the heritage significance and archaeological potential of the study site.

The proposed development of the site would not have any impact on any Scheduled Monuments; nor would it impact any non-designated assets recorded in the HER. However non-designated ridge and furrow earthworks would be affected.

The assessment has established that the site has a low/nil potential for settlement or other significant archaeological evidence of Prehistoric or Roman date.

The site lies outside the Medieval and Post-Medieval settlement core of Etwall, and has a low/nil potential for important archaeological remains of these periods.

Development within the site would have no adverse effect on the setting of the Grade II Listed Etwall Lodge, due to the distance of the site from the heritage asset, and the screening provided by hedgerows along Willington Road.

The assessment has identified no archaeological assets of sufficient significance to prevent or constrain the proposed development. The proposed development on the site is very unlikely to have a significant archaeological impact.

Planning History

None specific to this site but the adjacent site has planning permission for up to 100 houses (9/2013/1040).

Responses to Consultations

Local Ward Member Councillor Mrs Lisa Brown draws attention to specific identified in-school projects for secondary education contributions.

NHS England has provided detailed evidence to justify a contribution of £37,584 towards additional accommodation at Hilton GP practice.

John Port School comments that it has no further Science, Technology and IT capacity and seeks appropriate contributions to expand and re-furbish school facilities.

The Environmental Health Manager has no objection.

The Strategic Housing Manager recommends the provision of 30% affordable housing, with 68% for rent and 32% for shared ownership.

Natural England comments that no statutory nature conservation sites would likely be affected and recommends the application of standing advice in respect of protected species. It is also recommended that biodiversity and landscape enhancements be sought.

Severn Trent Water Ltd has no objection in principle.

The Crime Prevention Design Adviser has no objection in principle, subject to subsequent detail.

Historic England does not consider it necessary to be notified in respect of the impact on heritage assets.

The Environment Agency has no objection subject to a condition requiring the provision of foul sewage infrastructure to serve the development.

Derbyshire County Council's Flood Risk Management Team recommends conditions to secure sustainable urban drainage principles and to identify the most appropriate water body to receive any discharge off site.

The Development Control Archaeologist notes that evaluation was undertaken in respect of the extant 'Phase 1' permission and considers no further requirement is necessary.

Derbyshire Wildlife Trust recommends condition to mitigate and enhance ecological interests at the site.

The Contaminated Land Officer recommends conditions to ensure the site is adequately investigated and treated.

The Tree Officer originally commented that a more detailed arboricultural strategy would be required to take account of the changed context for existing trees and hedges. In regards to the additional assessment submitted he states that although very few trees have attained Category A, the bulk are within Category B and I therefore recommend careful consideration is afforded to these groups. Category C trees are of low quality, however, some do add value and with careful management could be straightforwardly retained over the medium term (20 years +). He states that the loss of all roadside Ash trees is disappointing, however unavoidable but suggest and reinforce the objective to fully mitigate by creating an exceptional avenue, as outlined above. Furthermore, I recommend trees are planted to both help detract the stark appearance of buildings, enhance open spaces and create greenways.

Derbyshire County Council seeks the following developer contributions:

- £227,980 towards 20 primary school places at Etwall Primary School
- £257,640 towards 15 secondary school places at John Port School
- £111,762 towards the provision of 6 post-16 places at John Port School

In addition the developer is advised to consider access to high speed broadband and designing new homes to Lifetime Homes standards.

The Highway Authority comments that it is already established through the 'Phase 1' application that satisfactory access could be provided, albeit with some improvements to Willington Road, including carriageway widening to 5.5m and footway provision. Conditions are recommended in the interest of highway safety.

The Highway Authority also seeks a £5000 Travel Plan monitoring fee.

Responses to Publicity

The Parish Council objects as follows:

- a) Objections raised in respect of Phase 1 also apply to this application.
- b) There would be more pressure on facilities and an intolerant increase in traffic, particularly in the morning.
- c) The development would exceed by 99 the number of houses (up to 100) in Policy H10, this being the presumed maximum that Etwall's infrastructure could support.

- d) The emerging Local Plan's strategy should be applied to the application to ensure a plan led approach.
- e) The application does not adequately address highway safety and traffic congestion concerns in respect of the local highway network.
- f) It is likely that existing flooding problems would be exacerbated, including flooding of Etwall brook.
- g) The foul drainage in the village is inadequate.
- h) Water supply is inadequate.
- i) Medical facilities are inadequate and surgery places unavailable.
- j) Primary and secondary schools are at capacity and with more properties in the John Port catchment areas there would be increased traffic movements in the village.
- k) The site is agricultural land and the application is not detailed.

48 letters of objection have been received:

- a) Schools are already over-subscribed.
- b) Doctors' and dentist surgeries are already full.
- c) The site is outside the boundaries of the village and the development is too large.
- d) The village has already accommodated its responsibility to accommodate new housing.
- e) There would be increased parking and traffic congestion in the village.
- f) The development would destroy green fields and harm the character of the area and its village identity.
- g) Water pressure is not adequate.
- h) Loss of premium agricultural land.
- i) Lack of compliance with government policy to develop brownfield sites.
- j) The site is not allocated in the emerging local plan and a precedent would be set.
- k) The development is contrary to the adopted local plan.
- l) Piecemeal Section 106 contributions do not address underlying infrastructure concerns.
- m) The proposed density of development would not be in keeping with the village contrary to the NPPF.
- n) This development would provide many more houses than the withdrawn application on the cricket field (9/2013/1040 & 9/2014/0149).
- o) There has been no consultation with residents.
- p) The sewerage system is overloaded.
- q) There is no gas supply.
- r) Cumulative impact with other proposals in the area should be addressed.
- s) The geometry of local roads is such that there would be increased accident risk.
- t) Site access is inadequate.
- u) The transport assessment omits school related traffic impacts.
- v) There would be increased flood risk.
- w) Direct access should be provided to the trunk road network to increase traffic in the village.
- x) Future railhead at Etwall should be taken into account in an 'in-combination' environmental impact assessment.
- y) There would be noise smell and loss of light and privacy.
- z) Vermin would be affected by domestic waste from the new properties.
- aa) There would be tree and habitat loss.
- bb) Protected species would be harmed.

Development Plan Policies

The relevant Saved Local Plan Policies are:

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

Housing Design and Layout SPG

Emerging Local Plan Part One Policies include:

S1 - Sustainable Growth Strategy

S2 - Presumption in Favour of Sustainable Development

S4 - Housing Strategy

H1 - Settlement Hierarchy

H10 - Land south of Willington Road, Etwell

SD1 - Amenity and Environmental Quality

BNE1 - Design Excellence

BNE2 - Heritage Assets

BNE3 - Biodiversity

BNE4 - Landscape Character and Local Distinctiveness

INF1 - Infrastructure and Developer Contributions

INF2 - Sustainable Transport

INF9 - Open Space, Sport and Recreation

National Guidance

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

Paras 6-10 (Achieving sustainable development)

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

Para 17 (Core principles)

Para 32-34 (Promoting sustainable transport)

Chapter 6 (Delivering a wide choice of quality homes)

Chapter 7 (Requiring good design)

Para 72 (Promoting healthy communities)

Para 109 and 118-123 (Natural environments)

Chapter 12 (Historic Environments)

Para 186 (Decision-taking)

Para 196 & 197 (Determining applications)

Para 203 – 206 (Conditions and obligations)

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

Local Guidance

Housing Design and layout SPG

Planning Considerations

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

- Principle of development and weight afforded to policy;
- Traffic and transport;

- Local services impact;
- Drainage and flood risk;
- Landscape impact;
- Biodiversity, ecological and arboricultural impacts;
- Urban design and open space;
- Residential amenity;
- Archaeology;
- Section 106 contributions and viability implications.

Principle of development and weight afforded to policy

The site lies outside the settlement confine of Etwall in the open countryside although it lies immediately adjacent to the eastern edge of the village. There are no site specific policies in the Adopted Local Plan affecting the land, which is shown as being outside the settlement limits of Etwall and is therefore subject to open countryside policies (particularly EV1). The proposal conflicts with Saved Policy EV1 which whilst not a housing policy, has an indirect effect of restraining delivery. Notwithstanding this, the policy accepts that some development in the countryside is unavoidable and indeed it could be argued that this proposal could fall as 'unavoidable' given the current shortage in the supply of housing and recognition to date that its development is necessary in order to meet identified needs (i.e. by way of the emerging Plan allocation). Nevertheless the policy goes on to consider safeguarding character and landscape quality, as well as ensuring all development in the countryside is designed so to limit its impact on the countryside, and these secondary parts of the policy provide a considerable degree of consistency with section 11 of the NPPF.

The NPPF's desire to significantly boost the supply of housing must be given significant weight, particularly in light of shortfall of the 5-year housing supply. The emerging Local Plan recognises this and seeks to provide this significant boost in a planned manner, through emerging Policy H10 and its criteria to mitigate impacts arising. The policy originally envisaged a mixed use development delivering 100 dwellings (as already previously consented) and a new cricket ground and pavilion although that policy is proposed to now be changed, retaining the same site boundary but just referring to 100 dwellings. However, it must be recognised that additional housing in this location is well supported by a range of services. There are also economic benefits arising from the whole proposal - both short and long term, with construction phase employment and subsequent occupation leading to increased revenue to local businesses and services. Setting the above matter aside, the sustainability of the development is paramount with it important to strike the right balance between housing delivery and ensuring the environmental, social and economic needs of occupants and the existing community can be readily met. Whilst a lack of a 5-year supply might engage paragraph 49 of the NPPF, it does not automatically "stand down" local plan policies - merely challenges the weight which may be afforded to them; and an unsustainable development means the presumption in favour set out under paragraph 14 does not apply. With this point in mind attention is given to the impacts of the development and conflict with planning policy. For the presumption in favour of development to apply, sustainability must be viewed in the round, considering infrastructure, landscape, ecology, heritage, design and so forth. It is important to remember that sustainability and sustainable development is subjective - there is no minimum or consistent level beyond which a particular development can be said to be sustainable. It is a concept, and one that is determined differently from one site to another. The remaining parts of the report

therefore give consideration to whether any other adverse impacts of granting permission would significantly and demonstrably outweigh the benefits of the proposals, after reaching a balance between the benefits and adverse impacts all the time noting that conditions or obligations may be used to mitigate or address an otherwise unsustainable impact.

Traffic and transport

Whilst all matters are reserved for future approval including means of access, the proposed means of access to the site, whilst indicative, would be via a second new junction to Willington Road further east from that which would serve Phase 1. The safety of the development is considered to be acceptable to the County Highway Authority though its detailed requirements as set out in the suggested conditions require the widening of the carriageway to 5.5m as well as the provision of a footway adjacent to the carriageway of 2m in width along Willington Road to allow access for pedestrians between the site and the village. In light of this, notwithstanding the comments submitted, the proposal is thus considered to be in conformity with Local Plan Saved Transport Policy 6.

It is acknowledged that at certain times the local roads are very busy. However, there is no evidence to show that the proposed development would have any undue impact on the highway network and thus the potential to affect the wider transport infrastructure. The NPPF makes it clear in paragraph 32 that development should only be prevented or refused on transport grounds where the residual cumulative impacts of the development are severe. In this case there is no evidence that the cumulative impact would be severe and as such, notwithstanding the comments received, in highway safety terms the proposal is considered to be acceptable.

Local services impact

With the capacity of the highway network already discussed above, attention turns to the impact on other infrastructure. The site is not too distant from a range of routes and modes of transport and would be connected to the existing estate. The provision of 99 dwellings in addition to the 100 already approved immediately adjacent would place pressure on existing schools, healthcare, recreation and built facilities. With regard to the consultation responses above, in terms of impact on primary school, secondary school and post-16 provision, the development would most likely be satisfactorily accommodated by contributions towards further expansion at Etwall Primary School and John Port School which would be necessary because it appears that they may be close to capacity now, with other committed developments. These contributions are considered to be compliant with the CIL Regulations and paragraph 204 of the NPPF and can be secured by way of a Section 106 agreement.

The request for a contribution towards healthcare provision has been tested against the same CIL limitations and the request identifies that an existing and relevant capacity issue exists and that the intended purpose of the sum and the amount sought are compliant both in terms of being proportionate and for a particular project(s) where there are no committed sums to date. This request can also be secured under a Section 106 agreement. A generous amount of open space would be provided on the site as a whole, with a large area on the periphery of the proposal, as shown on the indicative masterplan. Although a large area of open space which would be central to the development including one large central play area, no sports or built facilities would be

provided on site and as such the development would lead to additional pressure on existing facilities elsewhere. There are identified projects at Etwall Leisure Centre which would mitigate the additional demands that the new development would place upon the facility hence the requested sums are considered to be CIL/NPPF compliant.

Drainage and flood risk

The site has a reasonable slope, with levels falling approximately 10 metres from north to south. It is unconstrained by Flood Risk mapping published by the Environment Agency. The main focus therefore lies on surface water drainage arising from the development and it is noted that there have been issues with regards to the flooding of properties in the village and therefore this issue is of particular importance. Sustainable Urban Drainage Scheme (SUDS) are to be incorporated within the scheme, as shown on the illustrative Masterplan in the form of a surface water attenuation pond to the south of the housing which would serve both developments. The applicant is proposing to discharge from the pond to an existing watercourse, immediately adjacent to the attenuation pond. The Environment Agency as well as Derbyshire County Council's Flood Risk Management Team raise no objection subject to a condition requiring the submission of further details relating to the provision of surface water drainage to serve the development. With this in mind, notwithstanding the comments submitted, in terms of flood risk the proposal is considered to be acceptable.

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

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

Landscape impact

The site carries no statutory or local landscape designations. Nevertheless the absence of a landscape designation does not translate to a landscape which is not valued, and in turn one which the NPPF does not seek to protect. The correct approach, when reading section 11 of the NPPF as a whole and supported by an increasing number of appeal decisions, is to first determine what value the landscape has (if any) before determining the correct response to planning proposals. The site is located within the local characterisation of the Settled Farmlands Landscape Character Type (LCT) within the Needwood and South Derbyshire Claylands Character Area. The landscape context of the site includes the edge of the recently approved housing scheme and existing dwellings to the west south. Open agricultural land to the north and west is characterised by an undulating landform with mixed woodland groups. The site currently comprises agricultural fields but is also influenced by its context of a transition between the existing settlement, the approved development and the wider landscape. The scheme would introduce further residential development into a part of this wider landscape which is considered to be in keeping with the immediate context of the site especially taking into account the already approved housing immediately adjacent. There will be a limited amount of tree and hedgerow removal, however new planting would be introduced and a green buffer and landscaping on the northern, eastern and southern boundaries of the site, to help soften the impact on the surrounding rural landscape. The development is considered to be consistent with the LCT and would not materially undermine the character of the area.

The development would be prominent from near distance views from the immediate boundaries of the site, as well as from the established housing estates of Etwall and the wider landscape. However whilst the development would be visible, this would be from a relatively localised area and where it will be seen in the context of wider urban form. The harm arising here is not considered to be significant.

One of the core planning principles in NPPF at paragraph 17 is to recognise the intrinsic character and beauty of the countryside and states that the countryside has an intrinsic beauty and it has to be acknowledged that the site is located within an attractive rural scene, on the edge of the village. However, this can be mitigated to a certain extent through good design and the illustrative masterplan shows a significant woodland buffer to the Willington Road frontage, as well as landscaping on the eastern and southern periphery. There is a clear opportunity to provide a built form that creates a high quality environment incorporating local distinctiveness in accord with paragraph 60 of the NPPF and Saved Housing Policy 11 of the Local Plan. Whilst the detail would be considered at reserved matters stage, the submitted masterplan and Design and Access Statement provide a sound basis for this to happen and the development would appear as a logical extension to the village.

Biodiversity, ecological and arboricultural impacts

The site comprises improved grassland, arable, scattered scrub, hedgerows and trees. No protected species were identified within the site during the survey work undertaken in support of the application. The site has numerous trees on the frontage to Willington Road and whilst the masterplan proposals indicate the retention of many of the trees, consideration has to be had as to the implications of the requirements of the County Highway Authority. In regards to securing a safe and appropriate access to serve the development the County Highway Authority requires the carriageway to be widened to 5.5m and are also insistent that Willington Road would also have to be provided with a 2m wide footway adjacent to the carriageway, not separated from the carriageway behind the hedge or within the development. Whilst not directly affecting the trees or the hedge themselves it would mean that the Ash trees on Willington Road would be located in a more public environment with users of the footway introduced into that area. As such, notwithstanding the masterplan, consideration has to be had in regards to the impact of provided the necessary access, even though it is a reserved matter.

Notwithstanding the reports initially submitted the applicant was required to submit an assessment of the trees and this was assessed by the Council's Tree Officer. He has advised that the submitted report is generally factual and accurate and should be viewed as a trusted reference document. He states that trees affected by this development along Willington Road are mature Ash trees, all have defects, some major and although such trees could be acceptably managed in their current environment, this would not be the case post development. He states that the loss of the roadside Ash trees is disappointing, however unavoidable but recommends that the objective should be to fully mitigate by creating an exceptional avenue, as outlined above. Furthermore, he recommends that trees are planted to help detract from the stark appearance of buildings, enhance open spaces and create greenways.

In terms of the planning balance it is clear that the replacement of the trees on Willington Road frontage would result in a change to the character of the area. However, the trees are of poor quality and the proposed development provides an

excellent opportunity to ensure that a high quality planting scheme is provided to ensure that in the longer term the visual amenity of the area will be enhanced.

Overall it is considered that the ecological interest on and around the site, in terms of important habitats and protected species, as well as implications for trees and hedgerows have been properly assessed and suitable mitigation measures and new habitat opportunity available to mitigate the impact of the development. Derbyshire Wildlife Trust and the Council's Tree Officer consider that the impacts have been assessed to an appropriate standard and that they enable an accurate assessment to be reached. With appropriate conditions and details submitted at reserved matters stage the biodiversity, ecological and arboricultural impacts are considered acceptable.

Urban design & open space

The application is in outline only and all matters are reserved for future approval therefore it is not possible to carry out a full Building for Life assessment at this stage. Nevertheless the proposal presents some key aspects that would form the basis of a good scheme in urban design terms. It is reasonably well served by the public transport and within an acceptable distance of numerous facilities within the village, including educational, commercial and community facilities that help to make it a sustainable development. The illustrative masterplan has evolved to allow the development to integrate well with the adjacent development and the surroundings and to incorporate features promoted by the Council's Design Excellence Officer. It is considered that the masterplan provides a sound basis from which the development can be planned and evolved. Detailed issues relating to design and layout of the houses, how they relate to spaces, crime reduction measures and the provision of parking would be addressed through reserved matters submissions. In view of the urban design and open space matters considered above the proposal would accord with Chapter 8 of the NPPF and Saved Recreation and Tourism Policy 4 of the Local Plan.

Residential amenity

The majority of the site lies immediately adjacent to the adjacent site that was recently granted planning permission but part also lies immediately adjacent to the existing established residential properties on Springfield Road, and Elms Grove and the development of the site will clearly have a significant impact on the outlook from those properties. However, most of these properties have reasonable sized back gardens and the interrelationship between the new homes and the existing ones will be properly assessed at reserved matters stage. It is considered that the number of homes proposed can be achieved in line with the masterplan with a layout and design that accords with the Council's adopted residential space guidelines and the internal arrangements of individual dwellings would be assessed at reserved matters stage. The masterplan shows a similar approach to providing a landscape buffer on the boundary between the properties though the detail would be properly assessed when that reserved matter is applied for. The site therefore provides ample scope for reasonable amenities in terms of light, air and privacy for both existing and new dwellings; safe, functional and convenient layouts; private amenity space, and space for landscaping in accordance with Local Plan Saved Housing Policy 11.

Archaeology

The application is accompanied by an Archaeological Assessment which has been examined by the Development Control Archaeologist who states that that an evaluation was undertaken in respect of the extant 'Phase 1' permission and he considers no further requirement is necessary. This conclusion is considered to be appropriate and as such the development is compliant with Saved Environment Policy 14 and NPPF Chapter 12.

Section 106 contributions and viability implications

Whilst immediately adjacent to the recently approved housing site this application must be assessed on its own merits and regard had to mitigating the impact of this development at this point in time. In terms of specific contributions that would be necessary to off-set the impacts of this development these would be, namely:

1. Built Facilities Contribution towards improvements at Etwall Leisure Centre which would equate to a maximum of £30,195 at a rate of £122 per person.
2. Outdoor Facilities Contribution towards improvements at Etwall Leisure Centre which would ordinarily equate to a maximum of £54,450 at a rate of £220 per person.
3. £227,980 towards 20 primary school places at Etwall Primary School
4. £257,640 towards 15 secondary school places at John Port School.
5. £111,762 towards the provision of 6 post-16 places at John Port School
6. On site Public Open Space and Play Equipment – Provision of on-site incidental and major public open space as well as play equipment to reflect the masterplan, to be transferred to a management company or the District Council for management and maintenance.
7. On site Sustainable Urban Drainage (SUDS) – Provision of SUDS to reflect the masterplan, to be transferred to the District Council or a management company for management and maintenance.
8. £37,584 to the Southern Derbyshire CCG towards additional accommodation at Hilton GP practice to offset capacity issues.
9. 30% affordable housing, with 68% for rent and 32% for shared ownership (although this may alter at some point in the future according to the Government's intentions expressed through the current Planning and Housing Bill).

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

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

In this case it is accepted that contributions towards built and outdoor facilities (points 1 and 2), education (points 3, 4 and 5), open space and play equipment plus maintenance (point 6), SUDS and SUDS maintenance (7), NHS contribution (point 8) as well as for affordable housing (point 9) are compliant in principle and are requirements that must be delivered through a S106 Agreement.

With regards to the request from the County Council in respect of the Travel Plan monitoring, the provision of access to broadband for the site and for new homes being designed to Lifetime Homes standards, it is considered that at present there is no policy basis on which to secure those request and as such these are not required.

Conclusion

The application relates to one of the Council's preferred sites, albeit that it is one that refers to housing development for up to 100 dwellings through the Local Plan process with this current proposal increasing that total to 199. The development is likely to be able to contribute to the early delivery of homes, helping the Council meet its requirement for a five year supply of deliverable housing.

By reference to the NPPF's (Para 7) three sustainability dimensions (economic, social, environmental) the provision of new housing would support economic growth, ensuring an attractive place to live for South Derbyshire's economically active population as well as helping to supporting the vitality and viability of Etwall. Construction jobs would also be created. This is supported by the site's accessibility to Etwall, Derby as well as Burton upon Trent, served by public transport. The proposed scheme would have a significant positive impact on local communities by providing new homes (market and affordable).

In terms of healthy communities the illustrative masterplan includes open space and pedestrian links which would help to support active lifestyles and encourage alternatives to the car for accessing local facilities and employment opportunities.

The reports accompanying the application explain how a range of environmental factors have been taken into account to ensure sustainable development (including transport, landscape, ecology, archaeology, and water). Mitigation has been included within the scheme to ensure the conservation and enhancement of key features. The scheme also helps to mitigate future climate change through reducing CO2 emissions by building new homes in an accessible location and reducing the need to travel by car. In terms of resilience to climate change impacts, the scheme has been designed to take this into account, namely through provision of a sustainable drainage strategy.

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

Recommendation

- A.** Grant delegated authority to the Planning Services Manager to secure the signing of a Section 106 Agreement with the Council to deliver the contributions referred to in the "Section 106 contributions and viability implications" section of the report above;

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

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

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

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

2. Approval of the details of the access, layout, scale, appearance and the landscaping (hereinafter called "the reserved matters") shall be obtained from the Local Planning Authority in writing before any development is commenced in that phase. Plans and particulars of the reserved matters shall be submitted in writing to the Local Planning Authority and the development shall be carried out as approved.

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

3. The reserved matters submitted in accordance with condition 2 and details submitted in accordance with any other condition of this planning permission shall accord with the principles shown on the revised Illustrative Layout Plan ref: EMS.2287_19A, the revised Landscape Strategy Plan ref: EMS.2287_21, the revised Illustrative Super LEAP and Public Open Space Plan ref: EMS.2287_20C and Illustrative Site Frontage & Illustrative Sections Plan ref: EMS.2287_05E, all received by the Local Planning Authority on 11th August 2015.

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

4. No development shall take place until full details of both hard and soft landscape works for the development have been submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved, unless otherwise agreed in writing by the Local Planning Authority. These details shall include trees and hedgerows to be retained showing their species, spread and maturity; proposed finished ground levels or contours; finished floor levels of the dwellings, car parking layouts; other vehicle and pedestrian access and circulation areas; hard surfacing materials; minor artefacts and structures (e.g. street furniture, refuse or other storage units, signs, lighting etc.); proposed and existing functional services above and below ground (e.g. drainage, power, communications cables, pipelines etc. indicating lines, manholes, supports etc.).

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

5. The soft landscape works referred to in condition 4 above shall include planting plans; written specifications; schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate; and implementation programme.

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

6. All hard and soft landscape works shall be carried out in accordance with the approved details and finished not later than the first planting season following

completion of the relevant phase of the development unless an alternative timescale has been agreed in connection with condition 5 above.

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

7. A landscape management plan, including phasing and implementation strategy, long term design objectives, management responsibilities and maintenance schedules for all landscape areas, other than privately owned domestic gardens, shall be submitted to and approved in writing by the Local Planning Authority as part of the reserved matters submission in accordance with conditions 2 and 4. The landscape management plan shall be implemented as approved.

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

8. Any tree or shrub which forms part of the approved landscaping scheme which within a period of five years from planting fails to become, established, or becomes seriously damaged or diseased, or dies, or for any reason is removed, shall be replaced in the next planting season by a tree or shrub of a species, size and maturity to be approved in writing by the Local Planning Authority.

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

9. Before the development is commenced details of the play equipment to be provided within the public open space along with any means of enclosure, ancillary benches, bins, hard surfaces or similar facilities, including a timescale for their provision, shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented as approved and shall thereafter be retained throughout the lifetime of the development, unless otherwise agreed in writing by the Local Planning Authority.

Reason: In order to ensure that measures to encourage wildlife habitat creation within the site are provided.

10. No development shall take place until details of the materials proposed to be used on the surfaces of the roads, footpaths, car parking areas and any courtyards along with samples of the materials to be used on the external surfaces of the buildings have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out using the approved materials unless otherwise agreed in writing with the Local Planning Authority.

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

11. No development shall take place until a detailed scheme for the boundary treatment of the each element of the development, including position, design and materials, and to include all boundaries or divisions within the site, has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be completed as approved before the respective building(s) or land use is/are first occupied unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interests of the appearance of the area, to prevent crime and disorder and to protect the amenity of residents.

12. No site clearance works or development of a phase shall take place until there has been submitted to the Local Planning Authority for their written approval a scheme showing the type, height and position of protective fencing to be erected around each tree or hedgerow to be retained in that phase. The scheme shall

comply with BS5837:2005. No site clearance works or development of any phase shall be commenced in the vicinity of the protected tree or hedgerow until such a scheme is approved in writing by the Local Planning Authority and thereafter the development hereby permitted shall only be carried out in accordance with the approved scheme. The area surrounding each tree or hedgerow within the protective fencing shall remain undisturbed during the course of the works, and in particular in these areas:

- (i) There shall be no changes in ground levels;
- (ii) No material or plant shall be stored;
- (iii) No buildings or temporary buildings shall be erected or stationed;
- (iv) No materials or waste shall be burnt within 20 metres of any retained tree or hedgerow;
- (v) No drain runs or other trenches shall be dug or otherwise created without the prior written consent of the Local Planning Authority.

Reason: In the interests of the appearance of the area

13. No operations shall be commenced until a temporary access for construction purposes has been constructed to Willington Road, laid out in accordance with a detailed design that has first submitted to and approved in writing by the Local Planning Authority. The access shall have a minimum width of 5.5m, 6m radii and be provided with visibility sightlines commensurate with actual vehicle speeds indicated by a speed survey, measured from a distance of 2.4m back from and measured along the nearside carriageway edge, the area forward of which shall be cleared and maintained throughout the construction period clear of any obstruction exceeding 600mm in height relative to road level.

Reason: In the interests of highway safety.

14. No development shall take place until a Construction Management Plan or Construction Method Statement has been submitted to and approved in writing by the Local Planning Authority. The approved plan/statement shall be adhered to throughout the constructions period. The plan/statement shall provide for the storage of plant and materials, site accommodation, loading, unloading and manoeuvring of goods vehicles, parking of vehicles for site operatives and visitors, routes for construction traffic, hours of operation, method of prevention of debris being carried onto the highway, pedestrian and cyclist protection, proposed temporary traffic restrictions and arrangements for turning vehicles. Once implemented the facilities shall be retained free from any impediment to their designated use throughout the construction period.

Reason: In the interests of highway safety.

15. Prior to the first occupation of any dwelling, the Willington Road carriageway shall be widened to 5.5m from a point where the existing carriageway to the north west measures 5.5m along the entire frontage of the site and a 2m wide footway on the south western side extending from the existing footway located to the north west of the site, laid out, constructed, drained and lit in accordance with Derbyshire County Council's specification for adopted highways, all in accordance with a scheme first submitted and approved in writing by the Local Planning Authority.

Reason: In the interests of highway safety.

16. Prior to the first occupation of any dwelling, the new estate street junction shall be formed to Willington Road. The access shall have a minimum width of 5.5m, 2 x 2m footways, 6m radii and visibility sightlines of 2.4m x 59m. The area forward of the sightlines shall be level, form part of the new street, constructed as footway, and not part of any plot or other sub-division of the site. The access shall be laid out, constructed to base level, drained and lit in accordance with Derbyshire County Council's specification for adopted roads.

Reason: In the interests of highway safety.

17. The gradient of any of the accesses shall not exceed 1:30 for the first 10m into the site from the existing highway boundary and 1:20 thereafter.

Reason: In the interests of highway safety.

18. Notwithstanding the submitted drawings, the internal layout of the site shall accord with the Highway Authority's Policy Document ""6C's Design Guide"" and national guidance laid out in Manual for Streets.

Reason: In the interests of highway safety.

19. No dwelling hereby approved shall be occupied until the proposed new estate street between each respective plot and the existing public highway has been laid out in accordance with the approved application drawings to conform to the County Council's design guide, constructed to base level, drained and lit in accordance with the County Council's specification for new housing development roads.

Reason: In the interests of highway safety.

20. Notwithstanding the submitted Transport Assessment, and unless otherwise agreed in writing, space shall be provided within the site for the parking of two vehicles per dwelling, laid out in accordance with a scheme first submitted and approved in writing by the Local Planning Authority and maintained thereafter free of any impediment to its designated use.

Reason: In the interests of highway safety.

21. Any garage relied upon as an enclosed parking space in connection with condition 20 above, shall measure at least 6.0m x 3.0m.

Reason: In the interests of highway safety.

22. The development hereby permitted shall not be commenced until details of secure cycle parking facilities for the occupants of, and visitors to, the development hereby approved have been submitted to and approved in writing by the Local Planning Authority. These facilities shall be fully implemented and made available for use prior to the occupation of the development hereby permitted and shall thereafter be retained for use at all times.

Reason: In the interests of highway safety.

23. Bin stores shall be provided within private land at the entrance to shared private accesses to prevent refuse bins and collection vehicles standing on the new estate street for longer than necessary causing an obstruction or inconvenience for other road users. The facilities shall be provided prior to the first occupation of the dwellings to which they relate and shall be retained thereafter free from any impediment to their designated use.

Reason: In the interests of highway safety.

24. The plans and particulars submitted at reserved matters stage shall include a swept path diagram demonstrate that emergency and service vehicles can adequately enter/ manoeuvre within the site and leave in a forward gear.

Reason: In the interests of highway safety.

25. Prior to or concurrent with the submission of the Reserved Matters application, and notwithstanding the submitted details, a Travel Plan, comprising immediate, continuing and long-term measures to promote and encourage alternatives to single-occupancy car use, shall be submitted to and approved in writing by the Local Planning Authority. The approved Travel Plan shall then be implemented, monitored and reviewed in accordance with the agreed Travel Plan targets.

Reason: In the interests of highway safety.

26. Any gates provided within the development shall be set back at least 5m from the highway boundary and shall open inwards only.

Reason: In the interests of highway safety.

27. 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 must be submitted, which meets the requirements given in Box 2 of Section 3.1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.

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

d) If required by the conceptual site model, no development shall take place until monitoring at the site for the presence of ground gas and a subsequent risk assessment has been completed in accordance with a scheme to be agreed with the LPA, which meets the requirements given in Box 4, Section 3.1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.

Reason: In the interests of protecting human health.

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

Reason: In the interests of protecting human health.

29. Before the development is commenced details of measures to be provided for compensation and enhancement features for wildlife as recommended in pages 13 to 19 (incl.) of the Ecological Assessment produced by Ecological Solutions Ltd, dated March 2015, as well as for the provision of bat roosts opportunities and bird boxes to be located within the site or within the structure of any of the buildings hereby permitted and to include details of their long term management and maintenance arrangements as well as a lighting strategy which takes account of wildlife interests shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented and the measures shall thereafter be retained in those positions and managed in accordance with the agreed details throughout the lifetime of the development, unless otherwise agreed in writing by the Local Planning Authority.

Reason: In order to ensure that measures to encourage wildlife habitat creation within the site are provided and wildlife interests protected.

30. No development shall take place until a detailed design and associated management and maintenance plan of surface water drainage for the site, in accordance with Defra Non-statutory technical standards for sustainable drainage systems, has been submitted to and approved in writing by the Local Planning Authority. The approved drainage system shall be implemented in accordance with the approved detailed design prior to the first occupation.

Reason: To ensure that the principles of sustainable drainage are incorporated into this proposal and sufficient detail of the construction, operation and maintenance of sustainable drainage systems is provided to the Local Planning Authority in advance of full planning consent being granted.

31. No building works which comprise the erection of a building required to be served by water services shall be undertaken in connection with any phase of the development hereby permitted until full details of a scheme including phasing, for the provision of mains foul sewage infrastructure on and off site has been submitted to and approved in writing by the Local Planning Authority. No building shall be occupied until the works have been carried out in accordance with the approved scheme.

Reason: To prevent flooding, pollution and detriment to public amenity through provision of suitable water infrastructure.

32. During the period of construction no construction work shall take place outside the following times: 0800 - 1900 hours Monday to Friday and 0800 - 1330 hours on Saturdays and at any time on Sundays, Bank and Public Holidays.

Reason: To protect the amenities of nearby residents.

33. Within 12 months of the commencement of the operation of the approved surface water drainage scheme, it shall be certified as completed in accordance with the approved drawings/documents by a Chartered Surveyor or Chartered Engineer.

Reason: In the interests of flood protection.

Informatives:

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

Authority has implemented the requirement set out in paragraphs 186 and 187 of the National Planning Policy Framework.

The applicant is advised that following consultation with Severn Trent Water, they advise that there is a public sewer located within the application site. Public sewers have statutory protection by virtue of the Water Industry Act 1991 as amended by the Water Act 2003 and you may not build close to, directly over, or divert a public sewer without consent. You are advised to contact Severn Trent Water to discuss your proposals and they will seek to assist you in obtaining a solution which protects both the public sewer and the proposed development.

The applicant is advised that following consultation with the Council's Environmental Protection Officer, he advises that the above phased risk assessment referred to in condition 27 should be carried out in accordance with the procedural guidance of the Environmental Protection Act 1990 Part 2A. 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.

Reports in electronic formats are preferred, ideally on a CD. For the individual report phases, the administration of this application may be expedited if a digital copy of these reports is also submitted to the Environmental Protection Officer (Contaminated Land) in the Environmental Health Department:

thomas.gunton@south-derbys.gov.uk

Further guidance can be obtained from the following:

- a) CLR 11: Model Procedures for the Management of Contaminated Land
- b) CLR guidance notes on Soil Guideline Values, DEFRA and EA
- c) Investigation of Potentially Contaminated Land Sites - Code of Practice, BSI 10175 2001.
- d) Secondary Model Procedure for the Development of Appropriate Soil Sampling Strategies for Land Contamination, R & D Technical Report P5 - 066/TR 2001, Environment Agency.
- e) Guidance for the Safe Development of Housing on Land Affected by Contamination Environment Agency. ISBN 0113101775.

The applicant is advised to investigate the provision of broadband services for future residents as part of the development, in conjunction with service providers. 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. The applicant is advised that following consultation with Derbyshire County Council's Flood Risk team, they advise that in connection with condition 30 above any submission will need to demonstrate the appropriate level of treatment stages from the resultant surface water in line with Table 3.3 of the CIRIA SuDS Manual C697. This type of development usually requires >2 treatment stages before outfall into surface water system which may help towards attainment of downstream receiving watercourse's

Water Framework Directive good ecological status. Furthermore, they advise that condition 28 should include:

a. The production and submission of a scheme design demonstrating full compliance with DEFRA non-statutory technical standards for sustainable drainage systems:

- o Limiting the discharge rate and storing the excess surface water run-off generated by all rainfall events up to the 100 year plus 30% (for climate change) critical duration rain storm so that it will not exceed the run-off from the undeveloped site and not increase the risk of flooding off-site to comply with S2 & S3.

- o Provision of surface water run-off attenuation storage to accommodate the difference between the allowable discharge rate/s and all rainfall events up to the 100 year plus 30% (for climate change) critical rain storm to comply with S7 & S8.

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

- o Details of how the on-site surface water drainage systems shall be maintained and managed after completion and for the lifetime of the development to ensure the features remain functional.

- o Production of a plan showing above ground flood pathways where relevant for events in excess of 1 in 100 year rainfall event to comply with S9.

b. The submission of an appropriate ground investigation with percolation/soakaway results inclusive by a recognised method (i.e. BRE Digest 365) to confirm the suitability of infiltration as a primary method of disposing of surface water.

You are advised that Derbyshire County Council do not adopt any private SuDS schemes. As such, it should be confirmed prior to commencement of works which organisation will be responsible for SuDS maintenance once the development is completed. Any works in or nearby to an ordinary watercourse require consent under the Land Drainage Act (1991) from DCC (e.g. an outfall that encroaches into the profile of the watercourse, etc). Upon receipt of any application (including the legislative fee) DCC has an 8 week legislative period in which to make a decision and either consent or object the proposals. If you wish to make an application for any works please contact Flood.Team@derbyshire.gov.uk

Furthermore you are advised that Derbyshire County Council holds a suite of information that can inform site development across Derbyshire, including:

- o Historical data has been collated from a range of sources and is anecdotal. The provision of this data is suggested to act as a guide only.

- o Fluvial data has been provided by the EA however the applicant is advised to contact the EA for further information should the site lie within the floodplain of a Main River.

- o DCC hold BGS data under a licenced agreement and therefore are not licenced to reproduce this information into the public domain.

- o DCC have modelled surface water flooding for the whole of Derbyshire. The model output gives an indication of the broad areas likely to be at risk of surface water flooding and is intended to act as a guide only and cannot be used to identify specific properties at risk.

- o Further information regarding the WFD, ecology and biodiversity should be obtained from the EA and Natural England.

Item 1.2

Reg. No. 9/2014/0562/OM

Applicant:
Miller Homes Ltd
c/o Agent

Agent:
Pegasus Group
4 The Courtyard
Hall Farm
Church Street
Lockington
Derby
DE74 2SL

Proposal: **OUTLINE APPLICATION (WITH ALL MATTERS RESERVED) FOR THE ERECTION OF UP TO 290 DWELLINGS INCLUDING PROVISION OF PUBLIC OPEN SPACE, DRAINAGE WORKS AND RELATED INFRASTRUCTURE AND LANDSCAPING ON LAND AT SK3035 1279 HACKWOOD FARM MICKLEOVER DERBY**

Ward: ETWALL

Valid Date: 26/06/2014

Reason for committee determination

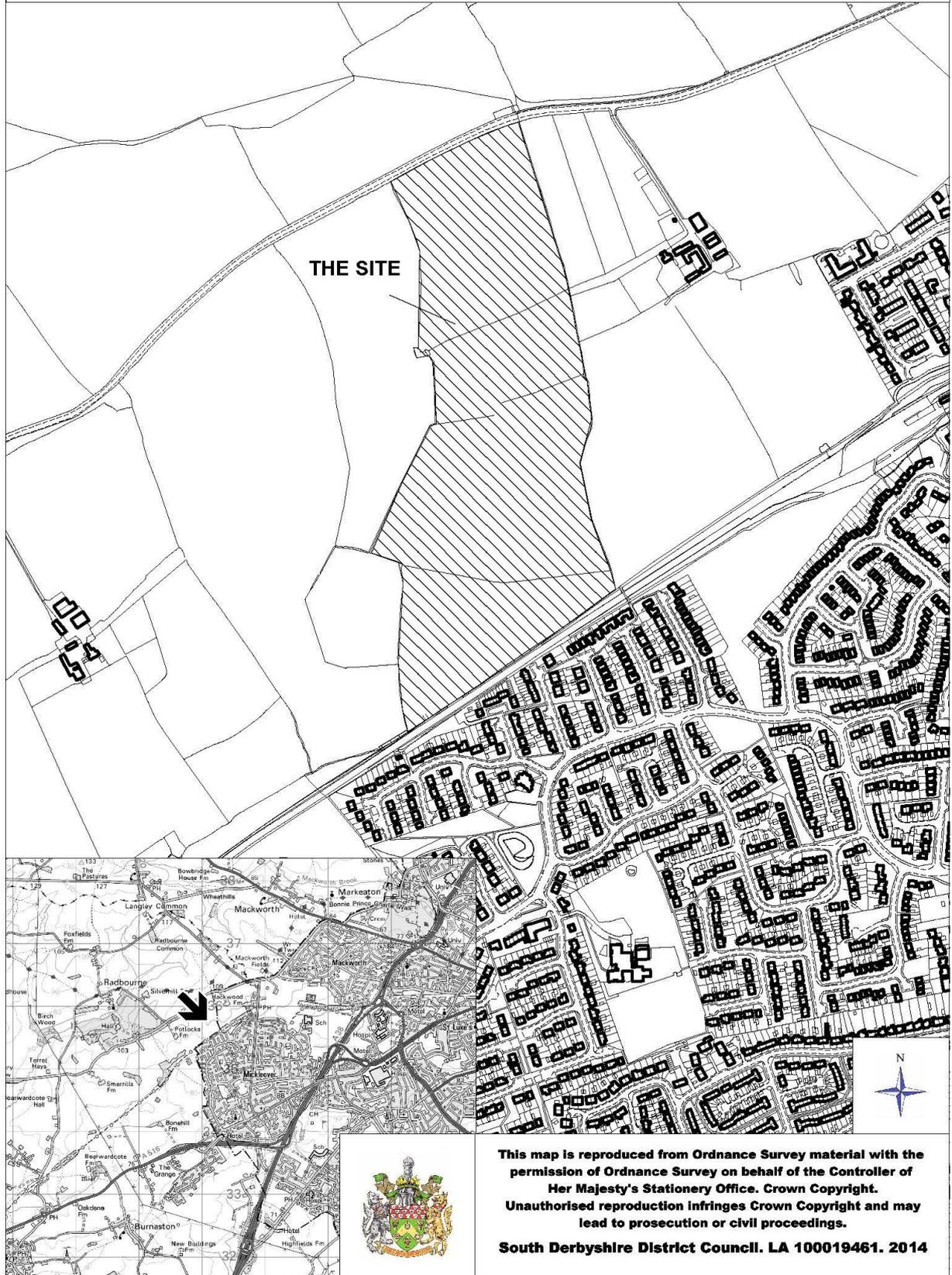
This is a major application not in accord with the development plan and to which more than two objections have been received.

Site Description

The site is situated within South Derbyshire District Council's administrative boundary as identified in the South Derbyshire Local Plan. Land directly to the east sits within Derby City. The site extends to approximately 15 hectares of arable land.

A public right of way (Radbourne 1) defines the site's eastern boundary and Radbourne Lane runs along the site's northern boundary. Further arable land lies to the north and west of the site.

A spring fed stream runs along part of the site's western boundary, which has very steep sides. A ditch runs along part of the site's eastern boundary and along the entirety of the site's southern boundary.



Proposal

The application, referred to as Phase 2b, is in outline and is accompanied by an illustrative master plan indicating:

- Up to 290 dwellings;
- Public open space;
- Associated drainage infrastructure including a water balancing pond.

The masterplan also shows proposals for development of the adjoining land to the east, within Derby City Council's administrative boundary (Phases 1 & 2a).

The site relies on access to be provided from the adjoining Derby City land and no direct access is proposed from Radbourne Lane for phase 2b, this application, although access to Radbourne Lane for the Derby City developments is proposed.

As a comprehensive, composite scheme the whole Hackwood Farm development would deliver:

- Up to 700 dwellings;
- A one form entry primary school;
- Local centre focused around existing farm buildings, comprising one 400 sq m class A1 convenience store and 400 sq m of small retail units (classes A1, A2, A3 and A5);
- Public open space;
- Highway works, including new vehicular accesses from Starflower Way and Radbourne Lane, and a new roundabout at the junction of Station Road and Radbourne Lane;
- Drainage infrastructure comprising a flood alleviation scheme and surface water balancing areas.

The application is accompanied by an Environmental Statement under the provisions of The Town and Country Planning (Environmental Impact Assessment) Regulations 2011. The statement considers the cumulative effects of the development in combination with the Derby City phases and a proposal for 600 dwellings at Radbourne Lane (Amber Valley district).

Applicants' supporting information

Planning Statement

A summary of how the entire Hackwood Farm development would contribute to the three dimensions of sustainable development, as well as meet the requirements of emerging Local Plan Policy H18 is as follows:

Economic:

- Creation of permanent jobs at the primary school and local centre.
- Creation of construction jobs.
- Creation of economic activity resulting directly and indirectly from the construction of the development.

- Creation of additional capital for the City Council in the form of the New Homes Bonus.

Social:

- Housing to help meet Derby City's and South Derbyshire's housing requirements, including an element of affordable housing.
- Development at a scale that enables a new primary school to be delivered, in accordance with part vii) of emerging policy H18.
- A local centre which will retain existing farm buildings, in accordance with part viii) of emerging policy H18.
- Contributions towards the extension of the Radbourne Lane bus service to provide links with the wider area including Derby City Centre.
- Contributions towards a pedestrian/cycle bridge over the Mickleover Greenway and connecting footpath to Saxondale Avenue in accordance with part iv) of emerging policy H18, to ensure the site is accessible to all.
- Provision of onsite open space to encourage sport, recreation and promote healthy communities, and pedestrian/cycle links with the wider public right of way network, in accordance with part iv) of emerging policy H18.
- A financial contribution to secondary education at Murray Park School.

Environmental:

- A comprehensive drainage strategy, including the provision of a flood alleviation scheme. The flood alleviation scheme will provide betterment to the existing conditions and reduce flood risk to existing residents around Starflower Way/south of the Mickleover Greenway.
- Retention of existing trees and hedgerows as far as possible, with replacement planting as mitigation for any landscape features lost as part of the development, in accordance with part iii) of emerging policy H18.
- Built development in an area of that would not affect the overall principle of the Green Wedge. The remaining areas of green wedge will be enhanced and include the provision of new public open space.
- A landscape and visually led masterplan that minimises landscape and visual effects, with careful consideration of the development scale and form, site planning and appearance in accordance with part ii) of emerging Policy H18.
- High quality design development, with landscaping and green buffers in accordance with part vi) of emerging policy H18.
- A scheme that does not impact upon the setting of listed buildings in the local area, in accordance with part x) of emerging policy H18.
- Traffic resulting from the proposed development can be accommodated on the local highway network. The Phase 1 application will provide land for the creation of a roundabout at the Station Road/Radbourn Lane junction in order to ease traffic flows, in accordance with part ix) of emerging policy H18.

Design and Access Statement

The physical, social and economic context has influenced the design in conceptual terms and informed the final proposals. The design concept plan has been prepared illustrating the key principles.

The Design and Access Statement confirms the applicant's commitment to the delivery of a high quality development that is sensitive to the local context of Mickleover and its

immediate context. In particular, the design proposal takes into account the need to create character areas that are unique to the scheme, but also reflect the identity of the local area.

The proposals aim to make the most efficient use of land that is appropriate to the nature and setting of the site. The scheme successfully promotes better access to local facilities and public transport, with clear access into the site and good pedestrian linkages to surrounding uses.

The layout and urban form of the scheme is such that it supports crime prevention and community safety, with development clearly overlooking public spaces and streets.

The landscape design is responsive to the sensitive setting of the site. Hedgerows and trees have been maintained, where possible, and inform the structure and layout of residential parcels.

Environmental Statement

The statement addresses the following topics:

- Traffic and transportation - The transport and traffic effects of the proposed development of the ES site have been considered, which have taken into account committed and planned developments in the area. When the ES site is fully operational there is the potential for some adverse effects, specifically at the Radbourne Lane / Station Road junction in terms of driver delay, pedestrian amenity and severance. However, proposals will accompany the development, including the construction of a new junction at Radbourne Lane / Station Road, which, once implemented, will reduce driver delay and improve pedestrian amenity, mitigating any adverse effect.
- Landscape and visual impact - The transport and traffic effects of the proposed development of the ES site have been considered, which have taken into account committed and planned developments in the area. When the ES site is fully operational there is the potential for some adverse effects, specifically at the Radbourne Lane / Station Road junction in terms of driver delay, pedestrian amenity and severance. However, proposals will accompany the development, including the construction of a new junction at Radbourne Lane / Station Road, which, once implemented, will reduce driver delay and improve pedestrian amenity, mitigating any adverse effect.
- Noise – An increase in road traffic as a result of the whole development will result in long term negligible or minor effects along Station Road and Radbourne Lane. Whilst the increase in noise along Spinneybrook Way and Starflower Way has been assessed as moderate in the long term, the development proposals are considered acceptable in terms of noise. This is because the overall predicted noise level in these locations is not considered significant: noise levels are likely to avoid those of minimal serious annoyance in rear garden areas; would fall within the category of Noise Exposure Category B (PPG 24); and internal noise levels would be below 30 dB, which satisfies British Standard criteria.
- Air quality – This chapter demonstrates that that the whole Hackwood Farm development site would have a negligible effect in terms of air quality and no

mitigation measures are therefore considered necessary to control effects associated with local air quality.

- Archaeology and Built Heritage – In terms of impact upon built heritage, the chapter confirms that the proposed development would have a negligible effect on the setting of Radbourne Hall, Silverhill Farm or Potlocks Farm. A 15m wide landscape buffer has been incorporated on the western edge of the site to mitigate minor adverse effects on Potlocks Farm, which would reduce the overall effects to negligible.
- Ecology – All ecologically valuable features within the site, save for some limited hedgerow loss, will be retained and some will be enhanced. Radbourne Lane Hedge LWS will require translocation in order to widen Radbourne Lane, which will have a short-term adverse effect, but long-term management and enhancements will result in a local level beneficial effect in the medium-to-long-term. Creation and enhancement of habitats will result in overall Local level beneficial effects.

In response to Derbyshire Wildlife Trust's concerns about compensatory farmland bird habitats, appropriate landscape buffers and protective barriers would be incorporated in the design.

- Hydrology and Drainage – This chapter demonstrates that the site can be satisfactorily drained and reduces the flood risk downstream of the site. Any adverse effects of the proposed development are mitigated implementation of the drainage strategy. The proposals also incorporate a flood alleviation scheme. This was included as a response to Council concerns about recent flooding affecting residential development to the south of the site. The flood alleviation scheme is designed to provide betterment to existing conditions south of the proposed development and represents a beneficial effect of the proposals.

Travel Plan

The Travel Plan's objectives are 'reduce the environmental impact of transport associated with journeys to and from the site', by:

- reducing the need to travel;
- reducing travel by car, particularly single occupancy car journeys; and
- encouraging and promoting the use of more sustainable modes of travel.

The Plan contains measures to promote walking, cycling, public transport, car sharing, appropriate parking provision, reducing the need to travel, travel information and school travel plan. Measures are included to monitor and review the Travel Plan.

Ground Condition Survey (Phase 1 Desk Study Report)

Geotechnical Assessment – Makes recommendations about construction on made/previously developed ground and to exercise caution in the vicinity of the former railway cutting.

Gas Precautions - It is recommended that a programme of ground gas monitoring should be undertaken at the site to establish whether any migration of landfill gases is occurring onto the site.

Building Near Trees - Foundation designs are likely to require adjusting when building near existing, recently removed or proposed trees due to the presence of potentially shrinkable cohesive soils beneath the site (i.e. Clay, Mudstone and cohesive Till). Numerous mature trees are located within the site, which will require surveying and identifying by a qualified arborist prior to development.

Radon and Coal Mining – No issues

Water - Shallow groundwater is not anticipated to be present within the shallow clay/mudstone deposits. However, locally wet conditions may occur.

Surface Water Drainage - The use of soakaways is unlikely to be a feasible option for the disposal of surface water within the site, predominantly due to the anticipated presence of cohesive soils (clay and mudstone) throughout the site.

Former Ponds and Well – To be taken in or account through foundation design.

Sources of Contamination – Various potential sources exist on site.

Further Works (Phase II) – i) A programme of exploratory holes across the site to provide an initial inspection of the near surface ground conditions for geotechnical and environmental purposes. ii) The installation of ground gas monitoring wells at the site to enable a programme of ground gas monitoring (the extent of monitoring may be increased depending on the results of the initial monitoring). iii) Geotechnical and environmental soil analysis and contaminated land risk assessment.

Planning History

Although the site has no relevant application history the adjoining land in Derby has been subject to refusal of applications in respect of Phase 1 (Ref 03/13/00298) and Phase 2a (Ref 06/14/00805), contrary to officer recommendations (the sites being included in the emerging local plan for Derby).

The refused applications are presently at appeal and two new applications are under consideration by the City Council.

Responses to Consultations

The Highway Authority notes that access to the site would be gained through the estate road connection to the highway in Derby. The change at the junction where Radbourne Road joins the north western section of the B5020 lies within the County and the Highway Authority is satisfied that the necessary sightlines could be achieved over controlled land. Therefore, subject to conditions, no objection is raised.

Highways England considers that there would be no material impact on the nearest strategic route, the A38 at Markeaton roundabout, and there is thus no objection.

Derbyshire County Council's Rights of Way Section has no objection and provides advice in respect footpath obligations.

The Environment Agency has no objection subject to further approval of a surface water drainage scheme to be secured by condition.

Derbyshire County Council's Flood Risk Management Team notes the potential for surface water flooding on the site and makes recommendations about the design of surface water disposal measures. It is also noted that Egginton Brook runs within 1km of the site and comments that the development should not lead to deterioration in its water quality or to that of other nearby watercourses. It is also advised that ecological surveys should be undertaken to assess risks to protected species, bats and great crested newts in particular.

Natural England has no objection in principle, and refers to standing advice. Measure to secure biodiversity enhancement are recommended. An appropriate condition would secure this.

Derbyshire Wildlife Trust considers that a development free buffer should be provided to land designated to comments for loss of farmland bird habitat as a result of the Derby City applications. On other ecology issue conditions are recommended.

Severn Trent Water Ltd has no objection in principle.

The Contaminated Land Officer recommends conditions requiring risk to be assessed and mitigated.

The Development Control Archaeologist considers that conditions requiring further evaluation would be sufficient to safeguard heritage assets under the surface of the site.

Historic England is satisfied that there would be no harm to the setting of Kedleston Hall or monuments and heritage assets at Mackworth. It is recommended that the impact on the significance of Radbourne Hall, as defined by the landscape setting, be considered.

East Midland Airport has no safeguarding objection.

The Crime Prevention Design Adviser has no objection in principle and provides appropriate design guidelines.

Southern Derbyshire CCG requests a contribution of £110,316 to offset capacity issues. In recognition of pooling limitations the CCG confirms that there are no other funding requests for the identified necessary improvements to the facilities.

The County Council's Policy Section accepts that the proposed new primary school in Phase 2a (Derby City) would also serve the application site, subject to normal areas being redefined accordingly. Other request for contributions are:

Access to high speed broadband services (in conjunction with service providers).

Undertaking of ground investigation for flood risk and water quality.

Ecological survey.

£775,751.48 towards the provision of 44 secondary school places at John Port School.

£316,674.30 towards 17 post-16 education places at John Port School.

New homes designed to Lifetime Homes standards.

Amber Valley Borough Council has no objection.

Responses to Publicity

Peak and Northern Footpaths Society welcomes the new footpath link into the southern edge of the site over the Sustrans cycle route and trusts there would be a link to the cycle route too. New footpaths through the site should be adopted.

11 letters of objection have been received:

- a) Secondary school provision is inadequate.
- b) There would be increased traffic congestion and highway hazards, particularly when in combination impacts are realised.
- c) There would be adverse traffic impacts on local trunk roads and junctions.
- d) There would be increased congestion in the village centre.
- e) Pressure on local GPs, dentists and other infrastructure would be beyond capacity.
- f) There would be increased pressure on public transport.
- g) Water supply and sewage capacity would be challenged.
- h) There would be loss of good agricultural land and countryside.
- i) The setting of listed Radbourne Hall and Silverhill and Potlocks would be harmed.
- j) There is concern that roads may not be adopted.
- k) There would be a need for journeys by car. Traffic mitigation measures would be ineffective.
- l) There would be increased risk of flood, in an area where flooding has occurred.
- m) The provision of shops and school would attract traffic to the area.
- n) Traffic and pollution impact on public footpaths would discourage walkers.
- o) Loss of outlook and property value.
- p) The submission should be in English.

Development Plan Policies

The relevant Saved Local Plan Policies are:

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

Housing Design and Layout SPG

Emerging Local Plan Part One Policies include:

- S1 - Sustainable Growth Strategy
- S2 - Presumption in Favour of Sustainable Development
- S4 - Housing Strategy
- H1 - Settlement Hierarchy
- H20 - Land at Hackwood Farm, Mickleover
- SD1 - Amenity and Environmental Quality
- BNE1 - Design Excellence
- BNE2 - Heritage Assets
- BNE3 - Biodiversity
- BNE4 - Landscape Character and Local Distinctiveness
- INF1 - Infrastructure and Developer Contributions
- INF2 - Sustainable Transport
- INF9 - Open Space, Sport and Recreation

National Guidance

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

Paras 6-10 (Achieving sustainable development)

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

Para 17 (Core principles)

Para 32-34 (Promoting sustainable transport)

Chapter 6 (Delivering a wide choice of quality homes)

Chapter 7 (Requiring good design)

Para 72 (Promoting healthy communities)

Para 109 and 118-123 (Natural environments)

Chapter 12 (Historic Environments)

Para 186 (Decision-taking)

Para 196 & 197 (Determining applications)

Para 203 – 206 (Conditions and obligations)

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

Local Guidance

Housing Design and layout SPG

Planning Considerations

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

- Principle of development and weight afforded to policy;
- Traffic and transport;
- Local services impact;
- Drainage and flood risk;
- Landscape impact;
- Heritage impacts;
- Biodiversity and ecological impacts;
- Urban design & open space;
- Section 106 contributions; and
- Affordable housing.

Planning Assessment

Principle of development and weight afforded to policy

The site lies outside any settlement confine in the open countryside although it lies immediately adjacent to the northern edge of Mickleover on the western side of Derby. There are no site specific policies affecting the land, which is shown as being outside the settlement limits of Mickleover and is therefore subject to open countryside policies (particularly EV1). The proposal conflicts with Saved Policy EV1 which whilst not a housing policy, has an indirect effect of restraining delivery. Notwithstanding this, the policy accepts that some development in the countryside is unavoidable and indeed it could be argued that this proposal could fall as 'unavoidable' given the current shortage in the supply of housing and recognition to date that its development is necessary in

order to meet identified needs (i.e. by way of the emerging Plan allocation). Nevertheless the policy goes on to consider safeguarding character and landscape quality, as well as ensuring all development in the countryside is designed so to limit its impact on the countryside, and these secondary parts of the policy provide a considerable degree of consistency with section 11 of the NPPF. The NPPF's desire to significantly boost the supply of housing must be given significant weight, particularly in light of shortfall of the 5-year housing supply. The emerging Local Plan recognises this and seeks to provide this significant boost in a planned manner, through emerging Policy H20 and its criteria to mitigate impacts arising. It must be recognised that additional housing in this location is very well supported by a range of services. There are also economic benefits arising from the whole proposal - both short and long term, with construction phase employment and subsequent occupation leading to increased revenue to local businesses and services. Setting the above matter aside, the sustainability of the development is paramount with it important to strike the right balance between housing delivery and ensuring the environmental, social and economic needs of occupants and the existing community can be readily met. Whilst a lack of a 5-year supply might engage paragraph 49 of the NPPF, it does not automatically "stand down" local plan policies - merely challenges the weight which may be afforded to them; and an unsustainable development means the presumption in favour set out under paragraph 14 does not apply. With this point in mind attention is given to the impacts of the development and conflict with planning policy. For the presumption in favour of development to apply, sustainability must be viewed in the round, considering infrastructure, landscape, ecology, heritage, design and so forth. It is important to remember that sustainability and sustainable development is subjective - there is no minimum or consistent level beyond which a particular development can be said to be sustainable. It is a concept, and one that is determined differently from one site to another. The remaining parts of the report therefore give consideration to whether any other adverse impacts of granting permission would significantly and demonstrably outweigh the benefits of the proposals, after reaching a balance between the benefits and adverse impacts all the time noting that conditions or obligations may be used to mitigate or address an otherwise unsustainable impact.

Traffic and transport

The proposed means of access to the site would be via the proposed housing development within Derby City and the masterplan proposal indicatively shows two proposed points of vehicular access to the site: Phase 1 from a vehicular access from Station Road, via Spineybrook Way with a new junction on the end of Starflower Way, with Phase 2a in the city including a further means of access directly onto Radbourne Lane. The application is accompanied by a Transport Assessment, which is based on the traffic impacts of the whole development of 700 dwellings, including the Derby City part of the scheme, as well as other significant development locally.

A bus service is proposed to link with the city centre, the Radbourne Lane housing site (currently under construction) and Mickleover District Centre, anticipated to be at a 30 minute frequency and other agreed transport contributions also include erection of a pedestrian/cycle bridge over and ramp to the existing Greenway to link to the existing estate to the south, improvements to Greenway access for the existing estates as well as cycle route and footway improvements to Station Road. These would be secured as part of the agreed package of contributions via a Section 106 Agreement.

The highway safety implications of the development are considered to be acceptable to the County Highway Authority provided the City Council accepts the proposal, since most impacts would be within the city. It is also noted that the Highways Agency raises no objection to the proposal in terms of the impact on the strategic road network.

It is acknowledged that at certain times the local roads are very busy, as are the routes that provide access into the city centre for gaining access to its more comprehensive services. However, the proposal does provide appropriate accessibility and offers realistic opportunities for the use of alternative modes of transport to and from the Mickleover area and the city centre. There is no evidence to show that the proposed development would have any undue impact on the highway network and thus the potential to affect the wider transport infrastructure. The NPPF makes it clear in paragraph 32 that development should only be prevented or refused on transport grounds where the residual cumulative impacts of the development are severe. In this case there is no evidence that the cumulative impact would be severe and as such the proposal is thus considered to be in conformity with Local Plan Saved Transport Policy 6. Notwithstanding the comments received, in highway safety terms the proposal is considered to be acceptable.

Local services impact

With the capacity of the highway network already discussed above, attention turns to the impact on other infrastructure. The site is well connected by a range of routes and modes of transport and the proposed pedestrian/cycle bridge would connect the development to the existing estate. There is also a footpath which runs north-south on the eastern boundary of the site that forms the border between the city and district which links Radbourne Lane with the Greenway and city to the south. The provision of 290 dwellings in addition to those proposed within the city would place pressure on existing schools, healthcare, sports and built facilities. With regard to the consultation responses above, within the city a new primary school is proposed which would serve the whole of the development, those within the city and this development. In terms of impact on secondary school and post-16 provision, children from the site could be satisfactorily accommodated by further expansion at John Port School (for example) as it may be close to capacity now, with other committed developments due to add pressure to local schools in the near future. These contributions are considered to be compliant with the CIL Regulations and paragraph 204 of the NPPF and can be secured by way of a Section 106 agreement. As for waste and recycling needs, whilst existing facilities in the District are already over capacity, the County recognises a request for a contribution would no longer be CIL compliant due to restrictions on the pooling of funds. The request for a contribution towards healthcare provision has been tested against the same CIL limitations and the request identifies that an existing and relevant capacity issue exists and that the intended purpose of the sum and the amount sought are compliant both in terms of being proportionate and for a particular project where there are no committed sums to date. This request can also be secured under a Section 106 agreement. It should also be noted that in addition to the sum sought, the proposed neighbourhood centre within the city land would reserve an area of land for a medical centre if the NHS wishes to take up that option. A generous amount of open space would be provided on the site as a whole, with a large area on the periphery of the proposal, as shown on the indicative masterplan. A play area is also proposed within the application site along with additional facilities within the city applications. No sports or built facilities would be provided on site but the development would lead to additional pressure on existing facilities elsewhere. There are identified projects at Etwall Leisure

Centre which would mitigate the additional demands that the new development would place upon the facility hence the requested sums are considered to be CIL compliant.

Drainage and flood risk

Severn Trent Water does not lodge an objection and evidence suggests there is sufficient capacity to receive foul water flows from the development. A conditional approach is considered appropriate. Surface water is to be drained to the watercourse via SuDS at a limited discharge rate and the Environment Agency agrees with this principle subject to further details before development commences. There have been problems with surface water flood water from the fields the subject of the application affecting homes in the city to the south of the site and therefore this issue is of particular importance locally. However, the city development includes the provision of surface water attenuation to ensure that the development within the city provides additional capacity to address that concern and the development the subject of this application within the district is able to be suitably drained whilst not increasing the risk of flooding elsewhere. Sustainable Urban Drainage Scheme (SUDS) are to be incorporated within the scheme, as shown on the illustrative masterplan in the form a swale and a surface water attenuation area to the south of the housing, discharging to an existing watercourse adjacent to the site. The Environment Agency has stated that it raises no objection to the proposal subject to a condition which secures details of surface water drainage. The condition would secure appropriate surface water drainage techniques, fulfilling policy objectives to ensure flood risk is not exacerbated on or off site. Notwithstanding the comments submitted, in terms of flood risk the proposal is considered to be acceptable.

Landscape impact

The site carries no statutory or local landscape designations. Nevertheless the absence of a landscape designation does not translate to a landscape which is not valued, and in turn one which the NPPF does not seek to protect. The correct approach, when reading section 11 of the NPPF as a whole and supported by an increasing number of appeal decisions, is to first determine what value the landscape has (if any) before determining the correct response to planning proposals. The site is located within the local characterisation of the Settled Farmlands Landscape Character Type (LCT). The landscape context of the site includes the existing urban edge to the south and east. Open agricultural land to the north and west is characterised by an undulating landform with mixed woodland groups. The site currently comprises agricultural fields but is also influenced by its context of a transition between the existing urban edge and the wider landscape. The scheme would introduce residential development into a part of this wider landscape which is considered to be in keeping with the immediate context of the site. There would be a limited amount of tree and hedgerow removal, however new hedgerows and tree planting would be introduced. The requirements of emerging policy H20 would also be adhered to with a green buffer and landscaping on the north and western boundaries of the site, to help soften the impact on the surrounding rural landscape. The development is considered to be consistent with the LCT and would not materially undermine the character of the area.

The development would be prominent from near distance views from the immediate boundaries of the site, as well as from the established housing estates of Mickleover. There are also close views from the public footpath that passed through the site itself as well as the Greenway. Visual effects on receptors in these locations in the short term

would generally be moderate to major adverse, due to their close proximity. However whilst the development would be visible, this would be from a relatively localised area and where it will be seen in the context of wider urban form. The harm arising here is not considered to be significant.

One of the core planning principles in NPPF at paragraph 17 is to recognise the intrinsic character and beauty of the countryside and states that the countryside has an intrinsic beauty and it has to be acknowledged that the site is located within an attractive rural scene, on the edge of the city. However, this can be mitigated to a certain extent through good design and the illustrative masterplan shows a significant woodland buffer to the Radbourne Lane frontage, as well as landscaping on the western periphery. There is a clear opportunity to provide a built form that creates a high quality environment incorporating local distinctiveness in accord with paragraph 60 of the NPPF and Saved Housing Policy 11 of the Local Plan. Whilst the detail would be considered at reserved matters stage, the submitted masterplan and Design and Access Statement provide a sound basis for this to happen and the development would appear as a logical extension to the city.

Heritage impacts

In terms of heritage assets as defined by the NPPF, the overall development site, including those within Derby City, does not contain any designated heritage assets, i.e. Listed buildings, Scheduled Monuments, Conservation Areas, etc. However, there is a recognised archaeological interest on and around the site, in term of evidence of medieval agriculture (ridge and furrow field patterns) and previous isolated archaeological finds on the site. The development would potentially impact on the setting of three nearby listed buildings to the west of the site, including Potlocks Farm and Silverhill Farm, both Grade II and Radbourne Hall, a Grade I listed country house, and it's associated features both listed and non-listed, within parkland estate. The submitted heritage impact assessment identifies that the proposed development would have a limited impact on the setting of Radbourne Hall and Silverhill Farm, with a moderate effect on Potlocks Farm, which is nearest in distance from the western boundary of the site.

Whilst Historic England has identified the main impact on setting would be to Potlocks Farm it is considered that the proposal would result in only very limited harm. The overall masterplan proposal is not considered to have a significant adverse effect on any of the nearby listed buildings, particularly with the proposed landscaping buffer zone on the western boundary of the site.

The desk based assessment and geophysical survey of the archaeological interest on the site have identified that there is potential archaeology within the site, although there are unlikely to be remains of significant historic significance. The County Archaeologist advises that conditions requiring further evaluation would be sufficient to safeguard heritage assets under the surface of the site and this can be secured by means of a suitable planning condition in line with NPPF para 141. This approach is considered to be appropriate and proportionate and as such would be compliant with Saved Environment Policy 14 and NPPF Chapter 12.

Overall, it is considered that the proposed development would respect and safeguard the setting of affected listed buildings in the area as well as the potential archaeological interest on the site.

Biodiversity and ecological impacts

Various species of farmland nesting birds have been identified on and around the site and potential impacts are identified within the Ecological Appraisal along with mitigation measures to safeguard species and habitat and to create habitat or enhance retained habitat have been recommended to ensure that there is no significant adverse effect on the ecological value of the site. The proposed creation of new water features and planting buffer zones would provide an enhanced habitat which would address the loss of existing wildlife features and result in an ecological benefit to the scheme. The loss of nesting habitat for farmland birds from the Phase 1 part of the development site within the city are to be compensated for on off-site plots to the south west of this application site.

The site has numerous trees which are primarily located along existing field boundaries. The masterplan proposals indicate the retention of many of the trees, within areas of public open space, either in hedgerow corridors or the formal open spaces. This is broadly welcomed and would contribute to the character of the development as well as retaining wildlife habitat.

Overall it is considered that the ecological interest on and around the site, in terms of important habitats and protected species, has been properly assessed and suitable mitigation measures and new habitat areas are proposed to safeguard the nature conservation value of the site during and following construction of the development. Derbyshire Wildlife Trust considers that the ecological works have been undertaken to an appropriate standard and that they enable an accurate assessment to be reached. Its comments relate to securing farmland nesting bird mitigation which can be secured through the imposition of a suitably worded condition.

Any loss of habitat would be appropriately replaced elsewhere on the site and potential disturbance to protected species and habitats would be subject to a suitable scheme of mitigation and enhancement measures.

Urban design & open space

The application is in outline only and all matters are reserved for future approval therefore it is not possible to carry out a full Building for Life assessment at this stage. Nevertheless the proposal presents some key aspects that would form the basis of a good scheme in urban design terms. It would be well served by the public transport and within an acceptable distance of numerous facilities within the city, including educational, commercial and community facilities that help to make it a sustainable development, whilst also providing some facilities on site within the neighbourhood centre and with the primary school. The illustrative masterplan has evolved in conjunction with the City Council to incorporate features promoted by the Council's Design Excellence Officer and it is considered that the masterplan provides a sound basis from which the development can be planned and evolved. Issues relating to design and layout of the houses, how they relate to spaces, crime reduction measures and the provision of parking would be addressed through reserved matters submissions, although the principle objectives for these can be secured by conditions at this stage. In view of the urban design and open space matters considered above, the proposal would accord with Chapter 8 of the NPPF and Saved Recreation and Tourism Policy 4 of the Local Plan.

Section 106 contributions and viability implications

This application forms part of a joint, cross boundary development with the city and the nature of the master planning of the site has resulted in the majority of the infrastructure necessary to deliver the scheme being provided within the city and subject to their applications.

Specifically for the city applications the proposed Section 106 package for their applications would secure the following:

Primary School – Provision of a one form entry school with land and core infrastructure for a one and half form entry school.

Secondary School – At present there would be sufficient capacity in Murray Park to accommodate the number of pupils generated by the development. There would be an assessment of capacity on 50% occupation and a contribution per school place on remaining 50% if there's no spare capacity.

On Site Public Open Space – Provision of on-site incidental and major public open space to standards set out in the Planning Obligations Guidance, to be transferred to a management company for management and maintenance.

Highways and Sustainable Transport –

1. An annual contribution for 3 years, towards a bus service to access the site and provide links with the wider area, including Mickleover District Centre and Derby City Centre. The bus frequency would be every 30 minutes.

2. The provision of a pedestrian/ cycle bridge over the Mickleover/Egginton Greenway and a further contribution towards a path linking the site with the existing residential area of Mickleover. A commuted sum to the Council for maintenance of the pedestrian/ cycle bridge.

3. Improvements to the ramp leading to Mickleover Greenway footpath/ cycleway.

4. A contribution towards sustainable transport measures including:

- a) Footway improvements along Station Road;
- b) Measures to reduce any blocking back on Uttoxeter Road / reduce any rat running along Western Road; and
- c) Remodelling of the timings at the new traffic lights associated with Radbourne Lane to provide capacity for the new traffic.

In addition to the above listed contributions that would be delivered within the city, there are additional specific contributions that would be necessary to off-set the impacts of this development within South Derbyshire. Ordinarily these would be, namely:

1. Built Facilities Contribution towards identified improvements at Etwall Leisure Centre which would ordinarily equate to a maximum of £116,754 at a rate of £122 per person.

2. Outdoor Facilities Contribution towards identified improvements at Etwall Leisure Centre which would ordinarily equate to a maximum of £210,540 at a rate of 220 per person.

3. £775,751.48 towards the provision of 44 secondary school places at John Port School (or other appropriate alternative).

4. £316,674.30 towards 17 post-16 education places at John Port School.

5. On site Public Open Space and Play Equipment – Provision of on-site incidental and major public open space as well as play equipment to reflect the masterplan, to be transferred to a management company for management and maintenance.

6. On site Sustainable Urban Drainage (SUDS) – Provision of SUDS to reflect the masterplan, to be transferred to the City or District Council (subject to the payment of £231,500 towards maintenance if transferred to the District), or a management company for management and maintenance.

7. £110,316 Southern Derbyshire CCG to offset capacity issues.

8. 30% affordable housing with 75% being social rent and 25% being intermediate/shared ownership.

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

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

In this case it is accepted that contributions towards built and outdoor facilities (points 1 and 2), education (points 3 and 4), open space and play equipment plus maintenance (point 5), SUDS and SUDS maintenance (6), NHS contribution (point 7) as well as for affordable housing (point 8) are compliant in principle and are requirements that can be delivered through a S106 Agreement.

With regards to the request from the County Council in respect of the provision of access to broadband for the site and for new homes being designed to lifetime homes standards, it is considered that at present there is no policy basis on which to secure those request and as such these are not required.

It should also be noted that the County Council's Policy Section accepts that the proposed new primary school in Phase 2a (Derby City) would serve the application site, subject to normal areas being redefined accordingly.

Attention is given to the proportion of affordable housing. Emerging policy sets a starting point of 30% (point 8 above) with any reduction to be evidenced by way of viability work,

whilst the NPPF advocates a need to provide a range of housing options. The SHMA also evidences such a need. The NPPF does, however, highlight that viability of development is a material planning consideration, directly affecting deliverability of schemes. The applicant advances that the scheme cannot achieve 30% affordable housing provision and has provided appropriate evidence. The District Valuer considers the provision of 16% affordable housing to be viable with a split of 78% social rent, 22% intermediate/shared ownership, as well as the provision of five dwellings to be what are referred to as “Discounted Market Dwellings”, consistent with the typologies of affordable housing in the city applications. This would still give rise to a range of dwellings for social/affordable rent and shared ownership purposes, helping to boost affordable housing delivery and contribute to current shortfalls in provision, and could be secured by way of a planning obligation and as such has been agreed with the Council’s Housing Strategy Manager.

With regards to the Built Facilities Contribution, Outdoor Facilities Contribution as well as NHS contribution (points 1, 2 and 7 above) the viability of scheme is such that the provision of all three of these sums would not be able to be achieved within the scope of a viable scheme without further reductions to the affordable housing. In order to provide a balance of mitigation in respect of the development it is recommended that the whole of NHS contribution set out in point 7 above, i.e. £110,316, should be provided but to compensate for that figure the Built Facilities Contribution should be reduced to £61,596 and the Outdoor Facilities Contribution reduced to £155,382.

Conclusion

The application relates to one of the Council’s preferred sites put forward for a cross boundary housing development through the Local Plan process in conjunction with Derby City Council and proposes up to 290 homes.

By reference to the NPPF’s (Para 7) three sustainability dimensions (economic, social, environmental) the provision of new housing would support economic growth, ensuring an attractive place to live for South Derbyshire’s economically active population. Construction jobs would also be created. This is supported by the site’s accessibility to Mickleover and Derby city centre served by public transport. The proposed scheme would have a significant positive impact on local communities by providing new homes (market and affordable).

In terms of healthy communities the illustrative masterplan includes open space along with pedestrian/cycle links which would help to support active lifestyles and encourage alternatives to the car for accessing local facilities.

The reports accompanying the application explain how a range of environmental factors have been taken into account to ensure sustainable development (including transport, landscape, ecology, archaeology, and water). Mitigation has been included within the scheme to ensure the conservation and enhancement of key features. The scheme also helps to mitigate future climate change through reducing CO2 emissions by building new homes in an accessible location and reducing the need to travel by car. In terms of resilience to climate change impacts, the scheme has been designed to take this into account, namely through provision of a sustainable drainage strategy.

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

Recommendation

A. That delegated authority be granted to the Planning Service Manager to complete an agreement under Section 106 to secure financial contributions set out in the “Section 106 contributions and viability implications” section of the report above; and

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

1. Approval of the details of the access, appearance, landscaping, layout and scale (hereinafter called “the reserved matters”) for the development shall be obtained from the Local Planning Authority in writing before any development is commenced. Plans and particulars of the reserved matters shall be submitted in writing to the Local Planning Authority and the development shall be carried out as approved.

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

2. 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.

3. No part of the construction of any of the dwellings hereby approved shall take place 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 that particular dwelling 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 character and appearance of the area.

4. Prior to the commencement of development details of the off-site landscaping buffer immediately to the west of the site to reflect the details shown on the approved masterplan together with a timetable for its provision as well as its ongoing management shall be submitted to and approved in writing by the Local Planning Authority. The landscaping buffer shall be provided and thereafter maintained in accordance with the details agreed and shall be retained throughout the lifetime of the development.

Reason: To safeguard the character of the countryside and heritage assets in the interests of visual amenity.

5. The details submitted under condition 1 shall include details of the internal road layout of the site designed which shall be in accordance with the principles contained in Manual for Streets and to conform to the “6C’s Highways Design

Guide", as well as a swept path diagram which demonstrates that HGVs, emergency and service vehicles can adequately enter and manoeuvre within the site and leave in a forward gear.

Reason: In the interests of highway safety.

6. A dwelling shall not be occupied until the proposed new estate street, between the respective plot and the existing public highway has been laid out in accordance with the approved reserved matters drawings, such drawings to conform to the County Council's design guide, constructed to base level, drained and lit in accordance with the County Council's specification for new housing development roads.

Reason: In the interests of highway safety.

7. Prior to a dwelling being first occupied parking and if appropriate turning space shall be provide in accordance with the "6C's Highways Design Guide" and these shall be retained throughout the life of the development free of any impediment to their designated use.

Reason: In the interests of highway safety.

8. Before development begins details of how the Travel Plan submitted with the application will be implemented, including timetables (which may provide for phased implementation), shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented in accordance with the timescales specified therein, to include those parts identified as being implemented prior to occupation and following occupation, unless alternative timescales are agreed in writing with the Local Planning Authority. Reports demonstrating progress in promoting sustainable transport measures in accordance with the objectives of the Travel Plan shall be submitted annually to the Local Planning Authority for approval for a period of five years from the date of first occupation of the relevant phase of the development. In the event of an annual report concluding that the objectives of the Travel Plan are not being met, the annual report shall also include for the approval of the Local Planning Authority a scheme detailing remedial measures to be undertaken in order to achieve the objectives of the Travel Plan, as well as a timetable for the implementation of the remedial measures. The scheme detailing the remedial measures shall be implemented as approved and in accordance with the approved timetable.

Reason: In the interests of highway safety.

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

- a) Surface water run-off leaving the site is restricted to QBAR for all events up to a 1 in 100 year flood, including an allowance for climate change;

- b) Surface water run-off is attenuated on-site up to the critical 1 in a 100 year flood event, including a allowance for climate change, through the submission of drainage calculations;
- c) Design details of the proposed balancing pond, including cross-sections and plans; and
- d) How the scheme shall be appropriately maintained and managed upon completion.

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

10. The development hereby permitted shall not be commenced until such time as detailed designs for the construction of the swales and other surface water drainage features shown on the submitted 'Foul and Surface Water Drainage Strategy' (Drawing Number 10446/SK/190 Rev A, dated 16 May 2014) included as Appendix F to the Flood Risk Assessment and Drainage Strategy are submitted to and approved in writing by the Local Planning Authority in consultation with the Environment Agency. The detailed designs shall demonstrate through the submission of plans, drawings, calculations and (where necessary) modelling:

- a) The alignment of the swales and the interactions / connections with the existing land drainage system and to be agreed on-site surface water drainage systems;
- b) That surface water drainage features (e.g. swale, pond etc.) are capable of conveying flood flows without increasing the risk of flooding to third parties; and
- c) How the design of the surface water drainage features make a net positive contribution to biodiversity.

The swales and other surface water drainage features shall be constructed in accordance with the approved detailed designs and shall be operational prior to construction of the built development, other than enabling and infrastructure works, unless otherwise agreed in writing by the Local Planning Authority in consultation with the Environment Agency.

Reason: To ensure the swales and other surface water features are designed and built to reduce flood risk to third parties; and to make a positive contribution to biodiversity.

11. The development hereby permitted shall not be commenced until such time as a scheme for the interception, collection and management of surface water run-off emanating from land to the north of Radbourne Lane is submitted to and approved in writing by the Local Planning Authority in consultation with the Environment Agency. The scheme to be submitted shall demonstrate that surface water run-off can be appropriately managed on-site without posing a risk of flooding to the proposed development. The scheme shall be implemented as approved and in accordance with a timetable to be agreed.

Reason: To manage the risk of flooding posed by surface water run-off emanating from land to the north of Radbourne Lane.

12. The development shall be implemented in strict accordance with the ""Mitigation and Enhancement Measures"" as set out in section 9.5 of Chapter 9 Ecology of

the "Hackwood Farm Environmental Statement" which accompanies the application.

Reason: To protect ecological interests.

13. The development shall be implemented in strict accordance with the "Protection Measures" set out in paragraphs 4.32 to 4.34 and the "Biodiversity Enhancement" measures set out in paragraphs 4.35 to 4.40 of the "Hackwood Farm, Mickleover, Phase 2b Ecological Appraisal Report" prepared by FPCR dated June 2014.

Reason: To protect ecological interests

14. Notwithstanding the submitted details prior to the commencement of development details of measures to deliver increased opportunities for grey partridge to be provided within the most south-western of the two farmland bird mitigation plots shall be detailed in a "Habitat Creation and Management Plan" which shall be submitted to and approved in writing by the Local Planning Authority. The "Habitat Creation and Management Plan" shall be implemented as approved.

Reason: To protect ecological interests

15. No part of the development shall take place until details of the proposed means of disposal of foul sewage for the phase have been submitted to and approved in writing by the Local Planning Authority. All foul water shall be directed into the main foul sewerage system. The development shall be carried out in accordance with the approved details.

Reason: To ensure that adequate drainage facilities are provided.

16.
 - a) 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 any part of the development 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) If required by the conceptual model, no development shall take place until monitoring at the site for the presence of ground gas and a subsequent risk assessment has been completed in accordance with a scheme to be agreed with the LPA, which meets the requirements given in Box 4, section 3,1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.

Reason: To protect human health.

17. 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 human health.

18. a) No development shall take place until a Written Scheme of Investigation for archaeological work has been submitted to and approved by the Local Planning Authority in writing, and until any pre-start element of the approved scheme has been completed to the written satisfaction of the Local Planning Authority. The scheme shall include an assessment of significance and research questions; and
- (i) The programme and methodology of site investigation and recording
 - (ii) The programme for post investigation assessment
 - (iii) Provision to be made for analysis of the site investigation and recording
 - (iv) Provision to be made for publication and dissemination of the analysis and records of the site investigation
 - (v) Provision to be made for archive deposition of the analysis and records of the site investigation
 - (vi) Nomination of a competent person or persons/organization to undertake the works set out within the Written Scheme of Investigation
- b) No development shall take place other than in accordance with the archaeological Written Scheme of Investigation.
- c) The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the archaeological Written Scheme of Investigation and the provision to be made for analysis, publication and dissemination of results and archive deposition has been secured.

Reason: To ensure that archaeological interests at the site are suitably addressed.

19. No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved, unless otherwise agreed in writing by the Local Planning Authority. These details shall include trees to be retained showing their species, spread and maturity; proposed finished levels or contours; means of enclosure; car parking layouts; other vehicle and pedestrian access and circulation areas; hard surfacing materials; minor artefacts and structures (e.g. furniture, play equipment, refuse or other storage units, signs, lighting etc.); proposed and existing functional services above and below ground (e.g. drainage power, communications cables, pipelines etc. indicating lines, manholes, supports etc.).

Reason: In the interests of visual amenity.

20. For the purposes of condition 19 above soft landscape works shall include planting plans; written specifications; schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate; and implementation programme.

Reason: In the interests of visual amenity.

21. All hard and soft landscape works approved pursuant to condition 19 above shall be carried out in accordance with the approved details and finished not later than the first planting season following completion of the relevant phase of the development.

Reason: In the interests of visual amenity.

22. A landscape management plan, including an implementation strategy, long term design objectives, management responsibilities and maintenance schedules for all landscape areas, other than privately owned domestic gardens, shall be submitted to and approved in writing by the Local Planning Authority as part of the reserved matters submission. The landscape management plan shall be implemented as approved.

Reason: In the interests of visual amenity.

23. Any tree or shrub which forms part of the approved landscaping scheme pursuant to Condition 19 which within a period of five years from planting fails to become, established, or becomes seriously damaged or diseased, or dies, or for any reason is removed, shall be replaced in the next planting season by a tree or shrub of a species, size and maturity to be approved in writing by the Local Planning Authority.

Reason: In the interests of visual amenity.

24. No site clearance works or development shall take place until there has been submitted to the Local Planning Authority for their written approval a scheme showing the type, height and position of protective fencing to be erected around each tree or hedgerow to be retained in that phase. The scheme shall comply with BS 5837:2005.

The area surrounding each tree or hedgerow within the protective fencing shall remain undisturbed during the course of the works, and in particular in these areas:

- (i) There shall be no changes in ground levels;
- (ii) No material or plant shall be stored;
- (iii) No buildings or temporary buildings shall be erected or stationed;
- (iv) No materials or waste shall be burnt within 20 metres of any retained tree or hedgerow; and
- (v) No drain runs or other trenches shall be dug or otherwise created; without the prior written consent of the Local Planning Authority.

Reason: To ensure adequate protection measures are in place in the interests of the character of the area.

25. No development shall take place until there has been submitted to and approved in writing by the Local Planning Authority a plan indicating the positions, design, materials and type of boundary treatment to be erected within the development. The boundary treatment shall be completed in accordance with a timetable

agreed in writing with the Local Planning Authority. Development shall be carried out in accordance with the approved details.

Reason: In the interests of visual amenity.

26. No development shall take place until details of the materials proposed to be used on the surfaces of the roads, footpaths, car parking areas and courtyards along with samples of the materials to be used on the external surfaces of the buildings have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out using the approved materials unless otherwise agreed in writing with the Local Planning Authority.

Reason: In the interests of visual amenity.

27. No development shall commence before details of the finished floor levels of each building has first been submitted to and approved in writing by the Local Planning Authority. The buildings shall be constructed in accordance with the approved details.

Reason: In the interests of visual amenity.

28. No development shall commence until the Local Planning Authority has approved in writing the details of and arrangements for the setting out of the public open space within the development. Such arrangements shall address and contain the following matters:

(i) The delineation and siting of the proposed public open space within the development.

(ii) The type and nature of the facilities to be provided within the public open space, including where appropriate the provision of play equipment within a play area, which shall be supplied and installed to a specification as agreed by the Local Planning Authority.

(iii) The arrangements to ensure that the public open space is laid out and completed during the course of the development.

(iv) The arrangements for the future management and maintenance of the public open space.

The public open space within the development shall be completed in accordance with the approved details.

Reason: To ensure adequate and appropriate open space and associated facilities are provided.

29. Within 12 months of the commencement of the operation of the approved surface water drainage scheme required by condition 9 above, it shall be certified as completed in accordance with the approved drawings/documents by a Chartered Surveyor or Chartered Engineer.

Reason: In the interests of flood protection.

30. The reserved matters submitted in accordance with condition 2 and details submitted in accordance with any other condition of this planning permission shall accord with the principles contained within the Design and Access Statement Ref: EMS.1790 dated June 2014 as amended by the addendum to Design and Access Statement Ref: EMS.1790_10-2 dated 4th December 2014 and as shown on the revised Masterplan Concept Drawing Ref: EMS.1790_21-1-

O dated 6th November 2014 as well as the Open Space Typologies Plan Ref: EMS.1790_28-1H dated 7th November 2014.

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

Informatives:

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

The applicant is advised that following consultation with Derbyshire County Council Rights of Way Section, they advise the following as a result of Radbourne Public Footpath No.9 abutting the site:

- a) The route must remain open, unobstructed and on its legal alignment at all times.
- b) There should be no disturbance to the surface of the route without prior authorisation from the Rights of Way Inspector for the area.
- c) Consideration should be given to members of the public using the route at all times.
- d) A temporary closure of the route may be granted to facilitate public safety subject to certain conditions. Further information may be obtained by contacting the Rights of Way Section.
- e) If a structure is to be erected adjacent to the right of way, it should be installed within the site boundary so that the width of the right of way is not encroached upon.

The applicant is advised that following consultation with Derbyshire County Council, they advise the following:

- a) The developer makes enquiries with broadband providers and ensures that future occupants have access to sustainable communications infrastructure, giving appropriate thought to the choice and availability of providers which can offer high speed data connections. Further advice can be found at:

http://www.openreach.co.uk/orpg/home/contactus/connectingyourdevelopment/downloads/developers_guide.pdf

- b) Any works in or within close proximity to an 'ordinary watercourse' (e.g. an outfall that encroaches into the profile of the watercourse) would require consent under the Land Drainage Act 1991 from the consent authoriser (the County Council). The Flood and Water Management Act came into force in 2010 and designated the County Council as a Lead Local Flood Authority. As of the 6th April 2012 the Flood and Water Management Act transposed consenting powers under the Land Drainage Act to the County Council. Therefore any works in or nearby to an ordinary watercourse require consent from the County Council. Upon receipt of any application (including the legislative fee) the County Council has an 8 week legislative period in which to make a decision and either consent or object the proposals. If the applicant wishes to make an application for any works please contact the County Council.

- c) The County Council holds British Geological Survey (BGS) data under a licenced agreement and therefore is not licenced to reproduce this information into the public

domain.

An analysis of the BGS data is summarised below:

- o Groundwater may be vulnerable to contamination therefore infiltrating water should be free of contaminants;
- o Groundwater is likely to be less than 3m below the ground surface for at least part of the year;
- o The subsurface is potentially suitable for infiltration SuDS;
- o Ground instability problems may be present or anticipated. Increased infiltration is unlikely to result in ground instability.
- o It is recommended that a site specific ground investigation is undertaken based on the review of the BGS data.

d) Domestic sprinkler systems are exceptionally effective through their ability to control a fire and help prevent loss of life. As a minimum, new residential development should incorporate a 32mm mains water riser which will enable the installation of domestic sprinkler systems, and ideally should incorporate the sprinkler systems themselves. The cost of installing a 32mm mains water riser is approximately £26 per dwelling and the cost of a domestic sprinkler system is approximately £1500. Derbyshire Fire and Rescue Service should be consulted on this application so that they can advise on the implications of this proposal for fire safety and the potential for the installation of 32mm mains water risers and sprinkler systems.

The applicant is advised that following consultation with Derbyshire County Council as Local Highway Authority, they advise that as part of the B5020 lies within the County you are advised to contact Mike Hawkins on 01629 538609 in the Traffic and Safety Section regarding this matter.

The applicant is advised that following consultation with the Environment Agency, they advise that when seeking to discharge planning condition 9 above, preference should be given to designs that maximise the biodiversity potential of the balancing pond such as permanently wetted deeper areas to the centre and wide, shallow draw down zones which allow for variation in hydrological regime.

The applicant is advised that following consultation with the Council's Contaminated Land Officer, he advises that remaining phased risk assessment including the submission of supporting evidence and validation work as required in Part B of the above conditions should continue be carried out in accordance with the procedural guidance of the Environmental Protection Act 1990 Part 2A. 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

Reports in electronic formats are preferred, ideally on a CD. For the individual report

phases, the administration of this application may be expedited if a digital copy of these reports is also submitted to the Environmental Protection Officer (contaminated land) in the Environmental Health Department: thomas.gunton@south-derbys.gov.uk.

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.

Item 1.3

Reg. No. 9/2014/0740/OM

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

Ward: **WOODVILLE**

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

Members will recall this application was deferred from the 25 August 2015 committee in order to explore further options for the Woodville Road access and clarify highway related questions raised by the committee. The report remains as it appeared on the agenda for the August committee; however, additional discussion in respect of the above matters appears within the report in italics.

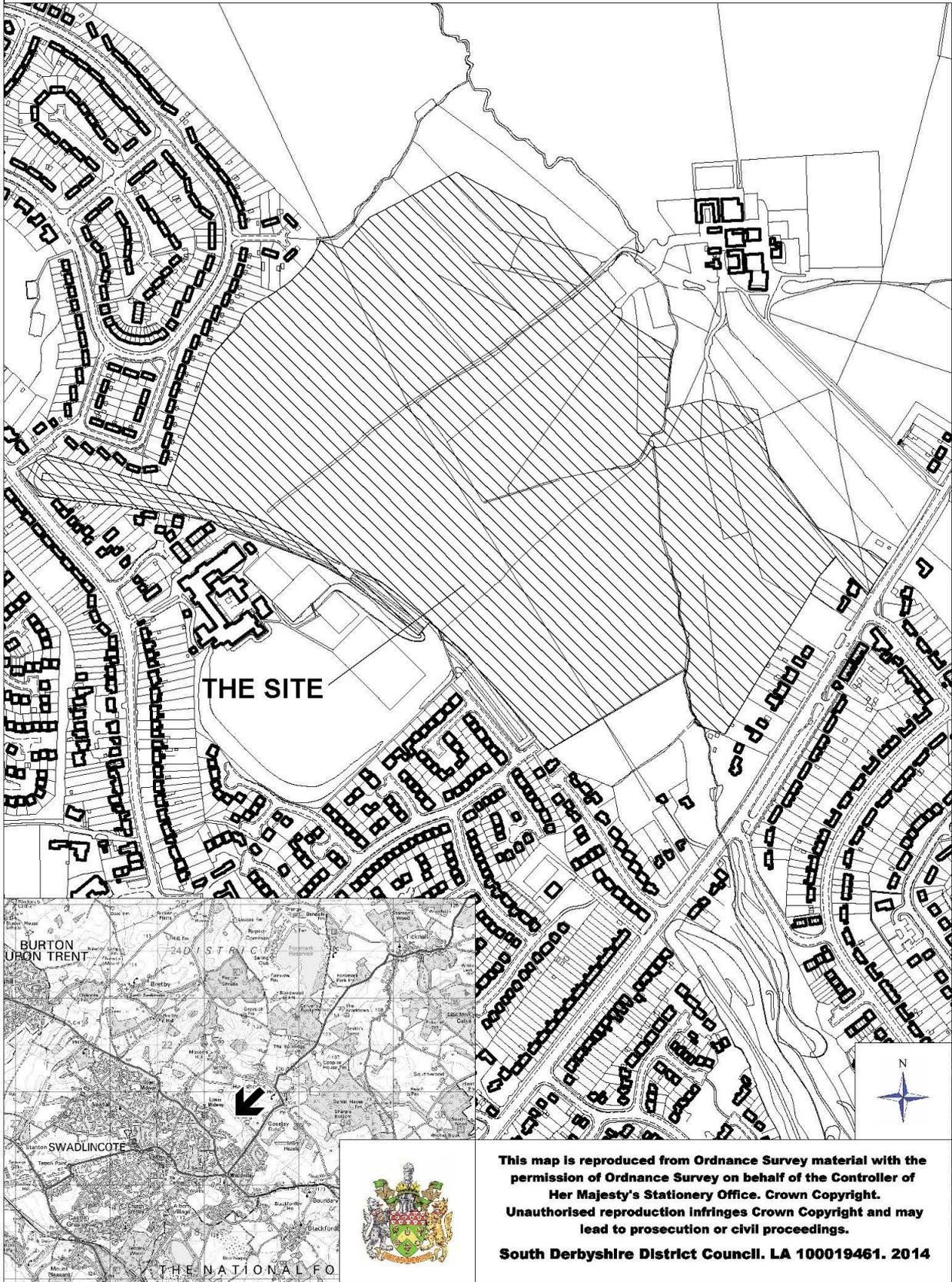
Reason for committee determination

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

Site Description

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

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



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

Proposal

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

Applicant's supporting information

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

Design and Access Statement (DAS) outlines its supporting purpose in informing the design of the proposals, considering the site and its surroundings in terms of the physical, social and planning context and identifying the site's constraints and opportunities to present the design principles that have been derived. It also outlines the stakeholder participation and consultation undertaken as well as its key findings. The DAS considers access for all ages and abilities and what design solutions could be implemented to encourage sustainable modes of transport and facilitate movement for disabled persons. The main road would be suitable for busses whilst the existing PRoW would be retained and enhanced. Street typologies are explored with the primary, secondary and tertiary routes creating a legible hierarchy of streets that play an important role in the creation of character, both across the scheme as a whole and at a more local level. Whilst Layout is reserved at this stage, a clear concept has been developed that can ultimately inform the location of streets, spaces, and buildings. The proposals have also been influenced by the characteristics of the site, its surroundings, the context of the local area and a series of good design principles, establishing a scheme that is rural in nature yet creates an urban edge to the existing settlement that

would be harmonious to the setting of the surrounding landscape and provide a positive frontage to open spaces.

Keynote buildings would be carefully sited to act as focal points within the scheme to aid legibility and help create an attractive street scene. They should also address important vistas throughout the scheme and will act as visual prompts for residents and visitors. Specific types of POS would be provided, including formal, informal amenity and space for children and young people. National Forest planting would also be provided. Pedestrian safety would be achieved by securing reduced vehicle speeds through the design of the internal access roads and differences in road surface treatment.

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

A Flood Risk Assessment identifies local watercourses run in a north-westerly direction through the site and are considered to be the primary flood risk to the development. Modelled flood levels during standard and extreme events and it is found that flood levels within the site varied but do not step significantly away from the watercourses. A recommendation that internal floor level are elevated at least 150mm above the finished external ground level is given, so to ensure any overland flows do not enter the new buildings.

Dry access and egress is considered to be essential during extreme flood events and that the link road is located within flood zone 1 as far as practicable. A drainage approach utilising SuDS is recommended, which includes infiltration as the first tier although further investigation will need to confirm that this would be a practical solution for the site. However other SuDS techniques can be used and attenuation needs have been calculated. The second tier is to discharge to a watercourse.

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

Severn Trent Water has confirmed that capacity would be made available as and when necessary.

The Ecological Assessment identifies the site is not covered by any statutory designation, and there are no statutory sites within a 1km radius, SSSIs within a 2km radius or Special Protection Areas and Special Areas of Conservation within a 5km radius. The Woodville Disused Railway potential Local Wildlife Site (pLWS) is situated to the south west of the study area and is highlighted as a potential unimproved grassland site. However the assessment identifies the habitats within this area do not meet the criteria to be designated as unimproved grassland and therefore loss of this site would not result in the loss of a pLWS. No further LWS or pLWS designations were identified within the study area. 32 bird species were recorded within the study area during the breeding bird surveys. All were common and widespread birds in Derbyshire and the UK, some are on the red and amber watch list. However only minor negative residual impacts are predicted on the local populations of skylark and yellowhammer. The overall assessment of potential effects to the local breeding bird population is that the development would not result in significant effects. No evidence of badger activity was identified within or on accessible land within 30m of the proposed site. The presence of bats using hedgerows and trees for foraging and commuting was observed, connecting with habitat immediately off site providing higher suitability for foraging and commuting through the wider area. No buildings are present within the study area and no trees were identified with suitable features for roosting bats. As such the presence of a roost site has not been identified as a statutory constraint to the proposed development. No Great Crested Newts were recorded within the pond on site or within any of the waterbodies surveyed within 500m of the site boundary and a reptile presence/absence survey did not record any reptiles or evidence of reptiles.

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

A Landscape & Visual Impact Assessment (LVIA) notes there are no formal planning designations relevant to landscape on site. The Landscape Character of Derbyshire (2003) assessment provides a basis for assessment and it is considered views towards the site from the west, south and south-east are limited by the existing settlement edge of Woodville, whilst there are a limited number of near distance views from the immediate boundaries of the site. There are also close views from the PRow's which cross the site. The site is located on a north facing slope and as such there are views

from the north from higher ground. These more distant views are often somewhat filtered by subtle interactions and changes between the landform, associated vegetation and built form. The scheme would therefore be visible from a relatively localised area only and where it would be seen, the highest degree of adverse effects is limited to close views only. On the basis of this LVIA, in landscape and visual terms, development of the nature and scale proposed is considered to be acceptable.

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

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

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

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

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

Air Quality Assessment confirms that the air quality effects of residential developments are dictated by the level and nature of traffic into and out of the proposed development and the effect this has upon existing traffic regimes. The Assessment considers three scenarios (reference case, with development and with development and the SRR). It is concluded that none of the receptors would be exposed to pollutants approaching the

limits identified within the National Air Quality Objectives and the proposed development does not create or exacerbate any problems regarding air quality.

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

Planning History

None relevant.

Responses to Consultations

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

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

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

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

Derbyshire Wildlife Trust raises no objection noting that surveys have been carried out to an acceptable standard. They concur with the assessment that the Woodville Disused Railway potential local wildlife site is unlikely to meet the criteria to be designated as a local wildlife site and, as such, does not present a constraint to the proposal, and that there are unlikely to be any impacts on protected species, including badger, great crested newts, roosting bats and reptiles. However it is noted little consideration has been given to any riparian species associated with the watercourse such that it is essential for a suitable undeveloped buffer to be maintained alongside it, and that any specific works required, such as road crossings, are preceded by an appropriate ecological survey and mitigation. It is understood and accepted that some hedgerow loss is inevitable but they would expect any loss to be kept to the absolute

minimum, appropriately timed to avoid the nesting season, and that sufficient new hedgerow planting is provided to ensure there is no net loss of hedgerow priority habitat as a result. No ecologically important hedgerows in terms of the Hedgerow Regulations are to be removed. In addition they expect the retained hedgerows to be incorporated within green corridors rather than as private garden boundaries to the new dwellings, as their long-term retention and appropriate management cannot be guaranteed with their wildlife value likely to diminish as a result. Any areas of retained vegetation, including hedgerows, trees and watercourses, should be protected from harm for the duration of works, and at least one of the SuDS ponds should be designed to hold water for a sufficient period of time to enhance the local amphibian population and compensate for the loss of the pond on the site. A detailed scheme for ecological mitigation, compensation and enhancement across the site, including emphasis on grassland creation which would help mitigate for the loss of suitable habitat for ground nesting birds such as skylark which has been recorded on the site.

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

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

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

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

The County Highway Authority raises no objection in principle to the amended A511 Burton Road access and the use of a signalised control. In respect of the A514 Woodville Road access, a simple priority junction incorporating a right-turn harbourage is considered to be acceptable in design and operational terms. The alternative roundabout design has also been considered. It recognises the concerns of residents and representatives but consultation with Derbyshire Constabulary has indicated that the most recent survey, taken in the vicinity of the Goseley Avenue junction (i.e. within the 40 mph limit), revealed an 85thile speed of 40 mph. On this basis there is no justification to seek the provision of a roundabout as a speed suppressing measure. Further, and more fundamentally, the roundabout would need to incorporate private accesses on the eastern side of Woodville Road generating confusion and inevitably a risk of rear shunts. In view of the foregoing the submitted roundabout scheme has adverse safety implications and is open to objection. The optional off-site works on Hartshorne Road/Woodville Road are not necessary to make the development acceptable or, conversely, that permission for the development should be refused if the works proposed were not implemented. In any case there are a number of associated noise, justification, street clutter and maintenance liability issues arising. They also do not sanction pick-up/drop-off facilities in general given the inference that use of the car is acceptable, contrary to the need to encourage non-vehicle modes. Further, in practical terms, it is considered unlikely that it would provide adequate space leading to increased and indiscriminate parking on approaches to the site. Notwithstanding these points, the Highway Authority raises no objection subject to conditions.

Following the deferral of the item to respond to Members' concerns, the County Highway Authority has responded further the applicant's additional information submitted. They confirm they have nothing further or different to add to the applicant's response in respect of:

- *signalisation of proposed Woodville Road junction;*
- *alternative siting of the proposed Woodville Road T-junction;*
- *the proximity of the Goseley Avenue junction;*
- *rat-running;*
- *the Burton Road signalised junction (although this needs to be subject to future detailed design with, for the avoidance of doubt, a minimum 2.5m wide right-turn lane)*
- *the SRR*

They also note the proposed traffic calming measures on Woodville Road, reasserting they do not regard them as necessary to make the development itself acceptable, nor does it consider that planning permission should be refused without them.

However, the following points are made:

- *they cannot guarantee that the scheme would, or could, be implemented in the submitted form;*
- *any scheme would be subject to consultation and experience shows that whilst the concept may be popular, physical features, such as refuges outside individual properties, may be less acceptable to residents resulting in objections;*
- *it is likely that minimum running lane widths of 3.25m (possibly 3.4m) would be sought; and*
- *it is likely that the design of physical refuges as pedestrian crossing points would be sought.*

The County Rights of Way Officer advises that Woodville Public Footpath 3 and Hartshorne Public Footpaths 13, 14, 15 and 16 all cross the site. It is noted that these

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

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

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

The Environmental Protection Officer advises there are no significant concerns with respect to contaminated land, although as there are historical features on the site which do have the potential to present risks to site workers, ends users and ecological receptors as a result of its development, conditions to identify and remediate any potential land contamination on the site are recommended.

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

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

The Crime Prevention Design Adviser considers the layout to be generally unproblematic, but highlights the need to ensure surveillance of open space and parking courts. Outward looking elevations, in curtilage parking which is visible from within dwellings, secure individual rear garden access and a strong definition between private curtilage and public space are encouraged.

It is noted that the most used footpath within the site links Thistle Close to Burton Road along the route of the former railway embankment, and part of this route runs between two banks of trees adjacent to the Granville School boundary. The route would benefit from being out in the open and close to housing where pedestrians could be seen. It is also requested that newly formed cycle and pedestrian routes have wide open aspects, are lit and in view of house frontages to encourage safe use. One short section of housing backing onto part of the former railway line would benefit from an enhanced rear boundary treatment for both security and privacy, and whilst proposals to link into the school site are not detailed at this stage, there should be no reduction in the existing levels of security.

Responses to Publicity

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

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

- i) before any development is considered, the problems at the Clock island should be fully resolved and the Woodville/Swadlincote Regeneration route complete;
- ii) concerned that the junction on to Woodville Road is too close to the brow of the hill near to the former 'Snooty Fox' , and it is felt that there is poor visibility particularly as the part of the road is 40 mph;
- iii) the new road would come out nearly opposite Goseley Ave almost creating a crossroad;
- iv) all possible road safety measures should be taken to ensure that the link road is not used as a 'rat run';
- v) consideration should be given to reducing the speed limit to 30 mph along Woodville Road;
- vi) the type junction onto the busy Burton Road is not clearly indicated and might cause issues for Lincoln Way users;
- vii) the link road would need to be of sufficient standard to take the high volume of traffic that would use it;
- viii) adequacy of bus services past the site;
- ix) whilst there is capacity at the Granville School, there is not at either Hartshorne or Eureka schools;
- x) if Eureka school is to be used there appears no means of getting there by foot other than to go onto Burton Road and down to Dunsmore Way;

- xi) there is little provision for a play/recreation area on the site leading to a greater demand on recreation grounds at Goseley and Salisbury Drive, such that financial sums should be granted to the Parish to update the existing play equipment;
- xii) assurance that the outline application extends only to the red line and development will not be allowed in the blue land;
- xiii) Hartshorne Parish is unsustainable and there are no provisions for any additional shops etc.; and
- xiv) the impact on neighbouring residential properties.

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

Principle of development

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

Services and facilities

- e) pressure on existing schools and doctors;

Highway capacity and safety

- f) existing congestion in Woodville, due to incomplete Swadlincote Regeneration Route (SRR), would be made worse;
- g) the Tollgate/Clock Island is already overloaded;
- h) if to go ahead, the SRR should be completed first;
- i) the new link road would become a 'rat run';
- j) possibility that Sandicliffe Road and Dunsmoor Lane will become a rat run;
- k) increased use of Manchester Lane and Heath Lane;
- l) the junction onto the Woodville Road is too close to the Goseley Estate junction;
- m) visibility of the new Woodville Road junction over the brow of the hill;
- n) the limit on Woodville Road should be reduced to 30mph and traffic calming introduced;
- o) the junction of Dunsmore Way with the A511 should be made into a roundabout;
- p) obstruction of private accesses;
- q) difficulty of manoeuvring in and out of driveways safely;
- r) adequate parking provision for the dwellings;

Drainage

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

Landscape and visual impacts

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

Design and character

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

Amenity

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

Other matters

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

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

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

Development Plan Policies

The relevant policies are:

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

Emerging Development Plan Policies

The relevant policies are:

- Submission Local Plan Part 1: S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), S4 (Housing Need), S6 (Sustainable Access), H1 (Settlement Hierarchy), H4 (Land at Broomy Farm,

Woodville), H19 (Housing Balance), H20 (Affordable Housing), SD1 (Amenity and Environmental Quality), SD2 (Flood Risk), SD3 (Delivering Sustainable Water Supply, Drainage and Sewerage), SD4 (Contaminated Land and Mining Legacy Issues), SD5 (Minerals Safeguarding), BNE1 (Design Excellence), BNE2 (Heritage Assets), BNE3 (Biodiversity), BNE4 (Landscape Character and Local Distinctiveness), INF1 (Infrastructure and Developer Contributions), INF2 (Sustainable Transport), INF6 (Community Facilities), INF7 (Green Infrastructure), INF8 (The National Forest) and INF9 (Open Space, Sport and Recreation).

National Guidance

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

Local Guidance

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

Environmental Impact Assessment

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

Planning Considerations

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

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

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

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

- Principle of development and weight afforded to policy;

- Highway capacity and safety;
- Local services capacity;
- Affordable housing and viability;
- Drainage and flood risk;
- Land stability;
- Biodiversity and ecological impacts;
- Landscape, heritage and visual impacts; and
- Design and amenity.

Planning Assessment

Principle of development and weight afforded to policy

The site lies outside the settlement confines for Swadlincote although on its fringes. Saved policy H4 allows for development on the fringes of Woodville and Midway provided that the site is substantially surrounded by development and it does not result in a prominent intrusion into the rural landscape outside of the built up area (amongst other criteria). The proposal is considered to stretch beyond the allowances of this policy such that it is not catered for by way of saved policy H4. However it is the view that saved policy H4 can be afforded little weight as it is no longer playing a part in significantly boosting the supply of housing. In this vein emerging policy H4 allocates this site as part of the Local Plan Part 1 for up to 400 dwellings. The proposal also conflicts with saved policy EV1. Whilst not a housing policy, it has an indirect effect of restraining delivery. Notwithstanding this, the policy accepts that some development in the countryside is unavoidable and indeed it could be argued that this proposal could fall as 'unavoidable' given the current shortage in the supply of housing and recognition to date that its development is necessary in order to meet identified needs (i.e. by way of the emerging Plan allocation). Nevertheless the policy goes on to consider safeguarding character and landscape quality, as well as ensuring all development in the countryside is designed so to limit its impact on the countryside, and these secondary parts of the policy provide a considerable degree of consistency with section 11 of the NPPF.

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

Setting the above matter aside, the sustainability of the development is paramount and it is important to strike the right balance between housing delivery and ensuring the environmental, social and economic needs of occupants and the existing community can be readily met. Whilst a lack of a 5-year supply might engage paragraph 49 of the NPPF, it does not automatically "stand down" local plan policies – merely challenges the weight which may be afforded to them; and an unsustainable development means the presumption in favour set out under paragraph 14 does not apply. With this point in mind attention is given to the impacts of the development and conflict with planning policy. For the presumption in favour of development to apply, sustainability must be

viewed in the round, considering infrastructure, landscape, ecology, heritage, design and so forth. It is important to remember that sustainability and sustainable development is subjective – there is no minimum or consistent level beyond which a particular development can be said to be sustainable. It is a concept, and one that is determined differently from one site to another. The remaining parts of the report therefore give consideration to whether any other adverse impacts of granting permission would significantly and demonstrably outweigh the benefits of the proposals, after reaching a balance between the benefits and adverse impacts in a context that conditions or obligations may be used to mitigate or address an otherwise unsustainable impact.

Highway capacity and safety

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

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

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

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

Concerns were raised by Members as to how the proposed Burton Road access might adversely affect access and parking for existing residents on the western side of the highway. The location of the proposed access would ensure that existing driveways sit south of the northbound stopline, so conflict would not occur in this respect. In terms of parking, the only feasible area for on-street parking that might be affected is a small section of carriageway outside numbers 353 and 355. Number 353 has its own driveway such that the impacts would be limited to number 355. As for numbers 357 and 359 further north, the current location of the bus stop already prevents parking directly outside these dwellings. It must be acknowledged there are no specific parking rights for residents in this area and therefore, whilst the proposed junction would prevent parking on this short section of Burton Road, this only potentially affects three properties – two of which are already prevented from parking directly outside their frontage. There are other opportunities to park on-street slightly further north and south where existing demand for parking is low given private driveways exist. The County Highway Authority has nothing to add to these observations, and indeed it must be remembered that the A511 is a primary route through this District which should be kept 'free flowing' as far as practicable.

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

This matter formed the focus of concerns raised at the August meeting. As a result the following questions/concerns were put to the applicant and their responses are summarised below:

- *Why can a signalised junction not be provided?*

Unlike the proposed T-junction, traffic signals would create static queues on the active carriageway at a location where forward visibility is limited. Queues associated with a roundabout would be less significant as they are more 'mobile', limiting the length and duration of stationary vehicles. Based on modelling, an average queue of around 5 vehicles would occur at the northbound stopline in the evening peak hour, extending for approximately 30 metres. In practice these queues could be longer, noting that the modelling for the Burton Road access shows a predicted mean maximum queue of up to 13 vehicles on the A511.

The significance of the potential queuing is that satisfactory forward visibility, or Stopping Sight Distance (SSD), for the measured speeds could not be achieved to the back of the queue for approaching vehicles. This is due to the crest in the carriageway to the south. Indeed the back of any queue from one to nine vehicles would not be visible to approaching traffic. Hence whilst the actual traffic signals themselves could be visible, by use of raised pole heights if necessary; guidance dictates that the envelope of forward visibility should account for both the signals and the back of predicted queues. Essentially approaching drivers may not see waiting traffic in sufficient time to stop safely and could run into the rear of the queue of vehicles. Hence it is unlikely that a safe signal-controlled access arrangement could feasibly be provided at this location.

Whilst in theory the carriageway level could be reconfigured to address the forward visibility issues, this would require extensive earthworks that would not be commensurate with the benefits they provide. Such a scheme would also create drainage issues, infrastructure diversions and impacts on existing residents. In addition existing driveways to numbers 207 and 209 on the east side of Woodville Road would be positioned in between the stoplines, meaning that residents would be expected to pull out without a clear view of which signals are currently green, heightening the risk of collisions. Furthermore the proximity of the Goseley estate junction means that this might also need to be signalised, and in this scenario the relocated stopline would still have issues relating to forward visibility. If Goseley Avenue were to be included, queues would also increase as traffic on Woodville Road would be allocated less overall green-time during each cycle.

In brief a signal-controlled junction is likely to create greater risks to safety on the public highway than the proposed T-junction, and also has the potential to increase congestion on the A514 and absorb a significant proportion of the already limited planning gain available from the proposed development. The County Highway Authority has nothing further to add to the above observations, reasserting their view that the proposed T-junction is a safe and suitable option.

- *Why can the access not be moved to the north of the substation?*

Alternative options for providing access north of the substation have been considered, but the proposed location is more suitable as it allows a staggered

arrangement with the existing ghost-island layout at Goseley Avenue. As for a roundabout, this has been considered, but as this location sits at the bottom of a dip in the road extensive earthworks would be necessary to provide an essentially flat 'table' for the island which would adversely affect the feasibility of this arrangement. With respect to traffic signals the crest in the carriageway to the north, along with newly created static queues, would present similar forward visibility issues and safety risks to those described above. In fact, as this location is further away from the more urban section of Woodville Road, speeds and associated stopping distances are likely to be higher. In addition all of the access 'types' carry further viability issues due to the presence of a gas main, overhead lines and a stream.

- *Is the proximity of the Goseley Estate junction and proposed junction not a fundamental issue?*

The existing Goseley Avenue junction already includes a right turn harbourage, and so the proposed access effectively creates a staggered arrangement comprising T-junctions on either side of Woodville Road. This is a standard junction layout that can be found at numerous locations in the local area (e.g. Stanley Close and Blueberry Way on Hartshorne Road, or the junction of Midland Road with Civic Way in Swadlincote) and across the country, and does not automatically mean increased risks of collisions. The 6Cs Design Guide confirms there are only spacing requirements on the same side of the carriageway (to prevent overlapping visibility splays) whereas there are no similar requirements for opposite junctions. In considering visibility it should be noted that any vehicles turning right out of each junction would be doing so at slow speeds, such that there would be intervisibility of these movements between drivers. It is also noted that there is no evidence of any significant ongoing safety issues at the current Goseley Avenue junction and the T-junction arrangement would be the most appropriate form of access – a view still maintained by the County Highway Authority.

- *Existing accidents and traffic speeds on Woodville Road/Hartshorne Road*

The Transport Assessment includes a detailed review of recent accident records along Woodville Road/Hartshorne Road, based on data provided by the police covering the period between September 2008 and August 2013. The study showed no incidents related to turning movements in the vicinity of the Goseley estate junction. Since this data was obtained there has been a single accident recorded approximately 60 metres north of the junction. Although precise details are not available, the distance from Goseley Avenue suggests it was not related to turning movements at the junction. Overall there is currently no evidence that the creation of a new access at this location would result in a significant risk of collisions. The lack of objection from the County Highway Authority only reinforces this view.

The Transport Assessment includes the results of a speed survey undertaken around the proposed access. This showed average speeds of 38.6mph northbound and 39.6mph southbound, confirming overall compliance with the current 40mph limit. The most recent survey undertaken by the police shows average speeds of 40mph, again in compliance with the limit. It is considered that if there were an issue with speeding, the above survey work would evidence a

problem. Nevertheless it is acknowledged that there are local concerns in respect of various incidents that have occurred along this route, away from the location of the proposed access. Three recorded incidents involved pedestrians, two involved turning movements from side roads, and one related to an overtaking manoeuvre around a parked car. It appears that whilst drivers in the majority respect the speed limit past the site frontage, when they reach the 30mph limit further south there is potential that they may not reduce their speed sufficiently.

It is advanced that complementary traffic calming measures delivered on this route in tandem with the proposed access would only serve to further reduce the risk of collisions. These could be secured by way of a sum specified in the Section 106 Agreement if deemed to be important, and would include solid white line markings along both edges of the carriageway, reconfigured central ladder markings and additional traffic islands at suitable locations. These measures would minimise the lane widths to 3 metres in each direction (discouraging speeding) and would introduce additional frictional effects. Case studies from similar schemes suggest that these changes could reduce average speeds to around 32 to 34mph. The proposed traffic islands could also be designed as pedestrian refuges, helping to improve safety for pedestrians wishing to cross.

The County Highway Authority note that they cannot guarantee that the scheme would, or could, be implemented in the submitted form as such a scheme would be subject to prior consultation. Experience shows that whilst the concept of a traffic calming scheme may be popular, the detail of a proposal indicating physical features, such as refuges, outside individual properties may be less acceptable to residents, resulting in objections. Furthermore it is likely that minimum lane widths of 3.25m (possibly 3.4m) would be sought and the design of physical refuges as pedestrian crossing points would be sought.

It is also noted that the suggestion of an extended 30mph speed limit along Woodville Road past the site has been raised in the past by local residents and Members. However, as there is no evidence of a speeding problem on this section of the road and the carriageway is suitable for a 40mph limit, the County Highway Authority advises there is no guarantee an associated Traffic Regulation Order (TRO) would be successfully made.

Notwithstanding the above points, the applicant suggests Members might wish to retain a degree of flexibility as to where to apply the additional funds – a cost which is being absorbed by the applicant without re-opening discussion on viability. It may be that Members wish to secure the traffic calming only, it might be felt it better to split the sum between such works and an attempt to secure a TRO. It may be considered that the traffic calming and TRO should fall below the priority of the SRR or Tollgate Island improvements. This flexibility is welcomed and so to enable flexibility as outlined it would be prudent to enshrine this into the Section 106 agreement. However it is necessary to make an explicit point that such funds would not be CIL compliant given they are not required to make the impacts of the development acceptable. Accordingly no weight may be afforded to these benefits when making the final planning balance below.

- *Creation of ‘rat runs’*

The Transport Addendum specifically addressed queries from the County Highway Authority relating to the potential for traffic using Manchester Lane and adjoining roads as a 'rat-run', demonstrating that the proposal would not significantly alter the number of vehicles potentially using this route. 'Rat-running' via Lincoln Way, Salisbury Drive etc., is considered unlikely given the directness of the alternative route along Burton Road (and the lesser priority junction of Lincoln Way onto the new estate road and in turn Burton Road). Nevertheless, any small proportion of traffic using this route should not raise significant concerns, noting that Salisbury Drive is a bus route and the carriageway should have sufficient spare capacity to accommodate any minor increases. Modelling at the Sandcliffe Road/Coventry Close junction points towards a negligible impact and even in a worst case scenario model (which is again considered unlikely due to the directness of the alternative route), it is estimated there would only be 12 additional two-way movements along Salisbury Drive, or one vehicle every 5 minutes during peak hour. The County Highway Authority has not raised any further concerns or comments in this respect suggesting there is no highway safety or capacity issue from potential 'rat-running'.

In light of the additional information above, it is considered the highway safety and capacity impacts of the development remain acceptable and in line with saved policies and the NPPF. The prospect of traffic calming being secured when there is no justification for doing so under this application has been discussed with the County Highway Authority, who raises no objection to this 'over supply' of measures beyond their requirements – it appears to be implementable, and even if a deliverability issue does arise there is flexibility in where the funds could be directed.

Local services capacity

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

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

The provision of 400 dwellings would place pressure on existing schools, healthcare, sports and built facilities, and waste and recycling provision. With regard to the consultation responses above, the impact on secondary school and post-16 provision can be satisfactorily accommodated within existing and projected capacity, whilst primary school pressures could be addressed by way of contributions towards an identified project at Eureka School. These contributions are considered to be compliant with the CIL Regulations and paragraph 204 of the NPPF and can be secured by way of a Section 106 agreement. As for waste and recycling needs, whilst existing facilities in

the District are already over capacity, the County recognises a request for a contribution would no longer be CIL compliant due to restrictions on the pooling of sums. The request for a contribution towards healthcare provision has tested against the same CIL limitations. The request identifies that an existing and relevant capacity issue exists and that the intended purpose of the sums and the amount sought are compliant both in terms of being proportionate and for a particular project designed to increase capacity. This request can also be secured under a Section 106 agreement.

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

Affordable housing and viability

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

Drainage and flood risk

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

Land stability and contamination

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

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

Biodiversity and ecological impacts

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

Landscape, heritage and visual impacts

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

The site is located within the local characterisation of the Coalfield Village Farmlands Landscape Character Type (LCT). The landscape context of the site includes the existing urban edge to the west, south and east. Open agricultural land to the north is

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

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

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

Design and amenity

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

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

drainage solutions interwoven with green infrastructure – would give rise to a pleasing overall design.

Conclusion

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

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

- Direct and indirect employment opportunities;
- Economic output as a result of the employment opportunities;
- Value of the development to the construction industry;
- Expenditure from future occupiers;
- The provision of market and affordable homes;
- The benefits to infrastructure brought about by the package negotiated under Section 106;
- New Homes Bonus, and
- Council tax revenue.

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

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

Recommendation

- A.** Grant delegated authority to the Planning Services Manager to complete a Section 106 Agreement to secure financial contributions as set out in the report towards off-site highway and footpath works, education and healthcare provision, sports and built facilities and affordable housing;
- B.** Acknowledge that the original priority T-junction with Woodville Road as the preferred *Woodville Road* access to the site *and that the applicant is willing to make available funds towards traffic calming or a similar project*; and
- C.** Subject to A and B, **GRANT** permission subject to The following conditions:

1. This permission is granted in outline under the provisions of Article 5(1) of the Town & Country Planning (Development Management Procedure) (England) Order 2015, and the further approval of the Local Planning Authority is required (before any development is commenced) with respect to the following reserved matters:

- (a) appearance;
- (b) landscaping;
- (c) layout; and
- (d) scale.

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

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

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

3. The reserved matters listed at condition 1 shall broadly be in accordance with the illustrative masterplan (ref: HALQ2011 Rev 07) and Design and Access Statement, and each application for reserved matters approval shall incorporate, in so far as relevant to that/those matter(s) and/or phase of development, the following specific detail/requirements:

- (a) undeveloped areas of green infrastructure adjacent to the watercourse and on the northern edge of the site, and that any specific works required with the potential to impact upon the watercourse and its banks be informed by an appropriate ecological survey which shall set out any required mitigation;
- (b) except where to the rear of existing dwellings, retained hedgerows and trees shall, as far as practicable, not form boundaries to proposed dwellinghouses and be incorporated into public spaces/green infrastructure;
- (c) at least one of the balancing ponds be designed to permanently hold water;
- (d) a Landscape and Ecological Management Plan (LEMP) for all retained and created habitats outside of private areas, including grassland creation where feasible to mitigate for the loss of suitable habitat for ground nesting birds and details of the legal and funding mechanism(s) by which the long-term implementation of the LEMP will be secured by the developer with the management body(ies) responsible for its delivery;
- (e) a site wide Phasing Programme including details of the proposed sequence of development across the site, strategic drainage and SuDS infrastructure, the extent and location of individual development phases or sub-phases and the associated access arrangements,

- programme and methodology for infilling of the former railway cutting, and timescales for implementation thereof;
- (f) a Framework Travel Plan, including Travel Plan targets (relating to each phase or sub-phase where relevant) comprising immediate, continuing and long-term measures to promote and encourage alternatives to single-occupancy car;
 - (g) detailed designs for the residential estate streets, accesses thereto and garaging, car parking and manoeuvring space;
 - (h) detailed design for the provision of bin stores within private land at the highway end of private shared accesses to prevent refuse bins and collection vehicles standing on the residential street for longer than necessary causing an obstruction or inconvenience for other road users;
 - (i) a scheme, including a programme for implementation, for the disposal of highway surface water;
 - (j) details specifications of improvements (to an adoptable standard of at least 2 metres width) of the existing footpaths within the site;
 - (k) details of subterranean tree and hedgerow root protection/facilitation measures; and
 - (l) details of at least 8.1 hectares of woodland planting to be delivered on the blue land (as defined on the site location plan submitted with this application), including the mix of species, planting methodology, timetable for planting and maintenance arrangements thereafter.

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

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

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

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

Reason: In the interests of highway safety.

6. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015, or any Statutory Instrument amending, revoking and/or replacing it; the garage accommodation/parking space provided pursuant to reserved matters approval shall not be used other than for the

garaging and parking of vehicles except with the prior permission of the Local Planning Authority granted on an application made in that regard.

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

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

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

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

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

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

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

Pre-commencement

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

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

11. No development of a phase or sub-phase shall commence until a scheme has been submitted to and approved in writing by the Local Planning Authority for that phase or sub-phase indicating:

- i) a construction traffic routeing plan
- ii) the proposed temporary means of construction access
- iii) site accommodation
- iv) storage of plant and materials
- v) areas for parking and manoeuvring of site operatives' and visitors' vehicles
- vi) loading, unloading and manoeuvring of goods vehicles
- vii) hours of operation; and
- viii) method of prevention of debris being carried onto the highway.

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

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

12. (a) No development or other operations shall take place until a Written Scheme of Investigation (WSI) for archaeological work has been submitted to and approved in writing by the Local Planning Authority, and until any pre-start element of the approved WSI has been completed to the written satisfaction of the Local Planning Authority. The scheme shall include an assessment of significance and research questions; and
- (i) the programme and methodology of site investigation and recording;
 - (ii) the programme for post investigation assessment;
 - (iii) provision to be made for analysis of the site investigation and recording;
 - (iv) provision to be made for publication and dissemination of the analysis and records of the site investigation;
 - (v) provision to be made for archive deposition of the analysis and records of the site investigation; and
 - (vi) nomination of a competent person or persons/organization to undertake the works set out within the WSI.
- (b) No development shall take place other than in accordance with the archaeological WSI approved under (a).
- (c) The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the archaeological WSI approved under (a) and the provision to be made for analysis, publication and dissemination of results and archive deposition has been secured.

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

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

Council's 'Guidance on submitting planning applications for land that may be contaminated'.

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

14. No development shall commence until a dust mitigation strategy has been submitted to and approved in writing by the Local Planning Authority. The strategy shall take into account national practice guidance and highlight details of the likely resultant dust levels from activities during the construction phase at the nearest residential premises as well as those dwellings which may be occupied as part of the development (or adjoining development), and set out measures to reduce the impact of dust on those residential premises. The approved strategy shall then be implemented throughout the course of development.

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

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

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

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

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

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

- Surface water drainage system(s) designed in accordance with CIRIA C697 and C687 or the National SuDS Standards, should the latter be in

force when the detailed design of the surface water drainage system is undertaken;

- Limiting the discharge rate generated by all rainfall events up to the 100 year plus 30% (for climate change) critical rain storm ideally to greenfield rates for the site but as a minimum so that it will not exceed the run-off from the undeveloped site and will not increase the risk of flooding off-site;
- Detailed design (plans, levels/cross sections, network details and calculations) in support of any surface water drainage scheme, including details on any attenuation system, and the outfall arrangements. Calculations should demonstrate the performance of the designed system for a range of return periods and storm durations inclusive of the 1 in 1 year, 1 in 2 year, 1 in 30 year, 1 in 100 year and 1 in 100 year plus climate change return periods;
- Details of how the on-site surface water drainage systems shall be maintained and managed after completion and for the lifetime of the development, to ensure long term operation to design parameters.

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

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

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

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

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

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

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

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

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

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

Other

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

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

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

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

Informatives:

- a. In dealing with this application, the Local Planning Authority has worked with the applicant in a positive and proactive manner through pre-application discussions, seeking to resolve planning objections and technical issues, suggesting amendments to improve the quality of the proposal, meetings and negotiations, and promptly determining the application. As such it is considered that the Local

Planning Authority has implemented the requirement set out in paragraphs 186 and 187 of the National Planning Policy Framework.

- b. This permission is the subject of a unilateral undertaking or agreement under Section 106 of the Town and Country Planning Act 1990.
- c. The Environment Agency does not consider oversized pipes or box culverts as sustainable drainage. Should infiltration not be feasible at the site, alternative sustainable drainage should be used, with a preference for above ground solutions.
- d. For further assistance in complying with planning conditions and other legal requirements applicants should consult “Developing Land within Derbyshire – Guidance on submitting applications for land that may be contaminated”. This document has been produced by local authorities in Derbyshire to assist developers, and is available from www.south-derbys.gov.uk/environment/pollution/contaminated_land/default.asp. Reports in electronic formats are preferred, ideally on a CD. For the individual report phases, the administration of this application may be expedited if a digital copy of these reports is also submitted to the Environmental Protection Officer (contaminated land) in the Environmental Health Department: thomas.gunton@south-derbys.gov.uk.

Further guidance can be obtained from the following:

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

Transport and Environment Department at County Hall, Matlock. You are also advised:

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

Item **1.4**

Reg. No. **9/2015/0796/FM**

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

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

Proposal: **THE ERECTION OF 4 DWELLINGS AT LAND ADJACENT**
TO COPPICE FARM GREEN LANE OVERSEAL
SWADLINCOTE

Ward: **SEALES**

Valid Date: **25/08/2015**

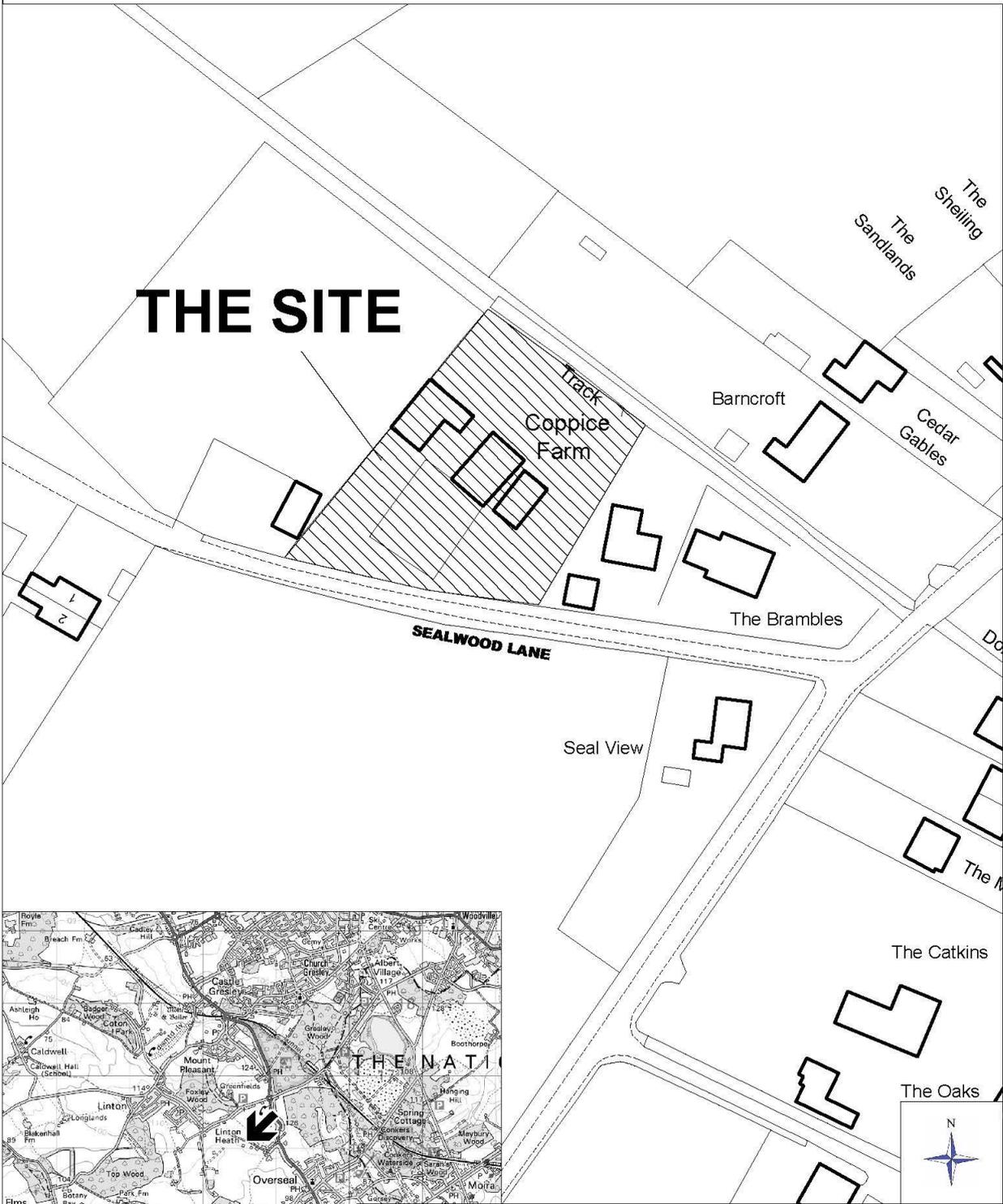
Reason for committee determination

The application has been brought to Committee because it would constitute development not in accord with the Development Plan and would affect the route of Public Footpath No.36.

Site Description

The site measures some 0.2275ha and is situated on the northern side of Sealwood Lane, which is linked to Burton Road (A444) via Green Lane. The site lies outside the defined confine boundary of Overseal and is within the River Mease SAC. It is located to the west of the former Coppice Farm, which has recently been redeveloped by the erection of a replacement two-storey dwelling and a new single storey dwelling. The existing properties on Green Lane and Sealwood Lane comprise a mix of single and two-storey houses. Planning permission for two dwellings has been granted on land between The Oaks and The Martins on Green Lane, one of which is now complete and occupied. The Oaks has also received planning permission for a replacement dwelling.

The application site originally formed part of the former Coppice Farm and fronts onto Sealwood Lane. It is enclosed by mature hedgerows on three sides. It contains two brick and tin-sheeted buildings, two timber sheds and a metal shipping container, all of which are neglected and in various states of disrepair. The site is overgrown with dense bramble vegetation and contains evidence of a former commercial use (picture framing business), being littered with broken glass, timber and other debris. There is also



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evidence of a concrete pad, which is also becoming buried under brambles and moss vegetation.

The site is open fronted and visible from Sealwood Lane and two adjoining public footpaths, No. 36 (the route of which passes along Sealwood Lane) and No. 6 (which passes along the northern boundary). There are extensive, open views across the surrounding countryside to the south.

Proposal

The application is a revised proposal of a previously refused scheme (9/2014/1095) which was refused by committee on the reason:

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

The revised application proposes the erection of four detached dwellings and associated parking and for the demolition/removal of the existing buildings/structures. The agent/applicants have taken members comments on board and reduced the scale of the properties significantly whilst increasing parking available on site. Two of the dwellings would face, and take access directly off, Sealwood Lane; these would be one and half storeys in height with rooms in the roofspace; the remaining two would be set back within the site and accessed via a private drive also leading off Sealwood Lane, these would be single storey. One of the existing buildings would be retained until completion of the development in order to provide a habitat for barn owls that live on the site. Three of the dwellings would have integral single garages with all properties providing between 3 and four parking spaces. The development would comprise three different house types, 2 of which would have four bedrooms and the other house type would accommodate three bedrooms. Each dwelling would incorporate traditional features, such as segmental arched window heads.

Applicants' supporting information

The following documents have been submitted in support of the application:

- Planning Statement
- Internal and External Bat Survey
- Reptile Evaluation Report
- Reptile Survey
- River Mease Impact Assessment

These documents can be summarised as follows:

Planning Statement

1. The statement draws on the previous decision which did not refuse the principal of development on the site and outlines the changes made to the scheme.
2. The development of four dwellings would benefit the local economy through the provision of employment opportunities for local builders and suppliers. Whilst

some may not view this as being significant it is argued that the development of smaller sites provides opportunities for smaller businesses which are not available to them on larger developments that are generally controlled by volume house builders.

3. New housing would contribute towards the Council's housing needs in the District.
4. The proposal would remove an unkempt and untidy site and would not harm the character or appearance of the countryside.
5. The proposal is sustainable development in accordance with the objections of the NPPF.

Bat Survey

This concludes by stating that none of the buildings have evidence of being used by bats; however there is evidence of them being used by two roosting barn owls as a permanent breeding site. As such no work should be carried out during the breeding season, which is from mid-March to mid-August. In addition, it is recommended that any clearance of site vegetation and demolition of buildings avoids the bird nesting season or that the site is thoroughly checked for breeding birds by a suitably qualified and experienced ecologist immediately prior to the commencement of any work on site. Temporary mitigation is recommended during the works.

Reptile Evaluation Report

There is a low but present risk of herptiles (reptiles or amphibians) being present on the site, although not of a level to justify further surveys prior to determination of the application. There will need to be adequate site precautions consisting, primarily, of an ecological supervision of the site strip focussing on areas with a higher likelihood to harbour herptiles. It is suggested that this could be adequately dealt with by condition.

Reptile Survey

This has been undertaken at the request of Derbyshire Wildlife Trust following its advice that the presence or otherwise of reptiles (as protected species) and the extent that they may be affected by the proposed development needs to be demonstrated prior to the determination of the application so that any required mitigation can be secured as part of the permission.

The Survey concludes by stating that the site contains a number of habitats and features (basking points and refugia) suitable for reptiles and there are records at some distance of common lizard and slow worm. However, during the survey no reptiles were recorded. Therefore, it is assumed that it is likely that reptiles are absent from this site or are at a very low population density. The Survey contains a list of recommendations should any species come to light during the course of development.

River Mease Impact Assessment

The Assessment recognises that the potential impacts of the development will depend on a range of factors, such as scale and nature of the proposal, the timing of works, the distance to the sensitive receptor and the impacts of intervening land use.

- The application site lies only just within the designated catchment-sensitive area and a minimum of 3km from the sensitive receptor, which is a considerable distance.
- There are considerable farming and other activities which are likely to affect the catchment in the intervening land between the development site and the sensitive receptor.
- The development is small-scale, low density on a site where there are existing buildings. The footprint of the proposed development would be of a similar scale to the buildings that would be demolished.

It can therefore be deduced that potential risks to the sensitive receptor are low and that suitable precautions undertaken during demolition, site clearance and construction phases can adequately mitigate the risk in addition to measures employed to mitigate any residual increase in risks, post-construction. The increase in sewer loading would be mitigated for via the Developer Contribution Scheme (DCS) which is the agreed method of the Local Planning Authority. Surface water runoff from the site would be channelled into a sustainable urban drainage scheme (SuDS) designed specifically for the development which would enable runoff to settle and have a level of attenuation prior to entering the storm water system.

Planning History

An application for residential development at Coppice Farm, which included the application site, was refused on 16th July 1953.

A second application for the erection of 26 dwellings at Coppice Farm was refused on 30th November 1959.

An application (9/2010/0324) was approved for the demolition of an existing property (Coppice Farmhouse) and its replacement with a detached, two-storey dwelling, detached double garage and the erection of a single storey dwelling, together with the creation of a new vehicular access to serve both properties was approved on 11th May 2010. Both dwellings have been constructed and are occupied.

An application for four detached dwellings (9/2014/1095) was refused in June 2015 for the reason provided above.

Responses to Consultations

The Peak and Northern Footpaths Society has no objections to the application provided that the full width of Sealwood Lane remains open and unobstructed at all times during and after the development. The applicants must be aware that it is an offence to drive a vehicle over a public footpath without lawful authority, so the new properties must have a vehicular right of access over the footpath.

The County Flood Risk Management Team has no comments and would refer the developers to the County teams standing advice.

Severn Trent Water has no objections to the proposal.

Derbyshire County Council Rights of Way Section confirms that the site abuts public footpaths 6 and 36; however there are no objections subject to the applicants being advised of their responsibilities with regard to the footpaths.

Natural England has no objections with regard to the River Mease SAC and SSSI subject to conditions in respect of the capacity at the local sewage treatment works and the submission of details relating to the proposed SuDS.

The Council's Environmental Protection Officer (contaminated land) considers that the development may be at risk from ground gas migration and accordingly recommends a ground gas condition.

The County Highway Authority (CHA) has reiterated comments made under the previous application as applications do not significantly differ in highway terms. Whilst numbers of traffic movements are not known, previous uses would have involved agricultural and commercial vehicles visiting the site, in addition to employees' and customers' vehicles on a daily basis. Visibility onto the lane is acceptable and, owing to its relatively short length, the proposal is unlikely to result in any significant danger or inconvenience to users. Whilst the proposal isn't ideal from a highway viewpoint, owing to Sealwood Lane being of limited width and having no footways, it is considered that a highway objection could not be sustained when visibility from the proposed access points is acceptable given the likely low speeds and the visibility from Green Lane onto Burton Road is acceptable. The CHA recommends the inclusion of three conditions on any consent, relating to formation of the new access, provision of parking and the retention of parking spaces, including garages, for the parking of vehicles in association with the residential occupation of the properties without the grant of planning permission.

Derbyshire Wildlife Trust (DWT) states comments do not differ from those provided previously for 9/2014/1095. It is satisfied with the survey work that has been undertaken with regard to bats. However, the survey identified that two of the buildings are used by breeding barn owl, which is a specially protected species under Schedule 1 of the Wildlife and Countryside Act 1981 (as amended) and local authorities have a duty to take such steps as they consider expedient to bring to the attention of the public the measures to conserve protected species. Building 1 is proposed for retention during construction works however building 2, which also supports barn owl, is to be removed/demolished. It is therefore important that alternative temporary provision is made for barn owl. Barn owl can nest throughout the year so DWT advises that a further survey is carried out immediately prior to the commencement of any work. With regard to the building proposed for retention during construction, DWT would prefer that the building be retained in perpetuity although this would be difficult to achieve if the building is retained and incorporated within the curtilage of one of the new dwellings. As an alternative one of the dwellings should incorporate a permanent accessible nest space. DWT also advises the attachment of conditions relating to barn owl nesting boxes, pre-development re-survey, retention and maintenance of one or more of the buildings and no removal of hedgerows between 1st March and 31st August inclusive unless a check has been made of vegetation for active birds' nests. DWT also notes there is evidence of nesting House Sparrow, a Species of Principal Importance, was also found in the buildings. It therefore recommends a further condition requiring the erection of two House Sparrow terraces within the development to be provided in accordance with an agreed scheme.

With regard to the Reptile Evaluation Report, DWT considers that the presence or otherwise of reptiles and the extent that they may be affected by the proposed development needs to be demonstrated prior to the determination of the application so that any required mitigation can be secured as part of any permission. DWT has provided further comments on the recently submitted Reptile Survey and these confirm that no further survey work or mitigation is required in respect of reptiles. The Trust commends the thorough nature of the survey work and the subsequent report is very comprehensive and of a high standard.

The County Archaeologist advises that the proposal would have no archaeological impact.

Responses to Publicity

Overseal Parish Council objects to the development as access to the site is along a very narrow country lane which is a no through road and has limited turning places. It is also a public footpath and access onto the A444 is very difficult. 8 parking spaces are shown but the planning statement refers to 16 vehicles, parking of visitors on the road would block it. The removal of hedgerows is not welcomed due to owls and wildlife on the site, it changes the whole landscape. Overall development is outside the village and in open countryside.

7 letters of objection have been received in response to the proposal and can be summarised as:

- a. Fundamentally the same as previously refused
- b. Scale and massing would be out of keeping with the rural character of the area;
- c. Design of the dwellings is not appropriate to the rural edge of Overseal and therefore not in accordance with the NPPF and the Council's own design guidance;
- d. The development of the site with four dwellings has forced the developer to devise a layout that is alien to the area, involving two dwellings lying within a backland location relative to the frontage houses. This has resulted in the two dwellings fronting Sealwood Lane to be located in parts less than six metres from the carriageway edge. Gardens as a consequence are small and overlooked. The whole effect is a development that remains cramped and urban in nature which is wholly out of character with the locality
- e. Contrary to policy EV1 as development in the countryside
- f. It is the case that a recent appeal case in Linton (your ref: 9/2013/0689, appeal case APP/F1040/A/14/2214428 – and interestingly where this same Planning Consultant acted for the authority in defending these policies) has clarified the weight to be given to the existing local plan. In short the Inspector in that case was satisfied that policy EV1 imposed a “blanket ban” (his words) on development in the countryside and since there was not a demonstrable five year supply of housing the policy was inconsistent with the National Planning Policy Framework and therefore should be set aside. The Inspector did indicate however that the policy carried “*little weight*” (paragraph 40 refers): he did not say “*no weight*”.
- g. Housing fronting onto Green Lane and Sealwood Lane are all single plot depth with large front garden, whereas the proposed development would impose a density that does not reflect the context of the site.
- h. Not in accordance with para 49 of the NPPF and is not sustainable development

- i. The council is close to a 5 year land supply which the proposed will not make a significant contribution to
- j. It is noted and accepted that the authority does not currently have a five year supply of housing land and thus prima facie paragraph 49 applies it is necessary to consider this matter in the round and have regard in particular to the “direction of travel”. The position reported by the authority to the Linton Inquiry in September 2014 showed a supply of 2.98 years as of May 2014. On behalf of the Rule 6 party at that inquiry I pointed out that in the few months to August 2014 the Council’s own calculations had shown the figure had increased significantly to 3.88 years. Since that time a further 582 dwellings have been approved (Thorpe Down Road, Church Gresley – 306, Willington Road, Etwall – 100, Linton – 110 and Packhorse Road, Melbourne – 66). Applying that, admittedly in crude form, to the calculation shows a further increase to 4.28 years’ supply. The latest published position by the authority (June 2015) shows there to be a 4.48 years supply. There are also a number of major housing developments submitted and in the pipeline ahead of this proposal. These include a total of around 1,000 dwellings on Broomy Farm, Hartshorne and off William Nadin Way, Swadlincote
- k. Important to note that the NPPF talks about the presumption in favour of sustainable development as opposed to a “sustainable location for development”. In other words the development proposal itself must also include measures which demonstrably show that it is contributing in a positive manner to sustainability objectives.
- l. The Inspector has raised no concerns about the basic strategy of the replacement Local Plan and it is reasonable to conclude that in effect she is saying that but for some changes (which are significant but do not impact upon the consideration of this application) then the plan will be found to be “sound”.
- m. Increased use of a single track lane with no passing places resulting in increased potential for accidents, particularly small children walking to catch the school bus;
- n. Detrimental impact on wildlife, public footpaths and native ancient hedgerows;
- o. Green Lane and Sealwood Lane are already congested by traffic accessing various businesses in the vicinity;
- p. Development would lead to a 50% increase in number of properties on Sealwood Lane;
- q. The documentation states that 16 parking spaces would be provided but only 8 cars are shown parked on the development, according to the submitted block plan;
- r. depth of the parking spaces appears to be substandard resulting in the likelihood that cars will overhang the public highway
- s. Removal of hedges and vegetation will change the landscape completely;
- t. The application site does not lie within an area considered suitable for development.
- u. having considered sustainability in the round it can be seen that the proposal and the site would score poorly on any measure of sustainability given the limited employment opportunities within the village, the lack of any secondary school provision or the distance to a range of shopping facilities (it is not likely that occupiers would walk to the single shop referred to or if they did that they could carry their weekly shopping needs back home). It is equally the case that the development will not contribute positively in any social sense. There is a shortage of affordable housing across the district but what is proposed here is clearly the antithesis of that. The isolated grouping of the development, away from the existing pattern of development, would be “anti-social” and not inclusive.
- v. Overdevelopment of the site

- w. Development is permissible on the edge of the “*urban areas*” but only for exception sites. These considerations do not apply to this proposal. Overseal is seen as a “Key Service Village” but development is nonetheless to be limited to sites within the settlement. Under no reasonable definition can this site be regarded as being within the confines of the village
- x. No fall-back position exists as the buildings were not in agricultural use on or before the 20th March 2013.

A petition has also been received with 69 signatures objecting to development as the lane is outside of the village curtilage and deemed as rural/agricultural land and the plan is inappropriate and out of keeping with the area as existing properties are in large plots set well off the lane with parking for residents and visitors. There is concern as the lane is deemed a footpath and there is no footway for pedestrians due to the narrow width of the lanes that have few or no passing or turning places. The parking and access provided would be unsighted directly onto a busy lane used by existing residents and businesses.

Development Plan Policies

The relevant Saved Local Plan Policies are:

Housing Policies H5, 8 and 11, Environment Policy EV1, 10 and 11, Transport Policy T6.

Emerging Local Plan Part One Policies include:

- S1 - Sustainable Growth Strategy
- S2 - Presumption in Favour of Sustainable Development
- S4 - Housing Strategy
- S6 -
- H1 - Settlement Hierarchy
- SD1 - Amenity and Environmental Quality
- BNE1 - Design Excellence
- BNE3 - Biodiversity
- BNE4 - Landscape Character and Local Distinctiveness
- INF1 - Infrastructure and Developer Contributions
- INF2 - Sustainable Transport
- INF8 -

Supplementary Planning Guidance: Housing Design and Layout

National Guidance

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

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

Para 203 – 206 (Conditions and obligations)

National Planning Practice Guidance (NPPG) ID:26 (Design), ID:21a (Conditions), ID:23b (Obligations), ID:3 (Housing land availability) and ID:50 (Rural Housing)

Planning Considerations

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

- The principle of the development
- The Council's five-year housing land supply and sustainability
- Design and Visual impact
- Highway matters
- Ecology
- River Mease SAC and S106 obligations
- Miscellaneous issues

Planning Assessment

Principle of the development

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

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

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

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

The application is located on the northern side of Sealwood Lane, a single width track that leads to other residential properties and farms before petering out to become a footpath leading through to Linton Heath. The site, together with all the existing properties in the vicinity, is some considerable distance from the village confine boundary, as shown on Inset 22 of the adopted Local Plan. The adopted Local Plan contains numerous saved policies relating to new residential development and countryside development that are considered to be consistent with the NPPF although some recent appeal decisions have called into question the validity of some policies in certain circumstances. When assessing the current proposals against the adopted

Local Plan it is clear that they would be contrary to Housing Policies 5 and 8. It is evident that the site is not within the village confine, but rather it lies within countryside outside any settlement boundary.

Saved Housing Policy 5 only supports new housing development in the countryside provided that they can be accommodated within villages and they are in keeping with the scale and character of the settlement.

Housing Policy 8 only supports new housing development in the countryside provided that it is necessary to serve a rural-based activity or unavoidable in the countryside.

Part A of Environment Policy 1 is similar to Housing Policy 8 except that it enables development which is unavoidable in the countryside whilst seeking to protect the intrinsic character and beauty of the countryside.

Notwithstanding the above policies, they should not be instrumental in reaching a decision on whether to approve or refuse consent as the housing policies could be considered to be out-dated when assessing development proposals on sites of this size when weighed against the need for housing in the district.

The Emerging Local Plan began its Examination in Public during November 2014 but was subsequently suspended pending further work being carried out with regard to the sustainability appraisal and the Housing Market Assessment (HMA). In the Plan, Policy H1 – Settlement Hierarchy – includes Overseal as a Key Service Village where development of a range of scales up to and including small strategic sites and affordable and cross subsidy exceptions sites of up to 25 dwellings will be promoted on appropriate sites and according to individual settlement circumstances. Clearly, this is what is proposed here. However, although some weight can be afforded to the Emerging Plan now that it has progressed beyond its consultation stages and has reached the Examination stage, it would not be advisable to attribute it significant weight until such time as the Plan has been found to be ‘sound’ following completion of the Examination and a five year supply of housing land has been demonstrated.

Given that the proposals do not accord with Saved Housing Policies 5 and 8 of the adopted Local Plan, it is evident that the principle of the development cannot be satisfied using these policies as a gauge. Notwithstanding this, Members will be aware that the decision is not as clear cut as the above policy considerations appear to suggest. Taking the advice in the NPPF into account, paragraph 14 emphasises that the presumption in favour of sustainable development must apply unless there are adverse impacts that would significantly and demonstrably outweigh the benefits when assessed against the policies of the NPPF as a whole. In other words, there is a need to identify the significant and demonstrable harm that would ensue from the development proposals in order to outweigh the NPPF policies and the need for housing.

The buildings were originally used as part of the agricultural operations relating to Coppice Farm to the east. This is their authorised use as there is no evidence that planning permission was ever sought or gained for their use in association with any commercial activity. The definition of previously developed land, according to Annex 2 of the NPPF, is *“land which is or was occupied by a permanent structure, including the curtilage of the developed land and any associated fixed surface infrastructure. This excludes: land that is or has been occupied by agricultural or forestry buildings*”

Applying this definition to the application site it is likely that the historic use of the site and buildings for storage and business use was unauthorised and therefore it is doubtful whether an argument that the site is a brownfield (previously developed) site could be sustained.

However, notwithstanding the previous use of the site and the buildings, it is evident in this case, that the site displays a partially built-up rather than open character. The site has been vacant for a considerable period of time with no reasonable expectation that it is likely to be used either in association with an agricultural use or for commercial purposes. The site does not make an identifiable positive contribution to the character of the countryside. In these particular circumstances the re-development of the site for housing would relate reasonably well to the existing housing in the immediate vicinity, both on Sealwood Lane and Green Lane, although it is acknowledged that the majority of the more recent developments here have been allowed under the infill policy (Housing Policy 6 of the adopted Local Plan) which allows for the infilling of a small gap for normally not more than two dwellings.

Clearly, therefore, the decision is not clear cut and the arguments, both for and against, are finely balanced. Added to this are other important material considerations that are fundamental to consideration of the application.

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

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

As already stated above, paragraph 14 of the NPPF states that the presumption in favour of sustainable development must apply unless there are adverse impacts that would significantly and demonstrably outweigh the benefits. It has been made clear through numerous appeal decisions made since the inception of the NPPF that any negative considerations would need to be *substantial* in order to justify refusal of an application that makes a meaningful contribution to strategic housing need. The mere presence of less than optimal planning circumstances for any given development is not likely to outweigh the presumption.

The Council currently is unable to demonstrate that it has a five year housing land supply. Paragraph 49 of the NPPF is specific on this subject. It states: "*Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five year supply of deliverable sites*". It follows, therefore, that, as the Council is unable to

demonstrate a five year housing supply, Members should be approving the current proposal, provided that they consider the scheme to be sustainable.

The main part of Overseal is within walking distance of the application site and the village is well-served by a range of local services and facilities, including a church, shops, public house, takeaways etc. The village is also served by public transport and footpath links to the surrounding countryside and wider area. It is evident that the application site is sustainable and would meet the sustainability objectives of the NPPF with regard to rural housing and the importance of supporting sustainable rural communities.

Regard must be had to paragraph 14 of the NPPF in that (if the presumption in favour of sustainable development applies) the benefit of the housing proposals has to be balanced against the harm to the countryside. Moreover, to justify resisting the proposals under paragraph 14 the harm must outweigh the benefit, not just marginally but rather '*significantly*' and '*demonstrably*'.

Design and Visual impact

The site has little visual quality and makes a very limited contribution to the open and rural character of the countryside. It is acknowledged that the existing buildings on the site are of single storey height and that the proposed development would be a mix of single and one half storey properties. Consequently, there is likely to be some minimal visual impact on the surrounding area. However it should be borne in mind that the replacement dwelling to the east (Coppice Farm) is of two storeys and of modern design. The height of the proposed dwellings would be comparable with surrounding buildings, even allowing for a slight difference in ground levels.

When viewed in this context, therefore, the proposed development would appear as a continuation of the Coppice Farm development and surrounding buildings. The design and scale of the proposed dwellings would also compare favourably with Coppice Farm and incorporate similar design features, such as arched window/door heads. Overall, it is considered that the proposed development would not have a significant or harmful impact on the character or appearance of the area and consequently the objectives of the NPPF would not be compromised, the reduction in height and changes to design are considered to overcome the reasons for refusal.

Highway matters

The County Highway Authority (CHA) has assessed the proposals against the level of traffic that could be generated from the site, both from its authorised use (agricultural) and its unauthorised use (commercial/storage). Whilst Sealwood Lane is of single width it is possible to pass other traffic with care as the verges and existing field entrances are sufficiently generous in places to allow vehicles to pass. The CHA recognises that the current situation on the lane is not ideal. However, the Authority is not convinced the proposal is of sufficient scale to warrant a recommendation for refusal. It should be remembered that Sealwood Lane is not a through road and the level of traffic using the lane is quite low. The impact of the proposal on highway safety would not be sufficiently detrimental to warrant refusal.

Car parking within the site would be provided at a ratio of four to five spaces per dwelling, which is more than meets the guidelines in the 6Cs Design Guide. The site could accommodate up to 16 vehicles which is more than sufficient enough to

accommodate resident and visitor parking, therefore it is unlikely that visitors would park on the verge of the lane.

Ecology

Derbyshire Wildlife Trust has expressed concern that the two existing buildings that provide roosting habitat for barn owl would be removed as part of the development, albeit one would be retained while the development was under construction. DWT has expressed a wish that at least one of the buildings be retained in perpetuity. Barn owl is a 'IUCN Red List' protected species which is given special protection under the Wildlife and Countryside Act 1981 (as amended). Section 25(1) of the Act imposes a duty on local authorities to take such steps as they consider expedient to bring to the attention of the public the provisions of Part 1 of the Act, which includes measures to conserve protected species.

It is recognised, however, that a balance needs to be achieved between the interests of development and conservation. Discussions have been ongoing during the course of the application between DWT, the applicant and the Local Planning Authority in order to secure an acceptable way forward that would safeguard the protected species whilst at the same time, allow for a favourable recommendation for the proposals. Originally, DWT requested that the building proposed for retention during construction works was retained in perpetuity. The applicant believes this would prove to be impracticable for a number of reasons:

1. The relationship of the building to the proposed development would create issues of maintenance and access and, other than providing a roosting structure, the building would have no viable use or function.
2. It is not clear who would be responsible for the upkeep of the building in the long term and what measures would be required to ensure the building did not fall into further disrepair.
3. The permanent presence of the building would reduce considerably the amount of amenity space allocated for Plot 3, which would mean that the scheme would likely not be viable in its current form.

The applicant has offered to provide a barn owl box close to the site but DWT considers this is neither sufficient nor in accordance with guidance provided in *Barn Owls and Rural Planning Applications* produced by the Barn Owl Trust and Natural England. The erection of a barn owl box in the area should only be viewed as temporary provision and while the applicant takes the view that the building would have no viable use or function, DWT argues that the use or function of the retained building would be to maintain a barn owl roost/nest site. If the applicant is unwilling to retain the existing building as a permanent barn owl roost/nest, one of the new dwellings should be designed to incorporate a permanent accessible nest space for barn owl. Further discussions with the applicant have resulted in an agreement to provide the latter facility and DWT now accepts that there is a way forward. This could be required by a suitably worded condition.

With regard to reptiles the most recent Reptile Survey has been assessed by DWT and they now confirm that no further survey work or mitigation is required.

DWT is also satisfied that, given the description of the buildings on the site and extent of the internal and external inspections, sufficient survey work has been undertaken to

determine that roosting bats are unlikely to be present on the site and, as such, no impact on bats is anticipated as a result of the proposals.

River Mease SAC and S106 obligations

As stated elsewhere in this report, the site is within the River Mease SAC and therefore the application has been screened in accordance with The Habitats Directive as required by EU Regulations. The screening has concluded that as there is not likely to be any significant impact on the River Mease SAC and, given the comments received from Natural England, there is no requirement to undertake an appropriate assessment for the development.

A development of the size proposed in this application would not meet the criteria for financial contributions towards recreation, health, education etc. However, the site's relationship to the River Mease SAC means that there will be a requirement for a contribution towards water quality management in accordance with the River Mease Developer Contributions Scheme. Based on the site details in terms of the number of dwellings and number of bedrooms created within the development, a contribution of £1,416 will be required. The applicant is aware of this and has agreed to pay the contribution as part of a Unilateral Undertaking obligation.

With regard to the provision of barn owl boxes, it is proposed that some of these would be located within an adjacent field that is not included in the red outline. Consequently, the Unilateral Undertaking would need to include an obligation to require the provision of the barn owl nesting/roosting boxes in accordance with a scheme to be agreed by the Local Planning Authority and DWT. One of the proposed dwellings would incorporate barn owl roosting facilities, details of which should be required by condition.

Miscellaneous issues

The issues/objections raised by the neighbouring residents have largely been addressed as part of the planning assessment above. The main issues remaining are addressed as follows:

- Increased potential for accidents – the site has been used for agriculture and commercial purposes previously, both of which could have involved the use of heavy machinery or vans/lorries. The traffic and type of vehicles generated by a residential use is likely to be lighter and create less of an impact than both the previous uses.
- The majority of the existing hedgerows would be retained and enhanced and the routes of the public footpaths would not be affected. The applicant's attention would be drawn to the presence of the footpaths and reminded of his duty to keep the routes clear at all times.
- Emergency vehicles currently have access to the other properties further along Sealwood Lane to the west. The site is closer to Green Lane and Burton Road than those properties and therefore this would not be an issue.
- The site is quite extensive, measuring some 2,275 square metres (0.2275ha) and its re-development by the erection of 4 dwellings is not considered to constitute over-development.

Overall Conclusion

The information within the supporting documents and responses from statutory consultees has not raised any particular concerns with regard to 'technical' issues. The County Highway Authority is satisfied that the development could be made acceptable in highway safety terms with imposition of conditions. Similarly, the wildlife within the site could be protected by mitigation and monitoring work. The scale, design and layout of this scheme are considered to be appropriate for the site and its location and address the reason for refusal of the previous application

Therefore, the decision falls to be determined on more fundamental issues of principle. Whilst the development appears to be contrary to Saved Housing Policies 5 and 8 and Environment Policy 1, this is outweighed by the material considerations of the presumption in favour of sustainable development, which is the main objective (golden thread) running through the NPPF (and the Government's desire to 'significantly boost the supply of housing'). In this context involving a development that would be sustainable and given that the Council is unable to demonstrate a five year housing land supply, it is recommended that the application is approved, subject to the applicant entering into a legal agreement (Section 106 or Unilateral Undertaking) to cover the above obligations and subject to the conditions specified below.

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

Recommendation

- A. That the Committee delegates authority to the Planning Services Manager to conclude the signing of a Unilateral Undertaking in pursuit of the contribution as set out in the planning assessment above;
- 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. Before development involving the construction of any dwelling commences precise details, specifications and, where necessary, samples of the facing materials to be used in the construction of the external walls and roof of the dwellings 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.
 3. Before development involving the construction of any dwelling commences a scheme of hard and soft 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, shall be submitted to and approved in writing by the Local Planning Authority.
Reason: In the interests of the appearance of the area.

4. All planting, seeding or turfing comprised in the approved details of landscaping submitted as part of Condition 3 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.

5. Notwithstanding any details submitted or the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended), before development involving the construction of any dwelling commences plans indicating the positions, design, materials and type of boundary treatment to be erected shall be submitted to and approved in writing by the Local Planning Authority. The boundary treatment shall be completed in accordance with the approved details before the development is occupied or in accordance with a timetable which shall first have been agreed in writing with the Local Planning Authority.

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

6. Before development involving the construction of any dwelling commences, details of the finished floor levels of the dwellings 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 levels.

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

7. Before development involving the construction of any dwelling commences details shall be submitted to and approved in writing by the Local Planning Authority to show the provision of nesting facilities for barn owls to be incorporated within one of the dwellings hereby approved. The works shall be carried out in accordance with the approved details and the facilities shall be provided before the dwelling is first occupied and shall be retained as such thereafter.

Reason: In the interests of the preservation of protected species.

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

Reason: The submission of the details at an early stage would allow the Local Planning Authority to control and mitigate the impact of the development on the protected species i.e. barn owls.

9. Immediately prior to the commencement of any demolition on the site a further survey shall be carried out to ascertain whether there are any barn owls nesting within the buildings. If barn owls are found to nesting then no demolition works

shall take place until such time as the nesting period has ended and the young have left the nest.

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

10. Before development involving the construction of any dwelling commences details shall be submitted to and approved in writing by the Local Planning Authority to show the provision and location of two House Sparrow terraces within the development and the works shall be carried out in accordance with the approved details. The approved House Sparrow terraces shall be provided prior to first occupation of the development hereby approved.

Reason: In the interests of the preservation of a species of Principal Importance.

11. Before development involving the construction of any dwelling commences a suitable scheme for the prevention of ground gas ingress shall be submitted to and approved in writing by the Local Planning Authority . Alternatively, the site shall be monitored for the presence of ground gas and a subsequent risk assessment completed in accordance with a scheme to be agreed with the Local Planning Authority, which meets the requirements given in Box 4, section 3,1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.

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

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

12. Before development involving the construction of any dwelling commences details of a scheme for the disposal of surface water shall be submitted to and agreed in writing by the Local Planning Authority. The submitted scheme shall be include a detailed SuDS and soakaway plan to ensure the River Mease water quality conservation targets can be met. The approved scheme shall be carried out in conformity with the details which have been agreed before the development is first brought into use.

Reason: To ensure that the integrity of the River Mease Special Area of Conservation is not compromised.

13. Before development involving the construction of any dwelling commences the new vehicular and pedestrian accesses shall be formed to Sealwood Lane in accordance with the application drawing No. 14/CFO/12f and provided with visibility sightlines extending from a point 2 metres from the carriageway edge, measured along the centreline of the access to the extremities of the site frontage abutting the highway in each direction. The land in advance of the visibility sightlines shall be retained throughout the life of the development free of any object greater than 1m in height (0.6m in the case of vegetation) relative to adjoining nearside carriageway channel level.

Reason: In the interests of highway safety.

14. No dwelling shall be occupied until space has been laid out within the site in accordance with drawing No. 14/CFO/12f for cars to be parked.

Reason: In the interests of highway safety.

15. The car parking spaces to be provided within the site shall be kept available for the parking of motor vehicles at all times. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) the garage/car parking spaces hereby permitted shall be retained as such and shall not be used for any purpose other than the garaging of private motor vehicles associated with the residential occupation of the properties without the grant of a further specific planning permission from the Local Planning Authority in that regard.

Reason: In the interests of highway safety to ensure sufficient parking remains available to serve the development.

16. The development hereby permitted shall be carried out in accordance with plan/drawing 15/CFO/LP, 15/CFO/01e, 15/CFO/02h, 15/CFO/03h, 15/CFO/06f, 15/CFO/07h, 15/CFO/08h and 15/CFO/10h received 25th August 2015; unless as otherwise required by condition attached to this permission or allowed by way of an approval of a non-material minor amendment made on application under Section 96A of the Town and Country Planning Act 1990 (as amended).

Reason: For the avoidance of doubt.

17. The building indicated as being retained on drawing No. 15/CFO/10h shall not be demolished until such time as the development has been completed and the replacement barn owl nesting/roosting opportunities have been provided within the dwelling subject to the requirements of Condition No 7 above.

Reason: To ensure that replacement barn owl nesting/roosting facilities are available at the earliest opportunity, in the interests of the preservation of protected species.

Informatives:

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

That the hedgerows on the application site may contain nesting birds. It is an offence under the Wildlife and Countryside Act 1981 to intentionally kill, injure or take any wild British breeding bird or its eggs or damage its nest whilst in use or being built. The nesting season normally encompasses the months March to July inclusive. If you are in doubt as to requirements of the law in this regard you should contact the Derbyshire Wildlife Trust, East Mill, Bridge Foot, Belper, Derbyshire DE56 1XH, telephone 01773 881188.

The routes of Public Footpaths 6 and 36 must remain open, unobstructed and on their legal alignment at all times. There should be no disturbance to the surface of the routes without prior authorisation from the Rights of Way Inspector for the area. Consideration should be given to members of the public using the routes at all times. A temporary closure of the routes may be granted to facilitate public safety subject to certain conditions. Further information may be obtained by contacting the Rights of Way Section at Derbyshire County Council, Shand House, Dale Road South, Matlock, Derbyshire DE4 3RY, telephone 01629 539781. If a structure is to be erected adjacent

to the rights of way, it should be installed within the site boundary so that the widths of the rights of way are not encroached upon.

The applicant's attention is drawn to the advisory letter from the Environment Agency dated 29th December 2014 with regard to pollution prevention measures.

The applicant is advised to confirm that the local sewage treatment works (Overseal STW) can handle the additional foul water capacity likely to be generated by the proposed development.

Pursuant to Section 184 of the Highways Act 1980 and Section 86(4) of the New Roads and Streetworks Act 1991, at least 12 weeks prior notification should be given to the Environmental Services Department of Derbyshire County Council before any works commence on the vehicular access within highway limits; please contact 01629 533190 for further information.

The 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.

The proposed development lies within a coal mining area which may contain unrecorded coal mining related hazards. If any coal mining feature is encountered during development, this should be reported immediately to The Coal Authority on 0345 762 6848. It should also be noted that this site may lie in an area where a current licence exists for underground coal mining. Further information is also available on The Coal Authority website at: www.gov.uk/government/organisations/the-coal-authority. Property specific summary information on past, current and future coal mining activity can be obtained from: www.groundstability.com.

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

In dealing with this application, the Local Planning Authority has worked with the applicant in a positive and proactive manner through pre-application discussions, by seeking to resolve planning objections and issues to improve the quality of the proposal and by determining the application as quickly as possible following receipt of additional information. As such it is considered that the Local Planning Authority has implemented the requirements set out in paragraphs 186 and 187 of the National Planning Policy Framework.

For assistance in complying with planning conditions and other legal requirements applicants should consult ""Developing Land within Derbyshire - Guidance on submitting applications for land that may be 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 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.

Item 1.5

Reg. No. 9/2015/0648/NO

Applicant:
Mr W Mc Cann
179 The Bungalow
Linton Heath
Linton
Swadlincote
DE12 6PE

Agent:
Mr Steve Cox
56 Clifton Close
Swadlincote
DE11 9SQ

Proposal: THE RESUBMISSION OF APPLICATION FOR THE
SITING OF TWO STATIC CARAVANS AT 179 THE
BUNGALOW LINTON HEATH LINTON SWADLINCOTE

Ward: LINTON

Valid Date: 10/08/2015

Reason for committee determination

The application is reported to Committee at the request of Councillor Grant as local concern has been expressed about a particular issue.

Site Description

The application relates to a site occupied by a large mobile home resembling a bungalow. The site is hard surfaced with gravel and bounded by close boarded fencing, with decorative entrance walls and pillars.

The application site is 15.5m across its road frontage and is approximately 56m deep. It is generally flat and is clear of all vegetation. The land to the north east comprises National Forest woodland planting whilst a ribbon of residential properties adjoins to the south west. There is open land on the opposite side of the road. The site lies within the countryside albeit adjacent to a recognisable ribbon of houses

Proposal

The application is a resubmission of the previously approved application 9/2008/0764 for the siting of two static caravans within the rear garden.

There would be no extension of the site into the countryside as the additional caravans would be sited within the existing site. The two new caravans would be sited alongside the site's north eastern boundary and positioned one behind the other, both further back in the site than the present mobile home.

All pitches would gain access via the existing access driveway. Each pitch would provide standing for a single large caravan and have two parking spaces.

Although one of the caravans previously approved has been brought on to the site and is in use, the conditions have not been correctly discharged and the time elapsed has meant that a fresh application for the caravans has now been submitted.

Applicants' supporting information

The applicant is the person who secured the original planning permission on appeal. The additional caravans are required for his older children, reflecting the fact that he has more children living with him now than when the appeal was granted.

Essentially the present mobile home has 2 bedrooms and this is now too small to accommodate the parents and all the children. In traveller culture it is usual to allow older teenage children to occupy a separate caravan, although this is normally close by the parents' home to provide care and supervision.

Planning History

Planning permission was granted on appeal to site two gypsy caravans in September 2006 (9/2005/0802). The Inspector considered that there was a demonstrable unmet need for gypsy sites in the District. He also accepted that whilst the development would extend the ribbon development there was an acceptability of gypsy sites on the edge of settlements and the low key nature of the proposal meant that it would not be out of keeping with its surroundings. He considered that in visual terms it would represent an appropriate transition between the built development and the woodland area to the north east.

The appeal allowed the siting of 2 caravans, reflecting the fact that at that time, the applicant owned two 25ft caravans. In 2007 the applicant applied under 9/2007/0751, to vary that consent to allow the siting of a single large mobile home. That was granted mainly having regard to the view that such a building would resemble a bungalow sited at the end of a row of houses.

In 2008 permission was granted for a further two static caravans (9/2008/0764). The present application is a resubmission of this proposal as the time of the 2008 application has lapsed.

Responses to Consultations

The County Highways Authority has no objection subject to a condition for the provision of two parking spaces per dwelling unit proposed and existing.

The Environmental Protection Team advises that there are issues with land drainage in the vicinity of the proposed site as a result it would be appropriate for the development to include the provision of the surface water drainage.

Planning Policy (River Mease SAC) advises that having regard to the location of the caravans, any water discharged into the sewer network would be exported out of catchment and would not go to a sewage treatment works which would discharge to the

Mease. Waste and Surface water would therefore go to Coton WWTWs, which in turn would discharge to a tributary of the River Trent bypassing the SAC. In light of the above no developer contribution in respect of the River Mease DCS will be required and a Habitat Regulations Assessment will not be required.

Responses to Publicity

Three letters of objection received which can be summarised as:

- a) Properties overlook the site and reduces loss of privacy of local residents
- b) No space within the site for additional parking as owner uses it to run his business from.
- c) Two business run from the site which is not appropriate
- d) Existing caravan at back of site is rented out and not for the owners daughter
- e) Additional noise would be caused causing further disturbance
- f) Caravans not in keeping with local scheme of building
- g) Increased safety issues from increased coming and goings

A letter of petition objecting to the development has also been submitted and signed by 17 residents which raise concern about the level of noise from the existing site which causes disturbance. The site is considered too small to accommodate two further caravans; the applicant already has another site with three caravans and is renting the current caravan out. Furthermore the additional caravans will increase the comings and goings from the site and rubbish left on the site which is within The National Forest.

Development Plan Policies

The relevant policies of the Saved Local Plan are: Housing Policy 15 and Environment policy 1

Emerging Local Plan Part 1 2014:

S1 – Strategic Growth Strategy

S2 - Presumption in Favour of Sustainable Development

S4 – Housing Need

S6 - Sustainable Access

H1 - Settlement Hierarchy

H21 – Sites for Gypsies and Travellers and for travelling show people

SD1 – Amenity and Environmental Quality

BNE1- Design Excellence

BNE2 - Heritage Assets

BNE3 – Biodiversity

BNE4 - Landscape Character and Local Distinctiveness

INF2 - Sustainable Transport

Derbyshire Gypsy and Traveller Accommodation Assessment 2008 has been updated by a joint Derbyshire/Staffordshire assessment in 2014 in response to the NPPF and Localism Act which requires local authorities to assess the accommodation needs of Gypsies and Travellers and make site specific allocations for new public and private sites in development plans. Gypsy and Traveller Accommodation Assessments (GTAAs), represent a piece of evidence, which provides a starting point for considering pitch and plot requirements for Gypsies, Travellers and Travelling Show people in the study area for the period 2014/15 to 2034/35. This is a similar approach to the

assessment of future needs for market and affordable housing, set out in the NPPF and National Planning Practice Guidance (NPPG).

Partners (Local Authorities within Derbyshire and East Staffordshire) would be able to use the GTAA to guide pitch and plot requirements in their administrative areas. They can also use it as the basis for further bespoke studies of their own, supplemented by other local survey and monitoring evidence, to provide a more locally specific indication of need. It is also recognised by the commissioning partners that such findings drawn primarily from snapshot data may be reviewed by individual local authorities over time.

The GTAA 2014 does not identify specific sites to accommodate future pitch and plot requirements in the study area. This would be the responsibility of the individual city, district and borough LPAs through the preparation and review of their local plans.

National Guidance

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

Paras 6-10 (Achieving sustainable development)

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

Para 17 (Core principles)

Chapter 6 (Delivering a wide choice of quality homes)

Chapter 7 (Requiring good design)

Para 196 & 197 (Determining applications)

NPPG ID:26 (Design), ID:21a (Conditions), ID:23b (Obligations), ID:3 (Housing land availability) and ID:30 (Noise)

Planning Policy for Traveller Sites, August 2015, Department for Communities and Local Government

This document sets out the Government's planning policy for traveller sites. It should be read in conjunction with the National Planning Policy Framework.

Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. This policy must be taken into account in the preparation of development plans, and is a material consideration in planning decisions. The Government's overarching aim is to ensure fair and equal treatment for travellers, in a way that facilitates the traditional and nomadic way of life of travellers while respecting the interests of the settled community.

To help achieve this, Government's aims in respect of traveller sites are:

- a. that local planning authorities should make their own assessment of need for the purposes of planning
- b. to ensure that local planning authorities, working collaboratively, develop fair and effective strategies to meet need through the identification of land for sites
- c. to encourage local planning authorities to plan for sites over a reasonable timescale
- d. that plan-making and decision-taking should protect Green Belt from inappropriate development
- e. to promote more private traveller site provision while recognising that there will always be those travellers who cannot provide their own sites
- f. that plan-making and decision-taking should aim to reduce the number of unauthorised developments and encampments and make enforcement more effective

- g. for local planning authorities to ensure that their Local Plan includes fair, realistic and inclusive policies
- h. to increase the number of traveller sites in appropriate locations with planning permission, to address under provision and maintain an appropriate level of supply
- i. to reduce tensions between settled and traveller communities in plan-making and planning decisions
- j. to enable provision of suitable accommodation from which travellers can access education, health, welfare and employment infrastructure
- k. for local planning authorities to have due regard to the protection of local amenity and local environment

Local Guidance

Housing Design and layout SPG

Planning Considerations

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

- Principle of development
- The need for additional gypsy caravan pitches in the area
- Conformity with the Development Plan including access to day-to-day facilities and intrusion into the countryside
- Access and highway safety
- The personal circumstances of the applicant
- Relevant appeal decisions
- Amenity
- Sustainability

Planning Assessment

Principle of development

The application is an identical resubmission of a previously approved application (9/2008/0764) which was granted by the Planning Committee. This followed an appeal decision which allowed the siting of a mobile home on this site as a Gypsy/traveller site.

The applicant has brought a caravan on site however this was after the 2008 application had lapsed and no conditions had been discharged, hence the new application.

Housing Policy 15: Gypsy Caravan Sites is criteria based. The policy is permissive of caravan sites provided that:

- The site is in an area frequented by gypsies;
- That it is satisfactorily related in relation to other development;
- That it is acceptable in environmental terms; that it is reasonably accessible to services and facilities;
- That it is capable of sympathetic assimilation into its surroundings; and
- That there is adequate provision for access.

The Planning policy for traveller sites 2015 produced by DCLG advises that rural settings for gypsy sites are acceptable in principle where they are not subject to special

planning constraints and that local planning authorities should ensure that the scale of such sites does not dominate the nearest settled community. The proposed site is already in use as a Gypsy site and the proposed caravans would be a reduced scale to the existing mobile home on site and neighbouring two storey properties, the reduced scale of the units at the end of the properties softens the transition from urban to rural as the site sits adjacent to a National Forest Woodland and open countryside.

The need for additional gypsy caravan pitches in the area.

Caravan counts show that unauthorised encampments in South Derbyshire are skewed towards two areas in the District, namely the Hilton/Hatton areas in the north and Linton in the south. This could possibly be attributed to the fact that there are public caravan sites in the vicinity of these areas which might attract hopeful travellers, or relatives of families residing on those sites.

Existing public sites at Church Broughton and Lullington continue to be generally fully occupied with turnover of plots being relatively rare. Planning permissions for small private sites have been granted at Walton on Trent and Overseal in the past.

The Accommodation Assessment states that there is a forecast growth in gypsy households and that this would need to be met by provision of caravan pitches, in additions to those at the existing sites. As a result it is considered that this application would be justifiable to meet an identified need for gypsy caravan pitches.

Conformity with the Development Plan including access to day-to-day facilities and intrusion into the countryside

It is clear that this is an area already frequented by gypsies evidenced by the number of public, private sites and unauthorised encampments. The applicant has suggested that the new pitches would be occupied by relatives of the family already living on the site.

In environmental and landscape terms, the site is presently occupied by a large mobile home and one of the previously approved static caravans, the remainder of the site is gravel surfaced and used for parking vehicles. The additional caravans proposed would be sited on the existing hard surface alongside the eastern boundary fence beyond which is the National Forest woodland.

Access and highway safety

The county highway authority has no objection to the use of the existing access for 3 caravans, but requests a condition that 6 car spaces be provided within the site.

Personal Circumstances

Essentially the existing mobile home has 2 bedrooms, and the only way to accommodate dependent children is to site more caravans close enough to provide care and supervision. The applicant has a large family ranging in age between 9 and 25, some of the older children live on an alternative site, however there is still insufficient space to accommodate the younger members of the family within the existing mobile home.

Relevant appeal decisions

The following additional appeal decision (other than that allowed at the application site) is relevant.

An application to expand the gypsy caravan site at Crafty Flats Lane in Coton in the Elms, from 2 to 8 caravans was granted planning permission on appeal in July 2006. Although the Council refused permission on highway safety grounds, a matter that persuaded the Inspector to dismiss the appeal, the Inspector's comments are useful in examining the issues regarding the principle of expanding an existing gypsy site.

The gypsy status of the family was not disputed; they wished to live together in the traditional gypsy manner on the appeal site that was already in use for that purpose. Given the details provided the Inspector was satisfied that gypsy status of the appellant's family had been established in accordance with the definition in ODPM Circular 01/2006

There was also no dispute between the parties that the site was located within an area frequented by gypsies, that it is reasonably accessible to services and facilities, and that it would be capable of assimilation into its surroundings subject to extra landscaping being provided around the site boundary. The Council agreed that there was an unmet, although as yet unquantified, need for gypsy caravan sites in the general area. On the basis of the information supplied, his inspection of the site and its surroundings and the latest gypsy count figures for the District and County, the Inspector concurred with those views. He therefore agreed with the appellant that the proposed development met the majority of the criteria in both Structure Plan Housing Policy 8 (no longer relevant) and Local Plan Housing Policy 15.

He concluded a family need appeared to exist in that particular case which, subject to sensitive landscaping and screening, was capable of being acceptably accommodated on that occasion as an extension to the established site.

The previous permission for the site currently being considered confers acceptance that the family are gypsies and as such an exception to the normal policies for the protection of the countryside may apply as supported by the NPPF.

Amenity

Concern has been raised regarding the overlooking of the site and loss of privacy. The proposed caravans would be sited on the opposing boundary to the nearest neighbour at no. 180, the rear bedroom windows on the caravan would be within 45 degrees of the rear elevation of no 180. However the distance between the existing dwelling and proposed caravans would be between 35 – 45 metres away which is significantly beyond the recommended distance outlined in the housing layout and design SPG. Furthermore the caravans would be partly obscured by the existing amenity block and the landscaping proposal involves planting along the western boundary to aid in screening the site. Overall the proposed development is not considered to cause undue harm to the amenity of neighbouring occupiers in terms of overlooking and loss of privacy.

Issues of drainage have been raised and a condition would be attached to ensure a drainage scheme is proposed and discharged into the mains sewer.

Sustainability

The closest village amenities lie in both Overseal and Linton, less than 1km away from the application site. A Post Office and primary school are in each of Overseal and Linton whilst medical and secondary school provision is further afield in Swadlincote.

The Planning policy for traveller sites 2015 produced by DCLG advises that rural settings for gypsy sites are acceptable in principle where they are not subject to special planning constraints. It goes on to advise local authorities to be realistic about the availability of alternatives to the car in accessing local services in rural areas. Given the overall scale of the proposal and the presence of some local facilities within walking/cycling distance, it is considered that it would be difficult to sustain a refusal on the basis of accessibility to services.

Conclusion

To summarise, therefore, the development or extension of gypsy sites in countryside locations such as the current application, is inappropriate in planning terms unless, firstly, available data demonstrates that a need for such accommodation exists which cannot be met on any existing sites, and secondly the proposal is acceptable in other planning respects.

It is considered that the need has been justified with the natural expansion of the applicant's family since he first occupied the site being a further relevant consideration. The proposal satisfies Housing Policy 15, the site is satisfactory in terms of its location in relation to other development and there are no environmental issues that would preclude development which is also in accordance with the DCLG policy for traveller sites (2015)(produced in accordance with the NPPF).

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

Recommendation

GRANT permission subject to the following conditions:

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

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

2. The development hereby permitted shall be carried out in accordance with the proposed block/landscaping plan received 8th July 2015 and the proposed caravan elevations received 10th August 2015; unless as otherwise required by condition attached to this permission or allowed by way of an approval of a non-material minor amendment made on application under Section 96A of the Town and Country Planning Act 1990 (as amended).

Reason: For the avoidance of doubt.

3. This permission does not authorise the use of the land as a caravan site by any person other than gypsies and travellers.
Reason: To satisfy the identified need for additional sites for gypsy pitches in South Derbyshire, in a location where development might otherwise not be supported.
4. The additional caravans hereby approved shall be occupied only by the applicant, his wife, their children and step children unless otherwise agreed in writing by the local planning authority
Reason: In order to meet the needs of the existing family on the site
5. No more than a total of 2 caravans shall be sited on the site at any one time
Reason: Siting more than this number of caravans may lead to an unacceptably detrimental effect on the residential amenity of neighbouring properties in accordance with adopted policy H15 of the South Derbyshire Local Plan 1998
6. 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 (discharged to the mains sewer) in conformity with the details which have been agreed before the development is first brought into use/occupied.
Reason: In the interests of flood protection and pollution control as the site is within the River Mease SAC catchment.
7. No commercial activity shall take place on the site
Reason: Such use might lead to an unacceptably detrimental effect on the residential amenity of neighbouring properties in accordance with adopted policy H15 of the South Derbyshire Local Plan 1998
8. No residential caravan shall be brought onto the site until the hard standing for it and the associated car parking spaces have been provided and allocated for the corresponding caravan and thereafter retained for that caravan
Reason: To ensure that all the activities associated with the development are contained within the curtilage of the site, so as to avoid parking and manoeuvring on the highway to the detriment of highway safety.
10. No vehicles which exceed 3.5 tonnes unladen weight shall be parked or stored at the site
Reason: Such a use might lead to an unacceptably detrimental effect on the residential amenity of neighbouring properties in accordance with adopted policy H15 of the South Derbyshire Local Plan 1998
11. All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed with the Local Planning Authority.
Reason: In the interests of the appearance of the area.

Informatives:

The proposed development lies within a coal mining area. In the circumstances Applicants should take account of any coal mining related hazards to stability in their

proposals. Developers must also seek permission from the Authority before undertaking any operations that involves entry into any coal or mines of coal, including coal mine shafts and adits and the implementation of site investigations or other works. Property specific summary information on any past, current and proposed surface and underground coal mining activity to affect the development can be obtained from the Coal Authority. The Coal Authority Mining Reports Service can be contacted on 0845 762 6848 or at www.coal.gov.uk.

The development hereby authorised does not override the requirements of the Caravan Sites Act/Site Licence legislation.

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

Item 1.6

Reg. No. 9/2015/0605/BM

Applicant:
Keystone Lintels Limited
Ryder Close
Castle Gresley
Swadlincote
DE11 9EU

Agent:
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JVH Town Planning Consultants Ltd
Houndhill Courtyard
Houndhill
Marchington
ST14 8LN

Proposal: REMOVAL OF CONDITION 15 OF PLANNING PERMISSION 9/2014/0411 RELATING TO THE HOURS OF USE OF EXTERNAL AREAS AT KEYSTONE LINTELS LIMITED RYDER CLOSE CASTLE GRESLEY SWADLINCOTE

Ward: CHURCH GRESLEY

Valid Date: 03/07/2015

Reason for committee determination

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

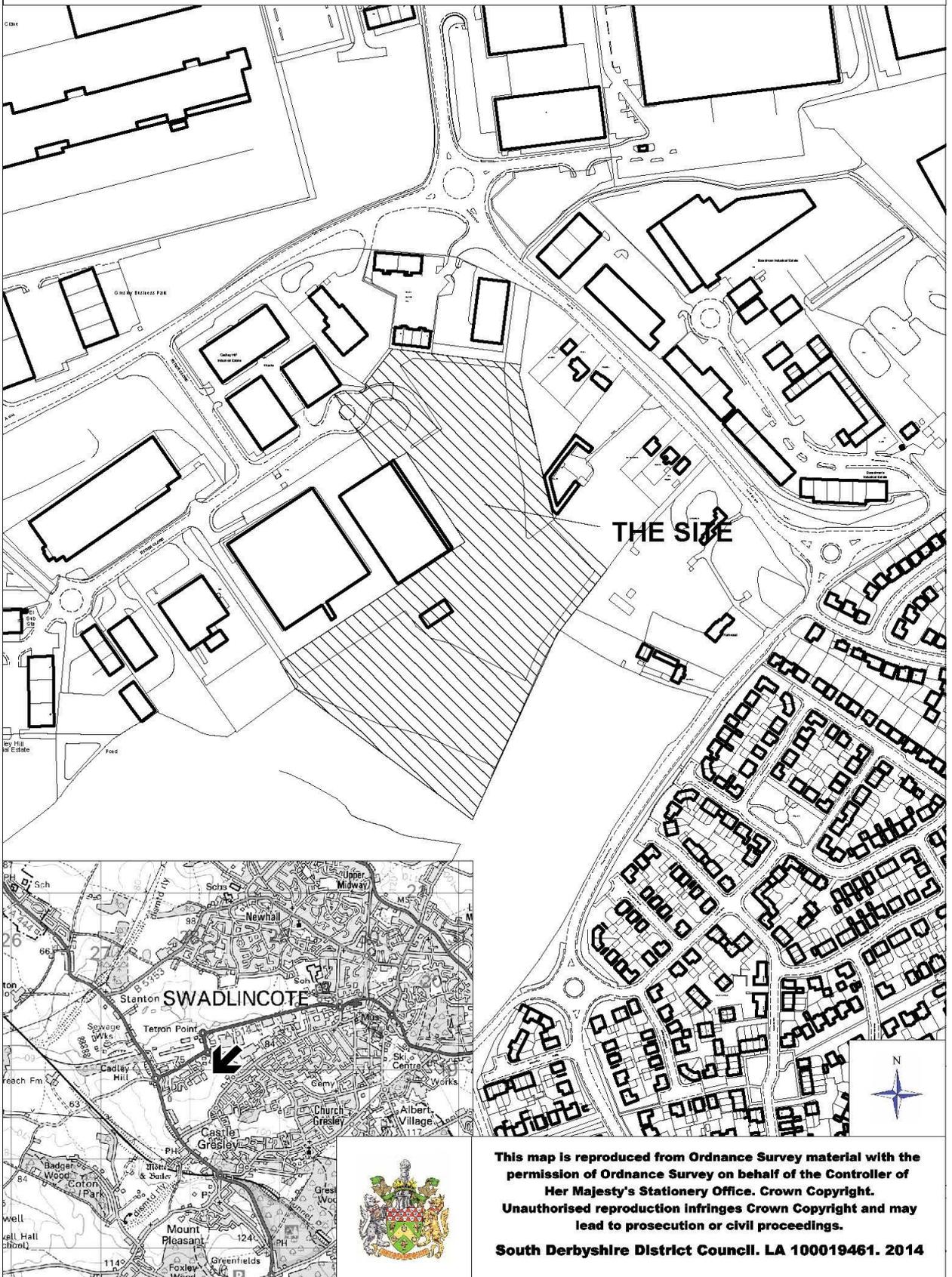
Site Description

The site comprises the whole of Keystone Lintels which comprises two main manufacturing buildings and external storage. Access is obtained via Ryder Close to the north-west. To the south and south-east of the site it has an open boundary, albeit the storage area is at a lower level than the adjoining field. Swadlincote Lane and the Castleton Park development lie beyond the field. To the east are a kennels business and a number of dwellings on Cadley Hill Road split by intervening pasture. A wooded area, protected by a Tree Preservation Order, also contains two further dwellings, where permission exists for a further 7 dwellings. To the north and west is the Cadley Hill Industrial Estate containing a mix of general and light industrial and office uses. Further to the south-west is a mixed light industrial and residential development currently under construction with a number of the dwellings now occupied.

Proposal

The application is made under Section 73 of the 1990 Act and seeks to remove condition 15 of the implemented approval for the erection of 3 buildings to form an

9/2015/0605 - KEYSTONE LINTELS, RYDER CLOSE, CASTLE GRESLEY DE11 9EU

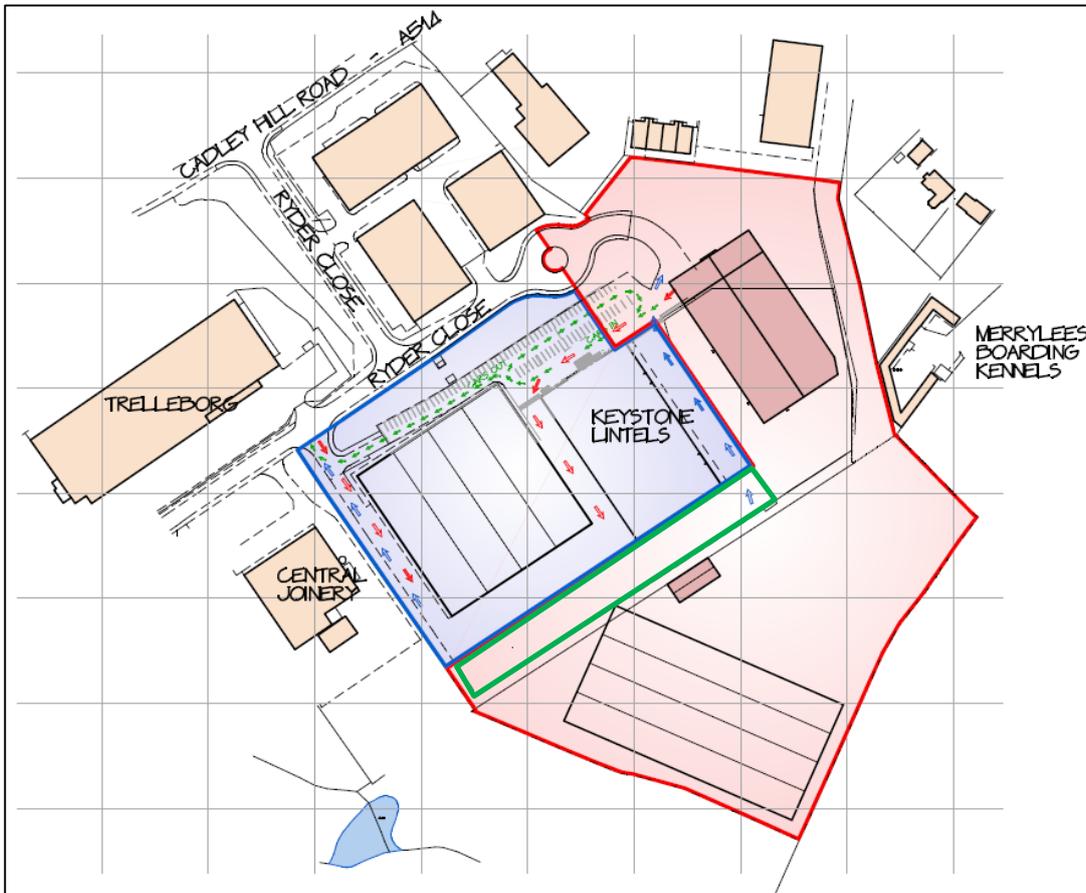


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additional fabrication unit, spray shop, and storage and distribution unit, with additional parking and ancillary office accommodation. The condition states:

“The use of the external areas hereby permitted shall not be used outside the following times, or at any time on Sunday, Bank or Public Holidays: 7am to 9pm Monday - Friday and 8am to 4pm on Saturdays”.

The external areas referred to in the condition are defined by the application site under the permission. This is shown in red on the plan below:



The condition therefore only has an influence on part of the site, and not the remaining land (as shaded blue).

Since submission the application has been amended to reduce the extent of the area sought for unrestricted external loading – to a length of existing hard standing to the southern edge of the original buildings, as outlined in green above. The condition would therefore continue to apply in its existing form across the remainder of the existing site (as defined in red).

Applicant's supporting information

A Planning Statement sets out the details of the proposal and planning history. It is considered the condition is unnecessary to safeguard the amenity of neighbouring occupiers. The applicant sets out the legal and policy background for use of Section 73 and notes that the Council should only consider the question of the condition itself and

any decision would leave the initial permission intact. It is considered that the disposition of the site and current layout of the premises is such that the storage and distribution building and the rear yard back onto open land north of Swadlincote Lane. Swadlincote Lane marks the start of residential property and is essentially the division between existing and proposed employment uses and housing. It is noted that the emerging Local Plan allocates the land for industrial and storage/distribution uses up to Swadlincote Lane. This allocation was first made in the 1998 Local Plan and remains part of the current Development Plan. On the basis of the Noise report it is considered there is no requirement for condition 15 to be retained. Keystone is a major international company providing jobs and a very significant employment opportunity in South Derbyshire (currently 226 employees at the Swadlincote site – many of them local – which would increase when the already permitted buildings are brought into use), and there is no planning reason to constrain their productivity and job opportunity creation by refusing to allow the use of outside areas across a 24 hours period. The operation of the site means that vehicles come back from all over the UK and require loading during the night in time for next day deliveries, and this is an essential part of the operations to provide this level of deliveries to the market – without which the company would be severely disadvantaged and would have to consider the long term position of the operations from this location. The application is not considered to be out of step with the NPPF and the planning approach to noise, and the objectives of the NPPF are aimed at economic growth and prosperity for the nation. Sustainable development should not be inhibited where significant adverse effects do not result.

A Noise Assessment is also provided, based on a survey undertaken in March 2015. Noise of loading/unloading trucks was measured at distances of 10 metres from the source and also at Portsmouth Road (south of Swadlincote Lane). The report concludes that, assuming partially open windows at noise sensitive properties on Portsmouth Road, the recommended internal noise level of 30dB is achieved. The report concludes that there are no significant adverse impacts on residential properties during the daytime or night time periods.

Planning History

- 9/2014/0411 Revised scheme to permission ref: 9/2013/0370 for the erection of 3 buildings to form an additional fabrication unit, spray shop, storage & distribution unit, with additional parking and ancillary office accommodation – Approved August 2014.
- 9/2013/0370 Erection of 3 buildings to form an additional fabrication unit, spray shop, storage & distribution unit and additional parking – Approved August 2013.
- 9/2011/0685 Change of use of approx. 2.5 ha of grassland into hard standing for use as a stock yard – Approved May 2012.
- 9/2005/0341 Erection of a distribution warehouse and marshalling yard and access – Approved June 2005.

Responses to Consultations

The Environmental Health Officer (EHO) holds some concerns with regards to the potential for night time movement and loading of lintels to an unreasonable impact upon

neighbouring residential amenity. The noise report is intended to demonstrate that noise levels from site operations should not unreasonably impact on residential neighbours, and it concludes this on the basis that they have observed employees loading lorries, and measured the noise generated by night time operations consisting of forklifts using only a broadband type reversing alarm, loading a single lorry. The EHO visited the site on the 7th & 8th October 2015 between 11pm and midnight, and observed 2-3 forklifts operating with a mixture of broadband and tonal reversing alarms in use. Keystone representatives have previously confirmed that business operations are expanding on the site, with night time operations likely to intensify to help meet demand. This likely intensification of operations on the site has not been considered in the noise report, and the EHO has concerns as to whether the modelled data is truly representative of site activity. The EHO also notes that the noise report uses the lowest background noise level measured for their BS:4142 assessment, and goes on to suggest that prevailing background noise levels are so low that a BS:4142 assessment should not be relied upon – instead proposing greater emphasis upon BS:8233. The EHO's own monitoring and that undertaken by the applicant suggest that background levels are regularly high enough to support a BS:4142 assessment. Furthermore caution should also be used in relying expressly on BS:8233 for monitoring fluctuating noise sources such as vehicle loading operations. The EHO also notes that the applicant's acoustician has confirmed that, as a worst case, operational noise could exceed the threshold of sleep disturbance, and the BS:4142 assessment indicates a potential adverse impact. There is therefore clear evidence to suggest that noise from the night time operations may have an unreasonable impact upon residential neighbours. On balance however, officer observations made were that site noise was not excessive at the time. The applicant has offered no additional noise mitigation, but it is considered suitably worded conditions could be used to permit the activities and safeguard neighbouring amenity, as well as 'test' the impacts over a temporary period.

Responses to Publicity

13 objections have been received from local residents, raising the following concerns:

- a) increase in noise nuisance which will affect the residents of nearby houses;
- b) impacts on sleep, health and living conditions;
- c) there have been many occasions with noise late in the evening and at weekends;
- d) noise during work hours is constant, with beeping and bumping;
- e) noise wasn't an issue last December, so the recent development has already affected the quality of life;
- f) there will be a very different and significant increase in operations once the buildings are complete and in use;
- g) the noise report is not representative of how the site will be used;
- h) the noise report says that trucks and forklifts have broadband reversing alarms, but tonal alarms are used
- i) the noise report appears to only consider the impact of either a single loader or lorry;
- j) the noise could have been kept to a minimum at the time of the survey;
- k) the noise survey took readings from Portsmouth Road which is significantly further away than the nearest residential properties;
- l) the report shows a bedroom at night is typically at 20-30 dB(A), yet the report also predicts that the internal sound level caused by the work is 44 dB;

- m) the predicted noise levels indicate that there is likely to be a significant adverse impact, but this is ignored in the conclusions in favour of a reference to WHO guidelines;
- n) suggest that the condition be retained and the matter reconsidered not less than 12 months after the site becomes fully operational, allowing evaluation against real and known conditions;
- o) the third factory (yet to be built) can only make things worse;
- p) alternative suggestions of granting permission to operate 06:00 to 22:00 or 24:00 Monday to Saturday whilst reserving a ban on Sundays as well as all public and bank holidays;
- q) additional noise screening should be put in place to reduce the noise levels by say 10 dB along with the silencing of the lorry and fork truck reversing alarms;
- r) had residents been aware of controls over operating times, they would have complained, and this lack of complaint suggests there is presently no concern;
- s) the flood lights during night working hours illuminate all the houses that face the factory, and this is just about bearable during current working hours;
- t) could more consideration be given to the bund/landscaping around the facility to ensure that the planting used is quick growing, dense and would provide some absorption of the noise being generated;
- u) there is a time and a place for business expansion; and
- v) it would drastically reduce the desirability and value of the area and properties.

Cllr Stuart Swann makes representations on behalf of nearby residents, noting that those who have approached him appreciate the business' desire to expand but feel any such move needs to be tempered by the close proximity of the company's premises to residential properties. People living near the site state they already struggle with constant noise nuisance and have described continual hammering and bashing, as well as the sounds associated with forklift trucks and other machinery. In addition, some residents suffer due to lighting from the site shining directly into their properties. Also there are suggestions that work is undertaken outside what are believed to be the operating hours agreed for the site. Therefore the legitimate fear is that the expansion of the business, together with an increase in the hours of operation, would only exacerbate the situation and make matters worse for nearby residents. Cllr Swann makes particular reference to one resident has states that as the operation of the factory has evolved over the years, they and their family have been reduced to using only the rear living areas and bedrooms of their home in order to avoid noise pollution and that because of this they also no longer open the windows of their property. This is clearly a demonstration of a significant loss of amenity for local residents who cannot enjoy their homes in a manner that many people would regard as a basic human right. Given the negative impact upon the quality of life of local residents it is urged that the Committee consider this application very carefully with the interests of local people being the primary consideration, and that, crucially, all possible measures to mitigate the detrimental impact on the occupiers of nearby residential properties be fully examined.

Development Plan Policies

The relevant policies are:

- Saved Local Plan 1998: Employment Policies 1, 2, 3 and 8 (E1, E2, E3 and E8)

Emerging Development Plan Policies

The relevant policies are:

- Submission Local Plan Part 1: E3 (Existing Employment Areas) and SD1 (Amenity and Environmental Quality).

National Guidance

- National Planning Policy Framework (NPPF), in particular paragraphs 6, 7, 8, 14, 17, 18, 19, 21, 120 and 123.
- National Planning Policy Guidance (NPPG)

Local Guidance

- Industrial & Office Design & Layout (2004)

Planning Considerations

The main issue central to the determination of this application is whether the proposed removal of the condition would give rise to an aural environment which would provide an acceptable balance between the continued operation and development of the business and the standard of amenity and health enjoyed by occupiers of affected premises.

Planning Assessment

Legal and policy background

Members are entitled to take three approaches to an application made under Section 73 of the 1990 Act. The application can be granted as applied for (i.e. the condition is simply deleted), the condition can be retained but with variation of its wording to meet the same objectives; or the application can be refused. In the first two options, additional conditions may be added where they meet the usual tests for applying conditions (i.e. they are necessary, enforceable, precise, relevant, etc.) whilst any varied condition should also meet these tests. Any grant of permission would also stand as a separate and distinct permission with other existing conditions 're-attached' and reviewed where necessary.

The economic benefits of the proposal must also be realised from the outset given the significance of Keystone as a local employer in the District and the NPPF affords significant weight on the need to support economic growth through the planning system.

Noise impacts

Reference should be made primarily to the applicant's supporting documents and the response of the EHO, both outlined above. These set out the differing opinions towards the application – including the method of noise assessment and the conclusions of that report. It is clear that the case is finely balanced given the evidence presented and the noise readings taken by the EHO. Notwithstanding this, there appears to be agreement from both parties that "for the night-time period, the predicted noise levels indicate that there is likely to be an indication of a significant adverse impact, depending on the context". It is the night-time period which forms the main focus of establishing the degree of harm arising, given the lesser level of background noise from adjoining

premises, etc. raising the comparative 'prominence' of noise at a time when most nearby residents are wishing to sleep.

The response of the EHO is questioned by the applicant's acoustician, arguing that the agreed approach was to carry out assessment against the lowest background noise levels available, recognising that BS:4142 recommends otherwise. It is also contested that the report is not solely relying on BS:8233; it is providing additional methods by which the noise from these operations could be assessed and the actual noise levels should be considered, not just the difference between background and measured peaks. Indeed the "depending on the context" quote above is also relevant in that the Keystone operation existed long before the new housing and it is an industrial unit, such that consideration for noise should be in the context of an industrial setting. The EHO comments that it is now apparent, following his own observations, that the lower background level agreed is not representative of typical background levels and that this point should have become apparent during the course of the applicant's assessment triggering further dialogue with the EHO to agree an alternative 'baseline'. Separately it is noted that whilst the business existed prior to the Castleton Park estate, it does not pre-date other residences affected.

Consideration is given to historical control over the use of the site, with the reduced area now subject to the application having previously had no control over the hours of use. However the business is materially different to that which first occupied the site in the 1980s with differing loading and delivery requirements and customer base, notably being more intensive than at the time the business first located here. The types of vehicles and the extent of storage (hence stock held) have materially changed also. It is not considered that much, if any, weight can now be afforded to this former unregulated status.

The applicant considers that the proposal is compliant with the NPPF, in particular that paragraph 123 states "...decisions should aim to avoid noise giving rise to significant adverse impacts on health and quality of life as a result of new development..." – being their opinion that the impacts would not be significant. A wider appreciation of the NPPF also identifies that whilst one of its core principles is to "always seek to secure...a good standard of amenity for all existing and future occupants of land and buildings"; paragraph 123 also states that "...decisions should aim to mitigate and reduce to a minimum other adverse impacts on health and quality of life as a result of new development, including through the use of conditions...". Local Plan Saved policies E1, E2 and E8 all reassert the need to provide an acceptable impact on existing amenities, but equally make provision for expansion and integration of new industrial development.

The above discussion and representations highlight that the proposal has demonstrable impacts and that these could be significantly adverse. Ordinarily it might be appropriate to withhold permission but consideration should first be given to the potential for mitigation and controls which might reduce the level of this impact to a more acceptable degree. This is wholly in line with the NPPF and NPPG, which promotes the use of conditions to facilitate a grant of permission as opposed to a refusal. The EHO suggests that 24 hour operations could be allowed within the amended site so long as any control is enforceable and reviewable. On this basis it is recommended that any variation of the condition be time limited to just 12 months to properly assess the outward effects and that either: CCTV with audio is installed to ensure that (a) operations are only within areas permitted, and (b) management can identify and control noisy events upon receipt of complaints from residents; or that additional barriers are provided to clearly demark

the area where activity is permitted. In the context of the above discussion and the need to be able to respond to any future complaints over compliance with conditions; these conditions are considered to meet the relevant tests.

Other considerations

The concerns regarding existing lighting are noted. However whilst the existing permission (and any permission granted here) carries control over any new lighting to be installed, the lighting at the cause of these effects appears to pre-date the permission. Hence it is considered that an informative should be added to highlight this concern, suggesting it is in the applicant's interest to resolve this matter through an alternative scheme submitted pursuant to the condition or by way of remedial works to the existing lighting.

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 for a variation of condition 15, as opposed its removal, amending the description stated above to reflect this change, subject to the following conditions:

1. The development hereby permitted shall be carried out in accordance with plans/drawings 212-53.01, 212-53.02 Rev E, 212-53.03 Rev B, 212_53.04, 212-53.05 Rev A, 212-53.06 Rev A, 212-53.07 Rev B and KSD/500/701 together with the recommendations of the JMP Transport Assessment (April 2014), GRM Development Solutions Mining Risk Assessment (February 2013), Clear Environmental Flood Risk Assessment (January 2012) as amended by SG Design Studio letter 'Variation to previously approved FRA', the D Costello Design of Attenuation of Storm Water report (March 2013) and the Acute Acoustics Ltd Noise Assessment Report (April 2014) - some of which were received and approved under planning permission ref: 9/2014/0411; unless as otherwise required by condition attached to this permission or allowed by way of an approval of a non-material minor amendment made on application under Section 96A of the Town and Country Planning Act 1990 (as amended).

Reason: For the avoidance of doubt.

2. 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 Local Planning Authority 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.

3. The development shall be implemented in accordance with the recommendations of the submitted Coal Mining Risk Assessment, in particular with regard to

intrusive site investigation works (which shall be undertaken prior to the commencement of any other development) and any resultant remedial works identified by the site investigation.

Reason: To ensure the stability and safety of the development, having regard to the Coal Mining Risk Assessment undertaken.

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

Reason: In the interests of pollution control.

5. Prior to being discharged into any watercourse, surface water sewer or soakaway system; all surface water drainage from parking areas and hardstandings shall be passed through an oil interceptor, designed and constructed to have a capacity and details compatible with the site being drained. Roof water shall not pass through the interceptor.

Reason: In the interests of pollution control.

6. No floodlighting shall be erected until precise details of the intensity, angling and shielding, and the area of spread of the lights have been submitted to and approved in writing by the Local Planning Authority. The lights shall be installed in accordance with these details and thereafter retained in conformity with them. The submitted scheme shall comply with the Institute of Lighting Engineers ""Guidance notes for the Reduction of Obtrusive Light"" (2005) or any equivalent guidance that may replace it.

Reason: To preserve the amenities of neighbouring occupiers and the wider area.

7. The new buildings, subject of the application, shall not be occupied until space has been provided within the application site in accordance with the application drawings for the parking of both the existing and proposed buildings vehicles, laid out, surfaced and maintained throughout the life of the development free from any impediment to its designated use.

Reason: To ensure that adequate parking and manoeuvring space is available within the site to prevent parking and manoeuvring on adopted highway.

8. The development permitted by this planning permission shall only be carried out in accordance with the approved Flood Risk Assessment (FRA) dated 19 January 2012 (ref: CL1113/05/01) as amended by the letter from SG Design and the report by D Costelloe dated March 2013, drawing no. KSD/500/701, and the mitigation measures detailed within the FRA that proposes the limiting the surface water run-off generated by all rainfall events up to the 100 year plus 20% (for climate change) critical rain storm such that it will not exceed the run-off from the undeveloped site and not increase the risk of flooding off-site. The mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the timing/phasing arrangements embodied within the scheme, or within any other period which has been first submitted to and agreed in writing by the Local Planning Authority.

Reason: The condition is imposed to prevent flooding by ensuring the satisfactory storage of/disposal of surface water from the site and to reduce the risk of flooding of the proposed development and future occupants.

9. The landscaping on the northern, eastern and part of the southern boundary of the site comprising a 1.0m high bund, planting and seeding as approved by this permission as detailed on plan no. 212-53.02 Rev C shall be carried out in coming planting season (i.e. October 2015 - April 2016). Any trees which within a period of 10 years, or other plants which within a period of 5 years, from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

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

10. The landscaping on the remaining part of the southern and western boundaries of the site comprising a 1.0m high bund, planting and seeding as approved by this permission and detailed on the plan no. 212-53.02 Rev C shall be carried out in first planting season (October - April) following the completion of the retaining wall on that part of the site. Any trees which within a period of 10 years, or other plants which within a period of 5 years, from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

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

11. Notwithstanding the submitted drawing 213-53.03 Rev B, the Phase 2 fabrication building shall be constructed in accordance with the recommendations of the Acute Acoustics Ltd Noise Assessment Report dated 23rd April 2014 and the noise mitigation measures shall be retained in place for the duration that the building occupies the site.

Reason: The use of the building for purposed within Class B2 of the Town and Country Planning (Use Classes) Order 1987 (as amended) has the potential to cause disturbance to the occupiers of nearby dwellings. The Local Planning Authority seeks to ensure that the construction method used in erection of the building is of a standard where noise is mitigated to acceptable levels.

12. Where installed, details of any fume extraction system(s) or similar equipment for the buildings hereby approved shall be first submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be implemented in accordance with the approved scheme prior to the first use of the building to which the details refer.

Reason: To protect the amenities of the locality generally in the interests of pollution control.

13. The use of the buildings hereby permitted shall not be used outside the following times, or at any time on Sunday, Bank or Public Holidays: 6am to 10pm Monday - Friday and 8am to 4pm on Saturday for the period of 2 years from the date of this permission. When this period has expires the hours of use shall be 7am to 9pm Monday to Friday and 8am to 4pm on Saturday.

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

14. Other than the land shaded green on plan ref: 212-53.05 Rev A; loading and unloading of vehicles and/or stacking/unstacking of products shall only be

permitted in the external areas (the extent as defined by the red line of the application site) between 0700 and 2100 hours Monday to Friday, and 0800 to 1600 on Saturdays. There shall be no loading and unloading of vehicles and/or stacking/unstacking of products within the external areas at any time on Sundays or on Bank or Public Holidays. The use of the land shaded green shall revert to the same hours of restricted activity upon the expiry of 1 year from the date of this permission.

Reason: To ensure that the use does not prejudice the enjoyment by neighbouring occupiers of their properties, and to afford a period of monitoring and review of the use of the land shaded green.

Informatives:

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

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.

Where development is proposed over areas of coal and past coal workings at shallow depth, The Coal Authority is of the opinion that applicants should consider wherever possible removing the remnant shallow coal. This will enable the land to be stabilised and treated by a more sustainable method; rather than by attempting to grout fill any

voids and consequently unnecessarily sterilising the nation's asset. Under the Coal Industry Act 1994 any intrusive activities, including initial site investigation boreholes, and/or any subsequent treatment of coal mine workings/coal mine entries for ground stability purposes require the prior written permission of The Coal Authority, since such activities can have serious public health and safety implications. Failure to obtain permission will result in trespass, with the potential for court action. Application forms for Coal Authority permission and further guidance can be obtained from the Coal Authority's website at: www.coal.gov.uk/services/permissions/index.cfm.

Item **1.7**

Reg. No. **9/2015/0211/OS**

Applicant:
Mr I Hamilton-Cooper
2 Woodville Road
Overseal
Swadlincote
DE12 6JG

Agent:
Mr John Pearson
JDP Architects
Manor Barn
Lullington Road
Coton in the Elms
Swadlincote
DE12 8EP

Proposal: **OUTLINE APPLICATION (ALL MATTERS EXCEPT FOR ACCESS TO BE RESERVED) FOR THE ERECTION OF A BUILDING TO PROVIDE RESIDENTIAL ACCOMMODATION WITH ASSOCIATED PARKING AND AMENITY AREAS AT 2 WOODVILLE ROAD OVERSEAL SWADLINCOTE**

Ward: **SEALES**

Valid Date: **07/05/2015**

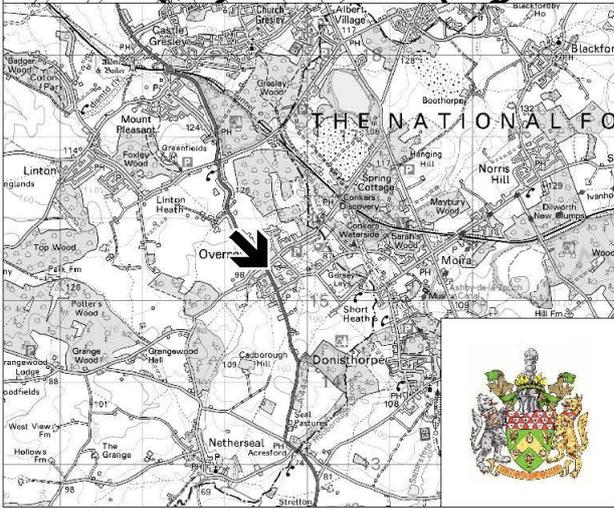
Reason for committee determination

The application is for a major development which has attracted more than two letters of objection.

Site Description

The application site occupies a prominent position at the junction of Woodville Road and Main Street (A444) and currently has a mixed use for carpet/ furniture sales and car sales. There is a rear carpark which is accessed from Woodville Road that is also used to display cars for sale and acts as a visitors' car park. Previous uses of the site include a carpet shop and aquatics store. The existing building is of a single storey modern design with large windows within both street elevations. The car park is partially screened by a mesh-fronted wall which extends off the main building along Woodville Road. There is a tarmac apron to the front of the site which is separated from the pavement by a series of concrete bollards.

Church Farm and its associated buildings, which are Grade II listed, abut the southeast boundary of the site. The Church of St. Matthew, which is also Grade II listed, is located opposite the site and the Robin Hood public house is diagonally opposite. The site is centrally located within the built-up area of the village and is close to a range of facilities and services.



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The village of Overseal is within the catchment area for the River Mease Special Area of Conservation (SAC). The River Mease is also a Site of Special Scientific Interest (SSSI).

Proposal

The proposal is for the demolition of the existing buildings on the site and its re-development by the erection of a single, L-shaped, two storey building to provide 16 residential units. The application has been submitted in outline with all matters reserved, except for access. The indicative layout shows that it is intended to provide 12 x 1-bedroom units and 4 x 2-bedroom units together with 24 car parking spaces to the rear and areas of communal amenity space between the rear of the building and the car park. The existing vehicular access would be widened to 4.8m to allow two vehicles to pass. The number of residential units has been revised during the progress of the application with a decrease from 21 to 16. This follows concerns raised with regard to the original height of the building being three storeys and its detrimental impact on the setting of the Grade II listed Church Farmhouse to the southeast.

The footprint of the proposed building would be substantially less than that of the existing modern building.

Applicants' supporting information

A Design and Access Statement has been submitted which makes the following points:

- The proposal will enhance the character of the area and complement the adjacent residential development;
- The site is important owing to the Grade II listed church on the opposite corner of Woodville Road;
- The Code for Sustainable Homes and the applicable level will naturally introduce initiatives within the building fabric to reduce energy and CO2 emissions;
- The layout has been designed to ensure full consideration of neighbouring amenities and will provide a well-positioned and aesthetically pleasing living environment of high quality;
- Account has been taken of the orientation of the building, the site location, designed to reflect the area, potential views and the surrounding scale and form of neighbouring properties;
- Use of sustainable materials which are sympathetic to local style and vernacular;
- High quality design owing to its important relationship with St Matthew's Church and Church Farm, with a gabled element mid-way along the Burton Road elevation and a corner-turning feature facing the road junction.

Planning History

9/2014/0858 – continued use of premises for the sale of carpets and furniture – withdrawn 21/10/2014

9/2014/1106 – continued use of premises for mixed use of retail/storage and vehicle sales – approved 27/01/2015

Responses to Consultations

The County Highway Authority has considered the application in respect of its existing retail/commercial use and the potential vehicular traffic generated by that use compared with the proposed residential use. It considers that an objection to the proposed development on highway grounds would be difficult to sustain. In addition, considering the modification of the site access to allow two-way traffic movements and that the parking provision has been restored to the original 24 spaces, there are no highway objections to the application, subject to a condition regarding the modification of the existing access prior to first occupation.

The Environment Agency has no comments to make on the application.

The Crime Prevention Adviser has no objections in principle to the proposal but requests that any future detailed application includes a boundary buffer between the front elevations and the street, the street-facing elevations are well treated to allow extensive internal and external views and that the inner elevations are treated so as to provide overlooking of parking areas within the private courtyard. If the latter point cannot be achieved it will be necessary to provide a secure gated access.

Severn Trent Water has no objection subject to a condition with regard to the provision of a scheme for foul and surface water drainage.

Natural England has no objection to the proposal with regards to the River Mease SAC or SSSI, subject to conditions relating to capacity at the local sewage treatment works, surface water, compliance with the River Mease Developer Contributions Scheme and the submission of a Construction Management Plan.

In response to the original scheme, Derbyshire County Council requested contributions towards education as follows:

- £11,399 towards one primary school place at Overseal Primary School;
- £17,176 towards one secondary school place at The William Allitt School; and
- £18,627 towards one post-16 school place at The William Allitt School.

However, commenting on the revised scheme, DCC confirms that the proposal no longer meets its threshold for contributions, as the number of two-bedroom units now falls below 5 and one-bedroom units do not require financial contributions. DCC requests the provision of high speed broadband services and the design of the residential units to be to Lifetime Homes' Standards.

The Environmental Protection Officer (contaminated land) recommends conditions with regard to contaminated land.

The Strategic Housing Manager has identified a need for the provision of some affordable housing within the scheme; however she has requested this be provided by way of a commuted sum to the equal value in lieu of on-site provision as the nature of the scheme is such that it does not easily allow the segregation of the affordable housing units and hence legal covenants are likely to restrict interest from a Registered Provider.

NHS England has confirmed that a contribution towards healthcare provision will not be required in this instance.

Responses to Publicity

Overseal Parish Council objects to the proposal on the basis that the height of the building at two storeys would affect the privacy of some neighbouring properties, including the listed buildings at Church Farm and 1 Lullington Road. Also the congregation of refuse bins on the road frontage would cause an obstruction and the refuse collection vehicle would necessarily need to stop close to the traffic lights. If cars from the A444 direction needed to enter the site at the same time there would be serious traffic dangers. It is difficult to assess the impact of the building without elevations and if permission is granted for the outline it would be difficult to sustain objections at the detailed stage. The application should provide this important information so that the mass of the building and its impact on the locality can be properly assessed.

Some 13 letters and emails of objection have been received regarding the proposal – 9 of which were sent in response to the original application for 21 units and 4 of which were sent in response to the amended plans. However, in the interests of completeness all the points made during the course of the application are reported below and are summarised as follows:

- a. Impact on an already dangerous road close to a busy junction;
- b. Overseal is fast becoming a commuter village;
- c. Overbearing impact on existing properties;
- d. Adverse impact on Church farmhouse (Grade II Listed) which should not be overshadowed;
- e. The proposal should be subject to the same considerations as the adjacent listed building;
- f. Parking in Overseal is already an issue – where would visitors and families park with more than 1 car?
- g. Overlooking of neighbouring gardens and windows – loss of privacy;
- h. The appearance and size of the building;
- i. Obstruction caused by parked cars on Woodville Road, close to the church and junction;
- j. The suggestion that the village is served by good public transport links is not the case;
- k. Lack of information within the application – will the units be privately-owned or rented?
- l. The proposed number of 16 units is still too high and should be in the region of 10;
- m. Increased noise and congestion from cars generated by the proposal;
- n. Bin storage and waste disposal has not been addressed, which should be provided via a communal facility, concealed and maintained;
- o. Proximity of the building to pavements – the building should be made more attractive by street planting;
- p. How would residents receive their right to fresh air and light?
- q. How would noise and vibrations from traffic be addressed/mitigated?
- r. Houses on the site would be more appropriate;

Development Plan Policies

The relevant policies are:

Adopted Local Plan: Saved Housing Policies 5, 9, 11; Saved Environment Policies 10, 13; Saved Transport Policies 6, 7; Saved Community Facilities Policy 1B

Emerging Local Plan: S2, S6, H1, E3, SD1, SD4, BNE1, BNE2, BNE3, BNE4, INF1, INF2, INF8

National Guidance

National Planning Policy Framework (NPPF), paragraphs 7, 8, 9, 10, 11, 14, 17, 49, 56, 111, 118, 119, 121, 131, 132, 186, 187, 203, 204, 205, 206

National Planning Practice Guidance (NPPG)

Planning Considerations

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

- The principle of the development
- Housing land supply and sustainability
- Visual impact including impact on heritage buildings
- Traffic, highway and parking issues
- The impact on the amenity of neighbours
- River Mease and S106 contributions
- Miscellaneous matters

Planning Assessment

The principle of the development

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

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

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

Paragraph 215 states that due weight should be given to relevant policies in existing plans according to their degree of consistency with the framework. The weight to be attached to policies in the adopted Local Plan is, therefore, dependent on their level of consistency with the NPPF. The Local Plan contains numerous saved policies relating to new residential development that have, in some instances, been considered to be consistent with the NPPF although very recent appeal decisions have questioned the validity of some policies in certain circumstances. However, in this case the site is well within the existing built-up residential area of the village and therefore the proposal is in accord with Saved Housing Policy 5 and consequently the principle of the development is satisfied. Moreover, it comprises previously-developed land, the re-development of which meets the one of the criteria in paragraph 17 (core planning principles) of the NPPF.

Housing land supply and sustainability

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

In terms of paragraph 14 of the NPPF the presumption in favour of sustainable development must apply unless there are adverse impacts that would significantly and demonstrably outweigh the benefits when assessed against the policies in the NPPF taken as a whole. Numerous recent appeal decisions have made it clear that any negative considerations would need to be substantial in order to justify refusal of an application that makes a meaningful contribution to strategic housing need. The mere presence of less than optimal planning circumstances for any given development is not likely to outweigh the presumption. As the Council is unable to demonstrate that it has a five year housing land supply, it follows that the proposal should be approved provided that the scheme is considered to be sustainable development.

The village of Overseal has been categorised as a Key Service Village in the emerging Local Plan as it is served by a variety of community facilities, including public transport, schools, shops, a public house, a church, playing areas etc. The village is also well placed in terms of accessibility to the wider area, including a major road (A444) which provides easy access to the M42 motorway and beyond. The application site is considered, therefore, to be sustainable and it follows that the proposal should be approved, provided that any negative considerations, including visual impact, are not considered to be substantial. These considerations are discussed in the following paragraphs.

Visual impact including impact on heritage buildings

The application site occupies a prominent position at the main junction of the A444, Woodville Road and Lullington Road. Consequently, the visual impact of the development is a principal consideration. Furthermore, the presence of two listed buildings in close proximity to the site, both of which are also prominent in the street scene, also need to be given careful consideration. The original Design and Access Statement indicated a building which would be part 3-storey facing the junction flanked by 2½ storeys fronting Woodville Road and Main Street. Following discussions between the applicant and the Council's Conservation and Heritage Officer, it has been agreed to amend the scheme to provide a building of a maximum 2-storeys in height. This would protect the settings of both St. Matthew's Church and Church Farm and ensure retention of their dominance within the street scene. In addition, the impact on the Robin Hood public house and No. 1 Lullington Road would also be reduced, as both of these properties are of two storeys. Whilst the application is in outline and such details are reserved for submission at the detailed stage, it is important to set the parameters for any subsequent reserved matters application at this stage so that it is clear from the outset what would be acceptable for the site. It is proposed therefore to include a condition on the outline permission to this effect.

The existing commercial building on the site is of modern design and is constructed from a variety of mismatched materials, including painted brickwork, roughcast painted render, with dated stone elements and profile metal sheets. The building and associated wire mesh panels to the front of the car sales area currently detract from the street scene and the setting of the heritage asset to the south and so their loss would not cause any concern. Indeed, replacement with a well-designed building designed in the local vernacular that sits well at this junction would enhance the character of the street scene, the setting of the listed building and so the village in general.

Traffic, highway and parking issues

The existing use of the site for car sales generates a fairly high level of vehicle movements which should be taken into consideration as part of determining the application and its impact on highway safety and traffic. The County Highway Authority is satisfied with the level of car parking to be provided, particularly when considering that the majority of the residential units would be of a 1-bedroom design, which are unlikely to generate a high level of residents' vehicles. Woodville Road is fairly wide at this location and vehicles can be accommodated on the roadside without causing obstruction. There are no traffic regulation orders in force other than what would be expected at the junction itself. Consequently, it is considered there is no basis for withholding permission on highway safety grounds.

Neighbouring amenity

The application has been submitted in outline without details as to the internal layout of individual units or elevations. As such it is not known at this stage whether the proposal would result in loss of privacy through overlooking to neighbouring properties and therefore cannot be considered as a reason for refusal. Such matters would be looked at in greater detail as part of the reserved matters submission. The applicant is aware of the Council's minimum distance standards set out in the Council's SPG and has indicated that the detailed design would reflect the standards. If for any reason the

detailed design did not meet the standards at that time, the Members would then have the opportunity to refuse that application.

River Mease and S106 contributions

The village of Overseal is within the River Mease SAC and the development proposal has been screened in line with the Habitats Regulations. The screening assessment concludes that the proposal would not result in an adverse impact on the River Mease and therefore an Appropriate Assessment will not be required in this instance.

It is proposed to drain the development to mains drainage and consequently there will be a requirement for the applicant to contribute towards water quality management by way of a financial contribution under the River Mease Developer Contribution Scheme. As there are no final details in terms of the number of residential units and bedrooms at this stage, the legal agreement will need to include a matrix for the determination of what the final contribution would be.

With regard to other contributions generated by the proposal, these are detailed below:

- (a) Recreation: There is currently a major, on-going, multi-phase project to upgrade the sports and village hall facilities within the village. The existing sports pavilion is subsiding and will require underpinning. The recreation area and village hall require improvements to bring them up to acceptable standards. The overall project is likely to cost in the region of £170,000 to £180,000 with approximately £70,000 already having been found. With particular regard to the open space element of the recreation contributions, whilst the ongoing sports facilities and village hall improvements do not create additional space per se, the contribution would be used to improve the quality of the play experience, particularly for additional play equipment and the provision of an outdoor gym. It is clear therefore that a request for developer contributions towards recreation facilities would be justified and that this request would be CIL compliant, as it would relate directly to the proposed development.
- (b) Affordable Housing: The nature of the proposal is such that it would not easily allow the segregation of the affordable housing units and therefore legal covenants are likely to restrict interest from Registered Providers. It is therefore intended to require a commuted sum in lieu of on-site provision. The applicant has indicated his agreement to this.

Miscellaneous matters

With regard to other matters that have been raised by neighbouring residents these are addressed as follows:

- The appearance and size of the building is a matter reserved for subsequent approval.
- The matter of whether the units will be privately-owned or rented is immaterial in planning terms other than with regard to the affordable housing requirement. It is the principle of residential accommodation that is currently being sought.
- The applicant has demonstrated that he can achieve 16 units within the building but this is open to detailed consideration at reserved matters stage.

- The provision of bin storage and waste disposal could be covered by condition.
- There will be a requirement as part of the reserved matters application for the submission and implementation of a landscaping scheme.
- The future occupants would be aware of the proximity of the development to the adjacent road network when considering whether to take up any of the units. The right to fresh air and light is not a planning consideration. Any problems caused by vibrations and/or noise would be covered by legislation under the Environmental Protection Act.

Overall Conclusion

This is a centrally located, brownfield site within the existing built-up part of Overseal, that would be well-served by existing facilities. The proposal is considered to be a sustainable form of development and therefore in accordance with both local and national policy. The loss of the existing modern building does not cause concern as it adds little to the character of the area or the street scene. The impact of the proposal on nearby listed buildings, the street scene and neighbouring residents would be addressed at reserved matters stage, although a condition is recommended to be included on the outline permission restricting the height of the building to two storeys. The proposed parking provision is considered to be sufficient to serve the development, with no objections or concerns being raised by the County Highway Authority. The applicant is willing to enter into a Unilateral Undertaking for the payment of contributions towards recreation, affordable housing and River Mease water quality management. There are no technical issues to overcome and is therefore recommended that the application is approved subject to the signing of a S106 Agreement and subject to conditions.

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

Recommendation

- A.** That the Committee delegates authority to the Planning Services Manager to conclude the signing of a legal agreement under Section 106 of the Town and Country Planning Act in pursuit of the provisions and contributions as set out in the planning assessment above;
- B.** Subject to A, **GRANT** permission subject to the following conditions:
 1. (a) Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.
(b) The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the reserved matters to be approved.
Reason: To conform with Section 92(2) of the Town and Country Planning Act 1990.
 2. Approval of the details of the layout, scale, appearance and the landscaping shall be obtained from the Local Planning Authority in writing before any development is commenced.

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

3. The development hereby permitted shall be carried out in accordance with drawing No. 1445/02 Rev B, received on 16th July 2015 unless as otherwise required by condition attached to this permission or allowed by way of an approval of a non-material minor amendment made on application under Section 96A of the Town and Country Planning Act 1990 (as amended).

Reason: For the avoidance of doubt.

4. Prior to any development commencing for the erection of building 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 shall be submitted to and approved in writing by the Local Planning Authority. The work shall be carried out in accordance with the approved details.

Reason: To safeguard the setting of adjacent Listed Buildings and the character and appearance of the area.

5. All planting, seeding or turfing comprised in the approved details of landscaping under condition 2 shall be carried out in the first planting and seeding seasons following the first occupation of the building 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.

6. Prior to any development commencing for the construction of the building details of a scheme for the disposal of surface and foul water shall be submitted to and agreed in writing by the Local Planning Authority. The submitted scheme shall include confirmation that the local sewage treatment works can handle the added foul water capacity. Thereafter 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 protection and pollution control.

7. With regard to condition 6 above, the current proposal includes drainage of surface water to the main sewer. In order to achieve the River Mease water quality conservation targets, contributions of surface water to the main sewer must be minimised. As such details shall be submitted prior to any works commencing on the construction of the building to justify the disposal of surface water to the main sewer by showing that other non-mains drainage alternatives are not feasible.

Reason: To safeguard the integrity of the River Mease which is a Site of Special Scientific Interest and Special Area of Conservation.

8. Prior to any development commencing on the construction of the building a suitably-worded Construction Management Plan (CMP) shall be submitted to and approved in writing by the Local Planning Authority. The CMP shall provide details on the nature of the likely construction works, potential impact on the River Mease, together with suitable mitigation measures as required.

Reason: To safeguard the integrity of the River Mease which is a Site of Special Scientific Interest and Special Area of Conservation.

9. A) Prior to any development commencing for the construction of the building a scheme to identify and control any contamination of land, or pollution of controlled waters shall be submitted to, and approved in writing by, the local planning authority (LPA); and the measures approved in that scheme shall be 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) If required by the conceptual model, prior to any development commencing on the construction of the building the site shall be monitored for the presence of ground/landfill gas and a subsequent risk assessment completed in accordance with a scheme to be agreed in writing by 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. If during development any contamination or evidence of likely contamination is identified that has not previously been identified or considered, then the applicant shall submit a written scheme to identify and control that contamination. This shall include a phased risk assessment carried out in accordance with the procedural guidance of the Environmental Protection Act 1990 Part IIA, and appropriate remediation proposals, and shall be submitted to the LPA without delay. The approved remediation scheme shall be implemented in accord with the approved methodology.

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

11. Prior to any of the residential units being occupied the existing access to Woodville Road shall be modified all in accordance with the submitted application drawing 1445/02B, laid out and constructed to a minimum width of 4.8m for at least the first 10m into the site measured from the highway boundary.

Reason: In the interests of highway safety.

12. Prior to the first occupation of any of the residential units the car parking spaces indicated on drawing No. 1445/02 rev B shall be provided and thereafter retained free from any impediment to their designated use.

Reason: In the interests of highway safety.

13. As part of any future reserved matters application or detailed application, the design of the building shall be restricted to no more than two storeys in height.

Reason: In order to safeguard the setting of the adjacent Listed Buildings and the amenities of neighbouring residents.

14. Prior to the development commencing for the construction of the building, details of the finished floor levels of the building 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: To protect the setting of the adjacent Listed Buildings, the amenities of adjoining properties and the locality generally.

15. The details of landscaping submitted under condition 2 above shall include a series of bollards to be positioned along the southeast boundary of the eight car parking spaces adjacent to the single storey listed outbuilding in the southeast corner of the site.

Reason: In order to ensure the listed outbuilding does not become damaged by vehicles manoeuvring with the parking spaces.

Informatives:

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.

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 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.

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

The proposed development lies within a coal mining area which may contain unrecorded coal mining related hazards. If any coal mining feature is encountered during development, this should be reported immediately to The Coal Authority on 0345 762 6848. It should also be noted that this site may lie in an area where a current licence exists for underground coal mining. Further information is also available on The Coal Authority website at: www.gov.uk/government/organisations/the-coal-authority.

Property specific summary information on past, current and future coal mining activity can be obtained from: www.groundstability.com.

The Crime Prevention Design Adviser recommends the following:

1. A boundary buffer between the front of the building and the street.
2. Street-facing elevations are well treated to allow extensive internal to external views.
3. Inner elevations are treated so as to provide overlooking of the car park within the courtyard.

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

Derbyshire County Council requests the provision of high speed broadband for the future residents of the development and that the design of the residential units should achieve Lifetime Homes' standards.

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

Item 1.8

Reg. No. 9/2015/0661/O

Applicant:
Mr Darren Evans
23 Manchester Lane
Hartshorne
Swadlincote
DE11 7BE

Agent:
Mr Doug Rutter
Sycamore Villa
36 Main Street
Linton
Swadlincote
DE12 6PZ

Proposal: THE ERECTION OF ONE DWELLING ON LAND TO THE REAR OF 1 ST PETERS CLOSE HARTSHORNE SWADLINCOTE

Ward: WOODVILLE

Valid Date: 13/07/2015

Reason for committee determination

The item does not accord with the Development Plan.

Site Description

The site is located to the rear of Peters Close and Church Lane in Hartshorne and is currently enclosed by substantial hedgerows to the west and east of the site and a row of trees to the north. The site is surrounded by existing, substantial detached dwellings and existing outbuildings on all four sides of the site. The site has a gradual gradient which slopes downwards in a northerly direction.

Proposal

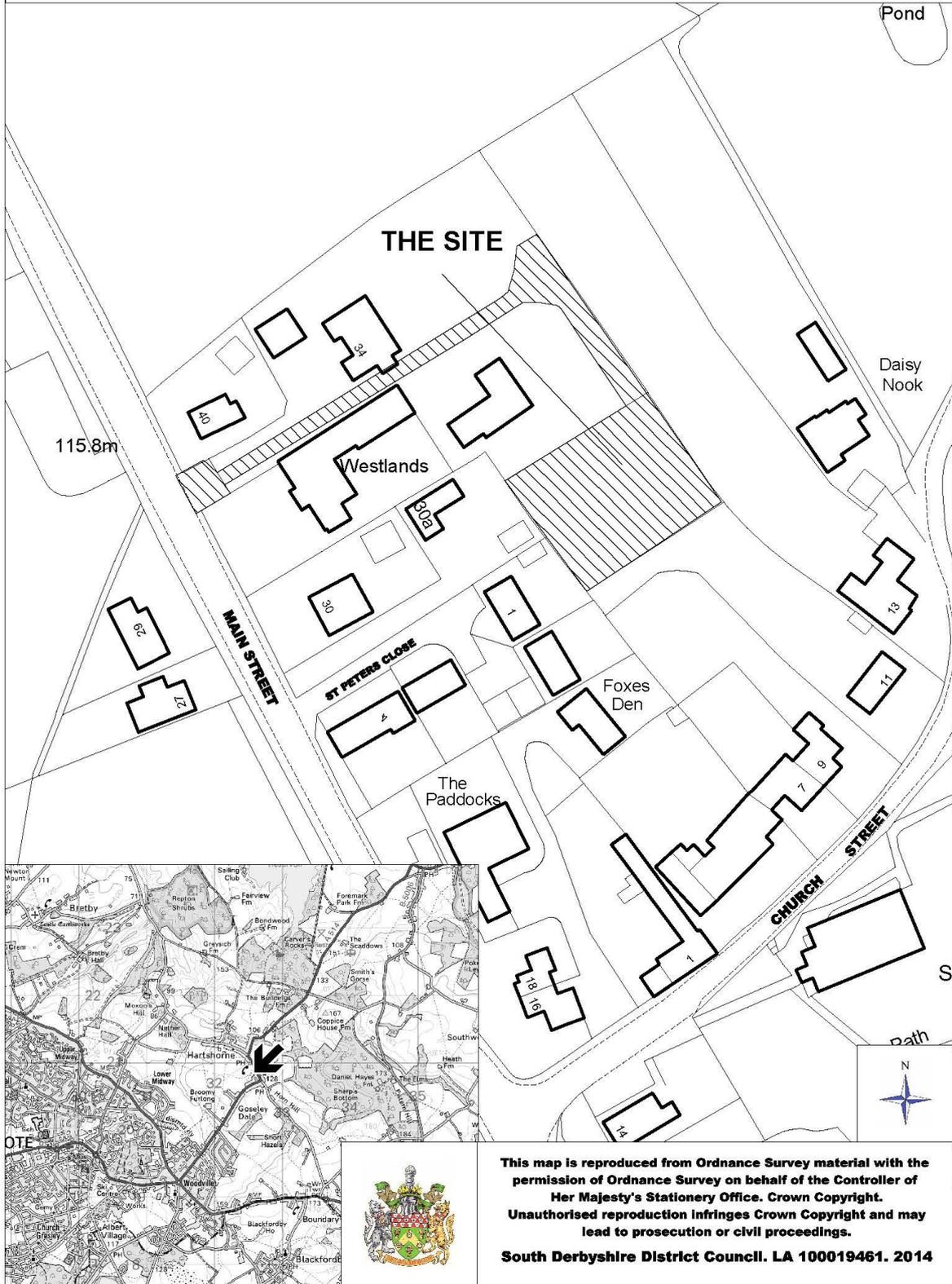
Consent is sought for outline consent for the erection of one dwelling on land to the rear of Church Lane and St Peters Close. The access is to be assessed as part of this application but all other matters are reserved.

Applicant's supporting information

The Design and Access Statement concludes that:

- the application being for a single dwelling will complete the development of the site and
- the dwelling would be a valuable addition to the district housing stock;

9/2015/0661 - LAND TO REAR OF 1 ST PETERS CLOSE, HARTSHORNE DE11 7ES



- the dwelling would add to the attractiveness of the locality and not affect the amenities enjoyed by neighbouring, surrounding properties;
- it will help in a small way to maintain the viability of existing local services and add to employment levels through the construction period
- it would fit well into the existing development framework and should not compromise the viability of the defined village boundary for development.

Planning History

None

Responses to Consultations

The Environmental Health Team, Severn Trent Water, the County Flood Risk Team and the Contaminated Land Officer have no comments.

The County Highway Authority has no objection to the amended plans subject to conditions.

Responses to Publicity

There have been eight objections received from Local Residents, which state the following:

- a) The development falls outside of the designated settlement boundary for the village of Hartshorne and would “open the door” for further applications like this.
- b) Previous applications around Church Street have been refused as the development would take place outside of the settlement boundary for Hartshorne.
- c) The site is not an infill site.
- d) The Design and Access Statement dismisses the settlement boundary on the basis that a stable block falls outside of the village envelope. However, this is an outbuilding and does not consist of habitable rooms.
- e) Concerns regarding damage to the roots of trees and hedges on the land.
- f) Trees have been removed from the site on the months building up to the application being submitted.
- g) The area allocated for parking and turning is not consistent with the landscape character which is currently in the rear gardens.
- h) Concerns that the substantial existing hedgerows along the boundary of the site will be removed/reduced and will cause substantial overlooking and demonstrable harm to wildlife.
- i) Plans do not reflect the accurate layout of the neighbouring properties.
- j) It is highly likely that the development will overlook neighbouring properties as there are many existing rear facing windows that overlook the plot.
- k) The proposed development would overshadow neighbouring properties.
- l) Properties no.30a Main Street and no.1 St Peters Close will be substantially affected by the development by way of; loss of privacy, overshadowing, overlooking and loss of views to the countryside.
- m) There is no mains gas within the village and the majority of properties in the area use heating oil or boil gas to heat their properties, this needs to be taken into consideration as refuelling tankers can only reach a certain distance.
- n) Concerns that fire services and emergency services could not reach the property.

- o) The indicative site plan shows the proposed dwelling too close to the south west of the site.
- p) The development will not conserve and enhance the quality and local distinctiveness of the area.
- q) The development will affect a wildlife corridor.
- r) New dwellings in the immediate area have been left unfinished which are a blight on the landscape.
- s) There has not been sufficient information submitted to make a considered opinion.

Development Plan Policies

The relevant policies are:

Saved Local Plan 1998:
Housing Policies 5 and 11, Transport Policy: 6

Emerging Development Plan Policies

The relevant policies are:

Submission Local Plan Part 1:

- S2 – Presumption in favour of Sustainable Development
- H1 – Settlement Hierarchy

Supplementary Planning Guidance

- Housing Design and Layout SPG

National Guidance

National Planning Policy Framework (NPPF) paragraphs

- 9 - Purposes of Sustainable Development
- 14 - Presumption in favour of Sustainable Development
- 17 - Core Planning Principles
- 49 – Delivering a wide choice of high quality homes
- 56 - Requiring Good Design
- National Planning Practice Guidance (NPPG) ID 26 Design

Planning Considerations

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

- The position of the site outside of the village confine;
- The impact on the amenity of neighbours and design issues;
- Parking and access arrangements;

Planning Assessment

Position of the site outside of the settlement boundary

The site is located outside of the designated settlement boundary for the village of Hartshorne as defined within the Councils Saved Local Plan Housing Policy 5. However, in accordance with paragraph 49 of the NPPF, when the Council cannot demonstrate a five year supply of housing, housing policies cannot be seen as “up to date” and development must be assessed on its merits and in accordance with sustainable development:

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

However, the application is for a single dwelling only and therefore would not make a significant contribution to supply and therefore the impact on its setting in terms of countryside intrusion must be assessed carefully.

The site is enclosed by neighbouring properties on Main Street and Church Street, beyond which is open countryside. The existing properties create a physical boundary between the residential area and the open countryside, the site falls within a “dog leg” area of this boundary. Therefore despite being outside of the designated settlement boundary, the site relates more strongly to the existing residential area, which would mean that a proposed dwelling on this site would have strong visual links to the settlement and would not appear isolated. The countryside beyond the residential properties would not be unacceptably or harmfully encroached upon as a result of the development. Therefore, because of the very limited environmental harm that the development would cause, greater weight would ensue for the housing supply argument.

The impact on the amenity of neighbours and design issues

The proposed site plan submitted can only be considered as indicative in this instance as both the siting of the proposed dwelling and design are reserved matters. Notwithstanding the illustrative drawing the site appears large enough that the erection of one dwelling could attain a minimum separation of 21m between main habitable room windows. Therefore, at this stage, the proposal is capable of compliance with the Councils SPG designed to protect the amenity of neighbouring residents.

Concerns have been raised regarding the possible removal of existing hedgerows and trees. It is important to recognise that the application seeks consent for outline approval of the erection of one dwelling and that a detailed reserved matters application would be required following this process. In principle, the active retention of the trees and hedges on the site could facilitate a more aesthetic development and detailed tree survey drawings would need to be submitted as part of a reserved matters application to address this.

The proposed development would be subject to a reserved matters application to assess detailed plans of the proposal. However, for the purpose of this outline planning

application, the site can demonstrate compliance with the Councils SPG. Loss of private views cannot carry significant weight.

Parking and access arrangements

Following initial comments and advice from the County Highways Authority (CHA), the applicant has submitted amended plans for the access of the site which have identified the required visibility splays measuring 2.4m x 43m in both directions and that there is sufficient area within the site for the turning and manoeuvring of vehicles, albeit this would need to be shown in detailed plans as a reserved matters application.

The amendment has shown an improvement to the original scheme and so the CHA has no objection in principle to the access subject to conditions.

Conclusion

For the purposes of outline planning permission, the proposed dwelling would be situated on a site that is well connected with the existing residential properties and in context, would result in very little harm in terms of encroachment into the countryside and so would not appear isolated. This in combination with the Local Service Village status of Hartshorne, as identified within policy H1 of the Submission Local Plan would indicate that the site is a sustainable location for a development of this size. On the basis that the Council cannot demonstrate a five year housing supply, this argument is significant and carries substantial weight in the determination of this application.

The access details provided as part of amended plans has been supported by the County Highways Authority. A dwelling on the site could be accommodated within the standard separation distances as defined within the Councils SPG. The proposal would be subject to a reserved matters application which would provide more in depth details of the proposal.

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

Recommendation

GRANT permission subject to the following conditions:

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

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

4. No ground works 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.

5. Notwithstanding any details submitted or the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended), the dwelling shall not be occupied until there has been submitted to and approved in writing by the Local Planning Authority plans indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed in accordance with the approved details before the development is occupied or in accordance with a timetable which shall first have been agreed in writing with the Local Planning Authority.

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

6. 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.

7. Prior to ground building works 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: To protect the amenities of adjoining properties and the locality generally.

8. The reserved matters listed at condition 2 shall broadly be in accordance with Site Location plan (received on 16/07/2015), Proposed Site Plan/Block Plan drawing number - 2977 (received on 16/07/2015), Existing Site Plan/Block Plan

drawing number -2976a (received on 16/07/2015) and Access/Visibility Sightlines (amended plan) drawing number -2997B, received on 02/09/2015.

Reason: For the avoidance of doubt.

9. Before any other operations are commenced, revised detailed designs shall be submitted to the Local Planning Authority for written approval indicating a temporary refuse collection area within the site curtilage but close to the highway boundary.

Reason: In the interests of highway safety.

10. Before any other operations are commenced (excluding demolition/ site clearance and condition 1 above), space shall be provided within the site curtilage for the storage of plant and materials, the loading and unloading of goods vehicles and the parking and manoeuvring of site operatives and visitors vehicles, laid out and constructed in accordance with detailed designs to be submitted in advance to the Local Planning Authority for written approval 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.

11. Before any other operations are commenced, the existing access to Main Street (A514) shall be modified in accordance with revised drawing number 2997B, laid out, constructed and provided with 2.4m x 43m visibility splays in both directions, 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 the adjoining nearside carriageway channel level.

Reason: In the interests of highway safety.

12. The premises', the subjects of the application, shall not be occupied until space has been provided within the application 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.

13. The proposed access drive to Main Street (A514) shall be no steeper than 1:14 for the first 5m from the nearside highway boundary and 1:10 thereafter.

Reason: In the interests of highway safety.

14. There shall be no gates or other barriers within 5m of the nearside highway boundary and any gates shall open inwards only.

Reason: In the interests of highway safety.

15. No caravans or other domestic paraphernalia shall be located, parked or stored within the designated parking area unless expressly agreed in writing by the Local Planning Authority.

Reason: In the interests of highway safety.

Informatives:

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

The 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 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.

Item **1.9**

Reg. No. **9/2015/0669/F**

Applicant:
Mr Davinder Gidda
C/O Karam S Chana MCIAT, ACIOB

Agent:
Karam S Chana MCIAT, ACIOB
Sallanches
7 Bracebridge Road
Four Oaks Park
Sutton Coldfield
B74 2SB

Proposal: **THE ERECTION OF A BANQUETING SUITE AT 130**
 NADEE INDIAN QUISINE HEATH LANE FINDERN
 DERBY

Ward: **WILLINGTON & FINDERN**

Valid Date: **23/07/2015**

Reason for committee determination

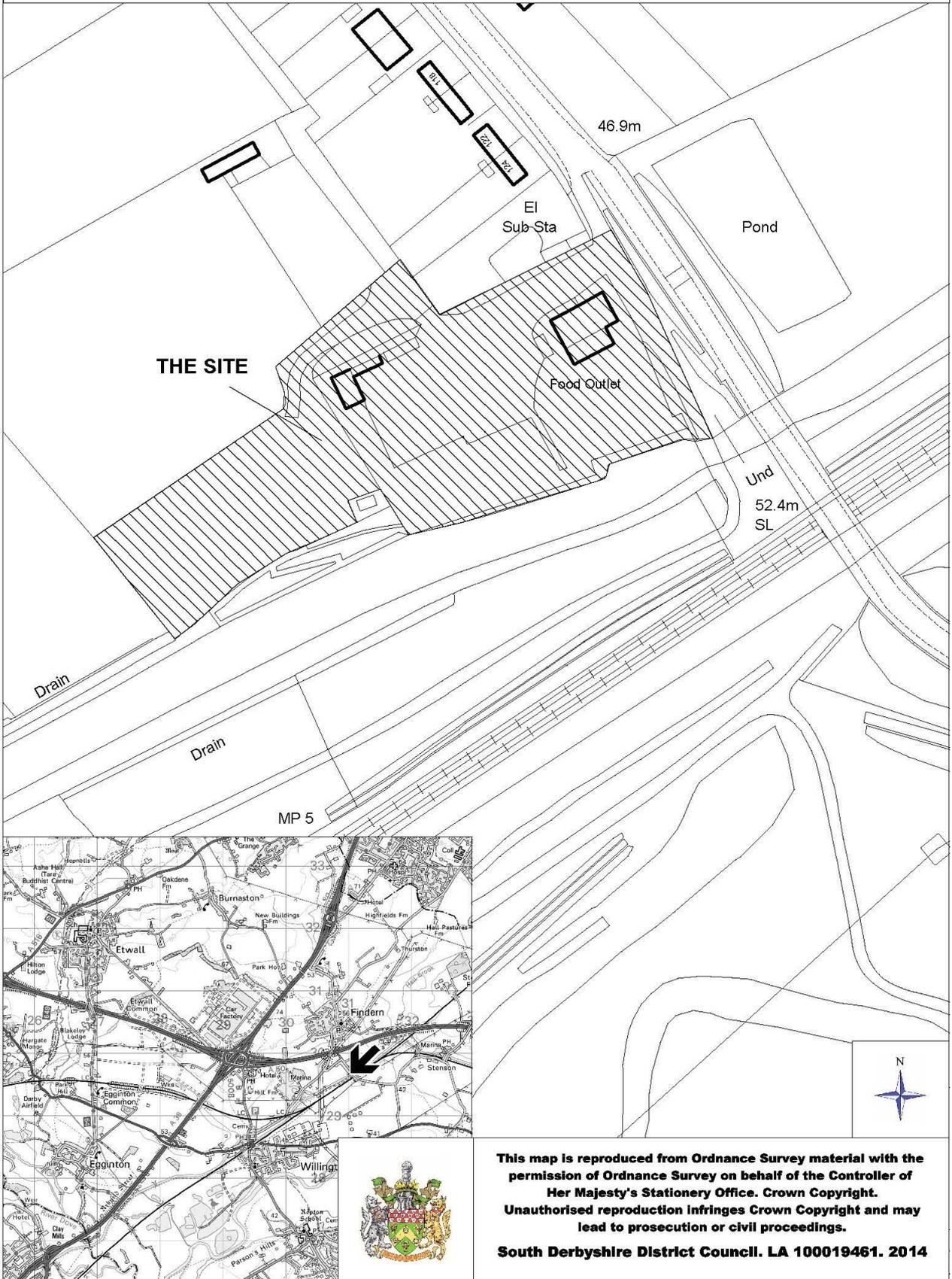
The item is brought to committee because an objection is raised by a statutory consultee but a grant of permission is recommended.

Site Description

The application is located within open countryside at the end of ribbon residential development fronting onto Heath Lane to the south of Findern. The site also lies within the Trent and Mersey Canal Conservation Area and is generally open fronted to the canal which lies to the south. The site comprises of the Nadee restaurant and bar, formerly used as a public house, an outside seating area, car park and a marquee and permanent buildings. To the west of the marquee is an area of grassland enclosed by hedgerow on three sides with post and rail fence to the adjacent paddock to the north-west. This is also used by adjacent canal moorings. To the north are residential properties which front onto Heath Lane with gardens extending south-west towards a paddock beyond which is agricultural land. The site is bounded to the east by a canal side access road that provides access to the Nadee and a bridge joining the public footpath which follows the towpath of the Trent and Mersey Canal. The access road joins Heath Lane at an acute angle where the road begins to rise over the canal and adjacent railway.

The marquee already exists through the benefit of previous temporary permissions given in 2010 and earlier in 2014. It measures 20m x 21m and is an open double-pitched marquee with a maximum height of 4.25m. The permanent buildings are set

9/2015/0669 - NADEE INDIAN QUISINE, 130 HEATH LANE, FINDERN DE65 6AR



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behind the marquee to the north and west and are flat roofed structures measuring less than 3m in height and constructed in dark painted block work.

Applicants' supporting information

A Design & Heritage Statement and Access is provided with the application, stating that the principle of a permanent replacement has been agreed and the proposal reduces the impact on the Canal Conservation Area and represents an opportunity to enhance the appearance of the proposed building and its setting.

Planning History

9/2014/0493 - The erection of a banqueting suite, Granted 6/8/14

9/2013/1052: Variation of condition 1 of 9/2010/0464 to extend the period of temporary consent – Approved March 2014

9/2010/0464: The regularisation of use of temporary marquee as restaurant/events facility, retention of buildings used as reception area, bar, kitchens, toilets and outside store, plus use of a container for storage and use of land for car parking together with enlargement of the existing car park – Approved August 2010

9/2007/0109: The retention of two breeze houses (gazebos) and a lamp/camera standard – Approved March 2007

9/2004/1373: The erection of two garages, a gazebo, external alterations and new access – Approved March 2005

9/2004/1008: The erection of two garages, a gazebo, external alterations and new access – Withdrawn

9/2003/0727: The display of illuminated signage – Approved August 2003

Responses to Consultations

The Environmental Health Officer has no objection subject to the same noise conditions as per the 2014 approval be attached to any permission.

The Conservation Officer recommended amendments to the original submission and the amended plans have incorporated all the changes and as such there is no objection subject to conditions relating to the external materials, bond, mortar, rainwater goods, joinery details and finish.

The Canal and River Trust notes there are a number of existing long-term moorings located close to the site, a short distance west of the proposed new building. It is important that the development takes account of these moorings and that noise disturbance to users is appropriately minimised. It is suggested therefore that it would be appropriate to restrict the hours of use of the banqueting suite to those proposed by the applicant and also to require details of noise mitigation measures to be incorporated into the design of the building. They also consider it is also important to ensure that the development is appropriately integrated into its surroundings, suggesting that details of

the proposed materials, boundary treatments and landscaping are secured by planning condition. Furthermore they note that, although not included in the application site, the submitted statement refers to the field west of the site being in the Applicant's control and used as an overspill car park. The Trust notes that no agreement exists for it to be used as an overspill car park by the Applicant and it should not be relied upon to provide additional parking space.

The Contaminated Land Officer states that the site is within influencing distance of potential sources of ground gas. However, the previous application had no such condition placed on the approval as no condition was recommended by the Officer. Conditions in respect of ground gas and if contamination is found are recommended.

The County Archaeologist raises no objection.

The County Highway Authority has raised objection to all previous applications (9/2010/0464, 9/2013/1052 and 9/2014/0493) on the grounds that the original proposals led to intensification in the use of a substandard access onto Heath Lane in terms of severely restricted visibility. It is considered this leads to a danger and inconvenience to other road users and interferes with the safe and efficient movement of traffic on the public highway. As the access remains unaltered from the original proposal, and this proposal would now make such use permanent, it considers the concerns raised remain valid.

The Police Crime Prevention Design Advisor states there are no objections provided conditions 3 and 4 of 9/2014/0493 are attached to any approval.

Responses to Publicity

None

Development Plan Policies

The relevant policies are:

- Saved Local Plan 1998: Employment Policy 1 (E1), Environment Policies 1, 12 and 14 (EV1, EV12 and EV14), and Transport Policy (T6).

Emerging Development Plan Policies

The relevant policies are:

- Pre-Submission Local Plan 2014: Policies S1 (Sustainable Growth Strategy), S2 (Presumption in Favour of Sustainable Development), S6 (Sustainable Access), SD1 (Amenity and Environmental Quality), SD3 (Sustainable Water Supply, Drainage and Sewerage Infrastructure), BNE1 (Design Excellence), BNE2 (Heritage Assets), BNE4 (Landscape Character and Local Distinctiveness) and INF2 (Sustainable Transport).

National Guidance

- National Planning Policy Framework (NPPF): with particular reference to paragraphs 6, 7, 8, 11, 12, 14, 17, 19, 28, 32, 39, 58, 61, 70, 120, 122, 123, 129, 131, 132, 134, 139, 186, 187, 196, 197, 203, 206, 215 and 216.
- National Planning Practice Guidance (NPPG).

Planning Considerations

The principle of development here has been established by way of the 2014 permission. It is therefore not intended to discuss matters relating to expansion of the existing business and employment opportunities, nor the expansion and sustaining of existing services and facilities. Attention is instead focussed towards the outward effects of the application, namely:

- The Principle of development
- The impact on neighbouring amenity; and
- The impact on highway safety.

Planning Assessment

This proposal is a re-submission of the 9/2014/0493 permission for a permanent building to replace the marque. Therefore, the principle of granting a permanent replacement was established in 2014 and that permission remains extant. The changes relate to a 26m² increase in the ground floor floorspace and removal of the two storey element of the proposal. This proposal significantly reduces the roof heights on the elevation adjacent to canal as it proposes two gable features with large arched doors. All amendments requested by the Conservation Officer in terms of window detail have been incorporated into the amended plans

Neighbouring amenity

The extant 2014 permission carries a condition specifying the hours of use of the building and the number of functions which can occur each week, together with requiring a noise limiting device to be used for events not covered by the Premises Licence. These conditions can be attached to any subsequent approval.

Highway safety

The Highways issue remains the same as the 9/2014/0493 approval which was decided by committee on 5th August 2014. The Highway Authority maintains its objection based on the substandard access onto Heath Lane. The objection is irrespective of the extant permission which expires on 5th August 2017 and any refusal on these grounds being highly likely to result in costs awarded to the applicant. A summary of the 2014 assessment is included below.

On emerging from the access onto Heath Lane vehicles would be required to do a U-turn in order to turn right over the bridge. The highway verge to the right of the junction is marked by post and wire fencing with a lamppost at the corner of the junction. The road rises to the south-east towards the bridge over the railway and canal. The Highway Authority commented on the 2004 approval that any extension to the facility would be unlikely to receive a favourable response due to the substandard visibility available to emerging drivers; their response to the 2010 formally set out this view and their continued objection since sustains this concern. Their concern is now supplemented by the fact that permission here would establish permanent associated impacts on the public highway.

The banqueting suite has been operating since 2010 and the seating capacity has changed little since that date such that associated vehicular movements have remained similar. Most importantly no accidents are known to have resulted from vehicles

entering or leaving the site over the last 4 years. It also remains significant that Members granted permission for the proposal in 2010 and earlier in 2014, contrary to the advice of the Highway Authority, and that the temporary periods of consent were not based on highway safety grounds.

Turning to parking considerations the car park provides capacity for between 45 and 50 cars. It is noted the Applicant states the adjacent field is occasionally used as an overspill car park, and this can take in excess of 100 cars, but the Canal & River Trust disputes this right to use the land. However it is material that the Highway Authority does not consider an objection could be sustained on the basis of parking capacity at the premises.

Consequently, despite the highway objection, it seems doubtful that a refusal could be sustained on highway safety grounds – especially when the access has continued to provide safe egress for some 4 years.

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

Recommendation

GRANT permission subject to the following conditions:

1. The development permitted shall be begun before the expiration of three years from the date of this permission.
Reason: To conform with Section 91(1) of the Town and Country Planning Act, 1990 (as amended by section 51 of the Planning and Compulsory Purchase Act 2004).
2. The development hereby permitted shall be carried out in accordance with plans/drawings 15.29.1 Rev B and 15.29.2; unless as otherwise required by condition attached to this permission.
Reason: For the avoidance of doubt.
3. The banqueting suite shall only be open to customers Monday to Sunday between 0800 hours and 1900 hours, but with an allowance for no more than 4 functions per week after 1900 hours for which the following restrictions apply: Sunday to Thursday functions to finish no later than 2300 hours (including dispersal of customers), and Friday and Saturday functions to finish no later than 2400 hours (including dispersal of customers).
Reason: To ensure that the use does not prejudice the enjoyment by neighbouring occupiers of their properties.
4. For events which are not covered under the Premises Licence number SDDC/002710, a noise limiting device, set to the same limits as agreed under the Premises Licence, shall be used to control all sources of amplified music within the banqueting suite.
Reason: To ensure that the use does not prejudice the enjoyment by neighbouring occupiers of their properties.
5. The parking and turning areas as shown on the approved layout plan (ref: 15.29.2, labelled as 'car park') shall be laid out, surfaced and maintained

throughout the life of the development free from any impediment to its designated use for the parking and turning of vehicles.

Reason: In the interests of discouraging parking of the public highway in the best interests of highway safety.

6. Before any works involving the construction of a building commences a scheme of noise mitigation measures to be incorporated into the design, construction and use of the banqueting suite shall first be submitted to and agreed in writing by the Local Planning Authority. The development shall thereafter only be carried out in accordance with the agreed scheme and the banqueting suite subsequently used in accordance with the agreed scheme.

Reason: To minimise adverse impacts on occupiers of nearby residential property and users of the adjacent canal moorings.

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

8. Before any works involving the construction of a building commences large scale drawings, to a minimum scale of 1:10, of eaves, verges and the interface between the flat roof and the surrounding pitched roof has been submitted to and approved in writing by the Local Planning Authority. The eaves, verges and interface between the flat roof and surrounding pitched roof shall be constructed in accordance with the approved drawings.

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

9. Before any works involving the construction of a building commences large scale drawings, to a minimum scale of 1:20, and details of the supporting columns to the colonnade and porch shall be submitted to and approved in writing by the Local Planning Authority. The works shall then be carried out in accordance with the approved details.

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

10. Before any works involving the construction of a building commences full details of all external facing materials to be used in the construction of the banqueting suite hereby permitted (including provision of samples/sample panels for inspection by the Local Planning Authority where so requested) shall first be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter only be carried out in accordance with the approved details.

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

11. Before any works involving the construction of a building commences precise details of the position, intensity, angling and shielding, and the area of spread of external lighting shall be submitted to and approved in writing by the Local

Planning Authority. The lighting shall be installed in accordance with these details and thereafter retained in conformity with them.

Reason: To preserve amenity of neighbouring occupiers and in the interests of reducing light glow in this rural location.

12. Before any works involving the construction of a building commences a scheme for the disposal of surface and foul water shall be 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.

13. Before any works involving the construction of a building commences a landscaping and boundary treatments scheme for the southern and western boundaries of the application site shall first be submitted to and agreed in writing by the Local Planning Authority. The scheme shall indicate the size, species and spacing of all new planting, the areas to be grassed, and the treatment of any hard surfaced areas, and also details of the landscape management plan. Any such planting which within a period of 5 years of implementation of the landscaping dies, is removed, or becomes seriously damaged or diseased shall be replaced in the next planting season with others of a similar size or species, unless the Local Planning Authority gives written consent to the variation. The approved scheme shall be fully implemented prior to the banqueting suite first being brought into use and the landscape management plan shall be implemented as approved.

Reason: In the interests of the appearance of the site and the Conservation Area.

14. External joinery shall be in timber and painted to a colour and specification which shall have been previously agreed in writing by the Local Planning Authority. The joinery shall be painted in accordance with the agreed details within three months of the date of completion of the development unless otherwise agreed in writing by the Local Planning Authority.

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

15. Gutters shall be cast metal (with cast metal fall pipes) and shall be fixed direct to the brickwork on metal brackets. No fascia boards shall be used.

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

16. 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.

17. Before any works involving the construction of a building commences a suitable scheme for the prevention of ground gas ingress shall be submitted to and approved in writing by the Local Planning Authority (LPA). Alternatively, the site shall be monitored for the presence of ground gas and a subsequent risk assessment completed in accordance with a scheme to be agreed with the LPA, which meets the requirements given in Box 4, section 3,1 of the Council's 'Guidance on submitting planning applications for land that may be contaminated'.

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

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

Informatives:

The applicant or any subsequent owner of the site should ensure that reasonable endeavours are made to ensure that the vegetation on the highway verge at the access to the application site from Heath Lane is maintained such that maximum achievable visibility is maintained at all times in the interests of highway safety.

The Applicant's attention is drawn to the fact that landscaping scheme as required under 9/2010/0464 and 9/2013/1052 has not been carried out. The landscaping scheme required by condition attached to this permission should look to make good this shortcoming.

In dealing with this application, the Local Planning Authority has worked with the applicant in a positive and proactive manner through pre-application discussions, seeking to resolve planning objections and issues, use of conditions. As such it is considered that the Local Planning Authority has implemented the requirement set out in paragraphs 186 and 187 of the National Planning Policy Framework.

Item 1.10

Reg. No. 9/2015/0679/TP

Applicant:
Mrs Corrine Stackhouse
14 Bramley Dale
Church Gresley
Swadlincote
DE11 9RT

Agent:
Mr John Smithard
7 Melbourne Road
Newbold Coleorton
Coalville
LE67 8JH

Proposal: THE FELLING OF A WYCH ELM (T1) AND OAK (T2)
AND PRUNING OF A WYCH ELM (T3) COVERED BY
SOUTH DERBYSHIRE DISTRICT COUNCIL TREE
PRESERVATION ORDER NUMBER TPO 48 AT LAND
ADJACENT TO SOUTH BOUNDARY OF 14 BRAMLEY
DALE CHURCH GRESLEY SWADLINCOTE

Ward: CHURCH GRESLEY

Valid Date: 20/07/2015

Reason for committee determination

The applicant is related to a member of staff.

Site Description

The trees, part of a semi natural ancient woodland here (locally known as Hall Wood), run along the private, rear boundaries of a number of residential gardens, in particular here, 14 Bramley Dale, Church Gresley. The woodland is protected by South Derbyshire District Council Tree Preservation Order 48, but owned by David Wilson Homes.

Proposal

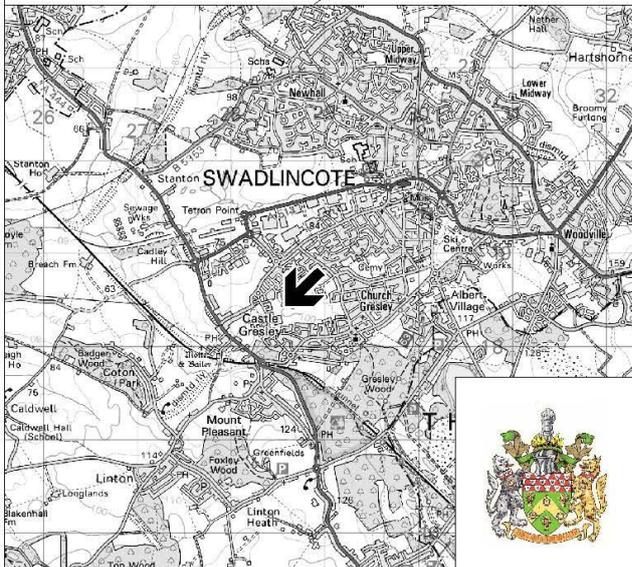
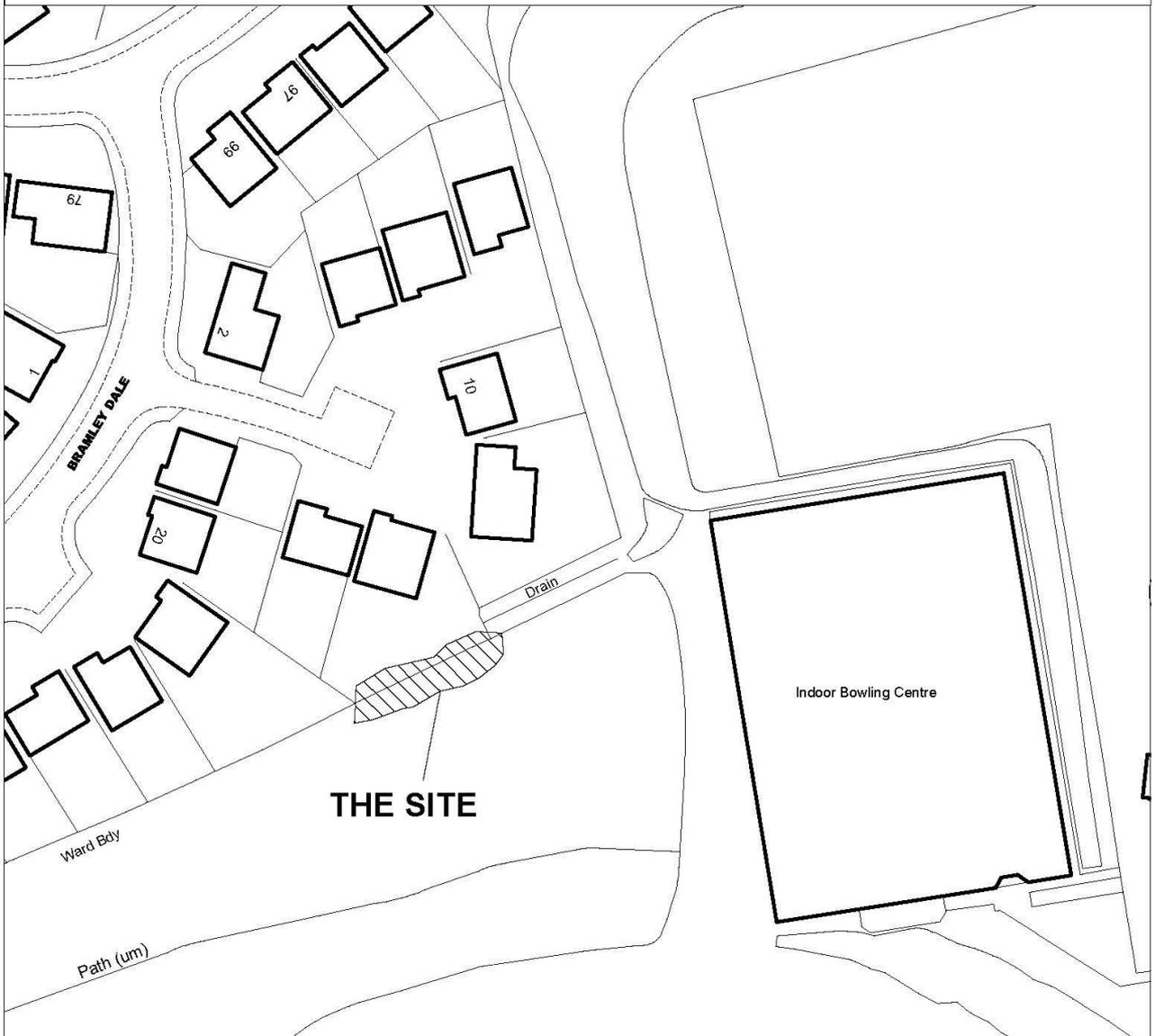
The proposal has been revised to felling a mature Wych Elm and young oak tree and reducing/coppicing a second Wych Elm, all which sit on the periphery of the woodland and in part overhang some of the applicant's rear garden space.

Applicants' supporting information

None.

Planning History

9/2015/0679 - LAND ADJ TO 14 BRAMLEY DALE, CHURCH GRESLEY DE11 9RT



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The TPO has been in force here since 1996.

Responses to Consultations

None.

Responses to Publicity

None.

Development Plan Policies

The relevant policies are: Environmental Policy 9

National Guidance

National Planning Policy Framework.

Planning Considerations

The main issue central to the determination of this application is whether the work proposed is warranted given the protective designation.

Planning Assessment

The woodland forms the backdrop to this modern residential estate. The applicant has requested the works to improve light levels to their garden space and remove a concern in regards potential failure; an elm tree recently failed here. At times, due to the proximity of the trees to the gardens here, there will be modest cases of conflict such as those suggested.

The Councils tree officer has visited the site and rather than a cutting back of all trees here to the boundary (as originally requested) has suggested removing a dangerous/diseased tree (the elm) and a small suppressed oak and coppicing a failed elm as an alternative.

The works would not unduly affect the amenity of the woodland given this area is not easily seen; the works are modest in comparison to the size and impact of the wood. Felling would remove any immediate threat of failing/diseased trees and better conform to recommended arboricultural practice. Removal of the oak would benefit the adjacent oak, which is a better and more mature specimen. The agent and applicant are both agreeable to the amendments.

Recommendation

GRANT permission subject to the following conditions:

1. The work hereby approved shall be carried out within two years of the date of this consent.

Reason: To conform with Regulation 17(4) of the Town and Country Planning (Tree Preservation) (England) Regulations 2012, in order to enable the local planning authority to consider any proposals beyond this period in the interests of safeguarding the amenity value of the tree(s).

2. The work shall be carried out in accordance with BS3998:2010 - Tree Work.

Reason: To safeguard the health of the tree(s).

Informatives:

Please note approval relates to an amended schedule of works as agreed in your email of the 5th October 2015. The original schedule of works (cutting back to the boundary of all overhangings trees here) has been superseded, seen not to constitute good arboricultural practice.

To contact and seek separate consent from the trees owners prior to carrying out any work.

Item 1.11

Reg. No. 9/2015/0396/FX

Applicant:
Mr N Price
2 Milton Grange
PTL Properties Limited
Main Street
Milton
DE65 6EF

Agent:
Mr Michael Congreve
Bi Design Architecture Ltd
79 High Street
Repton
Derby
DE65 6GF

Proposal: THE ERECTION OF 6 3-BED DWELLINGS ON LAND TO THE REAR OF 145 OVERSETTS ROAD NEWHALL SWADLINCOTE

Ward: NEWHALL

Valid Date: 30/06/2015

Reason for committee determination

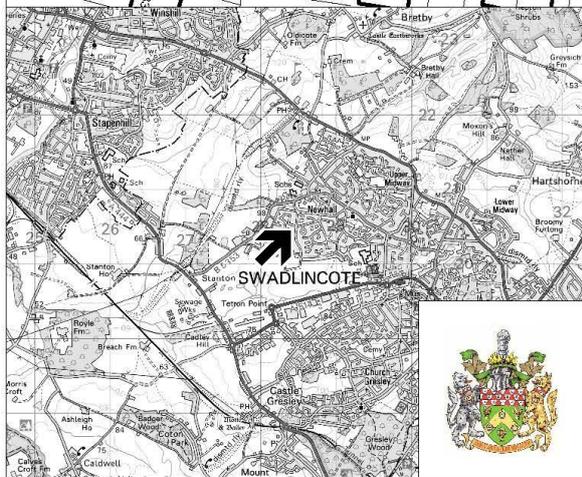
The application is reported to Committee at the request of Councillor Bambrick and because a local concern has been expressed about a particular issue and unusual site circumstances should be considered by committee.

Site Description

This 2,623 square metre site is located to the rear of The Crown public house on Oversetts Road, Newhall. The public house has a large car park to the side and rear and this site is currently partially an unused grassed area and formal car park adjacent to the western boundary. The site slopes steeply down to the west with a 6m change in levels from the public house access to the western boundary. Rear gardens of two storey properties on Warren Hill and Oversetts Road bound the site with 2 m high fencing to the south, west and north.

Proposal

Full planning permission is sought for six semi-detached dwellings with 14.5-17m rear private gardens and two car parking spaces per dwelling to the front. The dwellings would have shared mono-pitched porches on the front with eaves heights of 4.9m and ridge heights of 7m. Single storey sections to the rear would extend a further 2.5m from the main two storey dwelling serving the kitchens. Twenty one car parking spaces would be retained for the public house together with the play area adjacent to the southern boundary.



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Applicants' supporting information

The Design and Access Statement describes the site and considers the large car park to be far in excess of that required for a business located within the urban area. The proposal has been designed to achieve 21 metres between existing and proposed properties in line with the Council's space standards. Due to the significant change in land levels, low eaves and ridge heights are proposed in order to prevent the dwellings being overbearing on existing dwellings. The appearance of the dwellings is considered to reflect the simple design of existing dwellings and buildings in the vicinity.

The Coal Mining Risk Assessment identifies that the site has been subject to past coal mining activity and potential risks relate to both deep coal seams and shallow depth workings. It recommends intrusive site investigations are undertaken.

Planning History

9/2015/0516 – The erection of a single storey extension to create a new function room, pending.

9/2007/0476 - The formation of a smoking area, granted 18/6/07

Responses to Consultations

The Highways Authority has no objection to the amended plan received which relocated the access slightly to the south to achieve adequate emerging visibility to the north. Conditions are recommended in respect of provision of a site compound, mud prevention, the access, parking and manoeuvring space.

Severn Trent Water has no objections subject to a drainage condition and informative regarding a public sewer that crosses the site.

The Coal Authority considers the Coal Mining Risk Assessment to be adequate and recommends a condition requiring intrusive site investigations be undertaken prior to commencement of development.

The Contaminated Land Officer recommends a condition relating to if contamination is found during development.

NHS Southern Derbyshire Clinical Commissioning Group considers that existing GP practices have capacity to manage the associated increased patient demand.

Derbyshire County Council has yet to respond on S106 contributions in terms of Education and Waste and this will be reported verbally at committee.

Responses to Publicity

One letter of objection has been received which relates to any reduction in the parking at the pub would increase on street parking in the vicinity especially when there are special events on.

Development Plan Policies

The relevant policies are:

Local Plan: H4, H11, T6 and RT4

National Guidance

- National Planning Policy Framework (NPPF) paragraphs 17, 32 , 49, 56, 58,121, 196, 197
- National Planning Practice Guidance (NPPG) 26

Planning Considerations

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

- Principle of development
- Highways Issues
- Design and Residential Amenity

Planning Assessment

Principle of development

The site is located within the urban area of Newhall and as such is considered a sustainable location for residential development. The site is substantially surrounded by development and is not considered to make a valuable contribution to the character or environmental quality of the area. It is not highly visible from the street due to the drop in land levels and the majority of the land has been taken up with car parking.

Design and Residential Amenity

The proposed semi-detached dwellings are similar in design to existing properties in the vicinity which reflects the local character. They would be viewed in context with the fairly modern properties adjacent to the boundaries rather than the terraced properties on Oversetts Road. The land levels of the proposed properties would be 2.2-2.3m higher (based on existing levels) than those of the existing properties adjacent to the western boundary and as such greater distances are required in order to comply with the Council's space standards. An amended plan that has increased the distances between windows required by the space standards by a further 20% has been received and thus the proposal complies with guidance. Further landscaping at the boundary will also ensure better separation.

The proposed dwellings are therefore considered to be of a suitable scale and character in accordance with Housing Policy 4. The amenities of both the existing and proposed dwellings are considered to be adequate and accord with Housing Policy 11.

The Highways Authority considers the parking and access to be adequate in terms of Highways safety in accordance with Transport policy 6.

Residential development on this site is considered to be acceptable in principle as it is considered to be sustainable development within the urban area in close proximity to

services and accessible by a choice means of transport. National guidance within the NPPF advises of a 'presumption in favour of sustainable development'. There are no significant adverse impacts on the character of the area or residential amenity.

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

That subject to the receipt of a signed unilateral undertaking for the provision of £6,714 open space, £3,960 for outdoor facilities and £2,196 for built facilities (Total open space £12,870); **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 amended drawing ref. 02D; unless as otherwise required by condition attached to this permission or allowed by way of an approval of a non-material minor amendment made on application under Section 96A of the Town and Country Planning Act 1990 (as amended).
Reason: For the avoidance of doubt, the original submission being considered unacceptable.
3. If during development any contamination or evidence of likely contamination is identified that has not previously been identified or considered, then the applicant shall submit a written scheme to identify and control that contamination. This shall include a phased risk assessment carried out in accordance with the procedural guidance of the Environmental Protection Act 1990 Part IIA, and appropriate remediation proposals, and shall be submitted to the LPA without delay. The approved remediation scheme shall be implemented in accord with the approved methodology.
Reason: To protect the health of the public and the environment from hazards arising from previous contamination of the site which might be brought to light by development of it.
4. Before any works involving the construction of any dwelling commences a scheme for the disposal of surface and foul water shall be 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.
5. Before any works involving the construction of any dwelling commences 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. The development shall be implemented in accordance with the recommendations of the submitted Coal Mining Risk Assessment, in particular with regard to intrusive site investigation works (which shall be undertaken prior to the commencement of any other development) and any resultant remedial works identified by the site investigation.

Reason: To ensure the stability and safety of the development, having regard to the Coal Mining Risk Assessment undertaken and recognising the Council's opinion that this element of the development could lead to unacceptable impacts even at the initial stages of works on site.

7. Notwithstanding any details submitted or the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended), prior to the erection of boundary treatments plans indicating the positions, design, materials and type of boundary treatment to be erected shall be submitted to and approved in writing by the Local Planning Authority. The boundary treatment 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.

8. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, or any statutory instrument amending, revoking and/or replacing that Order; none of the dwellings hereby permitted shall be enlarged or extended without the prior grant of planning permission on an application made to the Local Planning Authority in that regard.

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

9. Before any works involving the construction of any dwelling commences 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: To protect the amenities of adjoining properties and the locality generally.

10. Before any works involving the construction of any dwelling commences space shall be provided within the site for storage of plant and materials, site accommodation, loading, unloading and manoeuvring of goods vehicles, parking and manoeuvring of 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. Once implemented the facilities shall be retained free from any impediment to their designated use throughout the construction period.

Reason: In the interests of highway safety.

11. Throughout the period of development vehicle wheel cleaning facilities shall be provided and retained within the site. All construction vehicles shall have their wheels cleaned before leaving the site in order to prevent the deposition of mud and other extraneous material on the public highway.
Reason: In the interests of highway safety.
12. Before any works involving the construction of any dwelling commences, the new access shall be formed to Oversetts Road. The access shall have a minimum width of 4.8m, be constructed as a dropped vehicular crossover, provided with 2m x 2m x 45° pedestrian intervisibility splays and 2.4m x 33m visibility sightlines in each direction. The area forward of the sightlines shall be cleared and maintained throughout the life of the development clear of any obstruction exceeding 600mm in height relative to road level.
Reason: In the interests of highway safety.
13. Prior to the occupation of any new dwelling, the existing access shall be reinstated as footway in accordance with a scheme first submitted to and approved in writing by the Local Planning Authority in consultation with the County Highway Authority.
Reason: In the interests of highway safety.
14. Prior to the first occupation of any dwelling the car parking and manoeuvring space associated with the public house and the new dwellings shall be laid out in accordance with the revised application drawing (1194H 02D) and maintained thereafter free of any impediment to its designated use.
Reason: In the interests of highway safety.
15. Prior to the occupation of any of the dwellings hereby permitted a landscaping scheme along the western boundary shall be submitted and approved in writing by the Local Planning Authority. The landscaping shall be implemented in accordance with the approved scheme and shall be planted in the same or immediately following planting season (November to March) from the date of this permission.
Reason: To protect the residential amenity of properties adjacent to the western boundary.

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 0345 762 6848. It should also be noted that this site may lie in an area where a current licence exists for underground coal mining. Further information is also available on The Coal Authority website at: www.gov.uk/government/organisations/the-coal-authority. Property specific summary information on past, current and future coal mining activity can be obtained from: www.groundstability.com.

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

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

Severn Trent Water advises that there is a public sewer located within the application site. Public sewers have statutory protection by virtue of the Water Industry Act 1991 as amended by the Water Act 2003 and you may not build close to, directly over or divert a public sewer without consent. You are advised to contact Severn Trent Water to discuss your proposals. Severn Trent Water will seek to assist you in obtaining a solution which protects both the public sewer and the proposed development.

Pursuant to Section 184 of the Highways Act 1980 and Section 86(4) of the New Roads and Streetworks Act 1991 prior notification shall be given to the Department of Economy Transport & Environment at County Hall, Matlock regarding access works within the highway. Information, and relevant application forms, regarding the undertaking of access works within highway limits is available via the County Council's website

http://www.derbyshire.gov.uk/transport_roads/roads_traffic/development_control/vehicular_access/default.asp, email ETENetmanadmin@derbyshire.gov.uk or telephone Call Derbyshire on 01629 533190.

Pursuant to Section 278 of the Highways Act 1980 and the provisions of the Traffic Management Act 2004, no works may commence within the limits of the public highway without the formal written Agreement of the County Council as Highway Authority. It must be ensured that public transport services in the vicinity of the site are not adversely affected by the development works. Advice regarding the technical, legal, administrative and financial processes involved in Section 278 Agreements may be obtained by contacting the County Council via email - es.devconprocess@derbyshire.gov.uk. The applicant is advised to allow approximately 12 weeks in any programme of works to obtain a Section 278 Agreement.

2. PLANNING AND OTHER APPEALS

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

Reference	Place	Ward	Result	Cttee/Delegated	Page
9/2014/1195	Overseal	Seales	Dismissed	Delegated	182
9/2015/0070	Sutton-on-the-Hill	Hilton	Dismissed	Delegated	186
9/2014/0727	Etwall	Etwall	Dismissed	Delegated	198

Appeal Decision

Site visit made on 8 September 2015

by Elaine Worthington BA (Hons) MTP MUED MRTPI

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

Decision date: 29 September 2015

Appeal Ref: APP/F1040/W/15/3127809

Land adjacent to 253 Burton Road, Overseal, Swadlincote, Derbyshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr J Hyde against the decision of South Derbyshire District Council.
 - The application Ref 9/2014/1195, dated 19 December 2014, was refused by notice dated 16 February 2015.
 - The development proposed is the erection of one dwelling.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The appeal was submitted in outline with matters of access and layout being sought for approval. Matters of appearance, landscaping and scale were reserved for future consideration. I have considered the appeal on this basis, but have also had regard to the submitted illustrative street scene drawing.

Main Issue

3. The main issue in this case is whether the proposal is a sustainable form of development and would provide a suitable site for development having regard to policies which seek to protect the open countryside.

Reasons

4. The appeal site is an open area of land to the side of 253 Burton Road, which also extends to the rear of No 253 to No 249. It is on the end of a row of semi-detached houses on the west side of Burton Road. There are properties on the other side of Burton Road which continue to the north and the site adjoins open fields to the north and west. It is outside the defined boundary of Overseal as set out in the South Derbyshire Local Plan (Local Plan).
5. Local Plan Housing Policy 5 indicates that new housing development in Overseal will be restricted to that which can be accommodated within the village confines as defined on the Proposals Map. Local Plan Housing Policy H8 restricts housing development outside settlements to that necessary for the operation of a rural based activity, where it can be demonstrated that a countryside location is necessary, and where the site is well related to existing farm buildings or other dwellings. The appellant does not argue that the appeal proposal would meet these criteria.

6. The Council accepts that it is unable to demonstrate a five year supply of housing land. Paragraph 49 of the National Planning Policy Framework (the Framework) indicates that where local planning authorities are unable to demonstrate a five year supply of deliverable housing sites, relevant housing supply policies (such as Local Plan Housing Policies 5 and 8 which restrict housing development outside defined settlement limits) should be considered out of date.
7. Paragraph 49 requires housing applications to be considered in the context of the presumption in favour of sustainable development. This is set out at paragraph 14 of the Framework and indicates that where relevant policies are out of date, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole. Paragraph 7 of the Framework establishes the three dimensions to sustainable development; economic, social and environmental.
8. In terms of the economic role of sustainable development the proposal would provide short term construction employment and the future residents of the house would support local services through expenditure. With regard to the social role of sustainable development the proposal would add to the housing stock, meet an acknowledged requirement for more homes, and be accessible to local services. The site is close to Overseal (which is classified as a Key Service Village in the emerging Local Plan). The appellant estimates it to be some 900 metres from a convenience store and a hot food take-away and advises that there is a Health Community Centre, and the Mount Pleasant Inn, along with two primary schools nearby. There is a regular bus service with stops close to the site connecting Overseal with Ashby de la Zouch and Burton via Swadlincote. The Council does not dispute these findings.
9. As such, the future occupiers of the house would be likely to use local shops and services (which would be accessible by means other than the private motor car) and the proposal would support the aim of paragraph 55 of the Framework to promote sustainable development in rural areas by locating housing where it will enhance or maintain the vitality of rural communities.
10. Turning to the environmental role of sustainability, as a residential garden the site is immediately adjacent to built development to the south and east and is not isolated from Overseal in terms of its location. The proposal is for a single dwelling which would be located next to the existing dwelling at No 253. It would be positioned in the plot to generally align to this neighbouring property and would relate closely to this and the other existing built development nearby. Although matters of scale and appearance are reserved for future consideration, the appellant indicates that the proposed house would be two storey of a similar density, scale and appearance to those in the vicinity.
11. That said, the site is also seen as part of the wider area of open fields which adjoin it to the north and the west. Although delineated from the fields to the west, for the most part the site is open to the adjoining field to the north with no boundary enclosures. Despite its use as a residential garden (with well maintained grass) and the existing boundary enclosures and planting, it does not appear distinctly different in character to that area. Even given the proximity of the housing nearby, its close relationship to the open countryside to the west and north, and its role as part of this wider area, is evident.

12. Whilst the proposal would only give rise to a small addition to the significant built form of Overseal, it would nevertheless represent an encroachment into the adjoining fields and an expansion of the extent of built development into currently open land on the western side of Burton Road. The proposal would unacceptably intrude into the defined countryside and, in introducing residential development, would detract from its rural character and appearance. Furthermore, it would undermine the rural appearance of the edge of the settlement and the approach to Overseal. This would be so despite the introduction of native hedgerows and trees on the boundaries.
13. For the reasons given, I consider that the proposal would have an unduly detrimental impact on the countryside and so would fail to protect and enhance the natural environment. This being so, it would not accord with the environmental dimension of sustainable development.
14. Overall, whilst the proposal would make a limited contribution in the short term to economic activity, and would be consistent with the social dimension of sustainable development, since it would fail to fulfil the environmental role, I do not regard the proposal to represent a sustainable form of development that paragraph 14 of the Framework indicates should be granted permission.
15. Even though its contribution to the shortfall in housing land supply is a benefit of the proposal, its role in this regard would not be great given that only one unit would be created. The proposal would also have some economic and social benefits as outlined above, though these would also be limited by the small scale of the scheme. Thus, I confirm that in any event, the adverse impacts of granting planning permission in this case, would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
16. I therefore conclude on this issue that the proposal would not be a sustainable form of development and would fail to provide a suitable site for development having regard to policies which seek to protect the open countryside. As a result it would be contrary to Local Plan Housing Policies 5 and 8, and Local Plan Environment Policy 1 which indicates that new development outside settlements will not be permitted unless (amongst other things) the character of the countryside are safeguarded and protected (iii). It would also be at odds with the core planning principle of the Framework of recognising the intrinsic character and beauty of the countryside.

Other matters

17. The Council considers the site to be within the catchment area of the River Mease which is designated as a Special Area of Conservation. In line with the Council's Developer Contributions Scheme the appellant has submitted a unilateral undertaking to provide a financial contribution to the River Mease water quality improvement scheme. However, since the appeal is to be dismissed on its substantive merits, it has not been necessary for me to consider whether this obligation meets the tests set out in the Framework.
18. I have also had regard to the other appeal decisions referred to by both the Council and the appellant, but am not convinced that those schemes are directly comparable with the appeal proposal. In any case, I confirm that I have considered the proposal before me on its own merits.

Conclusion

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

Elaine Worthington

Appeal Decision

Hearing held on 2 September 2015

Site visit made on 2 September 2015

by Nigel Harrison BA (Hons) MRTPI

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

Decision date: 2 October 2015

Appeal Ref: APP/F1040/W/15/3025091

Land at Brook Lane, Sutton-on-the-Hill, Ashbourne, Derbyshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr M and Mrs and T Rayworth against South Derbyshire District Council.
 - The application Ref: 9/2015/0070 is dated 23 January 2015.
 - The development proposed is the formation of an aquatic plant and fish farm including erection of polytunnel, storage building, dwelling, access and associated drainage (resubmission of planning application Ref: 9/2014/0785).
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr M and Mrs T Rayworth against South Derbyshire District Council, and is the subject of a separate Decision.

Procedural matter

3. At the Hearing, the appellants confirmed that, unlike the previous application, permission is sought for the proposed dwelling for a temporary three year period, rather than on a permanent basis as previously proposed.

Main issues

4. Taking into account the Council's statement setting out the reasons why it would have refused permission had the appeal not been lodged, I consider the main issues in this case are:
 - Whether there is an essential need for the proposed dwelling which is likely to be sustained, so as to amount to exceptional circumstances in the context of policies which seek to restrict new development in the countryside
 - The effect of the proposal on the setting, and therefore the significance, of the nearby Grade II listed building (Sutton Mill).
 - The effect of the proposal on the surrounding countryside;
 - the effect of the proposal on the site's ecology;

- The effect of the proposal on the site's trees; and
- Whether the proposal should be considered sustainable development in the overall planning balance having regard to such matters as the Council's housing land supply position.

Reasons

5. The appellants seek permission to establish a new business for rearing Koi Carp and growing aquatic plants for sale. A number of buildings are proposed which would be grouped closely together at the northern end of the site. The storage building would contain the small-fry fish rearing tanks and associated equipment. The polytunnel would be used to split and separate plants for planting in the outdoor pond and would contain tanks for housing fish prior to being packaged and sold. A prefabricated dwelling is also proposed comprising a living room/kitchen, three bedrooms, bathroom and office. The existing site levels would be re-contoured to provide flood compensation areas, and the existing two ponds would be merged to form one larger pond. Access would be taken from Brook Lane, which would run through the site as a raised track to a parking and turning area next to the buildings.

Planning policy context

6. Paragraph 55 of the *National Planning Policy Framework* (the Framework) says isolated homes in the countryside should be avoided unless there are special circumstances, such as an essential need for rural worker to live permanently at or near their place of work. Whether this need is essential will depend on the needs of the enterprise rather than the personal preferences or circumstances of any individual.
7. Saved Policy H8 of the *South Derbyshire Local Plan, 1998* (LP) seeks to restrict housing development in the countryside, although sets out a number of exceptions, including where the development is necessary for the operation of an established rural based activity, and where it can be demonstrated that a countryside location is necessary to the efficiency of the activity. Saved LP Policy EV1 similarly seeks to restrict development outside settlement boundaries unless it is essential to a rural based activity.
8. However, the Council cannot demonstrate a five-year supply of deliverable housing land as required by paragraph 47 of the Framework. Consequently, under the terms of paragraph 49, any relevant policies for the supply of housing should be considered out of date. The Council's putative reasons for refusal refer to a number of saved LP policies. Whilst Policies EV2, EV9, EV11, EV13 and T6 cannot be considered out-of-date; others, including EV1 and H8 which seek to restrict development outside settlements and are thus relevant to the supply of housing, must be considered out-of-date. Accordingly, I can attach little weight to saved policies EV1 and H8, and the fact that the appeal site falls outside the defined settlement boundary of the village is not, of itself, a determining factor in my decision. I shall therefore assess the first issue relating to the justification for the proposed dwelling against the requirements of paragraph 55 of the Framework.

Justification for the proposed dwelling

9. Paragraph 55 replaces advice in the former PPS7 Annex A which set out a methodology for assessing whether there was an essential need for a rural

workers dwelling. However, this no longer applies, and it is now necessary to decide on a case by case basis which factors need to be taken into account, and given weight to, when making such an assessment. Nevertheless, it is still necessary to establish whether an essential need can be demonstrated. To do this I need to consider whether it is essential for the proper running of the enterprise for a worker to live on the site and be readily available at most times, and be satisfied that the enterprise is viable and likely to be sustained.

10. I support of the proposal the appellants have submitted a statement prepared by Dr Bruno Broughton, a fisheries management consultant. This was evaluated by an Agricultural Consultant engaged by the Council and their evidence was discussed at the Hearing. Given the nature of the business there is no dispute between the parties that a full time on site presence will always be desirable. This is to enable immediate intervention to rectify any failure of life-support equipment used in the fish rearing unit, to monitor fish welfare and the routine feeding of fish, to monitor environmental conditions in the unit, and to respond quickly to any pollution threats. There are also genuine security concerns due to the high value of the fish.
11. Furthermore, although a financial test is no longer a pre-requisite of essential need, I still need to be satisfied that the enterprise would be viable and likely to be sustainable, at least in the short to medium term. Figures have been produced which set out the annual income and operational costs for a three-year period. Year 1 shows income from ornamental fish sales; whereas years 2 and 3 and three include income from fish and aquatic plant sales. This equates to a net income of £4,750 in year 1, £17,750 in year 1, and £31,750 in year 3. These net income figures are modest, and furthermore take no account of wages to the employees or investment loan costs (although the appellants have confirmed that the development of the site and business would be funded from their own capital reserves).
12. As the business is not yet operating, its success and future profitability can only be conjectural. A particular concern is that whilst sales are shown as doubling year on year, and Dr Broughton says that the market for Koi and aquatic plants is both lucrative and expanding, there is no substantive evidence to show where the specialised customer base will be drawn from, or how it will grow or be sustained to achieve the projected sales figures.
13. The appellants' ability, knowledge and expertise in being able to successfully sustain such a business have also yet to be proven. Whilst Mr Rayworth has bred and grown high quality Koi carp for several years this has been on a small 'hobby' scale. I accept that professional help and guidance may be available, but this does provide a sufficiently sound basis on which to justify the proposal.
14. I appreciate that permission is sought initially for a 3-year period, to enable the viability of the business to be assessed, and a condition could be imposed requiring the structures to be removed and the land re-instated if the Council took the view that there was no justification to extend the period of permission. Nonetheless, the substantial site works, new access, alterations to the ponds, formation of platforms for the buildings, tree and vegetation removal and replacement, would all bring about a very marked change to the appearance and character of the site. Consequently it would not be practical or a realistic to expect that the site could or would be re-instated to its previous condition in this eventuality.

15. Overall, I consider the appellants have failed to provide a sufficiently robust or convincing case to demonstrate that there is an essential need for a dwelling on the site, and as such the proposal conflicts with the requirements of paragraph 55 of the Framework.

Effect on the setting of a listed building

16. The appeal site is located immediately to the south of Sutton Mill, a Grade II listed building dating from the late 18th century, and a designated heritage asset. The statutory approach to development which may affect the setting of a listed building is set out in Section 66 (1) of the *Planning (Listed Buildings and Conservation Areas) Act 1990*. It requires the decision maker, in considering whether to grant listed building consent or planning permission for any works or development affecting a listed building or its setting, to have special regard to the desirability of preserving the building or its setting, or any features of special architectural or historic interest which it possesses.
17. Saved LP Policy EV13 states, amongst other things, that regard will be had to the need to preserve the setting of listed buildings. This follows the approach in the Framework, one of the core principles of which is to conserve heritage assets in a manner appropriate to their significance. Paragraph 132 says when considering the impact of a proposal on the significance of a designated heritage asset, great weight should be given to the asset's conservation. Significance can be harmed by development within its setting.
18. Although the listing designation does not refer to its setting, the rural landscape to the south, including the mill pond, mill stream and water meadows contribute to the character and significance of the building, and add to the understanding of the heritage asset. The Mill was built apart from the village adjacent to the water source, and the pattern of development in the village, with dwellings on the higher ground away from the flood plain, has been maintained. The appeal site is well wooded, and its present natural appearance contributes to the sylvan setting of the Mill.
19. The site of the proposed dwelling and other structures are on elevated ground. Although existing vegetation would afford some screening, it is inevitable that the structures would impinge on the view from the Mill, Common Lane and the bridge to some degree; more noticeably so in the winter months. At present the only other major impacts on the rural aspect (other than Mill Farm which has been on the site since at least the 19th century), are a rebuilt house (the Croft) which is beyond the appeal site, and distant views of the roofs and chimney stacks of a few houses in the village.
20. It was drawn to my attention at the Hearing that a number of trees at the northern extremity of the site had been removed without the appellants' knowledge. Nonetheless, whilst unfortunate, this has no bearing on my consideration of this issue, and in any event, I accept that it is the appellants' intention to strengthen planting to screen the buildings rather than remove it. However, I do not consider it appropriate to rely on new planting, which will take many years to mature, to screen a harmful form of development.
21. For these reasons I consider the proposal would fail to preserve the setting, and therefore the significance, of Sutton Mill. However, I am satisfied that the degree of harm caused would be less than substantial, and in such situations this harm should be weighed against any public benefits arising from a

proposal. It has not been shown that public benefits would outweigh this harm, and so the proposal would conflict with the Framework and saved LP Policy EV13.

Effect on the surrounding countryside

22. Although not subject to any specific landscape quality designation, the site and surrounding countryside lies within the Riverside Meadows sub-category of the *Needwood and South Derbyshire Landscape Character Area*. This sub-category is characterised by flat flood plains with seasonally waterlogged soils, localised patches of willow in damp hollows, and scattered locally dense trees along watercourses and field boundaries. Historically there would have been little evidence of built development on the flood plain except (as here) the occasional water mill, and the proposal would introduce significant new development into this typically undeveloped and comparatively unchanged landscape type.
23. Even though it is proposed to retain as many of the existing trees and as much of the vegetation as possible, and carry out replanting with appropriate species, there will clearly be significant initial losses as a direct consequence of the compensatory flood storage works, formation of level platforms for the structures, and provision of the access.
24. For these reasons I consider the proposal would have an unacceptable impact on the character and appearance of the appeal site and the surrounding countryside. It would be harmful to its intrinsic character, this being one of the core planning principles set out in paragraph 17 of the Framework, and would conflict with saved LP Policy EV1 which requires development to be designed and located so as to create as little impact as practicable on the countryside.

Effect on the site's ecology

25. The appeal site contains various natural features including trees, ponds and typical wetland vegetation, and is bordered by the Sutton Brook. It has also been managed under a stewardship scheme for a number of years, and is very much in its natural, unimproved state. Saved LP Policy EV11 states that development that would result in significant disturbance to sites containing protected species will not be permitted.
26. The application was accompanied by an ecological appraisal¹ and associated surveys which have been scrutinised by the Derbyshire Wildlife Trust (DWT) on behalf of the Council. At the Hearing it was confirmed that DWT were satisfied that the correct survey procedures has been followed with regard to the presence of protected species. No bats or signs of bats were recorded during the survey, and only two trees were identified as having features suitable for use by roosting bats. The two ponds were assessed for their potential to support great crested newt. With habitat suitability assessment scores of 0.47 and 0.41 both ponds are deemed as being of 'poor' suitability for great crested newt; this being mainly attributable to the fact they support dense stickleback populations, possibly owing to the fact that they are regularly flooded.
27. The Council's main outstanding concern appears to be that the appraisal fails to adequately address the impact of the likely changes to the existing ecosystem in terms of flora and invertebrates that would result from the proposed merging of the two ponds. In the absence of a suitably robust survey, the

¹ Dunelm Ecology Ecological Appraisal December 2014

Council says it cannot be satisfied that the proposal would not minimise the impact on biodiversity or, where possible, provide net gains in biodiversity in accordance with paragraph 109 of the Framework.

28. However, the appellants have satisfied the requirements set out in Circular 06/2005² to establish the presence or otherwise of protected species to ensure that all relevant material considerations have been addressed in reaching a decision. Nonetheless, I share the concerns of the DWT that proposed changes to the form of the ponds could lead to initial loss of reeds, willows and other characteristic vegetation, and could potentially have a harmful impact on the habitat of aquatic invertebrates. In this regard the Council has suggested a condition which requires a detailed survey of the ponds to be carried out in accordance with standard pond survey methodology. The results of this, along with a scheme for any loss of ecological interest, and a timescale for a programme of mitigation, would need to be submitted to and approved by the local planning authority before any development commences.
29. Therefore, and subject to the imposition of such a condition, I conclude on this issue that the proposal would not materially harm the site's ecology. As such I find no conflict with LP Policy EV11 and the Framework,

Effect on the site's trees

30. During the course of the application the Council placed a Tree Preservation Order on a mature Ash tree close to the proposed access point on Brook Lane. It is not disputed that the proposed access road would pass through the root protection area of that tree.
31. Due to the boggy nature of the ground and the frequent flood events in this area, the Council considers that ordinary methods of protecting roots from soil impaction may not prove effective. However, at the Hearing various options were discussed, including a cellular confinement system with a semi-permeable top surface, which may be acceptable. Overall, I am satisfied that this matter could be satisfactorily addressed by means of a condition requiring a full tree protection plan including construction method statement.
32. I conclude on this issue that the proposal would not harm the future health and life expectancy of the protected tree. As such, I find no conflict in this regard with saved LP Policy EV9.

Other matters - flood risk

33. The appeal site lies within an area of flood risk, with different parts of the site falling within zones 1, 2 and 3 on the Environment Agency's (EA) flood risk maps. Paragraph 100 of the Framework says inappropriate development in areas at risk from flooding should be avoided by directing development away from areas at highest risk, but where development is necessary, making it safe without increasing flood risk elsewhere. Paragraph 103 says local planning authorities should only consider development appropriate in areas at risk from flooding where, informed by a site-specific flood test assessment following a sequential test, it can be demonstrated that the most vulnerable development is located in areas of lowest flood risk unless there are overriding reasons to prefer a different location. It also requires the new development to be

² ODPM Circular 06/2005: Biodiversity and Geological Conservation –Statutory Obligations and their impact within the Planning System

appropriately flood resilient and resistant, including safe access and escape routes, and for priority to be given to sustainable drainage systems.

34. The application was accompanied by a Flood Risk Assessment³ and the Council accepts that there could be a need for the business to be located in an area at risk of flooding, and is satisfied that the sequential test search demonstrates that no other suitable sites are available.
35. In order to create a wider platform for the structures, it is proposed to relocate part of the high level bank (forming the existing and proposed access track) from the west to the east side of the site on a level for level basis, this extending the area within flood zone 1 (lowest risk). The mound to the west would also be lowered to ensure that the existing flood flow route would be maintained. More of the bank would be excavated than placed as fill, and there would be a modest net increase in overall flood storage capacity. The compensatory flood storage calculations show that the proposed development would not be at unacceptable flood risk, and will ensure that the flood risk will not be increased off-site. I note that surface water run-off from land to the east drains towards the site in periods of heavy rainfall. However, the layout of the proposed structures and associated drainage (including culverts) would ensure that any increased flood risk from that source is mitigated. The appellants have also negotiated an emergency access and egress arrangement via the field to the east.
36. Overall, having considered the detailed measures in the FRA and other information submitted by the appellant, I am satisfied that the proposed fully addresses the flood risk implications of the scheme, and meets the requirements of the Framework in this regard.

Other matters - Highway safety

37. The appeal site is accessed from Brook Lane, which is an adopted highway as far as the ford across the Sutton Brook. However, the last part of the lane, along which access would be taken, is unsurfaced, narrow and in many places overhung by vegetation. Brook Lane is also part of a well-used public footpath which continues over the foot bridge into the meadows beyond. Saved LP Policy T6 says all proposals must incorporate adequate access provision.
38. The proposal will inevitably lead to an increase in vehicle movements, and I share the concerns of many local residents that the means of access is far from ideal, particularly as the lower section of the lane is subject to flooding at certain times of the year and there is potential for conflict between vehicles and pedestrians sharing the confined space. Furthermore, as the unsurfaced section of the lane is not within the ownership or control of the appellants, it would not be possible for them to carry out any improvements or maintenance.
39. However, the County Highway Authority was consulted on the application and raised no objections subject to conditions concerning the design of the access and turning area. Paragraph 32 of the Framework says development should only be refused on transport grounds where the impacts would be severe. Therefore, and taking into account the modest number of traffic movements likely to be generated, I consider it would be unreasonable to resist the proposal for reasons of highway safety.

³ Flood Risk Assessment Version 3.2: October 2014 – Prepared by Julia Williams

Whether the proposal would represent sustainable development

40. I have concluded that the proposal would not materially harm the site's ecology (subject to conditions), would not result in unacceptable flood risk for future occupiers, would not harm the protected Ash tree, and would not harm highway safety. However, I have found that the proposed dwelling has not been adequately justified so as to amount to exceptional circumstances in the context of policies which seek to restrict new development in the countryside, and that the proposed development as a whole would have a harmful effect on the setting of Sutton Mill and the character and appearance of the surrounding countryside. These are substantive and overriding objections which must be decisive.
41. It is also necessary to determine whether the proposal is sustainable in the wider context of the Framework when taken as a whole. Paragraph 7 identifies a three-stranded definition of sustainable development based on economic, social and environmental factors. Whilst the impact of this proposal for just one (temporary) dwelling on the overall housing supply is small, the delivery of housing is nonetheless a material consideration in favour of the proposal. There would also be limited economic benefits arising from the establishment of a new rural enterprise and the provision of a family home would represent a social benefit.
42. However, my conclusions with regard to the harmful environmental impacts of the proposal including its countryside location and harmful effect on the setting of a listed building would substantially and demonstrably outweigh any potential social and economic benefits of the appeal scheme. For this reason I conclude that the proposal does not amount to sustainable development, and the presumption in favour of such development does not therefore apply.
43. Therefore, for the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Nigel Harrison

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Derek Kitson	Derek Kitson Architectural Technologist Ltd
Dr Bruno Broughton	Fisheries Management Consultant
Julia Williams	Flood Risk Advisor
Matthew Rayworth	Appellant
Tamar Rayworth	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Steven Mott	SDDC
Neil Robertson	SDDC
David Hughes	David Hughes Agricultural Consultancy Ltd
Trevor Taylor	Derbyshire Wildlife Trust
Peter Eastough	Arboricultural Consultant

INTERESTED PERSONS:

Jean Parkinson	Local resident
Brian King	Local resident
Stan Fraser	Local resident
K R Dutton	Local resident
R D Dutton	Local resident

DOCUMENTS

- 1 Consultation response: 18 September 2014 – David Hughes Agricultural Consultancy Ltd
- 2 Consultation response: 9 February 2015 - David Hughes Agricultural Consultancy Ltd
- 3 Emails between Jon Guarnaccio (Dunelm Ecology) and Derek Kitson
- 4 Background information from Matthew and Tamar Rayworth
- 5 Saved policies South Derbyshire Local Plan

PHOTOGRAPHS

- 1 Aerial Photographs
- 2 Photograph showing Brook Lane

PLANS

- 1 Plan showing Derbyshire County Council adopted highways
- 2 Plan showing settlement boundary

Costs Decision

Hearing held on 2 September 2015

Site visit made on 2 September 2015

by **Nigel Harrison BA (Hons) MRTPI**

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

Decision date: 2 October 2015

Costs application in relation to Appeal Ref: APP/F1040/W/15/3025091 Land at Brook Lane, Sutton-on-the-Hill, Ashbourne, Derbyshire

- 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 M and Mrs T Rayworth for a full award of costs against South Derbyshire District Council.
 - The Hearing was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for the formation of an aquatic plant and fish farm including erection of polytunnel, storage building, dwelling, access and associated drainage (resubmission of planning application Ref: 9/2014/0785).
-

Decision

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

The submissions for Mr M and Mrs T Rayworth

2. The costs application was submitted in writing and is made on the grounds that the Council behaved unreasonably, thus causing the applicants unnecessary and wasted expense. Reference is made to paragraphs 186 and 187 of the *National Planning Policy Framework* (the Framework) which states that decision taking should be approached in a positive way, and that local planning authorities should look for solutions rather than problems.
3. The Council have had two applications to consider the same proposal, have failed to determine either, and throughout a lengthy period have failed to engage proactively with the applicants and their consultants to seek a resolution. An example of this includes the Council's employment of an agricultural consultant at a late stage in the process to assess the viability of the proposal, without giving the applicants a chance to respond prior to the Hearing. Further concerns relate to the comments of the Council's Conservation Officer, Arboricultural Consultant and Derbyshire Wildlife Trust (DWT). Whilst the applicants have suggested solutions and a way forward in response to the concerns raised, no constructive feedback was received during the process.
4. It is suggested that the majority, if not all the concerns of the DWT, were answered in the ecological appraisal, and any outstanding or precautionary measures could be dealt with by condition.

The response by South Derbyshire District Council

5. The costs response was submitted in writing. During the course of the first application significant concerns emerged in terms of the business case necessary to justify the proposal, its impact on the listed Sutton Mill, and the potential impact on protected species. These fundamental issues would take time to address, and therefore the application was withdrawn with a view to resubmitting a fresh application with new evidence. In terms of the supporting information accompanying the new application expert opinions were again sought on the main issues. The applicants' agent was advised by the case officer that he would be given the opportunity to reply to the responses received, and was given copies of them during the statutory 8-week period, with the two remaining responses being sent soon afterwards. The agent duly came back with additional comments on the outstanding matters, having made previous comments on the heritage issue.
6. Dialogue with the consultees resulted in the case officer forming the opinion that matters relating to the business case, the setting of the listed building, impact on the protected tree, and on the site's ecology had still not been adequately addressed. The suggestion that outstanding matters could be dealt with by condition was not considered suitable given their importance. Ecological impacts for example should be addressed during the application period, and not post-decision. Consequently, the case officer advised the applicants' agent that in the light of his request for the Council to proceed to a determination, the application would be recommended for refusal.
7. Even if the Inspector is minded to allow the appeal, it would have to be clear that permission should have been granted from the outset, and that the Council unreasonably pursued the matters of concern. The need for a Hearing implies that the the issues involved are complex. Therefore, as a consequence, it contends that unreasonable behaviour has not been demonstrated.

Reasons

8. Paragraph 030 of the Government's *Planning Practice Guidance* (PPG) says that irrespective of the outcome of the appeal, costs can only be awarded against a party which has behaved unreasonably, and thereby caused the party applying for costs to incur unnecessary or wasted expenses in the appeal process. Paragraph 048 says where an appeal against non-determination is allowed, the Council may be at risk of a costs award if there were no substantive reasons to delay determining the application, and better communication with the applicant may have avoided the need for an appeal. If it is clear that the Council will fail to determine the application within the time limits, it should give the applicant a proper explanation. In any appeal against non-determination the Council should explain its reason for not reaching a decision, and why permission would not have been determined within the relevant period.
9. In this case I am satisfied that the complexity of the issues justified the Council's decision to seek expert opinions on the listed building, business case/agricultural justification, the site's ecological interest, and the site's trees. These are fundamental issues that would take time to address. Although criticism is made of the Council's 'late' decision to appoint an agricultural consultant, responses from that consultant (albeit in email form) were received in relation to both the original and resubmitted applications within the statutory 8-week periods, and according to the Council were forwarded to the applicant.

10. I agree with the applicants that the protracted nature of the negotiations throughout the course of two applications may to some extent have been avoided, and consider some of the concerns could perhaps have been 'flagged up' earlier. There appears to have been some deficiencies on the Council's part in advising when the application would be determined, and in agreeing official extensions of time. I also have concerns that the Council decided to impose a tree preservation order during the course of the appealed application, rather than at the stage of the first application. It would have been more helpful to the applicants to raise this matter earlier.
11. However, on balance, I accept that the continuing submission of and reaction to new information required time for a fully considered response by the Council. I am satisfied that the Council provided copies of all the relevant consultation replies (both internal and external), and allowed sufficient time for response. Indeed, I note that constructive dialogue between the parties resolved the Council's initial concerns regarding flooding and highway issues.
12. Overall, I am satisfied that the delays which arose in the processing of both applications (essentially arising from differences in professional opinion, particularly with regard to the listed building, business case and ecology issues), do not in themselves amount to unreasonable behaviour resulting in unnecessary expense.
13. It will be seen from my decision that outstanding ecological concerns could be dealt with by a appropriately worded planning condition. Paragraph 49 of the PPG states that refusing permission on a planning ground capable of being dealt with by conditions risks an award of costs, where it is concluded that suitable conditions would enable the proposal to go ahead. However, as I have determined that the appeal should fail for other substantive reasons, the imposition of such a condition would not make the proposed development acceptable.
14. The applicants have raised a number of concerns regarding the Council's handling of the applications, referring to the fact that the Council does not publish consultee responses on its website. However, the procedures adopted by local planning authorities are generally a matter for the authority within the context of local government accountability.
15. Having regard to the above, I consider the Council has behaved reasonably in both its handling of the planning applications and in the appeal process. Therefore, for the reasons given above I conclude that unreasonable behaviour resulting in unnecessary expense, as described in PPG paragraphs 030, 048 and 049, has not been demonstrated in this case.

Nigel Harrison

INSPECTOR



Appeal Decision

Site visit made on 22 September 2015

by **Tom Cannon BA DIP TP MRTPI**

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

Decision date: 7 October 2015

Appeal Ref: APP/F1040/W/15/3028082

Hill Pasture, Sutton Lane, Etwell, Derbyshire DE65 6LQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr & Mrs J Blackton against the decision of South Derbyshire District Council.
 - The application Ref 9/2014/0727, dated 6 August 2014, was refused by notice dated 3 October 2014.
 - The development is described on the application forms as: "outline planning permission for the erection of five dwellings (all matters reserved except access)."
-

Decision

1. The appeal is dismissed.

Procedural Matter

2. The application is in outline with all matters reserved for future determination except access.

Background and Main Issue

3. The Council accepts that it cannot demonstrate a 5-year supply of deliverable housing sites. Paragraph 49 of the National Planning Policy Framework (the Framework) states that in such circumstances, relevant policies for the supply of housing should not be considered up-to-date.
4. This conclusion has ramifications for the application of the presumption in favour of sustainable development, which lies at the heart of the Framework. Paragraph 14 of the Framework says that where relevant policies of the development plan are out of date, the presumption in favour of sustainable development means that unless material considerations indicate otherwise planning permission should be granted: that is unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
5. In this regard, it is necessary to determine whether the adverse impacts of granting planning permission for the proposed development would significantly and demonstrably outweigh the benefits. Therefore, based on the above background and all I have seen and read, the main issue in this case is the effect of the proposal on the character and appearance of the area.

Reasons

Character and appearance

6. The appeal site comprises of a large paddock that is located beyond the settlement limits of Etwall, as defined in Inset 2 of the proposals Map and Saved Housing Policy 5 of the South Derbyshire Local Plan 1998 (LP). As such, the site falls within the open countryside. Housing Policy 8 of the LP sets out the circumstances where new housing development will be permitted in the countryside, none of which are directly relevant to this case.
7. As paragraph 49 of the Framework is engaged, LP policies that seek to restrict housing development outside the defined settlement limits should be considered out of date. In this respect, the location of the appeal site outside the Etwall settlement boundary is not, in itself, a policy bar to its development for housing. Nevertheless, Saved Environmental Policy 1 of the LP, which seeks to ensure that new development safeguards the character of the countryside, remains an important consideration. This policy, despite its age is broadly consistent with the Framework policies to recognise the intrinsic character and beauty of the countryside, and thus, I afford it material weight.
8. The appeal site lies at the end of Sutton Lane, a no through road on the northern edge of Etwall. Although there is a dense concentration of residential development immediately after the junction with Main Road, as one heads away from the village towards the site the settlement pattern becomes more dispersed. This is emphasised on the northern side of the lane where houses, including the host dwelling are situated in large landscaped plots. Beyond which the landscape opens out to form a series of paddocks, and pockets of established tree planting which provide a landscaped buffer between the adjacent by-pass and the built form of the settlement. The verdant character of this area is enhanced by the cricket ground and mature planting on the southern side of the lane immediately opposite the appeal site.
9. Hill Pasture demarks the transition between the built envelope of Etwall and the open countryside. The development would encroach out into the large, open, undeveloped paddock to the west of this property, significantly extending the built form of the village into the countryside. That character would be transformed from an area of open grazing land that currently blends in with the open rural landscape, to one occupied by up to 5 houses and the domestic activity and paraphernalia associated with it. As such, the proposal would represent a visually intrusive expansion of the settlement which would adversely affect the open rural character of the north-west edge of Etwall.
10. Sutton Lane also serves as a public right of way linking the centre of the village to the surrounding open countryside. I observed that, when emerging onto Sutton Lane immediately opposite Hill Pasture there is a clear sense of having left the built form of the village behind and entering the open countryside. This feeling is increased as one travels past the appeal site, with its open rural character and the backdrop of established tree planting. The presence of the bypass further to the north and west does not undermine this experience.
11. Equally, when travelling east towards the village, the open character of the appeal site enhances views from the right of way and aids the visual transition between the countryside and the village. The development of this land for

housing would therefore result in the loss of these important public views and detract from the character and setting of the settlement.

12. The appearance, scale, layout and landscaping of the scheme are matters reserved for subsequent approval. I also note that the scheme would retain the existing hedgerow along the site frontage and could potentially enhance ecology in the area. Nonetheless, it is likely that the development regardless of its detailed design, layout and landscaping would provide a visually intrusive form of development and extend the built form out into the open countryside. The fact that the appeal site is not located in a landscape protection area does not lessen this impact.
13. It has been put to me that the route of the by-pass serves as a natural barrier to the expansion of the village. However, the existence of this principal road artery does not in itself justify the extension of Etwall further to the west. It is also suggested that the Inspector when examining the Saved LP only excluded the appeal site from the Etwall settlement boundary as it could be seen from the bypass. However, I have not been provided with the Inspectors detailed reasoning behind this. Nor does it alter my findings on the schemes impact on the character and appearance of the area.
14. For the above reasons, I conclude that the site forms an important part of the countryside beyond the built form of Etwall. The development of this large grass paddock for housing would therefore erode the rural character and appearance of the area, contrary to Saved Environmental Policy 1 of the LP which states that, where development is permitted in the countryside it should be designed and located so as to create as little impact as practicable on the countryside.

Other matters

15. The appeal scheme would contribute towards boosting the supply of housing, which is specifically identified as a matter relevant to the social role of sustainable development in paragraph 7 of the Framework. In doing so it would only provide 5 dwellings, but the resultant social benefits nonetheless would provide considerable weight in favour of the proposal. In this respect, I am also mindful of the correspondence from a local estate agent which indicates there is strong demand, specifically for larger good quality housing in Etwall.
16. It is suggested that the appellant has been previously approached by the Council regarding the development of the appeal site for housing. However, no detailed evidence has been put before me in this appeal to demonstrate this. Nor does its inclusion as a potential site in the Council's Strategic Housing Land Availability Assessment (SHLAA) necessarily mean that it is deliverable.
17. The site is situated within a reasonable walking distance of a range of services and facilities in Etwall including, shops, primary and secondary schools and a leisure centre. I observed that a bus stop is located at the end of Sutton Lane providing regular services to both Derby and Burton on Trent where potential future occupiers of the development could access employment opportunities, healthcare provision and other essential services by public transport. The scheme would also introduce a new section of footway along the site frontage, improving pedestrian links to the centre of the village

18. As such, the appeal site is reasonably well connected, with potential future occupiers not reliant on the private motor vehicle to serve their daily needs. In terms of paragraph 55 of the Framework, the development would not therefore be physically isolated. The proposal would also provide some benefits to the local economy through the construction of the dwellings and from potential occupiers utilising local services and facilities. In accordance with paragraph 19 of the Framework, significant weight should be placed on such considerations.
19. However, there are three dimensions to sustainable development: economic, social and environmental. These roles are mutually dependant and should be jointly sort to achieve sustainable development. In respect of the environmental dimension, recognising the intrinsic character and beauty of the countryside is one of the core planning principles of the Framework as is the need to take into account the different character of different areas and to contribute to conserving and enhancing the natural environment. For the reasons set out, I consider that the proposal would conflict with these important principles.

Planning Balance

20. The development would contribute to addressing some of the shortfall in housing land, to which I attach considerable weight. It is also situated in a reasonably accessible location and would deliver some social and economic benefits if it were to be implemented.
21. Nonetheless, I conclude that the environmental harm to the character and appearance of the area caused by the proposal would significantly and demonstrably outweigh the benefits of the appeal development. Consequently, the proposal does not amount to sustainable development and so the presumption in favour of sustainable development does not apply.
22. In reaching this finding, I have had regard to the appeal decisions to which the appellant refers. From the limited information provided, it does not appear that my colleagues identified any environmental harm in these cases. As such, there are clear differences between the appeal scheme and these decisions.

Conclusion

23. For the reasons set out above, and having regard to all other matters raised, include the scope of possible conditions, I conclude that the appeal should be dismissed.

T Cannon

INSPECTOR